

**IMPLEMENTATION OF RESTORATIVE JUSTICE BASED ON DECREE OF THE
DIRECTORATE GENERAL OF GENERAL JUSTICE AGENCY OF THE
SUPREME COURT NUMBER 1691/DJU/SK/PS.00/12/2020 CONCERNING
IMPLEMENTATION OF GUIDELINES FOR IMPLEMENTATION
OF RESTORATIVE JUSTICE IN GENERAL COURT
(Research Study at Sinabang District Court)**

¹Meka Hawalia, ²Chandra Darusman S

Faculty of Social and Political Sciences, Department of Law, Teuku Umar University

Keywords	Abstract. Restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enforcement (Supreme Court regulations and Supreme Court circulars) but its implementation in the Indonesian criminal justice system is still not optimal. .In this study, the type of research used is the Juridical Empirical approach. The research location used as a place to conduct research is the Sinabang District Court. Restorative justice is an alternative for resolving criminal cases which in the mechanism of criminal justice procedures focuses on punishment which is converted into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly create an agreement and settle the case. fair and balanced criminal justice for both the victim and the perpetrator by prioritizing the restoration to its original state, and restoring the pattern of good relations in society.
-----------------	--

Email :	Copyright 2022 Fox Justi : Jurnal Ilmu Hukum
mekahawalia2@gmail.com	
chandradasman@utu.ac.id	

1. INTRODUCTION

In the practice of criminal law enforcement, we often hear the term Restorative Justice, or Restoration Justice which in the Indonesian translation is referred to as restorative justice. Restorative justice or Restorative Justice contains the meaning, namely: a restoration of relations and atonement for wrongdoing that the perpetrator of the crime (his family) wants to do against the victim of the crime (his family) (peace efforts) outside the court with the intent and purpose that legal problems arise as a result of the occurrence of the criminal act can be resolved properly with the achievement of agreement and agreement between the parties. Restorative justice contains the value of full participation and consensus in which there is an attempt to restore the damage or loss that occurred due to the occurrence of a criminal act, in which the responsibility for the recovery is borne by the perpetrator as a whole. Thus the ideal concept contained in restorative justice is an effort to reunite something that is divided or separated, so as to prevent the occurrence of the next criminal act. Therefore, it can be said that, in essence, restorative justice is a reform of the criminal justice system which still prioritizes imprisonment for perpetrators of criminal acts. As is known, nowadays the criminal justice system has developed, no longer relying on the perpetrator but has led to the alignment of the interests of restoring the situation.

The principle of restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enforcement (Supreme Court Regulations and Supreme Court circulars), but its implementation in the Indonesian criminal justice system is still not optimal. Restorative justice is an alternative for resolving criminal cases which in the mechanism of criminal justice procedures focus on

punishment which is converted into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly create an agreement on the settlement of the case. fair and balanced punishment for both the victim and the perpetrator by prioritizing restoration to its original state.

Normatively *restorative justice* It was only stated explicitly in Law No. 11 of 2012, concerning the juvenile criminal justice system, where diversion is a concrete form of restorative justice, but long before the Supreme Court had issued various regulations in the form of regulations and circulars of the Supreme Court, among others Perma No. 2 of 2012, dated February 27, 2012, regarding the implementation of the adjustment to the limits of minor crimes and the amount of fines in the criminal law code, At the court level, peace can always be used to ease the sentence to be imposed, including in imposing a probationary sentence.

The Director General of the General Judiciary Board of the Supreme Court has issued Decree Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice (Restorative Justice). This decision was issued in order to encourage the optimization of the application of the Supreme Court Regulations, the Supreme Court Circular as well as the Supreme Court Chief Justice's Decree which regulates the implementation of restorative justice in court. In addition, it is important to apply restorative justice in line with efforts to reform the criminal justice system which still prioritizes prison sentences. The development of the criminal system should not only focus on criminals.

The purposes of this technical guideline are:

1. Facilitate the courts in the general court environment in understanding and implementing the application of the Supreme Court Regulations, the Supreme Court Circular Letter and the Decree of the Chief Justice of the Supreme Court which regulates the implementation of restorative justice.
2. Encouraging the increased application of restorative justice which has been regulated by the Supreme Court in the decisions made by the assemblies/judges.
3. Fulfillment of the principles of fast, simple and low cost justice with balanced justice.

