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RESTITUTION AS A CRIMINAL SANCTION IN THE PERSPECTIVE OF RESTORATIVE JUSTICE

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ABSTRACT
The development of thinking in the context of criminal law today has reached the highest discourse process, namely about how to view justice. In its development, restorative justice has ideas that tend to embrace all parties. Restitution is a small part of the diversion stage that strongly correlates with applying restorative justice. This paper aims to analyze and seek the purity of restorative justice in the criminal law system through a basic understanding. This research is normative juridical research using a statutory and conceptual approach. The legal material analysis technique used is *content analysis*. The analysis is any systematic procedure encouraged to examine the content of the information obtained. The results of the research and discussion of the problems that became the focus of the research obtained the following things: *First,* the concept of restitution in today's development has been interpreted as a small part of the diverse stage and has a strong correlation with the justice model of restorative. *Second, the* RKUHP has adopted additional criminal restitution, but there are still legal problems; starting from the substance, there are still obstacles in the structural, substance, and cultural components.

KEYWORDS
Restitution, restorative justice, diversion, barriers.

The law has a goal to be achieved, namely to produce orderly social rules, discipline, balance, and justice. Mochtar Kusumaatdmaja said, "By achieving order in society, it is hoped that human interests will be protected."[1] According to Sudikno Mertokusumo in the rule of law. In addition to protecting human interests against the dangers that threaten them, it also regulates relations between humans. By regulating the relationship between humans, apart from creating order or stability, it is hoped that conflicts or disturbances of interests can be prevented or overcome.[2] Satjipto Rahardjo stated more clearly that the presence of law, according to him, serves to integrate and coordinate interests that may conflict with one another.[3]

The highest achievement of law in human life is the achievement of order, but the process of achieving this is not only human obeying the law, but the law is indeed beneficial for humans; on the other hand, the law is indeed used to provide a deterrent effect on perpetrators who are not law-abiding. Unruly law results in the perpetrator's punishment with applicable criminal sanctions; of course, this is a necessity because criminal law is an *ultimum remidium,* and criminal sanctions, in this case, serve as a tool to help achieve legal goals.[4]

However, in the 21st century, sanctions are no longer interpreted as mere sanctions, which are essentially considered revenge but have shifted from applying retaliatory sanctions (retribution) to improvement (resocialization).[5] This is based on the development of human rights in the UDHR declaration (Universal Declaration on Human Rights), which completely changes the paradigm regarding the application of sanctions.

[1] *Mochtar Kusumaatdmaja, Teori Hukum Pembangunan, Epistema Institute dan Huma, Jakarta, 2012, hlm 15.*
[2] *Sudikno Mertokusumo, Teori Hukum, Yogyakarta, Maha Karya Pustaka, 2019, hlm 20.*
[3] *Satjipto Rahardjo, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung, 1991, hlm 53.*
[4] *Eva Achjani Zulfa, Pergeseran Paradigma Pemidanaan di Indonesia, Jurnal Hukum dan Pembangunan Tahun ke 36, No. 3 2006, hlm 392.*
[5] *Ibid., pp, 396.*

Sanctions interpreted this way are still considered unsatisfactory among criminal law thinkers, so the development of sanctions that focus on remediation (resocialization) is increasingly moving towards the recovery of victims as before. This condition is interpreted as "restorative justice," which is a model of punishment imposed by the court based on the recovery of the victim, and the law imposed by the court on the perpetrator aims to as much as possible restore the condition of the victim of a crime before the crime occurred.[6]

In practice, restorative justice is often linked directly to the concept of restitution, where one form of restitution by the principle of restoration in its original state *(restitution in integrum)* is an attempt that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on the fact that the victim can't be back to its original state.[7] In this concept, the victim and his family must get fair and appropriate compensation from the guilty person or a responsible third party. This compensation will include the return of property or payment for damage or loss suffered, reimbursement of costs incurred as a result of the victim's fall, provision of services, and rights of recovery.[8]

However, in its development, especially in law in Indonesia, restorative justice is often contested at least at the level of doctrine, theory, and implementation, including restitution which is said pragmatically that it is a form of restorative justice; therefore, the focus of this research is on purifying the teachings of restorative justice by relates the concept of restitution that is understood today. Based on the description above, there is a problem formulation as follows: how is restitution a criminal sanction in the perspective of restorative justice?

