
**THE URGENCY OF THE APPLICATION OF RESTORATIVE JUSTICE:
REGULATING THE APPLICATION OF RESTORATIVE JUSTICE AS AN
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Abstract

*Crime is considered as an attack on the state and crime is a logical necessity as a consequence of the existence of a crime. This consequence is manifested in the form of punishment through the criminal justice system. The concept of due process model fits with *daderstrafrecht* which emphasizes testing errors before the court making the perpetrator of a criminal act the center of attention. In its development, the community realizes that the current justice model (due process model) is too time-consuming, tiring, and expensive, not to mention the assumption that there are still fraudulent practices in it and which is more of a concern because the due process model emphasizes the perpetrators of criminal acts, which in this case, it does not see the interests of the victim, the victim's family and the environment that directly feels the loss as a result of the crime. As time goes by, people who are bored and dissatisfied with the prevailing justice model feel they have to take alternative efforts to be able to find a fair way out according to them. With this weakness, an idea emerged about a punishment system that is oriented towards the recovery of victims and victims' suffering, which is called restorative justice, because victims are the ones who are most disadvantaged by crime. By using the normative juridical method, it can be concluded that the settlement of crimes by restorative justice can accommodate the interests of the parties, including the victim, because the victim is involved in determining sanctions for the perpetrator. Justice returns conflict to those most affected - victims, perpetrators and society, and puts their interests first. With law enforcement through restorative justice it is hoped that the losses and suffering by victims and their families can be healed and the burden of guilt for criminals can be reduced because they have received forgiveness from the victims or his family.*

Keywords: Criminal Justice System; Crime Settlement; Restorative Justice

INTRODUCTION

Material criminal law consists of crimes called consecutively, general regulations that can be applied to the act, and the penalties that are imposed on the act. Formal criminal law regulates how criminal procedures should be carried out and determines the rules that must be considered on that occasion.¹ Indonesia has established imprisonment sanctions in legislation as a means of tackling the problem of crime, this is a part of criminal policy or criminal politics, but crimes that occur in society seem difficult to eliminate, even with the legal instruments and laws formulated by legislative.² The punishment that is often imposed on perpetrators of criminal acts who are adults is imprisonment, in contrast to a child who commits a criminal act, imprisonment is the last resort given as a form of punishment, because in Law Number 11 of 2012 concerning the Child Criminal Justice System it is known With the existence of diversion as an effort to settle criminal cases outside the criminal justice system, it is just that diversion may only apply to children and with the provisions that have been regulated in the applicable laws and regulations, while adults cannot seek diversion as a process of criminal settlement.

The increasing rate of crimes that occur and the settlement process that only focuses

on imprisonment has made the Penitentiary (Lapas) full, the Penitentiary is the implementing institution for imprisonment in Indonesia with a prison system. The existence of a correctional system provides an important meaning for the development of a criminal law system in the field of criminal executors in Indonesia. The correctional system is a series of criminal law enforcement units. Therefore, its implementation cannot be separated from the development of a general conception of the criminal system.³

The occurrence of overcrowding in prisons in Indonesia where the ratio between the number of prisoners and prison capacity is not comparable in number, this is due to several factors, among others, because crime is increasing and then other factors that cause congestion in prisons is due to the criminal system in Indonesia that requires special attention. As a result of the overcrowding of prisoners in Indonesia, guidance does not work optimally, supervision and security are difficult, psychological deterioration of prisoners / detainees including psychological officers, prone to conflict between residents, prone to sexual deviations, damaged sanitation systems, deteriorating health conditions of prisoners / detainees, and waste budget due to increased consumption of food, water and clothing.⁴ Overcrowding in prisons

¹ Leden Marpaung, *Asas-Teori-Praktik Hukum Pidana*, Sinar Grafika, Jakarta, 2005, hal. 2.

² Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Genta Publishing, Yogyakarta, 2009, hal 2.

³ Dwidja Priyatno, *Sistem Pelaksana Pidana Penjara di Indonesia*, Refika Aditama, Bandung, 2013, hal. 3.

