



## Formulation of Restorative Justice Concept in Criminal Law Reform

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### **Abstract**

The concept of Restorative Justice is relatively new in the criminal law enforcement process and also holds the perpetrators accountable. Philosophically, this concept 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 in accordance with the reflection of Pancasila values, namely "Fair and Civilized Deliberations" in order to achieve social justice for all people or citizens in the Republic of Indonesia. This research method uses normative legal research, namely by conducting research on legal materials related to the Formulation of the Concept of Restorative Justice in Criminal Law Reform. Legal politics in the development of a national legal system must be based on Pancasila as a guide and filtering tool for national legal politics and the 1945 Constitution of the Republic of Indonesia as the basic law. One of the political forms of criminal law reform is known as the concept of restorative justice which is an alternative mechanism for resolving legal problems that occur without resorting to the judicial process.

**Keywords:** *Formulation; Restorative Justice; Criminal Law*

### **Background**

The State of Indonesia is a constitutional state (*rechtsstaat*), 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 juridical-constitutional 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. The national development planning system is a unified development procedure to produce development plans in the long term, medium term and annual term which are carried out by elements of state administrators and society at the central and regional levels.

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 statutory regulations, but also in a broad sense which refers to a system,

This legal change implemented in Indonesia should be directed towards creating more stable conditions, so that every citizen can enjoy the 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.

As is understandable, positive criminal law in Indonesia currently consists of the Criminal Code and various special laws outside the Criminal Code. The current Criminal Code originates from the WvS legacy of the Dutch East Indies and is declared valid in Indonesia based on Law Number 1 of 1946 in conjunction with Law Number 73 of 1958. Given the conditions and developments in Indonesia, the Criminal Code inherited from the Dutch East Indies has undergone a good change " the general rules and the special rules. The development of the general rules of Book I of the Criminal Code since Law Number 1 of 1946 until now has not undergone any fundamental changes. It is said so because the principles or general principles of criminal and criminal law that exist in the Criminal Code are still like the WvS of the Dutch East Indies. Indeed, in its development there have been changes or additions or revocations of several articles in the general rules of Book I, but these are only partial changes that are not fundamental and do not change the entire criminal system. In the absence of fundamental changes to the general principles of the penal system in the Criminal Code, it is still very relevant to the statement 51 years ago from the Team for Drafting the First Concept of Book I of the New Criminal Code of 1964 which stated in essence that even though Law Number 1 of 1946 have tried to adapt it to the atmosphere of independence, but in essence the principles and foundations of the criminal law system and criminal law are still based on the science of criminal law and the practice of colonial criminal law. However, this is only a partial change that is not fundamental and does not change the entire penal system. In the absence of fundamental changes to the general principles of the penal system in the Criminal Code, it is still very relevant to the statement 51 years ago from the Team for Drafting the First Concept of Book I of the New Criminal Code of 1964 which stated in essence that even though Law Number 1 of 1946 have tried to adapt it to the atmosphere of independence, but in essence the principles and foundations of the criminal law system and criminal law are still based on the science of criminal law and the practice of colonial criminal law. However, this is only a partial change that is not fundamental and does not change the entire penal system. In the absence of fundamental changes to the general principles of the penal system in the Criminal Code, it is still very relevant to the statement 51 years ago from the Team for Drafting the First Concept of Book I of the New Criminal Code of 1964 which stated in essence that even though Law Number 1 of 1946 have tried to adapt it to the atmosphere of independence, but in essence the principles and foundations of the criminal law system and criminal law are still based on the science of criminal law and the practice of colonial criminal law.

Taking into account the conditions and developments of the Criminal Code and other positive criminal laws, the following matters can be identified: 1. Initially, the Criminal Code was seen as the main body and as a form of codification and unification. However, in its development, the Criminal Code is seen as: a. incomplete or unable to accommodate various problems and dimensions of the development of new forms of crime. - Not in accordance with the socio-philosophical, socio-political, and socio-cultural values that live in society; - Less in accordance with the development of thoughts or ideas and

inspiration demands or needs of society (national or international). b. does not form a complete criminal law system, because the articles or offenses are repealed. therefore,

In this modernization era, there are many crimes (delicts) among the Indonesian people which end up in the Courts (litigation), where people tend to use a route called the Court as an effort to resolve a case which according to them conceptually and theoretically will create justice, but in reality or at the level of law in action this is actually not easy to achieve because of its nature which tends to be a win lose solution, with a reality like this, the settlement of a case through the judicial route which is only a win lose solution in general often creates a feeling of "unpleasant or disappointed", holding grudges, feeling dissatisfied, feeling unfair and even worse, intending to take revenge.

