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Paradigm Shift of Criminal Punishment towards Restorative Justice in Law Enforcement Officers in Pontianak City

Moh. Fadhil
IAIN Pontianak
mohfadhil@iainptk.ac.id

ABSTRACT
Some of the challenges of law enforcement, including the retributive paradigm rooted due to colonial criminal law policies, overcriminalistic criminal law policies, overcapacity conditions in detention centers and prisons, the concept of restorative justice that is still regulated sectorally, and inadequate law enforcement capacity in restorative justice mechanisms, are some of the factors that influence the application of restorative justice. Nevertheless, law enforcement officers in Pontianak City still strive for restorative justice as the main preference. Therefore, the purpose of this study is to examine the paradigm shift of law enforcement officers towards restorative justice. The method used is empirical normative research with a conceptual approach and a sociological approach. The results of the study explain that the paradigm shift of law enforcement officers in Pontianak City can be seen in three paradigm models, namely postpositivism, critical and constructivism. The positivism paradigm can be seen in the attitude of law enforcement officers who actively offer restorative justice to the parties. The critical paradigm also grows in certain cases due to law enforcement officers' awareness of structural and gender inequality. The last, the constructivist paradigm was emerged from the activities of judges in interpreting the law against defendants who were threatened with the death penalty.

Keywords: *Restorative justice, Paradigm, Law enforcement Officers*.

INTRODUCTION

This article discusses the application of restorative justice by law enforcement Officers in Pontianak City. The perspective used in this study is a legal paradigm perspective based on paradigm theory as a grand theory. The paradigm theory was popularized by Thomas Kuhn and developed in more detail by Guba and Lincoln. In Indonesia, the Guba and Lincoln paradigm theory was developed interdisciplinary by Indarti into the legal paradigm to analyze the work practices of law enforcement officers and the extent to which a policy affects the perspective or belief system that is understood (belief system) in each law enforcement work process.

Zulfa described that the new direction of criminal law politics as well as the formulation of the objectives of punishment in the RKUHP (Criminal Code Bill) further emphasized the paradigm shift of punishment in Indonesia from the retributive paradigm to the restorative direction.

In the development of penalties, restorative justice occupies a strategic position that influences changes in patterns, structures, and paradigms of punishment at every level of the criminal justice system. Restorative justice is becoming a new benchmark for conviction success that is oriented towards non-penal efforts instead of prioritizing imprisonment. This prospectively builds a new construction on the goal of punishment that is progressive, responsive, and reparative as the formulation of the purpose of punishment in Article 51 of the Criminal Code Bill (KUHP 2023) states

that one of the objectives of punishment is conflict resolution and restoration of balance and peace for the community.[1]

Zulfa described that the new direction of criminal law politics as well as the formulation of the objectives of punishment in the Criminal Code Bill (KUHP 2023) further emphasized the paradigm shift of punishment in Indonesia from the retributive paradigm to the restorative direction.[2] This is to maximize efforts to resolve conflicts that are more effective and oriented to the needs of victims, who in current positive criminal law policies tend to ignore the interests of victims.

The restorative paradigm is based on the spirit of criminal law reform towards the improvement and recovery of victims. The pressure point of this paradigm is to place justice based on peace.[3] Nevertheless, the restorative paradigm faces enormous challenges both in terms of ideas, conceptions, and practices of its application. First, the challenge of the law enforcement paradigm is rooted in the retributive paradigm. Hiariej, who cites Eglash's view, considers that the restorative paradigm is always faced with the retributive paradigm, which positions prison as the main idol of punishment.[4]

This can be seen in the Criminal Code Bill (*Wetbook van Strafrecht*), which mentions as many as 485 times the threat of imprisonment, 37 times the prison sentence, and 10 times the death penalty. Meanwhile, in the Criminal Code Bill (KUHP 2023), out of a total of 1251 crimes, there are 1154 threats of imprisonment.[5] The condition of over-criminalization surely creates a much more complex problem, namely the accumulation of cases in court and overcrowding in prisons.

If judging from overcrowded data in Pontianak Class IIA Prison, from the total capacity of 500 prison residents, in 2018 the number of prison residents was 881, while in 2019 with the same capacity, the number of prison residents rose to 961. This means that in the last two years, the number of prison residents has exceeded 100 percent.[6] Second, the policy challenge of implementing restorative justice is still partial to each judicial institution regulated in each internal regulation. Partial arrangement, apart from the low binding force of norms compared to law-level arrangements, also do not support law enforcement within the framework of an integrated criminal justice system, so their workability and success are relatively low.

Third, challenges in terms of implementation practices require strong resources in the form of the capacity of law enforcement Officers, who must have skills in impartial conflict resolution. In addition, efforts to reconcile the parties tend to require extra capabilities and involve various available resources, both from law enforcement Officers, the commitment and goodwill of the parties, and the role of community leaders.

Although its application faced many challenges as described above, law enforcement Officers in Pontianak City began to position the restorative justice mechanism as the main preference in solving a criminal case. Both the police and the prosecutor's office in Pontianak City actively expose solutions based on restorative justice (data can be seen in Table 1). From this, it can be seen that there is a paradigm shift from the retributive paradigm with its character of repressive law enforcement to the restorative direction. This trend needs to be examined further to see whether the application of

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[1] Dede Kania, "Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia," *Yustisia Jurnal Hukum* 4, 1 (2015), hlm. 21.

[2] Eva Achjani Zulfa, "Pergeseran Paradigma Pemidanaan Di Indonesia," *Jurnal Hukum & Pembangunan* 36, 3 (2006), hlm. 400.

[3] Anna Maria Salamor et al., "Application of Restorative Justice In The Settlement of Customary Criminal Cases," *SASI* 29, no. 2 (2023): 226–232.

[4] Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana: Edisi Revisi* (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 44-45.

[5] Anggara dkk., *Distribusi Ancaman Pidana dalam RKUHP dan Implikasinya* (Jakarta: Institute for Criminal Justice Reform, 2016), hlm. 11.

