**Application of Restorative Justice in the Crime of Theft**

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***Abstract:*** *Indonesia is a constitutional state, this is emphasized in the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph 3 which reads "Indonesia is a constitutional state". In the existing statement or basis, the Indonesian people must comply with the rules of law. In addition, in the 1945 Constitution Alenia IV that one of the objectives of the Indonesian state is to maintain public order, so that in realizing law enforcement in Indonesia it must be a priority for the government and the legal institutions themselves. The author uses a normative juridical writing method, namely an approach through library research ( library research ) by reading, quoting and analyzing legal theories and laws and regulations related to problems in research. The formulation of the problem that the author uses is how is the application of restorative justice in comparison with criminal law in Indonesia and what are the requirements or criteria for criminal acts that can be carried out by stopping prosecution based on restorative justice? The restorative approach is a new framework and paradigm taken from the concept of restorative justice, where in the process of resolution, the perpetrators of crimes, the families of the perpetrators, the victims, the families of the victims, the community, and other related parties are actively involved in creating recovery.*

***Keywords: Restorative Justice, Crime***

**Introduction**

Indonesia is a country of laws, this is emphasized in the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph 3 which reads "Indonesia is a country of laws" ( Siallagan, Haposan, 2016). In the existing statement or basis, the Indonesian people must comply with the rules of law. In addition, in the 1945 Constitution Alenia IV that one of the objectives of the Indonesian state is to maintain public order, so that in realizing law enforcement in Indonesia it must be a priority for the government and the legal institutions themselves.

One of the applicable laws in Indonesia is criminal law which consists of formal law and material law. Material criminal law contains provisions and formulations of criminal acts. Formal criminal law is a law that regulates how the state, through the means of its power, uses its rights to convict and sentence the perpetrators of crimes (PAF. Lamintanf, 2013).

Material criminal law consists of successively referred to criminal acts, general regulations that can be applied to said actions, and punishments that are threatened with those actions. Formal criminal law regulates the manner in which criminal procedures should be carried out and determines the rules that must be observed on that occasion ( Leden Marpaung, 2005).

Indonesia has stipulated prison sentences in law as a means of tackling the problem of crime, this is a part of criminal policy or criminal politics, but crimes that occur in society seem difficult to eliminate, even with legal instruments and laws. formulated by the legislature ( Barda Nawawi Arief).

In Article 10 of the Criminal Code (KUHP) there are two types of punishment, namely principal punishment and additional punishment. The main punishment consists of death penalty, imprisonment, imprisonment, fine, and imprisonment. Meanwhile, additional punishment consists of revocation of certain rights, confiscation of certain items, and announcement of judge's decision.

The punishment that is often imposed on the perpetrators of criminal acts is imprisonment. The increasing number of crimes that occur and the settlement process which only focuses on imprisonment makes Correctional Institutions (Lapas) full.

Correctional Institutions are prison implementing institutions in Indonesia with a correctional system. The existence of a correctional system provides an important meaning for the development of the criminal law system in the field of criminal execution in Indonesia. The penitentiary system is a series of criminal law enforcement units. Therefore. its implementation cannot be separated from the development of a general conception of the penal system. ( Dwidja Priyatno, 2018).

Enforcement of criminal law begins with the process of investigation and investigation at the police, prosecution by the public prosecutor at trial, and imposition of sentences or sanctions by judges. However, every effort to overcome these crimes cannot promise with certainty that the crime will not be repeated or will not generate new crimes.

Efforts to overcome criminal acts should not only focus on programs and efforts that have been approved by the government. Efforts to overcome crime are continuous efforts, sustainable, and not final. Therefore, other efforts must still be carried out to further realize the protection and welfare of victims.

The criminal law route or through the penal route *(litigation)* and through channels outside the criminal law or non-penal *(non-litigation)* which are efforts to deal with crime in Indonesia where both have the same goal, namely to tackle crime. ( Desi Windia Wati, 2018). The difference between the two lies in their purpose, namely that efforts to overcome crime through the "penal" route focus more on *"repressive"* (suppression/ eradication/suppression) after the crime has occurred, while the "non-penal" path focuses on *"preventive"* (prevention/deterrence/control) before the crime occurred ( Muladi and Arief, Barda Nawawi, 2005).

Crime occurs because it can be seen from the role or involvement of the victim and the interaction between the victim and the perpetrator of the crime. The phenomenon of the occurrence of criminal acts generally originates from the perpetrators of criminal acts but can also come from victims (Mien Rukmini, 2006 ). The existence of criminals can be seen that basically the perpetrators of crimes have criminal seeds as expressed by the criminologist Lombrosso. However, the internal factors of the victim greatly influence the occurrence of crimes. Things like this must be considered in a crime, besides that the rights of the victim must be protected, and the factors that cause the crime and the situation or environment in which the crime occurred.