This regulation applies and must be followed by all district courts in Indonesia, several policies which contain the spirit of restorative justice, including the Regulation of the Minister of Justice No. Law, Sema Number 4 of 2010 concerning the placement of abuse victims, victims of abuse and narcotics addicts into medical rehabilitation and social rehabilitation institutions, Sema Number 3 of 2011 concerning the placement of victims of narcotics abuse in medical rehabilitation and social rehabilitation institutions.

The implementation of restorative justice in court as referred to in the Decision of the Director General of the General Judiciary Agency of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 in court has many obstacles, so a comprehensive evaluation and review is needed so that restorative justice can be implemented. with better results. Therefore, following up on the results of the leadership meeting which took place on November 15, 2021, the Supreme Court Circular Letter No. 1209/DJU/SK/PS.00/11/2021 was issued regarding the Suspension of the Decree of the Director General of the General Judiciary Agency Number 1691/DJU/ SK/PS.00/12/2020. Thus, the implementation of the Decision of the Director General of the General Court of the Supreme Court Number 1691/DJU/SK/PS.

Based on the description above, the author is interested in discussing the Implementation of Restorative Justice Based on the Decree of the Directorate General of the General Court of Justice Mahakamh Agung Number 1691/DJU/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice in the Sinabang District Court.,so as not to miss the title that has been set.

2. METHOD

The type used in this research is the Juridical Empirical approach, the research location is in the Sinabang District Court. This method explains about seeing and studying the workings of law in the

community as a real meaning, because this is related to people's lives, often referred to as sociological law.

The types of data used in this study are primary and secondary data. Primary data were obtained directly through interviews with informants and respondents. While secondary data is obtained from documents that can be published and are not confidential. This study analyzes the application of restorative justice Decree of the Directorate General of the Supreme Court of Justice Number 1691/DJU/SK/PS.00/12/2020 Concerning the Enforcement of Guidelines for the Implementation of Restorative Justice in the Sinabang District Court.

3. RESULTS AND DISCUSSION

3.1 Application of Restorative Justice Based on the Decree of the Directorate General of the General Court of Justice of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 at the Sinabang District Court

This research took place from April to June 2022. From this research it is known that the Sinabang District Court has handled criminal cases by applying a restorative justice approach, in which the parties agreed to settle the case with a mediation mechanism that resulted in peace, restoration of the victim's rights, in accordance with the principle -principles regulated in the Decree of the Directorate General of the General Court of Justice of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice. The case referred to above is a criminal case of theft of a white GM brand helmet with a hello kitty pattern involving Zubir Bin Alm Cut Buyung as the Defendant and Lusiana as the Victim. The tempus delicti of this case took place on Wednesday, March 04, 2021, with the locus in the village of Air Cold, East Simeulue District and still included in the territory of the Sinabang District Court. The case is registered with number 2/Pid.C/2021/PN.Snb and has undergone a settlement process using a restorative justice approach, where the victim has forgiven the defendant's actions and the defendant also promises not to repeat his actions and has fulfilled the requirements agreed upon in the deliberation.

During the trial the judge stated that the defendant Zubir Bin Alm Cut Buyung proven legally and convincingly guilty of committing a crime of minor theft, and imposing a sentence on the defendant, therefore with a prison sentence of 1 (one) month, and stipulating that the sentence does not need to be carried out, unless in the future there is another order in the form of a judge's decision that the defendant before 3 (three) months the defendant commits the crime again, and determines the evidence in the form of 1 (one) The GM brand helmet, white with a hello kitty pattern, was returned to the victim witness Lusiana, and the judge ordered the defendant to pay a court fee of Rp. 2.500.00 (two thousand five hundred rupiah).

At the time of the transfer of the theft case files from the court investigators, the victims, perpetrators, families, communities and other parties involved were present in the trial. The head of the court can directly examine, try, and decide on the case with a quick examination procedure in accordance with the provisions of the Criminal Procedure Code (KUHAP). the Criminal Procedure Code). The process of resolving minor or fast criminal cases whose mechanism is through: *restorative justice* This can be done if provided that the process of implementing peace between the perpetrator and the victim as well as the related family and community has begun in the case with or without compensation.

