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The Penalty System for Minor Crime in Realizing the Values of Pancasila Justice

Erwin Indrapraja [1*], Anis Mashdurohatun[1], Sri Endah Wahyuningsih[1]

[1]Sultan Agung Islamic University, Jl. Kaligawe Raya No.Km.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

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***Corresponding author:** Erwin Indrapraja
Sultan Agung Islamic University, Jl. Kaligawe Raya No.Km.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

Abstract

Minor crimes can still be handled using the concept of a restorative justice approach. Restorative justice has an implementation method by means of penal mediation or by diversion of criminal acts. Penal mediation is used in handling ordinary crimes, in the sense that it is carried out by adults, while the use of diversion is carried out in cases involving children and is in the Children's Court. The problem in this research is how the punishment system for minor crimes is based on Pancasila justice. The research method uses a constructivist paradigm, with a social legal research approach method, and a descriptive research type. Types and sources of data use secondary materials in the form of primary legal materials, secondary legal materials and tertiary legal materials. Data collection methods use literature and qualitative analysis methods. The results of the research are that the punishment system for minor crimes is not yet fair, legal action is still carried out procedurally. One effort that can be made is a policy approach to resolving minor crimes (Tipiring) through restorative justice; so it is necessary to reconstruct the Regulations on Light Crimes Based on Pancasila Justice, namely in the Criminal Procedure Code (KUHAP), in Article 205 Paragraph 1 and the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution.

Keywords: Reconstruction, Regulation, Punishment, Minor Crimes.

A. INTRODUCTION

The punishment system consists of the principles and objectives of punishment, the rules of punishment and also the material of the punishment. The foundation of the criminal system in Indonesia cannot be separated from the Criminal Code (KUHP) which was established through Law Number 1 of 1946, which is still a legacy of the Dutch East Indies government. According to the current Criminal Code, it is not formulated in writing regarding the objectives and guidelines for punishment in Indonesia [1].

In Bambang Waluyo's opinion, the criminal system based on the Criminal Code in Indonesia is still repressive-oriented, which means it is still focused on taking action or retaliating against perpetrators of criminal acts. The punishment system in the Criminal Code still adheres to the retributive paradigm, namely providing appropriate retribution to criminals for the crimes they have committed. Based on this retributive paradigm, the aim of punishment is to provide a deterrent effect to perpetrators of criminal acts so that in the future they will no longer commit criminal acts and prevent society from committing criminal acts [2].

One application of criminal sanctions in Indonesia is to rely on imprisonment as regulated in Article 10 of the Criminal Code. Criminal law is the main means of realizing the objectives of punishment in the retributive paradigm, namely creating a deterrent effect on perpetrators and preventing people from committing criminal acts. Apart from that, the concept of imprisonment is also to create a sense of security in society and protect society from crime. However, in practice the concept of punishment through imprisonment is not in accordance with its initial objectives. This happens because imprisonment is the

[1] Barda Nawawi Arief, 2016, Policy Formulation of Criminal Provisions in Legislative Regulations, Semarang: Pustaka Magister, p.7.

[2] Bambang Waluyo, 2017, Law Enforcement in Indonesia, Jakarta: Sinar Graphics, p. 107

main sanction imposed in punishing perpetrators of criminal acts, as if every perpetrator of a criminal act is sentenced to prison. Also, the aim of imprisonment in creating a deterrent effect on perpetrators is less effective because there are still many criminals who, after being sentenced to prison, recidivate [3].

Imprisonment sanctions also apply to minor crimes (tipiring). Based on the Criminal Code (KUHP), regulations regarding criminal acts are regulated in articles included in Book II of the Criminal Code concerning crimes. Among the regulations regarding minor crimes are article 364 regarding minor theft, article 373 regarding minor embezzlement, article 379 regarding minor fraud, article 384 regarding minor fraud by sellers, article 407 paragraph (1) regarding minor damage and Article 482 regarding minor damage. According to the provisions in Article 205 Paragraph (1) of the Criminal Procedure Code (KUHAP) which was promulgated by Law Number 8 of 1981, it is stated that the category of light criminal offenses is a criminal offense that is punishable by imprisonment or imprisonment for a maximum of 3 (months). and a maximum fine of Rp. 7,500 rupiah [4].

