

Reconstruction of the Regulation of Criminal Responsibility of Perpetrators towards Victims of Criminal Acts Based on Restorative Justice

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Abstract

Criminal acts according to the Restorative Justice perspective, are violations against humans and relations between humans. This research's objectives aim to: 1) examine regulations on criminal liability not yet based on restorative justice; 2) identify weaknesses in current regulations; and 3) propose a reconstruction of criminal liability regulations based on restorative justice principles. The research method uses the positivist paradigm, with a socio-legal research approach method, and a descriptive research type. The type and source of data uses secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method uses literature, and qualitative analysis methods. The research results are: 1) The regulation of criminal liability for perpetrators toward victims is not yet based on restorative justice, with court proceedings still aimed at deterrence through imprisonment; 2) Current weaknesses include: in legal substance, the litigation process is long, rigid, costly, and fails to restore the harm or reflect community justice; in legal structure, law enforcement is bound by rigid regulations, with unclear coordination, limited capacity, and weak commitment; in legal culture, positivistic legal views dominate, limiting flexibility and fairness in criminal justice; 3) The study proposes reconstruction of criminal liability regulations based on restorative justice. This includes shifting from a punitive to a restorative approach, focusing on healing and accountability, and updating key regulatory frameworks. Specifically, it involves revising values and norms in the Regulation of the Attorney General of Indonesia No. 15 of 2020 Article 6 on Termination of Prosecution Based on Restorative Justice, and the Regulation of the National Police No. 8 of 2021 Article 1, Point 3 on the Handling of Criminal Acts Based on Restorative Justice, to better integrate restorative principles into law enforcement and prosecution practices

Keywords: *Reconstruction; Regulation; Criminal Accountability; Restorative Justice*

Introduction

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states: that Indonesia is a country of law. One of them characteristics of a state based on law is in the settlement case through system trial leading to verdict Court is a enforcement law through distance long journey, through various levels start from Police, Prosecutor's Office, District Court, High Court and even until to The Supreme Court ultimately impact on the buildup the matter of the amount No little in Court.¹ As if only court the best place For finish legal problems (conflicts) and seeking justice, so that every indication existence act criminal, without take into account escalation his actions, will Keep going rolled out to realm the law that only become jurisdiction of law enforcers law.²

According to the concept of restorative justice, handling crimes that occur is not only the responsibility of the state but also the responsibility of society. Therefore, the concept of restorative justice is built on the understanding that crimes that have caused losses must be restored, both the losses suffered by the victim and the losses borne by the community. The involvement of community members is needed to help correct mistakes and deviations that occur in the surrounding community environment concerned. Giving awards and respect to victims by requiring the perpetrator to make a recovery or due to the crime that has been committed. The recovery carried out by the perpetrator can be in the form of compensation, social work or carrying out certain improvements or activities in accordance with the joint decision that has been agreed upon by all parties in the meeting held.

The concept of restorative justice is about restoring the relationship between the victim and the perpetrator. This relationship can be restored based on a mutual agreement between the victim/victim's family and the perpetrator. The victim can report the losses they have suffered and the perpetrator is given the opportunity to compensate for the losses through compensation mechanisms, social work, peace, or other agreements. This is important, considering that the traditional criminal process does not provide space for the parties involved, in this case the victim and the perpetrator, to play an active role in resolving their problems.

Based on theory accountability criminal law proposed by Simons, where accountability on act crime committed by a person is for determine error from act the crime he committed. Criminal responsibility or criminal liability means is that the person who has do an act criminal that, not yet means He must be punished, but He must be accountable on his actions that have been done, if found element error to him, because a act criminal That consists of on two elements, *a criminal act (actus reus)* and *a criminal intent (mens rea)*.

