

## **Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia**



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**ABSTRACT:** This study aims to analyze regulations related to the formulation of regulations on the application of criminal sanctions against elderly perpetrators, which at this time it is still possible to be sentenced to imprisonment which causes injustice to elderly people. So, it needs fair law enforcement. This study uses the constructivism paradigm, the type of research in the form of doctrinal law, and a juridical -normative approach. The data used in this study are secondary data obtained by conducting literature studies on various regulations and books, research results and various journals. The data obtained was then analyzed using a qualitative descriptive method. The results of this study are that criminal sanctions against elderly perpetrators (elderly) are still considered not fulfilling the principle of justice because the elderly factor as a judge's consideration in sentencing must look at Indonesia's positive legal arrangements, namely the Criminal Code. For now, the Criminal Code does not specifically regulate the factor of old age as a judge's consideration in sentencing. Thus, for criminal cases involving the defendant who is an elderly person, in applying positive law, the judge must look at the values and sense of justice that grow in society. The values here are related to social values that exist in society, namely, what is desired that influences social behavior and has a functional power in the development of life that has been going on for a long time in the habits of behavior in everyday life, while the sense of justice that grows in society reflects the form of the balance of social values in society in law. Weaknesses related to regulatory arrangements for the application of criminal sanctions against elderly offenders (elderly) at this time since the Criminal Code still adheres to a retributive system and the Restorative System has not yet been regulated. Justice in the Criminal Code Against Elderly Actors. Weaknesses in terms of legal structure due to factors Law Enforcement Officials tend to have a positivistic view of law and the rights of the elderly in the criminal system are still neglected. Weaknesses in terms of legal culture are due to the Psychological Consideration Factors of the Elderly and the Legal Awareness factor of the Elderly Community which is still lacking.

**KEYWORDS:** Crime, Elderly, Justice, Restorative, Indonesia

### **I. INTRODUCTION**

Perpetrators of criminal acts are people who commit an act that is formulated in the Criminal Code (KUHP). Criminal law enforcement that has been carried out to date, especially those regulated in the Criminal Code, is believed to be a solution in dealing with various criminal cases, especially cases that are in the category of general crimes. However, along with human development, the penal system owned by the Criminal Code also creates new problems, for example, causing over capacity in Correctional Institutions (LAPAS) to inconsistency problems. of justice (inconsistent justice). There are many criticisms in criminal law enforcement related to certain cases, that criminal law in Indonesia is sharp downward and blunt upward [1].

The fundamental problem with the penal system in Indonesia is that we adhere to a retributive pattern justice, namely the paradigm that views crime as a violation of the state. Meanwhile, on the other hand, we cannot hide the fact that there are many crimes that occur because there are social phenomena, such as crimes in the middle and lower classes of society which are closely related to poverty, lack of education, and low welfare. So, there is a clash between retributive paradigms justice with existing social reality.

Based on such reasons, there are various discourses regarding the ideal pattern of handling criminal acts. Even though on various sides we understand that crime or crime will never end until this world ends. This reason is not a solutive reason nor is it a strong reason for not carrying out preventive and repressive efforts to deal with criminal acts. Handling of criminal acts is a rational action that must be carried out to achieve legal objectives, namely justice, benefit, and certainty [2].

## Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

In the opinion of John Braithwaite in his book *Crime, Shame and Reintegration* provides new ideas for implementing a new approach to handling criminal acts, especially for criminal acts that are formed from social phenomena. He suggested that people change their minds from patterns of social control by carrying out social control punishments that are more moral. The approach taken by John Braithwaite is known as the restorative approach justice. Regarding the restorative concept Justice as stated by Braithwaite is also closely related to the reintegrative model of the justice system. There is a transition to replace the due model process that is strict in nature towards a reintegrative model that is flexible in nature.

According to due the process model adopted by the Criminal Code is basically strict and impeccable in nature but brings strict consequences in that almost all criminal cases in Indonesia end in punishment, moreover imprisonment. Through the due mechanism This process model, in the opinion and criticism of Satjipto Rahardjo, as quoted by Mahrus Ali, states that the dominance of the positivism paradigm which is inherent in formality is one of the causes for the decline in the performance and quality of criminal law enforcers in Indonesia which often ignore the aspects of justice and legal expediency [3].

