GIJLSS
Greenation International Journal of Law and Social Sciences
+62 81210467572 https://research.e-greenation.org/GIJLSS greenation.info@gmail.com
GREENATION RESEARCH

DOI: https://doi.org/10.38035/gijlss.v3i2.

The Concept of Peaceful Fines on The Implementation of Restorative Justice in The Development of Criminal Law in Indonesia

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Abstract: There is a conceptual error in the existence of peaceful fines when viewed from the implementation of peaceful fines itself, especially when applied to minor corruption crimes, which basically can be attached to the police institution, so that the fast track of criminal justice can be realised. Therefore, the purpose of the research conducted by researchers in this study is to find the concept of peaceful fines for the incorporation of restorative justice into Indonesia's evolving criminal code. Descriptive analysis is the research specification, and a normative juridical approach is the research methodology. Primary, secondary, and tertiary legal resources are the sources of the data. This research found that there is a social contract attached to state responsibility for the losses suffered by victims. This state responsibility is substantially and fundamentally attached to the state by attaching environmental losses and community losses in addition to state financial losses. Thus, the concept of punishment for corruption offences will be erroneous when only the state finances that are harmed are the focus. This also leads to amicable fines being the focus of punishment for corruption offences which will also be erroneous. The implementation of the concept of restorative justice in the form of peaceful fines places the Police as the implementer considering the 'vanguard' of law enforcement in Indonesia. On the other hand, the police also function as a conduit of information or a copy to the prosecutor's office and judges in court, the final result of which is an amicable fine set by the court.

Keywords: Peace Fines, Corruption, Restorative Justice, Police Department

INTRODUCTION

Provisions of Article 35 of Law No.16 of 2004 concerning the Public Prosecution Service. In the formulation of Article 35 paragraph (1) letter K of Law No.11 of 2021 on the Amendment to Law No.16 of 2004 on the Prosecutor's Office, it regulates peace fines, which can be more clearly stated:

'The Attorney General has the duty and authority: k. to handle criminal offences that cause losses to the state economy and may use peace fines in economic criminal offences based on statutory regulations'.

Examining the Explanation section of Article 35 paragraph (1) letter k of the Prosecutor's Office Law, it can be seen that there is no limitative regulation regarding the settlement of economic crimes through the mechanism of peaceful fines (Rolando Ritonga, 2023) because the explanation section stipulates: "The use of amicable fines in economic offences is a form of application of the principle of opportunity owned by the Attorney General in taxation offences, customs offences or other economic offences based on the law. Therefore, to anticipate opinions arising in the community regarding the application of amicable fines in economic crime cases, an amicable fine mechanism must be created that leads to the parameters and procedures for the exercise of prosecutorial authority (dominus litis) in terms of the application of amicable fines. In addition, a change in mindset (socialisation) by the Prosecutor's Office regarding the function of the law which no longer leads to retribution (retributive) must immediately become a concern because the function of the law as intended nationally and internationally has also shifted to recovery (restorative).

However, the statement found in Law No.11 of 2021 concerning Amendments to Law No.16 of 2004 respecting Prosecutors, Article 35, paragraph (1) letter K, makes it clear that (Rolando Ritonga, 2023): 1). Handling criminal offences that cause losses to the state economy, 2). Depending on laws and rules, peace fines may be applied to economic crimes.

The two points above show that there are 2 (two) binding elements regarding the authority in question, namely the first element, the Prosecutor's Office is authorised to handle economic crimes that cause losses to the state economy. While the second element, the settlement can use an amicable fine

Based on the above, an amicable fine is an amount of money that must be paid by the suspect imposed and approved by the Attorney General which is carried out outside the Indra court (Gunawan, 2023). The amount of the fine imposed is in accordance with the value of the loss suffered by the state or more where the amount is determined by the Attorney General based on statutory regulations. The use of peace fines is an exclusive authority that is only owned by the Attorney General without going through a judge's determination. Here the Attorney General becomes a semi-judge or in German called ein richter vor den richter, which is a judge before the judge.

