

The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System

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ABSTRACT

Settlement of criminal cases through restorative justice, focusing directly on perpetrators, victims, and the community in the process of resolving criminal cases, Formulation of the problem how the concept of restorative justice in criminal law reform and prospects for the formulation of restorative justice in criminal law reform, using normative research methods. Based on the results of the study, it can be concluded that the concept of restorative justice can become permanent legal politics in building the national criminal law system in the future. The draft Criminal Code has accommodated the principle of restorative justice participation as a method of resolving problems outside the court, so it is very possible if the concept of restorative justice is used as a criminal law reform in Indonesia in the future and the prospects for the formulation of restorative justice in criminal law reform have been adapted in Indonesian law by the existence of regulations made by law enforcement, where the principle of restorative justice regulated in the internal provisions of case settlement from law enforcement and it is implemented sectoral and doesn't use a criminal law policy theory approach, namely the renewal of criminal law through the formation of laws and restorative justice theory as a whole, namely as the approach to the concept of restorative justice. The response to a restorative justice settlement has received a positive appreciation from the community and law enforcement officials. It is suggested the need to accommodate the settlement of criminal cases through restorative justice against criminal acts in the Criminal Procedure Code and the Criminal Code that will come with certain conditions. Such a process also needs to be applied at all stages of the examination, starting from the investigation, prosecution, and trial.

Keywords: crime, judicial system, restorative justice.

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I. INTRODUCTION

One of the causes of stagnation in law enforcement is that it is still trapped in a single paradigm of positivism which is no longer functional. So that a progressive approach or paradigm is needed, because with a progressive paradigm there is always an effort to find the ideal concept in overcoming legal problems (Fauzia & Hamdani, 2022, p. 504). Changes in laws and regulations in Indonesia must be aimed at creating a more stable environment so that every citizen can enjoy an atmosphere and climate of order and legal certainty with a core of justice (Hamdani, 2021). So, it is necessary to continue with steps to draft laws and regulations concerning the rights and obligations of citizens in the context of practicing Pancasila and the 1945 Constitution of the Republic of Indonesia (Fauzia *et al.*, 2021, p. 14). It is expected that all Indonesian citizens must always be aware of and obey the law, on the contrary it is the obligation of the state to enforce and guarantee legal certainty (Manan, 2009, p. 5).

Policies to make criminal law good and effective that are good and efficient or criminal law political policies are part of criminal law policies effectiveness at its best. At other times, it is said that carrying out criminal politics means trying to implement criminal law legislation in accordance with the circumstances and situations as well as for the future (Arief, 1996, p. 31).

Restorative justice is based on the direct involvement of criminals, victims, and the community in the process of resolving criminal cases (Sahputra, 2022, p. 88). Restorative justice is viewed as a new way of thinking that can be utilized to respond to various crimes and unhappiness with the criminal justice system's current performance. Furthermore, the concept of restorative justice is thought to be consistent with the values of Pancasila, which is the root of all Indonesian law and is a legal system derived from many legal systems utilized by Indonesians, such as customary law (Fauzia & Hamdani, 2021).

The concept of restorative justice can be seen from several aspects, in this sociological aspect it is oriented towards social society and the values of its culture are the cultural values of kinship, deliberation

and problem solving with social systems that are usually regulated in the customary system. The concept of restorative justice is influenced by binding law in customary law, through the history of existing law it can be seen that the law in Indonesia is also influenced by customary values. Furthermore, customary law is used as a legal norm, customary law is influenced by the habits of the surrounding community in Indonesia and acts as a social regulator (Otje Salman, 2007, p. 21). The practice of restorative justice is the practice of peace between victims and perpetrators which is often used by Indonesians based on Pancasila (Candra, 2013). This is important, because recovery by focusing on the human aspect as a subject who has the right to improve themselves, grow and develop, and live properly in society, is one of the goals that must be achieved in an orderly social life (Hamdani *et al.*, 2022). Because restorative justice is a process in which all parties with an interest in certain violations come together to resolve collectively how to deal with the consequences of the violations made and their implications in the future (Fauzia & Hamdani, 2022).

In relation to the foregoing, Raharjo (2003) argued that the resolution of cases through the judicial system, which resulted in court decisions, constituted law enforcement in the slow lane. This is due to the fact that law enforcement travels a long distance, passing through various levels such as the Police, the Attorney General's Office, District Courts, High Courts, and even the Supreme Court, which has an impact on the accumulation of cases that are not small in number in court (Rahardjo, 2003, p. 170).

So far, law enforcement through the criminal justice system has faced harsh criticism, both from practitioners and legal theorists, because the role and function of the judiciary is currently viewed as overburdened, slow, and a waste of time.

The purposes of this paper are: (1) To analyze and examine the concept of restorative justice in criminal law reform (2) To analyze and examine the prospects for the formulation of restorative justice in criminal law reform.

II. METHOD

The normative technique is used in this article. Activities to explain the law in normative legal science research or study do not require data support or social facts, because normative legal science does not recognize social data or facts that are known only as legal materials, so to explain the law or seek meaning and give value to the law only uses legal concepts and the steps taken are normative steps (Nasution, 2008, p. 87).

