

Effectiveness of Implementing Restorative Justice in Theft Criminal Acts Based on Utility (Case Study of the Nunukan Police Resort)

Dony Setyo Helga Efendi¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia,
E-mail: donyefendi15719@gmail.com

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

Abstract. *This study is entitled "The Effectiveness of Restorative Justice Implementation in Expediency-Based Theft Crimes (A Case Study of the Nunukan Police Resort)". This research is motivated by the increasing application of restorative justice as an alternative to resolving criminal cases, including petty theft crimes, which emphasizes restoring relationships between perpetrators, victims, and the community. This approach is considered to provide more benefits for the parties compared to the conventional criminal justice system that is oriented towards revenge. In the context of the Nunukan Police Resort, the restorative justice approach has been used in several theft cases by considering aspects of humanity and social benefits. The research method used is socio-legal research, an approach that combines normative studies of laws and regulations with empirical analysis of field practices. Data were obtained through a literature review of legal doctrine, laws and regulations, and previous research findings, as well as through interviews and documentation at the Nunukan Police Resort. The analysis was conducted qualitatively by connecting restorative justice theory, Lawrence Friedman's legal system theory, and Satjipto Rahardjo's progressive legal theory. The research results indicate that the application of restorative justice in theft cases at the Nunukan Police Station has been quite effective, especially in cases of minor theft that do not result in significant losses. However, this effectiveness still faces several obstacles, such as limited understanding among law enforcement officers, the lack of uniform procedural standards, and the potential for injustice to victims if the mediation process is not balanced. Nevertheless, a benefit-based restorative justice approach is still considered capable of creating more humane and efficient solutions, and providing broader social benefits for both perpetrators, victims, and the community.*

Keywords: *Benefit; Crime; Effectiveness; Justice; Restorative.*

1. Introduction

In a state based on the rule of law, law is the primary pillar that drives the foundations of social, national, and state life. One of the fundamental characteristics of a state based on the rule of law is its tendency to assess every citizen's actions based on applicable regulations. This means that in a state based on the rule of law, all citizen behavior is regulated and limited by law to ensure order and social justice.

Criminal law plays a crucial role as a tool for resolving various issues that arise in society. Its existence is intended to provide justice and certainty for society by clarifying which actions are permissible and which are prohibited. Indonesian criminal law itself is divided into two types: criminal law contained in the Criminal Code (KUHP) and special criminal law regulated outside the KUHP.

Furthermore, criminal law not only defines prohibited acts and the accompanying threats of sanctions, but also regulates how those sanctions are imposed and enforced. Prohibitions in criminal law are directed at specific acts that have social consequences, while sanctions or criminal threats are directed at the perpetrator as the legal subject. Therefore, discussion of criminal acts is an integral part of the study of criminal law itself.

Theft is one of the most common crimes in Indonesia, including in border areas such as Nunukan Regency, North Kalimantan. Theft not only causes material losses for victims but also disrupts the sense of security and public order. According to Soerjono Soekanto, the existence of crime in society is inseparable from the social, economic, and cultural factors that influence it. Therefore, law enforcement efforts must consider the social conditions surrounding both the perpetrator and the victim.

In practice, conventional legal systems, which emphasize punishment, often fail to comprehensively address the problem. Many thieves reoffend due to a lack of adequate moral guidance or counseling during their sentences. Consequently, the deterrent effect of punishment is not fully achieved. Therefore, a more humane, participatory, and solution-oriented legal approach is needed, one of which is the concept of restorative justice.

The restorative justice approach is an effort to resolve criminal cases by involving victims, perpetrators, and the community to work together to find just solutions and restore the losses incurred as a result of the crime. Barda Nawawi Arief explains that restorative justice is a legal approach oriented towards reparation for victims' losses, accountability for perpetrators, and restoration of social relationships disrupted by crime. Thus, the goal of law is not merely punishment, but also the creation of balance and harmony in society.

For example, in Nunukan Regency in 2023, a teenager stole a cell phone from his neighbor. Through mediation facilitated by the Nunukan Police Criminal Investigation Unit, the perpetrator admitted his guilt, compensated the victim, and publicly apologized. The victim accepted the apology, and the case was dismissed through a restorative justice mechanism based on Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice (Indonesian National Police, 2021). This case serves as a clear example of how restorative justice can provide a quick, efficient, and more beneficial solution for both parties. For the victim, there is a restored sense of justice; while for the perpetrator, there is an opportunity to improve themselves without having to go through a lengthy criminal process.

However, practice in the field shows that several obstacles remain. For example, there is a lack of a unified understanding among law enforcement officials regarding the application of restorative justice, limited supporting facilities for the mediation process, and the potential for abuse of authority when cases are resolved outside of formal channels. Therefore, a study is crucial to assess the effectiveness of restorative justice in theft crimes, particularly within the jurisdiction of the Nunukan Police, from a legal perspective.