In the system justice criminal law in Indonesia has also enforced settlement case criminal based on approach justice restorative with effort besides For restore condition social post the occurrence act criminal especially is For give attention more to the victims of the crime criminal in a way direct and also to his family who experienced loss and suffering even For lighten up burden of the state.³

Following up draft approach justice restorative the in institution prosecutor's office has reinforced with Regulation Prosecutor's Office Number 15 of 2020 Concerning Termination Prosecution Based on Justice Restorative. In Regulation Prosecutor's Office this is what is meant with Justice Restorative is settlement case act criminal with involving perpetrator, victim, perpetrator /victim's family, and other

¹ Zico Junius Fernando, The Importance of Restorative Justice in the Concept of Ius Constituendum, Al-Imarah Journal, Vol. 5, No. 2, 2020, p. 525

² Ibid, p. 528.

³ Yudi Prayitno, Restorative Justice for Justice in Indonesia (Legal Perspective) Philosophical in Law Enforcement In Concreto), Journal of Law, Vol. 12 No. 3 September 2012, p. 410

related parties for together look for fair settlement with emphasize recovery back to the state originally, and not revenge.

The Attorney General's Office of the Republic of Indonesia as institution implementing government state power in the field of prosecution must capable realize certainty law, order law, justice, and truth based on law and respect religious norms, decency and morality, as well as must dig values humanity, law and living justice in public.

Completion case act criminal with put forward justice restorative which emphasizes recovery back to the state original and balance protection and interests of victims and perpetrators act criminal offenses that are not revenge oriented is a need law of society and the mechanism that must be built in implementation authority prosecution and renewal system justice criminal.

Restorative Justice contains understanding that is a recovery relationship and redemption error that wants to done by the perpetrator act criminal (family) against the victim of the crime criminal said (his family) (efforts) peace) outside court with the purpose and objective so that the problem the law that arises consequence the occurrence action criminal the can completed with Good with achievement agreement and consent between the parties.⁴ Use action punishment or punishment is the thing that distinguishes law criminal from the legal domain others, such as law public and private.⁵

Justice restorative is settlement act criminal with involving perpetrator, victim, family perpetrator, victim's family, figure community, religious figures, figures custom or stakeholders interest for together look for fair settlement through peace with emphasize recovery back to the state again. In restorative justice, balance recovery between the perpetrator and victim are shown with involvement both of them in every decision the law taken so that results settlement case become the real thing wanted second split party.⁶ According to Setyo Utomo, the characteristics that stand out from restorative justice is placement crime become a 'symptom' which is part from action social, not only violation law criminal.⁷ However, it must also be acknowledged that approach This own limitations certain and possible No suitable For every case. Therefore, that in implementing "Restorative Justice", it is important for do it with the way of thinking with well, with consider context specific from every case and maintain balance between need perpetrators and victims. With Thus, the "Restorative Justice" method offers valuable and potential perspective transformative in look for justice and promote peace social. In *restorative justice* in the prosecutor's office more flexible, whatever mark loss so throughout There is agreement peace, then That can be completed with restorative justice. Regulations Prosecutor's Office Number 15 of 2020 Concerning Termination Prosecution Based on Justice Restorative, related with the Level o loss limited. Perma Number 1 of 2024 is limited mark disadvantages. Weaknesses Perja, in the application related with existence bureaucracy that is too long, even from the district attorney must waiting for a long time exposed in jampidum, Perja must exposure at the Prosecutor's Office high, in the criminal justice system, in the district attorney's office.

On the basis of thoughts and descriptions the above, the author interested For do study with title "Reconstruction Accountability Regulation Criminal Perpetrator Against Victims of Crime Criminal Based on Restorative Justice".

⁴Hanafi Arief and Ningrum Ambarsari. 2018. "Implementation Restorative Justice Principles in the System Justice Criminal Law in Indonesia". Journal Al'Adl, Volume X Number 2, July 2018

⁵ Completion Perkara and Yuni Priskila Ginting, "Settlement of Criminal Cases Outside of Court Based on the Principle of Ultimum Remedy Completion Case Criminal Offenses Outside the Court Based on the Ultimum Principle Remedium," The Prosecutor Law Review 2, no. 1 (2024): 73–94.

