

Reconstruction Concept of Restorative Justice in the Crime of Theft with Elderly Perpetrators in Batam

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Abstract

Restorative justice is an alternative to solving criminal cases in which the criminal justice procedure mechanism focuses on punishment which is changed into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties. Indeed, the issue of sanctions is a very important issue in the implementation of the content of criminal law because it is a reflection of norms and rules that contain the values of a society. In its implementation, the determination and provision of criminal sanctions based on the law prioritizes *Primum Remedium* rather than *Ultimum Remedium*. The purpose of this research is to review, analyze and reconstruct the concept of restorative justice as an alternative to the settlement of criminal acts, especially against elderly perpetrators of theft in Batam city. Based on the result of the research, there is still no special regulation related to the settlement of theft crime by the elderly in Batam City, there is still a need for the establishment of legal institutions/agencies that develop the concept of restorative justice and the lack of knowledge of the people of Batam City on the concept of restorative justice

Keywords: Theft, Restorative Justice, Elderly Person

Introduction

The crime of theft is one of the crimes listed in the second book of the Criminal Code which is specifically regulated in Chapter XXII Articles 362 to 367 of the Criminal Code. Theft is generally formulated in Article 362 of the Criminal Code which reads: "Any person who takes property, wholly or partially belonging to another, with intent to unlawfully possess it, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs". From the wording of the article above, it is clear that theft is generally mentioned in Article 362 of the Criminal Code.¹ Along with the times, the crime of theft that occurs is certainly

¹ Rony A. Walandouw, "UNSUR MELAWAN HUKUM YANG SUBJEKTIF DALAM TINDAK PIDANA PENCURIAN PASAL 362 KUHP," *Lex Crimen* 9, no. 3 (2020): 249–57.

not only committed by adults, but in fact an elderly human being (seniors) also has the potential to commit the crime of theft. Basically, the imposition of criminal sanctions is not only imprisonment but the perpetrators of criminal acts get guidance and changes in their behavior (reconstruction of the perpetrator's behavior) as an effort to bring justice and mutual protection. Therefore, it is necessary to rethink imprisonment if there are other alternatives that are more effective as an effort to bring justice.² Indeed, the issue of sanctions is a very important issue in the implementation of the content of criminal law because it is a reflection of norms and rules that contain the values of a society. In its implementation, the determination and imposition of criminal sanctions under the law prioritizes *Primum Remedium* over *Ultimum Remedium*.³ The application of criminal law sanctions also does not always solve the problems that have arisen because it turns out that criminal sanctions do not contain the restoration of justice damaged by criminal acts. Therefore, justice must also contain the concept of restoration to peace.⁴ Restorative justice is an alternative to solving criminal cases in which the criminal justice procedure mechanism focuses on punishment which is changed 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 a fair and balanced settlement of criminal cases for both victims and perpetrators by prioritizing recovery back to its original state.⁵ Thus, the application of the concept of restorative justice can be implemented and become an effective alternative dispute resolution for cases with elderly suspects or defendants who commit criminal offenses with a sentence of imprisonment of more than five years.

² Ramadhayana Adhitya Ningrum, "MEDIASI PENAL TERHADAP PELAKU LANJUT USIA YANG BERHADAPAN DENGAN HUKUM DITINJAU DARI TEORI RESTORATIVE," *Badamai Law Journal* 6, no. September (2021): 289–314.

³ Titis Anindyajati, Irfan Nur Rachman, and Anak Agung Dian Onita, "Konstitusionalitas Norma Sanksi Pidana Sebagai *Ultimum Remedium* Dalam Pembentukan Perundang-Undangan," *Jurnal Konstitusi* 12, no. 4 (2016): 872, <https://doi.org/10.31078/jk12410>.

⁴ Abdurrakhman Teguh Prasetyo Alhakim and Soelistyo Budi Henry, "Revitalizing Justice: Empowering Juvenile Sexual Offenders through a Restorative Approach in Indonesia," *Journal of Judicial Review* 25, no. 1 (2023): 17–32.

⁵ Abdurrakhman Alhakim, "INTEGRAL APPROACH TO CULTURAL REFORM: AN INDONESIAN CRIMINAL JUSTICE SYSTEM," *Legal Spirit* 6, no. 1 (2022): 1–8.

The elderly have physical, psychological and other disabilities. Elderly incapacity such as difficulty walking, forgetfulness, sickness, vulnerability and other physical and psychological deterioration. According to Presidential Regulation Number 88 of 2021 concerning the National Strategy for Humanity, the age of the elderly is divided into 3 (three) periods, namely the early elderly period aged 46-55 years, the late elderly period aged 56-65 years and the upper elderly period which is more than 65 years. If the elderly perpetrator is dealing with the law and is threatened with a minor crime, penal mediation in the form of restorative justice should be sought. Currently, law enforcement officials seem to be only fixated on the articles of punishment and ignore the reality of the conditions of the elderly who commit criminal offenses. Law enforcement officials as public prosecutors are very rigid and actually irrelevant to an elderly person. Legal protection of elderly people who are dealing with the law is the responsibility of all law enforcers.⁶ Restorative justice is therefore very important as a means of recovery for all parties including the perpetrator.

