

Implementation of Restorative Justice in Handling Theft Criminal Act in Indonesia

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Abstract. *Theft is one of the actions or deeds that are against the law. In the Criminal Code, theft can be subject to Article 362. The purpose of the research in this study: 1). To study and analyze the implementation of restorative justice in handling criminal acts of theft in Indonesia; 2). To study and analyze the obstacles and solutions to the implementation of restorative justice in handling criminal acts of theft in Indonesia. This study uses a sociological juridical approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of restorative justice and the theory of the legal system of Lawrence Friedman. The results of the study concluded that: 1) The implementation of restorative justice for the crime of theft has begun to be maximized since the issuance of the Circular of the Chief of Police Number SE/2/II/2021 on February 19, 2021 and the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice issued on August 20, 2021; 2). The application of restorative justice as an alternative to resolving petty theft cases still has several obstacles or weaknesses. The weakness in the legal substance aspect is the time limit stipulated in Article 9 paragraph (5) of the Prosecutor's Regulation No. 15 of 2020, which stipulates a deadline of 14 days from the submission of the file. The weakness in the legal structure aspect is the lack of understanding of law enforcement officers regarding the implementation of resolving the crime of theft with restorative justice. The weakness of the legal culture of the application of Restorative Justice is that not all people are aware of the concept of Restorative Justice as a replacement for the general criminal system. The solution to the weakness of the legal substance aspect is that it is necessary to review the regulations governing the time limit in the Prosecutor's Regulation No. 15 of 2020, with the aim of adding time so that the resolution of cases is not rushed. The solution to the weakness of the legal structure aspect is the need to improve the quality of personnel by providing further education to law enforcers in handling restorative justice cases by improving the quality of personnel, it will also improve the abilities of members, especially restorative justice cases. The solution to the weakness of the legal culture aspect is that the government is advised to re-socialize the*

implementation of Restorative Justice as an initial step that should be taken in implementing law enforcement in the community.

Keywords: *Implementation; Restorative Justice; Theft Crime.*

1. Introduction

Indonesia is a country based on law which adheres to the principle of legality in its legal system. The principle of legality is explained in Article 1 paragraph (1) of the Criminal Code which states that "An act cannot be punished, except based on the strength of existing criminal law provisions." Before a comparison is made of the wording of the article, it is clear that the principle of legality applies to the criminal justice system in Indonesia, meaning that an act can only be punished if there are already rules that regulate the act in advance.

Laws are made and enforced in order to regulate and protect the interests of citizens so that there is no conflict and also to protect human rights. Law is a series of rules, regulations and rules, both written and unwritten, relating to the regulation of relations between citizens in society.¹ Law has a strategic and dominant position in the life of society, nation, and state. Law is the whole of norms that bind and regulate relations between humans in society.² Independent and impartial judges have become a universal rule. It is also a characteristic of a legal state.³

Material criminal law regulates the determination of criminal acts including perpetrators of criminal acts, criminal responsibility and punishment (sanctions). In Indonesia, the regulation of material criminal law is regulated in the Criminal Code (KUHP). In addition to material criminal law, formal criminal law or Criminal Procedure Law is also regulated, namely in the Criminal Procedure Code (KUHAP).

Law enforcement is a process of activities or actions, one of which is carried out by law enforcers (Indonesian National Police/PPNS investigators, prosecutors and judges).⁴ When someone experiences a legal problem and report the incident to the police, then the police conduct an investigation and inquiry as the main task of the Police as regulated in Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police, namely Maintaining public security and order; Enforcing the law; and Providing protection, care, and service to the community. In order to realize the development of a national legal system (Pancasila Legal System) based on the values of the Almighty God, it is necessary to realize this by

¹Yahya Harahap, 2015, Discussion of Problems and Implementation of the Criminal Procedure Code (Court Hearing Examination, Appeal, Cassation, and Judicial Review), Sinar Grafika, Jakarta, p. 1

²Hatnolo Ardi, Sri Endah wahyuningsih, Law Enforcement for Civil Servants in Relation to Criminal Acts, Khaira Ummah Law Journal Vol. 12. No. 3 September 20

³Indah Lestari, Sri Endah Wahyuningsih, Criminal Law Enforcement Against Drug Users in Central Java Regional Police, Khaira Ummah Law Journal Vol. 12. No. 3 September 2017: 601 - 610

⁴Sri Endah Wahyuningsih, Rismanto, Criminal Law Enforcement Policy on Combating Money Laundering in the Framework of Criminal Law Reform in Indonesia, Journal of Legal Reform 46 Volume II No. 1 January - April 2015

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exploring the values of religious law (such as Islam, Christianity, Catholicism, Hinduism and Buddhism), which are then integrated into the principles of our positive law, so that the laws in force in Indonesia do not conflict with the values of the Almighty God.⁵

The Indonesian National Police in carrying out its duties as law enforcers, namely conducting investigations and inquiries into criminal acts based on the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) and other laws that serve as references in enforcing the law. In addition to the Criminal Procedure Code and other laws that serve as the basis for implementing the law, there are also regulations in the Internal Police which serve as policies and bases for Indonesian National Police investigators in enforcing the law. However, in its implementation, there are obstacles that cause its implementation to be ineffective, which are influenced by several factors. Such as the Regulation of the Chief of Police Number 8 of 2021 concerning the handling of criminal acts through Restorative Justice which is currently a reference for Indonesian National Police Investigators in resolving criminal cases whose cases are not resolved at the investigation stage or whose cases are not transferred to the Public Prosecutor to the District Court (This has become an obligation for investigators who are required to carry out mediation efforts or certain criminal cases that meet the requirements to be resolved at the investigation stage.

