

RESTORATIVE JUSTICE IN THE SETTLEMENT OF CRIMINAL ACTS OF VIOLATION OF THE PRINCIPLE OF PRECAUTION IN BANKING REGULATED IN LAW NUMBER 10 OF 1998 CONCERNING AMENDMENTS TO LAW NUMBER 7 OF 1992 CONCERNING BANKING AT THE BALI REGIONAL POLICE

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Abstract

Violation of the principle of prudence in banking has the potential to cause economic losses and weaken public trust in the financial system. So far, the repressive settlement approach has not been fully effective in creating substantive justice. This study aims to analyze the application of Restorative Justice by the Bali Police in resolving banking crimes, and to identify the factors underlying its selection. The study uses a normative-empirical method with a regulatory approach, interviews, and analysis of legal practices. The results of the study indicate that Restorative Justice can be applied if the requirements are met, such as the loss has been returned, the victim is willing to reconcile, and there are no elements of serious crimes. This application is supported by internal Polri regulations and local Balinese values that uphold deliberation. Other supporting factors include the efficiency of law enforcement, police discretion, and the role of financial institutions and the community. This study recommends strengthening the policy of implementing Restorative Justice as an alternative to resolving economic crimes that is humane, fair, and effective.

Keywords: Restorative Justice, Banking, and the precautionary Principle

Introduction

Indonesia as a country based on law (Article 1 paragraph (3) of the 1945 Constitution) places law as the basis for creating justice, order, and welfare. However, in law enforcement practices, case resolution through litigation often results in win-lose solutions, creates dissatisfaction, and burdens the justice system. This shows the need for an alternative approach that is fairer and more humane, such as the concept of Restorative Justice. One area that is vulnerable to violations of the law is the banking sector. Violations of the principle of prudence such as providing credit without a feasibility analysis or misuse of third-party funds can cause

serious losses to customers and the stability of the financial system. Law Number 10 of 1998 requires the application of the principle of prudence in banking operations, but violations still often occur. So far, handling banking crimes has tended to use a retributive approach, which focuses on punishing the perpetrator without considering the recovery of the victim's losses. As a solution, the restorative justice approach offers a more proportional and equitable solution. Restorative Justice is in line with the principle of distributive justice as stated by John Rawls, that justice must provide benefits to all, especially the disadvantaged parties in society. According to Satjipto Rahardjo, good law enforcement is one that is able to bring benefits, not merely enforce legal texts. This is also emphasized by Soerjono Soekanto who stated that the effectiveness of law enforcement is influenced by factors of society, law enforcement, and legal culture. Although restorative justice has begun to be implemented by the police, including the Bali Police, its application in cases of violations of the principle of prudence in the banking sector has not been widely studied. Therefore, it is important to examine how the Restorative Justice approach can be implemented in resolving criminal acts of violations of the principle of prudence based on the Banking Law, especially in practice in the jurisdiction of the Bali Police.

Methods

According to Soerjono Soekanto, the typology of legal research consists of normative and empirical. The research method used in this study is a normative research method supported by empirical research that uses various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of library materials relating to restorative justice in resolving criminal acts of violations of the principle of prudence in banking. Johnny Ibrahim is of the opinion that normative legal research is a form of scientific research aimed at finding the truth based on the logic of legal science reviewed from the normative part, or in the form of an effort to discover law that is adjusted to a particular case..

Results and Discussion

Handling of Banking Crimes Involving Violations of the Prudential Principle to be Resolved Through Restorative Justice at the Bali Police

