



Reconstruction of the Concept of Restorative Justice of the Criminal Justice System in Indonesia

Heksa Koes Raharjo Bambang Sasmoyo Suryoningrat^{1*}, Muhammad Rustamaji²
Master of Laws, Faculty of Law, Sebelas Maret University

Corresponding Author: Heksa Koes Raharjo Bambang Sasmoyo Suryoningrat
heksakoesraharjo@gmail.com

ARTICLE INFO

Keywords: Restorative Justice, Criminal Law, Victims

Received : 21, October

Revised : 23, September

Accepted: 30, November

©2022 Suryoningrat, Rustamaji: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

Restorative justice is basically an approach to criminal law that contains a number of traditional values. This is based on two indicators, namely the values on which it is based and the mechanisms it offers. This is the basis for considering why the existence of restorative justice is being taken into account again. The existence of this approach is perhaps as old as criminal law itself. Apart from imprisonment which has consequences for the prisoner's family, the current system is seen as not providing relief or healing to the victims. Moreover, the legal process takes a long time. In contrast, in the restorative model the emphasis is on conflict resolution. This idea of Restorative Justice has also been accommodated in the Criminal Code Bill, namely the introduction of an alternative criminal system in the form of social work sentences and supervision sentences. So that in the end, Restorative Justice pays attention simultaneously to the interests of crime victims, crime perpetrators and society.

INTRODUCTION

In practice, law enforcers have their own rules for implementing restorative justice. Within the scope of the police, there are regulations governing restorative justice which are regulated in article 1 number 3 of the State Police Regulation number 8 of 2021 concerning handling criminal acts based on restorative justice, then within the scope of the prosecutor's office there are also its own regulations, namely in article 1 number 1 of the Prosecutor's Regulations Republic of Indonesia number 15 of 2020 concerning Termination of Prosecution based on restorative justice, meanwhile within the scope of the Supreme Court it is clear that it must follow the Criminal Procedure Code which has guidelines set out in article 98 of the Criminal Procedure Code.

This makes the regulations in Indonesia under legislation. Under Legislation in this case is defined as a rule under legislation where these rules have their own regulations but their legal force cannot be used in the justice system, both criminal and civil. The application of restorative justice itself depends on what legal system a country adheres to. If the legal system does not want it, then its implementation cannot be forced. So, it can be concluded that the principle of restorative justice is an option in designing the legal system in a country. Even if a country does not adhere to it, it does not rule out the possibility of implementing restorative justice in it to provide justice, certainty and legal benefits.

However, the problem that arises lies in the written legal norms that regulate restorative justice itself because the differences between one regulation and another are not the same in their regulation regarding what things can be applied to restorative justice, what are the legal regulations related to restorative justice? , and whether the resolution of criminal acts using restorative justice is in accordance with the Criminal Procedure Code in resolving criminal cases in accordance with the criminal justice system in Indonesia. The existence of internal institutional regulations governing Restorative Justice has several weaknesses, including:

- a. Unclear norms
- b. There is a phenomenon of under legislation
- c. There is turbulence in norms or legal rules between the Criminal Procedure Code and the internal norms of each institution that regulate restorative justice
- d. There is overlap regarding applicable norms

In relation to the above, the importance of researchers studying, researching, finding and formulating appropriate regulations is expected to increase knowledge, make scientific contributions in the legal field, and be useful for application in practice. On this occasion the author would like to convey that good law is law that is able to accommodate the needs of society according to the situation, time and circumstances so that the law can be dynamic in accordance with current developments. The paradigm of imprisonment for criminals is a classic thinking process without paying attention to recovery for victims. This is understandable because classical

criminal law is oriented towards the principle of *lex talionis* which means retaliation for the perpetrator of a criminal act without paying attention to the future fate of the victim. The orientation of classical criminal law only looks at justice for perpetrators of criminal acts, which means that whoever commits a criminal act, if they fulfill the elements of guilt and criminal responsibility, then the perpetrator should be sentenced to the maximum possible prison sentence so that there is no forgiveness for the perpetrator of the criminal act.

