

Law Enforcement of Corruption Crimes: Theoretical Study of the Restorative Justice Approach

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Abstract

The problem to be described in this research is how to handle criminal acts using a restorative justice approach that is practiced in the Indonesian criminal justice system and how is the concept of restorative justice applied to criminal acts of corruption in Indonesian law? The approaches used by the author in this research are the statutory approach, case approach, historical approach, comparative approach and legal conceptual approach. The results of the research found that handling criminal acts using a restorative justice approach which is practiced in the Indonesian criminal justice system has become a new method for resolving criminal cases. This model places greater emphasis on conditions for creating justice and balance for criminal perpetrators and their victims. This model has now been implemented in the criminal justice system in Indonesia. Indonesia. This model continues to be developed and implemented in the criminal justice system in Indonesia to achieve the goals of justice, certainty and benefit because the focus of the approach in restorative justice focuses on justice for victims and perpetrators, so that the function of law is not only as certainty for society but also as justice and benefit to the community in line with local wisdom in resolving criminal cases. The application of the concept of restorative justice in criminal acts of corruption in Indonesian law is through the return of all proceeds from criminal acts of corruption along with all forms of profits which are carried out at the stage before the investigation is carried out, during the investigation, during the investigation up to the stage of examination in court. The application of restorative justice has not been specifically regulated in corruption legislation in Indonesia, however circular letters have been issued in several law enforcement agencies which regulate the application of restorative justice in criminal acts of corruption which prioritizes deliberation to return all the proceeds of criminal acts of corruption.

Keywords: *Corruption Crime Law Enforcement, Restorative Justice Theory*

INTRODUCTION

Indonesia is a country of law, this is expressly stated in the 1945 Constitution of the Republic of Indonesia (Article 1 paragraph (3) namely "The State of Indonesia is a state of law). The state of law is the basis of the State and the outlook on life of every citizen of Indonesia, and Pancasila is the source of all legal order in force in the State of Indonesia. As a state of law, of course all actions in the life of the nation and state must be regulated by law. Law as a social institution has an important role in society to create peace, justice and security and also regulates all human actions that are prohibited or ordered in accordance with the objectives of the law. From a normative legal perspective, law is an order from the ruler which is stated in the form of a Law. There is no law outside the law and the center of legal growth is in legislation. From an empirical sociological perspective, law is not formed by the ruler but grows and develops in line with the growth and development of society. According to several experts, law provides different definitions. According to E. Utrecht "Law is a collection of life instructions (commands or prohibitions) that regulate order in a society that should be obeyed by members of society and if violated can lead to action from the government of that society (Arrasjid, 2008). According to Immanuel Kant "Law is the entire condition of free will from people to be able to adjust to the free will of others, by following the rules on freedom" (Muhwan, 2012). Furthermore. According to Jhon Austin "Law is a regulation that is made to provide guidance to rational beings by rational beings who have power over them" (Salim, 2010). In relation to some of the opinions above, it can be understood that law is a social institution, which functions as a tool to regulate society. However, its function is not only to regulate society

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but also to regulate it properly and usefully. As Jeremy Bentham once stated with the Theory of Utilitarianism, it emphasizes that (Schofield, 2003): "Utility as a legal purpose has become a belief in Indonesia. In his literature, Bentham implies that utility is the dimension of the calculation of pleasure and pain, which is more appropriate to be used as a method of evaluating laws and regulations, rather than for legal purposes. This study tries to dissect the concept of Bentham's utilitarianism theory, and to find its position in the facet of legal thought. The conclusion of this study explains why utility is not a legal purpose. Utility is part of the calculation variables for evaluating legal product evaluation methods, so as to determine whether legal certainty in a legal product is sustainable or not. Furthermore, Bentham's theory of utilitarianism takes the separability thesis and the reductive thesis, as its standpoint of legal positivism, therefore Bentham's theory of utilitarianism is not an independent school of thought, but a facet of legal positivism".

Law according to Van Apeldoorn is to regulate social life and in order for social life to be peaceful, the law requires peace and peace to be maintained. In maintaining the law, a method is needed, the method is to protect the interests of certain human laws, freedom, honor, life and property. Protection is intended to protect from parties who will harm it.

Various expert opinions on the law show that the law has a purpose. The purpose of the law, according to experts, has different opinions, some of which will be described below (Salim, 2010):

Ethical theory, the law is solely aimed at realizing justice. This theory was first put forward by the Greek philosopher, Aristotle in his work *Ethica Nicomachea* and *Rhetorika* which states that the law has a sacred duty, namely to give to everyone what he has the right to receive.

Utilities theory, this theory was taught by Jeremy Bentham that the law aims to realize only what is beneficial, namely beneficial to many people and is general without regard to justice. According to Bentham, the essence of happiness is pleasure and a life free from misery, therefore the intention of humans to take action is to get the greatest happiness and reduce suffering. An action is considered good if the action produces good. Conversely, it is considered bad if it results in evil (loss).

Dogmatic legal theory is a theory that originates from positivistic thinking in the legal world that tends to view law as something autonomous and independent because law is nothing more than a collection of rules, namely merely guaranteeing the realization of legal certainty, legal certainty is realized by law with its nature only making a legal rule. According to adherents to this theory, even though the rule of law or the application of law feels unfair and does not provide great benefits for the majority of members of society, it does not matter, as long as legal certainty can be realized.

