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Application of Restorative Justice Principles in Judges' Considerations in Decisions to Release from All Legal Charges (Decision Case Study Number: 28/Pid.B/2022/PN.LBB)

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Abstract: This research aims to examine and analyze the application of the principles of *restorative justice* to judges' considerations in decisions to release all legal claims (case study decision number: 28/Pid.B/2022/PN.LBB). This research uses the method normative juridical, while the approach used in this research is a statutory approach, then the data is analyzed using qualitative descriptive research analysis methods. The results of this research are: 1) Application of *restorative justice* in Decision No. 28/Pid.B/2022/PN.Lbb, where the judge handed down a decision to release all legal charges against Defendant Dedi on charges of theft. 2) In terms of implementing the principles of *Restorative Justice* This is an obstacle to the implementation of *restorative justice*, including in very serious violations, the difficulty in creating public trust in the implementation of *restorative justice* in serious cases. Apart from that, the reasons for recidivist actions by perpetrators after undergoing a *restorative justice process* raise questions from the public if they have to repeat the process several times against the same perpetrator.

Keywords: Restorative Justice Principles, Judges' Consideration, Acquittal Decision.

INTRODUCTION

A legal state like Indonesia, the court is a judicial body or institution that is the foundation of hope for seeking justice. Therefore, the best way to get a resolution of a case in a legal state is through the judicial body. In a judicial body, judges have the most important role because they are the ones who have the right to decide cases. The judge's decision is the result of deliberations starting from the indictment with everything that was proven in the examination at the court hearing (M. Yahya Harahap, 2004:236).

A judge is a person who carries out the law based on justice in making decisions on cases handled, it remains based on the rules that apply in law and uses considerations based

on authentic evidence, such as indictments, witness statements and other evidence. Substantially, the judge's envoy in criminal cases has three characteristics, namely (Lilik Mulyadi, 2014:194).

1. Criminal Decision (*Verordeling*) if the judge/court is of the opinion that the defendant has been legally and convincingly proven guilty according to the law of committing the criminal act charged (Article 193 paragraph (1) of the Criminal Procedure Code).
2. A verdict of acquittal (*vrijspraak/acquittai*) if the judge is of the opinion that the results of the examination at trial of the defendant do not provide legal and convincing evidence according to the law for the act charged (Article 191 paragraph (1) of the Criminal Procedure Code).
3. The decision is released from all legal demands (*onslag van alle rechtsvervolging*) if the judge is of the opinion that the act charged against the defendant is proven, but the act does not constitute a criminal act (Article 191 paragraph (2) of the Criminal Procedure Code).

Judge inside carrying out their duties, especially in deciding a case, must always adhere to the principles of an independent and impartial judiciary as stated in Article 1 of Law Number 4 8 of 2009 concerning Judicial Power, hereinafter referred to as the Judicial Power Law, namely: "Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of implementing the State of Law of the Republic of Indonesia (Oemar Seno Aji, 2003: 12).

A judge's decision is a statement from a judge in deciding a case at a trial and the decision has permanent legal force (*inkracht*). Based on the theoretical vision and practice of justice, the judge's decision is: "The decision pronounced by the judge because of his position in a criminal case trial which is open to the public after going through the process and procedures of criminal procedural law generally contains a verdict of punishment or acquittal or release from all charges. Laws are made in written form with the aim of resolving cases" (Lilik Mulyadi, 2007: 27).

The application of the law is very important in the judge's handing down of decisions, so that the final decision process before the court is that the correct decision is made against the defendant, in accordance with the actions and articles violated by the defendant. That in a trial in court, a decision can be in the form of convicting the defendant because it is based on valid evidence and convinces the judge about the occurrence of a criminal act and violation of the rule of law.

As per the provisions of the Criminal Procedure Code, the regulations regarding the form of handing down of decisions are also explained as follows:

1. Decision acquitting the defendant (Article 191 paragraph (1))
2. The decision is free from all legal demands (Article 191 paragraph (2))
3. Sentencing decision (Article 193 paragraph (1))

As in the Criminal Procedure Code, one form of judge's decision, namely a decision free from all legal charges (*onslag van alle rechtsvervolging*) is regulated in Article 191 paragraph (2) which reads, that: "If the court is of the opinion that the act alleged against the defendant is proven, but the act does not constitute a criminal act, then the defendant is adjudicated free from all legal charges (*ontslag van alle rechtsvervolging*), or usually abbreviated as "Judgment Free".

There is a discussion regarding the representative's release from all legal charges imposed by the judge against the defendant, based on the mechanism of the representative's decision taken by the panel of judges at the court hearing. As in every examination through the criminal procedure process, the judge's decision must always be based on the case handover letter which contains the entire case file, the indictment for the defendant's guilt, in

addition to the judge's decision being based on the results of the evidence of the facts revealed in the examination at trial.

