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Implementation of Mitigate Criminal Cases with a Restorative Justice Approach (Restorative Justice) in the Legal Area of Surabaya Polrestabaya

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Abstract

The authority of the National Police, in carrying out RJ settlements, is only limited to the settlement of minor criminal acts carried out based on reports/complaints, or finding directly suspected criminal acts, as Article 11 paragraph (1) Perkapolri No. 8 of 2021, the products issued are in the form of a Peace Agreement, an order, an order to stop the investigation, an order to stop the investigation, a decree to stop the investigation. The product of RJ's decision at the investigation level does not guarantee legal certainty, because the results of the decision do not require approval from the Head of the local District Court so that it is valid and has legal force. Implementation of the process of solving criminal problems for minor crimes through RJ work procedures carried out by the National Police, especially the Surabaya Polrestabes Police, as one of the elements of law enforcement at the stages of investigation and investigation in the Criminal Justice System (SPP), based on Law Number 8 of 1981 regarding Criminal Procedure Code, Law Number 2 of 2002 concerning the Indonesian National Police, and Regulation of the Head of the Indonesian National Police Number 8 of 2021 concerning Actions to Handle Crimes Based on Actions that are imposed on something impartial Restorative.

K*eywords:* *Police; Minor Crimes; Restorative Justice*

Introduction

Indonesia is a country that makes law the highest authority, as stated in Article 1 paragraph (3) of the 1945 Constitution. A country that makes law the highest authority (rechstaat) according to Hamid S. Attamimi by quoting Burkens, is a country that places law as the basis of state authority and the maintenance of said authority in all its forms shall be carried out under legal authority".[1] According to Philipus M. Hadjon, "the idea of rechtsstaat leans towards positive law which has the consequence that the law must be formed consciously by the legislature forming body (UU)".[2]

[1]A. Hamid S. Attamimi, *Teori perundang-undangan Indonesia*, makalah pada Pidato Upacara pengukuhan Guru Besar tetap di Fakultas Hukum UI, Jakarta, 1992, h. 8. 9.

[2]Philipus M. Hadjon, "Ide Negara Hukum Dalam Sistem Ketatanegaraan Republik Indonesia", makalah pada Simposium Politik, Hak Asasi Manusia, dan Pembangunan, dalam Rangka Dies natalis Universitas Airlangga Surabaya, 1994, h. 6.

In a country where the law is the supreme authority, everything must be done following with the law (*everything must be done according to the law*). A state that makes law the highest authority determines that the government is obliged to obey the law, not that the law is obliged to obey the government. Therefore, in a country where the law is the highest authority, everyone has the right to recognize, guarantee, the act of protecting, and certain things according to an impartial law and actions that are subject to something equal before the law.[3]

The guarantee of a certain subject according to law is achieved if the law contains 3 (three) identity values. According to Gustav Radbruch, mandatory law contains 3 (three) identity values, namely as follows:[4]

1. Actions imposed on something impartial (*gerechtigheit*), which has a philosophical value;
2. Usability (*doelmatigheid*), which has a sociological value; And
3. Matters that are certain according to the law (*rechtmatigheid*), have juridical value.

The thing that is certain according to the law in terms of the rules that apply is when a Per Law is made and promulgated or enforced with certainty, because it is arranged clearly and logically, it will not result in doubts due to multiple interpretations, so that they do not collide or result in regulatory disputes. Regulatory disputes arising from uncertainty per law can take the form of regulatory controversies, rule reductions, or rule deviations.

According to Hans Kelsen, the law is "a system of rules is a statement that emphasizes the "obligatory" aspect or *das sollen*, by including several regulations about what must be carried out. Rules are products and deliberative human actions".[5] Laws that contain general rules serve as a guideline for individuals to behave in alliances, both in dealing with one group of individuals and in relating to society. These rules become a barrier for society in burdening or taking action against individuals.

Law is a some of formulation of regulations that are established to organize back and forth behavior in society so that activities can move forward in an orderly manner and are useful for society. The use of the law needs to be considered because everyone expects the benefits of the law in people's lives, including in continuing with the implementation of law enforcement. Do not let law enforcement result in unrest in society, because the law in the form of law "is sometimes imperfect, not aspirational with the values that live in reality in society. Following the principles mentioned above, as stated by Satjipto Raharjo, an action that is imposed on something impartial is indeed one of the main values, but still in addition to other values such as usefulness. So, in law enforcement in society, the comparison between benefits and sacrifices must be proportional".[6]

The process of solving criminal problems by basing the actions imposed on something impartial, and restorative is "the process of resolving criminal problems by placating the perpetrators with the victims, involving the families of the perpetrators and victims, and other related parties to simultaneously seek the best resolution process for the benefit of the victim." and perpetrators, by prioritizing recovery back to its original state, as well as providing protective measures to victims and perpetrators of criminal acts. However, it must be understood that not all criminal problems can be resolved by using a *Restorative Justice* approach. This is because the process of resolving criminal problems employing RJ's work can only be carried out for certain criminal matters stipulated in the Law, including regulations stipulated by law enforcers (the Police, Prosecutors' Office, and Courts) based on juridical and non-juridical considerations related to the actions of the perpetrators. and losses suffered by victims of crime.