Imprisonment is not the best solution in solving crime problems, especially crimes where the damage caused to victims and society can still be restored so that the damaged conditions can be returned to their original state, as well as eliminating the bad effects of imprisonment. Responding to crimes that are restored, a punishment paradigm is known as restorative justice, where perpetrators are encouraged to repair the losses, they have caused to victims, their families and the community. For that, the main program is "a meeting place for people" to find solutions to improve relations and damage caused by crime (peace).

One of the criticisms of the concept of punishment in the current Criminal Code is related to the punishment of perpetrators of crimes committed by elderly people (elderly). People in the elderly category are citizens who have reached the age of 60 years or more. Indonesia's population in the elderly category continues to increase. This is the impact of the fact that Indonesia has experienced the baby phenomenon boom or a very significant increase in the number of babies in 1960-1970. The increase in the number of elderly people has complex consequences. Various challenges resulting from population aging have covered almost every aspect of life. To respond to these conditions, we need an aging development program that can protect the lives of the elderly in Indonesia [4].

Various aspects of life such as economic, social, and legal will be affected by the aging process of the population. Degradation of organ function with increasing age can cause health problems such as an increased risk of disability. Situations like this expose the elderly to various special needs from various sides. In cycles, the age of the elderly will bring them to retirement age, enter part of an economically unproductive group, are vulnerable to disease, need help from others, and require special attention and handling. Therefore, the elderly is also included in the vulnerable group.

Facts that occur in people's lives, the elderly, like other humans, also have the potential to commit criminal acts, apart from often being victims. The elderly also can become suspects in committing a crime. Several cases that show that the elderly can commit a crime include the one that occurred in Pekalongan on May 24, 2019. The Pekalongan Police arrested 2 elderly men, the first being Khasani, a 58-year-old man who worked as a beggar every day to commit unpleasant acts to his victim, a 13-year-old girl. Second, Kusnoyo, aged 72, had committed obscene acts against three of his victims who were underage.

Some of the phenomena of minor cases involving elderly perpetrators, which are always questioned by the public to law enforcement, include in 2015, the case of grandmother Asyani (63 years) from Situbondo Regency who stole teak wood belonging to Perhutani, as a result of the defendant's actions the panel of judges handed down a verdict 1 year in prison with 1 year 3 months probation and a fine of IDR 500,000.00 subsidiary 1 day of probation. Other cases in 2009, the case of Minah's grandmother (65 years) at the Purwokerto District Court who stole 3 cocoa beans, because of the defendant's actions, the panel of judges sentenced her to 1 month in prison with 3 months probation [5].

Cases of crimes committed by the elderly also occurred in Tapan Dolok District, Simalungun Regency, namely the crime of theft, the defendant named Samirin, 68 years old in the Decision of Criminal Case Number: 590/ Pid.B /2019/PN Sim, was proven to have committed theft against PT. Bridgestone by harvesting and/or collecting plantation products in the form of 1.9 kg (one point nine kilograms) of bamboo shoots sap which causes a loss of only Rp. 17. 480. The judge's decision during the trial stated that the defendant Samirin had been proven guilty of committing the crime of illegally harvesting and or collecting plantation products against the defendant Samirin, and therefore was sentenced to imprisonment for 2 (two) months and 4 (four) days minus the term prisoner.

There are not a few perpetrators of criminal acts committed by the elderly, but it is not purely a crime because the mindset when the elderly has decreased, this is because there are other influences that affect him both in terms of physical weakness, decreased psychological thinking, or lifestyle. which have not been able to achieve for the welfare of life. So far, no one has paid attention when the elderly is faced with the law, both from the state and the law itself. The phenomenon that gets the most attention is women and children from both the perspective of perpetrators and victims. The elderly are also weak creatures so they must be protected and nurtured both in terms of perpetrators and victims.

According to Law Number 39 of 1999 concerning Human Rights, in Article 5 Paragraph (3) it has been stated that every person who belongs to a vulnerable group of people has the right to receive more treatment and protection about his particularity. Ease

# Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

and special treatment for the elderly is explicitly written in Article 41 Paragraph (2) of Law Number 39 of 1999 which states that every person with disabilities, elderly people, pregnant women, and children, has the right to special facilities and treatment [6].

are regulated in Article 42 of Law Number 39 of 1999 which states that every citizen who is elderly, physically disabled, every citizen who is elderly, physically disabled and/or mentally disabled has the right to receive special care, education, training, and assistance. at the expense of the state, to guarantee a decent life, in accordance with human dignity, to increase self-confidence and the ability to participate in the life of society, nation and state.

