

Application of Restorative Justice in Settlement of Child Crime According to the Law Enforcement Theory and Progressive Law



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ABSTRACT: This study aims to analyze the application of the concept of Restorative Justice in Child Crimes that occur in the investigation stage at the Police, prosecution at the Prosecutor's Office and examination at the Court and the challenges and obstacles to the application of Restorative Justice in resolving Criminal Cases at the Police, Prosecutor's Office and Court. Each law enforcement agency has prepared guidelines for carrying out restorative justice as regulated in various regulations, but in practice there are still differences in perception and implementation. The regulation of restorative justice in various different regulations is feared to cause differences in perception. There is no comprehensive definition and explanation of restorative justice which has the potential to hinder its implementation by law enforcement officers. This study is a qualitative study with a normative approach and uses a statute approach. This study shows that the practice of implementing restorative justice in child crimes in conflict with the law has not succeeded in protecting children's human rights in Indonesia. Law enforcement institutions in Indonesia have not succeeded in providing legal protection for children's human rights in Indonesia. Law enforcement institutions in Indonesia are still trapped in legal formalism so that restorative justice has not become a priority in not succeeding in providing legal protection for children's human rights in Indonesia. In the application of restorative justice in criminal acts, it often arises from the law enforcement itself. For example, the police, prosecutors, and advocates who become obstacles because the perspective developed prioritizes settlement through the courts. On the other hand, in the peace process, it is related to differences of opinion in compensation for the interests of the victim, the victim and his family reject peace or there is a power relationship that experiences difficulties in achieving the restorative justice process. Philosophically, restorative justice is closely related to the theory of progressive law which prioritizes the resolution of legal problems substantively to achieve the goal of law enforcement that does not only see the law as written in the legislation (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law. Progressive legal thinking offers the need for progressive law enforcement that is pro-people and pro-justice to provide happiness to the people and their nation. Progressive law and restorative justice go beyond positivistic legal regulations and documents and side with local wisdom and the law that lives in society.

KEYWORDS: restorative justice; juvenile crime; law enforcement theory; progressive legal theory.

1. INTRODUCTION

Restorative justice¹ and its application in the settlement of criminal offenses committed by children is a hot and interesting issue for legal practitioners and academics in various countries, including in the discourse of the criminal law system in Indonesia.² The existence of a restorative justice system has caused controversy because in the development of national criminal law,³ as a form of

¹ Restorative Justice dalam bahasa Perancis disebut dengan justice réparatrice atau tater-opfer-ausgleich dalam bahasa Jerman atau Herstelrecht dalam bahasa Belanda. Restorative justice is an approach to justice that focuses on the needs of victims and offenders, instead of the need to satisfy the abstract principles of law or the need of the community to exact punishment. (suatu pendekatan keadilan yang berfokus pada kepentingan korban dan pelaku daripada tujuan keadilan untuk memuaskan asas hukum yang bersifat abstrak mau pun untuk memuaskan kebutuhan suatu masyarakat untuk memastikan dikenakannya suatu penghukuman). http://en.wikipedia.org/wiki/Restorative_justice

² Ketut Adi Wirawan, 2023. *Restorative Justice as a Law Renewal in Indonesia: A Concept or Theory?*, ICBLT 2022, ASSEHR 721, hlm. 743, https://doi.org/10.2991/978-2-494069-93-0_86. Lihat juga Henny Saida Flora, 2018. *Keadilan Restorative Sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya dalam Sistem Peradilan Pidana di Indonesia*, Jurnal UBELAJ, Volume 3 Number 2, Oktober 2018, hlm. 143.

³ Ketut Adi Wirawan, 2023. *Restorative Justice as a Law Renewal in Indonesia: A Concept or Theory?*, ICBLT 2022, ASSEHR 721, hlm. 743, https://doi.org/10.2991/978-2-494069-93-0_86

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criticism of the attributive system that has been considered not fulfilling a sense of justice for the community.⁴ According to Bagir Manan, Indonesian law enforcement can be said to be *communis opinio doctorum*, meaning that the current law enforcement is considered to have failed in achieving the objectives required by law. Based on this consideration, an alternative law enforcement is introduced, namely the restorative justice system, where the approach used is not a normative approach but a socio-cultural approach.⁵

The socio-cultural approach was initiated to fulfill the principles of justice, certainty and legal expediency. Meanwhile, the direction of national criminal justice policy has shifted from retributive to restorative-rehabilitative or *daad-dader-strafrecht* or balance of interest model.⁶ The current system of attribution affects the families of prisoners, but does not cure the problems faced by the victims. In contrast, the restorative model emphasizes conflict resolution to provide the best solution for victims and offenders. Restorative justice prioritizes the integration approach of the perpetrator on the one hand and the victim / community on the other as a unit to find solutions and return to good relations in the community.⁷

In line with that, the restorative justice approach seeks to resolve criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to collaborate and work together to find a fair solution by emphasizing restoration to the original state, and not just as a form of retaliation.⁸ Through the restorative justice process as an alternative to resolving criminal cases with criminal justice mechanisms and procedures that focus on punishment which are changed to a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator / victim, and other related parties. In this process, they jointly create an agreement on the settlement of criminal cases that is fair and balanced for both victims and perpetrators by prioritizing recovery back to its original state, and restoring good relations in the community.

At the implementation level, the restorative justice approach to criminal case resolution can be seen in Law No. 11/2012 on the Juvenile Criminal Justice System and Law No. 12/2022 on Sexual Crimes (TPKS) which regulates restitution and compensation for victims. Law No. 1 of 2023 on the Criminal Code (KUHP) also regulates restorative justice although not explicitly. Article 54 stipulates that sentencing guidelines must consider forgiveness from the victim or the victim's family. The Criminal Code opens up opportunities for judges to grant pardons or judicial pardons.

In each law enforcement institution, guidelines for the use of restorative justice have been regulated by each law enforcement institution, for example, Prosecutor's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Police Regulation (Perpol) Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, and Decree of the Director General of Badilum MA No.1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of Restorative Justice in the General Justice Environment.

Although each law enforcement agency has developed guidelines for implementing restorative justice as regulated in various regulations, in practice there are still differences in perception and implementation. The regulation of restorative justice in various different regulations is feared to cause differences in perception. The lack of a comprehensive definition and explanation of restorative justice will potentially hamper its implementation by law enforcement officials. The implementation of restorative justice in Indonesia also experiences challenges and obstacles. Restorative justice is often seen only as peace and case termination. Whereas the concept of restorative justice focuses more on recovery, especially for victims, for example how victims can access services to obtain justice, including in the problem of criminal acts committed by children.

In the context of criminal acts involving children as perpetrators of criminal acts or children dealing with the law (ABH) is one of the complicated and serious problems. Crimes committed by children every year always increase both in quality and modus operandi. If we look at the development of criminal acts committed by children so far, it has disturbed all parties, especially parents. The phenomenon of increasing violent behavior committed by children is not directly proportional to the age of the perpetrator.⁹ ABH cases, according to data from the Directorate General of Corrections of the Ministry of Law and Human Rights, showed an increasing trend in 2020-2023. As of August 26, 2023, nearly 2,000 children were in conflict with the law. A total of 1,467 of them are detainees and undergoing judicial proceedings, while around 526 children are serving sentences as prisoners. According to data from the 2020 "Implementation of the Juvenile Justice System" Report of the Indonesian Child Protection Commission summarized by Kompas Research and Development, the number of children in conflict with the law handled by the police according to case completion for the 2017-2020 period was 29,228 children. Of this number, 4,126 children were stopped from investigating through diversion. So from the proportion, in 4 (four) years only 14.1% of cases were closed through diversion. It is not good when children

⁴Antri Kristanto, *Kajian Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*, Jurnal Lex Renaissance, No. 1 Vol. 7 Januari 2022, hlm.181.

⁵Dessi Perdani Yuris Puspita Sari, Handri Wirastuti Sawitri, dan Siti Muflichah, *Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. Sudirman Law Review, Vol. 4 (No.2), hlm., 107.

⁶Hariman Satria, 2018, *Restorative Justice: Paradigma Baru Peradilan Pidana*. Jurnal Media Hukum Vol 25 No. 1 Juni 2018., hlm.111.

⁷Andika Wardhana Machmud, dkk, *Analisis Upaya Penanganan Anak Berhadapan Hukum dalam Konsep Restoratif Justice*, Jurnal of Comprehensif Science, Vol. 2 No. 6 Februari 2023, hlm., 1609.

⁸Surat Keputusan Direktur Jenderal Badan Peradilan Umum Nomor: 1691/DJU/SK/PS.00/12/2020 Tanggal 22 Desember 2020 Tentang Pedoman Penerapan Restorative Justice di Lingkungan Peradilan Umum. Lihat juga Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Pasal 1 butir (6).

⁹Anita Zulfiani, *Restorative Justice dan Penjatuhan Pidana Pada Anak*, Jurnal Ranah Research, Vol.5, No. 4, Agustus 2023, hlm, 285.

