

APPLICATION OF RESTORATIVE JUSTICE AGAINST OIL PALM THEFT: ANALYSIS OF ISLAMIC CRIMINAL LAW CASE STUDY MEDAN LABUHAN DISTRICT

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Abstract

Palm oil theft is a common crime in Indonesia, regulated by positive law. However, in the case of theft crimes in Medan Labuhan District, the use of restorative justice and Islamic criminal law is used to resolve these cases. This study aims to analyze the role of restorative justice in handling oil palm theft cases in Medan Labuhan sub-district from the perspective of Islamic criminal law. Restorative justice focuses on restoring relationships between victims and the community through dialogue and mutual attestation, compared to a retributive approach that focuses on providing punishment. This qualitative research, using empirical juridical approaches and field research techniques, concludes that restorative justice in the Islamic criminal law system can be an effective alternative in handling theft cases, especially in the community of Medan Labuhan District. This approach aligns with the principles of shura (deliberation), which prioritize peaceful settlement and the restoration of social relations.

Keywords: Restorative Justice; Theft; Palm Oil; Islamic Criminal Law.

Abstrak

Pencurian minyak sawit merupakan tindak pidana umum di Indonesia yang diatur dengan undang-undang positif. Namun, dalam kasus tindak pidana pencurian di Kabupaten Labuhan Medan, digunakan restorative justice dan hukum pidana Islam untuk menyelesaikan kasus tersebut. Penelitian ini bertujuan untuk menganalisis peran restorative justice dalam penanganan kasus pencurian kelapa sawit di Kecamatan Labuhan Medan dari perspektif hukum pidana Islam. Keadilan restoratif berfokus pada pemulihan hubungan antara korban dan masyarakat melalui dialog dan pengesahan bersama, dibandingkan dengan pendekatan retributif yang berfokus pada pemberian hukuman. Penelitian kualitatif dengan pendekatan yuridis empiris dan teknik penelitian lapangan ini menyimpulkan bahwa restorative justice dalam sistem hukum pidana Islam dapat menjadi alternatif yang efektif dalam penanganan kasus pencurian khususnya di masyarakat Kabupaten Labuhan Medan. Pendekatan ini sejalan dengan prinsip syura (musyawarah) yang mengedepankan penyelesaian damai dan pemulihan hubungan sosial.

Kata Kunci: Keadilan Restoratif; Pencurian; Minyak Sawit; Hukum Pidana Islam.

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INTRODUCTION

The theft of oil palm fruit, which significantly affects productivity and profits, poses a significant challenge to the palm oil industry in Indonesia (Suradi, Sahidanna, and Budiawan, 2023). Indonesia is one of the largest palm oil producers in the world, with plantations reaching millions of hectares. Medan Labuhan District is among the areas with oil palm plantations. Oil palm is a fairly productive crop at the moment, so many people choose to plant their land with it.

The most ancient crime to date, theft, still exists and continues to occur in society. The perpetrators typically justify their theft as a response to the economic hardships they and their families are experiencing. Unable to find a solution to their problems, the perpetrators turned to theft as a shortcut to make ends meet.

According to Article 362 of the criminal code on theft, a person who takes all or part of a person's wealth with the intention of unlawful possession faces a maximum five-year prison sentence and a maximum fine of sixty rupiah. The theft of oil palm is a common crime in the community. This is due to the oil palm land's distance from community settlements, making it easy for perpetrators to carry out their actions, a practice that is also prevalent in the District of Medan Labuhan. In this study, the authors examined two (two) owners of oil palm land who often lose oil palm fruit every week.

The issue of oil palm theft in Medan Labuhan Sub-District extends beyond typical criminal activities. It is a reflection of various overlapping and interrelated social, economic, and moral issues. First, oil palm theft shows how economic and social pressures can influence individuals or groups to commit acts that violate norms and laws. Therefore, by exploring this case, we can understand more about the socio-economic background of the community in Medan Labuhan District. In addition, we can also evaluate the effectiveness of the applicable criminal law, especially in the context of criminal law, in addressing this problem (Susilo, 2015).