The variety of crimes and violations that occur in Indonesia refers to criminal acts influenced by the development of the era where the needs to support life are increasing, so to meet these needs, it is not uncommon for someone to use various criminal methods to achieve them, such as stealing. Theft is a common crime in society, especially stealing property in the sense that theft in the form of property is often experienced by society and even occurs within the family. Theft is a criminal act that often occurs in various countries, including Indonesia.

Theft is an act or deed that is against the law. In the Criminal Code, theft can be subject to Article 362 which states "Anyone who takes something, which is wholly or partly owned by another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah".

Law enforcement against crime in Indonesia, especially in criminalization, should refer to a normative approach that is punitive to criminals so that it can have a deterrent effect.⁶Efforts and policies to create good criminal law regulations, in essence, cannot be separated from the goal of combating crime. So criminal law policies or politics are also part of criminal politics. In other words, seen from the perspective of criminal politics, criminal law politics is identical to the concept of crime prevention policies with criminal law.⁷So, punishment for the crime of theft in the future must be fair and can have a deterrent effect.

⁵Sri Endah Wahyuningsih, The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of Belief in the Almighty God, Journal of Legal Reform, Volume I No.1 January – April 2014

⁶Andri Winjaya Laksana, Review of Criminal Law Against Narcotics Abusers With Rehabilitation System, Journal of Legal Reform Volume II No. 1 January - April 2015

⁷Bambang Tri Bawono, SH., MH, Criminal Law Policy in Efforts to Combat Medical Professional Malpractice, Jurnal Hukum, Vol XXV, No. 1, April 2011

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The settlement of criminal cases within the framework of the Republic of Indonesia cannot be separated from Dutch criminal law which was adopted as Indonesian national criminal law. The implementation of Dutch criminal law in Indonesia is based on Law Number 1 of 1946 which is an affirmation of the Indonesian government to implement the Dutch Criminal Code (Criminal Code) which came into effect on March 18, 1942 as the criminal law applicable in Indonesia.⁸

Efforts to handle theft cases involve the prosecution process by authorities, such as the police and public prosecutors. However, there is an alternative approach known as Restorative Justice that has been adopted by several criminal justice systems in the world. Restorative Justice focuses on the restoration of losses accompanied by reconciliation between the suspect, victim, and community. This approach is different from the traditional approach that focuses more on punishment of the perpetrator. In the context of theft, Restorative Justice tries to repair the relationship between the perpetrator of theft, the victim, and the affected community. Termination of prosecution in theft cases based on Restorative Justice is a concept that emerged as an alternative to the traditional criminal justice process. This concept involves resolving theft cases through dialogue and mediation between the perpetrator, victim, and affected community. Legal Aid can be broadly interpreted as an effort to help the underprivileged in the legal field. While in the narrow sense it is a legal service provided free of charge to clients who are unable.⁹

According to the concept of restorative justice, handling crimes that occur is not only the responsibility of the state but also the responsibility of society. Therefore, the concept of restorative justice is built on the understanding that crimes that have caused losses must be restored, both the losses suffered by the victim and the losses borne by the community. The involvement of community members is needed to help correct mistakes and deviations that occur in the surrounding community environment. Giving awards and respect to victims by requiring the perpetrator to make a recovery or as a result of the crime that has been committed. The recovery carried out by the perpetrator can be in the form of compensation, social work or doing something to improve or certain activities in accordance with a joint decision that has been agreed upon by all parties in the meeting held. The shift in thinking from the traditional punishment model is with the existence of a punishment model that provides justice, especially justice that is directed at community justice. This is a starting point or basis for the birth of restorative justice in any country.

In the mediation stage, the Public Prosecutor acts as a facilitator who only offers the parties to make peace as stated in Article 9 paragraph (2) of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, but the final result is still left to the parties, whether they want to make peace or continue to the legal process as it should be. So that in order to achieve peace there must be agreement from the parties, namely the suspect and the victim. If one of them refuses or objects to making peace, the criminal case will continue the legal process. However, if both parties agree to make peace, the Public Prosecutor will make a peace

⁸ Eman Sulaeman, 2008, Licensing Offenses, Walisongo Press, Surabaya, p. 132.

⁹Ahmad Muntolib, Sri Endah Wahyuningsih, The Role of Legal Aid in the Criminal Justice Process in Blora Regency, Khaira Ummah Law Journal, Vol. 12. No. 3 September 2017

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letter. This peace letter can be accompanied by the fulfillment of conditions or not. If peace is accompanied by certain conditions, then in order to guarantee the fulfillment of the conditions that are not violated, in this case the Public Prosecutor asks for a guarantor so that both parties do not violate and later do not cause any more problems.