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spend their time facing the investigation process until the examination in court, which takes a long time. Children in this phase have lost time that should be used for learning.¹⁰

Placing children in the criminal justice system, like adult criminals, is not appropriate. Considering the psychiatric, mental, and mindset conditions of children are still in the developmental period. Resolving juvenile criminal cases through formal criminal justice can damage the future of children. The formal criminal justice process tends to create labeling (stigmatization) of children, and even become a criminogenic factor in the recurrence of child delinquency.¹¹

Diversion is an action or treatment to divert or place juvenile offenders out of the criminal justice system. Meanwhile, the concept of restorative justice is the settlement of criminal acts involving victims, perpetrators, families of perpetrators and victims, and the community, which is considered a more substantive settlement and is cultural and humanist because it involves all parties related to the criminal act. Looking at the practice of restorative justice within the Attorney General's Office of the Republic of Indonesia (AGO RI), the implementation of termination of prosecution based on restorative justice has conducted a total of 3,121 cases. This number is cumulative until July 11, 2023. A total of 3,121 cases have been discontinued prosecution based on justice since the issuance of the Indonesian Attorney General's Regulation Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice.¹²

Referring to Law Number 11 of 2012 concerning the Juvenile Justice System which provides a legal basis for the implementation of restorative justice when resolving cases involving children dealing with legal problems is not directly processed by law but emphasizes the best interests of the child and criminal law as a last resort for children. Diversion and restorative justice related to juvenile crime are methods of settlement outside the criminal justice process that aim to restore the order of community life damaged by crime.¹³ Referring to Law No. 11/2012 on the Juvenile Criminal Justice System Article 7 paragraph (2) states that "law enforcers are obliged to conduct diversion with a restorative justice approach for children in conflict with the law."¹⁴

The process of handling children in conflict with the law is closely related to law enforcement or the Juvenile Justice System itself. Studied from the perspective of the Criminal Justice System, in Indonesia there are 5 (five) institutions that are sub-systems of the Criminal Justice System, known as Panca Wangasa law enforcers, namely the police, prosecutors, courts, correctional institutions and advocates.¹⁵ In the context of legal protection of children in the judicial process, it is carried out starting from the level of investigation, investigation, prosecution, examination in court until the implementation of the court's decision. During the judicial process, the rights of children must be protected by applicable law.¹⁶

Juvenile crime is a crucial and worrying problem for the Indonesian nation. Handling children in conflict with the law is part of a policy or crime prevention effort because the main goal is child protection and child welfare where children are part of society.¹⁷

Researchers have been more inclined to the concept of restorative justice from the philosophical aspect, such as the studies of Fadil Zumhana (2015), Eva Achjani Zulfa (2009),¹⁸ Anas Yusuf (2014),¹⁹ dan Ronny Frengky (2015)²⁰ understanding restorative justice as the *primum remedium* in the settlement of criminal offenses.²¹ Gap knowledge from previous studies is restorative justice applied in cases of children dealing with the law in terms of the implementation of restorative justice carried out by comparing the application of restorative justice in the prosecutor's office, police and general court has not been the focus of previous research. The novelty of this study is the practice of restorative justice in criminal offenses committed by children using law enforcement theory and progressive legal theory.

This study departs from the argument that the practice of implementing restorative justice in criminal offenses of children facing the law has not succeeded in protecting children's human rights in Indonesia. Restorative Justice which is regulated in Police

¹⁰ Harris Y.P. Sibuea, Upaya Memperkuat Perlindungan Hak Anak Yang Berkonflik Dengan Hukum, Pusat Analisis Keparlemenan Badan Keahlian Setjen DPR RI, 28 Agustus – 3 September 2024. Lihat juga Kompas.com, Tanggal 24 Agustus 2023.

¹¹ Beniharmoni Harefa (2018), *Mediasi Penal Sebagai Bentuk Diversi Dalam Penyelesaian Perkara Pidana Anak Berbasis Keadilan Restoratif*, Jurnal Komunikasi Hukum (Jkh), Volume 4 Nomor 1 Februari 2018, h.19.

¹² <https://news.detik.com/berita/d-6834467/restorative-justice-kejagung-hentikan-penuntutan-3-121-perkara>

¹³ Lidya Rahmadani Hasibuan, *Perbandingan Diversi dan Restorative Justice Terhadap Anak Berhadapan dengan Hukum di Kota Medan dan Kabupaten Deli Serdang*, Jurnal Mecatoria, Vol. 10 (2) Desember 2017, hlm., 128.

¹⁴ Lihat Undang-undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak Pasal 7.

¹⁵ Lilik Mulyadi, *Kompilasi Hukum Pidana Dalam Perspektif Teoritis dan Praktik Peradilan*, Penerbit Mandar Maju, Bandung, 2010, hlm. 56.

¹⁶ Pingkan V Tambalean, *Penegakan Hukum Atas Tindak Pidana Pencurian Yang Dilakukan Oleh Anak DiBawah Umur*, Lex Et Societas, Vol 1. No 2, 2013 hlm 20-21.

¹⁷ Barda Nawawi Arif 2002, Bunga Rampai Kebijakan Hukum Pidana, PT. Citra Aditya Bakti, Bandung, hlm.2; Alycia Sandra Dina Andhini, Ridwan Arifin. 2019. Analisis Perlindungan Hukum Terhadap Tindak Kekerasan pada Anak di Indonesia. *Ajudikasi: Jurnal Ilmu Hukum* 3(1): 41-52; Dani Muhtada, Ridwan Arifin. 2019. Penal Policy and the Complexity of Criminal Law Enforcement: Introducing JILS 4(1) May 2019 Edition. *JILS (Journal of Indonesian Legal Studies)* 4(1): 1-6; Ridwan Arifin, Anis Widyawati, Rasdi Rasdi, Sonny Saptaojje Wicaksono, Muhammad Azil Maskur. 2019.

¹⁸ Eva Achjani Zulfa (2009), *Keadilan Restoratif Di Indonesia (Studi Tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana)*, Disertasi Program Doktor Universitas Indonesia Jakarta..

¹⁹ Anas Yusuf (2014), *Potensi Implementasi Restorative Justice Dalam Penegakan Hukum Pidana Oleh Polri Guna Mewujudkan Keadilan Substansial* Disertasi Program Doktor Universitas Trisakti Jakarta.

²⁰ Ronny Frengky (2015) yang berjudul *Diskresi Polri Terhadap Pelaku Tindak Pidana Berdasarkan Restorative Justice* Disertasi Program Doktor Universitas Borobudur Jakarta Tahun 2015.

²¹ Fadil Zumhana, 2015, *Restorative Justice Sebagai Primum Remedium Dalam Upaya Pengembalian Kerugian Keuangan Negara*, Disertasi, Program Studi Doktor Ilmu Hukum Fakultas Hukum Universitas Airlangga Surabaya, 2015.

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Regulation (Perpol) Number 8 of 2021 in the Police Environment, Prosecutor's Regulation (Perja) No.15 of 2020 and Decree of the Director General of Badilum MA No.1691/DJU/SK/PS.00/12/ in the General Court Environment has not been optimally successful in protecting children's human rights in Indonesia.

This study needs to understand and analyze the concept of Restorative Justice in Juvenile Crimes that occur in the Police Environment, in the Prosecutor's Office and in the Court whether each is in line and hand in hand in providing legal protection to children dealing with the law or each institution moves and runs without coordination. What are the challenges and obstacles to the application of Restorative Justice in resolving cases of Juvenile Crimes in the Police, Prosecutor's Office and Court in Indonesia, and how is the practice of Restorative Justice in the settlement of Juvenile Crimes in law enforcement, legal protection of children from the level of investigation, investigation, prosecution, examination in court until the implementation of court decisions. At which stage restorative justice is effective to provide protection of children's human rights in Indonesia.

II. METHOD PENELITIAN

This study is a qualitative research with normative and empirical approaches. This study uses the theory of Restorative Justice, and Progressive Law. This study is conducted by the author is a field research and also equipped with library research. Sources of legal materials consist of; Law on Juvenile Justice System (Law No. 3 of 1997); Law on Juvenile Justice System (Law No. 11 of 2012) and Law on Child Protection (No. 23 of 2002), Criminal Code (Kitab Undang-Undang Hukum Pidana), KUHAP (Kitab Undang-Undang Hukum Acara Pidana); Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 on the Implementation of Guidelines for the Application of Restorative Justice (Kepdirjenbadilum 1691/2020); Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice (Perkejaksaan 15/2020; Regulation of the Chief of the Indonesian National Police Number 6 of 2019 on Criminal Investigation (Perkapolri 6/2019); Circular Letter of the Chief of the Indonesian National Police Number SE/8/VII/2018 of 2018 on the Application of Restorative Justice in the Settlement of Criminal Cases (SE Kapolri 8/2018"). In addition, primary data obtained through interviews and observations with relevant legal institutions that handle juvenile criminal cases such as the Police, Community Research Officers (Bapas) and Juvenile Judges; Guidelines for Restorative justice at the Attorney General's Office, Criminal Cases resolved with Restorative Justice) and (Secondary sources; research results, dissertations, theses, related scientific articles, electronic mass media news, encyclopedias).

While the methods and techniques of data collection used; first, legal documentation studies. Conducting a critical study of legal documentation related to the policy of implementing restorative justice in the police, prosecutor's office and court. Second, interviews with prosecutors who implement restorative justice, criminal offenders who receive restorative justice, and criminal law experts. The data collection method in this research uses literature study, interviews, and observations in accordance with the types of data sources needed. Third, literature study. This literature study by searching for literature related to criminology then reading and reviewing various relevant literature directly related to the object of research which is used as a theoretical basis. The literature study is carried out on secondary data obtained by studying laws and regulations, literature, research results and official documents related to the object of research.²² This research is descriptive analytical in presenting the data. Researchers try to describe and analyze data starting from the collection stage, compiling data and then analyzing and interpreting the data.²³

III. DISCUSSION

1. Application of Restorative Justice in Juvenile Crimes

a. Implementation of Restorative Justice in the Police Environment

The Indonesian National Police (Polri) is mandated by the constitution to maintain domestic security through the implementation of police functions. According to Law No. 2 of 2002 on the Indonesian National Police Article 14, the police; "are authorized to conduct investigations and inquiries into all criminal acts in accordance with criminal procedural law and other laws and regulations." This function includes maintaining public security and order, law enforcement, protection, protection, and service to the community. The maintenance of internal security can be carried out by carrying out humanist law enforcement, including by prioritizing the recovery of conditions involving victims, perpetrators, families of victims / perpetrators, even affected communities or community leaders. This mechanism in the criminal law enforcement system is known as restorative justice. In the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation (Perkapolri 6/2019) explained that;

"a. that the National Police of the Republic of Indonesia needs to realize the settlement of criminal acts by promoting restorative justice which emphasizes the restoration to the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of the community; b. that the National

²² Abu Yasid, *Aspek-aspek Penelitian Hukum (Hukum Islam- Hukum Barat)* (Yogyakarta: Pustaka Pelajar, 2010), hlm., 77.

²³ Winarno Surakhmad, *Pengantar Penelitian Ilmiah* (Bandung: Tarsito, 1980), hlm., 136.

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Police of the Republic of Indonesia to answer the development of legal needs of the community that meets the sense of justice of all parties is given the authority in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. that the National Police of the Republic of Indonesia, in order to respond to the development of legal needs of the community that fulfill the sense of justice of all parties, is authorized in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, to formulate a new concept in criminal law enforcement that accommodates the norms and values prevailing in the community as a solution while providing legal certainty, especially the benefit and sense of justice of the community; c. that based on the considerations as referred to in letters a and b, it is necessary to stipulate the Regulation of the National Police of the Republic of Indonesia concerning Handling of Crimes Based on Restorative Justice.”