This feeling of discomfort or disappointment that is firmly entrenched in the minds of the losing party will try to seek "justice" at further levels of justice such as the High Court (PT), Supreme Court (MA) and even to the Constitutional Court (MK). This, of course, causes a buildup of cases flowing through the courts which can hamper the justice system, especially in Indonesia. From this phenomenon, it is true that what was stated by Joni Emirzon in his book entitled *Alternative Dispute Resolution Out of Court*, that this can generally be categorized as one of the weaknesses for a litigation institution which cannot be avoided even though it has become a provision.

Romli Atmasasmita expressed his opinion as follows: "National Law (Indonesia) as a system has not been formed holistically, comprehensively, nor has it been enriched by the life values of indigenous peoples to adapt to the lives of developed societies. Attempts to declare that there was a national legal system, proved to be only the inheritance of the inheritance legal system of the Dutch East Indies which adhered solely to the "Civil Law System" which was forced into force in the midst of the customary law community. Amendments to the Criminal Code during the post-independence period of the Republic of Indonesia and after the reform era, among others, were made by including provisions regarding air piracy and the prohibition of Marxism-communism ideology.

Based on Romli Atmasasmita's explanation, the legal politics of criminal law renewal is a system that is being continuously developed, or it can be said that the Indonesian national criminal law system is a system that is still being aspired to (*Ius Constituendum*). Based on this, it becomes a necessity conceptually and fundamentally to carry out the transformation of western law, Islamic law, and customary law into the national system, so that it becomes a unified whole as a unified national legal system which is philosophized by Pancasila and the 1945 Constitution of the Republic of Indonesia.

The reformers of the Criminal Code (hereinafter referred to as the Criminal Code) are positioned by its constituents as the foundation for building a national criminal law system. In line with that, the reform effort carries a big mission, namely: decolonization of the Criminal Code from colonial heritage, democratization of criminal law, consolidation of criminal law, and adaptation and harmonization of various developments both nationally and internationally. The derivation and elaboration of this grand mission is a limited or drastic change in the paradigm of criminal law as contained in the current Criminal Code.

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

Renewal of criminal law (including formal criminal law), must be pursued with a policy-oriented approach, because in essence it is only part of a legal policy measure, namely part of legal politics/law enforcement, criminal law politics, criminal politics, and social politics, and at the same time a value-oriented approach, because each policy contains value considerations. Criminal law renewal essentially implies an attempt to carry out a reorientation and reform of criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlies social policy, criminal policy and law enforcement policy. in Indonesia.

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 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 concept of Restorative Justice is relatively new in the criminal law enforcement process and also holds the perpetrators accountable. Philosophically, this concept 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 in accordance with the reflection of Pancasila values, namely "Fair and Civilized Deliberations" in order to achieve social justice for all people or citizens in the Republic of Indonesia. One form of solution offered is the settlement process in the context of Restorative Justice.

This is based on the view that in a crime incident, the suffering of the person who has become the victim does not only affect the person himself, but also affects those around him. It even has an impact on society and the country in a wider scope. In criminal justice practice, victims are only treated or positioned as witnesses (victims), without the right to take an active part in court proceedings. Law enforcement officials only position victims as instruments in order to help them punish or sentence perpetrators, without ever continuing to do what they can provide for the benefit of victims.

However, the concept of restorative justice includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator. Victims can convey the losses they have suffered and the perpetrators are also given the opportunity to atone for them, through mechanisms of compensation, peace, social work, and other agreements. This is important, because the conventional sentencing process does not provide space for the parties involved, in this case victims and perpetrators, to actively participate in solving their problems.

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 legal 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. The formulation of the thoughts of legislators (laws) as outlined in legal regulations will also determine how law enforcement is carried out. So, law enforcement and law-making cannot be separated.