In a criminal case where *Restorative Justice is considered*, *Restorative Justice* is used as a mediation bridge between the defendant and the victim (Chandra Prayuda, Ridho Mubarak & Rafiqi, 2022 : 2). *Restorative Justice* views criminal acts not as crimes against the state or the public, but as crimes towards the victim, so that the emphasis in the solution is on the victim's recovery, not on punishing the perpetrator in a series of judicial processes which basically aim to restore (restore) the losses suffered by the crime victim. *Restorative justice* in criminal law must aim to restore the situation to the way it was before the crime occurred. When someone violates the law, the situation will change. So that is where the role of law is to protect the rights of every crime victim.

In general, *restorative justice* is a concept in resolving unlawful actions by involving victims and suspects to speak in a meeting. *Restorative Justice* comes from the word "restore", which means return or restoration to the original condition, while *justice* has the meaning of fairness, whereas what is meant by *Restorative Justice* or *restorative justice* is a concept of resolving criminal acts aimed at "restore the relationships damaged by criminal acts between victims." and criminals" by means outside of court so in the criminal law system the meaning of *restorative justice* is a criminal justice concept that views criminal acts as crimes against society as not crimes against the state and to create an obligation for victims and society to make amends.

Restorative Justice System is an effort to resolve criminal cases using the approach used in the conventional criminal justice system. This approach focuses on the direct participation of perpetrators, victims and the community in resolving criminal cases. Handling criminal cases using a restorative justice approach offers a different approach to understanding and handling a criminal act. In the restorative view, the meaning of criminal acts is basically the same as the view of criminal law in general, namely attacks on individuals and society and social relations.

Liebman (2007 : 27) defines *Restorative Justice* as follows: " *Restorative justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school discipline system) that emphasizes restoring the victim and community rather than punishing the offender* " (*restorative justice* has become a term that is commonly used in the criminal approach as a punishment system such as a disciplinary school system which emphasizes the concept of returning the victim and the environment to their original state rather than punishing the perpetrator of the crime).

Approach *Restorative Justice* in progress A criminal act provides an opportunity for the parties involved, especially the perpetrator and victim, to participate in resolving the case, resulting in a transfer of the functions of the perpetrator and victim, whereas in conventional criminal procedural law, the perpetrator and victim only function as witnesses in the resolution of the case carried out by law enforcement officials. .

In principle, *Restorative Justice* seeking peace outside of court involving the perpetrator of the crime (his family) against the victim. In *Restorative Justice*, the resolution of a legal problem that occurs between the perpetrator and the victim of a criminal act can be achieved if there is an agreement or agreement between the parties so as to give the perpetrator the opportunity to take responsibility for all his actions by compensating for losses resulting from the criminal act he committed (Zevanya Simanungkalit, 2016 :16).

The application of *restorative justice* is also regulated by the terms of implementation through Attorney Regulation no. 15 of 2020 concerning Termination of Prosecution Cases Based on Restorative Justice. Article 5 of PerJa No.15 of 2020 states that: (1) Criminal cases can be closed by law and prosecution terminated based on Restorative Justice if the following conditions are met:

1. The suspect has committed a crime for the first time;

2. A criminal offense is only punishable by a criminal offense or is punishable by imprisonment for not more than 5 (five) years; And
3. Criminal acts are committed with the value of evidence or the value of losses incurred as a result of the criminal act of more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

The application of *restorative justice* is also regulated in Supreme Court Regulation no. 3 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. This regulation also explains that in implementing *restorative justice*, the Chairman of the District Court coordinates with the Head of the District Prosecutor's Office and the Chief of Police in carrying out the transfer of files based on the Republic of Indonesia Supreme Court Regulation No. 2 of 2012 regarding *restorative justice*. This means that implementing *restorative justice* in a criminal case requires coordination from all levels of law enforcement agencies.

An example of a case of theft is in P messenger No 28/Pid.B/2022/PN.Lbb, where on Tuesday, December 7 2021, at 13.00 WIB, D (DPO), A N (DPO), and BK (DPO) committed criminal acts which were considered crimes. They have taken other people's property, either in whole or in part, with the intention of controlling it unlawfully. This act is carried out by two or more people in alliance, and is carried out by cutting to enter the scene of a crime or to reach the items taken.

This act was carried out in Block 24 AB Pase 2 PT. AMP Plantation, Jorong Anak Air Kasing, Kenagarian Bawa, Ampek Nagari District, Agam Regency or somewhere else that is still within the jurisdiction of the Lubuk Basung Court which has the authority to handle this case. The incident began when E (DPO), BK (DPO), and AN (DPO) asked the defendant to help plant oil palm at PT AMP. After negotiating, the defendant went with them to the scene.

