

The Role of the Police in Creating Legal Effectiveness in Facing the Dynamics of the Indonesian Criminal System

Zarma Putra¹⁾ & Gunarto²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: zarmaputra.std@unissula.ac.id

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

Abstract. *There is a need for a paradigm shift in the criminal justice system across all subsystems, including the police, as the primary entry point for criminalization, which is then pursued through criminal justice, or what is known as the gatekeepers of the criminal justice system. The police, whose role is crucial in addressing Indonesia's criminal justice system challenges, need a concrete response to the evaluation of various issues in criminal law enforcement and sentencing. The aims of this research are (1) the nature of the reality of the development of the Indonesian criminal justice system, (2) the role of the Police in realizing legal effectiveness in addressing the problems of Indonesian criminal justice, (3) a formulative concept for the Police in achieving legal effectiveness in the Indonesian criminal justice system. The approach method used in this research is normative juridical. The specifications of this research are analytical descriptive. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The research results and discussion can be concluded: (1) According to the provisions in Article 10 of the Criminal Code, the types of criminal sanctions are divided into several types, including the main penalty consisting of the death penalty, imprisonment, detention, and fines. Then the additional penalties consist of the revocation of certain rights, confiscation of certain items, and the announcement of the judge's decision. (2) The presence of Police Regulation No. 8 of 2021 concerning Restorative Justice provides space for Police members in the Criminal Investigation Unit to resolve cases more quickly and provides normative guidelines for acting to resolve criminal cases using the restorative justice method. In terms of handling cases as determined by Police Regulation No. 8 of 2021, it can be seen that when there is a criminal complaint report where the severity of the case is assessed to be categorized as a light criminal case, that is when restorative justice is attempted. (3) The agenda for legal reform in the process of resolving criminal cases with restorative justice is outlined in the formal source of criminal law, namely the Criminal Procedure Code, as an idea of legal legitimacy for the realization of the legality of the application of restorative justice, which will be more precise and will fulfill legal certainty if accompanied by adequate and comprehensive legal instruments.*

Keywords: *Criminalization Dynamics; Legal Effectiveness; Police.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution, which contains the meaning of all actions and patterns of behavior of citizens which must also be in sync with the norms regulated by the state.¹The concept of a state based on law leads to the goal of creating a democratic life, protecting human rights, and achieving just welfare.²It is the law that determines which actions may or may not be done.

The enforcement of the rule of law serves as the foundation for state administration, including maintaining and protecting the rights of its citizens, a characteristic of a state based on the rule of law. A good law must fulfill at least three basic legal requirements: justice, legal certainty, and legal utility. Written regulations in a law are implemented to ensure legal certainty so that the state does not act arbitrarily. The Criminal Justice System, or Law Enforcement System, is one of the subsystems of state administration in the context of criminal law enforcement. The Criminal Justice System is an interconnected criminal justice subsystem encompassing the Police, Prosecutor's Office, Courts, and Correctional Institutions, with the aim of combating crime.³

Law enforcement activities in the narrow sense in the criminal field involve the role of the Police, Prosecutors, Advocates, and the Judiciary. The Police is a state institution whose main duty is to maintain public security and order, tasked with protecting, serving, and enforcing the law in accordance with the mandate of the 1945 Constitution in Article 30 paragraph (4). The Police is a legal institution and lives in a larger human community that can shape everything the organization does, so the placement of the police institution within a state organization becomes more important, because it will affect the implementation of the tasks and responsibilities assigned, as well as the performance of the police institution. The tasks and roles carried out by the police are not easy amidst current challenges and developments. At a glance, the Police are synonymous with handling various crimes ranging from conventional to modern crimes with a wide scope.⁴

Law Number 2 of 2002 concerning the Republic of Indonesia National Police (hereinafter referred to as the Indonesian National Police Law) in Article 19 paragraph (1) states that in carrying out their duties and authorities, officials of the Republic of Indonesia National Police must always act based on legal norms and respect religious norms, decency, morality, and uphold human rights, and Article 19 paragraph (2) explains that in carrying out the duties and authorities as referred to in paragraph (1), the Republic of Indonesia National Police must prioritize preventive measures.

2. Research Methods

The normative legal approach is an approach based on primary legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research. This

¹Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, Jurnal Daulat Hukum, 3 (1) March 2020, p.185

approach is also known as the literature approach, namely by studying books, laws and regulations, and other documents related to this research.