The various types of theft crimes based on the Criminal Code include:

1. Article 362 of the Criminal Code: This article explains about theft, which occurs when someone takes someone else's property with the intention of possessing the property unlawfully. This article also states that theft can be punished with imprisonment for a maximum of 5 years.
2. Article 363 of the Criminal Code: This article discusses aggravated theft, which occurs when someone commits theft using violence or threats of violence against people, using weapons, or colluding with others. Aggravated theft can be subject to a maximum prison sentence of 9 years.
3. Article 364 of the Criminal Code: This article regulates aggravated theft resulting in death, serious injury, or serious injury to the victim. This type of theft is punishable by life imprisonment or the death penalty.

One example of a case that ended with Restorative Justice is the case of theft of forest products with Police Report Number: LP/B/53/VII/2021/SPKT/POLRES BLORA/POLDA JATENG which has been handled by the police to the investigation stage, the settlement of the crime has been carried out based on restorative justice. This is due to the desire of both parties to the case to resolve the case outside the court and expect the return of evidence, namely 5 logs of rosewood to be returned to the victim, namely the State through Perhutani KPH Cepu. The desire of the victim and the perpetrator to reconcile resulted in the issuance of a Letter of Order to Terminate Investigation (SP3) in which an investigation and/or investigation was carried out by the Police. The police have carried out their duties to secure the reported evidence, as well as conduct an investigation and/or investigation. The desire of the parties to the case to resolve the case outside the court has resulted in justice for the parties. The justice in question is in the form of returning the evidence, namely 5 logs of rosewood to the rightful party, namely the Cepu KPH, and the perpetrator has promised not to repeat his actions, as well as the return of the perpetrator's KBM which was used to transport the wood.stolen goods.

Antaraneews reported that Semarang Police records showed an increase in aggravated theft cases, from 114 cases in 2022 to 167 cases throughout 2023. From the results of Operation Sikat Jaran Candi 2023, the Police also uncovered 33 theft cases. The police operation to combat crime, especially motor vehicle theft, was carried out during the operation from August to September 2023. In the operation, the police arrested 32 perpetrators, and secured the stolen goods in the form of four cars and 34 motorbikes.

The settlement of this theft case can be through the criminal justice system (litigation), or outside the court through mediation (non-litigation). Although the principle of criminal cases through positive law in Indonesia, namely the Criminal Code and Criminal Procedure

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Code, cannot be resolved peacefully, in practice it can be resolved peacefully. Efforts to achieve peace can be made through the policies of law enforcement officers, customary institutions, and the Juvenile Criminal Justice System. Handling cases through non-litigation is carried out outside the court, commonly known as Alternative Dispute Resolution.

Based on the records of the Indonesian Attorney General's Office in 2023 quoted from hukumonline.com, there were 2,407 case agreements whose resolution was carried out through restorative justice. Since the issuance of the Indonesian Attorney General's Office Regulation Number 15 of 2020, the total number of cases resolved using the restorative justice approach was recorded at 4,443 cases. This Attorney General's Office Regulation then became a basis for public prosecutors, in handling cases by considering restorative justice. Including prosecutors from the Semarang District Attorney's Office who are quite active in implementing case resolution with restorative justice efforts.

Law enforcement against crime in Indonesia, especially in criminalization, should refer to the normative approach that is punitive to criminals so that it can create a deterrent effect. Efforts and policies to create good criminal law regulations, in essence, cannot be separated from the goal of overcoming crime. So criminal law policies or politics are also part of criminal politics. In other words, seen from the perspective of criminal politics, criminal law politics is identical to the concept of crime prevention policies with criminal law.⁶ So punishment for theft crimes in the future must be fair and can create a deterrent effect

As in the case of minor theft in the capital city of Central Java Province, the perpetrator was charged with Article 362 of the Criminal Code. The theft case, which was motivated by economic factors, ended in peace, based on a peace agreement between the victim and the perpetrator. The peace agreement was carried out in the Coordination and Diversion Room, Semarang District Attorney's Office on Jalan Abdulrahman Saleh Number 5 - 9, Kalibanteng Kulon Village, West Semarang District, Semarang City.

Based onBased on the background description above, the author is interested in writing a thesis entitled "Implementation of Restorative Justice in Handling Criminal Acts of Theft in Indonesia".

2. Research Methods

The type of research used in completing this dissertation is the descriptive analytical legal research method, namely research conducted by examining library materials (secondary data) or library legal research.¹⁰, then described in the analysis and discussion.

3. Results and Discussion

3.1. Implementation of Restorative Justice in Handling Criminal Acts of Theft in Indonesia

Criminal law regulates actions that are prohibited from being carried out and actions that are ordered to be carried out, which are accompanied by the threat of criminal sanctions if the rules are violated. One type of criminal act is a minor criminal act. A minor criminal act is

¹⁰ Ediwarman, 2010, Monograph, Legal Research Methodology, Postgraduate Program, Muhammadiyah University of North Sumatra, Medan, p. 24.

