Restorative Justice in Criminal Law Reform in Indonesia

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Abstract

Restorative justice is indispensable in preventing an increase in crime. As countries in the world such as Canada, the United Kingdom and even the United Nations' 1975 Fifth Annual Session began to discuss Restorative Justice, it was expected that member states would also begin to use it in their positive laws. Restorative justice can monetize the level of capacity in the Penitentiary, reduce budget costs for the criminal justice process. Restorative justice in Indonesia began to exist in SE Kapolri, Kajari and SE MA. The main issue in this paper is "How to regulate Restorative Justice in Indonesian Criminal Law Reform ?". This article uses a legal research method based on law and ease approach by using normative approach, which aims to solve the problem about mentions. The target reached by implementing restorative justice. Generally, this article expectedly may contribute in the development of criminal justice system as an effort to embody fairness and certainty, justice and benefits.

1. Introduction

In human life as a zoon politicon, which implies that humans are socially interconnected with each other. This does not rule out the possibility of friction or disputes between people and this crime can lead to crime or criminal acts. The emergence of a crime or criminal act requires the existence of a law. The law must be used as a basis to prevent crimes that can disturb the peace of people's lives. In accordance with Muchtar Kusumaatmadja's opinion, law is the whole rule or principle that regulates human life in society, including institutions and the process of realizing the law in real terms. He added that for this reason, it needs

to be stated in the form of law or legislation.[1] Strengthened by van Apeldoorn, with the law, the law can be enforced so that the purpose of the law is achieved by regulating the peaceful association of human life. The achievement of peace in human life will protect the interests of certain human laws, honor, independence, life, and property against those who harm them. [2]

Peace in life so as not to be violated, it is necessary for law enforcement to regulate the process of resolving a case, whether it is a minor, moderate and severe case through the same criminal process starting from investigation, prosecution to trial in court. All of this goes through a long, complicated and winding process and procedure that takes a long time[3]

In fact, the Criminal System in handling the process of resolving a case gives a deterrent effect as a criminal purpose to the perpetrators of criminal acts by imposing a prison sentence. This method causes excess capacity of rutan and prisons and even affects the number of crimes that occur in the rutan and prisons environment. This raises the question of whether the ultimate purpose of a punishment ? What to provide a deterrent effect or create security?. In a legal system success is not caused by the large number of settled cases that cause the large number of prisoners and inmates. It actually reflects that the law cannot prevent the occurrence of crime[4]

A person can be declared as a perpetrator or commit a criminal act and a criminal sanction is imposed against him, if the person meets the elements below, namely:[5]

a. a. The existence of the ability to be responsible to the maker or perpetrator of a crime or criminal liability
b. The inner relationship between the maker and his actions, in the form of deliberation or dolus or forget fulness
c. There is no reason that erases the fault or there is no basis for forgiveness in the perpetrator

Perpetrators who have fulfilled the elements will be processed in criminal justice. In the conventional process of imposing sanctions on the perpetrator whether it has answered the interests of the victim due to losses by the perpetrator. Even if there has been peace between the perpetrator and the victim, in fact, it will not be able to affect the authority of law enforcement to continue to forward the case to the criminal realm which will lead to the conviction of the criminal perpetrator.The imposition of punishment on the perpetrator cannot

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[1]. Vience Ratna Multiwijaya, Perlindungan dan Sanksi Pidana Bagi pemberi Kerja Anak, Jurnal Hukum Pidana dan Pembangunan Hukum, Vol 1 No. 1, Oktober 2016, EISSN: 2654-7341, hal. 42

[2]. Ade Maman Suherman, Pengantar Perbandingan Sistem Huku Civil Law, Common Law, Hukum Islam, Jakarta, PT Raja Grafindo Persada, 2004, hal 9.

[3]. Bambang Waluyo, Penyelesaian Perkara Pidana Penerapan Keadilan Restoratif dan Transformatif, Jakarta, Sinar Grafika, 2020, hal. 4.

[4] https://www.pn-sabang.go.id/?p=5457,website resmi Pengadilan Negeri Sabang Kelas II, Artikel Pendekatan Restorative Justice Dalam Sistem Pidana Indonesia, Kamis September 1, 2022

[5] Sudarto, Hukum Pidana I Edisi Revisi, Semarang, Yayasan Sudarto FH UNDIP, 20213, hal. 155

provide legal certainty for the occurrence of peace or restore the relationship between the victim and the perpetrator. This requires a renewal in the Penal System by introducing the concept of restorative justice offering a recovery process that involves perpetrators and victims directly in solving problems.