METHODS OF RESEARCH

This research is normative juridical research using a statutory and conceptual approach. This research is a normative juridical with a literature approach, namely by studying journals, books, legislation, and other documents related to this research. Normative law is directly related to the practice of law which involves two main aspects, namely the formation and application of the law. This approach views law as synonymous with written norms made and promulgated by official institutions or officials.[9]

In this study, there are 3 (three) legal materials: primary, secondary, and tertiary legal materials. Primary legal materials are provisions. [10] Secondary legal materials include all publications on a law that are not official documents (books, dictionaries, journals), while tertiary legal materials include large Indonesian dictionaries, Thursday law, encyclopedias, and others. The technique of collecting legal materials is by using a literature study model.

The legal material analysis technique used is *content analysis*. The analysis is any systematic procedure encouraged to examine the content of the information obtained. [11] This analysis focuses on all secondary data obtained; after obtaining the necessary data, this paper analyzes the data logically, systematically, and juridically. Logical means that the data collected is analyzed by the principles of deductive logic, namely, concluding a general problem to the concrete problems faced. [12] Systematic means analyzing data with one another that are interconnected and dependent. Furthermore, the data were analyzed

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[6] M. Alvin Syahrin, Penerapan Prinsip Keadilan Restoratif dalam Sistem Peradilan Pidana Terpadu, Majalah Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia RI, Vol tahun 2018, hlm, 98..

[7]Fauzy Marasabessy, Resitutsi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru, Jurnal Hukum dan Pembangunan, No. 1 tahun 2015, hlm 58.

[8]Supriyadi Widodo Eddyono, Masukan Terhadap Perubahan UU No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban, Koalisi Perlindungan Saksi dan Korban, Jakarta, hlm 16..

[9]Poglabba, C. (2017) Juridical Review of Inclusion in Criminal Acts according to the Criminal Code, LEX CRIMEN

[10]Nishikawa., Y. (2020). The Reality of Protecting the Rohingya: An Inherent Limitation of The Responsibility to Protect Asian Security. https:doi.org/10/1080/14799855.2018.1547709

[11]Cheng, M., Edwards, D., Darcy, S., & Redfern, K (2018) A Tri-Metod Approach to a Review of Adventure Tourism Literature: Bibliometric Analysis, Content Analysis, and a Quantitative Systematic Literature Review, Journal of Hospitality and Tourism Research. https;//dpoi.org/10.1177/1096348016640588

[12]Lisdiyono, E (2017). Improving legal arguments critically in the litigation mechanism in Indonesia (an empirical study of environmental verdicts). Sriwijaya Law Review. https; //doi/org/10/28946/slrev.Vol.IsS1.10.pp080-092

juridically, namely starting from the existing regulations and related to the positive law that is currently in effect.[13]

RESULTS AND DISCUSSION

In terms of language, restorative justice consists of 2 (two) variables: the justice variable and the restorative variable. The two variables can be interpreted separately and interpreted together. However, at a philosophical level, restorative justice arises from efforts to achieve justice from a different perspective, especially in the theory of punishment and the fulfillment of the rights of the parties in conflict with the retributive approach. According to Bagir Manan stated that:[14]

"Law enforcement that has been implemented so far is a sustainable development effort, the aim of which is to create an atmosphere of national life that is safe, peaceful, orderly and dynamic in an independent, peaceful and friendly world environment. Law enforcement is essentially an effort to create justice. The process of fulfilling the community's sense of justice through law enforcement is still showing an old face, namely the law as a tool of *retribution (retributive justice)".*

