



Application of Restorative Justice in the Crime of Theft

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Abstract. 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 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 Tulang Bawang District Prosecutor's Office, Lampung, Indonesia has implemented restorative justice for the crime of petty theft committed by the defendant with the initials BC based on the Decree on Termination of Prosecution of the Head of the Tulang Bawang District Prosecutor's Office Number: PRINT- 01/L.8.4.18/Eoh.2/ 01/2022 dated 27 January 2022 (RJ-14). The purpose of this study was to find out the legal arrangements regarding restorative justice in the settlement of petty theft cases, to find out the application of restorative justice in the settlement of petty theft cases at the Tulang Bawang District Prosecutor's Office, and to find out the obstacles for the Tulang Bawang district attorney to implement restorative justice. in the crime of petty theft committed by Defendant BC. The research method used is a normative method using a juridical approach by managing primary legal materials, secondary legal materials and tertiary legal materials. The results of the study show that the legal arrangement regarding restorative justice in the settlement of cases of minor theft crimes is Perma Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes which prioritizes restorative justice Police Circular Letter Number SE/8/VII/2018 concerning Application of Restorative Justice). The application of restorative justice in the settlement of cases of minor theft crimes at the Tulang Bawang District Attorney is guided by the Republic of Indonesia Attorney General's Regulation No. 15 of 2020 because the defendant is the first time he has committed a crime. Obstacles for the Tulang Bawang District Prosecutor's Office in implementing restorative justice in the settlement of cases of minor theft crimes are that there are negative views and a lack of knowledge regarding community restorative justice, the large number of cases of theft that cannot be applied to restorative justice and the duration of time for making peace is too short.

Keywords: Natural Law; Secularism; theological; Sharia; Fiqh.

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 right 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. (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 a crime generally comes from the perpetrators of the crime but can also come from the victim (Mien Rukmini, 2006). The existence of criminals can be seen that basically the perpetrators of crimes have criminal seeds as expressed by the criminologist Lombroso. 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.

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, 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* within the Polri 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). The Tulang Bawang District Prosecutor's Office, Lampung, Indonesia has implemented *restorative justice* for the crime of petty theft committed by the defendant with the initials BC based on the Decree on Termination of Prosecution of the Head of the Tulang Bawang District Prosecutor's Office Number: PRINT- 01/L.8.4.18/Eoh.2/ 01/2022 dated 27 January 2022 (RJ-14). In this case, BC 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 in 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 solving it, the perpetrators of crimes, families of perpetrators, victims, families of victims, communities, and other related parties are actively involved in creating recovery (Setyowati , 2020).

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".

Research methods

The research method used in this article is a normative method using a juridical approach that examines the issues to be discussed using legal regulations in the form of secondary data in the form of primary, secondary and tertiary legal materials (Soekanto & Mamudji, 2010). The nature of the research used is descriptive. Collection of legal materials is done by study literature, namely through a review of the regulations governing the restorative justice as well as various relevant literature.

Discussion

1. Restorative Justice in Handling the Crime of Theft

Restorative justice is a foreign terminology that has only been known in Indonesia since the 1960s with the term Restorative Justice (Aprian, 2021). In several developed countries, restorative justice is not just a discourse by academics of criminal law or criminology. North America, Australia and several countries in Europe restorative justice has been implemented in the conventional stages of the criminal justice process, starting from the stages of investigation, prosecution, adjudication and execution stages (Eriyantouw Wahid, 2009). Basically, a person who commits a crime must be subject to a legal consequence. The legal consequences are generally in the form of criminal penalties. 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 (SR Sianturi, 1996).

In Indonesian positive law, criminal cases basically cannot be resolved outside the court. However, law enforcement practices in Indonesia are often criminal cases resolved outside the court through mediation, peace institutions and so on (Momo Kelana, 2002). The process of a restorative justice approach is carried out with a policy so that a transfer of the process of settlement of criminal acts is realized outside the criminal court process and is resolved through a process of deliberation. Settlement through deliberation is actually not a new thing for Indonesia, even customary law in Indonesia does not distinguish between the settlement of criminal and civil cases, all cases can be resolved by deliberation with the aim of getting a balance or restoration of the situation.