The restorative justice approach is an approach that prioritizes the creation of justice and balance between perpetrators and victims. This is done by opening dialogue and mediation in order to reach an agreement in resolving criminal cases between perpetrators and victims [6]. This is very important because it provides space for perpetrators and victims to solve cases directly without being represented so that they can have an impact on crime victims with justice and balance, so that victims feel they are getting a replacement for the losses experienced by victims.

. In the new positive legal rules in the case of children as perpetrators or children dealing with the governing law is carried out with the concept of restorative justice. This provision can be seen based on Article 5 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which regulates "The Juvenile Criminal Justice System must prioritize the Restorative Justice approach.". Even Article 1 number 6 of Law No. 11 of 2012 regulates Restorative Justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators / victims and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retribution.

In 2021, the Chief of National Police issued Article 5 of the Chief of Police Regulation (Perpol) Number 8 of 2021 concerning Resttorative Justice which in Article 5 recommends that case investigations be directed to restorative justice. Head of the Criminal Investigation Agency (Kabareskrim) of the National Police, Commander General of Pol. Agus Andrianto through his statement, Tuesday, Aril 19, 2022, he said that the Chief of the National Police, General Listyo Sigit Prabowo, emphasized that investigators must have the principle that criminal law becomes the last resort in law enforcement (Ultimum Remidium). In this case, the National Police must be able to position itself as an institution that provides a sense of justice to the community. Only in the exercise of restorative justice is not for all crimes. Only for certain criminal acts can restorative justice be used, including terrorism, crimes against state security, corruption and cases against people's lives, and also not cause unrest and / or rejection from the community, do not have an impact on social conflicts, do not have the potential to divide the nation, are not radicalism and separatism and are not a repeat of criminal acts based on court decisions. If the goal is achieved, it is done with an out-of-court approach.[7]

Dalam SE/2/II/2021, The National Police Regulation, then followed by investigators in the area. This is since the existence of Kapolri Circular Number

[6] Septa Chandra, Restoratif Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonsia, Jurnal Rechts Vinding, Vol2 No. 2, 2013, hal. 264

[7] https://bojongnews.semarangkota.go.id/detailpost/restorative-justice-jadi-prioritas-polri-selesaikan-perkara, diunduh tgl 1 September 2021, Jam 14.00 wib

SE/2/II/2021 dated February 19, 2021, there have been at least 1,864 cases resolved through restorative justice or without going through court processes. In SE/2/II/2021, National Police Chief General Listyo Sigit Prabowo instructed that National Police investigators prioritize a restorative justice approach in handling cases using the Electronic Information and Transactions Law (UU ITE).

The investigator must facilitate mediation between the victim and the perpetrator as well as the parties involved in the case who want to reconcile. All cases are prioritized using a restorative justice approach, except for cases that have the potential to be divisive, nuanced with SARA, radicalism, and separatism.

One of the references for the restorative justice approach is the SE of the Chief of Police Number 8/VII/2018, containing material requirements and formal requirements. The conditions of formal requirements that must be met, such as the case does not cause unrest and there is no rejection from the community, do not have an impact on social conflicts, and the level of culpability of the perpetrators is relatively not heavy. Criminal cases that can be handled with a restorative justice approach if the warrant for the commencement of investigation (SPDP) has not been submitted to the prosecutor's office

In addition to a number of SE, Perkap, and Telegram from the Chief of Police, the decree (SK) of the Director General of General Justice of the Supreme Court Number 1691 dated December 22, 2020 is also a guide for restorative justice considerations. The decree details the terms and types of criminal acts that may be resolved by peaceful means[8]. It can be seen from this recommendation that it is very important for the reform of the Criminal Law in Indonesia, so that the purpose of the law is achieved by providing a sense of justice in people's lives by restoring damaged conditions involving perpetrators and victims to harmonize agreements in solving problems after the occurrence of criminal acts.

2. Research Method

As a consequence of the selection of problem topics to be studied in this study are legal problems (while law is a rule or norm that exists in society), the type of research used is normative juridical research, which is research focused on examining the application of rules or norms in positive law and legal comparison. Because of the type of research used normative juridical, the approach used is the legal approach. This approach conducts a review of laws and regulations related to the central theme, namely: "Restorative Justice in Criminal Law Reform in Indonesia", This paper focuses on the use of secondary data, namely data obtained through library materials.[9] The secondary data

[8] https://kompolnas.go.id/index.php/blog/keadilan-restoratif-ala-polri-saat-pemidanaan-jadi-nomor-dua, diunduh Jakarta, tgl 1 September 2021, Jam 14,30

[9] Ronny Hanitijo Soemitro, **Metodologi Penelitian Hukum dan Jurimetri**, Ghalia Indonesia, Jakarta, 1990, hal .10.

