HANDLING OF MINOR CRIMES OF THEFT IN OIL PALM PLANTATIONS

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Abstract

Palm oil plantations play a vital role in Indonesia's economy but face issues of palm fruit theft with losses valued under IDR 2.5 million. Since the implementation of Supreme Court Regulation (PERMA) No. 2 of 2012, such theft cases have been resolved through restorative justice, which has proven insufficient in providing a deterrent effect. Offenders frequently repeat their actions, resulting in economic losses for companies and social unrest in communities. This study aims to evaluates the effectiveness of restorative justice in addressing minor theft cases in palm oil plantations in Tanah Laut, South Kalimantan. This research uses normative legal methods with case analysis. The results of the analysis show that restorative justice often only provides light sanctions, such as signing a statement or temporary confiscation of theft tools, which are not enough to create a deterrent effect. The findings reveal that weaknesses in the application of restorative justice are influenced by several factors, including social protection for perpetrators by village officials, limited supervision, and a lack of security personnel in large plantation areas. Therefore, this study recommends the implementation of stricter sanctions, such as recording the perpetrator's criminal record in the police database to increase the deterrence effect. In addition, there is a need to strengthen collaboration between companies and law enforcement officials to prevent repeated thefts. Thus, revisions to the application of restorative justice are urgent in order to be fairer and more effective in protecting the interests of companies and communities, as well as ensuring that perpetrators receive a commensurate deterrent effect.

Keywords: Restorative Justice; Minor Crime; Palm Oil

INTRODUCTION

Oil palm plantations are a vital sector in Indonesia's economy, contributing significantly to national income and the welfare of communities in palm oil-producing regions. In Tanah Laut District, South Kalimantan Province, oil palm plantations create jobs and support the local economy. However, palm oil companies also face major challenges related to the safety of plantation products. One issue that is becoming increasingly concerning is the rising incidence of oil palm fruit theft by local individuals. Repeated occurrences of this phenomenon reveal a pattern where the perpetrators exploit a legal loophole.

Since the implementation of Supreme Court Regulation (PERMA) No. 2/2012 (Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam KUHP, 2012), which stipulates that theft with a loss value below Rp 2,500,000 is considered a minor crime and is resolved through restorative justice mechanisms, theft cases in oil palm plantations have tended to increase. People involved in the theft seem to realize that as long as their thefts are valued below this threshold, their cases will not be processed by formal law, but rather through amicable settlement or restorative justice. This encourages some of them to commit repeated thefts, with the understanding that they will only be subject to light sanctions or even no significant punishment.

In the field, plantation companies have made various efforts to address this problem, including arresting perpetrators directly. These perpetrators often commit theft openly, even using modified vehicles such as motorcycles and pick-ups, which make it easier for them to transport large amounts of stolen products. Even when perpetrators are caught red-handed and reported to the local police, cases are often settled amicably. This is due to the fact that the loss value does not reach Rp2.5 million per perpetrator, so the police tend to recommend settlement through restorative justice in accordance with the provisions of PERMA No. 2/2012 (Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam KUHP, 2012).

The accumulated impact of this action is quite significant for the plantation company. For example, eight thieves each stealing 700 kg of oil palm fruit at Rp2,000 per kilogram would result in a loss of up to Rp11,400,000. Although each individual steals a small amount, the cumulative value results in a large loss to the company. In addition, the repeated pattern of theft creates social problems that are increasingly troubling, both for the company and the surrounding community. The absence of a deterrent effect on the perpetrators makes them feel more free to repeat their actions, making this problem even more difficult to overcome.

Restorative justice mechanisms that aim to reduce the burden on the justice system and provide a more humane solution in handling minor offenses have not always been effective in these cases. The application of restorative justice on the one hand serves to prevent perpetrators from repressive punishment, especially for minor offenses. However, in the context of repeated theft in oil palm plantations, restorative justice actually appears to provide space for perpetrators to take advantage of legal loopholes without fear of strict legal consequences. This raises fundamental questions about the effectiveness of restorative justice in the context of handling minor crimes that have broader economic and social impacts.