Settlement of criminal cases should be oriented towards benefiting all parties, both victims, perpetrators and society. From the description above, it can be concluded that the application of restorative justice in criminal cases has not been fully implemented as an alternative settlement of minor crimes in the Attorney General's Office. develop in society.

The application of *restorative justice* in solving theft cases currently receives a lot of attention from the wider community, beginning with the emergence of news about the many cases of theft with stolen goods as evidence having little value being tried in court, then getting the spotlight from the public that there is no justice if these cases are threatened with a penalty of 5 (five) years as stipulated in Article 362 of the Criminal Code, because they are not worth the value of the stolen goods. Besides that, cases that go to court will also burden the court in terms of the budget as well as in terms of public perception of the court. the stages and the community generally only knows whether there is a criminal case only when the case is being tried in court and because it has reached the trial stage in court the public spotlight is only focused on the court and demands that the court consider the community's sense of justice (Wiliam Aldo Caesar Najoan, 2021).

The main purpose of implementing restorative justice as an alternative to settling cases is to recondition the situation to the state it was before the crime occurred (Adiesta, 2021). This is because circumstances can change due to crimes committed by perpetrators and the role of the law to restore conditions to normal and protect the rights of victims. In addition, this concept emerged due to failures in the criminal justice system. This failure can be seen from the current concept

of punishment, namely depriving the right to freedom, where this is considered to have various negative impacts, including the process of dehumanization of prisoners that does not go well so that prisoners find it difficult to continue their lives after serving a period of detention, detention cells create a criminal mentality among prisoners, for prisoners with short prison terms, the correctional process does not run optimally, the last one is the emergence of a bad stigma from society towards convicts.

Of the many problems in handling minor crimes in Indonesia, there is hope for innovation in their resolution. One solution that appears is to use a restorative justice system. The nature of criminal acts that are minor in nature and do not have a broad impact makes it possible for deliberations and dialogue to be held between the parties.

Restorative justice is a case settlement concept that must be applied through a real process. The application of the principles and values contained in the restorative justice approach can be seen in the various models and forms of settlement of criminal cases outside the court that have been carried out by the community. The application of restorative justice must at least fulfill the following 3 (three) things, namely firstly identifying and taking steps to repair the loss/damage (*identifying and taking steps to repair harm*), secondly involving all interested parties (*involving al stakeholders*) and thirdly transformation from the pattern in which the state and society confront the perpetrators by imposing criminal sanctions into a pattern of cooperative relations between the perpetrators on the one hand and the community/victims in resolving problems due to crime (*transforming the traditional relationship between communities and their government in responding to crime*).

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:

- a. The suspect was a first time offender
- b. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; and

- c. 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 the crime 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:

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

The types of theft crime are:

- a. 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.
- b. 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.
- c. 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) (Arief, 2021). 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 (Siregar, 2020). 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 strength to give the opportunity to the perpetrator to express regret to the victim and it is better if it is facilitated to meet in a professional meeting (Taqieudin, 2021). 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:

- a. Make the perpetrators of criminal acts responsible for repairing losses caused by their mistakes

- b. Providing opportunities for perpetrators of criminal acts to prove their capacity and quality in addition to overcoming their feelings of guilt constructively
- c. Involve victims, families and other parties in terms of problem solving
- d. Create a forum to work together in solving problems
- e. 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.

The implementation of termination of prosecution based on restorative justice is in accordance with the procedures set out in the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In peace, the administrative stages are carried out first as stipulated in the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020, starting with identifying the

conditions for stopping prosecution in these criminal cases, in which not all criminal cases can be terminated based on restorative justice, but only criminal cases which meets the requirements as stated in Article 5 of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely (Prosecutor's Regulation, 2020).

Determining that a criminal case can be closed by law and the prosecution can be stopped based on restorative justice if three conditions are met. First, the suspect is the first time committing a crime. Second, criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 years. Third, the crime is committed with the value of evidence or the value of the losses incurred as a result of the crime of no more than 2.5 million rupiah, but because the potential loss of a crime exceeds Rp. 2,500,000 it can be resolved through a peace mechanism. The case controller determines whether or not a case can be delegated to court. Conciliation efforts can only be submitted for approval if the criminal case, in the opinion of the Public Prosecutor, has fulfilled the requirements mentioned above, so that not all criminal cases can be resolved by stopping prosecution based on restorative justice (Herman, 2022).

