

Implementation of Restorative Justice as an Effort to Resolve Minor Criminal Acts in the Criminal Justice System in Indonesia



Agung Ardiyansyah

Faculty of Law, Trisakti University, Jakarta, Indonesia

ABSTRACT: Restorative justice is a criminal case resolution model that prioritizes the recovery of victims and the community, where the provisions on restorative justice are regulated by each law enforcement agency in Indonesia at the investigation, prosecution and trial stages so as to cause differences in its application. This research is normative legal research, using a legislative approach and a case approach. The results of the research are, First, the regulation of restorative justice regulated in Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024, there are still differences related to the type of criminal act, the conditions and mechanisms in the application of restorative justice so that it can cause injustice for the parties involved in criminal cases. Second, the effectiveness of restorative justice in the criminal justice system has not been optimally applied, where at the investigation stage, there are formal provisions that are not implemented by the investigator related to the approval of the investigator's superiors, then at the prosecution and trial stages, restorative justice is applied to cases with a loss value that exceeds the maximum amount specified in the prosecutor's regulations and supreme court regulations.

KEYWORDS: Implementation, Restorative Justice, Criminal Act, Criminal Justice System.

I. INTRODUCTION

Every country has positive legal norms that apply in it, as well as the State of Indonesia which makes Pancasila as the basic norm and the 1945 Constitution as the highest legal norm in the legal system of the Indonesian nation as stated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. ¹ The existence of law in society becomes a unity with human life so that law and human beings cannot be separated since humans are still in the womb. ²

Law is born, grows and develops along with the development of the life of society itself, where at first the law is a habit between one individual and another about the code of behavior of society that is firmly held and maintained, then develops into written legal rules or provisions that are codified into a law book by the power or state as a guideline for living together not only for the whole society but also for the ruler to create a peaceful, peaceful and serene life. ³

In another perspective, the law is a political tool that applies in a country, where the law has the function of strengthening political power and making the implementation of state power effective. Law is solely a political tool to achieve (dogmatic) power. Law as a political tool, but after it is in the form of a product, it must be separated from the political interests of the ruler (sociological). Especially when associated with the doctrine of the rule of law, the highest source of power is the law, which means that the law is the commander in chief of a state power. ⁴

In this regard, in order to regulate the life of the Indonesian people, the Government of Indonesia enforces the provisions of the criminal law as stipulated in the Criminal Code which is a legacy of the Colonial Government of the West Indies based on the provisions of Article II, the Transitional Rules of the Constitution of the Republic of Indonesia in 1945, which reads All existing

¹ Hotma P Sibuea, et al, *Karakteristik Ilmu Hukum dan Metode Penelitian Hukum Normatif*, Jakarta: PT. Raja Grafindo Persada, 2021, Hlm 349.

² Dijan Widiowati, *Perlindungan Hukum Pada Korban Salah Tangkap*, Malang: PT. Literasi Nusantara Abadi, 2023, Hlm 2.

³ Rahman Amin, *Pengantar Hukum Indonesia*, Sleman: Depublish, 2019, Hlm 1.

⁴ Fikri Hadi, *Negara Hukum dan Hak Asasi Manusia Di Indonesia*, *Wijaya Putra Law Review*, Volume 1, Nomor 2, 2022, Hlm 173-174.

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state bodies and regulations are still in effect as long as a new one is not held according to This Constitution, which was later regulated in Law Number 1 of 1946.⁵

One type of criminal act regulated in the Criminal Code is a criminal act with a light qualification, where the public in general considers that the imposition of prison sentences on the perpetrator is unfair because it is not proportional to the consequences or losses it causes, where these cases have burdened the court which should be resolved quickly and simply to provide legal certainty and justice. as well as providing benefits for all parties involved in the case, including the wider community.⁶

This condition can be seen from the number of crimes that occur in Indonesia which continues to increase, where based on data released by the Directorate General of Corrections in the Correctional Database System, the number of inmates in 2024 will reach a total of 273,699 people, while in 2014 it only amounted to 163,454 people, meaning that over the last 10 years there has been an increase in the number of inmates of Correctional Institutions. State Prisons, Women's Correctional Institutions, and Special Children's Development Institutions.⁷

In this regard, the implementation of the criminal justice system is regulated in Law Number 8 of 1981 concerning the Criminal Procedure Law, which still maintains a retributive paradigm, namely solving criminal acts committed by perpetrators and still focusing on the perpetrators of crimes, not paying attention to the recovery of losses and suffering of victims of criminal acts. The retributive paradigm in the criminal justice system with the aim of providing a deterrent effect for perpetrators not to return to commit crimes again and prevent people from committing crimes.

