

Solving the Crime of Petty Persecution Through the Restorative Justice Mechanism in a Progressive Legal Perspective

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Abstract

The objectives of this study are to examine and analyze the application of Restorative Justice in handling minor assault crimes at the Lombok Tengah District Police Station and to analyze the legal challenges faced in applying Restorative Justice to optimize its application in minor assault cases from a progressive legal perspective at the Lombok Tengah District Police Station. The research method used in this study is normative empirical law using a legal approach, conceptual approach, sociological approach, and case approach. The legal materials used in this study include primary legal materials, secondary legal materials, and tertiary legal materials. The results of the study on the application of restorative justice in cases of minor assault within the Lombok Tengah Police Department were conducted in accordance with the mechanisms or rules outlined in Police Chief Regulation year 2021. In addition, the police offered reconciliation efforts to the victims and suspects based on cases that met the criteria for restorative justice and involved several other parties, such as religious leaders, traditional leaders, and community leaders, without any pressure, coercion, or intimidation from the Central Lombok Police, who acted as facilitators of minor assault cases. Second, the challenges faced in the implementation of restorative justice at the Lombok Tengah Police Station in resolving criminal cases of assault within the community include determining the value of compensation or restitution. Second, there are differing opinions between the victim and the victim's family regarding the peace efforts, where the victim does not wish to reconcile, while the victim's family desires reconciliation, considering long-term implications.

Keywords: Criminal Offense; Restorative Justice; Progressive Law.

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INTRODUCTION

The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) states that the state of Indonesia is a state of law. The idea of the state of law basically highlights that law is supreme in the affairs of the state, society, and nation. The implementation of the concept or state of law of Pancasila in Indonesia has different characteristics from the application of the state of law itself. Protecting the interests of individuals, human rights, and society is a priority of the goals of the State of Indonesia, which also seeks to advance public welfare through the Criminal Law.¹ The state or government is responsible for the protection, progress, enforcement, and general welfare in a democratic society. The rights of every Indonesian citizen include the following: the right to live, grow and develop; the right to be free from assault and suffering; the right to fair legal recognition, guarantee, protection, and certainty; the right to be treated equally before the law; the right to protection; the right to

¹ Devan Septyan Prayoga, Taufiqurrahman, and Nuryanto A. Daim, "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual Di Perguruan Tinggi Dalam Perspektif Hukum Positif Indonesia", *Jurnal Ilmu Hukum Wijaya Putra* 1, no. 2 (2023): 265-72

feel safe and protected from the threat of fear of doing or not doing something that is a human right; and the right to be protected from such unfair treatment.²

Human beings are recognized by law as subjects of law who have obligations and rights. According to the democratic principle of the rule of law, human rights are upheld and maintained, and rules and regulations govern how they are fulfilled. One must respect the human rights of others to maintain the order of society, the state, and the state. Such laws and regulations can only be violated to ensure that the rights and freedoms of others are respected, subject to obligations consistent with public safety and order, moral and religious values, and other legal requirements. One of the key components of Indonesia's criminal justice system is the National Police. The stages or pretrial process are formally carried out by the National Police of the Republic of Indonesia as one of the components of the criminal justice system. Input is the first step in this procedure, which is then followed by processing to produce output. A police report or case found by the police is the first step in the input of a case. Regardless of whether the case is resolved within the police force or sent to the Public Prosecutor for trial, the police process will yield results. The results from the police will be used as input by the Public Prosecutor if the case is delegated to them.³

The victim's sense of justice can be satisfied by the idea of resolving cases through the Restorative Justice method, which places the responsibility for admitting wrongdoing, apologizing, and returning loss and damage to its original condition, or almost as it was, on the perpetrator. This is because the litigation process, which prioritizes the formal legal system, has resulted in many cases that undermine the sense of justice in society. Perpetrators who have been victims of violence can now use *the Restorative Justice technique*. The National Police Institution of the Republic of Indonesia applies the concept of restorative justice. Currently, those who commit crimes against victims of violence can also be subject to restorative justice procedures. The Indonesian National Police uses *the Restorative Justice* strategy. The Chief of the Indonesian National Police, as the highest ranking police officer, implements legal achievements with a restorative justice approach through the Indonesian National Police Regulation Number 08 of 2021 concerning the Handling of Criminal Cases Based on *Restorative Justice*. According to this police regulation, the National Police Investigator can conduct an investigation of the suspect under the relevant circumstances if the parties involved have done so.

Restorative justice, which aims to restore the status quo and balance the protection and interests of both victims and perpetrators, is prioritized in this legal tool of the Indonesian National Police, which emphasizes the resolution of criminal cases. According to Law No. 2 of 2002 on the National Police of the Republic of Indonesia, which emphasizes the importance of public services in accordance with the International Convention on the Functions of the Police Worldwide, the police are part of the governmental functions responsible for maintaining and ensuring internal security. Article 13 of Law Number 2 of 2002 states: The main duties of the National Police of the Republic of Indonesia are: a) maintaining public security and order; b) enforce the law; c) providing protection, protection, and services to the community; The implementation of adjustments to the limits of misdemeanors and the amount of fines, rapid examination events, and the application of

² Widyawati Boediningsih and Novi Prameswari Regina Dermawan, "Perkembangan Ham Di Indonesia Dan Problematikanya", *Education : Jurnal Sosial Humaniora Dan Pendidikan* 3, no. 2 (2023): 77–87

³ I Made Tambir, "Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Di Tingkat Penyidikan", *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 4 (2019): 549–574.

restorative justice are based on Article 1 number 2 of the Memorandum of Understanding between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia Number: 131/KMA/SKB/X/2012, M.HH-07. HM.03 .02, KEP-06/E/EJP/10/2012, B/39/X/2012 of 2012. The process of resolving minor criminal cases involving the perpetrators, victims, victims' families, and related public officials in an effort to achieve a fair settlement that emphasizes restoration to the original state is known as *restorative justice*. This process is carried out by investigators at the investigation stage or by judges from the beginning of the trial.

