

The Application of Restorative Justice in Handling Hoax Spreading Case

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Abstract: Nowadays the number of hoaxes keeps increasing. With regard to the phenomena, the existence of law is considered of great importance in the society, since law does not only serve to enforce justice, regularity, peace and order, but also to guarantee legal certainty. In the latest development, an alternative is offered, which is to implement the concept of restorative justice. The concept of restorative justice is a popular alternative in many parts of the world to deal with unlawful conducts (unlawful in formal meaning) since it offers comprehensive and effective solutions.

Keywords: Restorative Justice; Spreading; Hoax

1. Introduction

Currently, the number of hoaxes keeps increasing uncontrollably, making the government to initiate a number of ways to deal with them. Not only blocking the hoax spreading platforms, but there is also a special line for hoax reporting. The government also cooperates with the owners of some social media platforms, such as Facebook, Twitter, and Google. These US companies are actually aware of the latent danger of hoaxes distributed in their platform. The three platforms are often accused of being responsible for the massive circulation of hoaxes. Facebook may be a media which quite enthusiastically suppress hoaxes.

With regard to the phenomena, the existence of law is considered of great importance in the society, since law does not only serve to enforce justice, regularity, peace and order, but also to guarantee legal certainty. Law cannot stand alone, but it must consider various aspects related to the society. This means that, since the development of society life is followed with the development of prevailing law, the development of prevailing law must be followed with the development of society life itself, thus the two things are basically influencing each other.

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly asserts that the state of Indonesia is a state based on the rule of law (*rechtstaat*), instead of based on power (*machtstaat*). This means that the nation of Indonesia completely upholds law as the fundamental part in regulating people's life. Therefore, law enforcement must be confirmed for the nation of Indonesia's goals and ideals to be completely reached. The Preamble of the 1945 Constitution of the Republic of Indonesia paragraph Four clearly declares the nation of Indonesia's goals and ideals, which are to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice. In achieving the nation's goals and ideals, technology is greatly needed, especially related to information technology and electronic transactions, since they may support human resource's capability in the globalization era.

Technology is utilized aiming to:

1. Develop the nation's intellectual life as part of the world information society;
2. Develop the national trade and economy in order to improve the people's prosperity;
3. Enhance the effectiveness and efficiency of public services;
4. Open the widest possible opportunity for everyone to develop their thinking and capability in using and utilizing information technology as optimal and responsible as possible; and
5. Provide the sense of security, justice and legal certainty to users and administrators of information technology.

With the influence of technology, the people are expected to utilize it well and responsibly. In its development, however, it has been misused by individuals, corporations, government and society groups to help various human activities, such as education, health, business, government, communication, entertainment, etc.

Crime as the issue of social phenomena remains influenced by various aspects of society life such as politics, economy, social, culture and matters related to national defence and security effort, thus the crime is relative

because of the aspects it is based on. Therefore, Indonesia as a state of law bears the obligation to protect individual's interest and human rights and protect people's and national interest in a harmonious balance from crime/despicable acts on one hand and from authority's arbitrary acts on the other hand. This means that what the state desires through the law applied is that there is no difference and imbalance in the application of the law.

2. Research Method

This is a Normative Leal Research or Doctrinal Legal Research, which is a legal research which uses secondary source of data or a Literature research. In this type of legal research, law is often conceptualized as what is written in legislation (law in books), or law is conceptualized as the principles or norms which are the guidelines on human behaviours which are deemed appropriate.

3. Discussion

The crimes prevention process should be handled using general criminal approach. The term policy is derived from English *policy* or in Dutch language *Politiek* which is generally defined as the general principles serving to direct the government, in the broad sense including law enforcement agencies in managing, regulating or settling public affairs, people's issues or legislation drafting fields and law/regulation application, with (general) purpose of directing towards people's (citizens) welfare or prosperity. Criminal law, meanwhile, is a system of norms to determine which acts (to do or not to do something where there is a necessity to do something) and in which conditions the law is enforceable, and which law is to be enforced on the acts.

The development of Crime leads to categorization of conventional crimes commonly referred to as "*warungan*" crimes and modern or "new" crimes. The two categories of crime have different criteria, especially regarding the types of crime, criminals, and how to do as well as the impacts incurred.

One form of modern or "new" crimes deemed important to discuss is regarding hoax, which falls into cybercrime category. The hoax issue is currently much discussed in mass media and social media since it is considered to unsettle the public with information of which correctness is uncertain.