The implementation of criminal justice that uses the retributive paradigm has in fact not been able to recover the losses and suffering experienced by victims of crimes, even though the perpetrators have been found guilty and sentenced by judges in court, but the condition of victims of criminal acts cannot return to normal. With this weakness emerged, the idea of a penal system oriented towards the recovery of the victim and the suffering of the victim emerged, called restorative justice, since the victim is the most disadvantaged party due to the crime that occurred.

In this regard, in order to realize the legal goals, namely certainty, usefulness and justice, the settlement of criminal acts through a restorative justice approach is expected to accommodate the interests of the parties, namely the interests of the victims who have suffered and lost due to criminal acts in determining sanctions for the perpetrators of criminal acts, restoring the conflict situation that occurs between the victim, the perpetrator and the community while still paying attention to the recovery efforts of the caused by the criminal act that occurred, so that it can restore the situation as it was before.

The provisions on restorative justice in Indonesia, in general, are one of the alternative dispute resolution efforts as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. However, on the other hand, in the field of criminal law, there are several alternatives or solutions that emphasize restitution to victims of criminal acts who directly experience suffering due to the crime that occurred rather than court decisions in the form of punishment to the perpetrators, where this principle is known as the principle of restorative justice.⁸

In its development, currently the provisions on restorative justice have been specifically regulated by regulations in each law enforcement institution in the criminal justice system in Indonesia, namely Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Cases Criminal Justice-Based Restorative Justice.

However, the provisions on restorative justice in each law enforcement agency have differences so that they can lead to differences in their application when handling criminal acts by law enforcement at the investigation stage, prosecution stage, and trial stage in court, which has the potential to cause unfairness and different treatment for the settlement of criminal acts that occur, and can potentially lead to abuse of authority by the each law enforcement officer in the criminal justice system.

Based on the above descriptions, it is important to examine how the arrangement of restorative justice in the criminal justice system in Indonesia according to the provisions applicable in Indonesia as an effort to resolve minor criminal acts, and how to implement restorative justice in the criminal justice system in Indonesia, especially in the jurisdiction of the Central Jakarta District Court, so as to provide input to the Government of Indonesia in Drafting regulations on restorative justice as a guideline for law enforcement officials.

⁵ R. Soenarto Soerodibroto, *KUHAP dan KUHP; Dilengkapi Yurisprudensi Mahkamah Agung dan Hoge Raad*, Jakarta: Raja Grafindo Persada, 2003, Hlm 21.

⁶ Porlen Hatorangan Sihotang, *Penyelesaian Tindak Pidana Ringan Menurut Peraturan Kapolri Dalam Mewujudkan Restorative justice (Studi Di Polresta Deli Serdang)*, Iuris Studia: *Jurnal Kajian Hukum*, Volume 1, Nomor 2, 2020, Hlm 107.

⁷ Sistem Database Pemasarakatan (SDP) Direktorat Jenderal Pemasarakatan Kementerian Hukum Republik Indonesia, <https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>, retrieved 26 October 2024.

⁸ Kadek Rudi Sagita, *Model Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Ringan di Polresta Yogyakarta*, Universitas Atmajaya Yogyakarta, 2016, Hlm 33.

II. RESEARCH METHODS

This research is normative legal research or literature research, which is research conducted by examining written legal materials or studying documents, namely using various secondary data such as laws and regulations, legal theories and legal doctrines. Normative legal research or doctrinal research aimed at written laws and regulations or other legal materials is also called literature research or document studies that carried out on secondary data in the library.⁹

The research approaches used in this study are the legislative approach and the case approach. The legislative approach is carried out by examining or reviewing the material, content of written legislation and studying the otological foundations, philosophical foundations, and logical ratios of laws related to the problems being studied. Then the case approach is carried out by studying or reviewing cases that occur and handled by law enforcement officials related to the problems being researched.¹⁰

The sources of legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are binding legal materials, namely laws and regulations, secondary legal materials, namely materials that provide explanations of primary legal materials such as reference books and scientific articles, and tertiary legal materials, namely legal materials that provide instructions or explanations of primary legal materials and secondary legal materials such as legal dictionaries.¹¹

