



## DEATH CRIME AGAINST SEXUAL VIOLENCE (RAPE OF 12 STUDENTS IN BANDUNG) IN A RESTORATIVE JUSTICE PERSPECTIVE

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### ABSTRACT

*Herry (Santriwati Rape Case in Bandung) is suspected of having violated a criminal offense Article 81 paragraph (1), paragraph (3) in conjunction with Article 76.D of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 65 paragraph (1) of the Criminal Code. The settlement of criminal cases can still be carried out amicably or based on restorative justice based on the following provisions: Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice ("Agency 15/2020"). Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation ("Perkapolri 6/2019"). Circular Letter of the Head of the State Police of the Republic of Indonesia Number SE/8/VII/2018 Year 2018 concerning the Application of Restorative Justice (Restorative Justice) in the Settlement of Criminal Cases ("SE Kapolri 8/2018").*

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## 1. INTRODUCTION

Indonesia is a state of law, the explanation of the 1945 Constitution which is the constitution of the State of Indonesia which stipulates that Indonesia is a state of law. However, even though Indonesia is a legal state, in everyday life, people are often faced with an urgent situation, the need for self-satisfaction.

In general, the needs of every human being will not be fulfilled, although not entirely. Meeting urgent needs is usually done without careful thought that can harm the environment or other humans.<sup>1</sup> It is also referred to as a criminal event or a crime (delict) is an act or series of actions that can be subject to criminal law.

A legal event can be declared as a criminal event if it fulfills its elements.<sup>2</sup> To return to an atmosphere of life that is of good value, it is necessary to have accountability from the perpetrator who creates an imbalance, it is also called criminal responsibility or can be subject to criminal penalties.

Of the various kinds of criminal offenses in Indonesia, there is one type of offense that attracts public attention, namely sexual violence against children. Many things can pose a threat to the survival of a child, from the lack of quality education to violence. Violence in question is sexual violence against children, namely any unwanted sexual acts, requests to perform sexual acts, either verbal or physical acts of a sexual nature, or any other behavior of a sexual nature and by coercion. What is certain is that it also harms society in the form of loss of balance, peace and order in society.<sup>3</sup>

<sup>1</sup>Abdoel Djamali. Introduction to Indonesian Law. Rajawali Pers, Jakarta, 2014. p. 171

<sup>2</sup>Ibid., p.175

<sup>3</sup>Nursariani Simatupang and Faisal I. Criminology An Introduction. Prima Pustaka, Medan, 2017, p.44

For example: the case of sexual violence in Bandung recently. The defendant Herry Wirawan, the perpetrator of the rape of 12 female students in Bandung, was sentenced to death with additional punishment in the form of chemical castration by the Public Prosecutor.<sup>4</sup>

This demand was conveyed by the prosecutor in a trial held at the Class IA District Court in Bandung, West Java, Tuesday (11/1). The Prosecutor, who is the Head of the West Java Prosecutor's Office, Asep N Mulyana, assessed that Herry was proven guilty of committing acts of sexual abuse against 12 of his students. We also impose or ask judges to impose additional penalties in the form of identity announcements distributed through judges and additional penalties in the form of chemical castration.

Herry was suspected of having violated a criminal offense in Article 81 paragraph (1), paragraph (3) in conjunction with Article 76.D of the RI Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 65 paragraph (1) of the Criminal Code.

One of the reasons for the prosecution was that the defendant's actions were considered to have been categorized as sexual violence by referring to the UN convention against inhumane torture. The reason is, of the dozens of students, some of them are said to be in a pregnant condition. Even the five victims have given birth up to two times.

The protection given to children is very close to interests as individuals in a country. Regarding the protection of individual interests, there are at least three things that are protected. First, protection of life.

Therefore, in the Criminal Code there are articles related to life. Second, the protection of property as outlined in the articles relating to crimes against property. Third, protection of honor, both decency and good name. Thus in the Criminal Code there are also articles related to honor.<sup>5</sup>

In Indonesia itself, it provides special protection for children as stipulated in Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning child protection. However, the punishment contained in the law is still considered light and has not been maximized in reducing the number of sexual violence against children.

Therefore, there is still a need for legal reforms that can provide a deterrent effect to perpetrators as well as countermeasures in order to suppress or even eliminate sexual violence against children. Is Indonesian law fair if the perpetrators who destroy the life of a child who still has a very long future are punished lightly?