Research by Rohman (2023) from Sultan Agung Islamic University (UNISSULA) shows that the implementation of restorative justice in Indonesia has not been optimal due to weak synergy between law enforcement agencies and the absence of uniform technical guidelines in the field. The study emphasizes the importance of strengthening the capacity of officers and public outreach to ensure that restorative justice truly functions as a means of justice based on expediency and not simply a legal compromise.

Nunukan, as a border region, has unique characteristics. High population mobility, limited economic conditions, and strategic geographic location make this region vulnerable to various crimes, including theft. Therefore, the implementation of restorative justice at the Nunukan Police Department is crucial in realizing legal solutions that are not only repressive but also rehabilitative and educational.

Several previous studies have shown that the implementation of restorative justice can increase victim satisfaction, reduce recidivism rates, and strengthen social ties within the community. However, its effectiveness depends heavily on police commitment, community support, and the perpetrator's compliance with the agreement reached through the process.

In the context of Indonesian positive law, the crime of theft is regulated by Article 362 of the Criminal Code, which states that anyone who takes another person's property with the intent to possess it unlawfully is subject to theft and is subject to a maximum prison sentence of five years or a fine. Restorative justice mechanisms exist as an alternative case resolution, particularly for cases of minor

theft, to ensure the legal process is faster, more efficient, and more beneficial for all parties.

The Nunukan Police, as a law enforcement agency, have implemented this mechanism in several theft cases. However, the effectiveness of this implementation in providing substantive justice for both victims and perpetrators still requires scientific study. Therefore, this study seeks to evaluate the practices, challenges, and effectiveness of the application of restorative justice in the crime of expediency-based theft at the Nunukan Police.

In addition, this research is expected to be a reference for other border areas with similar characteristics, so that law enforcement in Indonesia can move towards a more humane, adaptive, and pro-community welfare direction. Based on this description, the author is interested in conducting a study entitled "EFFECTIVENESS OF IMPLEMENTING RESTORATIVE JUSTICE IN THEFT CRIMINAL ACTS BASED ON BENEFIT (Case Study of the Nunukan Resort Police)."

2. Research Methods

This study uses normative legal research, namely using norms in laws with a conceptual approach and a special approach. The research specification used is Analytical Descriptive, namely an effort to analyze and explain legal issues related to the object. The method used in this study is normative juridical. This research goes through the stages of literature study, the data obtained is then analyzed through a qualitative analysis approach. Qualitative data processing and analysis generally emphasize the analysis of the deductive and inductive conclusion process and the dynamics of the relationship between observed phenomena using scientific logic.

3. Results and Discussion

3.1 Implementation of Restorative Justice in the Crime of Theft

The application of restorative justice to theft crimes is an innovation in modern criminal law that focuses on restoring the relationship between the perpetrator, the victim, and the community. The main principle of this approach is that crime is not simply a violation of the state, but rather a violation of social relations. Therefore, the goal of restorative justice is not simply to punish the perpetrator, but to restore the losses suffered by the victim and repair the social relations damaged by the act.

In the context of Indonesian law, restorative justice gained a strong legal basis following the issuance of Indonesian National Police Regulation (Perpol) Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. This regulation provides guidance for investigators to resolve criminal cases, including theft, through penal mediation if certain requirements are met, such as

a peace agreement, minimal losses, and the perpetrator being a non-recidivist. Therefore, investigators have the authority to terminate the investigation through restorative justice mechanisms if these criteria are met.

In practice, restorative justice in theft cases often begins with the investigator's initiative, after assessing the case as minor. For example, the theft of small-value items, such as agricultural produce or household goods, involves facilitating a meeting between the perpetrator and victim for deliberation with the goal of reaching a settlement. The results of this agreement are outlined in a peace agreement, which serves as the basis for terminating the investigation based on restorative justice.

This approach is considered more humane and contextual than a repressive approach through the courts. In many cases, perpetrators of petty theft come from economically disadvantaged backgrounds and lack professional criminal motives. Therefore, sentencing them to prison often does not provide significant social benefits. In contrast, through restorative justice, perpetrators can make amends by apologizing and providing direct compensation to the victim, while the victim also receives moral and material reparation.

One example of the application of restorative justice in theft cases occurs in several police jurisdictions in Indonesia, including the Nunukan Police. According to internal police reports, minor theft cases, such as theft of crops or household goods, are often resolved through mediation between the perpetrator and the victim. In these cases, the victim agrees to forgive the perpetrator after the perpetrator returns the goods or provides agreed-upon compensation. Investigators then issue a termination of investigation (SP3) based on the reconciliation between the two parties.