[6] Lembaga Pemasyarakatan Kelas IIA Pontianak, "Laporan Akuntabilitas Kinerja Instansi Pemerintah (LAKIP)", *Laporan Resmi Lembaga Pemasyarakatan Kelas IIA Pontianak, 6/1/2020*, hlm. 12.

restorative justice is a form of paradigm shift or just an effort to build a humanist image of law enforcement in the eyes of the people of Pontianak City.

Based on this, this article is directed at an effort to examine the application of restorative justice in several criminal justice institutions in Pontianak City using the perspective of the legal paradigm. This perspective is used to examine the extent to which law enforcement Officers in Pontianak City understand the concept and urgency of restorative justice in solving criminal cases as a perspective or belief system in the context of law enforcement. In discussing this, this article begins with the description of the paradigm and paradigm of law. The next section will discuss the concept and policy of restorative justice. The next section discusses restorative justice in Pontianak City. The last section discusses the paradigm shift in law enforcement Officers in Pontianak City.

The type of legal research used in this research is normative-empirical legal research. This research method focuses on efforts to study the application of law in concreto as well as assessing the behavior of law enforcement officers in carrying out law enforcement activities.[7] Therefore, this study compares the study of norms and principles with the process of applying them to an event or to an applied activity. The approaches used in this research are conceptual approaches, statutory approaches, and sociological approaches.

PARADIGM AND LEGAL PARADIGM

This Paradigm theory in legal science is actually not based on the concept of legal science as a distinctive science, as proposed by jurists in the term "*sui generis*".[8] However, paradigm theory is often used by some legal experts to analyze a belief or perspective that is considered binding for law enforcement Officers in criminal justice practice and for lawmakers in legal formulation activities. Even in academic activities, jurists often use paradigms as a concept of thinking both normatively and socio-legally.[9]

Paradigm theory is based on the view of Thomas Kuhn, who defines the term paradigm as follows:

> *"a term that relates closely to 'normal science.' By choosing it, I mean to suggest that some accepted examples of actual scientific practice— examples which include law, theory, application, and instrumentation together— provide models from which spring particular coherent traditions of scientific research".*[10]

From Kuhn's definition, it can be seen that law is also synonymous with paradigms. Although the term law referred to here refers to physical laws, overall Kuhn does not limit the paradigm to the terms of physical laws or more broadly to the field of science but also to the fields of social sciences and legal sciences. Kuhn describes the paradigm attached to scientific academic activities, such as education and scientific research. Paradigms are surely rational and empirical activities, so there is no gap even between empirical research and normative research.

The truth produced from a scientific research process is not only determined by methods, theories, or experiments; more than that, the truth found is the result of the control of the paradigm as a belief rooted in the world of ideas or perspectives that have been used. Ulfa Kesuma and Ahmad Hidayat simply describe four ways of working with Kuhn's paradigm.

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[7] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

[8] Titik Triwulan Tutik, "Ilmu Hukum: Hakekat Keilmuannya Ditinjau Dari Sudut Filsafat Ilmu Dan Teori Ilmu Hukum," *Jurnal Hukum & Pembangunan* 44, 2 (2014), hlm. 249.

[9] R. Karlina Lubis, "Pancasila: Paradigma Ilmu Hukum Indonesia," dalam *Kongres Pancasila VI: Penguatan, Sinkronisasi, Harmonisasi, Integrasi Pelembagaan Dan Pembudayaan Pancasila Dalam Rangka Memperkokoh Kedaulatan Bangsa* (Ambon: Pusat Studi Pancasila Universitas Gadjah Mada dan Universitas Pattimura Ambon, 2014), hlm. 425.

[10] Thomas S. Kuhn, *The Structure of Scientific Revolutions*, Fourth Edi. (Chicago: The University of Chicago Press, 2012), hlm. 8.

First, a paradigm is a belief or point of view held by a researcher, scientist, or practitioner, so that whatever form of new truth is produced by the new paradigm, it can be accepted or rejected depending on the beliefs or perspectives of others. For example, the gender paradigm that emphasizes the role of women to be able to have equal educational rights, employment rights, and political rights for its adherents is considered a paradigm that must continue to be fought. Meanwhile, for adherents of the conservative paradigm, of course, this is not necessarily acceptable. Second, the real paradigm can shift from the old paradigm to the new paradigm. This shows that science will continue to move dynamically, following the social development of society. Third, paradigms can work as "puzzle-solving" as puzzle solvers of a problem or anomaly that cannot be completely answered by the old paradigm. Fourth, the new paradigm accepted is a scientific revolution, namely the process of how scientific activities work to answer an anomaly or problem that has not been solved by the old paradigm, then produce a new paradigm that is able to answer the situation.[11]

Kuhn's paradigm approach, of course, can be a benchmark in legal research. Satjipto Rahardjo described Kuhn's scientific revolution process as also influential in the paradigm shift of legal science. According to him, legal theory is not static and final, but must develop following social transformation. A static theory of law will be plagued by anomalies that arise, which lead to critical conditions.[12] This is where the test was carried out by legal experts, so that various kinds of discourse were built and the process of theory reconstruction was carried out. In the end, new theories will be emerged to answer these anomalies, but this theory will not last forever considering that a theory will continue to deal with new anomalies that appear. Therefore, the paradigm transformation of legal science will run dynamically following social transformations that continue to move massively.[13]

Sidharta elaborated on the importance of paradigms in legal science for shaping normative perspectives in the process of law formation. First, paradigms are used in policy or legislation preparation. Secondly, paradigms are employed in the interpretation of the text of laws and regulations. Third, paradigms aid in formulating judgments for judges. Fourth, paradigms assist in finding optimal alternatives in dispute resolution. Fifth, paradigms facilitate legal discovery activities. Sixth, paradigms guide judicial proceedings. Seventh, paradigms contribute to building the perspective of legal scholars through legal studies. Eighth, paradigms play a crucial role in defining the goals and ideals of law enforcement across all aspects.[14]

The importance of paradigms in the study of legal science is surely due to the fact that paradigms have channels that directly lead to legal practice and cultural activities. The existence of a dynamic paradigm makes it very open to various kinds of practical and cultural shifts. For example, in the study of criminal law, the practice of the death penalty in the past was the main crime commonly imposed by the orders of powerful kings. At present, the death penalty has shifted to an alternative crime, and even in some countries, the death penalty has been abolished. Examples like this illustrate that paradigm shifts will always go hand in hand with the development of society.

