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The Law Enforcement Policies On Mindful Criminal Actions In The Perspective Of The Ius Constituendum

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Abstract. *The impact of poverty is that many individuals struggle to control their hunger, which has an impact on life challenges by destroying their own hopes (hopeless), feeling defeated and helpless, accompanied by taking shortcuts by committing crimes or suicide to avoid difficult situations. Economic problems make people commit minor crimes such as petty theft. This research uses the type of sociological juridical research. Methods of data collection in this study using interviews and literature study. The results of the study show that criminal law enforcement in minor criminal cases has gradually implemented restorative justice in the form of penal mediation. However, in reality, restorative justice does not work effectively, because there are still many cases of misdemeanors, especially minor theft which is processed up to court and gets criminal sanctions as retributive (retributive). In the future, Indonesia should reform customary justice, because customary justice existed before the colonial period occupied the archipelago. Customary justice prioritizes consensus deliberation in resolving cases, directly showing that customary justice upholds restorative justice.*

Keywords: *Crime; Enforcement; Misdemeanor; Policy.*

1. Introduction

A social problem that permeates almost every nation and every stage of life is poverty. Poverty is a form of material deprivation, a description of social needs, social isolation, dependency, and inability to participate in society, and adequate descriptions of a lack of money and wealth are all ways of looking at the problem of poverty. In rich countries or in developing countries, poverty is a social disease that is interconnected.

It is important to consider the problem of community poverty from various social, economic, psychological and political angles. Limited social involvement and mastery of knowledge is the main cause of the social component. The economic side will be reflected in the limited ownership of the means of production, low incomes, lack of bargaining power, lack of savings, and sluggish expectations of opportunities. Psychologically, it is largely due to poor self-esteem, fatalism, lethargy and feelings of loneliness. However, from a political perspective, there are issues of discrimination, limited access to opportunities and facilities, as well as a precarious position in the decision-making process.[1]

One of the effects of poverty is that many individuals struggle to control their hunger, which has an impact on life's challenges by destroying their own hopes (hopeless), feeling defeated and helpless, and fatalistic. In some cases, this is accompanied by individuals taking shortcuts by committing crimes or committing suicide to escape a difficult situation. By allowing certain people in society to suffer and struggle with life's challenges, poverty can be considered a crime because of its tremendous detrimental effects. Because the problem of poverty exists in a country that is said to be very rich in natural resources and some the people are still struggling to get their daily food, the situation is quite difficult.[2]

The poverty rate in September 2022 was officially reported at 9.57% or 26.36 million people. Although it is still lower than the poverty rate in September 2021 (9.71%), this figure has slightly increased from March 2022 (9.54%). From IDR 505,468 in March 2022 to IDR 535,547 in September 2022, the amount represents an increase of 5.95%.[3] The problem of poverty and crime is a direct result of two difficult socio-economic problems. This situation encourages minor crimes such as petty theft.[4] From the lower middle class to the upper middle class in Indonesia, the public is aware of the problem of minor criminal offenses laws, especially those related to minor theft cases. Economic limitations and poverty encourage an increase in these cases.

The Supreme Court made a breakthrough in the form of passing RI Supreme Court Regulation No. 2 of 2012 (hereinafter referred to as PERMA No. 2 of 2012)

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[1] C., Pratama, Y. "Analisis Faktor-Faktor Yang Mempengaruhi Kemiskinan Di Indonesia". *Jurnal Esensi*. Vol 4, No 2, (2014). p. 210-222.url https://journal.uinjkt.ac.id/index.php/esensi/article/view/1966/1535,

[2] Hanim,Lathifah dan Prakoso, Adityo Putro. "Perlindungan Hukum Terhadap Korban Kejahatan Perdagangan Orang (Studi Tentang Implementasi Undang-Undang No. 21 Tahun 2007)". *Jurnal Pembaharuan Hukum*. Vol 2, No 2, (2015). p. 234-241. url https://jurnal.unissula.ac.id/index.php/PH/article/view/1434/1107

[3] Endang Larasati, "Tingkat Kemiskinan Berhasil Ditahan Rasio Gini Menurun" *Siaran Pers Badan Kebijakan Fiskal Kementerian Keuangan*, 2023.