Another regulation related to the rights of the elderly is the Regulation of the Minister of Law and Human Rights Number 32 of 2018 concerning Treatment of Elderly Detainees and Prisoners, special care for the elderly is based on realizing human rights-based treatment of elderly detainees and inmates and based on the Standard Minimum Rules for The Treatment of Prisoners which has now changed to The Nelson Mandela Rules. This condition is very important considering that the percentage of the elderly prisoner population with other prisoners amounted to 2.5% or the equivalent of 4755 people in December 2019. Treatment for elderly prisoners and prisoners aims to provide fulfillment of the needs of elderly prisoners or inmates so they can maintain their abilities physical, mental, and social [7].

Specific arrangements regarding the sentencing of the elderly in the current Criminal Code have not been explicitly regulated or even not regulated at all, so that there are still many perpetrators of criminal acts committed by the elderly being sentenced (especially imprisonment) in the trial process. Based on the background explanation above, this study will analyze the reconstruction of regulations on the application of criminal sanctions against elderly offenders based on the value of justice.

## II. RESEARCH OBJECTIVES

1. To analyze and find regulations on the application of criminal sanctions against elderly offenders (elderly).
2. To solve scientific problems in the field of criminal law relating to weaknesses in the regulation of the application of criminal sanctions against elderly offenders (elderly) according to the current Criminal Code
3. Reconstructing regulations on the application of criminal sanctions against elderly perpetrators (elderly) based on Pancasila justice.

## III. RESEARCH METHOD

This research is normative juridical research, that in this study used data sourced from library studies in the form of secondary data. Sources of data are in the form of the Qur'an, Hadith, and laws and regulations as well as other regulations as primary legal materials. Literature books, research results, opinions of scholars, papers which are secondary sources of law. As well as legal dictionaries and legal encyclopedias which are tertiary legal materials. The data obtained from the literature study were then analyzed using a qualitative descriptive method.

## IV. RESEARCH RESULTS AND DISCUSSION

The current Criminal Code in Indonesia still uses Dutch inheritance law which is still oriented towards legal certainty and the classic criminal objective is that the purpose of the crime is retaliation or is retributive in nature. Even though at this time the development of modern criminal law has shifted that crime aims at protecting and caring for perpetrators and victims, not just retaliation. As well as oriented towards the application of the principle of criminal individualization.

The shift in the orientation of sentencing objectives should also be applied to older criminal offenders so that the objective of sentencing for justice can be realized. The current situation is difficult for law enforcers to implement because there are rules that do not yet accommodate law enforcement against old criminals [8].

restorative -based law enforcement Justice for the elderly is a crucial issue that needs immediate attention from the government. This process has started with the New Criminal Code in Indonesia which will take effect in the next three years because it already contains the settlement of criminal acts committed by the elderly, which prioritizes approaches other than criminal sanctions in their settlement. Of course, this good news must be supported by all parties to realize a more humane law enforcement.

restorative justice approach is assumed to be the most recent shift from the various models and mechanisms currently operating in the criminal justice system. The United Nations through the Basic Principles it has outlined considers that a restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with GP Hoefnagels' view which states that criminal politics must be rational the responses to crime).

After the development of the orientation of punishment, the position of the victim is an important part of the purpose of punishment. The development of thinking about sentencing then moves towards a new orientation where the settlement of criminal cases is something that benefits all parties, which is what people are thinking currently. Restorative justice is offered as an approach that can meet this demand. The return of the authority to settle criminal cases from the judiciary as the representative

## Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

of the state to the community through a restorative justice approach where victims and society are components that must exist and determine [9].

What is meant by restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. Restorative justice is a form of justice that is centered on the needs of victims, perpetrators of crimes, and society. With the application of restorative justice, it is hoped that it will be able to provide space for the community to deal with legal issues that are felt to be fairer; reducing the burden on the state, for example to deal with criminal acts that can still be resolved independently by the community, police officers, prosecutors and courts can focus more on eradicating criminal acts with more dangerous qualifications.

