Theme: The Existence of Customary Law as Living Law of the Indonesian Nation

The Existence of Customary Law as Living Law of the Indonesian Nation

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ABSTRACT

Customary law is a law that lives in the community, grows and develops with the community, and is recognized and obeyed by the community. Customary law has existed since before Indonesia became independent and has become part of Indonesian people's lives. The existence of customary law in Indonesia can be seen from several aspects, namely; 1) Historical aspect: Customary law has existed since before Indonesia became independent and has become a part of Indonesian people's lives. 2) Sociological aspect: Customary law is the embodiment of social values and norms that live in society. 3) Juridical aspect: Customary law has been recognized as one of the sources of law in Indonesia.

Keywords: Customary Law, Existence, Challenges, Preservation Efforts

1. Introduction

Customary law, which was originally a living law and was able to provide solutions to various social problems of the Indonesian people, is fading day by day. Currently, there are many problems faced by indigenous Indonesians when customary law is faced with positive law. The development of the Indonesian Legal System which tends to prefer *civil law and* common law system and *Indonesian legal politics that leads to the codification and unification of law, accelerates the disappearance of customary law institutions.*

The concept of law adopted refers to the fact that outside the state judiciary there is also a non-formal court installed and works based on rules of conduct in resolving disputes based on customary law that lives in the community. Here the judiciary is examined as a component of a complex societal system and not as a single source in the distribution of justice, as in legalistic-positivistic legal thinking. Thus the problem of the distribution of justice is not only associated with efforts to equalize opportunities for justice, through the establishment of formal courts and their instruments, but also with the right pairing between forums and disputes, and with the postulates of social structuring based on customary law. The complexity of the Judiciary as a justice-giving institution is colored by various emanations of legal theories and concepts. On the first side stands the legalistic-positivistic group mentioned above. Legalist-positivists want the judiciary to work on the basis of logical legal rules.

While on the other hand stands a pragmatic group, which wants the judiciary to work on the basis of legal values and justice that live in society. Therefore, the description below will touch on various legal concepts and theories regarding customary law, the judiciary and its judges. The notion of access to justice *does not actually refer to* "punitive jastice" (justice refers to punishment). But brought to a new vision, it is "*participatory justice*" (justice that refers to togetherness).

Historical facts have recorded that the Indonesian nation has cultural treasures in the form of social and legal systems regarding justice, judges and justice. Just as an example, the history of the Mataram kingdom since the 17th century has had a royal judicial institution called the Stinggil Court

or Serambi. Meanwhile, legal cases in rural areas are resolved in the Padu Court led by traditional chiefs. The village-level judiciary survives today under names as varied as the customary Court or the Village Peace Institute. Until now, such institutions are still alive with their functions and authorities to fix the damage to social associations due to violations of customary law that occur in the community by implementing and enforcing law and justice.

Law is an inseparable part of human society so that in society there is always a legal system, there is a society and there are legal norms (*ubi societas ibi ius*). It was intended by Cicero that the rule of law should refer to respect and protection for the nobility of human dignity. The law seeks to maintain and regulate the balance between the interests or desires of egoistic individuals and common interests so that conflicts do not occur. The presence of the law actually wants to enforce the balance of treatment between individual rights and joint rights. In essence, the law must be certain and fair so that it can function as it should.

The concept *of restorative justice or often translated as restorative* justice is a model approach that has emerged since the era of the 1960s in efforts to solve criminal cases. Restorative justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the need for community involvement and victims who are felt to be excluded from the mechanisms that work in the current criminal justice system. The United Nations defines restorative justice as a *way of responding to criminal behavior by balancing the needs of the community, the victims and the offenders,* which loosely translates as a solution to criminal acts by reharmonizing the harmonization between society, victims, and perpetrators.

Restorative *justice* is a relatively new thing in Indonesia. However, *restorative justice* has a different perspective according to Fruin J.A, namely for the fulfillment of a sense of justice due to a criminal act. Paul Hadisuprapto's view, restorative juvenile justice departs from the assumption that responses or reactions to child delinquent perpetrators will not be effective without the cooperation and involvement of victims, perpetrators and the community. The underlying principle is that justice is fulfilled, when each party receives fair and balanced attention, is actively involved in the judicial process and benefits adequately from their interaction with the juvenile justice system.