In fact, all this time, in terms of analyzing and handling a crime incident, attention has always been directed at the perpetrators of the crime. Very little attention is given to victims of crime who are actually elements (participants) in criminal events. When examined, the neglect of the victim's problem was due to, among other things:

1. The problem of crime is not seen, it is understood according to its true proportions in a multi-dimensional way.
2. Crime prevention policies ( *criminal policies* ) that are not based on concepts that are integral to criminal etiology.
3. Lack of understanding of the problem of crime is a humanitarian problem, as well as the problem of victims ( Suryono Ekotama, ST Harun Pudjianto Rs and G. Wiratama, 2001).

These conditions encourage the need to make changes to the criminal justice system, so that victims' rights can be more empowered into the criminal justice system in general, as has happened in several countries that have placed the concept of a *restorative justice approach* into their criminal law systems.

The application of the concept of restorative justice has been issued by the criminal justice sub-system in Indonesia, both at the Police at the investigation stage, the Prosecutor's Office at the prosecution stage as well as at the Supreme Court at the judicial level in the form of Regulations or Decisions, but the rules and policies issued by the criminal justice sub-system there are differences and inequalities in its application.

At the Police through the Chief of Police Circular Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice *in* Settlement of Criminal Cases. It is this circular letter from the Chief of Police regarding *Restorative Justice* which is then used as a legal basis and guideline for Police Investigators and Investigators who carry out investigations/investigations, including as a guarantee of legal protection and control oversight, in the application of the concept of restorative justice in *investigations* and investigations of criminal acts. Syahputra Eko, 2021) . For the sake of realizing the public interest and a sense of community justice, so as to realize uniformity in the understanding and application of restorative justice *in* the Police Environment , Fianhar, 2021) .

The concept of restorative justice *is* also implemented in the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative *Justice* . The prosecutor is a state apparatus whose job is to prosecute the accused. The majority of the public thinks that their duties are the same as those of a public prosecutor, even though the two have different duties.

The duties and powers of prosecutors are regulated in the Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, article 30. The existence of this law is a distinction between the duties and powers of the attorney general and the public prosecutor. The Criminal Procedure Code states that a prosecutor has the authority not to proceed with prosecution for legal purposes if the case being tried has expired, the evidence submitted is insufficient, and the suspect dies ( *nebis in idem* ). As stipulated in the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia article 35 paragraph 1 letter c 6.

The issuance of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which authorizes the Prosecutor to stop prosecutions based on restorative justice is a breakthrough in solving criminal acts. restorative *justice* \_is an approach to solving criminal offenses that is currently being voiced again in various countries. Through a restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing a *win-win solution* , and emphasizing that the victims' losses are replaced and the victim forgives the perpetrators of the crime.

The authority given to the Public Prosecutor to terminate a case through restorative justice is contained in Article 3 Paragraph 2 letter e which states that "Closure of a case for the sake of law is carried out in the event that there has been a settlement of the case outside the court (afdoening buiten process), *continue* in Paragraph 3 letter b explains "Settlement of cases out of court as referred to in paragraph 2 letter e can be carried out provided that there has been a restoration of the original state using a restorative justice approach" (Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020) .

*restorative* approach is needed because the criminal justice system that has been adhered to in essence puts more emphasis on *retributive justice* (retaliation) and *restitutive* (compensation), as well as giving enormous authority to the State and/or delegating it to Law Enforcement Officials (Police, Prosecutors and Judges). to resolve all criminal cases so that they are considered unsatisfactory and cause boredom because the cases always have to be brought to court for processing.

However, when connected with the history of the emergence of *restorative justice* , the criminal justice system has not worked as expected, because it has failed to provide sufficient space for the interests of potential victims and potential defendants, in other words, the current conventional criminal justice system in various countries in the world. often lead to dissatisfaction and disappointment ( Nicola Lacey, 2004) .

In solving a crime, within a philosophical framework, the presence of a *restorative justice approach* in criminal law does not aim to abolish criminal law or merge criminal law and civil law, because the *restorative justice approach* prioritizes mediation between victims and perpetrators. (Nurnaningsih Amriani, Mediation, 2011). There was a criminal case of theft in which the settlement of the criminal case used a *restorative justice approach* and the request was granted by the Junior Attorney General for General Crimes (JAM PIDUM). In this case, Cipto is suspected of violating Article 374 of the Criminal Code, which carries a penalty of 5 years for embezzling half a sack of frozen latex in Block 3 Division 8B, the rubber plantation area of PT. SIL in Mesuji District, where he works to be sold elsewhere. As a result of his actions, PT. SIL suffered a material loss of approximately IDR 500,000 (five hundred thousand rupiah).