[3]Ridwan HR, *Hukum Administasi Negara*, Jakarta, Rajawali Pers, 2014, h. 21.
[4]Dikutip dari Sonny Pungus, "Teori Tujuan Hukum", http://sonny-tobelo.com/2010/10/teori-tujuanhukum-gustav-radbruch-dan.html, diakses pada tanggal 16 Agustus 2022
[5] Nn, http://mh.uma.ac.id › analisa-konsep-aturan-keadilan.
[6] *Ibid.*

From one point of view, the process model for resolving criminal problems through RJ is a process model for resolving legal issues as a reflection of the culture of the process of resolving disputes in a society that promotes peace, following legal values and a sense of action that is imposed on something impartial that lives in society. However, also from another perspective, the process of solving criminal problems through the *Restorative Justice* approach can ease the burden on the government in continuing with the increasing number of convicts who become residents of Correctional Institutions (LP), even exceeding the burden and capacity (*overloading and overcapacity*) of the capacity of the prison. in various regions in Indonesia. In addition, by completing the process of resolving actions that are imposed on something impartial, restorative avoids the stamp or label "criminal" that can be given to convicts, such as people who have served a sentence in a correctional institution..

Concerning the basis for law enforcers in using the process of resolving criminal problems through RJ, legal regulations have been established as follows:

1. Memorandum of Understanding with Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General, Head of Police NRI Number 131/Kma/Skb/X/2012, Number M. Hh-07. Hmm. 03.02 of 2012, Number Kep-06/E/Ejp/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning Implementation of the Implementation of Adjustment of Tipiring Barriers and Amount of Fines, Quick Examination Events and Implementation of RJ;
2. Decree of the Director General of the General Judiciary Agency Number 301 of 2015 concerning the Process of Completing Tipiring;
3. Attorney General Regulation Number 15 of 2020 concerning Actions to stop Prosecution Based on Actions imposed on something that is not impartial, Restorative; And
4. NRI Police Regulation Number 8 of 2021 concerns Actions to deal with Crime Based on Actions imposed on something that is not impartial, Restorative.

In the Memorandum of Understanding, Decisions and Regulations mentioned above it is stipulated that in the process of resolving certain criminal issues, with certain conditions and work methods, RJ's work methods can be used to provide protective actions and actions imposed against something that is impartial to victims and perpetrators of crimes as well as benefits for the benefit of society to restore conditions as before.

In particular, in the Preamble to the NRI Police Regulation Number 8 of 2021 concerning Actions to deal with Criminal Acts Based on Actions imposed on something impartial, Restorative, it is stated that the NRI Police need to formulate a new concept in criminal law enforcement that can respond to developments in legal needs in society, to fulfill a sense of actions that are imposed on something impartial to all parties in criminal matters. Apart from that, it is also to accommodate the rules and legal values applied in society, as a solution to the process of solving criminal problems which can provide definite legal terms and uses and actions imposed on something impartial to society. For this, the NRI Police need to realize the process of resolving criminal acts by prioritizing actions that are imposed on something impartial,and restorative, which emphasizes restoration to its original state, a balanced state of action to protect and benefit victims and perpetrators of criminal acts, which does not review to determine attitudes towards punishment, as a legal necessity of society.

In Article 2 of the NRI Police Regulation Number 8 of 2021 concerning Actions to deal with Criminal Acts Based on Actions imposed on something that is not partial to Restorative, it is determined that (1) Actions to deal with crimes based on actions imposed on something that is not impartial are carried out in activities to maintain the function criminal investigator; investigation or investigation; (2) carried out by police investigators; (3) can be carried out within the framework of the process of completing Tipiring; and (4) can be carried out by stopping the investigation or investigation. Furthermore, Article 5 it is stated that "things that are material requirements to be able to carry out the act of dealing with criminal acts with RJ are: (a) not resulting in anxiety and/or acts of rejection from the

public; (b) does not clash with social disputes; (c) does not have the power to divide the nation; (d) does not have the nature of a radical movement in politics and groups that wish to separate themselves from a union; e) not a recidivist of a crime based on a court verdict; and (f) is not a crime of using violence to create fear in an effort to achieve goals, a crime against state security, a crime against corruption, and a crime against murder".