This approach is also in line with the spirit of Islamic law, which emphasizes peaceful dispute resolution (*ishlah*) and the restoration of social relations. Therefore, the application of restorative justice in the crime of theft also reflects the values of local wisdom and humanitarian principles that underlie Indonesian legal philosophy, as enshrined in the Pancasila. This demonstrates that criminal law is not merely normative but also serves a social function, maintaining balance and harmony in society.

From an Islamic legal perspective, the restorative justice approach is very much in line with the concept of *ishlah* (peace) taught in the Qur'an. Allah SWT says in QS. Al-Hujurat [49]:10, "Indeed, the believers are brothers; therefore, make peace between your two brothers." This principle emphasizes that resolving disputes through peace is the main way to maintain social harmony.

In addition, Islam places the value of *afw* (forgiveness) as a higher form of virtue than revenge. Rasulullah SAW said: "Wealth does not decrease because of charity, and Allah does not increase anything except glory to a servant who forgives." (HR.

Muslim). In the context of petty theft, if the victim is willing to forgive and the perpetrator returns the victim's rights, then the settlement is not only morally valid, but also worth worshipping.

The concept of restorative justice in Islam is also closely related to the principles of *maqasid al-syari'ah*, especially in protecting property (*hifz al-mal*) and protecting the soul (*hifz al-nafs*). The aim of Islamic law is not merely to punish, but to protect and maintain the benefit of society. Therefore, if peace is able to prevent greater social damage, then this approach is in line with *maqasid sharia*.

In the theory of *maslahah murrasa*, Imam Al-Ghazali explains that all policies that bring benefit to the people without conflicting with *sharia* principles can be used as a legal basis. Thus, resolving petty theft cases through penal mediation can be considered valid within the framework of *maslahah murlah* because it brings benefits and prevents wider harm.

Historically, a similar practice was implemented by Caliph Umar ibn al-Khattab when he suspended the punishment of amputating the hands of thieves during the famine (*'amur-Ramadah*). This decision demonstrates that, under certain circumstances, social utility can be a primary consideration in the application of Islamic criminal law.

Apart from social aspects, Islam also emphasizes the principle of *nasuha* repentance for perpetrators of crimes. Allah SWT says in QS. Al-Furqan [25]:70, "Except for those who repent, believe, and do righteous deeds; Allah replaces their evil with good." This means that justice in Islam also includes opportunities for perpetrators to improve themselves and return to society.

From an Islamic legal perspective, resolving criminal acts, including theft, focuses not only on punishment but also on restoring social and moral relations between the perpetrator, the victim, and the community. This principle aligns with the concept of *ishlah* (peace), a key principle of Islamic law. *Ishlah* emphasizes that the primary goal of law enforcement is not merely to provide a deterrent effect but also to improve the morals of perpetrators and restore the social balance disturbed by sin or violation.

The application of restorative justice in the context of Islamic law can be understood through the approach of *rahmatan lil 'alamin* (blessing for the universe), which emphasizes compassion, justice, and balance in society. Islamic law views every violation as having spiritual and social dimensions, so resolving it requires more than just physical sanctions, but also repentance and moral improvement. In cases of theft, which is a serious crime, if the perpetrator shows remorse, returns the stolen goods, and apologizes to the victim, then a peaceful resolution process can be an alternative to *hudud* punishment, as long as the requirements for punishment have not been fully met.

The principle of restorative justice in Islam is also in line with the words of Allah SWT in Surah Al-Ma'idah verse 39:

"So whoever repents after committing injustice and amends himself, then verily Allah accepts his repentance. Indeed, Allah is Oft-Forgiving, Most Merciful."

This verse emphasizes that the opportunity to improve oneself is an essential part of Divine justice. Punishment is not intended to destroy the perpetrator, but rather as a means for the perpetrator to realize their mistake and return to the right path. Thus, the principle of restorative justice finds spiritual legitimacy in Islam because it is oriented toward improvement, not mere retribution.

In Islamic legal practice, the implementation of *ishlah*, or peace, is often carried out by involving community leaders, religious scholars, or sharia judges as mediators. This process aims to ensure that the resolution reached is not only legally just but also fosters peace and mutual forgiveness between the disputing parties. This approach is similar to the concept of penal mediation in the Indonesian positive legal system, as stipulated in Police Regulation Number 8 of 2021 concerning Restorative Justice. Thus, it can be said that the concept of restorative justice in Islam has been known and practiced in Islamic legal tradition since the time of the Prophet Muhammad (peace be upon him).

Apart from that, Rasulullah SAW in many histories shows a tendency to encourage peace between disputing parties as long as they do not ignore the rights of victims and justice. In a hadith narrated by Abu Dawud, the Prophet said: "No one forgives another person's (mistakes) unless Allah increases his glory." This hadith shows that forgiving and resolving cases peacefully is a noble act in the Islamic view. So, the application of restorative justice can be seen as a form of application of noble Islamic moral values in a modern context.