3. Results and Discussion

3.1. The Reality of the Development of the Indonesian Penal System

In the general Indonesian dictionary, the term system has two meanings, namely a set of elements that are regularly interrelated to form a totality, and can also be interpreted as an orderly arrangement of views, theories, principles and so on or the system can also be interpreted as a "method".⁵

"Sentencing," or the imposition of a sentence by a judge, is said by Sudarto to originate from the term "punishment" in the narrow sense. Furthermore, he stated that "punishment" in this sense has the meaning of "sentence" or "veroordeling."⁶ That the definition of the criminal justice system is not only seen in a narrow/formal sense, the criminal justice system means the authority to impose/impose criminal sanctions according to the law decided by a judge as an authorized official. Materially, the criminal justice system is a chain of legal action processes starting from investigation, prosecution, to a criminal decision handed down by a judge and implemented by a public prosecutor.

Barda Nawawi Arief stated that if the definition of criminalization is explained broadly as a process of imposing a sentence by a judge, then it can be interpreted that the scope of this criminalization system is the entire statutory provisions that regulate how criminal law is implemented clearly so that a person is subject to criminal sanctions. This means that all statutory regulations) regarding formal criminal law, substantive criminal law, and criminal enforcement law can be said to be a unit in the criminalization system.

Determining the law for an event is not only a matter of criminal law, but also of civil law. Therefore, as far as punishment in criminal law is concerned, the term "punishment" must be narrowed down to mean punishment in a criminal case. To refer to punishment in a criminal case, the terms "punishment" or "imposition" of a sentence by a judge can be used.

According to Andi Hamzah, sentencing is the same as imposing a sentence. What kind of punishment will the judge impose on someone who violates those values? How will the punishment be implemented for the convict, and how will the convict be rehabilitated so that

²Masyhadi Irfani and Ira Alia Maerani, Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, Jurnal Daulat Hukum, 2 (1) March 2019, p.80

³Mardjono Reksodipuro, The Indonesian Criminal Justice System: Looking at Crime and Law Enforcement within the Boundaries of Tolerance, Jakarta: Indonesian Faculty of Law, 1993, p.1.

⁴Ismansyah, Criminal Accountability in the Implementation of Police Authority, Journal of Democracy, 7 (2) 2008, p. 137

⁵Surayin, General Dictionary of the Indonesian Language, Yrama Widya, Bandung, 2003, p.565

⁶Muladi and Barda Nawawi Arief, Anthology of Criminal Law Policy. Jakarta: Kencana, 2017, p. 1

they can become useful individuals in a Pancasila society. According to LHC Hulsman, the sentencing system is "the statutory rules to penal sanctions and punishment."⁷

Judges must consider the prosecutor's demands, but they are not bound by them. It is not uncommon to find in concrete cases where judges impose sentences far lower or higher than those demanded by the prosecutor. However, it is also not uncommon for judges to agree or conform to the prosecutor's demands. A person cannot be subject to criminal sanctions beyond those stipulated in the law. Therefore, when imposing a sentence, judges are bound by the types of criminal sanctions stipulated in the law. This is the position of the Supreme Court of the Republic of Indonesia, which expressly stipulates that adding other types of criminal sanctions to those stipulated in Article 10 of the Criminal Code is prohibited.

Historically, the Indonesian people have undergone a very long journey to reach this point. Over several periods, the Indonesian people experienced colonial rule by various foreign powers, including the Dutch, British, Portuguese, and Japanese. This naturally directly impacted the laws applicable to this nation, specifically criminal law.

The current criminal law in Indonesia is the Criminal Code (KUHP), which is a translation of the WvSNI (National Criminal Code for the Indies). Its current legal basis is based on Article II of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia and remains in effect under Law No. 1 of 1946.⁸After the dissolution of the VOC, the Dutch government continued to control Indonesia under the name of the Dutch East Indies. The VOC abandoned legal pluralism in Indonesia's criminal justice system. Two interesting aspects of this legal pluralism are worth examining.

First, the politics of legal pluralism in the Dutch East Indies was related to the issue of "repressive legal order in optima forma", namely a legal order that was more advantageous for the Dutch nation compared to the Indonesian nation, especially in the economic aspect.⁹This demonstrates the potential for all groups to submit to European law, but this recognition was limited and had to be linked economically to Dutch interests. For example, ethnic Chinese and foreign Easterners were recognized only in commercial law, while they were treated as Indonesians in criminal law.

