



Optics of Restorative Justice in the Criminal Justice Legal System in Indonesia

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Abstract: *This research discusses the transformation of criminal law enforcement in Indonesia from a retributive justice approach to restorative justice. In the context of a rule of law, judicial institutions, especially the Supreme Court, play an important role in protecting human rights. The emergence of the concept of restorative justice as an alternative for resolving criminal acts emphasizes the reconstruction of the relationship between the perpetrator, victim, and society, as well as restoring the original situation. Data from the Directorate General of Corrections shows overcapacity in correctional institutions, which shows that the retributive approach is no longer adequate. Law Number 11 of 2012 and other regulations have adopted restorative justice in the justice system, with the aim of speeding up resolution, reducing recidivism, and providing space for the participation of all parties in the legal process. This research uses normative juridical methods to analyze restorative justice regulations in various law enforcement institutions, as well as the importance of standardizing their implementation. The study's results reveal that despite the significant recovery potential of restorative justice, its implementation remains unintegrated, thereby impeding legal certainty and the effectiveness of the justice system.*

Keywords: *Restorative Justice, Legal System, Criminal Justice*

Introduction

In the Indonesian Constitution it is stated that Indonesia is a legal state.¹ One of the characteristics of a rule of law state is that it has a judicial institution as a form of administration of the existence of guarantees and recognition and protection of human

¹ BAPPENAS RI, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," 1945 BPHN (1945).

rights.² Indonesia itself is a legal system adherent Continental Europe³ or what is often known as *civil law* making the Supreme Court the pinnacle of justice in law enforcement that adjudicates criminal cases.

Enforcement of criminal law in the criminal justice system in Indonesia is currently experiencing a paradigm shift from nuanced retributive justice which looks at efforts to justify the imposition of criminal sanctions⁴ by making criminal law a *premun remedium*⁵ towards restorative justice as a legal breakthrough by prioritizing a humanist approach that focuses on recovery for victims. Resolving criminal acts with the involvement of victims, perpetrators and the community. The concept of restorative justice itself is not something new, but has been essentially embedded as an element of legal development in Indonesia since the reform era.⁶

Referring to data from the Directorate General of Corrections, Ministry of Law and Human Rights,⁷ occurred *over capacity* between residents (detainees and convicts) with a total of 263,940 people with a room capacity of 137,428 people. This situation illustrates that law enforcement through retributive justice is no longer ideal. Renewal of law enforcement in the development of the criminal law system in Indonesia entered a new phase with the introduction of restorative justice or often known as restorative justice.⁸

Restorative justice is an alternative resolution of criminal acts through an approach that focuses on reconstructing relationships in fair and balanced conditions between the perpetrator and the victim as stated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which mandates the resolution of criminal cases

² Friedrich Julius Stahl, *The Doctrine of State and the Principles of State Law*, 2009.

³ Feri Pramudya Suhartanto and Yenny Febrianty, "Perbandingan Sistem Hukum Civil Law Dan Common Law," *KONSENSUS: Jurnal Ilmu Pertahanan, Hukum, Dan Ilmu Komunikasi* 1, no. 3 (2024): 72–83.

⁴ Eva Achjani Zulfa, *Pergeseran Paradigma Pemidanaan* (Bandung: Lubuk Agung, 2011).

⁵ Pujo Widodo Elsa Kristina Hutapea, Achmed Sukendro, Halomoan Freddy Sitinjak Alexandra, "Implementasi Keadilan Restoratif Sebagai Upaya Perdamaian Dalam Penyelesaian Perkara Pidana Penganiayaan Kejaksanaan Negeri Lebong," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 316–24, <http://journal.upy.ac.id/index.php/pkn/article/view/4770>.

⁶ Chandra Septia, "Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia," *RechtsVinding* 2, no. 2 (2013): 263–77, <http://dx.doi.org/10.33331/rechtsvinding.v2i2.76>.