The study of paradigms in legal science is certainly interesting to map the position of the paradigm adopted by legal experts and legal practitioners. Erlyn Indarti developed a paradigmatic

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[11] Ulfa Kesuma dan Ahmad Wahyu Hidayat, "Pemikiran Thomas S. Kuhn Teori Revolusi Paradigma," *Islamadina: Jurnal Pemikiran Islam* 21, 2 (2020), hlm. 177.

[12] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro* (Jakarta: UKI Press, 2006).

[13] Maryati, "Pergeseran Paradigma Hukum Dari Hukum Positif Menuju Hukum Progresif," *Jurnal Lex Specialis* 12, Desember (2010), hlm. 38–39.

[14] B. Arief Sidharta, "Sebuah Gagasan Tentang Paradigma Ilmu Hukum Indonesia," dalam *Beberapa Pemikiran Tentang Pembangunan Sistem Hukum Nasional Indonesia: Liber Amicorum Untuk Prof. Dr. C.F.G. Sunaryati Hartono, S.H.*, ed. Elly Erawaty, Bayu Seto Hardjowahono, and Ida Susanti (Bandung: Citra Aditya Bhakti, 2011), hlm. 73-74.

study of legal science by referring to the Guba and Lincoln model, which states there are four main paradigms, namely positivism, postpositivism, critical theory, and constructivism.[15]

Positivism relies on naive realism, with its credo on a reality that its adherents believe has laws that have worked as they should. Positivism, of course, does not view values as part of its creed. Postpositivism undergoes a modification of positivism and no longer relies on naive realism but on critical realism, considering that this paradigm begins to question the essence of what positivism believes and begins to doubt the truth that has been believed through the paradigm of positivism. Critical theory rests on historical realism and is certainly not bound by the creeds of positivism or postpositivism. Critical theory binds itself to conditions of structural inequality as well as struggles for emancipation and social class. The paradigm of critical theory will rest on a dialectical process with social, political, economic, cultural, gender, and other conditions as long as it takes a struggle to create equality. Constructivism relies on relativism, so the truth is constantly interpreted or reconstructed. In this process, hermeneutics and dialectics play an important role in the process of reinterpretation and reactualization. Hermeneutics is needed to construct mature objects, while dialectics is used as a bridge between social realities that are constantly being reconstructed.[16]

This article will not delve extensively into the four paradigms as originally described by Guba and Lincoln. Therefore, to focus the elaboration of this theory within the context of the discussion, we will utilize the Indarti framework as described below.[17]

Positivism

Indarti incorporated several schools of legal science into the paradigm of positivism, including legal philosophy, legal theology, natural law, and legal positivism (it is also necessary to include legal utilitarianism as part of this paradigm). The first three schools rely on legal morality, which in its credo is called "what ought to be". The beliefs built by the three schools of law lead to justice as the main goal of legal work. The last school, namely legal positivism, relies on the binding power of legislative norms, which in its credo is called "what is written" or "law as what it is written in the books". Constructed beliefs lead to legal certainty and certainly reject values, morality, and even justice. Consistency in normative beliefs is ontologically a naive form of realism and methodologically requires only verification of data findings.

Postpositivism

Indarti incorporated the schools of legal realism and sociological jurisprudence into this paradigm. The characteristics of these two schools tend to be based on normative-empirical activity as well as the credo "law is made by the creativity of judges" or "law as a social institution". This paradigm ontologically rests on critical realism and methodologically uses falsification in empirical data testing. Although ontologically, epistemologically, and methodologically, it differs from positivism, it is important to consider its context and the interests of society. These two paradigms are both outside or still maintain themselves objectively and impartially. This condition makes these two paradigms not tied to values because they are consistent in maintaining their objectivity.

Critical Theory

Indarti includes adherents of critical legal studies and feminist jurisprudence in this paradigm. Both schools rely on class struggles, gender, structural inequality, and other struggles against power. The struggle is a historical trajectory, namely a continuous dialectical process that shapes political, social, cultural, economic, gender, ethnic, and other forms of structure. This paradigm views law as a hegemonic political product that tends to be discriminatory and exploitative. The methodology used

[15] Erlyn Indarti, "Diskresi Dan Paradigma Sebuah Telaah Filsafat Hukum" (Pidato Pengukuhan Guru Besar, Universitas Diponegoro, 2010), hlm. 19.

[16] Egon G. Guba, *The Paradigm Dialog* (California: Sage Publications, Inc., 1990), hlm. 26.

[17] Indarti, *Diskresi Dan Paradigma Sebuah Telaah Filsafat Hukum*, hlm. 21-35.

is dialectical because it deals with various kinds of objects of struggle. The data and facts found will be directed to side with the interests of the struggle.

Constructivism

Indarti stated that the school of legal constructivism is an adherent of this paradigm. This school has the credo "law is relative and contextual" or "law is agreement". Methodologically, this school is based on two main activities, namely hermeneutics and dialectics. Hermeneutics plays a role in the process of interpretation in both law formation and law enforcement. Dialectics plays a role in dialogical activities that are able to absorb context in society and are useful in the process of policy reconstruction. Through these two main activities, the law works dynamically and reflectively. Here, both legal experts, as well as practitioners and law enforcement Officers have the freedom to interpret the rule of law to suit the context of the problems faced by the community.