The Head of the Tulang Bawang District Prosecutor's Office Kasi Pidum and the Public Prosecutor provided facilities by bringing together BC and representatives of PT. SIL at the Tulang Bawang Prosecutor's Office which ended with the achievement of unconditional peace. Then on Wednesday, January 26, 2022 the Junior Attorney General for General Crimes (JAM PIDUM) approved the application for termination of prosecution through the RJ process which was presented by the Chief Prosecutor for the Tulang Bawang District along with the Head of Criminal Investigation and the Public Prosecutor. JAM PIDUM stated that the BC case met the requirements to go through the RJ process in accordance with the provisions of Article 5 paragraph (1) of the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely; a. the suspect is the first time committing a crime; b. penalty of not more than five years and; c. the value of losses arising from criminal acts is not more than IDR 2,500. 000,- (two million five hundred thousand rupiah). With the peace agreement and JAM PIDUM approval, the RJ regarding the BC case was successfully realized based on the Decree on Termination of Prosecution of the Chief Prosecutor of the Tulang

Bawang District Number: PRINT- 01/L.8.4.18/Eoh.2/01/ 2022 dated 27 January 2022 (RJ-14).

In this case the Tulang Bawang District Prosecutor's Office is guided by as stated in the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on restorative justice namely in CHAPTER IV article 8 concerning Procedures for Peace paragraphs (1) to (7), namely:

- a. For the purposes of conciliation efforts, the public prosecutor summons victims legally and properly by stating the reasons for the summons
- b. For the purposes of peace efforts by stating the reason for the summons
- c. The public prosecutor gives the goals and rights and obligations of the victim and the suspect in peace efforts, including the right to refuse peace efforts
- d. In the event that the peace effort is accepted by the victim and the suspect, then the peace process will proceed
- e. After the peace efforts are received by the victim and suspect, the public prosecutor makes a report on the peace efforts received by the State Attorney or the Head of the Prosecutor's Branch and forwarded to the High Chief Prosecutor's Office.
- f. In certain cases that receive special attention from the community, the reports referred to in paragraphs are submitted to the Attorney General in stages.
- g. In the event that peace efforts are rejected by and/or the suspect, the Public Prosecutor:
 1. Stating the non-achievement of peace efforts in the minutes
 2. Make a memorandum of opinion that the case is transferred to court by stating the reasons and
 3. Submit case files to court.

The prosecutor for general crimes accepted the request from the chief prosecutor of the Tulang Bawang district office, because the perpetrator confessed and will be responsible for his actions in providing compensation or restitution to the victim, the victim's family or guardian. Based on interviews conducted with Mr. Devi Freddy Muskita, SH, MH (Prosecutor, Head of local RT) participating in the process of providing *restorative justice* based on Perkejari No.15 of 2020 (Interview with Mr. Devi, 2022).

Settlement of criminal cases both inside and outside the court process that focuses on deliberation and direct participation of perpetrators, victims and the public in the process of resolving criminal cases that returns conditions to their original state (recovery) is *restorative justice* . Dispute resolution mechanisms based

on restorative justice are based on deliberation for consensus in which the parties are asked to compromise to reach an agreement. Law enforcement is one of the links in the law chain.

restorative justice theory offers answers to important issues in the settlement of criminal cases, namely: criticism of the criminal justice system which does not provide opportunities especially for victims (*criminal justice system that empowers individuals*) (Nugraha, 2009), eliminates conflicts especially between perpetrators and victims (*taking away the conflict from them*), and finally the fact that feelings of powerlessness experienced as a result of criminal acts must be overcome to achieve improvement. The programs contained in *restorative justice* and efforts to overcome crime problems are as follows, namely *restorative justice* is an expansion of the concept of thinking along with social developments that shift to *institutionalize peaceful approaches* to losses due to crime, problem solving, and violations of law and human rights (human rights), *restorative justice* seeks/builds partnerships (*ex to build partnerships*) to reaffirm *mutual responsibility* to respond constructively to crimes that occur in society (Darman, 2022).