Thus, the application of restorative justice to theft crimes from an Islamic perspective does not contradict Sharia, as long as it adheres to the requirements of hudud law and the rights of victims. Islam recognizes that true justice occurs not only when the perpetrator is punished, but also when social relations are restored and the perpetrator sincerely repents. These principles of *ishlah*, repentance, and social responsibility make the restorative justice approach relevant and aligned with the *maqasid* of Sharia—namely, the protection of religion, life, intellect, descendants, and property.

The restorative justice approach, which emphasizes the restoration and accountability of perpetrators, is truly a modern implementation of Islamic justice values. By combining positive law and Sharia principles, the Indonesian legal system can create substantive justice that is both humanistic and religious.

Thus, an Islamic perspective strengthens the moral and spiritual legitimacy of applying restorative justice in theft cases. This approach not only prioritizes social

peace but also serves as a concrete manifestation of law based on compassion (rahmatan lil 'alamin).

In practice, investigators must fulfill formal stages. These stages include: (1) initiating the mediation process by the investigator, (2) meeting between the perpetrator and victim with their counsel, (3) formulating a peace agreement, and (4) reporting the agreement to the investigator's superior for approval to terminate the investigation. This procedure aims to ensure that restorative justice remains accountable and is not misused.

However, the implementation of restorative justice does not always run smoothly. One major obstacle is the public perception that every crime must be punished with imprisonment. This makes it difficult for some, especially victims, to accept the concept of restorative justice. Therefore, extensive legal outreach and education efforts are needed to ensure the public understands that justice is not always synonymous with punishment but can also involve restoration.

Furthermore, another challenge arises from the integrity of law enforcement officers. Several studies have shown that the success of restorative justice depends heavily on the commitment and honesty of investigators in facilitating the peace process. If investigators are not neutral or there is external interference, the goals of restorative justice will be difficult to achieve. Therefore, internal oversight by the police is crucial.

Research conducted by Wahyuni (2021) from UNISSULA shows that implementing penal mediation in petty theft cases can reduce the burden on the criminal justice system while simultaneously providing satisfaction to all parties. The study's findings confirm that the concept of restorative justice is more effective in creating social harmony than conventional approaches, which tend to foster resentment. Therefore, the application of restorative justice needs to be expanded while still observing the precautionary principle.

Furthermore, the implementation of restorative justice also offers practical benefits to the police. With peaceful resolution, the caseload at the investigation level can be significantly reduced. This has positive implications for the efficiency of law enforcement officers and saves state resources. Furthermore, the public also experiences a more adaptive legal system oriented toward solving real problems.

From a theoretical perspective, the application of restorative justice in theft crimes also reflects the Restorative Justice Theory proposed by Howard Zehr (2002). According to him, restorative justice focuses on reparation for victims' losses, accountability for perpetrators, and community involvement in conflict resolution. This concept differs from the retributive approach, which focuses on retribution. Thus, the Indonesian criminal law system, which implements restorative justice, has moved toward a more substantive justice paradigm.

Besides Zehr, Satjipto Rahardjo's (2009) perspective on progressive law is also relevant in this context. Rahardjo emphasized that the law must side with humanity and not be bogged down in procedural formalities. Therefore, the application of restorative justice can be seen as a manifestation of law oriented toward social benefit and humanitarian values. This approach emphasizes that the ultimate goal of law is not merely to punish, but to improve human welfare.

Ultimately, the application of restorative justice to theft crimes offers new hope for the Indonesian criminal justice system. This approach not only reduces repressive crime rates but also strengthens social order through the values of peace, responsibility, and forgiveness. With proper oversight, the application of restorative justice is expected to be an effective means of achieving justice that is not only legal but also humane and beneficial.

3.2 Weaknesses in the Implementation of Restorative Justice in the Crime of Theft

The concept of restorative justice is fundamentally intended to provide a more humane, efficient, and recovery-oriented form of criminal case resolution. However, despite its many advantages, its application to theft crimes is not without a number of weaknesses, both normative, structural, and cultural. These weaknesses need to be thoroughly understood to ensure that restorative justice can be implemented consistently and prevent abuse.

One of the main weaknesses of restorative justice is the lack of a unified understanding among law enforcement officials. Many investigators still believe that criminal cases must be resolved through a court sentence. As a result, the implementation of restorative justice often relies on the subjectivity of officers, rather than on a well-established system. This creates inconsistencies in implementation across various regions, including border areas like Nunukan, where police human resources are still limited.