Regarding the duties and authorities of the National Police, the Chief of Police of the Republic of Indonesia (Kapolri) issued Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 Concerning the Handling of Criminal Acts Based on Restorative Justice (Perkapolri No. 8 of 2021) with the consideration that Polri needs to realize the settlement of criminal acts by prioritizing justice Restoration that emphasizes restoration to its original state and balance of protection and interests of victims and perpetrators of crimes that are not oriented towards punishment is a legal requirement of society. Regarding the authority of the Police as the implementation of the provisions of Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police (UU Polri), it is necessary to formulate a new concept in criminal law enforcement that accommodates the norms and values prevailing in society as a solution while providing legal certainty, especially the benefit and sense of justice in society.

In Article 16 paragraph (1) letter h of the Police Law it is stated that "In the framework of carrying out tasks in the field of criminal proceedings, the Indonesian National Police has the authority to terminate an investigation. The authority of the Police is limited to stopping investigations, while Article 18 of the Law on the Police states that in the public interest, Polri officials in carrying out their duties and authorities can act according to their judgment, meaning that the Police in acting must consider the benefits and risks of their actions and serve the public interest. The implementation of the provisions can only be carried out in very necessary circumstances by taking into account laws and regulations, as well as the Chief of Police's Professional Code of Ethics.

The authority of the National Police, in carrying out RJ settlements, is only limited to the settlement of minor criminal acts carried out based on reports/complaints, or finding directly suspected criminal acts, as Article 11 paragraph (1) Perkapolri No. 8 of 2021, the products issued are in the form of a Peace Agreement, an order, an order to stop the investigation, an order to stop the investigation, a decree to stop the investigation. The product of RJ's decision at the investigation level does not guarantee legal certainty, because the results of the decision do not require approval from the Head of the local District Court so that it is valid and has legal force.

Pembahasan

1.Legal Certainty Theory

Indonesia is a country that makes law the highest authority as stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a country that makes law the highest authority, the law guarantees a certain thing. The importance of certain matters according to law for citizens in a country that makes law the highest authority of Indonesia following with what is stipulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: "Everyone has the right to recognize, guarantee actions to protect and matter that is certain according to the law that is impartial and actions that are subject to something equal before the law.

In this case, it is necessary to understand that the law aims to regulate the order of society and is tasked with protecting the usefulness of humans and society as well as guaranteeing certain things according to law and seeking a balanced state of order in society. Protecting the use of humans and society means suing and expecting sacrifices from members of society. Based on the positivism paradigm, it is said that the definition of mandatory law prohibits all rules that are similar to law, but do not have the

nature of an order from a sovereign authority. The thing that is certain according to the law must always be upheld regardless of the consequences and there is no reason not to uphold it, because in the paradigm of positive law the only law is the law made by the authorities. From this it appears that positivists prioritize certain legal matters guaranteed by the authorities. What is certain according to the law in question is the law that is officially enacted and implemented with certainty by the State. Certain things according to the law mean that everyone can sue so that the law is carried out and that demand must be fulfilled.

According to Sudikno Mertokusumo, what is certain according to the law is a guarantee that the law is implemented, that those who are entitled according to the law can get their rights and that decisions can be carried out.[7] Although certain matters according to the law are closely related to actions that are imposed on something impartial, certain matters according to the law are not identical to actions that are imposed on something that is not impartial. Therefore, the law has a general nature, binds everyone, and has an equalizing nature, while actions imposed on something impartial have a subjective nature, are individualistic, and do not generalize. Thus, is a protector of human use.[8] In this case, to protect human use, the law must be implemented. The implementation of the law can peacefully take place, but violations of the law can also occur. Therefore, the law that has been violated must be enforced.