The above description is in line with the views of Johnstone and Van Ness, quoted by Shen, who state that restorative justice can be divided into three categories: "The initial concept is the encounter idea, which emphasizes the rights of stakeholders, the advantages of addressing the crime, its root causes and its consequences, and stakeholder interactions outside of formal, professional-dominated forums. The next concept is the reparative idea, which emphasizes making amends for the harm that a crime has caused or exposed. Lastly, the transformation notion described restorative justice as a lifestyle that prioritizes a healthy and equal connection with the environment and other living things".⁴ From the above description, it is clear that Johnstone and Van Ness offer three key ideas that fall within the concept of restorative justice. First, gathering interested parties outside the official framework of procedural law to discuss criminal acts, including their origins and impacts. The second approach is reparative, which aims to repair the damage caused by illegal activities. While the third, transformation, restorative justice is a means to achieve positive and healthy relationships with other living beings and their environment.

This approach is very relevant to the diversity of values and local wisdom in Indonesia. A strong basis for connecting *restorative justice* to the criminal justice system can be found in local wisdom that prioritizes deliberation, harmony, and healing. A more comprehensive and compassionate approach to criminal case resolution. In contrast to the retributive idea that focuses more on retribution, restorative justice is a concept where justice is achieved by improving and restoring the situation after the incident, in order to find solutions and improve communication or the order of positive relationships in the community, resolving cases through restorative justice - which is also referred to as an alternative method or alternative method of criminal justice - prioritizes integration between victims and society on the one hand and perpetrators on the other hand. This is of course related to progressive law in relation to the concept of *restorative justice*.⁵ Satjpto Rahardjo put forward the concept of progressive law, which is based on "anxiety" about the theoretical and practical implementers of the law who do not do their best to enforce the law. Instead of being confined by positivistic and analytical legal thoughts, Progressive Law aims to inspire the legal profession to dare to innovate in the administration of law in Indonesia. Since there are still new legal theories, tactics, and concepts that can be developed to break the law, such a breakthrough does not mean anarchy.⁶ The progressive law mentioned above has a desire

⁴ Yinzhi Shen, "Development of Restorative Justice in China: Theory and Practice", *International Journal for Crime, Justice and Social Democracy* 5, no 4 (2016): 76-86.

⁵ Kuat Puji Prayitno, "Restorative Justice Untuk Peradilan Di Indonesia (Perspektif Yuridis Filosofis Dalam Penegakan Hukum In Concreto)", *Jurnal Dinamika Hukum* 12, no. 3 (2012): 407-420.

⁶ Ida Made Oka Wijaya, "Restorative Justice Dalam Tinjauan Hukum Progresif: Eksistensi Dan Implikasi", *Indonesia Berdaya*, 3, no. 3 (2022): 707-718.

to return to its basic philosophy, which is the legal thought of human law. Man is the determinant and the point of direction of the existence of law. Therefore, the law must not be an institution that is detached from the interests of the welfare of human actors, to prioritize the integrity and integrity of law enforcement.

The *Restorative Justice process*, which is often carried out in the handling of minor criminal cases at the Central Lombok Police, emphasizes recovery and dialogue between victims, perpetrators, and other related parties and does not only focus on punishment but the process involves mediation, negotiation, and finding solutions that are suitable for all parties, including apologies, restitution, and community services so that the steps taken-The steps and patterns of *restorative justice* settlement that have been carried out by the Central Lombok Police in cases of minor crimes are: 1) Revocation of the report or termination of the detention of the case as well as the victim and the perpetrator can reconcile and retract the report, so that the case is not forwarded to the court; 2) The stages of mediation and mediation, the victim, the perpetrator, the family and other related parties (religious leaders, community leaders) discuss and find mutually agreed solutions; 3) The drafting of a peace agreement that includes an apology or other action deemed appropriate for the restoration of the situation; 4) Approval and endorsement are approved by the authorities such as the Investigator, after ensuring that the formal conditions are met between the victim and the perpetrator; 5) The implementation of the agreement that has been agreed, such as the payment of restitution or other remedial actions resulting from the perpetrators of minor criminal acts;

This research will focus on how the system of implementing restorative justice for people who commit minor violent crimes in the Central Lombok Resort Police is part of the process in the criminal justice system. The Central Lombok Regency Resort Police are trying to implement the principles of restorative justice against the perpetrators of minor violent crimes in the jurisdiction of Central Lombok Regency. The author presents the research subjects for a more detailed investigation with the aim of building a flexible criminal law enforcement system in handling violent crime cases by the Central Lombok Resort Police. This implies that in enforcing the law, it must go beyond simply mentioning legal requirements and exploring the core principles of the legislation. Based on the description as previously written, the author is interested in raising the topic of research entitled "*Restorative Justice in Law Enforcement of Violent Crimes: Juridical Analysis Through a Progressive Legal Theory Approach in the Central Lombok Regency Resort Police*".