Bagir Manan sees the state's point of view in the Indonesian context about the meaning of justice still using a retributive approach that tends to be classic, so that justice is limited to who is wrong, then he is the one who must be punished, he is the one who must be held accountable, and he is the one who must accept the legal consequences according to the law. It is essential to doubt this perspective that tends to oppress, starting from the principle of proportionality and the responsibility of the perpetrators. Although there are different perspectives regarding the meaning of justice, namely "restorative justice," there is an opinion that this retributivism will never be eliminated.[15] Likewise, the opinion of Gerber and Mc Anany states that although retributive theory is no longer popular, this retributivism cannot be eliminated. Even in the public's opinion, although in general, they admit that sanctions move towards rehabilitation, there must still be punished.[16]

For adherents of the retributive theory, the only legitimacy regarding the reasons for sentencing is strengthened on sociological and moral reasons, namely that the perpetrator deserves to be punished for the moral violation committed.[17] Moral norms that are violated will lead to a general morality lawsuit against the perpetrator so that it can be formulated based on the fundamental elements that underlie the theory, namely;

- The moral right to punish a person is based solely on the fact that he or she has been proven guilty of a crime;
- The moral obligation to punish exclusively rests on the same foundation;
- For the sake of retributive justice, the punishment must be balanced with the weight of the guilt that has been committed;
- The moral basis of justification for punishment is that punishment is a "remedy" against the law that is opposed; punishment is also a "right" of the perpetrator of the crime.[18]

Therefore, the theory of retributive justice is closely related to retaliation against the perpetrator, but it is necessary to distinguish between revenge and revenge. The primary difference expressed by Robert Nozick and Ten, revenge tends to consider satisfaction for

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[13]Kruyen, PM, & Van Genugten, M (2017). Creativity in Local Government Definitions and determinants. Public Administration. https://doi.org/10/1111/padm.12332

[14]Bagir Manan, Restoratif Justice (Suatu Perkenalan) dalam Refleksi Dinamika Hukum Rangkaian Pemikiran dalam Dekade Terakhir, Perum Percetakan Negara RI, Jakarta, 2008, hlm, 4..

[15]Sholehuddin, Sistem Sanksi Dalam Hukum Pidana: Ide Dasar Double Track System dan Implementasinya, PT. Raja Grafindo Persada, Jakarta, 2003, hlm. 28.

[16]Rudolph J. Gerber, et al., 1970, Philosophy of Punishment (in The Sociology of Punishment, John Wiley and Sons Inc., New York, pp. 358.

[17] David C Brody said, " a simple retributive justification provides a philosophical account corresponding to these feelings: someone who has violated the rights of others should be penalized, and punishment restores the moral order that has been breached by the original wrongful act (David C. Brody et al., 2001, Criminal Law, Jones & Bartlett Publishers, Boston, hlm.11)

[18] Yong Ohoitimur, Teori Etika Tentang Hukuman Legal, PT. Gramedia Pustaka Tama, Jakarta,1997, hlm. 17

the suffering of others, while the theory of revenge satisfaction is not an element of consideration, and revenge is personal while retributive theory is general.[19]

More clearly, Jim Consedine said of restorative justice as follows: “we need to discover a philosophy that moves punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and harshness to community and wholeness, from negativity and destructive justice… A positive philosophy that embraces a wide range of human emotions including healing, forgiveness, mercy, and reconciliation, as well as sanctions where appropriate, has much to offer.” Its aim is to restore the well-being of the community by having the offenders face up to their responsibility for their crimes. Victims, who are normally shut out of the process, are offered opportunities of being involved in the follow-up. As Australian criminologist Jhone Vratwaite Points out, this reforming has the effect of bringing shame and personal and family accountability for wrongdoing back into the justice process”.[20]

It is clear that the presence of restorative justice is not the antithesis of retributive justice, nor does it eliminate all thoughts of retributivism with restorative, but that restorative justice is present as an effort to complement this understanding of retributivism, but it cannot be denied that the sentencing process or the settlement of criminal cases is moving intensely towards restorative Even some criminal experts say that restorative is an alternative, the characteristics, and characteristics of the restorative justice paradigm are not only three-dimensional at once, namely victims, perpetrators and society, while the role of the judiciary itself represents the interests of the state.[21]