Handling minor crimes (Tipiring) which are processed up to the court level cannot always resolve conflicts that exist in society. In several cases it is considered a minor crime (tipiring), for example in the case of Grandma Minah (55 years) who stole 3 pieces of cocoa in Banyumas, the case of Basar Suyanto (45 years) and Kholil (49 years) who stole watermelon worth 30 thousand in Kediri, the case of Aal (15 years old) who stole flip-flops in Palu and the case of Prita Mulyasari who was considered to have defamed the good name of a hospital, the existing court decisions were deemed unsatisfactory and hurt the sense of justice for the poor in Indonesia. Laws that are made and apply in society will have no meaning if they are not followed by law enforcement by law enforcement officials. However, current law enforcement is considered not to reflect a sense of justice, especially for lower class people. The reason is that law enforcement is considered sharp downwards and blunt upwards [5].

There are still many similar cases involving small communities that can be accessed by the public, thereby generating sympathy from the wider community who ultimately provide advocacy. Law is a series of regulations regarding people's behavior as members of society; while the sole purpose of law is to establish justice, happiness and order in society. Each community has various interests that can cause clashes with each other. If this clash occurs, then society will be shaken and this shock must be avoided. For this reason, the law creates certain relationships in society.

The criminal system must be able to fulfill the sense of justice, usefulness and legal certainty in society. The existing criminal system should also be in line with the values that live and develop in Indonesian society. A criminal system and criminal objectives that are not in accordance with the initial concept will have a negative impact on social and legal aspects in Indonesia [6]. In connection with this legal aspect, the negative impact that arises is the failure to carry out criminal execution which can have an overcapacity impact on Correctional Institutions (LAPAS) as a place where prisoners are sentenced to prison.

Problems with law enforcement regarding minor crimes, some of which have resulted in reactions of dissatisfaction from several groups of society, where the justice imposed is considered disproportionate. Based on this, it should be seen in actual terms which cannot be separated from a realistic phenomenon in society. Thus, in essence, this can be done using the "actual enforcement" theory of law enforcement, as in Joseph Goldstein's theory, In law enforcement, law enforcement must be seen realistically, so that actual law enforcement must be seen as part of discretion that cannot be avoided due to limitations. - limitations, even though integrated monitoring will have a positive impact.

Handling of minor crimes (Tipiring) is carried out using a retributive paradigm, with repressive action against perpetrators of minor crimes, causing the number of prisoners in prisons to increase. This can lead to less effective guidance and correctional functions in prisons, less than optimal supervision functions in prisons and the occurrence of many violations of prisoners' rights in prisons. In the opinion of Romli Atmasasmitha (2017) stated that with overcapacity in prisons, this institution cannot carry out its deterrent function for prisoners because there are still many cases of recidivism in Indonesia [7]. According to data from the Directorate General of Correctional Institutions, Ministry of Law and Human Rights, in June 2021, it was stated that of the 33

[3] Marlina, 2011, Penitentiary Law, Bandung: Refika Aditama, p. 26.

[4] https://new.Hukumonline.com/berita/baca/lt5f0d7bb0a7562/menjangan-rebesar-bisnis-pidana-atasi-over-kapasitas-lapas/, accessed on May 28 2021, at 19.40 West Indonesia time.

[5] Muhammad Taufiq, 2014, Substantial Justice Cuts the Chain of Legal Bureaucracy, Cet I, Yogyakarta: Student Library, p. 161

[6] Sigit Suseno, 2012, Sentencing System in Indonesian Criminal Law Inside and Outside the Criminal Code, Jakarta: National Legal Development Agency Ministry of Law and Human Rights, p. 2.

[7] Romli Atmasasmitha, 2017, "The Principle of No Crime Without Error, No Mistake Without Benefit (Geen Straf Zonder Schud, Schuld Zonder Nut)", in Paper for Arranging National Level Criminal Law & Criminology Lecturers and Practitioners 2017, Surabaya on November 29-1 December 2017, p.3.

Correctional Institutions located at Regional Offices in the Province, as many as 30 Correctional Institution Regional Offices experienced overcapacity and only 3 Correctional Institution Regional Offices did not experience overcapacity. The prisons that do not experience overcapacity are Kanwil Penitentiary D.I. Yogyakarta, North Maluku Prison Regional Office, and Gorontalo Prison Regional Office. Meanwhile, according to the numbers, currently there are 266,270 prisoners and the prison capacity is only 135,647 people [8].