At the time after the opening of the trial the judge reads the defendant's notes and asks the opinion of the defendant and the victim and then the judge makes peace efforts by providing suggestions or advice that is considered to be able to provide a bright spot for the perpetrators and victims, in the peace process if it is reached the parties make a peace agreement in the form of a letter and signed by the perpetrator, victim and other related parties, and this peace agreement is included in the consideration of the judge's decision.

However, in the event that this peace agreement is not successful, the judge can continue the examination process, during the trial the judge continues to seek peace by prioritizing restorative justice in his decision.

The process of applying restorative justice guidelines is based on the Decree of the Directorate General of the Supreme Court of the General Court of Justice Number 1691/DJU/PS.00/12/2020 concerning the application of guidelines for the application of restorative justice in the Sinabang District Court. One form of business with the restorative justice mechanism is talking (dialogue) which is better known among the Indonesian people as deliberation for consensus, so that victims and perpetrators make peace and do not put forward a sense of revenge, and through the concept of restorative justice it becomes a very important consideration in resolve criminal cases committed by children in conflict with the law, women's cases in conflict with the law and also criminal cases of drug abuse and other minor criminal cases that can be resolved through restorative justice.

When viewed from the development of criminal law and the nature of modern punishment, it has introduced and developed what is called the Perpetrator-Victim relationship approach or a new approach that has replaced the act or perpetrator approach. Legal experts have introduced a justice formula, especially in the enforcement of Human Rights (Human Rights), that there are 3 aspects of the approach to building a legal system in the context of modernization and legal reform, namely in terms of structure, substance and culture, all of which are feasible to run in an integral, simultaneous and parallel manner. Restorative Justice is a criminal case settlement model that prioritizes recovery for victims, perpetrators, and the community. The main principles of Restorative Justice are the participation of victims and perpetrators, the participation of citizens as facilitators in solving cases.

From the research results that the implementation or application of regulations *restorative justice* has been running in accordance with the Decree of the Director General of General Courts Number 1691/DJU/SK/PS.00/12/2020 which emphasizes the very important role of judges in resolving criminal cases quickly and lightly.

3.2 Obstacle factor Restorative Justice Based on the Decree of the Directorate General of the General Court of Justice of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 at the Sinabang District Court

Implementation guidelines *restorative justice* contained in the decision letter of the directorate general of the general justice agency covers 4 (four) types of cases, namely minor crimes, cases of women dealing with the law, cases of children and narcotics cases, intended to facilitate courts within the general judiciary in understanding and implementing the application of regulations and Circulars of the Supreme Court as well as the decisions of the Chief Justice of the Supreme Court that regulate the implementation of restorative justice, so as to increase both the volume and quality of the application of restorative justice in the decisions made by judges so that the principles of justice are fast, simple and low cost with balanced justice.

One of the obstacles that arise in the implementation of *restorative justice* In the absence of harmony in the views of law enforcers, as can be seen from several rules issued by each institution, the method of criminal settlement with restorative justice has been pursued by each law enforcement officer (APH) with the issuance of several internal regulations respectively, at the investigation level. The National Police Chief has issued an Circular Number 8/VII/2018, at the prosecution level the Attorney General has issued several regulations, including the Attorney General's Regulation Number 15 of 2020, the Supreme Court itself has included various values of restorative justice in several PERMA and SEMA, and reaffirmed its implementation is in the decision letter of the directorate general of the general judiciary number 1691/DJU/SK/PS.00/12/2020.

However, if it is observed that each of these rules regulates the implementation of criminal settlements by: *restorative justice* Partially (overall), without harmonization between institutions, this causes the application of restorative justice to not be maximized into a method of criminal settlement that describes law enforcement and justice within the framework of an integrated criminal justice system (integrated criminal justice system), internal regulatory constraints between officers This law enforcement must be resolved with the existence of a legal umbrella that can cover all actions and implementation of criminal settlements with the concept of restorative justice.

Which is a factor The main problem to enact or implement a restorative justice approach or concept (*restorative justice*) in a legal system in general and in the criminal justice system in particular lies in the settlement mechanism offered by the restorative justice approach or concept (restorative justice) which is different from the settlement mechanism offered by the current criminal justice system so that it is still difficult to accept. This is because the mechanism offered by the approach or concept of restorative justice prioritizes the concept of peace, the concept of "mediation" and the concept of reconciliation in which perpetrators, victims, law enforcement officers and the wider community participate directly in resolving criminal cases. or contrary to the traditional criminal justice system that has been in place for a long time and is in effect today.

