

## The Concept of Law Enforcement against The Criminal Acts of Ownership of Explosives Based On Restorative Justice

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**Abstract.** *Philosophical, Sociological and Empirical aspects approach, for the nation and the Unitary State of the Republic of Indonesia, due to not being able to fully understand the law, so as a result they do not get equal treatment in the eyes of the law (equality before the law), whether it happens to the perpetrators of crimes, victims from a crime and or including parties who should be able to carry out legal interests in Law Enforcement Institutions in Indonesia, namely; Police, Attorney, and Judiciary as well as other institutions as related institutions, namely; Government agencies, the Ministry of Law and Human Rights, or institutions from the government or non-government sectors, in the application of restorative justice to the enactment of Law Number 12 of 1951. Which through the application of the Restorative Justice policy, is not fully implemented by Law Enforcement Agencies, namely the Powers of the Supreme Court, Judiciary, Prosecutor's Office and the Indonesian National Police, in a centralized, measurable and massive manner, for the implementation of new legal products throughout Indonesia! "Of course this requires research/research by legal scholars, in order to make a solution/way out, in order to achieve legal supremacy for the nation and the State of Indonesia. Therefore, the application of Restorative Justice in the Unitary State of the Republic of Indonesia requires several very basic aspects of the systematics and mechanisms of criminal law in all its existence, as follows; - Readiness of Human Resources/HR. From Honest, Fair, Proficient, Smart, Skilled, Independent and Independent Law Enforcement, - Readiness of Law Enforcement both for Law Enforcement Executors, Criminal Offenders and the victims of Criminal crimes themselves, - Readiness of Facilities and Infrastructure for socialization of the implementation information on Legal Justice/Restorative Of Justice for all Indonesian people related to this new legal product, as well as for its Law Enforcement Institutions.*

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

## 1. Introduction

The aim of the "Concept of Law Enforcement Against Criminal Offenders Based on restorative justice" as follows :

- 1) As an effort to restore the situation in the form of compensation for victims through certain methods agreed upon by the parties involved in it.
- 2) To get a fair and balanced legal verdict for both victims and perpetrators.
- 3) As a law enforcer who always prioritizes restoration to its original state, and restores the pattern of good relations in society.
- 4) As an effort to restore relations and/or atone for wrongdoing that the perpetrator of the crime (their family) wants to do to the victim of the crime (their family) in order to obtain peace, outside the court with the aim that the legal problems arising as a result of the crime can be resolved properly to reach agreement and agreement between the parties.
- 5) As an effort to create justice and balance, for perpetrators there is restitution and/or compensation for victims, with the aim of law namely achieving justice, legal certainty and benefits.

So that Restorative justice is, that is one of the principles of procedure, law enforcement in settlement of cases as an instrument of recovery and/or has been carried out by the parties to the litigation and/or dispute, which is used, the Supreme Court in forming a policy, so that the Indonesian criminal justice system has not been able to run optimally, as an alternative effort to settle criminal and civil cases, so that the mechanisms for criminal and civil justice procedures focus on sentencing and/or civil justice, which are transformed into a process of dialogue and/or mediation involving perpetrators , victims, families of perpetrators and victims, and/or other related parties, to create an agreement on the settlement of criminal and/or civil cases based on the concept of Restorative Justice, in a fair and/or balanced manner for the parties to the litigation, by prioritizing restoration to its original state and/or restoring a pattern of good relations in society, to settle beyond court / non litigation.

## 2. Research Methods

The method used is through the Qualitative Method, namely the method through qualitative research, through the Case Study method, which is usually carried out in detail from a particular case (a person or a small group). The stages

of the method are as follows: - Collection, - Data analysis, - Observation, Interview.