Restorative is considered the closest to justice because the substance of restorative justice is restoration/restoration/repairing of damaged conditions or conditions as a result of criminal acts; in this context, recovery is carried out on victims. Many researchers increasingly favor restorative justice because it stems from the future of society so that it can be built for the better. If examined from the actual thought that arises from anxiety, contemporary punishments are only based on misery, and such thinking, according to Hulsman, is hazardous. Therefore Hulsman put forward an idea to abolish the criminal law system, which is considered to bring more suffering than good, and replace it with a better way. -another way that is considered better.[22] In the same frame, it turns out that similar terms are found and refer to restorative concepts, including those proposed by Eric Hoffer[23] *Relational justice, positive justice, reintegrative justice, communitarian justice, and redemptive justice.*

From the concept of recovery, the general understanding of restorative justice is moving towards a "criminal case settlement mechanism," namely by focusing on the study of the relationship between perpetrators and victims (victimology); in the United States, the mediation tradition is often equated with the meaning of restorative justice.[24] In order to explore restorative justice purely and comprehensively, so as not to be confused with its dynamics, it is necessary to explore it from an ideological perspective.

The ideological role in the scientific realm seems unavoidable because ideological understanding is obtained from the results of mature philosophical thought. From the realm of criminal law, for example, the notion of abolitionism arises from a pessimistic sense of the legal atmosphere that is too normative in tackling crime. The bones are only the *sketch skeleton* for the legal building, while society may be likened to the flesh, so there is a skeleton and flesh. Legal experts like to work on the framework of the building instead of studying the flesh and the veins attached to it. That coral.[25]

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[19]Mirko Bagaric, et al, The Errors of Retributivism, http://www. Austlii.edu.au/cgibin/sinodisp/aujournals/UNSWL3/1999/6html?query=papers, diakses 2 September 2017.

[20]Jim Considine, Restorative Justice, Healing the Effects of Crime, (Lyttelton: Plowshares Publications, 2015), hlm 11, 99.

[21]Syahrin, M.A., Penentuan Forum Yang Berwenang dan Model Penyelesaian Sengketa Transaksi Bisnis Internasional Menggunakan E-Commerce: Studi Kepastian Hukum dalam Pembangunan Ekonomi Nasional, Jurnal Rechts Vinding; Media Pembinaan Hukum Nasional, 7 (2), 2018, hlm, 207-228

[22]LHC. Hulsman, Selamat Tinggal Hukum Pidana ! Menuju Swa Regulasi (diterjemahkan oleh : Wonosusanto), Forum Studi Hukum Pidana, Surakarta, 1998, hlm. 67.

[23]Eric Hoffer, Retributive and Restorative Justice, http://www. homeoffice.gov.UK/rds/prg.pdf/crrs 10.pdf (see also: Tony F. Marshall, Restorative Justice an Overview, http://www.aic.gov.au/rjustice/other.html), accessed August 5, 2017.

[24]Tony F. Marshall, Restorative Justice an Overview, http://www.aic.gov.au/rjustice/other.html), accessed August 5, 2017.

[25]Suteki, Desain Hukum Di Ruang Sosial, Thafa Media, Bantul Yogyakarta, 2013, Hlm, 1

The results of abolitionist thinkers varied, ranging from thinking that only emphasized alternative mechanisms other than imprisonment to revolutionary thinking to abolishing all forms of physical retaliation and physical suffering. Both of these ideas are oriented to the paradigmatic aspect/perspective of seeing the reciprocity obtained from the perpetrators of the crime. The idea of abolition of criminal or the most fundamental (extreme) emerged from Fillipo Gramatica in 1947 in his writing entitled *la lot of contra la pen (the fight against punishment),* which stated that social protection law must replace the existing criminal law by integrating the individual into the social order and is not part of the punishment for his actions.