Observing the current conditions which place restorative justice as "the new idol for the purpose of law enforcement in Indonesia raises serious questions." This certainly cannot be separated from the emergence of Law no. 1 of 2023 concerning the Criminal Code which brings with it the theory of criminal law which was originally *lex talionis* or brings classical criminal law teachings towards modern criminal law theory.

At the same time, law enforcement agencies or law enforcement officers such as the Police issued their own Police Chief Regulations, the Prosecutor's Office issued their own Prosecutor's Regulations, the Judiciary issued its own SEMA, and there was a Memorandum of Understanding with the Minister of Law and Human Rights, each of whom had their own standards. themselves are different from each other. At the same time, the different standards do not provide legal certainty on the one hand, while on the other hand, the institution that makes them is not the institution that makes legal products. This is what is then called Under Legislation.

If this is the case, then questions arise as to whether the institution is are law enforcers justified in making various technical regulations regarding restorative justice? shouldn't the legislature determine the measures, provisions, standards, criteria or qualifications regarding restorative justice? Is the phenomenon of under legislation appropriate? Should achieving legal certainty and benefits through restorative justice require recodification? Based on these restorative justice questions, we see the urgency/importance of discussing this issue in a more constructive study regarding the provisions regarding restorative justice for the author.

LITERATURE REVIEW

How is the reconstruction of the concept of restorative justice in the criminal justice system in Indonesia?

METHODOLOGY

Legal writing in this research uses normative legal research (doctrinal research). This research is based on legal materials (library based) which focuses on reading materials and studying both primary and secondary legal materials. So, legal research can aim to produce new arguments, theories or concepts as prescriptions for solving a problem faced by the author, whether the answer is right or wrong.

RESULT AND DISCUSSION

The criminal justice system is a system in a society for dealing with crime. The criminal justice system contains a systematic movement of supporting subsystems (Police, Prosecutor's Office, Court, Correctional Institution and Advocates) which as a whole and as a whole (totality) try to transform input into output which is the goal of the justice system criminal.

The flow of a criminal case process begins with a report, which is defined as a notification submitted by a person because of a right or obligation under the law to an authorized official regarding whether a criminal incident has occurred or is suspected of occurring or is suspected to have occurred (general offense) and there is also a complaint which is defined as a notification accompanied by a request by an interested party to the authorized official to take legal action against a person who has committed a criminal complaint that is detrimental to him. In accordance with the police administration system, reports and complaints are stated in a police report which is defined as written evidence of a report or complaint about an incident that is suspected of being a criminal act, where the police report is a requirement for an investigation to be carried out. Police reports are divided into two models, namely model A police reports, namely police reports made by members of the National Police who experienced, knew or discovered directly the events that occurred and model B police reports, namely police reports made by members of the National Police based on reports received from the public.³⁸⁴

After the police report is received, it is followed up with investigative activities carried out based on the report and/or complaint and investigation warrant. In the event that there is information regarding a suspected criminal act, an information report is made and an investigation can be carried out regarding the report and/or complaint accompanied by a warrant. ³⁸⁵ Investigation activities are carried out by: ³⁸⁶ crime scene processing, observation, interviews, surveillance, under cover, tracking, research and document analysis. The targets of the investigation include people, objects or goods, places, events/occurrences and activities. In investigative activities carried out by assigned investigators, they will always be equipped with assignment warrants and investigation warrants.

This investigative activity is an implementation of the investigator's authority as formulated in Article 5 of Law Number 8 of 1981 concerning the Criminal Procedure Code. Meanwhile, investigation is defined as a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated in this law. ³⁸⁷

When carrying out investigative activities, investigators are required to make a written report on the results of the investigation to the investigator. The report contains a little place and time, investigation activities, investigation results, obstacles, opinions and suggestions. The report signed by the head of the investigative team. The results of the investigation that have been reported by the investigative team must carry out a case to determine whether the incident is suspected of being a criminal act or not. The results of the case being decided

to be a criminal act were continued to the investigation stage, it was not a criminal act, the investigation was stopped and the criminal act case was not within the authority of the National Police Investigator, the report was transferred to the authorized agency. In the event that the Investigating Officer's superior receives an objection from the reporter regarding the termination of the investigation, a case will be held to determine whether or not the investigation activity can be escalated to the investigation stage. 388 If the incident that was reported later through the case title mechanism was concluded to not be a criminal incident, the investigation carried out was stopped by issuing a decree to stop the investigation and a letter to stop the investigation which was then informed to the reporter through a letter notifying the progress of the investigation.

