

ABSTRAK

Tujuan penelitian ini 1) Untuk mengetahui dan menganalisis pengaturan mengenai *restorative justice* pada tindak pidana umum dalam peraturan perundang-undangan di Indonesia; 2) Untuk mengetahui dan menganalisis urgensi pengaturan *restorative justice* pada tindak pidana umum ke depan dalam perspektif teori positivisme hukum di Indonesia. Adapun rumusan masalah 1) Bagaimanakah pengaturan mengenai *restorative justice* pada tindak pidana umum dalam peraturan perundang-undangan di Indonesia?; 2) Bagaimanakah urgensi pengaturan *restorative justice* pada tindak pidana umum ke depan dalam perspektif teori positivisme hukum di Indonesia?. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Hasil akhir menunjukkan bahwa: Pengaturan *restorative justice* di Indonesia diatur dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Anak, Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, Peraturan Kejaksaan Nomor 15 Tahun 2020 dan Surat Keputusan Direktur Jenderal Badan Peradilan Umum Nomor 1691/ DJUSK/PS.00/12/2020 tentang Pedoman Penerapan *Restorative Justice* Di Lingkungan Peradilan Umum. Kebijakan dan aturan yang dibuat dan dikeluarkan tersebut terdapat ketidakseragaman atau kesamaan baik mengenai kriteria suatu perkara pidana yang dapat diselesaikan melalui keadilan restoratif maupun terhadap pelaksanaannya. Sudah menjadi urgensi bahwa *restorative justice* harus diterapkan dalam sistem pidana di Indonesia. Ke depannya aturan dan kebijakan mengenai *restorative justice* di Indonesia harus di formulasikan ke dalam suatu peraturan perundang-undangan baik itu berbentuk Undang-undang seperti UU SPPA maupun diformulasikan ke dalam Rancangan Kitab Undang-undang Hukum Acara Pidana (RKUHAP) dan Rancangan Kitab Undang-undang Hukum Pidana (RKUHP) agar memberikan suatu kepastian hukum, kekuatan hukum dan dasar hukum yang jelas bagi aparat penegak hukum dalam menerapkan *restorative justice* terhadap penyelesaian perkara pidana. Idealnya, *restorative justice* diatur oleh sebuah undang-undang sesuai dengan teori positivisme Hans Kelsen tentang hierarki norma hukum. Jika diatur dalam tingkat peraturan kebijakan sub-sistem peradilan pidana seperti Peraturan Kepolisian, Kejaksaan dan Mahkamah Agung, maka aturan tersebut akan bertentangan dengan KUHP, karena peraturan kebijakan tersebut berada dibawah KUHP yang memiliki tingkatan setara dengan undang-undang.

Kata Kunci: *Restorative Justice, Tindak Pidana Umum, Teori Positivisme Hukum.*

ABSTRACT

The purposes of this research are 1) to find out and analyze the arrangements regarding restorative justice in general crimes in the laws and regulations in Indonesia; 2) To find out and analyze the urgency of setting restorative justice for general crimes going forward in the perspective of legal positivism theory in Indonesia. As for the formulation of the problem 1) What are the arrangements regarding restorative justice in general criminal acts in the laws and regulations in Indonesia?; 2) What is the urgency of regulating restorative justice for general crimes going forward in the perspective of legal positivism theory in Indonesia? This study uses a normative juridical research method with a statutory approach (statute approach) and a conceptual approach (conceptual approach). The final results show that: Restorative justice arrangements in Indonesia are regulated in Law Number 11 of 2012 concerning the Juvenile Justice System, Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, Prosecutor's Regulation Number 15 of 2020 and Decision Letters Director General of the General Courts Agency Number 1691/DJUSK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts Environment. The policies and rules that are made and issued contain dissimilarities or similarities regarding the criteria for a criminal case that can be resolved through restorative justice and its implementation. It has become an urgency that restorative justice must be implemented in the criminal system in Indonesia. In the future, rules and policies regarding restorative justice in Indonesia must be formulated into a statutory regulation, whether in the form of a law such as the SPPA Law or formulated into the Draft Criminal Procedure Code (RKUHAP) and the Draft Criminal Code. Criminal Law (RKUHP) to provide legal certainty, legal force and a clear legal basis for law enforcement officials in applying restorative justice to the settlement of criminal cases. Ideally, restorative justice is governed by a law according to Hans Kelsen's positivism theory about the hierarchy of legal norms. If regulated at the level of criminal justice sub-system policy regulations such as Police, Attorney and Supreme Court Regulations, then these rules will conflict with the Criminal Procedure Code, because these policy regulations are under the Criminal Procedure Code and have an equivalent level to the law.

Keywords: Restorative Justice, General Criminal Acts, Legal Positivism Theory.