

THE RESTORATIVE JUSTICE APPROACH AS AN ALTERNATIVE CRIMINAL SETTLEMENT IN INDONESIA

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ABSTRACT

As an alternative method for resolving criminal cases, Restorative Justice is a new approach model. In fact, this Restorative Justice approach model has been utilized in a number of nations with an emphasis on methods for resolving legal disputes between perpetrators, victims, and the community. Even though experts continue to debate this approach model at the theoretical level, it continues to grow, exist, and influence legal policies and practices in many countries. The Restorative Justice policy in Indonesia then adopts it. In this paper, the issue is how Restorative Justice can be used to settle criminal cases and how Restorative Justice works in Indonesia as a different way to settle cases. Through a number of provisions in Law No. 1 of 2023 pertaining to the Criminal Code and the diversion of children, the principle of Restorative Justice has been introduced throughout its development, particularly to ensure a balance of attention among stakeholders in criminal law (victims, perpetrators, society, and the state). Naturally, it is anticipated that this approach model will be incorporated into the upcoming reform of Indonesian criminal law to achieve the goals of justice, certainty, and expediency.

Keywords : Restorative Justice, Alternative Criminal Settlement, Criminal Case

ABSTRAK

Restorative Justice merupakan suatu bentuk model pendekatan baru sebagai alternative penyelesaian perkara pidana. Model pendekatan *Restorative Justice* ini sebenarnya telah digunakan di beberapa negara dengan focus pendekatannya kepada pelaku, korban dan masyarakat dalam penyelesaian kasus hukum yang terjadi diantara mereka. Walaupun model pendekatan ini masih banyak diperdebatkan dalam tataran teori para ahli, namun dalam kenyataannya tetap tumbuh dan eksis serta mempengaruhi kebijakan dan praktek hukum di banyak negara, yang kemudian kebijakan *Restorative Justice* di adopsi di Indonesia. Permasalahan dalam penulisan ini yaitu bagaimana penyelesaian perkara pidana dengan menggunakan pendekatan *Restorative Justice*, dan bagaimana konsep Restorative Justice sebagai alternative penyelesaian perkara pidana di Indonesia. Dalam perkembangannya prinsip *Restorative Justice* sudah diintrodusir melalui sejumlah ketentuan antara lain dalam Pasal 132 ayat (1) huruf g Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana dan diversifikasi terhadap anak, terutama untuk memberikan keseimbangan perhatian diantara *stakeholders* hukum pidana (pelaku, korban, masyarakat dan negara). Tentunya, model pendekatan ini diharapkan dapat menjadi bagian dari pembaharuan hukum pidana di Indonesia di masa yang akan datang guna tercapai, keadilan, kepastian dan kemanfaatan sebagai tujuan dari hukum itu sendiri.

Kata Kunci: Restorative Justice, Penyelesaian Alternatif, Kasus Kejahatan.

BACKGROUND OF RESEARCH

The term "restorative justice" refers to a settlement process that takes place outside of the criminal justice system and involves parties with an interest in a crime as well as victims, perpetrators, families of victims and perpetrators, the community, and others. The term "restorative justice" itself means "restoring justice," but the term "restoration" here refers to a much broader concept than the traditional notion of "restitution" or "compensation" for victims in the criminal justice system.

An approach known as restorative justice places a greater emphasis on the conditions necessary to achieve balance and justice for both criminals and their victims. In order to reach an agreement on a just and equitable criminal case settlement for both the perpetrators and the victims, procedural and criminal justice mechanisms that focus on punishment are transformed into dialogue and mediation processes.

The very idea that criminal cases can have alternative settlements is connected to the nature of criminal law itself. According to Van Bemmelen, criminal law is an *ultimum remedium* because if there is a limitation, criminal law will be applied if other parts of the law do not sufficiently emphasize the norms recognized by law. The threat of punishment must continue to be the ultimate remedy. This does not mean that the criminal threat will be eliminated; however, one must weigh the benefits and drawbacks of the criminal threat and be careful not to infect the drug with a disease that is worse than the drug itself.¹

"Criminal law is classified in the category of public law, which is the relationship between the State and individuals or the public interest,"² Moeljatno stated. "Most of the principles of criminal law are public law, some are mixed with public law and private law, have special sanctions because their nature exceeds sanctions in other fields of law, stand alone and sometimes create rules new laws whose nature and purpose are different from existing legal norms," Andi Zainal Abidin stated.³

Recently, it seems like courts are the best place to get justice and resolve legal issues (conflicts). As a result, the realm of law enforcement, which is solely under the jurisdiction of law enforcers, will continue to receive every indication of a criminal act regardless of the escalation of his actions. It is possible to say that the criminal justice system based on the

¹ Andi Hamzah, *Azas-Azas Hukum Pidana, Edisi Revisi 2008*, PT. Rineka Cipta, Jakarta, 2008, Hlm. 10

² Moeljatno, *Azas-Azas Hukum Pidana, Cetakan Kedelapan*, Jakarta : Rineka Cipta, 2008. Hlm 2.

³ *Ibid.* Hlm 2.

Criminal Procedure Code is Offender minded or Offender Oriented Criminal Justice because it places a strong emphasis on the perpetrators of criminal acts, both in terms of their position from being a suspect to being convicted and in terms of the protection of their rights as suspects or defendants. Process. The Criminal Procedure Code has no place for the interests of the victim (victim's interest) because it is so focused on the interests of criminals.

Restorative justice, on the other hand, emphasizes repairing relationships between perpetrators and victims. The victim and the perpetrator typically come to an agreement on how to restore this relationship. Through compensation, peace, social work, and other agreements, both the perpetrators and the victims are given the opportunity to compensate for their losses. This is important because the traditional way that sentences are handed out does not give victims and perpetrators a chance to actively participate in resolving their cases.

Despite the fact that a number of nations, including Austria, Germany, Belgium, France, Poland, the United States, Sweden, England and Wales, Italy, Finland, and the Netherlands, have begun to consider alternative strategies for resolving social tensions. It can also be found in the "Explanatory Memorandum" of European Council Recommendation No. R (99) 19 discusses "Mediation in Penal Matters," describing the various models of penal mediation, including:⁴

- a. Informal Mediation.
- b. Traditional village or tribal moots.
- c. Victim-Offender Mediation.
- d. Reparation negotiation programmers.
- e. Community panels or courts.
- f. Family and community group conference.