consists of: primary legal material, in the form of substance of laws and regulations related to Restorative Justice in the Renewal of Criminal Law in Indonesia. Secondary legal materials include official documents, books, research results in the form of daily reports and so on, as well as tertiary legal materials, which include, among others, dictionaries and encyclopedias

Data obtained or collected regarding problems related to this research are carried out by means of literature studies and analyzed qualitatively by descriptive and prescriptive parsers. The basis for justifying this data analysis is that this study not only reveals or describes the data as it is, but also reveals the reality behind the laws and regulations. The selected data is created in a list in. As the last activity of the researcher conducts a re-examination to be able to conclude the conclusion through a narrative description of what is successfully understood from the research problem. The approach used in the data analysis above is conceptualization induction [10] ,where the author tries to pull empirical data or information to the level of abstraction in the form of theoretical statements. From the description of the data and the analysis carried out, it can be shown "Restorative Justice in Criminal Law Reform in Indonesia

3. Results and Discussion

1. History of Restorative Justice

According to Andi Hamzah, the basis of restorative justice has existed since time immemorial, both in Europe, the Middle East and Indonesia. This does not distinguish between civil and criminal cases, both filed by aggrieved parties. Even in Germany it is known andagium "'wo kein kiager ist, ist kein richter" meaning no complaint then no haki.

Restorative justice is experiencing rapid development in various countries around the world. One of them is from the practice of Maori life in New Zealand and first nations in North America. In the 1950s, the term restorative justice, or restorative justice, was only introduced in some of Albert Eglash's writings and has been widely used since 1977. The beginning of the practice of used restorative justice in Kitchener, Ontario, Canada in 1974, was marked by the presence of Victim Offender Reconciliation Program (VORP) . It is based on there being a commotion that caused damage by two young men. The actions of the two young men just now caused harm to the victim. Furthermore, the two young destroyers were brought together with the victim to solve the problems that arose and resulted in losses. The result of the meeting found a peaceful way, the two young men paid compensation for their actions to the victim and this received support from various parties

In 1989, New Zealand proved the existence of restorative justice with the publication of Children's and Young People's Wellbeing, as a form of juvenile

[10] Sanafiah Faisal, **Penelitian Hukum Kualitatif, Dasar-Dasar dan Aplikasi**, Yayasan A-3, Malang,1990, hal. 90.

criminal justice system. This law regulates the mechanism of involving families or family group conferences between families, legal advisors, social workers, other parties to victims to make peaceful settlements. In the UK, it enacted the Crime and Disorder Act 1988 and the Youth Justice and Criminal Evidence Act 1999. These two rules provide the basis for the importance of hearing the opinions of victims before restorative justice is carried out and also publicizing the actions that will be done by the perpetrator in making improvements or restoration to victims and the community.

This situation was also carried out by the Council of Europe issuing Recommendation No. R. (85) 11 concerning the Position of the Victim in the Framework of Criminal Law and Procedure and also published Recommendation No. R (99) 19 concerning Mediation in Penal Matters which provides the spirit of restorative justice, and mediation as well as the basic principles of law and guidelines for the application of restorative justice

The idea of restorative justice was also found at the Tenth United Nations Congress in 2000 on the Prevention of Crime and Treatment of Offenders, which discussed the problem of mediated resolution with the concept of restorative justice. This was later standardized in UN Economic and Social Council Resolution 2000/14 on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. This regulation contains the principles of implementing restorative justice and can be used as a basis for member states to apply restorative justice.

Based on the historical description of Restorative Justice, placing victims of crime as people or groups of people who experience physical, mental, emotional and even economic losses which are basic rights caused by the actions or actions and attitudes of law violators or perpetrators of crime. Furthermore, the victim must be treated well, respected. Victims must also be able to access justice and get compensation for losses obtained in accordance with the rules set by the state. In restorative justice, victims must be informed of their right to redress. Victims in the criminal justice system in restorative justice are given the opportunity to express their opinions and his views and provide evidence and have the right to comment on the evidence presented at trial. In addition, decisions taken in restorative justice must pay attention to the development of victims.

2. The Meaning of Restorative Justice

The concept of Restorative Justice, as described above, has become a discourse in several countries in the world. To be clearer, the meaning of restorative justice will be discussed first, the meaning of Restorative Justice.As for what is meant by restorative justice, it says: “Restorative Justice is a process whereby all the parties with a stake in aparticular offence come together to resolve collectively how to deal with theaftermath of the offence and its implication for the future” . Restorative justice is a criminal justice process that involves interested parties in a violation of the law meeting together to find a

solution to the criminal problem so that the consequences that occur can be decided or resolved in the interest of all parties or together.

