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Enforcement of Justice in Minor Crimes for the Establishment of Law and Order in Indonesia

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Abstract

Since crime was known in society, criminal law experts from ancient times initially considered punishment as a means of treatment (remedy) to cure perpetrators of criminal acts by giving sanctions that have a deterrent effect, so that criminals no longer repeat their actions, including for minor criminal cases. The research was conducted using the Normative Juridical research method with literature studies, with the formulation of the problem to be raised, namely (1) How is the Law Enforcement of Minor Criminal Offenses Based on Restorative Justice in Order to Create Order in the Criminal Law and Sentencing System, and a Comparison of the Legal Basis in Indonesia with the United States and Singapore? and (2) What is the Ideal Concept of Law Enforcement of Minor Criminal Offenses Based on Restorative Justice Based on Progressive Legal Theory that is Expected in the Future (Ius Constituendum)?, and it is concluded, Firstly that the enforcement of minor criminal law with Restorative Justice in order to create order in the Criminal Law and Punishment System in Indonesia still has dualism in its law enforcement by law enforcers, some are carried out through Restorative Justice by issuing various Regulations related to Restorative Justice in handling minor criminal acts by the Indonesian Police, the Indonesian Prosecutor's Office, and the Indonesian Supreme Court, but there is still law enforcement with Strict Liability (Strict Criminal Responsibility), and Second, the Ideal Concept of Restorative Justice Law Enforcement for Minor Criminal Offenses Based on the Progressive Legal Theory that is expected in the future (Ius Constituendum), where except for perpetrators who repeat (Recidivists) for minor criminal offenses, all minor criminal cases are processed through Restorative Justice, by prioritizing protection for Victims to return to their original state, and making the Restorative Justice legal policy for Minor Criminal Offenses equivalent to the Law in the future (Ius Constituendum).

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1 Introduction

Since crime has been known in society, criminal law experts in ancient times (*ancient regime*) initially considered punishment to be a means of treatment (*remedium*) to cure criminals by imposing deterrent sanctions so that they would not repeat their crimes. Therefore, criminal law provisions that impose penalties on offenders through the payment of fines have been widely established in various countries. However, the application of such rules often serves as a secondary sanction, while imprisonment remains the primary sanction due to its deterrent effect on society (Sirait, 2022).

Criminal acts themselves are acts committed by an individual or a group of individuals that result in criminal incidents or violations of criminal law and are punishable by law (Daliyo, 1992) and criminal sanctions are applied to all criminal acts that meet the elements of acts prohibited in the Criminal Code (KUHP), but in its enforcement, the lack of legal certainty often creates injustice in society. Therefore, every country has rules of jurisdiction or authority to adjudicate in enforcing criminal liability of corporations suspected of committing criminal acts within its territory (Sirait, 2017). Similarly, this applies to perpetrators of minor criminal offences, which in Indonesian law are often abbreviated as 'Tipiring' and in the United States and Singapore are known as 'Misdemeanour Crime/Minor Crime/Summary Offence.'

Under the law, minor criminal offences ('Tipiring') are considered to be criminal offences that are minor or non-harmful, punishable by imprisonment or detention for a maximum of three months and/or a fine of up to seven thousand five hundred rupiah, with the value of the loss initially set at IDR. 2,500. Meanwhile, in PERKABAHARKAM No. 6 of 2011 on the Handling of Minor Criminal Offences, the definition of Tipiring reads: "A criminal offence, hereinafter referred to as Tipiring, is a case punishable by imprisonment or a maximum of three months' imprisonment and/or a maximum fine of seven thousand five hundred rupiah and for minor offences other than traffic offences, (Republic of Indonesia, 2011) However, through PERMA No. 2 of 2012 on the Adjustment of the Limits of Minor Criminal Offences and the Amount of Fines in the Criminal Code ('PERMA 2/2012'), the nominal amount of loss was changed to IDR. 2.5 million (Republic of Indonesia, 2012).

Various forms of minor criminal offences can be found in the Criminal Code, including disturbing public order (Article 172 of the Criminal Code), disrupting public meetings (Article 174 of the Criminal Code), causing disturbances at religious gatherings (Article 176 of the Criminal Code), obstructing roads (Article 178 of the Criminal Code), Disrupting the proceedings of a district court (Article 217 of the Criminal Code), Damaging official documents (Article 219 of the Criminal Code), Negligently losing or concealing seized property (Article 231 of the Criminal Code), Cruelty to animals (Article 302 of the Criminal Code), Insult (Article 315 of the Criminal Code), Insult by Writing (Article 321 of the Criminal Code), Causing Someone to Be Detained Due to Negligence or Mistake (Article 334 of the Criminal Code), Minor Assault (Article 352 of the Criminal Code), Minor Theft (Article 364 of the Criminal Code), Minor Fraud (Article 379 of the Criminal Code), Minor Damage (Article 497 of the Criminal Code), Minor Receiving of Stolen Goods (Article 482 of the Criminal Code), and Minor Embezzlement (Article 373 of the Criminal Code), Meanwhile, in Law No. 8 of 1981 on Criminal Procedure (KUHAP), minor criminal offences are determined based on the 'penalty imposed,' but it does not explain which criminal offences are included in the minor criminal procedure (Custers & Vergouw, 2015).