Based on the description above, the formulation of the problem is:

1. What is the Prosecutor's claim against sexual violence (rape of 12 female students in Bandung)?
2. How can the settlement of criminal cases still be carried out amicably or based on restorative justice?

## 2. LITERATURE REVIEW

### Sexual Violence

According to Ricard J. Gelles, violence against children is a deliberate act that causes harm or harm to children (both physically and emotionally). Forms of violence against children can be classified into physical violence, psychological violence, sexual violence and social violence.

Sexual violence against children according to End Child Prostitution in Asia Tourism (ECPAT) International is a relationship or interaction between a child and an older person or an adult such as a foreigner, sibling or parent where the child is used as an object to satisfy the sexual needs of the perpetrator. This act is carried out using coercion, threats, bribes, deception and even pressure.

These sexual violence activities against children do not have to involve bodily contact between the perpetrator and the child as the victim. The forms of sexual violence itself can be in the form of rape or obscenity.<sup>6</sup>

The term sexual harassment or sexual violence is not recognized in the Indonesian Criminal Code. The Criminal Code (KUHP) only recognizes the term obscene acts. The Big Indonesian Dictionary (KBBI) states that perpetrators of sexual harassment are people who like to humiliate or belittle other people, with regard to sex (gender) or with regard to cases of sexual intercourse between men and women.

Obscene acts in the Criminal Code are regulated in the Second Book of Crimes, Chapter XIV concerning Moral Crimes (Article 281 to Article 303). For example, rape (Article 285), or persuading to commit obscene people who are still minors (Article 293).

<sup>4</sup><https://www.cnnindonesia.com/nasional/20220112215151-12-745897/List-vonis-Hukuman-kebiri-bagi-Terdakwa-Kerasaan-Sexual>/accessed January 13, 2022

<sup>5</sup>Eddy OS Hiariej. Principles of Criminal Law Revised Edition. Cahaya Atma Pustaka, Yogyakarta 2014, p. 35

<sup>6</sup>Ivo Noviana, "Sexual Violence Against Children: Its Impact and Handling", Jurnal Sosio Informa Vol 01 No. 1, 2015, p.15



Child Sexual Abuse involves persuading or coercing a child to take part in sexual activities, or encouraging a child to behave in sexually inappropriate ways including completing or attempting sexual acts or contact or non-contact sexual interaction with a child by an adult.<sup>7</sup>

### Category Sexual Violence

Sexual violence is usually divided into two categories based on the identity of the perpetrator, namely:

#### a. Family Abuse

Included in familial abuse is incest, namely sexual violence in which the victim and the perpetrator are still related by blood, being part of the nuclear family.

The category of incest in the family and associated with violence against children, namely the first category, sexual molestation, this includes noncoitus interactions, petting, fondling, exhibitionism, and voyeurism, all things related to stimulating the perpetrator sexually.

The second category, rape (sexual assault), in the form of oral or genital intercourse, masturbation, oral stimulation of the penis (fellatio), and oral stimulation of the clitoris (cunnilingus). The last category that is the most fatal is called forcible rape, which includes sexual contact. Fear, violence, and threats become difficult for the victim.

Mayer said that there were at most the last two categories that inflicted the most trauma on children, but previous victims had not said so.

#### b. Extra-Familial Abuse

Sexual violence is violence perpetrated by someone other than the victim's family. In the pattern of sexual abuse outside the family, the perpetrator is usually an adult who is known to the child and has built a relationship with the child, then lures the child into a situation where the sexual abuse is being committed, often by providing certain rewards that the child does not receive at home. . The children usually remain silent because if they find out they are afraid that it will provoke anger from their parents.

In addition, some parents are sometimes less concerned about where and with whom their children spend their time. Children who often skip school tend to be vulnerable to this incident and must be wary of.

### Pros and Cons of the Death Penalty

The pros and cons of the existence of the death penalty are still ongoing now, both on a national and international scale. These pros and cons do not only occur in Indonesia, but occur in almost all countries that exist today. Every legal expert, human rights activist and others always rely on the pros and cons of the death penalty institution with logical and rational reasons.