We need to address the serious challenge of oil palm theft in Medan Labuhan Sub-District with more effective and proactive actions. These thefts not only hurt the oil palm farmers financially, but they also have a negative impact on the local economy and social stability in the region. In recent years, cases of oil palm theft in this area have increased significantly, indicating the need for a stronger response from the authorities. Increased security patrols, the use of advanced technologies like surveillance cameras and motion sensors, and close cooperation between the government, farmers, and local communities are all necessary components of a more holistic and integrated approach. So according to the author, there is a need for a solution to the Prevention of oil palm theft carried out by the community in Medan Labuhan district, in this case the theory that the author uses is restorative justice in solving the crime of oil palm theft using the perspective of Islamic Criminal Law Review.

METHOD

This study includes qualitative research using empirical juridical research methods that use two sources of data, namely primary and secondary. This study employs field research techniques to investigate the practice of oil palm theft in Medan Labuhan District, as well as library research techniques, which involve the use of specific books or rules as sources of literature. This study employs a qualitative approach to data analysis, which involves gathering and evaluating materials to address

current issues concerning the application of restorative justice in combating oil palm theft. Additionally, it scrutinizes the impact of Islamic Criminal Law on this practice.

RESULT AND DISCUSSION

1. Theft according to Islamic Criminal Law and positive Criminal Law

Theft is a criminal act of taking other people's goods secretly with the intention of being owned unlawfully. In the Indonesian dictionary mentioned that stealing is an act of taking other people's belongings by unauthorized means usually done in secret¹. From this understanding according to the language it is understood that in general stealing is taking other people's things, in other words, something that does not belong to him that is done in secret².

In Islamic criminal law this theft is a hudud jarimah where sanctions and prohibitions are set out in the quran³. In Arabic the act of theft known as sariqah is the masdar form of the word *saraqa*, *yasriqu*, *saraqan*, etymologically it means *akhaza maalahu khufyatan wahiilatan* stealing someone's property⁴. In fiqh terminology, *as-sariqah* is to take a treasure valued noble (*muhtaram*) belongs to another person from his rightful place without any doubt secretly⁵.

As for the legal basis of theft referred to in the Qur'an surah Al-Maidah verse 38 as follows:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ (سورة المائدة/ ٥ : ٣٨)

Meaning: *As for the thief, the man and the woman, cut off their hands as retribution for what they did, and as a punishment from Allah. And Allah is exalted in might, wise.*

The reason for the revelation of this verse is mentioned in an incident of theft during the time of the Prophet (peace and blessings of Allaah be upon him). A man stole a neighbor's sack of wheat, took it and stored it in someone's House. Since the sack is torn, then it can be traced. Meanwhile, the owner complained to the Prophet about this that he suspected his neighbor who turned out to be right. Adapu in the narration says a woman stole from the Prophet's House and then her right hand was cut off⁶.

In line with this verse, it has been explained in the following hadith about the punishment for thieves as follows:

حَدَّثَنِي إِبْرَاهِيمُ بْنُ الْمُنْذِرِ حَدَّثَنَا أَبُو صَفْرَةَ حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ قَطَعَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَدَ سَارِقٍ فِي حِجْرٍ مَمْنَهُ ثَلَاثَةٌ ذَرَاهِمَ تَابَعَهُ مُحَمَّدُ بْنُ إِسْحَاقَ وَقَالَ اللَّيْثُ حَدَّثَنِي نَافِعٌ فِيمَنْتَهُ (رواه البخار)

Meaning: It was narrated to me by Ibrahim bin al-Mundhir, it was narrated to us by Abu Dlamrah, it was narrated to us by Musa bin 'Uqbah from Nafi' that Abdullah bin Umar (may Allaah be pleased with him) said: the Prophet (peace and blessings of Allaah be upon him)

¹ Tim Redaksi, *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa, 2010).

² Sufriadi and Fauza Andriyadi, "Pencurian Menurut Hukum Islam," *Jurnal Al-Nadhair* 1, no. 2 (2022): 2.

