

The Concept of Law Enforcement of the Crime of Theft through a Restorative Justice Approach

Fajar Seto Nugroho¹, Anis Mashdurohatun^{1*}, Bambang Tri Bawono¹, Jamal Wiwoho²

¹Universitas Islam Sultan Agung Semarang, Indonesia

²Universitas Sebelas Maret Surakarta, Indonesia

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*Corresponding author: Anis Mashdurohatun
Universitas Islam Sultan Agung Semarang, Indonesia

Abstract

This research is considered important because efforts to resolve general criminal cases in Indonesia through a restorative justice approach can be realized if a regulation of material criminal law can be substantively reconstructed to provide legal certainty for justice seekers in a restorative justice manner. There was a conflict between *Das Sein* and *Das Sollen*. There are three problems raised in this dissertation research, which are about how the concept of law enforcement for criminal acts of theft through a restorative justice approach. To analyze these problems used the social legal research method. The results of this study found that the restorative justice approach is to realize the implementation of restorative justice in the settlement of general crimes with substantive legal, progressive, efficient and just powers. Reconstruction of several articles consisting of formal and material laws and regulations as well as law enforcement implementing regulations including the Criminal Code, the Criminal Procedure Code, the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Regulations Kapolri Number 14 of 2012 concerning Investigation Management, Kapolri Regulation Number 3 of 2015 concerning Community Policing. The concept of upholding the crime of theft through a restorative justice approach is to realize sentencing efficiency and a change in the sentencing paradigm. Looking at the phenomenon of the Indonesian judiciary which is very crowded from the accumulation of case files as an illustration of the large number of cases in this Republic, the condition of prisons that are over capacity, as well as the increasingly high state budget for financing legal proceedings.

Keywords: Restorative Justice, Theft crime.

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A. INTRODUCTION

Criticizing Law enforcement in the implementation of law in Indonesia has so many shortcomings and weaknesses. The most important shortcoming to be assessed is not in the legal system and its legal products, but in the law enforcement process. So that the public's desire to obtain guarantees and legal certainty is still very limited. Of course, in this case, it gives a negative stigma to law enforcement in society. Law enforcement and implementation have not been carried out in accordance with the principles of justice and truth. If this is not changed, it is certain that law enforcement is far from the ancestral values of our nation, namely law enforcement that is based on Pancasila values.

The process of law enforcement is often faced with the dilemma of achieving legal objectives. In the case of Mbok Minah, for example, an old grandmother

who was convicted of stealing 3 cocoa beans from her employer's garden and at the same time a mayor was sentenced to 6 months for corruption of billions of rupiah [1], for a moment we ask, is this the essence of justice carried out by law?

Then there was a case a few years ago, namely a case in the city of Palu, Central Sulawesi when AAL, a boy at a vocational school was arrested, accused and tried to steal flip-flops belonging to a police officer. Single judge Rommel F Tampubolon's decision in a hearing at the District Court (PN) Palu, Central Sulawesi, which found AAL guilty and handed over his guidance to his parents. AAL was accused of stealing flip-flops brand Eiger number 43 belonging to Brigadier

¹ Widodo Dwi Putro, *Mencari Kebenaran Materiil Dalam "Hard Case" Pencurian Tiga Buah Kakao*, Jurnal Yudisial, Vol-III/No-03/Desember/2010, p. 220

Ahmad Rusdi Harahap, a member of the Central Sulawesi Mobile Brigade Police. However, at trial, the sandals branded Ando number 9.5 were used as evidence. The judge's decision also did not mention that the sandals belonged to Ahmad. Judge Rommel's ruling may not be legally problematic [²]. However, considering that so far the treatment and sentences given to perpetrators of corruption have been low, this decision does not fulfill the people's sense of justice.

Several of the above cases and other cases have become common sights in our law enforcement process. Responding to such conditions of law enforcement, it can be assumed that anyone who is guilty must legally go through the legal settlement process as stipulated in the provisions of the legislation. Law enforcers should pay attention to the side of legal justice.

According to the proponents of the value of justice, the law so far moves faster and sharper when legal cases are related to small people and question the interests of big people, including those with power. However, if a case links or the alleged perpetrators are big people and powerful, then the law seems to be paralyzed and dull. Law enforcement must prioritize the values of justice, of course universal justice. Legal justice in this context is a legal settlement process that goes beyond the text of laws and regulations (beyond the law) and prioritizes the substance of the value of justice in a case.

Today in various countries including Indonesia there is dissatisfaction and frustration with the existence of formal criminal law through the Criminal Justice System (CJS) model. This is due to changes as well as the development of the criminal justice system which is considered no longer able to provide protection for basic rights inherent in humans and transparency towards interests in general. So that through this problem a new idea emerges in overcoming the weaknesses or deficiencies contained in the criminal justice system model through transfers that are carried out formally to non-formal in the settlement, the settlement is through the Restorative Justice model. Besides the just desert model, there is also another model, namely the restorative justice model which is often faced with the retributive justice model [³].

The concept of restorative justice is basically carried out through wisdom and diversion, namely

² Ashinta Sekar Bidari, *Ketidakadilan Hukum Bagi Kaum Sandal Jepit*, Jurnal FH Unsa, Vol 3 No 2 2013, p.1.

³ Prayogo Kurnia, Resti Dian Luthviati, Restika Prahanela, *Penegakan Hukum Melalui Restorative Justice yang Ideal sebagai Upaya Perlindungan Saksi dan Korban*, GEMA, Th. XXVII/49/Agustus 2014-Januari 2015, p.1498

moving the criminal process outside the formal process to be resolved by deliberation [⁴]. Settlement through consultation is nothing new 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. Justice to be achieved or aspired to is the result of ideas and ancestral values of a nation contained in the philosophy of Pancasila [⁵].

The national policy is Pancasila which is the core philosophy of the nation. As the core philosophy of the nation, Pancasila is a source of value for the existence of a legal system in Indonesia [⁶]. Pancasila in the fourth precept teaches that in an event to determine a decision, deliberations that reach a consensus with family values are a good way, so that if pulled back the meaning of the deliberations contains five principles as follows first, Conferencing (meeting to hear each other and express desire); second, Search solution (looking for meeting points for the problems faced); third, Reconciliation (reconciliation and individual responsibility); fourth, Repair (repairing the consequences that arise); Fifth, circles (mutual support).

These principles are keywords regarding the formulation of the restorative justice paradigm, so that from a constitutional aspect, the value of restorative justice finds a foothold in the fourth precept Pancasila philosophy. The foundation in the philosophy of the 4th precept, if examined further, its implementation leads to a pattern of criminal case settlement using a principle called VOC (Victem Offender Conferencing) whose research target is the realization of VOM (Victim Offender Mediation), namely an opportunity for peace that mutually agrees on improvements in both sides. party. The goal is to resolve conflict issues between people who are directly affected, not a direct conflict between the State and the accused. The deliberation rules in the fourth precept reflect consensus and expediency with family values which contain the essence of Exspeilencing Justice.

Satjipto Rahardjo said, law enforcement regulates an effort to realize ideas and concepts into reality. Law enforcement is the process of realizing legal aspirations, which are referred to as laws here only

⁴Trinita Yulinda Sirait, Irma Cahyaningtyas. *Restorative Justice Approach in The Settlement of Children's Cases in Indonesia*. Legality, Vol. 27, No. 2, September 2019-Februari 2020, p.234

⁵Duwi Aryadi, *Implementasi Keadilan Restoratif dalam Sistem Peradilan Pidana sebagai Perwujudan Nilai-Nilai yang Berwawasan Pancasila*, Al-Daulah, Vol.9 / No. 2/Desember 2020, p.141

⁶ Suparman Usman, *Pokok-Pokok Filsafat Hukum*, Serang, Suhud Sentrautama, 2010, .p.164.

as legislative ideas governed by the rule of law [7]. Talks about the process of law enforcement including law makers. The composition of the deliberations for legislators (legislation) as described in the statutory regulations will also determine how law enforcement is carried out [8].

Law enforcement efforts mean efforts to maintain recognized laws in a functioning society. This effort in principle must ensure that all citizens comply with the laws that apply in society. According to Rudi Hartono, in line with the principle of restitution *integrum* [9], that the balance in society which has been disrupted (because of not being implemented or breaking a rule of law) must be returned to its original state, it is proven. The atmosphere of order, order, peace and security which is the guarantee of human life. The law governs and regulates people in social life, so that the justice system is based on human respect and protection.

