



Formulation of Strengthening Restorative Justice by the Public Prosecutor to Realize Legal Certainty

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Abstract

Restorative justice is a legal paradigm that emphasizes repair and reconciliation between criminals, victims and society, not just punishment. The implementation of restorative justice in Indonesia still needs strengthening, especially through the role of public prosecutors. This research aims to formulate a strategy to strengthen restorative justice by public prosecutors in order to realize legal certainty. This research uses socio legal research methods. The data sources used by researchers are primary, secondary and tertiary data obtained from literature analysis, case studies and interviews with law enforcement. The results of the research show that the strategy formulation for strengthening restorative justice to realize legal certainty implemented by public prosecutors is increasing and strengthening the competency of public prosecutors, integrating restorative justice in law enforcement guidelines, collaboration and partnerships between institutions and related parties, advocacy and public education, evaluation and improving policies, as well as upholding balanced justice



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1. Introduction

The implementation of restorative justice in Indonesia has progressed, but still faces challenges in achieving the desired legal certainty. Although there are many challenges that must be overcome, the application of restorative justice in Indonesia can still be an effective tool in achieving more holistic justice (Risal, 2023; Zaidan, 2022), improving the relationship between perpetrators, victims, and communities (Reda Manthovani et al., 2022; Waluyo, 2022). To address these challenges, collaborative efforts between governments, NGOs, and other stakeholders are needed, as well as broader legal reform and education on the principles of restorative justice.

Public prosecutors have a crucial role in determining the direction of law enforcement, including in the context of restorative justice. Therefore, appropriate formulation is needed to strengthen the role of public prosecutors in realizing legal certainty through a restorative justice approach.

Restorative justice is a legal approach that emphasizes recovery and reconciliation between perpetrators of crimes, victims, and society (Arief & Ambarsari, 2018); (Rado & Badillah, 2019) (Setyowati, 2020) (Andriyanti, 2020) (Rambey, 2023) (Mohammad Nurul Huda, 2023). This approach is different from the retributive justice approach which focuses more on punishment of perpetrators of crimes (Rumadan, 2013). Restorative justice gives victims a

greater role in the justice process, promotes social accountability, and builds better relationships in the community. However, the implementation of restorative justice in Indonesia still experiences obstacles and challenges that affect the effectiveness and certainty of law in this context. Some of these obstacles are:

First, Lack of understanding and awareness: The public, including law enforcement such as public prosecutors, has not fully understood the concept and benefits of restorative justice. Lack of understanding can hinder effective implementation. To overcome these barriers, it is important to conduct broader education and training efforts on restorative justice among stakeholders, including law enforcement, victims, and the general public. In addition, strong advocacy and promotion of the benefits of restorative justice and demonstration of successful implementation in cases can help increase understanding and acceptance of this approach. With better understanding, restorative justice has the potential to be an effective tool in achieving more holistic justice and repairing social relationships damaged by criminal acts.

Imbalance between legal certainty and restorative approach: The implementation of restorative justice must ensure legal certainty is maintained, while also encouraging recovery and reconciliation. Not maintaining this balance can affect the integrity and effectiveness of the justice system. In this context, a deep understanding of the principles of restorative justice, good training for legal professionals, and the development of clear guidelines are essential to maintain a balance between legal certainty and recovery and reconciliation efforts.

Third, Lack of involvement of public prosecutors: The role of public prosecutors in implementing restorative justice has not been optimal. It is necessary to strengthen the role and competence of public prosecutors to ensure the effectiveness of restorative justice as an approach that prioritizes justice. Strengthening the role of public prosecutors in the application of restorative justice will help ensure that this approach is carried out properly, meets justice standards, and provides satisfactory results for all parties involved. It also promotes transparency and integrity in the legal process as a whole. Therefore, continuing training and education for public prosecutors, as well as clear guidelines on how to integrate restorative justice in their work, are essential in fostering a more optimal role in the justice system.

Traditional mindset and resistance to change: Some in the justice system may still be more inclined to conventional or retributive justice approaches. The existence of resistance to change is one of the obstacles in strengthening the restorative approach. Overcoming resistance and promoting a better understanding of restorative justice is an important step toward strengthening this approach and making it more integrated in the criminal justice system.