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a criminal act that is light or not dangerous such as the crime of minor theft which is regulated in Article 364 of the Criminal Code.

Theft is one of the criminal acts regulated in the Criminal Code. In KBBI, theft means taking someone else's property without permission or illegally, usually in a hidden way. According to criminal law, theft refers to the act of taking goods or objects that are the property of another person, either in whole or in part, with the intention of obtaining them unlawfully. In the Criminal Code, there are Articles 362 to 367 of the Criminal Code which regulates theft and other crimes that contain elements of theft.

Law needs to have an ideal purpose because human interests often conflict with each other. This opinion was expressed by Sudarsono, who stated that if human interests conflict, the law cannot fully protect one interest while ignoring the other. The essence of law enforcement itself lies in the effort to balance the values contained in solid principles, and is manifested in actions that reflect the application of these values. This occurs as a final effort to create, maintain, and safeguard peace in a shared life between the law and the community that is the subject of the law. Law enforcement is not only about the application of laws that make the concept of law enforcement so well-known. As a state of law (*rechts staats*), Indonesia emphasizes that every individual who commits a crime must be responsible for their actions through the legal process. Law enforcement shows that a crime is a violation of legal norms, which are regulated by the threat of criminal sanctions as a form of accountability. In the principle of legality, a person cannot be prosecuted unless it has been regulated in law, so that violations of the prohibition have the potential to be sanctioned or punished as a form of responsibility and are useful in providing a deterrent effect for the perpetrator.

Law enforcement is the process of actualizing legal norms as a guide to behavior in the life of society and the state. Every legal norm inherently includes the rights and obligations of legal subjects in the process of legal traffic so that legal problems are actually based on obligations and human rights in the concept of legal justice. Here, efforts to combat crime by using criminal law are basically part of legal prevention efforts, so that criminal law policy is also part of law enforcement policy. Criminal law here has the meaning as a step to realize the rules that have been formed and enforced in society that function to overcome the problems that occur. Therefore, combating criminal acts tends to focus on the prevention process (preventive) while eradication (repressive) action occurs if preventive efforts are unsuccessful or less effective in controlling crime.

In the concept of the rule of law, laws and regulations are the mecca for handling problems, especially in cases of violations of the law. The law must be enforced when violations occur. This is in line with the adage "even if the sky falls, justice must be upheld". This adage shows that the law is very strong and ideal. However, in practice, to create justice is something that is difficult to find in the law itself. The law seems to turn a blind eye to human values.¹¹

¹¹Prayogo Kurnia, Resti Dian Luthviati, Restika Prahanela, Law Enforcement Through Ideal Restorative Justice as an Effort to Protect Witnesses and Victims, GEMA, Year XXVII/49/August 2014 - January 2015, p.1504

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The crime of theft is still a dilemma and is a serious problem that requires a solution, therefore it requires efforts to overcome it or at least good prevention from all parties, both law enforcement and the community, which must be identified so that it can run in an orderly, directed and planned manner.¹²Regarding criminal law regulations, Indonesia has the Criminal Code (KUHP) which is the parent of the regulations applicable in Indonesia.

Law functions to protect human interests in general. In order for the interests of the people to be protected, the application of the law must be carried out properly. However, sometimes in the implementation of the law there is still the potential for violations of the law. Enforcement in an effort to enforce the law, there are 3 (three) goals to be achieved, namely, legal certainty, benefit (*zweckmassigkeit*), and justice (*Gerechtigkeit*). The law is expected by society to be applied in a concrete case. Therefore, the element of legal certainty is very important.

The police's duties are not only related to the law enforcement process, but also related to steps to overcome the occurrence of criminal acts or criminality. Efforts to overcome these crimes are strategic steps to deal with criminal acts that have been growing lately. Crimes that have increased from year to year require crime prevention, especially by the Police, so that they do not happen again in the following years.

Legal certainty is a form of legal protection against deviant acts. Then the element of benefit in law enforcement means that society expects benefits to arise in law enforcement efforts. The third element is the element of justice which means that the law has a general nature that binds everyone and also equalizes.

On the other hand, criminalization does not provide a sense of justice, both to the perpetrator and the victim. So even though the perpetrator has been punished (given punishment), it has not been able to restore peace between the perpetrator and the victim of the crime. This is where the importance of progressive law enforcement lies, by prioritizing aspects of justice and the benefits of the law.¹³Progressive law is part of the never-ending process of searching for truth, law that is seen from the empirical reality of how law works in society in the form of dissatisfaction and concern for the performance and quality of law enforcement.