Therefore, it is important to evaluate the effectiveness of restorative justice in handling petty theft cases in oil palm plantations. The problems in this research design include the process of handling minor crimes of theft of oil palm fruit and the social and economic impacts caused to oil palm plantation companies due to the application of restorative justice in theft cases that do not provide a deterrent effect for the perpetrators. This research aims to examine whether restorative justice is really the right solution in handling theft cases with recurring patterns and to see the implications for related parties, especially plantation companies. In addition, this research is expected to provide recommendations to improve the effectiveness of law enforcement and create a sense of justice for victims in theft cases in oil palm plantations. Thus, it is hoped that this research can contribute to the development of legal policies that are more responsive and adaptive to the characteristics of problems in the field.

RESEARCH METHOD

This study employed normative legal research, also known as doctrinal research. This type of normative legal research employs the statute approach and the case approach. These two kinds of approaches are carried out to find as much information as possible that is being studied so that it can be analyzed in order to solve the problems that have been determined. This research adopts a perspective approach, focusing on addressing predetermined problems. A study's perspective is characterized by its problematic nature, which necessitates problem-solving. In addition to describing the problem, it is also necessary to provide a way out for overcoming the problem. This ensures that

the solution derived from the problem-solving process will bring something fresh and novel to the parties involved. Sources of legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials (Manullang et al., 2020).

RESULTS AND DISCUSSION [Arial 10 bold font]

The Indonesian state is a state that upholds the law, so the Indonesian state is referred to as the State of Law. This is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the formula of which is "The State of Indonesia is a state of law". Legal/valid law. Therefore, everything in the State of Indonesia is regulated by law, one of which is criminal law (Noya & Walakutty, 2024).

Criminal Justice System

a. Police Sub-System

The police are authorized to conduct investigations, where an investigation is defined as a series of investigator actions to seek and find a situation or event suspected of being a crime or criminal offense in order to obtain preliminary evidence needed to decide whether an investigation is needed or not in accordance with statutory orders.

> *"Wewenang penyidik sesuai ketentuan KUHAP adalah: a. Menerima laporan atau pengaduan dari seseorang tentang adanya suatu tindak pidana, b. Melakukan tindakan pertama pada saat ditempat kejadian, c. Menyuruh berhenti seseorang tersangka dan memeriksa tanda pengenal diri tersangka, d. Melakukan penangkapan, penahanan, penggeledahan, dan penyitaan, e. Melakukan pemeriksaan dan penyitaan surat, f. Mengambil sidik jari dan memotret seorang, g. Memanggil orang untuk didengar dan diperiksa sebagai tersangka atau saksi, h. Mendatangkan orang ahli yang diperlukan dalam hubungannya dengan pemeriksaan perkara, i. Mengadakan penghentian penyidikan, j. Mengadakan tindakan lain menurut hukum yang bertanggung jawab".*(Undang-Undang Negara Republik Indonesia No. 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP), 1981).

Investigations carried out by investigators in this case must still respect the principle of presumption of innocence as mentioned in general explanation point 3c of the Criminal Procedure Code. The application of this principle is none other than to protect the legal interests and rights of the suspect from the arbitrary power of law enforcement officials.

If in the investigation there is insufficient evidence or the event is not a criminal event or the investigation is stopped for the sake of law, then the investigator issues a Termination of Investigation Order. If a Stop Investigation Order has been issued, then the investigator notifies the public prosecutor, the suspect or his family.

b. Prosecution Sub-System

The Public Prosecutor's Office is an official authorized by law to act as a Public Prosecutor and execute Court decisions that have obtained permanent legal force, as well as other powers based on the law.

Article 1 point 6 of Law No. 8 of 1981(Undang-Undang Negara Republik Indonesia No. 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP), 1981) and Article 1 points one and two of Law NO. 16 of 2004 states that:

1) Prosecutors are officials authorized by this law to act as Public Prosecutors and to execute Court decisions that have obtained permanent legal force, as well as other powers under the law.
2) Public Prosecutor is a Prosecutor who is authorized by this law to conduct prosecutions and execute Judges' decisions.

c. Court Sub-System

The court is an institution authorized to examine, try, and decide a case based on the principle of free, honest, and impartial in court in the manner provided for in the law. The court institution is also the implementation or application of the law to a case with a judge's decision in the form of punishment, release or release from punishment against the perpetrator of a criminal offense (Hakim & Kusno, 2018).