⁴ Kementerian Pemberdayagunaan Aparatur Negara dan Reformasi Birokrasi, *Tenaga Administrasi akan Dialihkan Menjadi Sipir*,

means that inmates will not get maximum guidance, the usefulness of the guidance carried out in prisons is expected that inmates (inmates) can have provisions in the form of knowledge to be used after leaving the prison itself, the knowledge provided is in the form of skills so that prisoners who have free to have employment from the skills that have been given while in prison. Because a prisoner who has been released from prison will certainly have a bad image in society, the community will underestimate and distrust an ex-convict who wants to work based on his history who has been in prison so that getting a job will be more difficult than someone who has never been in prison. in criminal.

Therefore, another alternative is needed in the criminal system in Indonesia, but these alternatives can not only be applied to all criminal acts, but have limitations or provisions, which is the same as in Article 7 paragraph (2) of Law Number 11 of 2012 Regarding the Juvenile Criminal Justice System, there are provisions in the implementation of diversion against child offenders, in article 7 paragraph (2) of the SPPA Law it is explained that at the level of investigation, prosecution and examination of cases of children in district courts, it is mandatory to seek diversion if threatened with imprisonment. under 7 (seven) years and is not a repetition of a criminal act. Article 7 paragraph (2) of the SPPA Law can become a

reference as a provision if it makes restorative justice an alternative to punishment in Indonesia.

METHOD

type of research used is the normative legal research method. The assessment approach used includes a statutory approach that is descriptive in the sense of a study that prioritizes the description of events that are taking place at this time or in the past. Basically, normative legal research is doctrinal legal research or theoretical legal research. Normative research focuses on written studies, namely using secondary data such as using statutory regulations, court decisions, legal theory, legal principles, legal principles, and can be in the form of scientific work by scholars (doctrine).⁵The data used in this research is secondary data, which based on its legally binding strength consists of primary legal materials in the form of theories, norms, rules and opinions of legal experts, secondary and tertiary legal materials related to the problem.

ANALYSIS AND DISCUSSION

Definition of Crime and Its Elements

Term criminal action comes from the Dutch criminal law, namely strafbaar feit contained in the Dutch Wetboek van Strafrecht (*WvS*) , because the Indonesian Criminal Code (KUHP) currently is Wetboek

(Jakarta: Kemenpan), diakses pada tanggal 27 Julii 2020. <http://www.menpan.go.id>.

⁵ Irwansyah, Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel, Mirra Buana Media, Yogyakarta, 2020, hal.98.

van Strafrecht. voor Indonesie which comes from *Wetboek van Strafrecht Nederland* (KUHP Holland) which is enforced in Indonesia through the concordance principle, so that the terminology and language comes from Dutch which is then translated into Indonesian.⁶

As a translation of *strafbaar feit* used criminal terms introduced by the government in this case the Ministry of Justice which are then widely used in special crime laws, for example the corruption law, the narcotics crime law, the terrorism crime law and so on. The term criminal action shows the meaning of the movements of a person's physical behavior. This also includes a person not to do something, but by not doing it he has committed a criminal act. Thus, a criminal act is an act which is prohibited by law and punishable by punishment, both active in the sense of doing something that is prohibited by law, and also an act that is passive, namely not doing something that is actually required by law.

According to Moeljatno, the elements of a criminal act as adherents of a dualistic view that separates criminal treatment and criminal responsibility, that in essence every criminal act must consist of outward elements (facts) by the act, containing the behavior and consequences caused by it. Both bring about events in the realm of birth (world). Apart from the behavior and consequences, for the

existence of a criminal act it is necessary to have certain circumstances or conditions accompanying the act. On the basis of this, Moeljatno concluded that the elements or elements of a criminal act are:⁷

1. Actions and consequences (actions).
2. Things or circumstances that accompany the action.
3. Additional circumstances that accompany deeds.
4. Objective elements against the law.
5. Subjective unlawful elements.