⁷ Kementerian Hukum dan Ham, "Analisa Jumlah Penghuni Lapas," Ditjenpas, 2022, <https://sdppublik.ditjenpas.go.id/analisa/jumlah-penghuni>.

⁸ Mujiburrahman, "Restorative Justice Dalam Penyelesaian Dan Hambatan Perkara Tindak Pidana Dalam Kuh Pidana," *Jurnal Hukum Ius Publicum* 4, no. 2 (2023): 123–33, <https://doi.org/10.55551/jip.v4i2.75>.

involving the perpetrator and victim. The families of the perpetrators/victims and other related parties must work together to seek a just solution by emphasizing restoration to the original situation, and not retaliation. The issue of law enforcement through restorative justice in Indonesia is currently not yet integrated so it does not provide legal certainty in its implementation.

Issues regarding restorative justice have been widely studied, such as the restorative justice approach in terminating prosecutions,⁹ Implementation of Restorative Justice in Police Regulations and Prosecutor's Regulations,¹⁰ Restorative Justice within the framework of Pancasila Democracy,¹¹ settlement of minor criminal cases through restorative justice.¹² This study focuses on the application of restorative justice in the guidelines of each institution implementing the integrated criminal justice system. The importance of this research is to explore the standardization of restorative justice elements in each implementing institution's regulations within the framework of an integrated criminal justice system.

Restorative justice is an approach to handling crime that emphasizes restoring relationships between perpetrators, victims and the community. In Indonesia, the implementation of RJ is increasingly gaining attention in line with efforts to reform the criminal justice system to be more humane and rehabilitative which aims to reduce the risk of recidivism by providing support and facilitating the means needed by perpetrators to restore relationships between perpetrators and victims, as well as society by adjusting the needs of the parties. which is involved in a more personal and relevant approach and takes into account cultural and social context. Restorative justice focuses on resolving conflict through dialogue, mediation, and reconciliation. This approach not only punishes the perpetrator, but also seeks to repair the losses experienced by the victim. RJ prioritizes the participation of all parties in the resolution

⁹ A.M. Siryan, Audyna Mayasari Muin, and Hijrah Adhyanti Mirzana, "Penghentian Penuntutan Sebagai Alternatif Penyelesaian Tindak Pidana: Pendekatan Keadilan Restoratif," *PAPUA Law Journal* 6, no. 2 (2022): 91–101.

¹⁰ Fahmi Arif and Nur Hamida Kholif As Syafii, "Disharmoni Peraturan Kepolisian Dengan Peraturan Kejaksaan Dalam Pelaksanaan Keadilan Restoratif," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 3, no. 2 (2023): 161–80, <https://doi.org/10.21274/legacy.2023.3.2.161-180>.

¹¹ E Iswahyudi, "Konsep Keadilan Restoratif Dalam Perspektif Demokrasi Pancasila," *Gudang Jurnal Multidisiplin Ilmu* 2 (2024): 72–77, <https://gudangjurnal.com/index.php/gjmi/article/view/214%0Ahttps://gudangjurnal.com/index.php/gjmi/article/download/214/200>.

¹² Muhaimin Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019): 185, <https://doi.org/10.30641/dejure.2019.v19.185-206>.

process and provides space for the perpetrator to take responsibility for his actions, so that the perpetrator understands the impact of the action and is committed to correcting mistakes, either through apologies or other improvements as an effort to restore the victim.

The research method used is normative research.¹³ This research uses a statutory approach by examining regulations regarding restorative justice in each institution implementing the integrated criminal justice system, then a conceptual approach by moving from an analytical perspective as well as developing views and doctrine regarding restorative justice, as well as a case approach by analyzing cases resolved with restorative justice at each institutional level implementing an integrated criminal justice system. The legal materials used are primary materials used in this study with reference to statutory regulations at the Police, Prosecutor's Office and District Court (Supreme Court) levels. Secondary materials by reviewing research results as well as tertiary legal materials originating from legal dictionaries and legal encyclopedias.