### 3. Results and Discussion

That if viewed from the approach of the Philosophical, Sociological, and empirical aspects. When, from a philosophical aspect, is when the people in Indonesia as citizens have understood the law, but have not received equal treatment in the eyes of the law (equality before the law), whether it happens to the perpetrators of criminal acts, victims of a crime and/or including parties who should be able to carry out legal interests in Law Enforcement Institutions in Indonesia, namely; Police, Attorney, and Judiciary as well as other institutions as related institutions, namely; Government agencies, the Ministry of Law and Human Rights, or institutions from the government or non-government sector, which are competent for parties as criminal offenders and victims, in order to achieve recovery rights as Indonesian citizens. So that until now, the Law Enforcement Agency consists of; The powers of the Supreme Court, the Judiciary, the Attorney General's Office and the Indonesian National Police, which should synergize together, in order to achieve an effective, efficient and measurable system of enforcement processes in criminal justice, to carry out a legal remedy as the newest legal product in all corners Indonesian homeland in general, in carrying out "The Application of Restorative Justice Against the Enforcement of Law Number: 12 of 1951, for the perpetrators of crimes that occurred in the City Police of Cilacap Regency, the jurisdiction of the Central Java Regional Police," in particular.

Whereas if it is viewed from the aspect of the sociological approach, it is; "Through the implementation of this Restorative Justice policy, law enforcement agencies have not fully implemented it, namely the powers of the Supreme Court, Judiciary, Prosecutor's Office and the Indonesian National Police, in a centralized, measurable and massive manner, for the implementation of new legal products throughout Indonesia! "Of course this requires research/research by legal scholars, in order to make a solution/way out, in order to achieve legal supremacy for the nation and the State of Indonesia. Whereas if viewed from an empirical aspect regarding the Implementation of Restorative of Justice, in the Unitary State of the Republic of Indonesia,

- a) Readiness of Human Resources/HR. From Honest, Fair, Capable, Smart, Skilled, Independent and Independent Law Enforcers.
- b) Readiness of legal regulations for law enforcement officers, perpetrators of criminal acts and victims of criminal crimes themselves.

c) Readiness of facilities and infrastructure for socialization regarding the application of Restorative Justice information for all Indonesian people related to this new legal product, as well as for Law Enforcement Institutions, optimally, which will be the vast geographical location of Indonesia which is very broad and or in the form of an archipelago -Island.

d) The number of bureaucratic institutions in Indonesia, which seem to impede legal policy for both law enforcers and the Government as an executive institution that is responsible for all material and immaterial matters, for the life of the nation and state, to carry out the Application of Restorative Of Justice, as a new legal product which is really needed to cut the mechanism, the budget for the running of the judicial system in Indonesia. That all Regulations/Provisions are new legal products from Law Enforcement Agencies namely; Police, Prosecutors, Supreme Court and Legal Institutions in the Unitary State of the Republic of Indonesia, others, in an effort to implement Restorative Justice as a medium for settling criminal cases,

e) Whereas implementation and implementation; "Emergency Law of the Republic of Indonesia No. 12 of 1951 concerning Amending "Ordonnantietijdelijke Bijzondere Strafbepalingen" (STBL. 1948 No. 17) and the Former Law of the Republic of Indonesia No. 8 of 1948, for the alleged perpetrators of criminal acts who are currently suspects, it is too forced and or very irrelevant to apply the jurisdiction of Cilacap Regency, because the city of Cilacap, which is in Central Java province, is not a conflict area and or an emergency area military civilian, for example; Eastern Indonesia Region, namely; West Papua, Ambon and Maluku, so that the level of security is very possible for potential riots, civil wars between tribes, or other types of criminal crimes, while the city of Cilacap is a safe area,

f) Whereas even though it has been proclaimed through various congresses on Restorative Justice, it is said by a number of countries with various experiences on a number of programs that have been developed including various problems that have arisen in their implementation. On this occasion, a number of countries also used the opportunity to cooperate in the context of efforts to prevent and combat crime, especially in crimes committed across countries. At the congresses held in 1990 and 1995, several non-governmental organizations from several countries sponsored a number of meeting sessions to specifically discuss Restorative of Justice.

g) based on specified conditions." with the condition that other than with or without money or person guarantees, there are also several conditions that must be met if the suspension of detention is granted, namely: - The suspect or defendant must report, - The suspect or defendant does not leave the house, -

The suspect or defendant does not leave city, - The suspension of detention can be revoked if the suspect or defendant violates the conditions listed herein.