The Central Lombok Resort Police in 2024 handling several cases of minor persecution crimes that occurred in the jurisdiction of the Central Lombok Police has successfully resolved several cases of persecution through *Restorative Justice*, including a case involving alleged criminal acts of persecution in one case of the Sandubaya Police assisted resolved the case with mediation led by the Criminal Investigation Office which ended in a peace agreement. Describing the above background on the basis of the problems that arise in the community, the researcher formulates several problems, including: How is the application of *Restorative Justice* in handling minor crimes of persecution in the Central Lombok Regency Resort Police and What are the juridical obstacles faced in the implementation of *Restorative Justice* to optimize the case of minor persecution from a progressive legal perspective in the Central Lombok Regency Police?

LITERATURE REVIEW

A. Overview About *Restoratif Justice*

Restorative Justice is a concept that responds to the development of thinking about the criminal justice system with an emphasis on community involvement and the victim's need to be felt, which is felt excluded by the mechanism it works in the criminal justice system available today. That *restorative justice* is also a new framework of thinking that can be used to respond to crimes by law enforcement. The main principle of this restorative practice is to respect human rights and dignity as a social construct independent of hardship and error. If we read more deeply about the nature of case settlement with the principle of restorative justice, then this principle is undoubtedly present in the existing customary criminal case settlement pattern. The important thing is that legal protection for victims of crime is not only a national problem, but also an international problem.⁷

According to Mark Umbreit, *restorative justice* provides a very different framework for understanding and responding to crime. Crime is understood as a loss to the individual and community, not just an abstract violation of the law against the state, it is most directly influenced by the crime of the victim, the members of society and the offender are victims therefore encouraged to play an active role in the judicial process. Meanwhile, according to Howard Zehr, seen through the lens of restorative justice, crime is a violation of people and relationships, in creating an obligation to fix it. Justice involves the victim of the perpetrator, and the community or social society in finding solutions that promote reparation, reconciliation, and guarantee, thus from the opinion of these legal scholars we can draw the conclusion that the work of criminal law cannot eliminate all of the criminal acts that occur but rather the overcoming of a symptom. This means that if criminal law is applied to children, of course there will be many conveniences that will be experienced on the part of the state, such as state waste, budget waste, and stigmatization and labeling that cannot be avoided from the definition mentioned above that settlement in a criminal act using *Restorative Justice* prioritize the occurrence of an agreement between the parties to the case, with future interests, to describe this definition in another article Tony F Marshal contains the *triangle of Restorative Justice* as follows:

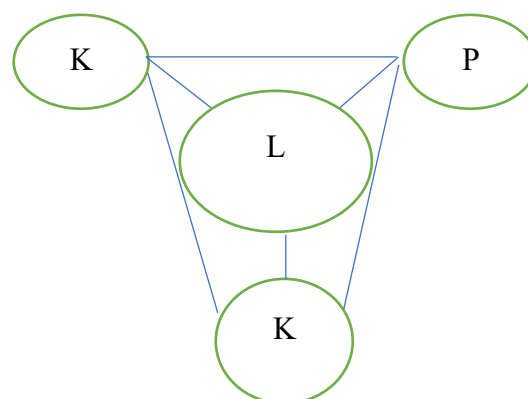


Figure 1. The Triangle of the *Restorative Justice* Process

Information:

Q: *Victim*

⁷ Alimuddin Alimuddin and others, "Rendahnya Perlindungan Hukum Terhadap Korban Kekerasan Anak Penyebab Meningkatnya Kasus Kekerasan Seksual", *JIIIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 7 (2022): 2186-2192

O: Offender
C: Community
J: Justice

Restorative Justice can be the glue of criminal justice with its social context that emphasizes rather than isolating it in a closed way, because this paradigm changes philosophical values in dealing with children, the concept of *restorative justice* is the result of an investigation and comparison between the *welfare approach* and justice shaming: a) from condemnation to reconciliation; b) from retribution there is the perpetrator to the healing of the victim; c) from exile and violence to community participation, and e) from the negative destructive to the repair, the forgiveness that is full of love.⁸

Although the use of restorative justice in criminal cases is still relatively new, it has been proven to have a positive impact on the wisdom of the local community. The restorative justice approach is an idea that emphasizes the need for justice and balance for society, the perpetrators of crime, and crime itself. To make the environment safer and more stable for both victims and perpetrators, the processes in the criminal justice system that focus on punishment are transformed into processes that involve communication and mediation. Friedman asserts that the three main pillars of the legal system are culture, structure, and content. This shows that measures to punish illegal activities are a major emphasis of the positive features of Indonesian law.⁹

The principle of *retributive justice*, which originates from the perspective of the criminal law system in practice, is a case puzzle that reflects the paradigm used today, namely the concept of retributive justice. Reintegration between victims, perpetrators, and society, as well as orientation towards victim losses, recovery of damage in society caused by crime, and orientation of criminalization and improvement of criminal behavior, are all influenced by the principles of *retributive justice*. The application of the principles of restorative justice must be based on honesty, sincerity, sincerity, and willingness. The concept of application is one of the components of the principle of restorative justice, because humans always have needs, desires, and doubts, so there needs to be an understanding of the law that can explain these differences. The application of the concept of restorative justice refers back to the philosophical foundation of the concept, which includes harmony, resilience, and the balance of justice of the parties, which focuses on the root of the problem. This is a return to the concept of restorative justice that focuses on the individual (efforts to punish the perpetrator, improve the perpetrator, responsibility of the perpetrator).