In addition to the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation (Perkapolri 6/2019), there has also been an update through Police Regulation Number 08 of 2021 concerning Handling Crimes Based on Restorative Justice. This Police Regulation (Perpol) is the basis for organizing the investigation function (Criminal Investigation) in conducting Restorative Justice by guiding matters relating to requirements, procedures, and supervision. As explained in article 3 of Police Regulation Number 08 of 2021 concerning Handling Crimes Based on Restorative Justice is limited. The police in a criminal justice system are the beginning of the process in many countries. The police have a legal authority referred to as discretion, which allows them to pursue or not pursue a case. The likelihood of the police exercising or using this discretionary authority is very high. In some countries, the police, through their discretionary authority, can, after an initial investigation, decide on the diversion of a juvenile case as part of an effort to achieve restorative justice.²⁴ The basis for the implementation of restorative justice within the Indonesian National Police is the Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. In the context of implementing restorative justice, the Indonesian National Police is an integral part of an integrated criminal justice system in criminal law enforcement. Law Number 2 of 2002 concerning the Indonesian National Police Article 2 explains that the function of the police is to carry out one of the functions of state government in the duties of protection, protection and community service and law enforcement. Article 14 paragraph (1) letter g of Law Number 2 of 2002 mandates that the police are authorized to investigate criminal offenses that were previously preceded by investigative actions by investigators.

The handling of criminal offenses based on restorative justice itself must meet general requirements which include material and formal requirements, as well as special requirements. Material requirements that must be met in resolving cases with restorative justice include: a) Does not cause unrest and / or rejection from the community; b) Does not have an impact on social conflict; c) Does not have the potential to divide the nation; d) Is not radicalism and separatism; e) Is not a repeat offender based on a court decision, and f) Is not a crime of terrorism, crimes against state security, corruption and crimes against the lives of people.²⁵

In upholding the law, law enforcers must be able to realize 3 (three) basic values of law, or often referred to as legal objectives, namely justice, benefit and legal certainty.²⁶ The formal requirements that must be met include peace between the two parties, except for drug offenses. The peace is proven by a peace agreement signed by the parties, and the fulfillment of the rights of the victim and the responsibility of the perpetrator, except for drug crimes. The fulfillment of this right can be in the form of returning goods, compensating losses, replacing costs incurred as a result of criminal acts and replacing damage caused by criminal acts.²⁷ If the material and formal requirements have been met, then the investigation or investigation can be stopped, through a special case title mechanism, and the reason for stopping the investigation and investigation is for the sake of law.²⁸

In Police Regulation Number 8 of 2021 Article 6 paragraph (3) explains the purpose of fulfilling the rights of victims above, which can be in the form of returning goods, compensating losses, compensating costs incurred as a result of criminal acts, and/or compensating for damage caused by these criminal acts. Based on the provisions of these articles, it can be seen that there are conditions that must be met if restorative justice is to be implemented. These conditions include an agreement between the parties to make peace, not a repetition of the crime, the fulfillment of the rights of the victim, and the application of restorative justice does not receive rejection from the community, and not for certain crimes. In practice within the Police, the application of restorative justice in handling or resolving various criminal problems outside the law enforcement mechanism (investigation) is mainly carried out by Bhayangkara Pembina Keamanan dan Ketertiban Masyarakat (Bhabinkamtibmas) as the bearer of Polmas as stipulated in Perkap Number 3 of 2015 concerning Community Policing or often called Polmas. Application of restorative justice through

²⁴ Feny Windiyastuti. 2021. *Konsep Restorative Justice Dalam Perkara Anak Ditinjau Dari Perspektif Kemanfaatan Hukum*. Tesis, Program Studi Magister Hukum Sekolah Tinggi Ilmu Hukum “IBLM”, Jakarta, hlm. 22.

²⁵ Armunanto Hutahaean (2022). Penerapan Restorative Justice Oleh Polri Untuk Mewujudkan Tujuan Hukum Jurnal Hukum tora: 8 (2): hlm., 145.

²⁶ Armunanto Hutahaean, 2019, Menegakkan hukum : Mewujudkan Keadilan, Kemanfaatan dan Kepastian Hukum (suatu telaah paradigmatis tentang penyelidikan dan penyidikan tindak pidana korupsi oleh polri daerah metro jaya sebagai bagian dari sistem peradilan pidana terpadu), Disertasi: Program Doktor Ilmu Hukum Universitas Diponegoro, Semarang.

²⁷ *Loc.Cit.* Armunanto Hutahaean (2022).

²⁸ *Ibid.*

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community policing by Bhabinkamtibmas,²⁹ The criminal justice system (CJS), which exists in every regional unit within the Polri, shows that the Polri does not only handle/resolve criminal cases through the mechanism of the criminal justice system (CJS) based on the notion/flow of legism, the principle of legal certainty and rules and logic in accordance with legal positivism,³⁰ but also based on the principle of justice by applying restorative justice in accordance with the school of natural law, pragmatic legal realism, or other legal schools in accordance with sociological jurisprudence as the foundation of restorative justice philosophy.³¹

To see the application of restorative justice in the police environment, this study provides an example that occurs in the Lampung police environment. Lampung Province is one of the most advanced provinces in terms of legal rules, legal institutions and legal culture in solving criminal problems based on the application of restorative justice, where there is a practice of reviving/strengthening the institution or institution of village and sub-district meetings called Rembug Pekon as a form of resolving criminal acts or other social problems before a Police Report is made. Rembug Pekon is an effort to resolve social problems correctly and thoroughly to prevent potential conflicts by coordinating and the guidelines for village and kelurahan rembug become a reference for government implementing elements at the village, sub-district, district / city and provincial levels by involving all community potential. In some criminal cases, Rembug Pekon is also taken during the investigation process and the investigator recognizes and accepts it as a form of criminal settlement and the investigation process is not continued.³²

Criminal matters resolved by Bhabinkamtibmas through the application of restorative justice include property-related crimes such as theft, fraud, destruction of property, and forgery of documents, crimes against the body, such as maltreatment, crimes of decency, such as adultery, domestic violence, minor crimes, social conflicts, and/or crimes related to adat.³³

According to RW, the police have resolved criminal cases through restorative justice in 2022 in cases of joint persecution or assault, especially those committed by children, as in the case that occurred in West Lampung; "The crime scene (TKP) of persecution in Pekon Serungkuk, Sekincau District, West Lampung Regency. The perpetrators of the crime of persecution were David Nelson bin Rasyid and Aldi Prayuda bin Hamdani. While the victim was Ahmad Variszal Arya bin Bizar Amran. The perpetrator is considered to have violated Article 170 of the Criminal Code. In the settlement process with a restorative approach, a Restorative Justice case settlement title was held led by the Deputy Chief of West Lampung Police Kopol Robi Wicaksono who was accompanied by Kaurbinops Sat Reskrim Ipda Joni, Kasi propam, Kasikum and Kasiwas.³⁴

Perkara tindak pidana kedua yang telah diselesaikan dengan menerapkan keadilan restoratif in the case of maltreatment was Marto Bin M. Rasid, while the victim was Istiawan Bin Syafrudin. The scene of the crime was in Pekon Bedudu, Belalau District, West Lampung. In the case of this criminal offense, it is suspected of violating Article 351 of the Criminal Code on persecution. In this case, a special title was also held led by the Wakapolres and attended by Kasipropam, Kanit Tipikor, Kasi Hukum and Kasiwas. Then the restorative justice case presentation was carried out by Ipda Andriyadi, S.IP as the Criminal Investigation Unit of Sekincau Police.³⁵

According to RW, these two cases have fulfilled the material and formal requirements for settlement by Restorative justice and have complied with the SOP as stated in Police regulation no. 8 of 2021 concerning handling criminal offenses based on Restorative justice.³⁶ Sebagai contoh dalam penerapan restorative justice dalam penanganan tindak pidana pencurian This is based on the concept of understanding children in conflict with the law and the conditions for diversion by the police, which are different from the provisions of the SPPA Law. In addition to the above cases, settlement through restorative justice is often used in traffic accident cases that can be resolved according to Article 236 (2) of Law Number 22 of 2009, namely only minor traffic accidents, according to Article 63 of Law No. Police Regulation Number 15 of 2013, namely minor traffic accidents, and based on the Chief of Police Circular Number 8 of 2018, namely criminal acts that do not cause human casualties.

"Investigators' consideration in resolving traffic accident cases through restorative justice at Lampung Police Station is the existence of a peace agreement by both parties involved in the traffic accident. Furthermore, the obstacles in the application of restorative justice include the absence of technical instructions or SOPs regarding the handling of traffic accidents through restorative justice from the direct leadership or from the leadership of the National Police, the absence of guidelines regarding the handling of traffic accidents through restorative justice, the conflict of interest between the suspect and the victim, and the low knowledge of members of the Unitlaka Polres regarding the settlement of traffic accidents through restorative justice.³⁷

²⁹ Marlina, 2009. *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, Bandung: PT Refika Aditama, hlm. 29.

³⁰ Lili Rasjidi dan Ira Rasjidi, 2001. *Dasar-Dasar Filsafat dan Teori Hukum*, Bandung: PT. Citra Aditya Bakti, hlm. 56-64.

³¹ *Ibid.*

³² Wawancara dengan Kopol Robi Wicaksono Polres Lampung Barat tanggal 24 Mei 2024.

³³ Edi Setio Budi Santoso dan Agus Surono, 2020. *Penerapankeadilan Restoratif dalam Penyelesaian Masalah Tindak Pidana Oleh Bhabinkamtibmas Polri di provinsi Lampung*, Procceding: Paper National Conference For Law Studies: Pembangunan Hukum Menuju Era Digital Society, hlm., 864.

³⁴ Wawancara dengan Kopol Robi Wicaksono Polres Lampung Barat tanggal 24 Mei 2024.

³⁵ Wawancara dengan Kopol Robi Wicaksono Polres Lampung Barat tanggal 24 Mei 2024.

³⁶ Wawancara dengan Kopol Robi Wicaksono Polres Lampung Barat tanggal 24 Mei 2024.