In facing these obstacles, it is necessary to formulate the strengthening of restorative justice by the public prosecutor to realize legal certainty. This formulation should consider integrating the principles of restorative justice into the legal system, increasing the understanding and competence of public prosecutors, and educating the public about the advantages of a restorative approach to justice. Thus, legal certainty can be maintained while promoting improved social relations and reconciliation in society.

2. Materials and Methods

This research uses empirical legal methods (socio legal research), which is a research approach in legal science that focuses on the use of empirical data (Muhdlor, 2012), direct observation (Djulaeka & Devi Rahayu, 2020), real experience (Muhammad Chairul Huda & S HI, 2021), and concrete evidence to understand law and legal issues (Marzuki, 2017). This empirical legal approach is an important part of evidence-based legal and policy development, enabling policymakers to make better, informed decisions. The data sources used by researchers are primary, secondary and tertiary data obtained from literature analysis, case studies, and interviews with related law enforcement to formulate strategies for strengthening restorative justice by public prosecutors. The data collected were analyzed qualitatively to identify inhibiting factors and recommendations to strengthen the role of public prosecutors in the context of restorative justice.

3. Results and Discussions

The law on restorative justice in Indonesia does not exist specifically. Restorative justice is an approach in law enforcement that aims to improve the relationship between perpetrators, victims, and the community after a crime (Prayitno, 2012); (Syahrin, 2018) (Setyowati, 2020) (Hambali, 2020). However, in Indonesia, the principles of restorative justice are still integrated in the conventional criminal justice system and have not been regulated in law separately.

Some practices that approach the principle of restorative justice can be found in the law and justice system in Indonesia (Waluyo, 2015) (Akbar, 2022), such as mediation in criminal cases, especially in small cases. This mediation aims to reach an agreement between the perpetrator and the victim, which can involve restitution or compensation to the victim as part of the judicial process (Chandra, 2014) (Beremanda, Hafrida, & Siregar, 2023). In addition, there are

also a number of non-governmental organizations and programs that seek to promote the concept of restorative justice in Indonesia, especially in handling cases of domestic violence and children involved in criminal (Irsyad Dahri, 2020).

Although there is no law that specifically regulates restorative justice in Indonesia, its principles continue to be an important part of various efforts to improve the criminal justice system in Indonesia (Yudi Krismen & SH, 2022).

Strengthening restorative justice by public prosecutors is an important step to realize legal certainty in the implementation of a legal approach that focuses on recovery and reconciliation. In this context, the discussion will focus on the formulation of strategies that can be applied by the public prosecutor to strengthen the restorative justice approach and achieve legal certainty. Some strategy formulations in strengthening restorative justice to realize legal certainty applied by public prosecutors include:

Improvement and strengthening of the competence of public prosecutors

Increasing and strengthening the competence of public prosecutors in restorative justice is an important step to ensure that they can perform their roles properly in implementing the restorative justice approach (Saefudin & NCD, 2021) (Ali & SH, 2022) (Risal, 2023).

It is important for public prosecutors to have in-depth knowledge of the principles and methods of restorative justice. Constant training and education related to this concept should be held regularly. Public prosecutors must understand how to properly implement restorative justice, including how to facilitate constructive dialogue between perpetrators, victims, and communities.

In addition to increasing competence, public prosecutors must also be accompanied by strengthening competence. In restorative justice, this reinforcement is important. Public prosecutors need to have a deep understanding of the principles and concepts of restorative justice as well as skills in facilitating dialogue between perpetrators of crimes, victims, and communities. Several important aspects in improving and strengthening the competence of public prosecutors are:

1. Public prosecutors need to have a deep understanding of the basic principles of restorative justice, such as restoration, reconciliation, accountability, and active participation of all parties involved. They must understand how this approach differs from conventional criminal justice.
2. Public prosecutors must have good communication skills to support the ability to listen empathetically, facilitate dialogue, and help parties to express their feelings and needs clearly.
3. Public prosecutors must have strong negotiation skills to help perpetrators and victims reach agreements that are fair and acceptable to all parties.
4. Public prosecutors need to have an understanding of trauma and how to approach cases with sensitivity and empathy.
5. Public prosecutors must also understand the relevant laws and policies in the context of the cases they handle. This includes an understanding of applicable laws and their role in legal proceedings.
6. Public prosecutors can obtain training in mediation and conciliation to help them facilitate meetings between perpetrators and victims effectively.
7. Public prosecutors must have skills in monitoring and evaluating the restorative justice process, as well as analyzing the results. This helps in improving the approach and making the necessary changes.