III. THE CONCEPT OF RESTORATIVE JUSTICE IN CRIMINAL LAW RENEWAL

The criminal justice system is also known as the law enforcement system because it recognizes that what these institutions undertake is a concrete endeavor to implement abstract legal norms (A. Garner, 2004, p. 901). The term "criminal justice system" or the criminal justice system has now become a term that indicates a working mechanism in crime prevention by using the basic criminal system approach, it is a case where the act is prohibited by a rule of law, which prohibition is accompanied by threats (sanctions) in the form of certain crimes, for anyone who violates these rules (Atmasasmita, 2011, p. 2).

The criminal justice system is essentially an open system in the sense that it will always experience interference (interaction, interconnection, and independence) with its environment in ranks, society: economy, politics, education, and technology, as well as subsystems of the criminal justice system itself (subsystem of criminal justice system), (Muhammad, 2011, p. 13). The term "policy" is derived from the phrases "policy" (English) and "politiek" (Dutch), hence "Criminal Law Policy" is also known as "Criminal Law Politics" and is frequently referred to as "penal policy," "strafrechtspolitik," or "criminal law policy" (Nawawi Arief, 2008, p. 26). In his book Barda Nawawi Arief cites the opinion of Marc Ancel who states that Penal Policy is one component of Modern Criminal Science in addition to other components such as "Criminology" and "Criminal Law" (Nawawi Arief, 2008, p. 23).

Carl Fredrich defines policy as "a course of action recommended by a person, group, or government in a specific environment that gives barriers and chances for the proposed policy to exploit and overcome in order to achieve a goal or realize a target or a specific purpose" (Winarno, 2002, p. 16). According to Mahfud MD, legal policy or legal politics is a legal policy or official line (policy) on law that will be enforced by adopting new laws or amending old laws to meet state aims. Thus, legal politics or legal policy is a choice of laws to be implemented as well as laws to be repealed or not enforced, all of which are designed to promote state aims as stated in the 1945 Constitution's preamble (Mahfud MD, 2018, p. 1).

Restorative justice is a response to illegal acts that focuses on rehabilitating victims who have experienced losses, holding criminals accountable for the crimes they have done, and fostering a peaceful community. Restorative justice is a response to illegal behavior that seeks to repair the harm done to victims of crime while also facilitating peace amongst warring parties (I. Minor and Morrison, 1996, p. 117).

According to Eva Achjani Zulfa (2010), “Restorative justice is a model of thought that responds to the evolution of the criminal justice system by emphasizing on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system” (Zulfa, 2009, p. 3). The concept of restorative justice arose from the uncertainty of the existing criminal justice system, which does not make the conflicting parties as parties who speak, but instead treats the conflict as if it were only between the state and the perpetrator/defendant, leaving the community, particularly victims, out of the conflict resolution process. As a state of law, the Republic of Indonesia resolves criminal charges through the criminal justice system.

“*Honeste vivere, alterum non laedere, suum cuique tribuere,*” a common natural law aphorism, means “tell the truth, do not injure (hurt) others, and give them what is their right.” If this can be a basic principle for law enforcement in resolving a case, namely by taking into account the rights of the parties, and guidelines for achieving “fair legal certainty” in accordance with the mandate of Article 28D paragraph (1) of the Constitution of the Republic of Indonesia Year 1945, (Fauzia & Hamdani, 2021, p. 5).

The current criminal justice system is designed to identify how the direction of the state’s participation in the formation and implementation of the law is based on the authority it possesses; the state, as the owner of the authority, has the authority to govern citizens through its organs (Zulfa, 2011, p. 27). The state as the holder of authority to determine a number of rules that apply in criminal law (*ius puniale*) and the right to punishment (*ius puniendi*) as a solution to the settlement of a crime that happened. However, in its evolution, the criminal law institution as a conflict resolution mechanism is put as the ultimate mechanism when other institutions fail to carry out their tasks to resolve problems that arise, such as criminal law (Zulfa, 2011, p. 27).

Comprehensive criminal law reform must incorporate formal criminal law (criminal procedural law), material criminal law (substantial five), and criminal law enforcement reforms. If only one area is updated, implementation will be challenging, and the reform’s goals will not be fully realized. The primary purpose of law reform is to reduce crime. As a result, the three legal areas are inextricably linked to attempts to eradicate and conquer crime (Supeno, 2016, p. 104).

The Draft Criminal Code revision is focused on the goals of “social defense” and “social welfare” (Muladi & Sulistyani, 2013, p. 3). Restorative justice is not a new concept in Indonesia’s criminal court system. Harkristuti Harkrisnowo (2018) claimed that a restorative justice approach was employed in the context of the Draft Criminal Code. The notion of restorative justice is incorporated into the Draft Criminal Code through the provisions of various articles, notably Articles 2, 12, 54, and 55. The introduction of mediation methods under Article 145 letter d, as well as diversion in the juvenile justice system.

When considered through the lens of human rights, the Criminal Procedure Code presents issues from a formal legal standpoint. The current Criminal Procedure Code plainly falls short of providing adequate assurances for the preservation and realization of rights, both in terms of creating standards and enforcing them. The Criminal Procedure Code is debated and legalized in an authoritarian political constellation that is enveloped in a thick tug of war of authority amongst institutions. As a result, citizens’ rights, both as suspects and defendants, witnesses, and victims, are neglected or deemed inadequate (Abdullah, 2020, p. 283). As a result, efforts to reform national criminal law are required, in which efforts are directed and integrated in order to support national growth in many domains, in line with development demands as well as the level of legal knowledge and the dynamics that develop in society (Efendi, 2014, p. 312).