The Indonesian legal system, which adheres to civil law, has become one of the factors that has made legal development complex and slow, leading to evolutionary changes. In order to avoid legal vacuums, Indonesia has adopted and transplanted various laws and regulations from the colonial era, as well as various regulations from outside the country (Sirait, 2021). One of the problems arising in the Indonesian legal jurisdiction, with the enactment of the Criminal Code (KUHP) derived from the Wetboek van Strafrecht (WvS), relates to the formulation of the value of loss arising from minor theft offences as defined in Article 364 of the Criminal Code, which refers to the acts described in Article 362 of the Criminal Code on ordinary theft. Article 363 No. 4 and No. 5 on theft by two persons and by damaging the property, provided that the act is not committed in a house or in a closed yard where a house is located, then if the value of the stolen property does not exceed IDR.250,- (two hundred and fifty rupiah), it is punished as petty theft with a maximum imprisonment of three months or a fine of nine hundred rupiah (Soesilo, 1991).

However, the value of the loss has been adjusted evolutionarily regarding the value of money in the Criminal Code, where through PERMA 02/2012 on the Adjustment of the Limits of Misdemeanours and the Amount of Fines in the Criminal Code, the phrase 'two hundred and fifty rupiah' in Articles 364, 373, 379, 384, 407, and 482 of the KUHP has been amended to read IDR 2,500,000.00 (two million five hundred thousand rupiah).

The Indonesian Constitution states that Indonesia is a state based on the rule of law. The term 'state based on the rule of law,' which is a translation of *rechstaat*, is also used as *the rule of law*. According to researchers, the 'labelling'

of a state as being based on the rule of law certainly has certain ideals, intentions, and objectives. The objective of a state based on the rule of law is identical to the objective of law itself (Sirait, 2016).

Initially, the formulation of Indonesia as a state based on the rule of law before the amendment of the 1945 Constitution was regulated and placed in the general explanation of the 1945 Constitution, namely in the section on the state system of government, paragraph one, which states that 'Indonesia is a state based on law (rechstaat) and not based on mere power (machtstaat)'. The term *rechstaat* was formulated in the European continental legal concept (Sirait, 2016).

The Indonesian legal system is a combination of several legal systems, including the *Civil Law* system, Religious Law, and Customary Law. Therefore, certain criminal acts that are violations of the Criminal Code (Kitab Undang-undang Hukum Pidana) may be resolved through Restorative Justice based on the principles of Religious Law or Customary Law through a family-based approach of forgiving the perpetrator (Sirait, 2021).

Historically, restorative justice has undergone several developments, the essence of which is to achieve peace in various countries (Candra, 2013; Morris & Maxwel, 2001; Wolthuis, et al., 2019). However, despite being declared a country governed by the rule of law, there is still often dualism in the enforcement of minor criminal cases (Tipiring) because some are handled with *Strict Liability* (absolute responsibility) and others are resolved through *Restorative Justice*, This dualism in law enforcement creates a sense of injustice in society, where there is still sectoral ego among institutions with their policies, so that there needs to be uniformity of policy and become part of the law or be included in the Criminal Procedure Code (RUUKUHAP).

Thus, based on the above, the researcher wishes to further investigate 'Law Enforcement of Minor Offences from the Perspective of Restorative Justice for Order'. The focus of this research includes: 1) How is the enforcement of minor criminal offences from the perspective of justice for order?; and 2) What is the ideal concept of the enforcement of minor criminal offences based on restorative justice according to progressive legal theory (*Ius Constituendum*) in the future?

2 Materials and Methods

The type of research used in this study is normative legal research or normative juridical research, which is a process of determining legal rules, legal events, legal theories, and legal doctrines in order to answer legal issues that arise (Marzuki, 2017). This normative legal research is conducted by examining library materials or secondary data (Soekanto, 2007), also known as doctrinal research, where law is often conceptualised as what is written in legislation (*law in books*) or conceptualised as rules or norms that are considered appropriate guidelines for human behaviour (Amiruddin, 2006). There are three types of normative legal research, namely legal research in the sense of law as a science of rules or law viewed as a rule that is formulated autonomously but is no longer associated with society.

Empirical legal research is legal research on the enforcement or implementation of normative legal provisions in action in specific legal events that occur in society, and sociological legal research is research that studies the influence of society on law, the extent to which existing phenomena in society can influence law, and vice versa (Rizkiah, 2021).

In this study, the researcher uses all three types of normative research, namely normative research, which prioritises legal theories and legislation, with the assistance of empirical legal research, using several court decisions that sentenced petty theft before the issuance of PERMA Number 2 of 2012 concerning the Adjustment of the Limits of Petty Crimes in the Criminal Code, Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice, PERKABAHARKAM No. 6 of 2011 on the Handling of Minor Criminal Offences, Prosecutor's Office Regulation No. 15 of 2020 on the Authority of the Prosecutor's Office to Implement Restorative Justice, and PERMA No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, as well as the sociological legal implications linking them to public reactions.

3 Results and Discussions

Enforcement of Restorative Justice in Minor Criminal Offences to Achieve Social Order

The planning and enforcement of legal policies as state legal policy must reflect the ideology of the nation, so that the laws that are developed must be centred on that ideology as a reflection of the preservation of the values that have

grown from that nation (Sirait, 2021). To that end, effective and appropriate criminal law enforcement is necessary to restore (restore) relationships, is an important element of criminal law policy, to properly regulate the substance of law in the criminal justice system, thereby achieving the objective of law, which is to fulfil the sense of justice in the handling of minor criminal cases (Tipiring) that create order in society. Thus, in the criminal justice system, law enforcement policies are closely related to the appropriateness of the substance of legislation, the structure and culture of the law in line with social developments and the times, and what is considered fair by the community.