*restorative* approach is a new framework and paradigm taken from the concept of *restorative* justice, where in the process of resolution, the perpetrators of crimes, the families of the perpetrators, the victims, the families of the victims, the community, and other related parties are actively involved in creating recovery.

Based on the background that has been described by the author, the author uses a normative juridical approach to writing, namely an approach through library research *by* reading, quoting and analyzing legal theories and statutory regulations related to problems in research. The formulation of the problem that the author uses is how is the application of *restorative justice* in comparison with criminal law in Indonesia and what are the requirements or criteria for criminal acts that can be carried out by stopping prosecution based on restorative justice?

Therefore the author is interested in writing this article with the title "Application *of Restorative Justice* in the Crime of Theft".

**Discussion**

***Restorative Justice* in Handling the Crime of Theft**

Based on the restorative principle which focuses on conditions for the creation of justice and balance for the perpetrators of criminal acts and the victims themselves, in the case of the crime of theft, of course it may be used. In general, the crime of theft is carried out because there is someone's will or compulsion so that he commits a crime. So that if the theft is committed because there is a specific purpose then the restorative principle can be used in order to create justice and balance for the perpetrators of criminal acts and their victims.

However, in obtaining restorative justice in cases of theft, there are conditions that must be met in accordance with Article 5 paragraph (1) Perja No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely: Criminal cases can be closed by law and the prosecution can be terminated based on restorative justice if the following conditions are met:

1. The suspect was a first time offender
2. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; and
3. The crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime of not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

So that in cases of criminal acts of theft where the nominal is in accordance with the provisions of these regulations and the requirements for obtaining restorative justice in accordance with Perja 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, efforts can be made to uphold the restorative principle. So that the punishment for the perpetrators of the crime of theft is not only imprisonment but focuses more on a fair settlement by emphasizing restoration to its original state, and not retaliation.

The crime of theft contained in Article 362 of the Criminal Code reads "Anyone who takes something, which is wholly or partly owned by another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs”. As regulated in Article 362. Theft has several elements, namely:

1. Objective Elements
2. The element of taking ( *wegnemen* )
3. Elements of things
4. Elements partly or wholly owned by other people.
5. Subjective Elements
6. Meaning has
7. Against the law

The types of theft crime are:

1. Ordinary theft, is used by some legal experts to refer to the notion of "theft in the main sense". Regulated in article 362 of the Criminal Code.
2. Petty theft, is theft which has the elements of theft in its main form, which because it is added to other (mitigating) elements, the sentence is reduced.
3. The crime of theft by weighting is regulated in Articles 363 and 365 of the Criminal Code, it is stated that theft by weighting is because the theft is carried out in a certain way or under certain circumstances, so that the penalty threat is aggravated. d) The crime of theft with violence, is theft that is preceded, accompanied, or followed by threats of violence against people (Tibrata News, 2020)

*Restorative justice* is a sentencing concept, but as a sentencing concept it is not only limited to criminal law provisions (formal and material). Restoration must also be observed in terms of criminology and the penal system. Based on the existing penal system, it does not fully guarantee integrated justice, namely justice for victims and justice for society (Bambang Hartono, 2015). Restorative justice will conflict with the principles of legality and legal certainty. This is because restorative justice does not focus on imprisonment, but on how to improve or restore the victim's condition after a crime has occurred. In this case, perpetrators of criminal acts may be required to pay compensation, perform social work, or other reasonable actions ordered by law enforcement or courts.

The restorative justice approach in criminal law has the power to restore relations between parties who are perpetrators and victims, it also has the power to prevent deeper hostilities between parties and encourage voluntary reconciliation between perpetrators and victims. Another strength is encouraging the participation of other members of the community, for example family members or neighbors and emphasizing the importance of the role of the victim in a process towards justice.

On the victim's side, restorative justice gives the power to give the opportunity to the perpetrator to express regret to the victim and it is better if facilitated to meet in a meeting that is carried out professionally. This perspective of restorative justice is as a result of a shift in law from lex talionis or *retributive justice* by emphasizing recovery efforts. In an effort to recover victims, if the choice of a more retributive or legalistic approach is difficult to treat the victim's wounds. So restorative justice seeks to emphasize the perpetrator's responsibility for his behavior that causes harm to others.