Regarding the legal reform, especially the criminal law reform, Romli Atmasasmita stated the following: National (Indonesian) law as a system has not been formed holistically, comprehensively, or has not been enriched with the values of indigenous peoples’ lives to adapt to the lives of developed societies. Some of efforts to state that there has been a national legal system, proved to be only the inheritance of the Dutch East Indies inheritance legal system which adhered to the “Civil Law System” solely which was enforced in the midst of customary law communities. Changes to the Criminal Code in the post-independence period of the Republic of Indonesia and after the reform era, among others, were made by including provisions regarding air piracy and the prohibition of the ideology of Marxism-communism. The formation of the national legal system is still unfinished, and it is questionable before and after Indonesia entered the reform era, the formation was more the result of harmonization of the influence of foreign law or international law into legislation (Atmasasmita, 2012, pp. 60–61).

What fits the concept of “restorative justice” is one of the concepts that has recently become a concern in national criminal law efforts. This approach is relatively new in criminal law enforcement and also shortens the culprits’ sentences. This notion proposes a method for addressing legal cases that arise outside of the present judicial system. Thus, the community does not rely solely on current procedures, but also on justice and problem solving, particularly for the most vulnerable victims, as well as on the accountability of criminals.

The renewal of material criminal legislation in the form of the Draft Criminal Code and the Criminal Procedure Code is an attempt to implement the state’s ideals. As a result, the Draft Criminal Code and the Criminal Procedure Code are representations of what is uniquely Indonesian, not just based on the rule of

law, which emphasizes the protection of individuals from the Western model, or socialist legality, which prioritizes the interests of the state. Legal reform entails not only improving the law but also replacing it with a better one. As a result, the Draft Criminal Code is more than just required alterations that transform colonial clothing into national packaging; it is also a sign of independence and full state ownership. Even legal reforms impact the direction of the formation of the nation's character, from an actual state to an ideal condition, so that the Draft Criminal Code is an instrument for planned social and cultural transformation of the community (Candra, 2013, p. 272).

It is required because of criminal law, particularly the Criminal Code and the Criminal Procedure Code, that the development and mode of operation will continue to evolve in tandem with the development of society. One of these advances is the birth of the concept of conflict resolution, which will be settled by the warring parties utilizing the existing conditions rather than the legal process in court. This is the notion that became known as restorative justice, which was recommended in the Draft Criminal Code through the provisions of Article 2, Article 12, Article 54, and Article 55, as well as diversion against juveniles in the juvenile criminal justice system in Article 145 letter d.

In essence, the principle of restorative justice, or simply the state, has existed since Aristotle, but it was only when it was termed the principle of retribution (Reciprocity) that it became popular (Gunawan, 2015, p. 60). The concept of Restorative Justice is currently being applied in the Indonesian Justice System to juvenile criminal cases, as regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as a Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the State Police of the Republic of Indonesia concerning the Implementation of Adjustments to the Limits of Minor Crimes and the Amount of Fines, Quick Examination Procedures, and the Application of Restorative Justice Number 131/KMA/SKB/X/2012, M.HH07.HM. 03.02, KEP-06/E/EJP/10/2012, B/39/X/2012 Year 2012 (Mudzakkir et al, 2008: 27-28).

Law enforcement officials, notably the police, are better suited to apply restorative justice because that is where the early steps of a crime are taken (initial investigation and investigation). However, it is essential that other law enforcement officials, including judges and prosecutors, be able to apply the idea of such a settlement. Belgium, as an illustration. In Belgium, for instance, mediation is also an option when the public prosecutor decides to press charges against a suspect, according to Dandurand. But in Belgium, the public prosecutor is permitted to lead a mediation to resolve criminal matters (Dandurand et al, 2006, p. 13).

There will be a notion called as restorative justice in relation to criminal law in the upcoming national criminal law). Restorative justice is an idea that is still relatively new to the criminal court system and puts offenders at danger. According to Pancasila values, namely "fair and civilized consultations," this concept offers a way to resolve a variety of legal disputes that arise outside the current criminal justice system so that society is not solely dependent on the current procedures in order to achieve social justice for all individuals or Republic of Indonesia citizens. The settlement procedure in the context of Restorative Justice is one of the options proposed.

IV. PROSPECTS FOR THE FORMULATING OF RESTORATIVE JUSTICE IN CRIMINAL LAW RENEWAL

Criminal law is one of the legal instruments that has existed since antiquity. The existence of criminal law is critical in ensuring that people feel comfortable and are not intimidated by criminal conduct. Furthermore, the existence of criminal law can sustain state stability, allowing the state to play a role in criminal rehabilitation. As a result, the growth of criminal law must be in step with the needs and demands of societal progress. The concept of conflict settlement outside of the courtroom is one of the recent advances in criminal law. This notion, which was established in the Draft Criminal Code, became known as restorative justice.

In Indonesia, customary law can be employed as restorative justice in an attempt to find a peaceful conflict settlement outside of the court or a win-win solution, despite the fact that its existence is not recognized by the state or is not codified in national law (Zulfa, 2010, p. 187). The birth of the concept of restorative justice as a critique of the criminal justice system's use of jail, which is deemed inefficient in addressing social problems. The reason for this is that the parties involved in the disagreement are not involved in resolving the conflict. Victims are remaining victims, criminals who are imprisoned generate new issues for their families, and so on (Utomo, 2014, p. 86).