The Indonesian legal system is a combination of several legal systems, including the *Civil Law* system, Religious Law, and Customary Law. Therefore, there are times when certain criminal acts that are violations of the Criminal Code (Kitab Undang-undang Hukum Pidana) can be resolved through Restorative Justice based on the principles of Religious Law or Customary Law by forgiving the perpetrator of the crime in a family manner (Sirait, 2021). This can be seen, for example, in several regulations such as Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice, Perkabaharkam No. 6 of 2011 on the Handling of Minor Criminal Acts, Regulation of the Attorney General's Office No. 15 of 2020 on the Authority of the Attorney General's Office to Implement Restorative Justice, and Regulation of the Supreme Court (PERMA) No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

Restorative Justice Punishment for Minor Crimes as a Legal Objective

Restorative justice is a new form that can be used in handling minor criminal cases, as can be seen from the definition put forward by Dagnan, who said, "Restorative justice is a new framework for responding to wrongdoing and conflict that is rapidly gaining acceptance and support by educational, legal, social work, and counselling professionals and community groups. *Restorative justice is a values-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community"* (Zulfa, 2011). Restorative justice is a values-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community.

Philosophically, restorative justice is in line with the main objective of law, namely justice. Justice, in theory, is the oldest objective of law. Concern for justice has existed since ancient times, where the ancient Greeks had a goddess dedicated to justice, namely Themis, who was depicted as a woman holding scales in one hand and a chain of goods in the other. She is the goddess of natural justice (*natural Justice).* The Romans adopted this goddess under the name Justitia, depicted as a woman holding scales and a sword and wearing a blindfold as a symbol of impartial justice. The goddess *Justitia* is more of a goddess of worldly justice. Attention to justice can also be seen in expressions that have been known for hundreds of years, such as: flat justitiae pereat mundus or let justice be done though the world perish, and flat Justitia ruat caelum or let justice be done though the heavens fall. These expressions show that justice must be carried out regardless of the consequences (Satsumi et al., 1998).

Restorative Justice in the Enforcement of Minor Criminal Offences as a Manifestation of the Rechtsidee Values of Godliness and Humanity that are Just and Civilised in Pancasila

Restorative justice in criminal law is not new in Indonesian law. This is in line with the opinion of Timbo Mangaranap Sirait, who argues that law enforcement using the restorative justice model based on religious and customary principles is a form of ancient regime law enforcement, which has been considered for application as a modern form of out-of-court settlement. In Indonesian law, one of whose sources is religious or customary law, the value of 'Belief in One God' is a fundamental norm (Grundnorm) and the first philosophical foundation of the five fundamental norms in the Indonesian Constitution, known as Pancasila, where the derivation of the norm of Belief in One God in Pancasila is interpreted philosophically, where God is the Almighty Forgiver. Due to this philosophical foundation, in the Indonesian legal system, mitigating factors in criminal law are highly considered when deciding a criminal case (Sirait, 2021).

Therefore, as stated above, in the implementation of these basic norms (Grundnorm) in legislation, based on the data researched by the researcher, from the beginning of the year to the end of 2022, the Indonesian National Police have enforced the law on minor criminal offences (Tipiring) by handling 8,768 cases (https://pusiknas.polri.go.id/), and referring to the opinion of Soekanto (2007), who stated that law enforcement is an activity that harmonises the values embodied in established rules/value systems and manifests them as a series of actions as the final stage of value implementation to create, maintain, and preserve peaceful social relations. Therefore, regarding the regulation of Minor Offences (Tipiring) that can foster restorative justice, efforts must begin with harmonising the values embodied in

established legal principles/value systems regarding minor criminal offences, and manifesting them as procedures and behavioural attitudes as the final stage of value implementation to create, maintain, and uphold peace in the enforcement of law.

Restorative Justice Law Enforcement for Minor Offences as Implementation of Fair and Civilised Human Values

After gaining independence, the Indonesian people were determined to live under laws established based on their own legal consciousness. The legal consciousness of the Indonesian people as a nation is found in the preamble of the 1945 Constitution, which is none other than the Pancasila Legal Ideology or *Rechtsidee* of the Indonesian nation (Sibuea, 2001). Therefore, legal policies, including those in the criminal sphere, must be developed as legal policies that are in line with Pancasila.

Legal ideals (*rechtsidee*) mean that, in essence, law as a set of rules of conduct for society is rooted in the ideas, feelings, intentions, and thoughts of the society itself. Thus, legal ideals are ideas, intentions, creations, and thoughts related to law or perceptions of the meaning of law, consisting of three elements: justice, effectiveness (*doelmatigheid*), and legal certainty. In the dynamics of society, legal ideals influence and function as general principles (*guiding principles*), norms of criticism (evaluation criteria) and motivating factors in the administration of law (Arief Sidharta, 2000).

Notonegoro (1971), expressed a similar view when he stated that Pancasila is the source of all national law, and the values contained therein are the values of divinity, humanity, unity, deliberation, and justice. In terms of procedure, the five basic values of Pancasila are fixed and cannot be reversed as stated in the Preamble to the 1945 Constitution. According to Notonagoro, Pancasila is a source of values and, as a legal ideal, can be said to have the status of a *Staatsfundamentalnorm* in the Indonesian state. In line with what was stated by Gustaf Radbruch (1878-1949), Staatsfundamentalnorm or grundnorm, which is an ideal, has a regulatory function and a constitutive function. The legal ideal has a first regulatory function, which is to serve as a benchmark to test whether a positive law is fair or not, and a second constitutive function, which is to determine that, without a legal ideal, the law would lose its meaning as a law (Kuo et al., 2010).