Progressive law places humans as the main center of all legal discussions. Based on progressive legal policies, it invites more attention to human behavioral factors. Therefore, from here it is questioned, for whose benefit is the determination of the criminal law, whether for the perpetrator of the crime, the victim, or for the state? Related to the problem of the crime of theft as regulated in Article 367 of the Criminal Code, it can be classified into 4 (four) types of theft, namely; ordinary theft regulated in Article 362 of the Criminal Code, minor theft regulated in Article 364 of the Criminal Code, aggravated theft regulated in Article 365 of the Criminal Code, where the severity of the penalty for the crime of theft is always related to the crime of theft committed. So it can be ascertained that

¹²Cut Nurita, Application of Criminal Law Sanctions Against Perpetrators of the Crime of Livestock Theft, *Jurnal Hukum Kaidah*, 1(2)

¹³Ali Imron, et.al, Reorientation Of Rehabilitation Institutions In Law Enforcement Against Narcotics Abuse In Progressive Legal Perspective, (USA : Multicultural & Education Journal, 2022) p.155

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every perpetrator of the crime of theft, if proven in court, will be put in a correctional institution as compensation for the crime he committed. Therefore, it is necessary to consider other approaches to resolving criminal cases such as "attempted theft", in order to realize the purpose of punishment as above "imprisonment". In fact, this case of "attempted theft" can be resolved in other ways, for example with a restoration approach or "restorative justice".

The procedure for resolving criminal acts has been regulated in the Criminal Procedure Code. However, the procedures in formal law are often used as a repressive tool alone and ignore the values of justice, even the nature of the law as a preventive measure also tends not to be taken into account. This situation positions the criminal system as no longer valuable as a system that provides a deterrent effect for its violators.

The implementation of restorative justice for theft crimes has begun to be maximized since the issuance of the Circular Letter of the Chief of Police Number SE/2/II/2021 on February 19, 2021 and the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice issued on August 20, 2021. The resolution of theft crimes using a restorative approach begins with the case identification stage. At the case identification stage, a case will be reviewed regarding the material requirements that must be met so that the case can be resolved through restorative justice.

The next stage is the application submission stage, namely submitting a letter of application along with an attachment of a peace statement letter addressed to the Chief of Police Sector. Next, the mediation stage is the stage that bring the parties together for mediation and the perpetrator will be urged to apologize and complete his/her responsibility for the case. And the last stage is the stage after mediation, the police officer will make a report on the results of the mediation and record it in the restorative justice register book for solving problems and terminating the investigation of minor crimes.

3.2. Obstacles and Solutions to the Implementation of Restorative Justice in Handling Criminal Acts of Theft in Indonesia

1. Weaknesses of Legal Substantive Aspects

Law enforcement in Indonesia is less effective and often there are problems and challenges faced by the community. Therefore, there needs to be a legal reform that is intended as an effort to develop the law, as an effort to support the implementation of governance and national development based on Pancasila and the 1945 Constitution.¹ Law enforcement refers to the Criminal Justice System, where people who commit crimes that they do. The Criminal Justice System is a system that is built to overcome and control crime within the limits of tolerance. The criminal justice system according to Mardjono Reksodiputro is a system in a society to overcome crime.

One alternative to resolve minor theft cases is to use a restorative justice approach. Restorative justice is a criminal act resolution that refers to the restoration of losses between victims, perpetrators and the community affected by it. The procedure of

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restorative justice makes or changes a criminal process into a process of dialogue or deliberation to reach an agreement between the perpetrator and the victim.¹⁴ Basically, restorative justice is not something new in the legal field, the concept of restorative justice has existed for a long time as an alternative to resolving juvenile criminal cases.¹⁵ Then, restorative justice was developed in its function which is not only limited to resolving child criminal cases, but can also be used as an approach to resolving various types of cases. Unlike the conventional criminal justice system, restorative justice has a form of resolving criminal cases that is not only focused on formal criminal law and material criminal law, but restorative justice also pays attention to and prioritizes the correctional system and criminology of the case. Therefore, restorative justice is considered better than conventional criminal law, this is because resolving cases using the restorative justice approach seeks to resolve cases by covering various aspects that do not only refer to formal criminal law and material criminal law.

Efforts to resolve cases through peace between the victim and the perpetrator outside the trial process as an effort to approach restorative justice through penal mediation can create a clash with the existing criminal system, this is what makes law enforcement officers find themselves in a dilemma in implementing restorative justice in the form of penal mediation for criminal cases, especially those related to theft crimes which are ordinary crimes.

The current reality in the implementation of the principle of restorative justice is still limited to using regulations at the level of Perkap and Perpol. Of course, with this regulation, the potential to question it with higher regulations, namely the Criminal Procedure Code, is certain because currently there is the potential for experts to question this issue. As is currently known, the criminal procedure system in terms of acts prohibited in the Criminal Code refers to the Criminal Procedure Code as a formal basis for litigation. Regarding the importance of restorative justice regulations that should be placed in a form of legislation is a form of urgency to avoid problems related to the principle of *lex superiori derogat lex inferiori*. So this is certainly related to the position of Perpol No. 8 of 2021 which formally cannot replace the Criminal Procedure Code as a new criminal procedure law because the position of the two regulations is not balanced as Law Number 12 of 2011 has regulated it. So if we explain its position, the position of the Criminal Procedure Code is clearly higher than the Perpol. But the problem here is that there are 2 types of procedural rules that are contradictory according to the Criminal Procedure Code and Perpol. The mechanism in the Criminal Procedure Code is clearly a penal procedure mechanism, while the Perpol deviates from the penal procedure system by referring to the non-penal procedure model. Based on this criminal system, the resolution of criminal cases as charged using the Criminal Code requires the perpetrator to undergo a penal procedure through the court hearing process.