According to Rene Van Swaaningen, the abolitionist movement adhered to three basic principles, namely:[26]

- *The criminal justice system is a social problem whose problematic character originates from the fact that the present social order is unjust. Moreover, what the state and criminal justice system like to call crime control is a simple industrially structured social control;*
- *As a result, the definition of «crime» is questionable and manipulative, and the concept of crime itself has a clear ideological concept. The concept of crime has no ontological dimension; it is just a social construction;*
- *Consequently, state authority and its criminal justice system have no legitimacy to punish lawbreakers. The criminal justice system is an ideological apparatus, and its power to punish people has no valid justification. Moreover, prison is not the «normal» response to «crime.»*

The perspective of abolitionist thinkers tends to see not only from the aspect of the perpetrator's fault but also why the perpetrator did so. Therefore abolitionist thinkers use other sciences to explore the motives of the perpetrators of crimes. In simple terms, criminal behavior is formed based on a person's character, which tends to be influenced by other factors, including biological, social, and environmental factors. can be subject to a criminal because it is precisely the cause of organic and mental abnormalities that cannot be corrected by punishment, but action *(treatment) is needed*[27]

From the available literature, it can also be concluded that indeed abolitionist thinkers are not only limited to ideas about criminal law reform but more in offering replacements for more directing theories and methods of crime prevention in the following ways.[28]

- Diversion, the criminal justice process which tends to be rigid, is replaced by an institutional system that is oriented towards the community;
- *Decategorization* replaces theory, a concept whose influence is on the paradigmatic of crime;
- *Delegation* and *denormalizatio*n, strengthening traditional conflict resolution methods and introducing other forms of the formal justice system;
- *Deprofessionalization* by replacing professional monopoly and power in criminal justice, social work, and psychiatry by establishing networks in social control, public participation, mutual assistance, and informal service delivery.

Based on this thought and philosophical foundation that tends to be solid, new thinkers and scholars tend to develop abolitionist thinking so that this thinking is broader and includes changes in the judiciary, enforcement institutions, and new and never known policy institutions. So it can be concluded that abolitionist thinkers want to change from the perspective level of punishment and a perspective on justice that tends to be formalistic and procedural. At the same time, restitution is a small part of the diversion. So it is clear that there is a direct relationship between restitution in abolitionist thought, which stems from restorative justice, which is further explained in the table below.

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[26]Rene van Swaaningen, What is Abolitionism? http://www.inventati.org/apm/abolizionismo/libri27.php?step=07, accessed June 6, 2017.
[27]Hajairin, Peradilan Pidana Prespektif Abolisionisme: Kritik Terhadap Model Pemidanaan Fisik Menuju Pemidanaan Psikis, Jurnal Pemikiran Syariah dan Hukum, Vol. 3 No. 3, Oktober 2019, hlm 215.
[28] G. Widiartana, Paradigma Keadilan Restoratif dalam Penanggulangn Kejahatan Dengan Menggunakan Hukum Pidana, Yogyakarta, hlm 13.

Table 1 – Relationship Between Restitution in Abolitionist Thought

Retributive Justice	Restorative Justice
Crime is defined as a violation of state (law)	Crime is defined as a violation between individuals; the state only acts as an intermediary.
The focus is on pinpointing faults and looking back.	The focus is problem-solving, determining responsibilities and obligations, and looking to the future.
The positions of the parties are contradictory and leave it to the judiciary.	Emphasis on the negotiation process
The purpose of punishment is suffering and prevention	Restitution as a suggestion to improve both parties: the goal is reconciliation/recovery
Justice tends to be interpreted as rigid, that is, only according to legal provisions	Justice is defined according to the rights that arise because of a legal relationship
Crime is defined as a conflict between individuals and against the state	Crime is a conflict between individuals
Suffering is replaced by the suffering of other members of the community (actors)	Total community recovery
Society is passive	Communities as facilitators in the recovery process
Impressed individualistic	Encouraging the spirit of helping each other
All processes are left to the state	Driven to be responsible
Punishment is the solution to mistakes/crimes	The responsibility of the perpetrator is interpreted as an understood consequence of his wrongdoing, and the perpetrator is helped to decide how things are made better.
Ignoring the social, moral dimension, political economy	Actions are thoroughly understood
Accountability is addressed to the state and society in an abstract way	The responsibility of the perpetrator is aimed at the victim
The stigma of crime is difficult to remove	The stigma of crime can be removed through the recovery process
There is no urge to regret his actions and forgive the perpetrators	The emergence of remorse for the perpetrator and forgiveness of the victim is possible
Conflict resolution depends/is dominated by law enforcement officers	Conflict resolution is carried out by involving the parties