Second, the Dutch East Indies government's efforts to address the pluralism of criminal law. Namely, by observing the slow progress of concrete plans to replace "VOC legal pluralism" with "criminal law unification" applicable to all residents of the Dutch East Indies regardless of race, in 1847, the governor-general was instructed by the Dutch Royal authorities to take

⁷LHC Hulsman in Barda Nawawi Arief, Bunga Rampai ..Op.Cit, 1996, p.129

⁸Nafi' Mubarak, History of the Development of Criminal Law in Indonesia: Welcoming the Arrival of the 2023 Criminal Code by Understanding it from a Historical Aspect, Al-Qānūn: Journal of Islamic Legal Thought and Reform, 27 (1) June 2024, p.15

⁹Fahmi and Pura, Application of Positive Criminal Law Sanctions and Customary Criminal Law to the Crime of Murder in the Baduy Traditional Village, JUSTITIA: Journal of Law and Humanities, 8 (6) 2021, p.1843

Master of Law, UNISSULA

strategic steps to draft a new criminal code for the colony that would apply to all ethnic groups there.

As a follow-up, the "colonial government" established a series of commissions to carry out this task. Unfortunately, their concentration was diverted by other matters, ultimately leading the Dutch East Indies government to implement criminal law (*Wetboek van Strafrecht*) only for Europeans. This Criminal Code came into effect in 1867, and was subsequently amended several years later, in 1872, with the *Straf wet voor Inlanders* (Criminal Code applicable to Indigenous Peoples).

In fact, the differences between the two penal codes in force after 1872 are relatively minor. While some crimes committed against indigenous people are identified as criminal, they are not criminalized for Europeans, even though the majority of the *Strafwet voor Inlanders* was based on a "code of conduct for Europeans." However, the formal separation of the two laws reflects a deep colonial reluctance to abandon the principle of legal pluralism unless forced to do so by issues arising from evidence of gross cruelty or inequality.

3.2. The Role of the Police in Achieving Legal Effectiveness in Addressing Criminal Problems in Indonesia

Imprisonment is increasingly under scrutiny. This is due to public apathy towards it. Imprisonment, as a form of punishment that deprives a convict of their liberty, is in fact the most frequently imposed sanction. It has even been considered a favorite because it is frequently imposed by judges in their decisions. This is certainly inconsistent with the principle of "*ultimum remedium*," which states that criminal law is a last resort, a remedy of last resort, and therefore must be used with caution. This is especially true when compared to other countries that avoid imposing imprisonment by replacing it with fines.

The Indonesian penal system is part of the criminal justice system, which aims to uphold justice and maintain public order. However, in practice, this system often faces various challenges, ranging from inconsistencies in law enforcement, disparities in judicial decisions, to overcrowding in correctional institutions. Furthermore, social, economic, and political factors also influence how criminal law is implemented in Indonesia. Therefore, understanding the reality of the penal system is not only about looking at written legal regulations but also about how the law is implemented in real life.

Romli Atmasasmitha emphasized that imprisonment doesn't always have a deterrent effect. Deterrence doesn't occur, and recidivism persists. Prisons have even become criminal colleges where criminals learn about crime.¹⁰ To date, imprisonment has been criticized for its impact on perpetrators, including stigmatization and prisonization. Criticisms have pointed to the shortcomings of the Indonesian penal system, including its inability to break the cycle of crime and the social problems experienced by perpetrators, victims, and the community.

¹⁰Romli Atmasasmitha, *Reconstruction of the Principle of No Crime Without Fault*, Published by Jakarta: Gramedia, 2018, p.3-6

Imprisonment or prison sentences, although an important mechanism for punishing offenders, are not a panacea for all crime problems, especially when linked to efforts to prevent crime or the offender's need for social integration.¹¹ Imprisonment sentences are actually considered to have shown a counterproductive effect on rehabilitation and reintegration efforts for perpetrators of minor crimes and perpetrators who are vulnerable groups.¹² There is insufficient evidence that imprisonment is more effective in preventing reoffending. In fact, several comparative studies of imprisonment and other forms of punishment show that imprisonment makes it more difficult for convicts to adjust to society after serving their sentence and makes them more likely to reoffend.

A fundamental negative impact on Indonesia's current penal system is the overcrowding of correctional institutions (Lapas) and detention centers (Rutan). This situation undermines the goal of the correctional system, which aims to restore offenders to good citizens and protect society from reoffending. Overcrowding occurs because the number of prison sentences increases compared to the available prison capacity.