Here are some barriers to implementation or factors that hinder the effectiveness/implementation of the Decree of the Directorate General of the Supreme Court General Judiciary Number 1691/DJU/SK/PS.00/12/2020 are as follows:

1. This Decree of the Directorate General of the General Judiciary Board of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 does not clearly regulate the stages or processes that must be carried out by judges or a panel of judges who examine, hear and decide cases in the implementation of restorative justice in criminal cases in court, so that there is the potential for every judge or panel of judges who handles the criminal case, the opportunity to interpret for themselves how the stages of case settlement are with the restorative justice mechanism, and have the potential to mix/modify the stages of the trial that have been regulated according to the provisions of the Criminal Procedure Code by including the following stages: stages or other agendas in the context of restorative justice in the process of examining cases before the court.
2. The Decree of the Directorate General of the General Court of Justice of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 does not clearly regulate the form of the verdict for criminal cases that are resolved by a restorative justice mechanism. Can the defendant be released or released from all charges because the settlement of the case has been carried out through a restorative justice mechanism, even though there is evidence and acknowledgment that he has indeed committed a crime and caused harm to the victim.
3. The Decree of the Directorate General of the General Judiciary Agency of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 does not clearly regulate how to resolve narcotics cases so that restorative justice can be carried out so that users can be rehabilitated and there must be a recommendation letter from a doctor that the person concerned deserves to be rehabilitated, but the budget for the agency concerned is examined by a doctor so that it can be rehabilitated.

After finishing observing the guidelines for the application of restorative justice, the author conducted interviews with the judges of the Sinabang District Court. the second is related to peace with compensation where the victim is willing to forgive the perpetrator on the condition that they ask for compensation from the perpetrator but the perpetrator is unable to compensate for the loss, so the victim does not want to make peace if the perpetrator does not want to compensate for the loss so that peace efforts are not successful and try restorative justice also failed.

4. CONCLUSION

The implementation or application of restorative justice in handling and examining minor criminal cases at the Sinabang District Court has been running in accordance with the guidelines for the Decree of the Director General of General Courts Number 1691/DJU/SK/PS.00/12/2020 which emphasizes the very important role of judges in resolving cases. Factors that hinder the implementation or application of restorative justice in the Sinabang District Court are the factors of victims and perpetrators and the lack of support from the community itself because they still consider prison as a solution in providing a deterrent effect on perpetrators of criminal acts so that the implementation of restorative justice is difficult to implement.

REFERENCE

- Apong Herlina et al. Protection of Children in Conflict with the Law. PT. Raja Grafindo Persada, Jakarta. 2004
- Dandapala internal magazine badilum MA RI. Guardians of Justice. Volume VII/Edition 42/July-August. 2021
- Dwidja Priyatno. Financing for Children in the Draft Draft Criminal Code (in the framework of Restorative Justice). Child Rights Advocacy Institute (LAHA). VIII/Volume III Edition. Bandung. 2007.
- Eva Achjani Zulfa, Restorative Justice. Faculty of Law, University of Indonesia. Jakarta. 2009
- Nikmah Rosidah. Legal Culture of Child Judges in Indonesia. Masters Library. Semarang. 2014
- Hanafi Arief, Ningrum Ambarsari. Application of Restorative Justice Principles in the Indonesian Criminal Justice System. ISSN Scientific Journal 1979-4940/ISSN-E 2477-0124 Faculty of Law, Islamic University of Borneo MAB. 2018
- Setyo Utomo. The Criminal Law System Based on Restorative Justice. Justitia pulpit, Faculty of Law, Suryakencana University. Cianjur. Vol. 5 No. 01. 2018
- Attachment to the letter of the director general of the general judiciary number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 regarding the application of restorative justice in the general justice environment.
- Bloghariyanto. 2009. Criminal Acts, ActCriminal, Criminal Case. <http://blogmhariyanto.blogspot.co.id/2009/07/strafbaar-feit-menurut-bambang>-html. Accessed June 5, 2022.
- Sinabang District Court website. 2021. Restorative Justice as the Goal of Implementing Diversion in the Juvenile Criminal Justice System. Legal Article <http://www.mahkamahagung.go.id/acc2107/level2-d.asp?bid=4085> accessed on 05 June 2022.