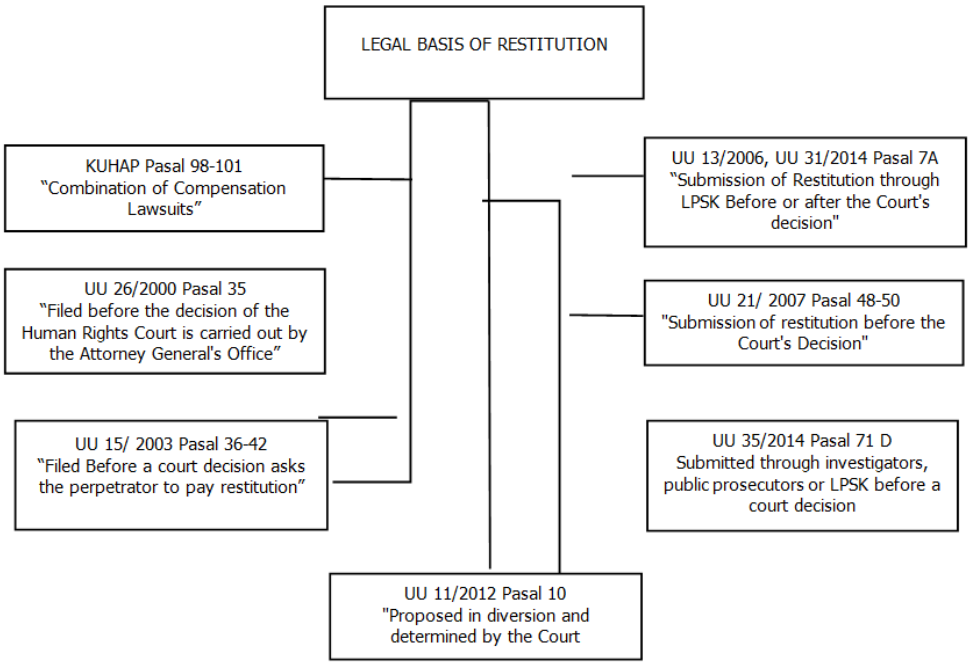

Figure 1 – Basic arrangements and procedures for applying for restitution according to applicable law in Indonesia

The application of restitution itself in Indonesia still tends to be understood as compensation, and its application is still selective, meaning that restitution is only partially applied to the presence or absence of losses experienced, and its nature through the submission of an application is not part of the type of crime. This means that the mechanism for submitting compensation in the nature of restitution in criminal acts can be proposed in three ways, including the following:

- A merger of cases is proposed, at least before the prosecutor submits a criminal charge;
- Filed after a final decision, through an ordinary deception lawsuit with the model of a lawsuit against the law;
- The mechanism can be proposed before or after a court decision has legal force through the intermediary of the LPSK (Witness and Victim Protection Agency).

The legal basis for restitution above is accommodated in various laws, and various mechanisms are provided. The legislators' perspective on restitution still seems to consider that it is not part of the type of crime that is a right, not an obligation, which means that it (submitting for restitution) requires active action from the applicant. The state that is passive in seeing a loss incurred for its citizens raises questions about the state's position in resolving criminal cases. The state acts on behalf of the victim to demand the perpetrator's guilt by using its authority to punish the perpetrator. However, the state also seems to allow the loss to occur and be experienced by the victim and is related to only granting the authority to submit a selective application. of course, in this condition, there is an interpretation that the state's only task is to "punish," not "educate/resocialize."