The principles of restorative justice proposed by Rahmawati, after discussing the concepts and regulations of restorative justice in Indonesia (using the term *restorative justice*) are: the application of *restorative justice* in the criminal justice system does not solely aim to stop the case; 1) Every step of the criminal justice process can involve restorative justice; 2) Given the power dynamics of inequality and vulnerability factors based on age, social background, education, and economic status, restorative justice must be applied in a way that upholds the principles of gender disparity and nondiscrimination; 3) Transparency and active involvement of perpetrators, victims, and other stakeholders are essential components of restorative justice; 4) The restorative justice principle of voluntariness free

⁸ Michael Wenzel, "Retributive and Restorative Justice", *Jurnal Law and Human Behavior* 3, no. 5 (2022): 1-15.

⁹ Sukardi, *Konsep Penyidikan Restorative Justice* (Jakarta: Raja Grafindo Persada, 2020), p. 95.

from coercion, threats, and pressure; 5) When applying restorative justice to child crimes, the best interests of the child must be taken into account.¹⁰

The concept of *restorative justice* refers to a method that discusses justice and balance. One of the legal goals, according to those who practice reparation or compensation to victims, is justice, which is in line with the clarity and usefulness of the law. The formation of a relationship between the perpetrator and the victim is part of the idea of restorative justice. This relationship can be in the form of a settlement where the complaining party can clarify the mistake and the perpetrator can provide a solution. Restorative justice cannot be applied in traditional criminal proceedings due to legality and positivism, which argues that if a trial is necessary, it must go through the court that makes the decision and that even if the victim and the perpetrator have reconciled, the punishment remains in effect. The evolution of criminal theory, which initially focused only on the preventive effects of detention on offenders, attention has shifted to the important role of the victim through the use of restorative justice, or restorative justice through mediation between the victim and the offender.

B. Minor Persecution

Bullying is the most common type of behavior in the general public environment and is caused by several factors, such as resentment, displeasure with others, and intentionality. In reality, persecution centers on four situations caused by intentional behavior by a person, according to Wiryo. Persecution, according to Poerwodarminto, is "the arbitrary treatment to torture or oppress another person." Abuse is when a person does something that is clearly intended to hurt or injure the body of another. The intentional component must take into account the desire to injure or cause suffering to the body of another. The perpetrator conveyed a response to a certain event. The purpose or desire must come from the nature of the things that cause pain or hurt to others, so that there is affection for the other person that makes him sad or lonely. For example, hitting, kicking, stabbing, raking, and others.¹¹ The things in question are as follows: a) Producing unpleasant sensations deliberately (suffering); in this case, the victim does not need to feel pain; simply making them feel uncomfortable is enough. An unpleasant act, such as pushing another person into a pool and getting them wet against their will. It also involves the terrible feeling of being forced to stand in the hot sun; b) Intentionally causing pain, here the victim feels pain due to the perpetrator's actions, e.g. pinching, slapping, being hit and so on that causes pain; c) When someone intentionally injures, the victim's body marks will change; for example, a sharp tool can be sliced, stabbed, or stabbed, so that the victim is injured; d) intentionally harming health, or actions taken with the intention to harm a person's health and result in real harm, are also considered abuse. For example, a person who sweats while sleeping is directed at a fan that is deliberately running at high speed with the intention of exposing the person to the flu.¹²

It is described in Article 352 of the Criminal Code. According to this article, minor assault is punishable by a maximum prison term of three months or a fine of three hundred rupiah as long as it does not violate Articles 353 and 356 and does not cause pain or interfere with the performance of duties or work. This penalty can be increased by one-third for anyone

¹⁰ Rahmawati, *Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*, (Jakarta: ICJR, 2022), p. 67

¹¹ Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 2003), p. 2.

¹² W. Bawengan Gerson, *Hukum Pidana Di Dalam Teori Dan Praktek* (Jakarta: Pradnya Paramita, 1979), p. 162.

who commits this petty assault on someone who works for them or is under their supervision.¹³ The elements of minor persecution are: a) Not in the form of ordinary persecution; b) It is not persecution committed against: 1) against the legal father or mother, his wife or child; 2) to civil servants who carry out their official duties; 3) by adding chemicals to food or beverages that are harmful to life or health; c) does not cause illness or obstacle to performing one's job, position, or means of livelihood.