However, when such peaceful fines are applied to petty corruption as well, it creates a polemic. As is known, during a hearing with Commission III of the House of Representatives on Thursday 27 January 2022, Attorney General Sanitiar Burhanuddin revealed that he had asked his staff not to prosecute corruption perpetrators who caused state financial losses below Rp50 million, and asked the suspect to return the loss (Yulida Medistiara, http). In addition, President Prabowo Subianto discussed forgiveness for corruptors by saying that he would forgive corruptors if they returned the money stolen from the state (Dani Aswara, http).

This is intended so that the legal process can be completed quickly, simply, and at low cost. In addition, with the existence of amicable fines, the state finances that are harmed can be restored to their position. This can be assessed from the expediency of the existence of amicable fines. However, when there is no rule of law that regulates amicable fines, polemics cannot be avoided, considering that even though the public prosecutor has the authority to stop a case with the existence of an amicable fine, the projection of abuse of authority will arise.

Based on the above, the application of peaceful fines, in addition to not having a mechanism that leads to the parameters and procedures for exercising the prosecutor's authority (dominus litis), the concept of petty corruption must also be ensured, considering the existence of The return of state funds cannot be used as a justification for not prosecuting the offender, according to Article 4 of Law Number 31 Year 1999 on the Eradication of the Crime of

Corruption. The restitution of state financial losses or the state economy does not absolve corrupt officials of criminal responsibility, according to Article 4 of Law Number 31 Year 1999 on the Eradication of the Crime of Corruption. Therefore, although the recovery of state financial losses aims to realise the implementation of legal processes that are fast, simple, and low cost, the elimination of punishment is not possible. This leads to the argument that the existence of corruption, which is a despicable behaviour regardless of the amount of state financial losses incurred, the attachment of deterrent aspects must still be carried out.

The context of peaceful fines refers to the benefits that can be obtained from out-of-court settlement of cases through the payment of fines, both for the perpetrators of criminal offences and the state. The principle of expediency must also be directed at law enforcement schemes without eliminating the existence of the legal function as a deterrent effect, considering that corruption offences fundamentally affect the surrounding environment, not only on one subject alone

This shows that the amicable fine given to the state with the prosecutor as the recipient, basically does not provide fundamental legal consequences, considering that the crime of corruption is not only limited to state losses for the amount of corruption obtained by the perpetrator. However, the important thing about the conviction of corruption offences, according to researchers, is that it must also reach the environmental aspects caused by the corruption offence, so that the peaceful fine basically has no substance when it is only attached to state financial losses..

Peace fines as part of restorative justice is a concept that is actually premature considering that restorative justice itself binds to the law as a concept of punishment that takes into account the existence of losses. Peace fines conceptually at this time only attach to state financial losses, which according to the author contradicts the philosophy of restorative justice, namely the existence of losses that must be restored to their original state. Therefore, conceptually, according to the author, peace fines are not appropriate when placed as part of restorative justice, especially since restorative justice itself can basically be carried out at the beginning of the criminalisation process, namely at the police level. In other words, the attachment and peaceful fines should override the police, not solely the authority of the prosecutor's office.

The strong authority of the Prosecutor in the implementation of peace fines is supported by previous studies such as research conducted by Ida Bagus Bima Adi Pranawa in the Journal of Kertha Wicara Vol 14 No 02 of 2025 with the title ‘The Role of the Public Prosecutor in Implementing Peace Fines and Restorative Justice Towards the Settlement of a Crime’. The development of Law Number 11 of 2021's Article 35 paragraph (1) letter (k) on Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia is the focus of this study, regulating peace fines, It makes it clearer that, in accordance with statutory requirements, the Attorney General has the responsibility and power to apply peace fines for economic offenses. The researcher claims that this study conceptually demonstrates that the Attorney General's Office is not fully associated with restorative justice. However, the National Police Chief SE No. SE/8/VII/2018 of 2018 concerning the Application of Restorative Justice in Criminal Case Resolution and National Police Chief Regulation No. 6 of 2019 concerning Criminal Investigation give the police, an early institution of law enforcement in Indonesia, the legal authority to implement restorative justice.