Jim Consedine, defines restorative justice as follows:

"Crime is no longer defined an offence by one person against another. It is based on recognition of the mundanity of both offender and victim. The Goal of thr restorative process is to heal the wounds of every person affected by the offence, including the victim and the offender. Option are explored that focus on repairing the damage". That the Criminal Act is no longer interpreted as an attack on the state but is a crime committed by one person against another. Restorative justice is based on both parties, namely the victim and perpetrator. The restorative justice process has the benefit of being able to recover existing injuries or consequences due to an evil act or crime committed by the perpetrator or lawbreaker. Settlement is chosen by focusing on repairing the damage that occurred from the criminal act.

The meaning of restorative justice according to Indonesian Law as stipulated in Law Number 11 of 2012, Article 1 number 6 is the settlement of criminal offenses involving the perpetrator of the victim, the family of the victim/perpetrator and other related parties jointly seeking a fair settlement with emphasis on restoring back to its original state and not retaliation. Based on the description above, what is meant by restorative justice is a criminal justice system that does not have a conventional concept that prioritizes the provision of criminal snaction as a form of deterrent effect. The provision of criminal sanctions with the aim of deterrent effect may not necessarily be able to solve problems that, especially for victims, do not guarantee the resolution of these problems. In restorative justice seeking a peaceful way between the parties including the victims, the perpetrators to find a solution without having to be in the judicial process. The chosen path seeks a way out with the process outside the trial but with the agreement of both parties. This is to give the perpetrator the responsibility to replace the damaged situation or pay compensation to the victim so that it does not cause heartache. In addition, peace of recovery against losses makes the situation return to its original state before the perpetrator's criminal act. Restorative justice also provides benefits that perpetrators will not be stigmatized as perpetrators of crimes or as prisoners.

The principle of Restorative Justice according to United Nations Office on Drugs and Crime

1. Restorative Justice is a flexible Approach to crime it can be adapted to and complement criminal justice system and be applied at every stage of the criminal justice process,. Restorative justice can intersect to varying degrees with the criminal justice process or function independently from it.
2. Restorative Justice processes take three main forms-victim-offender mediation (VOM) conferencing and circles.
3. VOM programmers offer a process wherein the victim and the offender mediation engage in a discussion of the crime and its impact that is facilitated

by an impartial third party trained for this purpose either in a face-to-face meeting or through indirect means

4. Restorative conferences, such as community conferences and family group conferences, differ from VOM pragrammers in that they involve more partied than the primary victim and the offender)
5. In the conferencing model, other persons affected by the offence, such as family members, friends, community representatives, and depending on the programme, the police or other professional
6. The Use of a circle process has been adapted to themodern criminal justice system. Circles can be used to facilitate the sentencing process. They can also be usewithin local neighbourhood to address residents concerns over crime or anti-social behaviour, or to resolve complaints against members of law enforcement or correctional agencies.Positive solutions can be generated by such communal dialogues
7. Restorative Juvenile justice is a key companent of an effective, fair and child-friendly juvenile justice system. There has been an unprecedented growth in the use of restorative justice in the youth justice context, either as an alternative to the criminal justice process or as part of diversion schemes. These programmes provide as progressive and educational response to offences or conflict stigmatizing youth through formal shunning or criminalization. Such programmes can offer a unique opportunity to create a community of care around youth in conflict with the law.
8. Restorative juvenile justice processes must be implemented in a manner the quarantees children's safety,respects their rights and remains consistent with the principle of the best interests of the chid .
9. Restorative justice approaches can also be used within the criminal justice system,but outside of the criminal procedure. Restorative Justice is successfully applied to resolve certain types of citizen complain against police officers. Similarly, mediation can be applied in prisons to resolve issue between prisoners or between prisoners and guards.

Description Handbook on Restorative Justice Programmers, that restorative justice is a way of approach that provides an alternative path to obtain a justice. So restorative justice not only prioritizes process but also on outcomes and can be used at every level of criminal justice. The basic principle of restorative justice is :

a) The implementation of restorative justice at each level of examination is not only aimed at stopping a case
b) Implementation of Restorative Justice can be used at every stage of the judicial process
c) Implementation of restorative justice must not deviate from gender equality and non-discrimination

d) The implementation of restorative justice must pay attention to empowerment, active participation of the perpetrators, victims and other parties related to problems that occur or are related

e) The principle of restorative justice must be without coercion, without pressure or intimidation, in the sense that all parties voluntarily settle with restorative justice

f) If it is done in solving children's problems, it must prioritize the best interests of the child

