

Construction Analysis of Penal Mediation and Restorative Justice on Crime Settlement in the Indonesian Criminal Justice System

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ABSTRACT

This research intends to analyze the existence of restorative justice and penal mediation in the Indonesian criminal justice system and to analyze the scope of the concept of restorative justice and penal mediation in the Indonesian criminal justice system. The research method used, normative juridical, is library law research which is carried out by examining library materials or secondary data sourced from primary, secondary, and tertiary legal materials. The research results obtained are the existence of restorative justice and penal mediation in the Indonesian Criminal Justice System. Number 11 of 2012 concerning the Juvenile Criminal Justice System. Restorative justice is a design of criminal justice that pays for the interests or needs of victims of victims, families and affected communities on the basis of the accountability of the perpetrators of criminal acts. So that it is necessary to strengthen the normative framework as a law enforcement effort from restorative justice to make law, both in a narrow formal sense and in a broad material sense, a guideline for behavior in every legal act, both by the legal subjects concerned and by law enforcement officials who are officially given the task and authority by law. Therefore, a rule that has legal certainty regarding restorative justice should be designed by a sovereign institution so that it has legal certainty. This is regulated in the 1945 Constitution of the Republic of Indonesia Article 20 paragraph (1) that "The House of Representatives Holds the Power to form Laws".

ABSTRAK

Penelitian ini bertujuan untuk menganalisis eksistensi restorative justice dan mediasi penal dalam sistem peradilan pidana Indonesia dan untuk menganalisis ruang lingkup konsep restorative justice dan mediasi penal dalam sistem peradilan pidana Indonesia. Metode penelitian yang digunakan, yuridis normatif adalah penelitian hukum kepustakaan yang dilakukan dengan cara meneliti bahan-bahan kepustakaan atau data sekunder yang bersumber dari bahan hukum primer, sekunder, dan tersier. Hasil penelitian yang diperoleh adalah Eksistensi restorative justice dan mediasi penal dalam Sistem Peradilan Pidana Indonesia secara Normatif dalam Kitab Undang-Undang Hukum Pidana dan Kitab Undang-Undang Hukum Acara Pidana tidak diatur secara tegas mengenai keadilan restoratif terhadap Sistem Peradilan Pidana, kecuali dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak. Keadilan restoratif merupakan desain peradilan pidana yang memerhatikan kepentingan atau kebutuhan korban, keluarga dan masyarakat yang terpengaruh atas dasar pertanggungjawaban pelaku tindak pidana. Sehingga perlunya penguatan kerangka normatif sebagai upaya penegakan hukum dari keadilan restoratif untuk menjadikan hukum, baik dalam artian formil yang sempit maupun dalam arti materil yang luas, sebagai pedoman perilaku dalam setiap perbuatan hukum, baik oleh para subyek hukum yang bersangkutan maupun oleh aparaturnya penegak hukum yang resmi diberi tugas dan kewenangan oleh Undang-Undang. Maka dari itu seharusnya dirancang sebuah aturan yang berkepastian hukum mengenai keadilan restoratif oleh lembaga yang berdaulat agar memiliki kepastian hukum. Hal ini diatur dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 20 ayat (1) bahwa "Dewan Perwakilan Rakyat Memegang Kekuasaan membentuk Undang-Undang".

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I. INTRODUCTION

As the dynamics of social life develop, it demands law reform as a form of dynamic law. Settlement of criminal cases in the current criminal justice system seems old-fashioned and does not instill a sense of justice and expediency in the life of the wider community. The existence of reforms in the Criminal Law leads to the problem of criminal cases being resolved without going through the courts. Therefore, at this time the most important thing is not the legal process according to the rules, but rather determining which one is more beneficial and seeking the best resolution of the problem.

In Indonesia, the practice of resolving disputes outside the court through penal mediation has long been known. This practice has been carried out in Palangkaraya by the National Dayak Indigenous People (MADN) where a sociologist named Tamrin Amal Tomagola through his statement while serving as an expert witness in a trial at the Bandung District Court by referring to the results of his research that sexual relations before marriage are common among the Dayak community. Then Tamrin's statement hurt the feelings, dignity, and dignity of the Dayak people. Against this statement, Tamrin was later at the customary trial in Palangkaraya and was found guilty. Tamrin accepts the Adat decision and is willing to retract his statement and apologize in public through print and electronic media. Besides that, Tamrin also had to pay a customary fine of Rp. 77,777,777,- (Seventy Seven Million Seven Hundred Seventy Seven Thousand Seven Hundred Seventy Seven Rupiah) and must revoke the results of his research which are considered to have hurt the feelings of the Dayak Indigenous people (Mulyadi, 2015).