⁶Arief, Hanafi and Ningrum Ambarsari. 2018. "Implementation Restorative Justice Principles in the System Justice Criminal Law in Indonesia," Al'Adl Journal Vol. 10 No. 2

⁷Utomo, Setyo. 2010. "System Punishment in Criminal Law Based on Restorative Justice", Mimbar Justitia Faculty of Law, Suryakencana University, Cianjur, Vol. 5 No. 01

Research Methods

Writer in study This use paradigm positivism, a paradigm that views that knowledge law That only deal with regulation legislation solely. Law as something that must be done applied, and more tend for No to question mark justice and its usefulness for society. Legal studies and their enforcement only range about what is right and what is not right, what is wrong and what is not wrong and more other forms nature prescriptive.

Approach research used Approach research used in study This is *socio legal research*. In research this, law conceptualized as a symptom empirical that can be observed in life real.

Types of data used are primary and secondary data. For to obtain primary data, researchers refer to data or facts and cases law obtained direct through field research including information from related respondents with object research and practice that can seen as well as relate with object research. While secondary data done with method studies bibliography.

Study This use primary data collection in the form of observation and interviews, while secondary data collection using *Library Research* (study bibliography) namely collection of data obtained from literature sources, works scientific, regulatory legislation, sources written other related with the problem being studied as runway theory.

Data analysis methods used is analysis descriptive, namely with notice the existing facts in practice the field then compared to with description obtained from studies bibliography. From the analysis the can known effectiveness system law of a nature educational.

As method for interesting conclusion from results research that has been done collected, method data analysis used is Analysis Qualitative, because to expose discussion, while qualitative It means dotted data analysis reject the information obtained from Respondent for reach clarity the problem that will discussed.

Discussion

1. Regulation Accountability Criminal Perpetrator Against Victims of Crime Criminal Procedure Not Yet Based on Restorative Justice

System objectives justice criminal namely : Prevent public become a victim of crime Finish case the crime that occurred so that public satisfied that justice has enforced and wrongly imposed criminal, and Strive for those who have do act criminal No will repeat it return However thus If connected with history the emergence principle justice restorative, then system justice criminal No can walk as expected, because fail give sufficient space for the interests of potential victims and potential defendant, in other words the system justice criminal conventional Now This is often the case in various countries in the world cause dissatisfaction and disappointment.⁸

According to Eva Achjani Zulfa, she stated the paradigm that is built in system justice criminal moment This determine how the country should play its role based on the authority it has, the state has authority for arrange citizens through their organs. That base from view This positioning the State as holder right set a number of applicable norms in law criminal (*ius punale*) and rights punish (*ius puniendi*) as form Handling an act the crime that occurred in society. However Thus, the use of institution law criminal as tool Handling conflict put himself as mechanism the last one where other institutions do not

⁸ Eriyantouw Wahid. (2019). Justice Restorative and Justice Conventional in Criminal Law. Jakarta: Trisakti University.

can operate its function For handle the conflict that occurred, with thus law criminal nature ultimate remedium⁹. Eva Achjani Zulfa continued it his statement that is implications from thinking the is definition crime as a attack against the State based on rule the legislation he made so that crime is conflict between perpetrator crime with the State.

This matter in harmony with statement Marjono Reksodiputro, namely crime interpreted as violation on law criminal, in law law criminal and also terms and conditions criminal in regulation legislation others, formulated action or prohibited and threatened behavior with punishment (criminal). According to Marjono Reksodiputro, crime is one of the form behavior in demand human beings, which is determined by their attitude in face a situation certain.¹⁰

Approach justice restorative precisely return function law criminal on track back to namely in the function ultimate remedium, a weapon ultimate when effort other laws already No one can Again be used in face an act criminal in society. At the level of practical handling and settlement case criminal with use approach justice restorative offer alternative answer on a number of problems faced in system justice criminal, for example administrative processes difficult, lengthy and expensive trials, backlogs case / decision court that does not accommodate the interests of the victim.” With thus justice restorative There is an answer on dissatisfaction or failure system justice criminal.

In Indonesia Principle justice restorative No is relative thing new in Indonesia because as a solution model dispute which is one of the type criminalization alternative in system law criminal in line with objective sanctions criminal according to draft law custom, namely return balance cosmic, balance between the worlds of birth with the supernatural world, to bring a sense of peace between fellow inhabitant public or between member public with its people.¹¹ Besides that, criminalization must be nature fair, in the sense that criminalization the felt fair good by the convict both by the victims and by the community, so that with thus disturbance, imbalance or conflict the will become gone.