Table 1: Data on Prison Employment in All Regional Offices in Indonesia

No	Satker	Tahanan L	Tahanan L	Tahanan L	Tahanan A	Tahanan A	Tahanan A	Tahanan	Napi Dew	Napi Dew	Napi Dew	Anak Laki-	Anak Pere	Anak	Napi	Total	Kapasitas	% Over Kapasitas
1	KANWIL A	1711	62	1773	8	0	8	1781	6735	233	6968	45	0	45	7013	8794	4105	114
2	KANWIL B	655	27	682	0	0	0	682	2627	270	2897	17	1	18	2915	3597	1518	137
3	KANWIL B	333	15	348	1	0	1	349	1932	114	2046	18	0	18	2064	2413	1311	84
4	KANWIL B	1355	47	1402	9	0	9	1411	8394	782	9176	42	0	42	9218	10629	5197	105
5	KANWIL B	487	18	505	10	0	10	515	1919	101	2020	77	0	77	2097	2612	1742	50
6	KANWIL D	439	26	465	3	0	3	468	1143	95	1238	17	0	17	1255	1723	2039	0
7	KANWIL D	5193	290	5483	6	0	6	5489	11994	625	12619	34	1	35	12654	18143	5791	213
8	KANWIL G	217	11	228	1	0	1	229	731	48	779	5	0	5	784	1013	1078	0
9	KANWIL J/	954	38	992	14	0	14	1006	3501	171	3672	29	1	30	3702	4708	2256	109
10	KANWIL J/	3270	127	3397	36	0	36	3433	18107	659	18766	85	3	88	18854	22287	16761	33
11	KANWIL J/	2398	144	2542	26	0	26	2568	10785	439	11224	85	5	90	11314	13882	9341	49
12	KANWIL J/	6143	282	6425	22	0	22	6447	20623	931	21554	99	1	100	21654	28101	13246	112
13	KANWIL K	1441	93	1534	4	0	4	1538	4015	297	4312	40	1	41	4353	5891	2498	136
14	KANWIL K	1212	50	1262	8	0	8	1270	7873	532	8405	56	2	58	8463	9733	3657	166
15	KANWIL K	631	45	676	3	0	3	679	3471	264	3735	19	0	19	3754	4433	2271	95
16	KANWIL K	1501	77	1578	7	0	7	1585	10220	774	10994	68	1	69	11063	12648	3586	253
17	KANWIL K	436	30	466	16	0	16	482	4026	253	4279	30	0	30	4309	4791	2733	75
18	KANWIL L	1874	37	1911	15	0	15	1926	6487	313	6800	84	2	86	6886	8812	5348	65
19	KANWIL M	320	25	345	1	0	1	346	1169	62	1231	17	1	18	1249	1595	1409	13
20	KANWIL M	170	6	176	1	0	1	177	937	53	990	9	0	9	999	1176	1417	0
21	KANWIL N	888	31	919	4	0	4	923	2240	128	2368	18	0	18	2386	3309	1929	72
22	KANWIL N	505	27	532	5	0	5	537	2306	91	2397	16	0	16	2413	2950	2903	2
23	KANWIL P	496	18	514	8	0	8	522	1845	85	1930	22	0	22	1952	2474	2267	9
24	KANWIL P	229	20	249	2	0	2	251	807	44	851	6	0	6	857	1108	980	13
25	KANWIL R	2494	105	2599	19	2	21	2620	10595	542	11137	77	6	83	11220	13840	4455	211
26	KANWIL S	296	10	306	7	1	8	314	803	44	847	10	0	10	857	1171	1022	15
27	KANWIL S	1983	159	2142	15	0	15	2157	7938	574	8512	66	1	67	8579	10736	6109	76
28	KANWIL S	761	52	813	5	0	5	818	2504	156	2660	25	0	25	2685	3503	1711	105
29	KANWIL S	722	25	747	6	0	6	753	1939	96	2035	56	0	56	2091	2844	2146	33
30	KANWIL S	518	33	551	3	0	3	554	1796	65	1861	33	0	33	1894	2448	2145	14
31	KANWIL S	1216	67	1283	26	0	26	1309	4554	199	4753	28	0	28	4781	6090	3217	89
32	KANWIL S	2099	119	2218	34	0	34	2252	11828	609	12437	99	1	100	12537	14789	6605	124
33	KANWIL S	7576	237	7813	30	2	32	7845	24885	1183	26068	111	3	114	26182	34027	12854	165