The law enforcement system in Indonesia must be in accordance with the values practiced and practiced by society, the values that guide the life of the Indonesian nation in Pancasila, namely divinity, kinship, justice, harmony, unity, humanity (humanism), decency, order and relations. (mutual cooperation). As a country that adheres to the Continental European system, of course the values of Pancasila are stated in the form of laws, including values in the rules of law enforcement [10]. Indonesian law enforcement which is considered to have violated general justice and is considered far from the values of Pancasila, through the concept of restorative justice in the settlement of disputes or cases is seen as a kind of settlement that meets Pancasila values, especially regarding the values of the fourth Pancasila precept (deliberation). However, this does not reduce or protect the interests of the victims, but also undermines the value of justice and benefits for the parties.

In recent times it seems as though only the courts are the best place to resolve legal issues (conflicts) and seek justice. Thus, any indication of a criminal act, without taking into account the escalation of his actions, will continue to be rolled out to the realm of law enforcement which is only the jurisdiction of law enforcers. It is as if the active participation of the

community is no longer important, everything only boils down to a court decision in the form of punishment without looking at its essence. In fact, in a criminal trial the parties who play a role are the public prosecutor, judges, defendants, and legal advisers and witnesses. The victim is represented by the public prosecutor and to strengthen the evidence, the person concerned is usually used as a witness (victim) [11]. However, it has not yet provided a real impact or benefit for victims of crime.

When viewed from its history, the restorative justice model approach was actually an emergency approach in the 1960s in order to resolve criminal cases, which did not use the criminal justice system. With this restorative justice approach, this approach focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases [12]. Indeed, this approach in practice is still debatable in theory, but this view is developing and has an impact on legal policy and law enforcement practices in several countries. Restorative justice is considered a new form of thinking that can be used to respond to various crimes and answer dissatisfaction with the current performance of the criminal justice system.

In addition, the concept of restorative justice is also considered in accordance with the values of Pancasila which is the source of all sources of Indonesian law and is a legal system that originates from and is rooted in various legal systems used by Indonesian society, which includes the customary law system, and the Islamic legal system which is prioritizing deliberation in solving problems (conflicts) that occur between members of the community. Satjipto Rahardjo said, law enforcement regulates an effort to realize ideas and concepts into reality. Law enforcement is a process of making legal wishes come true. What is referred to as legal desires here are none other than the thoughts of the legislature which are formulated in the legal regulations. Discussions about the law enforcement process also reach the legislators [13]. The formulation of the thoughts of legislators (laws) as outlined in legal regulations will also determine how law enforcement is carried out.

Law enforcement efforts mean that there are efforts to maintain that the existence of a law that is recognized in a society can be upheld. These efforts basically have to guarantee that every citizen complies

⁷ Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman, 1993, p.116

⁸ *Ibid*

⁹ Rudi Hartono, *Kewenangan Kepolisian Menurut KUHAP Dalam Perspektif HAM, makalah Semiloka: KUHAP dan Menuju Fair Trial "Victim Protection"*. LBH Yogyakarta, 24 Juli 2013, p 1.

¹⁰ Munir Fuady, *Aliran Hukum Kritis, Paradigma Ketidakberdayaan Hukum*, Bandung: Citra Aditya Bakti, 2003, p. 58-59.

¹¹ Bambang Waluyo, *Viktimologi Perlindungan Saksi dan Korban*, Jakarta: Sinar Grafika, 2011, p. 8

¹² T.Hansen & M. Umbreit, *State of knowledge: Four Decades of Victim-Offender Mediation Research and practice: The Evidence*. Conflict Resolution Quarterly, Volume 36 Nomor 2, 2018, p.106

¹³ Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman, 1993, p.116

with the law in force in the society concerned. According to Rudi Hartono, in line with the principle of restitution in integrity [14], that the balance in society which has been disrupted (due to non-implementation or violation of a rule of law) must be restored to its original state, for the purpose of creating an orderly, orderly, peaceful and safe atmosphere, which is guarantee for human survival. The law regulates and controls humans in life together, so the legal system starts from respecting and protecting humans. Therefore, in order for human protection (*justiabelen*) to be protected, in accordance with the adage "*fiat justitia et pereat mundus*", the law must be upheld even if the sky falls, either in normal or peaceful conditions, or in times of violation of the law.

B. RESEARCH METHOD

The research method used is juridical empirical [15]. This research is a qualitative research, the type of data used is primary and secondary data [16]. Data collection techniques through literature and field studies, interviews and questionnaires). The data collected were analyzed through descriptive analytic [17].

C. DISCUSSION

1. Restorative Justice as the Embodiment of the Implementation of Pancasila Philosophy

The State of Indonesia is a constitutional state, the confirmation of this can be seen in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to Daniel S. Lev, the constitutional juridical affirmation by the founding fathers as above is very appropriate, because sociologically various groups of Indonesian society also support or agree with the rule of law for various reasons [18]. This has the meaning that all sub-systems of the administration of the Indonesian state and its constitutional system, its social order system must be

governed by law, and also all elements of the instruments of state power and citizens must comply with the laws created for the Indonesian legal state. This is also called the notion of constitutionalism which is adhered to in a rule of law state. Because law is the backbone for regulation and guarantees the maintenance of order, all strategies for drafting laws, using law, legal institutions and law enforcement are very important in order to realize the ideals of a rule of law state.

In order to realize the ideals of a rule of law state as above, development in various fields must be carried out, including development in the field of law. When discussing development in the field of law, of course one cannot escape the discussion of legal politics (legal policy). Vice versa, when talking about legal politics it is closely related to legal development. Basically legal development is an action or activity intended to shape legal life in a better and more conducive direction. Legal development is not an independent entity, but is integrated with the development of other fields, so that it is a continuous process and synergizes with other development fields. Of course here, legal development is not only meant for the development of positive law, namely legislation, but also in a broad sense which refers to a system, which does not only include the development of legal material, but also institutions and law enforcement, legal services, and increasing public legal awareness and the legal apparatus itself [19].

The philosophy adopted in the development of national law for approximately forty years is the concept of development law which places the role of law as a means of community renewal. In such a concept, the implementation of legal development has a function as a custodian of order and security, as a means of development, a means of upholding justice, and a means of public education. Therefore, if in the implementation of development, law is interpreted as a means to achieve state goals, national legal politics must be based on a basic framework, namely:

- 1) National legal politics must always lead to the ideals of the nation, namely a just and prosperous society based on Pancasila;
- 2) Legal politics must be aimed at achieving state goals;
- 3) Legal politics must be guided by the values of Pancasila as the foundation of the state, namely based on religious morality, respecting and protecting human rights without discrimination, uniting all elements of the nation, placing power under the rule of the people, and building social justice;

¹⁴ Rudi Hartono, *Kewenangan Kepolisian Menurut KUHAP Dalam Perspektif HAM, makalah Semiloka: KUHAP dan Menuju Fair Trial "Victim Protection"*. LBH Yogyakarta, 24 Juli 2013, p. 1.

¹⁵ Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, *JPH: Jurnal Pembaharuan Hukum*, Volume 8, Number 3, December 2021.

¹⁶ Sunaryati Hartono. *Legal Research in Indonesia at the End of the 20th Century*, Bandung: Alumni, 1994.

¹⁷ Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, *Jurnal Akta*. Volume 9 No. 3, September 2022.

¹⁸ Daniel S. Lev, *Hukum dan Politik di Indonesia: Keseimbangan dan Perubahan*, Cetakan I, Jakarta: LP3ES, 1990, p. 386

¹⁹ Chairul Huda, *Politik Hukum Pembangunan Sistem Hukum Nasional Dalam Konteks Pancasila, UUD NRI Tahun 1945, dan Global*, Makalah disampaikan pada Seminar Nasional Fakultas Hukum Universitas Muhammadiyah Jakarta, Tanggal 22 November 2014

- 4) When linked to the legal ideals of the Indonesian state, legal politics must protect all elements of the nation for the sake of integration or national integrity, realizing social justice in the economy and society, realizing democracy (people's sovereignty) and legal sovereignty nomocracy, and creating religious tolerance based on civility and humanity;
- 5) The direction of legal development is not something that stands alone, but is integrated with the direction of development in other fields requiring harmonization. Even though the direction of legal development is based on the outlines of ideas in the 1945 Constitution of the Republic of Indonesia, alignment is needed with the level of development of society that is envisioned to be created in the future. Legal development is not identical and should not be identified with the development of laws or regulations according to terms commonly used in Indonesia. Forming as many laws as possible does not mean the same as forming laws. Country of law is not a country of laws. The formation of laws only means the formation of legal norms. Whereas the social, economic, cultural and political order is not merely a normative order. For this reason, a certain spirit is needed so that the order has the capacity.

In relation to the matters mentioned above, the legal changes implemented in Indonesia should be directed towards creating more stable conditions, so that every citizen can enjoy an atmosphere and climate of order and legal certainty with the core of justice. It must also provide support and safeguards for development efforts to achieve prosperity, by means of codifying and unifying laws in certain fields by taking into account the growing legal awareness in society. For this reason, it is necessary to continue steps to compile legislation concerning the basic rights and obligations of citizens in the context of implementing Pancasila and the 1945 Constitution of the Republic of Indonesia legal certainty [20].

Prof. Dr. Mahfud MD provides a simple understanding that legal politics is a legal policy that will be or has been implemented nationally by the government [21]. Pancasila which is the source of all sources of Indonesian law and the 1945 Constitution of the Republic of Indonesia as the basic law, serves as a guideline, touchstone, guide and filtering tool as well as the goal of all national legal politics. Sunaryati Hartono said that if we place law as a bridge that will lead us to the ideals we aspire to, then we must first know what kind of society the Indonesian people aspire to be. After

²⁰ Abdul Manan, *Aspek-Aspek Pengubah Hukum*, Jakarta: Kencana Prenada Media, 2009, p. 5

²¹ Moh. Mahfud MD, *Politik Hukum di Indonesia*, Jakarta: Pustaka LP3ES Indonesia, 1998, p. 7-9

we know what form of society the Indonesian people aspire to, we can look for which legal system can realize these ideals, and how legal politics can create the desired legal system [22].

Related to the form of society that the Indonesian people aspire to, according to Sunaryati Hartono is a just and prosperous society that is evenly achieved in a reasonable and humane way, which in turn achieves harmony, harmony and peace throughout the country [23].

Meanwhile, with regard to the national legal system that can realize the society that the Indonesian people aspire to, according to Sunaryati Hartono, it is a national legal system based on Pancasila and the 1945 [24] Constitution of the Republic of Indonesia. Romli Atmasmita said that the essence of national legal politics is legal certainty. justice and expediency must be seen as a condition sine qua non, not the other way around as a condition qum qua non [25].

Talking about legal reform is very closely related to legal policy. Hoefnagels said that legal policy is an integral part of social policy; or in other words, social policy includes legal policy, which in full is said to be law enforcement policy [26].

So, legislative policy and law enforcement policy are part of social policy [27], which according to Barda Nawawi Arief is a policy or effort to achieve social welfare [28].

Barda Nawawi Arief further said that social policy is all rational efforts to achieve people's welfare and at the same time includes community protection. So, in the sense of "social policy" it also includes "social welfare policy" and "social defense policy" [29].

Related to the legal politics of criminal law renewal in the future national criminal law, the concept of restorative justice is known. This concept is relatively new in the criminal law enforcement process

²² Artidjo Alkostar dan M. Sholeh Amin (Ed), *Pembangunan Hukum Dalam Perspektif Politik Hukum Nasional*, Jakarta: Rajawali, 1986, p. 1.

²³ *Ibid*

²⁴ Sunaryati Hartono, *Politik Hukum Nasional Menuju Satu Sistem Hukum Nasional*, Bandung: Alumni, 1991, p. 58-66

²⁵ Romli Atmasmita, *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*, Yogyakarta: Genta Publishing, 2012, p. 111

²⁶ G.P. Hoefnagels, *The Other side of Criminology*, Holland: Deventer-Kluwer, 1978, p.57

²⁷ *Ibid*

²⁸ Barda Nawawi Arief, *Op.Cit*, 1996, p. 3

²⁹ *Ibid*

and also holds the perpetrators accountable. In this concept, it offers a form of settlement of various legal cases that occur outside the existing criminal justice process, so that society does not only depend on the current procedures. But still get justice and problem solving, especially for victims as the party who suffers the most, as well as accountability for the perpetrators. One form of solution offered is the settlement process in the context of restorative justice.

The restorative justice approach model appears based on ideas that criticize that law enforcement through the criminal justice system with imprisonment is considered no longer effective in resolving problems that occur in society. Restorative justice is an alternative effort in the criminal justice system, of course in this case it will provide an offer through an integral approach between the perpetrator and the victim to find various solutions or the best way out between the two parties ^[30]. The improvement referred to in this case will emphasize compensating for losses made by the perpetrator ^[31].

This is in line with what was stated by John Braithwaite, he said that the main purpose of Restorative Justice is the improvement made by the perpetrator and in this case does not override the rights of the victim as the aggrieved party through conciliation and reconciliation among perpetrators, victims and public. The alternative solution in this case focuses more on peace between the victim and the perpetrator which is a win-win solution and in the end it will certainly provide substantive justice, not just the law that is stuck in the text alone. Law Enforcement through the Criminal Justice System only prioritizes aspects of legal certainty without regard to aspects of justice and benefits for society. Even though law enforcement is only based on the law, in this case what is achieved is legal certainty, it will actually result in the law losing its true meaning, in this case the real purpose of law is law that gives a sense of happiness, benefit and justice for society. to ensure the fulfillment of human rights ^[32].

In the Indonesian context, patterns of a restorative justice approach to resolving criminal cases have basically been practiced in various Indonesian traditional societies (indigenous peoples). Indigenous peoples take deliberations to reach consensus which is the most important value of restorative justice to resolve problems that arise. The concept of restorative justice

has actually been rooted in the life and culture of the Indonesian people which is the soul and personality (volkgeist) of the Indonesian people. However, during the Dutch colonial period, Indonesian customary law was subordinated to European (Dutch) law. After Indonesia's independence, the existence of customary law communities has been implicitly acknowledged in Paragraph IV of the Preamble of the 1945 Constitution, namely: "protect the entire Indonesian nation" which implies that the state is obliged to protect the entire Indonesian nation, including customary law which is the original law of the Indonesian nation which is the soul of the Indonesian nation and the personality (volkgeist) of Indonesian society that already exists, grows and develops as a manifestation of the values reflected in Pancasila. Awareness of the importance of the concept of restorative justice as the soul and personality (volkgeist) of the Indonesian people has prompted the government to make legal breakthroughs, although these legal breakthroughs are still partial.

The Indonesian criminal law (Wvs) which has been enforced to the present day is a legacy from the Dutch State, which enforced the principle of legality very strictly, so that patterns of settling criminal cases by deliberation for consensus were not recognized in Indonesian criminal law. In this case, namely through diversion with the concept of restorative justice which offers a mechanism by prioritizing the concept of peace through a process of deliberation, both mediation, reconciliation in resolving cases involving the direct participation of both victims, perpetrators and the community. This is inversely proportional to the approach model through the criminal justice system so that the practice of law enforcement in Indonesia still leaves many problems.

Until now, the legal process in the jurisdiction of the judiciary is considered not to fully reflect the values of justice for justice seekers, causing disappointment and dissatisfaction for many parties. Justice is something that is far from the reach of society, so there is a need for a justice system that fulfills a sense of justice for all parties. Broadly speaking, it examines the concept of restorative justice and analyzes the value of Pancasila philosophy in the concept of restorative justice. Actual problems related to justice and Pancasila philosophy. The Role of Pancasila Philosophy as Genetivus Subjectivus with the concept of Restorative Justice. Restorative justice is justice based on peace between perpetrators, victims and society. This is the moral ethics of Restorative Justice, therefore justice is said to be the "Just Peace Principle". This principle reminds us that justice and peace are basically inseparable. Peace without justice is oppression, justice without peace is a new form of persecution/pressure. It is said to be the Just Peace Principle or Just Peace Ethics because the approach to crime in Restorative Justice aims to restore damage caused by crime (it is an attempt to recover justice), this

³⁰ K. P. Prayitno, *Restorative Justice untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum in Concreto)*. Jurnal Dinamika Hukum, Vol. 12, No.3, 2012. P. 409

³¹ A.Nurwianti, Gunarto & Wahyuningsih, *Op.Cit*, Vol.12, No.4, 2017, p. 709

³² Yohanes Suhardin, *Fenomena Mengabaikan Keadilan Dalam Penegakan Hukum*, Jurnal Mimbar Hukum, Vol. 21 No. 2, 2009, p. 342.

effort is carried out by bringing together victims, perpetrators and the community. Second, in the perspective of Pancasila philosophy, the concept of restorative justice is in accordance with Pancasila values. Philosophically Pancasila as the source of all laws in Indonesia provides space so that the concept of Restorative Justice can be applied without violating existing legal rules. Restorative justice or restorative justice is a new approach in efforts to resolve criminal cases through recovery. This concept basically focuses more on the participation or direct participation of perpetrators, victims and the community in the process of resolving criminal cases. So that this popular approach is also known as the non-state justice system where the role of the state in the settlement of criminal cases is small or even non-existent.

The problems present in Indonesian criminal law so far, namely the formulations in the Criminal Code and the Criminal Procedure Code regarding legal protection and human rights of victims have not been regulated optimally when compared to perpetrators or suspects. For example, the Criminal Code is still thick with neoclassical views such as accepting mitigating circumstances for perpetrators of criminal acts. Meanwhile, the position of the victim in the Criminal Code has not been regulated optimally. The a quo problem cannot be separated from the focus of criminal law studies so far which only lies in criminal acts, criminal responsibility, and criminal threats. In Casu, this focus is influenced by the Absolute Theory (*vergeldingstheorien*) adhered to by Immanuel Kant, Hegel, Herbart and Julius Stahl. The theory that emerged at the end of the 18th century considers retaliation to be the legitimacy of punishment [33]. In this theory explicitly stated that the punishment was imposed on the perpetrators because they just deserted, that they were punished because they deserved to be punished for their disgraceful behavior. The concept of just desert in retribution refers to the ill-desert of the perpetrator and can be fulfilled through a negative payment or criminal revenge [34]. Furthermore, Satjipto Rahardjo explained that the settlement of cases through the justice system which ends in a court verdict is a law enforcement towards a slow track. Why is that, because law enforcement goes a long way, through various levels starting from the Police, Attorney General's Office, District Court, High Court and even up to the Supreme Court which in the end has an impact on the accumulation of cases that are not small in number in

court. Thus causing the criminal justice system to be less than optimal in its implementation. In addition, justice that is expected through formal means does not necessarily reflect a sense of justice, because it is expensive, prolonged, tiring and does not solve problems and what is even worse is that it is full of practices of corruption, collusion and nepotism.

Restorative Justice and the Ideals of Pancasila Law, Citing one of the adages in Prof.'s book. Eddy Hiariej with the title Principles of Criminal Law contains a postulate *le salut du peuple est la supreme*, namely the highest law is the protection of society. That is, the highest law which is the protection of society includes the values of justice and human rights that are owned by both perpetrators, victims, and society. This protection must be upheld and should not be ignored. By using the Restorative Justice criminal system, at least in the settlement of criminal cases it can involve the perpetrators of crimes, victims and other related parties to seek a fair settlement by emphasizing restoration to the original state and not retaliation.

Restorative Justice can also uphold the basic philosophy of upholding law and human rights based on the ideals of Pancasila, namely the 4th principle of Pancasila. This precept contains a philosophy of deliberation or deliberation which has the meaning of prioritizing deliberation in making decisions for the common good. Deliberation to reach consensus includes the spirit of kinship, so that if broken down the deliberation philosophy contains the following five principles. First, conferencing (meet to hear and express wishes); second, search solution (looking for a solution or meeting point for the problem at hand); third, reconciliation (making peace with each other's responsibilities); fourth, repair (repair of all the consequences that arise); fifth, circles (mutual support) [35].

Based on the five principles above, constitutionally restorative justice finds its foundation in the philosophy of the 4th precept of Pancasila. This basis, if implemented in the pattern of settlement of criminal cases, contains a principle known as VOC (Victim Offender Conferencing). The target in VOC (Victim Offender Conferencing) is mediation or VOM (Victim offender Mediation), which is an opportunity to make peace and mutually agree on improvements [36].

The concept of Restorative Justice is also able to answer various problems that arise in criminal law cases, namely First, criticism of the criminal justice system which does not provide opportunities especially for victims (criminal justice system that disempowers individuals). Second, eliminating conflicts between

³³ Stephen Benton dan Bernadette Setiadi, *Mediation and Conflict Management in Indonesia dalam Conflict Management in the Asia Pacifics, Assumptions and Approaches in Diversi Cultures* eds Kwok,L, dan Tjosvold D, John Wilye and Sons, Singapura, Jurnal Law Pro Justitia Vol. II, No. 2, Juni 2017,p. 228.

³⁴ Azhari, *Negara Hukum Indonesia Analisis Yuridis Normatif Terhadap Unsur-Unsurnya*, UI Press, Jakarta, 2009, p.81.

³⁵ K. P. Prayitno, *Op.Cit*, Volume 12 Nomor 3, 2012,p.414

³⁶ *Ibid*

perpetrators and victims and society (taking away the conflict from them). Third, the fact that the feeling of powerlessness experienced as a result of a criminal act must be overcome in order to achieve reparation. Thus, future criminal law enforcement can certainly be based on the legal ideals of Pancasila, namely the realization of justice for all parties without any loss for any of the parties. With this, it can also change the paradigm used in the purpose of punishment, which is to repair damage that is individual and social (individual and social damage) caused by the perpetrators of criminal acts (*dader strafrecht*). Bearing in mind, victims have human rights to get repair, recovery, and justice for criminal acts committed by perpetrators.

Goodness can only be realized if there is human love for each other, and this love will only be realized if there is justice. Conditions of justice will be formed if there is a law that will be a means for administering love to others. Thus, the law should be based on reason. If the law is structured so that it can bind human actions, the law must be fair and guide humans towards the ultimate goal, namely goodness. In the relationship between social interaction and the enactment of law, there is a tendency to defend oneself, a tendency to live in a society, a tendency to obtain the truth, and a tendency to act based on reason's decisions. These four forms of law enforcement are very relevant to the essential characteristics of Pancasila which by nature places humans as creatures of the one God who aspires to human existence, as creatures who unite with their environment based on a sense of brotherhood, and as creatures who must live together and have the will to live together. to create social justice for the people of Indonesia. Indonesia as a system contains a collection of different people, but one because of its unity by eliminating ethnic, religious, racial and inter-group differences in various aspects. Pancasila is the ideology (belief) of the Indonesian nation that wants Indonesian people to be Godly, humane, unite people with their humanitarian ideals, converse with other humans, and be fair as the basis for ideals of justice. It is Pancasila that can be the benchmark for being called a "complete Indonesian human being". The essence of law according to Pancasila for the extended family of the Indonesian nation is a law that is Godly, humane, prioritizes the unity and glory of Indonesia, is democratic, and of course fair. In addition, Pancasila is an ethic that is a benchmark for being called a "complete Indonesian human being". A complete Indonesian human being is a human being who fulfills his Indonesian law.

This Indonesian law also guides the Indonesian people in behaving and acting, both towards each other and their environment. In line with the development of human civilization, law is not static, but dynamic in nature which is continuously influenced according to the needs and wishes of society. An appropriate legal system in Indonesia is a legal system that is based on the values of life and culture of the Indonesian nation,

namely Pancasila which the founding fathers have determined as the basic philosophy of the nation and state. Thus, the order of the national legal system must refer to the legal ideals (*rechtsidee*) of Pancasila. Several legal experts gave their opinion regarding the characteristics of the national legal system based on Pancasila. The national legal system that is in accordance with the values that live in Indonesian society is the national legal system based on Pancasila which includes the following values:

- 1) Belief in One Almighty God The formation of law in Indonesia must be based on divine or religious values. In addition, the law must guarantee freedom of religion and must not prioritize one religion and exclude other religions.
- 2) Just and civilized humanity Every law formation must have guarantees and respect for human rights
- 3) The legal unity of Indonesia must pay attention to the unity and integrity of the nation and state. The formation of law must not trigger division (*disintegration*) of the nation and state.
- 4) Democracy led by wisdom in representative deliberations. The formation of law must be based on democratic values that involve all elements in the country, including the government, legislature and society.
- 5) Social justice for all Indonesian people The formation of national laws must aim to provide justice and welfare for all Indonesian people. A legal system based on Pancasila can provide a balance between conflicting values in society. The legal system must be able to provide balance points in the state's efforts to carry out development which changes very quickly which will eliminate the old balance, both in relations between individuals and groups in society. In addition, the national legal system will create legal harmonization and eliminate legal system pluralism so that a harmonious national legal system in the sense of harmony, harmony, balance, and consistency, and avoiding conflicting legal norms with other legal norms can be formed.

Restorative justice requires cooperative efforts from the community and government to create conditions for victims and perpetrators to reconcile conflicts and repair their wounds. Restorative justice returns conflict to the parties most affected, such as victims, perpetrators, and the interests of their communities, and gives priority to their interests. Restorative justice also emphasizes human rights and the need to recognize the impact of social injustice and in simple ways to restore rather than simply giving perpetrators formal or legal justice and victims not getting any justice. Restorative justice also seeks to restore victims' safety, personal respect, dignity, and more importantly a sense of control.

The various purposes of punishment stated above are not written in the Criminal Code, but

implicitly convey several purposes of punishment. The Criminal Code states that the judge considers aggravating circumstances (giving convoluted statements, not regretting his actions, and being absent) and mitigating circumstances for the defendant (the defendant is young, polite in the trial process, admits and regrets his actions, and has never been convicted before).). Post-independence Indonesia has a Pancasila philosophy so that the purpose of punishment must be adjusted by prioritizing the principles of punishment in the view of Pancasila philosophy which is carried out in accordance with the culture adopted by the Indonesian nation by taking into account the following principles:

- 1) Recognition of humans as creatures of God Almighty so that the form of punishment may not conflict with religious beliefs or beliefs held by the people of Indonesia. Punishment against a person must be directed at awakening the faith of the convict so that he can repent and become a human being of faith and obedience. In this case, sentencing must function as a mental development of the convicted person and transform the convict into a religious person [37].
- 2) Recognition of the nobility of human dignity as God's creation. Punishment must not violate the most basic human rights and guarantees for the right to life. This right is a right that cannot be reduced under any circumstances (non derogable right) and may not be degrading for any reason. The implication is that even though the convict is in a penitentiary, his human elements and characteristics must not be set aside in order to free the person concerned from his evil thoughts, traits, habits and behavior.
- 3) National solidarity with other people as fellow citizens of the nation. Perpetrators must be directed to efforts to increase tolerance with other people, cultivate sensitivity to the interests of the nation, and direct them not to commit crimes. In other words, punishment needs to be directed at instilling a sense of love for the nation [38].
- 4) Growing maturity as citizens who are solemn, able to control themselves, discipline, and respect, and obey the law as a form of people's decisions.
- 5) Raising awareness of the obligations of each individual as a social being who upholds justice with other people as fellow citizens. It should be remembered that the government and the people must take responsibility for freeing convicts from the chaos and cruelty of the social reality that binds them to becoming perpetrators of crimes.

In connection with the problems mentioned above, more generally, especially in reforming criminal law, including criminal and sentencing issues, including

³⁷ J.E. Sahetapy, *Suatu Studi Khusus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, CV. Rajawali, Jakarta, 1982, p.284
³⁸ *Ibid*

types of crimes, and more specifically regarding the drafting of a new Criminal Code, it cannot be separated from the idea/policy of developing a national legal system based on Pancasila as the desired values of national life. This means that the renewal of the National Criminal Law should also be motivated by and oriented towards the basic ideas of Pancasila which contain in it a balance of values/ideas/paradigm, religious morals (Divinity), Humanity (Humanistic), Nationality, Democracy and Social Justice.

In addition, there needs to be harmonization/synchronization/consistency between development/renewal of national laws and socio-philosophical and socio-cultural values or aspirations in society. Therefore, in carrying out efforts to reform national criminal law, it is necessary to study and explore national values originating from Pancasila and those originating from values that exist in society (religious values as well as cultural/traditional values).

2. The Law Enforcement Concept of Theft Crime Through Restorative Justice Approach

The solution to the weaknesses of restorative justice regulations in general criminal acts in Indonesia today. Through restorative justice, not all criminal cases must be completed in court, but can be ended between the perpetrators and the victims themselves. The method of settlement pursued through restorative justice is in accordance with the culture and ideology of the Indonesian nation as mandated in Pancasila. The results of the settlement can be accounted for to God Almighty. The solution takes into account fair and civilized human values for both parties, and of course social conditions can be recreated as before the crime occurred [39].

Although in its implementation there are weaknesses both in terms of legal substance, legal structure and legal culture, solutions can be provided for these weaknesses so that the implementation of restorative justice in handling general criminal cases can run well. The following is a solution to the weaknesses of restorative justice regulations on general crimes in Indonesia today:

1) In terms of legal substance;

The ultimate goal of law is to achieve social welfare and justice. Humans are required to act fairly in every aspect of their lives, individually or socially, because justice, in addition to the basic needs of human life in dealing with other humans, can also generate goodness among fellow humans and their environment. Justice will give birth to peace, so the purpose of law in the context of social life is to create social justice.

Even so, the law cannot be enforced in all cases, as long as there are other effective means. Law

³⁹ Satjipto Rahardjo, *Filsafat Hukum Progresif*, Yogyakarta: Thafa Media, 2013, p. 229.

should be used at the last level when other means are no longer able to solve the problem [40].

Regarding the weakness of the legal substance in restorative justice regulations for general crimes in Indonesia, it is necessary to have strict provisions or additional rules that allow law enforcers to act as mediators and initiate peace between perpetrators and victims [41], so that it is expected to provide legal certainty for the community, especially perpetrators and victims, that there is peace between the parties, this can resolve cases without going through legal channels.

With this certainty, it is hoped that it will encourage the perpetrators to consciously and voluntarily carry out the punishment as agreed upon in the peace forum. If this is done, then the victim will also get benefits and benefits, that is, his demands are voluntarily fulfilled by the perpetrator. This is expected to create peace and tranquility in social life.

Another obstacle in terms of substance, as has been stated, is that the Police, the Prosecutor's Office and the Supreme Court make internal rules for each of their institutions, so that their understanding and implementation differ in practice, so it is necessary to develop one rule at the law level which involves the three sub-systems. the criminal justice [42].

Law is embodied in statutory regulations, and the Indonesian state has made many statutory regulations in the context of creating order, security, justice and regularity in Indonesian society, nation and state. Thus, the law is expected to protect the rights of citizens, and the state is a tool used to protect the human rights of its citizens through a legal system that is used to achieve justice and prosperity [43].

2) In terms of legal structure;

The realization of the supremacy of law through restorative justice, in essence, is the realization of a law enforcement process in a broad sense, namely the upholding of justice, not just the upholding of written legal norms. What is meant by justice in this case is justice that is oriented towards recovering losses suffered by victims and restoration to their original state, not justice that only aims to punish the perpetrators (retributive justice) or justice that is only oriented towards recovering the suffering of victims (restitutive justice). With the restoration of conditions to

their original state, it is hoped that they will provide benefits for the creation of peace and tranquility in society. Therefore, in Latin it is stated that *ius suum cuique tribuere* (law also aims to guarantee benefits and peace) [44].

Law enforcement with a restorative justice approach in the settlement of criminal cases is carried out by returning the authority to settle criminal cases from the judiciary as the representative of the state to the community. The main focus lies on efforts to transform the mistakes made by the perpetrators with remedial efforts, including improving relations between the parties related to the incident through a mutual agreement [45].

The application of restorative justice by the Police, Prosecutor's Office and the Supreme Court operates independently without uniformity, so it is necessary to coordinate between the criminal justice sub-systems, so as to create an in-depth understanding of the application of restorative justice among all elements of law enforcement officials. The understanding that is owned is only limited to understanding semantically so that the principles and values are not well understood. Thus, human resources for law enforcement officers must be formed who truly understand the importance of restorative justice as well as the creation of the ability to conduct dissemination to the public as the subject of restorative justice.