³ Arjun Gunawan Yusti, "Analisis Fiqhi Jinayah Terhadap Tindak Pidana Pencurian Handphone Akibat Game Online Higgs Dominos Island (Studi Putusan Nomor. 12/Pid.B/2022/Pn)," *Delictum: Jurnal Hukum Pidana Dan Hukum Pidana Islam*, 2021, 4.

⁴ Nurul Irfan and Masyrofah, *Fiqh Jinayah* (Jakarta: Amzah, 2013).

⁵ Al-Bassam and Abdullah Bin Abdurrahman, *Syarah Bulughul Maram* (Jakarta: Pustaka Azzam, 2007).

⁶ K H Qamaruddin Shaleh, *Asbabul Nuzul (Lattar Belakang Historis Turunnya Al Quran)* (Bandung: Diponegoro, 1992).

once cut off a thief's hand for stealing a shield that cost three dirhams. This hadith is reinforced by Muhammad bin Ishaq and Al Laith said; has told me Nafi ' the price of the shield ⁷.

There are two types of theft in Islamic Criminal Law, one is theft punishable by Had and the other is theft punishable by Tazir. Theft that is threatened with had is theft that must be cut off his hand, while theft that is threatened with Ta'zir is theft whose Hadd is incomplete or does not meet the elements and conditions of theft. Therefore, because of the incomplete elements and conditions of the implementation of hadd, theft is not a punishment for hadd but a punishment for TA'zir. Theft whose punishment had two kinds, namely:

- a. Kubra theft, namely Grand Theft is the general theft of other people's property with violence that is only subject to the penalty of cutting off hands.
- b. Theft of sugrha.or petty theft is the theft of someone else's property,and is subject to a had penalty.

According to al Sayid Sabiq, that the requirements for thieves who are punished with a hand cut sanction are as follows ⁸:

- a. Taklif (legal word). that is, the thief is already an adult and reasonable, so he is not sentenced to cut off the hands of a crazy thief, a small child, because both are not mukalaf, but a small child who steals can be an educational sanction (ta'zir). And Islam is not a condition for thieves because if the disbeliever dhimi or apostates steal, then sentenced to cut off the hand and vice versa.
- b. Self-will or effort that is, that the thief has his own will. If he is forced to steal, then he is not considered a thief, because coercion negates the effort of not having the effort to abort taqlif.
- c. Something that is stolen is not doubtful that is, something that is stolen is not doubtful, if the item is doubtful, then the thief is not sentenced to cut off the hand, therefore the parents (parents) who steal the property of their children, are not sentenced to cut off the hand, based on the Hadith of the Prophet Muhammad: you and your property belongs to your father.

In addition to the requirements, of course, there are pillars that must be fulfilled by someone so that the perpetrator is considered a thief, while the pillars of theft according to Abdul Qadir Audah are 4 (four), which are as follows ⁹:

- 1) Take secretly or secretly.
- 2) Something taken away is a treasure.
- 3) That property belongs to someone else.
- 4) There is intent/malicious intent, or the intention to commit a criminal offense (stealing).

For this theft to occur, there must be an intention to possess it. If there is no intention to possess it, for example, to damage, then in this case it is not theft, but damage if

⁷ Shahih Bukhari, "Dalam Fathul Bari Nomor 6798 Kitab Hukum Hudud (Pidana) Dan Peringatan Akan Tindak Pidana, Bab Firman Allah Swt Q.S Al-Maidah : 38," in *Ensiklopedi Hadist*, 2024.

⁸ Sayyid Sabiq, *Fiqh Sunah* (Jakarta: Pena Pundi Aksara, 2006).

⁹ Abdul Qadir Hauda, *Al Fiqh Al Jinafi Al Islami (Qahirah Dar Al-Turas)* (Qahirah: Dar Al-Turas, n.d.).

damage it inside the hirz. But if it is damaged after being taken outside hirz, it is still theft, according to Jumhur ¹⁰.