In addition, the implementation of restorative justice can also reduce the number of perpetrators who are sentenced to prison, considering that currently correctional institutions (lapas) generally face the problem of overcapacity. From the reflection of the end of 2017 at the Ministry of Law and Human Rights (Kemenkumham), one of them is the problem of overcapacity prisons in Indonesia which is very apprehensive. Data from the Ministry of Law and Human Rights states that every month there are 2,000 new prisoners, meaning that there are around 24,000 new prison residents a year. In fact, the government is only able to provide space for 5,000 prisoners per year. According to the latest data on the number of prison inmates per regional office (Kanwil), March 2020, there are only 3 provinces where the number of prison inmates does not exceed capacity, namely DI Yogyakarta, North Maluku, and West Sulawesi. Meanwhile, the 3 provinces that exceed capacity by more than 200% are DKI Jakarta (218%), East Kalimantan (255%), and Riau (207%).

The problem of overcapacity of prisons has created dangerous negative impacts. First, overcapacity prison often sparked riots. For example, the riot at Sialang Bungkok Prison, Pekan Baru, Riau, May 5, 2017, which caused around 200 prisoners to escape. Second, the overcapacity of the number of prisoners makes supervision difficult. As a result, there are many convicts who freely sell drugs in prisons. Third, prisons, which are supposed to be used as training grounds, are ultimately unable to educate convicts optimally because of the excess number. The wardens will not be able to optimally guide them, so we often see that prisons do not deter prisoners. They became recidivists who were even more professional and ruthless than before [10].

In contrast to retributive justice which emphasizes punishment for criminals, restorative justice emphasizes the restoration of victims, perpetrators of crimes, and society. This is because in every crime, it is the victim who first suffers because of the crime. Furthermore, the perpetrators of crimes as parties responsible for the actions they have committed are required to be responsible for their actions. It is with this responsibility that his dignity as a person is restored. Society must also be restored because crime also destroys the harmony of life in society.

There are three basic principles of restorative justice. First, restorative justice prioritizes recovery or restoration for all parties affected by crime, namely victims, perpetrators, and society. Victims are the first to be harmed by crime. Victims directly suffer from the crime, physically and mentally. Criminals suffer losses as well. By committing a crime, a criminal experience a mental decline. He lost his self-control and ability to follow his conscience. Community life and society are also harmed by crime. The authority of the law is abused by the audacity of those who break the law. Peace is gone, replaced by fear, anxiety, mutual distrust, and feelings of depression. Social relations between residents are damaged by blaming one another or losing mutual trust. It is from this damaged condition that restorative justice wants to restore the three parties [11].

Second, about the ideals of restoration (restoration), restorative justice focuses on the needs of three parties, namely victims, perpetrators of crimes, and society, which are not fulfilled by the judicial process. In the judicial process victims of crimes are ignored because crimes are understood as actions against or detrimental to the state. The role of the victim is taken over by the state. It is the state that has the responsibility to punish the perpetrators of crimes. The punishment given to the perpetrators of crimes has nothing to do with the suffering of the victim. It is in this case that the needs of the victim are ignored. That's why restorative justice will focus on the needs of victims.

Third, restorative justice pays attention to the obligations and responsibilities that arise because of crimes. The perpetrator of the crime is obliged to recover the damage suffered by the victim and society. The obligation to the victim is carried out first by admitting that he is guilty. This acknowledgment is important, because it is proof of acknowledgment of the suffering experienced by the victim. Victims need to be heard to acknowledge their suffering. The acknowledgment and apology are important processes in healing the emotional wounds and mental suffering of the victim.

Bagir Manan described the substance "restorative". justice" which contains principles, including: "Building joint participation between perpetrators, victims and community groups in resolving an incident or criminal act; Placing perpetrators, victims, and society as "stakeholders" who work together; and immediately try to find a solution that is considered fair for all parties (win-win solutions)". The basic principles of restorative justice have been accommodated in the juvenile justice system, while the criminal justice system has generally not implemented restorative justice. However, the Criminal Code Bill has included restorative justice material and avoids retributive justice for juvenile crimes and other less serious crimes [12].

## Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

Not only for ABH, but protection for the elderly is also a human right. UU no. 39 of 1999 concerning Human Rights protects the elderly, who are included in a vulnerable group. Article 5 paragraph (3) of the Law states "Every person who belongs to a vulnerable group of people has the right to receive more treatment and protection with respect to their specificity." Explanation of paragraph (3) states "What is meant by "vulnerable groups of people" include the elderly, children, the poor, pregnant women, and people with disabilities."