With the concept of restorative justice, this phenomenon in law enforcement in Indonesia, which has been considered to have damaged social justice and is considered far from the values of Pancasila,

does not need to happen again. For example, so far we have witnessed various legal cases involving a grandmother who stole a bowl, a grandmother who stole a watermelon, a child who stole flip-flops, a child who sued his biological mother, and various other legal issues that are actually trivial and minor or acts that are categorized as actual crimes can also be resolved with the concept of restorative justice. Conflict resolution using this concept is seen as a form of settlement that values Pancasila, especially the 4th precept (deliberation), but still do not forget the interests of the victims and the value of justice and benefits for the parties in conflict. So based on the background above, the author raises the research title "Formulation of the Concept of Restorative Justice in Criminal Law Renewal".

### ***Formulation Problem***

Based on this background, it can formulate the problem formulation as follows:

1. How is the legal politics of the RKUHP towards the concept of restorative justice in the renewal of criminal law?
2. How important is the implementation of the concept of restorative justice in the RKUHP as an effort to tackle crime?

### ***Method***

This research method uses normative legal research, namely by conducting research on legal materials related to the Formulation of the Concept of Restorative Justice in Criminal Law Reform. As well as with the applicable laws and regulations.

### ***Discussion***

#### **1. Legal Politics of RKUHP Against the Concept of Restorative Justice in Criminal Law Renewal**

Renewal of material criminal law in the form of a Draft Law on the Criminal Code (hereinafter abbreviated as RUU KUHP), is an effort to realize the ideals of a rule of law state. So that the Criminal Code Bill 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) of the western model 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 Bill is not just making necessary changes that change colonial clothes to become national packaging, but is a form of true national independence and sovereignty. Even legal renewal determines the direction of forming the character of the nation,

Criminal law as an independent part of public law is one of the most urgent legal instruments in existence since ancient times. The existence of criminal law is very important in ensuring public safety from the threat of criminal acts, maintaining state stability and is a moral institution that plays a role in rehabilitating criminal offenders. So that criminal law continues to develop in accordance with the demands of societal development. One of these developments is the emergence of the idea of conflict resolution which does not only focus on the legal process in court, but is resolved by the parties to the conflict by restoring the existing situation. This principle was later known as restorative justice which was introduced in the Criminal Code Bill through a number of provisions in Article 2, Article 12, Article 54 and Article 55, there is mediation in Article 145 letter d, as well as diversion of children in the juvenile

justice system. The emergence of this concept is mainly to provide a balance of attention among criminal law stakeholders, namely perpetrators, victims, society and the state. Furthermore, this balance is also seen in terms of regulation regarding punishment (straf/punishment) with regulation regarding action (maatregel/treatment/measures) and the possibility of combined sanctions between crime and action (double track system), given the heterogeneity of crime issues, as well as awareness about the importance of appropriate therapy for victimless crime. victims, society and the state. Furthermore, this balance is also seen in terms of regulation regarding punishment (straf/punishment) with regulation regarding action (maatregel/treatment/measures) and the possibility of combined sanctions between crime and action (double track system), given the heterogeneity of crime issues, as well as awareness about the importance of appropriate therapy for victimless crime. victims, society and the state. Furthermore, this balance is also seen in terms of regulation regarding punishment (straf/punishment) with regulation regarding action (maatregel/treatment/measures) and the possibility of combined sanctions between crime and action (double track system), given the heterogeneity of crime issues, as well as awareness about the importance of appropriate therapy for victimless crime.

Actually the concept of restorative justice is a form of customary law that has long ago developed in Indonesian society. So that the recognition of customary law (the living law) in the Draft Criminal Code aims to fulfill a sense of justice that lives in society, by restoring conditions that have been damaged or the process in which interested parties solve together how to reach an agreement after a crime has occurred, including its implications in the future. . Thus, restorative justice in handling criminal acts is not only seen from a legal perspective, but is also linked to moral, social, economic, religious and local customs aspects as well as various other considerations.

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 much influence the sentencing decision.

In addition, in the development of criminal law at this time it is also known as penal mediation. In criminal law practice, penal mediation is considered a derivative of restorative justice, because there is no need to carry out criminal law through the courts. Although the settlement of cases outside the court (Alternative Dispute Resolution / ADR) is common or usually applied in civil cases, not for criminal cases. Because at the basic level, criminal cases cannot be settled out of court, but in practice certain cases may occur, and even out of court settlement may be ideal.