Characteristics of Restorative Justice according to Muladi :

a. Crime is formulated as an offense against another person and is a conflict that arises between both parties

b. In restorative justice, the main problems solved are solving the problems of accountability and obligations that must be carried out for the future

c. The normative nature of restorative justice is built on a two-way dialogue or discussion with the parties and negotiations to seek peace

d. Restitution or compensation as a means of improvement of the parties, reconciliation and restoration are the main objectives

e. Justice is a relationship between rights , and is assessed on the basis of the results

f. In restorative justice, the main point of attention is aimed at improving social wounds caused by a crime

g. The community is a facilitator or intermediary to achieve a peace in the restorative justice process

h. The role of victims and perpetrators is recognized, both when determining the problems that arise and resolving the rights that must be accepted and the needs of victims and perpetrators must be encouraged to be responsible for the problems that occur

i. The accountability of the perpetrators is formulated as the impact of understanding their work and is directed to participate in deciding the best

j. Criminal acts are understood in a comprehensive, moral, social and economic context

k. Stigma can be removed through restorative action

3. Regulation of Restorative Justice in the Reform of Indonesian Criminal Law

Law enforcement in order to enforce the rules that apply to those who commit a crime or crime must be based on the existence of a certainty of law, benefit and justice. Therefore, the litigation process must be based on written law, which means that it is made and promulgated definitively, and has fairness, which means that in handling cases, cases must be considered according to the case. This is a decision that is not necessarily fair to others, so it must pay attention to the balance and interests that are protected based on equality of rights and obligations. Meanwhile, the principle of usefulness sees how the decision benefits the perpetrators and the community. The benefits of this law must be considered because everyone hopes that the benefits in the implementation of law enforcement do not actually cause anxiety in the community. Therefore, in order to achieve this principle, it is necessary to change the Indonesian criminal justice system from a retributive paradigm to a restorative criminal system characterized by the active involvement of the community in the recovery of the parties, in this case the victims and perpetrators.

Although there has been a decrease in the number of crimes, it still shows a high crime rate, which is 810,823 incidents (2018 to 2020). Based on this, a new approach is needed in the prevention of criminal acts. This situation shows the need for changes in the handling of criminal. In addition, there is an overcrowding of criminals in prisons. The percentage of overcrowding in prisons reaches 111%, with the largest occupant profile being drug cases. Strategies are needed to prevent inmate overcapacity. The number of cases also disrupts the budget for handling criminal cases in the Criminal Justice System which reaches a cost of 136 Trillion, both within the scope of the Police, Prosecutor's Office, KP, MA and MK. Therefore, it is necessary to break the law in the Criminal Justice System in Indonesia by changing it from a retributive paradigm to a restorative criminal system characterized by the active involvement of the community in the recovery of the parties, in this case the victims and perpetrators .

The application of Restorative Justice in its development has the support of the United Nations or the United Nations. At the UN Five Year Congress held in Geneva in 1975, the UN began to pay attention to compensating victims of crime. It is an alternative to retributive criminal justice. In 2005, held in Bangkok at the Fifth Annual UN Congress, restorative justice was first discussed, under the theme Improving reform in the field of criminal justice. Since then the UN has recognized restorative justice as justice for social harmony

The principle of Restorative Justice in the Criminal Code can explicitly be found in criminal cases regulated in Article 14 a to f, Articles 364, 373, 379, 384, 407 and 483 of the Criminal Code (KUHP). If viewed based on the reform of the criminal law, restorative justice needs to be carried out. As with the promulgation of Law No. 1 of 2023, the objectives of punishment based on Article 51 are :

a) Prevent Criminal Acts by upholding legal norms for the protection and protection of the community
b) Communicating the convict by conducting coaching and guidance in order to become a good and useful person
c) Resolving conflicts caused by Criminal Acts, restoring balance and bringing a sense of security and peace in society
d) Cultivate a sense of remorse and release guilt in the convict.

It can be seen that the purpose of punishment has undergone a paradigm shift by prioritizing community protection and community welfare. An approach with a restorative justice system can encourage people not to commit crimes anymore. Because by resolving conflicts in a dialogue, finding the best solution for victims and perpetrators fosters a sense of security and freedom from guilt. In fact, there is no longer any resentment from the victim because the victim's loss has been resolved with the agreement of both parties. In Indonesia, restorative justice settlements are mostly carried out on customary law. For example, if there is a community that loses, it is collected by community customary elders, families, perpetrators and victims to settle by paying compensation or carrying out customary obligations.

