

## **Application of Restorative Justice in The Criminal Act of Illegal Retail Buying and Selling of Fuel (BBM) (Case Study in The District Prosecutor's Office of Mojokerto Regency)**

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**Abstract.** *Legal retail fuel sales are an event that is often encountered in society, but many people do not have permission from the authorities in the activity of buying and selling Pertalite fuel so that people will be subject to the Oil and Gas Law. This thesis aims to study and analyze: First, How is the Implementation of Restorative Justice in the Criminal Act of Illegal Retail Fuel Sales (Case Study at the Mojokerto District Attorney's Office), Second, what are the obstacles and solutions in the Implementation of Restorative Justice in the Criminal Act of Illegal Retail Fuel Sales, Third, how is the implementation of Restorative Justice against the Criminal Act of Illegal Retail Fuel Sales in the future. The approach method used in this study is a sociological legal approach, the research specifications used are descriptive normative, primary and secondary data sources and using qualitative analysis. This writing is analyzed with the theory of justice, restorative justice, and the legal system. Based on the research results, it can be concluded: (1) the application of Restorative Justice in the Criminal Act of Retail Sale and Purchase of Fuel Oil (BBM) at the Mojokerto District Attorney's Office is not only based on normative rules but also considers the level of reprehensibility, social and economic conditions, and losses by prioritizing humanistic law enforcement, (2) the obstacles in the application of RJ for retail sale and purchase of fuel oil are the rules that limit a case that can be RJ, socialization regarding the rules for the sale and purchase of fuel oil has not been implemented widely, there is still subjectivity in determining whether a case can be RJ or not, the solution is to align views and use conscience in implementing restorative justice, conduct socialization regarding the sale and purchase of fuel oil in retail so that there is no more ignorance of the law in society, review regulation 15 of 2020 concerning termination based on restorative justice regarding the requirements for restorative justice, (3) the application of Restorative Justice to the Criminal Act of Illegal Retail Sale and Purchase of Fuel Oil (BBM) in the future, namely the termination of prosecution based on restorative justice in the Attorney General's Office of the Republic of Indonesia is an effort to reform the national legal system which has so far only adhered to the positivist paradigm and as Ultimum remedium which means "last resort" or "last resort".*

**Keywords:** *BBM; Criminal Acts; Oil and Natural Gas; Restorative Justice.*

## 1. Introduction

The Republic of Indonesia is a country of law as regulated in Article 1 paragraph (3) of the 1945 Constitution. Likewise, the law will continue to follow the continuity of life in society in order to realize public order and security in it. The law is basically regulatory, coercive and protective. However, the presence of the law itself is a series that is applied by and for the sake of society so that society can live in peace without any threat to themselves. The law cannot be considered law if it is never applied. The application of the law always involves humans and their behavior. The police are given the responsibility to handle violations of the law, while the prosecutor's office is formed to prepare the examination process in court. In Indonesia, there are still many individuals who violate existing laws or regulations. Even though these regulations have been agreed upon and written, violations still occur

Criminal law is part of the law in force in Indonesia, where criminal law consists of norms containing obligations and prohibitions that include acts that may be done and acts that may not be done accompanied by certain sanctions contained in the criminal code or laws. A crime is a violation of norms or regulations that have been set by the government or an act that violates the Criminal Code.

Oil and gas crimes in the context of criminal law refer to violations involving the illegal exploitation, distribution, or utilization of these energy resources in violation of applicable regulations. In criminal law, acts such as oil theft, fraud in the allocation of exploration permits, and fuel smuggling are considered criminal acts that can be subject to legal sanctions in the form of imprisonment or fines. In addition, violations of environmental regulations governing the management of oil and gas can also be punished under the provisions of environmental criminal law. Crimes in this sector not only harm the state financially, but can also have a negative impact on society and the environment, so strict law enforcement is needed to provide a deterrent effect and ensure that natural resources are managed legally and sustainably.

We often find that many people still sell Pertalite gasoline, especially on the side of the road such as Pertamina, or grocery stores. That such activities must be followed by a permit from the authorities to be able to establish a gasoline sales business independently. Therefore, people who want to sell gasoline must have a business permit from the authorities so as not to be caught in the law. The regulation governing the determination of gasoline is Article 40 number 9 of the Republic of Indonesia Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas which reads "any person who misuses the transportation and/or Trade of subsidized Fuel Oil, gas fuel, and/or liquefied petroleum gas and/or the provision and distribution of which is assigned by the Government shall be subject to a maximum imprisonment of 6 (six) years and a maximum fine of IDR 60,000,000,000 (sixty billion rupiah)".