Restorative Justice

According to Tony Marshall, restorative justice is a set of principles defining restorative justice as an approach to solving criminal problems involving related parties (perpetrators and victims), the general community, as well as (through) active relationships with parties (enforcers). law) authorized.⁸

An explanation of the definition of *restorative justice* put forward by Toni Marshall in his writing "*Restorative Justice an Overview*," developed by Susan Sharpe in his book "*Restorative Justice a Vision For Hearing and Change*" which reveals five key principles of restorative justice, namely:⁹

⁷ Moeljatno, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2008, hal. 69.

⁸ Pendapat Toni Marshall dikutip dalam Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, Nomor: M.HH-OT.02.02 Tahun 2009 tentang Cetak Biru Pembaharuan Pelaksanaan Sistem Pemasarakatan, hal. 19

⁹ Dikutip dari <http://www.negarahukum.com/hukum/keadilan->

⁶ Teguh Prasetyo, 2011, *Hukum Pidana*, Raja Grafindo Persada, Jakarta, hal. 47.

1. restorative justice contains full participation. and the consensus of
2. restorative justice tries to heal the damage or loss that exists due to the occurrence of a crime;
3. restorative justice provides direct responsibility for the perpetrator in its entirety;
4. restorative justice seeks reunification to members of society who are divided or separated due to criminal acts;
5. Restorative justice provides resilience to the community in order to prevent further criminal acts.

There are five main elements of Restorative Justice justice, namely: a) Restorative justice is a type of justice which is a concept of criminal justice system that is universally recognized and which begins is increasingly being used in various criminal cases in developed countries. b) Restorative justice considers that a criminal act is not a crime against the state / public but a crime against the victim. This can be an individual or several people / groups. c) Restorative justice focuses on the suffering or loss suffered by the victim and not on the conviction of the perpetrator. d) Restorative justice can take the form of direct or indirect dialogue in the form of mediation or reconciliation or court. e) Restorative justice

restorasi.html, diakses pada tanggal 11 April 2021 Pukul 14.00 Wita.

is not only in the form of transitional reconciliation as in the presentation.¹⁰

From the five elements above, we can conclude that restorative justice understands crime not only as a violation of state law, but rather as a violation of justice in effect in society. The focus of resolution is not directed at punishing criminals for violating state law, but on efforts to restore social relations and community justice damaged by crime. The restorative justice method emphasizes the active involvement of the parties affected (directly or indirectly) from the crimes that occur to find a solution, and does not depend on state law enforcers with formal mechanisms in place, but is characterized by informal and voluntary processes.¹¹ Therefore, the restorative justice approach in handling criminal cases in principle places restorative justice, namely the efforts to restore (restoration) to the losses caused by an act committed by the perpetrator as a basic value used in responding to a criminal case. In this case, restorative justice requires a balance between the interests of the perpetrator and the interests of the victim and also takes into account the impact of resolving the criminal case through restorative justice in people's

¹⁰ Ali, Achmad, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (JudicialPrudence) Termasuk Interpretasi Undang-Undang LegisPrudence)*. Jakarta: Kencana. 2009, hal. 156.

¹¹ Afthonul Afif, 2015, *Pemaafan, Rekonsiliasi & Restorative Justice; Diskursus Perihal Pelanggaran di Masa Lalu dan Upaya-Upaya Melampauinya, Pustaka Pelajar, Yogyakarta*, hal. 328-329

lives so that the application of restorative justice does not have a broad impact on society.¹²

Legal Basis for Application of Restorative Justice in Criminal Case Settlement

The application of restorative *justice* in the criminal justice system, especially in cases involving children as perpetrators of criminal acts, is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 7 of The main point is that in handling cases at the stage of investigation, prosecution and examination in court involving children as perpetrators of a criminal act, it is obligatory to seek diversion on the condition that a criminal act with the threat of imprisonment is under 7 (seven) years and does not constitute a repetition of a criminal act. , where the provision only applies in cases involving a child as the perpetrator of a criminal act.¹³

To respond to the expectations of the justice-seeking community, especially in the settlement of criminal cases through peace as well as a legal basis that serves as a guide for investigators in implementing restorative justice in solving criminal acts, the National Police has issued a Circular of the Chief of Police Number: SE / 8 / VII / 2018 dated 27 July 2018 concerning the Application of Restorative *Justice* in the Settlement of

Criminal Cases. The provisions of Points 3 a and b of the Chief of Police Circular stipulate the material requirements for the application of restorative justice, namely:

1. Does not cause public unrest and there is no community rejection;
2. Does not have an impact on social conflict;
3. There is a statement from all parties involved not to object and to relinquish their right to prosecute before the law;
4. The limiting principle for the perpetrator is that the level of the perpetrator's error is not relatively serious (the error is not in the form of deliberate action) and is not a recidivist, and on criminal acts in the investigation and investigation process before the SPDP is sent to the Public Prosecutor.