In addition, Satjipto Raharjo argued that it is through upholding this law that this law becomes a reality, and in upholding the law three elements must always be considered, namely matters that are certain according to law, use, and actions that are imposed on something that is not impartial.[9] In this case, law enforcement implies that the law must be implemented and enforced, because everyone expects the law to be enacted in the event of a concrete incident. Thus, what is the law, that is what must be enforced it is not permissible to deviate, meaning that even if this world collapses the law must be upheld (*fiat justitia et pereat mundus*).[10]

Law enforcement, one of which is wanting a certain matter according to law, which is an act of protecting justifiable against arbitrary actions, which means that individuals will be able to get something that is expected in certain circumstances. "Society expects certain matters, because with certain matters society will be more orderly. The law is in charge of making something new, a matter that is certain according to law because it aims at public order".[11]

Sudikno Mertokusumo argues that it is through law enforcement that this law becomes a reality.[12] A certain thing is a definite subject (statement), a provision or stipulation".[13] The law essentially must be certain and impartial. It must be a guideline for behavior and impartiality because the guideline for behavior is obliged to support an order that is considered reasonable. Only because it has an impartial nature and is implemented with certainty that the law can carry out its functions. Certain things and actions imposed on something impartial are not just moral demands, but factually characterize the law. An uncertain and impartial law is not merely a bad law, it is not a law at all. These two characteristics include understanding the law itself (den begriff des Rechts)[14].

[7]Sudikno Mertokusumo, *Bab-bab tentang Penemuan Hukum, Citra Aditya Bakti, Bandung,* 2007,h. 160
[8]*Ibid.,* h. 1.
[9]Satjipto Raharjo, *Ilmu Hukum*, CitraAditya Bakti, Bandung, 2000, h. 54.
[10]*Ibid*.
[11]*Ibid*., h. 2.
[12]Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya Bakti, Bandung, 2013, h. 1.
[13]Cst Kansil, Christine S.t Kansil, Engelien R, Palandeng dan Godlieb N Mamahit, *Kamus Istilah Hukum*, Jala Permata Aksara, Jakarta, 2009 h. 385.
[14]Shidarta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*, Bandung, Revika Aditama,2006, h. .79-80.

Law is a collection of rules or principles in common life, the entire rules of behavior that are enforced in a common life, which can be enforced with a sanction".[15] Certain things according to the law are characteristics that cannot be separated from the law, especially for written legal rules. Laws without subject values will surely lose their meaning, because they can no longer be used as guidelines for the behavior of everyone. Where nothing is certain according to law, there is no law (Ubi jus incertum, ibi jus nullum).[16]

According to Hans Kelsen, the law is a system of rules. Rules are statements that emphasize the "obligatory" or das sollen aspects, by including several regulations about what must be carried out. Rules are products and deliberative human action. Laws that contain general rules serve as a guideline for individuals to behave in alliances, both in dealing with one group of individuals and in relating to society. These rules become a barrier for society in burdening or taking action against individuals. With the existence of these rules, the implementation of these rules results in certain matters according to the law.[17]

According to Utrecht, what is certain according to law contains 2 (two) basic meanings, namely: First, some rules have a general nature so that individuals know what actions may or may not be carried out; and Second, in the form of legal security for individuals from government arbitrariness because with the existence of rules that have a general nature, individuals can know what the State may impose or carry out against individuals.[18]

The thing that is certain according to the law as one of the objectives of the law is said to be part of the effort to realize the action that is imposed on something impartial. The real form of a certain thing according to law is the implementation or enforcement of the law against an action regardless of who is doing it. With certain legal matters, everyone can predict what will happen if they take certain legal actions. Things are needed to realize the principle of equality before the law without discrimination.[19] Therefore, certain matters are an inseparable feature of the law, especially for written legal rules. Law without a definite subject value will lose meaning because it can no longer be used as a guideline for the behavior of everyone. The certain thing itself is referred to as one of the objectives of the law.

Matters that are certain according to law, actions that are imposed on something impartial and legal effectiveness, associated with the purpose of this law are often associated with court sentences. The Court's verdict for actions imposed on something impartial has a philosophical aspect, namely the rule of law, values, morals, and ethics. Actions that are imposed on something impartial have the nature of rules that are enforced as well as constitutive of law. Actions imposed on something impartial the moral basis of law and at the same time a benchmark for the positive legal system and without actions imposed on something impartial, a rule does not deserve to become law. But on the other hand, critical thinking views that actions imposed on something impartial are nothing but a mirage, like a person looking at the sky which seems to be visible, but never reaches it, never even approaches it. Although it must be admitted that law without action is imposed on something impartial will occur arbitrarily.

