

Restorative Justice in Criminal Law Enforcement from a Legal Perspective as a Social Engineering Tool

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ABSTRACT

Restorative justice has emerged as an alternative approach in criminal law enforcement that regards crime as a violation of the relationship between the individual and society, not just as a crime against the state. This study investigates the concept of restorative justice in the context of criminal law enforcement, focusing on the perspective of law as a tool of social engineering. From the point of view of the law as the tool of social engineering, this study explains how restorative justice is applied in Indonesia in relation to criminal law. The conclusion of this study is that it is necessary to reconstruct the establishment of restorative mechanisms ranging from the stages of mediation, divorce, to rehabilitation and supervision. This research provides an in-depth understanding of the concept of restorative justice in the context of criminal law enforcement, emphasizing the vital role of law as a social engineering tool for achieving desired goals.

Keywords: Criminal Law Enforcement; Restorative Justice; Social Engineering Tool

INTRODUCTION

Indonesia, which is an archipelagic country with various tribes and languages, must have an instrument in regulating the harmony and order of life between people. This instrument aims to fulfill the ideals and hopes of the founding fathers contained in the Preamble to the Constitution of the Republic of Indonesia in 1945 (Indonesia. The House of Representatives, n.d.) which led to form an Indonesian state government that protects the entire Indonesian nation and to promote general welfare, educate the life of the nation and that implements world order based on independence, lasting peace, and social justice for all Indonesian people.

The law itself is the entire regulation whose enforceability can be imposed by the competent body (Rumokoy & Maramis, 2014). The purpose of the law is to regulate peaceful association. Thus, the reason for the existence of law is the existence of order and peace (onde en rust) of society. Community behavior can be controlled by applicable rules or laws. We all know that a country, if established without a rule or law that regulates the survival and how to get along with fellow community members, will potentially produce a conflict.

Indonesia itself uses legal guidelines from the 1945 Constitution which is more specific in Article 28D paragraph (1), "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law". Then instead of the law, the community will get what it wants in the life of the state which is ideally as a creature created by God who is not seen from any circle and does not attach importance to one race, religion, or certain group. In fact, this article is the legal basis used in this country from various existing legal elaborations, both issued side by side with the 1945 Constitution and issued based on the policies of various legal institutions in Indonesia.

But in reality, law enforcement in Indonesia now still leaves various problems that must be resolved, especially criminal cases involving one party with another party in the community. The sense of justice expected from law enforcement has not been enjoyed by the people in this country. Moreover, as is known, the criminal justice system in Indonesia does not regulate much about victims. Thus, sometimes the victim's whereabouts tend to be heeded or forgotten.

In reality, legal partiality towards perpetrators is not balanced with legal partiality towards victims. Several laws and regulations, both material criminal law and formal criminal law, are felt to provide more privileges and legal protection rights to perpetrators of crimes as suspects, defendants and convicts. Victims of crime seem to be marginalized and do not get maximum guarantees for the rights to recover losses they suffer.

Law enforcement carried out using formal justice methods in the form of repressive police actions which are then followed by a litigative legal process (law enforcement process), will generally end in a win-lose or lost-lose situation. The end of the litigative process will only lead to the conviction of the perpetrator for his actions, while the restoration of aspects of the victim's rights and physical and psychological losses suffered by the victim as a result of the event has not been fulfilled. The form of punishment used today can also be said not to provide a deterrent effect for lawbreakers.

According to Muhammad in Soedarsono (2009), criminal justice system that has been supported by the doctrine and theory of the deterrent effect (deterrence effect) is no longer effective to be used in the problem-solving process, this situation encourages handling problems through informal mechanisms (misdeamenor) by involving third parties as facilitators to carry out victim-offender Reconciliation and/or Alternative Dispute Resolution more benefits are felt by various parties concerned.

In recent times it seems as if the courts are the only good place to resolve legal issues and seek justice. So that any indication of a criminal act, without taking into account the escalation of his actions, will continue to be rolled out into the realm of law enforcement which is only the jurisdiction of law enforcers. Active participation from the community does not seem to be important anymore, everything only boils down to court decisions in the form of punishment without looking at its essence. In fact, in a criminal trial, the parties who play a role are public prosecutors, judges, defendants, and legal counsel and witnesses. The victim is represented by the public prosecutor and to corroborate the evidence, the person concerned is usually used as a witness (victim). But this has not had a real impact or benefit for victims of crime (Waluyo, 2011).