The data collection technique used in this study is literature research which is a single method used in normative law research.¹² Literature research is used to obtain information related to the problem being researched and to find out the history and perspective of the problem being researched.¹³ The legal material analysis technique used in this study is qualitative analysis, which is by systematically and consistently examining the legal materials of the research results to achieve clarity of the problem being researched.¹⁴

III. RESEARCH RESULTS AND DISCUSSION

A Theoretical Review of Crime and Restorative Justice

The term criminal act comes from a term in Dutch criminal law, namely *Strafbaar feit*, where the word *straf* means criminal, *baar* means can or can, and *feit* means acts, events, violations and deeds.¹⁵ *Moeljatno*, using the term criminal acts, is an act that is prohibited by a rule of law, which prohibition is accompanied by a threat (sanction) in the form of a certain criminal offense for anyone who violates the prohibition. It can also be said that a criminal act is an act that is prohibited by a rule of law and is threatened with a criminal offense that is shown to the person who caused the incident.¹⁶

The Indonesian government uses the term criminal act as a translation of *Strafbaar feit* which is used in special criminal laws such as the law on corruption and so on. The term criminal act shows the meaning of a person's physical behavior, both active, namely doing an act that is prohibited, and passive act, namely not doing an act that should be done according to the law, where the act is prohibited by the rule of law and accompanied by a criminal threat for the violator.¹⁷

Criminal acts generally consist of two elements, namely first, subjective elements which are elements that are attached to the perpetrator or related to the perpetrator, including everything contained in his mind, including intentionality (*dolus*) or forgetfulness (*culpa*) and so on. The two objective elements are elements that have to do with the circumstances, in which the actions and the perpetrators must be committed. Objective elements include the nature of the law, the quality of the perpetrator and causality.¹⁸

Then, related to the term restorative justice, it is a process of resolving events or acts of violation of the law that are committed by bringing the victim and the perpetrator together to sit in one meeting to be able to talk.¹⁹ In restorative justice, the perpetrator must be fully responsible so that he is expected to realize his mistakes, by involving the perpetrator, the victim, the community, mediators and law enforcement officials to jointly formulate appropriate sanctions for the perpetrators, and compensation given to the victim or the community.²⁰

⁹ Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, Jakarta : Sinar Grafika, 2008, Hlm 14.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2013, Hlm 133-134.

¹¹ Soerjono Soekanto dan Sri Mamudji, *Op Cit*, Hlm 13.

¹² Bambang Waluyo, *Op Cit*, Hlm 50.

¹³ Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: RajaGrafindo Persada, 2013, Hlm. 112-113.

¹⁴ Burhan Ashshofa, *Metode Penelitian Hukum*, Jakarta: PT.Rineka Cipta, 2004, Hlm 20.

¹⁵ Adami Chazawi, *Pelajaran Hukum Pidana 1*, Jakarta: PT. RajaGrafindo Persada, 2007, Hlm 69.

¹⁶ Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2012, Hlm 71.

¹⁷ Teguh Prasetyo, *Hukum Pidana*, Jakarta: PT. RajaGrafindo Persada, 2011, Hlm 49-50.

¹⁸ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bakti, 1997, Hlm 183.

¹⁹ Marlina, *Peradilan Pidana Anak di Indonesia; Pengembangan Konsep Diversi dan Restorative Justice*, Bandung: Refika Aditama, 2009, Hlm 180.

²⁰ Septa Chandra, *Restorative Justice; Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana*, Jurnal Rechtsvinding, Volume 2, Nomor 2, 2013, Hlm 269.

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According to Bagir Manan, the substance of restorative justice contains principles, including building joint participation between perpetrators, victims, and the community to solve a crime, placing perpetrators, victims, and the community who work together and directly try to find a solution that is seen as fair for all parties (win-win solutions).²¹

There are several approaches or mechanisms in the application of restorative justice, including:²²

1. Victim Offender Mediation (VOM), which is a meeting between the victim and the perpetrator led by a mediator, where this model originated in Canada as part of an alternative to court sanctions;
2. Family Group Conferencing (FGC), which is a meeting involving the core family, friends, and experts in addition to the perpetrator and victim, where this model is often used in cases committed by children in Australia and New Zealand;
3. Community Restorative Boards (CRB), which is a panel or institution consisting of people who have been trained to negotiate in resolving problems, where victims meet with perpetrators and panelists to discuss problems and solutions within a certain period of time applied in England and Wales;
4. Restorative Circles, a forum of family and friends to support inmates to socialize with the community, where this model is used in Hawaii.