There are several previous studies that have discussed dispute resolution through restorative justice in Indonesia such as research from Anak Agung Ngurah Adhi Wibisana and I Ketut Rai Setiabudhi in 2022 related to restorative justice resolution in cyberbullying dispute resolution,⁷ research by Febri Noor Hediati and Orin Gusta Andini in 2023 related to copyright dispute resolution through restorative justice,⁸ research by Hildayastie Hafizah and Surastini Fitriasih in 2022 related to the urgency of resolving alleged medical errors through restorative justice,⁹ and research by Muhammad Iredenta Tania, Dkk in 2022 which discusses legal protection in resolving

⁶ K. D. F Adinata, "Penerapan Prinsip Restorative Justice Terhadap Pelaku Tindak Pidana Lanjut Usia (Studi Tentang Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum)," *JURNAL HUKUM MEDIA JUSTITIA NUSANTARA (MJN)* 12, no. 1 (2022): 26–62.

⁷ A. A. N. A Wibisana and I. Ketut Rai Setiabudhi, "Restorative Justice Dalam Penyelesaian Sengketa Cyberbullying," *Jurnal Magister Hukum Udayana* 11, no. 2 (2022): 438–49.

⁸ Febri Noor Hediati and Orin Gusta Andini, "PENYELESAIAN SENGKETA HAK CIPTA MELALUI RESTORATIVE JUSTICE," *Seminar Nasional Hukum, Sosial Dan Ekonomi* 2, no. 1 (2023): 40–46.

⁹ H Hafizah and S Fitriasih, "Urgensi Penyelesaian Dugaan Kesalahan Medis Melalui Restorative Justice," *Jurnal USM Law Review* 5, no. 1 (2022): 205–23.

wage disputes for workers through the concept of restorative justice.¹⁰ Based on previous research, this research has a similar theme, namely examining law enforcement through restorative justice in legal cases, but this research focuses more on examining and analyzing the use of restorative justice as an alternative to resolving legal cases with elderly perpetrators in the city of Batam. Starting from this background, the main problems of this research can be formulated as follows: 1) How is the regulation of the settlement of criminal offense of theft through restorative justice against elderly perpetrators in Batam City?; 2) How is the ideal regulation of settlement of theft crime by elderly through restorative justice concept in Batam City?

Research Method

This research uses normative legal research methods or what is known as doctrinal legal research. Based on the doctrinal legal research method, the data collection technique used is a literature study. The type of approach used in this research is a statutory approach because this research examines and examines regulations regarding the settlement of theft crimes with elderly perpetrators and a conceptual approach that departs from views to doctrines that develop in legal science as a foothold for building legal arguments in resolving the legal issues at hand.¹¹

The research source used as the main reference material in this research is secondary data in the form of legal materials, where the legal material itself is then further categorized into primary, secondary and tertiary legal materials.¹² The research source used as the main reference material in this research is secondary data in the form

¹⁰ Yuhelson Tania, Muhammad Iredenta Yuhelson and Atmaja Dhody Ar, "PERLINDUNGAN HUKUM DALAM PENYELESAIAN SENGKETA UPAH BAGI PEKERJA MELALUI KONSEP RESTORATIVE JUSTICE," *NATIONAL JOURNAL of LAW* 7, no. 2 (2022): 850–66.

¹¹ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulasi Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–2478.

¹² Abdurrakhman Alhakim and Egia Ginting, "Analisis Pembentukan Undang-Undang Cipta Kerja Pada Tahapan Perencanaan Dan Penyusunan Berdasarkan Undang-Undang Pembentukan Peraturan Perundang-Undangan," *In Combines-Conference On Management, Business, Innovation, Education And Social Sciences* 1, no. 1 (2021): 284–96.

of legal materials, where the legal material itself is then further categorized into primary, secondary and tertiary legal materials.¹³