Restorative Justice (RJ) is a criminal justice approach that emphasizes the restoration of victim losses and improving the relationship between the perpetrator, victim, and community. In the context of banking crimes, especially violations of the principle of prudence, this approach is relatively new. The Bali Police through the Directorate of Special Criminal Investigation has handled several banking cases that indicate violations of the principle of prudence, of which a small number were resolved through the RJ mechanism. In the 2020-2024 period, 64 public reports were recorded regarding banking crimes, five of which were successfully resolved through RJ. One prominent case involved a customer's report against a national private bank due to the bank's failure to fulfill the customer's rights to a certificate of ownership (SHM) after repayment of the credit. The investigation revealed that the bank and notary did not implement the principle of prudence as stipulated in Article 29 paragraph (2) and Article 49 paragraph (2) letter (b) of Law No. 10 of 1998 concerning Banking. Findings include manipulation of credit analysis, violations of bank SOPs, and the use of notary covernotes without realization. The settlement process is carried out in three stages: investigation, inquiry, and restorative. In the final stage, the suspect submits a request for RJ which is then approved by the Bali Police Chief after the formal requirements such as restitution of losses and agreement with the victim have been met.

The application of RJ in banking cases reflects Satjipto Rahardjo's restorative justice theory which states that the law should side with substantive justice, not merely procedural. This is in line with Andi Hamzah's thinking that the formal criminalization system often does not fully address the interests of victims and instead leads to overcriminalization. Furthermore, Adrian Sutedi's thinking emphasizes that violations of the precautionary principle must be viewed from the context of the act and its consequences, whether rooted in administrative negligence or malicious motives. If no malicious intent is found, the RJ approach becomes more

relevant to apply. From the perspective of authority, Philipus M. Hadjon emphasized the importance of accountability of officers in using legal discretion which is the basis for Bali Police investigators when assessing the feasibility of implementing RJ in the banking sector. Finally, the concept of RJ in economic matters such as banking is also in line with the progressive legal theory proposed by Satjipto Rahardjo, which emphasizes that the law must be adaptive and provide the greatest possible benefits to society..

Underlying Factors for Undertaking Restorative Justice in Resolving Banking Crimes at the Bali Police

The application of the Restorative Justice (RJ) approach in resolving criminal acts of violations of the principle of prudence in the banking sector by the Bali Police is based on various normative, institutional, and socio-cultural considerations. Legally, the basis for the application of RJ refers to the Circular of the Chief of Police No. SE/8/VII/2018 and Perpol No. 8 of 2021 which provide legal space for investigators to resolve cases through non-litigative channels as long as the elements of substantive justice and victim recovery are met.

The internal factors that underlie this include internal Polri policies, evaluation of the effectiveness of law enforcement, and the ability of investigators to facilitate penal mediation. In addition, investigators consider the stages of the legal process (generally in the early stages of investigation), as well as the classification of violations that do not contain elements of fraud or corruption.

Meanwhile, external factors that support this include the perpetrator's good faith in returning the loss, the victim's willingness to make peace, and the influence of local cultural values in Bali that uphold deliberation and peaceful resolution. The involvement of third parties such as OJK, BI, and traditional leaders also strengthen the legitimacy of resolving RJ. In practice, violations of the precautionary principle caused by administrative negligence without malicious intent are more likely to be resolved through RJ, especially if they do not have a systemic impact on the financial system. As expressed by Satjipto Rahardjo, "the law must be

able to serve human interests, not the other way around". This approach is also in line with Muladi's view which emphasizes the importance of restorative justice in repairing social relations due to economic crimes. Philipus M. Hadjon also emphasized the importance of police discretion used wisely, especially in resolving cases concerning the public interest and economic stability. Therefore, the implementation of RJ by the Bali Police in banking cases is a strategic step in creating justice that is more contextual, efficient, and rooted in local values.

Conclusion

The application of the Restorative Justice (RJ) approach in resolving criminal acts of violations of the principle of prudence in banking at the Bali Police is an alternative effort to the repressive approach that has been dominant so far. Although the Banking Law still emphasizes criminalization, RJ has begun to be applied in certain cases that meet the requirements, such as the absence of elements of serious crimes, losses have been returned, and there is a peace agreement between the perpetrator and victim. This approach is considered more effective in realizing substantive justice and reducing the burden of cases in court. Supporting factors for the application of RJ at the Bali Police include internal aspects, such as regulatory support and the ability of investigators in penal mediation, as well as external aspects, such as local wisdom values, community support, and active participation of the parties. Synergy between law enforcement agencies and financial authorities is the key to the success of RJ in banking cases.

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