

Criminal Law Policy Based on Restorative Justice in Law Enforcement Practices in the Criminal Justice System

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Abstract. *Restorative Justice is a settlement process carried out outside the criminal justice system (Criminal Justice System) by involving victims, perpetrators, families of victims and perpetrators, the community and parties interested in a crime that occurs to reach an agreement and settlement. This study aims to determine the Criminal Law Policy Based on Restorative Justice in Law Enforcement Practices in the Criminal Justice System. In this study, the approach method used is: a normative legal approach (normative legal research method). library legal research conducted by examining library materials or secondary data alone. The research specification used is Analytical Descriptive, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to Criminal Law Policy Based on Restorative Justice in Law Enforcement Practices in the Criminal Justice System. Restorative Justice in Law Enforcement Practices in the Criminal Justice System is a stage of case resolution outside the court (settlement outside of court) by involving the victim, perpetrator, victim and perpetrator families, the community and interested parties to reach a settlement agreement that is expected to fulfill the sense of justice of both parties by emphasizing restoration to the original state and not retaliation.*

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

1. Introduction

In a state of law, law is the main pillar in moving the joints of social, national, and state life. One of the main characteristics of a state of law lies in its tendency to assess actions taken by society on the basis of legal regulations. This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws.

This is done to create, maintain and defend peace in social life in accordance

with what is mandated in Pancasila and the 1945 Constitution, namely that every citizen has the right to feel safe and free from all forms of crime.

Criminal law as a tool or means to solve problems in community life. The existence of criminal law can provide justice and appropriate solutions for the community. Because criminal law is a set of regulations that regulate actions, both ordering to do or do something, or prohibiting to do or do something that is regulated in the law with criminal sanctions for those who violate it. While the criminal law in force in Indonesia can be divided into two types, criminal law known in the Criminal Code (KUHP) and Special Criminal Law regulated outside the Criminal Code.

Criminal law not only provides an understanding of acts prohibited by a legal rule, which prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition, but also includes matters relating to the imposition of criminal penalties and how the penalty can be implemented. The prohibition is directed at an act, a condition or incident caused by a person's behavior or actions. The threat of criminal penalties or sanctions are directed at the perpetrator who commits a criminal act, usually referred to as "whoever" namely the perpetrator of the criminal act as a legal subject, namely the supporter of rights and obligations in the legal field. So that criminal acts are one of the parts studied in criminal law.

Restorative justice is a settlement process carried out outside the criminal justice system (Criminal Justice System) by involving victims, perpetrators, families of victims and perpetrators, the community and parties interested in a crime that occurred to reach an agreement and settlement. Restorative justice is a fair settlement involving perpetrators, victims, their families and other parties involved in a crime, together seeking a solution to the crime and its implications, with an emphasis on recovery and not retaliation.

The basic idea of having alternative resolutions in criminal cases is related to the nature of criminal law itself. Van Bemmelen¹ proposed the opinion that criminal law is an ultimum remedium, there should be limitations, meaning that if other parts of the law do not sufficiently affirm the norms recognized by law, then criminal law is applied. The threat of criminal punishment must remain an ultimum remedium (last resort).

This does not mean that the threat of criminal punishment will be eliminated, but we must always consider the advantages and disadvantages of the threat of punishment, and we must ensure that the medicine given is not worse than the disease.

In the Supreme Court Regulation (Perma) No. 1 of 2024, it is regulated regarding: Guidelines for trying criminal cases based on restorative justice by setting limits on the terms used in its regulation. Judges try criminal cases with Restorative

Justice implemented based on the principles:

1. recovery of state;
2. strengthening the rights, needs and interests of victims;
3. Responsibility of the Defendant;
4. criminal law as a last resort;
5. consensualism; and
6. transparency and accountability.

The purpose of trying criminal cases based on Restorative Justice is to:

1. rehabilitate victims of criminal acts;
2. restoring relations between the Defendant, Victim, and/or community;
3. advocate for the accountability of the Defendant; and
4. to protect everyone, especially children, from deprivation of liberty.