³⁷ Wawancara dengan Kopol Robi Wicaksono Polres Lampung Barat tanggal 24 Mei 2024.

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The police as the spearhead of criminal law enforcement, the role of the police is very decisive for a fair judicial process. Therefore, it is urgent for the police to apply restorative justice in the investigation of the cases they handle so that justice can be felt earlier which will ultimately foster more trust from the community, making it easier to realize security and order in society.³⁸

In Perkap No. 8/2018 concerning the Application of Restorative Justice in the settlement of criminal cases, it is stated that the guidelines for handling case settlement with a restorative justice approach are as follows: 1) material requirements are met, namely: not causing public unrest and no public rejection, no impact on social conflict, a statement from all parties involved not to object, and waive their right to sue before the law, the limiting principle, on the perpetrator: the perpetrator's guilt is relatively not serious, namely the mistake (schuld) or mens rea in the form of intent (dolus or opzet), especially intent as an intention or purpose (opzet als oogmerk) and the perpetrator is not a recidivist, in criminal offenses in the process: investigation and investigation before the SPDP is sent to the public prosecutor; and 2) the formal requirements are met, namely: a letter of request for peace from both parties (the reporter and the complainant), a statement of peace (akte dading) and settlement of disputes between the parties (the reporter and/or the reporter's family, the reported and/or the reported's family, and representatives of community leaders) known by the investigator, the minutes of the additional examination of the parties after the settlement of the case through restorative justice, the recommendation of the special case title that approves the restorative justice settlement, the perpetrator does not object to responsibility, compensation, or voluntarily carried out, and all criminal offenses can be carried out restorative justice against general crimes that do not cause human victims. In SE Kapolri No. 8/2018 mentioned above, the formal requirements clearly state that a criminal offense can be resolved through restorative justice if it does not cause human casualties, this is in accordance with Article 236 paragraph (2) of Law No. 22/2009 concerning Road Traffic and Transportation that for minor traffic accidents can be resolved through restorative justice.³⁹

In traffic accident cases, a restorative justice approach is also taken. The Investigator, both the victim and the suspect agreed to settle the case in a family manner. So that with this agreement, the criminal justice process for the traffic accident was stopped. From several cases of traffic accidents in Bandar Lampung Police above, the Unitlaka of Bandar Lampung Police applies traffic accident settlement outside the court referring to the agreement of both parties to make peace. Based on data from the Unitlaka Satlantas in resolving traffic accidents both violating Article 310 both paragraphs (1), (2), (3), (4) and Article 311 of Law No. 22 of 2009 concerning Road Traffic and Transportation, the Unitlaka Polresta Investigator only refers to the agreement of both parties, as long as both parties want to make peace, then the case will be resolved by restorative justice.⁴⁰

Referring to Traffic Law No. 22 of 2009 concerning Road Traffic and Transportation Article 236 (2) that minor traffic accidents can be carried out outside the court if there is an amicable agreement between the parties involved, according to Article 63 of Perkap No. 15 of 2013 in minor traffic accidents can be carried out outside the court and also referring to the Chief of Police Circular Letter No. 8 of 2018 concerning the Application of Restorative Justice in the settlement of criminal cases that all criminal offenses can be carried out restorative justice for general crimes that do not cause human victims. This contradicts the practice in the Unitlaka Satlantas that all traffic cases can be resolved through restorative justice if there has been peace from both parties. This was stated by Hendra Syahputra, an Investigator at the Traffic Unit of the Police, in resolving traffic accidents, referring to the custom at the Traffic Unit of the Police that traffic accident cases, whether minor, moderate or serious, if there is an agreement between the two parties to make peace, will be resolved through restorative justice.⁴¹

According to the restorative justice perspective, crime is not only seen as a violation of the law based on written law, but substantially a violation of human values and relations between fellow members of society and human relations. Restorative justice therefore focuses on restoring the damage caused by crime, through material and symbolic restitution, rebuilding the self-esteem of offenders, and returning them to society. Restorative justice seeks to serve as a means for community restoration by affirming the values that were damaged by the criminal offender.⁴²

In practice, the Indonesian National Police has opened up opportunities to resolve criminal cases through restorative justice mechanisms provided that the Investigator or Investigator must first complete both material and formal requirements as stated in the Indonesian National Police Regulation No. 8 of 2021. After all the requirements are met, then the investigator or investigator can stop the investigation or investigation on the grounds of the sake of law. However, there are still many investigators who adhere to the positivistic paradigm and do not understand the concept of restorative justice, besides that, in the criminal procedure code

³⁸ Junia Rakhma Putri, 2021. *Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Dan Angkutan Jalan Melalui Pendekatan Keadilan Restoratif*. Jurnal Soumatara Law Review, Volume 4, Nomor 1 hlm., 86.

³⁹ *Ibid.*

⁴⁰ Wawancara dengan Hendra Syahputra, Penyidik Unitlaka Polresta Bandar Lampung tanggal 25 Mei 2024.

⁴¹ Junia Rakhma Putri, 2021. *Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Dan Angkutan Jalan Melalui Pendekatan Keadilan Restoratif*. Jurnal Soumatara Law Review, Volume 4, Nomor 1 hlm., 90.

⁴² Armunanto Hutahaean, *Penerapan Restorative Justice Oleh Kepolisian Negara Republik Indonesia Untuk Mewujudkan Tujuan Hukum*. Jurnal Hukum to-ra: Hukum untuk Mastur dan Melindungi Masyarakat, Volume 8 Issue 2, 2022, h. 144. Lihat Juga, Rudy HAN, Ringkasan Disertasi: Konsep mediasi dalam penyelesaian perkara pidana diluar pengadilan oleh penyidik Polri, Program Doktor Ilmu Hukum Jayabaya, Jakarta, 2016, h. 32-33.

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(KUHAP) there is no reason to stop the investigation due to restorative justice. This raises doubts in investigators to stop the investigation.

Referring to a study conducted by the Police Research and Development Center, the implementation of restorative justice in general does not yet have a policy related to Police Regulation Number 8 of 2021 both in the activities of organizing the Criminal Investigation function (Binmas and Samapta), Investigation and Investigation (Criminal Investigation, Special Investigation, Narcotics and Traffic). There are still many personnel who do not understand Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice, even though they have received socialization. The majority of the ranks of the Samapta function and the Binmas function have never received socialization of Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice so they do not understand the resolution of criminal acts based on restorative justice. There is still a weak supervisory function in handling minor crimes based on restorative justice both from the Samapta function and from the Binmas function, considering that the upper units from both Ditbinmas and Ditsamapta rarely carry out supervisory activities either by conducting assistance/supervision activities. Not all ranks of the Drug Unit have applied restorative justice in handling criminal offenses. One of the reasons is due to investigators' concern that users are part of the drug trafficking network.⁴³

The implementation of restorative justice still needs to be carried out intensive socialization of Police Regulation Number 8 of 2021 concerning restorative justice. In addition, of course, a comprehensive refinement and review of how to apply restorative justice in handling criminal offenses based on the Perpol mentioned above must also be carried out.⁴⁴ As well as studies in terms of legal structure, legal substance and legal costum within the Indonesian National Police.

In terms of human resources and improvement of legal substance related to the concept of restorative justice and its practice. On the other hand, it is necessary that coordination between functions cannot run optimally because there is no cross-functional knowledge transfer; cross-functional coordination activities and stakeholders need to be optimized; development of the ability to detect, identify and solve security and order problems for the community must be carried out on an ongoing basis. In addition, technical guidelines are needed to emphasize that investigators are not directly involved in the peace process between perpetrators and victims. There is also a need to increase publicity on the handling of criminal offenses based on restorative justice and the need for rules regarding the time limit for the process from investigation to investigation to accelerate the restorative justice process. Last but not least, the police must be able to understand and respect the interests of perpetrators, victims and the community as well as local wisdom. The police should be at the forefront to mediate between the perpetrator, victim, family so that the success rate of restorative justice is higher and brings legal benefits and justice to the community.

b. Restorative Justice in the Public Prosecution Service

Since the issuance of Attorney General Regulation (Perja) No.15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Ketut explained that the number of cases that have been successfully resolved with a restorative justice approach is 4,443 cases. Based on data from the Information Center of the Attorney General's Office, in 2020 192 cases were approved using restorative justice and 44 were rejected. In 2021, 388 cases were approved using restorative justice and 34 were rejected. Furthermore, in 2022 as many as 1,456 cases were approved and 65 were rejected. The highest use of this approach was in 2023 with 2,407 cases approved and 38 rejected. In the form of institutions, the Attorney General's Office has established 4,784 Restorative Justice Houses and 111 Rehabilitation Centers throughout Indonesia as a concrete effort to implement restorative justice optimally. In the Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is explained that;

- a. that the Public Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice, and truth based on the law and heed religious norms, decency, and morality, and must explore human values, law, and justice that live in society;
- b. that the settlement of criminal cases by prioritizing restorative justice that emphasizes restoration to the original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal need of the community and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system;
- c. that the Attorney General has the duty and authority to streamline the law enforcement process provided by law by taking into account the principles of speedy, simple and low cost justice, as well as to establish and formulate case handling policies for successful prosecution carried out independently for the sake of justice based on law and conscience, including prosecution using a restorative justice approach carried out in accordance with statutory provisions;

⁴³ Azis Saputra, Dadang Sutrasno dan Widi Setiawan (2023), *Penerapan Keadilan Restoratif Dalam Penanganan Tindak Pidana Guna Mewujudkan Kemanfaatan dan Keadilan Masyarakat*. Jurnal Litbang Polri Vol. 26 No. 3, 2023, h. 160.

⁴⁴ *Ibid.*

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- d. that based on the considerations as referred to in letters a, b and c, it is necessary to stipulate Prosecutor's Regulation on Discontinuation of Prosecution Based on Restorative Justice."