In Islamic law, restorative justice is equated with deliberation or what is called Sound.(Deliberation).in the Qur'an surah Ali imran verse 159
 فَبِمَا رَحْمَةٍ مِنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانْفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ
 وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ

Meaning :It is because of the mercy of Allah that you have been gentle with them. If you had been harsh and harsh-hearted, they would have turned away from you. So forgive them, ask forgiveness for them, and consult with them in this matter. Then when you have made your decision, put your trust in Allah. Indeed, Allah loves those who put their trust in him. (Ali imran ayat :159)

Although this paragraph does not specifically mention theft,the principle of deliberation can be applied in a variety of contexts, including in resolving criminal cases such as theft.

Implementation of deliberation in islam.it is a decision – making process that involves consultation and dialogue between interested parties.

a. The Principles Of Shura:

Participation of all parties every interested individual has the right to express his views and opinions. The deliberation process must be carried out openly and honestly, without any manipulation or suppression. Fairness and equality every opinion should be considered fairly and equally, without discrimination or bias.

Prioritizing Common Interests, decisions made must prioritize the general benefit and not the interests of individuals or specific groups.

b. Stages Of Shura Implementation:

Collection of information: before the deliberation begins, relevant information must be collected and disseminated to all participants.Discussion: the participants put forward their views, arguments and suggestions. This discussion should be conducted with respect and patience. Alternative evaluation: various alternative solutions are evaluated based on their usefulness and impact on all parties involved.

Decision making: decisions are taken by consensus or, if not reached, by voting.

¹⁰ Mardani, "Sanksi Potong Tangan Bagi Pelaku Tindak Pidana Pencurian Dalam Perspektif Hukum Islam," *Jurnal Hukum* 15, no. 2 (2008): 249.

Implementation of decisions: decisions that have been taken must be implemented effectively and all parties must support their implementation.

Evaluation and follow-up: after implementation, the results of the decision are evaluated to ensure that the desired objectives are achieved and to improve the process in the future.

In order for the deliberations held to get the best results and get the pleasure of Allah SWT, each participant must understand the rules in deliberating (QS Ali Imran [3]: 159).

First, be gentle. Every deliberative society should be able to be gentle, both in attitude, speech and action, and avoid emotional attitudes, harsh words, banging tables, and stubbornness.

Second, it's easy to apologize. This attitude must be owned by each participant because the deliberation will not go well if each participant is still covered by turbidity.

Third, build a strong relationship with God through prayer. In deliberation it is possible to make mistakes, whether realized or not, the Prophet taught the prayer of kafaratul majelis as the closing of the deliberation. "Subhanakallahumma wabihamdika ashhadu alla ilahaila anta astaghfiruka WA'atubu ilaik" (Glory Be To You, O Allah, by praising you I testify that there is no true God but you, I ask your forgiveness and repent to you). (HR Tirmidzi).

Fourth, make a determination. It should be the participants of the deliberation made a determination in taking a mutually agreed decision (consensus), not each other want to win alone without a decision. And, if a decision must be decided by voting, then each participant in the deliberation should be able to accept the results with open arms.

Fifth, trust in God. After deliberation, the decision that has been taken, whether by consensus or voting, the result is left entirely to Allah because he is the one who determines everything that happens.

Meanwhile, in the positive law in Indonesia, the crime of theft is to take goods that wholly or partly belong to another person, with the intention of being owned unlawfully, as contained in Article 362 of the Criminal Code which reads "Whoever takes something, wholly or partly belonging to another person, with the intention of being owned unlawfully, shall be punished for theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah". Moeljanto argued that the problem of theft contained in Article 362 of the criminal code is formulated as a crime of theft, taking other people's goods. However, with the intention to possess goods in a way against the law, but when viewed from the nature against the law in

Article 362 of the Criminal Code, the act is not seen from the things that are born, but depends on the intention of the person who took the goods.