Strengthening the competence of public prosecutors in restorative justice will help ensure that they can play an effective role in this process, which in turn will contribute to more holistic justice and better recovery for all parties involved in the criminal justice system.

Integrating restorative justice into law enforcement guidelines

Integrating the principle of restorative justice in law enforcement guidelines and legal regulations is an important step (Prayitno, 2012); (Abeth, 2017); (Situmeang & Pudjiastuti, 2022). This can be achieved by incorporating the principles of restorative justice in the public prosecutor's code of ethics, case handling guidelines, and other official guidelines. This will provide clear direction to the public prosecutor in implementing restorative justice effectively and in accordance with legal norms.

The integration of restorative justice principles in legal regulations and law enforcement guidelines will ensure that restorative justice is recognized as an integral part of the national legal system. Some concrete steps to integrate the principles of restorative justice in legal regulations and law enforcement guidelines include:

1. Update relevant legislation or, if necessary, design new laws that recognize and support restorative justice approaches. These laws should include provisions on when, how, and under what circumstances restorative justice can be used as an alternative or complement to the conventional justice system.
2. Create clear operational guidelines for the implementation of restorative justice. These guidelines should detail practical steps, procedures, stakeholder roles, and case selection criteria.

3. Develop case selection criteria that help in determining appropriate cases for a restorative justice approach. These criteria may take into account factors such as the willingness of the perpetrator, the consent of the victim, and the type of crime.
4. Establish ethical standards and values relevant to restorative justice in legal regulations and law enforcement guidelines. This includes values such as fairness, accountability, empathy, and respect for human rights.

Integrating restorative justice principles into legal regulation and law enforcement guidelines will help create a solid legal foundation for this approach, so that it can be applied consistently and effectively. It will also help achieve the key goals of restorative justice, namely better restoration, reconciliation, and accountability in national legal systems.

The integration of restorative justice in law enforcement guidelines allows this approach to become a legitimate and standardized part of the criminal justice system. It also helps achieve the goals of restorative justice, which are improved relationships, accountability, and better recovery for all parties involved in the legal process.

Collaboration and partnership between institutions and related parties

Restorative justice enforcement requires close collaboration between public prosecutors, other law enforcement agencies, community organizations, and educational institutions. This synergy between various parties will enable the exchange of knowledge, experience, and best practices in implementing restorative justice. Collaboration can also help build consensus on the implementation of restorative justice at the national level.

Collaboration between public prosecutors, other law enforcement agencies, community organizations, and educational institutions can strengthen the implementation of restorative justice. This synergy will enhance mutual understanding of restorative justice and ensure effective implementation. The various benefits of collaboration and partnership between institutions and related parties are:

1. Collaboration enables the exchange of knowledge and experience between various stakeholders. Public prosecutors, police, judges, and other members of law enforcement agencies can learn from each other about how best to implement restorative justice.
2. Collaboration enables the development of shared plans and guidelines for the implementation of restorative justice. This helps ensure consistency in the approaches and procedures used.
3. Collaboration facilitates case referral from one stakeholder to another stakeholder who is better suited to handle a particular case with a restorative justice approach.
4. Collaboration with community organizations working with victims and perpetrators can assist in providing additional support to them and facilitating their participation in the restorative justice process.
5. Various stakeholders can work together in developing an effective evaluation and monitoring system to measure the results and effectiveness of restorative justice implementation.
6. Collaborations with educational and research institutions can support research on restorative justice and the development of best practices.
7. Collaboration allows communities to play an active role in the implementation of restorative justice. This can create greater community involvement and understanding of the process.

Collaboration between various stakeholders can also help overcome barriers and resistance to change in the criminal justice system. With broad support from various parties, the implementation of restorative justice can be more effective in achieving the goals of better recovery, reconciliation, and accountability in the legal system.

Community advocacy and education

The public prosecutor must act as an agent of advocacy and public education about restorative justice. They need to conduct an extension campaign to increase public understanding of the benefits and principles of restorative justice. This can be done through seminars, workshops, and social media, to ensure better public participation in the legal process and build support for restorative justice. Increased public understanding and awareness of this concept can have a number of benefits:

1. When people understand the principles of restorative justice, it can encourage crime prevention. Perpetrators may be more likely to take responsibility for their actions if they know that the consequence is to repair the damage they have caused.
2. Restorative justice allows victims to participate in the settlement process, giving them a sense of justice and recognition for their suffering. It can also help the victim in physical and emotional recovery.
3. The restorative justice approach helps criminals to be more easily reintegrated into society. They learn to take responsibility for their actions and can restore relationships with their communities.
4. With a focus on rehabilitation and reconciliation, restorative justice can reduce the burden on the criminal justice system, which is often overcrowded with criminal cases.