In addition to the regulation on basic rights, namely the right to life, which is regulated in the Universal Declaration of Human Rights (UDHR), which in terms of: This is related to the death penalty, there are exceptions to the exercise of this right, namely by having a deep understanding of the existence of derogable rights, namely in the first case "a public emergency which threatens the life of nation" can be used as a basis for limiting the implementation" basic liberties, provided that the state of emergency must be announced officially, is limited and should not be discriminatory and in Article 28A to Article 28I of the 1945 Constitution, it is subject to restrictions regulated in Article 28J of the 1945 Constitution, and the death penalty is no longer is a principal crime, but as a special crime.

The death penalty is the heaviest of all crimes, which only threatened with a heinous crime. The death penalty is considered a criminal the oldest, as old as humans, so that it raises the pros and cons of its use.<sup>8</sup>

For those who are pro with the application of the death penalty in Indonesia, there are: some of the most popular motives, namely the death penalty has a higher level of effectiveness than other threats of punishment. In addition to having a frightening effect (shock therapy), the death penalty is also more efficient. The death penalty is also used to prevent vigilante action (eigenrichting) in society.

Along with this motive, the dominant theoretical claim today is this death penalty will also have a very deterrent effect so that it will cause people to give up their intention to commit a crime. Thus, the death penalty can be used as a tool for both general and specific prevention.<sup>9</sup>

In addition, the function of punishment is still strong which emphasizes the retributive aspect, mainly the defense of several approaches from the absolute theory of retaliation, relative theory, and the combined theory which of course make important contributions to the sustainability of the death penalty in Indonesia today.<sup>10</sup>

<sup>7</sup>Diesmy Humairah, "Sexual Violence Against Children: A Study of the Relationship between Perpetrators and Victims and Vulnerability in Children", Journal of Psychoislamika Vol 12 No. 2, 2015

<sup>8</sup>Marlina, Penitensier Law, PT Refika Aditama, Second Printing, Bandung, 2016, p. 81.

<sup>9</sup>Djoko Prakoso and Nurwahid, Study of Opinions Regarding the Effectiveness of the Death Penalty, Ghalia Indonesia, Jakarta, 1995, p. 1

<sup>10</sup>Ibid., p. 12.

Those who support the implementation of the death penalty argue that the death penalty is carried out to prevent criminal acts from being repeated, which is believed to be a signal to have a frightening effect on people not to commit a crime.

The death penalty is imposed for crimes that clearly endanger the community. These circles also suggest that the death penalty should be applied selectively and not as a "legalization" of revenge.

According to Roeslan Saleh, the reason for maintaining the death penalty is: because the danger of disturbing law and order in Indonesia is greater and more threatening than in the Netherlands. Indonesia's diverse population has the potential to cause clashes, while the Indonesian government and police are inadequate. Based on this situation, it is considered that the death penalty cannot be eliminated as the most superior weapon of the Government.<sup>11</sup>

In line with this opinion, Adami Chazawi gives the view that there are two reasons the government maintains the death penalty, namely: first, the possibility of acts that threaten legal interests here is much greater than in the Netherlands, considering that this country has a very large territory wide with a population consisting of various tribes and groups with customs and different traditions.

This situation has the potential to cause disputes, sharp clashes, and great chaos in the community. Second, the security equipment owned by the Dutch East Indies government was still very lacking or not as perfect and complete as in the Netherlands.<sup>12</sup>

Views that agree with the implementation of the death penalty show arguments. Why is the death penalty necessary? Enthoven, citing Lombroso's view, by imposing and implementing the death penalty, it is hoped that there will be an artificial selection so that society is cleansed of evil and bad elements and is expected to consist of only good citizens.

Lombroso's view is strengthened by Garofalo's opinion which states that with the implementation of the death penalty against approximately 70,000 people based on laws under the reigns of Eduard VI and Elisabeth then proved that crime has been greatly reduced.<sup>13</sup>

- 1) From a pro-death penalty perspective, the following reasons are generally stated: The death penalty guarantees that the criminal will not move again. Society will no longer be bothered by criminals because of the "corpse" has been buried so that there is no need to fear the convict anymore" (deaarde bedekt het lijken van den veroordeelde is niets meer te vreezen).
- 2) The death penalty is a powerful tool of repression for the government especially in the local government of the Dutch East Indies.
- 3) With this powerful tool of repression the public interest can be guaranteed so that peace and legal order can be protected.
- 4) This powerful tool of repression also serves as a general prevention so that it is hoped that potential criminals will discourage their intention to commit crimes.
- 5) Especially with the execution of public executions expected a greater fear of committing crimes.