Settlement of cases using litigation channels in practice does not always run according to what is expected and aspired by the Indonesian people. because the settlement of cases using litigation channels in the current traditional criminal justice system actually creates

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new problems, for example, the pattern of punishment is still retaliatory, causes a backlog of cases, does not pay attention to the rights of victims, does not comply with the principles of simple justice, the process is long, complicated and expensive, the settlement is legalistic and rigid, does not restore the impact of crime, does not reflect justice for society and so on. Whereas the law is made in essence to provide justice and benefits for humans which are reflected in the values of Pancasila.<sup>1</sup>

Seeing various phenomena, in the latest developments a new concept has emerged, namely the concept of restorative justice. The concept or approach of restorative justice is considered to be able to overcome various problems in the traditional criminal justice system as mentioned above. This study will discuss the application of restorative justice in the criminal justice system in Indonesia. This study is a normative legal research that is descriptive analytical in nature. The approaches used are the legislative approach, the conceptual approach and the legal principles approach.

*Restorative justice* or often translated as restorative justice, is a model of approach that emerged in the 1970s in an effort to resolve criminal cases. Different from the approach used in the conventional criminal justice system, this approach emphasizes the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. Despite the fact that this approach is still debated theoretically, this view is in fact developing and greatly influencing legal policies and practices in various countries.

In this era of modernization, there are many crimes among Indonesian society that end up in the courts, where society tends to use the courts as an effort to resolve a case that they think conceptually and theoretically will create justice, but in reality and fact, this is actually not easy to achieve because of its nature which tends to be a win-lose solution, with this reality, resolving a case through the courts which is only a win-lose solution in general often causes a feeling of "unpleasant or disappointed", holding grudges, feeling dissatisfied, feeling unfair and even worse, intending to take revenge. The feeling of unpleasantness or disappointment that is deeply embedded in the mind of the losing party will try to seek "justice" at a further level of justice such as the high court, the Supreme Court and even to the Constitutional Court. This certainly causes a backlog of cases flowing through the courts which can hamper the justice system, especially in Indonesia. From this phenomenon, it is true what Joni Emirzon stated in his book entitled *Alternative Dispute Resolution Outside the Court*, that this can generally be categorized as one of the weaknesses of a litigation institution that cannot be avoided even though it has become a provision.<sup>2</sup>

As in the Mojokerto district area, the case of Hariyanto who committed an oil and gas crime, namely selling Peralite gasoline in front of his house with a profit of only IDR 1,000 (one thousand rupiah) to IDR 2,000 (two thousand rupiah). The Mojokerto District Attorney's Office attempted to file the case so that the prosecution could be terminated based on Restorative Justice. The regulation governing Restorative Justice is the Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on

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<sup>1</sup>Dessi Perdani Yuris Puspita Sari, Application of the Principles of Restorative Justice, Journal of the Law of General Soedirman University, pp. 105-119.

<sup>2</sup>Aertsen, Ivo, Daniela Bolívar, Vicky De Mesmaecker, Nathalie Lauwers. 2011.

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Restorative Justice, Article 4 paragraph (2) Termination of prosecution based on Restorative Justice as referred to in paragraph (1) is carried out by considering:

- a. Subjects, objects, categories and threats of criminal acts;
- b. The background to the occurrence of the crime;
- c. Level of depravity;
- d. Losses or consequences arising from criminal acts;
- e. *Cost and benefit* case handling;
- f. Restoration back to its original state; And
- g. There is peace between the victim and the suspect.

Perja Number 15 of 2020 Article 1 explains that Restorative Justice is the settlement of criminal cases involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation. The requirements for terminating the prosecution of Restorative Justice Article 5 Criminal cases can be closed by law and their prosecution can be stopped based on Restorative Justice if the following requirements are met:

- a. the suspect is committing a crime for the first time;
- b. criminal acts are only punishable by a fine or are punishable by imprisonment of no more than 5 (five) years; and
- c. the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000 (two million five hundred thousand rupiah).

The case of the Oil and Gas crime in the name of Hariyanto will be submitted for Restorative Justice by the Mojokerto District Attorney's Office, but based on the RJ requirements above, the criminal threat contained in the Oil and Gas Crime Law is a maximum of 6 (six) years in prison and whether the crime of buying and selling Peralite type fuel can meet the requirements for termination of prosecution based on RJ justice. Therefore, the author will discuss the issue of the problem in this thesis with the title "APPLICATION OF RESTORATIVE JUSTICE IN THE CRIMINAL ACT OF ILLEGAL RETAIL BUYING AND SELLING OF FUEL (BBM) (CASE STUDY AT THE DISTRICT PROSECUTOR'S OFFICE OF MOJOKERTO DISTRICT).

## **2. Research Methods**

The approach method used in this study is the sociological legal approach. The sociological legal approach is to identify and conceptualize law as a real and functional social institution in a real life system. The sociological legal approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object or going directly to the field.<sup>3</sup>

## **3. Results and Discussion**

### **3.1. Implementation of Restorative Justice in the Criminal Act of Illegal Retail Sale of Fuel Oil (BBM) (Case Study at the Mojokerto District Attorney's Office)**

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<sup>3</sup>Soerjono Soekanto, Introduction to Legal Research, Jakarta: Publisher University of Indonesia Press, 2005, p. 51.