According to Helen Cowie and Jenniffer, identify the main aspects of restorative justice, as follows:²³

1. Reparation, is not about gaining victory or accepting defeat, accusation or revenge but about justice;
2. Relationship restoration is not a punishment for criminals to take responsibility for mistakes and correct them in a number of ways, but through an open and direct process of communication between victims and criminals, which has the potential to change the way they relate to each other;
3. Reintegration, at its broadest level, provides an arena in which children and parents can obtain a fair process. This is so that they can learn about the consequences of violence and criminality and understand the impact of their behavior on others.

According to Lilik Mulyadi, in principle, restorative justice is an effort to recover (restoration) the losses caused by the actions committed by the perpetrator as a basic value used to respond to a criminal case, where restorative justice requires a balance between the interests of the perpetrator and the victim, as well as taking into account the victim, and taking into account the impact of the settlement of the criminal case in the life of the community, So that the application of restorative justice does not have a wide impact on the community.²⁴

Restorative Justice Arrangement as an Effort to Resolve Crimes According to Positive Law in Indonesia.

Normatively, the provisions on restorative justice are sourced from Pancasila as the philosophical foundation and basis of the State of Indonesia, where implicitly in the 4th Precept contains the meaning that the Indonesian nation upholds the value of deliberation in all activities of people, nation and state, including in efforts to resolve disputes that occur through consensus deliberation. Then constitutionally, restorative justice is based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, that the State of Indonesia is a state of law.

The arrangement of restorative justice which is an alternative dispute resolution as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 number 10 states that alternative dispute resolution is a dispute resolution institution or disagreement through a procedure agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment. This means that restorative justice is one of the efforts to resolve cases outside of court.

Alternative dispute resolution outside the court as an effort to resolve cases in a non-formal manner other than court institutions is recognized by the Government of Indonesia as stipulated in Article 60 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, stating that alternative dispute resolution is an institution for dispute resolution or disagreement through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.

²¹ Bagir Manan, *Restorative Justice (Suatu Perkenalan): Refleksi Dinamika Hukum Rangkaian dalam Dekade Terakhir*, Jakarta: Perum Percetakan Negara RI, 2015, Hlm 10.

²² Muladi, *Restorative Justice Dalam Sistem Peradilan Pidana Dan Implementasinya Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak*, Jakarta: Puslitbang Sistem Hukum Nasional Badan Pembinaan Hukum Nasional, 2013, Hlm 10.

²³ Hadi Supeno, *Peradilan Restoratif: Model Peradilan Anak Indonesia Masa Datang*, Semarang: Universitas Diponegoro, 2006, Hlm 203.

²⁴ Rahman Amin, *et all, Penerapan Keadilan Restoratif Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Berat di Kepolisian Resor Metro Jakarta Pusat*, Jurnal Krtha Bhayangkara, Volume 14, Nomor 1, 2020, Hlm 11-12.

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Especially in criminal cases, the provisions on restorative justice have not been explicitly regulated in the provisions of the criminal procedure law as a formal criminal law as stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP) which contains provisions on how law enforcement officials, namely investigators, public prosecutors, and judges in the criminal justice system, implement and enforce material criminal law. So that each law enforcement agency makes and ratifies provisions on restorative justice in their respective institutions.

At the investigation and investigation stage by the National Police, the provisions on restorative justice are currently regulated in Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. The provisions in this Police Regulation serve as a guideline for the National Police to seek alternative settlement of cases outside the court either through mediation or reconciliation by prioritizing restorative justice, namely restoration to the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not criminally oriented.²⁵

The material and formal requirements for handling criminal acts based on restorative justice are regulated in Articles 5 and 6 of Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, as follows:

1. Material requirements are not to cause unrest and/or rejection from the community, do not have an impact on social conflicts, do not have the potential to divide the nation, are not radicalism and separatism, are not perpetrators of repeating criminal acts based on court decisions; and not the crime of terrorism, the crime against state security, the crime of corruption, and the crime against the life of the person;
2. The formal condition is peace from both parties except for drug crimes as evidenced by a peace agreement letter and signed by the parties, the fulfillment of the rights of the victim and the responsibility of the perpetrator, except for drug crimes, can be in the form of returning goods, compensating for losses, replacing costs incurred as a result of criminal acts, and compensating for damages caused by criminal acts.