The overcrowding situation in correctional institutions requires in-depth study, not only in terms of government facilities and infrastructure, but also in terms of the penal system itself. Various problems result from the frequent imposition of prison sentences, ranging from overcrowding in correctional institutions, the view that prison sentences do not provide a deterrent effect for perpetrators, the emergence of recidivism, weak supervision resulting in many cases occurring in prisons (drugs) and the perception that prisons are criminal colleges, the problem of soaring state budget expenditures to finance prisoners, and various other problems.

Based on statistical data from the Indonesian Directorate General of Corrections, the capacity of prisons and detention centers throughout Indonesia is at 147,575 inmates (detainees/convicts), but the number of detainees and convicts in the latest statistical data from the Directorate General of Corrections in August 2025 was recorded at 282,777 inmates (detainees/convicts).¹³ This means that, by calculation, the percentage of overcrowding in prisons and detention centers across Indonesia has reached nearly 110%. This situation indicates that the number of inmates and detainees far exceeds the ideal capacity of prisons and detention centers.

Given these conditions, the use of imprisonment as the primary instrument for punishing criminals needs to be reconsidered. Current trends in various countries indicate the use of alternative punishment models that move away from the use of imprisonment. This is related to shifts in orientation regarding the purpose of punishment and the practical need to reduce

¹¹Office of the High Commissioner for Human Rights and International Bar Association, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers, UN Publications, New York, 2003, p.373.

¹²UNODC, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment, United Nations Publication, New York, 2007, p.3.

¹³<https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>, Accessed on August 14, 2025

overcrowding in correctional settings and overcriminalization within criminal law enforcement.

In practice, the Indonesian criminal justice system still relies heavily on imprisonment as the primary form of punishment. This means that when a person is found guilty by a court, the most common punishment is imprisonment, despite the availability of alternatives such as fines, community service, or conditional sentences. Data from the Directorate General of Corrections (Ditjenpas) shows that the majority of court decisions result in prison sentences. Even for relatively minor cases such as misdemeanors, petty theft, or drug use for personal gain, courts still impose prison sentences more often than other punishment options. This indicates that in the Indonesian criminal justice system, imprisonment is still considered the most effective and easiest punishment to implement. However, this dominance of imprisonment has led to numerous problems, such as overcrowding in correctional institutions, increased state costs, and negative effects on perpetrators who could have received other, more appropriate punishments.

In Indonesia, community service is already included in the reformed criminal law, particularly in the new Criminal Code, Law Number 1 of 2023 concerning the Criminal Code. This punishment is considered more effective in reforming the behavior of criminals than simply imprisoning them. Furthermore, community service can also help the community because the work performed is usually constructive, such as cleaning public facilities or assisting with social activities. However, the lack of implementation of community service in Indonesia is due to several factors. One is the lack of widespread application by judges because the Indonesian justice system is still accustomed to imprisonment and fines, and a lack of awareness among judges and prosecutors regarding the importance of imposing this alternative punishment. However, with the implementation of community service, perpetrators of minor crimes can receive more proportional punishments without having to enter the prison system, which often worsens their behavior. Besides community service, rehabilitation is also an alternative punishment that is rarely used in Indonesia.¹⁴ Meanwhile, for certain cases, such as drug abuse or crimes committed due to psychological factors, rehabilitation is more effective in preventing recurrence than imprisonment. With rehabilitation, perpetrators can receive appropriate treatment and return to society as better individuals. Furthermore, in cases of minor crimes such as petty theft, minor assault, and so on, the efficiency of criminalization in these cases can be minimized through alternative policies initiated by the police, who act as the first gateway to criminal proceedings within the criminal justice system.

The status or existence of the Police in the perspective of the Criminal Justice System is clear, namely as an integral part of the Criminal Justice System. Internationally, this is also seen in the report of the 5th UN Congress in 1975 on "The Prevention of Crime and the Treatment of Offenders, especially in discussing the issue of "the emerging roles of the police and other law enforcement agencies" which emphasized It was recognized that the police were a component of the larger system of criminal justice which operated against crime". The world

¹⁴Mahyudin Igo, et al. Formulation Policy in the Draft Criminal Code Regarding Community Service as an Alternative to Imprisonment. *Journal of Education and Development*, 10 (2) May 2022, p. 709

Master of Law, UNISSULA

recognizes that the police are a component of the larger Criminal Justice System that operates against crime.