Minor Crimes

Minor Crimes in the Criminal Code are mentioned in Article 364 which states that minor crimes are criminal cases punishable by imprisonment or confinement for a maximum of three months and/or a fine of up to Rp 7,500 (seven thousand five hundred rupiahs). Then the Supreme Court (MA) issued Supreme Court Regulation No. 2/2012 on the Adjustment of the Limitation of Minor Crimes and the

Amount of Fines in the Criminal Code. The regulation explains that the value of Rp 7,500 is multiplied by 1,000 times so that it becomes Rp 7,500,000 (seven million five hundred thousand rupiah). Then in this Perma also states that the words "two hundred and fifty rupiah" in Articles 364. 373, 379. 384, 407 and 482 of the Criminal Code shall be read as Rp 2,500,000 (two million five hundred thousand rupiah) (Satriadi, 2022).

The general public is familiar with the term *Tipiring* as a criminal offense which, from its name, uses the word "minor" and is immediately recognized as a minor criminal offense. Sometimes we hear phrases like: "He was only charged with *tipiring*". Sometimes there is also a negative tone, that the implementation of criminal law can be constructed in such a way that only *Tipiring* is charged. In fact, the person concerned should have been charged with a more serious criminal offense that carries a heavier penalty as well. With *Tipiring*, people expect that the punishment to be imposed by the judge will also be lenient, i.e. if found guilty, only conditional punishment will be imposed, known as a sentence but not executed. The "light" nature of these offenses and the alleged abuse of the *Tipiring* classification, raises questions about the nature and procedure of misdemeanor trials. What exactly is the nature of a misdemeanor and what is the procedure for examining a misdemeanor. (Solar, 2012)

The nature of a minor crime *(tipiring)* is a criminal offense that is light or harmless. Meanwhile, the nature of the provision of the Minor Crimes Investigation Procedure is so that cases can be examined with simpler procedures. These minor crimes are not only violations but also include minor crimes located in Book II of the Criminal Code which consists of, minor animal abuse, minor insult, minor persecution, minor theft, minor embezzlement, minor fraud, minor vandalism, minor storing (Solar, 2012).

The Nature of Minor Crimes

In KUHAP (Law No.8 of 1981 on Criminal Procedure), there are 3 (three) types of examination procedures, namely:

a. Ordinary Examination Procedure;
b. Short Examination Procedure; and,
c. Rapid Examination Procedure. The Rapid Examination Procedure consists of:
    1) Examination of Minor Crimes; and,
    2) Examination of Road Traffic Violation Cases (Loleng, 2021).

Article 364 of the Criminal Code stipulates that the acts described in Article 362 and Article 363 item 4, as well as the acts described in Article 363 item 5, if not committed in a house or enclosed yard where there is a house, if the value of the stolen goods does not exceed two hundred and fifty rupiahs, shall be punished as petty theft with a maximum imprisonment of three months or a maximum fine of two hundred and fifty rupiahs (Loleng, 2021).

Minor Crimes *(tipiring)* are crimes that are light or harmless in nature, while the nature of the procurement of the Minor Crimes Investigation Procedure is so that cases can be examined with simpler procedures. This minor crime is not only an offense but also includes minor crimes located in Book II of the Criminal Code which consists of, minor animal abuse, minor insult, minor persecution, minor theft, minor embezzlement, minor fraud, minor vandalism, minor storing (Tatumpe, 2019).

Substance of Minor Crimes

The systematics of Chapter XVI of KUHAP on Examination in Court, it can be seen that the KUHAP distinguishes between 3 (three) types of examination procedures as follows:

a. Ordinary Proceedings (Chapter XVI, Third Section on Ordinary Proceedings and Fourth Section on Evidence and Judgment in Ordinary Proceedings);
b. Summary Examination Proceedings (Chapter XVI, Fifth Section on Summary Examination Proceedings), namely cases of crimes or offenses which, according to the public prosecutor, the proof and application of the law are easy and simple in nature (Article 203 paragraph (1) of KUHAP);
c. Rapid Examination Procedures (Chapter XVI, Sixth Section on Rapid Examination Procedures). Chapter XVI, Part Six is divided into two parts, namely:
    1) Examination of Minor Crimes (Paragraph 1); and,
    2) Examination of Road Traffic Offenses (Paragraph 2).

The submission of criminal cases by the Prosecutor to the District Court Judge is done in two ways, namely:

1st, in an ordinary manner.
2nd, summarily or briefly.