[4] Brata, Agni Wisnu, P., Amin dan Aulia, Ira. "Penerapan Restoratif Justice Dalam Penanganan Konflik Di Masyaraka". *Jurnal Hukum Khaira Ummah*. Vol 15, No 1, (2020). p. 1-7. url https://jurnal.unissula.ac.id/index.php/jhku/article/view/2307/1735

concerning Adjustments to the Limits of Misdemeanor Crimes and the Amount of Fines in the Criminal Code (hereinafter referred to as the Criminal Code). Based on PERMA No. 2 of 2012 total value of goods which is categorized as light theft not more than Rp 2,500,000 and imprisonment for a maximum of 3 months.

In 2021 the Indonesian National Police signed Regulation of the Indonesian National Police (PERPOL) Number 08 of 2021 concerning Handling of Crimes based on Restorative Justice. The formation of the Perpol is a step for the National Police in realizing the settlement of criminal acts by prioritizing Restorative Justice which emphasizes restoration to its original state and a balance of protection and the interests of victims and perpetrators of crimes that are not oriented towards punishment is a legal necessity in society.[5]

Cases of petty theft before entering the realm of court, law enforcement officials based on this finding, police investigators and or the public prosecutor should check the reasons behind the perpetrators of committing petty theft. Is this factor due to forced circumstances due to poverty conditions the perpetrator cannot meet the basic needs of living things, namely eating, or the perpetrator has a psychological disorder such as kleptomania, and or the perpetrator is a recidive.

If the factors behind the perpetrator committing a crime are caused by poverty, it should not reach trial in court. Law enforcement officials should implement restorative justice efforts that are in accordance with the spirit of Indonesian law reform which prioritizes the values of justice based on Pancasila.[6] According to Article 34 of the Republic of Indonesia in 1945 stated that the poor and neglected children are cared for by the State. The state is responsible for providing for the poor for meeting their basic needs in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia.

Based on the description above, the writer will discuss the effectiveness of law enforcement against minor crimes in the perspective of ius constitutum. Have law enforcement officials, in this case the police, really implemented restorative justice in the settlement of minor criminal cases by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders,

[5] Purnami, Luh Made Indryani dan Swardhana, Gde Made. "Mekanisme Penghentian Penyidikan Perkara Pidana Melalui Restorative Justice Ditinjau Dari Peraturan Kepolisian Nomor 8 Tahun 2021". *Jurnal Kertha Desa*. Vol 11, No 3, (2023). p. 1990-2006. url https://ojs.unud.ac.id/index.php/kerthadesa/article/download/97344/49132/

[6] Juyanto. "Rekonstruksi Restorative Justice System Dalam Tindak Pidana Penganiayaan Berbasis Keadilan Hukum Progresif". *Jurnal Pembaharuan Hukum.* Vol 2, No 2, (2015). p. 400-408. url https://jurnal.unissula.ac.id/index.php/PH/article/download/1374/1058

traditional leaders, or other stakeholders? seeking a just settlement through peace by emphasizing re-election to the original state.

2. Research Methods

This research uses the type of sociological juridical research. The sociological juridical approach places great emphasis on acquiring empirical legal knowledge through direct, object-based investigations. Methods of data collection in this study using interviews and literature. The data analysis method used in this study is a qualitative method with an inductive way of thinking.[7]

3. Result and Discussion

3.1. The Effectiveness of Law Enforcement Against Misdemeanors in the Perspective of the Ius Constitutum

The categories of minor criminal cases in the Criminal Code (WvS) are light abuse of animals (article 302 paragraph 1), minor maltreatment (article 352 paragraph 1), minor theft (article 364), minor embezzlement (article 373), minor fraud (article 379), fraud in sales (article 384), destruction of goods (article 4407 paragraph 1), light collection (article 482), minor humiliation (article 315).[8]

Based on the author's interview with the informant from the Tegal City Police, namely AIPTU Aan Ristianti, SH, M.Sc, it shows that the Tegal City Police in the period 2021-2023 only handled 1 (one) minor crime case, namely a minor maltreatment case. In handling minor criminal cases, the Tegal City Police is guided by Republic of Indonesia National Police Regulation No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

