

Restorative Justice
A Principle to Resolve Conflict

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Justice is usually understood as rendering to each person or community their own and due by right. It implies that someone will get reward of his or her good act, and punishment of his or her wrongdoing. Reward and punishment are fairly the consequence of someone's action. But, in the context of building peaceful living which emphasizes the restoration of the conflicting communities, such understanding about punishment is no more compatible.

The restorative justice theory, according to me, suggests a principle which is more appropriate to cope with conflicts, violences, and wars which decorate the human world recent days. It offers the paradigm about crime and punishment in the context of building peace and reconciliation. Crime is not law breaking or, in the middle era, breaking the divine order of the universe. Crime is an action which affects the victim, the community, and the actor himself/herself. With this paradigm, then, it considers punishment is not relevant just because it is the consequence of someone's act. The most important one is how to restore the victim, the perpetrator, and the community affected by the crime. Therefore, the judicial process in the court is not relevant as well. The conference which involves the three sides of the victim, the perpetrator, and the community is suggested for the restoration of all sides affected by the wrongdoing.

My paper will present the theory of restorative justice, and how it should be applied in resolving conflict.

INTRODUCTION

Civil and ethnic wars, conflicts, and gang fight among secondary school students often take place in Indonesia. The number of crimes done by the underages, such as rapes, sexual violences, bullying, even, killing tends to increase recentdays. On other way, it is the fact that judicial system in Indonesia causes frustration of Indonesian people because it tends to be sharp upward but blunt downward (Ind. *tajam ke atas, tumpul ke bawah*). Many times it imposes severe punishment only to the poor people, but not to the riches or those from the high class. The cases of the under age, Aal, who stole sandal, and Mbok Minah who stole silk-cotton are some popular examples.

In this situation, restorative justice is frequently promoted recent days (Lushiana, 2010; and Dewa Nyoman Nanta Wiranta, Faisal Abdullah, and Syamsul Bachri, 2010). It is hopefully able to handle many cases which can not be managed by ordinary legal system. What is restorative justice? In what sense, it offers new paradigm in solving crimes and wrongdoing in general? What principles are strongly kept by it?

THEORY OF JUSTICE

Justice is usually defined as “rendering to each individual or community their own and due by right” ((Karl H. Peschke, 1994:232-235). Based on the definition, then, someone has his or her own because of his or her right and attributes. For example, as a human being someone has rights and attributes as human being, such as right to live, to own property, honour, respect, reputation etc.. As a professional, someone has rights and facilities which adhere to his or her profession. He or she deserves his or her salary, reward, compensation, and benefit because of his or her contribution for the profession and community he or she belongs to. On other way, he or she deserves burdens and duties because of his or her profession. This sort of justice is termed as attributive justice.

The ammount of salary, reward, compensation, and benefit is proportional in character. It follows proportionally the grandeur of someone’s contribution and participation in his profession and community. This kind of justice, then, is termed as proportional justice. Proportional justice is distinguished into four sorts that are commutative justice, distributive justice, contributive justice, and social justice.

Commutative justice demands that exchange of goods and services follows strictly the equality of values. It regulates those involved in exchange affairs for the purpose of attaining just regulation of prices, just wage for work, and even for insurance contracts. It is usually

called contractual justice, since from the beginning, the decision of values follows the contracts.

Distributive justice claims that benefits and burdens of community should be proportionally distributed to the members of the community. It guides those in authority of the states, social and religious organizations, and other communities, to distribute the common welfare, aids, burdens, and benefits in proportion to needs, capabilities, and merits of the members.

Contributive justice commands the members of communities or organizations to share their contributions for the communities or organizations they belong to. Compared to distributive justice which concerns on the individual members of community, contributive justice on common or general good of a community. For example, tax laws which regulate the citizens to pay tax for the communal good.

Social justice demands that the wealth of nation should be distributed proportionally to the groups and regions of the society. It aims to avoid the accumulation of the nation wealth in some individuals, families, and groups. It balances the wealth between the stronger and weaker sector of society, for instance between the agricultural and industrial sectors. In very broad sense, it also postulates the advanced and rich countries to the developing and poor ones.

The declaration of the proportional justice above gives facilities to each individual or groups, who have rights to wage, salary, compensation, and to claim rights they deserve. It also urges and forces those who have duties and obligations to comply their duties and obligations, for instance, to pay salary, reward, compensation etc. to those who have rights.

It is important to be noted that the claims for the sorts of justice above is basic requirement for living together in the society. It is also essential for the development of human dignity. Therefore, violations upon the claim of justice are the destruction of human living together, and even, the betrayal of human dignity. Then, for repairing the destruction human living and dignity, it should be applied retribution or punishment. It is called retributive justice or punitive justice. The perpetrators who violate the justice elaborated above should be punished in order not to do the similar violations in the future. Punishment is addressed to the wrongdoer for repairing human living and dignity.