Penal mediation is very closely related to *restorative justice* in efforts to renew criminal law (*penal reform*) due to the teachings of *restorative justice* as the basis of penal mediation. The restorative justice approach is a paradigm that can be used as a framework for a criminal case prosecution strategy which is aimed at dealing with complaints about the performance of the existing criminal justice system (Suyono, 2020).

Law and justice are sometimes two different things, but once again we have to philosophize, that is why humans form laws, none other than to create justice. But in fact the law is not necessarily fair, sometimes even the law is far from justice (Wibowo & Martedjo , 2021). The goal of justice is to satisfy the parties, and the means to do this include repairing the damage to the parties, whether physical, financial, or relational. This is in contrast to an approach which defines crime solely as violations against the government, and whose aim is prevention of crime through rehabilitation, incapacitation, and prevention. (Ness & Strong, 2009).

In its development, justice has also transformed into a newer direction. Since 1977, Albert Eglash and Howard Zehr have introduced the concept of restorative justice , *which* at first we have recognized the concepts of *retributive justice* and *distributive justice* in the criminal justice system . The concept of restorative justice exists as a form of criticism of the criminal justice system which overrides the interests of victims who have suffered losses as a result of a crime/violation, so that restorative justice is seen as very suitable to *provide* satisfaction for the parties, both victims, perpetrators and society. . Where the state becomes the intermediary in it by using the penal

mediation or diversion model regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Indonesia also recognizes the existence of *restorative justice* which prioritizes mediation between perpetrators and victims where perpetrators are not always processed in court and sentenced to death. Settlement with the diversion model (diversion) from the criminal justice system out of the criminal justice system is the preferred model. However, this is specifically regulated in Law Number 11 of 2012 Juvenile Criminal Justice System, the target is children who are in conflict with the law, with the aim of seeking a fair solution by emphasizing restoration to its original state and not retaliation. However, based on practice to this day we find a phenomenon that *restorative justice* is also used in other crimes that are not only committed by children as perpetrators, but adults as perpetrators.

If the juvenile criminal justice system leads to the establishment of diversion which diverts the judicial process outside the judicial process, what about the outcome of restorative justice other than juvenile justice. This is important because for cases other than juvenile criminal justice, especially for restorative justice that occurs in court, there is no unified opinion. Is it the same as the juvenile justice system by issuing Diversion stipulations for cases that can be resolved before the indictment is read out or does it continue to follow the procedural law process until the verdict is passed.

However, the provisions governing *restorative justice* have been forgotten in the Criminal Justice System by law enforcers and legislators, because when referring to the existing KUHAP rules, the implementation mechanism is not regulated. Does it then become a concern over the lack of trust in law enforcement, so that it is deliberately not regulated or is it completely forgotten?

II. RESEARCH METHODS

This research is a normative research. In compiling research this journal was compiled using the library research method which was carried out by examining various secondary data sources in the form of books, journals, and other legal writings related to research topics as well as reviewing and analyzing the application of restorative justice. at the level of investigation, prosecution, and trial court. This type of normative research uses qualitative analysis by explaining the existing data with words or statements. Then used a normative method that is descriptive analysis. The approach used is a statutory approach, a conceptual approach and an approach to legal principles that examines and explains the problem of the application of the concept of restorative justice in the criminal justice system in Indonesia. Because this research was conducted by looking at secondary materials from libraries or other storage areas, it is sometimes known as doctrinal research or library research (Irwansyah & Yunus, 2015).

III. DISCUSSION RESULTS

1. The Existence of Restorative Justice and Penal Mediation in the Indonesian Criminal Justice System

In Indonesia, the paradigm offered by restorative justice in practice is not a completely new thing. The practice of non-adversary dispute resolution or outside the criminal justice process has, in fact, been used by society as a reflection of the deliberative consensus institution which is part of the philosophy of the Indonesian nation. Reality shows that the resolution of a conflict in Indonesian society, even though it constitutes a violation of criminal law, does not always end in court. Minor cases such as child delinquency, petty theft, even assault and rape can also be resolved through this consultative institution with or without the involvement of relevant officials (Zulfa, 2009). Restorative justice that is followed in Indonesia is actually not a new theory or principle. In

Indonesia, there are customary concepts to recover victims' losses in a criminal matter (Ubbe, 2008).

