

Implementation of Restorative Justice in Settlement of Criminal Actions in the Criminal System in Indonesia

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Abstract. *Resolving several years of criminal offenses using a "restorative justice" mechanism has been hotly discussed recently. Restorative justice or restorative justice is the process of resolving criminal acts. This criminal problem resolution model involves all parties to find justice and restore the situation between the perpetrator and the victim. One of the functions of law is as "a tool of dispute settlement", various disputes can occur in society. As for the ways of resolving disputes in a society, some are resolved through formal institutions called courts. Resolving criminal acts through restorative justice is carried out from the level of investigation and investigation at the police to the prosecutor's office. These two law enforcement agencies have regulated the process and procedures for resolving criminal acts through restorative justice mechanisms. So it is hoped that this settlement model can reduce the number of cases handled by the courts, as well as reduce the burden of state costs for resolving criminal acts. Restorative justice is regulated in the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Article 1 number 1 of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In these two regulations, the resolution of criminal cases by prioritizing restorative justice emphasizes restoration to its original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retribution. This is an effort to reform the criminal justice system in order to realize the goals of just law. There are several criminal justice system models in the world, Control Criminal Model, Doe process of law Model and Family model, of course this justice system will be able to determine what resolution is appropriate to the criminal justice system, which is closer to restorative justice is the family model, a family approach resolving criminal cases by deliberation and consensus as intended by the fourth principle of Pancasila. A justice system with a family model involving all parties accommodates the interests of all parties, so that the original situation is restored after the case between the perpetrator and the victim. Basically, the model for resolving criminal cases outside of court, which carries the spirit of restorative justice, began to be implemented in the mid-1970s. One model for resolving criminal cases outside of court based on restorative justice is the Victim Offenders Mediation (VOM) program. The VOM program was first implemented in 1970 in North America and Europe such as Norway and Finland. VOM is a process that provides the victim's willingness as the subject of crime and violence to meet with the perpetrator, in a safe*

and orderly atmosphere with the aim of making the perpetrator directly responsible in the form of compensation to the victim.

Keywords: *Criminal; Implementation; Justice; Restorative.*

1. INTRODUCTION

Punishment imposed for acts done voluntarily is in itself retribution. According to Beysens,¹ revenge in the objective sense (*wreken in objective zin*) is causing harm to someone, because of an act of violation which he committed voluntarily and for which he can be held accountable.

Retaliation for mistakes committed by someone is not justified based on revenge, because the aim of the law is to create order in society. Revenge certainly cannot find any legal purpose. In resolving criminal acts in recent years, restorative justice has become known. Restorative justice or restorative justice is the process of resolving criminal acts. This criminal problem resolution model involves all parties to find justice and restore the situation between the perpetrator and the victim. In Article 3 paragraph (1) of the Republic of Indonesia Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice states: "Restorative justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders or stakeholders. to jointly seek a just solution through peace by emphasizing restoration to its original state." The aim of resolving criminal acts through restorative justice is to restore the condition of the parties (the perpetrator and the victim or the family of the perpetrator and the family of the victim) to its original state. The original state is defined as the state in which the legal function should be achieved.

One of the functions of law is as "a tool of dispute settlement", various disputes can occur in society. As for the ways of resolving disputes in a society, some are resolved through formal institutions called courts, and some are resolved independently by the people concerned with assistance from people around them. This aims to measure to what extent there has been a violation of norms and what must be required of violators so that what has been violated can be put right again.²

The function of law as dispute resolution should take into account the objectives of the law, namely certainty which will create order, justice which is expected to create peace, and legal balance which is expected to create peace. Creating peace, order and tranquility in society is the task of the law through its instruments, namely law enforcement officers and law enforcement agencies.

