



Reevaluation and Reorientation of the Philosophy of Retributive Justice to Restorative Justice in Imposing Criminal Sanctions

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Abstract

A change from retributive to restorative approaches to criminal punishment has occurred during the last several decades. While some who believe in retributive justice hold that criminal punishment must be founded on the idea of vengeance and retribution for the faults of the offender, those who believe in restorative justice place more value on victim rehabilitation and mending strained relationships. The goal of punishment and the retributive justice theory that has been used to impose criminal punishments are both examined in this paper. This article discusses the origins and fundamental principles of both forms of justice, as well as the pros and cons of each strategy. More than that, this study delves into the ways in which restorative justice might be used in sentencing to better connect offenders to their victims and deter further criminal activity. By comparing and contrasting the two methods, this study may assist reform the current criminal justice system in ways that are more effective and equitable for all parties.

Introduction

Meidiyanto (2015) notes that changes in both time and technology have had an effect on society's cultural norms and the frequency of criminal acts. Hartanto (2015) and Mubarak (2017) both point out that crime is a social phenomenon that harms society and provokes appropriate social responses. Robbery, theft, murder, sexual assault, drug crimes, embezzlement, fraudulent operations, forgery, and illicit gambling are all examples of crimes that Kartono (2014) listed as being prevalent. Crime and other forms of deviant conduct are unfortunately ingrained in every society (Arief, 2010; Dulkiah & Nurjanah, 2018; Hasibuan, 1994). The process of law enforcement and crime resolution can be carried out using the Integrated Criminal Justice System and the basic assumption of retributivism (Nursyamsudin & Samud, 2022; Widiartana, 2017).

Retributivism is the view that criminal punishment should be given as retribution for a person's unlawful actions. However, this view has limitations and challenges in determining appropriate criminal sanctions and does not take into account social and environmental factors that can influence the offender's behavior (Caruso, 2022). The state positions itself as a substitute for the victim in imposing criminal sanctions on the perpetrator as a reaction to any violation of public order. In criminal law, the state takes over the role of prosecution that is the victim's right on the grounds of minimizing the potential for personal retaliation and for appropriate punishment based on rational considerations for the victim and society as a whole (Juniar,

2019; Rahmi, 2019). However, law enforcement through the justice system that ends in a court verdict is law enforcement towards a slow path because it goes through various levels ranging from the Police, Prosecutor's Office, District Court, High Court, and even to the Supreme Court, which ultimately has an impact on the accumulation of cases that are not small in the court (Junius Fernando, 2020).

With the development of time, a new system emerged known as restorative justice. Restorative justice is an alternative concept that has gained popularity in various parts of the world to resolve formal cases of law violations and achieve a sense of justice in decision-making (Bazemore & Schiff, 2005). This concept has existed in Indonesian culture and is practiced by the Indonesian community, although it is still carried out by certain elite groups in society (Hutauruk, 2013). The Supreme Court has also applied the concept of restorative justice and issued a decree on the guidelines for the implementation of restorative justice in the General Court system (Director General of the General Judiciary Agency Decree Number: 1691/DHU/SK/PS.00/122/2020). Restorative justice differs from the retributive justice concept known in the Indonesian criminal justice system (Soetedjo & Melani, 2017). Restorative justice emphasizes repairing the damage caused or related to criminal acts through a cooperative process involving all stakeholders (Prayitno, 2012). The concept of restorative justice can be implemented by focusing attention on the harm caused by criminal acts, having the same concern and commitment to involving the perpetrator and victim, encouraging the perpetrator to take responsibility, providing an opportunity for dialogue between the perpetrator and victim, involving the affected community in the restorative process, and promoting cooperation and reintegration (Juniar, 2019).

Therefore, the re-evaluation and reorientation of the philosophy of retributive justice to restorative justice in the application of sanctions is an important issue that needs to be studied because there is a need to find more effective and comprehensive alternatives in handling criminal cases. Retributive justice, which is punitive and prioritizes punishment as a response to criminal acts, has shown weaknesses in producing the expected deterrent and rehabilitative effects. Meanwhile, restorative justice emphasizes the restoration of victims and offenders, and involves all parties involved in the conflict resolution process. The concept of restorative justice provides offenders with an opportunity to take responsibility for their actions and make amends to the victims they have harmed. Therefore, the reorientation of restorative justice becomes a promising alternative in handling criminal cases and can have a positive impact on the criminal justice system as a whole.

To maintain the originality of the research, the author conducted a literature review to find research materials with the same topic as this research. The author found three research materials as references, each discussing law enforcement policies in the Police and Prosecutor's Office in the application of restorative justice for embezzlement, criminal responsibility of perpetrators for minor criminal offenses in the perspective of restorative justice, and the possibility of implementing a restorative justice approach in the practice of criminal law enforcement in Indonesia (Karim, 2015; Sulistyowati, 2016; Zulfa, 2009).