The status of the Indonesian National Police (Polri) as a component/element/subsystem of the SPP is clearly visible in the current legislation, both in the Criminal Procedure Code and in Law No. 2 of 2002 concerning the Indonesian National Police (Polri), namely as investigators and investigators. The Indonesian National Police (Polri) is the spearhead, which can also be called the entry point in an integrated criminal justice system, in the hands of the Indonesian National Police it is hoped that they will be more capable of reducing the darkness of a crime case and realizing legal effectiveness in dealing with the problems of Indonesian criminalization.

In particular, ongoing criticism of the current dynamics of Indonesian law enforcement has always been directed at the performance of the Indonesian National Police (Polri) in carrying out their primary duties as law enforcers. This is particularly true when Polri investigators resort to coercive measures in the form of detention in minor criminal cases deemed unnecessary.¹⁵ This criticism is also related to the fact that the law is generally not an effective solution to problems, and tends to have a comprehensive impact, especially an impact on the quantity of cases that accumulate in each sub-system of the criminal justice system and the quantity of capacity of correctional institutions.

Formal legal remedies for social problems have so far failed to satisfy the public, particularly the affected parties. In fact, formal law enforcement often leaves behind various problems that exacerbate hostility and create unresolved conflicts. Furthermore, these formal legal remedies require significant costs, sometimes disproportionate to the number of minor criminal cases they resolve. The increasing number of unresolved issues ultimately creates a significant burden, leading to a backlog of cases and a "dark number of crimes" within various formal legal institutions, particularly the police. Furthermore, resolving legal problems through the aforementioned legalistic and retributive justice models often takes a relatively long time due to the often complicated legal process, which has led to public distrust of formal legal institutions in the criminal justice process.

The ongoing investigative practices show that the legal positivism school or legalism and based on the principle of legal certainty is the legal philosophy school that is the mainstream in the implementation of investigative authority carried out by Polri investigators, and the dominant method of interpretation is authentic or grammatical interpretation. This means that the main legal reasoning model in the implementation of investigative authority by Polri investigators is the legal positivism reasoning model. The dominance of legal positivism that interprets the law according to rules and logic in accordance with the principle of legal certainty in decision-making in the investigative process is more determined by the formalism aspect of law alone, not based on the material substantive aspects of the law with teleological or sociological interpretations to provide justice.

¹⁵Didik Hariyanto, Implementation of Restorative Justice in the Settlement of Criminal Cases at the Investigation Level at the Criminal Investigation Unit of the Banyuwangi City Police Resort, Janaloka, 2 (1) 2023, p.115

Currently, the urgency of changing the paradigm of Indonesian criminal law is needed through the existence of law enforcement that accommodates the resolution of criminal cases by minimizing the formal criminal justice process in a targeted manner for criminal cases that are considered ineffective and inefficient to be continued to the sentencing stage in court with various considerations of the problems that currently occur in the Indonesian criminal system. The implementation of law enforcement duties by the Police at the practical level in the field, in addition to law enforcement that prioritizes formal law, is also required to take other policies with various considerations in law enforcement in the form of non-formal oriented towards legal effectiveness and the realization of social justice. This is what underlies the idea of actualizing a concept of restorative justice or implementing restorative justice in the realm of the Police at the investigative and investigative stages.

In the 1970s, awareness of the importance of victims' roles grew. The public began to recognize their importance, particularly when it came to the failures of the criminal justice system. This recognition was achieved by a women's movement called the "National Victim Assistance Planning Association." This movement supported victims' roles while also providing services to them. In 1973, the first international conference was held to discuss victims' rights in coordinating crime resolution. This conference later led to the founding of the World Victims Society in 1979.¹⁶At that time, in 1985, the UN General Assembly had adopted the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Sovereignty.

With the birth of the concept of restorative justice (later synonymized by the abbreviation RJ), this movement began to gain widespread recognition. The theory and practice of RJ are thought to have originated and developed as an effort to address the needs of victims. Although rooted in ancient and noble values, the term "restorative justice" was first introduced in the 1950s in several works by Albert Eglash and remained widely used until 1977. However, this is not the case.