Planned behavior theory explains that attitude towards behavior is an important subject that can predict an action, however, it is necessary to consider a person's attitude in testing subjective norms and measuring the person's perceived behavior

¹ Beysens, dalam E.Utrecht, (1958), *A Series of Lecture Extracts, Criminal Law I, An Introduction to Criminal Law for the Bachelor of Laws level. A General Study Discussion*, Surabaya: Pustaka Tinta Mas, p. 152

² Ishaq, I. (2018). *Dasar-Dasar Ilmu Hukum*. Jakarta: Sinar Grafika Offset.

control. If there is a positive attitude, support from people around and there is a perception that because there are no obstacles to behavior, a person's intention to behave will be even higher.³

Resolving criminal acts through restorative justice is carried out from the level of investigation and investigation at the police to the prosecutor's office. These two law enforcement agencies have regulated the process and procedures for resolving criminal acts through restorative justice mechanisms. So it is hoped that this settlement model can reduce the number of cases handled by the courts, as well as reduce the state's costs for resolving criminal acts.

The resolution of criminal acts using the restorative justice model is a reflection of the principles of simplicity, speed and low costs. Article 2 paragraph (4) Law no. 48 of 2009 concerning Judicial Power. Simple means that the examination and resolution of cases is carried out in an efficient and effective manner. The fast principle, a universal principle, is related to a resolution time that does not drag on. This fast principle is known as the justice adage delayed justice denied, meaning that a slow judicial process will not provide justice to the parties. The lowcost principle means that case costs can be afforded by the public.⁴

The model for solving criminal problems through restorative justice is an accumulation of several existing criminal justice system models. According to Herbert L. Packer, several models have developed in the United States for the administration of criminal justice. Based on his observations, it is said that in the administration of criminal justice in the United States there are two models of the criminal case examination process (two models of the criminal process), namely the Due Process Model and the Crime Control Model.⁵ Furthermore, John Griffith, a professor from Yale University in California, found the family model as a criticism of the two models above, saying:

"The two models put forward by Packer, whatever the updates, remain within the framework of a model called the Adversary system or Battle model."

The Battle Model (resistance model) gives us an idea that the criminal process is a struggle or a war between two parties who have opposing interests, namely between individuals, especially perpetrators of criminal acts, and the State. In the family model or also called the kinship model, what really stands out is the equivalent of the atmosphere of a family, namely that if a child has made a mistake, he will be given sanctions, the child remains within the framework of family love and he is not

³ Indra Gunawan Purba, (2023), The Philosophy of "Habonaron Do Bona" as AntiCorruption Conduct in the Simalungun Tribe Society, *Jurnal Akta*, Accessed via <https://jurnal.unissula.ac.id/index.php/akta/article/view/33870>

⁴<https://www.hukumonline.com/berita/a/peradilan-yang-sederhana--cepat--dan-biaya-ringan-!t5a7682eb7e074/>. Furthermore, the explanation of Article 2 paragraph (4) of Law No. 48 of 2009 on Judicial Power states that: What is meant by "simple" is that the examination and resolution of cases is carried out in an efficient and effective manner. What is meant by "low costs" are case costs that can be afforded by the public. However, the principles of simplicity, speed and low costs in examining and resolving cases in court do not exclude thoroughness and accuracy in seeking truth and justice

⁵ Sidik sunaryo dalam R. Sugiharto, (2012), *Sistim Peradilan Pidana Indnesia Dan Sekilas Sistem Peradilan Pidana Di Beberapa Negara*. Semarang: Unisula Press, p. 10

considered a bad child and a special human being or as a member of a special group in relation to the family.

2. RESEARCH METHODS

The nature of this research is normative juridical, where normative juridical research includes research on legal principles. Juridical analysis of the resolution of criminal acts through restorative justice (a review of the criminal justice system in Indonesia). As normative research, researchers observe and explore legal norms regarding Indonesian positive legal provisions which regulate the resolution of criminal acts through restorative justice. The data source used in this research is secondary data which includes three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials.

The nature of the research used in this research is prescriptive and descriptive. The nature of this research is not only to describe and explain the facts of credit assessment and credit analysis at banks in Indonesia, but also to analyze the facts normatively with several approaches. Descriptive describes the facts of settlement practices through restorative justice instruments, while prescriptive analysis, justifies and assesses the reasons for the implementation of resolving criminal acts through restorative justice instruments in Indonesia. From the introduction above, the problem can be formulated as follows:

What are the arrangements for resolving criminal acts through restorative justice in Indonesia?