The Criminal Procedure Law stipulated in the Code of Criminal Procedure (KUHAP) does not recognize peace as a mechanism for solving a case, but in handling criminal cases, it is quite common that law enforcement officers, both police and prosecutors choose not to extend the case process and invite victims and perpetrators to resolve it through deliberation. Pasal 24 Undang-Undang No. 3 Tahun 1997 mentions alternatives to providing legal sanctions for children, namely returning to parents, guardians, or foster parents; submit to the state to participate in education, coaching and job training; or submit to the Department of Social Affairs, or Social Community Organizations engaged in education, coaching, and job training.

Based on the legislation described and the situation of conditions (facts) that have occurred so far, efforts to resolve children's problems in conflict with the law through diversion and restorative *justice* efforts are one of the right steps for resolving children's cases that conflict with the law. To make *restorative justice effective* in order to fulfill the rights of children who face the law, socialization and coordination from various parties are needed, namely law enforcement officials, families, and community leaders. Without this socialization, the application of restorative justice becomes difficult to realize as an alternative to solving the problems of children who face the law

2. Results And Discussion

The Criminal Code (KUHP) in the Criminal Procedure Code and juvenile court law is not known discretion and version, as well as the concept *of restorative justice* that is being developed throughout the world. Diversion based on the discretion of law enforcement officials is to protect

children from actions that are contrary to the best interests of children. Wagiati and Melani According to Soepomo in Wagiati and Melani Explaining that settlement according to customary law requires the restoration of balance in society, or the restoration of conditions. By using the concept of *restorative* justice , juvenile criminal justice can be expected to produce the following:

a. Reduced number of children in temporary detention and sentenced to prison.
b. Eliminate stigmatization and return children to normal human beings so that they are expected to be useful in the future.
c. Children who commit criminal acts can realize their mistakes and take responsibility, so they can be expected not to repeat their actions.
d. Reduce the workload of the court.
e. Saves State finances.
f. Increase parental support and community participation in tackling child delinquency.
g. Reintegrating children into society.

According to Prakoso in the Indonesian context how to mention that concepts and principles *Restorative Justice* has actually been tightened by a number of indigenous Indonesians. Therefore, efforts to make restorative justice as an alternative model in the matter of juvenile crime are very prospective, just modifying from practices that have been conversionally existing and developing in a number of places in Indonesia. *Restorative Justice* This Muliadin reveals in detail the traits of *Restorative Justice* as follows:

a. Crime is defined as the transgression of one person against another and is seen as a conflict
b. Focus attention on problem solving, accountability and obligations for the future, normative nature built on the basis of dialogue and negotiation
c. Restitution as a means of the parties, reconciliation and restoration are the main objectives.
d. Restitution as a means of the parties, reconciliation and restoration are the main objectives
e. Justice is formulated as the relationship between rights, valued on the basis of value
f. The focus of attention is focused on repairing the social wounds caused by crime.
g. The community is a facilitator in the restorative process.
h. The role of victims and perpetrators is recognized, both in determining problems and solving the rights needs of victims, perpetrators are encouraged to take responsibility.
i. The responsibility of the perpetrator is formulated as the impact of understanding the action directed to participate in deciding the best. Stigma can be eradicated through *restorative.*

The existence of customary law as *the living law* of the Indonesian nation is increasingly marginalized. Customary law, which was originally a living law and was able to provide solutions to various social problems of the Indonesian people, is fading day by day. Today, in empirical reality, there are sometimes many problems faced by indigenous Indonesians when customary law is faced with positive law. For example, when the traditional rights of the community deal with the interests of investors through state legal means.

The development of the Indonesian Legal System which tends to prefer *civil* law and common law system *and* Indonesian legal politics that lead to the codification and unification of law, accelerates the disappearance of customary law institutions. The increasingly marginalized existence of customary law as one of the sources of law in Indonesia, one of which is due to the assumption that customary law is very traditional and cannot reach the development of the times (globalization and technology). The implications of Indonesian legal politics are also felt in solving problems in communities that deny customary law, which is actually more relevant. For example, the rise of horizontal conflicts, between indigenous peoples in one region, should be resolved through the role of indigenous settlement institutions. A crucial problem that arises in everyday life is the difference in perception between land tenure by communities based on customary rights and public interests that

are burdens and obligations of the state. Another example is the idea that the basis for the punishment of an act is extended to the realm of customary law values.