In his book, Eglash describes restorative justice as a form of constructive, creative, autonomous, and supportive action, and expands opportunities for group participation. He explains that restorative efforts emphasize efforts to repair or correct the negative impacts of a person's actions and are a form of coordinated criminal resolution that actively involves all parties in the legal process. He also explains that RJ is an opportunity for perpetrators and victims to repair their relationships and ultimately find a way to repair the damage caused by the perpetrator to the victim's interests. The concept of RJ encompasses a paradigm that always opposes retributive justice and legal models that are only intended to provide compensation or punishment to individuals involved in the criminal process.

Sarre also said that restorative justice is a hallmark of the modern criminal justice system.¹⁷A man who is called the "visionary and architect of the restorative justice movement" Howard

¹⁶John PJ Dussich, The Evolution of International Victimology and its Current Status in the World Today, *Journal of Victimology*, 1 (1) January 2015, p.43

¹⁷Rick Sarre, *Restorative Justice: A Paradigm of Possibility*, in Martin D. Schwartz and Suzanne E. Hatty. Eds. *Controversies in Critical Criminology*, Cincinnati, Anderson, 2003, p.100-101

Master of Law, UNISSULA

Zehr stated that¹⁸ "Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."

Essentially, restorative justice is a conceptual framework that responds to the development of the criminal justice system by emphasizing the need to involve communities and victims who feel marginalized by the mechanisms currently in place. On the other hand, restorative justice also represents a new framework that law enforcement and legal professionals can use to respond to criminal acts.¹⁹ In restorative justice, crime is seen as a violation by one person against another person and society. Crime has both individual and social dimensions. Violation creates responsibility and focuses on problem-solving. Responsibility is defined as accepting responsibility and being willing to repair/replace the harm. Dialogue and negotiation are prioritized.

3.3. Formulative Concepts for the Police in Achieving Legal Effectiveness in the Indonesian Criminal Justice System

From a fundamental judicial perspective, ideal sentencing must consider various aspects to ensure that the sentence imposed truly reflects justice. It's not just about punishing the perpetrator, but also considering the impact on society and the potential for rehabilitation. Legally, sentencing is not merely an act of revenge but rather part of the justice system aimed at creating order and legal certainty. Therefore, judges must consider several criteria when sentencing. Artidjo Alkostar explains several important factors to consider when sentencing.

1) The perpetrator's fault

The perpetrator's culpability or level of involvement in the crime is a primary factor in determining punishment. If the perpetrator is proven to have committed the crime intentionally and with premeditation, the punishment should be more severe than those who committed the crime through negligence. For example, someone who commits premeditated murder should receive a harsher sentence than someone who accidentally causes the death of another person in an accident. This principle aligns with the legal principle that states that every action must be met with an appropriate response.

2) Motive and Purpose of the Crime

The motive or reason behind the crime is also very important to consider. Someone who steals out of necessity to feed their family is certainly different from someone who steals out of greed or bad habits. In some cases, a more "humane" motive may justify a lighter sentence. Conversely, if the motive is evil, such as wanting to harm others or gain an unfair advantage, then the sentence should be harsher.

¹⁸Howard J. Zehr, *Changing Lenses: A New Focus for Crime and Justice*, Herald Pr, 3rd edition, 2005

¹⁹Eva Achjani Zulfa, *Op.Cit.*, 2011, p.64-65.

3) How to Commit a Crime

The perpetrator's method of committing the crime is also an important consideration. For example, a robber who simply steals money without harming the victim may receive a lighter sentence than one who uses a weapon and commits violence against the victim. Crimes committed in a more brutal, sadistic, or premeditated manner typically receive harsher sentences because they demonstrate greater malicious intent and have a more severe psychological impact on the victim.

4) The Inner Attitude of the Perpetrator

The perpetrator's mental attitude or intent when committing the crime is also a factor that must be considered. If the perpetrator demonstrates a high level of malice, such as deliberately torturing the victim or carrying out the crime with pride, the sentence should be harsher. Conversely, if the perpetrator shows signs of genuine remorse and is willing to take responsibility for their actions, this can be a mitigating factor.

5) Life History and Socio-Economic Conditions of the Perpetrator

A person with a lengthy criminal record will naturally receive a harsher sentence than someone who is a first-time offender. Furthermore, socioeconomic conditions can also be a factor. For example, someone who comes from a difficult environment and is forced to commit crime to survive may receive a lesser sentence than someone who commits a crime solely for personal gain, even if they live in a comfortable environment.