The cause of the emergence of restorative justice is based on the resolution of the criminal justice system by providing a deterrent effect in the form of imprisonment not resolving existing conflicts or not having an effective impact. This is because the victim remains a victim while from the point of view of the perpetrator causes new problems for the perpetrator and family. Such as being rejected by society, isolated from the environment, but not resolving losses for victims. Therefore, the victim continues to experience trauma due to the loss she suffered.

A resortative fair settlement may serve the purpose of :

a) Achieve a peace as an effort to resolve conflicts between victims and perpetrators without compensation
b) Submission back to the parents/guardians of the perpetrators of the crime so that it is not stigmatized as the perpetrator of the crime
c) Participate in Education or training to Educational Institutions, Social Welfare Organizing Institutions or Social Welfare Institutions
d) Community Service or social work
e) Instill a sense of responsibility in the perpetrator

In Indonesia, we can see that based on Article 1 number 6 of the Indonesian Law No. 11 of 2012, restorative justice is a settlement of criminal cases that occur without going through a case process in court but take a way outside the court trial, involving the perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by

emphasizing the restoration of the original state, and not retaliation. In fact, Article 5 of Law No. 11 of 2012 explains that the Juvenile Criminal Justice System must prioritize restorative justice. In addition, restorative justice must be carried out at every level of examination, both investigations, prosecutions and court hearings, regulated in Article 5 paragraph (2) of Law No. 11 of 2012 concerning the System of Child Criminal Justice

In addition, there is also a Circular Letter (SE) of the National Police Chief No. SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. Since 2021, using a restorative justice approach, case resolution has increased by 28.3 percent from 9,199 cases in 2020 to 1,811 cases. According to him, a restorative approach is carried out in order to provide a sense of justice, especially cases involving small communities and small matters. This is based on a view that if the case is continued, the judiciary will actually cause problems in terms of justice.

The definition of restorative justice in SE Kapolri in 2008 was then amended based on the National Police Regulation No. 6 of 2019 concerning Criminal Investigation. As for the definition of Restorative Justice, This National Police Regulation Noumber 6 of 2019 is the resolution of criminal cases involving perpetrators, victims and/or families and related parties with the aim of creating justice for all parties. This National Police Regulation specializes in restoring relations or relations between victims and perpetrators. This definition undergoes another change in the National Police Regulation No. 8 of 2021, that Restorative Justice is the resolution of Criminal Acts involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religion, customary leaders or stakeholders to jointly seek a just solution through peace by emphasizing the restoration of the original situation. The purpose of restorative justice according to This National Police Regulation is to achieve peace between victims and perpetrators

The Prosecutor's Office also issued a Regulation on Restorative Justice stipulated in the Indonesian Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice. Article 1 number 1 Restorative Justice is the resolution of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing the restoration of the original situation, and not retaliation. Article 2 Termination of prosecution based on restorative justice is carried out on the basis of: a. justice; b. public interest; c. proportionality; d. criminal as a last resort; and e. fast, medium, and light costs

Furthermore, the requirements that must be met in order for restorative justice to be implemented in accordance with the Regulations regarding the requirements for implementing restorative justice are regulated in Police Regulation 8/2021 and Kejari Regulation 15/2020. The requirements contained in Police Regulation 8/2021 will be applied when carrying out criminal investigation, investigation, or investigation functions. The function of Criminal

Investigation in the case of minor crimes while investigation and investigation can be carried out

Meanwhile, the requirements contained in the Indonesian Prosecutor's Regulation 15/2020 will be applied during the prosecution stage by the public prosecutor. Based on Police Regulation 8/2021, it can be seen that to implement restorative justice there are general and/or special requirements. General requirements for handling Criminal Acts based on Restorative Justice in the implementation of criminal investigation, investigation, or investigation function activities. Special requirements explain the requirements for handling Criminal Acts based on restorative justice in investigation and investigation activities. (Article 3).

Meanwhile, the general requirements consist of material requirements and formal requirements. Material requirements are described in the provisions of Article 5 of Police Regulation 8/2021 which reads:

Material requirements as referred to in Article 4 letter a, include:

a) Does not cause anxiety and/or rejection from the community;
b) Does not have an impact on social conflict
c) does not have the potential to divide the nation;
d) is not radicalism and separatism;
e) is not the perpetrator of a repeat of a criminal offence based on a Court Decision;
f) not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a criminal act against people's lives.

Police Regulation 8/2021 which reads: "Formal requirements as referred to in Article 4 letter b, include:

a. reconciliation from both parties, except for drug crimes; and

b. fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes."

Article 6 paragraph (3) of Police Regulation 8/2021 explains the fulfillment of the victim's rights above, which can be in the form of returning goods, reimbursing, reimbursing costs incurred as a result of a criminal act, and/or reimbursing damages incurred from the crime.