Based on the testimony of witnesses in court that a peace agreement had been reached in this case, the Panel of Judges was of the opinion that the peace between the defendant and PT AMP was a form of settlement based on the concept of *restorative justice*. The concept of *restorative justice* is an approach that aims to repair the damage caused by crime, by returning victims and society to their original position before the crime occurred, as well as improving relations between victims, perpetrators and society.

In the case of defendant D with Decision No. 28/Pid.B/2022/PN.Lbb dated April 6 2022, that the judge decided to apply *restorative justice* even though defendant D had previously been a recidivist and received criminal sanctions. *Restorative Justice* is usually given to first-time offenders whose losses are less than IDR 2.5 million with a threat of a sentence of less than 5 years, as regulated in Prosecutor's Regulation no. 15 of 2020 concerning Termination of Prosecution Cases Based on Restorative Justice. However, D did not meet these criteria because he had been convicted before and the losses incurred exceeded these limits. Of course, this is contrary to the regulations that regulate the implementation of *restorative justice*. In the application of this case, the judge giving a decision free from all legal demands based on *restorative justice considerations* was also considered inappropriate, because the judge in giving the *restorative justice decision* himself did not coordinate with the Head of the District Prosecutor's Office and the Chief of Police in the same jurisdiction, in accordance with Mahkamah Regulations. Supreme No. 3 of 2014.

Several objections to the judge's decision arose because the application of *restorative justice* in case D did not meet the requirements for RJ and was unfair. Justice is an important question in this case, and it is important to ensure that the judge's decision prioritizes justice for all parties involved, especially the victim. Even though judges have the authority to make decisions based on *restorative justice considerations*, if the necessary requirements are not met, then these decisions can be ineffective and even have the potential to harm the victim.

Therefore, it is necessary to carry out a judicial analytical review of the judge's considerations and decisions, to ensure that appropriate and fair application of the law is

given to all parties involved in this case. It is also important to reiterate the aim of *restorative justice*, which should provide the defendant with an opportunity to improve himself and repay the victim, but still within the applicable legal provisions.

The description above provides the basis for the author to study and explore how Juridical Analysis of the Decision to Release All Legal Claims with *Restorative Justice Considerations*. So based on this background, the author is interested in writing and researching a thesis with the title "**Application of Restorative Justice Principles to Judges' Considerations in Decisions to Release All Legal Claims (Decision Case Study Number: 28/Pid.B/2022/PN.LBB).**".

METHOD

This type of research is classified as normative juridical research, namely legal research that conducts law as a system of norms. The norm system in question is about principles, norms, rules of statutory regulations, court decisions, *restorative justice studies* and doctrines (teachings) (Mukti Dawn And Yulianto Ahmad, 2010 :153). The approach used in this research is the statutory approach, this approach is carried out by examining all laws and regulations related to the legal issue being discussed (researched), and the case approach, this approach carried out by reviewing cases related to the issues at hand which have become court decisions that have permanent legal force, (Muhaimin, 2020 : 56-57) which relate to the Judge's Consideration of the Decision to Dismiss All Legal Claims with Consideration *Restorative Justice*.

The data processing used in this research is a data grouping technique, carried out so that the collected data is easy to search for when needed by researchers (data reduction), then *editing*, by editing the data according to research needs or with the *editing process* it is hoped that it will increase reliability. data that will be processed and analyzed (Anak Agung Putu Agung and Anik Yuesti, 2017 : 98). This research using a qualitative descriptive research analysis method, namely the data obtained in the research will be arranged systematically and in the form of sentence descriptions whose meaning is taken as statements and conclusions.

RESULTS AND DISCUSSION

Application of the Principles of Restorative Justice in the Judge's Consideration of the Decision to Release All Legal Claims (In Decision Case No. 28. Pid.B/ 2022/PN.Lbb)

Restorative Justice (restorative justice) is an alternative or other method of criminal justice that prioritizes the integration of perpetrators and victims or society as one unit to find solutions and return to a pattern of good relations between perpetrators of criminal acts. *Restorative Justice* emphasizes repairing the relationship between the perpetrator and victim and the community that has been damaged by criminal acts committed by the perpetrator (Kuat Puji Prayitno, 2012: 409). Fundamentally, *restorative justice* changes the role of victims in the criminal justice system (SPP) process, namely by empowering them so that victims have personal rights to participate in the process of resolving criminal cases. One method that can be used in handling criminal cases using a *restorative justice model* is *penal mediation*.

According to Ms. Toulemonde (French Minister of Justice), penal mediation is an alternative to prosecution which provides the possibility of a negotiated settlement between the perpetrator of the crime and the victim (Barda Nawawi Arief, 2010:1-2). In principle, in positive law criminal cases cannot be resolved outside of court. This means that every criminal case must be resolved through criminal justice channels. However, in the practice of law enforcement in Indonesia, criminal cases are often resolved outside of court through the discretion of law enforcement officials, peace mechanisms, traditional institutions and so on.