What is certain according to law is a matter that is certain in law or a matter that is certain in regulations. All kinds of ways, methods and so on must be based on laws or regulations. In matters that are certain according to law, there are positive laws and written laws. What is certain according to law is a question that can only be answered according to the rules that are enforced, not sociological.[20] Chasing things that are certain according to the law, abandoning actions that are imposed on something impartial

[15]Sudikno Mertokusumo dalam Salim HS, *Perkembangan Teori Dalam Ilmu Hukum*, Jakarta, Raja Grafindo Persada, 2010, h. 24.
[16]*Ibid*., h. 82.
[17]*Peter Mahmud Marzuki, Op. cit., h. 158*
[18]*Riduan Syahrani, Rangkuman Intisari Ilmu Hukum, Citra Aditya Bakti, Bandung, 1999, h. 23*
[19] Moh. Mahfud MD, "Penegakan Hukum DanTata Kelola Pemerintahan Yang Baik", Makalah pada *Seminar Nasional "Saatnya Hati Nurani Bicara"* , diselenggarakan oleh DPP Partai HANURA. Mahkamah Konstitusi Jakarta, 8 Januari 2009
[20] *Ibid.*

to the law and the usefulness of the law, even though in a rule of law there are circumstances that can create a void in the rules, disputes over the rules, and confusion of the rules.

Disputes over regulations (convlicten van normen) are situations in which there is an external dispute between the regulations of a lower degree Per Law and the rules of a Per Law of a higher rank, or with an equivalent Per Law or internal disputes between one rule and other rules in one title Per Law.[21] Meanwhile, the ambiguity of the rules (vague van normen) is a situation where there is a possibility that the law has been provided but the formulation of words or sentences is unclear, resulting in a blurring of meanings.[22] Likewise, a regulatory vacuum (*leemten van normamen*) is a situation where there is a possibility that the Law does not exist at all or that there has been a regulatory vacuum.[23]

2. Theory of Action Imposed on Something Impartial and RJ

According to Plato, as quoted from W. Friedmann, society has principal elements that must be maintained, namely:

1. Separation of firm classes; for example, the ruling class of shepherds and guard dogs must be strictly separated from human sheep.
2. Identification of the destiny of the state with the destiny of its ruling class; special concern for this class and its associations; adherence to its union, the rigid rules for the maintenance and education of this class, and the strict control and collectivization of the uses of its members.

From the above principal elements other elements can be derived, such as:

1. The ruling class has a monopoly on all things such as profits and military training, and the right to own weapons and receive all forms of education, but this ruling class is not allowed to participate in economic activities, especially in the pursuit of income,
2. There must be censorship of all intellectual activity of the ruling class, and constant propaganda aimed at uniforming their thoughts. All innovations in education, regulation and religion must be prevented or suppressed.
3. The state must be self-sufficient. The state must aim at economic autarky, otherwise the rulers will depend on the merchants, or even the rulers themselves become traders. The first alternative would weaken their authority, while the second would weaken the unity of the ruling class and the stability of the country.[24]

Actions that are imposed on something impartial are also understood in a supernatural way to exist as qualities or functions of superhuman beings, whose nature cannot be observed by humans. The consequence is "the realization of the act imposed on something impartial is shifted to another world, beyond human experience; and human reason essential for action imposed on something impartially subject to God's irreversible ways or God's unpredictable decisions".[25] That's why Plato revealed that "those who lead the country are naturally superhuman, namely *the king of philosophers"*.[26]

Actions imposed on something impartial according to Aristotle's concept, thought about actions imposed on something impartial is described in his book entitled Nicomachean Ethics. "The action imposed on something impartial is described fundamentally by Aristotle in the Nicomachean Ethics

[21] I Made Pasek Diantha, *Metodelogi Penelitian Hukum Normatif*, Prenada Media Group, Jakarta, 2016, h 117
[22] *Ibid*., h. 118
[23] *Ibid*., h. 118
[24]Karl R. Popper, *Masyarakat Terbuka dan Musuh*-Musuhnya, *The Open Society and Its Enemy*, diterjemahkan oleh: Uzair Fauzan, Cetakan I, Pustaka Pelajar, Yogyakarta, 2002, h. 110.
[25]W. Friedmann, *Teori dan Filsafat Hukum, Legal Theori*, Susunan I, diterjemahkan oleh Mohamad Arifin, Cetakan kedua, RajaGrafindo Persada, Jakarta, 1993, h. 117.
[26]Deliar Noer, *Pemikiran Politik Di Negeri Barat*, Cetakan II Edisi Revisi, Bandung, Pustaka Mizan, 1997, h. 1-15.

Book".[27] Tto find out about actions that are imposed on something impartial and unfair, 3 (three) main things must be discussed, namely: (1) what actions are related to the term, (2) what is the meaning of actions that are imposed on something impartial, and (3) between the two extreme points, what action is imposed on something impartial is placed.