For those who are against the application of the death penalty, it is based on opinion that the death penalty violates human rights. Those who are against this argued that the death penalty is against the constitution and Law no. 39 of 1999 concerning Human Rights, as well as international human rights instruments that have been ratified by Indonesia, such as the Covenant International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On that basis, the death penalty should be abolished as a criminal sanction in Indonesian national law.

According to Simons, he does not agree with maintaining the death penalty in KUHP, but Simons can accept if the death penalty is seen as an emergency action in extraordinary circumstances so that it is maintained in the criminal Code. Simons brought up the reason that Staatscommissie too talk about capital punishment as a last resort, as a law emergency, which if so it must be properly arranged in writing. Simons' view is in line with Kruseman's view, that the death penalty only as an emergency authority (noodrecht).<sup>14</sup>

Dutch legal scholars who are against the death penalty classified themselves in the ranks of abolition; they put forward excuses as follows:

- 1) In general, Dutch legal scholars who oppose the death penalty (hereinafter referred to as abolitionists) cannot understand why based on the concordance principle the death penalty is still being maintained in Dutch East Indies.

<sup>11</sup>Roeslan Saleh, Problems with the Death Penalty, New Script, Second Printing, Jakarta, 1998, p. 22.

<sup>12</sup>Adami Chazawi, Stelsel of Crime, Criminal Theories, and Limits on the Application of Criminal Law, PT Raja Grafindo Persada, Jakarta, 2002, p. 30

<sup>13</sup>JE Sahetapy, Death Penalty Threats for Premeditated Murder, Rajawali Pres, Bandung, 1999, p. 72-73.

<sup>14</sup>Ibid pp. 40-41

- 2) The abolitionists argue that the death penalty is not a crime, because the death penalty does not meet all the criteria required for a crime. They were also surprised that the contents of Minister Modderman's speech were brilliant in the context of opposing the death penalty in the Netherlands is not also carried out in the Dutch East Indies. In outline, Modderman argues that:
- a) The death penalty is disproportionate to the mistakes made by criminal.
  - b) By being sentenced to death, the possibility of repairing the criminal has been completely closed.
  - c) It is difficult to guarantee that the judge's decision is correct, correct and fair, because after all, the judge is still a human being.
  - d) With the implementation of a death penalty, the possibility to review a judgment that may have been wrong simply ceased to exist.
  - e) Decisions and especially the implementation of the death penalty have a bad influence on society.
- 3) The life of a human being, even if he is a great criminal, cannot be simply revoked by the execution of the death penalty, also according to the norms of norms that apply in indigenous peoples who are qualified as "people who are less cultured and lack education" (minbeschaafde of min-intellectueel ontwikkelde volken).
- 4) If the death penalty is considered as a tool to frighten candidates would-be criminal then it's hard to accept the thought of the base controversial clemency institutions.
- 5) Besides that, it is also difficult to understand that if the death penalty has a frightening function, why should its implementation be carried out in a closed place that cannot be seen by the public, for example in prisons (intra muros).
- 6) If it is true that the death penalty is a powerful tool so that it frightens would-be criminals, why with the abolition of the death penalty in the Netherlands, for example, did not increase crime.

The pros and cons of implementing the death penalty are already happened from time immemorial and continue to this day. Groups that do not agree with the implementation of the death penalty generally doubt the effectiveness of the death penalty as a means of deterrence and deterrence.

In addition, the application of the death penalty is also seen as a punishment that is contrary to human rights, especially the right to life, which is a human right that cannot be reduced under any circumstances (non derogable rights). In fact, in various legal instruments that regulate human rights, both national and international instruments, the final provisions must include rules stating that the rights and freedoms possessed by every human being are not absolute freedoms, but there are limits. In addition, these rights and freedoms must not interfere with the rights and freedoms of others.

The ineffectiveness of the death penalty as a means of deterrence and deterrence actually influenced by many factors, one of which is related to the application in concrete cases and the implementation of the death penalty itself.

In terms of implementation, the lack of effective deterrence and deterrence can occur because the positive law rules clearly include the death penalty but have never been applied by law enforcers. Meanwhile, from the side implementation, this is related to the slow implementation of the death penalty to create uncertainty.

The slow execution of the death penalty was then used by the convicts to escape the death penalty by taking advantage of various legal loopholes or by escaping from prison before the execution was carried out.