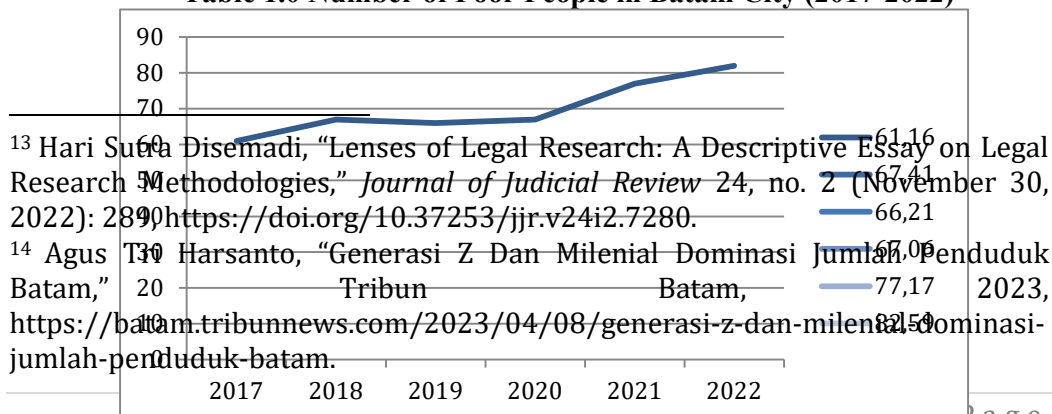
Sub Title

A. Settlement of Theft Crime through Restorative Justice against Elderly Offenders in Batam City

Batam City is the largest city in Riau Islands Province, Indonesia. The area of Batam City consists of Batam Island, Rempang Island and Galang Island and other small islands in the Singapore Strait and Malacca Strait. Batam, Rempang and Galang islands are connected by Barelang Bridge. According to the Batam City Population and Civil Registry Office as of 2020, the population of Batam reached 2,392,792 people. Batam is part of the Batam-Bintan-Karimun (BBK) special free trade area. Batam is one of the cities with a very strategic location.¹⁴ Besides being on an international shipping lane, the city is in close proximity to and directly adjacent to Singapore and Malaysia. As a planned city, Batam is one of the fastest growing cities in Indonesia. When it was built in the 1970s by the Batam Authority (BP Batam), the city had only about 6,000 inhabitants and within 50 years the population grew by 399 times.

Until now, according to the Central Bureau of Statistics of Batam City, the rapid growth in the quantity of the population is not in line with the rapid growth in the quality of the population. This is evidenced by the increase in the number of poor people from year to year. In 2020 it was recorded that around 67 thousand residents of Batam City were poor, entering 2022 it was recorded that there was an increase to 77 thousand residents of Batam City with the status of poor residents and until now, namely in 2023, it has increased to 83 thousand poor residents of Batam City. (Table 1.0)

Table 1.0 Number of Poor People in Batam City (2017-2022)



¹³ Hari Sufi Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (November 30, 2022): 2890. <https://doi.org/10.37253/jjr.v24i2.7280>.

¹⁴ Agus Tri Harsanto, "Generasi Z Dan Milenial Dominasi Jumlah Penduduk Batam," *Tribun Batam*, 2023, <https://batam.tribunnews.com/2023/04/08/generasi-z-dan-milenial-dominasi-jumlah-penduduk-batam>.

Sumber: Badan Pusat Statistik Batam 2022¹⁵

The causes of the increase in the number of poor people in Batam City are influenced by several factors such as the high quality of life of the community, the slow pace of economic growth and the high unemployment rate.¹⁶ The quality of life of the community illustrates how the population can access the results of development in terms of health, education, facilities and others. In addition, economic growth has implications for the development of economic activities that increase the goods and services produced by the community, as well as the unemployment rate, which is a measure of how much of the total labor force is looking for work. According to Larasati Prayoga, poverty is caused by several factors, including inadequate minimum wages, poor living standards, and increasing unemployment every year without additional employment opportunities. These three factors are the main basis for the increasing poverty rate in Batam City. Based on the data obtained, according to the supply and demand theory of crime, the supply of crime is formed due to the lack of job opportunities and the low level of wages earned. Basically, when there are few economic activities that generate income used to fulfill the basic needs of both themselves and their families, many poor people choose shortcuts to fulfill their needs by violating the law and the rights of others such as theft.¹⁷

¹⁵ Data BPS, "Persentase Penduduk Miskin Kepulauan Riau," KepriBPSGo.id, 2022, <https://kepri.bps.go.id/indicator/23/39/1/persentase-penduduk-miskin.html>.

¹⁶ Retno Andarini and Emiliya Febriyani, "Criminal Penalty for Billboard Tax Evaders," *Bareleng Journal of Legal Studies* 1, no. 1 (2023): 56–71.

¹⁷ K. P Isyunanda, "Pemanfaatan Law and Economics Sebagai Metodologi Analisis Hukum Di Indonesia," *Mimbar Hukum* 34, no. 1 (2022): 125–60, <https://doi.org/10.22146/mh.v34i1.2063>.

Based on data obtained by the Barelang Police of Batam City, from 2019 to 2021 there was an increase in theft crime up to 80% and many criminal acts were committed, namely theft at night to theft with violence such as curanmor. As an example of a case that often occurs in Batam City, namely the perpetrator of theft where the Batam City Nongsa Sector Police arrested ten perpetrators of theft and buying and selling motorized vehicles.¹⁸ Barelang Police throughout 2022 managed to uncover 10 prominent cases. Among them are 7 cases of theft, 1 case of skimming crime, 1 crime of murder and 1 election crime. AKP Ferry, SH said, 10 prominent cases were successfully revealed by the Barresta Barelang Police, even one case was submitted to the Police Headquarters, namely the crime of theft with aggravation and handling of cases in the Barresta Police Criminal Investigation Unit, dominated by cases of theft with aggravation with a total of 53 cases with a settlement of 40 percent.¹⁹

According to the Criminal Code (Kitab Undang-Undang Hukum Pidana), theft is taking something that belongs to another person by violating the rights of others as stated in Article 362 of the Criminal Code. Article 362 of the Criminal Code reads: "Whoever takes an object which partly or wholly belongs to another, with intent to gain unlawful possession thereof, being guilty of theft, shall be punished with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs". The Criminal Code differentiates theft into several types such as ordinary theft, theft with aggravation and petty theft.²⁰ The offense of larceny is regulated in Article 362 of the Criminal Code which states that "Whoever takes an object which partly or wholly belongs to another, with intent to gain unlawful possession thereof, shall, being guilty of larceny, be punished by a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs". Although the legislator does not explicitly state that the crime of theft as referred to in Article 362 of the Criminal Code must be committed intentionally, it is

¹⁸ Aris, "Polsek Nongsa Tangkap Pelaku Curanmor," *Metro Batam Pos*, 2023, <https://metro.batampos.co.id/polsek-nongsa-tangkap-pelaku-curanmor/>.