Of course, the argument is reasonable; by not using their authority "powerfully" to help restore the victim's condition, this indicates that restitution is still not regulated adequately because, in this regulation, it is mandatory to be proactive; it is the victim of a crime who must often have contact with law enforcement officers. To ensure that the public prosecutor in his claim will accommodate the process of filing a claim for compensation, and the nature of the loss in question, which is material in nature, is difficult to accept for a claim for immaterial damages in the corridor of the Criminal Procedure Code.

The possibility of not realizing the victim's right to restitution, both at the submission stage and at the execution stage, becomes a protracted problem; of course, this needs to be reaffirmed that the VII UN Congress in 1985 had discussed "the prevention of crime and the treatment of offenders" which stated that the rights of victims should be an integral part of the overall criminal justice system.[29] (Seventh United Nations Congress on The Prevention of Crime and The Treatment of Offenders 1985) In other words, an integrated criminal justice system that includes justice for victims and justice for the community, whose ideas are strengthened through the concept of restorative justice.[30]

Another thing about the criminal justice system is a system of social order on how to deal with crime problems. The meaning of tackling here is based on efforts to control crime to be within the limits of community tolerance. According to Remington and Ohlin, the criminal justice system can be defined as the use of a systems approach to the administrative mechanism of criminal justice, and justice as a system is the result of the interaction between statutory regulations, administrative practices, and social attitudes or behavior.[31]

Hagan distinguishes between the *criminal justice system* and the *criminal justice process.* According to him, the *criminal justice process* is defined as every stage of a decision that confronts a suspect in a process that leads to a criminal determination for him.[32] According to Mardjono Reksodiputro, the objectives of the criminal justice system are:

- Prevent people from becoming victims of crime;
- Resolving crime cases that occur so that the community is satisfied that justice has been served and the guilty are punished; and
- Ensuring that those who have committed crimes do not repeat their actions.

The components that work together in the criminal justice system are the police, prosecutors, courts, and correctional institutions. These four components are expected to work together to form what is known as the integrated criminal justice system. Muladi

[29]*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 1985, p. 147.*
[30] *Mudzakir, Analisis Restorative Justice: Sejarah, Ruang Lingkup, dan Penerapannya, 2013, Jakarta, hlm. 28*
[31]*Syahrin, MA, Reflection on E-Contract Theoretical: Applicable Law in International Business Transaction Disputes Using E-Commerce. Lex Librum: Journal of Legal Studies, 3 (2), 2017, hlm (_)*
[32]*Syahrin, M.A., 2017. Refleksi Teoretik E-Contract: Hukum yang Berlaku dalam Sengketa Transaksi Bisnis Internasional yang Menggunakan ECommerce. Lex Librum: Jurnal Ilmu Hukum, 3 (2), 2017, hlm*

emphasized that the meaning of an integrated criminal justice system is synchronization or uniformity and harmony, which can be distinguished in:[33]

- Structural *synchronization* is uniformity or harmony in the context of the relationship between law enforcement agencies;
- Substance *synchronization* Is the uniformity or harmony that is vertical and horizontal in relation to positive law; and
- Cultural *synchronization*.

It is the uniformity and harmony of nature in appreciating the views and attitudes, and philosophies that underlie the overall operation of the criminal justice system.

Meanwhile, for other mechanisms, an LPSK intermediary is needed to apply. The basis of consideration for establishing LPSK is indeed the government's response to guarantee the human rights of victims of criminal acts, but is it correct? Considering the institutional model required by Law No. 13 of 2006 is as follows.[34]

- The desire to design an institution that specifically deals with the issue of witness and victim protection that is not under the existing institutions, namely the police and the prosecutor's office, Komnas HAM, or the Ministry of Law and Human Rights, because it is believed that it will be more established in terms of performance capabilities;
- Other institutions are considered to have great responsibilities, so they are no longer burdened by these institutions.