The requirements contained in Kejari Regulation Number 15 of 2020 will be applied during the prosecution stage by the public prosecutor. The conditions regarding the application of restorative justice during the prosecution stage are explained in Article 5 paragraph (1) of Kejari Regulation 15/2020 which reads: "A criminal case may be closed by law and the prosecution may be terminated based on Restorative Justice in the event that the following conditions are met: a). the suspect is a first-time offender; b). the criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and c). the criminal offense is committed with the value of evidence or the value of losses incurred as a result of the criminal offense not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah)." However, for criminal offenses related to property, criminal offenses against the person, body, life, and freedom, and if the criminal offense is committed due to negligence, the conditions stated in Article 5 paragraph (1) of Kejari Regulation 15/2020 can be partially deviated from. Therefore, the application of these conditions is not rigidly applied, but can be waived in certain cases. In addition to the 3 (three) conditions mentioned in Article 5 paragraph (1) of Kejari Regulation 15/2020, the implementation of restorative justice must also fulfill several other conditions as stated in Article 5 paragraph (6) of Kejari Regulation Number 15/2020 which reads:

"..... Termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions: a). there has been a restoration to the original situation carried out by the suspect by: returning the goods obtained from the criminal offense to the victim; compensating the victim; compensating the costs incurred as a result of the criminal offense; and/or repairing the damage caused by the criminal offense; b). there has been a peace agreement between the victim and the suspect; and c). the community responds positively."

However, the implementation of the termination of prosecution based on restorative justice in Kejari Regulation number 15/2020 has several exceptions for certain cases. These exceptions are as stipulated in Article 5 paragraph (8) of Kejari Regulation 15/2020 which reads: "Termination of prosecution based on Restorative Justice is excluded for cases: criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order, and decency; criminal acts punishable by a minimum criminal threat; narcotics criminal acts; environmental criminal acts; and criminal acts committed by corporations."

The practice of implementing the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and the influence of law enforcement, community culture and facilities and infrastructure in influencing the implementation of restorative justice so that the achievement of case settlement up to 80% through termination of prosecution based on restorative justice. Restorative justice is considered more able to realize substantive justice as desired by the parties (perpetrators, victims and society), which in this case focuses more on the interests of victims.

Meanwhile, the obstacles faced by the prosecutor's office in implementing the Indonesian Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice include juridically, law enforcers are not given clear and firm space in using alternative models in resolving criminal cases that allow a balance of protection for all parties.⁴⁵

The practice of implementing restorative justice as happened on Wednesday, November 1, 2023 in the Hall of the North Lampung District Prosecutor's Office, a Termination of Prosecution Based on Restorative Justice was carried out against 1 (one) General Criminal Case (Case of Storing), namely on behalf of the Suspect Junaidi Saputra Als Jujun Bin Dul Manan in the case of persecution in violation of Article 480 Paragraph (1) of the Criminal Code based on the Determination Letter of Case Settlement Based on Restorative Justice (RJ-35) Number: Print-1894/L.8.13/Eoh.2/11/2023 dated November 01, 2023. Attending the activity were the Acting Head of the General Crime Section of the North Lampung District Prosecutor's Office (Nurhayati, SH) and the Functional Prosecutor at the North Lampung District Prosecutor's Office (Adi Hidayattulloh, SH) as the Facilitator Prosecutor, the Suspect and Victim and their families.

The implementation of restorative justice is a follow-up to the RJ approval given by the Deputy Attorney General for General Crimes of the Attorney General's Office, represented by the Director of TP.OHARDA of the Deputy Attorney General for General Crimes of the Attorney General's Office (Agnes Triani, SH., MH) and the Deputy Head of the Lampung High Prosecutor's Office (Yuni Daru Winarsih, SH., M.Hum) through video conference facilities on Tuesday, October 31, 2023. On that occasion the Plh. Head of the General Crime Section representing the Head of the North Lampung District Prosecutor's Office (Mohamad Farid Rumdana, SH., MH) said that the Restorative Justice carried out at this time was the 21st case that was RJ, the implementation of Restorative Justice was given a termination of prosecution on the grounds that: the suspect was a first time offender, the crime was

⁴⁵ Ahmad Jamaluddin, 2021. Penerapan Keadilan Restoratif Bagi Pelaku Tindak Pidana dalam Penegakan Hukum Dikejaksaan, *Jurnal Pemuliaan Hukum*, Vol. 4 No.2., hlm., 1-2.

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only punishable by imprisonment of not more than 4 years, there had been a peace agreement between the victim and the suspect, the victim forgave the actions that the suspect had committed.⁴⁶

As a recent example of the restorative justice process at the North Lampung District Prosecutor's Office, a Termination of Prosecution Based on Restorative Justice (Restorative Justice) and Submission of SKPP of a General Crime case was carried out on behalf of the suspect ABDUL KADIR Bin DAMIRI (deceased) as referred to in Article 480 paragraph (1) of the Criminal Code Jo Article 84 of the Criminal Procedure Code, based on the Decree on Case Settlement Based on Restorative Justice (RJ-35) Number: Print-2821/L.8.13/Eoh.2/8/2024 Date August 09, 2024. Present in the activity were Plh. General Criminal Section Head of the North Lampung District Attorney's Office (Guntoro Janjang Saptodie, S.H., M.H.), Facilitator Prosecutor at the North Lampung District Attorney's Office (Ridi Avianti, S.H.), Suspects and Suspects' Families.⁴⁷

However, in the case of traffic accident negligence, for example, the implementation of restorative justice there are obstacles from the legislative side even though there have been peace efforts between the perpetrator and the victim's family. In the case of traffic accident negligence, the Metro District Attorney's Office in Lampung stated that the case file was declared P-21, then peace efforts were made and the peace process was guided by the implementing provisions in Letter E point 2 c of the Circular Letter of the Deputy Attorney General for General Crimes Number: 01/E/EJP/02/2022. The failure in restorative justice case settlement for traffic accident negligence in the Metro District Attorney's Office, Lampung is due to statutory factors. Despite the failure in the restorative justice process, the Public Prosecutor at the Metro District Attorney's Office, Lampung is expected to reduce the criminal charges against the suspect, considering that a peace agreement has been reached between the parties concerned. The government as the legislator needs to formulate policies on the settlement of traffic accident cases through a restorative justice approach, especially in the case of negligence that causes the death of victims. Another example that is considered successful is the case of Herdinata Bin Aminudin, who was suspected of violating Article 480-1 of the Criminal Code. Before it was decided to settle through Restorative Justice, the Bandar Lampung District Attorney's Office conducted a case expose on Tuesday (05/16/2023). The expose was carried out by the Head of the Bandar Lampung District Attorney's Office, Helmi, SH. MH, Head of Criminal Investigation Section, Firdaus Affandi, SH. MH, together with Wakajati Lampung, Yuni Daru Winarsih, SH. M.Hum. The virtual expose was conducted in front of the Deputy Attorney General for General Crimes, Dr. Fadil Zumhana, SH. MH, represented by the Director of People and Property at JAM Pidum, Agnes Triani, SH. MH. The case that was exposed was a case on behalf of Herdinata Bin Aminudin who was suspected of violating Article 480 to 1 of the Criminal Code. From the results of the case expose, the Attorney General's Office approved the termination of the prosecution of the case.⁴⁸ Bahkan dalam upaya penerapan keadilan restoratif pihak kejaksaan negeri di wilayah propinsi Lampung formed a "Restorative Justice Village" or RJ Village as a concrete form of the prosecutor's office in solving criminal problems through the RJ process.

c. Court 's Restorative Justice.

Actually, in the application of the restorative justice approach, there have been five Supreme Court policies related to the implementation of restorative justice in the court environment, namely; First, Perma No.2 of 2012 concerning the Settlement of the Limitation of Minor Crimes (Tipiring) and the Amount of Fines in the Criminal Code. Second, a joint memorandum of agreement between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Minister of Law and Human Rights, and the Chief of Police of the Republic of Indonesia No.131/KMA/SKB/X/2012 dated October 17, 2012 on the Implementation of the Adjustment of the Limitation of Minor Crimes and the Amount of Fines, Rapid Examination Procedures and the Application of Restorative Justice. Third, the establishment of a Working Group on Case Handling Based on Restorative Justice in December 2021. Fourth, Decree of the Director General of Badilum No.1691/DJU/DK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice in 2020 (suspended and will be replaced by PERMA). Fifth, integrated technical guidance on restorative justice-based case handling has been held in the Badilum environment since 2021 until now. Restorative justice itself is a process where all parties involved in a particular criminal offense sit together to solve problems and think about how to overcome the victims and perpetrators of the law, still prioritizing the principle of the best interests of the child and the punishment process is the last resort while still not ignoring the rights of the child. If the legal process continues to the process of reporting to the Police, then basically the implementation of the law through diversion efforts carried out by the police by using discretionary authority. Discretion is a diversion from the formal criminal court process to a non-formal process to be resolved by deliberation. This approach can be applied to resolve cases of children in conflict with the law. This is based on the amendment to Law No.11 of 2011 replacing Law No.3 of 1997 concerning Juvenile courts only protects children as victims and not for perpetrators, as perpetrators are categorized as minors, their position is not equal to adult perpetrators.

⁴⁶ Website Kejaksaan Negeri Lampung 15 November 2023. <https://kejari-lampungutara.kejaksaan.go.id/2023/11/15/penyerahan-skpp-restorative-justice-3/>

⁴⁷ Website Kejaksaan Negeri Lampung, 9 Agustus 2024. <https://www.instagram.com/kejarilampung/p/C-clG7py655/>

⁴⁸ Website Kejaksaan Negeri Lampung 15 November 2023. <https://kejari-lampungutara.kejaksaan.go.id/2023/11/15/penyerahan-skpp-restorative-justice-3/>

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According to Indonesian Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 71 to Article 82 states that in principle, the implementation of diversion is possible with the conditions determined by the laws and regulations, and if in the event that diversion is unsuccessful or does not meet the diversion requirements, the Judge seeks a decision with a justice approach. Another embodiment of the concept of restorative justice that considers the aspects of justice and humanity in Law No. 11/2012 on Juvenile Criminal Justice System is also manifested in the concept of judge forgiveness or *rechtelijke pardon*. In this concept, the judge is expected to be able to consider the severity of the criminal act, the personal circumstances of the child, or the incident when the act was committed or which occurred later as stated in Law No. 11/2012 on Juvenile Criminal Justice System Article 70. In jurisprudence, an example of a judge's forgiveness decision was handed down by the Rengat District Court in a theft case against a child who was charged with 2 (two) months imprisonment in case number 2/Pid,Sus-Anak/2021/PN Rgt. In the Supreme Court institution, apart from juvenile offenses, the application of restorative justice is found in the administration of law for minor crimes, crimes committed by women in conflict with the law, and narcotics crimes. According to PERMA No. 2/2012 Article 1, cases of petty theft, petty embezzlement, petty fraud, petty vandalism, and petty looting whose value does not exceed Rp2,500,000.00 (two million five hundred thousand rupiah) shall be examined by a single judge with a speedy examination procedure in accordance with Articles 205-210 of KUHAP. In the event that a peace agreement cannot be reached, the single judge continues the criminal examination process and during the trial, the judge is encouraged to continue to seek peace and prioritize restorative justice in his decision.