¹⁹ Aris, "Polresta Barelang Tangani 16 Kasus Anak Berhadapan Dengan Hukum," *Metro Batam Pos*, 2022, <https://metro.batampos.co.id/polresta-barelang-tangani-16-kasus-anak-berhadapan-dengan-hukum/>.

²⁰ Rusmiati Rusmiati, Syahrizal Syahrizal, and Mohd Din, "Konsep Pencurian Dalam Kitab Undang-Undang Hukum Pidana Dan Hukum Pidana Islam," *Syiah Kuala Law Journal* 1, no. 1 (2017): 339–52.

undeniably true that the crime of theft must be committed intentionally, namely because the applicable criminal law does not deal with the institution of the crime of theft committed unintentionally.²¹

Theft with aggravation is usually doctrinally referred to as "qualified theft". Qualified theft refers to theft that is committed in certain ways, so that it is more serious and therefore punishable by a heavier penalty than ordinary theft. Theft with aggravation or qualified theft is regulated in Article 363 and Article 365 of the Criminal Code. Because the qualified theft is theft committed in certain ways and under certain aggravating circumstances, the proof of the elements of the crime of theft with aggravation must begin with proving the theft in its basic form.²²

Theft with aggravation as stipulated in Article 363 of the Criminal Code is punishable by a maximum imprisonment of seven years, namely: a) Theft of livestock; b) Theft committed during a fire, explosion, flood, earthquake or seaquake, volcanic eruption, shipwreck, shipwreck, railway accident, riot, insurrection or danger of war; c) Theft by night committed within a dwelling or on an enclosed yard on which a dwelling stands, or by a person who is there without the knowledge or without the permission of the rightful claimant; d) Theft committed jointly by two or more persons; e) Theft, whereby the offender has gained access to the place of the crime or to the object to be taken by means of breaking, damaging or climbing, by means of a false key, a false order or a false uniform.²³

Theft with aggravation, as set out in Article 365 of the Indonesian Penal Code, has the following elements (1) A theft preceded, accompanied or followed by violence or threat of violence against persons, committed with intent to prepare or facilitate the theft or, if caught, to enable him or other participants in the crime to escape or to secure his possession of the stolen property, shall be punished by a maximum imprisonment of

²¹ Naziha Fitri Lubis and Marlina Madiasa Ablisar, Edi Yunara Marlina, "Kebijakan Hukum Pidana, Pencurian Dengan Pemberatan (CURAT) Dan Pencurian Dengan Kekerasan (CURAS)," *Jurnal Sosial Dan Sains* 3, no. 3 (2023): 271–85.

²² Muhammad Rizki, "Tinjauan Yuridis Pembuktian Pasal 363 Ayat 1 Ke-4 Dan Ke-5 KUHP Tentang Pencurian Dengan Pemberatan Dalam Perkara No: 287/PID. B/2021/PN. PBR," *Universitas Islam Riau*, 2022.

²³ Rian Prayudi Saputra, "Perkembangan Tindak Pidana Pencurian Di Indonesia," *Jurnal Pahlawan* 2, no. 2 (2019): 1–8.

nine years. (2) Shall be punished by a maximum imprisonment of twelve years.²⁴ If the act is committed at night in a dwelling or on an enclosed yard on which a dwelling is situated, or on a public road, or on a moving train or tram; 2) if the act has been committed jointly by two or more persons; 3) if the offender has gained access to the place where the crime has been committed by breaking or climbing in, by means of false keys or false orders or by means of a false uniform; 4) if the act has caused serious bodily harm to any person. And shall be punished by a maximum imprisonment of fifteen years if the act results in the death of any person. shall be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years, if the act is committed jointly by two or more persons.²⁵

Petty theft, which is regulated in Article 364 of the Criminal Code which states that "the acts as regulated in Articles 362 and 363 no. 4, as well as those regulated in Article 365 no. 5, if committed in a dwelling or on an enclosed yard on which a dwelling stands and if the value of the stolen object is not more than two hundred and fifty rupiah, as petty theft, shall be punished by imprisonment for a term of up to three months or by a maximum fine of nine hundred rupiah". The Criminal Code itself is the *lex generalis* of criminal law, if there are other laws that regulate criminal sanctions specifically, these provisions apply *lex specialis*, especially against theft crimes that have used technology. Penal mediation is a settlement of legal cases outside the court. Penal mediation is carried out in certain cases that are deemed necessary to be resolved by finding a middle ground through deliberation mediated by a mediator and law enforcement officials, especially for criminal cases such as theft.²⁶ In contrast, the settlement of cases in court is generally recognized as a theory of punishment or punishment in criminal law consisting of absolute, relative and combined theories. Broadly speaking, the theory of

²⁴ Christian F Lintjewas, "DELIK PENCURIAN YANG DIKUALIFIKASI (DIPERBERAT) DALAM PASAL 363 DAN PASAL 365 KUHP SEBAGAI KEJAHATAN TERHADAP HARTA KEKAYAAN," *LEX CRIMEN* 11, no. 2 (2022).