The historical course of the enactment of law in Indonesia records that many jurists actually study customary law as a law that lives in Indonesian society. Van Vollenhoven, for example, states that if "one wants to gain knowledge and information about the laws that live on this earth, precisely because of the diversity of forms in the past and present, then the whole rule of the Indies (read: in Indonesia) is an endless source of study. This statement acknowledges that legal pluralism in customary environments is unique, interesting and a feature of Indonesian society. Kusni Sulang (Member of the Palangka Raya Dayak Cultural Institute) even emphasized that the plurality of customary law is a blessing. Legal pluralism can be a unifier, a solution and even create peace in the social life of the community.

Until now, the pluralism of customary law in Indonesia, which has developed dynamically following the development of its society while still relying on the characteristics of indigenous peoples and the mindset of participerend coschmish attracts experts from all over the world to be the object of research. Just to remind, currently related to the resolution of disputes, both civil and criminal, a method or approach known as restorative approach has developed, which is similar to the *participerend coschmish* mindset adopted by indigenous peoples. Implementation of restoring a state of balance based on the mindset of *the participerend coschmish*, incarnated in some ceremony, abstinence or *rite (rites de passage*). This fact shows that indigenous conceptions and mindsets are not only still relevant, but also an inspiration for other countries to develop laws to meet people's sense of justice.

Indigenous peoples have the same pattern in resolving conflicts in the community, namely controlling life in the community and imposing sanctions if violated so that recovery becomes very effective. Another example, Utrecht University seeks to encourage the use of consensus deliberation model of indigenous Malays in solving problems that occur. In Indigenous peoples, dispute resolution through deliberation is a living law and is known in almost every legal circle (*rechtskring*). Dispute resolution through deliberation always involves the head of the people (traditional leaders), both in preventing violations of law (*preventieve rechtszorg*) and restoring the law (rechtsherstel). On the contrary, Indonesia enacted Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution as an out-of-court settlement option, which was clearly inspired by the development of dispute resolution in countries with *a common law system*. Furthermore, it can be seen that in the framework of codification and unification of law in Indonesia, various laws and regulations refer to the common law, *civil law* and sharia legal systems.

The complete acceptance of other legal systems in the formation of legislation in Indonesia in its implementation sometimes clashes with the sense of justice of the people in Indonesia, concrete examples, the field of economic law, especially the capital market, for example, has developed many types of anonymous agreements such as collective investment contracts, trust agreements, brokerage agreements, and derivative transactions. Specifically for the practice of derivative transactions, the court still classifies derivative transactions in the capital market as a for-profit agreement based on Article 1774 of the Civil Code. This erroneous view of derivative transactions can be seen from the derivative cases that occurred in the banking world between Bank Niaga and Dharmala Agrifood, Bank Niaga and Suryamas Duta Makmur, Mayora Indah and Bankers Trust, Bank Credit Lyonnais Indonesia and PT Nugrasentana. The court considered that derivative transactions were considered not to meet the lawful causa as one of the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code. This case example proves that the acceptance of certain legal systems is sometimes difficult to apply in certain societies.

Given that customary law is a law that reflects the personality and soul of the nation, it is believed that some customary law institutions are certainly still relevant as material in shaping the Indonesian legal system. Customary law that can no longer be maintained will be silent over time, in accordance with the flexible and dynamic nature of customary law (not static). Savigny as quoted by Soepomo affirmed that Customary Law is a living law, because it is the incarnation of a real legal feeling from the people. According to its own nature, customary law is continuously in a state of growth and development like life itself.

In line with Savigny, van Vollenhoven said that "customary law in the past has been somewhat different in content, customary law has shown development". He further asserted that "customary law develops and advances continuously, customary decisions give rise to customary law". Considering customary law as the crystallization of Indonesian culture, researchers believe that an effort is needed to revitalize customary law, and make it part of the source of national law formation. With regard to the establishment of national laws, Mochtar Kusumaatmadja added that they should be sensitive to the development of society and that they should be adapted and adapted to circumstances.