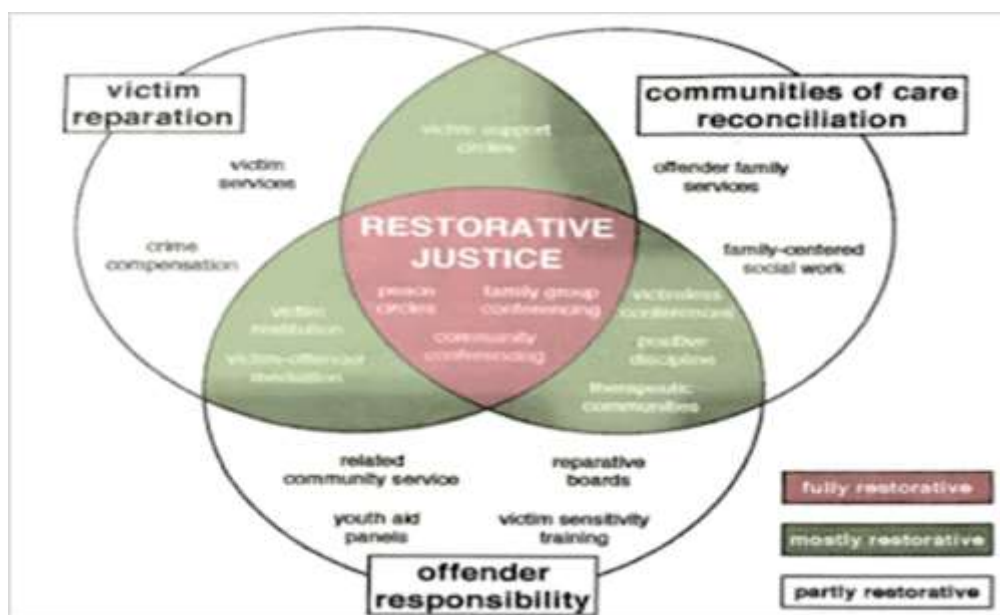
As an Effort to Ensure the Preservation of Indigenous Cultures, in the life of the nation and state. So that based on the several models described above, it can be an alternative way for law enforcement officials to be able to make choices in resolving criminal cases that conflict with customs and culture in Indonesia, before being tried through the courts. Court mechanisms that have so far been seen as not satisfying the expectations of justice expected by the public are Syiar Hukum Jurnal Ilmu Hukum | Volume 17 Number 2 149 RESTORATIVE JUSTICE APPROACH IN OVERCOMING CRIMINAL ACTIONS, those affected have new hopes with other alternatives, which can be implemented practically. Law enforcers can choose and determine one of the many existing restorative models to be applied, if you have to adopt a policy of resolving criminal cases, which violate the Emergency Law Number 12 of 1951, by using a model of restorative justice as an effort to guarantee the restoration of the preservation of cultured, civilized and dignified life, so as not to cause damage, the mechanism of the legal principles apply, through Restorative Justice, for example through; The restorative conferencing model can be an option that can be used as a means of resolving the crime itself without leaving the legal concept in question. Some of the arguments that can be used to apply the restorative justice model in this case, namely:

- a. Involve a wider range of participants than perpetrator-victim mediation;
- b. Able to direct settlement orientation in the form of compensation and restoration of environmental sustainability;
- c. Easy to apply at every stage of the criminal justice process;

This model has been developed in many countries for various crimes,

since 1989 and created a new alternative to respond to juvenile crime, child protection issues by placing more decision-making authority but still taking into account the input, considerations and interests of the parties. This model can be applied to environmental crimes that have been occurring in Indonesia and handled by Central Java Police investigators, through a JURIDICAL REVIEW OF THE CRIMINAL ACTION OF THE MANUFACTURE OF LOW EXPLOSIVE EXPLOSIVES WITHOUT PERMISSION (BASED ON COURT DECISION NO. 226/PID.B/2014/PN. Smg), which is currently the production of explosives without a permit is increasingly prevalent. Many illegal explosives can be found circulating in the community. For example, firecrackers are included in the class of low explosive explosives. Making low explosives without a permit is very dangerous.