Restorative Justice Arrangements in the Penal System

The concept of restorative justice was originally an incarnation of customary law which was then adopted in the construction of positive law as part of law enforcement which transformed from aspects of retributive justice to restorative justice with the aim of restoring compensation to victims of criminal acts for the losses they experienced. Therefore, restorative justice itself is actually a resolution of criminal cases¹⁴ in a non-litigation manner. However, the current legal dynamics are changing the direction from limited non-litigation to limited litigation. Restorative justice starts from an introduction and initial understanding through an outreach mechanism by providing understanding to the parties regarding its goals and benefits, as well as identifying cases to determine suitability for resolving disputes through a restorative justice approach. Apart from that, the involvement of parties including victims, perpetrators and the community is the

¹³ BAPPENAS RI, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," 1945 BPHN (1945).

¹⁴ Mohtar Arifin, Tiya Cahya Kusuma, and Alfitra Alfitra, "Penerapan Keadilan Restoratif Tahap Penuntutan Dalam Penyelesaian Perkara Tindak Pidana Pencurian (Studi Kasus Putusan No: 28/PID.B/2022/PN LBB)," *Jurnal Ilmiah Publika* 11, no. 1 (2023): 151, <https://doi.org/10.33603/publika.v11i1.8215>.

main support in achieving restorative justice by facilitating dialogue through mediators so that the essence of restorative justice is realized.

It is hoped that the implementation of restorative justice can help create a justice system that is more humane and effective in preventing and dealing with crime. For perpetrators to understand the impact of their actions and get the opportunity to improve themselves, victims are expected to get a sense of justice and emotional and psychological recovery. For society to increase social harmony and reduce recidivism rates.

1. Restorative Justice Regulations in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) is the first positive legal product to introduce Restorative Justice (*Restorative Justice*) through the term Diversion. Diversion is defined as the transfer of resolution of children's cases from the criminal justice process to a process outside of criminal justice.¹⁵ Diversion aims to provide protection for children who face the law (ABH) as perpetrators as well as children as victims and Society in general as a form of resolving children's cases from the beginning of litigation to non-litigation.¹⁶

The concept of diversion itself emphasizes the responsibility of the perpetrator for his actions and seeks to restore disturbed relationships in addition to restoring the rights of victims by focusing on both the perpetrator and the child victim. Towards this goal, the handling has 3 (three) approaches, namely searching, finding, deciding and implementing an agreement to recover the consequences of the perpetrator's criminal actions; Involvement of all components starting from the perpetrator's child and their parents/guardians and family as well as the victim's child and their parents/guardians or family; as well as the reconstruction of traditional relations in community relations with the government as a response to criminal acts.¹⁷

¹⁵ Undang-Undang Republik Indonesia Nomor 11 Tahun 2012, "Sistem Peradilan Pidana Anak," JDIH BPK RI (2012).

¹⁶ Dwi Rachma Ningtias, Said Sampara, and Hardianto Djanggih, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak," *Journal of Lex Generalis (JLS)* 1, no. 5 (2020): 18–35.

¹⁷ Josua Navirio Pardede and Septian Dwi Riadi, "Problematika Penerapan Keadilan Restoratif Di Wilayah Terdepan , Terluar Dan Tertinggal (3T): Studi Kasus Di Kejaksaan Negeri Kabupaten Maluku Tengah , Info Artikel," *Kertha Patrika* 45, no. 1 (2023), <https://ojs.unud.ac.id/index.php/kerthapatrika>.

This shows that diversion is no longer an alternative, but rather an obligation for law enforcement officials to guarantee human rights. Referring to Article 6 of the SPPA Law, diversion aims to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from being deprived of their liberty, encourage the community to participate, and instill a sense of responsibility in children. The diversion obligation as regulated in Article 7 states that at every level starting from investigations at the Police, prosecution at the Prosecutor's Office to the examination process at the District Court regarding children's cases, diversion must be carried out. Diversion is carried out if there is a threat of a criminal offense that carries a prison sentence of less than 7 years, is not a repeat crime, and is committed against children aged 12 years and over.