This is very compatible with a penal mediation model that is carried out by personnel working in the criminal justice system in their normal duties. The Public Prosecutor (JPU) can use this model by inviting the parties to an informal settlement with the goal of not continuing the prosecution if an agreement is reached; can be carried out by probation officers, social workers, police officers, or judges. Western European legal systems frequently allow for this kind of informal intervention.

⁴ Barda Nawawi Arief, *Mediasi Penal : Penyelesaian Perkara Pidana Di Luar Pengadilan*, Semarang: Pustaka Magister, 2008, Hlm. 7-8.

However, this strategy is still up for debate in practice, but it is developing and has an impact on legal policy and law enforcement in a number of nations. It is thought that restorative justice is a new way of thinking that can be used to deal with a variety of crimes and address Indonesians' dissatisfaction with the current criminal justice system.

FORMULATION OF THE PROBLEM

The scope of this study's primary issues is as follows, given the aforementioned context of the issues:

- a. In Indonesia, how is the concept of restorative justice implemented as an alternative to criminal case resolution?
- b. How do criminal cases using restorative justice methods get resolved?

RESEARCH OBJECTIVES

The following are the study's goals:

- a. To investigate the idea of restorative justice as a different method for resolving criminal cases in Indonesia.
- b. Using a Restorative justice methodology, to investigate how criminal cases are resolved.

RESEARCH METHODOLOGY

a. Data collection methods

Document studies were used to gather the information for this study by compiling an inventory of the relevant literature. This is done in order to get information in the form of: principles, legal theories, concepts, and doctrines. Two goals are the focus of this literature review:

- (1) Investing in and analyzing various pieces of existing literature to build a more complete picture of the research's problems;
- (2) investigate the principles, legal theories, concepts, doctrines, and legal principles associated with achieving the desired outcomes from a theoretical or jurisprudential perspective.

b. Data analysis method

The obtained data and information are then subjected to qualitative analysis. After that, the findings of this qualitative analysis will be presented in an analytical and descriptive manner that is not only capable of expressing and locating categories that are related to a field, but also develops from a category that is discovered and its connection to the data that was obtained. The term “qualitative” refers to a method of research that produces descriptive and analytical data, namely what is found in practice and literature as a whole.

FINDING & DISCUSSION

1. Criminal Justice System

Criminal procedural law and the criminal justice system cannot be separated. The country's legal system has a significant impact on both. In the United States, experts in criminal law and criminal justice science introduced the criminal justice system in response to dissatisfaction with the working mechanisms of law enforcement officials and institutions based on a law-and-order approach that is heavily dependent on the success of crime prevention in terms of work effectiveness and efficiency. organization of the police In this regard, it turns out that the police are confronted with a variety of operational and legal procedural obstacles that do not produce optimal results in their efforts to reduce crime rates; rather, the opposite is the case.⁵ The criminal justice system is referred to by Lawrence F. Travis III as the integrited criminal justice system begins with the detection of crime, proceeds through investigation, arrest, initial appearance before the court, charging (arraignment), trial, senctencing, and possible revocation, and ends with discharge.⁶

Thus, the criminal justice system begins with the stage of investigation and continues through the stages of detention, prosecution, examination of court hearings, and sentence enactment. As a result, the police, prosecutors, courts, and correctional facilities comprise the criminal justice system.

⁵ Supriyanta, 2009, KUHAP dan Sistem Peradilan Pidana Terpadu. Hlm. 29.

⁶ *Ibid.* Hlm. 29.

There is a legal term that can describe the ideals of the judiciary when it comes to the implementation of criminal justice. "Due process law" can be translated as "fair or proper legal process" in Indonesian. An "arbitrary process" or "based solely on the power of law enforcement" is the opposite of this process.⁷ The Criminal Procedure Code of 1981 established an integrated criminal justice system based on the "functional differentiation" of law enforcement officials and agencies according to the "authority process stage" stipulated by law. The Criminal Justice System's activities consist of the following functions: 1) Lawmakers; 2) The police 3) Lawyer; 4) Court; 5) Penalty; 6) Relevant organizations, both within and outside the government.⁸

When it comes to the criminal justice system, the Anglo Saxon legal system is known for two terms: the criminal justice process and the criminal justice system. These two terms are thought to be distinct from one another. The process of dealing with criminals, which begins with an investigation and continues all the way to the point where they are brought before a judge or jury, is referred to as the criminal justice system.⁹

In the meantime, the criminal justice system is viewed as a decision-making relationship between criminal justice institutions.

2. Criminal purposes and punishment of perpetrators of criminal acts

i. Purpose of Punishment

The objectives of a sentence can basically be summarized in three main ways:¹⁰

- 1) To enhance the criminal's own personality;
- 2) To discourage criminal activity;
- 3) To prevent certain criminals from committing additional offenses.

There are three main points that can be drawn from the purpose of criminal law: prohibited acts, people who violate prohibited acts, and punishments that are imposed on those who

⁷ Mardjono Reksodiputro, 2007, *Bunga Rampai Permasalahan dalam Sistem Peradilan Pidana (buku kelima)*, Pusat Pelayanan Keadilan dan Pengabdian Hukum UI, Jakarta, Hlm. 8.

⁸ Mardjono Reksodiputro, 2007, *Bunga Rampai Permasalahan dalam Sistem Peradilan Pidana (buku kelima)*, Pusat Pelayanan Keadilan dan Pengabdian Hukum UI, Jakarta, Hlm. 8.

⁹ Joshua Dressler, 2002, *Criminal justice process is specialis commonly the investigatory offender before adjudicatory*, Hlm. 362

¹⁰ P.A.F. Lamintang dan Theo Lamintang, *Sinar Grafika, Jakarta, 2020*. Hlm. 11

violate prohibited acts. Is the prohibited act meaningful only in relation to the characteristics of the person who committed it, or does it have a meaning or characteristic that is independent of the person who committed it? In the second view, the act itself has no significance; what matters is the guilty mind, or the bad attitude of the person who did the act.¹¹

The severity of the punishment that can be imposed on the perpetrator must be determined by the type of act that has been committed by the perpetrator, according to Hegel, in the sense that the perpetrator's person is still respected when a sentence is imposed. According to this theory, Hegel wants "dialektische vergelding" (dialectical retaliation) because it requires a balance between the crimes committed and the punishments imposed. If the punishment given to the offender is equivalent to the value of the crime that was committed, balance does not necessarily require that it be of the same kind.¹²