Moeljatno said that "criminal law is classified as public law, which is the relationship between the state and individuals or public interest." Another opinion was expressed by Andi Zainal Abidin who said that "Most of the rules in criminal law are Public Law, some are mixed with public law and private law, have special sanctions because their nature exceeds sanctions in other legal fields, stand alone and sometimes create new rules whose nature and purpose are different from existing legal rules.

The functioning of the judicial institution in the criminal justice process is based on Law Number 8 of 1981 concerning the Criminal Procedure Code. The criminal justice process based on the Criminal Procedure Code is very focused on the perpetrator of the crime, both regarding their position from being a suspect to being a convict and their rights as a suspect or defendant are very protected by the Criminal Procedure Code, so it can be said that the criminal justice process according to the Criminal Procedure Code is Offender minded/Offender Oriented Criminal Justice Process. Because it is very focused on the interests of the perpetrator of the crime, the interests of the victim (victim's interests) do not have a place in the Criminal Procedure Code.

Restorative justice side with penal mediation, its relevance can also be found in the "Explanatory Memorandum" of the European Council Recommendation No. R (99) 19 concerning "Mediation in Penal Matters" which explains that there are several models of penal mediation, namely;

- a. Informal Mediation.

- b. Traditional villages or tribal moots.
- c. Victim-OffenderMediation.
- d. Reparation negotiation programs.
- e. Community panels or courts.
- f. Family and community group conference

The author argues that informal mediation is a fairly compatible model of penal mediation carried out by criminal justice personnel in their normal duties, namely it can be carried out by the Public Prosecutor (JPU) by inviting the parties to carry out an informal settlement with the aim of not continuing the prosecution if an agreement is reached; it can be carried out by a social worker or a probation officer, by a police officer, or by a judge. This type of informal intervention is common in all legal systems in Western Europe.

Mardjono Reksodiputro, regarding “settlement outside the court” which in English is “settlement outside of court”. Meanwhile, Tristam Pascal Moeliono, translator of the book *Inleiding tot de Studie van het Nederlandse Strafrecht*, 14th edition (1995) written by Jan Remmelink, interpreted it as “Complete Settlement Outside the Judicial Process” which can be understood as one way of losing the authority to prosecute a crime if the prosecutor/public prosecutor before starting the trial determines one or more requirements (especially stated in the form of restitution or certain compensation) to prevent or end the continuation of criminal prosecution for a crime.

Criminal cases in principle cannot be resolved through the restorative justice process, but in practice criminal cases are often resolved through the mediation process which is an initiative of law enforcement as part of the case resolution. Thus, in reality mediation can actually be carried out in the Criminal Justice System. Countries that have implemented restorative justice are Austria, Germany, Belgium, France, Poland, the United States, Sweden, England and Wales, Italy, Finland, and the Netherlands. This mediation is called Penal Mediation.

Based on current criminal procedure law, all criminal cases must be processed in the criminal justice system. Article 1 number 6 letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) states that a prosecutor is an official who is authorized by this law to act as a public prosecutor and to implement court decisions that have obtained permanent legal force. Then Article 1 number 6 letter b of the Criminal Procedure Code states that a Public Prosecutor is a prosecutor who is authorized by this law to carry out prosecution and implement the judge's decision. The norm of Article 1 number 6 letter b of the Criminal Procedure Code is exactly the same or there is a duplication with

Article 13 of the Criminal Procedure Code.

Furthermore, in Article 14 of the Criminal Procedure Code concerning the authority of the public prosecutor in points g and h, it is stated that the public prosecutor has the authority to prosecute and close cases in the interests of the law. Meanwhile, in Article 140 paragraph (2) letter a, it is stated that in the event that the public prosecutor decides to stop the prosecution because there is insufficient evidence or the incident turns out not to be a criminal act or the case is closed by law. The public prosecutor states this in a Decree. In addition, in Article 35 letter c of Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office, only the Attorney General is given the authority to stop a case on the basis of the public interest. From all the provisions on prosecution in the Criminal Procedure Code and in other laws, it is clear that the prosecutor/public prosecutor currently does not have the authority to stop or set aside criminal cases.