To comply retributive justice for the wrongdoer, it is needed institution which guarantee the implementation of justice. The institution emphasizes punishment for the wrongdoer who have violated the rules of justice. It needs legal system which is fair and consistently applies just laws, so the perpetrator gets punishment in accordance to the serious

offence he or she did. Without good and healthy, retributive justice will never guarantee the common good and welfare of the society. On other way, it frustrates the people and society at large. Indonesian legal system, as mentioned in the introduction, does not assure justice. Therefore, restorative justice is strongly promoted recent days.

RESTORATIVE JUSTICE

1. Principles

Restorative justice concerns on the restoration of damages which are effected by crime or wrongdoing done by the offender or the perpetrator. Different to retributive justice which concerns on the punishment imposed upon the offender because of his or her offense, restorative jutice concerns on harm which are effected by crime. Concentrating on punishment, retributive justice considers crime as wrongdoing attacking more the state which has no relation to the victim. Therefore, in retributive approach, victim is neglected. Punishment upon the offender effects nothing to the victims. But, restorative justice focusing on harm, considers crime as harm done to the people and community. Therefore, it also focuses on the restoration the people and the community attacked by the crime.

Restorative justice considers the victim as the one who suffers most because of crime. So, restorative justice emphasizes the needs of the victims in order to be able to restore harms suffered by the victim. The victim needs information why he or she was offended. He or she needs truth telling regarding the offense. Truth telling, even, can heal the mental wound of the victim. He or she also needs empowerment, because of frustration and powerless situation affected by the offense. Lastly, he or she needs restitution or vindication of his or her loss because of the crime.

On other way, the offender needs accountability, especially which involves facing what he or she has done. The offender needs to understand the impact of what he or she has done. Then, he or she also needs to be responsible to repair the damages effected by his or her wrong doing. He needs as well encouragement and support for integration into the community. Besides, the community has also responsibility to the victim, the offender, and to themselves.

The second principle is to address the obligations that result from the harms. As mentioned above, the offender and the community have obligations to restore the damages effected by the crime. The third principle is inclusive and collaborative process. Realizing the fact that the victim, the offender, and the community are effected by the crime, restorative

justice involve all parties, consisting of the victim, the offender, and the community, in restoring the damages. Finally, restorative justice wants to put right the wrongs.

With the principles above, Zehr mentions the negative formulations that restorative justice is not primarily about forgiveness or reconciliation. It is not mediation. It is not primarily designed to reduce residivism or repeating offenses. It is not also a particular program or blue print. It is not as well primarily intended for comparatively minor offenses or first time offenders. Lastly, it is not a panacea nor replacement for the legal system.

2. Procedure of Sentencing

In the procedure of sentencing, there are three different things in restorative justice compared to retributive one (Johnstone in Howard Zehr and Barb Toews (eds), 2004: 6). First, the perpetrator is required to take part in a meeting with the victim, and those who are affected by the crime, such as the members of the victim's family, and the third side as mediator. In this meeting, the perpetrator is required to listen respectfully while the victim and the members of the victim's family describe how they are affected by the crime. If it is needed, the perpetrator is required to answer the questions from the victim. It is clear that in the concept of restorative justice, it is facilitated the face to face meeting between the perpetrator and the victim.

There are some alternatives of meeting. The first is victim offender conferences (VOC). In certain case, victim and offender can organize meeting between them. Then, with their agreement, they bring the case to the meeting or conference which involves trained facilitator. The outcome, then, is a signed restitution agreement. The second is family group conference (FGC). FGC includes family members of the both parties of victim and offender or other figures significant to the parties involved. The third is circle which involve a larger number of participant. It includes the victim, the offender, the family members of the both parties, the community members, and sometime the justice officials.

What is important in the sorts of conference is the opportunity of the victim to reveal his or her experience of suffering because of offense done by the offender. On the other side, it is the opportunity of the offender to hear the victim's sharing of his or her experience and gives empathy to him or her. It is also the opportunity of the offender to reveal his or her contrition for his wrongdoing. It is chance of the offender to show his or her responsibility. In the conference, with the support of the mediator, they formulate agreement regarding compensation or other forms of restitution to restore the damages of their relationship and of the community.

Second, in the restorative sentence, the perpetrator is not obliged to “pay for” his or her crime by undergoing pain as the punishment, but he or she is expected to make amends for his or her crime through positive actions for the benefits of the victim. Of course, he or she is expected to apologize for his or her crime.

Third, the decisions regarding the way the offender making amends are determined together in the conference between the perpetrator, the victim, the victim’s family, and the mediator. It means that there is dialogue to reach agreement between all parties. In this sense, occurs a restoration of the relationship between all parties.

The procedure above strongly indicates restorative principles which emphasizes the meaning of harms, which affect mostly the victim. The needs of the victim, the offender, and the community are paid much attention in the procedure. Different to legal process which emphasizes punishment imposed upon the offender, restorative approach stresses the restoration of all parties affected by harms.