What is the position of restorative justice in the criminal justice system in Indonesia?

3. RESULT AND DISCUSSION

3.1 Arrangements for resolving criminal acts through restorative justice in Indonesia

Restorative justice is a form of justice that is centered on the restoration of victims, perpetrators of crimes, and society. Restorative justice according to Tony Marshall, is a process when the parties involved in a criminal act jointly solve problems and deal with future consequences.⁶ In Article 1 number 6 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System which reads:

"Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to the original situation, and not retaliation."

Apart from that, restorative justice is also explained in Article 1 number 3 of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Article 1 number 1 of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In accordance with some of the definitions

⁶ Apong Herlina, (2004), Restorative Justice, *Jurnal Kriminologi Indonesia*, Volume 3-Nomor 3 Septembe, p. 19

above, in simple terms restorative justice is the process of resolving criminal cases by involving parties involved in a criminal act to find a fair way of resolution by seeking restoration to the original condition and not just retaliation for the perpetrator.

Settlement of criminal cases by prioritizing restorative justice emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retribution. This is an effort to reform the criminal justice system in order to realize the goals of just law. The principle of fast, simple and low-cost justice,⁷ as well as establishing and formulating case handling policies for the success of restorative justice independently for the sake of justice based on law and conscience.⁸

Edward Kern said:

"Tough policies in Texas reflect a long-standing attitude that punishment is society's natural revenge. Every moment spent in prison should be a strong warning to criminals that they are there to be punished. Many ancient scholars argued that losing one's freedom was a severe enough punishment and that efforts should be made to make life in prison bearable or tolerable. Prison is unnecessarily punitive, said John Irwin, a sociologist at San Francisco State University. We must make prison life as much like life on the outside as possible. Talk like this makes Estelle Texas laugh. Attempts to make prison life like the real world are treated as a joke by both the prisoners themselves and the staff. Anyone who has a different opinion is closing their eyes to reality."⁹

Next, Van Hattum reminded:

"That almost all countries, through criminal law experts, penitentiary law experts, psychiatric experts and rehabilitation officers, have repeatedly stated that imprisonment has a worse effect on prisoners than vice versa."¹⁰

From Vanhattum's statement above, of course we agree that certain cases should be resolved in more elegant ways and look more at achieving the function of law, namely achieving public order. Article 2 of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 states: Termination of prosecution based on restorative justice is carried out on the basis of: a. justice; b. public interest; c. proportionality; d. punishment as a last resort; and e. fast, simple and low cost, so that by involving all litigants it is hoped that an effective, efficient, simple, just and beneficial resolution will be achieved by achieving public order by accommodating all parties' interests proportionally.

Regulations regarding the conditions for implementing restorative justice are regulated in Police Regulation number 8 of 2021 and Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on

⁷ Preamble of the Regulation of the Attorney General of the Republic of Indonesia, Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice.

⁸ Preamble of the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice

⁹ Edward Kers, dalam Baktiar Agus Salim. (2009). *Pidana Penjara dalam stelsel Pidana di Indonesia*, Medan: USU Pres, p. 4

¹⁰ ibid

Restorative Justice. The requirements contained in Police Regulation Number 8 of 2021 will be applied when carrying out criminal investigation, investigation or inquiry functions by containing material and formal requirements and. Meanwhile, the conditions contained in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice will be applied at 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 specific requirements. Special requirements explain additional requirements for certain criminal offenses such as drugs, traffic, and electronic information and transactions. Meanwhile, general requirements consist of material requirements and formal requirements. Material requirements are explained in the provisions of Article 5 of Police Regulation Number 8 of 2021 which reads:

"The material requirements as intended in Article 4 letter a, include:

does not cause unrest and/or rejection from the community;

does not impact social conflict;

does not have the potential to divide the nation;

not radicalism and separatism;

not a repeat perpetrator of a criminal offense based on a Court Decision; And

not a criminal act of terrorism, a criminal act against state security, an act criminal corruption and criminal acts against people's lives.