2. Research methods

Research Methods, are basically a function of the problems and objectives of the research. Therefore, discussions in research methods cannot be separated and must always be closely related to the problems and objectives of the research. What is used in this research consists of approach methods, research specifications, sources and types of data, data collection techniques and data analysis techniques.

3. Results and Discussion

3.1 Criminal Law Policy Based on Restorative Justice in Law Enforcement Practices in the Criminal Justice System

Restorative justice is a stage of settlement outside of court by involving the victim, perpetrator, victim and perpetrator's family, the community and interested parties to reach a settlement agreement that is expected to fulfill the sense of justice of both parties by emphasizing the restoration to the original state and not retaliation. According to Lynne N. Henderson in her writing entitled *The Wrongs of Victims' Rights*, restorative justice is a manifestation of the evolution of criminal acts from the concept of "private or personal" to the scope of "public or social". The criminal justice system before knowing restorative justice highlighted law enforcement against criminal acts through the trial stage only where the defendant would be charged by the public prosecutor and then the punishment was decided by the judge. This system focuses solely on the perpetrator and the state and in its development resulted in the neglect of the fulfillment of the victim's rights because the orientation of punishment is aimed at the perpetrator only. For example, in the Criminal Procedure Code (KUHP), victims of criminal acts are only positioned as witnesses who help the public prosecutor to prove the charges.

The basic principle of restorative justice is based on the idea of fair and impartial law enforcement. With the implementation of restorative justice, the harmony of the criminal justice system is not only based on the accountability of the perpetrators of the crime but also on the interests of the victim's recovery, including through compensation, peace, imposing social work sentences on the perpetrators, or other agreements. The criminal justice system that is not yet familiar with restorative justice in its journey also tends to use the instrument of imprisonment for punishment. This, in the end, causes the problem of overcrowding or excess residents in State Detention Centers and Correctional Institutions. According to data as of January 23, 2024 from the website of the Directorate General of Corrections, Ministry of Law and Human Rights, there has been an overcapacity of 77 (seventy-seven) percent with the number of residents amounting to 228,204 from the capacity for 128,656 residents of the Correctional Technical Implementation Unit (UPT).

The beginning of the concept of Restorative Justice was born from the emergence of awareness of the failure of the criminal justice system in accommodating the role of victims initiated by the women's movement called the "National Association for Victim Assistance Schemes". Then, in 1973, the first international meeting was held to discuss the rights of victims in the criminal justice system which became the forerunner to the formation of the World Society of Victimology in 1979[3] until in 1985, the United Nations (UN) General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. These movements are in line with the birth of the concept of Restorative Justice. The term 'restorative justice' was only introduced in several writings by Albert Eglash in the 1950s and was only widely used in 1977.

The definition of restorative justice, or what is known in positive law in Indonesia as Restorative Justice, is regulated in the provisions of Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). In addition to the SPPA Law, the regulation of restorative justice in laws and regulations in Indonesia is also found in:

1. Law Number 31 of 2014 concerning Protection of Witnesses and Victims;
2. Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims;
3. Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age;
4. Regulation of the Chief of the Republic of Indonesia Police Number 6 of 2019 concerning Criminal Investigation;

5. Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice;
6. Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice; and
7. Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Narcotics Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle of the Prosecutor

The principle of restorative justice has also been implemented by the Supreme Court, one of which is through the implementation of policies in the form of the Regulation of the Supreme Court of the Republic of Indonesia (hereinafter referred to as PERMA) and the Circular of the Supreme Court of the Republic of Indonesia (hereinafter referred to as SEMA). The PERMA and SEMA are:

1. PERMA Number 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code (hereinafter referred to as PERMA No. 2 of 2012)
2. PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System
3. PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law (hereinafter referred to as PERMA No. 3 of 2017)
4. SEMA Number 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions (hereinafter referred to as SEMA No. 4 of 2010)
5. SEMA Number 3 of 2011 concerning the Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation Institutions
6. Joint Decree Chief Justice of the Supreme Court of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, and Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 166A/KMA/SKB/XII/2009, 148A/A/JA/12/2009, B/45/XII/2009, M.HH-08 HM.03.02 of 2009, 10/PRS-s/KPTS/2009, 02/Men. PP and PA/XII/2009 concerning Handling of Children in Conflict with the Law
7. Note Joint Agreement of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012

concerning the Implementation of the Implementation of Adjustments to the Limits of Minor Criminal Offenses and the Amount of Fines, Quick Examination Procedures and the Implementation of Restorative Justice

8. Joint Regulation of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Chief of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014 Number Per-005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions

9. Decree Director General of General Courts Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts

The SPPA Law through Article 5 paragraph (1) has required the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a sentence, to prioritize the restorative justice approach. One of these approaches is attempted through the Diversion institution, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. Diversion efforts can be applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime that is threatened with imprisonment of less than 7 (seven) years, or are threatened with imprisonment of less than 7 (seven) years and are also charged with a crime that is threatened with imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative or combination (combined) indictment, and are not a repetition. Diversion efforts are carried out through deliberation by paying attention to the interests of the victim, the welfare and responsibility of the child, avoiding negative stigma, avoiding retaliation, community harmony, and propriety, morality and public order.

The diversion process is carried out for a maximum of 30 (thirty) days with the ultimate goal of obtaining a diversion agreement. If deemed necessary, a separate meeting or caucus can be held between the parties and the judge as the diversion facilitator. In this diversion deliberation, the judge's ability is needed to be able to bridge the process of differences of opinion so that a diversion agreement can be obtained that is agreed upon and deemed fair to both parties. This agreement can be excluded if the crime is a violation, a minor crime, a crime without victims, or the value of the loss suffered by the victim does not exceed the local Provincial Minimum Wage. Article 11 of the SPPA Law has regulated the forms of diversion agreements that can be in the form of peace with/without

compensation, return to parents or guardians, participation in education or training at educational institutions or Social Welfare Institutions (hereinafter referred to as LPKS) for a maximum of 3 (three) months, or community service. If the diversion process does not produce an agreement or the diversion agreement is not implemented, law enforcement against the crime can be continued with the criminal justice process.

The variety of principal penalties that can be imposed on children in conflict with the law accommodates the obstacles encountered related to overcrowding in the law enforcement process in Indonesia. Article 71 paragraph (1) of the SPPA Law regulates the types of principal penalties that can be imposed on children in conflict with the law, namely warning penalties, penalties with conditions in the form of guidance outside the institution (can be in the form of a requirement to follow a guidance and counseling program carried out by a supervisory official, follow therapy in a mental hospital, or follow therapy due to abuse of alcohol, narcotics, psychotropics, and other addictive substances), community service, or supervision, as well as job training, guidance in an institution, and imprisonment. Meanwhile, for children in conflict with the law who are under 14 (fourteen) years of age, they can only be subject to the actions as regulated in Article 82 paragraph (1) of the SPPA Law in the form of return to parents/guardians, surrender to someone, treatment in a mental hospital, treatment at the LPKS, the obligation to follow formal education and/or training held by the government or private bodies, revocation of a Driving License (SIM), and/or correction due to criminal acts.

Another manifestation of the concept of restorative justice that considers aspects of justice and humanity in the SPPA Law is also manifested in the concept of judicial forgiveness or *rechtelijke pardon*. In this concept, judges are expected to be able to weigh the lightness of the criminal act, the child's personal circumstances, or the incident at the time the act was committed or that occurred later as stated in Article 70 of the SPPA Law. In jurisprudence, an example of a judicial pardon decision was once handed down by the Rengat District Court in a case of theft against a child who was sentenced to 2 (two) months in prison in case number 2/Pid,Sus-Anak/2021/PN Rgt.