Before formed regulation special about draft justice restorative, a country famous for with the real Pancasila Already have draft justice restorative. Indonesia has been uphold tall principle deliberation as habit For finish all problems that exist in the nation this. Deliberation This as proof that draft justice restorative of course developing in Indonesia. The results of the deliberation will be achieved a win-win solution agreement, no cause loss of one parties. Utilization sanctions the criminal penalty imposed to offender must in accordance with values civilized humanity. Besides that, criminal utilized for increase understanding for the offender to be willing apply values humanity as well as values socializing life in society. Prioritize peace in a way deliberation for reach consensus is integral mechanism in life citizens in Indonesia. Updates the law in Indonesia does not can released from condition objective Indonesian citizens who uphold values religious law aside law custom so that need dug up product law that originates from as well as rooted in values culture, morals and religious.

Completion act criminal regular patterned light Can taken with penal mediation pronounced approach justice restorative, namely focuses on existence participation direct from perpetrator act criminal, victims and public and also party with to give meaning to act criminal. Justice restorative can also become a draft framework think new things that can used in respond something act criminal for enforcer law in Indonesia. Justice restorative involving community, victims and The perpetrator. The goal is as efforts to achieve a justice for all over parties. So that can the creation of a sense of justice for

⁹Eva Achjani Zulfa. (2011). Restorative Justice and Pro-Victim Justice, Reparation and Victim Compensation in Restorative Justice. Jakarta: Cooperation between the Witness and Victim Protection Agency and Department Criminology, Faculty of Social and Political Sciences, University of Indonesia.

¹⁰Marjono Reksodiputro. (2013). System Justice Indonesian Criminal Code (See To Crime and Law Enforcement Within the Boundaries of Tolerance). Jakarta: Faculty of Law, University of Indonesia.

¹¹I Made Widnyana. (2013). Customary Criminal Law in Criminal Law Reform. Jakarta: Fikahati Aneska.

society that states freedom to think. But according to author, concept justice restorative should No enforced and not applied to real cases nature break divide, contains SARA, radicalism, and also separatism.

Approach justice restorative in settlement an act criminal give chance to the parties involved specifically perpetrators and victims to participate participate in settlement case so that the occurrence diversion function where the perpetrator and victim are in criminal procedure law conventional, the perpetrator and the victim are just functioning as witness in settlement things carried out by the authority enforcer law. The perspective has been created update in settlement a case. Dropping criminal to the perpetrator who law considered guilty on an act criminal No ensure fulfillment the interests of the victims and provide effect deterrent to perpetrators. However, the deliberation between perpetrators and victims applied in justice restorative Of course can reach matter said, that between the perpetrator and the victim will choose form settlement things that fulfill interest both of them Where justice restorative makes an effort For emphasize not quite enough answer perpetrator on his behavior that caused loss of others. So in implementation draft justice restorative, the enforcers law especially apparatus police must put forward effort educational and persuasive so that No happen Allegation criminalization of the person reported.¹²

Legal process fair and just is system justice criminal, besides must implemented implementation criminal procedure law in accordance with the principles, must also be supported by attitude inner enforcer law that respects rights inhabitant society. The appropriate justice model with justice criminal law in Indonesia front is a model of justice restorative. This model try repair human being man member public with method confront perpetrator not quite enough he replied to the victim inside paradigm justice Indonesian criminal law front.¹³

These are some indicator indicator toward a model of justice criminal law in the form of a balance model interests (the interests of the state, society and rape victims) are seen as a model that reflects values ideology and values socio-cultural Indonesian society is characterized by harmonious, harmonious, and balanced like contained in Pancasila.¹⁴ Made Sadhi Astute explained that in theory criminal wisdom based on Pancasila. This is means Pancasila must to salt, as flavoring meaning, nature, form and purpose criminal or criminalization.¹⁵ Efforts to operate living law in community in the field law criminal is the ideals of the experts law Indonesian criminal law.¹⁶