Based on the objectives of the law described above, there are 3 (three) pillars or basic values that are the objectives of the law, namely legal certainty (*Rechtssicherheit*) based on dogmatic legal theory, usefulness (*Zweckmassigkeit*) guided by the theory of utilities and justice (*Gerechtigkrit*) rooted in the ethical theory that law only aims to realize justice (Sutiyoso. 2004).

The explanation of this is that society expects legal certainty, because with legal certainty society will be more orderly. The law is tasked with creating legal certainty because it aims to create public order. On the other hand, society expects benefits in the implementation or enforcement of the law. In the implementation or enforcement of the law, society really wants justice to be considered. Along with the description above, Gustav Radbruch stated that the law must contain 3 (three) identity values, namely; (1) The principle of legal certainty (*rechtmatigheid*), This principle is reviewed from a juridical perspective; (2) The principle of legal justice (*gerechtigheid*), This principle is reviewed from a philosophical perspective; (3) The principle of legal utility (*zwech matigheid* or *doelmatigheid* or utility) This principle is reviewed from a sociological perspective. According to Gustav Radbruch, the three objectives of the law above can be achieved, one of which is by implementing restorative justice or what is commonly known as restorative justice, which is a form of justice that focuses on the restoration of victims, perpetrators of crimes, and society (Clifford & Arief, 2018). Another definition of restorative justice is also explained by Tony Marshall. According to Tony Marshall, restorative justice is a process when the parties involved in a crime jointly solve problems and deal with the consequences in the future (Herlina, 2004). Restorative justice is a new legal philosophy that is a combination of existing

criminal theories. Restorative justice that is oriented towards resolving cases that focus on the perpetrator, victim and community. Here, restorative justice contains the values of classical criminal theory that focuses on efforts to restore victims contained in the theory of retributive, deterrence, rehabilitation, resocialization punishment. In addition to focusing on the recovery of the perpetrator, restorative justice also pays attention to the interests of victims and the community.

In Indonesia, the process of criminal law reform is currently underway. Criminal law reform includes reforms to formal criminal law (R-KUHAP), material criminal law (has been ratified by Law No. 1 of 2023 concerning the Criminal Code which will come into effect in 2026) and criminal enforcement law (R-UUP). These three areas of law are jointly or integrally improved so that there are no obstacles in their implementation (Lilik, 2007). One of the triggers for changes in criminal law is the advancement of technology and information (Anwar, 2008). As part of criminal law policy, criminal law reform is essentially aimed at making criminal law better in accordance with the values that exist in society. Barda Nawawi Arief, explains that the meaning and nature of criminal law reform can be seen from (Barda Nawawi Arief, 2016): Policy approach perspective; (1) As part of social policy, criminal law reform is essentially part of an effort to overcome social problems (including humanitarian problems) in order to achieve or support national goals (social welfare and so on); (2) As part of criminal policy, criminal law reform is essentially part of an effort to protect society (especially efforts to combat crime); (3) As part of law enforcement policy, criminal law reform is essentially part of an effort to reform the legal substance in order to make law enforcement more effective.

From a value approach perspective, criminal law reform is essentially an effort to review and re-evaluate the socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie and provide content for the normative and substantive content of the desired criminal law.

As is known, there are currently many criminal acts that end in the trial process in court, where victims of crime tend to use the courts as an effort to resolve a case that they think conceptually and theoretically will create justice, but in reality and fact, this is actually not easy to achieve because of its nature which tends to be a win-lose solution (Azhar, 2019). Where there will be a winning party and a losing party. With this reality, resolving a case through traditional court channels generally often creates an unpleasant feeling in the mind of the losing party, so that they try to seek justice at a further level of court. Satjipto Rahardjo stated that resolving cases through the judicial system that ends in a court verdict is a law enforcement towards a slow lane. This is because law enforcement goes through a long distance, also through various levels starting from the police, prosecutors, district courts, high courts and even to the Supreme Court. In the end, it has an impact on the accumulation of cases that are not small in number in court (Flora, 2018). In addition, the imposition of a sentence, no matter how light, is essentially a revocation of basic human rights. Therefore, the use of criminal law as a means of criminal politics must be based on reasons that can be justified philosophically, legally and sociologically.

Supporting the implementation of law enforcement and the objectives of punishment, there are criminal theories (strafrecht theorien) such as the Absolute Retribution Theory (vergeldings theorien) (Hamzah, 1986). The Purpose Theory (doel theorien) (Hamzah, 1986), and the Combined Theory¹⁹. However, in the latest developments, these theories are considered inadequate in answering the objectives of punishment so that a form of renewal is needed in the Indonesian Criminal Law, namely the regulation of criminal law in the perspective and achievement of justice for the improvement or restoration of conditions after the event and the criminal justice process known as restorative justice. The concept of restorative justice is certainly different from the concept of retributive justice (emphasizing justice in retribution) and the concept of restitutive justice (emphasizing justice in compensation). This restorative justice emerged with the aim of empowering victims, perpetrators, families and communities to improve an unlawful act by using awareness and realization as a basis for improving community life. Restorative Justice can be described as a response to criminal behavior to restore the losses suffered by victims of crime and to facilitate peace between conflicting parties (Minor & Morrison, 1996).

Restorative Justice is a principle of case resolution that emphasizes restoration to the original state rather than demanding punishment from the court. The practice of law enforcement by adopting the principle of restorative justice to resolve a criminal case has been carried out in all law enforcement institutions in Indonesia,

including the Supreme Court, the Attorney General's Office, the Indonesian National Police and the Ministry of Law and Human Rights of the Republic of Indonesia.

The Supreme Court, the Attorney General's Office, the Indonesian National Police and the Ministry of Law and Human Rights of the Republic of Indonesia as law enforcement institutions in Indonesia signed a Memorandum of Understanding on October 17, 2012, which regulates the resolution of criminal cases through the principle of restorative justice.

The laws and regulations referred to include; (1) Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice; (2) Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; (3) Decree (SK) of the Director General of the General Court (Dirjen Badilum) MA Number: 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

Based on the Decree of the Director General of the General Court Number: 1691/DJU/SK/PS.OO/12/2020 Date: December 22, 2020 Concerning Guidelines for the Implementation of Restorative Justice in the General Court environment. These guidelines apply and must be followed by all district courts in Indonesia.

These guidelines are used in resolving cases through restorative justice in minor criminal cases, cases of women in conflict with the law, cases of children and narcotics cases.

Restorative Justice in Minor Criminal Cases; (1) Criminal cases that can be resolved with restorative justice are minor criminal cases with criminal threats as regulated in articles 364, 373, 379, 384, 407 and article 482 of the Criminal Code with a loss value of no more than IDR 2,500,000 (two million five hundred thousand rupiah); (2) During the trial, the judge continues to strive for peace and prioritizes restorative justice in his decision; (3) Restorative justice as referred to above does not apply to repeat criminals in accordance with the provisions of statutory regulations.

Restorative Justice in Children's Cases; (1) The legal basis includes Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years of Age; (2) The juvenile criminal justice system must prioritize the restorative justice approach. In the event that a peace process is reached, the parties make a peace agreement, then signed by the child and/or his/her family, the victim and related parties (PK Bapas, Peksos, Community Representatives) and the peace agreement is included in the judge's decision considerations for the best interests of the child. Restorative Justice in Women's Cases in Conflict with the Law. The legal basis includes; (1) The CEDAW Convention (The Convention on the Elimination of All Forms of Discrimination Against Women) which has been ratified by Law of the Republic of Indonesia Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women; (2) The ICCPR (International Covenant on Civil and Political Rights) Convention which has been ratified by Law of the Republic of Indonesia Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights; (3) Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection; (4) Handling of women in conflict with the law as victims Judges in trying cases of women in conflict with the law as victims are required to consider legal facts and implications in the future with a restorative justice approach.

The legal basis for Restorative Justice in Narcotics Cases includes; (1) Criminal Procedure Code (KUHP); (2) Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics; (3) Circular of the Supreme Court of the Republic of Indonesia Number 4 of 2010 Concerning the Placement of Narcotics Abusers, Victims of Abuse and Addicts in Medical Rehabilitation and Social Rehabilitation Institutions; (4) Circular of the Supreme Court of the Republic of Indonesia Number 3 of 2011 concerning the Placement of Narcotics Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions; (5) Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia; (6) Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number

03 of 2014, Number 11 of 2014, Number 03 of 2014 Number Per-005/A/JA/03/2014 Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. The restorative justice approach can only be applied to addicts, abusers, victims of abuse, drug dependency and one-day narcotics use as regulated in Article 1 of the Joint Regulation of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia Number Ol/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014 Number Per005/A/JA/03/2014 Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions.

Observing the Decree of the Director General of the General Courts above, the application of restorative justice only covers minor criminal cases; child cases; cases of women in conflict with the law and narcotics cases, but in practice this is not the case because a number of criminal cases handled at the investigation level, case handling at the prosecutor's office level and also case examination at the court level do not follow the instructions of the Decree of the Director General of the General Courts so that cases handled at the investigation, prosecution and trial levels deviate from the rules that have been determined. The following author conducts initial research at the investigation level at the Central Sulawesi Regional Police, prosecution at the Central Sulawesi High Prosecutor's Office and case handling at the Palu District Court level. Associated with the Restorative Justice Approach Model from Van Ness, which restorative justice approach model is practiced in the justice system in Indonesia. As is understood that the use of restorative justice at the investigation level and at the prosecution level has been practiced for several years, but based on the author's observations, several similar criminal cases such as fraud, embezzlement, abuse, corruption and so on, in reality some are handled by restorative justice and some are not handled by restorative justice or the case is continued in the next trial process. What parameters are used by law enforcement in implementing the restorative justice approach in carrying out their functions, duties and authorities as law enforcers.

Another interesting thing is that the author has never obtained data on cases handled by the Palu District Court at the level of examination in court, some of which were resolved by restorative justice, even though according to the provisions, it is possible for judges to use their authority to use the Decree of the Director General of the General Court of the Supreme Court concerning the Implementation of Guidelines for the Implementation of Restorative Justice (restorative justice) in resolving criminal cases with restorative justice facilities.

The researcher's search by surfing on social media, the researcher found several other court decisions that had used the restorative justice approach in their decisions. For example, the Suka Makmue District Court Decision Number 63/Pid.B/2021/PN.Skm Date November 9, 2021 Public Prosecutor: Haland Perdana Putra, S.H. Defendant: Edi Yanto Bin Mak Syah. In his decision, he stated that the Defendant Edi Yanto Bin Mak Syah had been proven to have committed a crime as stated in the single indictment of the Public Prosecutor, but could not be held criminally liable because restorative justice had been implemented during the trial; Therefore, he released the Defendant from all legal charges. Based on the arguments above, the researcher presents a chart or matrix for handling restorative justice at the Central Sulawesi Regional Police investigation level and handling restorative justice at the Central Sulawesi High Prosecutor's Office level. Based on the description above, the researcher is interested in raising the title of the dissertation research, namely "Paradigm of Punishment in Corruption (Theoretical Study of the Restorative Justice Approach)". By using several theories, namely the theory of justice, the theory of legal certainty, the theory of utility, the theory of local wisdom and the theory of Restorative Justice.

RESEARCH METHODS

This research adopted a qualitative descriptive design, systematically exploring the application of restorative justice in handling corruption cases within the Indonesian legal framework. The study was structured around several analytical approaches to ensure a comprehensive evaluation: statutory methods were employed to analyze the legal texts and norms governing corruption and restorative justice; case methods focused on

reviewing judicial decisions and legal proceedings to understand how restorative principles were applied in actual cases; historical methods examined the evolution of restorative justice within the Indonesian legal context; and comparative methods were used to contrast Indonesian practices with those of other jurisdictions to highlight unique features and potential areas for reform.

Data collection involved a meticulous review of legislative documents, court records, and official reports to construct a detailed picture of the current legal framework and its implementation. In-depth interviews were conducted with a range of stakeholders, including legal experts, practitioners, and officials directly involved in the justice process, providing qualitative insights into the operational challenges and successes of applying restorative justice in corruption cases.

Data were analyzed through thematic analysis, where emerging themes were identified and coded for in-depth examination. This process facilitated a nuanced understanding of the intersections between restorative justice principles and anti-corruption efforts, emphasizing practical outcomes and theoretical implications. The comparative analysis further enriched this discussion, offering a broader perspective on the adaptability and efficacy of restorative justice in diverse legal cultures.

RESULTS AND DISCUSSION

Handling of Criminal Offenses with a Restorative Justice Approach Practiced in the Indonesian Criminal Justice System

The development of law in society has a goal that it wants to realize, as one of the goals of law is to serve the goals of the State which is basically the goal of the state, namely to realize prosperity, justice and provide happiness to the people in its country, the purpose of law is not only to obtain justice, but there must also be a balance between the demands of legal certainty and the demands of legal justice (Prasetyo, 2011). Law is used as a means to realize social justice, law is expected to be beneficial for community life, so that society gets a sense of justice.

One of the developments in law is the resolution of cases using a restorative justice approach in overcoming various legal problems. The restorative justice approach in resolving criminal cases (penal) is considered a new method, although the patterns used are mostly rooted in the values of local wisdom of primitive communities. The restorative justice approach is an approach that can be used in a rational criminal justice system, this is in line with the view of G. P. Hoefnagels who stated that criminal politics must be rational (a rational total of the responses to crime) (Muladi, 1992).

Rational criminal politics in the criminal justice system, namely by implementing the concept of a restorative justice approach, is an approach that focuses more on the conditions for creating justice and balance for perpetrators of criminal acts and their victims. The principle of Restorative Justice has been adopted by all Law Enforcement Institutions in Indonesia, including the Supreme Court, the Attorney General's Office, the Indonesian National Police and the Ministry of Law and Human Rights of the Republic of Indonesia as law enforcement institutions in Indonesia signed a Memorandum of Understanding on October 17, 2012, which regulates the resolution of criminal cases through the principle of Restorative Justice. National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice¹¹³ (State Gazette of the Republic of Indonesia 2021 Number 947), Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (State Gazette of the Republic of Indonesia 2020 Number 811) (Zafrullah, 2023), and Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.OO/12/2020 Concerning the Implementation of Guidelines for the Implementation of Restorative Justice. It can be concluded that the purpose of restorative justice is not focused on revenge for perpetrators of criminal acts, but rather on seeking a just resolution by emphasizing restoration to the original state. The mechanism of procedures and criminal justice that focuses on punishment is changed to a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is fairer and more balanced for victims and perpetrators.

Implementation of General Criminal Acts with a Restorative Justice Approach

Implementation of Restorative Justice at the Police Level

The Indonesian National Police is authorized by Law No. 2 of 2002 concerning the Indonesian National Police to formulate a new concept in criminal law enforcement that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community. Seeing all this, the Indonesian National Police needs to realize the resolution of criminal acts by prioritizing restorative justice that emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment (Hutahaean, 2022). The application of restorative justice within the police has been regulated through the Indonesian Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice (Indonesian Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice). Where the handling of criminal acts based on restorative justice itself must meet general requirements which include material and formal requirements, as well as special requirements. Material requirements that must be met, such as the case does not cause unrest and there is no rejection from the community, does not have an impact on social conflict, does not have the potential to divide the nation, is not radical and separatist, is not a repeat offender of a crime based on a court decision, is not a criminal act of corruption, a crime against state security, and a crime against people's lives. Criminal cases that can be handled with a restorative justice approach in the police if the investigation commencement order (SPDP) has not been submitted to the prosecutor's office. Not all cases can be resolved in that way, but must also meet formal requirements, namely there must still be an agreement between both parties and the fulfillment of the victim's rights and the perpetrator's responsibilities. In addition, since the issuance of the Circular of the Chief of Police Number SE / 2 / II / 2021 dated February 19, 2021, at least 1,864 cases have been resolved without having to go to court. As stated in the Circular of the Chief of Police Number SE/2/II/2021 dated February 19, 2021, investigators must facilitate mediation between victims and perpetrators and the parties involved in the case who want to reconcile.

All cases are prioritized using a restorative justice approach, except for cases that have the potential to divide, have SARA nuances, radicalism, and separatism. The implementation of restorative justice at the Police stage, the author presents an example of a case of a maritime crime with the following chronology of events; (1) Starting from the Information Report obtained by members of the Intelligence Ditpolairud Polda Sulteng about a ship that was going to Kalimantan, based on this information we conducted an investigation around the waters, after a long time we floated and went undercover in the waters we heard a ship sailing through our waters approached and stopped the ship, from the results of the examination it was discovered that the ship was named KM. Z (pseudonym) which was captained by Mr. X (pseudonym) with a crew of 6 (six) people; (2) The results of the examination of witnesses that it is true that Mr. X as the captain of the KM. Z ship has sailed to Berau Regency, East Kalimantan Province without being equipped with a Sailing Approval Letter (SPB); (3) Then the results of the examination of the Shipping Expert explained that the actions carried out by Mr. X have fulfilled the elements of a crime as referred to in Article 323 paragraph (1) Jo Article 219 paragraph (1) of Law of the Republic of Indonesia No. 17 of 2008 concerning Shipping with criminal witnesses that "A captain who sails without having a Sailing Approval Letter (SPB) issued by the Harbor Master as referred to in Article 219 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 600,000,000,- (six hundred million rupiah)".

Furthermore, in the investigation stage, the Legal Counsel accompanying Suspect X submitted a request to the Director of Polairud Polda Sulteng for the handling of the maritime crime case committed by Mr. X based on Restorative Justice with an attachment of a Statement Letter from Religious Leaders, Community Leaders, Youth Leaders and the Suspect, so that based on the request, the Ditpolairud Polda Sulteng investigators conducted additional examinations of the suspect, clarification to the parties, namely Religious Leaders, Community Leaders, Youth Leaders, Village Governments, Harbor Masters to ensure the truth as stated in the statement letter. On Tuesday, August 29, 2023, a Special Case Title was held which was attended by the Figures, Legal Counsel accompanying the suspect, Itwasda Polda Sulteng, Bidkum Polda Sulteng, Propam Polda Sulteng, Wassidik Ditkrimsus Polda Sulteng and investigators handling the case. Then in the implementation of the

Special Case Title, all participants agreed (agreed) that the criminal case of Shipping with suspect X was terminated by law based on Restorative Justice.

That based on the case above, the actions committed by Mr. X can be carried out with a settlement based on restorative justice because it has met the material and formal requirements in handling the case. The material requirements as referred to in Article 5 of the National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, as referred to in Article 4 letter a, include; (1) Does not cause unrest and/or rejection from the community; Based on the chronology of the case above, that the settlement through Restorative Justice has been approved by Religious Leaders, Community Leaders, Youth Leaders and the Suspect, the Village Government, the Harbor Master so that it does not cause unrest and/or rejection from the community, and even receives support to carry out the settlement through restorative justice; (2) Does not have an impact on social conflict. The settlement of Mr. X's case through restorative justice settlement does not result in social conflict, and even receives support from the community and government so that it can return the situation to its original state; (3) Does not have the potential to divide the nation, the resolution of Mr. X's case through restorative justice does not have the potential to cause division and can even strengthen unity because through restorative justice resolution involving various parties and in accordance with the resolution of local wisdom in the nation's culture and customs; (4) Does not have a radical or separatist nature, the resolution involving the perpetrator Mr. X has been approved by Religious Figures, Community Figures, Youth Figures and the Suspect, the Village Government, the Harbor Master and there is a mutual agreement that the best resolution is through restorative justice; (5) Is not a repeat offender of a crime based on a Court Decision; Mr. X has only committed Article 323 paragraph (1) in conjunction with Article 219 paragraph (1) of Law of the Republic of Indonesia No. 17 of 2008 concerning Shipping for the first time and is not a repeat offender or recidivist; (6) Is not an act of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.

The crime committed by Mr. X Article 323 paragraph (1) Jo Article 219 paragraph (1) of Law of the Republic of Indonesia No. 17 of 2008 concerning Shipping is not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.

Based on the above, according to the author, Mr. X's actions can be carried out through restorative justice and meet material requirements. Based on the chronology and results of the investigation, it is linked to the formal requirements as stipulated in Article 6 paragraph (1) of the State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice which states that: "The formal requirements as referred to in Article 4 letter b, include; (1) Peace from both parties, except for drug crimes; (2) fulfillment of the rights of victims and the responsibilities of the perpetrators, except for drug crimes."

Based on the chronological facts of the investigation and the State Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, it is appropriate and based on the law, the investigation by the Ditpolairud Polda Sulteng was carried out through the handling or resolution of Restorative Justice because it has met the material and formal requirements. The author is of the opinion that the case investigated by the Ditpolairud Polda Sulteng was not stopped by law based on restorative justice, but its resolution was based on restorative justice.

Implementation of Restorative Justice at the Prosecutor's Office Level

The development of the implementation of the criminal justice system, both in Indonesia and globally, the punishment of perpetrators of criminal acts is still retributive in nature which emphasizes the punishment of the perpetrators of the crime. This orientation of punishment aims to take revenge and fulfill the demands of public anger due to the perpetrator's actions. "However, over time, there has been a shift in the alternative paradigm offered to replace retaliation-based justice, namely the idea that emphasizes the importance of solutions to improve the situation, reconcile the parties and restore harmony to society but still demands accountability for the perpetrators that we know as restorative justice, (Rukman, 2023) The Attorney General said that in general there are 5 (five) principles of restorative justice, namely; (1) Principles that emphasize the dangers and consequences caused by criminal acts, both to victims, society, and to the perpetrators; (2) Principles that emphasize protection of the place of the action that occurred, such as the perpetrator's family,

and the surrounding community; (3) Principles that emphasize an inclusive collaborative process; (4) The principle of involving certain parties in certain cases, such as perpetrators, victims, families, and communities that are considered legally able to be involved in them; and (5) The principle of correcting mistakes.

These principles must always be applied as an effort to develop national law, so that the noble goals of the law itself can be realized, namely justice, certainty, and the benefits of law".

Prosecutors as holders of *dominus litis* (controllers) are given the authority to resolve criminal cases outside the court, based on the application of restorative justice and the principle of opportunity (Waluyo, 2022). On this basis, the Prosecutor's Office issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The role of the Public Prosecutor (JPU) is no longer limited to referring cases to court but can also be a mediator between the parties to the case. If the parties to the case (the perpetrator and the victim) have reached an agreement and have met the requirements in the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Public Prosecutor can terminate the prosecution and release the defendant from prison.

As a follow-up to the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Head of the Central Sulawesi High Prosecutor's Office (Kajati) has simultaneously established Restorative Justice Houses in 10 District Attorney's Offices and 14 District Attorney's Offices throughout Central Sulawesi. The establishment of the Restorative Justice House is an implementation of the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The purpose of the Restorative Justice House is as a place for implementing consensus and peace to resolve criminal problems/cases that occur in society, which is mediated by the Prosecutor witnessed by community leaders, religious leaders and local traditional leaders.

The Restorative Justice House is here with the aim of resolving cases quickly, simply and at low cost and realizing legal certainty that prioritizes justice not only for suspects, victims and their families, but also justice that touches the community by avoiding negative stigma. The Restorative Justice House can eliminate the adage that the law is blunt upwards and sharp downwards as has been the case so far. The Restorative Justice House will be able to provide new hope in the legal settlement process in accordance with the laws and customs that develop in the community. Because Central Sulawesi has local wisdom that supports legal settlements by prioritizing the principle of justice, is beneficial to the community and supports economic recovery and investment. The author presents an example of a case in the implementation of restorative justice or restorative justice that has been applied in handling cases at the Central Sulawesi High Prosecutor's Office as follows. The Central Sulawesi High Prosecutor's Office (Kejati) has implemented restorative justice or case resolution in a family manner without going through the court process. Deputy Chief Prosecutor of Central Sulawesi, Pipuk Firman Priyadi, S.H., M.H, together with Aspidum Kejati Sulteng, Fithrah, S.H., M.H, led a process of requesting termination of prosecution based on the principle of restorative justice.

The implementation of restorative justice was carried out through the Parigi Moutong District Attorney's Office and the Morowali District Attorney's Office Branch in Kolonodale, with the scope of the virtual exposure led by the Director of Criminal Acts Against Persons and Property at the Jampidum Kejaksaan RI.

The process is related to the case file implicating the suspect An. Ismail alias Onje, who was charged with violating Article 351 Paragraph (1) of the Criminal Code at the Parimo District Attorney's Office, as well as the suspect An. Asnah Samana Guntur who was charged with violating Article 80 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2014 concerning child protection.

The request to stop the prosecution was made by considering aspects of restorative justice in accordance with the provisions stipulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 and the Circular Letter of Jampidum Number 01/E/EJP/02/2022a. The reason for making a request for prosecution based on restorative justice is because the requirements set out in the applicable regulations have been met.

The Public Prosecutor's Team (JPU) has conducted an evaluation process on these cases, and based on careful consideration, they decided to submit a request to stop the prosecution based on the principles of restorative justice to JAMPIDUM.

In this process, the role of the Director of Crimes Against Persons and Property at Jampidum, Attorney General's Office of the Republic of Indonesia is very important. The virtual exposure carried out is part of a strict coordination process between the Central Sulawesi High Prosecutor's Office and related institutions at the national level to ensure fair and just law enforcement.

Furthermore, the request to stop the prosecution is submitted to JAMPIDUM to obtain official approval. This step marks the commitment of law enforcement officers to implementing a holistic and sustainable justice approach in handling legal cases in Indonesia, by paying attention to the balance between justice for victims and perpetrators.

In the application of restorative justice at the prosecution level, the Prosecutor's Office has created a legal instrument as a guide for prosecutors in handling their cases. "Good law ideally provides something more than just legal procedures," in implementing the application of restorative justice, the Prosecutor's Office has issued three regulations that serve as a legal umbrella and guidelines for prosecutors in implementing restorative justice in handling cases. First, Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation is a form of prosecutorial discretion in handling cases by implementing restorative justice. Through these internal regulations, prosecutors are expected to be able to use them as guidelines and balance the applicable regulations with the principle of benefit that will be achieved. The Prosecutor's Office has also formed a Restorative Justice House, this institution is a form of follow-up to the involvement of elements of society in every effort to reconcile cases by involving victims, suspects, community leaders or representatives, and other related parties. The Restorative Justice House functions as a place to absorb local wisdom values. In addition, efforts to revive the role of community, religious and customary leaders to work together with prosecutors in the case resolution process that is oriented towards the realization of substantive justice. The Prosecutor's Regulation is a breakthrough by the Adhyaksa Corps in answering various legal issues.

Guideline Number 18 of 2021 concerning the Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle. Through these guidelines, regulations that prioritize the restorative justice approach in resolving drug abuse cases, namely by treating addicts and victims of drug abuse..

In this regard, it is important to underline that the birth of these provisions cannot be separated from the authority of the prosecutor's office as the controller of "dominus litis" cases or only prosecutors can determine whether someone can enter the court realm or not. Settlement of criminal cases through the restorative justice mechanism is carried out by prioritizing the principle of benefit (*doelmatigheid*), considering the principle of fast, simple, and low-cost justice, and the principle of criminal law as a last resort (*ultimum remedium*). However, of course there is a scope of criminal acts that can be resolved through the Restorative Justice mechanism, namely; (1) The suspect has committed a crime for the first time; (2) The crime is only threatened with imprisonment of no more than 5 (five) years; (3) The crime was committed with the value of the evidence or the value of the losses incurred not exceeding Rp. 2,500,000.- (two million five hundred thousand rupiah); (4) There has been a restoration to the original state carried out by the suspect; (5) There has been a peace agreement between the victim and the suspect, and sixth, the community responds positively.

Implementation of Restorative Justice at Court Level

The principle of restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enforcement (Supreme Court Regulations and Supreme Court Circulars), but its implementation in the Indonesian criminal justice system is still not optimal. The Supreme Court Regulations and Supreme Court Circulars are; (1) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code; (2)

Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System; (3) Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law; (4) Circular of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abusers, Victims of Abuse and Drug Addicts into Medical Rehabilitation and Social Rehabilitation Institutions; (5) Circular of the Chief Justice of the Republic of Indonesia Number 3 of 2011 Concerning the Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation Institutions.

Joint Decree of the Chief Justice of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of Police of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia and Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 166A/KMA/SKB/XII/2009, 148 A/A/JA/12/2009, B/45/XII/2009, M.HH-08 HM.03.02 of 2009, 10/PRS-s/KPTS/2009, 02/Men.PP and PA/XII/2009 concerning Handling of Children in Conflict with the Law.

Joint Memorandum of Understanding of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of the Application of Adjustments to the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Application of Restorative Justice.

Joint Regulation of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Chief of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014 Number Per005/A/JA/03/2014 Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions.

The Guidelines also outline several types of cases that can be resolved through the restorative justice mechanism, including; (1) Types of Minor Criminal Cases; (2) Types of Child Criminal Cases; (3) Types of Women in Conflict with the Law; (4) Types of Narcotics Cases. The model for implementing restorative justice in these cases is Restorative Justice in Minor Crime Cases.

Legal Basis; (a) Criminal Code (KUHP) Article 310; (b) Criminal Procedure Code (KUHP) Article 205; (c) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code (KUHP); (d) Joint Memorandum of Understanding of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of the Adjustment of the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Implementation of Restorative Justice; (e) Letter of the Director General of the General Courts Number 301/DJU/HK01/3/2015 concerning the Settlement of Minor Crimes.

Implementation; (a) Criminal cases that can be resolved with restorative justice are minor criminal cases with criminal threats as regulated in articles 364, 373, 379, 384, 407 and article 482 of the Criminal Code with a loss value of no more than Rp 2,500,000 (two million five hundred thousand rupiah); (b) The Head of the District Court coordinates with the Head of the District Attorney's Office and the Chief of Police in implementing the transfer of files based on the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning restorative justice; (c) In receiving the transfer of cases of theft, fraud, embezzlement, receiving funds from investigators that are complete including presenting the perpetrator, victim, perpetrator's family, victim's family and related parties on the day of the trial, the chairman then determines a single judge by

considering the value of the goods or money that are the object of the case as stipulated above; (d) The Chief Justice shall immediately appoint a single judge (1 x 24 hours) to examine, try and decide the case with a fast examination procedure as regulated in Articles 205 - 210 of the Criminal Procedure Code; (e) Settlement of minor criminal cases through restorative justice may be carried out provided that peace has been started between the perpetrator, victim, perpetrator/victim's family, and related community leaders who are in the case with or without compensation; (f) After opening the trial, the judge reads the indictment and asks for the opinions of the defendant and victim, then the judge makes peace efforts; (g) If the peace process is achieved, the parties make a peace agreement, which is then signed by the defendant, victim and related parties and the peace agreement is included in the judge's decision considerations.

In the event that the peace agreement fails, the sole judge continues the examination process. During the trial, the judge continues to seek peace and prioritizes restorative justice in his/her decision. Restorative justice as referred to above does not apply to repeat criminals in accordance with the provisions of laws and regulations in terms of law enforcement and case resolution using the principle of restorative justice implemented by the Supreme Court through the Supreme Court Regulation and the Supreme Court Circular. In the examination at the court level, the parties are given the opportunity to resolve their problems through a harmonious "meeting" model. Therefore, judges are required to use a strategy or regulate the resolution of criminal cases by selecting and providing an appropriate alternative model (Dewi & Syukur, 2011). In practice, the resolution of criminal cases has used a normative approach by looking at the type of crime committed, the consequences caused and paying less attention to aspects of protection for victims, while restorative justice emphasizes the victim because of the perpetrator's mistake in the sense that restorative justice prioritizes dialogue between the victim and the perpetrator and between other related parties (Putri & Tajuddin, 2015). Based on the Decree of the Director General of General Courts Number 1691/DJU/SK/PS.00/12/2020 dated December 20, 2020 concerning Guidelines for the Implementation of Restorative Justice as a guideline for judges in the general court environment in handling cases with a restorative justice approach. With this technical guideline, it is hoped that it can encourage the optimization of the implementation of restorative justice so that it is no longer focused on criminalization.

Changes in the resolution of criminal cases with dialogue and mediation mechanisms involving all parties, including victims/families, perpetrators/families and other related parties together to create an agreement on a balanced settlement of criminal cases for all parties by returning the situation to its original state in society.

Settlement of criminal cases through minor restorative justice in the District Court is guided by the Decree of the Director General of General Courts Number 1691/DJU/SK/PS.00/12/2020 in this provision it is stated that minor criminal cases that can be resolved with restorative justice are criminal cases regulated in articles 364, 373, 379, 384, 407 and article 482 of the Criminal Code with a loss value of no more than IDR 2,500,000 (two million five hundred thousand rupiah). In resolving minor criminal cases, the Head of the District Court coordinates with the Head of the District Attorney's Office and the Chief of Police in implementing the transfer of files based on Perma Number 2 of 2012 concerning restorative justice. At the time of the transfer of cases, whether it is a case of theft, fraud, embezzlement, receiving from investigators that is complete including presenting the perpetrator, victim, perpetrator's family, victim's family, and related parties on the day of the trial, the Chief Justice determines a single judge by considering the value of the goods or money that is the object of the case as stipulated above. The Chief Justice immediately determines a single judge (1x24 hours) to examine, try, and decide the case with a fast examination procedure regulated in Articles 205-210 of the Criminal Procedure Code.

Settlement of minor criminal cases through restorative justice can be carried out provided that peace has begun between the perpetrator, victim, perpetrator/victim's family, and related community leaders who are in dispute with or without compensation.

After opening the trial, the judge reads the indictment and asks for the opinions of the defendant and victim. The judge then makes peace efforts. If the peace process is achieved, the parties make a peace agreement, signed by the defendant, victim, related parties and the peace agreement is included in the judge's decision considerations.

In the event that the peace agreement fails, the sole judge continues the examination process. During the trial, the judge continues to seek peace and prioritizes restorative justice in his decision. Restorative justice does not apply to repeat offenders in accordance with the provisions of the laws and regulations (Wahyudhi & Rahayu, 2021).

In relation to the issue of punishment, what is required by the principle of balance is that punishment must accommodate the interests of society, the perpetrator and also the victim. Punishment should not only emphasize one interest. Or as Roeslan Saleh said, punishment cannot only pay attention to the interests of society or the interests of the perpetrator, or only pay attention to the feelings of the victim and his family (Saleh, 1978).

Punishment from a balance perspective is all three of the interests of society, the perpetrator and the victim. Only emphasizing the interests of society will give a figure of punishment that places the perpetrator as a mere object. On the other hand, only caring about the interests of the perpetrator will get a picture of a very individualistic punishment that only pays attention to the rights of the perpetrator and ignores his obligations. Meanwhile, emphasizing the interests of the victim only too much will give rise to a figure of punishment that only reaches very limited interests, without being able to accommodate the interests of the perpetrator and society in general.

The imposition of criminal sanctions on perpetrators of criminal acts has a purpose. The purpose of imposing criminal sanctions is greatly influenced by the philosophy that is used as the basis for the threat and imposition of punishment. The philosophy of punishment is closely related to the justification (retribution, benefits/utilities and purposeful retribution) for the existence of criminal sanctions. The philosophy of punishment is a philosophical basis for formulating the measure/basis of justice in the event of a violation of criminal law. The philosophy of justice in criminal law that has a strong influence is two, namely justice based on the philosophy of retribution (retributive justice) and justice based on the philosophy of restoration or recovery (restorative justice), and the Criminal Code adheres to a philosophy of justice that is more inclined towards retributive justice.

Restorative justice places a higher value on the direct involvement of the parties. The victim is able to restore the element of control while the perpetrator is encouraged to take responsibility as a step in correcting the mistakes caused by the crime and in building his social value system. Active community involvement strengthens the community itself and binds the community to values of respect and mutual compassion for each other. The role of government is substantially reduced in monopolizing the current justice process. Restorative justice requires cooperative efforts from the community and government to create conditions where victims and perpetrators can reconcile their conflicts and repair their old wounds (Flora, 2017). In addition to the justice mentioned above, there is also a justice model, as a modern justification for punishment proposed by Sue Titus Reid. The justice model is also known as the justice approach or the just desert model which is based on two theories about the purpose of punishment, namely prevention and retribution. The basis of retribution in the just desert model assumes that offenders will be assessed with sanctions that they deserve to be bound by the crimes they have committed, appropriate sanctions will prevent criminals from committing further crimes and prevent others from committing crimes

CONCLUSION

Handling criminal acts with a restorative justice approach practiced in the Indonesian criminal justice system is a new method in resolving criminal cases, this model emphasizes more on the conditions for creating justice and balance for perpetrators of criminal acts and their victims, which has now been applied in the criminal justice system in Indonesia. This model continues to be developed and applied in the criminal justice system in Indonesia to achieve the goals of justice, certainty, and benefit because the focus of the approach in restorative justice emphasizes justice for victims and perpetrators, so that the function of law is not only as certainty for society but also as justice and benefit for society in line with local wisdom in resolving criminal cases.

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