However, Law no. 39 of 1999 does not set an age limit for the elderly. The law that regulates the elderly is Law no. 13 of 1998 concerning Elderly Welfare. The implementation of national development which aims to create a just and prosperous society based on Pancasila and the 1945 Constitution has resulted in a social condition that is getting better and life expectancy is increasing, so that the number of elderly people is increasing. Even though many of the elderly are still productive and able to play an active role in the life of society, nation, and state, due to their age they will face many limitations.

According to Law no. 13 of 1998, the definition of elderly is someone who has reached the age of 60 (sixty) years and over. Meanwhile, there are 4 classifications of old age limits according to the World Health Organization or World Health Organization (WHO), namely:

- 1) Middle age (middle age): 45 – 59 years
- 2) Elderly: 60-74 years
- 3) Old age (old): 75-90 years
- 4) Very old age (very old): > 90 years.

BPS also classifies Indonesian elderly as previously mentioned, namely young elderly (60-69 years), middle elderly (70-79 years), and old elderly (80 years and over).

The age limit in Law no. 13 of 1998 is the same as the classification of elderly (elderly) according to WHO and young elderly according to BPS, namely 60 years and over. However, WHO still classifies elderly people over 74 years old, into old people (75-90 years) and very old people (over 90 years). Likewise, BPS classifies the elderly into young elderly, middle elderly, and old elderly. Based on these provisions, the age of over 75 years for elderly perpetrators in the Criminal Code Bill is above the old age stipulated in Law no. 13 of 1998.

Due to the age factor, a person will face many limitations, thus needing assistance, although many of the elderly are still productive and able to play an active role in the life of society, nation, and state. UU no. 13 of 1998 distinguishes the elderly into Potential Elderly and Non-Potential Elderly. Potential elderly is elderly who are still capable of doing work and/or activities that can produce goods and/or services. Meanwhile, non-potential elderly is elderly who are powerless to make a living, so their lives depend on the help of others [13].

Considering the law, the age of the elderly in the Criminal Code should consider the age of the elderly 60 years and have no potential for criminal prosecution. However, for potential elderly people, the age limit for elderly people who are not sentenced to prison as much as possible can be determined, namely 70 years or more. This is considering the life expectancy in Indonesia according to BPS in 2018 reaching an average of 71.2 years, as well as the classification of elderly according to WHO and the classification of elderly by BPS.

As a comparison, from the results of research on elderly criminals in the United States and Europe, there is no agreement among researchers at a certain age that should be used to categorize "elderly." Fattah and Sacco (1989) note that some studies include older offenders and victims of crime who are older than 50 years of age; other researchers have used 60 years and over as a cut-off point, and still other researchers have used 65 and over as the age to define elderly.

The Criminal Code Bill has considered the age of the elderly in the criminal system, by setting the age of over 75 years for perpetrators of criminal acts so that as far as possible they are not subject to imprisonment. In the discussion of Article 72 of the Criminal Code Bill, this age limit was postponed, between the ages of "over 70 years" or "over 75 years" for perpetrators of criminal acts so that as far as possible they were not subject to imprisonment. This provision was one of the issues pending in the Formulation Team Meeting (Timus), but in the following Timus Meeting it was agreed that "age over 75 years" for perpetrators to avoid imprisonment as far as possible (become Article 76), considering the life expectancy that the higher it is. The results of the Timus Meeting were subsequently approved at the Working Committee Meeting on 28 May 2018 [14].

This provision allows judges not to impose prison sentences. The conditions that must be met so that the judge can not impose a prison sentence are:

- a. the defendant commits a crime which is only punishable by imprisonment.
- b. the judge is of the opinion that it is not necessary to impose a prison sentence after considering: – the purpose of the sentence; – sentencing guidelines; – guidelines for imposing prison sentences.
- c. the defendant has never been sentenced to imprisonment for a crime committed after the age of 18 (eighteen) years.

However, this does not mean that elderly offenders will be exempt from criminal punishment. Judges are given the option of imposing fines as a substitute for imprisonment against defendants who commit crimes that are only punishable by imprisonment,

## Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

intended to overcome the rigid nature of the formulation of a single sentence which seems to require judges to only impose prison sentences. In addition, it is also intended to avoid imposing short prison sentences. By giving choices to judges, considering the goals and guidelines for sentencing, this is in line with the goals of sentencing adopted by the combined theory, which wants to base punishment on retaliation and also maintain social order.