Then, the provisions on restorative justice at the prosecution stage must meet the conditions as stipulated in Article 5 paragraph (1) of Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, that criminal cases can be closed for the sake of the law and the prosecution is stopped based on restorative justice in the event that the following conditions are met:

- a. The suspect had committed a criminal act for the first time
- b. Criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years; and
- c. The criminal act is committed with the value of evidence or the value of the loss incurred as a result of the criminal act of not more than Rp 2,500,000 (two million five hundred thousand rupiah).

The next requirement according to Article 5 paragraph (6) of the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, states that the termination of prosecution based on Restorative Justice is carried out by meeting the requirements:

- a. There has been a restoration to the original state carried out by the suspect by returning the goods obtained from the crime to the victim, compensating the victim's losses, reimbursing the costs incurred as a result of the criminal act; and/or repair damage caused by the consequences of criminal acts;
- b. There has been a peace agreement between the victim and the suspect; and
- c. The community responded positively.

Furthermore, the provisions on restorative justice at the trial stage must meet the conditions as stipulated in Article 6 paragraph (1) of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice, that judges apply the guidelines for prosecuting criminal cases based on restorative justice if one of the following criminal acts is met:

- a. The criminal act committed is a minor criminal act or the victim's loss is not more than Rp 2,500,000 (two million five hundred thousand rupiah) or no more than the minimum wage of the local province;
- b. A criminal act is a complaint;
- c. Criminal acts with a maximum penalty of 5 (five) years in prison in one of the indictments, including the crime of jinayat according to the qanun;
- d. Criminal acts with child offenders whose diversion is unsuccessful; or
- e. Traffic crimes in the form of crimes.

²⁵ Armunanto Hutahaean, *Penerapan Restorative Justice Oleh Polri Untuk Mewujudkan Tujuan Hukum*, Jurnal Hukum Tora, Volume 8, Nomor 2, 2022, Hlm 140-142.

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Implementation of Restorative Justice as an Effort to Resolve Minor Qualified Crimes in the Criminal Justice System in Indonesia.

To examine the implementation of restorative justice in the criminal justice system in Indonesia, the author will examine several examples of cases that occurred in the jurisdiction of the Central Jakarta District Court handled by the Central Jakarta Metro Police Criminal Investigation Unit Investigator, the Public Prosecutor of the Central Jakarta District Attorney's Office, and the Central Jakarta District Court Judge, where in general the number of criminal settlements through restorative justice is 3 (three) The last year, namely 2022 to 2024 in the jurisdiction of the Central Jakarta District Court, can be seen from the table as follows:

Table 1. Number of Crimes Resolved Through Restorative Justice ²⁶

No	Description of Handling Stages Case	Year		
		2022	2023	2024
1	Investigation Stage at the Central Jakarta Metro Police.	21	23	25
2	Prosecution Stage at the Central Jakarta District Attorney's Office.	2	32	5
3	Trial Stage at the Central Jakarta District Court.	2	1	1

Based on the data on the number of criminal acts resolved through restorative justice mentioned above, it can be said that the highest number of criminal settlements through restorative justice was carried out at the investigation stage by the Central Jakarta Metro Police Criminal Investigation Unit Investigator with a total of 69 (sixty-nine) cases within a period of 3 (three) years, while the lowest number of criminal settlements was at the trial stage by a Judge at the Central Jakarta District Court with a total of 4 (four) cases in a period of 3 (three) years.

Restorative Justice Analysis at the Investigation and Investigation Stage

One example of criminal acts that were resolved through restorative justice at the investigation stage by the Central Jakarta Metro Police Criminal Investigation Unit Investigator, can be studied from a case involving a woman with the initials named Sdri. ZA who reported a man with the initials named Mr. DE at the Central Jakarta Metro Police on September 12, 2021 on suspicion of the crime of obstructed marriage as referred to in Article 279 of the Criminal Code, where the perpetrator of the crime was threatened with a maximum prison sentence of 5 (five) years.

Judging from the provisions of the types of criminal acts that can be applied restorative justice as stipulated in Article 5 letter f of Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, the type of criminal act as referred to in Article 279 of the Criminal Code is a criminal act that is not included in the type of criminal act that is excluded to be resolved through restorative justice, So that the case is a type of criminal act that can be resolved through restorative justice.