According to the Big Indonesian Dictionary, "directions, directions (majors), intentions, demands (demands)," are the definitions of objectives. The direction that "should" be achieved by imposing a sentence is known as the purpose of sentencing, but it can also be interpreted as the goal that must be achieved by issuing a sentence or sentence. The supporting function of the overall function of criminal law is fulfilled by punishment. The ultimate objective is to ensure society's well-being and security. In addition, the function of the purpose of punishment is to ensure that the sentencing is based on the convict's condition so that he can achieve the objective, which is to ensure the welfare and safety of society. The viewpoint of Professor Roeslan Saleh regarding the three reasons that criminal law and criminal law are still required, particularly the third reason, which is: " People who are not evil, such as members of the general public who adhere to social norms, are also susceptible to the influence of crime or punishment."¹³ This viewpoint makes it abundantly clear that the goal of punishment is not only for the offender in question but also for society as a whole to adhere to legal guidelines. In addition, this sentencing system is a purposive system, and it is determined that the purpose of sentencing includes the intention that the sentence imposed is in accordance with the circumstances of the convict in order for him to achieve the goal. So far, the justification for the sentence has been the purpose of the sentence. This goal is

¹¹ Lamintang dalam Tina Asmarwati, , Deepublish, Yogyakarta, 2014, Hlm. 23

¹² Lamintang dalam Tina Asmarwati, , Deepublish, Yogyakarta, 2014, Hlm. 23

¹³ Barda Nawawi Arief, ", Alumni, Bandung, 1992, hal. 153

frequently referred to as the retaliation, compensation, or retributive goal of traditional punishment. The justification for this retributive punishment is that there must be a sentence for every violation of the law because this is a demand for justice. This theory is also known as an absolute theory whose goal is to improve the perpetrator, which includes a variety of goals. Criminal is an absolute consequence that must exist as retaliation against a person who has committed a crime in order to fulfill a sense of justice. The perpetrators' rehabilitation, socialization, and protection from arbitrary treatment outside of the law are among other things.

In Article 52 of Law Number 1 of 2023 (KUHP of 2023), the purpose of punishment is stated as follows: Punishment is meant to:

- a) By upholding legal standards for the protection of society and preventing criminal acts,
- b) integrating the convicted person into society by providing them with direction so that they can become useful and good people;
- c) bring about a sense of security and peace in society, restore equilibrium, and resolve conflicts brought about by criminal acts; d) fostering a sense of regret and letting go of the convict's guilt.

According to Law Number 1 of 2023, also known as the "KUHP of 2023," the purpose of punishment is not to degrade human dignity. Punishment has four components that will determine its purpose as a means of social protection (social defenses):

- 1) There is a belief or theory that the purpose of crime and criminal law is to prevent crime, viewed from the perspective of the need for public protection against anti-social acts that harm and threaten society;
- 2) An opinion emerges stating that the purpose of the crime is to improve the perpetrator, considering the need for public protection against the dangerous nature of the individual (the perpetrator);
- 3) It is said that the purpose of criminal law and criminal law is to regulate or limit the authority of authorities and members of society in general; this is based on the need for public protection against abuse of power in the use of criminal sanctions or responses to criminal offenders.

- 4) The need to maintain a balance or align various interests and values that are disrupted by crimes is another aspect of public protection. In light of this, it is frequently asserted that the goal of crime is to restore or maintain social equilibrium.¹⁴

3. Sentence Guidelines

According to the Big Indonesian Dictionary, guidelines can be understood as a collection of fundamental provisions that specify how something must be carried out. They can also be understood as things (subjects) that serve as the foundation (handles, instructions, and so on) for determining or carrying out something.¹⁵ Guidelines for sentencing or guidance of sentencing refer more to instructions for judges to impose and apply punishments or to judicial or judicative guidelines for judges. These are things that judges must take into consideration when deciding the type, severity, and lightness of punishment. In light of these sentencing guidelines, each judge will consider the severity of the sentence in accordance with these guidelines, resulting in a fair sentence for all parties.¹⁶ Because they are fundamental guidelines, these sentencing guidelines are incorporated into legislative policy. In order to achieve a larger objective through legal means (laws), namely social welfare, legislative policy creates guidelines and penalties. The formulation of criminal and penal regulations in the law is essentially only a means to achieve the goal of the law, which is essentially a legal system with goals.¹⁷ To ensure that the sentence imposed is clearly directed and effective, sentence guidelines serve as a control or control for judges.

4. Guidelines and Objectives Used in the Sentence Process

Straftoematingsleiddraad is a guideline made by legislators that contains principles that need to be considered by judges when imposing a sentence. What is contained in the current Criminal Code is only the rules for awarding sentences (Straftoematingsregels), which is the

¹⁴ Barda Nawawi Arid, , *BP Undip, Semarang, 1996, Hal. 85-87*

¹⁵ Kamus Besar Bahasa Indonesia

¹⁶ *Ibid.*

¹⁷ *Ibid.*

main source of Indonesian criminal law. Laws outside the Penal Code do not have clear and complete written arrangements regarding general objectives and sentencing guidelines (Straftoemetingleiddraad).¹⁸ The "situation or condition of the perpetrator" in following the course of the court process as outlined in the format of the decision/convict has been used as a guideline by judges for the implementation of sentencing in practice. The term "the perpetrator's situation or condition" refers to both aggravating and mitigating factors.

It's possible to mention things that are bothersome:

- giving muddled information - not expressing regret - absent, meanwhile

The following are the limiting factors:

- still young, polite, and open about having never been punished

The "check points" listed above are guidelines that judges frequently use when imposing punishments, both in terms of the type of sentence or straf maat and its severity. From the checkpoints above, it can be seen that judges' freedom is given more weight, and it even appears to be very broad and seemingly unlimited.¹⁹ The judge's and law enforcement officials' interpretations of the punishment are based on this, and each has a different interpretation. Criminal disparities are the application of unequal penalties to the same crimes or to crimes whose dangerous nature can be compared (offenses of comparable seriousness) without a clear justification if the lack of clarity in these sentencing guidelines continues. Due to the uncertainty surrounding the Criminal Code Bill, H. Eddy Djunaedi Karnasudirdja's book "Some Guidelines for Sentences and Observations of Prisoners" outlines a number of strategies for reducing disparities, including the following:

1. By using criminal data,
2. By using the "Checking List" or "sentence table",
3. By using a "prediction table" or "forecast table" or

¹⁸ Noveria Devy Irmawanti dan Barda Nawawi Arief, *Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana*, Jurnal Pembangunan Hukum Indonesia, Vol. 3, No. 2, Tahun 2021, halaman 220

¹⁹ I Made Sukanegara, *Tujuan Dan Pedoman Pemidanaan Dalam Pembaharuan Sistem Pemidanaan*, Tesis, Tahun 2007, halaman 70

4. By using "criminal standard".²⁰

This goal can be achieved by giving the accused a sentence that is proportional to the seriousness of the crime they committed, which must be the same as the sentence given to another defendant who committed a similar crime in the same circumstances. In light of the foregoing, a criminal sanction norm and a more comprehensive criminal law norm are formulated and included in Book I of the 2023 Criminal Code. These norms are related to criminal law norms and the threat of criminal sanctions that stand out as a response to the development of criminal law, namely the existence of regulations regarding:

The purpose of the punishment in the Criminal Code of 2023:

Article 51

Punishment aims:

- a. for the benefit of the community's safety and security, stop a crime from being committed by adhering to legal guidelines;
- b. encourage convicts to socialize by providing guidance and coaching so that they can become good and useful people;
- c. bring about a sense of security and peace in society, restore equilibrium, and resolve conflicts brought on by criminal acts; and
- d. help convicts feel sorry for themselves and let go of their guilt.