In addition to the material requirements, the Chief of Police Circular also regulates the formal requirements for the application of justice in the application of restorative justice, namely:

1. letter requesting peace between the two parties (reporter and reported);
2. A statement letter for conciliation and dispute resolution of the parties in a case (the reporter and / or the family of the reporter, the reported and / or the reported family and representatives of community leaders) is known to the investigator's superior;
3. Minutes of additional examination of the party in a case after the settlement of the

¹² Lilik Mulyadi, 2015, *Media Penal Dalam Sistem Peradilan Pidana Indonesia*, Alumni, Bandung, hal. 63-64.

¹³ Pasal 7 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

case is carried out through *restorative justice*;

4. Recommendations for the title of a special case that approves the settlement of restorative justice;
5. The perpetrator does not object to responsibility, compensation, or is done voluntarily;
6. All criminal acts can be carried out by restorative justice against general crimes that do not cause human victims.

The Urgency of the Application of Restorative Justice: Regulating the Application of Restorative Justice as an Alternative to Criminalization in the Crime of Theft.

Theft is a criminal act that is most often encountered in social life, this is caused by various factors, namely due to the weak economic condition of the community, then due to environmental factors which sometimes also influence and because of a lack of knowledge which results in a person unable to work properly and prefer stealing as a way out to get money to make ends meet.

The increasing number of criminal acts of theft has resulted in an increase in the number of prisoners in prison, resulting in overcrowding in the prison itself. If a prison is congested, it can be ascertained that the inmates who are in it do not receive proper guidance, and some prisoners are even placed in detention centers, which should only be for perpetrators of criminal acts who are still in

the process of being examined in court. Apart from that, if the number of prisoners increases, the greater the state expenditure to finance the needs of the prisoners themselves, and also the image of prisoners who after being released will get a negative stigma in society. The image of ex-convicts will not be well accepted by society, especially with the track record of ex-convicts of theft, in the future, in terms of finding a job, these ex-convicts will experience difficulties, so that not a few ex-convicts commit theft again because they think that someone is not involved. can accept an employee who is a former convict for a criminal act of theft.

The Restorative Justice approach focuses on the needs of both victims and perpetrators of crimes. In addition, the Restorative Justice approach helps criminals avoid other crimes in the future.¹⁴ The Restorative Justice movement began as an attempt to rethink needs that were not met in ordinary justice processes. Restorative Justice (Restorative Justice) expands the circle of stakeholders or parties involved in events or cases where it is not only the Government and the perpetrator but also includes victims and community members.

The current criminal justice process is still oriented towards retributive justice and through the victimology approach, this has resulted in a lawsuit against criminal law and the administration of justice that is oriented

¹⁴ Septa Chandra, *Restorative Justice: suatu tinjauan terhadap pembaharuan hukum pidana di Indonesia*, 2013, hal. 264.

towards criminals by questioning why justice is actually given to people who violate criminal law and not to people whose rights are violated. as parties who suffer or suffer losses directly as a result of a violation of the criminal law.¹⁵ The reality is that the legal side of the perpetrator is not equal to the legal side of the victim. Several statutory regulations, both material criminal law and formal criminal law, provide more privileges and legal protection rights to criminals as suspects, defendants and convicts. Victims of crime seem marginalized and do not receive maximum guarantee for their rights to recover their losses. Various arguments can be put forward to prioritize legal protection for victims, namely based on the social contract argument and the social solidarity argument. The social contract argument states that the state monopolizes all social reactions to crime and prohibits acts of a private nature. Therefore, if a crime occurs and it takes a victim, the state must also be responsible for paying attention to the needs of these victims. The social solidarity argument states that the state must protect its citizens in meeting their needs or if their citizens experience difficulties, through cooperation in society based on or using the means provided by the state. This can be done both through improving services and through regulating the rights