In the development of theoretical discourse as well as the development of criminal law reform in various countries there is a strong tendency to use penal mediation as an alternative to solving problems in the field of criminal law. It is undeniable that the practice of law enforcement in Indonesia in which criminal cases are resolved outside the court through the discretion of law enforcement officials, not to mention that in practice the community also performs forms of discretion over criminal cases (social discretion) through peace mechanisms, settlement of customary institutions , and so on, which then causes the demand to be positive forms of settlement of cases outside the court getting stronger.

As previously stated, basically restorative justice returns the conflict to the most well-known parties to influence victims, perpetrators and the interests of their communities and give priority to their

interests. Restorative justice also emphasizes human rights and the need to reverse the effects of social injustice and in simple ways gives perpetrators of justice rather than formal (legal) justice victims do not get any justice. Then, restorative justice also seeks to restore the victim's safety, personal respect, dignity and more importantly, a sense of control.

## **2. The Importance of Implementing the Concept of Restorative Justice in the RKUHP as an Effort to Combat Crime**

The existence of restorative justice in the criminal justice system in Indonesia is nothing new. Because of this, the discourse on restorative justice on strengthening the role of the victim in the criminal justice system is important because in practice the criminal justice system tends to ignore the interests of the victim. This RJ paradigm in the RKUHP is given an entrance through the purpose of punishment, so that it can be regulated further. The discussion on the RKUHP was very serious to encourage RJ due to concerns about the overcrowding of prisons in Indonesia, especially what caught his attention, 50% of prison inmates whom he knew were prisoners involved in narcotics cases where the cases were pure users, not dealers. In the RKUHP, try to formulate things that were not previously included in the current KUHP.

In the future, in order to achieve legal objectives, a Draft Criminal Code will be prepared which is the result of the thoughts of the Indonesian nation. The preparation of the draft Criminal Code in the future is expected to target 4 (four) things, namely:

- a. Crime prevention and control;
- b. Improvements to the perpetrators;
- c. Prevention against arbitrary actions outside the law; and;
- d. Conflict resolution in society.

These four benchmarks are placed within the framework of community protection which is achieved through the purpose of punishment. Thus, the draft Criminal Code material should have had an impact on substantial changes related to public protection that shifted the paradigm of national criminal law. This change will certainly have an impact on many aspects, one of which is especially the conditions and policies of correctional institutions. With changes both paradigmatic and material by material, the projections of the situation and correctional policies will also change along with this update. The reform of the Draft Criminal Code starts from the objectives of "social defense" and "social welfare".

The Restorative Justice approach focuses on the needs of both victims and perpetrators of crime. In addition, the Restorative Justice approach helps criminals to avoid other crimes in the future. The Restorative Justice movement originally started as an effort to rethink needs that were not being met in the ordinary justice process. Restorative Justice expands the circle of stakeholders or parties involved in events or cases which are not just the government and perpetrators but also victims and community members.

In fact, there are many Traditional Laws in Indonesia that can become Restorative Justice as an attempt to find a peaceful conflict resolution outside the court or a win-win solution, although in reality it is still very difficult to implement because its existence is not recognized by the state or not codified. in national law. The emergence of the idea of Restorative Justice (Restorative Justice) as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. This is because the parties involved in the conflict are not involved in resolving the conflict. Victims are still victims, perpetrators who are imprisoned also raise new problems for families and so on.

One form of the Restorative Justice mechanism that can be applied and in accordance with the cultural values of the Indonesian nation is to use dialogue techniques in a familial way which among Indonesian people is better known as "deliberation for consensus". This concept of Restorative Justice (Restorative Justice) assume that perpetrators and victims both get the best possible benefit so as to reduce recidivism rates among perpetrators of criminal acts and provide a sense of responsibility for each party.

The failure of the Criminal Justice System based on the dynamics of changes and developments in criminal law emerges a paradigm of punishment known as Restorative Justice. In Restorative Justice the perpetrator is encouraged to repair the harm he has caused to the victim, his family and also the community. The main program is "a meeting place for people" to find solutions to repair relationships and damage caused by crime. Justice that is based on peace for perpetrators, victims and society is the moral ethics of Restorative Justice, therefore justice is carried out as the "Just Peace Principle". This principle reminds us that justice and peace are fundamentally inseparable. Peace without justice is oppression, justice without peace is a new form of persecution/pressure.