Based on the explanation above, it can be seen that the obstacles that arise in the implementation of restorative justice include the absence of a peace agreement between the victim and the perpetrator, intervention from a third party that further aggravates the situation, and the absence of regulations at the level of laws that are currently in effect to

¹⁴Iklimah Dinda Indiyani Adiasta, Implementation of Restorative Justice as an Innovation in Resolving Minor Criminal Cases, IDJ: Jurnal Hukum, Vol. 2 No. 2, 2021, p. 2.

¹⁵Irsyad Dahri and Ahmad Syahril Yunus, Introduction to Restorative Justice, Guepedia, Bogor, 2022, p. 9.

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accommodate the concept of restorative justice. This is related to the position of Perpol No. 8 of 2021 which formally cannot replace the Criminal Procedure Code as the new criminal procedure law because the positions of the two regulations are not balanced.

Instructions case resolution through Restorative Justice, instructed by the Chief of Police through Circular Letter Number SE/8/VII/2018 and ratified as Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. Regulation of the Chief of Police Number 8 of 2021, is the sole source of law in the implementation of the case resolution process, this occurs because basically the legal system in Indonesia does not accommodate non-penal case resolution. In line with the development of the concept of law enforcement in the criminal law enforcement system in various countries that adopt the principle of restorative justice, and often with the emergence of various problems in the criminal law enforcement process in Indonesia, such as over capacity correctional institutions, increasing case backlogs, the number of law enforcers is not balanced with the development of cases, court costs that are unable to support the increase in cases and so on, have an impact on changes in the legal culture of society, especially the perspective of the Indonesian people towards the criminal law enforcement process.

In order to respond to the development of the legal needs of the community, and to fulfill the sense of justice of all parties, the Republic of Indonesia National Police Indonesia as an institution that is given the authority as an investigator and investigator to formulate a new concept in the criminal law enforcement system, especially the criminal investigation process that is able to accommodate the values of justice in society while providing legal certainty, especially the certainty of the process. However, both the Circular of the Chief of Police and Regulation Number 8 of 2021 have not been fully able to realize legal certainty regarding the certainty of the process as referred to in the purpose of resolving cases through Restorative Justice. As stated in the material and formal requirements in Article 5 and Article 6 of Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. namely; Vide, Circular of the Chief of Police Number SE/8/VII/2018

Material Requirements

1. does not cause unrest and/or rejection from the community
2. does not result in social conflict
3. does not have the potential to divide the nation
4. not radical or separatist
5. not a repeat offender of a criminal offence based on a court decision
6. not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption or a criminal act against people's lives.¹⁶

¹⁶Article 5 of Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

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Based on Article 1 paragraph (1) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, the Attorney General's Office is a government institution whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on law. In carrying out these functions, the Attorney General's Office must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, decency, and morality, and is obliged to explore humanitarian values, law and a sense of justice in society. One of the legal products of the Attorney General's Office is Perja Number 15 of 2021 concerning Termination of Prosecution Based on Restorative Justice, where this regulation prioritizes the goal of a win-win solution by focusing on the rights of victims. This regulation is known as restorative justice. The implementation of Restorative Justice in each Attorney General's Office has its own form and pattern, but is still guided by the Perja, one of which is in the jurisdiction of the Semarang District Attorney's Office. In the implementation of restorative justice, it does not always run according to the objectives, because in the process of peace efforts, obstacles or barriers will arise.

The legal regulations relating to resolving criminal acts of theft using a restorative justice approach include:

- 1) Criminal Code (KUHP), namely the regulations regarding the crime of theft which is regulated and subject to criminal sanctions as referred to in Article 362, Article 363, and Article 364 of the Criminal Code;
- 2) Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2012 concerning the Limitation of Minor Criminal Offenses and the Amount of Fines in the Criminal Code, namely the legal regulation that regulates the limitations of the crime of theft and the value of the loss which must not exceed Rp. 2.5 million.
- 3) Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Criminal Offenses Based on Restorative Justice, namely a legal regulation that regulates the procedures for resolving criminal cases using a restorative justice approach by the Police.

However, it should be noted that the involvement of the criminal justice subsystem is very important for the success of criminal reform through social work. Without adequate participation of the criminal justice subsystem, the implementation of social work will not be able to achieve its goals of strengthening the aspects of rehabilitation, reintegration, and Restorative Justice in the Indonesian criminal law system. In addition to social work, there is a fine. A fine is one of the main types of punishment in the Indonesian criminal system that is threatened against the assets or property of a perpetrator for violating the provisions of the applicable Criminal Code.

The weaknesses of the legal substance aspect in terms of law and legislation, second, involve the perpetrators and victims, and third, involve public legal awareness. In this case, the legal constraints faced are the time limits stipulated in Article 9 paragraph (5) of the Prosecutor's Regulation No. 15 of 2020, which stipulates a time limit of 14 days from the submission of the files. Meanwhile, the process of implementing Restorative Justice takes quite a long time.