CONCEPT AND RESTORATIVE JUSTICE POLICY

The term restorative justice was introduced by Eglash, which he elaborated into three forms of justice in law enforcement. First, retributive justice, which emphasizes punishment as retribution for evil deeds that have been committed. Second, distributive justice which emphasizes efforts to rehabilitate perpetrators. Third, restorative justice emphasizes efforts to bring perpetrators and victims together in the process of providing reparations to victims and rehabilitation to perpetrators.[18]

Duff, citing Marshall's view, describes restorative justice as a process that brings together conflicting parties in criminal cases to agree on a resolution of the problem by taking into account the implications for both parties in the future. Meanwhile, Zehr, as quoted by Ness and Strong, explained restorative justice as a distribution of justice for victims, perpetrators, and communities around the occurrence of crimes to focus on reconciliation, reparation, and reinsurance efforts.[19]

The background to the birth of restorative justice, according to Braithwaite, is rooted in several traditions in ancient Arabia, ancient Greece, Rome, Germany after the collapse of Rome, India, and traditions religiously rooted in Buddhist, Taoist, and Confucian societies in the past.[20] Although the practice of retributive justice plays an important role in the criminal justice system, restorative justice remains steadfast in every tradition of society, especially in homogeneous European society. This is seen as a solutive effort for people who are more concerned with empowering victims and community groups affected by crime. In addition, this approach is felt to reduce the punitive impact of retributive punishment methods so that perpetrators can directly apply accountability to victims.[21]

Liebmann outlines several practical models for the application of restorative justice. First, mediation between victims and perpetrators either directly or indirectly (victim-offender mediation), awareness of victims in building joint communication (victim awareness work leading to communication with the victim), community mediation, conferences between victims and perpetrators (victim-offender conferencing), and conferences in the family environment (family

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[18] James Dignan, *Understanding Victims and Restorative Justice* (Berkshire: Open University Press, 2005), hlm. 94.

[19] Daniel W. Van Ness dan Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*, Fifth Edit. (Waltham, Massachusetts: Anderson Publishing, Elsevier, 2015), hlm. 14.

[20] In the context of Islamic teachings at the time of the Prophet Muhammad SAW, restorative justice was also practiced if there was a criminal case. Prophet Muhammad SAW always suggested forgiveness first and deliberation between the parties. Likewise, Umar bin Khattab R.A. once released a date thief by considering the condition of the people who were facing a famine. Lihat Syaibatul Hamdi, M. Ikhwan, dan Iskandar, "Tinjauan Hukum Islam Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia", *Maqasidi: Jurnal Syariah dan Hukum*, 1, 1, (2021), hlm. 82.

[21] John Braithwaite, *Restorative Justice & Responsive Regulation* (New York: Oxford University Press, 2002), hlm. 3.

group conferences), youth offender panels, behavioral agreements (acceptable behavior contracts), peace-making circles, retail theft initiatives, and victim-offender groups.[22]

The above restorative justice practices and models are also found in practice in Indonesia. Therefore, it is worth looking further at the model and its mechanism in some of its settings. In the juvenile criminal justice system, restorative justice is a unified system that must be implemented by law enforcement Officers in the form of a diversion mechanism. This mechanism runs integratively, starting with the police, prosecutors, district courts, and correctional center officers.[23] Unlike the juvenile criminal justice system, restorative justice for other crimes is actually regulated sectorally by each law enforcement agency. Here are some regulations governing restorative justice.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

One of the mechanisms regulated in the juvenile criminal justice system is diversion as a method of solving juvenile criminal cases outside the court. This law has substantially provided for integral restorative justice for all law enforcement Officers, so as to establish good connections between agencies in control and assessment mechanisms at every level of the juvenile criminal justice process.[24]

Philosophically, the juvenile criminal justice system is built in the best interest of the child. Diversion is the right method to prevent children from developing into criminals as adults. The diversion process involves law enforcement Officers at all levels of juvenile criminal justice, including placing correctional center officers in a leading role in building interrelationships between law enforcement. The process of diversion also gives enormous space to the role of society and social institutions.[25]

Circular Number SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases

This Circular of the Chief of Police is a strategic step built by the police to bridge the initial understanding of restorative justice. The existence of this circular is a guideline for investigators to begin to shift the old view, which is very retributive and punitive. The police began to realize the main problems in law enforcement and its policies were overcapacity in detention centers, the accumulation of cases, limited human resource capacity, inadequate infrastructure capacity, and very expensive costs that must be budgeted for law enforcement purposes. Therefore, the existence of this circular is a breath of fresh air to bring about a change in a new legal culture and a new way of looking at restorative justice.

Police Regulation of the Republic of Indonesia Number 8 of 2021 Concerning Handling Criminal Acts Based on Restorative Justice

After the enactment of the 2018 circular, the police also issued a regulation by the Chief of Police as a legal protection to strengthen the normative foundation for investigators, investigators, and auxiliary investigators in carrying out restorative justice. This regulation regulates material and formal requirements so that clear criteria define boundaries between perpetrators, criminal acts committed, victims, and society. Crimes that can be sought for resolution based on restorative justice are ITE crimes, narcotics crimes (specifically for drug abusers), traffic crimes, and minor crimes.

Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

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[22] Marian Liebmann, *Restorative Justice How It Works* (London and Philadelphia: Jessica Kingsley Publishers, 2007), hlm. 73-101.

[23] Erny Herlin Setyorini et al., "The Effectiveness of Diversion Through Restorative Justice For Handling Children In The East Java Police," *SASI* 29, no. 1 (2023): 59–74.

[24] Randy Pradityo, "Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum dan Peradilan* 5, 3 (2016), hlm. 323-324.

[25] Teguh Prasetyo, "Penerapan Diversi Terhadap Tindak Pidana Anak Dalam Sistem Peradilan Pidana Anak," *Refleksi Hukum: Jurnal Ilmu Hukum* 9, 1 (2015), hlm. 6.