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Restorative justice is an alternative approach in the criminal justice system that emphasizes restoring relationships between perpetrators, victims, and society. Rather than simply punishing the perpetrator, this approach seeks to repair the social damage caused by the crime. In this context, Yudi Latif's thoughts on justice as social harmony become very relevant. According to Latif, justice is not just an even distribution of rights and obligations, but rather placing everything proportionally in order to create humane and civilized social harmony.<sup>4</sup>

Yudi Latif sees justice as part of the nation's culture rooted in the values of mutual cooperation, deliberation, and a sense of social justice. He emphasizes that true justice must be rooted in the collective ethics of society and not merely formal legal norms.<sup>5</sup>In that spirit, restorative justice is a manifestation of this principle because it prioritizes dialogue, reconciliation, and healing for the social wounds that have occurred. Resolving cases in this way opens up space for the parties to share their experiences and find solutions together, rather than just relying on the judge's decision.

In addition, Latif also highlighted the transformative dimension of justice. According to him, justice must be able to transform social inequality towards a more just and humane order.<sup>6</sup>Restorative justice is in line with this because it gives perpetrators the opportunity to take responsibility and make amends, and empowers victims to gain real, not just symbolic, reparations. Thus, restorative justice not only resolves conflict, but also rebuilds healthier social structures.

The implementation of restorative justice in Indonesia is becoming increasingly important amidst the justice crisis and overcapacity of correctional institutions. Many minor criminal cases are actually better resolved through a restorative approach, as it can prevent unnecessary criminalization and reduce the burden on the justice system. This is in line with Latif's vision that justice must serve the broader interests of humanity, not simply pursue rigid law enforcement.<sup>7</sup>

The restorative justice approach is not only practically relevant, but also has a strong philosophical foundation in the culture and thinking of national justice. Yudi Latif's thinking provides a moral and cultural framework that supports the development of a justice system that is more oriented towards healing, togetherness, and social transformation. In the context of the Pancasila state, restorative justice can be a concrete manifestation of the second and fifth principles: just and civilized humanity and social justice for all Indonesian people.<sup>8</sup>

Lawrence M. Friedman in his theory of the legal system explains that law consists of three main elements: structure, substance, and legal culture. All three must work harmoniously so

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<sup>4</sup>Yudi Latif, *The Perfect State: Historicity, Rationality, and Actuality of Pancasila* (Jakarta: Gramedia Pustaka Utama, 2011), p. 304

<sup>5</sup>*Ibid.*, p. 306

<sup>6</sup>Yudi Latif, "Public Ethics and Democratic Civility," *Journal of Social and Political Sciences*, Vol. 15, No. 3 (2012), p. 243

<sup>7</sup>Yudi Latif, *Muslim Intelligentsia and Power: Genealogy of Indonesian Muslim Intelligentsia in the 20th Century* (Bandung: Mizan, 2005), p. 415.

<sup>8</sup>Yudi Latif, *The Fountain of Exemplary Role Model: Pancasila in Action* (Jakarta: Kompas, 2014), p. 89



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that the legal system can function effectively and responsively to the needs of society.<sup>9</sup>In the context of handling the crime of illegal retail fuel sales in Indonesia, Friedman's theory can be used as a basis for understanding how the legal system responds to violations of the law by small communities who sell fuel for survival, not for large profits or organized crime.<sup>10</sup>

The legal structure in Indonesia includes institutions such as the police, the prosecutor's office, and the courts. Within the framework of restorative justice, these structures play a role not only as law enforcers, but also as facilitators of the restoration of social relations between perpetrators and the affected community. According to Friedman, legal substance includes laws and regulations, policies, and legal principles. In the case of illegal retail fuel, a rigid and formalistic substantive approach often does not reflect substantive justice.

Therefore, the application of restorative justice encourages the adjustment of legal substance to be more contextual and oriented towards social justice.<sup>11</sup>Legal culture, which is the third element in Friedman's theory, refers to the values, attitudes, and ways in which society perceives the law. In many areas in Indonesia, retail fuel sales are considered a normal practice that helps society, not a crime. Therefore, the restorative justice approach is more in line with the local legal culture that emphasizes peaceful resolution and deliberation.<sup>12</sup>*Restorative justice* acts as a bridge between the formal legal system and the legal culture of society. In the context of Friedman's theory, restorative justice strengthens the legal culture dimension by involving the community in the legal settlement process, which has so far been dominated by formal institutions.<sup>13</sup>

Friedman emphasized that law must transform dynamically following social change. With increasing awareness of more humanistic and inclusive justice, the application of restorative justice is evidence that the Indonesian legal system is trying to adapt to the dynamics of society and contemporary justice values.<sup>14</sup>In practice, the Indonesian legal structure has begun to accommodate restorative justice, as reflected in the prosecutor's guidelines and the Supreme Court's regulations on the resolution of minor cases. This shows that structural elements in the legal system are not static, but can be adapted to reflect the values of justice that live in society.