Some of the thoughts contained in the theory of *living law*, including stating that in a process of forming laws and regulations it is absolutely necessary to pay attention to the values and legal norms that live and apply in society. If the enactment of a law contradicts the values and legal norms that live and apply in its society, it will certainly get rejection. In the Indonesian context, the *living law* of Indonesian society is customary law.

Customary law can also be used as a source of law by judges if the law so requires. Customary Law is a law that is not codified among Indonesians and foreign Easterners (including Chinese and Arabs). Customary law can not only be classified based on diversity as found in legal environments (*rechtskring*), but can also be seen from another perspective, namely from the field of study, namely customary law regarding the composition of citizens (constitutional law), customary law regarding relations between citizens (civil law), and customary law regarding delik (criminal law). Based on this and to examine customary law that is still relevant, used as a source of national law formation, researchers first set the following signs.

First, the study is carried out by first looking at areas of law that are neutral and non-neutral (sensitive). Meant by neutral legal field is the field of law that is not directly related to human spiritual aspects, such as property law, treaty law and economic law field, while non-neutral legal field is a field of law that is closely related to human spirituality such as marriage law, inheritance law and land law.[26] Second, it is based on customary law that does not hinder the development of a just society. Third, customary law, which is still considered relevant, is expected to be a source of unification and codification in certain fields of law. Based on the signs above, the researcher conducted a study of constitutional law and customary civil law.

Composition of Indigenous Peoples (Governance) Customary law regarding the composition of citizens includes all that concerning the structure and order in the communion of indigenous peoples. Indigenous peoples are united by their own legal alliances, in which legal disputes have arrangements, equipment, and duties. Legal fellowships have members who feel attached to each other, who are united, and full of solidarity. Legal alliances are formed on the basis of geneological and territorial factors. Geneological factors bind people according to lineage. Based on lineage, there is a legal arrangement arranged based on the Father's lineage (patrilineal), the mother's lineage (*matrilineal*), and based on the lineage of both (parental). The territorial factor binds members of a legal alliance based on a common relationship to the same area. Legal alliances based on territorial factors include, villages, regions, and village unions. A village fellowship is when a common dwelling place binds a human alliance over its own territory.

A regional alliance is when there are several common residences in a particular area and always with a certain degree of freedom and each headed by an official, where the residences are part of an alliance that has its own boundaries and government, as well as its own territorial rights. A village union is when each village alliance is complete with its own government and region and is located adjacent and enters into an agreement to maintain common interests by entering into an agreement to maintain common interests by establishing a cooperative government between these governments, where the village heads who are incorporated are not given separate territories.

The demand for nationalism against the Unitary State of the Republic of Indonesia has forced legal alliances based on geneological factors cannot be surfaced, besides that another cause is because the composition of geneological orderly society is spread in regions because it does not have its own territory. However, this is not the case in the composition of society based on territorial factors such as Nagari in Minangkabau and Subak in Bali until now its existence is still in line with the development of government, even in the era of regional autonomy the concept of Nagari government has inspired the revitalization of village autonomy. The existence of customary law alliances as a system of government in the regions is formally juridically grounded.

The existence of indigenous peoples in Indonesia is constitutionally recognized as stipulated in the 1945 Constitution 4th Amendment Article 18B paragraph (2): "The State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia stipulated in law". At a practical level, for example, the 1945 Constitution which introduced the Right to Control the State, was lifted from the Right to Ulayat, the Right of Lordship which is traditionally recognized in customary law. In addition to being protected by the constitution, the existence of indigenous peoples is also protected in Law No. 39 of 1999 concerning Human Rights as stipulated in Article 6 paragraph (1) and paragraph (2) which determines In order to uphold human rights differences and needs, in customary law communities must be considered and protected by law, society, and government. The cultural identity of indigenous peoples including customary land rights is protected, in line with the times.