Then, the formal requirements are explained in Article 6 paragraph (1) of Police Regulation Number 8 of 2021 which reads: "Formal requirements as referred to in Article 4 letter b, include:

peace from both parties, except for drug crimes; And

fulfillment of the rights of victims and the responsibilities of perpetrators, except for criminal acts drugs."

Furthermore, Article 6 paragraph (3) of Police Regulation Number 8 of 2021 explains the purpose of fulfilling the victims' rights above, namely in the form of returning goods, compensating for losses, compensating for costs incurred as a result of criminal acts, and/or compensating for damage. resulting from the criminal act. Based on the provisions of these articles, it can be seen that there are conditions that must be fulfilled if restorative justice is to be implemented. These conditions include an agreement between the parties to make peace, not repeat criminal acts, the victims' rights have been fulfilled, and the application of restorative justice does not receive rejection from the community, and is not for certain crimes.

The conditions regarding the implementation of restorative justice during the prosecution stage are explained in Article 5 paragraph (1) of the Prosecutor's Office Regulation 15/2020 which reads:

"Criminal cases can be closed by law and the prosecution terminated based on Restorative Justice if the following conditions are met:

the suspect has committed a crime for the first time;

Criminal offenses are only punishable by fines or criminal penalties imprisonment for not more than 5 (five) years; And

criminal acts are committed with the value of the evidence or the value of the loss resulting from a criminal act of no more than IDR 2,500,000.00 (two million five hundred thousand rupiah)"

However, for criminal acts related to property, criminal acts against persons, bodies, lives and freedom, and if criminal acts are committed due to negligence, then the conditions stated in Article 5 paragraph (1) of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 can be partially saved. Therefore, the application of these conditions is not enforced rigidly, but can be waived in certain cases. Apart from the 3 (three) conditions mentioned in Article 5 paragraph (1) of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020, the implementation of restorative justice must also fulfill several other conditions as stated in Article 5 paragraph (6) of the Republic of Indonesia Prosecutor's Regulation Number 15 2020 which reads:

".....termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

there has been a restoration to its original state by the suspect by:

return items obtained from criminal acts to the victim;

compensate victims' losses;

reimburse costs incurred as a result of criminal acts; and/or

repair damage resulting from criminal acts;

there has been a peace agreement between the victim and the suspect; And

the community responded positively"

The implementation of termination of prosecution based on restorative justice in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 also has several exceptions for certain matters. As stated in Article 5 paragraph (8) which reads:

"Termination of prosecution based on Restorative Justice is excluded for cases:

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

criminal acts that are punishable by a minimum penalty;

narcotics crime;

environmental crimes; And

criminal acts committed by corporations.”

Based on the explanation above, it can be concluded that the aim of restorative justice is not focused on retribution for perpetrators of criminal acts, but rather seeks a fair resolution by emphasizing restoration to the original state. Then, the conditions that must be met to implement restorative justice when carrying out criminal investigation, investigation or investigative functions, namely that there is an agreement between the parties to make peace, not repeat criminal acts, the rights of victims have been fulfilled, and the application of restorative justice. This did not receive any rejection from society. Furthermore, the conditions that must be met to implement restorative justice at the prosecution stage, namely that peace has been created and restoration has been achieved for the victim, the threat of imprisonment is not more than 5 years, the loss incurred is not more than IDR 2,500,000.00 (two million five hundred thousand rupiah), and not a repetition of a criminal act. Apart from that, restorative justice cannot be applied to criminal acts that threaten state security, corruption, crimes against people's lives, environmental crimes, and criminal acts committed by corporations.