Handling illegal retail fuel cases through a retributive approach can create conflict between legal substance and community culture. Therefore, restorative justice offers a solution that harmonizes the three elements of Friedman's legal system—with a responsive structure, fair substance, and a living legal culture.<sup>15</sup>In conclusion, Friedman's legal system theory is very relevant to explain why and how restorative justice can be applied in cases of illegal retail

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<sup>9</sup>Lawrence M. Friedman, *\*The Legal System: A Social Science Perspective\**, Russell Sage Foundation, 1975.

<sup>10</sup>Siti Rahmawati, "Law Enforcement against Retail Fuel Sellers in Remote Areas," *\*Journal of Criminal Law\**, Vol. 12, No. 1, 2023.

<sup>11</sup>Lilik Mulyadi, *\*Restorative Justice Model in the Criminal Justice System in Indonesia\**, Prenada Media, 2020

<sup>12</sup>Soetandyo Wignjosoebroto, *\*Law: Paradigms, Methods and Dynamics of the Problems\**, Elsam, 2002.

<sup>13</sup>Tony Marshall, "Restorative justice: An Overview," *\*Home Office Research Development and Statistics Directorate\**, 1999.

<sup>14</sup>Lawrence M. Friedman, *\*American Law: An Introduction\**, WW Norton & Company, 1984.

<sup>15</sup>National Legal Development Agency, "Restorative Justice in the Indonesian Justice System," 2021.

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fuel sales in Indonesia. When the three legal components work in harmony, the legal system will be able to produce justice that is not only legal-formal, but also social and contextual.<sup>16</sup>

Along with the development of legal dynamics and the complexity of Indonesian society, the Restorative justice approach has become an important alternative in realizing a more humanistic, participatory, and socially just legal system. The Restorative justice approach itself has been applied by law enforcement officers. The Republic of Indonesia Attorney General's Office regulates Restorative Justice in the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The considerations of the Republic of Indonesia Attorney General's Office to be able to terminate prosecution based on restorative justice are in Article 4 paragraph (2) which reads:

"Termination of prosecution based on Restorative Justice as referred to in paragraph (1) is carried out by considering:

- a. Subjects, objects, categories and threats of criminal acts;
- b. The background to the occurrence of the crime;
- c. Level of depravity;
- d. Losses or consequences arising from criminal acts;
- e. Cost and benefits of handling cases;
- f. Restoration back to its original state; And
- g. There is peace between the victim and the suspect."<sup>17</sup>

Perja Number 15 of 2020 Article 1 explains that Restorative Justice is the settlement of criminal cases involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation. The requirements for terminating the prosecution of Restorative Justice Article 5 Criminal cases can be closed by law and their prosecution can be stopped based on Restorative Justice if the following requirements are met:

- a. the suspect is committing a crime for the first time;
- b. criminal acts are only punishable by a fine or are punishable by imprisonment of no more than 5 (five) years; and
- c. the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).

We often find that many people still sell Peralite gasoline, especially on the side of the road such as Pertamina, or grocery stores selling retail fuel illegally, such as in the case of Mr. HARIYANTO Bin LUTUNG at the Mojokerto District Attorney's Office who sold Peralite gasoline with a profit of Rp 2,000 per bottle. That such activities must be followed by a permit from the authorities in order to be able to establish an independent gasoline sales

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<sup>16</sup>Rachmad Safa'at, "The Relevance of Friedman's Legal System Theory in Criminal Policy in Indonesia," *Journal of Law & Development*, Vol. 53, No. 3, 2022.

<sup>17</sup>Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

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business. Therefore, people who want to sell gasoline must have a business permit from the authorities so as not to be caught in the law. The regulation governing the determination of gasoline is Article 40 number 9 of the Republic of Indonesia Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of the Republic of Indonesia Law Number 22 of 2001 concerning Oil and Natural Gas which reads "any person who misuses the transportation and/or Trade of subsidized Fuel Oil, gas fuel, and/or liquefied petroleum gas and/or the provision and distribution of which is assigned by the Government shall be subject to a maximum imprisonment of 6 (six) years and a maximum fine of IDR 60,000,000,000 (sixty billion rupiah)".

That in the case of Mr. HARIYANTO Bin LUTUNG who violated Article 40 number 9 of Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas. Based on the requirements for termination of prosecution based on restorative justice in Perja Number 15 of 2020 article 5 as stated above, points letter b and point letter c will be declared not meeting the requirements for termination of Restorative justice prosecution on the grounds of a criminal threat of more than 5 (five) years and a maximum fine of IDR 60,000,000,000.00 (sixty billion rupiah).