6) The Perpetrator's Attitude After the Crime

After committing a crime, perpetrators can exhibit varying attitudes. Some regret their actions and strive to improve themselves, while others remain defiant or even proud of their crimes. If a perpetrator actively cooperates with law enforcement, for example by uncovering a larger criminal network, this can be considered for a lighter sentence. Conversely, if the perpetrator attempts to destroy evidence, complicate the investigation, or even repeat the crime, the sentence can be harsher.

7) The Impact of Punishment on the Future of the Offender

The purpose of sentencing is not only to punish but also to provide the perpetrator with an opportunity to improve themselves and become a good member of society. Therefore, judges need to consider the impact of the sentence imposed. If an offender still has the potential to change, a more rehabilitative sentence may be preferable to one that is merely repressive. For example, a young person who becomes involved in crime due to bad company may be better off receiving counseling rather than a lengthy prison sentence.

8) Public View of Crimes Committed

Master of Law, UNISSULA

Laws are not only designed to punish criminals but also to maintain social order. Therefore, public perception of a crime must also be taken into consideration. Crimes that are deeply disturbing to society, such as corruption, sexual violence, or terrorism, must be punished strictly to provide a deterrent effect. If the punishment is too light, the public may lose trust in the justice system, which can ultimately lead to social instability.

In terms of legal reasoning, the opinion of a senior judge, Artidjo Alkotsar, above illustrates that in principle, the criminal norms applied in all forms of criminalization, in addition to being guided by positive law, are also based on legal reasoning from each legal instrument in carrying out law enforcement. The point taken is that legal logic in legal reasoning in each legal instrument must be inherent in the aspect of the ability and capability of legal apparatus resources, including the Police, in assessing whether or not a crime is appropriate for restoration or not.

Because minor crimes are underlined as a criminal weight that is worthy of restorative justice regardless of the special requirements in ITE crimes, narcotics crimes and traffic crimes that demand a precise attitude of a POLRI investigator in making a decision to stop the investigation. For this reason, criminal offenses that are full of major impacts on a person's criminal actions that are more likely to lead to major losses such as loss of life due to murder, rape, sexual harassment, pedophilia, terrorism, even corruption must be a parameter for the Police to avoid abuse of discretionary authority to provide restorative justice in a criminal case, which is a form of maintaining the integrity and credibility of a Police Institution in accommodating the concept of restorative justice to be on target.

The effectiveness of restorative justice approaches in reducing recidivism, prison overcrowding, and promoting positive outcomes for both offenders and victims has been the subject of numerous studies across various research projects. Some analyses suggest that restorative justice efforts can reduce the number of problematic prison system encounters. For example, an evaluation of the Bridges to Life program in Dallas found that participating inmates had lower screening attrition rates. Research on the Holt program in the Netherlands also showed that restorative justice programs can have a positive impact on youth academic performance and recidivism rates. Furthermore, the effectiveness of restorative justice programs depends on variables such as the specific program used and the environment in which it is implemented.

Within the context of restorative justice in Indonesia, efforts are being made to internalize cultural values into criminal justice systems. Restorative justice, on the other hand, offers a new option to counter hegemony by introducing a modernized approach to coordinating traditional crime resolution, focusing on the offender and addressing regret and reintegration. The implementation of Indonesian National Police Regulation Number 8 of 2021 will improve the management of crime within a restorative justice framework and enhance the use of restorative justice analytical principles in various law enforcement issues.

A restorative justice approach has the potential to positively improve crime-fighting coordination in Indonesia. Analogous analysis shows that, unlike traditional litigation, it

increases victim satisfaction and acceptance of aggressor responsibility, and reduces recidivism rates. This suggests that restorative justice can help victims address their issues while promoting reintegration and reducing recurrence of criminal behavior.

Fulfilling the obligation to be accountable to the victim is one way to restore the cosmic balance disturbed by the perpetrator's actions, specifically the violation of the rules. However, the introduction of a restorative justice approach does not mean that the Indonesian justice system has permanently eliminated retributive justice. Retributive justice will be a last resort, rather than punishment, or ultimum remedium, if other avenues and restorative justice are unavailable.

From a legal perspective, the legal interrelationship between internal institutional regulations and formal sources of criminal law, namely the Criminal Procedure Code (KUHP), remains a key issue in the synchronization of restorative justice implementation in the form of termination of investigations. Law No. 8 of 1981 concerning Criminal Procedure explains that there are several reasons why investigators may terminate an investigation. These include insufficient evidence, the incident being found not to be a crime, or the investigation being terminated by law (due to the statute of limitations or the death of the suspect). The omission of a reason for terminating an investigation due to restorative justice in the KUHP often raises doubts among investigators about whether to terminate an investigation into a crime.