The principles of restorative justice are outlined in several legislations. There are three (three) legal advocacy groups, including the police, the prosecutor's office, and the supreme court, each of which has its own set of rules to handle cases through restorative justice, by implementing the Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Restorative Practice-Based Crimes and the Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2019 concerning the Investigation of Criminal Offenses, the police promote restorative justice. Pidum Hour Circular Letter Number: 01 / E / EJP / 02/2022 concerning the implementation of prosecution based on restorative practices and Prosecutor's Regulation No. 15 of 2020 concerning the implementation of prosecutions based on restorative practices issued by the special prosecutor's office. In order to maximize the use of Article 15 of 2020 concerning the termination of prosecution based on restorative regulations, this circular was made. The circular letter of Pidum hours can reverse the provisions of closure as stipulated in Article 5 Paragraph (1) of Article 15 of 2020 in circumstances concerning property, persons, bodies, lives, and individual freedoms caused by carelessness in its implementation.¹⁴

METHODS OF THE RESEARCH

This research is a legal research. The coherence between legal norms, legal principles, legal rules, and human behavior towards legal norms is the goal of law in this kind of prescriptive empirical normative legal research, continuing to refer to Peter.¹⁵ Legal studies that focus entirely on the norms contained in laws and regulations are generally believed to be what is meant by the term "juridical norm research." Normative law research is broader in scope.¹⁶ The approach method used in this study is the approach as explained by Peter Mahmud Marzuki, the problem approach used in empirical normative law research is the Law Approach (*Statute Approach*), Conceptual Approach (*Conceptual Approach*), Sociological Approach, and Case Approach (*Case Approach*). In order to build a strong argument, there are several types of legal material data used in this study, namely primary legal materials, secondary legal materials, and tertiary legal materials. Research data collection techniques with library *research* techniques and the Internet. Meanwhile, the data analysis technique utilizes descriptive analysis methods, and uses interpretation techniques to analyze. The interpretation used is the *grammatical* interpretation of the legal regulations. Using analytical techniques in descriptive legal materials arises from the need for a comprehensive and in-depth picture. Interpreting or interpreting laws and regulations is to find and determine the meaning of the propositions contained in the law in accordance with the wishes and intentions of the lawmakers.

¹³ Hiro R. R. Tompodung and others, "Kajian Yuridis Tindak Pidana Penganiayaan Yang Mengakibatkan Kematian", *Lex Crimen* 71, no. 1 (2021): 63–71.

¹⁴ Soritua Agung Tampubolon et al, "Penghentian Penuntutan Tindak Pidana Penganiayaan Berdasarkan Pendekatan Keadilan Restoratif", *Locus Journal of Academic Literature Review* 2, no. 3 (2023): 193–202.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).p. 35.

¹⁶ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malamg: Bayumedia Publishing, 2013). p. 57.

RESULTS AND DISCUSSION

A. The Implementation of Restorative Justice in Handling Minor Crimes of Persecution at the Central Lombok Regency Police

Criminal law is closely related to the idea of legality, which highlights that no criminal act can be punished unless there is a clear rule that the act is responsible and that the perpetrator can be held criminally responsible for his actions in accordance with pre-established rules of law. The need that any violation of the law be based on the rules that are followed and should signal possible violations is one of the most important elements of law enforcement. On the other hand, if you follow the applicable law, there will be a lot of risks that occur related to all criminal acts that occur without paying close attention to who did it and how the perpetrator did it to existing goods. Every criminal act that occurs has its characteristics.

The idea of legality, which ensures legal certainty in certain cases, is considered highly burdensome to society, as evidenced by previous cases in which an elderly woman was suspected of stealing some cocoa beans, a young man was suspected of stealing sandals belonging to a policeman, and other similar cases, but was still processed in accordance with Indonesian criminal law. As a result, the dissatisfaction, disappointment, and alienation of the community from the sense of justice sought is increasing. Normative norms state that every authorized official must complete a number of processes to deal with criminal matters, including investigation, examination, prosecution, and court. Perhaps because the criminal justice system is closely related to individual freedom, this should be done as effectively as possible. For example, in the context of an investigation, a series of steps taken by investigators to gather evidence to explain a criminal case and identify the perpetrators, it is not uncommon in criminal cases for investigators to have to stop the investigation due to obstacles. The Criminal Procedure Code effectively regulates in a limited way the situations that may be the basis for terminating the investigation, as stipulated in Article 109 paragraph (2) of the Criminal Procedure Code, as follows: there is insufficient evidence, the incident does not constitute a criminal act, and the case has been resolved in accordance with the law.

Yahya Harahap stated that if a case is included in *the nebis in idem* case, the suspect dies, and the case has expired, then the case is legally closed.¹⁷ After the investigation is completed, the process continues with the prosecution stage as stipulated in the Criminal Procedure Code. Whether or not the issue has been properly dealt with on a proportionate or absolute basis is one of the questions discussed in the prosecution. However, as with examinations, the prosecution procedure often encounters certain obstacles. This is also briefly explained in the Criminal Procedure Code, especially in Article 140 paragraph (2) letter A. Among others, as follows: there is no evidence at all, what happened was not a criminal act, and the case is void. Restorative justice is not the main reason that can be used in ensuring that criminal cases deserve to be stopped at the investigation or even prosecution level, assuming that the above two reasons are considered by the Public Prosecutor in stopping the investigation and prosecution. Internal norms with their various signs arise as a result of the absence of strong regulations guiding restorative justice. As a result, in practice, there are cases that have been determined with a Notice of Investigation

¹⁷ Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP; Penyidikan Dan Penuntutan Edisi Kedua* (Jakarta: Sinar Grafika, 2012), p. 150

Commencement from the investigator to the public prosecutor suddenly a Investigation Termination Warrant appears. This is because the investigator determined that the case in question could be abolished based on the results of restitution, but the public prosecutor stated that there were no other cases that could be abolished based on the results of restitution, or vice versa.