Article 52

Punishment is not intended to humiliate human dignity.

The following are the guidelines for punishment in the Criminal Code of 2023:

Article 54

- 1) The following factors must be taken into account when determining punishment²¹:
 - a. the degree of guilt exhibited by the criminals;

²⁰Dominggus silaban, SH.MH, *POLA PEMIDANAAN TINDAK PIDANA KORUPSI*, <http://www.pn-kayuagung.go.id/images/pnkag/Dokumen/POLA-PEMIDANAAN-TINDAK-PIDANA-KORUPSI.pdf>.

²¹ KUHP, final, *Pasal 54* Hlm. 12

- b. the purpose and motivation behind committing a crime;
- c. the inner mindset of the criminal act's perpetrator;
- d. Criminal acts can be carried out with or without a plan;
- e. the steps needed to commit a crime;
- f. the person who committed the crime and how they acted afterward;
- g. the criminals' resumes, social and financial circumstances, and criminal history;
- h. criminal influence on potential criminals in the future;
- i. the impact that the crime had on the victim or their family;
- j. the use of the victims or their families; and/or
- k. societally ingrained principles of law and justice.

Taking into account aspects of justice and humanity, the lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed and what happened later can be used as a basis for considering whether or not to impose a sentence.

If a person has intentionally caused a situation that may become the reason for the abolition of the crime, that person is not exempt from criminal responsibility based on the reason for the abolition of the crime.²² This stipulation will ensure that the severity of the sentence imposed by each judge will be considered in accordance with one another, resulting in uniform sentences in the future.

5. The Concept of Settling Criminal Cases Using a Restorative Justice Approach

i. The Basic Restorative Justice Approach Used in The Criminal Justice System for Crime Prevention

Without considering the connection between the science of law and the issues that need to be dealt with, law has been understood only as rules that are rigid and place an excessive amount of emphasis on particular aspects of the legal system.²³ A legal concept

²² Mudzakkir., *Laporan Departemen Hukum dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional, Tahun 2008*

²³ Henry Arianto, *Hukum Responsif dan Penegakan Hukum di Indonesia, Lex Jurnal, Vol. 07 No. 02, 2010*, Hlm.115

that is acceptable to the community (acceptable) and in accordance with the characteristics and patterns of community life (adaptable) is required because rigid or inflexible laws will result in complexity and various social conflicts. In order for Indonesian national law to become a law that people can live with and change, efforts need to be made to look into values that people still hold and think are noble. Crime victims, who typically represent the parties who suffer the most from a crime, do not receive the legal protection they are entitled to. As a consequence of this, it appears as though the circumstances of the victims of crimes are completely ignored by the courts when the perpetrators of crimes are given criminal sanctions.

According to criminological and criminal law perspectives, crime is a conflict between individuals that harms the victim, society, and the offender themselves. Of these three groups, the "crime victim's" interests are the primary focus of the crime, as Andrew Ashworth explains: 'primary a crime against the victim and only secondarily a crime against the community or the state'²⁴ as a whole. According to Andi Hamzah, when discussing criminal procedural law, particularly those pertaining to human rights, there is a tendency to investigate human rights-related issues. This is due to the criminal justice system's tendency to prioritize the rights of suspects or defendants. the suspect's rights without considering the rights of the victims. Victims are denied authority and are not actively involved in the investigation and trial, preventing them from fighting for their rights and regaining their lives after a crime.²⁵

The criminal justice system has evolved into a guide that demonstrates the basic systems approach's working mechanism for crime prevention. Romli Atmasasmita cited Mardjono as saying that the criminal justice system is the system for controlling crime, which includes the police, prosecutors, courts, and correctional facilities.²⁶

The need for the idea of settling cases outside of the criminal justice system is supported by victimology, a victim-focused field of study. The proposed solution is the restorative justice-based resolution of criminal cases.

²⁴ Bambang Waluyo, *Viktimologi Perlindungan Korban dan Saksi*, Jakarta, Sinar Grafika, 2012, Hlm. 2

²⁵ Bambang Waluyo, *Viktimologi Perlindungan Korban dan Saksi*, Jakarta, Sinar Grafika, 2012, Hlm. 2

²⁶ Barunggam Siregar, *Nilai Kebenaran Dalam Keterangan Saksi "Meringankan" Menjadi Saksi Memberatka (Analisa Perkara Pidana Nomor:696/Pid.B/2015/Pn.Plg)*, *Lex Lata Jurnal Ilmiah Ilmu Hukum*, Vol. 01 No. 03, 2019. Hlm. 232

A more comprehensive approach known as restorative justice focuses on creating conditions of justice and equilibrium for both victims and perpetrators.²⁷ The restorative justice process seeks a dialogue facility between all parties affected by crime, including victims, perpetrators, supporters, and society as a whole. Restorative justice does not merely apply decisions about who wins and who loses in a criminal justice system that is hostile/resistance (adversarial system). This involves a process in which all parties at risk of a particular crime work together to figure out how to deal with the consequences of a crime and what that means for the future.²⁸

According to Satjipto Raharjo, a slow track of law enforcement was the settlement of cases through the justice system that resulted in a court verdict. This is due to the fact that law enforcement reaches numerous levels, including the Police, Attorney General's Office, District Court, High Court, and even Supreme Court.²⁹ In the end, it has an effect on the number of cases that accumulate in court, which is not small. In addition, formal channels of justice do not always reflect a sense of justice; they are costly, time-consuming, and exhausting, and they do not solve problems. Even worse, they are full of practices of nepotism, collusion, and corruption. Currently, almost all offenses dealt with by the Indonesian judicial system always result in incarceration. Even though prison is not the best way to solve problems with crime, especially crimes where the harm done to victims and society can still be fixed and the bad effects of prison removed, prison is still not the best option. Restorative justice is a model of punishment for crimes that are thought to be reversible. In this model, offenders are encouraged to make amends for the harm they have done to victims, their families, and the community. As a result, the main program is "a meeting place for people" to find ways to fix relationships and repair the damage that crime has done (peace).