Generally for minor criminal cases the victim reports to the Tegal City Police, then investigators will follow up on the report by the victim. Furthermore, the investigator will call the perpetrators, witnesses, victims to be questioned about the case. The results of interviews conducted by the author, the perpetrator is not a recidivist or a person with a mental disorder. Investigators in carrying out the investigative process will provide education that cases with the category of minor crimes must prioritize mediation between the two disputing parties in order to create restorative justice. However, if mediation the report fails and the reporter continues the legal process, the police in making the report is then

[7] Soerjono Soekanto, 2005, *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia Press, p.51.
[8] Mulyani, Sri. "Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang-Undang Dalam Perspektif Restoratif Justice ". *Jurnal Penelitian Hukum DE JURE*. Vol 16, No 3, (2016). p. 337 – 351. url https://ejournal.balitbangham.go.id/index.php/dejure/article/view/187/50,

submitted to the prosecutor's office to be prosecuted up to court, the process may not take more than 2 (two) weeks, in order to create a speedy trial and fulfill the elements of legal certainty.

The results of the author's interview with investigators regarding minor crimes, the perpetrator was not detained. Examination of the perpetrators took approximately 3 (three) hours, when the examination was completed, the perpetrators were not detained and were allowed to return home to await the trial schedule. In article 34 paragraph (1) The 1945 Constitution of the Republic of Indonesia states that it is the State's obligation to look after the poor and neglected children. If there are poor people or neglected children who commit acts of petty theft and are then taken to the Tegal City Police, the legal remedy that will be taken by investigators is to check whether the perpetrator has committed the theft repeatedly or because of forced circumstances and or this is the first time he has committed the theft. Tegal City Police investigators strongly support mediation efforts between the two litigants. If the mediation has reached an agreement, the investigator will make a letter of mutual agreement stating that the mediation has been successful.

According to sources, the current criminal justice system, at the level of investigation and investigation by the Indonesian National Police, especially minor criminal cases, has been effective because the Indonesian National Police is guided by PERPOL Number 8 of 2021. According to investigators, if someone reports an act of minor theft, it is because the perpetrator has repeatedly committed this act so that it becomes anxiety in society.

Indonesia has passed Act No. 1 of 2023 concerning the Criminal Code which will take effect in the next 3 (three) years. Based on interviews with informants, there has been no socialization regarding the ratification of the new Criminal Code. Act No. 1 of 2023 article 478 which reads:

"If the crime as referred to in Article 476 and Article 477 paragraph (1) letter f and letter g is not committed in a closed house or yard where there is a house, and the price of the goods stolen is not more than IDR 500,000.00 (five hundred thousand rupiah), shall be punished for petty theft, with a maximum fine of category II."

When compared to the Criminal Code (WVS), light theft is contained in article 364, namely:

"The acts described in Article 362 and Article 363 point 3, as well as the acts described in Article 363 point 5, if they are not carried out in a closed house or yard where there is a house, if the price of the stolen goods does not exceed

twenty five rupiahs, is threatened for light theft with a maximum imprisonment of three months or a maximum fine of two hundred and fifty rupiahs."

The fact is that until now the application of restorative justice has not been effective, it has been proven that there are still many cases of minor crimes that have reached the courts. Several other petty theft cases that have received inkracht decisions include:

1. Decision Number 1/Pid.C/2022/PN.Kla

Defendant S has been charged with committing the crime of theft as referred to in Article 364 of the Criminal Code, for which the value of the goods he took was IDR 1,000,000.00 (one million rupiah). The value of the goods stolen by S was approximately 5 (five) Kg of porang tubers belonging to Witness ES worth approximately IDR 1,000,000.00 (one million rupiah). In his decision the Judge was of the opinion that the crime which was carried out by the Defendant should be interpreted as a crime of light theft as referred to in Article 364 of the Criminal Code. According to the decision, Defendant S was proven to have committed the crime of "light theft" so that legally he was found guilty. Defendant S was sentenced to 1 (one) month in prison. Stating that the evidence in the form of 5 (five) Kg of Sweet Potatoes was returned to Witness ES and assessing the cost of the case against the Defendant in the amount of IDR 5,000.00 (five thousand rupiahs), stated that imprisonment does not need to be punished other than at a later date there is a judge's decision because the convict has already passed a probationary period of 3 (three) months.