However, the conditions for judges not to impose fines are very strict. According to Article 70 paragraph (2) of the Criminal Code Bill, the provision for abolishing imprisonment for elderly offenders does not apply to crimes punishable by imprisonment for 5 (five) years or more, crimes punishable by a special minimum sentence, or certain crimes that are very harm or harm the public, or financial loss or the country's economy. There are many criminal acts punishable by imprisonment under five years in the Criminal Code Bill. Some examples of crimes that are punishable by imprisonment for a maximum of 4 (four) years and below include:

- a) Article 188: the crime of spreading or developing the teachings of communism/Marxism - Leninism in public.
- b) Article 213: criminal acts during wartime, without the aim of helping the enemy or harming the state to benefit the enemy.
- c) Article 221: the crime of committing treason with the intention of relinquishing the territory of a friendly country, either in whole or in part from the power of the legitimate government.
- d) Article 246: the crime of inciting a person who commits a crime.
- e) Article 262: the crime of broadcasting or disseminating fake news that can cause riots in society.
- f) Article 412: criminal act of decency in public.
- g) Article 417: adultery.
- h) Article 420: obscene acts.
- i) Article 429: the crime of selling intoxicating substances.
- j) Article 439: defamation.
- k) Article 449: the crime of disclosing secrets that must be kept because of position, profession, or duties.
- l) Article 501: fraudulent act.

The large number of crimes punishable by imprisonment for 4 (four) years or below should be of benefit to elderly offenders, because it allows judges not to impose prison sentences. However, with the conditions that must be met by judges not to impose prison sentences for the elderly as previously mentioned, the provision for abolishing prison sentences for the elderly becomes very selective.

Meanwhile, crimes that are punishable by a special minimum sentence are generally included in special crimes, namely the Crime of Trafficking in Persons (Article 461), Serious Crimes against Human Rights (Article 598), Terrorism Crimes (Article 600), Corruption (Article 603-Article 605), and Narcotics Crime (Article 610). Meanwhile, certain criminal acts that are very harmful or detrimental to society, or financially detrimental or detrimental to the country's economy are included in the criteria for special crimes as well. This crime also carries a prison sentence of 5 (five) years or more.

As far as possible, provisions for not being sentenced to prison for elderly perpetrators in Article 70 are accompanied by alternative criminal provisions for the elderly. In Article 71 it says that "If a person commits a crime which is only punishable by imprisonment under 5 (five) years, while the judge is of the opinion that it is not necessary to impose a prison sentence after considering the purpose of sentencing and sentencing guidelines as referred to in Article 52 and Article 54, the person may be subject to a fine. Based on these provisions, the abolition of imprisonment applies to anyone, including elderly offenders, who commits a crime punishable by imprisonment under 5 (five) years. This provision can also be interpreted that elderly offender can be subject to fines, as an alternative to imprisonment [15].

However, the Criminal Code Bill stipulates conditions for the imposition of fines for offenders with a threat of under five years, in lieu of abolishing imprisonment. These conditions, namely fines can only be imposed if:

1. without Victims.
2. the victim does not mind; or
3. not a repetition of a criminal act.

If we pay attention to the examples of criminal acts punishable by imprisonment under 5 (five) years which have been mentioned previously, many of them are criminal acts that result in victims, such as adultery, obscenity, defamation, and fraudulent acts. In this case it is one of the obstacles for the elderly not to be sentenced to prison and replace it with a fine if there are victims.

In the context of law enforcement against these vulnerable groups, affirmative action is needed actions / policies. Vulnerable groups must be treated differently with positive reasons. In certain situations, and conditions, this affirmative action allows the state to be more "discriminatory" to certain groups. In fact, it is the responsibility and obligation of the state to provide guarantees and legal protection that is just.

## Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

If the human rights perspective is placed as the philosophical basis and paradigm of law in dealing with (minor) legal cases that befall vulnerable groups, then the paradigm of state law must be developed not only to law by rules, legalistic -positivistic, but law must also include all the potential of oneself. man. Borrowing from Satjipto Raharjo's (2009) thoughts on progressive law, Progressive Law: Action, not Text, states that progressive law is a concept of a non-linear way of judging, due to the action factors and human efforts involved in it; This human involvement causes the way of judging is not always related to spelling out the text but is full of creativity and choices. It is further stated that the philosophy underlying progressive law is not "law for law" as interpreted by positivists but is "law for humans". Law is not completely autonomous but is always seen and assessed from its coherence with humans and humanity, as well as the conditions of the society that shelters it [16].