Another weakness lies in the positive legal aspect. Although restorative justice is regulated by the Republic of Indonesia National Police Regulation Number 8 of 2021, this regulation is only internal and administrative in nature. This means there are no statutory provisions binding on all law enforcement agencies, such as the prosecutor's office and the courts. As a result, restorative case resolution mechanisms often stop at the police level without strong coordination with other institutions in the criminal justice system.

From the victim's perspective, another weakness is the potential for dissatisfaction with the outcome of the peace agreement. In some cases, victims feel pressured to forgive the perpetrator or accept compensation disproportionate to the losses they have suffered. This can occur due to the victim's weak bargaining position, especially when the perpetrator has a higher social or economic status. As a result, the primary goal of restorative justice, namely restoring social relations and moral

balance, becomes difficult to achieve.

From an Islamic perspective, the principle of resolving criminal cases oriented toward restoration and peace has been known since the time of the Prophet Muhammad (peace be upon him). Islam recognizes the concepts of al-'afwu (forgiveness) and islah (peace), which are highly valued in resolving conflicts between individuals. In the Quran, Allah states:

"And the recompense for an evil deed is an evil like it. But whoever forgives and does good, his reward is with Allah." (Surah Asy-Shura: 40) This verse shows that Islam encourages resolving disputes peacefully as long as it does not disregard the principle of justice. This value aligns with the philosophy of restorative justice, which emphasizes restoring social relationships between the perpetrator, the victim, and the community.

However, in Islamic criminal law (jinayah), the implementation of forgiveness does not mean eliminating all forms of legal accountability. For the crime of theft (sariqah), sharia stipulates the punishment of amputation of the hand for perpetrators who meet certain elements as mentioned in QS. Al-Maidah: 38. However, scholars also emphasize that this punishment is not applied if the victim forgives the perpetrator before the case is brought to the authority of the judge (qadhi). Thus, Islam still provides room for restorative resolution as long as it remains within clear moral and legal corridors.

The concepts of diyat (compensation) and ta'zir in Islam also bear similarities to the compensation mechanisms in restorative justice. Diyat allows the perpetrator to compensate the victim as a form of moral and social responsibility, while ta'zir empowers the ruler to determine a form of punishment proportional to the level of wrongdoing and social conditions. This principle emphasizes that justice in Islam focuses not only on retribution but also on correction and prevention so that the perpetrator does not repeat their actions.

Furthermore, restorative justice, from an Islamic perspective, also serves to safeguard the public interest (maslahah). Through the principle of maqasid al-sharia, every legal policy must aim to protect five main aspects: religion, life, intellect, descendants, and property. In the context of theft, the implementation of restorative justice must ensure that the victim's right to property is protected, the perpetrator acknowledges their wrongdoing, and the social stability of society is not disrupted. Thus, Islamic values emphasize that social recovery is an integral part of substantive justice.

However, the application of Islamic principles to restorative justice practices in Indonesia still faces challenges. Not all officials or mediators understand the sharia philosophy underlying the concepts of forgiveness and moral responsibility. However, if these values are internalized, the restorative justice approach will have a stronger ethical and spiritual foundation. Therefore, it is necessary to integrate

Islamic values such as honesty (*amanah*), justice (*'adl*), and compassion (*rahmah*) into every mediation and peace resolution process.

Furthermore, the potential for abuse of authority by law enforcement officials has also come under scrutiny. Several reports indicate that restorative justice processes can be exploited as a legal compromise tool to avoid formal criminal proceedings. If not strictly monitored, this has the potential to undermine public trust in the integrity of law enforcement. Therefore, transparency and internal oversight are crucial to prevent manipulative practices in the implementation of restorative justice.

Another weakness arises from the lack of supporting facilities and human resource capacity. Implementing restorative justice requires a mediation space, trained mediators, and comprehensive guidance on implementation procedures. Unfortunately, in many areas, particularly at the police sector (*Polsek*) level, these facilities and infrastructure are not yet available. As a result, the mediation process is often conducted informally without professional assistance, resulting in less than objective and fair outcomes.

From a societal legal culture perspective, many still view justice as synonymous with punishment. This view often leads to the application of restorative justice being perceived as "lenient" toward perpetrators. Consequently, society sometimes rejects peaceful resolutions, particularly in cases of theft, which are considered disruptive to public order. This challenge demonstrates that the success of restorative justice depends not only on regulation but also on the transformation of values within society.

The next weakness relates to the imbalance between the rights of victims and perpetrators. In some cases, the peace process focuses more on the perpetrator's recognition and responsibility, without considering the victim's psychological trauma. This indicates that the application of restorative justice still tends to emphasize procedural aspects over substantive justice. As a result, the mediation process can conclude formally without truly restoring the victim's well-being.