The condition and situation of prison overcapacity can give rise to various problems in prisons, among which have occurred are riots in prisons, burning of prisons, prisoners escaping from prisons, crimes in prisons, and encouraging the development of illegal levies by prison officers. Furthermore, overcapacity of prisoners in prisons causes losses both for prisoners whose rights are not fulfilled, as well as for the state which causes budget losses and social losses. The prisoner overcapacity situation also does not support the existence of healthy prison conditions for training and education for prisoners as an effort to return to society as better individuals. In fact, with this overcapacity situation, prisoners are even more stressed and do not receive proper guidance.

One effort that can be made to deal with overcapacity in prisons is a policy approach to resolving minor crimes (Tipiring) through restorative justice. The concept of restorative justice has a different approach to the concept of punishment with a retributive approach. The restorative justice approach is a shift in punishment in criminal law in Indonesia which emphasizes the principle of justice for victims and perpetrators of criminal acts as well as the concept of imposing alternative punishments other than imprisonment or confinement, for example by imposing social work sentences, fines or other crimes. The substance of restorative justice is to build joint participation between criminal perpetrators, victims and community groups to be able to resolve criminal cases by finding solutions that are equally beneficial to all parties (win-win solution).

Restorative justice has a concept of punishment from a perspective related to fulfilling the losses suffered by the victim so that peace becomes the ultimate goal of the concept of restorative justice. However, restorative justice does not necessarily eliminate prison sentences, namely those where criminal cases involve crimes that cause mass losses and criminal acts of murder. Minor crimes can still be handled using the concept of a restorative justice approach. Restorative justice has an implementation method by means of penal mediation or by diversion of criminal acts. Penal mediation is used in

[8]http://smslap.ditjenpas.go.id/public/grl/current/monthly

handling ordinary crimes, in the sense that it is carried out by adults, while the use of diversion is carried out in cases involving children and is in the Children's Court. The restorative justice approach in order to reduce prison overcapacity is implemented through law enforcement officials by carrying out mediation efforts between perpetrators of minor crimes and victims. Currently, the implementation of handling minor criminal cases with restorative justice is still carried out partially and is not comprehensive because the regulations related to the concept of this approach are still limited to technical implementing regulations and are still spread across several settings. The concept of restorative justice is also not yet regulated in the Criminal Code (KUHP) as a legal umbrella relating to criminal acts[9].

A more comprehensive and more systematic effort is needed through a restorative justice approach in the criminal system in Indonesia as an effort to resolve the problem of overcapacity in prisons. Efforts are being made as in the concept of the new Criminal Code Draft Law (RUU) as well as in special arrangements related to restorative justice so that law enforcement officials, namely the police, prosecutors and judges have a strong legal basis in implementing the concept of restorative justice in Indonesia as an effort to overcome the problem of overcapacity in prisons.

Law enforcers often bring cases of minor crimes to the realm of litigation (court), this is due to several factors, including: the influence of positivism, which is based only on legalistic formalities, positivism refers to regulations that must be overcome. The existence of legal education produces law enforcers who are not good at thinking critically about the law. In the practice of legal resolution by judges in court, the influence of positivism is also very strong. For example, proving legal issues and legal truth based on concrete and empirical evidence. The influence of positivism is also visible in the system of standard legal regulations, which apply to all citizens, especially in the field of criminal law. Some well-known cases, for example, have been intensively exposed by the media regarding the punishment of relatively trivial crimes, such as theft of 3 cocoa beans, theft of a watermelon, theft of three kilos of cotton, charging a cellphone in an apartment, which are considered minor by society, but receive legal treatment. rigorously.

Apart from developing in the social sciences, this positivism understanding also influenced the development of legal science. The concept of positive law is concrete evidence of the influence of positivism. Positive law grows and develops as written law, created by groups who have power/sovereignty to regulate concrete life in society, so that positive law is separate from moral values and good and bad. Handling that is light does not bring justice because the case is taken to court. This is due to court overcapacity. Based on the background above, the problem in this research is formulated as follows: how punishment for minor criminal acts can realize Pancasila justice.

B. RESEARCH METHODS

In this research the author uses the constructivism paradigm, a paradigm which views that legal science only deals with statutory regulations. Law is something that must be applied, and is more likely to not question the value of justice and its usefulness for society.