The Attorney General's Office of the Republic of Indonesia views and prioritizes humanistic law enforcement, one of which is through Restorative Justice. Although in Article 40 number 9 of Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas explains the maximum criminal threat of 6 (six) years and a maximum fine of IDR 60,000,000,000, -, the Mojokerto Regency District Attorney's Office is still trying to file a case on behalf of Mr. HARIYANTO Bin LUTUNG to be submitted for termination of prosecution based on restorative justice on the grounds that Mr. HARIYANTO Bin LUTUNG is a first-time criminal offense, no malicious intent was found from Mr. HARIYANTO Bin LUTUNG, the suspect is purely unaware of the laws and regulations regarding Oil and Gas according to Law of the Republic of Indonesia Number 06 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law of the Republic of Indonesia Number 02 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas, and the suspect is not involved or related to the illegal circulation / Oil and Gas Mafia and is solely only to meet daily life with the profit of buying and selling Peralite type fuel of IDR 2,000 (two thousand rupiah) per bottle.

Termination of prosecution based on restorative justice in the Attorney General's Office of the Republic of Indonesia is an effort to reform the national legal system which has so far only adhered to the positivism paradigm and as *Ultimum remedium* which means "last resort" or "last resort". In the context of the criminal law system, this means that criminal sanctions must be used as a last resort after other lighter efforts. As in the case of Mr. HARIYANTO Bin LUTUNG at the Mojokerto District Attorney's Office which was successfully approved by the Attorney General's Office of the Republic of Indonesia so that efforts to



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terminate prosecution based on restorative justice can be carried out which is a step forward in the legal system in Indonesia which prioritizes humanistic law enforcement based on restorative justice. Based on the opinion of the figure Jeremy Bentham, he argues that a just action is an action that brings the greatest benefit to the greatest number of people. In this case, law enforcement must aim to create happiness or welfare for society as a whole.

Jeremy Bentham is a leading figure in the utilitarian school, which defines justice as that which produces the greatest happiness for the greatest number. In the context of criminal law, this approach emphasizes legal consequences that provide the greatest social benefits, not simply retaliation against the perpetrator of the crime.<sup>18</sup>In cases of retail and illegal fuel trading in Indonesia, the perpetrators often come from low-income families who sell fuel to meet their living needs. An overly repressive approach through formal law enforcement sometimes actually causes wider suffering, both for the perpetrators, their families, and local communities who need access to fuel.<sup>19</sup>

*Restorative justice*, or restorative justice, is a legal approach that aligns with Bentham's utilitarian view because it focuses on reparation rather than retaliation. In this case, the legal system does not simply look at whether the perpetrator is guilty, but considers the extent to which the offense can be resolved in a way that benefits and reduces the suffering of all parties.<sup>20</sup>The restorative justice approach focuses on mediation between the perpetrator, the victim, and the community, with the ultimate goal of restoring social balance and repairing the harm. In the context of illegal fuel trading, this approach could mean educating the perpetrator, bringing them together with authorities, and finding solutions so they can switch to legal businesses.<sup>21</sup>

Referring to Bentham's principles, the restorative justice approach is fairer because it produces outcomes that avoid unnecessary suffering. For example, rather than imprisoning small-time fuel sellers, which would add to the burden on the state and impoverish their families, the restorative approach seeks to encourage behavioral change and create long-term social benefits.<sup>22</sup>The application of criminal law that is too rigid to illegal retail fuel sellers can be considered contrary to the principle of utilitarian justice. Laws that do not take into account the socio-economic conditions of the perpetrators can create substantive injustice, which ultimately reduces public trust in the legal system.<sup>23</sup>In practice, law enforcement agencies such as prosecutors and police in Indonesia have begun to apply restorative justice in minor cases, including violations committed by the poor. This shows a

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<sup>18</sup>Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789)

<sup>19</sup>Siti Rahmawati, "Law Enforcement against Retail Fuel Sellers in Remote Areas," *Journal of Criminal Law*, Vol. 12, No. 1, 2023.

<sup>20</sup>Tony Marshall, "Restorative justice: An Overview," Home Office Research Development and Statistics Directorate, 1999.

<sup>21</sup>Lilik Mulyadi, *Restorative Justice Model in the Criminal Justice System in Indonesia*, Prenada Media, 2020.

<sup>22</sup>Bentham, *An Introduction to the Principles of Morals and Legislation*, *ibid*.

<sup>23</sup>Yusriyadi, "Implementation of Restorative Justice in Handling Minor Crimes," *Jurnal Yuridis*, Vol. 7, No. 2, 2022.

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shift from retributive justice to a more pragmatic and humanist justice, in accordance with the spirit of Bentham's thinking.<sup>24</sup>

Jeremy Bentham himself argued that law should be designed to avoid suffering and maximize happiness. Therefore, if an unlawful act—such as small-scale illegal fuel sales—does not cause major losses and is actually needed by people in remote areas, then severe punishment for small perpetrators can be considered inconsistent with utilitarian justice.<sup>25</sup> In this framework, restorative justice becomes a relevant alternative, especially in the context of Indonesian criminal law which seeks to bring the law closer to the sense of justice of society. Restorative justice allows perpetrators to correct their mistakes without having to enter the correctional system which could actually damage their future.<sup>26</sup>