Justice can only be understood if it is positioned as a condition to be realised by law. The effort to realise justice is a dynamic process that takes a long time. Natural law theories from Socrates to Francois Geny have maintained justice as the crown of law. Natural law theory prioritises 'the search for justice' (Huijbers, 1995). In normative studies, law is an instrument for upholding justice, which takes the form of guidelines for behaviour with the primary function of regulating human behaviour. According to Satjipto Rahardjo, discussing law is discussing relationships between humans (Rahrdjo, 1996). Discussing relationships between humans is discussing justice. Thus, every discussion about law, whether explicit or implicit, is always a discussion about justice.

Meanwhile, Satjipto Raharjo argues that law enforcement is essentially the enforcement of ideas or concepts about justice, truth, social benefit, and so on (Dellyna, 1998). And referring to this opinion, the enforcement of law related to minor offences is an effort to realise ideas and concepts by resolving minor criminal cases in a manner that embodies values or principles of restorative justice, which must be implemented in law enforcement by law enforcement officials as the responsible parties.

Harmonisation of Law Enforcement on Minor Offences (Tipiring) with Restorative Justice Efforts in Legislation

Within the Indonesian legal system, the division of duties and powers of each law enforcement agency is clearly regulated. The Police are responsible for conducting investigations into criminal offences, the Prosecutor's Office is responsible for prosecuting offenders in court, judges in court are responsible for examining and deciding criminal cases, and correctional institutions are responsible for enforcing sentences imposed by the court.

Discourse on the enforcement of law on minor offences (Tipiring) has always been a subject of debate among legal practitioners and academics, as well as among people seeking justice, who question the value of justice both in the substance of the legislation and in its enforcement (*law enforcement*) by officials from the investigation stage, prosecution, to trial in court. This is due to the dualism of law enforcement and disparities in sentencing in the prosecution of minor criminal cases (Tipiring), which has not yet created legal order in the enforcement of minor criminal cases.

Therefore, various efforts have been made to address the substantial problems in legislation that are considered no longer appropriate to be implemented in the present day. These efforts can be seen in the issuance of various regulations

applicable to each law enforcement agency, such as the Supreme Court Regulation (PERMA) No. 2 of 2012 on the Adjustment of the Scope of Minor Criminal Offences in the Criminal Code, National Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice. PERKABAHARKAM No. 6 of 2011 on the Handling of Minor Criminal Offences, Prosecutor's Office Regulation No. 15 of 2020 on the Authority of the Prosecutor's Office to Implement Restorative Justice, and Supreme Court Regulation (PERMA) No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, to fill various gaps in the implementation of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) and the Criminal Code (KUHP), with the hope that these regulations will create a sense of justice and thereby ensure legal order in society.

The Ideal Concept of Law Enforcement for Minor Offences Based on Restorative Justice According to Progressive Legal Theory

Restorative Justice for Minor Offences as an Ideal Concept and Progressive Efforts to Break Through Legal Rigidity

Minor criminal offences are inseparable from developments in society, which are increasingly complex and give rise to various multidimensional problems that ultimately lead to various criminal offences. Therefore, the concept of ideal law enforcement in the handling of minor criminal offences in a fair manner is always a relevant need that must be progressively pursued in order to create legal order.

Therefore, Satjipto Raharjo stated that legal practitioners in this country should always feel uneasy if the law has not yet been able to make the people happy. This is also referred to as progressive law enforcement (Sirait, 2021), particularly in cases that are disturbing but can be handled simply by balancing the interests of all parties involved in the case.

The distinctive feature of progressive law that distinguishes it from positivist law is its recognition of the importance of written legal provisions that are not bound by normative rules, but also allows the law to freely explore new legal ideas in the pursuit of justice. Thus, the enforcement of law is no longer confined to the literal wording of existing legal provisions but can freely interpret them based on the justice of society. To measure and assess this social justice, spiritual intelligence is required in the form of conscience on the part of law enforcers in handling every legal case entrusted to them.

Thus, progressive law does not absolutely reject written law but only gives it a more limited role and gives more importance to the factors of justice and the welfare of the people as the main objectives of law. Because of this, law must always move in line with the development of human and social needs. This is consistent with Article 5 of Law No. 48 of 2009, which states that judges and constitutional judges are obligated to explore, follow, and understand the legal values and sense of justice that exist within society.

Balance of interests is one of the theoretical foundations for the establishment of a legal order. The foundation of the Theory of Balance of Interests proposed by Rescoe Pound is rooted in legal pragmatism that developed in the United States, which argues that theories about law must be more concrete so as not to be abstract (Sirait, 2021).

One of the obstacles to the enforcement of restorative justice in minor criminal offences (Tipiring) is the importance of written law (Lex Dura Sed Tamen Scripta), which, once enacted as positive law, must be enforced without compromise, making the law appear rigid in its enforcement, such as in dealing with criminal offences considered minor offences.