Nagari in West Sumatra Province is an administrative division after the sub-district replaced the term village. Nagari is a legal community unit that has territorial boundaries that are authorized to regulate and take care of the interests of local communities, based on origins and customs that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. Nagari is led by a Wali Nagari who is assisted by several Wali Jorong (Nagari Secretaries). Wali Nagari is democratically elected by Anak Nagari (nagari residents). Nagari is administratively the current government under the sub-district which is part of the Regency Regional apparatus, as opposed to the City Government structure, Nagari is no longer known. Nagari has autonomy so Nagari can be analogous to village autonomy. In a Nagari formed the Nagari Customary Density (KAN), which is an institution consisting of elements of alim ulama, clever clever, and ninik mamak (tigo furnace rare). Important decisions that will be taken are always deliberated between the Wali Nagari and the Nagari Customary Density. As for the legislative bi- dang, there is the Nagari Consultative Body (BMN). Nagari also has his own wealth such as customary rights. In Solok Regency, Nagari currently has 111 (one hundred and eleven) authorities including the Building Permit and Business Place Permit (SITU).

In Indonesia, there are approximately 600,000 (six hundred thousand) legal alliances inhabited by around 70 (seventy) million people, they live in rural areas and forests. Its existence is very difficult to reach by the local government. Therefore, for the effectiveness of government services and in an effort to prosper the people living in rural areas, the revitalization of the Nagari government

and the like is important and immediately realized, because it is very much in line with the conception of regional autonomy.

3. Conclusion

Hardjito Notopuro defines Customary Law as unwritten law, customary law with distinctive characteristics that are guidelines for people's lives in carrying out justice and community welfare and are familial. Van Vollennhoven described customary law as a set of rules on conduct for indigenous and Eastern foreigners that have sanctions (because they are legal), and are in a state of non-codification.

In general, the recognition of customary law can be seen from the politics of Indonesian law contained in the UUD NRI 1945 pasal 18B ayat (2) which states: "The State recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as stipulated in law". However, in its development, Indonesian law tends to move more towards western law (*civil law and common law*) which has implications for Indonesian legal politics that deny customary law, which is actually more relevant. For example, dispute resolution between indigenous peoples in one territory should be resolved through the role of indigenous peoples' settlement institutions rather than the District Courts. A crucial problem arising from the exclusion of customary law is the conflict between indigenous peoples and the public interest which is the burden and obligation of the state.

Customary law term, translation of the Dutch term "Adatrecht". First worn by Snouck Hurgronje, popularized by C. Van Vollenhoven. The term "Adatrecht" appeared only in 1920, in Dutch legislation. The term "*Adatrecht*" is not popular among many. Popular is the term "Adat" which comes from Arabic, which means "Custom". Van Vollenhoven defined customary law as rules of conduct applicable to indigenous peoples and foreign easterners, which on the one hand have sanctions (hence the word "law") and on the other hand are not codified (hence said to be customary While R.Soepomo mentions that.

Customary law is a synonym of unwritten law in legislative regulations (*unstatory* law), law that lives as a convention in state legal entities, law that arises because of judges' decisions (*judgemade* law), law that lives as customary rules that are maintained in the association of life, both in cities and villages (customary law). Customary Law is defined as Original Indonesian Law which is not written in the form of legislation of the Republic of Indonesia which here and there contains religious elements. For the development / drafting of national law, Customary Law may mean:

a. The use of customary law conceptions and principles to be formulated in legal norms that meet the needs of the community.
b. The use of customary law institutions that are modernized and adapted to the needs of the times.
c. Incorporate customary law concepts and principles into new legal institutions.

The role of Customary Law is as the development of property law (Customary Law is one of the elements) and the development of family law and inheritance law (Customary law is the core). The theory of *Receptioin complexu* states that the customs and laws of a group (law) of a society are the overall reception of the religion adopted by that group of people. The (customary) law of a group (society) is the result of a unanimous acceptance of the law (religion) adopted by that group of people This theory was challenged by Snouck Hurgronje and van Vollenhoven. The reason: not all parts of religious law are accepted (*reception*) in customary law. Only a few parts are influenced by religious (Islamic) law, namely: Family law, marriage and inheritance. Snouck Hurgronie's opinion was refuted

by Ter Haar, arguing that the Law of Inheritance was not influenced by Islamic Law, it remained original, as in Minangkabau.