3.2 The Position of Restorative Justice in the Criminal Justice System in Indonesia

Settlement of criminal cases through non-formal mechanisms (outside the justice system) is considered more satisfactory because it is more beneficial for both parties. This cannot be separated from resolving cases based on the principle of deliberation. When linked to Pancasila as the state ideology, the peace mechanism in the form of deliberation is in line with the 4th principle of Pancasila, namely "People led by wisdom in deliberation/representation". Pancasila calls for decision making to prioritize deliberation to reach consensus. Apart from the principle of deliberation, this peace mechanism is also in line with the concept of restorative justice. The concept of restorative justice is an approach that focuses more on conditions for creating justice and balance for perpetrators of criminal acts and the victims themselves, so that active participation between victims, perpetrators and the community is highly expected in finding solutions to problems. In this context, peace becomes an effective and efficient instrument for restoring conditions resulting from criminal acts in a harmonious and familial manner between victims and perpetrators, their families and the community.¹¹

Current developments in criminal law show that there is a shift in the paradigm of justice, namely from retributive justice (oriented towards retaliation against perpetrators of criminal acts) to restorative justice (oriented towards balance that takes into account victims and perpetrators of criminal acts). Restorative justice is slowly becoming a new paradigm that covers the shortcomings of retributive justice. Conceptually, the punishment system in the Draft Criminal Code (2017) adheres to the restorative justice paradigm and accommodates the implementation of peace mechanisms. Restorative justice is very clearly illustrated in the objectives of punishment in Article 55 which states⁹: preventing the commission of criminal acts by

¹¹ Naomi Renata Manihuruk, (2023), *Kedudukan Perdamaian Dalam Sistem Peradilan Pidana*, Download. https://pn-sumedang.go.id/file_lama/Paper%20%20Perdamaian%20dlm%20pidana%20Naomi.pdf

enforcing legal norms for the protection and protection of society; socializing convicts by providing training and guidance so that they become good and useful people; resolve conflicts caused by criminal acts, restore balance and bring a sense of security and peace in society; and foster a sense of remorse and relieve the convict of guilt. This article also emphasizes that punishment is not intended to cause suffering and humiliate human dignity.¹²

Settlement of criminal cases as a unit of law enforcement within the framework of the rule of law, at least refers to the principles and objectives of the law. We also remain firmly guided by the nation's philosophy, constitution, jurisprudence, wisdom and moral foundations. It is true that the rise of criminal acts must be responded to firmly and wisely and law enforcement is consistent, society relies on law enforcement, but actually prevention and eradication or handling must be simultaneous and comprehensive, especially in the justice system itself.¹³

As a system, the judiciary has mechanisms that move towards achieving the mission of the essence of the judiciary's existence. The justice system requires a clear vision so that the activities or implementation of the role of the judiciary proceed effectively, efficiently, fairly and appropriately. Also as a social system, justice is one of the main supports for a civilized society in carrying out its daily life in today's modern world.

Barda Nawawi Arief stated that broadly speaking, crime prevention efforts can be divided into 2 (two), namely through penal channels (criminal law) and through non-penal channels (outside criminal law). Penal measures or through the application of criminal law focus more on the repressive nature (action/suppression/eradication) after a crime has occurred. On the other hand, non-penal efforts focus more on preventive properties (prevention/deterrence/control) before a crime occurs. The main targets of penal efforts are factors conducive to triggering crime.¹⁴

Penal measures are often considered successful in overcoming crime, but in certain cases it turns out that the public often questions and is dissatisfied with the resolution of criminal cases through penal channels carried out by law enforcement officials, in this case by investigators, public prosecutors and even judges' decisions against victims and perpetrators. Therefore, the idea emerged that the settlement of criminal cases could be resolved outside of court (out of court settlement). Settlement of criminal cases outside of court is able to fulfill a sense of justice in society, especially for victims and perpetrators. However, due to the legality of investigations and prosecutions, criminal cases often have to be submitted to court. To overcome these problems, Indonesia itself has recognized the resolution of criminal cases outside of court by the police and prosecutors using the principles of Restorative Justice.