The rigidity of written law related to minor criminal offences, referring to Satjipto Raharjo's opinion, states that one of the important characteristics of written law lies in its rigidity (lex dura sed tamen scripta - the law is harsh/rigid, but that is the nature of written law). Once the law is written or becomes a written document, attention shifts to the complexities of its use as a written document. While the original purpose of law was related to issues of justice or the pursuit of justice, we are now faced with the text, the reading of the text, and other related matters (Raharjo, 2010).

Restorative Justice as an Ideal and Progressive Concept for Minor Offences

The discourse on the ideal concept of law enforcement for minor offences (Tipiring) based on restorative justice has been progressively reviewed over time in order to find solutions for dealing with perpetrators of minor offences so that they are punished according to their actions and those who are not guilty are released or acquitted through a judicial process based on restorative justice.

However, in reality, the growth in the number of minor crimes cannot be matched by appropriate handling due to the dualism of the resolution model, so that fair law enforcement is not fulfilled because, on the one hand, there are perpetrators of minor crimes who are tried, but on the other hand, there are also those who are resolved through

restorative justice simply because the value of the loss incurred is only idr. 2,500,000. This social reality of law enforcement for minor criminal offences has eroded public trust in legal institutions, as the dualistic approach is perceived as discriminatory.

Restorative Justice for Minor Offences Meets the Principles of Speed, Simplicity and Low Cost

Therefore, in order to fulfil a sense of justice for minor offences (Tipiring) in the community and to facilitate public access to the courts, it is necessary to initiate the concept of Restorative Justice because the process is faster, simpler, and less costly and can be carried out under one roof.

Through this process, it is hoped that cases of minor criminal offences (Tipiring) with a value below IDR 2,500,000, which are currently handled differently, will ultimately be processed through the court system. This is because the economic value of IDR 2,500,000 varies across Indonesia; some consider it a significant amount, while others view it as small, depending on the region and the economic income level of the population. As a result, in certain areas, the incidence of minor criminal offences (Tipiring) is very high, causing public concern.

The concept of *Restorative Justice* is highly idealised as a means to reduce the number of minor criminal cases (Tipiring), as it ensures that all individuals are treated equally before the law (*equality before the law*). While offenders are prosecuted and held criminally liable in accordance with criminal law provisions, the process is conducted within a restorative framework aimed at restoring the original state of affairs.

The social reality of enforcing the law on minor criminal offences has eroded public trust in legal institutions, which has continued to decline due to the discriminatory nature of this dualism.

Therefore, the court as a law enforcement institution should not be viewed merely as a place for adjudicating cases, but as a place for delivering justice. Judges are required to fully engage themselves when making decisions, not merely relying on their expertise in legislation. According to Saleh (1979), "A judge is expected to always place himself within the law, so that the law is the essence of his life. A judge must not regard the law as a series of prohibitions and commands that will reduce his independence, but rather the law must be something that fills his independence. Therefore, 'the law is not merely regulations or statutes, but more than that: "behaviour". Statutes are important in a state governed by law, but they are not everything, and the process of delivering justice to society does not simply end with the enactment of statutes.' However, the reality is that the judicial institutions have failed to meet the expectations of those seeking justice. If we examine the enforcement of law in Indonesia today, it is far from ideal and can even be described as poor. The weakness of law enforcement in Indonesia is evident in various unresolved cases that have not been touched by the sense of justice. Such a reality in law enforcement will undoubtedly wound the hearts of the common people, leading to a loss of trust in the law, particularly in the law enforcement officials themselves (Anshori, 2016).

Enforcement of Law on Minor Offences as a Solution for Law Enforcement

The enforcement of law against criminal offences, particularly minor criminal offences, is the application of substantive criminal law to formal criminal law, which is precisely restorative justice. In reality, the public has long perceived that law enforcement is harsh on the weak and lenient on the powerful. On one hand, numerous corruption cases involving state losses of trillions of rupiah remain unresolved, resulting in asset confiscation that is merely symbolic and disproportionate to the losses incurred by the state. On the other hand, the enforcement of law against minor criminal offences, such as the case of Grandmother Minah who picked three cocoa beans from the Rimpun Sari Antan (RSA) plantation on 2 August 2009, which resulted in a criminal sentence imposed by the court on Grandmother Minah, has sparked demonstrations and protests from the wider community. Such law enforcement prioritises legal certainty by focusing solely on the textual norms of criminal law, while the sense of justice of the community is overlooked.

According to Soerjono Soekanto, there are several factors that influence the success of law enforcement in society, including legal factors, namely the conflict or contradiction between legal certainty and justice, where the concept of justice is an abstract formulation and legal certainty is a procedure that has been determined normatively (Soekanto, 2011). There are five factors influencing law enforcement, where these five factors support one another (Soekanto, 2011).

Other factors include the enforcement of law in the form of good mentality or character, the availability of facilities and infrastructure that support the enforcement of law, societal factors such as a community environment with legal

awareness that supports the enforcement of law within that community, and cultural factors; the more regulations align with societal culture, the easier it becomes to enforce the law.

The Ideal Concept of Law Enforcement in Tipiring Restorative Justice and Discretion Against Special Legal Subjects

The application of *Restorative Justice* in minor criminal cases (Tipiring) should ideally only be given to minor offences committed by children, elderly parents (aged 60 years and above), and people with special needs (*disabilities*) by law enforcement officials. This humane restorative enforcement also aims to strengthen other laws and regulations, and to address the circumstances and situations that arise in the field so that police investigators can take discretionary measures as referred to in Law No. 2 of 2002 on the National Police of the Republic of Indonesia, so as to maintain the situation and conditions as well as a sense of justice in the community that prioritises guidance.