The elements of customary law consist of the original element (the largest part), (hereditary) and the religious element (a small part). While the source of customary law according to van Vollenhove

a. Behavior that remains due to the habits of members of the customary law community;
b. The decisions (statutes) of the heads in helping to keep the rules of conduct obeyed;
c. Decisions (decrees) of the head of Indonesia in adjudicating the agreement;
d. The decisions (statutes) of the magistrate's officials according to customary law.

In the perspective of its current position, Customary Law is also recognized as one of the sources of Indonesia's formal law, namely in the form of customary law. Customary law and customary law are regulations followed by the community that take place repeatedly because they are considered by the community as something that should be done or followed, for a long time. People who follow customary law and customary law continuously and repeatedly, and the community's assumption that this has become something that should be so, will make customary law and customary law more powerful.

The Indonesian legal system is a system that applies in Indonesia as a source of law for courts, judges, to formulate decisions, and also at the same time includes the values or ideals that underlie it. Every nation has its own legal system, along with the value system that underlies it, including Indonesia. Adequate understanding of sources or materials derived from legal sources in Indonesia is a concrete component of the legal structure or building of the Indonesian legal system, which includes laws and regulations, court decisions, customs, and other non-positive rules, that every legal issue must be resolved within the framework of the applicable legal system, or by referring to that source.

The legal system in Indonesia today is a unique legal system, a legal system built from the process of discovery, development, adaptation, and even compromise of several existing systems. Indonesia's legal system not only prioritizes local characteristics, but also accommodates general principles espoused by the international community. The Indonesian legal system is a blend of the continental European legal system, the Anglo Saxon legal system, the customary law system, and the Islamic legal system.

The development of the Indonesian legal system is increasingly visible when there are contributions from the thoughts of philosophers of legal thinkers both from the schools of positivism and *sociological jurisprudence*. In this sense, positivism is a movement that remains in general philosophy. While the relationship between sociology and legal science is essentially a modern phenomenon. On the one hand it accompanies the importance of science, and on the other hand explains political philosophy and theory about legal science in Indonesia. In most actions of the legislature to make laws, the actions of the Government (*Executive*) and officials in enforcing the law, even the actions of judges in deciding cases always make this school of thought a reference. In addition, aspects of justice in law enforcement in the national legal system are always seen from the perspective of legal justice.

Positivism emphasizes that every methodology thought of to find a truth should make reality exist and objective and should be detached from various subjective metaphysical conceptions. When positivist thought is applied to the field of law, legal positivism releases legal thinking as espoused by natural law thinkers. So every legal norm must exist objectively as positive norms. Law is not conceptualized as abstract moral principles about the nature of justice, but something that has been positive as law to ensure legal certainty.

The model of law enforcement in Indonesia is inseparable from the influence of positivist thinking. According to Hans Kelsen that legal norms become the standard of assessment for every action carried out by every individual / group in society. The standard of assessment in question is the relationship between human actions and legal norms. So legal norms become a measure to punish someone or not, and claiming someone guilty or not must be measured based on articles in written regulations, without regard to moral and justice aspects. Law as a system of norms that applies to Indonesian society, is always faced with social changes that are so dynamic along with changes in people's lives, both in the context of individual, social and state politics. The idea that the law must be sensitive to the development of society and that the law must be adapted or adapted to changing circumstances is actually contained in the mind of Indonesian people. Aum positivism defines legal justice as legality. A legal regulation is said to be fair if it is really applied to all cases.

Conversely, a legal regulation is considered unfair if it is only applied to a particular case, and not applied to other similar cases. The substance of legal justice in the view of positivism is the application of law by looking at the value of a rule of law (the principle of certainty). So law and justice are two sides of the coin . Legal certainty is fair, and legal justice means legal certainty. The legal basis for restorative justice in cases of minor crimes is contained in the following regulations:

a. Pasal 310 Kitab Undang-Undang Hukum Pidana (KUHP)
b. Pasal 205 Kitab Undang-Undang Hukum Acara Pidana (KUHP)
c. Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2012 concerning Adjustment of the Limit of Minor Crimes and the Amount of Fines in the Criminal Code
d. Nota Kesepakatan Bersama Ketua Mahkamah Agung, Menteri Hukum dan Hak Asasi Manusia, Jaksa Agung, Kepala Kepolisian Negara Republik Indonesia Nomor 131/KMA/SKB/X/2012, Nomor M.HH-07.HM.03.02 Tahun 2012, Nomor KEP-06/E/EJP/10/2012, Nomor B/39/X/2012 tanggal 17 Oktober 2012 concerning the Implementation of the Application of Adjustment of the Limits of Minor Crimes and the Number of Fines, Quick Examination Events and the Application of Restorative Justice
e. Surat Direktur Jenderal Badan Peradilan umum Nomor 301 Tahun 2015 concerning the Settlement of Minor Crimes
f. Peraturan Polri Nomor 8 Tahun 2021 concerning Handling Criminal Acts based on Restorative Justice
g. Peraturan Jaksa Agung Nomor 15 Tahun 2020 concerning Termination of Prosecution Based on Restorative Justice.

Criminal cases that can be resolved with restorative justice are minor criminal cases as stipulated in Pasal 364, 373, 379, 384, 407 and 483 Kitab Undang-Undang Hukum Pidana (KUHP). In this case, the law given is a maximum imprisonment of 3 months or a fine of IDR 2.5 million.

In addition to minor criminal cases, solutions with restorative justice can also be applied to the following criminal cases:

a. Juvenile Crime
b. Women's Crimes Against the Law
c. Narcotics Crime
d. Information Crime and Electronic Transactions Traffic Crime

The word Restorative justice comes from English, consisting of two words, namely *"restoration" which means repair, restore, or restoration, and* "justice*" means justice. (Restorative*) means (noun) medicine that heals/strengthens/refreshes (adjective) that strengthens, heals, or refreshes. Thus the definition of *restorative justice* according to language is healing justice, or restoration justice.

The definition *of restorative justice* mentioned above can be identified several dimensions of understanding, including that the recovery in question is the restoration of the relationship between the victim and the perpetrator, recovery or healing can also be interpreted as the recovery of victim losses or damage caused by the perpetrator's actions, while the dimension of justice is aimed at individual justice, namely victim justice. The meaning of *restorative justice* can be described as follows:

a. According to Tony Marshall in Wagiati and Melani, *Restorative justice* is a process that involves parties who have an interest in a particular violation problem to come together to resolve collectively and how to respond to resolve the consequences of the violation and its implications for the future
b. Mariam Liebman in Barda Nawawi simply defines Restorative justice as a legal system that strives to restore the welfare of victims, perpetrators and communities damaged by crime, and to prevent further violations or acts of crime.
c. According to Marlina, *restorative justice*, the process of resolving violations of the law that occur is carried out by bringing victims and perpetrators (suspects) together to sit in one meeting to talk together in solving problems.

According to Marlina, in Indonesia the development of the concept of *restorative justice is a new* one, restorative justice is a process of transferring from formal to informal criminal processes as the best alternative to handling children who face the law by means of all parties involved in a particular criminal act both victims, perpetrators and the community to jointly solve problems on how to handle the consequences of acts The crime, creating reconciliation and satisfying all parties as a diversion, *restorative* justice is also carried out outside the formal process through the courts to realize law and justice correctly.

Investigators make efforts to handle cases of children facing the law with a restorative justice approach in the best interests of the child, must involve the correctional center, parents and / or families of victims and perpetrators of criminal acts and local community leaders. A *restorative justice* approach has been taken to solve criminal cases committed by children. According to Wagiati and Melani, the application of *restorative* justice emphasizes the process of justice that can recover, namely restoring for child crime perpetrators, victims and communities disturbed by the crime. The recovery process according to the concept of *restorative justice* is through diversion, namely the transfer or transfer from the judicial process into an alternative process of case resolution, namely through recovery deliberation or mediation.

If the case cannot be resolved by mediation, the juvenile criminal justice system must refer to due process of law, so that the human rights of children who are suspected of committing criminal acts and/or have been proven to have committed criminal acts can be protected. The criminal justice system is closely related to criminal legislation itself, both material criminal law and formal criminal law. The juvenile criminal law in force in Indonesia is primarily based on the Criminal Code (KUHP), the Code of Criminal Procedure (KUHAP), and the juvenile court law. Both the Criminal Code, the Criminal Procedure Code and the juvenile court law, in tackling child delinquency still use a punitive approach.

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