The obstacles that occur in implementing Restorative Justice include:

- a. *An identifiable victim;*
- b. *Voluntary participation by the victim;*
- c. *An offender who accepts responsibility for his/her criminal behavior; and,*
- d. *Non-coerced participation of the offender.*

The results that occur in implementing Restorative Justice include the following:

- a. Peace with or without compensation;
- b. Handover to parents/guardians;
- c. Participation in education or training at Educational Institutions, Social Welfare Organizations or Social Welfare Institutions; or
- d. Society service.

There should be a key strategy for developing a sense of restorative responsibility:

- a. Focus on recovering victims' losses;
- b. Carrying out a process to secure the interests of the Community;
- c. Organizing a process to promote a broader understanding of the effects of criminal acts on other people and society;
- d. Offer meaningful ways for perpetrators to be held accountable for their actions;
- e. Promote an apology or expression of remorse for the offender;
- f. Involve victims and the community in determining accountability measures.

According to Muladi, the restorative justice approach provides opportunities and possibilities for victims of crime to obtain reparations, a sense of security, allows perpetrators to understand the causes and effects of their behavior and is responsible in a meaningful way and allows society to understand the main causes of crime, to promote community welfare and prevent crime. A balanced approach to replace the punitive-retributive approach is urgently needed in a restorative justice system to fulfill the interests of the perpetrators of the rehabilitation and reintegration process; the interests of victims of restoration as a result of criminal acts; and the community's need for increased security and safety.

The existence of a special restorative justice process strategy for children/adolescents who are balanced (The Balanced Restorative Justice for Juvenile) is based on the idea that the source of crime and juvenile delinquency is society, family, school, so that the strategy only focuses on the individual. wrong



doer. The involvement of victims' elements and the community, as well as professionals, will solve the problem in a systemic and comprehensive manner. Restorative justice features a flexible range of measures that can be adapted to the prevailing Criminal Justice System and carried out in a complementary manner by taking into account legal, social and cultural conditions. The use of restorative justice will not harm the state's right to prosecute suspected criminal offenders.

Normatively, the application of this restorative justice is not always oriented towards imprisonment, but aimed at aligning the interests of recovering victims and the accountability of non-imprisonment perpetrators in certain criminal cases, such as cases of children, women, narcotics, minor crimes. Since 2009, the concept of restorative justice has begun to be adopted in Indonesian Laws and Regulations. Beginning with the issuance of the Chief of Police Letter No. Pol: B/3022/XII/2009/SDOPS dated 14 December 2009 concerning Handling of Cases through Alternative Dispute Resolution (ADR) and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, regarding the obligation of diversion at all levels of examination.

Then, several regulations were issued in the internal judiciary, police, prosecutors, and related agencies. For example, Perma No. 2 of 2012 concerning Adjustment of Limits on Misdemeanors and Amount of Fines in the Criminal Code; Perma No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Then, SE Kapolri No. SE/8/VII/2018 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, Chief of Police Regulation No. 6 of 2019 regarding Investigation of Criminal Acts, and Prosecutor's Regulation No. 15 of 2020 regarding Termination of Prosecution Based on Restorative Justice.

The concept of restorative justice in international rules has become known since 1985 as stated in Rule 11 Beijing Rules (Standard Minimum Rules for the Administration of Juvenile Justice – SMR-JJ). This rule is the result of the VII UN Congress Resolution No. 40/33 of 1985. Then, UN Publication No. E.06.V.15 named “Handbook on RJ Programs” on 2006. At the national legal level, the concept of restorative justice has been adopted since 2009. Like Law no. 22 of 2009 concerning Traffic and Road Transportation, the diversion rules in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and several other Special Laws. Since 2012, the concept of restorative justice has also been adopted in the Draft Criminal Code (RKUHP).