Restorative Justice is one of the concepts of case resolution that is carried out outside the judicial system. Restorative justice itself has the meaning of restoring justice, while restoration here has a broader meaning than what is known in conventional criminal justice processes for restitution or compensation to victims. This departs from the view that in an event of crime, the suffering of the person who has been victimized not only affects the person himself, but also affects the people around him. This approach also has a positive impact on the development of law in Indonesia. However, so far, our country does not have a definite rule contained in the Criminal Procedure Code related to restorative justice itself so that it can be a basic guideline in law enforcement through this approach.

Each of these law enforcement institutions issues regulations as guidelines in solving criminal cases with the principle of restorative justice. The first one is Regulation of the Chief of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation. The second one is National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. The third one is Prosecutor's Regulation of the Republic of Indonesia number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Lastly, Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice.

However, even though there are regulations that serve as guidelines from each law enforcement institution, according to the author, this is not enough because the existing rules of each institution have some differences and weaknesses, so it is considered necessary to have a centralized rule of law to improve this as well as being the basic guideline of each institution in carrying out law enforcement related to the restorative justice approach in order to create harmony in the implementation or legal mechanism. The simplest thing can be seen in the Prosecutor's Decree of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in Article 5 Paragraph 1b which emphasizes that what can be subject to the restorative justice approach mechanism is a criminal offense that is threatened with a fine or threatened with imprisonment of not more than 5 (five) years (Indonesia. The Audit Board, 2020).

This is contrary to the rules contained in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (Indonesia. The Audit Board, 2021) which does not require this, so that the existing rules can cause conflicting perceptions between one rule and another. Therefore, the Government must establish a complete set of laws and regulations (Sasongko et al., 2022). In fact, the issuance of existing regulations has been very helpful from every law enforcement officer. As happened to the police where before the issuance of the police regulation, sometimes the police often take steps or policies that may conflict with existing rules. Where if we move on to a conventional law enforcement approach that applies a retributive justice system, then the rules of the case reporting process must continue to the court stage and court decisions. However, on humanitarian grounds, sometimes some cases that are considered to still be resolved outside the court channels, special policies are made based on the conscience of law enforcement while still being based on public interest, justice and humanity. The case often gets positive results even though it is resolved outside the court. However, this also often puts law enforcement officers in a dilemma, because based on the rules, what is done by law enforcement has contradicted existing rules.

On the other hand, even though the case has been resolved by both parties, both the victim and the perpetrator, based on administrative data in the police, the perpetrator still holds the status of a suspect even though the case has never been continued again both from the victim and the authorities. With the existence of Prosecutor's Decree of the Republic of Indonesia number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, some of the problems described above get answers and solutions. But still there are weaknesses both in terms of rules issued from each of these institutions. From the above, it can be shown that so far there has been no clear legal certainty related to Restorative Justice itself so it is considered necessary to make a law that can correct the error. With the above problems, it shows that problems in criminal law enforcement are seen based on restorative justice.

LITERATURE REVIEW

In general, law enforcement can be interpreted as the act of applying certain legal means to enforce legal sanctions in order to guarantee compliance with the stipulated provisions. According to Soekanto (2013), law enforcement is the activity of harmonizing the relationship between values described in stable rules and embodying attitudes as series of value explanations in the final stage to create, maintain and maintain peaceful social life. Law enforcement is a process of realizing legal desires (namely the thoughts of law-making bodies formulated in legal regulations) into reality (Rahardjo, 1985).

Criminal law enforcement is closely related to the criminal justice system. The criminal justice system is a system in society for dealing with crime, with the aim of preventing people from becoming victims of crime, resolving criminal cases that occur so that people are satisfied because justice has been upheld and the perpetrators have been punished and the perpetrators who have committed crimes never repeat their crimes again (Reksodipuro, 1994). Enforcement of criminal law by the judiciary is a system related to the legal system proposed by Friedman including the substance subsystem, legal structure, and legal culture subsystem (Friedman, 1975).