The threat of punishment for the perpetrator of the crime of theft varies depending on the severity of the theft committed. Here are some levels of theft and their penalties::

- a. Ordinary theft
 - 1) Provided for in Article 362 of the Criminal Code.
 - 2) Penalty: maximum imprisonment of 5 years or a maximum fine of Rp900.
- b. Theft with weighting
 - 1) Provided for in articles 363 and 365 of the Criminal Code.
 - 2) Theft with weighting can be
 - a) theft of livestock, theft during a disaster, theft at night, theft by two or more persons, or theft with damage accompanied by dismantling, climbing, or the use of false locks.
 - b) threat of punishment: imprisonment for a maximum of 7 years or 9 years, depending on the additional circumstances accompanying the theft.
- c. Light theft
 - 1) Provided for in Article 364 of the Criminal Code.
 - 2) Minor theft occurs within a residence or closed yard, with the value of the stolen goods not more than Rp25.
 - 3) Threat of punishment: maximum imprisonment of 3 months or a maximum fine of Rp250.

Theft by force (Article 365 of the Criminal Code) can face a maximum prison sentence of 15 years or the death penalty if it causes grievous bodily harm or death, especially if it is committed by two or more people together and is accompanied by elements of violence or threats of violence.

2. *Crime of oil palm theft and forms of oil palm theft*

The regulations on fishing are basically made to manage fishing from the negative impact of catching activities and for those who do not care about fish resources. According to Lawrence M. Friedman¹¹, There are three things that are the edge of a good legal order in a society: the substance of law, the structure of law and the culture of law. The three must support each other (synergically) in order to effectively enforce the law on conservation of fish resources. As Antony Allot elaborated the reasons or factors that influence the ineffectiveness of the law, namely: 1. imperfection in the formulation of legal sentences in the regulation (the defects of legal linguistic formulation); 2. Conflict between the purpose of formulating the Law and the will of the public being the target of regulation; 3. Lack of implementing norms, such as the regulations of enforcement and gentleness responsible for ensuring the implementation of the legislation.

Evil is the behavior of someone who commits a crime will be punished and the punishment must be coercive to shape the nature and change the behavior of evil to good. This

¹¹ Lawrence M. Friedman, 2001, *Amerikan Law: An Intoduction, Second Edition (Hukum Amerika Sebuah Pengantar)*, Penerjemah Wisnu Basuki, Pt Tananusa, Jakarta, Hlm. 285-286

absolute basis of punishment is divided into subjective punishment and objective punishment. Subjective punishment is the punishment for the harm that the perpetrator must receive as a result of the act, while objective punishment is the punishment for what the perpetrator has done in the outside world¹².

Theft is an act that is committed against the property and wealth of a person. Where this theft crime often occurs among the community, causing losses and unrest for the community. Although the crime is not included in the serious crime, but this crime causes side effects for a restless society and the harm caused by this crime can be detrimental from the material side.

The types of theft crimes are divided into five, as follows¹³:

- a. The principal crime of theft
- b. Theft crime with the use of aggravating elements
- c. Misdemeanor theft
- d. Violence in committing theft crimes
- e. Theft crimes committed within the family.

Oil palm theft is a frequent problem in areas where oil palm is one of the main commodities. These thefts are usually committed by irresponsible parties to be sold illegally or for their personal benefit. Some of the factors that lead to increased crime of oil palm theft include:

- 1) High economic value, palm oil is a commodity that has high economic value, especially because palm oil is one of the important raw materials in the food industry and various other products. This makes oil palm theft attractive to criminals.
- 2) Lack of supervision, some oil palm plantations may have less strict supervision, making it easier for thieves to access and steal crops.
- 3) Organized acts of theft, some cases of oil palm theft are carried out by organized groups that have sophisticated equipment and strategies to carry out the crime.
- 4) Involvement of related parties, palm oil theft also involves related parties within the palm oil company itself or even law enforcement officials, which makes it difficult to eradicate the practice of theft.

Oil palm theft is a serious problem plaguing the oil palm industry in many countries, especially in areas where the crop is widely grown. Here are some common forms of palm oil theft crimes:

- a) Theft Of Raw Palm Fruit
Thieves will break into oil palm plantations and steal ripe palm fruit. They can use tools such as machetes or even vehicles to collect large quantities of palm fruits.
- b) Theft of collected palm fruit
After the palm fruits are harvested and collected by farmers, thieves can steal the fruits from temporary storage or transport vehicles before the fruits are transported to the processing plant.
- c) Theft of seedlings or plants
Thieves can also steal oil palm seedlings or plants that have been planted for resale.