Based on the provisions of the article, it can be seen that there are conditions that must be met if it will apply restorative justice. These conditions such as there is an agreement between the parties to make peace, not the repetition of criminal acts, the fulfillment of victims' rights, and the application of restorative justice has not received rejection from the community, and not for certain crimes

Furthermore, the requirements regarding the application of restorative justice, when in the prosecution stage are described in Article 5 paragraph (1) of the Indonesian Prosecutor's Regulation 15/2020 which reads: "Criminal cases can be closed by law and stopped prosecution based on Restorative Justice in the event that the following requirements are met:

a. a new suspect commits a criminal offense for the first time;

b. a criminal offense is only threatened with a fine or threatened with a crime imprisonment for not more than 5 (five) years; and

c. a criminal act shall be committed with the value of the evidence or the value of the loss caused as a result of the criminal act not exceeding Rp2,500,000.00 (two million five hundred thousand rupiahs) "

The conditions stipulated in Article 5 paragraph (1) of Kejari Regulation 15/2020 basically do not apply rigidly. This if it relates to cases of crimes related to property, against humans, bodies and lives and freedom, the provisions in Kajari Regulation 15/2020 can be waived. In addition to the 3 (three) conditions for the implementation of restorative justice, several other conditions must also be met as stated in Article 5 paragraph (6) of Kejari Regulation 15/2020 which reads: ".....termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

a. There has been a restoration to the original state carried out by the suspect, by:

1. return the goods obtained from the crime to the Victim;

2. indemnify the Victim;

3. reimburse costs incurred from the consequences of criminal acts; and/or

4. repair damage arising from the consequences of criminal acts;

b. there has been a peace agreement between the Victim and the Suspect; and

c. the community responds positively.

(7) In the event that the Victim and the Suspect agree, the condition of restoration to the original state as referred to in paragraph (6) point a may be excluded.

(8) Termination of prosecution under Restorative Justice is excluded for cases of:

a. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their deputies, public order, and decency;

b. criminal offenses punishable with minimal criminal threat;

c. narcotics crimes;

d. environmental crimes; and

e. criminal acts committed by corporations.

In addition, the Supreme Court with the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia No. 1691 / DJU / SK / PS. OO/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice. The regulation signed by the Director General of Badilum of the Supreme Court regulates the application of restorative justice only in the scope of women's cases facing the law and drug cases. According to this rule, restorative justice is a concept of justice that prioritizes need-based reconciliation and restoration of victims, perpetrators and the environment affected by a criminal act. In addition, it contains an order for all judges of the District Court, High Court to implement guidelines for the application of restorative justice in an orderly manner, while the chairman of the PT is obliged to supervise, monitor and evaluate and report on the implementation of restorative justice in the jurisdiction of the High Court.

This policy has been implemented both by the Supreme Court in both the Court Regulations and the Supreme Court Circular. The regulations in question are Court Regulations No. 2 of 2012 concerning Adjustment of the Limitation of Minor Crimes and the Amount of Fines in the Criminal Code; COURT REGULATION No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System; Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law; Circular Letter No. 4 of 2010 concerning the Placement of Abuse, Abuse Victims and Drug Addicts into Medical Rehabilitation and Social Rehabilitation Institutions; Circular Letter of the Chief Justice of the Supreme Court No. 3 of 2011 concerning the Placement of Victims of Drug Abuse in Medical Rehabilitation and Social Rehabilitation Institutions.

In addition, the Joint Decree of the Chairman of the Supreme Court, the Attorney General, the Chief of Police, the Minister of Law and Human Rights, the Minister of Social Affairs, and the State Minister of Women's Empowerment and Child Protection Number 166A/KMA/SKB/X11/2009, 148 A/A/JA/12/2009, B/45/X11/2009, M.HH 08 HM.03.02 of 2009, 10/PRS s/KPTS/2009, 02/Men.PP and PA/XII/2009 concerning the Handling of Children Facing the Law.

Memorandum of Understanding with the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General, Chief of Police R.I Number 131/KMA/SKB/X/2012, Number M.HH 07.HM.03.02 of 2012, Number KEP 06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Adjustment of the Limitation of Minor Crimes and the Amount of Fines, Rapid examination events as well as the application of restorative justice.

Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014 Number As of 005/A/JA/03/2014 Number 1 of 2014, Joint Regulation Number/01/III/2014/BNN concerning the Handling of Drug Addicts and Victims of Drug Abuse into Rehabilitation Institutions. Annex to this Decree defines restorative justice, the resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation (imprisonment). The purpose of this technical guideline is to optimize the application of Court Regulations, Circulars or the Decree of the Chief Justice that regulates the implementation of restorative justice in court.