Through the concept of *Restorative Justice* as a means of resolving minor criminal offences (Tipiring) only for children, elderly parents (60 years and above), and persons with special needs (*disabilities*), a progressive legal structure is needed. Thus, law enforcement officials in implementing restorative justice have clear criteria on which legal subjects should be subject to restorative justice and who should be held accountable in court.

The concept of restorative justice has been implemented in a minor criminal case involving theft committed by Andi Armansyah alias Bonge bin. Anwar (deceased), where the researcher was involved as an investigator, and the case was resolved through *Restorative Justice*, thus preventing it from proceeding to court. The incident occurred in Cilincing, within the jurisdiction of the North Jakarta Police Department, and the case file was returned by the Public Prosecutor Roberth M. Tacoy, SH.MH. Based on a letter from the North Jakarta District Prosecutor's Office No. B/534/0.11/Epp.2/10/2017 dated 24 October 2017 regarding the return of the case file of Andi Armansyah alias Bonge bin. Anwar (deceased), resulting in the termination of the investigation through Investigation Termination Order No. SP/S/268/XI/2017/RESKRIM dated 4 November 2017, with investigators AKP Sandy Budiman, SH.SIK, IPTU Wahyudi, SH.MH., and Bripka Dwi Prasetyo, SH., as well as the case of minor criminal fraud involving the suspect Yosep Fau alias Putra Sihombing, at the North Jakarta Police Station, by the Public Prosecutor through Letter No. B-118/0.1.11/EUH.1/05/2019 dated 22 May 2019, stating that the investigation files were incomplete, resulting in the case not proceeding further.

The Ideal Concept of Procedural Law for Minor Criminal Cases with Restorative Justice, Except for Recidivists

Except for perpetrators of minor crimes who repeat their offences (repeat offenders), the fast-track legal process with restorative justice is highly relevant for minor criminal cases (Tipiring), so that all Tipiring cases can be processed before the law with equality before the law and restorative justice.

Considering the development of ideal law enforcement, one of the alternative forms of criminal case resolution that has emerged in recent times is known as Restorative Justice. Historically, the practice of Restorative Justice has been applied and developed.

The Restorative Justice model is ideal for handling minor criminal cases (Tipiring), which currently still face dualism in law enforcement. Therefore, this practice needs to be elevated to the level of law, so that in its implementation, the Restorative Justice model can create a dispute resolution forum that is appealing to all parties involved, both economically and psychologically, where the parties involved feel comfortable and their interests are accommodated through the use of the Restorative Justice mechanism.

The Urgency of Drafting Restorative Justice Legislation for Minor Criminal Offences

Legal policy through legal reform for the enforcement of more humane criminal law for minor offences is essential to ensure its effectiveness. The product of this legal policy is intended to determine the direction, form and content of the legislation to be enacted (*ius constituendum*), which should be ideal for implementation in the future and also enforceable (Sirait, 2021).

The Restorative Justice approach is a shift from the model that has been used so far to the best model in the criminal justice system in handling criminal cases at this time. The United Nations, through its Basic Principles, considers that the Restorative Justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of G. P. Hoefnagels, who states that criminal policy must be rational (a rational total of the responses to crime). The Restorative Justice approach is a paradigm that can be used as a framework for criminal case handling strategies aimed at addressing dissatisfaction with the current criminal justice system. Restorative justice is a concept

that responds to the development of the criminal justice system by emphasising the need for community involvement and victims who feel marginalised by the mechanisms of the existing criminal justice system. On the other hand, restorative justice is also a new framework that can be used in responding to criminal acts by law enforcement and legal professionals. (Zulfa, 2011) where the sense of justice sought by victims is achieved through the restorative justice process, which has long been considered impossible due to the principle that there is no peace in criminal cases.

Restorative Law Enforcement at the Investigation Level

The enforcement of law in cases of minor criminal offences with an emphasis on *Restorative Justice* can also be found in Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice.

The resolution of minor criminal offences under Police Regulation No. 8 of 2021 may be carried out by submitting a written request to the Chief of the District Police and the Chief of the Sector Police. The request letter, prepared by the perpetrator, victim, perpetrator's family, victim's family, or other relevant parties, must be accompanied by a statement of reconciliation and evidence of the restoration of the victim's rights.

Based on the request letter, the Community Development and Community Relations Police officers invite the conflicting parties, facilitate or mediate between them, prepare a report on the mediation results, and record the resolution of the issue and the termination of the criminal investigation in the Restorative Justice Register.

With the existing foundational principles of Restorative Justice in various laws and regulations, the ideal concept for Restorative Justice in cases of minor criminal offences (Tipiring) in the future should be established at the legislative level to strengthen the legal foundation, and by being established at the legislative level, justice and legal certainty can be achieved.

One of the global movements driving the enforcement of restorative justice is the Vienna Declaration on Crime and Justice, which was declared and launched at a congress attended by representatives from 119 countries on 17 April 2000 at the United Nations. This declaration encourages the development of policies, procedures, and programmes of restorative justice that fully respect the rights, needs, and interests of victims of crime, perpetrators, communities, and all other parties involved.

In addition, the Restorative Justice Model by abolitionists rejects coercive means in the form of penal measures and replaces them with reparative (remedial) measures. Abolitionists consider the criminal justice system to be flawed or structurally defective, so that its basic structure must be changed. In the context of the criminal sanction system, the values underlying abolitionism are still reasonable in seeking more appropriate and effective alternatives to institutions such as prisons. Restorative Justice is a concept of punishment, but as a concept of punishment it is not limited to criminal law provisions (formal and material).