5. With proper education, people can become more concerned about issues of justice and the criminal justice system. This can encourage community involvement in supporting restorative justice programs.

Increasing public understanding and awareness of restorative justice needs to be the focus. Public prosecutors can play an important role in educating the public about the benefits and objectives of this approach.

Policy evaluation and improvement

Public prosecutors should be actively involved in the policy evaluation process related to the application of restorative justice. Through careful evaluation, public prosecutors can provide valuable input to improve policies, improve processes, and improve the effectiveness of restorative justice in achieving legal certainty. In this context, the public prosecutor has several key roles:

1. Public prosecutors need to be involved in the evaluation of policies related to restorative justice. This involves assessing the effectiveness of existing restorative justice programs, as well as identifying areas where change or improvement may be needed. Careful evaluation can help keep restorative justice programs relevant and effective.
2. Public prosecutors can provide valuable input based on their experience in prosecuting criminal cases. This includes providing feedback on weaknesses or obstacles that may arise in the application of restorative justice, as well as advice on how to address those issues.
3. Public prosecutors must be able to identify cases that are suitable for restorative justice. Cases where perpetrators show a willingness to take responsibility for their actions and where restorative justice can provide greater benefits than traditional punishment are likely appropriate cases.
4. Public prosecutors can also play a role in facilitating meetings between perpetrators, victims, and other relevant parties in the restorative justice process. They can help ensure that these meetings go well and are in accordance with the law.
5. Public prosecutors should monitor the restorative justice process to ensure that agreements reached are respected and perpetrators abide by their commitments. They should also be prepared to take legal action if the deal is not adhered to.
6. By being actively involved in the restorative justice process, public prosecutors can help increase legal certainty. This can include ensuring that restorative justice agreements are in accordance with the law and meet the needs of victims, perpetrators, and communities.

Involving public prosecutors in the restorative justice process is an important step to maintain a balance between justice and restoration. By doing so, they can ensure that restorative justice becomes an effective tool in the legal system to address criminal acts and restore society.

Public prosecutors need to be actively involved in evaluating policies related to restorative justice. Input from public prosecutors will help develop policies that are more effective and appropriate to the local context.

Balanced enforcement of justice

In realizing legal certainty, public prosecutors must ensure that restorative justice does not sacrifice justice. The application of restorative justice must be in line with the principles of justice, especially in terms of fair treatment of all parties involved, including victims, perpetrators, and the community.

Restorative justice is a legal approach that focuses on rapprochement and conflict resolution rather than just punishing perpetrators of crimes (Prayitno, 2012) (Chandra, 2014) (Maulana & Agusta, 2021). However, the principles of justice should remain the main guide in this process. Some important aspects to ensure that restorative justice is in line with the principles of justice are:

1. Restorative justice must ensure that all parties involved, including victims, perpetrators, and communities, are treated fairly. This means that the interests and rights of all parties must be taken into account.
2. Participation in the restorative justice process must be voluntary. There should be no pressure or coercion on the victim or perpetrator to participate. All parties should have the freedom to decide whether they want to be involved in the process.
3. All parties involved in the restorative justice process must understand the objectives and procedures involved. They must also be willing to abide by agreements reached as a result of the process.
4. In the process of restorative justice, all parties must be treated equally. There shall be no discriminatory or unfair treatment of either party.
5. The restorative justice process must be transparent, and the results must be accountable. This means that the outcome of the process must be recorded, and if any agreement is violated, there must be corresponding consequences.

The application of restorative justice that pays attention to these principles of justice can help create more sustainable solutions and enable better recovery for all parties involved in a conflict or criminal act.

4. Conclusion

Strengthening restorative justice by public prosecutors requires commitment, collaboration, and integration in the legal system. Through competency improvement, collaboration with related parties, integration in the legal system, public education, and participation in policy evaluation, public prosecutors can play a crucial role in realizing legal certainty through a restorative justice approach. It is hoped that the results of this study can be a guide for law enforcement and the government in strengthening the application of restorative justice in Indonesia.

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