²⁵ Abdurrakhman Alhakim and Rinto Sibarani, "Kebijakan Pemberian Hukuman Mati Terhadap Pelaku Terorisme Di Bawah Umur Yang Ada Di Indonesia," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 1 (2022): 62–71.

²⁶ Teguh Hariyono, "Mediasi Penal Sebagai Alternatif Upaya Penyelesaian Perkara Pidana Di Luar Pengadilan," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 1 (2021): 1–18.

punishment has the aim of punishing, retaliating for actions, giving torture to the perpetrators of criminal acts. However, in its development, for some criminal cases, punishment tends to be unfair, especially in criminal cases that can still be resolved in a family manner, such as the case of theft of three cocoa beans by Minah's grandmother in 2009, where the material loss was very small compared to the punishment imposed.²⁷

There are several other legal sources that regulate restorative justice, such as the jurisprudence of the Supreme Court in several case decisions to one of the rules regarding restorative justice contained in the National Police Chief Letter No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Case Handling Through Alternative Dispute Resolution (ADR) and there is a Bhabinkamtibmas institution that is also related to restorative justice, which is to become a mediator and facilitator in mediating and facilitating efforts to solve problems that occur in the community. After the mediation reaches an agreement and peace, the results of the mediation in the form of a peace agreement are put in writing, and the results are binding on both parties.²⁸ Penal mediation or restorative justice is one of the bases for its application because it is based on the value of justice.²⁹ John Stuart Mill said that no theory of justice can be separated from the demands of expediency.³⁰ Justice is the term given to rules that protect claims deemed essential to the well-being of society. Justice relies on the principle of expediency and the essential properties of justice can be subject

²⁷ Mohd Yusuf DM, "DISPARITAS PENEGAKAN HUKUM DI INDONESIA (ANALISIS KRITIS KASUS NENEK MINAH DALAM PERSPEKTIF HUKUM PROGRESIF)," *Jurnal Ilmiah Publika* 10, no. 2 (2022): 542–51.

²⁸ Sahuri Lasmadi, Ratna Kumala Sari, and Hari Sutra Disemadi, "Restorative Justice Approach as an Alternative Companion of the Criminal Justice System in Indonesia," in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/aebmr.k.200513.044>.

²⁹ Kahardani Kahardani, "Penerapan Restorative Justice Dalam Penyelesaian Perkara Pidana Oleh Kepolisian Republik Indonesia (POLRI)," *Law and Humanity* 1, no. 1 (2023): 65–84.

³⁰ Antonius Faebudodo Gea, "Hukum Progresif Dalam Penanganan Masalah Sosial Oleh Kepolisian," *Jatiswara* 37, no. 3 (2022).

to the demands of expediency which implies equality. Whatever brings the greatest good to all can be called just.³¹

Restorative Justice is a new concept of punishment, but as a concept of punishment that is not only limited to the provisions of criminal law (formal and material).³² Bagir Manan defines restorative justice as a concept of punishment, he remains 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 society.³³ A characteristic of restorative justice is the Just Peace Principles or justice based on peace between the perpetrator, the victim, and the community. This principle is based on the idea that peace and justice are essentially inseparable.³⁴ Peace without justice is oppression, justice without peace is a new form of persecution or oppression. It is said to be Just Peace Principles or Just Peace Ethics because the approach in restorative justice applies the basic principles of restoring damage to those who have suffered loss as a result of crime, providing opportunities for perpetrators and victims to be involved in restoring the situation, giving the courts and society a role in maintaining public order and preserving a just peace.³⁵ The goals are achieved through a cooperative process involving all stakeholders.³⁶

³¹ Lathifah Azhar Saptaningrum, "PENERAPAN RESTORATIVE JUSTICE TERHADAP PERLINDUNGAN ANAK YANG BERHADAPAN DENGAN HUKUM DITINJAU DARI TEORI UTILITARIANISME," *Journal Equitable* 8, no. 1 (2023): 95–110.

³² Antony Antony, "Balancing Justice and Reconciliation: Restorative Approaches to Criminal Defamation Settlement," *Barelang Journal of Legal Studies* 1, no. 1 (2023): 15–30, <https://doi.org/10.37253/barjoules.v1i1.7749>.

³³ Andi Bambang Rajeman, "PENERAPAN RESTORATIVE JUSTICE PADA TINDAK PIDANA PENGANIAYAAN DI KEJAKSAAN NEGERI WAJO (STUDI KASUS TAHUN 2020-2021)," *Universitas Hasanuddin*, 2023.

³⁴ Yani Atrian Panab, "PENERAPAN KEADILAN RESTORATIF (RESTORATIVE JUSTICE) DALAM PENANGANAN TINDAK PIDANA PENGANIAYAAN TERHADAP ORANG DEWASA DI KEJAKSAAN NEGERI TIMOR TENGAH SELATAN," *Jurnal Hukum Online* 1, no. 59–76 (2023).

³⁵ Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, "Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia," *Journal of Human Rights, Culture and Legal System* 2, no. 66–77 (2022).

³⁶ Van Ness and W Daniel, "Restoring Justice: An Introduction to Restorative Justice," *Routledge* 2022, 2022.