Restorative justice has taken on a wider role in the Indonesian Criminal Justice System since the amendment to the Child Protection Law in 2014. Although the Law only applies to children and adolescents, the discourse on implementing restorative

²⁷ Afthonul Afif, *Pemaafan, Rekonsiliasi dan Restoraive Justice*, Yogyakarta, Pustaka Pelajar, 2015, Hlm. 341-350

²⁸ *Ibid*

²⁹ Satjipto Rahardjo, *Sisi-sisi Lain dari Hukum di Indonesia*, Jakarta, Kompas, 2003, Hlm. 170

justice is widespread within the Indonesian Criminal Justice System. Since 2017, the National Development Planning Agency (Bappenas) has been discussing this matter with academics and non-governmental organizations to discuss strategies for implementing or applying the concept of restorative justice more broadly in Indonesia. At present the rules and policies in applying the concept of restorative justice have been issued by the criminal justice sub-system in Indonesia, both at the Police at the investigative stage, the Prosecutor at the prosecution stage as well as at the Supreme Court at the judicial level in the form of Regulations or Decisions, but the rules and policies that are issued by the criminal justice sub-system there are differences and inequalities in its application. At the Police through the Chief of Police Circular Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in Settlement of Criminal Cases. It is this circular letter from the Chief of Police regarding Restorative Justice which is then used as a legal basis and guideline for Police Investigators and Investigators who carry out investigations/investigations, including as a guarantee of legal protection and control oversight, in the application of the concept of restorative justice (restorative justice) in investigations and investigations of criminal acts for the sake of realizing the public interest and a sense of community justice, so as to realize uniformity in the understanding and application of restorative justice within the Polri environment.³⁰

At the National Police, the following are the guidelines for using a restorative justice approach to settle cases:

1. Satisfied the material requirements, which included:
 - a. There is no public unrest or community opposition to it.
 - b. Has no effect on interpersonal conflict.
 - c. All parties involved have agreed not to object and to waive their right to sue in court.
 - d. Principle of limitation:

³⁰ Fianhar, *Surat Edaran Kapolri Nomor 8 Tahun 2018 tentang Penerapan Restorative Justice dalam Penyelesaian Perkara Pidana*

- (i) In opposition to the offender: The actions of the perpetrator were relatively minor, specifically an intentional error (schuld) or menrea (dolus or opzet), particularly intentional as an intention or purpose (opzet als oogmerk); and the offender is not a repeat offender;
 - (ii) Concerning ongoing crimes: Investigations; before the SPDP was sent to the Public Prosecutor, and investigation.
2. Satisfied the formal requirements, which included:
- a. a peace request letter from each party (the complainant and the reporter);
 - b. The investigators are aware of a statement of conciliation (deed dading) and a settlement of the litigants' disputes (the complainant and/or the reporting family, the reported and/or the reporting family, and representatives of community leaders);
 - c. The minutes of the additional examination of the litigants following the restorative justice settlement;
 - d. A suggestion for the name of a special case that supports the restorative justice settlement (restorative justice);
 - e. The offender accepts responsibility and compensation without hesitation;

Restorative justice can be used for any kind of criminal activity that does not involve human victims. Restorative justice is also used in Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 regarding Restorative Justice-Based Termination of Prosecution. "Closure of a case for the sake of law is carried out in the event that there has been a settlement of the case outside the court (afdoening buiten process), continue in Paragraph 3 letter b explains "Settlement of cases out of court as

referred to in paragraph 2 letter e can be carried out provided that there has been a restoration of the original state using a restorative justice approach,"³¹ which is where the Public Prosecutor's authority to terminate:

- a) The interests of victims and other legally protected interests
- b) Avoiding stigmatization;
- c) Preventing retaliation;
- d) Community harmony and response;
- e) Civility, order, and decency;
- f) The category, subject, object, and threat of crime;
- g) The circumstances surrounding the crime;
- h) The degree of shame;
- i) The losses or consequences of wrongdoing;
- j) The costs and advantages of handling cases;
- k) Restoring it to its original condition;
- l) The victim and the suspect are at peace.

Article 3 of the Prosecutor's Regulation of the Republic of Indonesia No. 15 of 2020 Concerning Restorative Justice-Based Termination of Prosecution

Article 5 Paragraph 1 of the Attorney General's Regulation Number 15 of 2020 explains the conditions for criminal cases that can be resolved through restorative justice, which are as follows:³²

- a) The suspect has never committed a crime before;
- b) Criminal acts are only punishable by fines or the threat of up to five years in prison;
- c) The crime was committed with a value of no more than IDR 2,500,000 (two million five hundred thousand rupiah) for the evidence or the losses caused by the crime.

³¹ Fianhar, 22 September 2018, (diakses pada tanggal 3 Februari 2021 dilaman <https://www.fianhar.com/2018/09/penerapan-keadilan-restoratif-perkara-pidana.html?m=1>)

³² *Ibid*, Pasal 5

In addition, there is a provision in the Prosecutor's Regulation (Perja) Number 15 of 2020 that allows for the termination of a prosecution in certain circumstances on the basis of restorative justice. This exception is governed by the following paragraph in Article 5: Restorative justice does not apply in the following situations:

- a) Criminal acts that threaten public order and decency, the dignity of the President and Vice President, friendly nations, their leaders, and state security;
- b) Violations of the criminal code that only carry a minimal penalty;
- c) Drug offenses;
- d) Abuse of the environment;
- e) Corporation-sponsored criminal acts³³

In addition, the Public Prosecutor must be able to guarantee that a peace agreement that is carried out fairly, proportionally, voluntarily, and freely will the implementation of restorative justice-based prosecution termination. The implementation of restorative justice in the Attorney General's Office must keep in mind that the agreement is decided by the perpetrator and the victim, that the Public Prosecutor becomes a facilitator or impartial party, and that the restorative justice agreement's results are kept confidential to maintain an atmosphere of equality and mutual benefit and honor.