The concept of Restorative Justice here prioritizes restoring the situation between child perpetrators of criminal acts and child victims of criminal acts through a deliberation mechanism involving parents/guardians, community counselors and professional social workers while still paying attention to the interests of the victims; child welfare and child responsibility; avoidance of negative stigma; avoidance of retaliation; harmony of society and propriety, decency and public order. In principle, diversion must obtain approval from the victim and/or family, however, Article 9 paragraph (2) of the SPPA Law provides a dispensation for carrying out diversion without approval because the criminal act is a violation, in the form of a minor crime, the criminal act does not cause victims and the value of the loss the victim is no more than the value of the local provincial minimum wage.¹⁸

The position of diversion in the SPPA Law is not only limited to an authority for law enforcement institutions but is an obligation for all law enforcement institutions in handling cases of children in conflict with the law (ABH).¹⁹ It can be understood that this diversion position is an obligation and

¹⁸ Ningtias, Sampara, and Djanggih, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak."

¹⁹ Bendry Almy, "Kebijakan Hukum Pidana Penyelesaian Perkara Tindak Pidana Melalui Upaya Diversi Bagi Pelaku Dewasa Dalam Mewujudkan Keadilan Restoratif," *Jurnal Panji Keadilan : Jurnal Ilmiah Nasional Mahasiswa Hukum* 3, no. 2 (2020), <https://doi.org/10.36085/jpk.v3i2.1196>.

something that must be implemented by all stakeholder institutions in the law enforcement process.

2. Arrangements for Restorative Justice in the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

According to Tony Marshall, restorative justice is a process that involves all parties who have an interest in the problem of a particular violation who collectively provide a solution to the legal consequences that arise afterwards.²⁰ Restorative justice in the Police prior to the introduction of Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 first applied the Circular Letter of the Chief of Police of the Republic of Indonesia Number SE/8/VII/2018 concerning the Implementation of Restorative Justice in Resolving Criminal Cases. The existence of this Circular Letter is the legal basis for investigators and investigators of the Republic of Indonesia Police (Polri) in carrying out inquiries and inquiries, including providing legal protection and supervision, in applying the concept of restorative justice in investigating and investigating criminal acts to ensure the public interest and a sense of justice. among the community, so as to realize the understanding and application of restorative justice in the police environment.²¹

Restorative justice in the Regulation of the Chief of Police of the Republic of Indonesia (Perkap) Number 8 of 2021 is stated as an effort to resolve criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to work together to find a just settlement through peace by emphasizing restoration to the original state.²² The presence of Perkap Number 8 of 2021 concerning the handling of criminal acts based on restorative justice is a series of efforts to harmonize all levels of the Police institution. This Police Regulation states that

²⁰ Citra Sonia and Ragil Surya Prakasa, "PENERAPAN MEDIASI PENAL SEBAGAI PENYELESAIAN PERKARA KEKERASAN DALAM RUMAH TANGGA (PERSPEKTIF RESTORATIVE JUSTICE)" 4, no. May (2024): 78–95.

²¹ Fianhar, "Surat Edaran Kapolri Nomor 8 Tahun 2018 Tentang Penerapan Restorative Justice Dalam Penyelesaian Perkara Pidana," 2018, <https://www.fianhar.com/2018/09/penerapan-keadilan-restoratif-perkara-pidana.html?m=1>).

²² Kepolisian Republik Indonesia, "Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif," JDIH BPK RI (2021).

restorative justice is a process of resolving a criminal act involving victims, perpetrators, their families, and community, religious, traditional and stakeholder leaders by focusing on restoring the original situation.