2. Court Notes Number: 8/Pid.C/2021/PN Tlk

The judge notified the Defendant BM that the investigators submitted the Defendant to trial because he was suspected of committing the crime of light theft of loose palm fruit which occurred on Monday, December 20, 2021 at around

16.00 WIB in Afdeling XI Block 405 Estate Bukit Paying PT. FFB from Lubuk Ramo Village, Kuantan Mudik District, Kuantan Singingi Regency. After the Defendant was arrested, 2 (2) sacks made of white plastic material weighing 60 kg were also secured, with an estimated price of IDR 180,000 (one hundred and eighty thousand rupiah), as well as 1 (one) red and black Honda Revo BM 2358 KW motorbike belonging to the defendant. The defendant took loose palm fruit without permission from PT. TBS as the owner of the oil palm land. So the Defendant prosecuted under article 364 of the Criminal Code. According to the verdict, the defendant BM was proven guilty of committing the crime of "minor theft" and was legally and convincingly proven guilty of committing this. Therefore, the judge sentenced the defendant to 1 (one) month in prison with

the provision of a suspended sentence until a further order was issued from the judge that had long-term legal force. Evidence in the form of 1 (one) red and black Honda Revo Fit motorcycle No. Pol: BM 2368 KW was returned to the defendant and 2 (two) white sacks containing loose fruit weighing 60 kg were returned to PT. TBS through Witness R and charged the defendant with court costs of IDR 5,000.00 (five thousand rupiah). This was done because the defendant had already committed the crime before the probationary period of 2 (two) months ended.

Based on the provisions of Article 3 paragraph (1) Police Regulation No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, the settlement of cases of minor theft crimes based on restorative justice must meet general requirements as well as special requirements. General requirements include material and formal requirements. Article 5 PERPOL Number 8 of 2021 stipulates that material requirements include:

1. Do not generate anxiety and/or rejection from public;

2. Does not affect social conflict;

3. Does not have the potential to divide the nation;

4. Not radicalism and separatism;

5. Not a repeat offender based on Court ruling; and

6. Not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.

The formal requirements are regulated in Article 6 PERPOL No. 8 of 2021 which includes:

1. Peace from both parties, in addition to the Crime of Narcotics, the peace between the two parties is evidenced by a peace agreement signed by the parties.

2. Fulfillment of victims' rights and responsibilities of perpetrators, apart from drug crimes. Fulfilling the rights of victims and the responsibilities of perpetrators can be in the form of:

a. Returngoods;

b. Compensation for losses;

c. Reimbursement of costs incurred as a result of a criminal act; and/or

d. Compensation for damages caused by a crime.

3. Fulfillment of the victim's rights and the responsibility of the perpetrator is demonstrated by a statement in line with the agreement signed by the victim.

The Criminal Code clearly regulates the reasons for the abolition of a crime, but does not provide a clear definition of the intent of the reason for the abolition of a crime. The definition of reasons for abolishing crimes can only be known by tracing the history of the formation of the Criminal Code originating from the Dutch WvS. Historically, through the explanation of the Dutch government through the Dutch Parliament, known as *memorie van toelichting.* The reasons for not being criminally accountable to the perpetrators are grouped into 2, namely:[9]

1. The reasons that exist in the perpetrators (inwendige oorzaken van ontoerekenbaarheid) as stated in Article 44 of the Criminal Code, for example people who are mentally disabled.

2. Reasons that are outside the perpetrator's self (uitwendige oorzaken van ontoerekenbaarheid) are listed in articles 48-51 of the Criminal Code, for example such as coercion, emergencies, and so on.

Emergency situations in the Criminal Code do not have a specific definition, based on the history of the formation of the Criminal Code (memorie van toelichting) and the Minutes of the De-Wal Commission, emergency situations are classified as overmacht or coercive force as a result, setting up separate emergency situations is deemed unnecessary. Similar to this, the rationale is within the theoretical framework where using an emergency becomes part of a forced emergency or noodtoestand. Means that the unlawful element of a crime committed in an emergency situation is eliminated.