¹⁵ Mudzakkir, *Viktimologi (Studi Kasus di Indonesia)*, Makalah dalam Seminar Nasional Hukum Pidana dan Kriminologi Ke XI, Surabaya, 2005, hal. 20.

of the State and the general public in overcoming the burden of suffering of victims, not only because the state has public service facilities, but also with the premise that the state is obliged to maintain safety and improve the welfare of its people. its citizens. The occurrence of a crime victim can be considered the failure of the state to provide good protection to its citizens. It is on this basis that the state is also guilty of victimization and therefore it is only natural for the state to provide compensation (compensation) to victims, if restitution is not obtained from the perpetrator of the crime.

In implementing the Restorative Justice system, there are still many external obstacles that arise, namely: a) inconsistency in the application of regulations, the absence of a legal umbrella as a basis and guidelines for all law enforcement agencies, the inconsistency in implementing regulations in the field in handling children dealing with the simplest legal problems can be seen at various limits on the minimum age of a child in the relevant regulations. b) Lack of support and cooperation between institutions, this problem is another obstacle that still occurs in enforcing legal provisions, including the handling of children dealing with the law, many legal professionals still consider mediation as a second class method of seeking justice that they fail to achieve. justice at all, even though currently judges are the only party that can mediate cases of children in conflict with the law, unlike civil mediation

which allows non-judges to become mediators in court. c) the public's view of criminal acts is still obstructed. The existence of a community view that tends to be vindictive and wants to take revenge against criminals, including child perpetrators¹⁶

Based on the explanation above, the authors conclude that the concept or approach of restorative justice must be carried out in an integrated manner, meaning that it is carried out in stages starting from the stage of investigation, prosecution and the stage of justice. This is important considering that if one of the components does not apply the concept or approach of restorative justice, then a restorative decision may not be implemented. For example, the police and the prosecutor's office have embraced the concept of restorative justice but judges still adhere to a logistic mindset, in cases like this the judge will issue a very normative decision so that even prisons are unable to apply the concept of restorative justice. Therefore, the approach or concept of restorative justice must be carried out in an integrated manner between one component and another. On the other hand, if one component does not carry out the restorative justice approach or concept, the restorative justice approach or concept itself will not be properly realized.

¹⁶ Munawara dkk, *Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak Di Kota Makassar*, Bagian Hukum Pidana Fakultas Hukum Universitas Hasanuddin, Makassar, hal. 7.

In fact, there are many Traditional Laws in Indonesia that can become Restorative Justice. Restorative) is one of the efforts to seek a peaceful conflict resolution outside the court or a win win solution even though in reality it is still very difficult to implement because its existence is not recognized by the state or codified in national law.¹⁷ The emergence of the idea of Restorative Justice as a criticism of the application of the criminal justice system with imprisonment is deemed ineffective in resolving social conflicts. The reason is that the parties involved in the conflict were not involved in conflict resolution. Victims still become victims, perpetrators who are imprisoned also create new problems for their families and so on.¹⁸

In the indigenous community, a criminal act is not an offense against individuals, but a violation of the balance between human relations and natural forces and property must be maintained. Therefore, every time a balance disturbance occurs as a result of a criminal act, the balance must be recovered by paying an amount of money or part of the property to the injured party.¹⁹

¹⁷ Eva Achjani Zulfa, *Keadilan Restoratif Dan Revitalisasi Lembaga Adat Di Indonesia*, Jurnal Kriminologi Indonesia Volume. 6, No. II, 2010, hal. 187.

¹⁸ Setyo Utomo, *Sistem Pemidanaan Dalam Hukum Pidana Yang Berbasis Restorative Justice*, Mimbar Justitia Fakultas Hukum Universitas Suryakencana, Cianjur, Volume V, No. 01, 2014, hal. 86.