In the implementation of restorative justice, emphasis is placed on the investigation and investigation stages in carrying out the criminal investigation function by paying attention to general requirements and special requirements as outlined in Article 3 of Perkap Number 8 of 2021. General requirements include material requirements which, if restorative justice is implemented, do not cause unrest and/or rejection. from society, does not have the impact of giving rise to social conflict, does not have the potential to divide the nation, does not have a radical and separatist nature, is not a recidivist, and is not a special class of criminal act (terrorism, corruption) and involves criminal acts against state security and criminal acts against people's lives. Meanwhile, the formal conditions for reaching a peace agreement and fulfilling the rights of the victim and the responsibility of the perpetrator can be in the form of returning goods, compensating for losses and covering and reimbursing all existing costs as a causality of the perpetrator's actions. As regulated in Article 7 of Perkap Number 8 of 2021, the special requirements are additional requirements for 3 (three) types of criminal acts, namely criminal acts in the fields of information and electronic transactions, narcotics and traffic. The distribution of these additional requirements varies according to the criminal act, such as in the case of criminal acts of information and electronic transactions, giving restorative justice It can only be filed against the perpetrator of spreading illegal content who is then willing to delete the content that has been distributed/uploaded, then apologizes openly through videos uploaded on social media, and is willing to cooperate with investigators when carrying out further investigations.

Special requirements for perpetrators of drug crimes, giving restorative justice only aimed at addicts and victims of drug abuse with a prior application for rehabilitation; the evidence found at the time of arrest was no more than 1 (one) day old and no evidence of drugs was found but based on urine test results it showed positive results for drug use; has no connection with dealers, dealers or narcotics criminal networks whether local, national or international;

and have undergone an assessment by an integrated assessment team and are willing to collaborate with educators in carrying out further investigations. Regarding traffic crimes, it is only intended for perpetrators who drive motorized vehicles in dangerous ways and conditions or because of their negligence, resulting in traffic accidents that cause property/material loss and/or the victim suffers minor injuries.

3. Restorative Justice Regulations in the Republic of Indonesia Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

Restorative justice in Attorney General's Regulation (Perja) Number 15 of 2020 is defined as the resolution of criminal cases involving elements of the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the situation. originally and not in retaliation.²³ The existence of the Prosecutor's Office as a law enforcement apparatus (APH) is regulated in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, making the Prosecutor's Office the only institution that has duties and authority in the field of Prosecution as law enforcement efforts in realizing legal certainty, legal order, justice and truth based on law. Apart from having these duties and authorities, there is also the authority to stop prosecutions based on restorative justice as stated in Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Prosecution is actually carried out based on restorative justice which is based on the principles of justice, public interest, proportionality, and resolution quickly, simply, and has low costs and makes punishment a ultimum remedium.²⁴ The presence of Perja Number 15 of 2020 is the Attorney General's response to the shift in the retributive justice paradigm towards restorative justice by prioritizing the resolution of criminal cases at the prosecution level.

²³ Kejaksaan Agung, "Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif," JDIH BPK RI (2020), https://jdih.kejaksaan.go.id/inventaris/berkas/berkas_4150.pdf.

²⁴ Republic of Indonesia, "Indonesian Law Number 11 of 2021 Regarding Amendments to Law Number 16 of 2004 Concerning The Attorney General of The Republic of Indonesia," *Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia*, no. 112784 (2021): 11.

The existence of this Perja is an option for resolving the prosecution process which so far has not provided direct benefits for victims of criminal acts. As a result, resolving criminal cases using a restorative justice approach becomes the basis for resolving cases outside of litigation, where the Public Prosecutor functions as a facilitator to stop criminal cases that meet the specified requirements.²⁵

The requirements that must be fulfilled in this Perja include prioritizing the protection of victims' interests and other legally protected interests, avoiding labeling or negative views from society as well as retaliation and paying attention to the values of propriety, decency and public order within the scope of social harmony. Apart from that, the application of restorative justice in terminating prosecution must comply with at least having never committed a criminal act before, the criminal act is punishable by imprisonment for no more than 5 (five) years and the criminal act is only punishable by a fine, as well as criminal acts involving evidence, or the value of the loss is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