Thus, according to the author, there is a conceptual error in the existence of peace fines when viewed from the implementation of the peace fines themselves, especially when applied to petty corruption crimes, which basically can be implemented by the police institution, so that a fast criminal justice path can be realised. The difficulty of implementing peaceful fines for minor corruption offences, according to the author, is due to the juridical aspects inherent in the punishment itself, namely the elimination of the deterrent effect, although in the current

development of criminal law, the deterrent effect is basically not inherent in restorative justice. However, in the author's opinion, when linked to corruption offences, the deterrent effect is the most important element considering the fundamental loss of the corruption offence itself which is not only limited to state financial losses, but environmental losses. Therefore, the purpose of the research conducted by the researcher in this study is to find the concept of peaceful fines supports the incorporation of restorative justice into Indonesia's evolving criminal code.

METHOD

A normative juridical approach is the research methodology employed, which entails conducting legal research by searching for regulations and other literature pertaining to the issue being studied and using library materials or secondary data as a basis (Soerjono Soekanto and Sri Mamudji, 2003). In order to examine issues in relation to the idea of peaceful fines for the implementation of restorative justice in the development of Indonesian criminal law, this method of approach makes reference to the laws and values that are applicable in society. Library resources or secondary data in the form of primary, secondary, and tertiary legal materials are the subject of normative research.

The notion of peaceful fines on the application of restorative justice in the evolution of Indonesian criminal law is described in the descriptive analysis research specification employed in this study. Regarding the issues that have been formulated, the situation is examined in light of the relevant laws and regulations, legal theories, and the practice of implementing positive legislation (Soerjono Soekanto, 2010).

Research on the notion of peace fines and the application of restorative justice in the evolution of Indonesian criminal law was conducted using secondary data, which came from primary, secondary, and tertiary legal materials. The Republic of Indonesia's 1945 Constitution and the Criminal Code are examples of primary legal materials. Secondary legal materials include expert opinions, legal journals, textbooks written by prominent jurists, legal cases, jurisprudence, and the outcomes of recent symposia related to the research topic (Johny Ibrahim, 2008). Tertiary legal materials are those that provide information about primary and secondary legal materials, such as websites, general dictionaries, legal dictionaries, and other pertinent articles.

RESULT AND DISCUSSION

Indonesia is one of the many countries in the world that highly values and upholds the values and provisions of the law that are enforced both domestically and other laws that have been established (Dwi Atmoko, Amalia Syauket, 2022). Law is a tool to regulate society and regulate people's lives in the nation and state (Adinda Shafiyah, Elisatris Gultom, 2024) as well as when carrying out their daily activities, therefore the role of legal personnel occupies a very important position. Mentioned in Article 1 Paragraph 3 of the NRI Constitution, Indonesia is a state based on law. Indonesia uses and applies law as one of the regulatory tools for the lives of its people, both for relationships with the state and relationships with other communities in their environment. Law and society are interrelated and cannot be separated, this is because the law itself exists in a social order called society. In addition to the function of law as a regulatory tool for the life of society, the law also has another role, namely as a protector for the community so that the community avoids the abuse of the rights and obligations of the power holders. If there is no law in Indonesia then what happens is that chaos will arise as has been conveyed by the community that if the law is eliminated and not enforced then crime will certainly appear and grow everywhere so as to threaten and endanger the welfare of people's lives.

One of the applications of the law is carried out in sentencing. Due to the large number of individuals and organizations involved, sentencing is the most complicated procedure in the

criminal justice system (Rabith Madah Khulaili Harsya, 2022). According to Rabith Madah Khulaili Harsya (2022), punishment can be understood as both the stage of deciding on sanctions and the stage of enforcing them. This is evident in Sudarto's view, which holds that the legislature is involved in determining the criminal law sanctioning system through the granting of penalty in abstracto. In the meantime, a number of organizations that support and carry out the criminal law consequences are involved in the actual implementation of punishment (Eddy OS Hiariej, 2014).