In the criminal justice process, the interests and rights of victims of a criminal act are enforced by the state through the Public Prosecutor (JPU) in opposition to the perpetrator of the criminal act, i.e., the defendant. In this process, the wishes of the victim are never accommodated in the existing criminal justice system, so that the sense of justice expected by the victim is neglected. However, in the concept of Restorative Justice, the sense of justice of the victim is accommodated, including the sense of justice of the perpetrator of the crime, which in the criminal justice process has only been oriented towards imprisonment. In Restorative Justice, the perpetrator's capacity and how they can fulfil it are discussed in the application of Restorative Justice.

Restorative Justice as a Means of Recovery and Improvement

With the implementation of Restorative Justice, there will be a shift in the direction of punishment from a punitive and/or vengeful approach to one that emphasises accountability for every action taken, to one that focuses more on healing and improving the welfare of the perpetrator, the victim and the community.

Regarding the momentum of Restorative Justice, this refers to the period before and after the judicial process. Before the judicial process, this refers to when the 'case' is still in the hands of the police or the prosecutor's office. Whether initiated by the police, the prosecutor's office, an individual or a community group, efforts are made to resolve the criminal act through the methods or principles of the Restorative Justice approach (Manan, 2008). Jim Consedine, one of the pioneers of restorative justice from New Zealand, argues that the concepts of retributive and restitutive justice based on punishment, revenge against the perpetrator, isolation, and destruction must be replaced by restorative justice based on reconciliation, victim restoration, integration into society, forgiveness, and pardon (Syukur, 2011).

In the Indonesian Supreme Court Regulation (PERMA) No. 1 of 2008 concerning mediation procedures in court, contained in Article 1 paragraph 7, it is stated that: "The method of dispute resolution through a negotiation process to reach an agreement between the parties with the assistance of a mediator. A mediator is a neutral party who assists the parties in the negotiation process to explore various possibilities for resolving the dispute without imposing or forcing a resolution." (Manan, 2008).

The Ideal Concept of Restorative Justice in the Draft Criminal Procedure Code Ius Constituendum

The drafting of the Criminal Procedure Bill has become a priority bill for 2025. This bill replaces the criminal procedure regulations currently governed by Law No. 8 of 1981 on Criminal Procedure (KUHAP).

The restorative justice mechanism in the KUHAP Bill is implemented through the settlement of cases outside of court. The settlement of cases outside of court is carried out at the investigation, prosecution, and trial stages. Out-of-court case resolution is carried out if the following conditions are met: a) the offender has committed the criminal act for the first time; b) the offender, suspect, defendant, or convicted person has restored the original condition; and c) there is a peace agreement between the victim and the offender, suspect, defendant, or convicted person.

In Section Nine of the 2025 Draft Criminal Procedure Code, the procedural rules for the examination of minor criminal offences are also regulated as follows: Article 273 of the Draft Criminal Procedure Code; 1) Cases examined under the summary proceedings for minor criminal offences are cases punishable by imprisonment for a maximum of 6 (six) months or a fine as specified in Category II of Law No. 1 of 2023 on the Criminal Code. 2) In cases referred to in paragraph (1), the investigator, acting on behalf of the Public Prosecutor, shall, within 3 (three) days from the completion of the investigation report, bring the defendant, along with evidence, witnesses, experts, or interpreters, to court. 3) In the examination proceedings referred to in paragraph (1), the court shall adjudicate with a single judge at the first and final instance. 4) If a sentence of deprivation of liberty is imposed, the defendant may file an appeal.

Therefore, in this study, as a continuation of PERMA Number 2 of 2012 concerning Adjustments to the Limits of Minor Offences in the Criminal Code, Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offences Based on Restorative Justice, PERKABAHARKAM No. 6 of 2011 on the Handling of Minor Criminal Offences, Regulation of the Attorney General's Office No. 15 of 2020 on the Authority of the Attorney General's Office to implement Restorative Justice, and Regulation of the Supreme Court (PERMA) No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, proposes as the novelty of this research that between paragraph (1) and paragraph (2) of Article 273 of the Draft Criminal Procedure Code (RUU-KUHAP) regarding the procedural law for minor criminal offences, one paragraph 1a be inserted, which reads:

Article 273 paragraph (1a) of the Draft Criminal Procedure Code, which reads: Cases examined under the summary proceedings for minor offences must first consider restorative justice in accordance with the provisions of the law.
It is hoped that the provisions of Article 273(1a) of the Draft Criminal Procedure Code will be applied in an integrated manner by all law enforcement agencies so as to create legal order in society.