On the legal aid side, in general it is not always available or even if it is available the costs of legal institutions are not cheap and awareness of the role of the parties themselves in making decisions still requires experience and consistency. The implications of this restorative justice are expected to reduce the number of people who enter the criminal justice process, especially in correctional institutions, reduce the burden on the criminal justice system and increase public participation in assisting the settlement of legal cases.

The principles of restorative justice according to Adrinus Meliala are as follows:

1. Make the perpetrators of criminal acts responsible for repairing losses caused by their mistakes
2. Providing opportunities for perpetrators of criminal acts to prove their capacity and quality in addition to overcoming their feelings of guilt constructively
3. Involve victims, families and other parties in terms of problem solving
4. Create a forum to work together in solving problems
5. Establish a direct and real relationship between actions that are considered wrong or evil and formal social reactions

Peace is the best way of resolving disputes, among the disputing parties because actually there has been tension or disharmony which will then lead to hostility and hatred, resulting in the loss of good relations or family relations. In order to re-create a harmonious relationship between the parties to the dispute, the wishes of the two conflicting parties must be fulfilled so that both parties feel satisfied again. The intended satisfaction is not only limited to the substance (material) which is the subject of the dispute, it also concerns psychological satisfaction. This can be realized through peaceful dispute resolution.

Mediation is also known in criminal cases, but its presence in the settlement of criminal cases with peace involving victims, perpetrators and the community is still limited and is carried out outside the court. In this case it is termed as penal mediation. The existence and implementation of penal mediation is outside the court. Penal mediation is not regulated in the Law but only partially and limitedly regulated.

The issuance of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 is seen as an answer to the voice of justice in society and various other problems such as the buildup of caseloads in court and the dilemma of over capacity in court. For ten years the prosecutor's office has experienced a dilemma in the process of law enforcement and the judicial system in Indonesia. Starting from small cases that must be brought to court, cases with small losses to the wishes of victims who want to make peace but are shackled by applicable regulations.

**Purpose Not to commit a criminal act under the principle of restorative**

The main goal of restorative justice is to empower victims, where perpetrators are encouraged to pay attention to recovery. Restorative justice is concerned with meeting the material, emotional and social needs of the victim. The success of restorative justice is measured by the amount of loss the perpetrator has recovered, not by the severity of the sentence imposed by the judge. In essence, as far as possible the perpetrators were removed by the criminal process and from prison. But, as Kent Roach said, restorative justice does not only provide an alternative to prosecution and imprisonment, but also holds perpetrators accountable. Because of this, it is necessary to understand some of the differences between restorative justice and conventional criminal justice. Criminal acts in restorative justice are interpreted as actions that are detrimental to victims and the community, not interpreted as violations against the law and the state; Moreover, what the perpetrators face are the victims and their communities, not the government (Eriyantouw Wahid, 2009).

The main goal of restorative justice is the creation of a fair trial. In addition, it is hoped that the parties, both victims, and the community, will play a major role in it. Victims are expected to receive appropriate compensation and be mutually agreed upon with the perpetrators to compensate for losses and reduce the suffering experienced. In restorative justice, the perpetrator must be fully responsible so that the perpetrator is expected to realize his mistake.

The concept of restorative justice is not a concept that has been established and perfect, to apply it properly in a social order in a country, a concept must be built that is in accordance with the cultural roots of the people of that country. Some of the difficulties that may arise in the application of restorative justice:

1. Difficulty in balancing the various interests of the parties (actors, victims, society and the state)
2. Non-compliance with the guidelines and basic principles that have been formulated on the principles of " *human development, mutually, empathy, responsibility, respect and fairness* "
3. The feelings of victims who feel they are experiencing " *re-victimization* " because they feel pressured
4. Attempts from the formal criminal justice system to take over the restorative justice movement on the grounds that it conforms to the existing traditional system and its bureaucracy
5. The application of restorative justice must be carried out systematically by first strengthening the underlying legal system, both its substance and culture, including the "insiders" who will be directly involved.

**Conclusion**

Restorative justice is a sentencing concept, but as a sentencing concept it is not only limited to criminal law provisions (formal and material). Restoration must also be observed in terms of criminology and the penal system. Based on the existing penal system, it does not fully guarantee integrated justice, namely justice for victims and justice for society.

The main goal of restorative justice is to empower victims, where perpetrators are encouraged to pay attention to recovery. Restorative justice is concerned with meeting the material, emotional and social needs of the victim. The success of restorative justice is measured by the amount of loss the perpetrator has recovered, not by the severity of the sentence imposed by the judge.