The application of termination of prosecution based on restorative justice must meet the requirements, namely the restoration of the original condition and the existence of a peace agreement between the victim and the suspect and getting a positive response from the community. Restoration to its original condition can be carried out by returning the goods resulting from the crime to the victim, then replacing the costs/losses/damage arising because of the crime. Referring to this, the implementation of restorative justice has certain criteria and indicators in the application of law at the prosecution level to guarantee the values *legal justice*, *moral justice* and *social justice* in the form of terminating the prosecution by giving the parties the option of peace by the public prosecutor in a transparent manner without any pressure or coercion on the part of the public prosecutor.

²⁵ Anwar F, Rizal; Sofyan, Andi Muhammad; Saleng, Abrar; Borahima, "Reviewing Restorative Principles of Corporate Punishment in Corruption Crime," *Journal of Law, Policy, and Globalization* 88 (2019): 159.

4. Restorative Justice Regulations in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice

Restorative justice at the Supreme Court began with the Decree of the Director General of the General Judicial Body of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice which can only be applied to types of cases including: (a) minor criminal offenses; (b) cases of women in conflict with the law; (c) children's cases; and (d) narcotics cases.²⁶

Restorative Justice in Supreme Court Regulation (Perma) Number 1 of 2024 is defined as an approach in handling criminal cases committed by involving parties including the victim, the victim's family, the defendant/child, the defendant/child's family, and/or other related parties. with processes and goals that seek healing, and not just retaliation.²⁷ The development of the criminal system has changed the face of the current criminal settlement by focusing on the responsibility of the defendant and prioritizing the interests of the victim within boundaries which include the types of cases, conditions and procedures for implementing at the trial level for decisions that accommodate the approach *restorative justice*. The existence of this Perma aims to fill the legal void as a guide for judges in adjudicating criminal cases with an orientation towards restorative justice without ignoring the existence of material crimes.

Perma Number 1 of 2024 is a response and effort to overcome the losses suffered by victims in a constructive way, and minimize recidivism by involving perpetrators in the recovery process, thereby reducing the possibility of perpetrators repeating criminal acts, as well as providing opportunities for victims to actively participate in the case resolution process. , thereby increasing the sense of justice. The existence of this Perma shows a step forward in criminal justice reform by adopting principles that focus on recovery and reconciliation without prioritizing punishment alone as part of criminal

²⁶ Dirjen Badilum, "Keputusan Direktur Jenderal Badan Peradilan Umum Mahkamah Agung Republik Indonesia Nomor 1691/DJU/SK/PS.00/12/2020 Tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice)" (2020).

²⁷ Mahkamah Agung, "Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2024 Tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif" (2024).

responsibility for perpetrators. On the other hand, Article 3 paragraph (2) of Perma Number 1 of 2024 confirms that implementing the principles of restorative justice does not aim to eliminate criminal liability. Apart from that, the existence of this regulation also applies to criminal and military criminal cases. The application of restorative justice refers to the categorization of minor crimes or those with material loss to the victim of no more than Rp. 2,500,000,- (two million five hundred thousand rupiah) or not exceeding the local provincial minimum wage (UMP); constitutes a complaint offense; maximum penalty of 5 (five) years in prison whether contained in 1 (one) or more charges, including jinayat according to Qanun; as well as crimes that are classified as traffic crimes and specifically accommodates criminal acts with children as perpetrators where the implementation of diversion is not successful. On the other hand, the judge does not have the authority to implement restorative justice if there is a refusal to reconcile from the victim or the defendant, besides there is also a power relationship and the defendant is not a recidivist with the exception of 3 (three) years after the defendant has finished serving a period of detention in accordance with a decision that has permanent legal force (*incraht van gewijsde*).