Not only violating the permits that have been set but more to the level of security of these explosives. This crime against the manufacture of low explosive explosives without a permit has been formulated in Emergency Law No. 12 of 1951 concerning Firearms and Explosives. The government has also regulated matters related to licensing of these explosives in the Regulation of the Minister of Defense of the Republic of Indonesia Number 36 of 2012 concerning Guidelines and Procedures for Licensing, Guidance, Development, Supervision and Control of the Explosives Industry and Regulation of the Head of the National Police of the Republic of Indonesia Number 2 of the Year 2008 concerning Supervision, Control and Security of Commercial Explosives. In Decision Number 226/Pid.B/2014/PN.Smg, the Judge in deciding to use the provisions of Emergency Law.



JURIDICAL REVIEW OF THE CRIME OF OWNERSHIP OF EXPLOSIVES WITHOUT RIGHTS (CASE STUDY: DECISION NUMBER.69/Pid.Sus/2020/PN.End), Reference Fajrianti, Nurul Izzah (2023) CASE: DECISION NUMBER.69/Pid.Sus/2020/PN.End). Thesis thesis, Hasanuddin University. Abstract (Abstract), NURUL IZZAH FAJRIANTI (B011181589) with the title Juridical Review of the Crime of Possession of Explosives Without Rights (Case study: Decision No. 69/Pid.Sus/2020/PN.End). (Under the guidance of Abd. Asis as the Main Advisor and Syarif Saddam Rivanie as the Assistant Advisor). This study aims to analyze the qualifications of the criminal act of possessing explosives without rights in statutory regulations and the legal considerations of the panel of judges in passing a decision on case Number 69/Pid.Sus/2020/PN.End. The type of research used is normative legal research using a statutory approach and a case approach. The legal materials used consist of primary legal materials, secondary legal materials and tertiary legal materials. The results of this study are 1). The

crime of possessing explosives without rights in statutory regulations is qualified in Article 187 bis paragraph (1) of the Criminal Code and in Article 1 paragraph (1) of the Indonesian Emergency Law No. 12 of 1951 concerning Amending the *Ordonantie Tijdelijke Byzondere Straftbepalingen* ( Stbl, 1948 No. 17 ) as well as the former UURI NR 8 of 1948. 2). The legal considerations of the panel of judges in passing their decision on case No.69/Pid.Sus/2020/PN.End against the defendants were based on Article 1 paragraph (1) of the Indonesian Emergency Law No. 12 of 1951 Jo. Article 55 of the Criminal Code Paragraph (1) 1st. The defendant has been proven to have fulfilled the elements of the criminal act of possessing explosives without rights as stipulated and subject to criminal penalties in the Republic of Indonesia Emergency Law No. 12 of 1951, the defendants were sentenced to nine months in prison. Through deliberation forums for consensus (restorative meetings) seek solutions to settlement of cases, which are caused by the actions of the perpetrators. By applying this model the efficiency of law enforcement for perpetrators of criminal acts, victims and their families, as well as competent parties to resolve them, so that it does not take a long and protracted time. However, to avoid sharp differences of opinion in this model and minimize failure in making an agreement, it is necessary to involve a trained mediator to calculate material and immaterial losses due to criminal acts in a professional, objective and transparent manner. According to the author, the restorative meeting is suitable to be applied in this case and is considered quite fair. The criteria for this method are considered fair because it involves perpetrators, victims, their families and other parties involved in a crime, jointly seeking a solution to the crime and its implications, emphasizing recovery not retaliation. Restorative meetings have ideas that are conceptually applicable in environmental cases because: their families and other parties involved in a crime, jointly seek a solution to the crime and its implications, by emphasizing recovery not retaliation. Restorative meetings have ideas that are conceptually applicable in environmental cases because:

a. Restorative meetings are a method that reflects justice that has been universally recognized and is increasingly being used in various criminal cases in developed countries. b. The restorative meeting views criminal acts as not crimes against the state/public but crimes against victims. This can be an individual or several people/groups.

c. Restorative meetings focus on the suffering or loss suffered by the victim and not on the punishment of the perpetrator.

d. Restorative meetings can take the form of direct or indirect dialogue in the form of mediation, reconciliation. According to Supeno there are 5 (five) principles of implementing restorative justice, namely: a) Making the offender responsible for repairing the loss. Siti Sundari Rangkuti, Environmental Law and