In the Supreme Court institution, in addition to child criminal acts, the application of restorative justice is found in the implementation of law against minor criminal acts, criminal acts committed by women in conflict with the law, and narcotics crimes. According to Article 1 of PERMA No. 2 of 2012, cases of minor theft, minor embezzlement, minor fraud, minor vandalism, and minor receiving of goods whose value does not exceed Rp2,500,000.00 (two million five hundred thousand rupiah) are examined by a single judge with a fast examination procedure in accordance with Articles 205-210 of the Criminal Procedure Code. If a peace agreement is not reached, the single judge will

continue the criminal examination process and during the trial, the judge is advised to continue to strive for peace and prioritize restorative justice in his/her decision.

Then, the existence of PERMA No. 3 of 2017 is one proof of the Supreme Court's commitment to guaranteeing access to justice and improving the bargaining position of women who come into conflict with the law as vulnerable groups through the principles of respect for human dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty as regulated in Article 2 of PERMA No. 3 of 2017. Through this PERMA, the role of women who come into conflict with the law in providing evidence in court is not only to "assist the public prosecutor" in proving the defendant's guilt, but also in restoring public order which is accommodated in the statutory order for judges in Article 8 paragraph (1) to guarantee women's rights to communicate openly regarding losses, the impact of the case, and their need for recovery.

In narcotics cases, the restorative justice approach is implemented through the application of punishment in the form of an order to take legal action in the form of rehabilitation for defendants who are drug addicts, namely those who use or abuse narcotics and are in a state of dependence on narcotics both physically and mentally, who are caught red-handed and when caught red-handed evidence of use of 1 (one) day is found (more complete details are listed in SEMA No. 4 of 2010), there is a positive Laboratory test letter for using Narcotics based on the investigator's request and a Certificate from a government psychiatrist/psychiatrist appointed by the judge, and there is no evidence of involvement in the illicit trafficking of narcotics. Then, the judge in determining the length of the rehabilitation process must seriously consider the level of addiction of the defendant so that in this case the existence of expert testimony becomes mandatory. During the examination at the trial, the judge can also order the defendant to present the defendant's family and related parties to be heard as mitigating witnesses in the context of the restorative justice approach.

Based on the explanation above, it can be understood together that in the application of restorative justice, the law as a tool of social control that is always developing following the development of its society has a remedial nature that aims to restore the situation to its original state. As the legal adage that reads *judex herberet debet duos sales, salem sapientiae, ne sit insipidus, et salem conscientie, ne sit diabolus* which means "a judge must have two things; a policy, unless he is stupid; and a conscience, unless he has a cruel nature", then the purpose of the application of restorative justice is not only to prioritize revenge for the perpetrators of the crime while ignoring a fair settlement for both parties. However, a good judge should also consider the interests of the victim by prioritizing the restoration to its original state.

3.2 Obstacles and Solutions to the Implementation of Restorative Justice in the Criminal Justice System

Restorative justice is a new paradigm in the criminal justice system that no longer emphasizes punishment (retributive justice) or revenge on the perpetrator, but rather emphasizes the restoration of losses as a result of the crime. According to Howard Zehr in his book *The Little Book of Restorative Justice*, restorative justice is a process of involving parties who have an interest in a particular violation and together identifying and addressing losses, needs, and obligations to heal and place them properly.

Likewise, John Braithwaite defines restorative justice as a process where all parties involved in a particular offense come together to collectively decide how to deal with the consequences of the offense and its implications for the future. This approach is different from the conventional criminal justice system which places more emphasis on punishment.

Although the restorative justice approach is considered new in resolving criminal cases, it should be realized that historically, Indonesian society's culture actually highly values the consensus approach. So that without realizing it, Indonesian society has known the concept of restorative justice in customs, customary law and the values that are born in it which often use deliberation to reach consensus. Indonesian society in practice often uses peace mechanisms as an ideal effort to realize justice. This practice is not only in civil cases, even now in criminal cases, peace is often found involving victims, perpetrators, the community and sometimes mediated by law enforcement.