¹⁹ Eriyantouw Wahid, *Keadilan Restoratif dan Peradilan Konvensional Dalam Hukum Pidana*,

However, because traditional community life is still simple, restoring the balance is not too expensive and can even be resolved immediately. In most parts of the archipelago, it is known as shame, so that in deliberations for peace or punishment, the perpetrators of customary offenses provide "shame cover" by apologizing. If not, the perpetrator must be humiliated in order for the case to be resolved.²⁰

One form of the Restorative Justice mechanism that can be applied and in accordance with the cultural values of the Indonesian nation is to use a family dialogue technique which is known among the Indonesian people as "musyawarah untuk mufakat". This concept of Restorative Justice (Restorative Justice) consider the perpetrator and the victim both get the best possible benefit so as to reduce the number of recidivists among the perpetrators of criminal acts and provide a sense of responsibility for each party. The main problem in implementing Restorative Justice actually lies in the factors that follow it, namely the legal factors themselves, the law enforcement factors, namely the parties who form or implement the law, the supporting infrastructure for law enforcement, the community factors where the law applies or is applied, and cultural factors

which are still local community policies and are still valid today. ²¹

Article 1 point 6 of the law explains that restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair solution by emphasizing restoration. in its original state, and not retaliation. Regarding the momentum, namely before and after the judicial process took place; prior to the trial process, this is meant when the case is still in the hands of the police or the prosecutor's office. Whether on the initiative of the police, the prosecutor's office, a person or community group, efforts are made to resolve the criminal act, by means of a restorative justice approach.

The same thing happened when the case was transferred to the court. Judges, for example, can recommend settlement according to the methods and principles of restorative justice. There is even a possibility that in the middle of the judicial process methods of settlement can be taken according to the principles of restorative justice. When viewed from the position of the defendant and the victim, restorative justice is nothing but a form of mediation which aims to achieve a "win-win solution" as in civil cases.

In the law of our country, we have also made efforts to develop the concept of restorative justice, as evidenced by several

Penerbit Universitas Trisakti, Jakarta, 2009, hal. 39-40.

²⁰ *Ibid*, hal. 40.

²¹ Makarao, *Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak*, Guru Besar Ilmu Hukum Universitas Islam As-syafi'iyah Jakarta, 2013, hal. 47 – 48.

law enforcement policies related to the application of restorative justice, including:

- a. Supreme Court Circular (SEMA) Number 6 of 1959, which states that child trials must be carried out privately.
- b. Supreme Court Circular (SEMA) Number 6 of 1987, dated November 16, 1987 concerning the Rules of the Session of Children.
- c. Indonesian Attorney General Circular SE-002 / ja / 4/1989 regarding Prosecution of Children.
- d. Letter of the Deputy Attorney General for General Crimes B 532 / E / 11/1995, 9 November 1995 concerning Technical Guidelines for Prosecution of Children.
- e. MOU 20 / PRS-2 / KEP / 2005 DitBinRehSos Depsos and DitPas DepKumHam RI concerning Out-of-Institutional Development for Children in Conflict with the Law.
- f. Circular of the Chief Justice of the Supreme Court of the Republic of Indonesia MA / Kumdiil / 31 / I / K / 2005 regarding the obligation of each PN to hold a special courtroom and a special waiting room for children to be tried.
- g. The appeal of the Chief Justice of the Supreme Court of the Republic of Indonesia to avoid detention of children and to prioritize decisions on action rather than prison, July 16, 2007.
- h. KAPOLRI regulations 10/2007, 6 July 2007 concerning the Women and Children Service Unit (PPA) and 3/2008 concerning the formation of RPK and procedures examination of witnesses and / or victims of TP.
- i. TR / 1124 / XI / 2006 from Kabareskrim POLRI, 16 November 2006 and TR / 395 / VI / 2008, 9 June 2008, regarding the implementation of diversion and restorative justice in handling cases of child perpetrators and fulfillment of children's best interests in cases of children both as perpetrators, victim or witness.
- j. Mutual Agreement between the Ministry of Social Affairs of the Republic of Indonesia Number: 12 / PRS-2 / KPTS / 2009, Ministry of Law and Human Rights of the Republic of Indonesia Number: M.HH.04.HM.03.02 Year 2009, Ministry of National Education of the Republic of Indonesia Number 11 / XII / KB / 2009, Ministry of Religion of the Republic of Indonesia Number: 06 / XII / 2009, and Police Indonesian National Number: B / 43 / XII / 2009 concerning Protection and Social Rehabilitation of Children in Confrontation with the Law, dated December 15, 2009.
- k. Joint Decree of the Chief Justice of the Supreme Court RI, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Minister of Law and Human Rights, the Indonesian Minister of Social Affairs, the Minister of Women Empowerment and