Thus, there is a strong connection between Jeremy Bentham's theory of justice and the application of restorative justice in handling illegal fuel trading cases in Indonesia. Both emphasize that justice does not only lie in punishment, but in the ability of the law to create the greatest possible social benefits for the wider community.<sup>27</sup>

### **3.2. Obstacles and Solutions in the Implementation of Restorative Justice in the Criminal Act of Illegal Retail Sale of Fuel Oil (BBM)**

In an interview with ARI BUDIARTI, SH, as the Public Prosecutor in handling the case of Mr. HARIYANTO Bin LUTUNG at the Mojokerto District Attorney's Office as a respondent, he explained the obstacles faced in implementing Restorative Justice in the crime of illegal retail sale of fuel oil (BBM). among others:

#### **1) Legally**

In Perja Number 15 of 2020 concerning the termination of prosecution based on restorative justice in article 5 explains that criminal acts are only threatened with a fine or are threatened with imprisonment of no more than 5 (five) years, while in the crime of selling fuel in retail without a permit, Article 40 number 9 of Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas explains the maximum criminal threat of 6 (six) years and a maximum fine of IDR 60,000,000,000. So the obstacle is that normatively the crime of buying and selling fuel, especially that carried out by Mr. HARIYANTO Bin LUTUNG does not fulfill the termination of prosecution based on restorative justice because the maximum criminal threat is 6 (six) years, unless the prosecutor's regulations can eliminate limitations regarding criminal threats and pay attention to other aspects of the level of reprehensibility, mens rea and other aspects, because if viewed normatively only it will cause ambiguity for Law Enforcers, especially in the Indonesian Attorney General's Office to determine whether a case can be RJ or not, as in the case of Mr. HARIYANTO Bin LUTUNG who sells Peralite type fuel in a

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<sup>24</sup>Attorney General's Office of the Republic of Indonesia, Guidelines for the Implementation of Restorative Justice, 2021

<sup>25</sup>Jeremy Bentham, The Theory of Legislation, (trans. Etienne Dumont), 1830.

<sup>26</sup>National Legal Development Agency, "Restorative Justice in the Indonesian Justice System," 2021.

<sup>27</sup>Rachmad Safa'at, "The Relevance of Utilitarianism in Indonesian Criminal Policy," Journal of Law & Development, 2022.

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grocery store with a profit of Rp. 2,000 (two thousand rupiah) per bottle and is caught in Article 40 number 9 of Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas, so that it seems as if the sale and purchase of Pertalite type fuel carried out by Mr. HARIYANTO is a petroleum crime with high losses due to the imposition of the article, but in fact, Mr. HARIYANTO Bin LUTUNG only gets a profit of Rp. 2,000 per liter and is a poor person so he sells fuel for additional income only.

## 2) In terms of socialization of the Criminal Act of Retail BBM Sale and Purchase

Indonesia is a country of law, the principle of *ubi societas ibi ius* is a legal principle that states that where there is society, there is law. This principle means that the existence of law always follows the existence of society because the law functions to regulate and maintain social life. This principle also emphasizes that law is a product of society and is created to meet the needs and values that exist in that society. In the case of Mr. HARIYANTO Bin LUTUNG who sold retail Pertalite fuel without permission from the authorities, the reason was that the suspect did not know the existing rules so that this could not be justified. Therefore, the Department of Industry and Trade and Law Enforcement Officers need to build synergy in the socialization of the legalization of the sale and purchase of fuel in the community to avoid ignorance of the law in the community itself.

## 3) The obstacles faced by the Prosecutor's Office itself are as follows:

Lack of alignment in analyzing a case can be terminated based on Restorative or not, there is still often subjectivity in reviewing a crime to be carried out RJ. The prosecutor's office needs to align thinking based on regulations and also conscience without ignoring the rules themselves.

The solutions to overcome the obstacles to implementing RJ in the crime of retail fuel sales include:

- 1) Aligning views and using conscience in implementing restorative justice;
- 2) Conducting outreach regarding retail fuel sales so that there is no longer any legal ignorance in society;
- 3) Updating Perja 15 of 2020 concerning termination based on restorative justice regarding the limitations of restorative justice, this is because, as in the case of HARIYANTO, who only received a profit of IDR 2,000, - but if you look at Article 5 of Perja 15 of 2020, the case cannot be terminated based on restorative justice.

To answer these problems, a theory of justice is needed. Based on Pancasila which is the foundation of the Indonesian state in the fifth principle, namely social justice for all Indonesian people, then with the presence of a breakthrough in the legal system, namely the termination of prosecution based on restorative justice, it becomes a solution in resolving criminal cases by involving the perpetrator, victim, the perpetrator's/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not retaliation. The application of restorative justice must look at

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several aspects starting from the aspect of reprehensibility, the aspect of mens rea, the social aspect of the suspect, the economic aspect of the suspect, and the humanist aspect.