Thus, it can be understood that handling criminal cases using penal mediation is aimed at finding the right solution desired by the parties (perpetrator and victim). This is in

accordance with the philosophical basis for the existence of penal mediation which contains the principle of implementing a "win-win" solution *and not ending in a "lose-lose" or "win - lose" (win - lost) situation* . as desired by the court by achieving formal justice through a litigative/litigation legal process (*law enforcement process*) (Lilik Mulyadi , 2013:9) .

Victim empowerment is the philosophical basis for the concept of *restorative justice* . Based on this philosophy, objectively the problem in criminal law is not the severity of punishment as a form of revenge against perpetrators of criminal acts. However, to repair or restore losses or injuries suffered by victims as a result of criminal acts (Mudzakir, 2014:8) .

The application of *restorative justice* in Decision No.28/Pid.B/2022/PN.Lbb, where the judge handed down a decision to release all legal charges against Defendant Dedi for theft. This is based on the facts of the trial which stated that there had been peace between the Defendant as the perpetrator and the PT. AMP as the victim .

During the trial, witness Mulyono, who is the Public Relations Officer or representative of PT AMP as the victim in this case, explained that at the time the handling of this case was in progress. investigation, there has been a peace agreement between PT AMP as the victim and the Defendant as the perpetrator, as stated in the Peace Letter dated January 7 2021 where the Defendant's Ninik Mamak appeared before the leadership of PT. AMP, which basically states that the Defendant apologized for the theft committed by the Defendant and promised not to repeat his actions again, while the Victim also stated that he forgave the Defendant's actions and would not prosecute the Defendant legally for this incident. Then during the examination at the trial of witness Mulyono, when asked by the Panel of Judges about his hopes for the Defendant's case, witness Mulyono answered that because there had been peace before and saw the poor condition of the Defendant's family and witness Mulyono also explained that the Defendant was just a person who was ordered to take palm oil belonging to PT AMP and this was the first time he had taken palm oil belonging to PT AMP, while those who ordered him were Ade Inyia and Bujang Kadek who had often also taken palm oil from PT AMP, for this reason witness Mulyono asked the Panel of Judges to allow the Defendant to be acquitted in this matter .

This is what the judge takes into consideration in handing down a decision to release all legal charges against the defendant by applying the principles of *restorative justice* . The restorative justice approach focuses on conditions for creating justice and balance for the perpetrators of criminal acts and the victims themselves. Criminal procedures and justice mechanisms that focus on punishment are transformed into a dialogue and mediation process to create an agreement on the resolution of criminal cases that is fairer and more balanced for the victim and perpetrator.

Restorative justice is a justice concept to replace the concept used in the criminal justice system, namely *retributive justice* .

The concept of restorative justice does not focus on past mistakes, but how to solve the problem of responsibility and obligation in the future of the perpetrator (Muladi, 1995:76-77) . The resistance model was replaced by a dialogue and negotiation model. Deterrence was replaced with reconciliation and restoration as the primary goal. The community is considered a facilitator in the restorative process and the feelings of victims and perpetrators are acknowledged. Stigma must be removed through restorative and action possibility always open to repent and forgive as long as they help improve the situation caused by their actions.

In the regulatory framework, restorative justice provisions in the context of the criminal justice system only extend to juvenile justice as stipulated in the Juvenile Justice System Law. However, due to demands from police practitioners, the Prosecutor's Office and the Supreme Court are progressively issuing regulations regarding restorative justice. The police issued the Chief of Police Circular Number SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases and the Chief of Police Regulation Number 6 of 2019 concerning the Investigation of Criminal Acts which in Article 1 number

27 and Article 12 describes the mechanism for resolving cases using restorative justice, while the Prosecutor's Office issued Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, while the Supreme Court has just issued Decree of the Director General of the General Judicial Agency Number 1691/DJU/SK/PS. 0012/2020 Supreme Court of the Republic of Indonesia concerning the Implementation of Guidelines for the Implementation of *Restorative Justice*.

Based on the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.0012/2020 of the Supreme Court of the Republic of Indonesia concerning the Implementation of Guidelines for the Implementation of Restorative Justice, it is regulated regarding instructions for the application of restorative justice in minor criminal cases, children's cases, cases of women in conflict with the law. and narcotics cases, but until now there has been no regulation regarding ordinary criminal cases for adults.

Arrangements for restorative justice in ordinary cases for adults are not yet regulated by existing laws and regulations, based on Article 10 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, the Court is prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or lacks class, but is obliged to examine and try it and based on Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society. So, by carrying out a systematic interpretation of these provisions, the Panel of Judges is of the opinion that Judges are obliged to fill the legal gaps and carry out legal discoveries by exploring and understanding the values of law and justice in society.