2. Weaknesses of Legal Structure Aspects

In Lawrence M. Friedman's theory, this is referred to as a structural system that determines whether or not the law can be implemented properly. The legal structure based on Law No. 8 of 1981 includes: starting from the Police, Prosecutor's Office, Courts, and Criminal Execution Agencies (Lapas). The authority of law enforcement agencies is guaranteed by law so that in carrying out their duties and responsibilities they are free from the influence of government power and other influences.

There is an adage that states "fiat justitia et pereat mundus" which means even if the world collapses, the law must be enforced. The law cannot run or be upheld if there are no credible, competent, and independent law enforcement officers. No matter how good a law is, if it is not supported by good law enforcement officers, justice is just a dream. The weak mentality of law enforcement officers results in law enforcement not running as it should.

Many factors influence the weak mentality of law enforcement officers, including weak understanding of religion, economy, non-transparent recruitment processes, and so on. So it can be emphasized that the law enforcement factor plays an important role in the functioning of the law. If the regulations are good, but the quality of law enforcement is low, there will be problems. Likewise, if the regulations are bad while the quality of law enforcement is good, the possibility of problems arising is still open.

Regarding the legal structure, Friedman explains as follows:¹⁷

"To begin with, the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their jurisdiction... Structure also means how the legislature is organized...what procedures the police department follows, and so on. Structure, in way, is a kind of cross section of the legal system...a kind of still photograph, with freezes the action."

The structure of a legal system consists of the following elements, the number and size of courts, their jurisdiction (including the types of cases they have jurisdiction to hear), and the procedure for appeals from one court to another. Structure also means how the legislature is organized, what the president can and cannot do, the procedures that the police follow and so on. So the structure (legal structure) consists of the legal institutions that exist to implement the existing legal system.

Structure is a pattern that shows how the law is implemented according to its formal provisions. This structure shows how the courts, lawmakers and legal bodies and processes operate and are implemented. In Indonesia, for example, if we talk about the structure of the Indonesian legal system, it includes the structure of law enforcement institutions such as the police, prosecutors, and courts.¹⁸

¹⁷ Lawrence M. Friedman, 1984, *American Law: An invaluable guide to the many faces of the law, and how it affects our daily lives*, New York: WW Norton & Company, pp. 5-6

¹⁸ Achmad Ali, 2002, *Unveiling the Veil of Law (A Philosophical and Sociological Study)*, Gunung Agung Shop, Jakarta, p. 8

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In Indonesian law and in Islamic law, there are two mechanisms for resolving cases, namely through litigation (in court) and non-litigation (outside the court). Many people assume that the only appropriate institution for resolving cases is through litigation. However, many people also assume that resolving cases does not always go through law and the court.

Settlement of criminal cases through non-litigation mechanisms or outside the court, is often considered more satisfying because it is more beneficial to both parties, both the victim and the perpetrator. In criminal cases, penal mediation as one of the mechanisms outside the court that is currently being practiced and has received a good response from the community. The method of resolving cases through peace efforts between the victim and the perpetrator has proven effective in resolving cases without leaving wounds and ongoing grudges. This method is now called case resolution through restorative justice. Restorative justice is an alternative resolution of criminal cases that focuses on punishment which is changed into a process of dialogue and mediation involving the perpetrator, victim, the perpetrator's family and the victim, and other related parties to jointly create an agreement on a fair and balanced settlement of cases for the victim and the perpetrator by prioritizing restoration to its original state. Settlement of cases outside the court is carried out on a voluntary basis from each party to the case involving a third party (hakam). The hakam functions as a mediator for the parties to the case. The position of the hakam is equivalent to a mediator. The amicable way of resolving things is a tradition that has long been rooted in civil society.

3. Weaknesses of Legal Culture Aspects

Legal culture is the atmosphere of social thought and social power that determines how law is used, avoided, or abused. Legal culture is closely related to public legal awareness. The higher the public legal awareness, the better the legal culture will be created and can change the public mindset about the law so far. Simply put, the level of public compliance with the law is one indicator of the functioning of the law.

The relationship between the three elements of the legal system itself is as powerless as mechanical work. The structure is likened to a machine, the substance is what is done and produced by the machine, while the legal culture is whatever or whoever decides to turn the machine on and off, and decides how the machine is used. Associated with the legal system in Indonesia, Friedman's theory can be used as a benchmark in measuring the law enforcement process in Indonesia. The police are part of the structure together with the prosecutor's office, judges, advocates, and correctional institutions. The interaction between these components of law enforcement determines the strength of the legal structure. However, the upholding of the law is not only determined by the strength of the structure, but is also related to the legal culture in society.