In relation to this sanction issue, G.P. Hoemagels even gives a broad meaning. He said that sanctions in criminal law are all reactions to violations of the law that have been determined by law, starting from the detention of the suspect and the prosecution of the defendant to the verdict by the judge. Hoefnagels sees punishment as a process of time in which the whole process is considered a crime (G.P. Hoemagels, 2013).

The theory makes a distinction between formal and material criminal law. The content or regulations found in the Criminal Code constitute material criminal law. On the other hand, the law that implements the material criminal law is known as formal criminal law (KUHAP). Formal criminal law is a very important part in enforcing the rules contained in the material criminal law, or in other words, a person to be considered as a perpetrator of a criminal offence must be proven through the mechanism of formal criminal law (Moeljatno, 2015). A person can be called the perpetrator of a criminal offence must be proven by the provisions stipulated in the formal criminal law (KUHAP) (Ismail Ali, 2023).

Restorative justice can also be felt directly by victims and suspects in a case where case settlement is carried out to restore or restore the situation in a way that is discussed and consulted by both parties (Hanaf Arifi, Ningrum Ambarsari, 2018).

Restorative justice refers to an approach to resolving criminal cases through the involvement of perpetrators, victims, or other related parties. The aim is to jointly find a fair solution, emphasising restoration and repair of the original situation, rather than punishment in retaliation for the offence..

Restorative justice refers to an approach to resolving criminal cases through the involvement of the offender, victim or other relevant parties. The aim is to jointly find a fair solution, emphasising recovery and repair of the original situation, rather than punishment as retribution for the act (Andri Kristanto, 2022). The principles contained in restorative justice are actually one of the characteristics of being a country, Indonesia should be able to raise and implement the resolution of legal problems that arise in society into its positive legal system.

Conceptually, restorative justice is the most sophisticated mechanism in the current criminal justice scheme. This is motivated by dissatisfaction with conventional mechanisms in resolving criminal cases which tend to lead to long time, expensive costs and complexity in the judicial process. This shows that the current criminal justice system is difficult to be accepted by the public considering that legal protection of human rights is difficult to achieve.

Restorative justice, according to the UN's Basic Principles notion, is the logical extension of the existing criminal justice system (Niko Muhammad Insani, 2024). G. P. Hoefnagels's belief that criminal politics must be logical—a rational sum of the responses to crime—is in line with this viewpoint (Zulkarnain Koto, Syafruddin, Tagor Hutapea, 2024). One paradigm that can serve as a framework for criminal case management techniques meant to address discontent with the way the existing criminal justice system operates is the restorative justice approach.

Peace fines which are part of restorative justice are a new breakthrough, where the use of restorative justice places both victims and perpetrators as aspects that must be considered by the law. Factually, the concept of restorative justice is different from conventional justice, because conventional justice places the perpetrator and the community as an inseparable part of the implementation of criminal case settlement through the criminal justice system

mechanism. On the other hand, conceptually restorative justice gives a position to the perpetrator as a part that must be honoured and the law must pay attention to it, not just imprisoning or punishing the perpetrator, but giving the position of the perpetrator as a subject who must get help for his wrong actions, so that the perpetrator feels guilty and does not repeat his actions. However, if this concept is related to the crime of corruption, although it is a minor crime, then according to the author, the elements that must be considered are not only focused on the perpetrator and the victim. However, what must be considered is the loss of state finances and the main thing is the loss of the environment.

State financial loss is the impact of corruption that factually harms state finances. This is a common thing when a corruption offence occurs and at this time the attachment of punishment focuses on this. However, what must also be considered, according to the author, is the existence of environmental losses, with the first aspect being the loss to society due to the corruption offence that occurred. This implies that the community feels harmed by the corruption that occurred, such as the community will be harmed by the construction of an alleyway in a village that was not realised because the construction funds were corrupted. The second aspect is the environmental aspect itself, such as the landslide on a cliff due to the construction of cliff reinforcement not being carried out due to the funds being corrupted.

