The Implementation Of Restorative Justice As An Effort To Overcome Environmental Crimes

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Abstract

The problem of the application *of restorative justice* in environmental crime cases basically concerns juridical issues, namely whether all forms of environmental violations can be resolved through restorative mechanisms, appropriate settlement models, and legal consequences for the status of cases being handled by law enforcement officials. This paper aims to identify the relevant *restorative justice* model applied in handling environmental crimes and explain the legal consequences of its application to the status of the case. This study uses a normative juridical method that relies on secondary data and literature studies, with qualitative data analysis. The *restorative justice model* that is considered the most suitable to be applied is *Restorative Conferencing,* which is a settlement mechanism that involves perpetrators (both individuals and corporations), victims (the community and the environment), mediators, as well as investigators from the National Police and PPNS voluntarily to reach a recovery agreement. The application of this model has legal implications in the form of stopping investigations to avoid imposing criminal sanctions and reducing the accumulation of cases, which is carried out through the discretion of law enforcement as long as it meets the material and formal requirements in accordance with the Circular Letter of the National Police Chief Number 8 of 2018 concerning Guidelines for Handling Case Settlement with a *Restorative Justice Approach*.

***Keywords**:* Restorative Justice, Environment, Legal Consequences.

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Introduction

The use of criminal sanctions against acts of pollution and environmental destruction in reality does not show a deterrent to individual and corporate actors, but on the contrary, the trend of environmental crimes is actually increasing in various forms such as waste pollution, *illegal logging,* air pollution and so on. Enforcing the rules of environmental law does not have to be by enforcing criminal laws that aim to punish but implementing environmental laws should be more directed at restoring environmental sustainability as before. That is why Law No. 32 of 2009 concerning Environmental Protection and Management prioritizes the enforcement of administrative and civil laws rather than criminal law. Given that both legal instruments make it possible to apply sanctions that lead to environmental restoration.[1]

One of the right concepts to overcome various environmental law enforcement problems as described above is the *restorative justice system approach.* The *restorative justice system* approach to criminal justice is considered a new method, although the patterns used are largely rooted in the local wisdom values of primitive societies. The concept of *the restorative justice* approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of criminal acts and their victims. Procedural and criminal justice mechanisms that focus on criminalization are transformed into a process of dialogue and mediation to create an agreement on a fairer and more balanced settlement of criminal cases for both victims and perpetrators The restorative justice approach can be assumed to be the most recent shift from the various models and mechanisms that work in the criminal justice system to handle criminal cases at this time.[2]

The restorative justice approach is a thought that responds to the development of the criminal justice system by focusing on the needs of community involvement and/or victims who have been sidelined with the mechanisms that work in the criminal justice system that currently exists. On the other hand, the restorative justice approach is also a new framework of thinking that can be used in responding to a criminal act for law enforcement.[3]

The view *of retributive justice* in the settlement of criminal cases today has begun to receive a lot of criticism because it does not provide satisfaction for the community, especially the victim because *retributive justice* only views the perpetrator as an object that must be retaliated against while the victim's legal interests receive less attention. In environmental crimes, the victim aspect is the main concern because the environment that is the victim is an ecosystem that is the residence of living beings, if in the settlement only focuses on punishing the perpetrator, then the interest in environmental improvement will be neglected. Although *restorative justice* is seen as good to be applied in environmental crime cases, there are still a number of legal issues that are debated related to whether all environmental crimes can be resolved restoratively, how or methods are used to apply them in the criminal justice system and what the legal consequences of *restorative justice* are on the status of the environmental case.[4]

Whether all environmental cases can be resolved with restorative justice, especially major cases that have a wide impact on society and perhaps restorative settlement can provide justice for perpetrators and victims because this method will exclude criminal sanctions and whether the perpetrators are deterred if they are not sentenced to criminal sanctions. The opportunity to apply a restorative justice approach in environmental crime cases is factually possible because environmental crimes cause victims not only from members of society but the environment itself, only legally there are problems that require academic answers so that in their application they do not cause new problems.

Issues that require research related to the application of *restorative justice* in environmental crimes are related to the *restorative justice* model that is suitable to be applied and what legal consequences are caused if the parties agree to resolve it peacefully. Another

issue is whether *restorative justice* can be applied to all environmental crimes, to what extent can environmental crimes be resolved restoratively.

One of the ideas of using the concept *of restorative justice* in resolving environmental crimes is to avoid the accumulation of more and more cases and less to provide justice for victims of the community and the environment. The settlement of environmental crimes is seen as not in favor of the justice of the victims of the community or the environment. On that basis, the idea of *restorative justice* emerged as a reaction to the handling of cases in court that were seen as unfair and lacking ecological benefits. In addition, administrative sanctions are considered ineffective due to the low compliance of corporate administrators and weak supervision of the implementation of administrative sanctions. In fact, juridically, Law No. 32 of 2009 concerning Environmental Protection and Management has properly regulated the provisions regarding administrative sanctions, but empirically in its implementation it has not met expectations.

Although the concept *of restorative justice* is seen as a model of law enforcement that provides hope to create justice, empirically law enforcement still finds it difficult to apply it in concrete environmental crime cases, because if the perpetrators, both individuals and companies, have been designated as suspects based on sufficient evidence, then investigators and public prosecutors must be accountable for the settlement of the case until the court if It is not considered as a case arrears, while the imposition of criminal sanctions does not provide substantive justice to the perpetrators, the community and the damaged and polluted environment.

Literature Review

2.1 Restorative Justice As An Effort To Overcome Environmental Crimes

Restorative justice (RJ) offers an alternative paradigm to the handling of crime: moving from an emphasis on retributive punishment to repairing relationships, compensation for victims, and community involvement. In the context of environmental crime, RJ focuses on repairing ecological damage, restoring ecosystem function, and recognizing victims who are collective and even non-human (e.g., habitat, future generations). Recent studies show a growing interest in this idea as a complement or alternative to traditional criminal/administrative enforcement. Restorative justice offers a promising conceptual and practical framework for tackling environmental crime by emphasizing restoration, community participation, and concrete restorative action. However, empirical evidence is still developing and effective implementation requires a clear legal framework, scientific standards for recovery, robust oversight mechanisms, and a balance with traditional law enforcement goals. In the Indonesian context, the literature suggests a phased approach: pilot projects involving NGOs, communities, environmentalists, and law enforcement authorities, accompanied by independent evaluation before wider implementation.[5]

Research Methodology

This study uses a normative legal approach *(normative juridical)*. The research uses a normative juridical approach because it will examine the principles and norms in laws and regulations. The specification of this research uses analytical descriptive because it will describe a reality and facts related to environmental crimes. The type of data is secondary data sourced from secondary primary and tertiary legal materials. The data collection technique in this study uses a literature study, which is to analyze reading sources that are theoretical and scientific.

The analysis method used is qualitative, which is a research method that produces analytical descriptive data, because it does not use formulas and numbers using deductive thinking methods.[6]

Results

4.1 Restorative Justice *Model* That Can Be Applied in Criminal Law Enforcement to Overcome Environmental Crimes as an Effort to Ensure Environmental Sustainability

Based on some of the models described above, it can be an alternative way for law enforcement officials to be able to make choices in resolving environmental criminal cases before being tried through the courts. The court mechanism that has been seen as not satisfying the expectations of justice that the affected community expects has new expectations with other alternatives that can be practically implemented.[7]

Law enforcement can choose and determine one of the many existing restorative models to be applied, if they have to take a policy to resolve cases of pollution and environmental destruction by using one of the *restorative justice models* as an effort to ensure the restoration of the preservation of damaged or polluted environmental functions.

This model has been widely developed in many countries since 1989 and creates new alternatives to address juvenile crime, child protection issues by placing more decision-making authorities but still taking into account the input, considerations and interests of the parties. This model can be applied to environmental crimes that have been occurring in Indonesia and are handled by National Police and environmental PPNS investigators.[8]

The restorative conferencing *model* can be a means of bringing together the interests of perpetrators, victims (community and the environment) and related authorities such as the Ministry of Environment, Provincial/regency/city Environment Agency and law enforcement to form a consensus deliberation forum (restorative meeting) to find a solution to environmental damage caused by the perpetrator's actions. By applying this model, the efficiency of environmental law enforcement can be carried out and does not take a long time and be protracted. However, to avoid sharp differences of opinion in this model and minimize failures in reaching an agreement, it is also necessary to involve a mediator who is trained and able to calculate ecological losses that are damaged and polluted due to environmental crimes in a professional, objective and transparent manner.[9]

According to the author, restorative meetings are suitable to be applied in environmental cases because this method is seen as quite fair. This criterion is seen as fair because it involves the perpetrator, the victim, their families and other parties involved in a criminal act, jointly seeking a settlement to the crime and its implications, emphasizing recovery rather than retaliation.

Article 85 paragraph (1) provides that the purpose of environmental settlement outside the court is to reach an agreement on the form and amount of compensation, recovery due to pollution and environmental destruction, certain actions and preventive measures so that pollution and destruction do not recur. This rule has reflected the spirit of *restorative justice* because it provides space for the community and perpetrators of pollution and environmental destruction to resolve disputes voluntarily without suing the courts.[10]

Although Article 85 paragraph (1) provides an opportunity for a restorative meeting of the parties to resolve environmental cases through deliberation, Article 85 paragraph (2) states "*Settlement of disputes outside of court does not apply to environmental crimes as stipulated in this Law".* This means that environmental cases that can be resolved by way outside the court are civil environmental cases, whereas in practice environmental cases tend to meet more

criminal elements, civil issues are only an alternative settlement or an option to claim compensation even though in fact the case is a criminal case. The provisions of Article 85 paragraph (2) are not in accordance with the general explanation of the UUPPLH which is that environmental criminal law enforcement still pays attention *to the principle of ultimum remedium* which requires the implementation of criminal law enforcement as a last resort after the implementation of administrative law enforcement is considered unsuccessful.

The principle *of ultimum remidium* in criminal law is seen as the last legal means if other legal means cannot resolve environmental cases, if Article 85 paragraph (2) does not apply the settlement of environmental disputes to environmental crimes regulated in the UPPLH, it means that every environmental crime must be resolved through criminal justice and closes the possibility of being resolved in other ways such as alternative settlements dispute. This is contrary to the principle of ultimum remidium which requires that criminal law should be used at the end if the negotiation process (administrative, civil alternative dispute resolution) is unsuccessful.[11]

4.2 Legal Consequences of the Application *of Restorative Justice* to Environmental Crime Status to Reduce the Accumulation of Cases and Avoid Criminal Sanctions

The issue that is being debated related to the application of the restorative meeting model in dealing with cases of environmental crimes is a problem due to the law of restorative meetings on the status of environmental cases if the negotiations reach an agreement. Is it possible that the outcome of the agreement in the form of peace will stop environmental issues? The problem due to the law of this restorative meeting model is a question of the community and law enforcement.

Legal consequences are consequences caused by legal events, legal events are caused by legal acts, while a legal act can give birth to a legal relationship, then legal consequences can also be interpreted as a result caused by the existence of a legal act and/or legal relationship. According to Syarifin, legal consequences are all consequences that occur from all legal acts carried out by legal subjects against legal objects or other consequences caused because certain events by law are determined or considered as legal consequences.[12]

Although the conditions for terminating the investigation have been regulated in Article 109 paragraph (2) of the Criminal Code, there is room for investigators to take other legal actions. As stated in Article 16 letter point l that the authority is to be able to "carry out other actions according to responsible law". With regard to the termination of investigations, the police have the authority to act on their own investigations, this authority is called discretion. What is meant is acting according to his own judgment is an action that can be carried out by a member of the Police who considers the benefits and risks of his actions and is really in the public interest. A National Police official can apply discretion in various incidents that he faces on a daily basis, but various literature on discretion focuses more on selective *enforcement,* which is related to the factors that affect whether a violator will be prosecuted or not.

The authority to act according to the investigator's assessment as mentioned in Article 16 paragraph (1) letter l provides the possibility for the investigator to be able to take legal action in the form of terminating the investigation into the status of environmental cases that have been mediated through restorative meetings as long as the other legal actions in question are really resulting from an agreement between the parties to take certain actions directed at environmental restoration efforts. These other actions must be accountable by investigators with feasible, reasonable reasons to provide justice for victims and the environment.

According to the above provisions, it can be said that the agreement that occurred in the restorative meeting caused legal consequences in the form of the termination of the investigation of environmental cases that had been resolved with the restorative meeting model. The termination of the investigation is based on the authority of the investigator to take other legal

actions according to the responsible law. The act of stopping this investigation must be balanced with the payment of compensation and/or environmental restoration measures or measures to prevent negative impacts of business activities. Therefore, the authority of investigators to stop environmental cases on the basis of the agreement of the parties in restorative meetings must be seen as a policy that is in accordance with the law and policies that provide restorative balance values for the perpetrators, victims and the environment.[13]

Although the agreement in the restorative meeting can stop the status of the environmental case juridisically-normatively, the action of stopping the investigation that does not follow the provisions of Article 109 paragraph (2) of the Criminal Procedure Code is considered contrary to the criminal procedure law because the rule does not stipulate that the outcome of the mediation agreement or restorative meeting is the reason for the termination of the investigation. The policy of stopping the investigation on the basis of the agreement of the parties is considered to deviate from the procedural law and legally the legitimacy of its execution force can be questioned.

Efforts to resolve criminal cases including environmental crimes currently do not have strict rules, but the Head of the Criminal Investigation Agency (Kabareskrim) of the National Police in 2012 has issued a Telegram Letter of the Criminal Investigation Agency Number: STR/583/VIII/2012 dated August 8, 2012 concerning the Application *of Restorative Justice*, the telegram letter is used as the basis for investigators in resolving criminal cases with restorative justice, so that the Circular Letter of the National Police Chief Number 8 of 2018 (SE/8/VII/2018 dated July 27, 2018) appeared concerning the Application *of Restorative Justice* in the Settlement of Criminal Cases. The National Police Chief's circular letter on *Restorative Justice* is further used as a legal basis and guidelines for investigators and investigators of the National Police who carry out investigations/investigations, including as a guarantee of legal protection and supervision of the control of investigations and investigations of criminal acts in order to realize the public interest and sense of justice of the community, so as to realize uniformity of understanding and application of *restorative justice* in the National Police.

The above description provides an illustration that environmental crimes resolved through the restorative meeting model cause legal consequences in the form of termination of investigations into the status of cases as long as they meet the material and formal requirements stipulated in the Circular Letter of the National Police Chief No. 8 of 2018 concerning Guidelines for Handling Case Resolution with *a restorative justice approach.* Investigations based on Article 16 paragraph (1) letter L of the Police Law can carry out other actions as long as they meet the conditions specified in the laws and regulations. In environmental cases such as those that occurred in Rancaekek District, South West Java and Sukoharjo Regency leaving hardship and suffering for the community, mediation efforts were made but the company did not pay all the compensation so the community objected and demanded the government close the company's operational permit. So it is difficult to meet the material requirements as stipulated in the Circular Letter of the National Police Chief because the victims of environmental crimes are not individuals but the community.

The possibility of meeting material requirements can occur if environmental crimes are relatively minor. It is said that it can be measured from the level of damage that does not have a wide impact on the environment, does not cause fatalities or circumstances that endanger the health of the local community, is easily restored, and is threatened with a minimum penalty of 3 (three) months imprisonment or a fine of seven thousand five hundred rupiah.[15] The quality and quantity of victims are the benchmark for environmental crimes in the category of severe/light environmental crimes. The lighter it is, the easier it is to take action to stop the investigation, on the contrary, the more severe it is, the more difficult it is to resolve restoratively.[14]

If you look at the various sanctions regulated in the criminal provisions of Law No. 32 of 2009 concerning Environmental Management and Protection, the average environmental crime is threatened with a minimum penalty of 1-4 years. Criminal threats for certain criminal cases allow for mediation but often environmental cases demand responsibility in the form of compensation and restitution. The issue of compensation and recovery is difficult to reach an agreement between the two parties, so it is the cause of the non-reaching agreement, so that the legal consequences in the form of termination of the investigation cannot be achieved.

Conclusion

1. The Restorative Justice *model* that can be applied in criminal law enforcement to tackle environmental crimes is the *Restorative Conferencing model*, a model that requires the participation of perpetrators (individuals/corporations), victims (community and environment), mediators, investigators from the National Police and PPNS voluntarily to seek a peace agreement. The success of the restorative meeting model is in the form of an agreement as a concrete effort in order to ensure environmental sustainability and realize ecological justice. This model agreement can be in the form of: (a) Compensation to the community (b) Environmental restoration measures that have been damaged/polluted (c) Certain actions to prevent destruction/pollution (d) Measures to prevent negative impacts on the environment. On the other hand, if the restorative meeting fails, the victim (individual/community/environmental organization) can report to the authorities to be resolved through the court so that it can be processed criminally.
2. The application *of restorative justice* with the restorative meeting model *(Restorative Conferencing)* has legal consequences for the status of environmental crime cases in the form of stopping investigations to avoid criminal sanctions and reducing the accumulation of cases through the discretion of law enforcement as long as it meets the material and formal requirements stipulated in the Circular Letter of the National Police Chief No. 8 of 2018 concerning Guidelines for Handling Case Resolution with an Approach *Restorative Justice,* but environmental crimes generally cause economic and ecological losses as well as social conflicts that make it difficult for law enforcement to meet both conditions. The fulfillment of this condition aims not to give rise to diversity in the administration of investigations/investigations and differences in the interpretation of investigators as well as irregularities in their execution.

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