Restorative Justice comes from the word "*restoraare*" which means return or restoration to its original state, while *justice* has the meaning of justice while what is meant by *restorative justice* is a concept of solving a crime aimed at "restoring the relationship damaged by a crime between the victim and the perpetrator." crime" out of court

Although *restorative justice* is not a new principle in the Indonesian justice system, previously it was only really regulated in relation to the Juvenile Criminal Justice system, based on Law Number 11 of 2012 concerning the Juvenile Justice System. With the enactment of Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, it seems that the National Police wants to expand the application of *restorative justice* to criminal cases. Some of the criminal justice system's early involvement with restorative justice came at police stations, especially where caution was used as a response to crimes and offences

One form of handling cases involving the police with a settlement using *restorative justice* is a case of sexual abuse committed by an unscrupulous school principal. (principal) with the initials IS in Dompu Regency, West Nusa Tenggara Province (NTB) ended peacefully (Nickyawati, 2022). The case was finished with *restorative justice* (RJ). The Director of the General Criminal Investigation Unit for the NTB Regional Police, Kombes Hari Brata, explained that there are cases that can be resolved with restorative justice, and some that cannot. "(This case) is allowed. Cases that are not allowed in RJ are terrorist cases, murders, and SARA," explained Hari Brata to detikcom Saturday (12/3/2022). This case was resolved with a *restorative justice system*, because both the victim and the perpetrator had reached an agreement whereby at that time the village head and representatives of community leaders had the matter resolved in amicable way by bringing a statement.

In law enforcement, in principle, it is the Police Agency that is the entry point for various criminal law enforcement mechanisms in this country. As part of law enforcement, the Police are required to pay close attention to 3 elements of law enforcement when carrying out their obligations including: Justice, Benefit and legal certainty (Mahendra, 2020).

Sexual abuse of children is expressly prohibited in the Child Protection Act No. 35 of 2014 Article 76, that everyone is prohibited from forcing children to have intercourse either with themselves or with other people. As stipulated in the child protection law, criminal sanctions are stipulated for perpetrators contained in Article 81 of the Child Protection Law No. 35 of 2014, is subject to a minimum prison sentence of 5 years and a maximum of 15 years, as well as a maximum fine of 5 billion rupiah.

Not only can the police apply restorative justice, but the judiciary can also implement it through the Decree of the Director General of the General Court of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for the Implementation of Restorative Justice. As described in a decision of the Supreme Court of the Republic of Indonesia Number: 63/Pid.B/2021/PN Skm Suka Makmue District Court with a decision to acquit all lawsuits on the grounds that there has been peace by using a restorative justice mechanism. Where based on the statement of the public prosecutor stated that the defendant Edi Yanto Bin Mak Syah was legally and convincingly proven guilty of committing the crime of "persecution" as stipulated and punishable by crime in Article 351 paragraph (1) of the Criminal Code. Then imposing a sentence on the defendant for 4 (four) months minus the entire period of arrest and detention that has been served. Considering, that at the trial on October 7, 2021 the Peusijeuk Traditional Procession was held which was attended by the witness victim Tengku Rahmatul Wahyu, the Defendant and his family, witnesses, traditional leaders of the Alue Kambuk community, and also

witnessed by the Suka Makmue District Court. In Peusijeuk the defendant and the victim were reunited as brothers and the shock caused by the defendant's actions was restored. The defendant's family brought Peusijeuk special food to offer to the witness victim Tengku Rahmatul Wahyu as a sign of regret and apology from the defendant's family, and besides that the defendant gave money to the witness Rahmatul Wahyu but the witness Rahmatul Wahyu was not willing to accept it by stating that it was not the money expected victim witness Tengku Rahmatul Wahyu. But a sincere apology and restoration of his good name which has been tarnished among Dayahs (Safinatun Naja Islamic Boarding School) (Putusan Mahkamah Agung , 2021).

The existence of a restorative justice process as an alternative to solving criminal cases is largely determined by the awareness and knowledge of the community itself, including its law enforcement officers. The understanding of the judiciary that only prioritizes the application of rules, proves the guilt of the perpetrator, then punishes him will not be able to accept this concept. For him, justice is the state's right to impose sanctions on its citizens who have violated the rules. Deterrence and/or rehabilitation is a very popular factor in it, the attention of the judiciary is dominated by the interests of the perpetrators, society and the state (Prayitno, 2013).