4 Conclusion

Based on the above descriptions, the researcher concludes that this dissertation research can be summarised as follows:

a) The enforcement of minor criminal offences (Tipiring) from the perspective of justice for the sake of order, which is often discussed in academic circles and in the practice of criminal law, is a result of the dualism of law enforcement, starting from the investigation stage, through prosecution, to the examination process in court for minor criminal cases (Tipiring) with a value below IDR. 2.5 million, because law enforcement officials view minor criminal offences (Tipiring) as merely simple cases, as they are only considered from the perspective of their value, which is below IDR. 2.5 million, and as a result, public prosecutors consider these Tipiring cases to be resolvable through *Restorative Justice*, and the perpetrators do not need to be further investigated and prosecuted in court as long as certain conditions are met. There are also cases where the investigative files of minor criminal offences are deemed incomplete, resulting in the cases not proceeding further, and thus the investigation can be terminated by issuing a Cease of Investigation Order (SP3). As a result, the number of minor criminal offences continues to increase. However, there are also cases of minor criminal offences where the process is examined, tried, and punished by a judge in court, resulting in disparities in enforcement and punishment. In such cases, law enforcement officials consider that as long as the perpetrator of a minor criminal offence meets the criminal elements of the offence under the Criminal Code, the case must still be prosecuted, and tried in court, resulting in some being

sentenced to imprisonment. This has led members of the public seeking justice to question the fairness of this dualism in law enforcement, which does not create legal order either in the substance of the legislation or in its enforcement (*law enforcement*). therefore, to achieve fair law enforcement and establish order, in addition to the existing Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), various policies on restorative criminal law enforcement have been established, starting from the Supreme Court Regulation of the Republic of Indonesia (PERMA) No. 2 of 2012 on the Adjustment of the Limits of Minor Criminal Offences in the Criminal Code, the Indonesian National Police Regulation (Perkapolri) No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice. Perkabaharkam No. 6 of 2011 on the Handling of Minor Criminal Offences, Regulation of the Attorney General's Office No. 15 of 2020 on the Authority of the Attorney General's Office to Implement Restorative Justice, and PERMA No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, thereby aligning with the Pancasila Rechtsidee, which embodies the values of justice and humanity.

b) Conceptually, the enforcement of law on minor offences based on Progressive Legal Theory is expected to be ideal and appropriate in the future (*Ius Constituendum*) in overcoming the dualism of law enforcement in cases of minor offences, where on the one hand there are perpetrators of minor offences who are prosecuted, but on the other hand, there are also those who are resolved through restorative justice based on PERMA Number 2 of 2012 concerning the Adjustment of the Limits of Minor Offences in the Criminal Code, Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offences Based on Restorative Justice, PERKABAHARKAM No. 6 of 2011 on the Handling of Minor Criminal Offences, Prosecutor's Office Regulation No. 15 of 2020 on the Authority of the Prosecutor's Office to Implement Restorative Justice, and PERMA No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, solely because the value of the loss caused was only Rp. 2.5 million, resulting in the growth rate of minor criminal offences not being matched by appropriate handling, which has led to the enforcement of justice not being fully realised in creating order in the enforcement of law regarding minor criminal offences, and therefore the ideal concept to create uniformity in the enforcement of law on minor criminal offences that is fair in society, as well as to facilitate public access to the courts, is the need to initiate the concept of Progressive Law Enforcement through *Restorative Justice* at the investigation level, which is carried out in a simple, transparent, and easily accessible, except for repeat offenders (recidivists), then *Restorative Justice* applies to all Tipiring cases and is included in the RUU-KUHAP as a guideline for all law enforcement officials by prioritising *Restorative Justice* with *Ultimum Remidiun*, with priority given to protecting victims so that they can return to their original state, and the legal policy of *Restorative Justice* for minor offences (Tipiring) is regulated through the RUU_KUHAP, namely that between paragraph (1) and paragraph (2) of Article 273 of the RUU-KUHAP regarding the procedural law for minor criminal offences, a new paragraph 1a is inserted, which reads: "Cases examined under the procedural law for minor criminal offences must first consider resolution through Restorative Justice in accordance with applicable laws and regulations."

Suggestions

Based on the above conclusions, the researcher can provide the following recommendations for this dissertation research:

a) Considering the increasing number of minor offences in Indonesia, which occur repeatedly as a sociological problem, it is hoped that law enforcement officials in the Indonesian National Police, Prosecutors of the Attorney General's Office of the Republic of Indonesia, and Judges of the Courts, as well as Lawyers in handling cases of minor criminal offences, including Civil Servant Investigators of the Local Police in enforcing Local Regulations, consistently enforce the law through Restorative Justice so that legal order is comprehensively established in the nation;
b) As a follow-up to PERMA No. 2 of 2012 on the Adjustment of the Limits of Minor Criminal Offences in the Criminal Code, Police Regulation No. 8 of 2021 on the Handling of Criminal Offences Based on Restorative Justice, PERKABAHARKAM No. 6 of 2011 on the Handling of Minor Criminal Offences, Prosecutor's Office Regulation No. 15 of 2020 on the Authority of the Prosecutor's Office to Implement Restorative Justice, and Supreme Court Regulation (PERMA) No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, this research proposes a novelty to amend Article 273 of the Criminal Procedure Code (RUU-KUHAP) regarding the procedural law for minor criminal offences by inserting a new paragraph 1a, which reads

as follows: (2) of Article 273 of the Draft Criminal Procedure Code (RUU-KUHAP) regarding the procedural law for minor criminal offences, a new paragraph 1a is inserted, which reads as follows:
Article 273(1a) of the Draft Criminal Procedure Code (RUU-KUHAP) states: Cases examined under the procedure for minor criminal offences must first consider resolution through Restorative Justice in accordance with the provisions of the law.
The provision of Article 273(1a) of the Draft Criminal Procedure Code is expected to be applied consistently by all law enforcement agencies to ensure legal order in society.

Conflict of interest statement
The authors declared that they have no competing interests.

Statement of authorship
The authors have a responsibility for the conception and design of the study. The authors have approved the final article.

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