Considering, that based on Article 10 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power above states that the main task of a Judge is to judge a case, whereas according to Bagir Manan, as quoted by Sunarto in the book *The Active Role of Judges in Civil Cases*, that there are several benchmarks for the meaning of "Judging" for a Judge according to law. among others:

1. Judging according to law is one of the principles of creating a state based on law. Every judge's decision must have a substantive and procedural legal basis that existed before the unlawful act or legal violation occurred;
2. The law in adjudicating according to law must be interpreted broadly beyond the meaning of written and unwritten law in certain cases or circumstances including the meaning of what binds the parties, good morality and public order;
3. The living law in society is the law that is considered in the judge's decision, but it does not always have to be followed, because it is possible that *the living law* may actually have to be set aside because it is not in accordance with new social demands;
4. In accordance with applicable legal traditions, judges are obliged to prioritize the application of written law, unless it will cause injustice, conflict with morality or public order. The judge is not the "mouth" or "mouthpiece" of the law but the "mouthpiece" of justice.

Based on the meaning of adjudicating in point 4 (four) above, judges are obliged to prioritize the application of written law, unless it will cause injustice, conflict with morality or public order. Judges are not "mouths" or "mouthpieces" of laws but rather "mouthpieces" of justice, starting from this concept, if written law will cause injustice then the judge can set it aside and make legal discoveries to achieve justice.

According to Sudikno Mertokusumo (1993,4) , Legal Discovery is the process of forming law by Judges or other Legal Apparatus who are given the task of applying general legal regulations to concrete legal events. Furthermore, it can be said that legal discovery is a process of concretization or individualization of general legal regulations by remembering certain concrete events. The legal discovery method can be carried out using two methods (according to Sudikno), namely:

1. Interpretation is a method of legal discovery that provides a clear explanation of the text of the law so that the scope of the rules can be determined in relation to certain events. This interpretation method is a means or tool to find out the meaning of the law. Interpretation is a method of finding law in cases where the regulations exist but are not clear enough to be applied to the event. This interpretation or interpretation can be done using several methods, namely: grammatical, historical, systematic, teleological, legal comparison, and futuristic .
2. Legal construction can be used by judges as a method of legal discovery if when adjudicating a case there are no regulations that specifically regulate the events that occurred. This legal construction can be done by using logical thinking in the following way: *Argumentum per analogiam* or often called *analogy* ; Refinement of law and *Argumentum a contrario* or often called *a contrario* .

In this case, the panel of judges made a legal discovery using the following method:

1. The teleologios interpretation is guided by social goals, namely that legal discovery is carried out as a means of achieving justice in society;
2. The futuristic interpretation is by looking at the provisions in Law no. 1 of 2023 concerning the new Criminal Code or Criminal Code that applies in Indonesia, especially regarding the concept of restorative justice;
3. Systematic interpretation, namely by looking at the concept of restorative justice as an integrated system of criminal law legislation by analyzing regulations and court decisions regarding restorative justice.

Based on the description of the legal considerations above, it is then linked to the facts in the trial of this case regarding the existence of a peace during the investigation process between the Defendant and the Victim (PT AMP) and the testimony of witness Mulyono as a representative of PT AMP as the victim who explained that there had been peace between The Defendant and PT AMP, where the Defendant Ninik Mamak, the Defendant, appeared before the leadership of PT. AMP and Witness Mulyono as the reporter to make peace, namely asking to forgive the Defendant because the Defendant was the victim of the other perpetrators, from this peace effort, a Peace Letter was then made on January 7 2022 which basically contained the Defendant apologizing and the PT. AMP forgave the Defendant, PT. AMP will not sue the Defendant and PT. AMP asked the Defendant not to repeat his actions. The Panel of Judges was of the opinion that the peace was a form of settlement based on the concept of restorative justice, where negotiations had been carried out between the perpetrator and the victim involving traditional elements, namely traditional leaders of the surrounding community who were called Ninik Mamak, which in the tradition According to Minangkabau customs, Ninik Mamak is an elder in the village, who is responsible for supervising, managing and leading the members of his clan, so that if a problem occurs to a member of his clan, Ninik Mamak is also responsible according to custom to help resolve or mediate the problem . Apart from that, during the trial, witness Mulyono also submitted a request to the Panel of Judges because there had been peace between the Defendant and PT AMP as the victim and seeing the condition of the Defendant's family and his position, his family really needed it, if the Panel of Judges allowed the Defendant to be released .

peace and request are in line with the concept of restorative justice, namely a fair resolution that emphasizes restoration to the original state and not retaliation, although in positive law, especially in ordinary criminal cases for adults, there is no regulation regarding the resolution of cases through the concept of restorative justice. Therefore, taking into account human values and justice and based on the legal considerations above, the Panel of Judges is of the opinion that peace between the Defendant and the Victim and the Application from Witness Mulyono must be the main consideration in handing down this decision i. The Panel of Judges was of the opinion that even though the act of theft committed by the Defendant was proven, because peace efforts had been made and there was a request from the

Victim himself so that the Defendant would not be punished, the peace and the request erased the unlawful nature of the Defendant's actions even though in positive law it is currently not regulated. regarding peace as a reason for expunging a crime or erasing the unlawful nature of the perpetrator's actions, but the Panel of Judges is of the opinion that this is because conditions have been restored to those before the crime occurred. The defendant does not deserve to be sentenced to a crime even if he has been proven to have committed a criminal act, because that is the case. In this peace, the Defendant's mistake towards the victim can be forgiven and the element of "Unlawful" is removed, so that in this case the Defendant is released from all legal demands (*onslaght van alle rechtvervolging*).