Criminal cases that are submitted by the Prosecutor to the Judge in the usual manner are cases that will be examined based on the *acte van verwijzing*, which is now called an indictment. These cases are crimes such as murder, and so on. In the HIR, this procedure is regulated in Chapter X on the Trial of Criminal Cases before the District Court in Criminal Cases.
Summary or short cases are cases that are "simple, especially regarding evidence and matters of implementing the law, and the main punishment imposed on the case is generally no more than imprisonment for a maximum of one (Sumampouw, 2013).

Legal Policy and Juridical Basis

Matters regulating minor crimes are regulated in the Regulation of the Supreme Court of the Republic of Indonesia and the Decree of the Chief of Police. The contents of PERMA No.2 of 2012 are as follows:

a. The Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2012 basically does not change the Criminal Code but only adjusts the value of money/goods that are no longer in accordance with current conditions, this is a breakthrough step in responding to the dynamics of the development of a law enforcement paradigm that realizes fast, simple and low cost justice by prioritizing the application of restorative justice.
b. Criminal offenses listed in Articles: 364, 373, 379, 384, 407, and Article 482 of the Criminal Code are qualified as minor crimes with indicators:
    1) Threatened with a maximum imprisonment of 3 (three) months;
    2) The fine is multiplied by 10,000 (ten thousand) times from the fine stated in the Article, namely Rp. 250, - (two hundred and fifty rupiahs) so that what must be read is a fine of Rp. 2,500,000, - (two million five hundred thousand rupiahs). (Hakim & Kusno, 2018).

While the contents of the National Police Chief Letter No.Pol.B/3022/XII/2009/SDEOPS are (Surat Kapolri No.Pol.B/3022/XII/2009/SDEOPS Tentang Penanganan Kasus Melalui Alternatif Dispute Resolution (ADR), 2009):

a. Small losses must be agreed by the litigants, otherwise the agreement will be resolved in accordance with legal procedures.
b. The principle of consensus is known to the community by including the local Rt/RW.
c. Respect social/customary law norms and fulfill the principle of justice.
d. No longer touched by other legal actions that are counterproductive to the objectives of Polmas.
e. Chief of Police Decree No: SKEP/433/VII/2006, namely:
    1) For minor crimes, the punishment is less than 3 months.
    2) Minor crimes (in the Criminal Code) namely Articles 302, 352, 634, 373, 379, 482 and 315 (Wulandari, 2018).

Case Study in Oil Palm Plantation

The case study of theft in this research took 2 (two) oil palm companies in Tanah Laut Regency, South Kalimantan Province, namely PT. Pola Kahuripan Inti Sawit and PT. IndorayaEverlatex (Sinar Alam Plantations). Researchers communicated with the Plantation Manager and Assistant Legal Manager. From the interview data, information was obtained that the rampant theft of oil palm Fresh Fruit Bunches (FFB) in the Company's plantation both openly and secretly. FFB theft is carried out in groups of 2 to 4 people. FFBs are stolen by directly harvesting from the trees or only taking the unquoted loose fruits from under the trees. The means used for theft are 2-wheeled vehicles or small boats *(klotok)* and harvesting tools in the form of *egrek*. Because the tools used are only vehicles or small boats, the FFB stolen is also not too much but can be done repeatedly by the same person or group. The stolen FFB when calculated based on the market price is always below Rp2.5 million, so the case is classified as *Tipiring*. Several times this *Tipiring* case was reported to the Kintap Police but the perpetrators were always protected by the local Village Head so that the case would not be prosecuted under the pretext that the perpetrators were only small people who stole for their daily needs because they did not have a permanent job, the FFB stolen was also not much and the loss was insignificant and there was pressure from the perpetrators' families who asked the Village Head to help the perpetrators. The village head admitted that he was forced to comply with the request because they were members of his community. Because of this pressure, the case was finally resolved through restorative justice with the result of:

The perpetrators signed a statement acknowledging their guilt, promising not to reoffend and that any repetition of the theft would be prosecuted. The means of theft in the form of motorized vehicles or other vehicles are temporarily deposited at the Mapolsek. In reality, all means of theft have been

returned to the perpetrators within a few days. The perpetrators who have been arrested and handed over to the police often repeat their thefts because of the lack of deterrence:

a. Lack of deterrence for the sanctions obtained from the restorative justice results at the Polsek.
b. Tendency to underestimate restorative justice sanctions
c. Feeling protected by the local village head
d. Opportunity due to the lack of security personnel in the field while the Company has thousands of hectares of plantations that cannot all be guarded by security personnel.