The non-implementation of the death penalty and the slow implementation of the sentenced death cause the death penalty to be just an "empty threat" so less deterrent effect. Conversely, the death penalty is not only used as an "empty threat", then the effectiveness of the death penalty as a means of deterrence and deterrence will be realized properly.

If the death penalty is applied by law enforcement officials and the execution of the sentence can be carried out simply and with certainty, it will be able to bring justice to both the convict himself and the victim and will also benefit mankind as a whole, namely the protection of humanity from criminal acts. which insults the dignity of humanity as well as criminal acts that can cause the loss of the right to life of others.<sup>15</sup>

### Restorative Justice

Umbreit in his writings explains that "Restorative justice is a "victim-centered response to crime that allows the victim, the offender, their families, and representatives of community to address the harm caused by the crime"."

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<sup>15</sup>Bambang Sugeng Rukmono, The Nature of the Implementation of the Death Penalty From a Human Rights Perspective, Rajawali Pres, Jakarta, 2016, p. 123.



(Restorative justice is a "victim-centred response to crime that allows victims, offenders, their families, and representatives of society to deal with the damage and harm caused by the crime".)<sup>16</sup>

Against this view Daly<sup>17</sup> said, that the concept of UmbreitThe program focuses on "repairing the damage and losses caused by criminal acts" which must be supported through the concept of restitution,namely "trying to recover the damage and losses suffered"by pre-victims of criminal acts and facilitate the occurrence of peace".<sup>18</sup>

Thus, it is true what Tony Marshall said thatIn fact, restorative justice is a concept of resolving an actcertain crimes involving all interested parties tototogether looking for solutions and at the same time looking for solutions indealing with the incident after the crime occurred and how toaddress its future implications.<sup>19</sup>

According to Wright, that the main goal of restorative justice is restoration, while the second goal is redress.<sup>20</sup> This means thatthe process of overcoming criminal acts through a restorative approach is a the process of resolving criminal acts, which aims to restore the situation. which includes compensation for victims through certain methods agreed upon by the parties involved in it.

According to UNODC, what is meant by restorative justice is an approach to solving problems, in its various forms, involving victims, perpetrators, their social networks, judicial bodies and the community.<sup>21</sup>

Restorative justice programs are based on the basic principle that behavior criminals not only violate the law, but also injure the victim andPublic. Any attempt to address the consequences of criminal behavior should, where possible, involve the perpetrator and the injured parties in addition to providing victims and perpetrators with needed assistance and support.<sup>22</sup> Meanwhile, according to Clifford Dorn, a leading scholar of the movement restorative justice, has defined restorative justice as a philosophyjustice emphasizes the importance and relevance of perpetrators, victims, society, andgovernment in cases of crime and juvenile delinquency.<sup>23</sup>

### 3. METHODS

The research method is descriptive analytical, which describes the problems and facts that occur based on positive legal norms, namely the laws related to this research.

Approach method with normative juridical that is using positive legal norms related toDeath Penalty Claims Against Sexual Violence (Rape Against 12 Santriwati in Bandung) in the Perspective of Restorative Justice.

Data analysis was carried out qualitatively, meaning without using numbers and statistical formulas.

### 3. RESULTS AND DISCUSSION

The recent sexual violence in Bandung with the Defendant HerryWirawan, the perpetrator of the rape of 12 female students in Bandung, was sentenced to death with additional punishment in the form of chemical castration by the Public Prosecutor.<sup>24</sup>

Herry was found guilty of committing acts of sexual abuse against 12 of his students. Prosecutors also impose or ask judges to impose additional penalties in the form of identity announcements distributed through judges and additional punishments in the form of chemical castration.