Van Bemmelen and Van Hattum argue that the difference between coercive power and a state of emergency is a kind of coercive power in the narrow sense, the perpetrator acts or does not act due to physical pressure by individuals or other circumstances. There is no free choice of will for one who acts. He was forced by a strong mental external coercion, which made him act in a way he

[9] Marcus Priyo Gunarto, 2014, *Alasan Penghapus Pidana, Alasan Penghapus Penuntutan Dan Gugurnya Menjalani Pidana*, Makalah Pelatihan Hukum Pidana Dan Kriminologi Diselenggarakan Oleh Fakultas Hukum UGM Dengan Masyarakat Hukum Pidana Dan Kriminologi Indonesia, Yogyakarta, 2014, p. 1.

really didn't want to. In an emergency, perpetrators face dangerous circumstances that compel or motivate them to break the law.

The sanction for the crime of theft in Islamic law is amputation. However, according to Islamic law, even though the crime of theft is included in the criminal act of hudud (an action that has the form and limit of punishment in the Al-Quran and the sunnah of the Prophet Muhammad SAW), if there is a criminal act of theft, it does not necessarily mean that the accused is subject to the punishment of cutting off the hand.

Islamic law recognizes the principle of flexibility/elasticity and modification of punishment, namely hudūd criminal cases, qisas/diyat criminal acts and ta'zir criminal acts. In this principle the sentence given to the perpetrator of the crime must be adjusted to the characteristics and conditions of the perpetrator, it means that there must be leeway for the judge in choosing the criminal sanction as well as the severity of the sanction and there must be a possibility of criminal modification in its implementation, so that this principle contains the value humanity.[10]

Even though in hudud crimes the authorities and judges are not allowed to change or pardon, in certain cases it is possible to pardon if the case reaches court. Regarding the permissibility of forgiving before the case reaches court, there is also a history that explains that Zubair bin Awwam once caught a thief and then wanted to pardon him, people said to him:

"Forgive him before the case reaches court, Zubair said, indeed when it reaches court judgment, Allah will curse the pardoner and the pardoner." (HR At-Tabrani)

3.2. Policy Reform for the Implementation of Customary Courts for Misdemeanor Crime Cases from the Perspective of Ius Constituendum

A Roman philosopher with a stoic school of philosophy named Marcus Tullius Cicero created the adage Ubi Societas Ibi Ius which means where there are people there is law. If this proverb is believed to be true, then it can be said that wherever there are people there is justice, or at the very least, there is a dispute resolution system. According to Professor Hilman Hadikusuma, customary justice has been practiced in Indonesia for a very long time, long before the days of the Hindu-Buddhist kingdoms.

The dynamics of the development of customary law and the judiciary cannot be separated from the dynamics of legal development in Western Europe which was

[10] Sri Endah Wahyuningsih, 2013, *Perbandingan Hukum Pidana Dari Perspektif Religious Law System,* Cetakan 2, Semarang: Unissula Press, p. 101

transplanted during the Dutch East Indies government and then continued during the independence period through law schools. judiciary, and laws and regulations.[11]

When the ideas of the French Revolution began to penetrate colonial policy-making in the mid-19th century, they began to be seen as an important component of the "sacred mission of the white man" by colonial politicians everywhere. The success of Western Europe in creating nations with unified national laws based on meta-juridical postulates (ideology of humanism) was tried to be realized in the colonial territories when the political bewuste recht began to carry out legal unification (gradually) for the entire population of the Dutch East Indies. However, the imposition of law is difficult because the native culture finds it difficult to accept. Consequently, it must be enforced by force which was bigger and at a very large cost, which was not able to be provided by the Dutch East Indies government.

The Dutch East Indies government reached a compromise, allowing the temporary application of indigenous law as long as it did not conflict with European standards of fairness and decency law. Governor General De Eerens was advised by Mr. CJ Scholten Van Oud Haarlem that before passing a law governing the composition of courts and judicial procedures, a regulation must be issued.

The law of the Dutch East Indies government inherited five types of justice, including:

a. Gouvernement justice (*gouvernements rechtspraak*) is a court which is administered by government judges on behalf of the king or queen of the Netherlands with European legal systems over the entire Dutch East Indies area.

b. Indigenous justice/customary justice (*inheemsche rechtspraak*) is a trial presided over by European judges and Indonesian judges conducted according to the customary law system which is determined by the president with the approval of the director of justice in Batavia, not on behalf of the king or queen and not in accordance with European legal principles.

c. Swaraja judiciary (*zelfbestuur rechtspraak*) is a trial presided over by an autonomous judge. The trial in Java-Madura is limited to adjudicating cases involving high-ranking autonomous regional government officials who are accused in both civil and minor criminal cases who are still related by blood to the king or relatives up to fourth cousins. Swaraja judges carry out their duties

[11] Haider Lodging, 2019, *Memepertimbangkan Peradilan Adat*, Jakarta: Perpustakaan Nasional:Katalog Dalam Terbitan, p. 3

following indigenous judicial regulations.

d. Religious courts (gottesdienst rechtspraak) are matters related to Islamic law decided by religious judges, regional judges, or governor judges.