However, according to the author, this decision is not correct, because the panel of judges was not guided by the Decree of the Director General of the General Court Number: 1691/DJU/SK/PS.00/12/2020 concerning guidelines for implementing *restorative justice* in the General Court environment. The defendant Dedi's case does not meet the requirements for *restorative justice* as stipulated in National Police Regulation no. 8 of 2021 concerning Handling Criminal Acts Based on *Restorative Justice* and Attorney General Regulation no. 15 of 2020 concerning Termination of Prosecution based on *Restorative Justice* and does not fulfill legal objectives, namely the principles of legal certainty, justice and benefit. Justice and legal certainty are important questions in this case, to ensure that the judge's decision prioritizes justice for all parties involved, especially the victim. Even though they have the authority to make decisions with *restorative justice* considerations, if the necessary requirements are not met, then the decision can be ineffective and even have the potential to harm the victim.

The application of *restorative justice* is also regulated in Supreme Court Regulation no. 3 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. This regulation also explains that in implementing *restorative justice*, the Chairman of the District Court coordinates with the Head of the District Prosecutor's Office and the Chief of Police in carrying out the transfer of files based on the Republic of Indonesia Supreme Court Regulation No. 2 of 2012 regarding *restorative justice*. This means that implementing *restorative justice* in a criminal case requires coordination from all levels of law enforcement agencies. However, in deciding the defendant Dedi's case, the Chairman of the District Court did not coordinate the implementation of *restorative justice* with the Head of the District Attorney's Office and the Chief of Police in the jurisdiction responsible for this case.

Of course, this is not in accordance with the certainty of law enforcement of the applicable regulations, in the absence of coordination between the Head of the Court and the Head of the Prosecutor's Office and the Head of Police in the jurisdiction responsible for this case, this means that the aspect of legal certainty in implementing the judge's decision regardless of all demands is not achieved. law based on *restorative justice considerations*.

Law enforcers are tasked with creating legal certainty because they aim to create order in society. Legal certainty is an inseparable characteristic of law, especially for written law. According to Fence M. Wantu (2007:388), "law without the value of legal certainty will lose meaning because it can no longer be used as a guide to behavior for everyone". Legal certainty is defined as clarity of norms so that they can be used as guidelines for communities subject to these regulations. The definition of certainty can be interpreted as that there is clarity and firmness in the application of law in society. This is so as not to cause a lot of misunderstandings. According to Van Apeldoorn, "legal certainty can also mean things that can be determined by law in concrete matters". Legal certainty is a guarantee that the law is implemented, that those entitled to it according to the law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances.

Laws must be implemented and enforced. It is how the law must apply, basically it must not deviate *from fiat justitia et pereat mundus* (even if the world collapses the law must be upheld). That is what legal certainty wants. Legal certainty is a judicial protection against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances. The public expects legal certainty, because with legal certainty society will be more orderly. Law is tasked with creating legal certainty because it aims at public order (Sudikno Mertokusumo, 2005:160). On the other hand, society expects benefits in implementing or enforcing the law. Law is for humans, so the implementation or enforcement of law must provide benefits or usefulness for society. Don't let unrest arise in society because the law is implemented or enforced.

Regarding the application of *restorative justice* in the case of the defendant Dedi, it is the judge's decision before the court with shared considerations, which should provide a decision that truly creates legal certainty and reflects benefits. Judges as state officials should carry out justice and must really know the actual situation of the case, the process of administering justice in accordance with the governing rules, as well as the legal regulations governing it that will be applied, both legal regulations written in statutory regulations and laws that are not written.

Obstacles and Efforts to Overcome Obstacles in Applying *Restorative Justice Principles* to Judges' Considerations in Decisions to Dismiss All Legal Claims

This restorative justice can be called a new law enforcement paradigm model to respond to dissatisfaction with the workings of the criminal justice system which places more emphasis on the legal process. "The practice of law by law enforcers that occurs in Indonesia tends to always rely on legalist thinking as the main characteristic of legal *positivism* (A Sukris Sarmadi, 2012: 332). The injustice that occurs in the administration of law by law enforcers is an irony because in fact the form of law itself aspires to justice (*gerechtigheit*) (Agus Raharjo and Angkasa Angkasa, 2011:385).