In the perspective of current hoax spreading criminal law enforcement, the actors always end up in imprisonment process. Imprisonment, meanwhile, is not the best solution to settle criminal issues, especially crimes of which damage they cause for the victims and the society may be restored, thus the damaged condition can be restored to the initial condition. A hoax anticipation approach is therefore needed.

In the latest development, there is an alternative offered of the implementation of the concept of restorative justice. The concept of restorative justice is a popular alternative in many parts of the world to handle unlawful act (unlawful in formal sense) since it offers comprehensive and effective solutions.

Restorative justice does not only render a decision of who won and who lost in an adversarial criminal justice system, but it attempts to facilitate a dialogue between all parties affected by the crime, including victim, committer, supporters and the society as a whole. This involves a process where all parties at risk of a certain crime to jointly attempt to collectively settle and handle the crime and its future implications.

The settlement of problems for hoax spreading with the restorative justice approach emphasizes on justice for committer and victim. With the concept of restorative justice, it will be found of what kind of justice is appropriate to hoaxer and which conviction to be imposed.

Restorative justice is a new effort to view criminal law enforcement process focusing on how to remedy the damage inflicted on the victim and the relation with rule violator. Restorative justice starts to emerge from 1970s from mediation between victim and committer.

Case settlement effort through justice system leading to court verdict is a legal enforcement directing to a slow path direction. The reason is the law enforcement takes a long course through many levels, from Police, General Prosecutor, District Court, High Court to Supreme Court. This causes accumulation of non-small number of cases at the court.

Therefore, an idea of non-court or non-litigation settlement of legal issues arises. Restorative Justice has drawn the attention of legal reviewers and practitioners. Tony Marshall, a British criminologist, defines Restorative

Justice as a process involving all parties with interest in certain violation issue to collectively discuss how to respond to and settle the consequence of violation and its future implications.

Restorative justice is a concept of conviction, but as a concept of conviction, it is not limited only to (formal and material) provisions of criminal law. Restorative Justice must also be observed from the perspectives of criminology and correctional system.

Bagir Manan in his writing proposes the substance of Restorative Justice containing the following principles: "To build mutual participation between committer, victim and society group to settle an incident or crime. To place committer, victim and the society as the stakeholders who work together and directly to seek for settlement which is deemed fair for all parties (win-win solutions)".

Restorative Justice application shall meet at least the following 3 (three) matters:

1. Identifying and taking steps to repair harm;
2. Involving all stakeholders; and
3. Transforming the traditional relationship between communities and theirs government in responding to crime.

Stephenson, Gillet and Brown divide case settlement using the Restorative Justice approach into 4 (four), namely Victim Offender Mediation (penal mediation), Restorative Conference (Conferencing), Family Group Conference (FGC), and Community Panels Meeting (CPM). The "Explanatory Memorandum" of the European Council Recommendation Number R (99) 19 concerning "Mediation in Penal Matters" presents 6 (six) models of penal mediation, namely Informal Mediation, Traditional Village or Tribal Moots, Victim-Offender Mediation, Reparation Negotiation Programmes, Community Panels or Courts, and Family And Community Group Conferences. In addition, there are many other models and terms used, such as: Circles, Restorative Board/Youth Panels, etc.

Observing the development of hoax spreading, restorative Justice may be a choice of policy for law enforcement agencies. Hoax spreading crimes mostly attack victim's individual interest, thus the approach is applicable. However, Restorative Justice cannot be applied to all hoax crimes. This certainly should observe the extent of impact of damage caused on the victim. Restorative Justice effort is made before it is submitted to law enforcer. One form of the efforts is to mediate between the victim and the hoaxer. Law enforcement agencies may serve to mediate the victim and the hoaxer for solutions to the problem. Law enforcement through criminal process is made in case of no point of agreement between the victim and the hoaxer. Restorative Justice has currently not been specifically set forth in laws and regulations. Law enforcement institutions such as the Indonesian National Police (Polri) and the Office of Prosecutor-General (Kejagung) still interpret the implementation of Restorative Justice on their own.

4. Conclusion

With the development of hoax spreading, it is necessary to apply a restorative justice as a choice of policies for law enforcement agencies. Hoax spreading crimes mostly attack victims' individual interest, thus the approach is applicable. However, the Restorative Justice cannot be applied to all hoax crimes. This should certainly consider the extent of damage caused to the victims.

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