The regulations for the implementation of restorative justice contained in Perkap Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Perma Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice have similarities and The difference between Restorative Justice in the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 regulates the approach to resolving criminal acts with a focus on recovering losses and restoring relationships between parties provided that it is a certain criminal act that meets the criteria of mild or moderate and does not involve serious violence, the willingness of the victim in the sense of the victim must be willing to be involved in the restorative justice process and give consent to the proposed settlement, the perpetrator of the crime must be willing to admit his mistake and be willing to take responsibility and follow the settlement process, a mutual agreement

between the perpetrator and the victim regarding the method of settlement, including restitution or recovery that must be committed by the perpetrator, there are no criminal charges so that the application of restorative justice can be carried out if no criminal charges have been filed and the formal legal process has not yet taken place, and if restitution is provided from the perpetrator, the perpetrator must provide restitution or recovery to the victim as part of the restorative justice process as an alternative effort a more humane and recovery-oriented solution, compared to a retributive approach in law enforcement.

In the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, there are several requirements for the implementation of restorative justice, including minor criminal acts, so that restorative justice can be applied to certain criminal acts that are light in nature and do not involve victims who experience serious impacts. , the victim's consent where the victim gives consent to take part in the restorative justice process and is willing to be involved in the resolution, the perpetrator's confession admits his mistake and is willing to take responsibility for his actions, an agreement between the perpetrator and the victim regarding the method of settlement, including the recovery or restitution that must be given by the perpetrator, facilitation by a mediator or third party who has competence in restorative justice, and there is no threat of further criminal prosecution against the perpetrator, as well as supporting justice as an embodiment in providing justice for both victims and perpetrators, with the aim of providing alternative solutions that are more constructive and oriented towards recovery, compared to more retributive legal processes.

Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice stipulates several requirements for implementing restorative justice looking at the types of criminal acts that can be applied to minor crimes, cases of women in conflict with the law, children's cases, and criminal acts. narcotics, the material loss incurred is not more than IDR 2,500,000,- or does not exceed the local provincial minimum wage (UMP), the threat of a maximum sentence of 5 years, a peace agreement between the victim and the perpetrator indicating the restoration of the original situation, the victim's consent, where restorative justice cannot be carried out if there is resistance from the victim or defendant, there is community involvement in efforts to achieve recovery and

reconciliation, and does not eliminate the perpetrator's criminal responsibility; There are still legal consequences even through a restorative approach. This regulation aims to make the justice system more humane, encourage recovery for victims, and reduce the risk of recidivism through a more constructive approach.

Regulations regarding the legal process reflect the legal mechanisms of each institution from the investigation level to the decision. However, in its legal application, Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 and Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, is limited, because it is. Meanwhile, Supreme Court Regulation Number 1 of 2024 has rigidly binding legal force in the criminal justice system with the aim of improving the justice system and law enforcement in Indonesia.

Conclusion

Paradigm shift in the Indonesian criminal justice system from retributive justice to restorative justice. Restorative justice in Indonesian culture is found in the philosophy of mutual cooperation and deliberation, where conflict resolution involves active participation between perpetrators, victims and the community as part of communal responsibility. This approach encourages perpetrators to take responsibility for their actions in a way that not only punishes, but also heals the damaged relationship between the individual and society. Apart from that, it has also been adopted through various regulations, offering a more humanistic approach. The application of these principles aims to create a more effective, humane and humane space for resolution by prioritizing the improvement of social relations rather than retaliation. Restorative justice has the potential to reduce recidivism rates and create social harmony, making it a positive step in reforming the criminal justice system in Indonesia through existing laws and regulations, such as Law Number 11 of 2012, Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021, and Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, restorative justice is expected to be able to resolve conflicts in a non-litigation manner and restore the original situation, as well as preventing children from being exposed to a harsher justice system. However, integrated and effective implementation requires more consistent standardization and law enforcement in all institutions.

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