Settlement of criminal cases through the restorative justice principle approach can be applied by law enforcement officers. This principle can be applied in the police area with reference to the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Likewise in the prosecutor's office with the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Likewise, the principle of restorative justice can be applied in court with reference to the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice.

Violence against children is not limited to physical abuse. As the definition of abuse put forward by R. Soesilo, abuse is an act of making someone feel bad, such as pushing them until they fall, causing pain such as pinching or hitting, causing wounds such as slicing or stabbing with a knife, and damaging someone's health such as letting them get sick. All of these actions are carried out intentionally and with improper or transgressive intentions). In the context of

children, violence in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is any act against a child that results in physical, psychological, sexual, and/or neglect or suffering, including threats to commit acts, coercion, or unlawful deprivation of liberty. In addition, the World Health Organization emphasizes that violence against children is any form of abuse or inappropriate treatment of a child that causes physical, emotional, sexual injury, neglect of care or exploitation for commercial purposes that can endanger the health, survival, dignity, or development of the child.

The obstacles in implementing the principle of restorative justice in resolving alleged acts of violence against children that frequently occur are as follows:

1. Abuse of authority by law enforcement officers.

The role of law enforcement is very necessary in the process of peace efforts through restorative justice, although law enforcement is passive in efforts to reconcile victims and perpetrators. Even though passive, law enforcement can also be an inhibiting factor in making peace efforts, because of the potential for abuse of authority. The potential for abuse of authority is caused by the ineffectiveness of supervision in the implementation of restorative justice, as well as the administrative recording system for handling criminal acts based on restorative justice which has not been properly recorded. Abuse of power by law enforcement officers in resolving criminal cases through restorative justice is an action that deviates from the goals or intentions of the principles of restorative justice so that the impact is no longer recovery, but rather a loss for the parties.

In handling criminal cases through restorative justice, there are a number of corrupt practices of the use of restorative justice by law enforcement officers as a result of the lack of supervision. Recovery of victim losses by giving a sum of money from the perpetrator, is not only a form of recovery for the victim, but in practice the payment of peace money is also intended as money for withdrawing case files, money for making additional examination files, money for organizing case titles that should not be collected from the community.

Among the forms of abuse of the restorative justice principle by law enforcement officers in resolving acts of violence against children is the existence of law enforcement officers who take advantage of restorative justice by taking financial advantage. The practice of abuse of authority by law enforcement officers who take financial advantage of parties who want to take restorative justice, such as what happened to teacher S who was reported for alleged violence against children. In the case of teacher S, restorative justice was used as a loophole by law enforcement officers to carry out extortion.

The abuse of authority by law enforcement officers by taking advantage of teacher S has been proven in the ethics trial of the Southeast Sulawesi Regional Police Propam. Through the ethics trial, two police officers were sentenced to

special placement for seven days and a one-year demotion as well as ethical sanctions in the form of an apology to the institution for the actions they had committed.

The potential for abuse of authority in resolving criminal cases through peace is often also initiated by the perpetrator against the victim by giving a certain amount of peace money as a substitute for sanctions for the crime committed by the perpetrator. In many cases, when the victim reports to law enforcement regarding what they experienced, law enforcement sometimes directs and tends to force the victim to make peace with the perpetrator without considering the psychological condition and readiness of the victim. This certainly contradicts the principle of voluntary in restorative justice because the victim's bargaining position is weak or under pressure. The imposition of peace will certainly benefit certain parties, especially if there are certain interests and strong power relations, so that the peace agreement made no longer reflects true restorative justice.

Peace money can be interpreted as a form of responsibility of the perpetrator which is intended to compensate for the losses suffered by the victim, medical costs and others. Therefore, peace money in the context of restorative justice, even though it is a positive instrument to create a peace agreement, must be understood carefully and also requires strict supervision to prevent misuse by law enforcement officers or as a means of seeking profit from one of the parties. The supervision of peace money, in addition to preventing abuse of authority, is also to ensure the achievement of restorative justice for the parties, not transactional justice which prioritizes finances alone or tends to be a means of extortion.