The Supreme Court of the Republic of Indonesia has also issued guidelines and policies regarding the implementation of restorative justice, namely the latest through the Decree of the Director General of the General Court 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 (Restorative Justice), while the purpose of enacting this decision is to encourage optimization of the application of Supreme Court Regulations, Circulars of the Supreme Court and Decisions of the Chief Justice of the Supreme Court which regulate the implementation of restorative justice in court, while the purpose of enacting this decision is to facilitate courts in general justice environment in understanding implementing the implementation of Supreme Court Regulations, Supreme Court Circular Letters and Decisions of the

³³ *Ibid*, Pasal 5 Ayat 8.

Chief Justice of the Supreme Court governing the implementation of restorative justice (restorative justice), encouraging increased application of restorative justice, fulfilled its principles of fast, simple and low-cost justice with balanced justice.

Concerning the range of criminal cases that can be resolved through restorative justice in general court settings, these are the following:

a. Case of Misdemeanors

Restorative justice can be used to resolve minor criminal cases with penalties outlined in Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code and a loss value that does not exceed Rp. 2,500,000 (two million fifty thousand rupiah)

b. Child Matters

The juvenile justice system is required to prioritize restorative justice, and each diversion determination is a form of restorative justice. If the diversion is unsuccessful or fails to meet the requirements, the judge seeks a restorative justice decision in accordance with Articles 71 through 82 of Law Number 11 of 2012.

c. Cases of Women Confronting the Law

d. Narcotics Case

According to Article 1 of the Joint Regulations, only addicts, abusers, victims of abuse, and people who depend on narcotics for one day can benefit from the restorative justice approach. Head of the National Narcotics Agency of the Republic of Indonesia, number 01/PB/MA/III/2014, number 03 of 2014, number 11 of 2014, number 03 of 2014, number Per-005/A/JA/03/2014, number 01 of 2014, and number Perber/01/III/2014/BNN regarding the treatment of drug addicts and drug abuse victims in rehabilitation facilities. With the trend of the

emergence of institutional regulations governing procedural law, a problem arises that will be discussed in writing this journal, namely the policy of applying the concept of Restorative Justice in the Criminal Justice System in the future, despite the fact that the regulations and policies issued by the criminal justice sub-system regarding non-criminal criteria that can be resolved through restorative justice can be seen to have differences and inequalities both regarding the implementation or application as well as the requirements for a crime that can be.

6. The Criminal Justice System's Use of the Restorative Justice Concept

The application of the concept of restorative justice in the criminal justice system in Indonesia is currently being implemented in the juvenile justice system through Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. The problem discussed is the mechanism for expanding the application of the concept of restorative justice in the criminal justice system in the future. The research method used is normative legal research. The conclusion drawing technique used is the deductive method. Based on the results of the research, with the differences and dissimilarities in the application of the concept of restorative justice in the Police, Prosecutor's Office and the Supreme Court which regulate procedural law regarding the implementation or application of the concept of restorative justice in the settlement of criminal cases committed by these adults, the Government and the DPR are expected to immediately formulate a policy -policies regarding the concept of restorative justice issued by the criminal justice sub-system into a Legislation, whether in the form of a law or formulated into the Draft Criminal Procedure Code (RKUHAP) and the Draft Criminal Code (RKUHP).

The Criminal Justice System's Concept of Restorative Justice Restorative justice aims to empower victims, perpetrators, families, and communities to correct an illegal act by utilizing awareness and conviction as a foundation for enhancing social life.³⁴ A theory of justice known as restorative justice places an emphasis on compensating

³⁴ Nikmah Rosidah, *Budaya Hukum Hakim Anak Di Indonesia, Pustaka Magister; Semarang, 2014, hlm. 103*

victims of wrongdoing. The fundamental premise of progressive law is that humans are for law, not the other way around. Law is an institution of morality and conscience rather than an absolute and final one; rather, it is determined by its capacity to serve humans. The goal of the law is to help people live just, prosperous lives and make them happy. The objectives of everything in our legal life are humanity and justice. The phrase "law for justice" also refers to "law for humans." This indicates that justice and humanity are superior to the law. The point is that just law enforcement, also known as social welfare or a "just and prosperous society," is a major focus in Indonesia.³⁵

The founding fathers of Indonesia have determined that the country is a legal state ever since it was established. This is reflected in the General Explanation of the 1945 Constitution, which states that Indonesia is a law-based state (*rechtsstaat*) and not a power-based state (*machtsstaat*). The term "*rechtsstaat*" in the General Explanation of the 1945 Constitution refers to the idea of the rule of law as a whole rather than the concept of *rechtsstaat* as it applies to the civil law legal system. This affirmation is included in Article 1 Section 3 of the 1945 Constitution after the amendment. This affirmation explains that the idea of a rule of law in Indonesia is not the same as the idea of a *rechtsstaat* law state or the rule of law. Instead, the Pancasila Law State is a rule of law with Indonesian characteristics that makes the Pancasila values the foundation of national and state life. I Dewa Gede Atmadja says that a constitutional state based on kinship, consensus deliberation, and human rights protection with the principle of a balance between rights and obligations and the legal function of protection is essential to the Pancasila Law State.³⁶ Within the framework of the Pancasila Law State Concept, the approach to the concept of restorative justice has only been implicitly acknowledged in the constitution and only partially regulated in a number of criminal law laws and regulations. These include the SPPA Law, or Special Autonomy Law for Papua Province, which acknowledges the existence of a "consensus consensus" method of enforcing criminal law, as well as institutional regulations like the Police's Circular Letter Number SE/8/VII/2018.

³⁵ Rudi Rizky, *Loc.cit.*

³⁶ Putra, I. K. C, *Relevansi Konsep Negara Hukum Pancasila dengan Welfare State dalam Implementasinya dengan Pelayanan Publik di Indonesia, Jurnal Magister Hukum Udayana (Udayana Master Law Jurnal), Volume 6, Nomor 12, 2017, hlm. 3*

In the Settlement of Criminal Cases, the Attorney General's Office through the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice and the Supreme Court through the 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 are the two parties involved. The process of "consensus consensus," which is the fundamental tenet of the idea of restorative justice in the process of resolving criminal cases, has not yet been regulated by the Criminal Procedure Code, which serves as the formal legal main, or the Criminal Code, which serves as the primary material law. From the point of view of *ius constituendum*, legal policies and practices are required to regulate the implementation of the concept of restorative justice in the judicial, prosecution, and investigation phases of criminal justice.³⁷ Legal politics, according to Soedarto, is the attempt to establish desirable regulations in accordance with current circumstances and state policy through authorized bodies in order to express what is contained in society through regulations. and in the end, you'll get what you want.³⁸ Legal politics, according to Abdul Hakim Garuda Nusantara, is the application or implementation of legal policies (legal policy) by a particular state government. The scope of work includes consistency in the implementation of existing legal provisions in the process of renewal and law-making with a critical attitude toward law with a legal dimension. *constitutum* and creating law with an *ius constituendum* dimension, affirming the institution's functions, training law enforcers, and raising public awareness of legal issues.³⁹

Barda Nawawi Arief argues that the politics of criminal law are synonymous with the phrase "crime prevention policies with criminal law" because the goal of efforts and policies to make regulations under criminal law is to prevent crime. In the same way that criminal law policies are a part of law enforcement policies, efforts to combat crime

³⁷ I Made Tambir, *Pendekatan Restorative Justice dalam Penyelesaian Tindak Pidana di Tingkat Penyidikan*, *Jurnal Magister Hukum Udayana*, Volume 8, Nomor 4, 2019, Hlm. 565.