Restorative justice seeks to restore social peace and harmony. Peace through a restorative justice approach is an important peace that is the major goal in customary law, since it is consistent with the cultural values of the Indonesian people, which prioritizes peace, harmony, and cosmic balance. Furthermore, restorative justice is in line with Pancasila values, particularly the Second Precept, which contains human values to be treated equally before the law, and is also a reflection of the Fourth Precept, which contains

justice values obtained through deliberation for consensus in problem solving.

One of the processes that can be used in dispute resolution in accordance with the cultural values of the Indonesian nation is the employment of a family-friendly discussion technique known as “musyawarah for consensus” among the Indonesian people. The concept of restorative justice assumes that perpetrators and victims alike receive the best possible benefits in order to reduce the number of recidivists among criminals and provide a sense of responsibility for each party. Furthermore, cultural factors are still a local community policy and exist to this day.

Restorative justice is a type of customary law, or local wisdom, that already exists and grows in Indonesian society. As a result, the Draft Criminal Code recognizes customary law in order to fulfill a sense of fairness in society. In dealing with criminal crimes, the concept of restorative justice emphasises moral, religious, social, and economic components, as well as a variety of other concerns. As a result, restorative justice can help to repair broken conditions.

Restorative justice encourages perpetrators to make amends for the harm they have caused to victims, their families, and the community. The core program is “a gathering space for people” to discover answers to the problems produced by crime (Muladi & Arief, 1984, p. 3). Justice based on the peace of perpetrators, victims, and the community is the moral and ethical foundation of restorative justice; thus, justice is carried out in accordance with the “Just Peace Principle.” This notion states that justice and peace are inextricably linked. Without justice, there is tyranny; without peace, there is a new sort of persecution/pressure (Muladi & Arief, 1984, p. 79).

With the implementation of Law Number 11 of 2012 governing the Juvenile Criminal Justice System, restorative justice settlement has been implemented in principle to cases involving children as perpetrators of criminal actions. There are no provisions in the form of laws that regulate restorative justice settlement in adult cases, but there are several statutory provisions issued by the Police, Prosecutors, and Judiciary Institutions in the form of their respective guidelines to accommodate the application of restorative justice.

A Circular Letter of the Head of the Indonesian National Police Number 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases is available in the Police. The police set limits on criminal acts that can be resolved through a restorative justice approach in this Circular Letter, such as the level of error the perpetrator is not a recidivist, and even the community’s aspirations are accommodated by including the condition that there is no rejection from the community.

The Attorney General’s Office issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which requires a fine or criminal threat of not more than five years, not recidivist, and the value of the loss is not more than Rp. 2,500,000.

The judiciary issued a Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice, which allows the use of restorative justice for perpetrators of narcotics crimes, subject to certain conditions.

The concept of restorative justice began to be practiced in Indonesia since 2009, marked by the issuance of the National Police Chief Letter No. Pol: B/3022/XII/2009/SDOPS dated December 14, 2009, regarding Case Handling through Alternative Dispute Resolution (ADR). In the letter from the National Police Chief, cases involving child perpetrators, in the field of copyright, refer to the Article 95 paragraph (4) of Law Number 28 of 2014 concerning Copyright and Article 154 of Law Number 13 of 2016 concerning Patents, principally regulates the mediation process before carrying out criminal prosecutions which are adopted by the penal mediation model to tackle crime problems.

The Supreme Court (MA) as the holder of the highest judicial power in Indonesia issued a number of policies in the form of Supreme Court Regulations and Supreme Court Circulars. Regarding the Supreme Court Circulars of Head of MA Number 3 of 2011 concerning Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation Institutions. Then, Supreme Court Regulations Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code; Supreme Court Regulations Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System; Supreme Court Regulations Number 3 of 2017 concerning Guidelines for Adjudicating Women in Confrontation with the Law; Decision of the Director General of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice.

Meanwhile, restorative justice in the Police and the Prosecutor’s Office applies Police Chief Circular Number SE/8/VII/2018 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases; Regulation of the National Police Chief Number 6 of 2019 concerning Criminal Investigations; and Prosecutor’s Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Subsequently, several joint decrees (SKBs) were issued, including the Decree of the Chief Justice of the Supreme Court, the Attorney General, the Chief of Police, the Ministry Of Law and Human Rights, the Minister of Social Affairs, and the State Minister for Women’s Empowerment and

Child Protection in 2009 concerning Handling Children in Conflict with the Law; Memorandum of Understanding with the Chairperson of the Supreme Court, Ministry Of Law and Human Rights, Attorney General, and National Police Chief in 2012 regarding the Implementation of Adjustment of Limits for Minor Crimes and the Amount of Fines, Quick Examination Procedures and the Implementation of Restorative Justice.

Based on some of the statutory requirements mentioned above, restorative justice has been used in the settlement of criminal cases in Indonesian law for minor criminal crimes, cases of women in confrontation with the law, cases involving children, and drugs charges. Restorative justice is exclusively applied based on decrees, circulars, and combined decrees issued by numerous law enforcers, not on legal provisions.