3. New Paradigm of Crime

Theory of restorative justice was based on the different understanding of crime. In the conventional understanding, crime is understood as breaking the divine order of the universe, which then is considered as the law breaking. Therefore, crime cannot be restored by apologizing the individuals or groups affected by the crime. The crime should be redeemed by a purgatorial suffering of the doer. It is called punishment. According to the proponents of restorative justice, this understanding of crime is not relevant anymore in the secularized world like now. Also, this understanding does not involve the victim at all. According to them, crime is action which affects an injury to the victim and his or her family (Van Nees in Burt Galaway and Joe Hudson, 1996: 22-23). The injury must be restored in order to recover the victim’s trauma, to reconcile the victim and the offender, and to rebuild the peace of the community. The concern of restorative justice is the restoration and reconciliation of the victim, the offender, and the community. To reach these goals, restorative justice takes the way of involving all parties of the victim, the offender, and the community in the process of reconciliation. The involvement the of government in the legal process is not enough to recover the suffering of the victim. Restorative justice, then, reduces the domination of the government.

Restorative justice is also different from retributive or punitive justice which considers the crime as lawbreaking that should be punished in order to make it back in accordance to the law. The wrongdoer must pay retribution for the wrongness that he or she

has done. It seems that the orientation of retributive or punitive justice is more to the past rather than the future, to the wrongness that has occurred rather than the restoration of the defect, to the perpetrator rather than the victim. From the facts that there is no retribution that can be equal to suffering of the victim and repair the damages affected by the crime, retributive or punitive justice is not effective. Restorative justice seems to be more available.

4. Justice for All

Meeting, conference, and circle applied in the procedure of restorative justice fulfill the essential need of human being (Dennis Sullivan dan Larry Tifft, 2004:391). Every individual has the essential need to be heard and respected. Therefore, meeting, conference, and circle which facilitates victim and offender to do dialogue satisfy the essential need. In that dialogue, the victim reveals his or her experience of suffering because of the offender's misdeed. On the other side, the offender emphatically hears and accepts all the victim's sharing. The offender also acknowledges his or her misdeed he or she has done, and then reveals his or her remorse and says apology. Furthermore, the victim undertakes forgiveness and agrees to receive compensation of his or her wounds. The conference reaches the end when peace and reconciliation take place, and the amount of compensation is agreed as well. In such a way, restorative justice is manifested when peace and reconciliation between victim, offender, and community are recovered.

In countries where judicial process can not fairly operate, the practice of restorative justice is more appropriate than retributive or punitive justice. Restorative justice guarantees more social welfare because it ends with peace and reconciliation, and not punishment and vengeance. The judicial process which does not successfully decide a fair punishment will litigate fire of resentment between the victim and the perpetrator, even it provokes brutal act of retaliation. Restorative justice will also reduce the arrogance of those who are rich and have power. In many cases, the rich and powerful people arrogantly brought their very simple case to the court because they have money to pay the cost of the legal process. Restorative justice should be promoted to change the arrogance and the cockiness to become patience and humility. Restorative justice will train and educate people to easily forgive those who do misdeed or wrongdoing, because through dialogue restorative facilitates people to realize themselves who often did the similar misdeed or wrongdoing. Readiness to do dialogue in the conference and circle of restorative process is the manifestation of humility and patience. It is important to be trained. So, brutality manifested in the demonstration with destruction and

violence can be exercised through dialogue which occurs in the restorative procedure. In this areas, restorative justice should be promoted.

So far, there are limitations of restorative approach. Restorative justice, up to now, only handles individual crimes and does not reach the structural crimes and the roots of economic crimes. The actors of structural crimes which affect poverty and hunger can not be handled by restorative justice (Bonnie Price Lofton, 2004: 379). There are facts that someone did criminality or offense not because of he or she is criminal, but because he or she is trapped in the structure of crimes. There is possibility that the actor of wrong doing is actually the victim of the other crime. Restorative justice could not attain this sort of crime. However, in the situation of legal uncertainty, restorative justice is real hope for those who are longing for justice. Peace and reconciliation can be manifested through restorative process.

CONCLUSION

Restorative justice does not consider justice only from the perspective of right. It does not mention that someone has right to get something because he has done something, but someone has right of something that loses because another one has grasped that thing with crime or misdeed. In other sense, restorative justice promotes right to be restored because another one has robbed it.

In country such as Indonesia, where legal system does not fairly work, restorative justice is more relevant. It will strengthen the tradition of deliberation or *musyawarah* where the community discuss together in order to find the best way out of the problem, helping each other or *gotong royong*, and greeting to each other in the community. It is also more human, because in the conference of restorative approach between parties involved in conflict it is preferred to do dialogue rather than to make interrogation and accusation. It does not merely impose punishment upon the offender, but postulate responsibility of the offender to restore the relationship between the offender and those involved in conflict.

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