Challenges/Obstacles and Efforts in the Implementation of Restorative Justic

Fine is the type of main punishment that is rarely imposed by Judges, especially in the judicial practice in Indonesia. The factor that causes the imposition of fine punishment by Judges in Indonesian judicial practice is because the amount of fine punishment contained in the current Criminal Code is generally relatively light. Furthermore, according to the provisions contained in Article 30 of the Criminal Code, there is no definite time limit when the fine must be paid. In addition, there are no provisions regarding other measures that can ensure that the convict can be forced to pay the fine, for example by seizing or confiscating the property or wealth of the convict (Daimon, 2019).

In the application of PERMA No. 2/2012 in the field there is still confusion and differences in perception between the Public Prosecutor (Attorney), Police and Judges so that more socialization is needed so that this can be applied optimally. This can be seen in the description of the case that the author describes above, namely a case of petty theft with a nominal value of less than Rp 2,500,000 (two million five hundred thousand) using an ordinary examination procedure subject to detention for approximately 4 (four) months Related to the issue of detention, this provides confusion to law enforcement officials, especially judges because the order of the justice system in Indonesia is carried out in a coherent manner that goes through several stages, namely:

a. The case file at the Police level is made as an ordinary criminal case, which is continued by the Prosecutor's Office by submitting it to the Semarang District Court as an ordinary criminal case;
b. Thereafter, the President of the District Court who has the authority to issue a decision on the appointment of a Judge or Panel of Judges handling a criminal case has issued a decision on the appointment of Judges to examine the criminal case with a Panel of Judges;
c. The Panel of Judges hearing the case is obliged to examine and decide the case assigned to it.

It is recommended that the socialization of the existence of the Supreme Court Regulation, especially PERMA No. 2 Year 2012, be further enhanced. It is hoped that law enforcement officials such as the Police, Prosecutors and Judges at the District Court can adjust the provisions contained therein, so that they can be applied properly for justice for thieves of justice, especially people who are classified as poor, who are sometimes forced to commit a minor crime just to make ends meet or for a bite of rice (Djamil, 2020).

Efforts that can be made in streamlining restorative justice can be:

a. The President of the Kepanjen District Court must pay attention to Supreme Court Regulation no. 2 of 2012 made by the Supreme Court as the highest institution and also pay attention to the value of the case object as stipulated in Supreme Court Regulation No. 2 of 2012. 2 of 2012
b. Establish an MoU (Memorie of Understanding) with other law enforcement agencies such as the Police and the Prosecutor's Office to pay attention to Supreme Court Regulation No. 2 of 2012 in handling criminal cases. 2 Year 2012 in handling minor criminal cases and criminal offenses with the value of the case object below Rp. 2,500,000.00 (Febriadi, 2013).

Efforts to overcome crime with criminal law are part of criminal politics, must also be an integral part of social politics, namely policies to achieve social welfare and community protection. In relation to this issue, in the preamble of the 1945 Constitution, it is included as a national goal, which is stated, among others: “to protect the whole nation and all the people of Indonesia and to promote the general welfare”. This shows that the issue of community protection and efforts to create community welfare is already a basic idea outlined in the 1945 Constitution. Thus, it is an obligation for the government and the entire community to realize it by carrying out national development. Thus, the factor of security and public order is important, which means that the community is free from worries about rampant crime, so this needs to be included in development policies related to social protection (Muhaimin, 2019).

The role of Bhabinkamtibmas in the Effectiveness of Restorative Justice Implementation on the Prevention of Recurrent Theft

Handling of minor crimes *(tipiring)* is classified as a problem-solving process carried out by *Bhabinkamtibmas* at the mutual will of both parties without pressure from anywhere, with a form of joint agreement format signed by both parties, then known by the local *Bhabinkamtibmas* as proof that they

have been peaceful without going through the legal process. However, sometimes it is directed to the investigation process by the Criminal Investigation (Reskrim) if they cannot reach consensus (Djamil, 2020).