3) Legal culture aspect;

The restorative justice approach is the most recent shift from the various models and mechanisms that work in the criminal justice system in dealing with current criminal cases. In addition, the method of settlement through restorative justice is in full accordance with the culture and ideology of the Indonesian nation, in full accordance with the mandate of the Indonesian people's way of life, namely Pancasila. The results of settlement in this way can be accounted for to God Almighty. Completion with restorative justice pays attention to fair and civilized human values for both parties, and of course social conditions can be recreated as before, namely before the crime occurred. By pursuing restorative justice, not all criminal cases must be completed in court, but can be terminated and resolved between the perpetrator and the victim.

Apart from that, sociologically, some areas still practice restorative justice values originating from customary law that was once in effect in Indonesia, for example the Kuntara Munawa Book which is often also called the Religious Book is still used as a reference in the application of customary law. applies in Bali. In

⁴⁰ Zainuddin Ali, *Sosiologi Hukum*, Cetakan Ketiga, Jakarta: Sinar Grafika, 2008, p. 65

⁴¹ Fanny Widyastuti., *Wawancara*, selaku Kepala Kejaksaan Negeri Pematang.

⁴² Fanny Widyastuti, S.H.,M.H., *Wawancara*, selaku Kepala Kejaksaan Negeri Pematang.

⁴³ C.S.T. Kansil dan Christine S.T. Kansil, *Ilmu Negara (Umum dan Indonesia)*, Jakarta: Pradnya Paramita, 2001, p. 28.

⁴⁴ Bambang Waluyo, *Desain...*, *op.cit.*, p. 90.

⁴⁵ Fanny Widyastuti, S.H.,M.H., *Wawancara*, selaku Kepala Kejaksaan Negeri Pematang.

addition to Bali, along with the enactment of special autonomy in Aceh Province, the existing customary law provisions in the Mangkuto Alam Qonun, the legal code made during the reign of Sultan Iskandar Muda, are also trying to be revived and made into positive law that applies in the Aceh region. The community also still maintains deliberative institutions as a means of finding solutions to any problems that occur in each community group. This shows that the application of restorative justice in the Indonesian penal system has a fairly strong sociological basis [46].

The essential feature of the Pancasila Law State is that it is a rule of law based on the principle of kinship, consensus deliberation and protection of human rights with the principle of a balance between rights and obligations as well as the legal function of protection. In the perspective of *ius constituendum*, legal policies/politics are needed to regulate the application of the concept of restorative justice in criminal law enforcement, both at the level of investigation, prosecution and trial. In addressing future crimes, the paradigm of crime and punishment must be changed. If someone commits a crime, it does not mean solely thinking about punishment for the perpetrator, but recovery for the victim. Focusing on punishment for the perpetrators will only increase the desire for revenge, while the victims who really suffer are ignored. Instead attention should be directed to the victim. Victims must be healed physically and mentally. Victims must be compensated for their suffering. Instead, the perpetrators of crimes must be held accountable for their actions.

Renewal of material criminal law in the form of the Criminal Code Act (KUHP), is an effort to realize the ideals of a rule of law state. So that the Criminal Code is a manifestation of that which has an Indonesian personality, which does not only understand the rule of law which prioritizes the protection of individual interests (individualistic) western models or socialist legality which prioritizes the interests of the state. Legal renewal does not only improve the law, but replaces the existing law with a better law. So that the Criminal Code is not just making the necessary changes that change colonial clothes to become national packaging, but is a form of true national independence and sovereignty. In fact, legal renewal determines the direction of forming national character, from a real condition to an ideal condition, so that the Criminal Code is a tool for social and cultural transformation in a planned manner.

In the process of conventional criminal procedures, for example, if there has been peace between the perpetrator and the victim, and the victim has forgiven the perpetrator, then this will not affect the authority of law enforcement to continue to forward the

case to the realm of crime which will eventually lead to the conviction of the perpetrator. The formal criminal process which takes a long time and does not provide certainty for both the perpetrator and the victim certainly does not necessarily fulfill or restore the relationship between the victim and the perpetrator, this concept of restorative justice offers a recovery process that involves the perpetrator and the victim directly in solving the problem. The conventional criminal process only makes the victim later as a witness at the trial level which does not greatly affect the sentencing decision, the prosecution task is still given to the Prosecutor who only receives investigative files to be further processed to become the basis for criminal charges, without knowing and understanding the real condition of the problem. and the perpetrator is in the prison chair ready to accept the punishment that will be imposed on him.

Modern law creates a gaping gap between law and humanity, shaken by the presence of progressive law which contains the spirit of liberation, namely liberation from the legalistic and linear tradition of conventional law. Progressive law informs that executing the law is not just according to the black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law or law [47]. The law is not only carried out with intellectual intelligence, but with spiritual intelligence. Executing the law must be with determination, empathy, dedication, commitment to seeking truth and justice as well as legal certainty for the welfare of the people.

Progressivism (progressive legal school) teaches that law is not a king, but a tool to describe the basis of humanity which functions to give grace to the world and humans. Progressivism does not want to make law a technology that is devoid of conscience, but rather an institution that is morally human. According to Satjipto, the assumptions underlying legal progressivism are First, law exists for humans and not for themselves; second, the law is always in the status of law in the making and is not final; Third, law is a moral institution of humanity, and not a technology that is not conscienceless. On the basis of these assumptions, the criteria for progressive law are: 1) having a major goal of human welfare and happiness; 2) create a very strong human moral content; 3) progressive law is a liberating law covering a very broad dimension which does not only operate in the realm of practice but also theory; 4) is critical and functional, because progressive law does not stop looking at existing deficiencies and finding ways to fix them.

The way of progressive law is willingness and willingness to free oneself from legal positivism. This release is closely related to the psychological factor or

⁴⁶ Bambang Waluyo, *Penegakan...*, *op.cit.*, p. 125.

⁴⁷ Satjipto Rahardjo. *Op.Cit.*, 2009,p.4-5

spirit that exists in law enforcers, namely courage. The inclusion of the courage factor expands the map of how to judge, namely not only prioritizing aspects of rules (rule), but also aspects of behavior (behavior). Thus the method of law that is shown is not only textual, but also carries out a process of searching for the hidden meaning behind the text that lives in society [48].

Progressive law departs from the basic assumption that law is for humans, not the other way around. Law is not an institution that is absolute and final, but rather an institution of morality, conscience and therefore is determined by its ability to serve humans. Law is an institution that aims to deliver people to a just, prosperous life and make people happy. Humanity and justice are the goals of everything in our legal life. Then the sentence "law for humans" also means "law for justice". This means that humanity and justice are above the law. The point is the emphasis on just law enforcement in Indonesia, namely the creation of social welfare or what is often referred to as a "just and prosperous society".

Restorative justice is based on a logical understanding of wrongdoing. Although it will be expressed differently in different cultures, this approach is probably common to most traditional societies. According to the Fundamental Principles, a "restorative outcome" is an agreement reached as a result of a restorative process. Such agreements may include references to programs such as reparations, restitution and community services, "aimed at meeting the individual and collective needs and responsibilities of various parties and achieving the reintegration of victims and perpetrators". It may also be combined with other measures in cases involving serious offences.

The character of restorative justice that emphasizes deliberation to reach a consensus on justice in dealing with and resolving criminal acts is actually oriented towards the role and participation of the community. If in the conventional criminal justice system the role of the community is limited and merely passive because the active ones are law enforcement officers, but in the concept of restorative justice there is an active role that is balanced between community participation and law enforcement officials. In this case, synergy and harmony between law enforcers and community participation is the key to realizing restorative justice as the embodiment of the legal ideals of Pancasila.

Law exists because there are conflicts of interest in society that have the potential to cause problems. Law is needed because it is a social mechanism to solve the problem. Law is generally not distinguished from ethics, but specifically law is

distinguished from ethics in terms of its specific purpose, scope, benchmarks, authority, and sanctions.

According to Aristotle: "Man is a *zoon politicon*" or "Man is by nature a political animal". While Thomas Hobbes said: "Humans contain malignant traits, namely *homo homini lupus*". Because it is vicious, if humans are allowed to regulate themselves, their vicious nature can create war or struggle (*Bellum Omnum Contra Omnes*). That is why it is necessary for the state to regulate the order of life and harmony. So, the state is essentially the highest organization of a nation, which has inhabited a certain territory for generations [49].