So that there is no mistake in understanding restorative justice, that solving cases through restorative justice does not automatically become a diversion which makes the perpetrators unable to be sentenced, but punishment of perpetrators can still be imposed on perpetrators as long as this is felt to be very useful for victims, perpetrators, and society. Therefore, based on this restorative justice, punishment is placed as *Ultimum Remidium* "The Last Resort" which is used if other sanctions are deemed ineffective to be imposed on the perpetrator.

Puteri Hikmawati in her writing summarizes at least 3 (three) advantages in the application of *restorative justice* in the sentencing process. Where these advantages are general principles that apply universally, namely fair settlement, equal protection, fulfillment of victims' rights (Hikmawati, 2016). As described earlier, the spirit of *restorative justice* exists as a form of effort to restore the original state. Victims in this case as subjects who feel direct losses both materially and non-materially as a result of crimes or violations. So that it is hoped that *restorative justice* can accommodate victims and perpetrators as an effort to restore the situation, it is possible for compensation by the perpetrators as a form of accountability to victims affected by violations. The dimension of restorative justice has a broader scope than just paying compensation or compensating victims as restitutive justice, but also involving all parties involved in it to find the best solution that is acceptable to all parties.

In line with the breath of criminal law renewal, in handling criminal cases by prioritizing the concept of *restorative justice* it can provide different approaches and views to understand a settlement of a crime. From the perspective of *restorative justice*, the meaning of a crime actually has the same meaning as the criminal law approach in general, which means attacks on the public or private persons. But in the context of *restorative justice*, the main victim when a crime is committed is not the state as understood by the criminal justice system used to handle criminal cases now (Sirande, 2021).

At the regulatory level of the hierarchy of laws and regulations, the existence of restorative justice provisions in the context of the new criminal justice system extends to juvenile justice where the target is children in conflict with the law as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Even though it has not been explicitly regulated in the Criminal Procedure Code, this *restorative justice* does not mean that there are also other rules that conflict with each other or prohibit its application, it's just that it has not been explicitly regulated. So the authors argue that *restorative justice* is very useful in the development of the criminal justice system as an approach that focuses on the condition of creating justice for the perpetrators and victims and society. As stated by Achmad Ali who quoted the opinion of Howard Zehr, a pioneer of

restorative justice in the United States, interpreting restorative justice is "a process that involves interested parties from a specific violation and jointly identifies losses and fulfills obligations and needs and places change as a right that must be accepted" (Ali, 2009).

Bearing in mind that there is a principle of legal expediency or *doelmatigheid*, namely usability, usefulness, usability, benefit and purpose; *behalve de rechmatigheid moet de~in aanmerking worden genome* apart from juridical considerations, benefit and objective considerations must also be considered (Utrecht, 1960). In the perspective of the presence of *restorative justice* as an approach to solving the problem of criminal acts but must still use the principle of permanent legal force with legal certainty from court decisions. Regarding this matter, the author is of the opinion that the procedural law process must still be carried out thoroughly and thoroughly by making restorative justice a material consideration in the decision. When people are increasingly aware of the existence of law, it does not only create security and order through sanctions alone, then the idea that is called a formal legal state or often called a welfare state is *born*. The state of material law does not only function to provide sanctions to society, but the law begins to regulate every aspect of life in society (Ditayani, 2021).

Howard Zehr stated that restorative justice is not primarily about forgiveness or reconciliation. Howard Zehr explained that some victims and victim advocates react negatively to restorative justice because they imagine that the goal of restorative justice programs is to encourage, or even force, them to forgive or reconcile with the perpetrators (Zehr, 1990). However, this is entirely up to the participant. There should be no pressure to choose to forgive or seek reconciliation. However, law enforcement must provide the container voluntarily.

In the settlement of minor criminal cases through *restorative justice*, this can only be done if the consent of the victim and the perpetrator is obtained. If one of the parties does not agree with the settlement of minor criminal cases with *restorative justice*, the settlement of cases will be returned in accordance with the procedure for handling cases through a quick examination led by a single judge as regulated in articles 205 to 210 of the Criminal Procedure Code (Karim, 2019).