The foregoing shows the importance of attention to the environmental element of the punishment attached to corruption offences. Thus, it is conceptually inappropriate for peaceful fines to be attached to corruption offences if they are only attached to the existence of financial losses alone by eliminating the elements of community and environmental losses, even if such application is carried out in minor corruption offences.

As explained above, restorative justice is a concept that prioritises the protection of victims, where its implementation can be attached to the existence of social contracts and social solidarity. The social contract is attached to the state's responsibility for the losses suffered by victims. This state responsibility, according to the author, is substantially and fundamentally attached to the state by attaching environmental losses and community losses in addition to state financial losses. Therefore, the state as the highest authority in a state organisation should pay attention to these losses, not only focusing on restoring the state's finances. Thus, the concept of punishment for corruption offences will be wrong when only the state finances that are harmed are the focus. This also leads to peaceful fines being the focus of criminalisation of corruption offences, which will also be erroneous

Based on this, it should be seen in an actual manner that cannot be separated from a realistic phenomenon in society. Thus, in essence, it can be done with the approach of ‘actual enforcement’ law enforcement theory, as in the theory of Joseph Goldstein which states that in this law enforcement, law enforcement must be seen realistically, so that actual law enforcement must be seen as a discretionary part that cannot be avoided due to limitations, even though integrated monitoring will provide positive feedback (Sigar P. Berutu, et al, 2024). Law enforcement officers should not only ‘spell out the rules’, but explore the values contained in the laws and regulations. For this reason, law enforcement officers are required to empower all capacities that exist in themselves, not only ratios but with compassion, empathy, sincerety and courage (dare) (Ali Marwan HSB, 2016).

Referring to the two views above, basically the frontline in law enforcement is the Police. Given the duties and functions of the Police are the entities that first touch criminal cases, starting from investigations, investigations and submission of case files to the Public Prosecutor. Based on this, when the Police are faced with a large or small criminal case that can actually cause realistic phenomena in society, then of course this lies in the courage of the Police in using or not using their discretionary authority. T"In the public interest, officers of the Indonesian National Police in carrying out their duties and authorities may act according to

their own judgment," according to Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police, which outlines the discretionary authority.

It is also anticipated that the use of this discretion would be motivated by the importance of justice and the advantages for the parties involved in the case as well as the larger community. Regarding the law as a set of standards to successfully accomplish the intended objectives, law enforcement success always depends on the proper operation of all its constituent parts.

The implementation of the concept of restorative justice in the form of peaceful fines places the Police as the implementer considering the 'vanguard' of law enforcement in Indonesia. On the other hand, the police also function as an introducer of information or a copy to the prosecutor's office and judges in court, the final result of which is an amicable fine set by the court. It is this court decision that makes an amicable fine legally binding in Indonesian positive law. With the main condition, in addition to the amicable fine, the repair of the environment damaged by the criminal act of corruption committed, must also be repaired by the perpetrator.

CONCLUSION

The idea of peaceful fines in relation to the application of restorative justice in Indonesia's evolving criminal code is The idea of restorative justice places a high priority on victim safety, where its implementation can be attached to the existence of social contracts and social solidarity. The social contract is attached to the state's responsibility for the losses suffered by victims. This state responsibility, according to the author, is substantially and fundamentally attached to the state by attaching environmental losses and community losses in addition to state financial losses. Therefore, the state as the highest authority in a state organisation should pay attention to these losses, not only focusing on restoring the state's finances. Thus, the concept of punishment for corruption offences will be wrong when only the state finances that are harmed are the focus. This also leads to peaceful fines being the focus of criminalisation of corruption offences, which will also be erroneous.

As the "first line" of law enforcement in Indonesia, the police are the ones who carry out the concept of restorative justice through the use of peace fines. However, the police also serve as a source of information or copies for the prosecutor's office and judges in court, which ultimately leads to a court-imposed reasonable fine. It is this court decision that makes an amicable fine legally binding in Indonesian positive law. With the main condition, in addition to the amicable fine, the repair of the environment damaged by the criminal act of corruption committed, must also be repaired by the perpetrator.

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