Research by Wahyuni (2021) from Sultan Agung Islamic University (UNISSULA) found that restorative justice in petty theft cases often faces implementation obstacles due to a lack of clear technical guidelines and weak oversight. Wahyuni emphasized that if this mechanism is not properly supervised, restorative justice has the potential to become a tool of legal compromise that harms victims and benefits perpetrators. This demonstrates the need for stronger regulations to ensure substantive justice.

From the perspective of progressive legal theory, Satjipto Rahardjo argues that weaknesses in law enforcement often lie not in the legal norms themselves, but in the overly legalistic mindset of law enforcement officials. In the context of restorative justice, a rigid legal approach can hinder innovation and social

empathy. Therefore, a paradigm shift is needed in law enforcement, from law enforcement to law service, and from law enforcement to justice service.

Another weakness is the lack of a national evaluation system for the implementation of restorative justice. To date, there is no official data available that can quantitatively measure the effectiveness of this mechanism. Without measurable evaluation, it is difficult to assess whether restorative justice is truly effective in reducing crime or simply a pragmatic solution to reduce the police's caseload.

Empirically, obstacles also arise when perpetrators fail to comply with the settlement agreement after the case is dismissed. For example, perpetrators fail to pay compensation as agreed or re-commit the same crime. This situation indicates the lack of a robust post-restorative oversight system. As a result, victims may feel deceived and believe that restorative justice does not provide adequate legal protection.

Furthermore, restorative justice also has normative limitations because it cannot be applied to all types of crimes. For example, aggravated theft, violence, or crimes involving minors cannot be resolved through this mechanism. This limits the scope of restorative justice, even though most theft perpetrators come from economically disadvantaged groups, which requires a more humane approach.

Finally, a frequently emerging conceptual weakness is the lack of a standard for assessing effectiveness based on utility. In practice, many peace settlements are deemed successful simply because of the existence of a written agreement, even though, from a social perspective, this does not necessarily result in restoration of relationships or changes in the perpetrator's behavior. Therefore, the effectiveness of restorative justice should be measured not only from an administrative perspective but also by the resulting social utility.

Thus, it can be concluded that the weaknesses in the application of restorative justice in theft crimes encompass legal, structural, social, and moral aspects. More comprehensive legal reform is needed so that this mechanism becomes not only an alternative case resolution but also a means of shaping the nation's social and moral character. If these weaknesses can be addressed, restorative justice can develop into an effective and substantively just legal instrument in Indonesia.

3.3 The Effectiveness of Implementing Restorative Justice in Crimes of Theft Based on Benefit

The effectiveness of restorative justice in theft crimes can be measured by the extent to which the process provides substantive justice for the victim, the perpetrator, and the community simultaneously. This approach emphasizes not only punishment but also restoration of social relationships and the achievement of broader benefits for all parties involved. In the context of theft crimes, this

effectiveness means that the resolution process goes beyond punishing the perpetrator and also encourages restitution of the victim's losses and the prevention of recurrence of similar crimes.

Utility is the basis for assessing the extent to which a legal system achieves its social goals, namely creating order and social welfare. This concept is rooted in Jeremy Bentham's theory of legal utilitarianism, which asserts that law should aim to produce "the greatest happiness of the greatest number." In the application of restorative justice, utility is realized in the form of reconciliation between victims and perpetrators, a reduction in the caseload in courts, and efficiency in law enforcement costs.

The implementation of restorative justice in theft crimes in Indonesia is based on National Police Chief Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The regulation explains that this approach can be implemented if certain conditions are met, such as a peace agreement between the victim and the perpetrator, restitution of losses, and an apology received by the victim. Thus, the legal process is not solely repressive but also rehabilitative.

However, the effectiveness of restorative justice implementation is measured not only by the administrative success of case resolution, but also by the resulting social impact. In the case of theft, for example, many perpetrators come from economically disadvantaged backgrounds. Through this approach, law enforcement officials can understand the social roots of the crime and provide more humane solutions such as counseling, job training, or social reintegration for perpetrators who have repented. This reflects the substantive benefits of the law.

Research conducted by Nurul Isnaini of Sultan Agung Islamic University (UNISSULA) shows that the application of restorative justice in petty theft cases has a positive impact on reducing recidivism rates. The mediation process, involving the victim, the perpetrator, and the community, has been shown to restore social trust damaged by the crime. These findings strengthen the argument that a utility-based approach has significant potential for achieving more effective and efficient justice.

From the victim's perspective, restorative justice provides a space to express their feelings and demands directly to the perpetrator. In conventional justice systems, victims are often simply the object of the case, without the opportunity to actively participate. Through this dialogue mechanism, victims can feel more valued and receive more adequate emotional and material recovery than simply receiving a criminal sentence.

For perpetrators, this system also offers significant benefits, particularly in avoiding the social stigma attached to criminals. Through the rehabilitation process, perpetrators are given the opportunity to improve themselves and return

to contributing to society. In the context of legal benefits, this aligns with the principle that law should function to improve human behavior, not simply punish.