Thus, in the case of the crime of theft committed by the defendant with the initials MF, the Tulang Bawang District Prosecutor's Office facilitated this by bringing the victim and perpetrator together to reach an agreement. If it is related to the theory of *restorative justice*, which enforces it rationally and prioritizes justice, then in the application of *restorative justice* and in the forms of its application, it is in accordance with Perkejari No. 15 of 2020 Article 8 paragraph (1) for the purposes of peace efforts, the public prosecutor summons victims legally and properly by stating the reasons for the summons and Article 9 Paragraphs (1) and (2) The peace process is carried out voluntarily, by deliberation to reach a consensus, without pressure, coercion and intimidation in the peace process the Public Prosecutor acts as a facilitator. The application of *restorative justice* by the Tulang Bawang District Prosecutor's Office is in accordance with the Perkajari No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

2. Obstacles to the Junior Attorney General for General Crimes in the Implementation of Restorative Justice in the Settlement of Cases of Theft Crimes at the Tulang Bawang District Prosecutor's Office

The implementation of *restorative justice* certainly requires the creativity of the prosecutor's office (public prosecutor) to develop restorative programs, so as to minimize settlement of cases in court. In that context, the prosecutor's office is required to utilize or develop problem-oriented strategies or approaches. This is not an easy problem because it shifts the paradigm of the prosecutor's office, which so far has been seen as a "*case processor*" (processing cases) to "*problem solvers*" (case resolution), which involves the community (*community involvement*). (Natsir, 2021). So far, public prosecutors have tended to continue resolving cases through a formal criminal justice process to obtain court decisions that have permanent legal force, rather than resolving them with restorative models.

Prosecution can end with "*prosecutor fine*", ie "the victim and the person responsible for the crime are brought together and, if the mediation is successful, the public prosecutor's office can decide not to pursue the prosecution" (victims and perpetrators of crime jointly) together to mediate, and if successful, the public prosecutor may decide not to prosecute). Even then expanded with the use of mediation. Likewise in France, since 1993, as stated by Catherine Elliot and Catherine Vernon that "public prosecutors often in practice seek to apply for intermediate solutions". The reason used, as stated by Davies, Croall, and Tyrer, is "the role of prosecutors is not to seek a conviction at all costs: they should prosecute not persecute" (Luhut MP Pangaribuan, 2009).

The measure of justice is no longer based on proper retaliation from the victim to the perpetrator (whether physically, psychologically, or punishment) but the painful act is healed by providing support to the victim and requiring the perpetrator to be responsible with the help of family and society when needed. the similarity of restorative justice with local (customary) mechanisms is an advantage because it is more acceptable and practiced by the wider community. In addition there are several other advantages in implementing restorative justice, namely (DS Dewi and Fatahilah, 2011):

- a. Restorative justice focuses on justice for victims according to personal desires and interests, not the state's decision
- b. Offers recovery for all parties involved
- c. Make perpetrators responsible for their crimes.

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:

- a. Difficulty in balancing the various interests of the parties (actors, victims, society and the state)
- b. Non-compliance with the guidelines and basic principles that have been formulated on the principles of " *human development, mutually, empathy, responsibility, respect and fairness* "
- c. The feelings of victims who feel they are experiencing " *re-victimization* " because they feel pressured
- d. 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
- e. 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.

Several obstacles to the implementation of restorative justice were given by the Tulang Bawang District Prosecutor's Office based on the results of an interview with Mr. Devi as the Chief Prosecutor of the Bone Court

Onions as follows:

- a. There is still a negative view from the community regarding efforts to stop prosecution and the efforts of the Public Prosecutor (JPU) in realizing legal certainty and justice
- b. The lack of public knowledge regarding stopping the prosecution with *restorative justice* makes it difficult to make peace between the two parties
- c. There are many cases of theft that cannot be applied to *restorative justice* because the theft that was committed fulfills the requirements for restorative justice to be applied
- d. The timeframe for making peace is too short.

Settlement of criminal cases by stopping prosecution based on restorative justice is inseparable from obstacles or obstacles. Obstacles or obstacles encountered in resolving restorative justice cases at the Tulang Bawang District Prosecutor's Office are the short time limit stipulated by the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 in carrying out efforts to stop prosecution based on restorative justice and the difficulty if the victim does not want to make peace (Interview with Mr Devi As Chief Prosecutor at the Tulang Bawang District Attorney, 2022).