Then it is reviewed according to the conditions that must be met in the application of restorative justice, that the Reported Party, Mr. DE, has never been convicted for committing a criminal act, in this case it is not a repetition of a criminal act (recidivism) that has received a court decision with permanent legal force, and there has been a peace agreement between the complainant. ZA with the Reported Party, Mr. DE, as evidenced by the existence of a peace letter signed by the parties, so that it has met the material and formal requirements for the application of restorative justice.

Furthermore, it is reviewed from the mechanism of resolving the case through restorative justice, that the case has met the material and formal requirements, as well as through the mechanism of applying restorative justice at the investigation stage, where the settlement of the case involves all related parties, namely the Sdri Complainant. ZA, the Reported Party, Mr. DE, and other related parties who are focused on recovery efforts by providing compensation to the victim through mediation so as to provide an opportunity for the Reported Party Mr. DE to be responsible for his actions.

The mechanism that has been carried out by the Investigator is to conduct an analysis of the criminal acts committed by the Reported Party, conduct an investigation into the alleged criminal acts that occurred, conduct a case title, and mediate with the Complainant Sdri. ZA and the Reported Defendant Mr. DE who produced the peace outlined in the peace letter and then the parties sent a letter requesting the settlement of the case through restorative justice to the Investigator, where the letter became the basis for the Investigator to issue a cease and desist order.

²⁶ Diolah dari hasil penelitian di Polres Metro Jakarta Pusat, Kejaksaan Negeri Jakarta Pusat, dan Pengadilan Negeri Jakarta Pusat.

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However, the case settlement mechanism has not been implemented in accordance with the provisions of Article 17 of Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, where the application letter for the settlement of cases through restorative justice should have received approval from the Central Jakarta Metro Police Chief to hold a special case for the termination of case handling through restorative justice attended by the supervisory function internal, legal functions, reporting parties, reported parties and other related parties.

Restorative Justice Analysis at the Prosecution Stage

One example of a criminal act that was resolved through restorative justice at the prosecution stage by the Public Prosecutor of the Central Jakarta District Attorney's Office, can be studied from the case involving the victim with the initials named Mr. LG and the suspect with the initials named Mr. IZ in the case of the crime of theft in the form of 1 (one) unit of motorcycle located at the Cikini hospital, Central Jakarta, as referred to in Article 362 of the Criminal Code which occurred on February 19, 2023, where the perpetrators of the criminal act were threatened with a maximum prison sentence of 5 (five) years.

Judging from the type of criminal offense that can be applied restorative justice as stipulated in Article 5 paragraph (8) of Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the crime of theft as referred to in Article 362 of the Criminal Code is not included in the type of non-criminal that is excluded to be able to apply restorative justice at the prosecution stage as explicitly stated in the provisions of the article, So that the crime of theft can be solved through restorative justice.

Then it is reviewed from the conditions that must be met to be able to apply restorative justice at the prosecution stage as stipulated in Article 5 paragraph (1) of Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, that the suspect Mr. IZ has only committed a criminal act for the first time, the alleged criminal act, namely Article 362 of the Criminal Code, is only threatened with imprisonment of not more than 5 (five) years, however, the value of evidence or loss is more than Rp 2,500,000 (two million five hundred thousand rupiah).

Thus, normatively, the crime of theft involving the Suspect Mr. IZ is a criminal act that does not meet the requirements stipulated in Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, considering that the value of evidence or losses due to the criminal act, namely in the form of a motorcycle belonging to the victim Mr. LG, is Rp 4,500,000,- (four million five hundred thousand rupiah), so that the Public Prosecutor cannot apply restorative justice if guided by the provisions of the prosecutor's regulation.

Furthermore, it is reviewed from the mechanism of resolving cases through restorative justice as stipulated in Articles 7 to d. Article 12 of the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, that for the case involving Mr. IZ, the Public Prosecutor has facilitated peace between the parties, then there has been a peace agreement on April 6, 2023 between the victim Mr. LG and the suspect Mr. IZ without the fulfillment of certain obligations, and there has been a Sura Approval from the Head of the DKI Jakarta High Prosecutor's Office dated April 12, 2023.