According to the will of the legislators, the purpose of establishing LPSK is to guarantee and have functional performance in dealing with the protection of witnesses and victims. However, the position of LPSK, which is only located in the capital city, will undoubtedly be one of the obstacle factors for LPSK to maximize performance by reaching all parts of Indonesia. Moreover, the limited personnel and inadequate infrastructure are things that need attention. Fauzy suggested that the authority for restitution should be given to the prosecutor's office, considering that the prosecutor has the authority to prosecute to facilitate coordination with other law enforcement officers in the criminal justice system who are interested in fighting for the rights of victims of crime.[35] Researchers think differently and paradigmatically about this debate by formulating restitution into a type of crime by not eliminating the authority of LPSK as an institution authorized by law.

The RKUHP (Draft of the Criminal Code) provides wider opportunities and legal protection for victims of criminal acts by accommodating restitution as an additional crime. Of course, this is a good step, considering that the various restitution arrangements have not fulfilled the sense of justice and protection for non-criminal victims; in other words, restitution has a coercive power that was not previously obtained. Concretely, the RKUHP has regulated restitution as an additional crime in Articles 70 to 72. This additional level of crime is different from the level of the foremost criminal, which also recognizes "a fine." It seems that the regulation assesses that the immediate punishment in the form of a "fine penalty" is prioritized over restitution because the crime in the RKUHP is regulated in detail regarding the amount and consequences of not paying, in contrast to restitution (payment of compensation) which is not regulated in detail and the consequences if it cannot be paid.

The future of restitution must also be debated at the level of theoretical studies to the most influential studies; in fact, restitution is more ideally aligned with fines so that it includes the scope of the leading crime with provisions limited to offenses that cause harm and suffering, and can consider granting remission or parole for the perpetrators if the obligation for restitution is fulfilled.

This concept is based on developments in countries with a *common law system,* one of the pioneers of which was Cortner E. Lollar with his article entitled "*What is Criminal Restitution"?*[36] (Cortney El Lollar n.d.) In the article, it is explained that restitution is also imposed as part of the main criminal sentence; the court's coercive power when it fails to pay

[33] *M. Alvin Syahrin, Op.cit, hlm 102.*
[34] *Supriyadi Widodo Eddyono, et.al, "Pokok-Pokok Pikiran Penyusunan Cetak Biru Lembaga Perlindungan Saksi dan Korban: Usul Inisiatif Masyarakat", Jakarta: Indonesia Corruption Watch, 2008, hlm 6.*
[35] *Fauzy Marasabessy, Op.cit, hlm 73.*
[36] *Cortney E. Lollar, What is Criminal Restitution?, Iowa Law Review, Vol. 100, No. 1 (November 2014), him 93.*

will illustrate the increasingly dominant character of restitution.[37] The more this restitution is instituted, and even if it is not applied to victims who do not experience real losses, or the losses are only indirectly related to the criminal acts committed by the defendant, the more benefits will emerge from those previously unknown to the victim.[38]

CONCLUSION

Restorative justice that is currently present complements the variations of thought in criminal law as if it is the basis for the influence of modern criminal law thinking today, and this development has influenced it as a whole, starting from the level of theory, perspective, and the criminal justice system itself. Restorative justice is not the antithesis of retributive justice but complements and complements each other while the forms of restorative justice are found to be very varied, ranging from alternative dispute resolution that underlies the presence of the mediation model to the form of diversion, while restitution is a small part of the diversion stage which has a strong correlation with the restorative justice model.

With the development of thinking about the fulfillment of restorative justice in an integrated criminal system, restitution should be made a principal criminal sanction. The RKUHP has regulated restitution, which was initially still accommodated from being unsystematic and not fulfilling legal protection for victims. However, the regulation of restitution in the RKUHP still has obstacles in the structural component, substance component, and cultural component, so efforts are still needed from the government and legislators to perfect the formulation of the penalty for payment of compensation by aligning it with criminal compensation.

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