<sup>16</sup>Mark M. Lanier and Stuart Henry, *Essential Criminology*, Second Edition, Wastview, Colorado, USA, 2004, p. 332 and 407-408

<sup>17</sup>Kathleen Daly, *Restorative Justice in Diverse and Unequal Societies*, Law in Context 1:167-190, 2000, pp. 332 and 367

<sup>18</sup>Sthepanie Coward-Yaskiw, *Restorative Justice: What Is It? Can It Work? What Do Women Think?*, Horizons 15 Spring), <http://web.infotrac.gale-group.com>

<sup>19</sup>Tony Marshall, *Restorative Justice: An Overview*, London: Home Office Research Development and Statistics Directorate, 1999, p. 5,

<sup>20</sup>Wright, 1991 p. 117 accessed from the website <http://www.restorativejustice.org> on December 08 2017

<sup>21</sup>UNODC, *Handbook on Restorative Justice Programmes*. Criminal Justice Handbook Series, Vienna, UN New York, 2006, p. 5

<sup>22</sup> Rocky Mabun, *Restorative Justice as a Criminal System in the Future*, <http://forumduniajuangblogku.wordpress.com>, accessed on December 08, 2017

<sup>23</sup>Susan C. Hall, *Restorative Justice in the Islamic Penal Law. A Cintribution to the Global System*, Duquesne University School of Law Research Paper, No. 2012-11, pp. 4

<sup>24</sup><https://www.cnnindonesia.com/nasional/20220112215151-12-745897/List-vonis-Hukuman-kebiri-bagi-Terdakwa-Kerasaan-Sexual/>accessed January 13, 2022



Herry was suspected of having violated a criminal offense in Article 81 paragraph (1), paragraph (3) in conjunction with Article 76.D of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 65 paragraph (1) of the Criminal Code.

In formulating criminal law norms and formulating criminal threats, there are at least 3 (three) things to be achieved by the implementation of criminal law in society, namely forming or achieving the ideals of an ideal community life or a society that is aspired to, maintaining and upholding noble values. in society, and maintain something that is considered good (ideal) and is followed by the community with negative norm formulation techniques.

The purpose of imposing criminal sanctions is influenced by the reasons that are used as the basis for threats and imposing criminal penalties, in this context the reasons for sentencing are retaliation, benefit, and a combination of retaliation that has a purpose or retaliation given to the perpetrator with a specific purpose and purpose.

According to Tony F. Marshall, "Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future". (Restorative justice is a process where all parties with an interest in a particular violation meet together to resolve together to resolve together how to resolve the consequences of the violation for the sake of the future).

From this definition, it can be concluded that the settlement of a criminal act by using Restorative Justice prioritizes the occurrence of an agreement between the litigants, with the interests of the future. Meanwhile, according to criminologist Adrianus Meliala, the restorative punishment model was introduced because the current criminal justice and criminal justice system creates problems.

In the current prison system, the purpose of punishment is deterrence, revenge, and suffering as a consequence of his actions. Sentence indicators are measured by the extent to which inmates (prisoners) are subject to prison regulations. So, the approach is more to security (security approach).

Restorative justice is basically a criminal law approach that contains a number of traditional values. It is based on two indicators, namely the values on which it is based and the mechanisms it offers. This is the basis for considering why the existence of restorative justice is reckoned with. The existence of this approach is perhaps as old as criminal law itself.

In addition to imprisonment that has consequences for the families of prisoners, the current system is considered not to relieve or cure victims. Moreover, the legal process takes a long time. On the other hand, the restorative model emphasizes conflict resolution.

The idea of Restorative Justice has also been accommodated in the Criminal Code Bill, namely the introduction of an alternative criminal system in the form of social work punishment and supervision punishment. So that in the end, Restorative Justice pays attention to the interests of crime victims, perpetrators of crime and the community.

The settlement of criminal cases can still be carried out amicably or based on restorative justice based on the following provisions:

1. Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice ("Agency 15/2020");
2. Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation ("Perkapolri 6/2019");
3. Circular Letter of the Head of the State Police of the Republic of Indonesia Number SE/8/VII/2018 Year 2018 concerning the Application of Restorative Justice (Restorative Justice) in the Settlement of Criminal Cases ("SE Kapolri 8/2018").

Restorative justice referred to in the above provisions is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just settlement by emphasizing restoration to its original state, and not retaliation. .

The principle of restorative justice cannot be interpreted as a method of peaceful cessation of cases, but is broader in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and the local community as well as investigators/investigators as mediators, while the settlement cases, one of which is in the form of a peace agreement and the revocation of the right to demand from the victim, it is necessary to ask for a judge's determination through the public prosecutor to abort the authority to demand from the victim, and the public prosecutor.

**Resolution at the Investigation Level:** The legal process of criminal cases involving you has not yet reached the stage of trial examination and is only at the level of investigation or investigation by the Police. In such a case, a settlement based on restorative justice can be made, if material and formal conditions are met.