This research is different from previous research because the previous research focuses on the aspect of criminal resolution by offering the concept of restorative justice. Therefore, the author is interested in further examining how the re-evaluation and reorientation of the provision of criminal sanctions from retributive justice to restorative justice can be linked to the goals of criminal punishment. This research aims to conduct a re-evaluation and reorientation of the provision of criminal sanctions from retributive justice to restorative justice linked to the goals of criminal punishment.

Methods

This research will be conducted using the normative juridical research type, which is focused on examining the application of rules or norms in positive law (Ibrahim, 2006). The normative juridical research type is a legal research method that is conducted by examining literature or secondary data as the basis for research, by conducting a search of regulations and literature related to the problem being studied. The materials studied are: 1) Eva Achjani Zulva's dissertation, entitled "Restorative Justice in Indonesia (A Study on the Possibility of Restorative Justice Approach in Criminal Law Enforcement Practice)," the Law Faculty's dissertation program at UI's Criminal Justice System Specialty in 2009. This dissertation discusses the possibility of applying the restorative justice approach in criminal law enforcement practice in Indonesia. The search for ideas on the application of restorative justice approach in this dissertation begins with a theoretical study of restorative justice, which is struggling to be recognized as a theory or philosophy of punishment. 2) Karim's dissertation entitled "Criminal Accountability of Perpetrators to Victims of Minor Crimes in the Perspective of Restorative Justice," the Doctoral Program in Law at Airlangga University (UNAIR) in 2015. The issues studied are related to (1) the philosophical foundation of resolving minor criminal cases through restorative justice, (2) the characteristics of the restorative justice approach in resolving minor criminal cases, and (3) the *ius constituendum* in regulating the resolution of minor criminal cases through restorative justice.; and 3) Sulistyowati's dissertation, entitled "Reconstruction of Police and Prosecutor Legal Policy in the Application of Restorative Justice for Theft Crime Based on Progressive Law," the Doctoral Program in Law at Sultan Agung Islamic University (UNISSULA) in 2016. The aim of this research is to understand and examine legal policy in the police and prosecutor's office in the application of restorative justice to theft crimes, to identify the factors that hinder legal policy in the police and prosecutor's office in the application of restorative justice, and to understand and examine legal policy reform in the police and prosecutor's office in the application of restorative justice based on progressive law.

These studies serve as a guide for the author to examine how criminal cases in Indonesia are handled outside the criminal justice system, as well as the views of law enforcement officials on this matter, and to analyze the results of the application of the restorative justice approach. Therefore, this research uses the normative juridical approach, which examines legal principles, legal systematics, legal synchronization, legal history, and legal comparison. The focus of the research is the re-evaluation and reorientation of the retributive justice philosophy towards restorative justice in the imposition of criminal sanctions, with a descriptive analytical research specification that provides a description or explanation of the object or problem being studied. Research data is obtained through literature studies that analyze the implementation of criminal sanctions in Indonesia and the change in the philosophy of criminal law towards the restorative justice approach.

Results and Discussion

The law enforcement in Indonesia, which is still stagnant, should be seen as a strong alarm and warning message that needs to be responded to and taken seriously (Yusianto, Madiung, & Nur, 2022). The law enforcement that has been carried out so far has been found to be stagnant and has not shown significant progress. The problems and phenomena, especially related to the dynamics that have been developing and affecting the process, make law enforcement more complex, difficult, and complicated instead of becoming easier and simpler.

As in the background of all types of crimes, the retributive approach is used to resolve them, where the retributive justice approach assumes that crimes must be punished, and justice must

be restored by imposing sanctions commensurate with the level of crime committed by the perpetrator. In this case, the sanction is viewed as a retaliation or retribution for the criminal action, with the aim of eliminating the victim's pain and restoring justice, as well as providing a deterrent effect for the perpetrator. Therefore, in this approach, criminal sanctions tend to be retributive and punitive (Manan, 2008). There are three main schools of thought when it comes to punishment that emerge when looking at criminal punishments (Ramadhan & Ariyanti, 2023).

The absolute theory is a school of thought in criminal law that places an emphasis on retributive justice; it is also known as the retribution theory or relative/bergeldingstheorieen. With this method, punishments are meted out to offenders based on the gravity of their actions. The primary idea behind this notion is that those who commit crimes should be punished for their actions. According to this theory, the purpose of punishment is to restore the moral injury and the shattered sense of justice by ensuring that the transgressor is punished to a penalty that is equal to the sin committed. The absolutist retaliation theory, also known as the theory of absolute punishment, is predicated on the idea that the severity of the punishment should correspond to the magnitude of the offense committed, regardless of mitigating factors like the offender's mental state, intent, or the circumstances that led to the action. According to the argument, criminals are less likely to commit more offenses if they are subjected to harsher punishments. Critics of the absolute theory argue that it fails to recognize the role of the social setting in encouraging criminal behaviour and ignores the social and psychological factors of criminal behavior. The punitive goal includes elements of rehabilitation and restoration, but the absolute approach tends to overlook them.