The formation of attitudes and character comes from observing certain objects that have multiple sides. This can be applied to 2 (two) arguments, namely (1) if "good" conditions are known, then bad conditions are also known; and (2) a "good" condition is known from something that is in a "good" condition. To know what an act is imposed on something impartial and unfair, it is necessary to have clear knowledge about one side of it to determine the other side as well. If one side is ambiguous, then the other side is also ambiguous. However, "in general it is said that an impartial person is a person who is not lawful (*lawless*) and an impartial person (*unbiased*)., then an impartial person is a person who obeys the law (*law-abiding*) and takes sides. Because the act of fulfilling or complying with the law is impartial, all acts of law-making by the legislature by existing rules are impartial. The purpose of law-making is to achieve the advancement of people's happiness. Thus, all actions that tend to produce and maintain social happiness are impartial".[28]

Thus the actions that are imposed on something impartial can be equated with the values of the social basis. Actions imposed on something impartial that is complete not only achieve happiness for oneself, but also happiness for others. Actions that are imposed on something impartial which is interpreted as an act of fulfilling one's happiness and that of others, are actions that are imposed on something impartial as a value. The actions that are imposed on something impartial and the values, in this case, are the same but have a different essence. As an individual continues with other people is an act that is imposed on something impartial, but a special attitude without qualification is a value. Injustice in social continuity is closely related to greed as the main feature of impartial action.

3.Law Enforcement Theory

Law enforcement according to Soerjono Soekanto, is an activity of continuously harmonizing the values described in solid principles and attitudes as a series of final stage value translations. To make something new, maintain and maintain the peace of living friends or friends.[29] According to Dellyana Shant, law enforcement is the process of carrying out efforts to uphold or function the rule of law in a real way as a guide for traffic actors or to continue the law in the life of an alliance and a nation. Law enforcement is an attempt to realize legal ideas and concepts that people expect to become reality. Law enforcement is a process that involves many things.[30]

The definition of criminal law enforcement can be interpreted as the maintenance of the law by law enforcement officers and by everyone who has used it by their respective authorities according to the rules of law that apply.[31] Law enforcement according to Jimmly Asshadique [32] It is also the process of carrying out efforts to uphold or function legal rules in a real way as guidelines for behavior in traffic or to continue the law in the life of an alliance and a nation.

[27]Aristoteles, Nicomachean Ethics, translated by W.D. Ross, http://bocc.ubi.pt/ pag/Aristoteles-nicomachaen.html. Diakses pada tanggal 20 Juli 2018.

[28]Dardji Darmodihardjo dan Shidarta, *Pokok-Pokok Filsafat Hukum; Apa dan Bagaimana Filsafat Hukum Indonesia*, Gramedia Pustaka Utama, Jakarta, 1995, h. 137.

[29] Soerjono Soekanto, 1983, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, UI Pres, Jakarta, h. 35

[30] Dellyana Shant, *Konsep Penegakan Hukum*, Liberty, 1988, Jakarta, h. 32

[31] Arief, Nawawi Barda. *Upaya Non Penal Dalam Kebijakan Penanggulangan Kejahatan*, Semarang: Makalah Seminar Kriminologi UI. 1991, Fakultas Hukum Undip, h. 42.

[32] Jimly Asshadique, Mantan Ketua Mahkamah Konstitusi Republik Indonesia, Guru Besar Hukum Tata Negara Universitas Indonesia, Ketua Dewan Penasihat Asosiasi Hukum Tata Negara dan Administrasi Negara Indonesia. https://repository.uir.ac.id

The process of resolving through RJ as a Tipiring, criminal law enforcement is the concrete application of criminal law by law enforcement officials. In other words, criminal law enforcement is the implementation of criminal regulations. Thus, law enforcement is a system that involves harmonization between values and norms and real human behavior. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or obligatory. This behavior or attitude aims to create something new, maintain and maintain peace.

4. Theory of Action protects the Law

The act of protecting the law can mean the act of protection that is given by law so that it is not interpreted differently and is not injured by law enforcement officials and can also mean the act of protecting something that is given by law. The act of protecting the law can also result in questions that then doubt the existence of the law. The law is obliged to provide protective measures against all parties by their legal status because everyone has the same position before the law. Every law enforcement officer is obliged to uphold the law and with the functioning of the rule of law, the law will also indirectly protect every legal continuation or all aspects of people's lives regulated by the law itself.

According to Fitzgerald, the theory of acts of protecting the law is that the law aims to integrate and coordinate various uses in society, because in a flow of uses, actions to protect against certain uses can be carried out by limiting various uses on the other hand.[33] The use of the law is to deal with human rights and uses, so that the law has the highest authority to determine human uses that need to be regulated and protected.[34] The act of protecting the law is obliged to see the stages, namely the act of protecting the law born of a legal provision and all legal regulations given by the community which is community agreements to regulate the continuity of behavior between members of the community and between individuals and the government which is considered to represent the usefulness of society .