In the application of restorative justice, law as a tool of social control that always develops following the development of society has a remedial nature that aims to restore the situation to its original state. As the legal adage reads *judex herberet duos sales, salem sapientiae, ne sit insipidus, et salem conscientie, ne sit diabolus* which means "a judge must have two things; a policy, unless he is stupid; and conscience, unless he has a cruel nature", then the purpose of applying restorative justice is not only concerned with retaliation for the perpetrator of the crime while he rules out a fair settlement for both parties. In the concept of a restorative approach, the purpose of resolving criminal acts is to restore the situation to its original condition, whose main principle is how to find efforts that can resolve various conflicts ethically and properly, encouraging someone to make an agreement as a form of affirmation of compromise values that can create communication that is restorative, so that all forms of damage and losses incurred as a result of a criminal act can be restored to their original condition and aim to make the perpetrators of criminal acts again comply with the applicable laws so that order in society can be realized.

In the context of making a decision, the judge will consider when imposing a sentence on the defendant, then first consider the aggravating and mitigating circumstances of the defendant. For example, aggravating circumstances: the defendant's actions have harmed someone. While the mitigating circumstances, for example, the defendant has never been convicted; the defendant admitted and regretted his actions; the defendant promised not to reoffend; the injured party has forgiven the defendant's actions because the defendant has been considered as his own family and willingness. So even though for example the defendant still gets a sentence, restorative justice can alleviate from the side of the law imposed on the perpetrator of the crime because there is a Restorative justice process.

What happens in court is a concept based on the goal of restorative justice which is concerned with meeting the material, emotional and social needs of the victim so that the success of restorative justice is measured by how much harm the offender has restored rather than the severity of the sentence imposed by the judge. In both common law and civil law countries, judges can play a leading role in moving cases to a restorative stage. He or she can be an active participant in the process, for example in peacemaking circles or sentencing circles. In such practices, the judge may conduct hearings, conduct case resolution, or conduct monitoring. Conditional punishment, for example, can be based on a restorative process.

Restorative justice changes the pattern of the criminal justice system and places the victim in a central position by involving the perpetrator, family, and even the community, to achieve criminal objectives while obtaining justice by involving the parties through a mechanism of cooperation (deliberation).⁴⁹ This is in line with the notion of justice according to John Rawls, who considers that justice is a normal condition as a result of human cooperation (deliberation) which requires cooperative work for mutual benefit and is based on a humane relationship between victims and offenders and focuses on the impact of crime on all parties, not only on victims, but also on society and offenders themselves.

So through the considerations mentioned above, the Panel of Judges considers that the decision imposed is appropriate and in accordance with the guilt of the Defendant by taking into account moral justice, social justice, and legal justice and the concept of a restorative justice approach for the Defendant, the injured party and society in general so that what the Defendant has gone through through the punishment he has undergone can make the Defendant return to society and obey the rules and will not commit a crime again.

⁴⁹ John Rawls, *Teori Keadilan: Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan dalam Negara*, Cetakan II, terj. Uzair Fauzan dan Heru Prasetyo, Yogyakarta, Pustaka Pelajar, 2011

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In the context of juvenile crime, the court is basically allowed to implement diversion with the conditions determined by the legislation, and if in the event that the diversion is unsuccessful or does not meet the diversion requirements, the Judge seeks a decision with a restorative justice approach as regulated in Article 71 to Article 82 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

2. Challenges and obstacles to the application of Restorative Justice in resolving cases of Juvenile Crime

a. Challenges and Barriers to Restorative Justice in the Police Environment

In the implementation of restorative justice in the Police environment, there are still various obstacles and challenges, including; first, the factor of the low understanding of Polri members regarding the restorative justice system because not all Investigators of Women and Children Services (PPA) have the same ability between one investigator and another. In assessing a problem, there are those who are capable because they are supported by their experience, but there are also many who assess a problem without taking into account the risks that will occur, so that there are even bigger problems because there is no understanding of all parties in understanding the implementation of restorative justice with the aim of recovery for perpetrators, victims, and society so that as a result sometimes there are parties who intervene in the mediation process and inconsistencies in the application of regulations in the field. In terms of handling children in conflict with the law, there is still a lack of cross-sectoral (institutional) coordination in the juvenile criminal justice system. As happened in the case of premeditated murder charged to Yusman Telaumbanua, there are still law enforcers who do not carry out procedures in accordance with applicable law.⁵⁰ Second, the application of restorative justice has not been maximized because there are still law enforcement officials who fabricate the case, namely fabricating the age of the perpetrator because at that time Yusman did not have an identity and the investigator committed violence against Yusman during the interrogation process, so that the implementation is not in accordance with the applicable legal rules in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) which should protect the rights of children in conflict with the law and the negligence of judges who are less intelligent in deciding the sentence against Yusman Telaumbanua. Law enforcement officials should coordinate well with each other so that there are no mistakes in the criminal justice process for children.⁵¹

The decisive factor in applying restorative justice to cases of children in conflict with the law is the legal substance factor, this is because the provisions governing restorative justice and diversion mandated in the 1989 Convention on the Rights of the Child and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in addition to these provisions, the Criminal Procedure Code (KUHAP) is still generally applicable. This causes the application of formal law contained in Law Number 11 of 2012 cannot be fully applied considering that general formal law can still be applied, this can lead to deprivation of rights during the criminal justice process and legal substance that has not accommodated implementation properly so as to minimize errors in enforcing the complete legal rules of restorative justice.⁵²

Minors should not be sentenced to death because it violates children's rights. If law enforcement officials are able to interpret and understand well everything that is listed in the legislation governing criminal minors, then the application of restorative justice can be applied properly. In deciding a child's criminal case, the legal apparatus should pay attention to all the rules of law that have been enacted so that children who are dealing with the law obtain their rights fairly.⁵³

As a concrete example of the application of Restorative Justice in the Bandar Lampung area, especially those recorded at the Bandar Lampung Police Station, it is carried out with the consideration that children still have a long future, so they need to be given the opportunity to change. The case experienced by Tito Yunanda alias Kentis Bin Jul Tobi, with regard to the provisions of Article 12 Paragraph (5) of Law. Number 11 of 2012 Jo. Article 6 paragraph (5) of Perma No. 4 of 2014 and Law No. 8 of 1981 concerning Criminal Procedure as well as other relevant laws and regulations, has been through diversion efforts, and diversion has been successful in accordance with the determination of the Chairman of the Tanjungkarang District Court dated February 24, 2022, so that the examination of case No. 10/Pid.Sus-Child/2022/PN.Tjk is officially terminated. The judge and investigators have been able to prove the testimony of the Child Perpetrators, that he only acted as a pilot, and was not the perpetrator of the theft, so the judge ordered the Public Prosecutor to release the Child from detention.

In handling cases of perpetrators of violence committed by children, investigators have difficulty applying restorative justice due to different understandings in handling cases of children in conflict with the law between the victim's family and the suspect's family. On the other hand, there is a lack of cooperation between the parties involved (law enforcement officers and child social workers). In addition, ethical problems and obstacles as well as coordination and there is no common perception between law enforcement officials with prosecutors, judges, advocates, bapas, detention centers, and prisons. In addition, sectoral ego constraints and obstacles in the exchange of information data between law enforcement and the victim's family and the suspect's family, which

⁵⁰ Renita Dharma Pratiwi, Moch. Ardi dan Rosdiana. 2019. *Kendala Penerapan Prinsip Restorative Justice Dalam Perkara Tindak Pidana Anak*. Jurnal Lex Suprema, Volume 1 Nomor II September 2019, hlm., 14-15.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.* hlm. 13.

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makes the victim's party urge the investigator to immediately detain the suspect without following existing procedures. This happens because the victim's family is still influenced by the views of people who do not understand the actions of children in conflict with the law.⁵⁴

In applying restorative justice, the victim's family did not want to reconcile, there was no good faith on the part of the perpetrator, the victim asked for irrelevant and unreasonable compensation, lack of public knowledge about restorative justice efforts.⁵⁵ Likewise in other cases in the criminal offense of theft committed by children. North Lampung Police has implemented a restorative justice approach to the crime of theft by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation.⁵⁶

In the settlement carried out with a restorative justice approach at Lampung Police Station, is a mediation process in accordance with the habit of deliberation, in the application of the principle of restorative justice carried out by the police with the perpetrator / offender, family group deliberation, which is restorative for both the victim and the perpetrator, where the involvement in the settlement process is the victim and the perpetrator as well as the third party, namely the police who become mediators and facilitators to mediate between the two parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the child delinquency event. Thus, the negative impact of children who commit criminal acts when dealing with law enforcement officials can be minimized. The police as the diversion authority is responsible for determining the policy mechanism to be taken in implementing diversion.⁵⁷

While the inhibiting factors faced by Bandar Lampung Police investigators in implementing Restorative Justice are two types of obstacles, namely internal obstacles and external obstacles. Internal obstacles include the legal factors themselves, namely in the applicable legal system, namely in Article 29 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regarding the diversion process which only lasts for a maximum period of 30 (thirty) days from the date of initiation of diversion, because usually the relevant parties cannot be present at the specified time. The application of restorative justice also often creates a dilemma for law enforcement officials, for example in this case, a juvenile convict committed an act of motorcycle theft. In restorative justice, the value of the loss of goods should not be above Rp 2,500,000, - (two million five hundred thousand rupiah), but because the perpetrator is a minor, with the consideration that the perpetrator still has a future, restorative justice is applied in accordance with the rules in the child protection law. While other obstacles are, lack of coordination between institutions, limited facilities and infrastructure in terms of handling children who commit criminal offenses are also internal obstacles to the application of restorative justice. While the external obstacles include the factor of children as perpetrators, the victim factor, the difficulty of finding witnesses and the factor of community views. In addition, the application of restorative justice also does not guarantee that children will realize their mistakes, and not repeat their actions in the future, because, usually, the leniency of the punishment given, does not provide a deterrent effect for the perpetrator.