Restorative Justice is a process where all parties involved in a particular criminal act jointly solve the problem of how to deal with the consequences in the future. Viewed

¹² Ibid

¹³ Iriyanto Tiranda, Fenty U, Puluhalawa dan Johan Jasin, (2019), Konsep Ideal Penanganan Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan, *Jambura Law Review*, Volume 1 Issue (2), ISSN: 2654-9266, p. 126

¹⁴ Barda Nawawi Arief, (1991), Upaya Non-Penal Dalam Kebijakan Penanggulangan Kejahatan, *Bahan Seminar Kriminologi VI* di Semarang Tanggal 16-18. Accessed through the site www.hukumkriminologi.wordpress.com, December 15, 2023, 23:30 WIB

through the lens of restorative justice, a criminal act is a violation of humans and relations between humans. Criminal acts create an obligation to make things better by involving victims, perpetrators and the community in finding solutions for repair, reconciliation and reassurance.¹⁵

Based on this concept, restorative justice-based case resolution fulfills at least 3 (three) things as follows:¹⁶

identifying and taking steps to repair harm.

involving all stakeholders.

Transformation from a pattern where the State and society confront perpetrators by imposing criminal sanctions, into a pattern of cooperative relationships between perpetrators and the community/victims in resolving problems resulting from crime.

Remington and Ohlin define the Criminal Justice System as the use of a systems approach to criminal justice administration mechanisms and criminal justice as a system is the result of interactions between statutory regulations, administrative practices and social attitudes or behavior.¹⁷ The position of restorative justice in the criminal justice system in Indonesia can provide justice that focuses on the needs of the victims, perpetrators of crimes, and also involves community participation, and does not merely fulfill legal provisions or merely impose sentences. In this case, the victim is also involved in the process, while the perpetrator of the crime is also encouraged to take responsibility for his actions, namely by correcting the mistakes he has made. In life, it turns out that there is no end to criminal acts or crimes or criminal acts (*strafbaar feit*). For this reason, the existence of law is very necessary. Indeed, the law is the basis, basis, morals, and oversees the achievement of the life goals that are aspired to together. Of course, law also functions to prevent, reduce and eradicate criminal acts.¹⁸

Herbert L Parcker "The limits of the criminal prosecution" quoted by Rusli Muhammad suggests that there are two models, namely what is called the Crime Control Model (CCM) and the Due Process Model (DPM). According to Packer, these two models will allow us to understand a normative anatomy of criminal law. This model does not say what is reality and what should be. These two models are not absolute polarization.¹⁹

The Crime Control Model (CCM) is based on the statement that criminal behavior should be prosecuted, and the criminal justice process is a positive guarantee for public order. For the purpose of achieving this very high goal, the CCM states that primary attention must be assigned to efficiency. This efficiency is above all else. This efficiency includes speed and accuracy and administrative efficiency in processing

¹⁵ Prayogo, Resti Dan Restika, (2023), Penegakan Hukum Melalui Restoratif Justice Yang Ideal Sebagai Upaya Perlindungan Saksi Dan Korban, *Jurnal GEMA*, Th. XXVII/49, p. 1499

¹⁶ Mc Cold and Wachel, Restorative Justice, (2012), *The International Institute Fo Restorative Practicee (IIRP)*, di terjemahkan oleh Bambang Waluyo, New York: Criminal Justice Press & Amsterdam: Kluger Publication Journal, p. 7

¹⁷ Ali Zaidan, (2015), *Menuju Pembaruan Hukum Pidana*, Jakarta: Sinar Grafika, p.115.

¹⁸ Bambang Waluyo, (2020). *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif dan Transformatif*, Jakarta: Sinar Grafika, p. 1

¹⁹ Rusli Muhamad, (2011), *Sistem Peradilan Pidana Indonesia*, Yogyakarta: UII Press, p.44

criminal offenders. In contrast to CCM which is based on the Presumption of Guilt, DPM is based on the Presumption of Innocence as the basis for the value of the justice system. The DPM requires a formal investigation process into a case. by finding facts objectively. Family Model is a parable that exists in our family, that is, even though one of our family members is beaten or insulted, he is still loved without being treated as a special criminal. Likewise, if criminals are convicted, they should not be considered special criminal people who are then isolated from members of society, but they are still in an atmosphere of affection. Thus, if we compare it with the Battle Model which assumes that criminals are essentially enemies of society or enemies in society and the function of criminals is Xile Of Offender or exile of criminals, it can be seen that the basic values in the Battle Model are in accordance with family values. in the family model where the function of punishment is to appealing capacity of self-control or trying to control so that he has the capacity to improve himself and remain within the framework of family affection (contitium of love).²⁰