Compared to perpetrators of criminal acts who are sentenced to prison, the goal of restorative justice will be more useful for the health and welfare of all parties involved. For example, when a child is involved in a minor crime in the criminal process, it will be more beneficial for the victim and the perpetrator because it involves family members, so that the problem-solving strategy is adjusted to the group. This is seen as a middle approach to finding the truth for both parties involved. This is to reaffirm that punishment is not an act of revenge, but perseverance and achievement. In this position, the author explains that if you want to make changes based on restorative principles, it should be done first. This is because, after the investigation or prosecution process is completed, a review must be carried out on all matters that have been regulated in the Criminal Procedure Code, including the details of the investigation or prosecution.

The implementation of the Resort Police Chief's regulation Number 8 of 2021, which in handling Crimes based on Restorative Justice states that restorative justice is the settlement of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leader, religious leader, traditional leader or stakeholders to jointly seek a just settlement through peace by emphasizing restoration to the Back to normal. *Restorative justice* is a diversion process, that is, all parties involved in a certain criminal act together overcome problems. Creating an obligation to make things better by involving victims, children and the community in finding solutions to correct, reconciliation and calm hearts that are not based on retribution, in the settlement of a case according to the concept of restorative justice, the role and involvement of community members is very useful and important to help correct the mistakes and deviations that occur around the community in question. It is hoped that the settlement with the restorative justice system will be restored so that all parties who feel aggrieved will be restored and there is respect and respect for the victims of a criminal act. Respect is given to the victim by requiring the perpetrator to make recovery for the consequences of the criminal act that he has committed.¹⁸

B. Juridical obstacles faced in the implementation of Restorative Justice to optimize the case of minor criminal acts of persecution from a progressive legal perspective in the Central Lombok Regency Police

Understanding Satjipto Rahardjo's thoughts on Progressive Legal Theories is more difficult than it seems at first because it requires a longer discussion of how these theories came about. The realization that many people still don't know how to implement a better legal system after 60 years of being a state of law is the basis of Satjipto Rahardjo's Progressive Legal Theory, with which he said: "After looking back on more than 60 years of rule of law in Indonesia, I feel uneasy. The graph shows a downward trend, and despite some national efforts to develop legislation in the country, the results have not been adequate. Instead of discussing a bright legal life, what is discussed is a gloomy legal life".¹⁹

¹⁸ Afina Anindita and others, "Implementasi Prinsip Restorative Justice Tindak Pidana Penganiayaan Pada Tingkat Penyidikan (Studi Kasus Di Polresta Surakarta)", *UNES Law Review* 6, no. 3 (2024): 8539–53.

¹⁹ Romli Atmasasmita, *Teori Hukum Integratif Rekonstruksi Terhadap Teori Hukum Pembangunan Dan Teori Hukum Progresif* (Yogyakarta: Genta Publishing, 2012). p.86

There is a need to return to the legal basics in my country because of the bitter reality of life and the laws that I hold fast. The deceased hinted at the possibility of errors or inaccuracies in understanding the basics of this law, so that there is no legal development that can be attributed to those who are more mature. The word "progressive" comes from English, and means "progress" in the most literal sense. Progressive Law refers to very strong laws. Satjipto Rahardjo introduced the idea of progressive law, which is based on the basic premise that human rights are protected by law. Satjipto Rahardjo insisted on the contribution of legal knowledge in defending Indonesia and in handling crises, even those related to the law itself.

The meaning of progressive law, as it is known to do quickly, involves analysis based on legal theory and practice, as well as involves some type of research. The basic principle of this liberation is that the law is for men and not for them, and that the law does not apply to them personally. It refers to something much broader, namely human value, happiness, well-being, and human emulation. According to Satjipto Rahardjo, this shows that progressive law is a set of basic principles that aim to make the legal system more useful, especially in lowering prices and ensuring human rights and welfare.²⁰

Progressive law, in a more direct way, is a law that undergoes development, either through interpretation or obedience to the law, so that it can be used to directly meet the needs and welfare of humanity. There is no engineering or partiality in law enforcement. Therefore, the purpose of the law is to protect the safety and well-being of all people. Progressive law is more flexible than dogmatic legislation because it is based on the concept of human rights. In particular, progressive law can be defined as a law that is pro-people and good. The idea behind progressive legislation is that the law exists for purposes other than itself. As a result, progressive law challenges conventional analytical jurisprudence, which is also known as *rechtsdogmatiek*. The core principles of legal progressivism are: first, that law exists for man rather than for himself; second, that legislation is always in the process of formation and is not definitive; and third, that law is a moral institution of humanity.