According to Satjipto Raharjo, the act of protecting the law is protecting human rights (HAM) that are harmed by other people and the act of protection is given to the community so that they can enjoy all the rights granted by law.[35] While the act of protecting the law according to Phillipus M. Hadjon that the act of protecting the law for the people is a government action that has a preventive and repressive nature.[36] Actions to protect *Preventive* law aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and protective actions that are *repressive* aim to prevent disputes from occurring, including actions to handle them in the judiciary.[37]

5. Tipiring

The Tipiring in question is "problems that are punishable by imprisonment or imprisonment for a maximum of 3 (three) months and or a fine of up to Rp. 7,500; (seven hundred and fifty thousand rupiahs) and minor insults, except for those specified in the procedure for examining cases of back-and-forth violations, according to the Criminal Code. Tipiring in criminal procedural practice is known as Tipiring, this term is an abbreviation of the term contained in the Criminal Procedure Code, CHAPTER XVI, Examination at Court Sessions, Part Six of the Quick Examination Procedure, Paragraph I of the Tipiring Examination Procedure.

Tipiring arrangements are currently assumed to be a kind of act of protecting against disproportionate law enforcement against criminal acts whose (losses) are considered not serious. The

[33] *Ibid*, h. 53.
[34] *Ibid*., h. 69
[35] *Ibid*., h. 54
[36] Phihpus M. Hadjon, *Perlindungan Hukum bagi Rakyat Di Indonesia*, Bina Ilmu, Surabaya, 1987, h. 2
[37] Maria Alfons, *Implentasi Perlindungan Indikasi Geografis Atas Produk-Produk Masyarakat Lokal Dalam Prespektif Hak kekayaan Intelektual*, Disertasi Universitas Brawijaya, Malang, 2010, h. 18.

logic that the determination of Tipiring is connected with the process of handling it in court, although perhaps for different reasons, can be found again in the Criminal Procedure Code which was then enacted in Indonesia. Perhaps, because it had not yet been discovered why at that time the system of dealing with Tipiring, which originated from the colonial period, was maintained.[38]

First, related to minor insults as mentioned earlier, which were also categorized as Tipiring during the colonial period, even though the punishment was more than three months. Meanwhile, the second is related to the trial of a ticket issue, which is regulated by its procedural law. Most likely because there are far more of them. The emergence of the spotlight on this Tipiring act, especially the crime of petty theft, is the injustice that is felt by the community due to the processing of small value cases involving the lives of ordinary people. This happened, as has been widely discussed, because the maximum limit for the value of money that was regulated was not longer renewed since 1960.

In addition, it could also be influenced by the handling of corruption cases which are often considered by the public to be not satisfactory enough. This analysis is indeed based, on namely that criminal law provisions are then felt to be impartial, due to changes in currency values. The prevalence of criminal offenses that are considered minor, such as minor theft cases is tried based on the provisions (Article) of ordinary theft because there is no longer a value of goods equivalent to "two hundred and fifty rupiahs" for goods of economic value, so that the article on theft mild cannot be applied, which also conflicts with the detention of suspects/defendants because they are deemed to have met the conditions for detention based on the provisions of Article 21 of Law No. 8 of 1981 concerning Criminal Procedure Code. There are quite some Tipiring problems that should be tried based on the provisions of the Speedy Procedure law as referred to in Part Six of Law no. 8 of 1981 concerning The Criminal Procedure Code, being tried and legally processed based on the provisions of the Ordinary Criminal Procedure law which takes a long time.

In the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 Concerning the Adjustment of the Limits on Not Minor Crimes and the Number of Fines in the Criminal Code it is stated that in the provisions of Article 1, the words "two hundred and fifty rupiahs" and Article 364, Article 373, Article 379, Article 384, Article 407 and Article 482 of the Criminal Code, read as IDR 2,500,000.00 (two million five hundred thousand rupiahs); and in Article 2 it is stipulated :

1) In accepting the transfer of cases of theft, fraud, embezzlement, and collection from the public prosecutor, the head of the court must pay attention to the value of the goods or money that is the object of the problem and pay attention to Article 1 above;
2) If the value of the goods or money is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiahs) the Chief Justice shall immediately appoint a Single Judge to examine, hear and decide on the matter by using of a quick Examination as regulated in Article 205- 210 Criminal Procedure Code;
3) If the defendant was previously subject to detention, the Chief Justice does not stipulate detention or an extension of detention.