In principle, the use of restorative justice to reform the criminal justice system that still prioritizes imprisonment in the decisions of assemblies / judges. The guidelines described above must be guided by all district courts in Indonesia. Only according to Ni Made Martini Putri there are 3 things that are not recognized by restorative justice, namely:

1. Human rights violations or crimes committed by the state. For example, policies made by an official and cause citizens' rights to be neglected,

2. White collar crimes are relatively difficult to prove.

3. A crime in which the perpetrator has no shame or guilt, and instead feels himself moral. As an example of the Criminal Act of Corruption, the perpetrators often show an image as a moral, law-abiding person, so that it can obscure the judge's view. Especially if the Corruption Crime has only been committed once by the perpetrator.

In Indonesia, it has not expressly regulated restorative justice but, in some regulations, it means restorative justice. Law No. 11 of 2012 concerning the Juvenile Criminal Trial System (SPPA) in Article 5 paragraph (1). If you pay attention to the spirit of restorative justice in several regulations such as Article 82 of the Unang Criminal Code, it regulates the abolition for prosecution of cases that are only punishable by fines. In the Code of Criminal Procedure, we can also find Article 98, regulating claims for compensation by the victim to be filed together with the criminal case. In Law Number . 31 of 2014, Article 7 victims through the victim witness protection agency have the right to apply to the court, the right to compensation in cases of gross human rights violations and the right to restitution or compensation for which the perpetrator of a criminal act is responsible.

The settlement of criminal cases according to resorative justice is a concept that places criminal acts as crimes against society rather than the state. Because the concept is a crime against society, there is an obligation for the offending community to improve relations with victims by providing dialogue

or creating communication between victims and perpetrators of crimes in the form of mediating between victims of crime and perpetrators with third parties. Therefore, the success of the restorative justice system depends on two things, namely the community element that does not only focus on providing a deterrent effect on perpetrators of crime and the cooperation between law enforcement officials. It can be said that this is the key to the success of restorative justice, so that the criminal justice system is no longer in the nature of giving punishment or sanctions but prioritized the restoration of the original state aimed at providing healing to victims by perpetrators of crimes

As Muhammad Budi Setyadi argued, the science of criminal law must have the aim of restoring the situation as before the existence or occurrence of a criminal act. It is clear that there is a role for the law to provide protection to victims of crime. The restoration of the situation as it was before the crime is based on a peace agreement between the victim and the perpetrator. In the peace agreement, the victim expresses the losses suffered due to the perpetrator's actions, and the perpetrator is given the opportunity to do actions to redeem or erase the losses suffered by the victim by providing compensation .

In addition, the basic basis of Restorative Justice in Law Number 1 of 2023 concerning the Code of Criminal Law, at least contained in several articles, including Articles 36 to Article 43 regulating criminal liability. There are also articles 51 to 54 regulating the purpose of punishment, guidelines for punishment and the provision of criminal must consider certain matters, Article 64 to Article 66 concerning the provision of crimes and actions, Article 70, concerning perpetrators of criminal acts that are not criminalized, Article 71 concerning containing provisions if the criminal is threatened under 5 years, Article 108 regulates efforts to recover or repair damage caused by the Criminal Act as it was originally

4. Conclusion

Restorative Justice arrangements in Indonesia have not expressly regulated them. Restorative justice is spread in several regulations such as in the Police, Prosecution and Supreme Court. Only in Undang_Undang Number 11 of 2012 concerning the Juvenile Criminal Justice System expressly stipulates that law enforcement must prioritize a restorative justice approach at every level of examination, carried out with efforts through Diversion.

It is expected that the criminal law reform contains regulations on restorative justice that can be used as a guideline for all law enforcers to prioritize settlement with restorative justice. Criminal law reform is no longer retributive by emphasizing retaliation or a deterrent effect, but provides worship and guidance to perpetrators. The method is to prioritize recovery for the victim accompanied by giving the responsibility or obligation of the perpetrator to restore it to its original state before the occurrence of criminal acts that harm the victim. Strict rules by including resorative justice in criminal law reform in

positive law so that it can be used as a basis for the examination of criminal cases. This can obviously reduce the crime rate but does not remove the responsibilities and obligations that must be fulfil perpetrators of crime. The impact of regulating restorative justice in positive law will be the achievement of the goals of punishment, protection and community protection by conducting guidance and guidance. This goal can resolve conflicts that arise safely and peacefully, leave no resentment and foster regret for the perpetrator not to repeat the act and release the perpetrator's guilt.

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