The Attorney General's Office of the Republic of Indonesia has issued a policy regarding restorative justice with the Attorney General's Regulation (PERJA) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Based on Article 2 of Attorney General's Regulation Number 15 of 2020, considerations for implementing the concept of restorative justice are carried out based on the principles of justice, public interest, proportionality, punishment as a last resort, and the principles of fast, simple, and low cost. The Public Prosecutor has the authority to close cases for legal purposes, one of which is because there has been an external case settlement, this is regulated in Article 3 paragraph (2) letter e Attorney General's Regulation Number 15 of 2020.

If you want to settle a case outside of court for specific criminal crimes with a maximum fine being paid willingly or if there has been a restoration of the original situation through restorative justice, the Attorney General's regulation in Article 3 paragraph (3) contains provisions. By assessing whether the issue can be resolved outside of court and referring to Attorney General's Regulation Number 15 of 2020, the prosecutor in this case, acting as *Dominus Litis* or as a "case controller," might decide if the course of the case should be taken urgently.

Legally, prosecution will end when matters are resolved outside of court utilizing a restorative justice strategy in accordance with Attorney General's Order Number 15 of 2020. According to Article 3 Paragraphs (4) and (5), the Public Prosecutor must conduct the termination of the prosecution in a responsible manner and report it in stages to the Head of the High Prosecutor's Office.

The aforementioned justification, as well as the issuance of regulations, circulars, and decrees by the Police, the Prosecutor's Office, the Judiciary, and the Supreme Court, make it clear that Indonesian law has been modified to reflect the prospects for the formulation of restorative justice in criminal law reform for cases of minor crimes, such as: Article 364 of the Criminal Code, 373 of the Criminal Code, 379 of the Criminal Code, 384 of the Criminal Code, and 40.

Criminal law reform through the creation of laws made by the Government with the House of Representatives, and restorative justice theory as a whole, namely as the approach to the concept of restorative justice, are the two ways in which the principles of restorative justice are still implemented. The internal provisions of case settlement from law enforcement agencies (Police, Prosecutors, and Courts) still follow the internal restorative justice regulations. By repairing a damaged situation or by facilitating a process where interested parties work together to find a resolution after a crime has occurred, sectoral restorative justice, which is recognized by each law enforcement agency in the integrated criminal justice system, aims to fulfill the sense of justice that exists in society.

According to the author's inventory, the prospects for the application of restorative justice in laws and regulations, the development of legal substance regarding criminal law reform policies, and efforts to approach restorative justice have all grown significantly. Among these laws and regulations are:

1) *Law Number 11 of 2012 concerning the Juvenile Criminal Justice System*

Restorative justice is defined in Article 1 paragraph 6 of Law Number 11 of 2012 as "the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution emphasizing restoration to its original state, rather than retaliation." The approach taken in this law must prioritize a restorative justice approach through diversion, namely the resolution of children's cases from the beginning through the criminal justice process to processes outside of criminal justice.

Based on a restorative justice approach, the diversion process is carried out through deliberation with children and their parents/guardians, victims and/or their parents/guardians, community advisors, and professional social workers.

2) *Decree of the Director General of the General Court of Justice on Guidelines for the implementation of Restorative Justice in the General Courts*

The Director General's Decree of the General Judiciary Board is a technical guide to encourage the optimization of restorative justice implementation in the judiciary. The decree's implementation is also intended to reform the criminal justice system, which continues to prioritize prison law. That with the enactment of the decree as a development of the criminal system based on perpetrators, but also leads to the alignment of the interests of victims' recovery and accountability for criminal acts.

This decree governs criminal acts that can be resolved through restorative justice, namely minor crimes

defined in Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code, which are punishable by imprisonment for up to three months or a fine. Rp. 2,500,000 (two million five hundred thousand rupiah), legal cases involving women, children, and narcotics.

3) *Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice*

The implementation of the concept of settlement with a restorative justice approach is governed by Article 2 of the Attorney General's Regulation Number 15 of 2020, which is based on the principles of justice, public interest, proportionality, criminal justice as a last resort, and the principles of fast, simple, and low-cost justice. This Attorney General Regulation authorizes public prosecutors to halt prosecutions for the sake of the law, one of which is because cases have been settled out of court, as specified in Article 3 paragraph (2) letter e.

4) *Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice*

The purpose of the issuance of Police Regulation Number 8 of 2021 is to assist the National Police in realizing the settlement of criminal acts by prioritizing restorative justice, which emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that have been oriented to punishment.

The Police Regulation is a new concept in criminal law enforcement that has evolved from a criminal approach to a restorative justice approach that accommodates the interests of victims, perpetrators of crimes, families of victims, families of perpetrators, and the community to jointly seek a just settlement through peace by emphasizing restoration back to its original state. Information and Electronic Transactions (ITE) crimes, Narcotics crimes, and traffic crimes are examples of crimes that can be resolved through a restorative justice approach.

The issuance of laws and regulations with a restorative justice approach by the government and law enforcement agencies creates hope for encouraging a more just approach for the community. Satjipto Raharjo defines law enforcement as an effort to make the concepts of legal certainty, social benefits, and justice a reality. The process of putting these three ideas into action is the essence of law enforcement. Law enforcement can also be defined as the application of the law-by-law enforcement officers and anyone else who has an interest, in accordance with their respective authorities and in accordance with the applicable legal rules (Rahardjo, 1980, p. 7).