This prosecutor's regulation was emerged out of the desire of law enforcement Officers to begin to shift to the paradigm of restorative justice in solving criminal cases. The concept of restorative justice based on this regulation can be seen as a crystallization of the application of opportunistic principles and dominus litis to the prosecutor's office. Opportunistic principles are the authority of the public prosecutor not to delegate criminal cases in the interests of the state, legal interests, or the wider community. The authority of this prosecutor strongly supports the model of solving criminal cases based on restorative justice.[26]

In addition to the principle of opportunity, the public prosecutor is also referred to as the dominus litis, or controller of criminal cases. Dominus litis is an authority for the public prosecutor to control the prosecution process, starting from the investigation stage (that control was already held when the SPDP was held) to the prosecution and trial stages in court.[27]

Some considerations that can be resolved based on restorative justice are criminal acts whose threat does not exceed five years or whose threat of fines does not exceed two million five-hundred-rupiah, first-time perpetrators of committing crimes, peace has occurred before, compensation has been made, and other considerations.

Decree of the Director General of the General Court Agency Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment

The existence of Guidelines for the Application of Restorative Justice in the General Court is a progressive step from the Supreme Court to strengthen the role of judges in solving cases based on restorative justice. The existence of this guideline is actually to bridge the performance of the prosecutor's office, which at the same time has issued a restorative justice policy. The Supreme Court responsively regulates the interrelationship between courts and prosecutors so that restorative justice mechanisms can be connected in the criminal justice system.

The existence of this guideline also further strengthens the application of the principle of fast, simple, and low-cost trials, namely in the form of a trial process using a quick examination event with a single judge, so that in the process, the role of the judge is very central to peace efforts between the parties. With this guideline, it is expected to shift the punitive paradigm that has been infused by judges towards the restorative justice paradigm.

APPLICATION OF RESTORATIVE JUSTICE IN PONTIANAK CITY

Normatively, the police institution already has regulations governing the settlement of criminal cases based on restorative justice, namely Circular Number SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases (Sekap RJ) and Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (Perkap RJ).

In the city resort police and the regional police in West Kalimantan, the new restorative justice approach is effective and has become one of the preferences in law enforcement starting in 2019. This shows that the existence of Sekap RJ in 2018 was quite effective in building a new work culture for investigators in solving criminal cases based on restorative justice. The presence of Perkap RJ in 2021 further strengthens the role of investigators in solving criminal cases based on restorative justice. Table 1 displays the number of cases resolved based on restorative justice at the Pontianak Regional Police.

Table 1. Trends and Percentages of Restorative Justice at Pontianak Police Station

[26] Endi Arofa, "Penghentian Penuntutan Dalam Perkara Pidana Berdasarkan Restorative Justice," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 7, 2 (2020), hlm. 326.

[27] Dedy Chandra Sihombing dkk., "Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif," *Locus: Jurnal Konsep Ilmu Hukum* 2, 1 (2022), hlm. 284.

Year	Number of Criminal Reports	Number of Restorative Justice	Restorative Justice Percentage
2019	1884	305	16
2020	1142	294	26
2021	1113	203	18

Source: Pontianak Police, 2022 (Processed by Researchers)

From Table 1, it can be seen that the number of cases resolved under restorative justice shows a downward trend, from 305 in 2019 to 294 in 2020 and 203 in 2021. However, it needs to be seen holistically that the number of incoming reports (total crime) has also experienced a downward trend. From the comparison of the number of incoming reports with restorative justice handlers, the movement is quite fluctuating, with a positive trend in 2020 with 26 percent. This means that, despite the downward trend in cases, the percentage of restorative justice-based settlements is moving in a positive direction. In addition to the data at the Pontianak Regional Police, investigators at the West Kalimantan Regional Police have also resolved criminal cases based on restorative justice, but it has only been effectively carried out, and the cases are well recorded administratively starting in 2021.

That year, the number of cases resolved based on restorative justice was eight. From 2022 until August, there were nine cases. Although data on solving criminal cases based on restorative justice in the West Kalimantan Regional Police has been recorded since 2021, empirically, this does not mean that restorative justice has not been carried out in previous years. This is because in previous years investigators referred to it as an amicable settlement (penal mediation), and administratively it was also not recorded as an amicable settlement. Data collection is not carried out because the peaceful process is always action-oriented. Only after the birth of Sekap RJ and Perkap RJ was the process of administrative data collection of cases carried out so that there was data on the performance of investigators and institutions that could prove the restorative justice process had been carried out at the investigation level.

Similar to the police, the prosecutor's office also has restorative justice-based settlement regulations regulated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perja RJ). Since Perja RJ was implemented in 2021, the prosecutor's office has begun to clean up and build a new legal culture in the form of restorative justice-based prosecutions. The research team conducted interviews and documentation at the Pontianak District Attorney's Office and the West Kalimantan High Prosecutor's Office to dig deeper into how far the restorative justice paradigm has become a new perspective or belief system that creates a culture of prosecution law. The data on restorative justice-based prosecutions can be seen in Table 2.

Table 2. Restorative Justice at the Pontianak District Attorney's Office

Year	Criminal Act	Restorative Justice Offers	The Success of Restorative Justice	Percentage
2021	Assault	4	1	25
2022	Assault and theft	7	4	57

Source: Kejari Pontianak, 2022 (Processed by Researchers)

Based on Table 2, the number of successful prosecutions through restorative justice mechanisms in 2021 was only one case out of four offers and in 2022 (through August) only four cases out of seven offers. When compared to the police, the number of restorative justice-based prosecutions in the prosecution is relatively very small. However, the results of the review show that

this small number does not mean that the efforts of public prosecutors in the restorative justice process are very minimal compared to investigators in the police. On the contrary, this number is more because the success of investigators in the restorative justice process in the Police has an impact in the criminal justice system so that the burden on public prosecutors is not heavy. Some cases that have succeeded through the restorative justice-based prosecution mechanism in the prosecution are cases that, since the investigation process, have attempted a restorative justice process, but these efforts have only succeeded when they enter the prosecution stage at the prosecutor's office.

From this, it can be seen that the success of police investigators has a positive impact on the prosecution work in the prosecutor's office. Based on the data in Table 2, the trend of successful prosecutions based on restorative justice has increased significantly.