Investigation act criminal is entry point door from an enforcement law criminal through system justice criminal justice system in Indonesia. Implementation of restorative justice in context enforcement law criminal called recovery which situation is one alternative draft settlement act criminal for avoid criminal prison to suspect. In philosophical task Police and law enforcement law others in Indonesia are enforcement law and justice, not solely enforcement law. Therefore, dig values law that lives in the midst public must be done especially moment inspect case. Investigator in apply justice restorative subject to the Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 Concerning Handling Action Criminal Based on Justice Restorative. In Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling Action Criminal Based on Justice Restorative, the principle of restorative justice is interpreted as settlement act criminal with involving perpetrator, victim, family perpetrator, victim's family, figure community, religious figures, figures custom or stakeholders interest for look for fair settlement through peace with emphasize recovery back to the state again.

¹²Siswanto Sunarso. (2014). *Victimology in System Justice Criminal.*, Jakarta: Sinar Grafika Publisher.

¹³ Syahrin, MA, 2014. *Development Draft Nationalism in the World*. Bhumi Pura, 11(1), pp.23-24.

¹⁴Paulus Hadusuprpto, *Reintegrative Shame Giving As a Non-Penal Means of Prevention Behavior Child Delinquency*, (Semarang: Diponegoro University, 2013), p. 314.

¹⁵Made Sadhi Astuti, *Criminalization Towards Children As Perpetrator Action Criminal Law*, (Teaching Teachers' Training College Malang, 2017), p. 89.

¹⁶ Syahrin, MA, 2015. *Human Rights Migrating*. Bhumi Pura, 11(1), pp.45-48.

Based on theory accountability criminal law proposed by Simons, where accountability on act crime committed by a person is for determine error from act the crime he committed. Accountability criminal or criminal liability means is that the person who has do an act criminal that, not yet means He must be punished, but He must be accountable on his actions that have been done, if found element error to him, because an act criminal That consists of on two elements, a criminal act (*actus reus*) and a criminal intent (*mens rea*).

As mentioned in Article 1 number 3 of the Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling Action Criminal Based on Justice Restorative, mentions that : Justice restorative is settlement act criminal with involving perpetrator, victim, family perpetrator, victim's family, figure community, religious figures, figures custom or stakeholders interest For together look for fair settlement through peace with emphasize recovery back to the state again.

Regulation accountability criminal perpetrator against victims of crime criminal Not yet based on *restorative justice* that settlement through the courts is expected to provide a deterrent effect for perpetrators of criminal acts by providing imprisonment or prison sanctions. However, in practice, this litigation step does not always run as expected. Because in the current traditional litigation method, it actually creates new problems, such as a pattern of punishment that is still retaliatory, causing a backlog of cases, not paying attention to the rights of victims, so that *restorative justice is needed*.

2. Weakness Regulation Accountability Criminal Perpetrator Against Victims of Crime Current Crimes

a. Weaknesses of Aspects Legal Substance

Weakness aspect substance law is a litigation process own a number of disadvantages, such as a long, complicated and expensive, settlement process nature legal and rigid, no restore impact crime, condition institution correctional institutions that are not adequate, not reflect justice for society and so on. In practice organization law on the ground There is sometimes happen opposition between certainty law and justice, things This caused by conception justice is a formulation that are abstract, whereas certainty law is a procedures that have been determined in a way normative. So that ambiguity rule law or Constitution cause Not yet optimally at the stage implementation. So that legal umbrella is required same level Constitution in implementation of restorative justice.

b. Weaknesses of Aspects Legal Structure

Weakness aspect structure law that is apparatus enforcer law feel bound by existing regulations, to what extent is synchronization assignments given to apparatus so that can operate his authority in a way right, to what extent capability, integrity and commitment apparatus those. To what extent? officer allowed do Discretion in implementation of restorative justice in order to implement law in a way precise and contextual and exemplary type what should be shown apparatus to society so that they can trusted.

c. Weaknesses of Aspects Legal Culture

Weakness aspect culture law that is too strong domination positivistic understanding in the legal system general and enforcement system law criminal especially. In addition to the factors mentioned, there is also factor that police as apparatus enforcer law, already used to with pattern think that as state apparatus that carries out task enforcement law, only know one enforcement model law that is through the judicial process criminal.