Professor Satjipto Raharjo revealed that the study of law must return to its basic concept, namely law for humanity. According to this concept, people become more ethical and law-abiding. Hum is responsible for serving people, not the other way around. As a result, law is not an institution that exists independently of human demands. The quality of a law is determined by its ability to promote human well-being. This led to progressive legislation based on two "ideologies": projustice and pro-people. Logically, legal updates happen every day. According to progressive law, the process of change is not limited by law, but rather relies on the innovative thinking of the legal profession to update the law in a timely and appropriate manner. Individuals who practice progressive law can influence change by creatively modifying existing laws rather than changing the laws themselves, bad rules should not be an obstacle for people who practice progressive law to explain justice to the general public and those who seek justice because they can interpret the rules in a new way each time. As a result, for law to be useful, legal practitioners who are imaginative and appreciate the value of law in the social environment must be sought.²¹

²⁰ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), p.10

²¹ Susana Andi Meyrina, "Restorative Justice Dalam Peradilan Anak Berdasarkan Undang-Undang No.11 Tahun 2012," *Jurnal Penelitian Hukum DE JURE* 17, no. 11 (2017): 92-107.

Satjipto used the term "progressive law" to describe a way of reading the law that goes beyond simply following official laws. Legal progress in this progressive way is very important for the Indonesian legal community. Legal problems in Indonesia, for example, are described in Satjipto as arising when the practice of law begins to include written law. After that, the law becomes official, bureaucratized, structural, and even rationalized based on legal texts that must comply with many laws and regulations, not only does the law have a "spirit" of humanity, but it is also designed to deal with humanitarian issues. Then, to deal with the formalization of the law in question, in the context of progressive law, the review of the legal text is something very important every time.

If we can understand that this type of interpretive law is the heart of the law, then the better. Almost certainly, the law can be applied without creating a door of interpretation. The interpretation of the law is an activity that is completely open to do, because in the written law "Reading the law is the same as interpreting the law." By saying that the law is clear, a lawmaker is acting pragmatically while quietly admitting that he is having trouble to the point of offering an explanation. Progressive legal thinking and actions like this are very helpful in correcting the shortcomings of legal formulation in practice. According to Satjipto, there is no single law that is completely comprehensive, detailed, and clear. Therefore, according to Satjipto's interpretation of the law, this is a type of "means" that can overcome the decline of objects.²²

The suspicious status of the law and the people who execute it can probably be traced back to the adoption of contemporary and postmodern law that requires rationality, formalization, and legal bureaucracy, as mentioned above. This is the bad side of the written law. Satjipto elaborated on the formalization and codification of legal norms in his work "Law in the Universe of Order," it can be said that law is not for man, but for those who are "enslaved" by him. Historically, postmodern and modern law have influenced premodern law. According to Satjipto, this is no longer a humanitarian process but a legal process.

According to the progressive theory proposed by Satjipto Rahardjo, the government must take progressive steps to empower Indonesia's judicial administration to conduct judicial investigations and create breakthrough discoveries. Judicial power is necessary because there are many forms of fraud and sophisticated crimes today that require specialized knowledge to prosecute the perpetrators, to limit the risk of crime and fraud in law enforcement, progressive legal procedures for investigations should be used, as well as the application of severe and strict penalties against anyone who commits an offense or crime, especially those involved in legal engineering activities. In addition, law enforcement should adopt an integrated approach to address this issue, as well as improve the standards of human resources in Indonesia.

Restorative Justice as one of the efforts to seek peaceful resolution of conflicts outside the courts is still difficult to implement. The emergence of the idea of *Restorative Justice* as a criticism of the implementation of the criminal justice system with imprisonment is considered ineffective in resolving social conflicts. The reason is that the parties involved in the conflict are not involved in the resolution of the conflict. The victim is still a victim, the perpetrator who is imprisoned also raises new problems for the family and so on, by adhering to the *Restorative Justice paradigm*, it is hoped that the losses and suffering

²² Arpandi Karjono et al., "Penerapan Keadilan Restoratif Justice Dalam Hukum Pidana Berbasis Kearifan Lokal," *Jurnal Usm Law Review* 7, no. 2 (2025): 1035-1050.

experienced by the victim and his family can be restored and the burden of guilt of the perpetrator of the crime can be reduced because he has received forgiveness from the victim or his family. The concept of *Restorative Justice* is a new paradigm in criminal law enforcement, although in fact the concept has long been developed and practiced in the resolution of criminal cases in several countries that adhere to the *common law system*. Efforts to apply this concept in criminal law enforcement practices in Indonesia still encounter various obstacles. This obstacle occurs due to factors from the community who do not understand awareness in law enforcement, there are several indicators of legal awareness in the community, consisting of: 1) Legal knowledge, the community has conceptual knowledge of the actions of the community that have been regulated by the law; 2) Must understand, the community can interpret the rules in the Law; 3) Attitude, the community can judge in moral dimensions; 4) Behavior, the community is able to behave in accordance with the applicable law.²³

Another weakness in the implementation of *Restorative Justice* is that not all people then know the concept of Restorative Justice as a substitute for the criminal system in general. This then causes in the investigation process, often one of the parties cannot be present to carry out the investigation process or cannot attend the diversion process at the investigation level. This often happens in the handling and use of *Restorative Justice*. These obstacles, which then become one of the weaknesses of the implementation of *Restorative Justice* are still not perfectly carried out and implemented in Indonesia, public awareness and also the role of law enforcement in supporting the implementation of *Restorative Justice* is still minimal and has not been carried out optimally.²⁴

Violating the right to peace is violating the rights of all people, so the concept of peace is a public concept. Committing an act that disturbs the peace, then it is likely that the person has committed a violation. Peace is a beautiful fit. The concept of beauty here is not in the contest of the form of a beautiful scenery to the eye. However, it is beautiful in the context of human social relations that originate from the human heart and mind that are formed both before the conflict and after the conflict. So that the main source of beauty in peace is not in the sight of the eyes but in the social relations of humanity formed from the open hearts of both sides. In addition, peace is not only needed when there is a conflict or legal problem between the two parties, but all communities basically need peace. There was no commotion created between fellow residents and so on.