In addition to social benefits, the restorative justice approach also provides administrative benefits for law enforcement agencies. Many theft cases involving small losses can be resolved out of court, reducing the burden on police and prosecutors. This expedites the legal process and saves state funds that would otherwise be used for formal judicial proceedings.

However, the effective implementation of restorative justice also faces certain challenges. One of these is the lack of understanding of the concept among law enforcement officials and the public. Many officials remain trapped in a retributive paradigm, where punishment is viewed as the only form of justice. This often hinders the optimal implementation of restorative justice.

Furthermore, cultural and social factors also influence the implementation of this system. In some communities, victims are reluctant to forgive perpetrators due to ongoing social pressure or fear of repeating the crime. Therefore, the success of restorative justice depends heavily on a communicative approach and trust between the parties.

The effectiveness of restorative justice also depends on strong institutional and policy support. The government needs to ensure the existence of clear implementing regulations and technical guidelines to ensure implementation on the ground does not deviate from the principles of justice. Furthermore, training for police officers and mediation facilitators is crucial to maintaining the quality of implementation.

In the context of utility, effectiveness must also be measured by its long-term impact on changing the perpetrator's behavior. If, after participating in the restorative justice process, the perpetrator no longer repeats their actions, then this approach can be considered successful. Therefore, the measure of success lies not only in the resolution of the case, but also in the development of the perpetrator's legal and moral awareness.

On the other hand, society also benefits by creating social harmony. This approach teaches the importance of empathy, responsibility, and respect for the rights of others. Collectively, this helps build a more just and civilized society.

From an Islamic legal perspective, the principles of restorative justice are in line with the concepts of *islah* (peace) and *taubat* (repentance) which are the core of Islamic criminal law. Islam not only emphasizes the aspect of *uqubah* (punishment), but also provides space for the restoration of social relations between the perpetrator and the victim. This is in accordance with the word of Allah in QS. Al-Hujurat [49]:10, "Indeed, believers are brothers, therefore make peace between your two brothers."

Islam also recognizes the concept of forgiveness, which holds high spiritual value. In the context of theft resulting in material loss, if the victim sincerely forgives the perpetrator after the goods are returned or compensation is given, it is considered a great act of kindness in the sight of Allah. The Prophet Muhammad (peace be upon him) said, "Wealth is not decreased by charity, and Allah does not increase a servant who forgives except in honor." (Narrated by Muslim).

Apart from that, the application of restorative justice can also be linked to the principles of *maqasid al-syari'ah*, especially in the aspects of *hifz al-mal* (protection of property) and *hifz al-nafs* (protection of the soul). In this context, if mediation between the perpetrator and the victim can restore rights and prevent hostility, then this approach is in accordance with *maqasid*.

The concept of utility (*maslahah mursalah*) in Islam also shares similarities with the theory of utilitarianism in positive law. The difference lies in the source of legitimacy: while utilitarianism is oriented solely toward human well-being, *maslahah* is rooted in the interests of others that align with *sharia* principles. Therefore, a peaceful resolution of a minor theft case that meets certain conditions can be seen as an application of *maslahah mursalah*.

Furthermore, in the history of classical Islamic law, a similar practice was implemented during the reign of Caliph Umar ibn al-Khattab, who postponed the imposition of hand amputation during times of famine (*'amur-ramadah*) due to considerations of expediency and social justice. This action demonstrates the flexibility of Islamic law in its application based on social context.

Thus, restorative justice in Islamic law embodies the value of *rahmatan lil 'alamin*—law that spreads compassion and well-being to humanity. This approach is not only formal and legal, but also moral and spiritual, making it highly relevant for integration into the Indonesian legal system, which is based on the values of social justice and humanity.

Considering these various dimensions, it can be concluded that the effectiveness of implementing restorative justice in expediency-based theft crimes lies in its ability to integrate justice, humanity, and legal efficiency. This approach not only benefits law enforcement officers but also provides tangible social benefits to the wider community.

Therefore, the application of restorative justice needs to be continuously expanded and strengthened, particularly for minor crimes such as theft. Through a utility-based approach, the law can truly function as a means of sustainable development, recovery, and social justice within society.