Regarding legal culture, Friedman argues, "The third component of the legal system is legal culture. By this we mean people's attitudes toward law and their belief in the legal system ... in other words, is the climate of social thought and social force that determines how law is used, avoided, or abused". Legal culture concerns the legal culture which is the attitude of humans (including the legal culture of law enforcement officers) towards the law and the legal system. No matter how good the legal structure is to implement the established legal

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rules and no matter how good the quality of the legal substance is made without the support of legal culture by the people involved in the system and society, law enforcement will not run effectively.

Law as a tool to change society or social engineering is nothing more than ideas that the law wants to realize. To ensure the achievement of the function of law as engineering society towards a better direction, it is not only the availability of law in the sense of rules or regulations that is needed, but also the guarantee of the realization of the legal rules into legal practice, or in other words, the guarantee of good law enforcement. So the working of the law is not only a function of its legislation, but also the activities of the implementing bureaucracy.¹⁹

In line with or in agreement with M. Friedman, Sajtipto Rahardjo said that speakLegal issues are basically inseparable from the principles of the legal paradigm which consist of legal fundamentals and legal systems. Some of the legal fundamentals include legislation, enforcement, and justice, while the legal system includes the substance, structure, and culture of law. All of these greatly influence the effectiveness of the performance of a law. From these definitions, we can interpret that the functioning of a law is a sign that the law has achieved the purpose of the law, namely trying to maintain and protect society in social interaction. The level of legal effectiveness is also determined by how high the level of compliance of citizens with the legal rules that have been made.

According to Achmad Ali, if a legal rule can be obeyed by most of the targets of its obedience, then it can be interpreted that the legal rule is effective. However, even though a rule which is obeyed can be said to be effective, the degree of effectiveness still depends on the interests of obeying it. If the community's obedience to a rule of law is due to interests that are of a compliance nature (fear of sanctions), then the degree of obedience is considered very low. It is different when obedience is based on interests that are of an internalization nature, namely obedience because the rule of law really matches the intrinsic values that are adhered to, then this degree of obedience is the highest degree of obedience.

Solution to Weakness

The solution to the weakness of the legal substance aspect is that detailed and clear rules are needed that can be socialized to the community in order to provide knowledge to the community to realize the principle of legal fiction in the midst of the legal community, while the solution to the weakness of the legal structure aspect is the need to improve the quality of personnel by providing further education to law enforcers in handling restorative justice cases by improving the quality of personnel, it will also improve the ability of members, especially restorative justice cases. The solution to the weakness of the legal culture aspect is that the government is advised to re-socialize the application of Restorative Justice as an initial step that should be taken in implementing law enforcement in the midst of society.

¹⁹ Achmad Ali, 2002, *Unveiling the Veil of Law (A Philosophical and Sociological Study)*, Gunung Agung Shop, Jakarta, p.97

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The weakness of the legal culture of the application of Restorative Justice is that not all people are then aware of the concept of Restorative Justice as a replacement for the general criminal system.

4. Conclusion

1. The implementation of restorative justice for theft crimes has begun to be maximized since the issuance of the Circular Letter of the Chief of Police Number SE/2/II/2021 on February 19, 2021 and the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice issued on August 20, 2021. The settlement of theft crimes using a restorative approach begins with the case identification stage. At the case identification stage, a case will be reviewed regarding the material requirements that must be met so that the case can be resolved through restorative justice. The next stage is the application submission stage, namely submitting a letter of application along with an attachment of a peace statement addressed to the Chief of Police Sector. Furthermore, the mediation stage is the stage that brings together the parties to mediate and the perpetrator will be urged to apologize and complete his/her responsibility for the case. And the last stage is the stage after mediation, police officers will make a report on the results of the mediation implementation and record it in the restorative justice register book for problem solving and termination of minor crime investigations. 2. The application of restorative justice as an alternative to resolving petty theft cases still has several obstacles or weaknesses. The weaknesses in the legal substance aspect in terms of law and legislation, second, involve the perpetrator and victim, and third, involve public legal awareness. In this case, the legal constraints faced are the time limit stipulated in Article 9 paragraph (5) of the Prosecutor's Regulation No. 15 of 2020, which stipulates a grace period of 14 days from the submission of the file. Meanwhile, the process of implementing Restorative Justice takes quite a long time. The weakness in the legal structure aspect is the lack of understanding of law enforcement officers regarding the implementation of resolving theft crimes with restorative justice. The weakness of the legal culture of implementing Restorative Justice is that not all people are aware of the concept of Restorative Justice as a replacement for the general criminal system. 3. The solution to the weakness of the legal substance aspect is that it is necessary to review the regulations governing the time limit in the Prosecutor's Regulation No. 15 of 2020, with the aim of adding time so that the resolution of cases is not rushed. In addition, it is hoped that the Prosecutor's Office can organize a socialization program to the community regarding the Restorative Justice system, especially in cases of minor crimes, so that the community can understand the essence of the system, while the solution to the weakness of the legal structure aspect is the need to improve the quality of personnel by providing further education to law enforcers in handling restorative justice cases by improving the quality of personnel, it will also improve the abilities of members, especially restorative justice cases. The solution to the weakness of the legal culture aspect is that the government is advised to re-socialize the application of Restorative Justice as an initial step that should be taken in implementing law enforcement in the community.

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