The process of examining criminal cases based on restorative justice in district courts is slightly different from the process in the police and prosecutor's offices. This is because the process in court has entered the stage of examining cases in court. However, this does not mean that the application of restorative justice cannot be implemented in the courtroom. Unlike the highly structured pre-adjudication process in conferences, the application of restorative justice relies entirely on the judge's discretion in determining their judgment during the decision-making. Judges are required to actively elaborate on legal certainty, justice, and expediency to determine the level of criminal sanctions ranging from minimal criminal threats to maximum criminal threats. If judges use a restorative justice perspective in a case, there will be a convergence between legal justice, social justice, and moral justice, which is concretely stated in the choice of imposing criminal sanctions.[28]

To see the convergence process, researchers conducted interviews with two judges of the Pontianak District Court. The informants stated that the examination based on restorative justice by the judge was carried out through a legal reasoning process against the facts revealed at trial. The result can be explicitly stated in the judgment or it can be implicit, but the process does not come out of the perspective of restorative justice.

To what extent restorative justice is a way of view or belief system in every criminal case hearing for judges, the informant explained as follows:

> "There are some, such as diversion, rehabilitation of drug addicts, reducing sentences for women who face the law, and giving probation to defendants in prison because victims and defendants have forgiven each other. The restorative justice, or RJ, approach is contained in the legal considerations of the verdict or determination."[29]

To test informants' statements, researchers searched judgment documents containing restorative justice considerations. The results can be seen in the table below.

Table 3. Considerations of Restorative Justice in Pontianak District Court

Verdict	Year of Verdict	Consideration	Punishment
Number 224//Pid.Sus/2017/PN Ptk (Narcotics)	2017	The panel of judges considered restorative justice so that the defendant would not be	Imposing a sentence of life imprisonment

[28] Didi Hilman and Latifah Ratnawaty, "Membangun Moral Berkeadilan Dalam Penegakan Hukum Di Indonesia," *Yustisi Jurnal Hukum dan Hukum Islam* 4, no. 1 (2017): 59–65.

[29] Hakim Pengadilan Negeri, "Wawancara Dengan Hakim Pengadilan Negeri Pontianak" (Pontianak: Pengadilan Negeri Pontianak, 2022).

		sentenced to death	
Nomor 27//Pid.Sus/2018/PN Ptk (Narcotics)	2018	The panel of judges considered restorative justice so that the defendant would not be sentenced to death	Imposing a sentence of life imprisonment
Nomor 31//Pid.Sus/2018/PN Ptk (Narcotics)	2018	The panel of judges considered restorative justice so that the defendant would not be sentenced to death	Imposing a sentence of life imprisonment
Nomor 755//Pid.Sus/2019/PN Ptk (traffic)	2019	The panel of judges considered restorative justice so that the defendant would not be sentenced to death	Imprisonment of 3 months from a maximum of 1 year
Nomor 1110/Pid.B/2019/PN Ptk (fraud)	2020	The judge considers restorative justice to determine the defendant's guilt as a misdemeanor and therefore needs leniency	Imprisonment of 10 months from a maximum threat of 4 years
Nomor 1124//Pid.B/2019/PN Ptk (embezzlement)	2020	The judge considers restorative justice to determine the defendant's guilt	Imprisonment of 10 months from a maximum threat of 5 years

		as a misdemeanor and therefore needs leniency	
Nomor 1109//Pid.B/2019/PN Ptk (fraud)	2020	The judge considers restorative justice to determine the defendant's guilt as a misdemeanor and therefore needs leniency	Imprisonment of 4 months from a maximum threat of 4 years
Nomor 1108//Pid.B/2019/PN Ptk (fraud)	2020	The judge viewed the defendant's actions as gross misconduct. Despite this, the judge still considered restorative justice necessary to grant leniency.	Imposing a prison sentence of 2 years 6 months from a maximum of 4 years
Nomor 1123//Pid.B/2019/PN Ptk (embezzlement)	2020	The judge viewed the defendant's actions as gross misconduct. Despite this, the judge still considered restorative justice necessary to grant leniency.	Imposing a prison sentence of 1 year 8 months from a maximum of 5 years
Nomor 8//Pid.Sus/2020/PN Ptk (Narcotics)	2020	The panel of judges expressly stated that restorative justice for drug trafficking cannot be done because the act	Imposing the death penalty

		of distributing narcotics is a serious and extraordinary crime	
Nomor 106//Pid.B/2020/PN Ptk (embezzlement)	2020	The judge considers restorative justice to determine the defendant's guilt as moderate misconduct and therefore needs leniency	Imprisonment of 1 year 6 months from a maximum of 5 years
Nomor 255//Pid.B/2021/PN Ptk (premeditated murder)	2021	The panel of judges considered restorative justice so that the defendant would not be sentenced to death	Imposing the death penalty

Source: Directory of Supreme Court Decisions

Table 3 above shows that over the past five years, the perspective of restorative justice has become a paradigm used in the legal reasoning process. In several cases with the threat of the death penalty, the Pontianak District Court has used the perspective of restorative justice as the basis for not imposing the death penalty. This, of course, should be appreciated as a progressive step to reduce the death penalty in Indonesia.

Strengthening the perspective of restorative justice can also be seen from the statements of informants who consider restorative justice regulations to be weak. The informants wanted restorative justice to be regulated at the legal level. The informants explained as follows:

> "We strongly agree that if this restorative is strengthened at the court level, we feel that it is much more effective and efficient. First, our energy has been drained a lot due to the number of cases coming in, while the number of judges each year has not increased much. Here alone, the burden on judges when compared to the number of cases is very unequal, so restorative justice is very important. Now the prison is overcapacity, though, So yes, the government should focus later on strengthening this restorative regulation, not only the Supreme Court or the police or prosecutor's office have their own regulations, if necessary, this should be included in the draft of the Criminal Procedure Code in the future so that the regulations are strong and clear. Then it works integrative-functionally, starting from the police, prosecutors, courts, and even detention center. If the regulation is at the level of law, we are very strong at implementing it, especially if there is a mediation process first. In the case of children, there is a diversion. And in the theory of criminal procedural law, we also know penal mediation, so

for the case of drug addicts, they should only rehabilitate them; it can clearly reduce the overcapacity of prisons."[30]

From the results of interviews and searches of legal materials related to the Pontianak District Court's decision, it can be said that the judges have used the perspective of restorative justice in carrying out the legal reasoning process. Therefore, in the context of punishment, the paradigm shift towards restorative justice is already underway, as it should be.