2. Failure to reach a peace agreement

Peace agreements are an important part of the implementation of restorative justice which also plays an important role in the process of resolving criminal cases. In this context, peace agreements are not just a formality, but are an important tool that helps improve the relationship between perpetrators and victims of crime.

The peace agreement which is an important element in restorative justice as regulated in Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice which requires that the restoration of the situation must be through peace. Likewise, the requirements for terminating prosecution based on restorative justice as regulated in Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, including the existence of a peace agreement between the victim and the suspect, and this has been responded to positively by the public.

In line with this, Court Regulation No. 1 of 2024 concerning Guidelines for Trying

Criminal Cases Based on Restorative Justice, in Article 19 it is stated that a peace agreement and/or the defendant's willingness to be responsible for the losses and/or needs of the victim as a result of a criminal act is a reason to mitigate the sentence and/or be considered for imposing a conditional/supervisory sentence in accordance with statutory provisions.

Therefore, through a peace agreement, the parties are given space to actively participate in determining a fair solution. This process allows for constructive dialogue in which victims can express the impact of the victimization they experience, while the perpetrators have the opportunity to admit their mistakes and show responsibility for their actions. This is certainly different from the criminal justice system with a retributive approach that tends to be punishment-oriented. Moreover, in the retributive approach, the interests of the victims of crime are represented by the Public Prosecutor as part of the protection of society according to the social contract theory (social contract argument) and the social solidarity theory (social solidarity argument) which tend to limit direct participation from the parties involved.

In the application of restorative justice, the confession of the perpetrator is also important in order to create a peace agreement. The confession of guilt is the entry point for the process of recovery for the parties. So without confession, the principle of accountability in restorative justice cannot be fulfilled substantially.

As with the peace efforts in the case of teacher S who chose to revoke the peace agreement with the victim's parents on the grounds that when signing the peace agreement, teacher S was under pressure and did not know the contents and intent of the agreement letter (www.tribunnews.com/regional). Moreover, in his confession, teacher S admitted that he had never committed acts of violence against children as accused of him. So teacher S preferred to resolve the case of the crime of violence against children accused of him through the courts. During the trial at the Andoolo District Court, it was revealed that there were no witnesses who saw teacher S committing violence against student D (child) either from among the teachers or students. Likewise, the statement from the Forensic Expert Doctor who was presented as an expert explained that the wound on the victim's thigh was not caused by a coconut broom handle but by friction of a blunt object with a rough surface. This certainly strengthens S's statement that he was not involved in the criminal act as accused of him. Finally, based on the facts of the trial, through the verdict of the panel of judges of the Andoolo District Court, S was declared not proven legally and convincingly guilty, and acquitted him of all charges and restored his rights. The role of law enforcement components with integrity and authority is expected to be able to drive social change in society, especially in the theory of social contract (social contract argument) of law enforcement as part of community protection. Therefore, changes in the culture and mindset of law enforcement related to the

implementation of restorative justice are greatly needed in law enforcement as part of the criminal justice system, where the focus of punishment becomes recovery. This challenge includes changing the mindset of law enforcers, judges, and the general public who may be more accustomed to retributive justice which tends to be punishment-oriented.

Therefore, in order to maximize the resolution of criminal acts through restorative justice as its aim is to restore relations between the parties, the following is recommended:

1. There must be a monitoring system in the implementation restorative justice, so that restorative justice is not misused.
2. There needs to be a clear mechanism regarding the determination of peace money to prevent misuse.
3. A better understanding of the essence is needed restorative justice for all parties involved, including the perpetrators, victims, the community and law enforcement.