2. Scope of Restorative Justice and Penal Mediation in the Criminal Justice System for Types of Crime

The scope for the application of *restorative justice* in the types of criminal acts is not the same between one another in the rules issued by each state institution regarding restorative justice. In Perpol No. 8 of 2021 only limits the material requirements that *restorative justice* can be applied to all criminal acts which may not only be in the context of causing unrest, social conflict, dividing the nation. Of course, this consideration is very difficult to test what kind of assessment it is because it is *discretionary*. Exceptions for criminal acts that can be subject to *restorative justice* in the Prosecutor's Regulation 15 of 2020 such as state security, minimal criminal threats, the environment, decency, and those committed by corporations. Then in its development through the Prosecutor's Regulation no. 18 of 2021 regulates that narcotics offenses fall within the scope of *restorative justice*. Of course we can observe that the types of scope of criminal acts are different from each other and this also occurs in the Decree of the General Courts Agency No.1691/DJU/PS.00/12/2020 which provides limitations on restorative justice for minor crimes, children in conflict with the law, Women Face the Law, and Narcotics.

Table 1. Comparison of Restorative Justice Arrangements in Various Regulations in Indonesia

ASPECT	Perpol No. 8/2021	Perja No. 15/2020	SK Badilum MA RI No.1691/DJU/PS.00/12/2020	SPPA Law 11/2012
Definition	Restorative Justice is the settlement of a crime by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair solution through peace by emphasizing restoration to its original state.	Restorative Justice is the settlement of criminal cases involving perpetrators, victims, families, perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the state of all, and not retaliation.	Restorative justice is the settlement of criminal cases involving perpetrators, victims, families, perpetrators/victims and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.	Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties
Type of Crime	<ul style="list-style-type: none"> • There is no limit to criminal acts that can be prosecuted, except for those that have been clearly excluded. • Material requirements: not cause unrest, impact social conflict, divide the nation, radicalism, separatism, repetition 	<ul style="list-style-type: none"> • Criminal acts that meet certain requirements (Article 5) Exceptions: State security, minimal criminal penalties, environment, decency, and those committed by corporations. 	<ul style="list-style-type: none"> • Misdemeanors: Articles 364, 373, 379, 384, 407, 482 KUHP (unless the perpetrator is a repeat offender) • Cases of children dealing with the law (ABH). • Perara women face the law (PBH) • Narcotics use case 	Diversion with the consent of the victim: <ul style="list-style-type: none"> • The crime is punishable by imprisonment for under 7 years Not a repetition of a crime. The type of crime for diversion without the consent of the victim can only be investigated, is a type of crime regulated in Article 9 paragraph (2).
Output	<ul style="list-style-type: none"> • Warrant for Termination of Investigation and Decree for Termination of Investigation; or • Warrant for Termination of Investigation and Decision Letter for Termination Investigation 	<ul style="list-style-type: none"> • Stipulation of Termination of Prosecution (SKP2) 	Tipiring Case : <ul style="list-style-type: none"> • Prison sentence; or • Fines (which can be replaced with imprisonment) ABH case: <ul style="list-style-type: none"> • Peace Agreement; • Action PBH case: <ul style="list-style-type: none"> • The judiciary is in line with PERMA 3/2017 Cases of drug use : <ul style="list-style-type: none"> • Rehabilitation Order 	<ul style="list-style-type: none"> • Diversion agreement • Criminal • Action

Restorative Justice is also considered a new thing that comes from outside or the West. Because of this, several articles have appeared examining restorative justice and its relevance to Indonesian law. In the concept of a rule of law, the term " *rule of law* " is often translated in Indonesian as "supremacy of law " or government based on law. Recognition of a country as a rule of law (*government by law*) is very important, because state and political power is not unlimited (not absolute). It is necessary to limit the authority and power of the state and politics, to avoid arbitrariness from the authorities. In this rule of law, the limitations on state and political power must be made clear, which cannot be violated by anyone. Therefore, in a constitutional state, law plays a very important role and is above state and political power. Because of that also appeared the term government under the law. Thus, the concept that in countries where *Commom Law*

applies is known is the system of "government based on law, not based on human will". In the Continental European version of the rule of law concept, the principle of supremacy *of law* is the main core. According to AV Dicey (Fuady, 2009), the meaning of the rule of law, by quoting classical law from the courts in England as follows:

"The law occupies the highest place, higher than the position of the king, to which the king and his government must submit, and without law there is no king and there is no reality either"

With the description above, it is clear that what is meant by law enforcement is more or less an effort made to make law, both in the narrow formal sense and in the broad material sense, a guideline for behavior in every legal act, both by legal subjects who concerned as well as by law enforcement officials who are officially given the task and authority by law to ensure the functioning of legal norms that apply in the life of society and the state.