The implementation of Restorative Justice does not aim to ignore positive law but with the circumstances and situations in the field so that Police Officers take police discretionary steps as stipulated in Indonesian Law Number 2 of 2002 concerning the Indonesian National Police to maintain the situation and conditions of society and fulfill a sense of justice by prioritizing guidance.³⁷ To provide police officers with an understanding of the concept of restorative justice, it must be accompanied by an understanding of the concept of police discretion, because discretion and restorative justice are related. The statement of peace between the perpetrator and the victim contained in the statement letter should be the basis for the investigator to terminate the investigation (SP3) in addition to what is regulated in article 109 of the Criminal Procedure Code and the case is considered closed (clearan). If the cessation of investigation (SP3) is challenged, the SP3 is either through public complaints to the leadership or through pretrial legal channels and if the applicant is granted by the District Court Judge, the statement of peace will be revoked and the case file will be continued.³⁸

In the implementation and application of restorative justice, there are still several obstacles caused by: 1) The legal factor itself, namely the low understanding of the concept of restorative justice which is a new thing in Indonesian law in the community. Restorative justice in minor criminal cases has not been clearly regulated and this is an obstacle for law enforcement officials in applying restorative justice.³⁹ However, seeing the number of minor criminal cases that are resolved by applying the principles of peace and restoration, to fill the legal vacuum, the letter of the Chief of Police and the jurisprudence governing restorative justice become the legal basis outside the law for

³⁷ Ismail Rumadan, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 69–87.

³⁸ Luh Made Indryani Purnami, "MEKANISME PENGHENTIAN PENYIDIKAN PERKARA PIDANA MELALUI RESTORATIVE JUSTICE DITINJAU DARI PERATURAN KEPOLISIAN NOMOR 8 TAHUN 2021," *Jurnal Datin Law* 2, no. 2 (2021): 1–46.

³⁹ Lysa Angrayni, "Kebijakan Mediasi Penal Dalam Penyelesaian Perkara Tindak Pidana Ringan Perspektif Restorative Justice," *Jurnal Hukum Respublica* 16, no. 1 (2016): 88–102.

law enforcement officials in applying it.⁴⁰ 2) Law enforcement factors, the rule of law and law enforcement officials are likened to meat and bones. Without professional law enforcement, the principle of expediency which is the goal of the law will not be achieved. The low understanding of police officers about restorative justice is something that affects the concept of restorative justice.⁴¹ Coupled with the hesitancy of police officers to use discretionary authority to bring about healing between perpetrators and victims.

In several judges decisions on minor criminal cases, the concept of restorative justice was not applied.⁴² The perpetrator was given a verdict containing imprisonment with probation, while the victim as the injured party did not receive his rights. The judge did not award a fine due to the economic factors of the perpetrator. Some rules such as Supreme Court Regulations or Circular Letters that have been made do not reach other law enforcement institutions. Lack of attention to integration which includes coordination due to fragmentation and agency centrality makes coordination between law enforcement agencies considered not optimal, and lack of understanding of the integrated criminal justice system, synchronization of law enforcement agencies, making the apparatus rigid in enforcing the law.⁴³ 3) Facility factors, one of which is socialization, which is a means to empower and educate the community, especially towards the rule of law and its stages. Socialization of the concept of restorative justice for minor crimes to the community is not carried out routinely and thoroughly. The low

⁴⁰ Dedy Chandra Sihombing, "Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif," *Locus: Jurnal Konsep Ilmu Hukum* 2, no. 1 (2022): 281–93.

⁴¹ Mufatikhatul Farikhah, "Rekonseptualisasi Judicial Pardon Dalam Sistem Hukum Indonesia (Studi Perbandingan Sistem Hukum Indonesia Dengan Sistem Hukum Barat)," *Jurnal Hukum & Pembangunan* 48, no. 3 (2018): 556–88.

⁴² Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022): 199–208.

⁴³ Kania Putri, Andhika Dewi, and Arifin Ridwan, "Tinjauan Teoritis Keadilan Dan Kepastian Dalam Hukum Di Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia)," *Mimbar Yustitia* 2, no. 2 (2018): 142–58.

level of socialization from law enforcement to the community is due to the insufficient budget provided, while other programs classified as priorities must be carried out.⁴⁴

4) Community factors, a good society is a law-abiding society. In the event that the community does not comply with the law due to many factors that exist in the community / social conditions such as low trust from the community towards law enforcement officials. The weak economic level and low education are the main triggers for crime in society.⁴⁵ The best rule of law will not provide answers/resolutions as long as the social conditions of the community are bad, because bad intentions and intentions to seek welfare quickly/quickly remain in the community.⁴⁶ 5) Cultural factors, Indonesian society still has the mindset that crimes must be avenged and punished to deter criminals. Community habits such as vigilante behavior towards perpetrators of minor crimes are an obstacle in implementing restorative justice. The perpetrators of minor crimes caught red-handed by the community are judged by themselves first, then taken to the police station in the hope that the perpetrators will be processed for imprisonment.⁴⁷ Reconciliation of minor offenders is sometimes considered as something that does not provide a deterrent effect.⁴⁸

B. Ideal Regulation for the Settlement of Crime of Theft by Elderly through Restorative Justice Concept in Batam City

⁴⁴ Maya Hehanusa, "Faktor Penyebab Rendahnya Kesadaran Hukum Masyarakat Menjadi Saksi Tindak Pidana," *Jurnal Hukum Yurisprudinsia* 17, no. 2 (2019): 105–14.