In the case of criminal acts committed by the elderly, restorative justice at least aims to provide protection for the elderly considering the weaknesses and limitations that exist in them. Elderly criminals have limited physical, psychological, social, and economic activities; therefore, they need protection. Elderly offenders need health care and prepare for death. However, on the other hand, the interests of the victim and/or their family need attention, because according to the basic principles of restorative justice, it is the victim who is the first party to suffer the most from a crime. In this case the victim has the right to obtain compensation from the defendant/convict.

Restorative justice is carried out based on the fundamental principle that criminal behavior not only violates the law, but also injures victims and society. Every problem-solving provides as much assistance and support to perpetrators and victims as is needed to achieve restorative justice. This condition is different from the punishment system regulated in the Criminal Code, which focuses on regulations and laws in which it adheres to a retributive theory, in which the legal system ensures that the perpetrators of criminal acts will receive retribution for the crimes they commit (retributive justice).

restorative Justice can be formulated as a thought that responds to the development of the criminal justice system by focusing on the need to involve the community and victims who feel excluded from the mechanisms that work in the existing criminal justice system. In addition, restorative justice can be used as a frame of mind that can be used in responding to a crime for law enforcers.

In various principles and models of restorative approaches justice, the process of dialogue between perpetrators and victims is the basic capital and the most important part of the application of this justice. Direct dialogue between perpetrators and victims allows victims to express what they feel, express hopes for the fulfillment of rights and desires from a settlement of criminal cases. Through dialogue, it is hoped that the perpetrators will be moved to self-correct, realize their mistakes and accept responsibility because of a crime committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, it is basically restorative Justice is also known as settlement of cases through mediation (mediation penal). Associated with an elderly offender, the offender should be given the opportunity to express the feelings and hopes he wants in resolving cases that involve him.

Based on this, changes to the Criminal Procedure Code must adopt the handling of cases involving the elderly. Restorative justice in handling ABH cases can be a reference for legislators and law enforcement officials in dealing with elderly offenders. Protection for elderly offenders needs to be carried out from the investigation stage. The investigation stage is the initial stage of the criminal justice process, so that if restorative justice has been achieved at this stage it can reduce cases handled by subsequent law enforcement officers [7].

With such an update, it certainly requires readiness in the criminal justice system for the handling of cases involving the elderly. This means that all factors that affect law enforcement are needed, starting from the law (statutory regulations), law enforcers, culture, and society.

### CONCLUSIONS

1. Regulatory Arrangements for the Application of Criminal Sanctions Against Elderly Offenders (Elderly) Are Still Considered Not Fulfilling the Principles of Justice because the elderly factor as a judge's consideration in sentencing must look at Indonesia's positive legal provisions, namely the Criminal Code. For now, the Criminal Code does not specifically regulate the factor of old age as a judge's consideration in sentencing. Thus, for criminal cases involving the defendant who is an elderly person, in applying positive law, the judge must look at the values and sense of justice that grow in society. The values here are related to social values that exist in society, namely, what is desired that influences social behavior and has a functional power in the development of life that has been going on for a long time in the habits of behavior in everyday life, while the sense of justice that grows in society reflects the form of the balance of social values in society in law
2. Weaknesses related to regulatory arrangements for the application of criminal sanctions against elderly (elderly) perpetrators at this time are due to weaknesses in terms of legal substance, weaknesses in terms of legal structure and weaknesses in terms of legal culture. Weaknesses in terms of legal substance occur because the Criminal Code still adheres to a retributive system and the Restorative System has not yet been regulated Justice in the Criminal Code Against Elderly Actors. Weaknesses in terms of legal structure due to factors Law Enforcement Officials tend to have a positivistic view of law and the rights of the

## Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia

elderly in the criminal system are still neglected. Weaknesses in terms of legal culture are due to the Psychological Consideration Factors of the Elderly and the Legal Awareness factor of the Elderly Community which is still lacking.

### ADVICE

1. The Government and DPR-RI to revise specifically regulate arrangements for elderly criminals in the new Criminal Code and in its derivative regulations.
2. For law enforcement officials, both police, prosecutors, and judges to pay more attention to the special interests and rights of elderly perpetrators of crimes so that there must be a special mechanism in the criminal system for elderly perpetrators of crimes
3. It is necessary to increase public legal awareness so that they are more obedient to Indonesia's positive laws, especially towards the elderly.

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