3. Reconstruction Regulation Accountability Criminal Perpetrator Against Victims of Crime Criminal Restorative Justice Based

a. Comparison With Foreign Countries Regulations Accountability Criminal Perpetrator Against Victims of Crime Criminal Restorative Justice Based

1) United States of America

Prosecution In The System Justice United States Criminal System laws in force in the United States which include criminal procedure law known as an “adversary system”. Adversary system is dotted system reject from a doctrine that a defendant is subject that has a position The same with the country (in matter This represented by the prosecutor general) in system justice mutual criminal acts face to face for reach a justice.

System court state court level is a logical place For open discussion Because most demands begins and ends in court This.¹⁷ The common law tradition in court proceedings places great emphasis on “orality”. Common law courts are more Like saying from the document written. System This called as system adu (adversary system). That is, the parties (and advisors the law) controls matter. They strategize, dig goods evidence, presenting it in court. Both party fight desperately, generally put witnesses on the stand and submit question.¹⁸

America has device court twins, there are courts throughout the country (federal) that can be on top (or Can together with courts in the state each of them. so that prosecution case criminal law in the United States shared to be 2, especially prosecution use authority kingdom and prosecution through federal authorities. Prosecution state and federal criminals in One chance Now No be under danger double (nebis in idem). United States adhere to the doctrine of Double Sovereignty, in particular principle prison that more from One sovereignty can demand somebody without violate prohibition contradictory with damage double (nebis in idem) if action somebody violate kind of guidelines law sovereign, as results end federal authorities and state governments can demand someone. decides regulation the with No violate protection conflicting constitutions with loss double (nebis in idem) if somebody do act criminal law in their respective jurisdictions. For example, someone who is observed use car stolen from one state to kingdom other can sued under regulation federal criminals. usually known as the Dyer Act. someone who is responsible answer for violate The Dyer Act on the federal court docket may also sued under recommendation regulation robbery car where car become stolen. example This Now No under consideration through document room hearing as danger double (nebis in idem), because federal law that makes transportation from one state to another state as federal offense.

Transportation can be punished based on the Dyer Act, whereas robbery can be punished in the United States where robbery changed become specifically where theft and transportation done through the same human being. Office requirements professional Federal law has policy For No demand after prosecution kingdom started, until hobby federal substance no always as presented in federal court file prosecution.¹⁹

Protection witnesses, victims and officer’s enforcer law is state duties. In the example This ensure rights granted to witnesses, victims and officers enforcer law. Monica Hakimi said that during human rights and global regulation, the task human rights defense every public is state duties, which consist of from apparatus enforcer regulation in a country. United States is a country that respects right basic

¹⁷Friedman, Lawrence Meir, and Grant M. Hayden. American law: An introduction. Oxford University Press, 2017. pp. 76 77.

¹⁸Ibid. Page 91

¹⁹ Tarigan, Ivan Sadana. Comparative Criminal Law Studies About System Prosecution Case Criminal According to System Justice Indonesian and United States Criminal Law. 2018. Page 120.

human, so protection is something that is necessary done authority America. With system law that does not commonly developed from common law, United States become constitution as law the best to be reference for all law in his state. If regulated in constitution, rules That No applicable again. law stated No Legitimate If contradictory with constitution. In addition to having a very large territory, the United States develop codification for state and federal ²⁰.