⁴⁵ Andi Takdir Jufri, "Terjadinya Pencurian Yang Dilakukan Oleh Anak Di Kota Palopo," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 5, no. 2 (2016): 228–43.

⁴⁶ Prima Anggara and Mukhlis Mukhlis, "Penerapan Keadilan Restoratif Pada Tindak Pidana Pencurian Ringan," *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana* 3, no. 3 (2019): 468–77.

⁴⁷ Heni Hendrawati and Krisnan Johny, "Main Hakim Sendiri (Eigenrichting) Dalam Perspektif Kriminologis," *In Prosiding University Research Colloquium*, 2019, 31–38.

⁴⁸ Tita Nia, Haryadi Haryadi, and Najemi Andi, "Keadilan Restoratif Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Ringan," *PAMPAS: Journal of Criminal Law* 3, no. 2 (2022): 223–39.

According to Lawrence M Friedman's theory of legal effectiveness, there are 3 (three) aspects that form the basis for a legal system to be effective including legal structure, legal substance, and legal culture.⁴⁹ In order for the application of the concept of restorative justice as a weapon for the settlement of theft crimes by seniors in Batam City to be effective, a systematic and definite legal structure, adequate substance and legal culture of the application of restorative justice are needed. Until now, the law enforcement officers of Batam City are trying to implement restorative justice by fulfilling the three important elements of legal effectiveness. Until now, there is no specific legal structure related to the settlement of theft crimes by seniors in Batam City. As for the Draft Criminal Code as *ius constituendum*, the aspect of out-of-court settlement has been regulated in the provisions of Article 145 of the Draft Criminal Code that the prosecution authority is lost due to an out-of-process settlement. The provisions of the article fully states that the prosecution authority is canceled, if:⁵⁰

- A. There has been a decision that has obtained permanent legal force;
- B. The defendant has passed away;
- C. The case has expired;
- D. Settlement outside the process;
- E. Maximum fine shall be paid voluntarily for criminal offenses committed only punishable by a maximum fine of category II;
- F. Maximum fine shall be paid voluntarily for criminal offense punishable by imprisonment of at most 1 (one) year or a maximum fine of category III;
- G. The President grants amnesty or abolition;
- H. The prosecution is stopped because the prosecution is handed over to another country based on a treaty;
- I. complaint criminal offense for which there is no complaint or the complaint is withdrawn; or
- J. The imposition of the principle of opportunity by the Attorney General.

Criminal law policy which is often referred to as crime prevention has three stages, namely: 1) formulation stage (legislative policy); namely how the criminal law is formulated. 2) the application stage (judicial policy); namely how the criminal law that

⁴⁹ Lalu M. Alwin Ahadi, "Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum," *Jurnal Usm Law Review* 5, no. 1 (2022): 110–27.

⁵⁰ Rudy Antow, "Hapusnya Kewenangan Menuntut Pidana Pembunuhan Karena Daluwarsa," *Lex Crimen* 8, no. 12 (2019): 98–105.

has been formulated is applied/enforced. 3) execution stage (executive policy); namely how the criminal law is executed and implemented.⁵¹

The idea of legal reform, especially for elderly offenders who have not been taken seriously, needs to be studied further. The background of the need for penal mediation for elderly offenders is the humanitarian aspect. Literally humans have human nature. The sense of empathy that arises in society when a criminal case involving the elderly as the perpetrator arises as a basis for considering that penal mediation for perpetrators who have entered old age needs to be taken into account due to various factors such as physical and mental which are not the same as productive age.⁵²

From several cases that occurred in Indonesia involving elderly perpetrators such as grandmother Minah, grandfather Nyabin and other elderly people who committed criminal acts, the causal factor was poverty and committed criminal acts such as theft to survive. In contrast to the perpetrators of corruption, the average causal factor is lifestyle, which encourages corruptors to benefit from illegal means.⁵³

The settlement of cases outside the court through penal mediation (including in cases where the perpetrators are elderly offenders) should be aimed (if it will be made in a regulation) at small or light cases that can be:⁵⁴

- Offenses as regulated in the third book of the Criminal Code
- Misdemeanor (tipiring) punishable by imprisonment or confinement for a maximum of 3 (three) months or a maximum fine of Rp. 7,500,- (seven thousand five hundred rupiah).
- Minor crimes (lichte misdrijven) as stipulated in the Criminal Code are:
 1. Article 302 on light maltreatment of animals.
 2. Article 315 on minor insult
 3. Article 352 on light maltreatment of a human being
 4. Article 364 on petty theft

⁵¹ Vivi Ariyanti, “Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia,” *Jurnal Yuridis* 6, no. 2 (2019): 33–54.

⁵² Hariyono, “Mediasi Penal Sebagai Alternatif Upaya Penyelesaian Perkara Pidana Di Luar Pengadilan.”

⁵³ Hariman Satria, “Restorative Justice: Paradigma Baru Peradilan Pidana,” *Jurnal Media Hukum* 25, no. 1 (2018): 111–23.

⁵⁴ Karim, “KARAKTERISTIK PENYELESAIAN PERKARA TINDAK PIDANA RINGAN MELALUI RESTORATIVE JUSTICE,” *Jakad Media Publishing*, 2019.