Restorative Justice Analysis at the Trial Stage

One example of criminal acts that were resolved through restorative justice at the trial stage by the Judge at the Central Jakarta District Court, can be studied from the case involving the victim from PT. Surya Citra Multimedia and the Defendant Mr. David Namdany and the Defendant Mr. Minami Tohir in the case of fraud committed jointly as referred to in Article 378 of the Criminal Code Juncto Article 55 paragraph (1) 1 of the Criminal Code, Juncto Article 64 paragraph (1) of the Criminal Code, where the perpetrators of the criminal act are threatened with a maximum prison sentence of 4 (four) years.

Judging from the types of criminal acts that can be applied restorative justice as stipulated in Article 6 paragraph (1) of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, the criminal acts of fraud committed jointly are not included in the criminal offenses that are excluded from being able to apply restorative justice at the trial stage, because the criminal act of fraud has a maximum criminal threat of 4 (four) year so that the crime of fraud can be applied restorative justice.

Then it is reviewed from the conditions that must be met to be able to apply restorative justice at the trial stage as stipulated in Article 6 paragraph (1) of Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, that the criminal acts committed by the Defendant Mr. David Namdany and the Defendant Mr. Minami Tohir have resulted in losses to PT. Surya Citra Multimedia amounting to IDR 565,552,420,- (five hundred and sixty-five million five hundred and fifty-two thousand four hundred and twenty rupiah).

This means that if guided by the provisions stipulated in Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Prosecuting Criminal Cases Based on Restorative Justice, then the criminal act of fraud committed by the Defendant Mr. David Namdany and the Defendant Mr. Minami Tohir cannot be applied restorative justice at the trial stage because the amount of losses incurred due to the criminal act exceeds the maximum limit specified in the Regulation is a maximum of Rp 2,500,000 (two million five hundred thousand rupiah).

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Furthermore, it is reviewed from the mechanism of resolving cases through restorative justice as stipulated in Articles 7 to d. Article 20 in Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, that at the time of the trial, the judge found the fact that the parties had a peace agreement, namely a peace agreement dated June 11, 2024, in which the defendants had returned the losses suffered by the victim, and there was a letter requesting the termination of the prosecution and the victim to the Public Prosecutor.

Based on the facts of peace between the victim and the defendants, it is considered by the judge to make a decision that the defendants are legally and convincingly proven to have committed a criminal act of fraud committed together, where the judge sentenced the defendants to imprisonment for 3 (three) months with the provision that the criminal does not have to be served unless in the future there is a judge's decision that determines otherwise due to the convict committing a criminal act before the probation period of 6 (six) months ends

IV. CONCLUSION

The conclusion that can be drawn based on the description of the previous discussion, First, that the regulation of restorative justice as an effort to resolve criminal acts according to positive law in Indonesia, philosophically sourced from Pancasila as the source of all laws in Indonesia, constitutionally based on the Constitution of the Republic of Indonesia in 1945, and operationally the regulation is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Law Number 48 of 2009 concerning Judicial Power, but the two laws have not provided adequate arrangements so that each law enforcement agency, namely the police, prosecutor's office and the court, makes and ratifies regulations on restorative justice, namely Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, Prosecutor's Regulation. Second, the implementation of restorative justice as an effort to resolve minor qualified criminal acts in the criminal justice system in Indonesia, from the results of a study of cases that occurred in the jurisdiction of the Central Jakarta District Court, it was found that at the investigation stage, there were several case settlement mechanisms that had not been implemented by investigators, namely the approval of the leadership as the basis for the implementation of a special case title to stop the handling of cases Through restorative justice, at the prosecution and trial stages, it was found that the settlement of the case did not meet the predetermined conditions because the value of the loss suffered by the victim exceeded the maximum limit, which was Rp 2,500,000 (two million five hundred thousand rupiah), so that if guided by the applicable provisions, then restorative justice could not be applied to the case at the prosecution and trial stages.

Suggestions that can be given from the findings in this study are: First, I hope that the Government of Indonesia makes provisions on restorative justice regulated in the law so that it can be a legal basis for law enforcement officials in implementing restorative justice in the criminal justice system. Second, it is hoped that law enforcement agencies can provide education and training to law enforcement officials in each of their institutions to increase knowledge and understanding of the provisions on restorative justice, and increase supervision of the performance of law enforcement officials in handling cases so that the implementation of restorative justice can run in accordance with the provisions of applicable laws and regulations.

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