In handling minor criminal offenses *(tipiring)* carried out by *Bhabinkamtibmas* in the form of problem solving, there are often problems faced by *Bhabinkamtibmas* due to several obstacles, including:

a. The existence of third parties who intervene in a problem, which can affect the problem-solving process carried out by *Bhabinkamtibmas* so that the problem becomes difficult to resolve.
b. There are still people who are mediated who do not understand the law and the rules that apply and many people who stumble over problems want to win alone without thinking about the other party.
c. In the settlement of minor crimes carried out by *Bhabinkamtibmas*, there are several *Bhabinkamtibmas* officers who do not fully understand the problem-solving techniques they face, such as how to make reports and filing in accordance with existing instructions so that the recapitulation of problem reports that have been resolved by *Bhabinkamtibmas* officers is not optimal and the way data is archived is also not neatly organized (Djamil, 2020).

The main tasks of the Indonesian National Police are regulated in Article 13 of Law No. 2 of 2002 concerning the National Police. The main tasks of the National Police are classified into three, namely:

a. Maintaining public security and order;
b. Enforcing the law;
c. Providing protection, protection, and service to the community.

In the handling of criminal cases, especially minor crimes, at first glance, penal mediation is almost the same as the discretion of our criminal justice system institutions, such as the police and the prosecutor's office, to filter incoming cases and not to continue certain cases through the criminal justice process, especially minor crimes. However, there is a different essence to the discretionary system. Penal mediation prioritizes the interests of the perpetrators of criminal acts as well as the interests of the victims, so that a win-win solution can be achieved that benefits both the perpetrators of criminal acts and their victims. In penal mediation, the victim is brought together directly with the perpetrator of the crime and can express their demands so that peace between the parties is produced. Penal mediation is conducted transparently so as to reduce the dirty games that often occur in the criminal justice process. Considering the many advantages of penal mediation, as has been practiced in several countries, it is necessary to conduct a study to apply penal mediation in the Indonesian criminal justice process as part of the criminal justice system in Indonesia. The criminal justice system is a system consisting of sub-systems such as the police, prosecution, courts and correctional institutions, including legal counsel.

The operation of the Indonesian criminal justice system is based on Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), as a formal law to implement material criminal law. In the criminal justice process, the operation of the criminal justice system has interdependency between one sub-system and another. Penal mediation is one form of implementation of restorative justice, which is a concept that views crime more broadly. This concept views that crime or criminal offense is not just a matter of the perpetrator and the state representing the victim, and leaves the settlement process only to the perpetrator and the state (public prosecutor). The Police Institution has the authority to determine whether an act is continued or not continued in the criminal justice process for certain reasons (Rusniati, 2021).

Future perspectives on alternative models for resolving minor crimes

Talking about the future perspective of alternative models for resolving minor crimes, there are at least 2 (two) models of Law Enforcement against Minor Crimes that are considered to fulfil a sense of justice for perpetrators, victims and the community, namely:

a. Restorative justice

Restorative Justice is a response to criminal behavior that focuses on restoring victims who have suffered losses, giving understanding to perpetrators to take responsibility for the crimes they commit, and building a peaceful society. Restorative Justice can be described as a response to criminal behavior to restore the losses suffered by victims of crime and to facilitate peace between conflicting parties (Mulyani, 2017).

The background of the idea of Restorative Justice or better known as Restorative Justice is a reaction given by criminal law experts to the negative appearance of the application of criminal law which has a repressive or coercive nature. By examining the negative impact of the application of criminal law, criminal experts have initiated restorative justice to replace it as a reparative tool (Manullang et al., 2020).

Restorative Justice is a concept of punishment, but as a concept of punishment it is not only limited to the provisions of criminal law (formal and material).1 However, although Bagir Manan defines restorative justice as a concept of punishment, he is still in line with the idea that the concept of punishment must prioritize justice, which is emphasized by the term integrated justice, namely justice for the perpetrator, justice for the victim and justice for the community. A characteristic of restorative justice is the Just Peace Principles or justice based on peace between offenders, victims and society. This principle is based on the idea that peace and justice are essentially inseparable. Peace without justice is oppression, justice without peace is a new form of persecution or oppression. It is referred to as Just Peace Principles or Just Peace Ethics because the restorative justice approach applies the basic principles of restoring harm to those who have suffered loss as a result of crime, providing opportunities for offenders and victims to be involved in that restoration, and giving courts and communities a role in maintaining public order and preserving a just peace. The goal is to be achieved through a cooperative process involving all parties (stakeholders) (Anggara & Mukhlis, 2019).