Village courts (drop justitie) are trials conducted outside Java and Madura by local judges in the governorate, customary/customary courts, and autonomous courts. Minor matters relating to customary or village issues, including disputes over land, irrigation, marriage, dowry, divorce, customary status, as well as other situations that occur between the customary law community concerned, can be decided by this court. Village judges cannot impose penalties as outlined in the Criminal Code, and if the parties to the dispute do not agree with the village court's decision, they can bring their case to the governor's judge. Local customary law is the only source of legal guidance for village courts.

Pakava indigenous peoples in the villages of Tomodo, Dangara'a, Bamba Kanini, Gimpubia, Ngopi, and Palintuma in Donggala District, Central Sulawesi, are examples of customary courts that still exist in the 21st century. Totua nu baya still plays an important role in this community as a customary judge. Cases of serious maltreatment and other criminal situations can still be resolved by customary courts, which not only attempt to expiate but also impose penalties in the form of fines. The Pakova community requested in 1997 that the police stop interrogating people who had abused other Pakava residents. The police shouldn't get involved because this incident involved Pakava's neighbors. According to the Pakava community, police assistance is only needed in cases of homicide.

In Papua, dispute resolution through customary courts is still common. Because the community's customs still exist, customary law is still useful in resolving conflicts in society. Murder, adultery, rape, and traditional land boundary issues between tribes and residents have all been resolved. Ondoafi and Ondofolo are the names in charge of customary justice.

The 1945 Constitution of the Republic of Indonesia does not specifically state the existence of customary justice, even though it is a component of customary law. based on Article 1 Paragraph 3 of the 1945 Republic of Indonesia Constitution which states that the state is a state based on law. This idea can be interpreted that apart from written law, the state also recognizes unwritten law. Customary law is one of these unwritten laws. 12 Customary law is implicitly recognized in the 1945 Constitution of the Republic of Indonesia, Article 18B Paragraph (2) states that:

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the

development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law".

The provisions of Article 18B paragraph (2) are strengthened by the provisions of Article 28I paragraph (3) that:

"Cultural identity and the rights of traditional communities are respected in line with the times and civilizations."

Based on Article 28 I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, customary law is the traditional right of the customary law people, and the government is obliged to uphold this right. Adopt the supplementary doctrine of Article

1 Preambule Paragraph 10 of the Rome Statute 1998, which states that "customary justice with state justice must be coordinated, not subordinated", means that customary courts must be equal to state courts. 13 The difference between customary courts and state courts is due to their different operating systems, therefore customary justice is part of customary law which is part of national law. The status of customary courts will be equated with state courts on condition that they function as coordinators of state courts.

Because "customary justice" wants to be equated with General, Military, Religious, and State Administrative Courts if the term "judicial" is used, the state needs to amend the 1945 Republic of Indonesia Constitution and several other laws. Law to maintain its existence. Customary courts, however, are subject to state courts because they are regulated by the Supreme Court when the judiciary is positioned as one of the special courts. Based on Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, "other bodies whose functions are related to Judicial Power are regulated by law" can also be used to refer to customary justice. As a result, customary courts are now positioned under state courts.

4. Conclusion

Criminal law enforcement in cases of minor crimes at this time from the police level to the courts has gradually implemented restorative justice in the form of penal mediation between the disputing parties. But in reality restorative justice is not run effectively, because there are still many petty criminal cases, especially petty theft which are processed up to the court and receive criminal sanctions in retaliation (retributive). In the future, Indonesia should reform customary justice, because customary justice existed before the colonial period occupied the archipelago. Traditional justice currently only applies to areas that still uphold customs, in the future customary justice can also be applied to urban urban

communities. This is necessary because customary justice prioritizes consensus deliberation in resolving cases, directly showing that customary justice upholds restorative justice.

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