The duration of time set for seeking peace and all its processes is only a maximum of 14 days. As stipulated in Article 9 paragraph (5) of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 namely; "The process of reconciliation and fulfillment of obligations is carried out within a maximum period of 14 days (fourteen days) from the day of handing over of responsibility for the suspect and evidence (stage two)" and the success of the prosecutor's party in bringing together the victims and perpetrators is one of the things that is very important so that efforts must be made for the successful implementation of restorative justice.

Based on this, according to Mr. Devi as the Chief Public Prosecutor who is felt to be one of the obstacles in the process of implementing the termination of prosecution based on restorative justice. Because these 14 days have counted since the case file has been transferred from the investigator to the Attorney General's Office, whereas to be able to implement a termination of prosecution

based on restorative justice one must go through various procedures as stipulated in the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020. As for the supporting factors of the Prosecutor in implementing *restorative justice* at the Tulang Bawang District Prosecutor's Office apart from the rules that must be upheld and implemented is conscience. Prosecutors consider that the application of the law must be accompanied by conscience. The prosecutor said that "The law follows the rules, we see from the facts. That's what we get." This opinion is supported by the opinion of the Attorney General (ST) Burhanuddin who invites the Prosecutors to work by prioritizing conscience and prioritizing community justice in giving charges to perpetrators of minor crimes (*tipiring*). He said that actually it was not wrong if the Prosecutors gave charges based on what was written in the Criminal Code (KUHP) because conscience-based sentences were not included in the books. For this reason, he invited prosecutors to pay attention to the sense of justice that exists in society (Interview with Mr. Devi as Chief Prosecutor at the Tulang Bawang District Attorney, 2022).

The sense of responsibility from the perpetrator to the victim is needed so that the perpetrator is encouraged to have a sense of responsibility by showing empathy and helping to repair the loss. As a result of the offender's hurtful behavior not on the offender's past. So that the stigma can be removed through appropriate actions supported by the perpetrator's regret and forgiveness from the victim. The resolution process depends on the direct involvement of the people affected by the incident so that it is possible for the process to become emotional (Rena Yulia, 2010).

Restorative justice is not a principle but a philosophy, namely philosophy in the judicial process and also a philosophy of justice. *Restorative justice* is said to be a philosophy of justice because it is the basis for the preparation of judicial institutions. So that it can be interpreted that *restorative justice* is a series of judicial processes that basically aim to *restore* (recover) losses suffered by victims of crime. *Justice* in the science of criminal law must aim to restore the situation to how it was before the crime occurred. When someone violates the law, things change. So that's where the role of law is to protect the rights of every crime victim (Mudzakir, 2013).

Restorative Justice requires cooperative efforts from the community and government to create an environment where victims and perpetrators can recommend their conflict. *Restorative justice* returns the conflict to the parties most affected (victims), perpetrators and their "community interests" and gives priority to their interests. *Restorative Justice* also emphasizes human rights and the need to recognize the effects of social injustice and in simple ways to redress them, rather than simply giving the perpetrators formal or legal justice and victims not getting any justice.

Conclusion

The implementation of restorative justice at the Tulang Bawang District Prosecutor's Office is guided by RI Attorney General's Regulation No. 15 of 2020, the Tulang Bawang district attorney provides facilities for conducting deliberations and acting as a third party, namely the mediator between the victim and the perpetrator to the point where the successful implementation of restorative justice conducts direct dialogue between the perpetrators and victims, enabling victims to express what they feel, expressing hopes for the fulfillment of rights and desires from a settlement of criminal cases. Through dialogue, the perpetrators are expected to be moved to self-correct, realize their mistakes and accept responsibility as a consequence of a crime committed with full awareness and the perpetrator is expected to compensate for the losses he has done.

Obstacles for the prosecutor's office in implementing restorative justice at the Tulang Bawang District Prosecutor's Office: There are still negative views from the community about efforts to stop prosecution and J's efforts to realize legal certainty and justice, lack of public knowledge regarding stopping prosecutors with restorative justice so it is difficult to make peace between the two sides parties, there are many cases of theft that cannot be applied to restorative justice because the theft committed fulfills the requirements for restorative justice, the duration of time for making peace is too short.

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