On the other hand, the success or failure in implementing restorative justice is also due to the lack of knowledge of investigators regarding the concept of restorative justice which is an obstacle in its application, this is due to the lack of socialization regarding police regulation number 8 of 2021. Not all investigators have participated in the socialization related to restorative justice. So that investigators think that solving cases through restorative justice is only an ordinary peace effort. Whereas in its application there are material and formal requirements that must be met. In addition, the performance culture of investigators, most of whom are still conservative and still carry out their duties through a legalistic mindset and adhere to a positivistic paradigm, this raises doubts in investigators in carrying out their duties, especially in terminating investigations, where there is a fear that if they terminate the investigation through a restorative justice mechanism, they will violate the rules (KUHAP) and will receive a reprimand from superiors.⁵⁸

The absence of reasons for termination of investigation due to restorative justice in KUHAP raises doubts for investigators in terminating an investigation into a criminal offense.⁵⁹ In the implementation of resolving criminal cases through restorative justice, Investigators or Investigators must first complete both material and formal requirements as stated in the Indonesian National Police Regulation No. 8 of 2021. After all the requirements are met, the investigator or investigator can stop the investigation or investigation on the grounds of law. That there are still many investigators who adhere to the positivistic paradigm and do not understand the concept of restorative justice, besides that, in the criminal procedure code (KUHAP) there are no reasons for stopping the investigation due to restorative justice. This raises doubts in investigators to stop the investigation.⁶⁰

⁵⁴ Wawancara dengan Penyidik Polres Lampung Utara selaku Kanit PPA, Ipda M. Syafei tanggal 20 Mei 2024.

⁵⁵ Suci Handayani. 2022. *Penerapan Restorative Justice Terhadap Anak Sebagai Pelaku Tindak Pidana Pencurian Di Polresta Banda Aceh*. Fakultas Syariah dan Hukum UIN Ar-Raniry Banda Aceh, hlm., 56.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Armunanto Hutahaean (2022). Penerapan Restorative Justice Oleh Polri Untuk Mewujudkan Tujuan Hukum Jurnal Hukum tora: 8 (2): hlm., 140-148.

⁵⁹ *Ibid.*

⁶⁰ Armunanto Hutahaean (2022). Penerapan Restorative Justice Oleh Polri Untuk Mewujudkan Tujuan Hukum Jurnal Hukum tora: 8 (2): hlm., 147.

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In implementing the restorative justice process in the police environment, HS admitted that he experienced conflicts and obstacles, including the following;

“There is a conflict of interest between the perpetrator and the victim of a traffic accident, in this case between the wishes of the victim who sometimes expects high compensation for a traffic accident or there are several parties from the victim who do not mutually agree on the agreed compensation while the perpetrator is also not a financially capable person, then this will create obstacles in the restorative justice process”.⁶¹

Kompol HS added that;

“ Sometimes the victims of traffic accidents do not understand the living conditions of the perpetrators. Sometimes the person who is the perpetrator is just an ordinary person who has no property, compared to the value of the losses suffered by the victim, which is only minor and asks for compensation of tens of millions of rupiah. This cannot be fulfilled by the victim and results in the perpetrator undergoing further legal proceedings or even being imprisoned.”⁶²

In line with this, in practice in the field there are obstacles as revealed below;

“The obstacles include the absence of technical instructions or SOPs on the settlement of traffic accidents through restorative justice from the direct leadership or from the leadership of the National Police, the absence of human resource development on the settlement of traffic accidents through restorative justice, the conflict of interest between suspects and victims, and the low knowledge of police members regarding the settlement of traffic accidents through restorative justice as evidenced by the incompatibility of practice with the existing legal basis”.⁶³

Some of the obstacles in implementing restorative justice include;

- a. The mediation settlement process has not yet been institutionalized among law enforcers and the community;
- b. The absence of a strong legal basis in the settlement through mediation has led to law enforcement officials not daring to exercise discretion;
- c. The criminal justice system is spearheaded by the investigation process, if the suspect has been detained during the investigation process, it will inevitably continue to the next process, namely prosecution and trial. If the suspect has been detained then there is no other option for the judge to impose imprisonment, as a result the mediation process cannot be carried out;
- d. For the victim, especially a wife, sometimes she does not want to do mediation, especially if previously there was another man, so the existence of a criminal decision will facilitate the divorce process;
- e. The consequences or adverse effects of the crime of domestic violence are severe enough that the victim cannot forgive;
- f. The parties do not comply with the mediation decision, for example the defendant repeats the crime, and;
- g. Public distrust of law enforcement officials, so that if law enforcement officials become mediators, the public does not have a negative perception so as to cause unreasonable suspicion.⁶⁴

On the other hand, one of the challenges and obstacles to the implementation of restorative justice is in the implementation of special case titles due to the difficulty of presenting the parties so that if one of the parties cannot attend, the Special Case Title cannot be carried out which will have an impact on the delay in case completion through SP2 Lid / SP3. In several Polres, the application of restorative justice could not be implemented for drug crimes because the prosecutor refused and even threatened to conduct a pre-trial because the prosecutor applied the principle of *Dominus Litis* (the authority is only owned by the prosecutor's office). Investigators experienced difficulties in destroying drug evidence because the court rejected the request for a determination of destruction of evidence for cases resolved through restorative justice. Investigators still face obstacles in implementing restorative justice at the investigation stage. If the SPDP (Notice of Commencement of Investigation) has been sent to the prosecutor and restorative justice is carried out, even though a notification has been sent that the case has been terminated due to restorative justice, the prosecutor still sends a P17 to the investigator (request for investigation progress). The mechanism for implementing restorative justice in handling minor crimes by the ranks of the Binmas function in Police Regulation Number 8 of 2021 is still equated with the mechanism for implementing restorative justice in investigation and investigation activities. The parties still have to submit a

⁶¹ Wawancara melalui Telpon dengan Hendri Syukur, Unitlaka Satlantas Polresta tanggal 26 Mei 2024.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Dani Durahman, 2022. *Pelaksanaan Restorative Justice Perkara Kekerasan Dalam Rumah Tangga Dalam Tahap Penyidikan*. Wacana Paramarta Jurnal Ilmu Hukum, Vol. 21 No. 1., hlm., 8.

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request to the KaPolres to resolve the case through restorative justice so that the application of restorative justice becomes more complicated and difficult for the community.⁶⁵

Based on the results of the Police Research and Development study, the challenges in implementing restorative justice are as shown in the table below;

Table 2: Challenges in the Implementation of Restorative Justice in the Police Force

No	Description	Reskrim	Reskrim	Drugs	Traffic	Samapta	Binmas	Average
1.	Intervention from External Parties	9,25 %	3,04 %	7,97 %	23,45 %	11,75 %	10,61 %	11 %
2.	Intervention from External Parties	9,93 %	1,54 %	11,03 %	28,12%	14,79 %	14,42 %	13,30 %
3.	Budgetary Constraints	-	-	-	-	18,78 %	24,83 %	21,81 %
4.	Capability/Capacity Constraints of Police Personnel	18,76 %	5,44 %	19,60 %	25,62 %	14,69 %	22,42 %	17,76 %
5.	Obstacles in Special Cases	8,03 %	4,96 %	8,37 %	12,78 %	-	-	8,54 %

Source: Azis Saputra, Dadang Sutrasno and Widi Setiawan (2023)

Based on the data contained in table 2 above, the challenges in the implementation of restorative justice in the Police environment based on the results of the Police Research and Development study are; intervention from internal parties (11%), intervention from external parties (13.30%), budget availability constraints (21.81%), constraints on the ability / capacity of Polri personnel (17.76%), and constraints in special case titles (8.54%).

On the other hand, there is still a weak supervisory function in handling minor crimes based on restorative justice both from the Samapta function and from the Binmas function, considering that the upper units from both Ditbinmas and Ditsamapta still rarely carry out supervisory activities either by conducting assistance/supervision activities. It is also related to the understanding of investigators that the application of restorative justice in handling criminal offenses is only for minor crimes. This is certainly related to the mindset and culture of members and some people that still prioritize the law of retaliation by punishing the perpetrator to create a deterrent effect rather than providing restoration of victims' rights. In addition, the problem that is no less important in the application of restorative justice is that investigators tend to still play a major role in the peace process between victims and perpetrators. This condition has the potential to create the impression and even public suspicion of investigators that there are still transactional practices in restorative justice. Under these conditions, a solution is needed to maximize the restorative justice approach as an effort to resolve criminal cases, including criminal cases involving children so that legal certainty, justice and legal benefits are achieved.

b. Challenges and Barriers to Restorative Justice in the Public Prosecution Service

In the implementation of restorative justice, law enforcement factors related to the prosecutor's understanding of restorative justice, community culture in understanding and responding to the settlement of the termination of prosecution through restorative justice and with facilities and infrastructure factors that support the implementation of restorative justice.⁶⁶

The obstacle is related to the attitude of the parties because it is the parties who determine it, not the judiciary. State officials as law enforcers only act as mediators. Of the many advantages of the Restorative Justice process, this method also has several weaknesses, including; low public literacy, especially related to Restorative Justice, especially from the perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair settlement through peace by emphasizing the selection of a return to the original state.⁶⁷

⁶⁵ Azis Saputra, Dadang Sutrasno dan Widi Setiawan (2023), *Penerapan Keadilan Restoratif Dalam Penanganan Tindak Pidana Guna Mewujudkan Kemanfaatan dan Keadilan Masyarakat*. Jurnal Litbang Polri Vol. 26 No. 3, 2023, h. 161.

⁶⁶ Mirdad Apriadi Dania, Muhadar, Ratnawati, 2022. *Pelaksanaan Perja Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*. Jurnal Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik, Volume 11 No. 1, hlm., 15.

⁶⁷ *Ibid.*

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Secara yuridis, penegak hukum tidak diberikan ruang yang jelas dan tegas dalam menggunakan The lack of integrated criminal data between law enforcers makes it difficult for prosecutors to know whether the suspect who will be terminated from prosecution based on PERJA Number 15 of 2020 has committed a criminal offense and has been stopped at the investigation stage or not.