4. Conclusion

The application of restorative justice in theft crimes in Indonesia has shown a

positive direction toward a more humane and beneficial justice for all parties involved. This approach places victims, perpetrators, and the community on equal footing, working together to repair losses, improve social relations, and restore balance to community life. Thus, the law functions not only as a repressive tool but also as a means of reconciliation and moral development. On the beneficial side, the implementation of restorative justice has a real impact in reducing recidivism rates, accelerating case resolution, and saving law enforcement resources. This approach also helps police and prosecutors reduce their caseload, particularly in cases of petty theft. Furthermore, offenders have the opportunity to improve themselves and avoid the social stigma that often accompanies former inmates. The effective implementation of restorative justice still faces several obstacles, such as limited understanding among law enforcement officials, low public awareness, and suboptimal regulatory support at the regional level. Social and cultural factors also influence the success of mediation, particularly in communities that still hold retributive views or struggle to accept a peace process between victims and perpetrators. The expediency-based restorative justice approach has proven to be an effective and efficient alternative for resolving cases, prioritizing restoration over retribution. This approach aligns with the spirit of progressive law and the legal objectives, according to Gustav Radbruch, of balanced justice, expediency, and legal certainty in community life.

5. References

Al-Qur'an & Hadist:

Kementrian Agama Repulik Indonesia, Al-Quran dan Terjemahan, Jakarta, 2017

Journals:

Isnaini, N. (2020). Efektivitas Penerapan *Restorative Justice* dalam Kasus Pencurian Ringan di Kepolisian. *Jurnal Hukum UNISSULA*, 6(2), 145–156.

Marsudi, U., dkk. (2020). Sengaja dan Tidak Sengaja dalam Hukum Pidana Indonesia. *Lex Librum: Jurnal Ilmu Hukum*, 7(1), 76–88.

Wahyuni, E. (2021). Konsep *Restorative Justice* dalam Penyelesaian Tindak Pidana Pencurian Ringan. *Jurnal Hukum Khaira Ummah*, 16(2), 225–238. Universitas Islam Sultan Agung (UNISSULA).

Books:

Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana, 2014, hlm. 67–72.

Arief, B. N. (2008). *Kebijakan Hukum Pidana: Perkembangan Konsep Restorative Justice*. Semarang: Pustaka Magister.

- Al-Ghazali, *Al-Mustashfa min 'Ilm al-Usul*, Beirut: Dar al-Kutub al-'Ilmiyyah, 1993, hlm. 174.
- Bentham, J. (1789). *An Introduction to the Principles of Morals and Legislation*. Oxford: Clarendon Press.
- Friedman, L. M. (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.
- Friedman, L. M. (1975). *Legal Culture and Social Development*. Cambridge: Harvard University Press.
- Hamzah, A. (2012). *Hukum Pidana Indonesia*. Jakarta: Sinar Grafika.
- Hartanti, E. (2012). *Tindak Pidana Korupsi (Edisi Kedua)*. Jakarta: Sinar Grafika.
- Hidayat, A. (2020). *Mediasi Penal dalam Penyelesaian Tindak Pidana Ringan*. Jakarta: Kencana.
- Johnstone, G., & Van Ness, D. (2007). *Handbook of Restorative Justice*. Cullompton: Willan Publishing.
- Lamintang, P. A. F. (2010). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Citra Aditya Bakti.
- Moeljatno. (2008). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Moeljatno. (2015). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Muladi. (2017). *Restorative Justice dan Penerapannya di Indonesia*. Semarang: UNDIP Press.
- Prakoso, A. (2013). *Kriminologi dan Hukum Pidana*. Yogyakarta: Laksbang Grafika.
- Rahardjo, S. (2009). *Hukum dan Masyarakat*. Bandung: Angkasa.
- Rahardjo, S. (2009). *Hukum Progresif*. Yogyakarta: Genta Publishing.
- Rahardjo, S. (2012). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Rohman, F. (2023). *Rekonstruksi Konsep Mekanisme Restorative Justice dalam Sistem Pemidanaan Terpadu di Indonesia untuk Mewujudkan Kepastian Hukum yang Berbasis Keadilan*. Semarang: UNISSULA.
- Soekanto, S. (1983). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Press.
- Soesilo, R. (1996). *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia.

- Sudarto. (1983). *Hukum dan Hukum Pidana*. Bandung: Alumni.
- Utrecht. (1986). *Hukum Pidana I*. Surabaya: Pustaka Tindak Mas.
- Van Ness, D. W., & Strong, K. H. (2022). *Restoring Justice: An Introduction to Restorative Justice*. New York: Routledge.
- Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Beirut: Dar al-Fikr, 1989.
- Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.

Regulation:

- The 1945 Constitution of the Republic of Indonesia
- Criminal Code (KUHP)
- Law Number 8 of 1981 concerning the Criminal Procedure Code
- Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.
- Indonesian National Police. (2021). Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Jakarta: Indonesian National Police.
- Nunukan Police Internal Report. (2023). Data on Handling of Restorative Justice Cases by the Nunukan Police in 2023. Nunukan: Nunukan Police.
- Regulation of the Chief of Police Number 8 of 2016 concerning Restorative Justice in the Settlement of Minor Criminal Cases. Jakarta: Indonesian National Police.