3.3 Criminal Law Policy Based on Restorative Justice in the Future Positive Law

Indonesian criminal law policy shows an increasingly strong tendency towards a restorative justice approach in response to the weaknesses of the retributive approach which is repressive and does not provide solutions to the root causes of crime. The retributive approach which prioritizes punishment has proven to be ineffective in reducing recidivism rates or restoring relationships between perpetrators, victims, and the community. Within this framework, restorative justice is present as an alternative paradigm that prioritizes recovery, dialogue, and fair resolution for all parties affected by the crime.

The renewal of national criminal law is reflected in the ratification of the new Criminal Code (KUHP), through Law Number 1 of 2023, which explicitly recognizes and accommodates the principles of restorative justice. In the new Criminal Code, the restorative justice approach is not only mentioned as an alternative principle, but is also regulated in various articles as a form of resolving certain criminal acts, especially against:

1. Minor crimes,
2. Criminal acts committed by children,
3. Criminal acts that do not cause physical casualties or major losses
4. Criminal acts that can be resolved outside the legal system litigation.

This shows a shift from the classical paradigm of criminal law which emphasizes retaliation, towards a more humanistic and contextual approach.

With the increasing strength of normative support for the restorative justice approach, it can be predicted that in the future, Indonesian positive law will be increasingly integrated with the principles of restorative justice in the following forms:

1. Institutionalization of restorative forums such as family conferences, penal mediation, and customary deliberations into the formal justice system.
2. Increasing the capacity of law enforcement officers in facilitating approaches restorative, including special training for investigators, prosecutors, judges and community counselors.
3. Reform of the criminal justice system, which prioritizes non-criminal sanctions imprisonment, such as community service, rehabilitation, or counseling, especially for first-time offenders or minor crimes.
4. Strengthening community participation in the criminal resolution process to revive the social role of the community as an agent of social recovery and reintegration.

4. Conclusion

Criminal Law Policy Based on Restorative Justice in Law Enforcement Practices in the Criminal Justice System is a stage of case resolution outside the court (settlement outside of court) by involving victims, perpetrators, families of victims and perpetrators, the community and interested parties to reach a settlement agreement that is expected to fulfill the sense of justice of both parties by emphasizing restoration to the original state and not retaliation. obstacles to the implementation of restorative justice in the criminal justice system are the existence of law enforcement officers who abuse their authority in its implementation for their own benefit. In addition to the existence of law enforcement officers, the difficulty of reaching a peace agreement is also a significant obstacle because the victim or perpetrator does not accept something. Criminal law policies based on restorative justice in future positive law will be increasingly integrated with the principles of restorative justice in the following forms: Institutionalization of restorative forums such as family conferences, penal mediation, and customary deliberations into the formal justice system. Increasing the capacity of law enforcement officers in facilitating a restorative approach, including special training for investigators, prosecutors, judges and community counselors. Reform of the penal system, prioritizing non-prison sanctions, such as community service, rehabilitation, or counseling, especially for first-time offenders or minor crimes. Strengthening community participation in the criminal resolution process forreviving the social role of the community as an agent of social recovery and reintegration.

5. References

- Felisiano, I., & Paripurna, A. Penerapan keadilan restoratif dan celah praktik korupsi. *Integritas: Jurnal Antikorupsi*, 2023
- Ferry Irawan Febriansyah , Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis dan Ideologis Bangsa, *DiH Jurnal Hukum* , Vol 13 . No 25 ,Februari 2017
- Hatarto Pakpahan, 2015, Restorative Justice Terhadap Pengguna Narkotika Dan Obat Obatan Berbahaya, *Jurnal Cakrawala Hukum*, Vol.6, No.2
- Kusnu Goesniadhie, Perpektif Moral Penegakan Hukum yang Baik, *Jurnal Hukum*, Vol. 17, No. 2 2017
- Laia, F., Hulu, K. I., & Laia, F). Analisis Hukum Terhadap Tindak Pidana Penganiayaan Yang Dilakukan Oleh Anak.*JURNAL MathEdu (Mathematic Education Journal)*,6(2), 2023