National Environmental Policy, Airlangga Press, Surabaya, 1996, Pg 74 Syiar Hukum Journal of Legal Studies | Volume 17 Number 2 151 RESTORATIVE JUSTICE APPROACH IN OVERCOMING CRIMINAL ACTIONS, which are used to repair losses caused by mistakes, are as follows; a) Give the offender an opportunity to prove his capacity and quality in addition to overcoming his guilt. b) Involve the victim's parents, family. c) Creating a forum to work together in solving problems. d) Establish a direct and real relationship between mistakes and formal social reactions. The restorative meeting model offers the idea of recovery, which provides benefits to society and the environment instead of punishment which so far has not produced justice and benefits in criminal law enforcement, legal consequences of the application of restorative justice to the status of environmental crimes to reduce the accumulation of cases and avoid criminal sanctions being debated regarding the application of the restorative meeting model in tackling environmental crime cases is the problem of the legal consequences of restorative meetings on the status of environmental cases if the negotiations reach an agreement. Is it possible that the result of an agreement in the form of peace will stop environmental problems. The problem of the legal consequences of this restorative meeting model is a question for the community and law enforcement. Legal consequences are consequences caused by legal events, legal events are caused by legal actions, while a legal action can give rise to a legal relationship, so legal consequences can also be interpreted as an effect caused by the existence of a legal action and/or legal relationship. According to Syarifin, legal consequences are all consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events determined by law or considered as legal consequences. 13 In the criminal procedure law regulated in the Criminal Code (KUHAP) the investigator has the authority to stop the process of investigating a crime if he meets the juridical requirements set forth in Article 109 paragraph (2) of the Criminal Procedure Code, namely: 1. Not obtaining sufficient evidence , Fundamentals of Legal Studies, 2. The alleged incident is not a criminal act 3. Termination of the investigation for the sake of law. This reason can be used if there are reasons for the abolition of the right to prosecute and the loss of the right to carry out a crime, namely, among other things, because the suspect is nebis in idem, the suspect has died, or the criminal case has passed its expiration date. Even though the conditions for terminating an investigation have been regulated in Article 109 paragraph (2) of the Criminal Procedure Code, there is room for investigators to take other legal actions. As stated in Article 16 letter point I that the authority is to be able to "take other actions according to responsible law". In connection with stopping an investigation, the police have the authority to act based on their own judgment, this authority is called discretion what is meant by acting according to his own judgment is an action that can be carried out by members of the Police who consider the benefits and risks of his actions and are truly in the public interest.



- a. Not contrary to a rule of law.
- b. In line with the legal obligation that requires such action to be performed.
- c. Must be proper, reasonable, and include the position environment.
- d. Reasonable consideration under the circumstances of the force.
- e. Respect human rights. The authority to act according to the investigator's assessment as stated in Article 16 paragraph (1) letter I provides the possibility for investigators to take legal action. The authority to act according to one's own judgment (discretion) can be exercised in the following circumstances:
  - a. Very necessary condition.
  - b. Not against the law.
  - c. Not against the police code of ethics.

According to the provisions above, it can be said that the agreement that occurred in the restorative meeting has legal consequences in the form of stopping the investigation of environmental cases that have been resolved using the restorative meeting model. The termination of the investigation is based on the authority of the investigator to take other legal actions according to the responsible law. Actions to stop this investigation must be balanced with compensation payments and/or environmental restoration actions or actions to prevent negative impacts from business activities. So the investigator's authority to stop environmental cases on the basis of the agreement of the parties in a restorative meeting must be seen as a policy that is in accordance with laws and policies that provide a restorative balance value for perpetrators, victims and the environment.

#### **4. Conclusion**

As a law enforcer who always prioritizes restoration to its original state, and restores the pattern of good relations in society. As an effort to restore relations and/or atone for wrongdoing that the perpetrator of the crime (their family) wants to do to the victim of the crime (their family) in order to obtain peace, outside the court with the aim that the legal problems arising as a result of the crime can be resolved properly to reach agreement and agreement between the parties. An effort to create justice and balance, for perpetrators there is restitution and/or compensation for victims, with the aim of law namely achieving justice, legal certainty and benefits.

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