The concept of restorative justice is also contained in the 2012 RKUHP draft, 2015 RKUHP, and the 2019 RKUHP draft. The difference from the three drafts is only a shift and a slight addition to the editorial articles. These articles are aimed at repairing victims' losses, environmental losses, and wider community losses (state finances). Signs of restorative justice in the RKUHP consist of the purpose of sentencing, sentencing guidelines, type of crime, and the fall of the prosecution.

In the Chapter on Purpose of Punishment Article 58 paragraph (1) letter c, d RKUHP 2015, it is stated that resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society; foster a sense of remorse and free the convict from guilt (see Article 51 of the 2019 RKUHP draft). In the Punishment Guidelines Chapter Article 53 of the 2019 RKUHP draft, it is stated that when trying criminal cases, judges are required to enforce law and justice. If there is a conflict between legal certainty and justice, the judge must prioritize justice. Article 54 paragraph (1) letter hk 2019 RKUHP states that punishment must consider the influence of the crime on the future of the perpetrator of the crime; the influence of the crime on the victim or the victim's family; forgiveness from the victim and/or his family; and/or the values of law and justice that live in society.

In Article 70 paragraph (1) of the 2019 RKUHP draft it is stated that while still considering Article 52 and Article 54, prison sentences should not be imposed if the circumstances are found: the defendant is a child; the defendant is over 75 years old; the defendant is the first time committing a crime;

the losses and suffering of the victims are not too great; the defendant has paid compensation to the victim; the accused was not aware of the crime he had committed will incur great losses; the crime occurred due to very strong incitement of the person other. Meanwhile, the type of punishment regulated in Article 65 is the Main Crime in the form of imprisonment; cover sentence; supervision punishment; fines; and social work punishment. Article 66, namely additional punishment in the form of revocation of certain rights; confiscation of certain goods and/or bills; announcement of the judge's decision; payment of compensation; and fulfillment of local customary obligations.

Regarding the loss of prosecution authority, Article 132 of the 2019 RKUHP draft stipulates that the authority to sue is null and void if: there has been a court decision that has legal force remain against someone for the same matter; the suspect or defendant dies; expired; maximum fine paid voluntarily for the crime punishment which is only punishable by a maximum fine category III; maximum fine of category IV paid voluntarily for a crime punishable by imprisonment for a maximum of 1 (one) year.

## **Conclusion**

The legal politics of criminal law reform in Indonesia is currently still ongoing and is part of the development of the national legal system. The legal politics of developing a national legal system must be based on Pancasila as a guide and filtering tool for national legal politics and the 1945 Constitution of the Republic of Indonesia as the basic law. One of the political forms of criminal law renewal is known as the concept of restorative justice which is an alternative mechanism for resolving legal problems that occur without resorting to the judicial process. With this restorative justice approach, law enforcement which so far has always used a purely retributive approach (retaliation) will shift to a restorative (recovery) approach.

With this restorative approach, the settlement of criminal cases prioritizes the following matters:

- a. in the settlement of criminal cases in Indonesia so far it can actually be carried out using a restorative justice approach, in which the mechanism used is by means of deliberation to reach a consensus between the perpetrators, victims/victims' families, society, and the state as stakeholders of criminal law;
- b. that actually the mechanism for settling criminal cases using a restorative justice approach has long been applied by the people of Indonesia. It even develops and exists in people's lives, because in concreto it can bring mutual benefits and avoid the bad effects of imprisonment and recovery for victims of their rights. It's just that it hasn't formally become part of the Indonesian legal system;
- c. in the context of renewal of criminal law in Indonesia it has also accommodated the principles of restorative justice as stipulated in the national Criminal Code Bill, where the formulation of types of crimes (*strafmaat*) contains restorative properties. Likewise in the law on the juvenile justice system. So it is very possible that the concept of restorative justice can be used as part of the renewal of criminal law in Indonesia in the future.

Recommendations For legislators, in this case the President and the People's Legislative Assembly, in the future, they need to seriously think about it, and facilitate the Restorative Justice approach as part of the National Legal System (SHN), so that it becomes part of the mechanism for settling cases in the Criminal Justice System. in Indonesia country. There needs to be a serious effort from the government to complete the process of discussing, ratifying and enacting the Draft Criminal Code as soon as possible in accordance with Indonesian values. Given that the current Criminal Code is no longer compatible with the culture of the Indonesian nation which is based on customary law (traditional law) and other diversity values.

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