Satjipto (2009) went on to say that progressive law enforcement follows the law not just in black-and-white words from regulations (according to the letter), but in the spirit and deeper meaning (to the very meaning) of the law. Law enforcement requires not only intellectual but also spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, and commitment to the nation's suffering, as well as the courage to seek alternatives to what is typically done (Rahardjo, 2009, p. 13).

In the development of legislation, the restorative justice approach is a type of embodiment of the concept of law, law enforcement, and legal discovery into criminal law policies to achieve criminal law reform. The concept of restorative justice is being used to renew criminal law because the law itself must be able to be engineered in people's lives that are constantly changing. However, the approach to reforming the criminal system with restorative justice in various law enforcement agencies and driven by government policies remains partial because it begins with the renewal of juvenile justice with Law Number 11 of 2012. The ideal is for the concept of restorative justice to reform criminal law in a political way, and for the law to be fully implemented from the Criminal Code and the Criminal Procedure Code in the form of a law as a formal and material source of criminal law in Indonesia, which has not yet been discussed in the DPR and the Government.

Restorative justice content in the Draft Criminal Code has been mentioned since 2012, with details of the 2012 Draft Criminal Code, 2015, in 2019, and now the content has resurfaced. Restorative justice is being considered for inclusion in the Draft Criminal Code because the current criminal justice and criminal justice system are causing problems and are not paying attention to victims. The concept of the purpose of imposing criminal sanctions is currently thought to only focus on the actions of criminal perpetrators, by inflicting suffering, a sense of deterrence, and revenge as a result of the perpetrator's actions.

Restorative justice is based on the principle that criminal acts not only violate the law, but also injure victims and the community. As a result, there is a discourse to use restorative justice through the contents of the Draft Criminal Code, because it prioritizes the agreement of the litigants as a process to resolve crime conflicts by focusing on the needs of the perpetrators and victims, particularly in the context of complaint offenses that focus more on balanced aspects between the victim and the perpetrator, without involving criminal sanctions.

Furthermore, the application of restorative justice is based on efforts to reform criminal law, particularly the criminal system in Indonesia, so that it is not solely oriented toward imprisonment, but also includes the restorative justice principle.

V. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

Based on the findings and discussions, the following conclusions can be drawn:

- 1) Restorative justice is a concept in criminal law reform that emphasizes the need for participation from all societal tiers and divisions of law enforcement in determining the appropriate course of action for offenders and victims. Recovering the losses brought on by the crime committed is the goal of the restorative justice idea. If the offender acknowledges guilt, the victim wants to apologize, and both parties desire to make amends without going to court, restorative justice can take place. The idea of restorative justice may be included into future national criminal justice system construction as permanent (permanent) legal politics. The design has accommodated the principle of restorative justice as a method of resolving problems outside the court, so it is very possible if the concept of restorative justice is used as a criminal law reform in Indonesia in the future.
- 2) The possibility of restorative justice being formulated as part of criminal law reform has been adapted in Indonesian law by the existence of regulations made by law enforcement, where the principles of restorative justice regulated in the internal provisions of the settlement of cases from law enforcement are still implemented sectorally, not using a criminal law policy theory approach, namely the renewal of criminal law through the formation of laws made by the Government jointly. The community and law enforcement officials have expressed positive gratitude for the response to a restorative justice deal.

B. Recommendations

- 1) It is hoped that law enforcement officers can explore the values that exist in society as mandated by Article 5 of Law Number 48 of 2009 concerning Judicial Power as the basis for resolving criminal cases through restorative justice.
- 2) It is hoped that law enforcement officers can explore the values that exist in society as mandated by Article 5 of Law Number 48 of 2009 concerning Judicial Power as the basis for resolving criminal cases through restorative justice.

CONFLICT OF INTEREST

Authors declare that they do not have any conflict of interest.