The material requirements include:

1. Does not cause public unrest or there is no community rejection.
2. No impact on social conflict.
3. There is a statement from all parties involved not to object, and waive the right to sue before the law.
4. Limiting principle:
  - a. On the perpetrator:
    - 1) the level of the perpetrator's error is relatively light, namely the error in the form of intentional, especially intentional as an intent or purpose; and
    - 2) the perpetrator is not a recidivist;
  - b. On criminal acts in progress:
    - 1) Investigation; and
    - 2) Investigation, before the Notification of the Commencement of the Investigation is sent to the Public Prosecutor;

Formal requirements, including:

1. Letter of request for peace from both parties (the reporting party and the reported party).
2. The statement of reconciliation (deed of dading) and the settlement of disputes between the litigants (the reporting party, and/or the family of the reporting party, the reported party and/or the reported family and representatives of community leaders) are known by the investigator's superiors.
3. Minutes of additional examination of the litigating parties after the settlement of the case through restorative justice;
4. Recommendation of a special case that approves a restorative justice settlement;
5. The perpetrator does not object and is carried out voluntarily on responsibility and compensation; and
6. All criminal acts can be carried out by restorative justice against general crimes that do not cause human victims.

If the criminal case meets the requirements above, then the criminal case can be resolved based on the mechanism for applying restorative justice.

**Restorative Justice Implementation Mechanisms:** The guidelines for the application of restorative justice are as follows:

1. After receiving the request for reconciliation from both parties (the complainant and the reported party) signed on a stamp duty, administrative research is carried out on the formal requirements for resolving cases through restorative justice.
2. A peace request after the formal requirements are met is submitted to the investigator's superior for approval.
3. After the application is approved by the investigator's superior (Kabareskrim/Kapolda/Kapolres), then the time for signing the peace statement is determined.
4. The holding of a conference that resulted in an agreement signed by all parties involved.
5. Make an official note to the investigator supervisor or Kasatker regarding the application for a special case title for the purpose of terminating the case.
6. Carry out a special case title with the reporting participant, and/or the reporting family, the reported party and/or the reported family and representatives from public figures appointed by the investigator, the investigator in charge and representatives from the internal supervisory function and legal functions and government elements if necessary.
7. Prepare administrative completeness and special case title documents and report the results of case titles.
8. Issuing a warrant to terminate an investigation/investigation and a decision to terminate an investigation/investigation on the grounds of restorative justice.
9. For cases at the investigation stage, the investigator issues an Order for Termination of Investigation and a Decision Letter for Termination of Investigation signed by:
  - a. Director of Criminal Investigation at the National Police Headquarters level.
  - b. Director of Criminal Investigation at the Polda level.
  - c. Kapolres, at the Polres and Polsek levels.
10. For cases at the investigation stage, investigators issue an Order for Termination of Investigation and a Decision Letter for Termination of Investigation, which are signed by:
  - a. Director of Criminal Investigation at the National Police Headquarters level.
  - b. Director of Criminal Investigation, at the Polda level.
  - c. Kapolres, at the Polres and Polsek levels.
11. Recording into the new register book B-19 as a restorative justice case is counted as a case settlement.





## CONCLUSION

1. Herry was suspected of having violated a criminal offense in Article 81 paragraph (1), paragraph (3) in conjunction with Article 76.D of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 65 paragraph (1) of the Criminal Code.
2. The settlement of criminal cases can still be carried out amicably or based on restorative justice based on the following provisions:
  - a. Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice ("Agency 15/2020").
  - b. Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation ("Perkapolri 6/2019").
  - c. Circular Letter of the Head of the State Police of the Republic of Indonesia Number SE/8/VII/2018 Year 2018 concerning the Application of Restorative Justice (Restorative Justice) in the Settlement of Criminal Cases ("SE Kapolri 8/2018").

## SUGGESTION

1. Starting from the implementation of the death penalty in Indonesia, regulations legislation that is currently the basis for implementation the death penalty should be reformed. In update With this policy, several sentencing policies need to be included in the laws and regulations so that the execution of the death sentence can be carried out quickly, precisely, and carefully.
2. The Panel of Judges in deciding the case must continue to provide fair punishment for the perpetrators of the crimes committed carried out, so that the punishment will have a deterrent effect for perpetrators and provide understanding to the public so that criminal acts of sexual violence do not occur in the future.

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