Meanwhile, reported incidents which are then concluded can be escalated to the investigation stage which is defined as a series of investigative actions in terms and according to the methods regulated in this law to search for and collect evidence which, with that evidence, can shed light on the criminal act that occurred and in order to find the suspect. In carrying out investigative activities, the assigned investigative personnel and assistant investigators will be equipped with assignment orders and investigation warrants. The criminal investigation activities that will be carried out are investigations, initiation of investigations, coercive measures, examinations, determination of suspects, filing, submission of case files, surrender of the suspect and evidence and termination of the investigation. In the case of investigations into minor crimes and violations, investigative activities consist of:

- a. Inspection
- b. Notify the defendant in writing about the day, date, time and place of the trial
- c. Submit files to court
- d. Bringing the defendant and the evidence before the court. Investigators in carrying out investigative activities must carry out administrative registration of the investigation. Investigation registration is carried out centrally. Every development of case handling during criminal investigation activities must be issued SP2HP. 390 In the event that the investigator has started to investigate an incident which constitutes a criminal act, the investigator shall notify the public prosecutor of this matter. 391 Regarding the obligation to notify the public prosecutor of investigations carried out in accordance with the Constitutional Court decision Number 130/PUU-XIII/2015, it is interpreted that the investigator is obliged to notify and submit an order to commence the investigation to the public prosecutor, the reported party, and the victim/reporter no later than 7 (seven) days after the issuance of the investigation warrant.

Although the principle of an investigation is to shed light on a criminal act and find the suspect, in the investigative activities carried out there is still

room for the investigation to be stopped on the grounds that there is not enough evidence or the incident turns out not to be a criminal act or the investigation is stopped by law, then the investigator notifies this to the public prosecutor, the suspect or his family. 392 In the event that the investigation is considered complete, the investigator assigns responsibility for the suspect and evidence to the public prosecutor. 393 Furthermore, the public prosecutor will exercise the authority of the public prosecutor, namely:

- a. Receive and examine investigative case files from investigators or assistant investigators
- b. Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in order to perfect the investigation from the investigator
- c. Providing an extension of detention, carrying out further detention or detention and/or changing the status of the detainee after the case has been delegated by investigators
- d. Make an indictment
- e. Submitting cases to court;
- f. Provide notification to the defendant regarding the day and time the case will be heard, accompanied by a summons, both to the defendant and witnesses, to come to the specified hearing.
- g. Carrying out prosecution
- h. Closing the case for legal purposes;
- i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
- j. Carry out the judge's decision.

The public prosecutor has the authority to prosecute anyone accused of committing a criminal offense within his jurisdiction by transferring the case to a court that has the authority to try. 395 The public prosecutor delegates the case to the district court and only a request to immediately try the case accompanied by a letter of indictment. The public prosecutor prepares an indictment which is dated and signed and contains:

- a. Full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect
- b. A careful, clear and complete description of the criminal act charged by stating the time and place the crime was committed.

An indictment that does not comply with the provisions is null and void. A copy of the case transfer letter along with the indictment is delivered to the suspect or his attorney or legal advisor and investigator, at the same time as the case transfer letter is submitted to the district court. 396

At the start of the trial, the presiding judge at the trial asks the defendant about his full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation and reminds the defendant to pay attention to everything he hears and sees in court. After that, the presiding

judge at the trial asked the public prosecutor to read the indictment. Next, the presiding judge at the trial asks the defendant whether he really understands. If it turns out that the defendant does not understand, the public prosecutor at the request of the presiding judge at the trial is obliged to provide the necessary explanation.

After the examination is declared complete, the public prosecutor submits a criminal complaint, then the defendant and/or legal advisor submits a defense which can be answered by the public prosecutor, provided that the defendant or legal advisor always has the last turn, the demands, defense and answers to the defense are made in writing and after read out immediately, handed over to the presiding judge of the trial and any derivatives to interested parties.

When the event has finished, the presiding judge at the trial declares that the examination is declared closed, with the provision that he can open it again, either on the authority of the presiding judge at the trial because of his position, or at the request of the public prosecutor or defendant or legal advisor by giving reasons. After that, the judge holds a final deliberation to make a decision and, if necessary, the deliberation is held after the defendant, witnesses, legal advisor, public prosecutor and the audience have left the court room. The deliberation must be based on the indictment and everything proven during the examination at trial. During the deliberation, the head judge of the panel asks questions starting from the youngest judge to the oldest judge, while the last person to express his opinion is the head judge of the panel and all opinions must be accompanied by considerations and reasons. In principle, the decision in the panel's deliberation is the result of unanimous agreement, unless after serious efforts it cannot be achieved, then the following provisions apply:

- a. Decisions are taken by majority vote
- b. If the provisions in letter a cannot be obtained, the decision chosen is the judge's opinion which is most favorable to the defendant.

The implementation of decision making is recorded in a decision collection book which is provided specifically for this purpose and the contents of the book are confidential. The district court's decision can be handed down and announced on the same day or on another day which must be previously notified to the public prosecutor, defendant or legal advisor.

Against the decision of the court of first instance (district court) an appeal can be submitted to the high court by the defendant or someone specially authorized for that purpose or the public prosecutor. Meanwhile, for criminal case decisions given at the final level by a court other than the Supreme Court, the defendant or public prosecutor can submit a request for a cassation hearing to the Supreme Court, except for acquittal decisions.

Regarding court decisions that have obtained permanent legal force, except for decisions of acquittal or release from all legal claims, the convict or his heirs can submit a request for reconsideration to the Supreme Court. Requests for reconsideration are made on the basis of:

- a. If there is a new situation that gives rise to strong suspicion, that if the situation had been known while the trial was still in progress, the result would be a verdict of acquittal or a decision to be released from all legal charges or the public prosecutor's demands cannot be accepted or lighter criminal provisions are applied to the case.
- b. If in various decisions there is a statement that something has been proven, but the things or circumstances as the basis and reasons for the decisions that are stated to have been proven, turn out to be in conflict with each other.
- c. If the decision clearly shows a judge's error or a real error.

On the basis of the same reasons for a court decision that has obtained power According to the law, a request for reconsideration can still be submitted if in the decision the act charged has been declared proven but has not been followed by a conviction. 400 Furthermore, people who are sentenced to a crime will serve their sentence in prison and in the process of serving their sentence, prisoners who have fulfilled certain requirements without exception are also entitled to:

- a. Remission
- b. Assimilation
- c. Leave to visit or visit family
- d. Conditional leave
- e. Vacation before release
- f. Parole
- g. Other rights in accordance with statutory provisions.

These requirements are as follows:

- a. Be well behaved
- b. Actively participating in the coaching program
- c. Has shown a reduction in risk levels

Apart from fulfilling certain requirements, convicts who will be given leave before being released or on parole must also have served a minimum of 2/3 (two thirds) of the criminal period with the provision that 2/3 (two thirds) of the criminal period is at least 9 (nine) months. The granting of rights does not apply to convicts sentenced to life imprisonment and those sentenced to death.

Paying attention to the implementation of the authority of each criminal justice subsystem as described, there is absolutely no room for restorative justice to be accommodated or implemented in the current criminal justice system which is based on Law number 8 of 1981 concerning the Criminal Procedure Code. However, the implementation of restorative justice has actually begun to be implemented by the National Police as part of the criminal justice subsystem using the terminology of restorative justice as formulated in Article 12 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts which formulates:

In the investigation process, restorative justice can be carried out, if it meets the following requirements:

- a) Materials, including:
 - i) Does not cause public unrest or there is no public rejection
 - ii) Does not impact social conflict
 - iii) There is a statement from all parties involved not to object, and to waive the right to sue before the law
- iv) Limiting principle:
 - i. On the perpetrator:
 - 1. The perpetrator's level of error is relatively not serious, namely the error is intentional
 - 2. The perpetrator is not a recidivist
 - ii. On criminal acts in progress:
 - 1. Investigation
 - 2. Investigation, before the SPDP is sent to the Public Prosecutor
- b) Formal, including:
 - 1. Letter requesting peace from both parties (reporter and respondent)
 - 2. The statement of peace (deed of dading) and resolution of disputes between the parties involved (the complainant, and/or the family of the complainant, the reported party and/or the family of the reportee and representatives of community figures) are known to the Investigating Officer's superiors
 - 3. Minutes of additional examination of the litigants after the case has been resolved through restorative justice
 - 4. Recommendations for special case titles that approve restorative justice solutions
 - 5. The perpetrator does not object and voluntarily accepts responsibility and compensation.

Then it is specifically regulated again in accordance with the Regulation of the Head of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The issuance of the regulation in question is based on the consideration that the National Police of the Republic of Indonesia needs to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes restoration back to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of society and that the Police The Republic of Indonesia, in order to respond to the development of society's legal needs that fulfill a sense of justice for all parties given authority in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, needs to formulate a new concept in enforcing criminal law that accommodates norms and values. which applies in society as a solution while providing legal certainty, especially for the benefit and sense of justice of the community.⁴⁰²

The regulation in question is formulated regarding the requirements for implementing justice in a restorative manner, namely: ⁴⁰³

- a) Handling of criminal acts based on Restorative Justice as intended in Article 2 must meet the requirements:
 - a. General
 - b. Special.
- b) The general requirements as referred to in paragraph (1) letter a, apply to the handling of criminal acts based on Restorative Justice in the activities of carrying out criminal investigation, investigation or inquiry functions.
- c) The special requirements as referred to in paragraph (1) letter b, only apply to the handling of criminal acts based on Restorative Justice in Investigation or Investigation activities.

General requirements as intended in Article 3 paragraph (1) letter a, include:

- a. Material
- b. Formal

Material requirements as intended in Article 4 letter a, include:

- a. No cause unrest and/or rejection from society
- b. Does not impact social conflict
- c. It has no potential to divide the nation
- d. Not radicalism and separatism
- e. Not a repeat perpetrator of a criminal act based on a court decision
- f. Not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives.

Formal requirements as intended in article 4 letter b, include:

- a. Peace from both parties, except for drug crimes
- b. Fulfilling the rights of victims and the responsibilities of perpetrators, except for drug crimes

Peace as referred to in paragraph (1) letter a, is proven by a peace agreement letter and signed by the parties. Fulfilling the rights of victims and the responsibilities of perpetrators as referred to in paragraph (1) letter b, can take the form of returning goods, compensating for losses, replacing costs incurred as a result of criminal acts and compensating for damage caused as a result of criminal acts.

Fulfillment of rights is proven by a statement letter in accordance with the agreement signed by the victim. The format of the peace agreement letter as intended in paragraph (2), and the statement letter as intended in paragraph (4), are listed in the Attachment which is an inseparable part of this Police Regulation. Based on the application of restorative justice in inquiries and investigations, this is used as a reason to terminate the investigation or investigation for legal reasons based on restorative justice for the investigator or investigators immediately:

- a. Return confiscated goods/objects to those most entitled to them, after a decree to terminate the investigation or inquiry is issued, if there is confiscation of goods/objects related to a crime
- b. Destroy confiscated goods/objects in the form of drugs or other dangerous goods after a decree to terminate the investigation or inquiry is issued.
- c. Release the perpetrator/suspect after a decree to terminate the investigation or inquiry is issued, if the perpetrator/suspect is arrested/detained.

The return and destruction of confiscated goods/objects as well as the release of the perpetrator/suspect as intended in paragraph (1) letters a and c, a warrant and official report shall be made. In the case of drug crimes, the suspect's release is carried out by attaching recommendations from the assessment results from the integrated assessment team.

This is the case with the Prosecutor's Office of the Republic of Indonesia based on the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The consideration in issuing this regulation is that the Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and heed religious norms, decency and decency, and must explore the values human values, law and justice that exist in society, that the resolution of criminal cases by prioritizing restorative justice which emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retribution is a legal need of society and a mechanisms that must be built in the implementation of prosecutorial authority and reform of the criminal justice system and that the Attorney General has the duty and authority to make the law enforcement process provided by the Law more effective by paying attention to the principles of fast, simple and low-cost justice, as well as establishing and formulating case handling policies to successful prosecution carried out independently for the sake of justice based on law and conscience, including prosecution using a restorative justice approach carried out in accordance with the provisions of statutory regulations. The definition of restorative justice according to the prosecutor's regulations is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original condition and not retaliation.

Termination of prosecution based on restorative justice is carried out on the basis of justice, public interest, proportionality, punishment as a last resort and is fast, simple and low cost. 406 The conditions for stopping prosecution based on restorative justice are carried out by taking into account:

- a. Victim's interests and other protected legal interests
- b. Avoiding negative stigma
- c. Avoidance of retaliation
- d. Community response and harmony

e. Decency, decency and public order

Termination of prosecution based on Restorative Justice is carried out by considering:

- a. Subject, object, category and threat of criminal acts
- b. The background to the occurrence of the criminal act
- c. Degree of blameworthiness
- d. Losses or consequences arising from criminal acts
- e. Costs and benefits of handling cases
- f. restoration back to its original state
- g. There is peace between the victim and the suspect

Criminal cases can be closed by law and prosecution terminated based on Restorative Justice if the following conditions are met:

- a. The suspect committed a crime for the first time
- b. Criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years
- c. A criminal act is committed with the value of the evidence or the value of losses incurred as a result of the criminal act not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah)

For criminal acts related to property, if there are criteria or circumstances that are casuistic in nature, according to the consideration of the Public Prosecutor, with the approval of the Head of the District Prosecutor's Office or Head of the District Prosecutor's Office, the prosecution can be terminated based on Restorative Justice. For criminal acts committed against people, the person's body, life and liberty can be excluded. In the event that a criminal act is committed due to negligence, it can be excluded. Provisions in the event that there are casuistic criteria/circumstances which, according to the Public Prosecutor's consideration, with the approval of the Head of the District Prosecutor's Office or Head of the District Prosecutor's Office, cannot stop the prosecution based on Restorative Justice. Apart from fulfilling the terms and conditions, termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

- a. There has been a restoration to its original condition carried out by the suspect by:
 - ii) Return the items obtained from the crime to the victim
 - iii) Compensate for victims' losses
 - iv) Reimburse costs incurred as a result of criminal acts
 - v) Repair the damage caused by criminal acts
- b. There has been a peace agreement between the victim and the suspect
- c. The community responded positively

If the victim and suspect agree, the condition for returning them to their original condition can be waived. Termination of prosecution based on Restorative Justice is excluded for cases:

- a. Criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and decency
- b. A criminal offense that is punishable by a minimum penalty
- d. Narcotics crime
- e. Environmental crimes
- f. Criminal acts committed by corporations

The existence of the National Police Chief's Regulation Number 6 of 2009 concerning the Investigation of Criminal Acts which contains a formulation regarding the application of restorative justice in the inquiry and investigation stages, then more specifically regulated in the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and also Republic of Indonesia State Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Justice

Restorative is actually a form of implementation of Pancasila values in the criminal process carried out, but in a rule of law everything should be done according to the provisions. If related to the provisions of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, then what is formulated in these two regulations should be regulated in the Law taking into account the type and hierarchy of statutory regulations. -invitations, namely the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly, Laws, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations and Regency/City Regional Regulations.

In the hierarchy of statutory regulations above the Chief of Police Regulations and Prosecutor's Regulations are not found, however these regulations still have a basis as formulated in Article 8, namely Types of Legislative Regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the Consultative Assembly The People, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, bodies, institutions or commissions of the same level established by Law or the Government by order of the Law, Provincial Regional People's Representative Council, Governor, People's Representative Council Regency/City, Regent/Mayor, Village Head or equivalent. Legislative Regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by higher Legislative Regulations or are formed based on authority. 409 However, within the framework of the legitimacy and strength of the implementation of restorative justice or also known as restorative justice, ideally these regulations are regulated in law, not at the level of the Republic of Indonesia's police regulations and the Republic of Indonesia's prosecutor's regulations.

The spirit of implementing restorative justice in criminal cases is also clearly visible in the values found in several norms in Law Number 1 of 2023 concerning the Criminal Code as can be seen in the formulation of Article 54 paragraph (1) letters i, j and k in mandatory sentences considering the impact of criminal acts on the victim or the victim's family, forgiveness from the victim and/or the victim's family and/or the values of law and justice that exist in society. Then Article 70 paragraph (1) letters d and e formulates that imprisonment should not be imposed if it is found that the loss and suffering of the victim is not too great and the defendant has paid compensation to the victim. Likewise, in accordance with the provisions of Article 71 paragraph (1) and paragraph (2) letter b, it is formulated that in criminal acts which only carry a prison sentence of less than 5 (five) years, the judge does not need to impose a prison sentence after considering the purpose of the sentence and the guidelines for the sentence that can be carried out. if the victim doesn't mind. Furthermore, Article 132 paragraph (1) letter g states that one of the reasons for declaring a prosecution invalid is that there has been a resolution outside the judicial process as regulated in the Law. Even in the case of a defendant who is sentenced to death, there is still the possibility that the death sentence will be changed to life imprisonment by presidential decree after obtaining consideration from the Supreme Court, taking into account the defendant's feelings of remorse and hope for self-improvement, then during a probationary period of 10 years, he will show his attitude and actions. which is commendable, this is as formulated in Article 100 paragraph (1) letter a and paragraph (4).

Taking into account the matters as described above, the regulatory reconstruction offered in this research is based on progressive legal theory with the principle that law exists for humans, not humans for the law. It is hoped that norms will be included in the Criminal Procedure Law Law in the future that every subsystem of the justice system The existing criminal law needs to be supplemented with norms regarding the obligation to make efforts to implement justice in a restorative manner at every stage of the judicial process that is carried out. In the case of crimes that do not have a broad impact on society, the application of restorative justice can be used as a reason for terminating an inquiry or investigation if it is carried out during the inquiry or investigation stage and stopping prosecution in the prosecution process and being declared acquitted by law at the examination stage in court. Then, at the stage of serving a sentence in a correctional institution, norms are created in terms of achieving restorative justice after being sentenced, which is used as a reason for granting rights as a prisoner, namely remission, assimilation, leave to visit or be visited by family, conditional leave, leave before release, conditional release and other rights. in accordance with the provisions of statutory regulations.

CONCLUSIONS AND RECOMMENDATIONS

The reconstruction of criminal justice system regulations based on Pancasila justice that is desired in the Indonesian criminal justice system based on progressive legal theory is in 2 (two) ways, namely related to the value system in the Indonesian criminal justice system by adopting a restorative justice value system that is proven to be in harmony and in accordance with values. -Pancasila values as fundamental basic norms of the Indonesian state or as staatsfundamentalnorm. Then reconstruct the norm regulations in the upcoming Criminal Procedure Law that every sub-system of the criminal justice system has an obligation to make efforts to implement restorative justice in every stage of the judicial process that is carried out. In the case of crimes that do not have a broad impact on society, the application of restorative justice can be used as a reason for terminating an inquiry or investigation if it is carried out during the inquiry or investigation stage and stopping prosecution in the prosecution process and being declared acquitted by law at the examination stage in court. Then, at the stage of serving a sentence in a correctional institution, norms are created in terms of achieving restorative justice after the sentence is imposed, which is used as a reason for granting rights as a prisoner, namely remission, assimilation, leave to visit or be visited by family, conditional leave, leave before release, parole and other rights. in accordance with the provisions of statutory regulations

FURTHER RESEARCH

This research still has limitations so further research needs to be done on this topic "Reconstruction of the Concept of Restorative Justice of the Criminal Justice System in Indonesia".

REFERENCES

- Arief, Barda Nawawi. 2011. Beberapa Aspek Pengembangan Ilmu Hukum Pidana. Semarang: Penerbit Pustaka Magister.
- Djuwityastuti. S.H. M.H. dkk. 2016. Pengantar Hukum Indonesia. Surakarta: Penerbit Pustaka Hanif.
- Finch, John. 1979. Introduction to Legal Theory. London: Sweet & Maxwell.
- Hagan, Frank E. 2013. Pengantar Kriminologi: Teori. Metode dan Perilaku Kriminal. Edisi Ketujuh. Jakarta: Kencana Prenadamedia.
- Hall, Jerome. 1958. General Principles of Criminal Law. Second Edition. The Bobbs-Merill. Inc. A Subsidiary of Howard W. Sams & Co. Inc. Publishers. Indianapolis. New York.
- Herlina, Apong dkk. 2004. Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum. Jakarta: PT. Raja Grafindo Persada.

- Hiariej, Eddy O.S. 2009. Pengantar Hukum Pidana Internasional. Jakarta: Erlangga.
- Hiariej, Eddy O.S. 2014. Prinsip-Prinsip Hukum Pidana. Yogyakarta: Cahaya Atma Pustaka.
- Kansil, C.S.T. 1989. Pengantar Ilmu Hukum dan Tata Hukum Indonesia. Jakarta: Balai Pustaka.
- Marzuki, Peter Mahmud. 2014. Penelitian Hukum. Jakarta: Prenamedia Group.
- McLeod, Ian. 1999. Legal Theory. London: Macmilian.
- Pompe, W.P.J.1959. Hanboek Van Het Nederlandse Strafrecht. Vijfde Herziene Druk. N.V. Uitgevers – Maatschappij W.E.J. Tjeenk Willink. Zwolle.
- Rahardjo, Satjipto. 1991. Ilmu Hukum. Bandung: PT. Citra Aditya Bakti.
- Rizky, Rudi (ed). 2008. Refleksi Dinamika Hukum (Rangkaian Pemikiran dalam Dekade Terakhir). Jakarta: Perum Percetakan Negara Indonesia.
- Rosidah, Nikmah. 2014. Budaya Hukum Hakim Anak di Indonesia. Semarang: Pustaka Magister.
- Sahetapy, J.E. 2014. Hukum Pidana Indonesia Suatu Prespektif. disampaikan dalam acara Pelatihan Hukum Pidana dan Kriminologi “Asas-Asas Hukum Pidana dan Kriminologi Serta Perkembangan Dewasa Ini”. Yogyakarta: Kerjasama Fakultas Hukum Universitas Gadjah Mada dengan Masyarakat Hukum Pidana dan Kriminologi.
- Salman, Otje & Anton F. Susanto. 2005. Teori Hukum: Mengingat. Mengumpulkan dan Membuka Kembali. Bandung: Refika Aditama.
- Sibarani, Sabungan. (2019). Pembaharuan Hukum Pidana Masa Kini. Jakarta.
- Soekanto, Soerjono. 2008. Faktor-Faktor yang Mempengaruhi Penegakan Hukum. Jakarta. Raja Grafindo Persada.
- Soeroso, R. 2011. Pengantar Ilmu Hukum. Jakarta: Sinar Grafika.
- Arief, Hanafi dan Ningrum Ambarsari. 2018. “Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana di Indonesia”. Jurnal Al’ Adl. Vol. X No. 2. Juli 2018.
- Braithwaite, John. 2002. Restorative Justice & Responsive Regulation. England: Oxford University Press.