2) China

Criminal law English require that in principle everyone who does crime can accountable on his actions, except There is negating causes deletion the responsibility concerned or “exemptions from liability.” Liability criminal law in England based on errors, namely:

- a. Intent (Deliberate)
- b. Recklessness (Frivolity)
- c. Negligence (Negligence)

Including to in deletion accountability the above crime:

- 1) Insanity or crazy / sick soul Contents of the provisions about Insanity / crazy (M’nghten Rule) contains meaning of 3 (three) things as following:
 - a) Everyone is considered Healthy his soul, and his burden proof lies on the side accused
 - b) Stupidity solely No is a sufficient defense; must There is what is called “some disease of mind”
 - c) “Irresistible impulse” is not a defense, will but If defense the can prove that accused suffer abnormality thoughts that result in "diminished responsibility" then matter This just is mitigating factors punishment.
- 2) Automatism or motion reflex in case motion reflex This precisely action certain No can have convicted If done in a way No intentionally. As for example, the driver who was sued Because operate vehicle in condition sleepy and cause a pedestrian died; no can defend self that He fall asleep Because motion reflex, because He should stop hold steering wheel If He sleepy.
- 3) Drunkenness or drunk Reasons for being drunk in law criminal English differentiated in 2 (two) types, namely:
 - a) “Involuntary drunkenness”, i.e somebody drunk due to Because other people's actions. If things the can proven so reason drunk is an " absolute defense " (a complete defense)
 - b) “Voluntary drunkenness”. In general No acknowledged as defense of a nature absolute; except his drunkenness That resulting in temporary " insanity ". time so that remove element the intention required by an act criminal
- 4) Coercion or Power English Law Force distinguish this “coercion” to in 3 (three) parts, namely:
 - a) "Coercion by orders of superior" (power force Because order superior)
 - b) “Coercion by threats” (power force Because a threat)
 - c) "Martial coercion" (power forced by one of the party in One bond marriage)

²⁰Ibid. Page 99.

- 5) Necessity or condition emergency “necessity” or “state of emergency” emergency” is an effort defend self that is absolute in case: “self- defense” case origin reasonable according to condition certain for prevent crime with violence.
- 6) Mistake or ignorance of fact or mistake on Mistake fact or mistake on fact can is defense in situation certain If error the reasonable. While mistake on law No is defense.

3) Dutch

In general practice, the Netherlands is the best country in running the justice system criminal in the sense of relationship harmonious, in tune, between all related agencies in justice criminal following is explanation regarding the justice system criminal law in the Netherlands,

In general, the institutions involved with the judicial system criminal in the Netherlands, no Far different with Indonesia, or more precisely, considering system justice Indonesian criminal law adopted from the Netherlands. However, difference the main thing is that institution courts, prosecutors, police and immigration all is at in organization and structure Ministry Justice. Even Interpol and Laboratory Section Criminal is at under ministry said.by Because that, structurally and in coordination Far smoother than in Indonesia where the authority enforcer the law is at under different departments. Well, the components of the institution in System Justice criminal law in the Netherlands, namely Police, Courts, Prosecutors, Legal Profession (Advocates / Legal Advisors), and the Public Order Service. Functions from the Probation Service is make reports - reports before the fall punishment to prosecutor's office as well as give assistance and rehabilitation in connection with liberation conditional and criminal conditional.

In general, short can describes the process in the justice system Dutch criminal law is as the following, namely Investigation, Prosecution, Examination Trial, Legal Efforts, Execution. One of the countries that abolished punishment dead Can see namely the Netherlands. However, in fact a number of countries still there are those who apply punishment dead such as Saudi Arabia, China, the United States, Singapore, Malaysia, and especially Indonesia which is still show the norm of punishment dead and enforced for crime certain, one of them narcotics. This is loaded in Constitution Number 35 of 2009 concerning Narcotics that regulate criminal dead as a law positive in Indonesia.Expert Dutch law Jan Pronk put forward opinion that is:

"Some governments are still hesitant to take such further steps. They believe that the death penalty is a just punishment for very serious crimes, not only genocide or treason, but, for example, also the selling of drugs. In many countries the selling of drugs has led to criminal violence and the rise of a criminal underworld."