In criminal law, the relative theory, sometimes called the goal theory or utilitarian/doeltheorieen, places value on the goals that may be achieved by the imposition of criminal sanctions. According to the aforementioned perspective, the state uses punishment as a means to an end, such as discouraging criminal conduct, preserving public order, and repairing the damage done by criminal activity. A key tenet of relativity theory is that criminal punishments should be proportional to the severity of the offense and should lead to the desired outcomes. Based on the premise that punishment should serve to discourage further criminal behavior and aid in the improvement of offenders' behaviour, this method prioritizes prevention and rehabilitation. Punishment should be determined after careful consideration, according to the theory of relativity or goal theory. The basic idea behind this method is that there should be a careful weighing of the benefits and downsides of each potential punishment option before settling on one.

The Third Integrative Theory, or integrated theory, is a conceptual tool for understanding criminal law that combines aspects of the Absolute Theory and the Relative Theory to accomplish certain ends. According to the current methodological framework, each theoretical framework has its own set of advantages and disadvantages, and the best way to achieve a goal is to take the best parts of several frameworks and combine them. According to proponents of the integrative approach, criminal punishment should serve several purposes, including but not limited to retribution, restitution, and deterrence. It is said that proper punishments must take into consideration the individuality of each offender by considering factors such as motivation, mental condition, and the connection between illegal activity and its repercussions.

According to the integrative view, a comprehensive examination and appraisal process should be done to determine the most appropriate kind of punishment and that criminal punishments should be effective in fulfilling their intended aims. The concept here is that criminal activity has different outcomes for different people, and that the criminal justice system should account

for these differences by including restorative and rehabilitative measures to help offenders make amends and dissuade others from engaging in criminal behavior.

However, criticisms of the integrative approach suggest that it can be confusing and unclear in making decisions about criminal punishment. It also requires very complex and complicated evaluations that can hinder the effectiveness of criminal punishment. The goals of criminal punishment may have many differences in theories, but the main goal that is never debated is to prevent crime itself and to improve criminals to be better. One of the purposes of correctional facilities or often called prisons is to improve criminals to be useful people in society.

Therefore, the goal of criminal punishment, in short, is to maintain order and security in society, ensure justice for victims, and prevent future criminal acts. Another goal is to provide lessons and understanding to offenders about the mistakes they have made and to help them improve their actions and reintegrate into society. Criminal punishment can also function as a sanction and punishment for offenders who have committed criminal acts.

Meanwhile, the restorative justice approach emphasizes the improvement of relationships between offenders, victims, and the affected community of criminal acts. In this approach, criminal punishment is seen as a means of restoring damaged relationships and restoring harmony between offenders, victims, and the community. Therefore, the punitive sanction tends to be restorative and rehabilitative (Manan, 2008).

Indonesian law enforcement agencies must provide careful consideration before adopting the restorative justice paradigm as an alternative to traditional policing practices. The goals of criminal law, which include maintaining public safety and order, are inextricably intertwined with the rehabilitative and punitive philosophies. The criminal justice system in Indonesia is based on a theoretical framework that combines retributive and restorative approaches. The judicial system is one option for settling legal disagreements, but it is far from the only one. But it's crucial that the community's engagement in this effort be stepped up. When resolving criminal cases, restorative justice places a premium on the participation of offenders, victims, and the community as a whole. Restorative justice is seen as an alternative method of dealing with criminal acts and resolving public dissatisfaction with the current criminal justice system. Pancasila's emphasis on social justice and compassion for all people finds resonance in the concept of restorative justice.

Retributive justice and restorative justice have different motivations for using punishment. Restorative justice focuses on repairing the suffering caused by criminal actions and mending broken relationships among offenders, victims, and the community, whereas retributive justice promotes punishing criminals in accordance with their conduct.

Conclusion

If a more fair and humane criminal justice system is to be established, it may be necessary to embrace a restorative justice approach rather than a retributive justice approach in the implementation of severe consequences. This makes it easier to achieve retributive goals, which include not only punishment but also the reformation of offenders and the repair of ties between offenders, victims, and the society as a whole. By requiring offenders to make amends to victims and the community for harm done, restorative justice ensures that offenders learn from their mistakes. Therefore, it is crucial to direct punitive measures toward repairing the damage done to society by criminal behavior. This method helps criminals change their behavior by focusing on the underlying causes of their criminality. However, the aforementioned readjustment does not indicate that retributive justice as a notion should be abandoned totally. Punitive tactics aimed at meting out retributive justice may be warranted in

certain cases. However, when enforcing sanctions, it is crucial to find a happy medium between the two approaches. Restorative justice within punitive measures requires extensive coordination between criminal justice agencies, offenders, victims, and the society at large. Improving the public's understanding and knowledge of restorative justice approaches and providing legal professionals with the tools to properly implement them are both crucial. It is possible that a criminal justice system that is more effective, equitable, and justifiable for all parties involved may be established by the integration of restorative justice practices into punitive procedures.

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