³⁸ Harun M, *Reformulasi Kebijakan Hukum terhadap Penegakan Hukum Pidana Pemilu dalam Menjaga Kedaulatan Negara*, *Jurnal Rechtsvinding*, Volume 5, Nomor 1, 2016, Hlm. 103

³⁹ Putuhena, M.I.F, *Politik Hukum Perundang-undangan: Mempertegas Reformasi Legislasi yang Progresif*, *Jurnal Rechtsvinding*, Volume 2, Nomor 3, 2013, Hlm. 384

through criminal law are also part of those efforts. Policies in the areas of material criminal law, formal criminal law, and criminal law enforcement are all included in criminal law policy. In addition, Barda Nawawi Arief argued that the politics of criminal law are also an integral part of policy or social politics (social policy) because the essence of crime prevention through the creation of laws is an integral part of efforts to protect society (social welfare). As a result, it encompasses social defense and welfare policies as well as social policy.⁴⁰

The condition of Indonesian society is rapidly developing in line with international developments and the strong demands for justice and legal certainty. As a result, the Criminal Code and Criminal Procedure Code are no longer able to solve many crime issues. Future Arrangements for the Criminal Justice System Related to the Application of the Restorative Justice Concept As previously mentioned, this condition has led the criminal justice subsystem (the Police, the Prosecutor's Office, and the Supreme Court) to take policy measures to enforce the law.

Not only must the criminal justice subsystem (Police, Attorney, and Supreme Court) continue to consider the principle of legitimacy in the form of local and situational wisdom, but it must also consider the principle of legality alone. The legitimacy of the policies of the criminal justice subsystem—the Police, the Prosecutor's Office, and the Supreme Court—can still be questioned, in the perspective of normative *ansich*. The Criminal Code and the Criminal Procedure Code, for instance, are regarded as incompatible with these policies. Even Andi Hamzah, who serves as the Chair of the Draft Team for the Criminal Procedure Code, is of the opinion that, in accordance with Article 1 of the Dutch Criminal Procedure Code (Sv), criminal procedures are only carried out in the manner that is regulated by law. As a result, criminal procedures cannot be formalized by a lower regulation than the law.⁴¹ Therefore, it is not surprising that the Police, Prosecutor's Office, and Supreme Court of Indonesia currently issue policies

⁴⁰ Kenedi, J, *Kebijakan Kriminal (Criminal Policy) dalam Negara Hukum Indonesia: Upaya Mensejahterakan Masyarakat (Social Welfare)*, *Jurnal Pemerintahan dan Politik Islam*, Volume 2, Nomor 1, 2017, hlm. 17-18

⁴¹ Andi Hamzah, *Naskah Akademik RUU tentang Hukum Acara Pidana*, dalam *Tim RUUKUHAP*, Hlm.2

regarding the application and implementation of restorative justice in the settlement of certain adult criminal acts.

With the trend of the emergence of institutional regulations such as the Regulation of the Chief of Police, the Attorney General's Regulation or the Supreme Court Regulation which regulates the procedural law, the author is of the opinion that the application of the concept of restorative justice must be carried out in its entirety and regulated in a specific statutory regulation such as the System Law. Juvenile Criminal Justice. This means that existing rules and policies regarding the application of restorative justice to criminal cases committed by adults, be it at the Police, Prosecutors' Office, and the Supreme Court, must be formulated into statutory regulations, whether in the form of laws. -laws or formulated into the Draft Criminal Procedure Code (RKUHAP) and the Draft Criminal Code (RKUHP), which have now been ratified, in order to provide legal certainty, legal force and a clear legal basis for sub-systems criminal justice such as the Police, Prosecutor's Office and the Supreme Court in enforcing the law by applying restorative justice to the settlement of criminal cases committed by adults, because at this time the policies and rules issued by the criminal justice sub-system are not the same in provide application to criminal cases that can be tried In carrying out a settlement through the concept of restorative justice, for example in the Police, there are weaknesses and indecisiveness in implementing restorative justice where settlement of cases based on restorative justice can only be carried out before the Notice of Commencement of Investigation (SPDP) is sent to the Prosecutor's Office, this means that police investigators only have time 7 (seven) days to implement restorative justice through a mediation process after the investigation begins.

Restorative justice is exempt from narcotics crimes, criminal acts with a minimum penalty, and criminal threats in Prosecutor's Regulation No. 15 of 2020. a maximum of five years. A policy on restorative justice has also been issued by the Director General of the General Courts at the Supreme Court. The most recent policy is the Decree of the Director General of the General Courts of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of the Guidelines for the Implementation of Restorative Justice. In this decision, the scope of

restorative justice can only be applied to cases of minor crimes, cases involving children, cases involving drugs, and cases involving women that are in violation of the law.

7. Implementation of Restorative Justice as an Alternative to Settlement of Criminal Cases in Indonesia

It was discovered that restorative justice could only be used in certain situations, such as defamation, traffic violations, and cases involving children. It is evident that these cases can be handled in a middle path, resulting in a settlement or agreement between the offender and the victim. As a result, the author is of the opinion that if a case can still be tried, discussions ought to be held to take into account factors that are in the victim's and the perpetrator's best interests. In this case, the goal should be to find a compromise and a point of agreement that will bring peace to the victim and the perpetrator. A description of how restorative justice was used to solve the case is provided below.

The following are some of the factors that come into play when restorative justice is used in the daily life of the community⁴²:

1. Utilize a broader range of participants than victim-partisan mediation;
2. capable of directing settlement orientation in the form of recovery and compensation;
3. simple to use at any point in the criminal justice system;
4. Numerous nations have developed this model for various crimes.