Based on Jon Pronk's statement, then there is differentiator between a number of countries in apply punishment dead so that result in imbalance to meaning ambition law and purpose law for every country. Even all countries have aligned ideals use realize objective the law in which load implementation law in case criminal narcotics.

b.Reconstruction of Regulatory Values Accountability Criminal Perpetrator Against Victims of Crime Criminal Restorative Justice Based

Reconstruction desired value achieved in study This that regulation accountability criminal perpetrator against victims of crime the crime that was previously Not yet based on justice now based on restorative justice.

c. Reconstruction of Regulatory Norms Accountability Criminal Perpetrator Against Victims of Crime Criminal Restorative Justice Based

The concept of restorative justice is about restoring the relationship between the victim and the perpetrator. This relationship can be restored based on a mutual agreement between the victim/victim's family and the perpetrator. The victim can report the losses they have suffered and the perpetrator is given the opportunity to compensate for the losses through compensation mechanisms, social work, peace, or other agreements. This is important, considering the criminalization process in general. traditional No give room to parties involved, in matter this is the victim and the perpetrator for play a role active in settlement problem they.

Based on information above, then served summary reconstruction on the table under:

Table 5.1. Reconstruction Regulation Accountability Criminal Perpetrator Against Victims of Crime Criminal Restorative Justice Based

No.	Construction	Weakness	Reconstruction
1	Regulation Republic of Indonesia Attorney General's Office Number 15 of 2020 Concerning Termination Prosecution Based on Justice Restorative Article 6 Fulfillment condition termination prosecution based on justice restorative used as Public Prosecutor's considerations for determine can or whether or not file case delegated to court	Not based on mark justice	Reconstruction Regulation Republic of Indonesia Attorney General's Office Number 15 of 2020 Concerning Termination Prosecution Based on Justice Restorative, in Article 6 with add with notice mark justice, so that reads: Article 6 Fulfillment condition termination prosecution based on justice restorative used as Public Prosecutor's considerations for determine can or whether or not file case delegated to court with notice mark justice
2	Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 Concerning Handling Action Criminal Based on Justice Restorative article 1 Number 3 Justice Restorative is settlement Action Criminal with involving perpetrator, victim, family perpetrator, victim's family, figure community, religious figures, figures custom or stakeholders interest For together look for fair settlement through peace with emphasize back to the state back to	It's not clear yet definition restorative justice in its implementation since stage What just in police	Reconstruction Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 Concerning Handling Action Criminal Based on Justice Restorative, in Article 1 Number 3 with add stages police in implementing restorative justice, so reads : article 1 Number 3 Justice Restorative is settlement Action Criminal with involving perpetrator, victim, family perpetrator, victim's family, figure community, religious figures, figures custom or stakeholders interest For together look for fair settlement through peace with emphasize back to the state back to the stage activity organization function criminal investigation, investigation, and inquiry.

Closing

Conclusion

Regulation accountability criminal perpetrator against victims of crime criminal Not yet based on restorative justice that settlement through justice expected can give effect deterrent for perpetrator act criminal with method give sanctions confinement and also sanctions prison. Weakness regulation accountability criminal perpetrator against victims of crime criminal moment This namely : weakness aspect substance law is a litigation process own a number of disadvantages, such as a long, complicated and expensive, settlement process nature legal and rigid, no restore impact crime, condition institution correctional institutions that are not adequate, not reflect justice for society and so on ; weakness aspect structure law that is apparatus enforcer law feel bound by existing regulations, to what extent is synchronization assignments given to apparatus so that can operate his authority in a way right, to what extent capability, integrity and commitment apparatus those. Weaknesses aspect culture law that is too strong domination positivistic understanding in the legal system general and enforcement system law criminal especially. Reconstruction regulation accountability criminal perpetrator against victims of crime criminal based on restorative justice, namely reconstruction mark regulation accountability criminal perpetrator against victims of crime criminal based on restorative justice that regulation accountability criminal perpetrator against victims of crime the crime that was previously Not yet based on justice now based on restorative justice, reconstruction of regulatory norms accountability criminal perpetrator against victims of crime criminal restorative justice based on the Regulation Republic of Indonesia Attorney General's Office Number 15 of 2020 Concerning Termination Prosecution Based on Justice Article 6 Restorative and reconstructive Regulation Republic of Indonesia National Police Regulation Number 8 of 2021 Concerning Handling Action Criminal Based on Justice Restorative, in Article 1 Number 3.

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