Meanwhile, Baharuddin Lopa wrote that there are three components or elements that make it possible to uphold law and justice in society; *first*, there is a legal regulation in accordance with the aspirations of the community; *second*, the presence of law enforcement officials who are professional and have a tough mentality or have commendable moral integrity; *third*, there is legal awareness of the community that allows law enforcers to implement it. Therefore, said Baharuddin Lopa, both legislators and law enforcers must understand and feel the conscience of the people who always long for justice, objective justice, justice that is generally wanted by healthy minds (Akub & Badaru, Yogyakarta).

Indonesia is a country of laws. Therefore, it is necessary to enforce the law in a just manner because it is an absolute thing that needs to be realized for this nation. Law enforcement in Indonesia is carried out with the aim of increasing legal certainty, justice and order for the community. Law enforcement can be interpreted as an effort to realize the ideas and legal concepts that society hopes for can be realized into reality. (A.A. Ngurah Bagus Krishna, 2022). Within the framework of the Pancasila Law State Concept, the approach to the concept of *restorative justice* has only been implicitly recognized in the constitution and only partially regulated in several criminal law laws and regulations, including the SPPA Law which has recognized the existence of a "consensus consensus" method in enforcing criminal law. (Tambir, 2019).

There is a customary criminal settlement in which this settlement is carried out through a restorative justice *mechanism* . so that the Defendant cannot be held criminally liable even though he has been proven to have committed a crime as the single indictment of the public prosecutor. This is illustrated in decision Number 63/Pid.B/2021/Pn.Skm, where at the hearing on 07 October 2021 the Peusijeuk Traditional Procession was held which was attended by Witnesses of the Defendant Victims and their Families, Indigenous Peoples, the head of the District Court. In the Peusijeuk, the defendant and the victim were reunited as brothers, and the shock caused by the defendant's actions was restored.

In connection with the decision to release all lawsuits on the grounds that there has been peace by using a restorative justice mechanism that has been legalized by custom. So that on the basis of the fulfillment of a sense of justice for all parties, including the community and the restoration of the rights of witness-victims, the decision of the panel of judges considered that it had carried out restorative *justice* . Then based on the approach of Article 5 paragraph (1) in conjunction with Article 2 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power and judicial practice, it is clear that the conception of law enforcement in Indonesia is law enforcement which not only refers to the Law but also accommodative to the values that apply and are accepted in society. Against this Gustav Radbruch stated that there is justice outside the " *Übergezets liches recht*" Act . In relation to the implementation of restorative justice other than cases involving juvenile justice,

the Assembly believes that this right can be exercised as long as it is in accordance with the values prevailing in society and does not conflict with Pancasila (Putusan Restoratif Justice Suka Makmue, 2021).

In procedural practice, there are several decisions that make restorative justice the main reason for making decisions, whether in the form of punishment or not. So the authors formulate a form of type of sanction, namely " *MIXED SYSTEM* " which allows combining 2 types of sanctions from a material criminal point of view and a restorative justice point of view .

So according to the author it is necessary to immediately design a regulation that specifically regulates *restorative justice* so that the scope of types and crimes is clear to be carried out procedurally and substantively. In the 1945 Constitution Article 20 Paragraph (1) the House of Representatives holds the power to form laws. If the object and/or subject has been fulfilled as stated by the author above, then the court will immediately investigate by deciding with the Quick Examination Procedure (APC).

IV. CONCLUSION

The existence of *restorative justice* and penal mediation in the Indonesian Criminal Justice System Normatively in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) do not explicitly regulate restorative justice for the Criminal Justice System. except in Law Number 11 of 2012 Juvenile Criminal Justice System. So that there is no validity to measure the strength of the Perkapolri, Perja, and Perma, because they are only in the form of policies from each agency.

The author suggests SK Badilum Number 1691/DJU/SK/PS.00/12/2020 Concerning Guidelines for the Implementation of Restorative Justice in the General Courts to be constructed into regulations in legislation regarding restorative justice. Because in this Decree Badilum restorative justice regulates in a limited way in terms of what cases can be done through restorative justice. The description of the results of the study states that several cases that can be limitedly regulated are carried out by restorative justice, namely in the form of minor crimes, narcotics, children dealing with the law, women dealing with the law.

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