REFERENCES

- Abdullah, M. Z. (2020). Urgensi perlunya pembaharuan hukum acara pidana nasional di indonesia yang lebih responsive [The urgency of the need for reform of the national criminal procedural law in Indonesia which is more responsive]. *Jurnal Ilmiah Universitas Batanghari Jambi*, 20(1), 281–287.
- Anonim. (2011). *Restorative justice dan peradilan pro-korban* [Restorative justice and pro-victim justice]. dalam buku *Reparasi dan kompensasi korban dalam restorative justice*. Jakarta: Kerjasama LPSK dengan Departemen Kriminologi FISIP UI.
- Arief, B. N. (1996). *Bunga rampai kebijakan hukum pidana* [An anthology of criminal law policies]. Bandung: Citra Aditya Bakti.
- Atmasasmita, R. (2011). *Sistem peradilan pidana kontemporer* [Contemporary criminal justice system]. Edisi Pertama. Cet. II. Jakarta: Prenada Media Group.
- Atmasasmita, R. (2012). *Teori hukum integratif: rekonstruksi terhadap teori hukum pembangunan dan teori hukum progresif* [Integrative legal theory: a reconstruction of developmental legal theory and progressive legal theory]. Yogyakarta: Genta Publishing.
- Buku I RKUHP Bab III Pidana, Pidana dan Tindakan Bagian Kesatu Pidana Paragraf I Tujuan* [Book I RKUHP Chapter III Punishment, Crime and Actions Part One Punishment Paragraph I Purpose].
- Candra, S. (2013). Restoratif justice: suatu tinjauan terhadap pembaharuan hukum pidana di indonesia, terhadap pembinaan hukum nasional [Restorative justice: a review of the reform of criminal law in Indonesia, towards the development of national law]. *Jurnal RechtsVinding: Media Pembaharuan Hukum Nasional*, 2(2), 263–277.
- Dandurand, Y., dkk. (2006). *Handbook on Restorative Justice Programmes*. New York: United Nations Publication.
- Efendi, M. (2014). *Teori hukum dari perspektif kebijakan: perbandingan dan harmonisasi hukum pidana* [Legal theory from a policy perspective: comparison and harmonization of criminal law]. Jakarta: Referensi Gaung Persada Pres Group.
- Emirzon, J. (2001). *Alternatif penyelesaian sengketa di luar pengadilan* [Alternative dispute resolution outside the court]. Jakarta: PT Gramedia Pustaka Utama.
- Eva Achjani Zulfa, (2009), *Keadilan Restoratif* [Restorative Justice]. Jakarta: FHUI.
- Fauzia, A., & Hamdani, F. (2021). Aktualisasi nilai-nilai pancasila dan konstitusi melalui pelokalan kebijakan hak asasi manusia (HAM) di daerah [Actualization of Pancasila and constitutional values through localization of human rights policies in the regions]. *Jurnal Indonesia Berdaya*, 2(2), 157–166.
- Fauzia, A., & Hamdani, F. (2021). Penegakan miranda principles melalui pemberian bantuan hukum pendampingan di masa pandemi Covid-19 [Upholding Miranda principles through providing legal assistance during the Covid-19 pandemic]. *Seminar Nasional Hukum Universitas Negeri Semarang*, 7(1), 1–20.
- Fauzia, A., & Hamdani, F. (2022). Pembaharuan hukum penanganan tindak pidana korupsi oleh korporasi melalui pengaturan illicit enrichment dalam sistem hukum nasional [Legal renewal for handling corruption by corporations through illicit enrichment arrangements in the national legal system]. *Rewang Rencang: Jurnal Hukum Lex Generalis*, 3(7), 497–519.
- Fauzia, A., & Hamdani, F. (2022, May). *Restorative justice: antara teori dan praktik* [Restorative justice: between theory and practice]. https://hng.co.id/view/article-details?id_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES.