LAW ENFORCEMENT PARADIGM SHIFT IN PONTIANAK CITY

The emergence of various sectoral policies governing solutions based on restorative justice starting in 2018 in the police and followed by the procuratorate and courts in 2020 illustrates that the concept of restorative justice has been institutionally accepted as one of the alternatives needed by law enforcement Officers to reduce the amount of law enforcement workload and overcapacity problems.

Both the police, the prosecutor's office, and the courts below the Supreme Court have realized that restorative justice is very important to be carried out and offered in the law enforcement process. Law enforcement policies that have been built have been able to open the veil of importance that both victims and perpetrators need to be heard and need to be given the opportunity to talk about peace. Placing law enforcement officers as facilitators will certainly play a role in improving the image of law enforcement from repressive to restorative, from punitive to humanist.

So far, the justice that is interpreted is justice in the aspect of positivistic legal certainty. This narrow meaning causes justice to be very exclusive because justice is intended for the interests of the rule of law, not the sovereignty of the people, which in the context of law enforcement is the rights of the victims and perpetrators themselves. Law enforcement is considered as enforcement of acts that violate the law regardless of the impact that occurs on the victim, the victim's loss, and the damage incurred and felt by the victim. Law enforcement is considered complete when the perpetrator has languished in prison, then the law no longer needs to see whether the loss and damage suffered by the victim need to be addressed or not.

This model, of course, places justice exclusively in the hands of the law itself, not humans. Therefore, the emergence of Sekap RJ and Perpol RJ in the police, Perja RJ in the procuratorate, and RJ Guidelines in the general judicial environment is a form of breaking the old paradigm that locks justice as justice for the law alone. This breakthrough represents a paradigm shift in punishment for policymakers within law enforcement institutions. Therefore, since 2018 until now, solutions based on restorative justice have become an alternative that law enforcement Officers need to implement.

From various interviews and documentation, it can be seen that restorative justice has become an important thing that must be done in every criminal case resolution process. Both Pontianak Police and West Kalimantan Regional Police have sought a restorative justice model in every investigation or investigation process. This can be seen from the trend that is quite well shown by the Pontianak Police, and it was also strengthened by the West Kalimantan Regional Police.

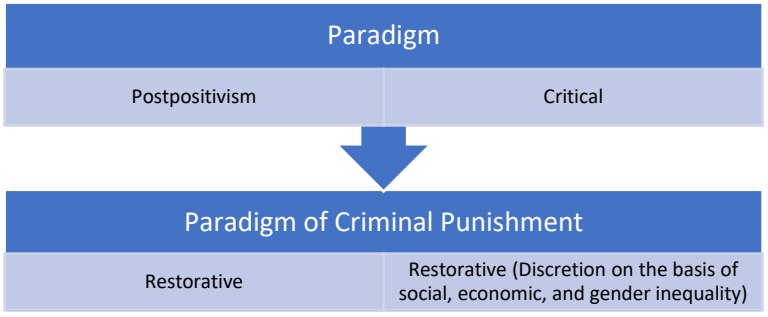
In addition, an interesting finding from the documentation data is that Pontianak Police investigators are not rigid in applying Sekap RJ and Perkap RJ. This can be seen from Pontianak Police data, the use of restorative justice in general crimes not only targets minor crimes, but investigators even solve many cases whose threats are more than five years based on restorative justice. This indicates that the paradigm that has begun to be built in the police is not only the paradigm of positivism, but, in certain cases, has moved in a critical direction.

The positivism paradigm can be seen in the awareness of investigators, investigators, and auxiliary investigators to choose solutions based on restorative justice regardless of the magnitude of the criminal threat. As long as the case is open to resolution based on restorative justice, a non-penal process is the best alternative.

[30] Hakim Pengadilan Negeri, "Wawancara Dengan Hakim Pengadilan Negeri Pontianak".

Meanwhile, the critical paradigm in certain cases can be seen from the reasons investigators, investigators, and auxiliary investigators choose the restorative justice model in a particular case. The reason for social inequality, economic inequality, or gender inequality problems is also one of the rational reasons why restorative justice is chosen in a criminal case settlement. These two paradigms, in the field, are empirically proven to show the excellent and open performance of Pontianak Police in choosing restorative justice. This indicates a good transformation of the police agency in Pontianak City.

Chart 1. Restorative Justice Paradigm at Pontianak City Resort Police

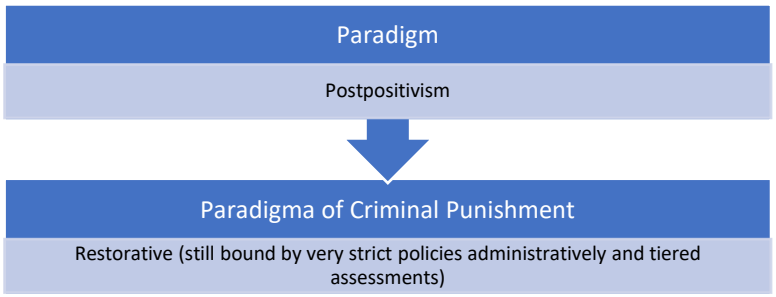


The many successes of cases completed based on restorative justice at the police level also help the work of the prosecutor's office. The public prosecutor in Kejari Pontianak has also made optimal efforts by offering and educating perpetrators to be willing to use the restorative justice model. The existence of the Restorative Justice House is one of the optimal efforts made by Kejari Pontianak so that the restorative justice model can continue to run consistently.