Islamic law has 3 (three) levels of punishment, namely equal punishment, *permafaafan* and *diyat*. This shows that Islamic law recognizes two models of case settlement, namely litigation and non-litigation. Settlement by litigation requires the settlement of the case to be carried out with the authorities while the non-litigation path is a path of settlement by means of kinship and peace without any grudge. This non-litigation method is close to the restorative justice system.

Philosophically, restorative justice has a correlation with the concept of *diyat* in the Islamic criminal law system if it is related to one of the objectives of Islamic punishment is *al-istiadah* (restorative) as a method of responding to criminal acts by involving conflicting parties in order to repair damage. this concept can be seen from the existence of *diyat* law as a substitute law for *qisas*(Satriadi, 2022).

b. Optimizing customary institutions owned by several regions

As an alternative in resolving minor criminal cases, of course, an innovative step is needed, namely by optimizing customary institutions owned by several regions. There are several reasons, namely First, customary settlements can feel the value of justice more, where it grows and is rooted in the value of justice of the local community which has been internalized and recognized for its existence (accepted for its applicability). This can be seen empirically that the culture of conciliation or deliberation is a widespread community value in Indonesia, where peaceful dispute resolution procedures have long and commonly used and are considered capable of eliminating feelings of resentment, as well as playing a role in creating security, order and peace. Secondly, the reach of law enforcement officers engaged through the judicial system is limited, where by looking at Indonesia's vast geographical situation and the lack of facilities in remote areas, of course law enforcement officers are not necessarily fully able to reach with fast time and optimal results, so that there can be consequences for the accumulation of cases. Third, it can reduce the expensive costs that must be incurred for justice seekers and the state during the process of resolving criminal cases (Mulyani, 2017).

The concept of an independent customary court is not a necessity. From a juridical, philosophical, sociological and theoretical perspective, this aspect and dimension is based on the provisions of Article 18B Paragraph (2), Article 28I Paragraph (3) and Article 24 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, MPR Decree No. IX/MPR/2001, Law No. 17/2007 and Presidential Decree No. 7/2005. The basic conclusions of these provisions essentially regulate, recognize and respect the existence of indigenous peoples and their traditional rights. The settlement of a case in customary law is a very effective case settlement when viewed socially. This means that the possibility to finish a case is very large. This is because our society is accustomed to the applicable customary law compared to positive law. Besides being cheap, it is also hassle-free. This means that there is no need to think about procedures that are very confusing. The minor crimes that are resolved by customary law include theft and assault.

There are several things that need to be reviewed in the Indonesian legal system. For example, the settlement of cases is sometimes ineffective for the surrounding community. There are always obstacles faced by the community. Starting from their ignorance of positive law as well as the complexity of procedures and the large costs incurred by the community itself. So that the implementation of the law is not effective and flexible. With the various reasons above, the community has turned to the law that has become their habit in resolving their cases, namely the customary law they know. Especially now that there is a law that regulates customary institutions and customary settlements. We Acehnese should be grateful for the recognition of customary law in the structure of laws and government. Although recognized customary institutions do not play a full role in a case (Musrizal et al., 2020).

The obstacles faced when resolving minor crimes using customary channels, namely:

1) Lack of understanding of customary officials in understanding customary law

2) The customary sanctions given do not have a deterrent effect on the perpetrator.
3) The handling of cases by customary institutions is not documented (Surya & Suhartini, 2019).

CONCLUSION

Companies usually choose restorative justice for *tipiring* cases because the process of handling this case needs to be done quickly both in the police, prosecutor's office and court so that law enforcement officials need to really push themselves in handling this case which causes the reporting party (the Company) to need to provide more compensation to law enforcers (even though compensation is a violation of the law) while the results of sanctions from handling *tipiring* crimes are very light, namely fines, short confinement or compensation; not balanced with the efforts made. Restorative justice conducted by the police for handling this case tends not to provide a deterrent effect and tends to seem trivial so that the perpetrators repeat the same case.

So that restorative justice in *tipiring* cases is made special rules about handling both sanctions that are more certain, it does not seem that the sanctions given are only the results of deliberations (negotiations); for example sanctions in the form of direct detention of a maximum of 50% of the maximum detention time limit according to Article 24 of the Criminal Procedure Code (KUHAP) in the investigation stage. Record all crimes of *Tipiring* perpetrators in the police database so that their crime records will appear in the SKCK (Police Record Certificate) so that the perpetrators think harder to repeat their actions and become a lesson for other communities not to commit crimes even though *Tipiring*.

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