The prosecutor's office also considered the economic context of Mr. HARIYANTO bin LUTUNG and the social context, namely behaving well as the opinion of community leaders in the village of Mr. HARIYANTO Bin LUTUNG, namely the opinion of the Hamlet Head. Based on the application of the termination of prosecution based on restorative justice, it is a solution to be able to prioritize laws that are centered on humans and humanity, contextuality which means that the law is not neutral but must be born from the social, cultural, economic and historical context of the nation, morality and social ethics means that the law must bring values of goodness and justice, not just formal norms.

### **Implementation of Restorative Justice for the Criminal Act of Illegal Retail Sale of Fuel Oil (BBM) in the future**

*Restorative justice*(restorative justice) is an alternative approach in the criminal justice system that focuses on restoring relationships between perpetrators, victims, and the community. In the context of the crime of illegal retail fuel sales, the application of Restorative justice can be a solution to resolve cases in a more humane, efficient, and substantive justice-oriented manner, especially if the perpetrators are small communities who survive by selling retail fuel.

The crime of illegal retail fuel sales generally involves perpetrators from low-income groups who do not have access to official permits, but still sell fuel to meet their living needs. The repressive approach through imprisonment often worsens their social and economic conditions. Therefore, Restorative justice opens up a space for a wiser resolution by considering the conditions of the perpetrators and the social impacts caused.

Within the framework of Restorative justice, law enforcers can facilitate dialogue between perpetrators, victims (for example, the state as the party harmed by the loss of potential income), and the community. The goal is not merely to punish, but to find a way out that repairs social damage, educates perpetrators, and provides an opportunity to take responsibility without having to go to prison. The implementation of Restorative justice in the future can be directed through penal mediation, where the perpetrator and the injured party reach an agreement on the form of accountability. For example, the perpetrator is willing to stop the practice of illegal fuel trading, take part in legal business training, or compensate for losses in an agreed form, and be supervised by village officials or Bhabinkamtibmas.

This step needs to be supported by clear regulations, considering that oil and gas crimes are included in formal crimes with quite high penalties. Law enforcement officers must have the wisdom to assess the proportionality of the case. For small perpetrators who are not part of a large syndicate and do not cause environmental damage or major losses to the state, Restorative justice can be a viable approach. Restorative justice can also be a tool to build legal awareness in the community. The open dialogue and mediation process provides educational space, both for perpetrators and other citizens, about the importance of business permits, fuel distribution safety, and the legal consequences of illegal activities. This is more effective than simply using prison sentences that do not provide comprehensive learning. The implementation of this model certainly faces challenges. One

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of them is resistance from law enforcement officers or parties who believe that this kind of crime must still be dealt with firmly. However, through a holistic approach and proof of its effectiveness in reducing recidivism rates and encouraging legal compliance, Restorative justice can be accepted as a long-term solution.

*Restorative justice* in the oil and gas sector, it is also necessary to involve related agencies such as Pertamina, the Trade Service, or the Downstream Oil and Gas Regulatory Agency. They can play a role in directing perpetrators towards business legality, providing easy access to permits, and integrating perpetrators into the legal fuel distribution system. With a good mechanism, the implementation of Restorative justice can reduce the burden on courts and correctional institutions which are currently full of minor cases. Furthermore, this can create a more humane and inclusive legal system, and create solutions that touch on the roots of the socio-economic problems behind the crime. In the future, the implementation of Restorative justice for the crime of illegal retail fuel sales needs to be accompanied by empirical studies and pilot projects in areas prone to violations. That way, a fair, participatory case resolution model will be created that is able to maintain legal order while maintaining social harmony in society. One important aspect that must be considered in the implementation of restorative justice is the validation of the perpetrator's intentions and conditions. In many cases, illegal fuel sellers do not intend to harm the state, but rather to meet their daily needs. Therefore, the restorative process must begin with a careful assessment of the perpetrator's background, including socio-economic conditions, education level, and involvement in larger illegal distribution networks.

In the implementation process, this approach can also be combined with community economic empowerment programs. For example, after resolving a case through restorative justice, the perpetrator can be directed to take part in entrepreneurship training or facilitated to gain legal access to business, including assistance with permits and business capital. Thus, this legal approach not only resolves the case, but also prevents similar violations from occurring in the future. The application of restorative justice to violations in the energy sector such as illegal fuel can also be a strategic step for the state in encouraging distributive justice. In many remote areas, access to gas stations or official fuel is still limited, so residents are forced to buy or sell fuel at retail from unofficial sources. The restorative approach opens up space for a comprehensive evaluation of energy distribution and the role of the state in providing for the basic needs of its citizens.

In order for the implementation of restorative justice to run optimally, there needs to be special training for law enforcers—such as police, prosecutors, and judges—on the principles, mechanisms, and limits of the application of this approach. The authority to stop cases based on restorative justice must be carried out carefully and transparently so as not to be misused or cause legal inequality. Finally, the restorative justice approach to illegal retail fuel sales cases reflects the evolution of a legal system that is more contextual, humane, and pro-social justice. Amid the complexity of the law and the economic challenges of the common people, this approach is present as a bridge between law enforcement and humanitarian protection. If implemented properly, restorative justice not only resolves legal conflicts, but also builds a more just and legally aware society.