Law and ethics actually depart from the same basis, namely morals. In general, what is seen as good or bad by ethics is also seen as the same by law, it's just that the law does not cover small things because people are still considered capable of dealing with it on their own without causing breakdowns. Law is applied to social order in society, and ethics is applied to individual or professional behavior. Law is to influence action, while ethics is to influence personal will. Ethics itself becomes an application that is an obligation, especially in the implementation of a profession and law becomes a cover or supervisor to oversee an ethical behavior.

There needs to be clear and binding rules, namely binding on the state and its people, including in terms of the implementation of restorative justice which seeks to facilitate general crimes while remaining within the limits of certain crimes which must fulfill justice for society and be on target. These rules are called "laws" or in the case of written rules they are called "laws", namely regulations stipulated by the state based on the agreement of the people, or at least based on the assumption that there is a mandate from the people. In a country based on law, it is appropriate that law be made supremacy, where everyone is expected to submit and obey it without exception.

From the description and analysis above, the authors compile a reconstruction of general crime regulations in Indonesia through a restorative justice approach based on the results of:

- 1) In-depth interviews with resource person Fanny Widyastuti as Head of the Pematang District Attorney, Field observations of a series of cases related to restorative justice efforts, literature review, and scientific data analysis.
- 2) Study of the laws and regulations that apply in the implementation of restorative justice for general crimes, namely the Criminal Code, the Criminal Procedure Code, the Prosecutor's Law, the

⁴⁸ Faisal, *Menerobos Positivisme Hukum*, Yogyakarta : Rangkang-Education. 2010,p.90

⁴⁹ Carel van Schaik, *Zoon Politikon;The Evolutionary Origins of Human Political Systems*, University of Southern California,p. 2.

Prosecutor's Regulations in the implementation of restorative justice, the Police's implementing regulations in an effort to restorative justice.

- 3) Comparison of methods and systems in other countries: study of methods and systems for applying restorative justice in handling criminal cases in New Zealand, the Netherlands, France, South Africa, and Japan. Each country has its own problems and settlement method schemes that are different from other countries in implementing restorative justice.
- 4) Theories of grand theory, middle theory and applied theory.

Based on the series of elaborations, 2 reconstructions can be carried out, namely:

According to Liebmann's theory, it simply defines Restorative Justice as a legal system that "aims to restore the welfare of victims, perpetrators and society damaged by crime, and to prevent further violations or acts of crime [50]. Liebmann also provides a formulation of the principles of Restorative Justice as follows:

- a. Prioritizing victim support and healing;
- b. Violators are responsible for what they do;
- c. Dialogue between victims and perpetrators to reach understanding;
- d. There have been attempts to properly lay down the losses incurred;
- e. Offenders must be aware of how to avoid future crimes;
- f. The community helps in integrating the two parties, both victims and perpetrators [51].

Liebmann's theory of restorative justice with the idea that adult perpetrators are "too far" to seek a restorative concept, but in the essence of restorative justice it is equally relevant between adult perpetrators and child perpetrators in this case literally everyone can change. From the victim's side, it shouldn't depend on the age of the perpetrator whether he needs to try a restorative concept or not [52].

Some of Liebmann's restorative justice principles have outputs: dialogue, togetherness, healing, improvement, repentance, responsibility, honesty and sincerity. Another way to look at restorative justice is to think of it as a balance between disputing parties.

- a. Balance between therapeutic and retributive justice models;
- b. The balance between the rights of the perpetrator and the needs of the victim;
- c. Balance between the need to rehabilitate the perpetrator and the obligation to protect society [53].

Perpetrators are used to "taking the punishment" but this is not the same as being responsible for what they have done. In Marian Liebmann's notes, often when interacting with perpetrators who are serving prison terms, Marian Liebmann summarizes their statements by saying that "I have done my responsibility, I have paid my debt to society", while in reality they have swallowed up a lot of state budget money for their legal process and not think about the people they have harmed. This is the starting point for the concept of restorative justice [54].

The next logical step in taking responsibility for doing damage is to try as far as possible to put things right. Sometimes an apology is enough, but proportionate action is often more needed. Sometimes people have been harmed and this needs to be fixed. Many criminals are poor and may not have the means to do this, so society or the state may need to help too. Victims sometimes ask the perpetrator to do some volunteer work for people who are less fortunate than the victim himself.

Restorative justice needs to be running followed by system resources that support to achieve this concept. The strong point of a restorative approach, for example meeting with victims, is that it provides the perpetrator with the motivation to do other work as a moral responsibility. In the long run, most victims are attracted to perpetrators who avoid future offences, thereby preventing more victims from being created [55].

With Liebmann's theoretical foundation in accordance with philosophical principles, scientific disciplines, and the conditions of the Indonesian judiciary. Thus the reconstruction of the value of efforts to resolve general crimes using a restorative justice approach is to realize the implementation of restorative justice for the settlement of general crimes with substantive legal, progressive, efficient and just powers.

Several articles consisting of formal and material laws and regulations as well as law enforcement implementing regulations include the Criminal Procedure Code, Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Chief of Police Regulation Number 14 of 2012 concerning Investigation Management, Regulation of the Chief of Police Number 3 of 2015 concerning Community Policing.

The concept of upholding the crime of theft through a restorative justice approach is:

Weaknesses in the Criminal Procedure Code, the Reconstruction of the Criminal Procedure Code is

⁵⁰ Marian Liebmann, *Op.Cit*, 2007, p. 25.

⁵¹ *Ibid*, p.26

⁵² *Ibid*, p.175

⁵³ Marian Liebmann, *Op.Cit*, 2007, hp.33

⁵⁴ *Ibid*, p.26

⁵⁵ *Ibid*, p.27

related to the reasons for stopping the investigation, the reconstruction is related to the technical termination of the investigation and its relationship with the prosecution authority possessed by the public prosecutor so that the reconstruction is the Addition of a special new chapter specifically for restorative justice which covers the stages of the judicial process from investigation and prosecution which can begin with a restorative justice decision by technically elaborating each, both technical restorative justice from the investigation stage (cessation of investigation) and restorative justice technical from the prosecution stage (cessation of prosecution).

Chief of Police Regulation Number 14 of 2012 concerning Investigation Management, Article 76

Paragraph 1 point c Termination of the investigation as referred to in Article 15 letter i, is carried out if: for the sake of law, because: the suspect dies; case has expired; the complaint is withdrawn (specifically the complaint offense); and the crime has obtained a judge's decision that has permanent legal force (*nebis in idem*).

The weakness is, "for the sake of law" which is listed as one of the reasons for stopping the investigation should include "in the public interest" and "resolved outside the process" as one part of the reasons for stopping the investigation. So that the reconstruction offered is Termination of the investigation as referred to in Article 15 letter i, carried out if for the sake of law, because: the suspect dies; case has expired; the complaint is withdrawn (specifically the complaint offense); and the crime has obtained a judge's decision that has permanent legal force (*nebis in idem*), in the public interest, resolved non-penalty.

Kapolri Regulation Number 3 of 2015 concerning Community Policing, before reconstruction Article 27: In carrying out the main tasks, as referred to in paragraph (1) Bhabinkamtibmas carries out activities: a. door to door visits in all assigned areas; b. perform and assist problem solving (Problem Solving); c. organize and secure community activities; d. receive information about the occurrence of criminal acts; e. provide temporary shelter to lost people, victims of crimes and violations; f. participate in providing assistance to disaster victims nature and disease outbreaks; g. provide guidance and instructions to the community or community related to Kamtibmas issues and Polri services.

Weaknesses in the category of social problems where there is a criminal element are facilitated by the National Police as social controllers through out-of-court settlement mechanisms including considering the category of perpetrators and the value of the loss for the victim. Thus, the reconstruction offered Article 27: In carrying out the main tasks, as referred to in paragraph

(1) Bhabinkamtibmas carries out the following activities: a. door to door visits in all assigned areas; b. perform and assist problem solving (Problem Solving); c. organize and secure community activities; d. receive information about the occurrence of criminal acts; e. Facilitate the settlement of social problems whether or not there is a criminal element so that they can be resolved using a restorative justice concept approach with no fixed limit on the size of the perpetrator's criminal category and the value of the loss for the victim f. provide temporary protection to lost people, victims of crime and violations; g. participate in providing assistance to victims of natural disasters and epidemics; h. provide guidance and instructions to the community or community related to Kamtibmas issues and Polri services.

Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice, before reconstruction Article 5: Paragraph 5 The provisions referred to in paragraph (3) and paragraph (4) do not apply in the event that there are casuistic criteria/circumstances which, according to the prosecution's considerations In general, with the approval of the Head of the District Attorney's Office or the Head of the District Attorney's Office, prosecution cannot be terminated based on

Restorative Justice. The weakness in this Perja itself is that there is no information about what parameters are used by the Public Prosecutor in deciding whether a criminal case is causal or not, so what size cases can or cannot be stopped based on Restorative Justice is still uncertain which will create many loopholes for problems and also multiple interpretations in the application of criminal acts paragraphs (3) and (4).

The reconstruction offered in the new item in Paragraph 5 contains the substance of the restorative justice decision that is taken only applies to certain events with casuistic terms which are more detailed in terms of what is included in casuistic.

D. CONCLUSION

Law enforcement for the crime of theft using a restorative justice approach is to realize the implementation of restorative justice for the settlement of general crimes with substantive legal, progressive, efficient and just powers. Reconstruction of several articles consisting of formal and material laws and regulations as well as law enforcement implementing regulations including the Criminal Code, the Criminal Procedure Code, the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Regulations Kapolri Number 14 of 2012 concerning Investigation Management, Kapolri Regulation Number 3 of 2015 concerning Community

Policing. The concept of law enforcement for the crime of theft through a restorative justice approach, namely the theory of restorative justice with substantive legal, progressive, efficient and just power (The theory of restorative justice has substantive, progressive, efficient and just legal power) is a theory whose focus is to optimize a restorative justice approach in resolving general criminal cases with permanent legal force with clear legal substance, boundaries of offense criteria that meet the provisions of legal logic considerations through hierarchical legal products to align from top to bottom, namely from material formal legislation to law enforcement regulations. This theory also embodies the efficiency of sentencing and changes in the paradigm of sentencing. Looking at the phenomenon of the Indonesian judiciary which is very crowded from the accumulation of case files as an illustration of the large number of cases in this Republic, the condition of prisons that are over capacity, as well as the increasingly high state budget for financing legal proceedings.

REFERENCES

- A.Nurwianti, Gunarto & Wahyuningsih, *Op.Cit*, Vol.12, No.4, 2017.
- Abdul Manan, *Aspek-Aspek Pengubah Hukum*, Jakarta: Kencana Prenada Media, 2009.
- Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, *JPH: Jurnal Pembaharuan Hukum*, Volume 8, Number 3, December 2021.
- Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, *Jurnal Akta*. Volume 9 No. 3, September 2022.
- Anny Widyastuti, S.H.,M.H., *Wawancara*, selaku Kepala Kejaksaan Negeri Pematang.
- Artidjo Alkostar dan M. Sholeh Amin (Ed), *Pembangunan Hukum Dalam Perspektif Politik Hukum Nasional*, Jakarta: Rajawali, 1986.
- Ashinta Sekar Bidari, *Ketidakadilan Hukum Bagi Kaum Sandal Jepit*, *Jurnal FH Unsa*, Vol 3 No 2 2013.
- Azhari, *Negara Hukum Indonesia Analisis Yuridis Normatif Terhadap Unsur-Unsurnya*, UI Press, Jakarta, 2009.
- Bambang Waluyo, *Viktimologi Perlindungan Saksi dan Korban*, Jakarta: Sinar Grafika, 2011.
- C.S.T. Kansil dan Christine S.T. Kansil, *Ilmu Negara (Umum dan Indonesia)*, Jakarta: Pradnya Paramita, 2001.
- Carel van Schaik, *Zoon Politikon; The Evolutionary Origins of Human Political Systems*, University of Southern California.
- Chairul Huda, *Politik Hukum Pembangunan Sistem Hukum Nasional Dalam Konteks Pancasila, UUD NRI Tahun 1945, dan Global*, Makalah disampaikan pada Seminar Nasional Fakultas Hukum Universitas Muhammadiyah Jakarta, Tanggal 22 November 2014
- Daniel S. Lev, *Hukum dan Politik di Indonesia: Keseimbangan dan Perubahan*, Cetakan I, Jakarta: LP3ES, 1990.
- Duwi Aryadi, *Implementasi Keadilan Restoratif dalam Sistem Peradilan Pidana sebagai Perwujudan Nilai-Nilai yang Berwawasan Pancasila*, *Al-Daulah*, Vol.9 / No. 2/Desember 2020.
- Faisal, *Menerobos Positivisme Hukum*, Yogyakarta : Rangkang-Education. 2010, hlm.90
- Fanny Widyastuti, *Wawancara*, selaku Kepala Kejaksaan Negeri Pematang.
- Fanny Widyastuti., *Wawancara*, selaku Kepala Kejaksaan Negeri Pematang.
- G.P. Hoefnagels, *The Other side of Criminology*, Holland: Deventer-Kluwer, 1978.
- J.E. Sahetapy, *Suatu Studi Khusus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, CV. Rajawali, Jakarta, 1982,.
- K. P. Prayitno, *Restorative Justice untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum in Concrete)*. *Jurnal Dinamika Hukum*, Vol. 12, No.3, 2012.
- Moh. Mahfud MD, *Politik Hukum di Indonesia*, Jakarta: Pustaka LP3ES Indonesia, 1998.
- Munir Fuady, *Aliran Hukum Kritis, Paradigma Ketidakterdayaan Hukum*, Bandung: Citra Aditya Bakti, 2003
- Prayogo Kurnia, Resti Dian Luthviati, Restika Prahanela, *Penegakan Hukum Melalui Restorative Justice yang Ideal sebagai Upaya Perlindungan Saksi dan Korban*, *GEMA*, Th. XXVII/49/Agustus 2014-Januari 2015.
- Romli Atmasasmita, *Teori Hukum Integratif: Rekonstruksi Terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*, Yogyakarta: Genta Publishing, 2012.
- Rudi Hartono, *Kewenangan Kepolisian Menurut KUHAP Dalam Perspektif HAM, makalah Semiloka: KUHAP dan Menuju Fair Trial "Victim Protection"*. LBH Yogyakarta, 24 Juli 2013.
- Rudi Hartono, *Kewenangan Kepolisian Menurut KUHAP Dalam Perspektif HAM, makalah Semiloka: KUHAP dan Menuju Fair Trial "Victim Protection"*. LBH Yogyakarta, 24 Juli 2013.
- Satjipto Rahardjo, *Filsafat Hukum Progresif*, Yogyakarta: Thafa Media, 2013.
- Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman, 1993.
- Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*, Jakarta: Badan

- Pembinaan Hukum Nasional Departemen Kehakiman, 1993.
- Stephen Benton dan Bernadete Setiadi, *Mediation and Conflict Management in Indonesia* dalam *Conflict Management in the Asia Pacific*, eds Kwok,L, dan Tjosvold D, John Wilye and Sons, Singapura, Jurnal Law Pro Justitia Vol. II, No. 2, Juni 2017
 - Sunaryati Hartono, *Politik Hukum Nasional Menuju Satu Sistem Hukum Nasional*, Bandung: Alumni, 1991.
 - Sunaryati Hartono. *Legal Research in Indonesia at the End of the 20th Century*, Bandung: Alumni.1994.
 - Suparman Usman, *Pokok-Pokok Filsafat Hukum*, Serang, Suhud Sentrautama, 2010.
 - T.Hansen & M. Umbreit, *State of knowledge: Four Decades of Victim-Offender Mediation Research and practice: The Evidence*. Conflict Resolution Quarterly, Volume 36 Nomor 2, 2018.
 - Trinita Yulinda Sirait, Irma Cahyaningtyas. *Restorative Justice Approach in The Settlement of Children's Cases in Indonesia*. Legality, Vol. 27, No. 2, September 2019-Februari 2020.
 - Widodo Dwi Putro, *Mencari Kebenaran Materiil Dalam "Hard Case" Pencurian Tiga Buah Kakao*, Jurnal Yudisial, Vol-III/No-03/Desember/2010.
 - Yohanes Suhardin, *Fenomena Mengabaikan Keadilan Dalam Penegakan Hukum*, Jurnal Mimbar Hukum, Vol. 21 No. 2, 2009.
 - Zainuddin Ali, *Sosiologi Hukum*, Cetakan Ketiga, Jakarta: Sinar Grafika, 2008.