In its implementation, the concept of a restorative justice approach in various countries has shown some success, but obstacles or challenges are often encountered. Obstacles experienced by several countries in implementing restorative justice include very serious violations, difficulties in creating public trust in the implementation of *restorative justice* in serious cases. Apart from that, the reasons for recidivist actions by perpetrators after undergoing a *restorative justice process* make the public question whether they have to repeat the process several times against the same perpetrator (Marlina, 2009:228).

The implementation of the concept of restorative justice in the integrated criminal justice system in Indonesia has not been implemented in an integrated manner with the absence of high-level regulations regarding the implementation of *restorative justice*, including clear technical instructions with the aim of ensuring that the perpetrator truly recovers and is accepted back into society. This is why the criminal justice sub-systems (police, prosecutor's office, judiciary, correctional institutions) in Indonesia do not fully understand what is actually meant by the concept of restorative justice. Judicial institutions in Indonesia have not implemented or implemented the concept of restorative justice as a whole. This is proven by the "series of development of the concept of restorative justice" that the implementation of the concept of restorative justice in Indonesia has not been implemented or is in the "could be restorative" category (meaning it has not used the concept of restorative justice) or at least reached the "partially restorative" stage.

The criminal justice system in Indonesia is still at the "restorative" stage because victim involvement is not the main concern, decisions are made by parties who are not directly affected, there is no option for dialogue between those directly affected, the focus is on rules or laws who is violated and the consequences of his actions (passive liability), does not focus on efforts to recover the damage or loss experienced. So as to create a sense of public

trust in the implementation of restorative justice in serious cases such as the crime of theft (Erma Sirande, 2021 ; 587) . The concept or approach to restorative justice *must* be created with a high-level legal umbrella as a basis and guideline as well as a form of legal certainty for all law enforcement agencies so that it is implemented in an integrated manner, meaning it is carried out in stages starting from the investigation, prosecution and trial stages. This is important considering that if one of the constituents does not apply the concept or approach of restorative justice, *then* a restorative decision will not be possible. For example, the police and prosecutors have embraced the concept of restorative justice but judges still adhere to a legislative mindset. In cases like this the judge will hand down decisions that are so normative that even correctional institutions are unable to apply the concept of restorative justice.

Therefore, the approach or concept of restorative justice *must* be implemented in an integrated manner between one component and another. On the other hand, if one component does not implement the restorative justice approach or concept, *then the restorative justice* approach or concept itself will not be realized properly.

The application of restorative principles in the judge's consideration of the decision to release all legal charges (*ontslag van alle rechtsvervolging*) is an approach that emphasizes the restoration of the relationship between the perpetrator and the victim and the reintegration of the perpetrator into society. There are several obstacles to implementing *restorative principles* , including resistance from parties who prefer a retributive approach, limited resources for mediation and rehabilitation programs, and the need for changes in the legal framework. Efforts that can be taken include:

Efforts to overcome obstacles in applying the principles of *restorative justice* in the judge's consideration of decisions free from legal action are:

1. Willingness of All Parties

All parties involved in criminal acts or detrimental events, namely victims, perpetrators, and the community (if relevant), must agree to participate in the *Restorative Justice process*. Their involvement must be voluntary and based on awareness to seek solutions and reconciliation.

2. Feeling of Security and Freedom from Coercion

All parties must feel safe during the *Restorative Justice process* and there should be no coercion to participate. Involvement must be based on free will and without pressure from other parties.

3. Fair and Transparent Procedures

Restorative Justice Process must be carried out with fair and transparent procedures. Each party must have an equal opportunity to speak and hear, and provide their views on the events that occurred.

4. Trained Mentors

Mediators, facilitators, or mentors who oversee the *Restorative Justice process* must have specific training and skills in restorative approaches. They are responsible for ensuring the process runs well and in accordance with the principles of *Restorative Justice*.

5. Focus on Accountability and Recovery

The main goal of *Restorative Justice* is to encourage perpetrators to be held accountable for their actions and strive for the recovery of victims and the restoration of disturbed relationships. Therefore, this process must be focused on efforts to correct the negative impacts that arise as a result of criminal acts.

6. Protection of Victims' Rights

Victims' rights must remain respected and protected during the *Restorative Justice process* . They must feel heard and respected in expressing their needs and desires.

7. Handling Certain Cases

Not all criminal cases are suitable for *Restorative Justice*. This approach is more appropriate for cases with lower levels of crime, where healing and reconciliation between victim and perpetrator is considered possible.

8. Cooperation with the Conventional Criminal Justice System

Restorative Justice can be an alternative or complement to the traditional criminal justice system. In some cases, the court decision may refer the case to a restorative process or incorporate restorative elements in the prescribed sentence.