The success of implementing restorative justice in cases of illegal retail fuel trading is highly dependent on the active involvement of the community. The community is not only the



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party affected, but also part of the solution. The role of community leaders, village officials, and traditional institutions in the mediation or deliberation process is very important to ensure that the results of the agreement are fair, adhered to, and provide a moral deterrent effect, not just from the aspect of punishment. In addition, there needs to be a clear distinction between small and large perpetrators in oil and gas crimes. Restorative justice is not suitable for corporate perpetrators or large fuel smuggling networks because the nature of the crime is systematic, organized, and has a major impact on the state. Therefore, restorative justice must be positioned as a selective, targeted legal alternative that does not open up loopholes for impunity.

To encourage the legitimacy of the application of restorative justice in this area, the government can prepare technical guidelines that regulate case criteria, mediation procedures, the role of institutions, and monitoring and evaluation mechanisms. These guidelines can be issued by the Attorney General's Office or the Ministry of Law and Human Rights as a legal basis so that their application is not subjective or discriminatory. In addition to the legal side, this approach must also be integrated with national energy policies. If access to official fuel is still difficult to reach in remote areas, then residents will continue to be encouraged to seek alternative, illegal methods. Therefore, the application of restorative justice must be supported by improvements to the energy distribution system, the construction of mini gas stations, or other affirmative policies that favor remote communities. With a multidisciplinary and collaborative approach, restorative justice is not only an alternative path in handling the law, but also an instrument of social transformation. In the context of illegal retail fuel trading, it opens up opportunities for more humane legal reform, prioritizing the balance between order and justice, and making the law a tool for fostering, not just punishing.

#### **4. Conclusion**

1. Implementation of Restorative Justice in the Criminal Act of Illegal Retail Sale and Purchase of Fuel Oil (BBM) at the Mojokerto District Attorney's Office in the case of Mr. HARIYANTO Bin LUTUNG, the Attorney General's Office of the Republic of Indonesia views and prioritizes humanistic law enforcement, one of which is through Restorative Justice. Although in Article 40 number 9 of Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas explains the maximum criminal threat of 6 (six) years and a maximum fine of IDR 60,000,000,000, -, the Mojokerto District Attorney's Office is still trying to file a case on behalf of Mr. HARIYANTO Bin LUTUNG to be terminated based on restorative justice on the grounds that Mr. HARIYANTO Bin LUTUNG is a first-time criminal, no malicious intent was found from Mr. HARIYANTO Bin LUTUNG, the suspect is purely unaware of the laws and regulations regarding Oil and Gas according to Law of the Republic of Indonesia Number 06 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law of the Republic of Indonesia Number 02 of 2022 concerning Job Creation into Law on Amendments to the Provisions of Article 55 of Law of the Republic of Indonesia Number 22 of 2001 concerning Oil and Natural Gas, and the suspect is not involved or related to the illegal circulation / Oil and Gas Mafia and is solely to meet daily life with the profit of buying and selling Peralite

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type fuel of IDR 2,000 (two thousand rupiah) per bottle. 2. Obstacles and Solutions in the Implementation of Restorative Justice in the Crime of Illegal Retail Sale and Purchase of Fuel Oil (BBM) itself, among others, legally in Perja 15 of 2020 still has limitations on cases that can be RJ, for example in article 5, namely the threat of imprisonment must not exceed 5 years, while in the case of Mr. HARIYANTO Bin LUTUNG, he was sentenced to 6 years in prison but Mr. HARIYANTO only got a profit of IDR 2,000 per bottle. So the solution is to eliminate these limitations and/or align humane law enforcement and see the mens rea and the suspect's despicable side. Then the second obstacle is the lack of socialization from the Trade and Industry Office regarding the sale and purchase of BBM in the community, so that comprehensive and broad socialization is needed in the community so that they are not caught in the retail sale and purchase of BBM which is still widely found in the community. 3. The Implementation of Restorative Justice in the Criminal Act of Illegal Retail Sale of Fuel Oil (BBM) at the Mojokerto District Attorney's Office in the future is the Termination of Prosecution based on restorative justice at the Republic of Indonesia Attorney's Office is an effort to reform the national legal system which has so far only adhered to the positivism paradigm and as *Ultimum remedium* which means "last resort" or "last resort". In the context of the criminal law system, this means that criminal sanctions must be used as a last resort after other lighter efforts. As in the case of Mr. HARIYANTO Bin LUTUNG at the Mojokerto District Attorney's Office which was successfully approved by the Attorney General's Office of the Republic of Indonesia so that efforts to terminate prosecution based on restorative justice can be carried out which is a step forward in the legal system in Indonesia which prioritizes humanistic law enforcement based on restorative justice. Based on the opinion of the figure Jeremy Bentham, he argues that a just action is an action that brings the greatest benefit to the greatest number of people. In this case, law enforcement must aim to create happiness or welfare for society as a whole

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