Tipiring does not only cover offenses, but also includes minor crimes that are placed in Book II of the Criminal Code which consist of minor animal abuse, minor humiliation, minor abuse, minor theft, minor embezzlement, minor fraud, minor destruction, and minor detention.[39]

[38] Leonardo O. A. Pandensolang, Kajian Terhadap Tindak Pidana Ringan Dalam Proses Peradilan Pidana, Lex Crimen Vol. IV/No. 1/Jan-Mar/2015.
[39] *Ibid*.

6. Actions imposed on something that is impartial Restorative (RJ)

According to Tony F. Marshall that "*RJ 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".* (That is, RJ is a process in which all parties who are beneficiaries of a particular violation meet together to resolve simultaneously how to resolve the consequences of the violation for future uses). From this definition it can be said that the process of resolving a crime by using RJ prioritizes an agreement between the parties in question, for the future use of the perpetrator and the victim of the crime.

The concept of action being imposed on something impartial restorative (RJ) is a popular alternative in various parts of the world for dealing with unlawful acts (unlawful in the formal sense) because it offers a comprehensive and effective solution.[40] Actions imposed on something impartial, and restorative aim to empower victims, perpetrators, families and communities to correct an unlawful act by using awareness and conviction as a basis for improving community life.[41]

The implementation of the concept of actions imposed on something that is impartial restorative (RJ) in Indonesia starts from the Supreme Court (MA). This is because the Supreme Court (MA) is a state institution that exercises judicial authority and is the peak of the judiciary. This is regulated explicitly and clearly in Per Laws, such as the 1945 NRI Basic Law; Law Number 48 of 2009 concerning Judicial Authority, Law Number 14 of 1985 as amended by Law Number 5 of 2004 and most recently by Law Number 3 of 2009 concerning the Supreme Court. Thus, bearing in mind that the Supreme Court (MA) is a state institution that exercises judicial authority and is the apex of the judiciary, it is appropriate for the Supreme Court to adopt or adhere to and apply an approach or concept of action that is imposed on something that is not in favor of RJ.

In this case, the Supreme Court is the pinnacle so if the Supreme Court adopts or adheres to and applies the concept (RJ) then the judiciary under it will also adopt, adhere to and apply the concept of an act imposed on something that is not in favor of RJ. In this way, it is hoped that the concept of actions imposed on something that is not in favor of RJ can be applied in the entire justice system in Indonesia, starting from the District Courts and the Supreme Court itself.

In addition, the Judicial Authority Law, namely RI Law Number 48 of 2009 concerning Judicial Authority, specifically the provisions of Article 5 expressly states that "judges are obliged and constitutional judges explore legal values and a sense of action imposed on something impartial who lives in public". Thus, in essence the judge is obliged to use the deed approach imposed on something that is not in favor of RJ in resolving criminal issues, because the deed approach imposed on something that is not in favor of RJ is following the soul of the Indonesian nation, namely Pancasila, following customary law values. and following religious values.

Conclusion

The authority of the National Police, in carrying out RJ settlements, is only limited to the settlement of minor crimes carried out based on *reports/complaints or finds out directly that there is an alleged Criminal Act, as Article 11 paragraph (1)* Police Chief No. 8 of 2021, the products issued are in the form of a Peace Agreement, an order, an order to stop the investigation, an order to stop

[40] Bambang Sutiyoso, *Penyelesaian Sengketa Bisnis, Solusi Dan Antisipasi Bagi Peminat Bisnis Dalam Menghadapi Sengketa Kini dan Mendatang,* Yogyakarta, Citra Media, 2006, h. 30.

[41] Gordon Bazemore dan Mara Schiff, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice,* Willan Publishing, Oregon, 2005, h.5. Dikutip juga oleh Dewi DS dan A. Syukur Fatahilah, *Mediasi Penal: Penerapan RJ di Pengadilan Anak Indonesia,* Depok, Indie Publishing, 2011, h. 4.

the investigation, a decree to stop the investigation. The products of RJ's decisions at the investigation level do not guarantee legal certainty, because the results of the decisions are not subject to approval from the Head of the local District Court so they are valid and have legal force.

Implementation of the process of solving criminal problems for minor crimes through RJ work procedures carried out by the National Police, especially the Surabaya Polrestabes Police, as one of the elements of law enforcement at the stages of investigation and investigation in the Criminal Justice System (SPP), based on Law Number 8 of 1981 regarding the Criminal Procedure Code, Law Number 2 of 2002 concerning the Indonesian National Police, and Regulation of the Head of the Indonesian National Police Number 8 of 2021 concerning Actions in handling Criminal Acts Based on Actions imposed on something that is not impartial Restorative.

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