This can be seen from the trend of settlements based on restorative justice in Kejari Pontianak increasing from 2021 to 2022. This increase is supported by the paradigm of public prosecutors who are competent in understanding restorative justice, the existence of Restorative Justice Houses, and education carried out for perpetrators and victims. The success of the Pontianak Police Station and Pontianak Kejari certainly had a positive impact on the Pontianak District Court because the number of criminal cases entered decreased.

However, in the context of the paradigm, when compared to the Pontianak Regional Police, there has not been a progressive shift towards critical A new paradigm shift occupies the paradigm of positivism. Kejari Pontianak has made choices on the restorative justice model, but these choices are still bound by the norms in Perja RJ and tiered assessments starting from Kejati Kalbar to the approval of the Attorney General's Office.

Chart 2. Restorative Justice in Kejari Pontianak



The judges at the Pontianak District Court also tried to carry out restorative justice through the legal reasoning process. The existence of Restorative Justice Guidelines in the general judicial environment greatly supports the success in building a paradigm towards postpositivism and critical in the Pontianak District Court. Meanwhile, in the case of death penalty threats, the judges made a legal breakthrough by using a restorative justice perspective to not impose the death penalty. This is good practice as a form of paradigm shift towards constructivism.

The positivist paradigm is built on the various critical efforts of judges in giving consideration and handing down decisions. These critical efforts are rooted in the doctrine of the freedom of judges as *homo yuridicus* (freedom bound to legal norms). While the critical paradigm is seen in the partiality of judges in certain cases against defendants who come from low economic circles, defendants who have not socially committed a crime, and defendants who are women who face the law. From this, it can be seen that the judges of the Pontianak District Court began to realize that structural inequality can be a consideration for imposing probation.

Meanwhile, the constructivist paradigm was built on the efforts of judges to prevent the imposition of the death penalty against drug and premeditated murder defendants. Of the 5 cases prosecuted for the death penalty, 4 of them used the perspective of restorative justice as a ratio decidendi to reject the imposition of the death penalty on the defendant. Although in their judgment the judges cited the Constitutional Court ruling on the constitutionalism of the death penalty, they instead resorted to the method of legal interpretation (*rechtsvinding*) to declare that the death penalty was no longer relevant to be imposed.

Chart 3. Restorative Justice Paradigm in Pontianak District Court

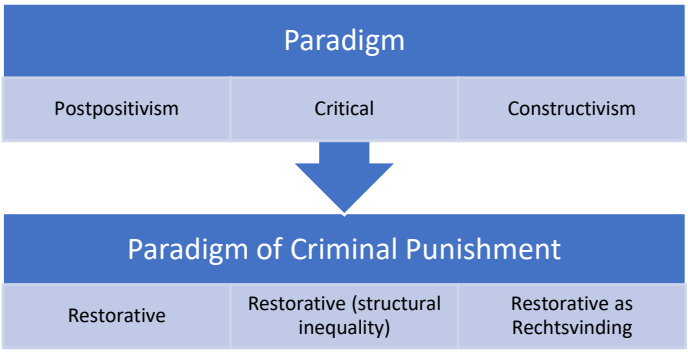
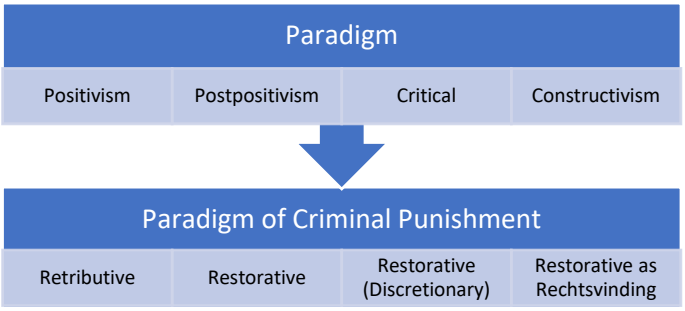


Chart 4. Paradigm of Criminal Punishment Shift



From the experience of law enforcement in Pontianak City, it can be seen that the paradigm of positivism has slowly begun to be abandoned and shifted towards postpositivism, critical, and constructivism. This situation is surely very positive for the future of law enforcement in Pontianak City. Slowly, law enforcement Officers began to make restorative justice as the main alternative, both in discretionary activities, legal reasoning activities, and the application of excellent policies for law enforcement activities.

Thus, it is hoped that the law enforcement process in Pontianak City can run optimally so that the burden of case accumulation, law enforcement budget burden, and overcapacity in detention centers and prisons can be progressively minimized. Law enforcement with a restorative justice model in Pontianak City also gives a good image to law enforcement institutions ranging from the police, prosecutors, to the courts.

CONCLUSION

Based on research findings and data exposure, it can be seen that in the penal paradigm, there has been a shift in the punishment paradigm from a highly positivist retributive paradigm to a

restorative paradigm. This is supported by cross-sectoral policies that have accommodated restorative justice as an alternative to solving criminal cases. However, there is a different paradigm shift pattern between Pontianak Police Station and Kejari Pontianak. At the Pontianak Regional Police, the shift not only leads to postpositivism but also, in certain cases, lead to a critical paradigm. In certain cases, investigators at the Pontianak Regional Police see structural inequality as a reason for choosing the restorative justice model. This can be seen from the findings in the field, Pontianak Police often make legal breakthroughs by choosing restorative justice in cases with criminal threats of more than five years. Meanwhile, the public prosecutor in Kejari Pontianak does not have freedom to make legal breakthroughs. Strict policy factors and tiered assessments structurally shackle the work of public prosecutors. Similar to the police, judges at the Pontianak District Court have also, in certain cases, shifted to the critical paradigm and constructivism through the legal reasoning process in their rulings. The judges use restorative justice as a perspective in interpreting the law (rechtsvinding) and do not impose the death penalty.

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