Child Protection RI, Number 166 / KMA / SKB / XII / 2009, No.148A / A / JA / 12 / 2009, No.B / 45 / XII / 2009, No.M.HH-08 HM.03.02 year 2009, No. 10 / PRS-2 / KPTS / 2009, No.02 / Men.PP and PA / XII / 2009 dated December 22, 2009 concerning Handling of Children in Conflict with the Law.

1. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which will take effect on July 30, 2014 replaces Law Number 3 of 1997 concerning Juvenile Court

In its implementation, the concept of the restorative justice approach in various countries has shown some success, but obstacles or challenges have often been encountered. Obstacles experienced by several countries in the implementation of restorative justice include very serious violations committed by children. Most serious offenses committed by children in the country of Canada will be returned to formal justice for imprisonment. For certain types of perpetrators, restorative justice is not the right choice, according to Umbreit not all or some serious crimes or certain perpetrators must be exiled from the environment on the grounds public safety.²²

There is difficulty in creating public trust in the implementation of restorative

justice in severe cases. In addition, the reason for recidivist actions by child offenders after undergoing the restorative justice process raises questions from the public if they have to repeat the process several times against the same perpetrator.²³ According to the author, this shows that the implementation and urgency of the implementation of the concept of restorative justice in the integrated criminal justice system in Indonesia has not been implemented in an integrated manner. This is partly because the sub-sub-systems of criminal justice (police, prosecutors, judiciary, correctional institutions) in Indonesia do not fully understand what exactly is meant by the concept of restorative justice. Judicial institutions in Indonesia have not implemented or implemented the concept of restorative justice as a whole. It is proven that when viewed from the "series of developments in the concept of restorative justice", the implementation of the concept of restorative justice in Indonesia has not been implemented or is categorized as "can be restorative" (meaning that it has not used the concept of restorative justice) or at least has reached the stage of "partial restorative".

The criminal justice system in Indonesia is still at a "can restorative" stage because victim involvement is not the main concern, decisions are made by parties who are not directly affected, there are no options for dialogue among those directly affected, the focus is on rules or laws who are violated

²² Marlina, 2009, *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*, Bandung: Refika Editama, hal. 228.

²³ *Ibid.*, hal. 229.

and the consequences of their actions (passive responsibility), does not focus on efforts to recover the damage or loss suffered. So that it creates a sense of public trust in the implementation of restorative justice in serious cases such as theft.

CONCLUSION

Regulations for the Application of Restorative Justice as an Alternative to Criminalization in the Crime of Theft as an effort to rethink the unmet needs in ordinary judicial processes. Restorative Justice broadens the circle of stakeholders or parties involved in events or cases where it is not only the Government and the perpetrator but also includes victims and community members.

Based on the explanation above, the authors also conclude that the concept or approach of restorative justice must be implemented in an integrated manner, meaning that it is carried out in stages starting from the stage of investigation, prosecution and the judicial stage. This is important considering that if one of these components does not apply the concept or approach of restorative justice, then a restorative decision may not be implemented. For example, the police and the prosecutor's office have embraced the concept of restorative justice but judges still adhere to a logistic mindset, in cases like this the judge will issue a very normative decision so that even prisons are unable to apply the concept of restorative

justice. Therefore, the approach or concept of restorative justice must be implemented in an integrated manner between one component and another. On the other hand, if one component does not apply the restorative justice approach or concept, the restorative justice approach or concept itself will not be properly realized in the efforts to restore the damage or loss suffered. So that it makes the public feel less trust in the implementation of restorative justice in serious cases such as theft.

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