5. Article 373 on light embezzlement
 6. Article 379 on minor fraud
 7. Article 482 on minor stolen goods
- Crimes as set out in Article 362
 - Crimes as stipulated in Article 359 and Article 360 of the Criminal Code
 - Crimes committed by children as stipulated in Law No. 3 of 1997
 - Crimes as stipulated in Law Number 23 Year 2004 on the Elimination of Domestic Violence (KDRT).
 - Settlement of medical disputes. 80 The Draft Criminal Code as *ius constituendum* aspect of out-of-court settlement has been regulated in the provisions of Article 145 of the Draft Criminal Code that the prosecution authority is waived due to out-of-process settlement.

Efforts to resolve criminal cases through penal mediation against elderly perpetrators are essentially a renewal of criminal law, because previously it had not been regulated in legislation specifically (*lex specialis*).⁵⁵ Restorative justice against elderly perpetrators needs to be applied in Indonesia, seen from the basic reasons for the application of case settlement against elderly perpetrators, namely seen from the objectives of penal mediation which is a win-win solution that prioritizes the agreement of both parties, both from the physical and psychological side, the elderly are less suitable for the criminalization process through the criminal justice system generally used by law enforcement officials. However, by examining more deeply the legal case faced by the elderly perpetrator, whether the criminal case is included in the mild or severe (selective) category.⁵⁶

In substance, law enforcement officials are trying to create restorative justice innovations. There is a new innovation, namely establishing restorative justice villages in 2023. The existence of restorative justice villages in the city of Batam is a program of the Attorney General's Office which was formed by the Batam District Attorney

⁵⁵ Muhaimin Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019): 185–206.

⁵⁶ Philipi Risard Kakiay, "PENERAPAN ASAS SELEKTIF DAN LIMITATIF DALAM PEMIDANAAN DALAM RANGKA MENGURANGI KAPASITAS LEMBAGA PEMASYARAKATAN," *Universitas Atma Jaya Yogyakarta*, 2021.

(Kejari).⁵⁷ Based on a statement by Herlina Setyorini, the Head of the Batam District Attorney's Office, the village of restorative justice is a new innovation to resolve criminal cases in a family manner and emphasizes restoration to the original state rather than retaliation.⁵⁸ The restorative justice village also serves to socialize the restorative justice policy to the wider community. With the new innovation of restorative justice, it will be more effective method of solving theft crimes by seniors in Batam City today. In terms of legal culture, the concept of restorative justice is still not well known among the public and there are even some people who still adhere to the retaliation system to resolve legal cases. Basically, the enforcement of criminal sanctions is not only imprisonment but the perpetrators of criminal acts get guidance and changes in their behavior (reconstruction of perpetrator behavior) as an effort to bring justice and mutual protection.⁵⁹

Therefore, it is necessary to rethink imprisonment if there are other alternatives that are more effective as an effort to bring justice. Oliver W.H argues that "The supreme court is not of justice, it is a court of law" which means that making the law just is not enforcing the law for the law itself but enforcing the law for justice. In other words, punishment does not only talk about retaliation, but also how punishment continues to humanize humans (Humanistic), returning offenders to society after serving their sentences and renewing the behavior of criminal offenders for the better, both in terms of morals and in terms of self-ability so that they can live well in society.⁶⁰ To increase the effectiveness of implementing the concept of restorative justice, there is a need for

⁵⁷ BRAMNTYO ADIMAS, "PERAN KEPALA DESA HAJIMENA DALAM PENYELESAIAN SENGKETA PIDANA DI KAMPUNG RESTORATIF JUSTICE," *FAKULTAS HUKUM UNIVERSITAS LAMPUNG*, 2023.

⁵⁸ Yusi Amdani, "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh," *Al-'Adalah* 13, no. 1 (2016): 81–76.

⁵⁹ Abdurrakhman Alhakim, "THE IDEAS OF RECHTERLIJK PARDON AS A RESTORATIVE JUSTICE APPROACH: FROM VENGEANCE TO RECOVERY," *Ganesha Law Review* 1, no. 1 (2023): 1–12.

⁶⁰ Eko Nurisman and Antony Antony, "Unmasking Xenophobia: Exploring Anti-Chinese Sentiments in Indonesia through a Criminological Lens," *Journal of Judicial Review* 25, no. 1 (June 17, 2023): 89, <https://doi.org/10.37253/jjr.v25i1.7731>.

adequate regulations, substance that can promote restorative justice to foster a culture of restorative justice.

Conclusion

Regulations on restorative justice are found in many other rules outside the law but do not have specific regulations (*lex specialis*), especially in the settlement of theft crimes by seniors in Batam City, causing legal uncertainty and there are still obstacles in applying restorative justice due to factors such as lack of restorative justice and discretionary authority; inadequate means of socialization; social conditions and public distrust of law enforcement institutions, vigilante culture and providing deterrent effects by the community against perpetrators of theft crimes. Therefore, the settlement of cases against elderly perpetrators requires the establishment of special regulations, forming innovative law enforcement agencies/apparatus on the concept of restorative justice to foster a culture of restorative justice in society in order to achieve legal effectiveness in society, especially in the settlement of theft crimes by seniors in Batam City.

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