The Indonesian legal system is improved as a result of the application of restorative justice. The following are some of the positive effects of incorporating Restorative Justice into the Indonesian legal system:

- 1) Restorative justice only places an emphasis on providing victims with justice in accordance with their own personal wishes and interests, not the decision made by the state.
- 2) Recovering all parties involved.
- 3) Holding the offender accountable for the crime he committed.

⁴² Widya Pranata Hukum Vol. 3, No. 2, September 2021

- 4) In an effort to address the issue of children encountering difficulties with the law, increase community involvement and public awareness;
- 5) Hold those responsible for the crimes accountable;
- 6) Help the actors comprehend the consequences of their actions;
- 7) Attempting to repair the harm caused by the offender;
- 8) The application of Restorative Justice results in equitable punishment for both perpetrators and victims, as well as opportunities for litigants to reach a quick, simple, and inexpensive settlement;
- 9) Contributes to the reduction of crime rates because restoration is the primary objective of restorative justice, while retaliation is the secondary objective;
- 10) Restorative justice focuses more on resolving cases that meet the goal and are fair because it frequently occurs that judicial cases do not meet the goal and are fair to both parties.

Restorative Justice is also known as settling cases through a mediation process (mediation penal) because it uses dialogue media between the perpetrator, the victim, the perpetrator's family and the victim outside of the judiciary (non-litigation) or commonly known as ADR (Alternative Dispute Resolution). In this case the community can successively participate in realizing the results of the agreement and monitoring its implementation. In addition, restorative justice requires assistance from a third party that is neutral and impartial to any party and third parties do not have the right to make decisions in the mediator process. This was done in order to reach an agreement in the settlement of an ongoing case without any of the parties feeling defeated.⁴³

However, restorative justice also adheres to the following guiding principle:

- a. In order to use restorative justice, a third party must act as a mediator.⁴⁴ A mediator, on the other hand, must have faith in the litigants—the perpetrator, the victim, his or

⁴³ I Ketut Artadi, et. all, 2009, *Pengantar Umum Tentang Alternatif Penyelesaian Sengketa dan Perancangan Kontrak*,

Denpasar : Fakultas Hukum Universitas Udayana, Hlm 12.

⁴⁴ Sahuri Lasmadi, 2011, *Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia*, INOVATIF/ Jurnal Ilmu Hukum, Hlm. 6.

her family, and the victim. Additionally, the mediator must place a high priority on the communication process in order to bring the situation back to its pre-case state through mutually agreed-upon fixes;

- b. Prioritizing the process's capacity. In order to achieve a fair settlement for both parties, restorative justice must place a high priority on procedures that require each party to be aware of the litigation and refrain from engaging in discussions that are overly formal. Restorative justice is a method in which all parties involved in a violation work together to find a solution to the problem of how to deal with the consequences of the violation and how it will affect the future. The goal of restorative justice is to change the criminal justice system, which still places an emphasis on prison sentences. Restorative justice aims to achieve justice that is equitable and empowers victims, perpetrators, families, and communities to rectify wrongdoing by utilizing awareness and conviction as the foundation for enhancing social life.

The following are some of the negative effects of using Restorative Justice in the Indonesian legal system:

1. Mediation as a form of restorative justice involves the perpetrator, the victim, the perpetrator's and victim's families, as well as the parties involved, at the stage of the process. The goal is to reach a mutual agreement as a means of holding the perpetrator accountable so that the matter is not included in the formal criminal justice system. The outcome of the mediation is contingent on the parties involved and may result in a conflict of interest between the perpetrator and the victim. There is a tug-of-war between parties' desires to exploit opportunities because of this inequality. In an effort to free the offender from the formal justice system, the victim is a party that must accept the decision. 1. Mediation as a form of restorative justice involves the perpetrator, the victim, the perpetrator's and victim's families, as well as the parties involved, at the stage of the process. The goal is to reach a mutual agreement as a means of holding the perpetrator accountable so that the matter is not included in the formal criminal justice system. The outcome of the mediation is contingent on the parties involved and may result in a conflict

of interest between the perpetrator and the victim. There is a tug-of-war between parties' desires to exploit opportunities because of this inequality. In an effort to free the offender from the formal justice system, the victim is a party that must accept the decision.

2. The mediation process failed at this point.

Restorative justice includes mediation, and if it fails, parties can use it as evidence in the subsequent criminal justice process. Additionally, if perpetrators are exposed to the criminal justice system, it has the potential to exacerbate existing penalties.

3. The mediation process is successful at this point.

It is certain that the outcomes of the mediation are flawed when the process is successful but the perpetrator and the victim do not obey, fulfill, and submit to the outcomes of the mutual agreement. In addition, it has the potential to return the case to the formal criminal justice process and force the parties involved back into dispute.

CONCLUSION

ADR (Alternative Dispute Resolution) is a method used by law enforcement to achieve a case settlement agreement that prioritizes recovery and restores the pattern of relations in society that provides a balance of attention between criminal law stakeholders (offenders, victims, families, communities, and the state). Restorative justice is the principle of law enforcement in an effort to settle cases through a dialogue and mediation process mechanism that involves the perpetrator, victim, perpetrator's family, and the aggrieved party outside of Naturally, it is anticipated that this approach model will be incorporated into the upcoming reform of Indonesian criminal law to achieve the goals of justice, certainty, and expediency. And among the numerous cases involving the Law No. 19 of 2016 on Information and Electronic Transactions (UU ITE), particularly in defamation cases. so that a Police Circular Number was issued by the National Police: SE/2/11/2021 about ethical cultural awareness to create a digital Indonesia that is clean, healthy, and productive. In the circular letter, Polri states that restorative justice must be prioritized in every case involving alleged violations of the ITE Law and that criminal law settlement is the last resort for law enforcement. Restorative justice involves the community, victims, and criminals in its implementation. The pursuit of justice for all parties is the goal of this involvement. The goal of the law is to help people live just, prosperous lives and

make them happy. In the world of law, the objectives of everything are justice and humanity. The phrase "law for justice" also refers to "law for humans." This indicates that justice and humanity are superior to the law. The point is that fair law enforcement is emphasized.

SUGGESTION

In Indonesia, law enforcement must uphold the use of restorative justice. not just used in cases involving children, traffic violations, and slander. However, this must also be done in other cases to ensure that victims, perpetrators, families, and society as a whole receive justice. As a result, the government ought to develop a legal foundation, such as a separate law on restorative justice. As a result, when used to its full potential, it can lead to legal certainty, benefits, and fulfillment of a sense of justice.

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