With regard to the criminal justice system model as stated above, restorative justice is closer to the family model, a family approach to resolving criminal cases using deliberation and consensus as intended by the 4th principle of Pancasila. A justice system with a family model involving all parties accommodates the interests of all parties, so that the restoration of the original situation after the case between the perpetrator and victim (even more broadly) the family and/or related parties can be achieved.

Basically, the model for resolving criminal cases outside of court, which carries the spirit of restorative justice, is actually not something new because it began to be implemented in the mid-1970s. One model for resolving criminal cases outside of court based on restorative justice is the Victim Offenders Mediation (VOM) program. The VOM program was first implemented in 1970 in North America and Europe such as Norway and Finland. VOM is a process that provides the victim's willingness as the principal of crime and violence to meet with the perpetrator, in a safe and orderly atmosphere with the aim of making the perpetrator directly responsible with a form of compensation to the victim.²¹

In this regard, Andi Hamzah said, in the Netherlands now according to Prof. Mr Dr. Strijards expert staff from the Netherland prosecutor's office told the Attorney General's delegation who conducted a comparative study to The Hague on 15 June 2010, that cases in the Netherlands that were resolved out of court reached 60%, in Norway it was even higher, 75%.²² This data shows that the percentage of case settlements outside of court is actually greater. It is believed that if this is done by law enforcers with high commitment, they will receive several benefits, including the following:²³

²⁰ Michael Barama, (2023), *Model Sistem Peradilan Pidana Dalam Perkembangan*, downloaded via: https://repo.unsrat.ac.id/1304/3/MODEL_SISTEM_PERADILAN_PIDANA_DALAM_PERKEMBANGAN.pdf

²¹ Marlina, (2011), *Peradilan Pidana Di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*, Jakarta: Refika Aditama, p. 181

²² Andi Hamzah, (2013), *Beberapa Hal Dalam Rancangan KUHAP*, Jakarta: Sinar Grafika, p. 73

²³ Bambang Waluyo, Op.cit, p. 85-86

Achieving the objectives of law enforcement, namely justice, legal certainty and benefits for society.

Achieving the ideals of justice that is fast, simple, cheap, effective and efficient.

Strengthening police and prosecutor institutions, their apparatus, their participation, and increasing public trust.

Savings in State finances.

Overcapacity in detention centers and prisons can be reduced or avoided. Reducing the backlog of cases in the police, prosecutor's office and courts. Income from state financial revenues, asset recovery, saving state finances, and so on.

4. CONCLUSION

From the description of the discussion above, it can be concluded as follows: Restorative justice in the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Article 1 point 1 of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In these two regulations, the resolution of criminal cases by prioritizing restorative justice emphasizes restoration to its original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retribution. This is an effort to reform the criminal justice system in order to realize the goals of just law. Policy for handling cases for the success of restorative justice independently for the sake of justice based on law and conscience. Regarding the criminal justice system model, restorative justice is closer to the family model, a family approach to resolving criminal cases through deliberation and consensus as intended by the 4th principle of Pancasila. A justice system with a family model involving all parties that accommodates the interests of all parties, so that the original situation is restored after the case between the perpetrator and the victim, while basically the model for resolving criminal cases outside of court which carries the spirit of restorative justice, is actually not something new because it has already begun. One model for resolving criminal cases outside of court based on restorative justice is the Victim Offenders Mediation (VOM) program. The VOM program was first implemented in 1970 in North America and Europe such as Norway and Finland. VOM is a process that provides the victim's willingness as the principal of crime and violence to meet with the perpetrator, in a safe and orderly atmosphere with the aim of making the perpetrator directly responsible with a form of compensation to the victim.

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