CONCLUSION

Based on the results and discussion above, the following conclusions can be drawn:

1. The application of *restorative justice* in Decision No.28/Pid.B/2022/PN.Lbb, where the judge handed down a decision to release all legal charges against Defendant Dedi for theft. This is based on the facts of the trial which stated that there had been peace between the Defendant as the perpetrator and the PT. AMP as the victim. *Restorative justice* is a justice concept to replace the concept used in the criminal justice system, namely *retributive justice*.
2. In terms of implementing the principles of *Restorative Justice* This is an obstacle to the implementation of *restorative justice*, including in very serious violations, the difficulty in creating public trust in the implementation of *restorative justice* in serious cases. The implementation of the concept of restorative justice in the integrated criminal justice system in Indonesia has not been implemented in an integrated manner with the absence of high-level regulations regarding the implementation of *restorative justice*, including clear technical instructions with the aim of ensuring that the perpetrator truly recovers and is accepted back into society. This is what causes the criminal justice sub-systems (police, prosecutor's office, judiciary, correctional institutions) in Indonesia to not yet fully understand what is actually meant by the concept of restorative justice.

REFERENCES

- Agus Raharjo and Angkasa Angkasa, “*Profesionalisme Polisi Dalam Penegakan Hukum*,” 11, no. 3 (2011) 11:3, Jurnal Dinamika Hukum.
- A Sukris Sarmadi, “*Membebaskan Positivisme Hukum Ke Ranah Hukum Progresif (Studi Pembacaan Teks Hukum Bagi Penegak Hukum*, (2012) 1:12, Jurnal Dinamika Hukum.
- Anak Agung Putu Agung dan Anik Yuesti, *Metodologi Penelitian Kuantitatif dan Kualitatif*, Denpasar : AB Publisher, 2017.
- Barda Nawawi Arief, *Mediasi Penal dalam Penyelesaian Perkara Di Luar Pengadilan*, Semarang: Pustaka Magister, 2010.
- Chandra Prayuda, Ridho Mubarak & Rafiqi, “*Analisis Penerapan Restorative Justice Dalam Penyelesaian Kasus Kecelakaan Lalu Lintas Yang Mengakibatkan Kematian (Studi di Kepolisian Polres Pelabuhan Belawan)*”, (2022) 4:1, Jurnal Ilmiah Hukum.
- Erma Sirande, Hijrah Ahiyanti Mirzana, Audyana Mayasari Muin, *Mewujudkan Penegakan Hukum Melalui Restorative Justice*, Jurnal Hukum dan Kenotariatan, Volume 5 Nomor 4 November 2021.
- Fence M. Wantu, *Antinomi Dalam Penegakan Hukum Oleh Hakim*, Yogyakarta: Fakultas Hukum Universitas Gadjah Mada.
- Kuat Puji Prayitno, *Restorative Justice untuk Peradilan Pidana di Indonesia*, Jurnal Dinamika Hukum (2012).
- Lilik Mulyadi, *Kompilasi Hukum Pidana Dalam Perspektif Teoritis dan Praktek Pradilan*. Mandar Maju, Jakara : Bumi Aksara , 2007.
- Lilik Mulyadi, *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori, dan Prakti*, Jakarta : PT. RajaGrafindo, 2013.

- Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia*, Bandung : PT Citra Aditya Bakti, 2014.
- M.Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP : Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali*, ed. 2, cet.3, Jakarta : Sinar Grafika, 2004.
- Marlina, *Peradilan Pidana Anak di Indonesia dan Pengembangan Konsep Diversi dan Restorative Justice*, Bandung : Refika Editama, 2009.
- Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Cetakan I, Pustaka Pelajar : Yogyakarta, 2010.
- Muhaimin, *Metode Penelitian Hukum*, Mataram University Press, Nusa Tenggara Barat, 2020
- Mudzakir, *Perkembangan Viktimologi dan Hukum Pidana*, Makalah disampaikan pada “Pelatihan Hukum Pidana dan Kriminologi, Yogyakarta: Fakultas Hukum UGM, 2014.
- Muladi, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro, 1995.
- Miriam Liebman, “*Restorative Justice: How It Works*”, London : Jessica Kingsley Publishers, 2007.
- Oemar Seno Aji, *Hukum Hakim Pidana*, Jakarta : Bumi Aksara, 2003.
- Sudikno Mertokusumo dan A. Pitlo, *Bab-Bab Tentang Penemuan Hukum*, Yogyakarta: PT. Citra Aditya bakti, 1993.
- Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Yogyakarta : Liberty, 2005.
- Zevanya Simanungkalit, Skripsi: “*Analisis Hukum Terhadap Penerapan Restorative Justice Dalam Kecelakaan Lalu Lintas*”, Makassar : UNHAS, 2016.
- Kitab Undang-undang Hukum Pidana (KUHP)
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana
- Undang-Undang Nomor 48 tahun 2009 tentang Kekuasaan Kehakiman
- Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP).