

RESTORATIVE JUSTICE AS A REASON FOR TERMINATION OF INVESTIGATIONS ON CRIMINAL ACTS OF HURT OR DESTRUCTION IN THE ELECTRONIC INFORMATION AND TRANSACTION LAW

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Abstract:

The implementation of restorative justice in the criminal justice system should be carried out comprehensively, considering criminal decisions have only been retaliation and condolences so far. Only sad decisions ultimately lead to *overcapacity* in correctional institutions. As in the case of defamation, initially, this defamation was only regulated in Article 310 of the Criminal Code (KUHP), which in essence, contains the prohibition against attacking honor, slandering, and defaming someone in written form. And pictures. However, over time, defamation regulation is also regulated in Law Number 19 of 2016 concerning Information and electronic transactions, commonly known as the ITE Law. Furthermore, Circular Letter (SE) No. SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Digital Space for Indonesia. The statement in the SE stated that the National Police has the principle that criminal law is a last resort (*ultimum remidium*) and always prioritizes and seeks *restorative justice* in existing cases, including termination of investigations. The type of research used in this research is normative juridical research, this type of research is research that refers to legal norms and rules in its study. The results of this study are to understand the *restorative justice arrangement* as a reason for stopping the investigation and the role of the investigator in carrying out mediation in defamation cases regulated in the ITE Law.

Keywords: Restorative Justice, Criminal Defamation, Investigator and Termination of Investigation.

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INTRODUCTION

The state of Indonesia was not only established to show its sovereignty over colonialism, but it also had a more important purpose. It aims to protect the nation and its citizens and provide justice in their lives. As the noble goal is stated in the preamble to the 1945 Constitution of the Republic of Indonesia or commonly abbreviated as the 1945 Constitution, the 4th paragraph states:

"Subsequent to it, to formulate a government of the state of Indonesia which will protect all Indonesian people and all the independence and the land that has been struggled for, and to improve public welfare,"

Protecting means that the state must protect every Indonesian citizen. If there is a violation of the rights of these citizens, the state must be present and fight for it. At the same time, fair means that every citizen must get equality in service, protection, and the judiciary. There should

be no difference in good treatment between the poor and the rich, both officials and ordinary people (Preamble to the 1945 Constitution of the Republic of Indonesia).

In the life of the nation and state today, society's problems are increasingly complex, and technological advances and information facilities are unstoppable. So it often causes conflicts and disputes in people's lives. Conflicts and disputes that culminate in the end require a judicial route to be resolved, especially in criminal cases. Criminal conflicts are often in the spotlight in people's lives; even in the news in the media, both online and in print, it is always reported. People tend to use the court route when a crime has occurred, which is expected to create a fair decision in theory and concept. However, in reality, this is a problematic thing (Kristian & Tanuwijaya C., 2015)

We realize that the results obtained from resolving cases with the judiciary are win-lose solutions; this will cause some parties to feel satisfied because they won and some disappointed because they lost. Statements like this often birth hatred, resentment, and hostility.

Settlement of criminal conflicts through the judiciary takes a long time because we all know that several stages must be passed, from the investigation to the reading of the verdict. In addition to the judicial system, the parties are allowed to appeal and appeal if the decision made by the district court is deemed not to fulfill a sense of justice. Satjipto Raharjo assumed that settling cases in a judicial system that led to a verdict was slow for law enforcement. It is because law enforcement goes through a very long process, and there will often be an accumulation of case files considering the large number of incoming files and the limited format in the judicial system (Satcipto Raharjo, 2003)

The justice that has been practiced in the criminal justice system is still retributive; that is, when a crime occurs, the perpetrator must get revenge. Meanwhile, criminal retaliation, such as imprisonment, tends to be a problem. Besides that, being a burden on the state's budget, imprisonment cannot make things better. Sometimes, there is a transfer of knowledge about the crime. In addition, a breakthrough is needed to overcome this, which is commonly called restorative justice. Restorative justice is a procedure in which all parties involved in a specific crime come together to unravel the problem of how to deal with future significance. Restorative justice is a model for resolving criminal cases that prioritize recovery for victims, perpetrators, and the community (Ahmad Faizal Azhar, 2019). The main principle of restorative justice is the participation of victims and the committer's participation of citizens as facilitators in resolving cases so that there is a guarantee that the child or perpetrator will no longer disturb the harmony that has been shaped in society.

It is time for the implementation of restorative justice in the criminal justice system to be comprehensively carried out, considering that criminal decisions have only been retaliation and condolences so far. Decisions that are only sad in the end only lead to overcapacity in correctional institutions. As in the case of defamation, initially, this defamation was only regulated in Article 310 of the Criminal Code, which essentially contains the prohibition against attacking honor, slandering, and defaming a person in the form of written speech and pictures (Zainuddin Ali, 2014). However, over time, defamation of regulation is also regulated in Law Number 19 of 2016 concerning Information and Electronic Transactions, commonly known as the ITE Law.

Then regarding this defamation, it is further regulated in the provisions of the National Police Chief Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice in the investigation stage, the Chief of Police's Telegram Letter No. ST/339/II/RES.1.1.1./2021 concerning Guidelines for Handling Cyber Crime Cases using the ITE Law, Circular (SE) No. SE/2/11/2021 concerning Ethical Cultural Awareness to Create Indonesia's Digital Space Clean, Healthy, and Productive. The statement in the SE stated that the National Police has the principle

that criminal law is the last legal remedy (*ultimum remedium*) and always prioritizes and seeks restorative justice in existing cases, in this particular case regarding the handling of criminal acts of defamation with electronic media.

From the background that has been explained, the authors are interested in studying more deeply Restorative Justice as a Reason for Termination of Investigations in Criminal Acts of Humiliation or Defamation in the Law ITE by identifying problems:

- 1) How to arrange Restorative Justice as a reason for stopping the investigation of criminal acts of insult or defamation as regulated in the ITE Law?
- 2) To what extent is the role of investigators in seeking achievement of Restorative Justice in criminal acts of insult or defamation as regulated in the ITE Law?

METHOD

The form of research used is normative juridical research. This type of research refers to and is based on legal norms and rules, relevant laws and regulations, legal theories and doctrines, jurisprudence, and other library materials where the reference and basis are still relevant to the study.

The approach in this study uses a statutory approach and a conceptual approach. This research will depart from the views, and doctrines that develop in the science of law, theories, legal principles, and laws related to restorative justice in the crime of defamation (Peter Mahmud Marzuki, 2015).

RESULTS AND DISCUSSION

Restorative Justice Arrangements as a Reason for Termination of Investigation on Criminal Acts of Humiliation or Defamation Regulated in the ITE Law. Muladi, in his book entitled "capita selecta criminal justice system," argues that criminal justice (criminal justice system) is a judicial network that uses material criminal law, formal criminal law, or the implementation of criminal law as a unified system. However, this institution must be seen in a social context (Muladi, 1996). An overly formal nature that only cares about the legal certainty side will bring a new disaster in the form of a sense of injustice.

Restorative justice, commonly referred to as justice with efforts to restore the situation, is a new way of resolving criminal cases. The concept of restorative justice is a concept in the settlement of criminal cases by involving conflicting individuals and the role of the community; this approach is often also known as the "non-state justice system," where the role of the state through law enforcement officers is not dominant and sometimes does not play the same role. Very. It is hoped that the criminal justice system can run well with restorative justice and not just provide sorrow or revenge.

Before discussing the concept and implementation of restorative justice, it must first be understood whether this restorative justice will be effectively implemented in Indonesia. In this regard, the Braithwaite legal expert said:

"Indonesia is a country with delightful capitals of intracultural restorative justice. The tradition of musyawarah pronouncement by friendly cooperation and deliberation-traverse the archipelago. Adat law (law of tradition) at the same time tolerates diversity to the point of local criminal laws being written to supplement universal national law."

Based on this opinion, it can be concluded that dispute resolution in Indonesia has adopted the concept of restorative justice. This right can be seen clearly by the existence of a culture of negotiation or deliberation in several conflicts or disputes. Indonesian customary law in several

regions also regulates criminal matters and effectively resolves local communities in conflict. The existence of proper training and socialization related to the concept of restorative justice is firmly believed that this restorative justice will be well received among the elite and the lower middle class (Runifus Hotmaulana Hutauruk, 2013).

Settlement of criminal cases that have applied the concepts and principles of restorative justice and can be used as a reference for their application in criminal cases, namely:

- 1) The provisions in Article 76 paragraph (1) of the Criminal Code that except in the case that the judge's pronouncement may still be repeated, a person may not be prosecuted twice because of an act that an Indonesian judge has tried against him with a final decision;
- 2) The provisions in Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System at the level of investigation, prosecution, and examination of children in a district court must seek a diversion solution;
- 3) The provisions in Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees that Fiduciary Guarantee Certificates have executive power equal to court decisions that have permanent legal force;
- 4) Article 51 paragraph (7) of Law Number 21 of 2001 regarding Special Autonomy for the Papua Province states that in order to free criminals from criminal charges according to the provisions of the relevant criminal law, a statement of approval is required to be carried out from the Head of the District Court who is in charge of the territory obtained through The Head of the State Prosecutor's Office concerned with the place where the crime occurred (Circular No. SE /8/VII/2018).

Given the size of the Indonesian state and the large number of people in it, conflict is not something new. Criminal cases are reported everywhere every day, not to mention criminal acts of defamation. Especially at this time, technological developments and advances in information systems have caused criminal acts of defamation to rise drastically. It is because human relationships are no longer limited by distance and time. The existence of social media causes a person to be still able to socialize and interact even in cyberspace. Every year there are no less than 800 to 900 cases of defamation. The high number of cases or criminal acts of defamation became the background for the issuance of Circular Letter (SE) No. SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Digital Space in Indonesia.

The fact above shows that there must be a breakthrough in settling criminal acts of defamation. Criminal law can no longer be substitutive but must be restorative. Suppose the criminal law is still substitutive, which prioritizes retaliation. In that case, it can be ascertained that there is overcapacity in a correctional institution which ultimately causes sentencing to be no longer effective as a case settlement.

Referring to Circular SE No. SE/2/11/2021, filled with this circular, has clearly stated that in alleged violations of the provisions of the ITE Law, especially in the case of defamation, the Indonesian National Police must have the principle that in resolving a criminal case, the provision of criminal sanctions is an ultimum remedium. Alternatively, last resort is used when other measures are no longer effective. Restorative justice must be put forward in every case. In addition, based on the circular above, the National Police must also explain that the victim wants his case to be brought to court. However, the suspect has realized and apologized, so the suspect cannot be detained before the file is submitted to the public prosecutor so that the victim and perpetrator are given room for discussion again.

In principle, in the occurrence of criminal acts of defamation, as the formulation has been contained in the provisions of the ITE Law, the National Police must prioritize educational and persuasive efforts so that there are no allegations of criminalization of the reported person. Therefore, a clean, healthy, ethical and productive digital space can be realized. In the circular letter above, in handling cases, the police must be guided by:

- a) Following the development of the use of digital space, which continues to develop with various kinds of problems;
- b) Understanding the ethical culture that occurs in the digital space by taking an inventory of various problems and impacts that occur in society;
- c) Prioritizing preemptive and preventive efforts through virtual police and virtual alerts aimed at monitoring, educating, giving warnings, and preventing the public from potential cybercrimes;
- d) In receiving reports from the public, investigators must be able to clearly distinguish between criticism, input, hoaxes, and defamation that can be punished. After that, the investigator can determine the steps he will take;
- e) After receiving the report, the investigator must communicate with the parties, especially the victim (not represented), and facilitate by giving the disputing parties the widest possible space to mediate;
- f) Investigators conduct comprehensive studies and case titles on cases handled involving elements of the Criminal Investigation Agency (Bareskrim)/Directorate of Cyber Crimes (Ditipidsiber) can go through zoom meetings and make collegial collective decisions based on existing facts and data;
- g) Investigators have the principle of criminal law being the last resort in law enforcement or the ultimum remidium and promoting restorative justice in case settlement;
- h) Against parties or victims who will take peaceful steps to become part of the investigator's priority for restorative justice. Except for potentially divisive cases, SARA, radicalism, and separatism e;
- i) Against victims who still want their case to be brought to court, but the suspect has realized and apologized, no detention will be carried out. Before the file is submitted to the Public Prosecutor (JPU) to be given space for mediation again;
- j) Investigators to coordinate with the Public Prosecutor in its implementation, including providing advice on the implementation of mediation at the prosecution level;
- k) In order to carry out gradual supervision of every step of the investigation taken and provide rewards and punishments for the assessment of the leadership on an ongoing basis.

In the above provisions, at the investigation stage, the investigator must open the widest possible space to mediate the parties (perpetrators, victims, and related parties) to discuss or deliberate on ongoing problems (Randi Pradityo, 2016).

In mediation between the victim and the perpetrator, an agreement has been reached to make peace, then based on that, the police must stop the investigation of the case. Crimes or criminal acts of humiliation and defamation through online media do not always have to be resolved with criminal justice. Breakthroughs such as mediation at the investigation stage need to be intensified because restorative justice makes the parties find a fair decision. There is no longer a party who feels aggrieved or defeated, so after the decision in this case, through mediation, the parties will make peace with each other and accept each other with sincerity. The settlement of criminal cases, especially defamation cases, based on the concept of restorative justice, will positively impact crime prevention so that peace and tranquility in people's lives are maintained.

The Role of Investigators in Efforts Achieved Restorative Justice on Criminal Acts of Humiliation or Defamation Regulated in the ITE Law. The crime of defamation is a conventional crime that has been rampant. This crime was regulated initially in the provisions of the Criminal Code Article 310 Paragraphs (1), (2), and (3), as well as Article 311 of the Criminal Code, in which the type of punishment is regulated in various ways depending on the respective crimes.

Article 310 paragraph (1) of the Criminal Code states that:

"Whoever intentionally attacks someone's honor or reputation by accusing someone of something, the intent of which is clear so that it is known to the public, is threatened for libel with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs."

R. Soesilo explained that what is meant by insulting or defaming one's reputation is attacking someone's honor and reputation. The honor that was attacked was only about honors about good names, not honors in the sexual field. As for the kinds, there are forms:

- a) verbally insulting (smaad);
- b) Defamation in writing or letters (smaadschrift);
- c) slander (laster);
- d) Minor insults;
- e) Complain slanderously;
- f) Defamatory accusations (Gomgom, 2014).

Along with the development of information technology, the crime of defamation has also developed; if previously it was done conventionally, it is now more modern. Juridically, acts of defamation through social media have been prohibited in the ITE Law in Article 27 paragraph (3), which formulates that:

"Everyone intentionally and without rights distributes and transmits and makes accessible electronic information and documents containing insults and defamation contents."

Someone who creates content that has defamation content and then distributes it on social media so that everyone can access the content, then the content creator can be sentenced to criminal because he has fulfilled the formulation of the article above; defamation is seen as a cybercrime.

The punishment for the crime of defamation is regulated in the provisions of Article 45 paragraph (3) of the ITE Law, which reads as follows:

"Each person who deliberately and without rights allocates and transmits and makes accessible Electronic Information and Electronic Documents that contain insults and defamation as referred to in Article 27 paragraph (3) shall be punished with imprisonment a maximum of 4 (four) years and a maximum of fine for of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)."

As a rule in the legislation, any act of defamation that has fulfilled the formulation of the offense in the Criminal Code and the provisions in the ITE Law can be processed for criminal justice. In the past, when a criminal act of defamation occurred and the evidence was sufficient, the criminal justice process would be carried out. Because the crime is retaliatory, the settlement will go through litigation.

There are several stages of the process in the criminal justice system, one of which is the investigation process. At this stage, the police, in this case, the investigator, will try to find and collect evidence, which will determine who the suspect is (Erma Sirande, 2021). This part of the investigation is an essential first step in criminal justice. Because the evidence from the investigator is not strong, the next step will not be carried out.

Before, restorative justice was included in the criminal justice system. Surely every case that enters the investigation stage will end in a criminal verdict. Sentencing in the case of a crime is a way that must be decided because the judicial provisions do not provide other options. However, crime does not disappear even in defamation cases that tend to rise. The impact of information technology advances allows the community to establish contact and communication, although not directly.

After increasing defamation cases through electronic or online media, it finally received special attention from several parties, including the Indonesian police. In terms of preventing many cases of defamation that fall into the realm of criminal justice, the National Police Chief issued a circular which, in the circular letter, maximizes the principles of restorative justice in the investigation stage (Sodik Muslih, 2021).

The existence of the circular gives a new dimension and color to the world of police investigations. In the past, investigators only looked for strong evidence to ensnare the perpetrators of crimes so they could be tried in a criminal court; now, investigators have new functions and roles. Investigators now also play a role in trying to resolve defamation cases through mediation. Investigators will facilitate the victim and the perpetrator to share their opinions in resolving the case.

Based on this agreement, suppose the result of the mediation is that the victim and the perpetrator agree to make peace. In that case, the investigator will stop the investigation process and close the case. However, if there is no peace between the two, the investigator must also play an active role in advising the Public Prosecutor to mediate at the prosecution stage. Incorporating the principle of restorative justice in the investigation stage is the right solution in filtering so that defamation cases do not always end in conviction, which will only cause new problems in people's lives that are more complex.

CONCLUSIONS

From the explanation above, the researcher draws the following conclusions:

There must be a breakthrough in the settlement of criminal acts of defamation. Criminal law can no longer be substitutive but must be restorative. Suppose criminal law is still substitutive, which prioritizes revenge. In that case, it can be ascertained that there is overcapacity in a correctional institution which ultimately causes sentencing to be no longer effective as a case settlement. In line with that, Circular Letter (SE) No. SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Digital Space was issued, which subsequently became a reference in the implementation of mediation at the investigation stage with the principle of restorative justice. In addition to the role of investigators in collecting evidence in defamation cases regulated in the ITE Law, investigators must also seek to resolve cases through mediation. Investigators will facilitate the victim and the perpetrator to share their opinions in resolving the case. Based on this agreement, suppose the result of the mediation is that the victim and the perpetrator agree to make peace. In that case, the investigator will stop the investigation process and close the case. However, if there is no peace between the two, the investigator must also play an active role in advising the Public Prosecutor to mediate at the prosecution stage.

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