- Fauzia, A., Hamdani, F., & Octavia, D. G. R. (2021). The revitalization of the Indonesian legal system in the order of realizing the ideal state law. *Progressive Law Review*, 3(1), 12–25.
- Garner, B. A. (2004). *Black's Law Dictionary*. Edisi Delapan. Amerika Serikat: West Publishing CO.
- Gunawan, T. J. (2015). *Konsep pemidanaan berbasis nilai kerugian ekonomi* [The concept of punishment based on the value of economic loss]. Yogyakarta: Genta Press.
- Hamdani, F. (2021). Urgensi penerapan konsep non-conviction based dalam praktik asset recovery TPPU di Indonesia [The urgency of implementing the non-conviction-based concept in asset recovery practices for money laundering crimes in Indonesia]. In Rishan, I., Martha, A. E., & Setiawan, D., (Eds.), *Hukum Sebagai Penggerak Pembangunan Berkelanjutan di Indonesia*. Yogyakarta: FH UII Press.
- Hamdani, F., Fauzia, A., & Putro, W. D. (2022). *A Value of Awareness (Petuah untuk Anak Muda di Abad ke-21)*. Yogyakarta: Penerbit Samudra Biru.
- Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. [The 1945 Constitution of the Republic of Indonesia].
- Indonesia, Undang-Undang Republik Indonesia Nomor 1 Tahun 1946 Tentang Peraturan Hukum Pidana. [Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations].
- Indonesia, Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana. [Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law].
- Indonesia, Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia. [Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police].
- Indonesia, Undang-Undang Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. [Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Formation of Legislation].
- Indonesia, Peraturan Kejaksaan Republik Indonesia No. 15 Tahun 2020 tentang penghentian penuntutan berdasarkan keadilan restoratif [Republic of Indonesia Attorney Regulation No. 15 of 2020 concerning termination of prosecution based on restorative justice].
- Indonesia, Perkap Nomor 7 Tahun 2008 Tentang Pedoman Dasar Strategi dan Implementasi Pemolisian Masyarakat dalam Penyelenggaraan Tugas Polri Perihal Penguatan Struktur Masyarakat. [Regulation of the Chief of Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Polri's Duties Concerning Community Structure Strengthening].
- Indonesia, Perkap Nomor 6 Tahun 2019 yang menegaskan pemberlakuan konsep keadilan restoratif untuk menghentikan perkara pidana di masa penyelidikan atau di masa penyidikan selama SPDP belum dikirim ke Jaksa Penuntut Umum. [Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2019 which emphasizes the application of the concept of restorative justice to stop criminal cases during the investigation period or during the investigation period as long as the SPDP has not been sent to the Public Prosecutor].
- Indonesia, Surat Keputusan (SK) Direktur Jenderal Badan Peradilan Umum (Dirjen Badilum) MA Nomor: 1691/DJU/SK/PS.00/12/2020 tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif. [Decree of the Director General of the General Court of Justice (Dirjen Badilum) MA Number: 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for the Implementation of Restorative Justice].
- Indonesia, Peraturan Jaksa Agung Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif. [Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice].
- Indonesia, Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif. [Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice].
- Indonesia, Surat Edaran Kapolri Nomor: SE/8/VII/2018 tanggal 27 Juli 2018 Tentang Penerapan Keadilan Restoratif Dalam Penyelesaian Perkara Pidana. [Chief of Police Circular Letter Number: SE/8/VII/2018 dated 27 July 2018 Concerning the Application of Restorative Justice in Settlement of Criminal Cases].
- Indonesia, Surat Kapolri No Pol: B/3022/XII/2009/SDEOP tanggal 14 Desember 2009 tentang Penanganan Kasus Melalui Alternative Dispute Resolution (ADR) serta Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2008 Tentang Pedoman Dasar Strategi dan Implementasi Kepolisian Masyarakat Dalam Penyelenggaraan Tugas Polri. [Police Chief's Letter No. Pol: B/3022/XII/2009/SDEOP dated December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR) and Regulation of the Head of the National Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Police in Carrying Out Their Duties Police].
- Indonesia, Telegram Kabareskrim No. STR/583/VIII/2012 tanggal 08 Agustus 2012 tentang Penerapan *Restorative Justice*. [Telegram Kabareskrim No. STR/583/VIII/2012 dated 08 August 2012 concerning the Implementation of Restorative Justice].
- Malarangan, K., Nurhayati, & Qalbi, V. N. (2022). The premeditated murder in the family: Reconstruction of criminal weighting. *Jurnal Faculty of Law Tadulako*, 7(1), 121–131.
- Manan, A. (2009). *Aspek-aspek pengubah hukum* [Legal modifier aspects]. Jakarta: Kencana Prenada Media.
- Minor, K. I., and Morrison, J. T. (1996). A theoretical study and critique of restorative justice. In Galaway, B., & Hudson, J., (Eds.), *Restorative Justice: International Perspectives*. Monsey: Amsterdam.
- Moh. Mahfud M. D. (2018). *Politik hukum di Indonesia* [Legal politics in Indonesia]. Cet Ke-8. Edisi Revisi. Jakarta: PT. Raja Grahindo Persada.
- Mudzakir dkk. (2008). *Perencanaan pembangunan hukum nasional bidana hukum pidana dan sistem pemidanaan (politik hukum dan pembedanaan)* [Planning for the development of national law in criminal law and punishment systems (legal politics and sentencing)]. Jakarta: Departemen Hukum dan HAM, Badan Pembinaan Hukum Nasional.
- Muhammad, R. (2011). *Sistem peradilan pidana indonesia* [Indonesian criminal justice system]. Yogyakarta: UII Press.
- Muladi dan Arief, B. N. (1984). *Teori-teori dan kebijakan pidana* [Criminal theories and policies]. Bandung: Alumi.
- Muladi dan Sulistyani, D. (2013). *Pertanggungjawaban pidana korporasi* [Corporate criminal liability]. Bandung: PT Alumni.
- Nasution, B. J. (2008). *Metode penelitian ilmu hukum*. [Legal science research methods]. Cet. Ke-1. Bandung: Mandar Maju.
- Otje Salman, H. R. (2007). *Kesadaran hukum masyarakat terhadap hukum waris*. [Public legal awareness of inheritance law]. Bandung: PT Alumni.
- Rahardjo, S. (1980). *Hukum dan masyarakat* [Law and society]. Bandung: Angkasa.
- Rahardjo, S. (2003). *Sisi-sisi lain dari hukum di Indonesia* [Other sides of the law in Indonesia]. Jakarta: Kompas.
- Rahardjo, S. (2009). *Penegakan hukum suatu tinjauan sosiologis* [Law enforcement a sociological review]. Yogyakarta: Genta Publishing.
- Rampadio, H., Fauzia, A., & Hamdani, F. (2022). The urgency of arrangement regarding illicit enrichment in indonesia in order to eradication of corruption crimes by corporations. *Jurnal Pembaharuan Hukum*, 9(2), 225–241.
- Supeno, B. J. (2016). Efektivitas kebijakan kriminal dalam penanggulangan tindak pidana narkoba (dalam kerangka pembaharuan hukum nasional) [The effectiveness of criminal policies in dealing with narcotics crimes (within the framework of national law reform)]. *Jurnal Hukum dan Dinamika Masyarakat*, 14(1), 1–15.

- Sutiyoso, B. (2006). *Penyelesaian sengketa bisnis, solusi dan antisipasi bagi peminat bisnis dalam menghadapi sengketa kini dan mendatang* [Settlement of business disputes, solutions and anticipation for business enthusiasts in dealing with current and future disputes]. Yogyakarta: Citra Media.
- Utomo, S. (2014). Sistem pemidanaan dalam hukum pidana yang berbasis restorative justice [Criminal justice system based on restorative justice]. *Jurnal Mimbar Justitia Fakultas Hukum Universitas Suryakencana*, 5(1), 1–39.
- Winarno, B. (2002). *Teori dan proses kebijakan* [Theory and policy process]. Yogyakarta: Media Presindo.
- Zulfa, E. A. (2010). Keadilan restoratif dan revitalisasi lembaga adat di Indonesia [Restorative justice and revitalization of customary institutions in Indonesia]. *Jurnal Kriminologi Indonesia*, 6(2), 182–203.