So the researcher concludes that the concept of peace is a mixture, namely public and private. Public in the sense that the whole community needs the so-called peace, while the private context here is the peace that exists between the two parties to the conflict. The concept of peace that the researcher refers to in this study is private between the two parties in conflict from a criminal act of persecution. However, it is necessary for researchers to convey that a case of persecution is a criminal act that causes private consequences (on the victim), but the criminal act of persecution is a public law and includes all types of criminal acts. So that the police in handling cases of persecution are usually accompanied by deliberative efforts to reconcile between the two parties.²⁵ Reconciling the two parties to a

²³ Renita Dharma Pratiwi and others, "Kendala Penerapan Prinsip Restorative Justice Dalam Perkara Tindak Pidana Anak", *Jurnal Lex Suprema* 1. no. 2 (2019), 1-19.

²⁴ R Rahaditya and others, "Analisis Pro Dan Kontra Restorative Justice Dalam Penyelenggaraan Sistem Keadilan Di Indonesia", *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2157-68.

²⁵ Yeti S Hasan, "Jurnal Hukum Non Diskriminatif Jurnal Hukum Non Diskriminatif" 2, no. 1 (2023), 74-82 <<https://doi.org/10.56854/jhdn.v2i1.226>>.

conflict born from a criminal act is basically a slightly complicated matter, different from civil cases that we can calculate with a jurimetric method in the case of unlawful acts under Article 1365 of the Civil Code. However, in the case of criminal acts of persecution, for example, it is certainly a bit difficult to assess how much compensation for the pain experienced by the victim. Of course, in cases like this, it must be based on an objective and reasonable assessment. If the main job of a victim of capital persecution is good looks or beauty, then of course the compensation value is different if the victim of persecution has a job that does not require physical appearance capital.

The application of the concept of *restorative justice* in the case of criminal acts of persecution with an effort to recover the victim of a criminal act, the consideration is material and non-material losses that must be taken into account. Material losses arising from the criminal act of persecution are medical expenses and so on, while for non-material losses, namely pain caused by the criminal act of persecution itself. This calculation must also be objective and reasonable.

The results of the researcher's interview with the Head of the Criminal Investigation Unit Sigit Widia Putra through Assistant Investigator Pupuh Restu Wijaya: One of the obstacles is indeed sometimes an obstacle in the effort to reconcile the two parties in a case of criminal persecution, namely the determination of the compensation value, but so far obstacles like this are not so complicated for us to solve. In addition, there is a disagreement between the family and the victim himself, in the sense that the victim's family is trying to reconcile the two parties, but the victim himself does not want to make peace and wants the legal process to continue. Usually we if there is an obstacle like this, yes. We do not try to run the legal process as soon as possible, because for us it is much better than having to have legal proceedings in court, especially if we do not add serious injuries and be treated for problems in family relationships.

From the explanation above, there are 2 obstacles faced by investigators in an effort to reconcile the two parties, namely First, the determination of the value of compensation or compensation. Second, there is a difference of opinion between the victim and the victim's own family in the peace effort, where the victim does not want to reconcile, while the victim's family wants to reconcile, of course with long-term considerations. The researcher considers that the investigator's consideration is considered wise in terms of law enforcement in cases of criminal persecution. In addition, the researcher also conducted an interview with Mr. Bripda Moh Pangkei, the problem of obstacles in penal mediation efforts to bring down victims and perpetrators of persecution, which in essence explained: One of the obstacles that we have experienced in trying to mediate both parties, where when we conducted an investigation we always tried to resolve the cases of persecution by means of deliberation and before we did that, We asked the victim whether this case would be continued or not. They answered that they would continue and did not want to deliberate. So we as investigators continue this case until the file is declared complete P21 by the prosecutor's office. While the file is already P21, it turns out that the victim and the perpetrator together with their respective families have conducted a peaceful deliberation at the village office, which was discarded in the deed under hand witnessed and known by the village government. If the situation is like this, it is inevitable that the legal process will continue.

CONCLUSION

The process of applying *restorative justice* to minor crimes of persecution within the Central Lombok Resort Police is carried out in accordance with the applicable mechanism or rules contained in the regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2021. In addition, the police offer peace efforts to victims and suspects based on cases that meet the criteria for *restorative justice*, but from the police element, they want peace between the perpetrator and the victim in resolving cases of minor persecution by involving several families from both other parties such as religious leaders, traditional leaders, community leaders, without any pressure, coercion, or intimidation from the Central Lombok police who acted as facilitators of the case of minor persecution. The obstacles faced in the process of implementing *restorative justice* in the Central Lombok Police in resolving criminal acts of persecution in the midst of the community are the determination of the value of compensation or compensation. Second, there is a difference of opinion between the victim and the victim's own family in the peace effort, where the victim does not want to reconcile, while the victim's family wants to reconcile, of course with long-term considerations.

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