Restorative Justice is an effort to resolve criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties jointly seeking a fair resolution by emphasizing restoration to the original condition, and not retaliation. According to Muladi in Yunus (2013), restorative justice is a theory that emphasizes restoring damage caused or incurred by criminal acts. Recovering these losses will be achieved through a collaborative process that includes all interested parties.

The concept of law as a tool of social engineering as proposed by Pound and DeRosa (2017), the law must be a driver towards social change in society that is better than before. The function of law in society is determined and limited by the need to balance legal stability and certainty in the development of law as a tool of social evolution.

RESEARCH METHOD

This research is legal research. This research uses a normative juridical approach. Normative legal research is legal research carried out by examining literature or secondary data (Rimbing et al., 2021). This research uses a statutory approach, a concept approach and a case approach. In this research the author used secondary data. Secondary data consists of primary legal material, namely, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Republic of Indonesia State Police Regulation Number 6 of 2019 concerning Investigation of Criminal Acts, Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Republic of Indonesia Prosecutor's Regulation number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Decree of the Director General of the General Judicial Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Implementation of Guidelines for Implementing Restorative Justice. Secondary legal materials are legal materials that can provide an explanation of primary legal materials. Secondary legal materials used in this research include literature books, journals, research results, and other things including relevant sources.

RESULTS

Restorative Justice in Criminal Law Regulations Applicable in Indonesia

The term restorative was first put forward by Bernatt to resolve cases in the form of mediation between the parties and the victims of criminal acts (Marshall, 1999). Restorative justice is an effort to resolve criminal cases involving the perpetrator, victim, family of the perpetrator/victim and other related parties jointly seeking a fair solution by emphasizing restoration to the original state and not retaliation. Philosophically, the concept of restorative justice offers a form of implementing the resolution of cases that occur outside the criminal justice process which is carried out in accordance with the Criminal Procedure Code, with an alternative function for people who are litigating without depending on the procedural law implementation procedures currently in force.

According to Muladi in Yunus (2013), restorative justice is basically similar to the definition formulated by Prison Fellowship International, which states that restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished when the parties themselves meet cooperatively to decide how to do this. This can lead to transformation of people, relationships and communities.

Restorative justice is a theory of justice that emphasizes repairing harm caused by criminal behavior. It is best achieved when the parties themselves meet cooperatively to decide how to do this. This can lead to transformation of people, relationships and communities. According to Rahardjo (2006), restorative justice basically arises because of dissatisfaction with law enforcement because it is often felt that justice has failed. Although it is acknowledged that laws with a positivistic dimension are useful for ensuring legal certainty, due to their rigid nature, such laws have the potential to ignore the society in which they live. Referring to this problem, Rahardjo (2006) initiated an idea about progressive law with the basic assumption proposed that progressive law has the principle that law is for humans and not vice versa. So, the law is not for itself but for something broader and greater, namely for human values, justice, welfare, and happiness of mankind. Restorative justice was first introduced as an alternative approach for addressing juvenile offenders. In practical terms, prior to determining a sentence for the wrongdoer, a phase is conducted to facilitate a meeting between the offender and the victim. This aims to develop a legal proposal that will subsequently be taken into account among various factors by the judge.

Currently in Indonesia the term restorative justice itself may still be relatively new or still unfamiliar to the public. The concept of handling criminal acts using restorative justice itself, although relatively new, has been widely applied in several criminal cases. However, in practice, not all criminal acts can be carried out using a restorative justice approach. Criminal acts that can be carried out using a restorative justice approach include minor crimes, cases of women in conflict with the law, children's cases, and narcotics cases. This light crime as regulated in Articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code is punishable by a maximum prison sentence of 3 (three) months or IDR 2.500.000 (two million five hundred thousand rupiah). Women in conflict with the law are women who are in conflict with the law where the woman is a victim, witness or party. In the section on children in conflict with the law what is meant is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a criminal act. And the narcotics cases in question are narcotics addicts who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically, those who accidentally use narcotics because they are persuaded, deceived, forced, and threatened to use narcotics. This criminal act can be carried out using a restorative justice approach.

Several basic values are the characteristics of Restorative Justice put forward by Braithwaite (2003). These basic values are grouped into 3 (three) groups. The values related to the application of Restorative justice in practice are referred to as fundamental Procedural Safeguards which consist of (1) Non-Domination. In resolving a criminal case using Restorative Justice, it is hoped that all parties are in the same and equal position. Here the dominance of one of the parties will influence the resulting decision so that it will damage the objectives of the settlement using this approach. In this approach model, it is hoped that decisions will be taken jointly by all parties involved; (2) Empowerment. There is a need for empowerment (protection) of parties who are not in a favorable position. This empowerment is not meant to show favoritism but is an effort to build courage to express thoughts, views, and desires so that the needs of perpetrators, victims or the community can be heard and taken into account in decision making.; (3) Honoring Legally Specific upper limits on sanctions, when the parties have made a decision to resolve a problem using this concept, then they must accept all decisions produced by this settlement model; (4) Respectful Listening. In resolving this case the parties must have mutual respect and empathy between the parties; (5) Equal Concern for all stakeholders. There must be attention to all stakeholders, in efforts to complete this model it is not only focused on one stakeholder; (6) Accountability, Appealability, in the sense of Restorative Justice is the freedom to choose a resolution mechanism based

on the choices of all parties; (7) Respect for the Fundamental Human Rights. When resolving criminal cases, it is a must to refer to human rights instruments. Human rights values must be accommodated in the objectives of punishment and in designing a punishment model; (8) Values related to the ability to forget past events. Forgetting and not eliminating or just leaving it without a solution. The desire to forget past events is not an excuse to abandon or prevent the ongoing resolution process; (9) Acceptance of an agreement means the task of bringing and spreading new values and changing the paradigm of the surrounding community regarding criminal acts that occur. The problem that occurs is that clashes often occur in the community so that the process of program realization is hampered, mainly related to local/local values held by the community which actually hinders repair and restorative programs. In such conditions, the agreement that has been reached must be re-evaluated; and (10) The values contained in Restorative Justice are preventing injustice, forgiveness, and gratitude. In contrast to previous views, Restorative justice is basically an evolving concept. Many scholars then continuously developed this concept further. This includes the development of potential ideas as well as negative risks if this concept is implemented.

The concept of restorative justice in the law enforcement process in Indonesia does not mean eliminating the sanction of imprisonment for a criminal act. In its classification, if there is a crime that results in massive losses and a crime that results in the loss of another person's life, then corporal punishment can still be applied. The concept of restorative justice is a concept that is able to function as an accelerator of the principles of simple, fast and low-cost justice, thereby ensuring the fulfillment of legal certainty and justice in society (Syahrin, 2018). With the process of implementing restorative justice like the concept above, it proves that the process of resolving criminal cases using the concept of restorative justice is credible and is part of the process of resolving and enforcing criminal case law in a more modern and progressive direction.

In Indonesia itself, the concept of restorative justice is not something new, because if you look closely, this concept has long been practiced in several regions in Indonesia, such as in Papua, Bali, Toraja, Minangkabau and other traditional communities that still adhere to local culture. In these areas, if a criminal offense is committed by someone, it will be resolved internally through customary mechanisms that apply in the customary community without involving state officials. In resolving the problem of criminal acts, the benchmark for justice is not based on retributive justice but on the basis of conscience and forgiveness. Therefore, in this case the main milestone of restorative justice is aimed at ensuring that the perpetrator is willing to take responsibility for his mistakes in order to repair the victim's condition and that the perpetrator is able to show his remorse, which in this case can involve the victim, parents or family and other parties (Yulia, 2012).

DISCUSSION

Restorative Justice in Criminal Law Regulations Applicable in Indonesia

Law is a collection of regulations that are general in nature because they apply to everyone and normative because they strictly regulate the actions that are allowed and not allowed to be carried out so that the law is the most important element in creating conducive conditions by regulating and adjusting the interests of each person in social life and to avoid conflict occurs. Likewise, criminal law is a weapon to protect the legal interests of society from disgraceful acts. Criminal law is also a means used to overcome criminal acts (Nugraha, 2023).

Among Indonesian society in the current, more modern era, there are many criminal acts (offense) which procedurally end in court (litigation), where society tends to use the process of resolving criminal cases through court, which is based on public perception, the resolution of the case. Through the courts, justice and legal certainty can be provided for the parties involved in the case. However, if you look at the existing facts, the law enforcement process is actually not in accordance with the principles of certainty and justice itself. Because the process of resolving criminal cases in court is a win-lose solution. with a reality like this, resolving a case through justice which is only a win lose solution in general often results in feelings of “unease or disappointment”, holding a grudge, feeling dissatisfied, feeling unfair and even worse, namely intending to take revenge.

The feeling of discomfort or disappointment that is deeply ingrained in the minds of the losing party will try to seek “justice” at further judicial levels such as the High Court (PT), Supreme Court (MA) and even the Constitutional Court (MK). This of course causes a buildup of cases flowing through the courts which can hamper the justice system, especially in Indonesia. From this phenomenon, it is true what was stated by Emirzon (2001) that this can generally be categorized as one of the weaknesses of a litigation institution which cannot be avoided even though it has become a provision.

Combating crime using criminal (law) is the oldest method, as old as human civilization itself. There are also those who call it the “older philosophy of crime control”. Viewed as a policy problem, there are those who question whether crime should be dealt with, prevented or controlled, using criminal sanctions (Kassebaum, 1974).

Satjipto Raharjo stated that resolving cases through the judicial system which culminates in a court verdict is law enforcement in the slow lane. This is because law enforcement takes a long distance, through various levels starting from the Police, Prosecutor’s Office, District Court, High Court and even to the Supreme Court which ultimately has an impact on the accumulation of quite a few cases in the Court (Rahardjo, 2003).

Looking at the criminal law system in Indonesia, imprisonment is one of the primary sanctions for perpetrators of criminal acts by sending them to a correctional institution for detention. The imposition of these sanctions is a manifestation of retributive justice, the implementation of which is clearly regulated in the legal system in Indonesia. In implementing a correctional system that is in accordance with retributive justice, it is hoped that perpetrators of criminal acts will receive guidance so that they realize and regret the criminal acts they have committed and will not repeat criminal acts or unlawful acts when they return to society. However, the results of this correctional punishment system are not explicitly implemented due to a number of problems that exist in detention centers or correctional institutions, one of which is excess capacity of convicts.

Restorative justice emphasizes that if there is a crime or criminal act, the most important thing is not to punish the perpetrator of the criminal act but to prioritize mechanisms for repairing the damage caused by the criminal act. This also includes damage to values in a community.

The general methods used to implement restorative justice are by carrying out mediation between interested parties, carrying out communication either through meetings or discussion forums, carrying out negotiations, accompanying victims, accompanying perpetrators, implementing restitution/compensation, and carried out through community service or community service. In implementing these methods, the implementation of restorative justice must adhere to the 3 main spearheads of restorative justice as stated by Van Ness and Strong in Garbett (2017), namely: (1) Encounter, namely the

perpetrator, victim and the community who feel the impact of a criminal act are brought together, (2) Amendments, namely the restoration of individuals, communities and countries who feel the negative impact of a crime. One of the most significant forms of improvement is a sincere apology to the victim. Strong notes that in RJ meetings, there is always a moment of sincere apology, this is in accordance with research that what victims most often want is a sincere expression of regret from the perpetrator. Another improvement is property restitution (compensation for losses). Even in this case, prison can also be used as an outcome agreed upon by the parties as an action to protect society or to atone for the perpetrator's mistakes; and (3) Reintegration, namely ensuring that the victim can return to living a normal life. This is because victims often experience depression or trauma after the crime occurs. Meanwhile, reintegration for perpetrators is to rebuild the relationship between the perpetrator and his community.

Although restorative justice cannot be separated from the context of "peaceful means", restorative justice also cannot be interpreted as an effort to resolve problems using peaceful means absolutely. This is because the concept related to restorative justice does not mean eliminating criminal sanctions altogether in reality.

Seeing the importance of restorative justice in the legal system in Indonesia, where the role of restorative justice is to provide stability in law enforcement between law enforcement officers and the community. According to Wignyosubroto (1995), in the theory of law as a tool of social engineering, it is emphasized that the use of law as a means of engineering society towards a government (executive) policy scenario is very much needed by developing countries, far more than the need for developed countries to accommodate changes in the world. in society, while developing countries are not like that.

The restorative justice approach provides opportunities and possibilities for victims of crime to obtain reparation, a sense of security, allows perpetrators to understand the causes and consequences of their behavior and take responsibility in a meaningful way and allows society to understand the main causes of crime, to promote the welfare of society and prevent crime.

The concept of restorative justice is an integrated unity of law as a tool or means for engineering society towards national development which is expected to provide a better understanding of the legal system that applies in society. Restorative justice is very important to support the progress of nation development through legal system mechanisms. implemented in this country. This is because there are various criminal acts that are resolved using retributive justice mechanisms that do not provide satisfactory results for all parties, especially for the victims. Restorative justice itself is a mechanism that is able to involve victims and perpetrators more actively and be directly involved in deciding the outcome of the case so that both the victim who feels aggrieved can be satisfied and also the perpetrator, their condition and status in society can be restored through coaching to change bad behavior into positive behavior.

The concept of restorative justice is often considered to be in conflict with imprisonment itself. The general view is that the only way to implement restorative justice in sentencing is by diverting the perpetrator from serving imprisonment but serving a sentence in the form of a community-based restorative justice program (community-based punishment such as social work, etc (Johnstone, 2014).

Regarding law enforcement in Indonesia, it cannot be separated from Law Number 8 of 1981 concerning Criminal Procedure (Indonesia. The Audit Board, 1981) because based on the actual words as quoted from the Criminal Procedure Code, this term refers to the implementation of formal law. It could be said that what is meant by law enforcement, the form of its concreteness is the imposition of a crime or sanction. In this regard, according to Sauer there are three basic meanings in criminal law, namely the nature of resistance. law, error, and crime (Priyatno, 2007).

From the perspective of law as a tool of social engineering, it emphasizes that the application of law functions as a tool to regulate harmonization in society and law enforcement officials. Law is not an absolute and final institution, but rather an institution with morals, conscience and therefore is determined by its ability to serve humans. Law is an institution that aims to lead humans to a just, prosperous life and make humans happy. Humanity and justice are the goals of everything in our legal life.

Restorative Justice aims to empower victims, perpetrators, families, and communities to correct unlawful acts by using awareness and conviction as a basis for improving social life. Explaining that the concept of Restorative Justice is basically simple (Rosidah, 2014). The involvement of community members is very much needed to help correct errors and irregularities that occur within the community itself. The position of Restorative Justice in Indonesia is regulated explicitly in various laws and regulations, for example the 1945 Constitution of the Republic of Indonesia; Law Number 48 of 2009 concerning judicial power, Law Number 14 of 1985 as amended by Law Number 5 of 2004 as most recently amended by Law Number 3 of 2009 concerning the Supreme Court.

The position of restorative justice in the criminal justice system is divided into two, namely: outside the criminal justice system and inside the criminal justice system (Zulfa, 2009). In fact, majority of society still relies on state law and existing legal procedures. Apart from that, policy makers also still believe in and depend on the criminal justice system that is already running. In this case, the legislature and executive view that the use of a restorative justice approach is only an alternative model for resolving criminal cases offered in a legal system that is different from existing state law applies.

In the current development, regulations in implementing the law enforcement process using the concept of restorative justice have been issued by the criminal justice sub-system in Indonesia, whether at the Police at the investigation stage, the Prosecutor's Office at the prosecution stage and at the Supreme Court at the judicial level in the form of Regulations or Decisions, which will however, there are differences and inequalities in the regulations and policies issued by the criminal justice sub-system in the implementation process. The Police refers to the Chief of Police Circular Letter Number SE/8/VII/2018 on the Implementation of Restorative Justice in Criminal Case Resolution. The Chief of Police Circular Letter on Restorative Justice is then used as a legal basis and guideline for Police Investigators and Investigators who conduct investigations, including as a guarantee of legal protection and supervisory control, in applying the concept of restorative justice in criminal investigations and investigations in order to realize the public interest and sense of justice, so as to create a uniform understanding and application of restorative justice within the Indonesian National Police.

The concept of restorative justice is also implemented in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The authority given to the Public Prosecutor to terminate cases through restorative justice is stated in Article 3 Paragraph 2 Letter E which states that "Closing cases for legal purposes is carried out in cases where there has been a resolution of the case outside the court (afdoening buiten proces), continued in

Paragraph 3 Letter B explains "Settlement of cases outside of court as referred to in Paragraph 2 letter e can be carried out provided that there has been a restoration of the original situation using a restorative justice approach".

The Supreme Court of the Republic of Indonesia has also issued guidelines and policies regarding the application of restorative justice, namely the most recent Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice (Indonesia. Supreme Court, 2020). The purpose of this decision is to encourage the optimization of the implementation of Supreme Court Regulations, Supreme Court Circular Letters and the Decree of the Chief Justice which regulates the implementation of restorative justice in courts, while the purpose of this decision is to make it easier for courts in the area. general judiciary in understanding the implementation of Supreme Court Regulations, Supreme Court Circular Letters and Decisions of the Chief Justice of the Supreme Court which regulate the implementation of restorative justice, encouraging increased application of restorative justice, fulfilling the principles of fast, simple, and low-cost justice with fair justice.

It also needs to be stated that the concept of restorative justice cannot only be applied to the Supreme Court (MA). In the criminal justice process in general and the criminal justice process in Indonesia in particular, there are several stages or processes that justice seekers must go through, both at the level of investigation, investigation, prosecution, examination in court up to the stage of the judge's decision. Even at the stage where the seeker justice takes legal action (both ordinary legal action and extraordinary legal action). However, in this research, the concept of restorative justice is only studied juridically within the scope of the police, namely at the case investigation stage. The Indonesian National Police (Polri) is a state instrument that plays a role in maintaining security and public order, law enforcement, protection, protection, and service to the community in the context of maintaining domestic security. Therefore, the National Police is required to continue to develop to become more professional and closer to the community. In other words, the National Police is required to develop itself into a civil police force. As civil police, the position of the National Police in state organizations has a dominant influence in administering the police in a proportional and professional manner, which is a supporting condition for the realization of good governance (Sadjijono, 2008).

The existence of resolving cases outside of court through restorative justice or penal mediation is a new stage of reform if studied juridically from theoretical and practical aspects. In the analysis of the practical description, penal mediation will correlate with achievements in the world of justice. As time goes by, there is an increase in the volume of cases in all forms and variations that come to court, so that the consequences become a burden on the judiciary, namely legal certainty, expediency, and justice. Do all criminal cases have to be filed and resolved before the court, or are there certain cases that can be resolved through penal mediation? In polarization and penal mediation mechanisms, as long as this is truly mutually desired by the parties (suspect and victim), as well as to achieve broader interests, namely maintaining social harmonization. If it is correlated with the context of restorative justice as a rule that becomes a social engineering tool in society, then there is a need for clear legal products to regulate the application of restorative justice systematically and concretely, so that it can be implemented optimally in society. In implementing law as a tool or means of reform or social engineering, there are several problems that are often faced. One of the problems faced is when what Gunnar Myrdal calls soft development, namely where certain laws that are formed and implemented turn out to be ineffective. These problems will arise due to several factors, such as the establishment, law enforcement, justice seekers, and other groups in society. These factors must be identified to be able to obtain the expected goals.

CONCLUSION

Restorative Justice in Criminal Law Enforcement Viewed from the Perspective of Law as a Tool of Social Engineering, which sees the importance of restorative justice in the legal system in Indonesia, where the role of restorative justice is to provide stability in law enforcement between law enforcement officials and the community. In the theory of law as a tool of social engineering, it emphasizes that the use of law as a tool to engineer society against government (executive) policy scenarios. The concept of restorative justice is an integrated unit of law as a tool or means to engineer society towards national development which is expected to provide a better understanding of the legal system that applies in society. Through several stages of applying the concept of restorative justice such as mediation, deliberation to peace, everything will lead to the provision of legal certainty. Restorative justice is very important to support the progress of national development through the mechanism of the legal system that applies in Indonesia.

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DECLARATION OF CONFLICTING INTERESTS

The authors declared no potential conflicts of interest.

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