However, some cases that failed through the restorative justice approach in the police, but succeeded at the prosecutor's office (theft and looting cases) were influenced by the emotional factors of the victims, the failure of restorative justice in the police was not because this approach was not conveyed so that the parties did not understand but their respective egos, so that when the case rose in the prosecutor's office the parties lowered their sectoral egos and restorative justice could work well. At the investigation level, Perkap Number 6 of 2019 concerning Criminal Investigation regulates the implementation of restorative justice at the investigation level with material and formal requirements. However, this Perkap does not provide an explanation of the procedures that must be taken by the Investigator if restorative justice is achieved, so that the implementation is left to the discretion of the investigator. Then, at the prosecution stage, Attorney General Regulation Number 15 of 2020 was established to implement restorative justice. In this Perja, the arrangement is more specific where the Public Prosecutor can issue SKP2. However, the two regulations formed by these institutions cannot be a comprehensive legal basis for implementing restorative justice. Based on Article 3 of KUHAP, the application of procedural law cannot contradict the law. Therefore, it is necessary to establish restorative justice regulations that are universally applicable at the level of legislation.

c. Challenges and Barriers to Restorative Justice in the Courts

Lack of support and cooperation between institutions is an obstacle that still occurs in upholding justice, including the handling of children in conflict with the law, many people still consider mediation as a second-class method of seeking justice by arguing that mediation does not achieve justice at all because it is nothing more than the result of a compromise between the parties involved, even though currently judges are one of the parties who can mediate cases of children in conflict with the law unlike civil mediation which allows non-judges to become mediators in court. Some of the constraining factors related to law enforcement are the quality of human resources (HR) in this case the law enforcement officers who handle cases of children in conflict with the law.⁶⁸

In cases of juvenile crime where the child is the victim, the victim's family insists that the juvenile offender be processed according to the law. The majority of the community, especially the victim's family, believes that children in conflict with the law should be punished as much as adults. This happens because the victim's family does not accept when their family is injured due to acts of violence or persecution committed by the perpetrator. So that it will make it difficult for investigators to carry out the peace process in children's cases because of the strong influence of the victim's family against the diversion process.

An obstacle is the low level of understanding of the restorative justice system among police officers. Even though law enforcement officers will find it easier to understand and implement the principles of restorative justice because it has been regulated in the legislation, in reality there are still quite a number of juvenile cases that continue to the prosecution process and end up in prison. In fact, the concept of diversion should be done first to prevent children from the judicial process. The punishment of juvenile offenders, let alone sending them to prison, will not solve the problem at hand.⁶⁹

3. Philosophical Values of Progressive Law in the Implementation of Restorative Justice in Indonesia

Referring to the view of the Utilitarianism school with its figure Jeremy Bentham, states that every regulation made must have use value for society.⁷⁰ The principle of utility was put forward by Bentham in his monumental work *Introduction to the Principles of Morals and Legislation* (1789). Bentham defined it as the property of things to tend to produce pleasure, goodness, or happiness, or to prevent damage, suffering, or evil, as well as unhappiness to the party whose interests are considered.⁷¹

To realize justice for victims and perpetrators, it is good when law enforcers think and act progressively, namely not applying regulations textually but need to break the rules (rule breaking) because in the end the law is not a text in order to achieve the justice desired by society. Progressive law departs from the basic assumption that law is for humans, not the other way around. Law is not an institution that is absolute and final, but rather as a moral, conscientious institution and is therefore determined by its ability to serve humans. Law is an institution that aims to lead humans to a just, prosperous and happy life. Humanity and justice become the goal of everything in our legal life. Therefore, the phrase "law for human beings" also means "law for justice". This means that humanity and justice are above the law. The point is to emphasize the enforcement of justice in Indonesia, which is the creation of public welfare or what is often referred to as a "just and prosperous society".⁷²

⁶⁸ Dani Durahman, 2022. *Pelaksanaan Restorative Justice Perkara Kekerasan Dalam Rumah Tangga Dalam Tahap Penyidikan*. Wacana Paramarta Jurnal Ilmu Hukum, Vol. 21 No. 1., hlm., 9.

⁶⁹ Renita Dharma Pratiwi, Moch. Ardi dan Rosdiana. 2019. *Kendala Penerapan Prinsip Restorative Justice Dalam Perkara Tindak Pidana Anak*. Jurnal Lex Suprema, Volume 1 Nomor II September 2019, hlm., 14.

⁷⁰ Dessi Perdani Yuris Puspita Sari, Handri Wirastuti Sawitri, dan Siti Muflichah, *Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. Sudirman Law Review, Vol. 4 (No.2), hlm., 107.

⁷¹ Achmad Ali, *Teori Hukum dan Teori Peradilan Termasuk Interpretasi Undang-Undang*, (Jakarta : Kencana Prenada Media Grup), hlm. 273.

⁷² Dessi Perdani Yuris Puspita Sari, Handri Wirastuti Sawitri, dan Siti Muflichah, *Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*. Sudirman Law Review, Vol. 4 (No.2), hlm., 109.

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According to Setyo Utomo, there is another prominent feature of restorative justice, where crime is placed as a symptom that is part of social action and not just a violation of criminal law. Crime is seen as an act that harms people and damages social relations. This is in contrast to criminal law which has drawn crime as a state problem. Only the state has the right to punish, despite the fact that indigenous communities can sanction crime.⁷³ The concept of Restorative Justice does not mean the elimination of imprisonment, in certain cases that cause mass losses and are related to the value of a person's life, imprisonment can still be used. The concept of Restorative Justice is a concept that is able to function as an accelerator of the principles of simple, fast and low cost justice, so as to better ensure the fulfillment of legal certainty and public justice.⁷⁴

According to the view of the concept of Restorative Justice, handling crimes that occur is not only the responsibility of the state but also the responsibility of society. Therefore, the concept of Restorative Justice is built on the understanding that crimes that have caused losses must be restored, both the losses suffered by victims and the losses and those borne by the community. The involvement of community members is needed to help correct mistakes and irregularities that occur around the community concerned. The position of restorative justice in the criminal justice system is divided into two: outside the criminal justice system and within the criminal justice system. The reality shows that most people still rely on state law and existing legal procedures.⁷⁵

According to Bambang Waluyo (2015), the concept of restorative justice is an approach to problem solving that emphasizes the recovery of victims' losses and the restoration of relationships between offenders and victims and their respective communities. By using this approach, the parties are expected to reach a mutual agreement regarding dispute resolution, so as to re-harmonize the relationship between the parties as it was before the crime occurred. At the practical level, the principles of restorative justice in the settlement of criminal cases need to be immediately applied as part of the criminal justice system in Indonesia.⁷⁶

The Law on Judicial Power, namely Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, precisely in Article 5, explicitly states that judges must explore the values that live in society (the living law or local wisdom). Article 8 paragraph (4) of Law No. 16/2004 on the Prosecutor's Office stipulates, "In carrying out their duties and authorities, prosecutors always act based on the law with respect to religious norms, decency, morality, and must explore and uphold human values that live in society, and always maintain the honor and dignity of their profession." The practice of problem solving with the approach or concept of restorative justice already exists in the culture of Indonesia, even though it is carried out by certain elite members of society. Thus, in essence, judges must or must apply the approach or concept of restorative justice in resolving cases because the approach or concept of restorative justice is in accordance with the spirit of the Indonesian nation, namely Pancasila, in accordance with the values of customary law and in accordance with religious values.

IV. CONCLUSION

This study shows that the practice of implementing restorative justice in criminal offenses of children in conflict with the law has not succeeded in protecting children's human rights in Indonesia. Law enforcement institutions in Indonesia have not succeeded in providing legal protection for children's human rights in Indonesia. Law enforcement institutions in Indonesia are still trapped in legal formalism so that restorative justice has not become a priority in failing to provide legal protection for children's human rights in Indonesia. The practice of applying Restorative Justice in resolving cases of Juvenile Crimes in the Police Environment, in the Prosecutor's Office and in the Courts in Indonesia in the police environment experiences obstacles and obstacles both in legal substance, legal structure and legal culture. In the application of restorative justice in criminal acts, it often arises from law enforcement itself. For example, the police, prosecutors, and advocates who become obstacles because the perspective developed prioritizes settlement through court channels. On the other hand, the peace process is related to differences in views on compensation for the interests of the victim, the victim and his family refuse peace or there are power relations that make it difficult to achieve the restorative justice process. Philosophically, restorative justice is closely related to progressive legal theory which prioritizes solving legal problems substantively to achieve the goal of law enforcement which does not only see the law as written in the legislation (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law. Progressive legal thinking offers the need for progressive law enforcement that is pro-people and pro-justice to give happiness to the people and the nation. Progressive law and restorative justice go beyond positivistic regulations and legal documents and favor local wisdom and laws that live in society.

In the application of restorative justice, it is necessary to submit suggestions and recommendations, as follows; first, the police, prosecutors and courts in the application of restorative justice in the settlement of juvenile crimes in the investigation stage in the police, prosecution in the prosecutor's office and examination in court to improve the quality of human resources (HR) related to the professionalism of mediators in settlement through restorative justice, especially there are still many police human resources,

⁷³ *Ibid.* hlm. 110.

⁷⁴ *Ibid.* hlm. 111.

⁷⁵ *Ibid.* hlm., 112-113.

⁷⁶ Bambang Waluyo (2015), Relevansi Doktrin Restorative Justice dalam Sistem Pemidanaan di Indonesia, *Hasanuddin Law Review*, Volume 1 Issue 2, August 2015, h. 222.

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prosecutors and judges who have not been certified in handling cases through restorative justice. Second, to minimize the challenges and obstacles to the application of restorative justice in resolving juvenile criminal cases in the police, prosecutors and district courts, it is better for the police, prosecutors and courts to conduct socialization and education as well as continuous counseling so that the community, police, prosecutors, judges, and advocates to prioritize law enforcement through a restorative justice approach rather than settlement through court channels. On the other hand, the police, prosecutors, judges, advocates and community leaders need to seriously establish communication and coordination in applying the restorative justice approach so that parties in trouble with the law can get justice, certainty and legal benefits.

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