The type of research used in completing this dissertation is the analytical descriptive juridical research method, namely research carried out by examining library materials (secondary data) or library legal research [10], then describing it in the analysis and discussion. The approach method in this research is an approach with y social legal research. The social legal research approach is a method with procedures used to solve research problems by examining primary data in the field [11].

The types of data used are primary and secondary data. [12] To obtain primary data, researchers refer to data or facts and legal cases obtained directly through field research, including information from respondents related to the research object and practices that can be seen and related to the research object. This secondary data is useful as a theoretical basis for underlying analysis of the main problems in this research.

C. RESEARCH RESULTS AND DISCUSSION

The impetus for the need to reform criminal law can be seen from socio-political, socio-philosophical, socio-cultural aspects or from various policy aspects

[9] Dedi Prasetyo, Resorative Justice Transportation Strategy Towards Precision Police, Rajawali Pers.2022.

[10] Ediwarman, 2010, Monograph, Legal Research Methodology, Medan: Univ Postgraduate Program. Muhammadiyah North Sumatra, Medan, pp. 24.

[11] Soerjono Soekanto, 1984, Introduction to Legal Research, Jakarta: UI Press, pp.7.

[12] Bambang Setyabudi, Anis Mashdurohatun, Reconstruction of Legal Protection Regulations for Debtors and Third Parties in Credit Agreements with the Object of Fiduciary Based Guarantee, Sch Int J Law Crime Justice, Volume.5 Issue.12 .2022.p. 520-526

(especially social policy, criminal policy and law enforcement policy). Criminal law reform must also essentially be a manifestation of change and renewal of various aspects and policies behind it. Thus, criminal law reform essentially contains the meaning of an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlie social policy, criminal policy and enforcement policy. law in Indonesia. Thus, in summary, criminal law reform must essentially be taken with a policy-oriented approach and at the same time a value-oriented approach.

Criminal law reform must be carried out with a policy approach, because it is essentially part of a policy step or policy (ie part of legal politics/law enforcement, criminal law politics, criminal politics and social politics). Every policy also contains value considerations. Therefore, criminal law reform must also be oriented towards a values approach.

Enforcement of criminal law within the framework of the criminal justice system in Indonesia, which until now is still based on Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), is indeed felt to not represent various interests. For example, regarding the interests of victims in the criminal justice process who are represented by the Public Prosecutor, there are still significant differences with the interests of criminal perpetrators. Therefore, the goals to be achieved in the criminal justice system as stated by Mardjono Reksodipoetro, namely, among other things, resolving crime cases that occur so that the public is satisfied that justice has been served, are unlikely to be carried out properly [13].

For example, in certain legal cases, if the judge wants his decision to be "fair" (according to the perception of justice held by the judge) for the offender or accused or defendant, then the result is often detrimental to the benefit of the wider community, on the other hand, if the wider community is satisfied, it causes feelings of justice for certain people have to be "sacrificed". Therefore, Radbruch teaches that the principle of priority must be used, namely that the first priority is always "justice", then "benefit", and finally "certainty". The three ideals (ideas or ideals) in law that are desired are justice, expediency and legal certainty as stated above by Radbruch that run side by side in human life. as an ideal basis for thought (rechts-idee), legal ideals are an abstraction of society's understanding of the law and the concept of justice contained therein [14].

Settlement of criminal cases through the current criminal justice system has several weaknesses in realizing justice as follows:

1. Investigation
   a. Inappropriate analysis and evaluation by investigators of reports/complaints.
   b. Investigators are inexperienced, due to inappropriate rotation or transfer of duties.
   c. There is no good cooperation between the intelligence police and investigators

2. Investigation
   a. Back and forth transfer of case files
   b. subjectivity of detention by investigators (no standardization)
   c. Investigators are inexperienced

3. Prosecution
   a. There is still subjectivity in detention
   b. Instructions are only for technical prosecution purposes
   c. The prosecutor's mindset always assumes that the suspect must be punished, even though the prosecutor is actually given the authority to demand acquittal

4. Trial
   a. Subjectivity of detention authority
   b. The judge only confirmed the truth of the contents of the BAP
   c. The judge did not delve into the background of the crime.

Of the weaknesses above, the main reason why the resolution of criminal cases drags on is because case files often go back and forth between the police and the Prosecutor's Office. You can get case files back and forth occurs because:

1. Since the beginning of the investigation, coordination between investigators and research prosecutors has not gone well;
2. When research was carried out on the case file, it turned out that the alleged act was not a criminal act (either a crime or violation), so that it was not possible to prosecute the case file. On the other hand, the research prosecutor did not clearly state this in his instructions (P-19), so that the pre-prosecution process became protracted;
3. There are still investigators who are unable to carry out instructions from the Research Prosecutor because they feel that the case files are complete, even investigators respond to instructions given by the research prosecutor

[13] Mardjono Reksodipoetro, Indonesian Criminal Justice System, Looking at Crime and Law Enforcement Within the Bounds of Tolerance, Java Kurnia, Depok. 2018, pp.11-12

[14] Wilk, Kurt, The Legal Philosophy of Lask, Radbruch and Dabin,Harvard University,Press.1950 : pp.72-78.

with letters, accompanied by their own opinions or by expressing the opinions of legal experts;

4. There are times when errors occur in determining the person who is appointed as a suspect (error in persona), while the Research Prosecutor does not explicitly appoint the person who should be the suspect (according to the facts resulting from research in the case files). This causes the pre-prosecution process to drag on or even stop;

The current criminal justice system in Indonesia is unable to achieve substantial justice for both victims and perpetrators of criminal acts. This is because: Firstly, according to the concept of criminal procedural law, judges do not examine the facts of cases directly from the source but only from the BAP that has been prepared by investigators during the examination, in other words the judge only confirms information that has already been provided in the BAP. Second, to determine the elements of the defendant's guilt the judge uses the syllogism method where the premises are (i) "elements in the formulation of the criminal act" and (ii) facts (acts) found from "evidence" and then followed by (iii) the judge's conclusion, namely the statement the defendant is guilty.

Most law enforcement officials reduce the understanding that enforcing the law is the same as enforcing the law. In the judicial system in Indonesia, there are quite a few court decisions that are far from the dynamics of society. It only refers to formal rules. The court which was supposed to be a place to find justice "turned" into a battlefield to win the case.

The current criminal regulations for minor criminal offenses are not fair because legal action is still carried out procedurally. So there needs to be other efforts that are more dynamic and fair. One effort that can be made is a policy approach to resolving minor crimes (Tipiring) through restorative justice. The concept of restorative justice has a different approach to the concept of punishment with a retributive approach. The restorative justice approach is a shift in punishment in criminal law in Indonesia which emphasizes the principle of justice for victims and perpetrators of criminal acts as well as the concept of imposing alternative punishments other than imprisonment or confinement, for example by imposing social work sentences, fines or other crimes.

The view of justice in law literally has a narrow meaning, namely that what is in accordance with the law is considered fair while that which violates the law is considered unjust. If a violation of the law occurs, a court must be tried to restore justice. In the event that a criminal offense or what is colloquially called a "crime" occurs, a court must be held to restore justice by imposing a sentence on the person who committed the criminal offense or crime.

The view of justice in national law originates from the basis of the state. Pancasila as the basis of the state or state philosophy (fiolosofische grondslag) is still maintained and is still considered important for the Indonesian state. Axiologically, the Indonesian people are supporters of Pancasila values (subscribers of Pancasila values). An Indonesian nation that is devout, humane, united, populist and socially just.

As supporters of values, it is the Indonesian people who appreciate, recognize and accept Pancasila as something of value. Recognition, appreciation and acceptance of Pancasila as something of value will appear to be reflected in the attitudes, behavior and actions of the Indonesian people. If recognition, acceptance or appreciation is reflected in the attitudes, behavior and actions of humans and the Indonesian nation, in this case, it is also the bearer of the attitudes, behavior and actions of Indonesian people. Therefore, Pancasila as the highest source of law is irrational and as a rationality it is the source of national law for the Indonesian nation[15].

Therefore, there is a need for more comprehensive and more systematic efforts through a restorative justice approach in the criminal system in Indonesia as an effort to resolve the problem of overcapacity in prisons. Efforts are being made as in the concept of the new Criminal Code Draft Law (RUU) as well as in special arrangements related to restorative justice so that law enforcement officials, namely the police, prosecutors and judges have a strong legal basis in implementing the concept of restorative justice in Indonesia as an effort to overcome the problem of overcapacity in prisons.

The view of justice in the national law of the Indonesian nation is focused on the foundation of the state, namely Pancasila, the fifth principle of which reads: "Social justice for all Indonesian people". The problem now is what is fair according to the national legal conception that originates from Pancasila.[16]

[15]Anis Mashdurohatun, Erman Suparman, I Gusti Ayu Ketut Rachmi Handayani, Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections, Lex Publica, Volume.6. Issue. 1.2019.pp.52-60

[16]Danialsyah, Anis Mashdurohatun, Reconstruction Of Mediation In Environmental Disputes Settlement Based On Pancasila Justice, Journal Of Law And Political Sciences, Scientific Association For Research And Strategic Studies Faculty Of Law - Academy Of The Aalborg – Denmark. Volume 24. Issue. 3. 2020.p.123-138.

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Social justice concerns the interests of society and a socially just individual must set aside his individual freedom for the interests of other individuals. National law only regulates justice for all parties, therefore justice from the perspective of national law is justice that harmonizes or harmonizes justice that is general among some of the individual justices. In this case, justice focuses more on the balance between the individual rights of the community and the general obligations that exist within the legal community group.

So the value reconstruction that this research wants to achieve is that regulation of minor crimes which previously were not fair is now fair. The existence of Law Number 1 of 2023 concerning the Criminal Code has carried out legal reform in national criminal law which emphasizes that national criminal law must be aligned with legal politics, circumstances and development of social, national and state life aimed at respecting and upholding human rights, based on belief in the Almighty God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and social justice for all people Indonesia.

In the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is emphasized 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, politeness and decency, as well as the obligation to explore the human values, law and justice that exist in society. Settlement 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 is not oriented towards retribution is a legal need for society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system. . 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 for successful prosecutions which are 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 statutory provisions.

Based on the description above, the reconstruction is presented in the table as follows:

Table .2: Reconstruction of Regulations Against Minor Crimes Based on Pancasila Justice

No.	Construction	Weakness	Reconstruction
1.	The Criminal Procedure Code (KUHAP), namely: Article 205 Verse 1: Those examined according to the examination procedure for minor crimes are cases which are punishable by imprisonment or imprisonment for a maximum of three months and/or a fine of up to seven thousand five hundred rupiah and minor insults except as specified in Paragraph 2 of this Section.	Sanctions of imprisonment and fines are still light and the value is relatively small.	Reconstruction of the Criminal Procedure Code (KUHAP), on Article 205 Paragraph 1 by increasing the sanctions of imprisonment and fines, so that it reads; Article 205 Verse 1 Those examined according to the examination procedure for minor crimes are cases which are punishable by imprisonment or imprisonment for a maximum of six months and/or a fine of up to ten million rupiah and minor insults except as specified in Paragraph 2 of this Section.
2	Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice article 1 Number 1 Restorative Justice is the resolution of criminal cases crime involving the perpetrator, victim, family perpetrator/victim, and other parties related to together to seek a fair solution with emphasizes restoration back to its original state, and not revenge.	Implementation that is not fair	Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice by re-emphasizing the principle of proportional justice at the end of the sentence of Article 1 Number 1 so that, it reads; article 1 Number 1 Restorative Justice is the resolution of criminal cases crime involving the perpetrator, victim, family perpetrator/victim, and other parties

			related to together to seek a fair solution with emphasizes restoration back to its original state, and not proportional and fair retaliation.

D. CONCLUSION

The punishment system for minor crimes is not yet fair, legal action is still carried out procedurally. So there needs to be other efforts that are more dynamic and fair. One effort that can be made is a policy approach to resolving minor crimes (Tipiring) through restorative justice. The concept of restorative justice has a different approach to the concept of punishment with a retributive approach. The restorative justice approach is a shift in punishment in criminal law in Indonesia which emphasizes the principle of justice for victims and perpetrators of criminal acts as well as the concept of imposing alternative punishments other than imprisonment or confinement, for example by imposing social work sentences, fines or other crimes. Reconstruction of Regulations Against Minor Crimes Based on Pancasila Justice, namely: that the reconstruction of the value to be achieved in this research is regulations on minor criminal acts which were previously unjust, but now are fair. nRegulation of norms for minor crimes based on Pancasila justice, namely reconstruction in: Book The Criminal Procedure Law (KUHAP), in Article 205 Paragraph 1 by increasing the sanctions of imprisonment and fines. And Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice by re-emphasizing the principle of proportional justice at the end of the sentence of Article 1 Number 1.