4. Conclusion

After Indonesia's Independence on August 17, 1945, Article II of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia stated that: "All existing state bodies and regulations remain in effect until new ones are enacted according to this Constitution." Thus, the Wetboek van Strafrecht voor Nederlandsch Indie was enforced throughout Indonesia. Then, WvSNI remained in effect based on Law No. 1 of 1946. Article 1 states: "By deviating as necessary from the Presidential Regulation of the Republic of Indonesia dated October 10, 1945 No. 2, stipulates that the criminal law currently in effect is the criminal law regulations in effect on March 8, 1942." Meanwhile, the one in effect on March 8, 1942 was WvS. Meanwhile, based on Article 4, this Law has changed the official name of the Wetboek van Strafrecht voor Nederlandsch Indie to Wetboek van Strafrecht or the Criminal Code. PAF Lamintang argues that Indonesian criminal law essentially only recognizes two types of criminal sanctions: principal penalties and additional penalties. According to the provisions of Article 10 of the Criminal Code, criminal sanctions are divided into several types, including the death penalty, imprisonment, detention, and fines. Additional penalties include the revocation of certain rights, confiscation of certain items, and the announcement of a judge's decision. It was only on January 2, 2023, that the Draft Criminal Code was ratified with the issuance of Law Number 1 of 2023 concerning the Criminal Code. It is stated that the ratification of this law is in order to realize the national criminal law of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Law Number 1 of 2023 concerning the Criminal Code shall come into effect after 3 (three) years from the date of its enactment, or 3 (three) years after January 2, 2023. The

Master of Law, UNISSULA

ratification of the Criminal Code through this law is also to replace the Wetboek van Strafrecht or what is also known as the Criminal Code.

5. References

Journals:

- Didik Hariyanto, Penerapan Keadilan restorative dalam Penyelesaian Perkara Pidana pada Tingkat Penyidikan di Satreskrim Kepolisian Resort Kota Banyuwangi, *Janaloka*, 2 (1) 2023
- Fahmi dan Pura, Penerapan Sanksi Hukum Pidana Positif dan Hukum Pidana Adat Terhadap Tindak Tidana Pembunuhan di Kampung Adat Baduy, *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora*, 8 (6) 2021
- Ismansyah, Pertanggungjawaban Pidana dalam Pelaksanaan Kewenangan Kepolisian, *Jurnal Demokrasi*, 7 (2) 2008
- John P. J. Dussich, The Evolution of International Victimology and its Current Status in the World Today, *Journal of Victimology*, 1 (1) January 2015
- Mahyudin Igo, dkk. Kebijakan Formulasi dalam RUU KUHP Terhadap Pidana Kerja Sosial sebagai Alternatif Pidana Penjara. *Jurnal Education and Development*, 10 (2) Mei 2022
- Masyhadi Irfani and Ira Alia Maerani, Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, *Jurnal Daulat Hukum*, 2 (1) March 2019
- Nafi' Mubarak, Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami dari Aspek Kesejarahan, *Al-Qānūn: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 27 (1) Juni 2024
- Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, *Jurnal Daulat Hukum*, 3 (1) March 2020

Books:

- Howard J. Zehr, Changing Lenses: A New Focus for Crime and Justice, Herald Pr, 3rd edition, 2005
- Mardjono Reksodipuro, Sistem Peradilan Pidana Indonesia:Melihat Kepada Kejahatan dan Penegakan Hukum dalam Batas- Batas Toleransi, Jakarta: Fakultas Hukum Indonesia, 1993
- Muladi dan Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana. Jakarta: Kencana, 2017
- Office of the High Commissioner for Human Rights dan International Bar Association, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers, UN Publications, New York, 2003
- Rick Sarre, Restorative Justice: A Paradigm of Possibility, in Martin D. Schwartz and Suzanne E. Hatty. Eds. Controversies in Critical Criminology, Cincinnati, Anderson, 2003

Master of Law, UNISSULA

Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan*, Terbitan Jakarta: Gramedia, 2018

Surayin, *Kamus Umum Bahasa Indonesia*, Yrama Widya, Bandung, 2003

UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, United Nations Publication, New York, 2007

Internet:

<https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>, accessed on 14 August 2025