¹² Ilyas Amir, *Pertanggungjawaban Kriminologi Sebagai Syarat Pemidanaan* (Yogyakarta: Rangkang Education Yogyakarta, 2012).

¹³ Novelina Hutapea, "Diskresi Penerapan Hak Kepolisian Dalam Perkara Anak Pelaku Kejahatan," *Jurnal Elektronik Delik*, 2014, 1.

3. Restorative Justice As A Settlement Of Criminal Cases

Restorative justice it is an alternative or another way of criminal justice by putting forward an integrated approach to the perpetrator on the one hand and the victim/ community on the other hand as a whole to find solutions and return to patterns of good relations in society . In relation to criminal law enforcement, restorative justice is an alternative to the settlement of criminal cases, which originally focused on the mechanism of conviction, into a process of dialogue and mediation involving the perpetrator, victim, perpetrator/victim's family, and other related parties, to jointly create an agreement on the settlement of criminal cases that are fair and balanced for the victim and ¹⁴.

Restorative justice does not merely apply decisions about who wins and who loses in an adversarial criminal justice system, the restorative justice process seeks a dialogue facility between all parties affected by crime including victims, perpetrators, supporters, and society as a whole. It involves a process by which all parties at risk in a particular crime jointly attempt to resolve collectively how to deal with the aftermath of the crime and its implications in the future¹⁵.

Currently, almost all crimes handled by the Indonesian criminal justice system always end up in prison. Even though prison is not the best solution in solving crime problems, especially crimes where the damage caused to victims and the community can still be restored so that the damaged conditions can be restored to their original state, as well as eliminating the bad effects of prison. In addressing crimes that are considered to be restorative, there is a paradigm of punishment called restorative justice, in which the perpetrator is encouraged to repair the harm he has caused to the victim, his family and also the community. For this reason, the main program is “a meeting place for people”to find solutions to improve relations and damage caused by crime (peace) ¹⁶.

The settlement of criminal cases inside and outside the court process that focuses on the deliberation and direct participation of perpetrators, victims and the community in the process of resolving criminal cases that restore the original state (recovery) is restorative justice ¹⁷.

Restorative justice in the laws and regulations in Indonesia, was first regulated and used as an alternative to punishment in criminal cases contained in Article 1 Number 6 of Law Number 11 of 2012 concerning the child criminal justice system which provides an understanding of restorative justice or restorative justice is the settlement of criminal cases involving related parties to resolve by emphasizing recovery instead of retaliation.

Restorative justice in Indonesia has been adopted in the practice of all law enforcement institutions as an option in resolving criminal cases. Chairman of the Supreme Court, Attorney General, Police, Minister of Law and Human Rights of the Republic of Indonesia on October 17, 2012 has made a memorandum of agreement No. 131/KMS/SKB/X/2012. Number M-HH-07. HM. 03. 02 year 2012, Number KEP-06 / E / EJP/10/2012, Number B/39 / X/2012 on the implementation of the adjustment of the limits of misdemeanors and the amount of fines, the rapid examination and the application of Restorative Justice (Restorative Justice), in Article 1

¹⁴ Afthonul Afif, *Pemaafan, Rekonsiliasi Dan Restoraive Justice* (Yogyakarta: Pustaka Pelajar, 2015).

¹⁵ Afif.

¹⁶ Eko Syaputra, “Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang,” *Jurnal Lex Lata : Jurnal Ilmiah Ilmu Hukum* 45 (2021).

¹⁷ Josefhin Mareta, “Enerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak,” *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 310.

Paragraph 2 described the definition of restorative justice (restorative justice) is a settlement of cases of misdemeanors, the families and community leaders together seek a just solution and emphasize restoration to the way things were.

At the judicial level, restorative justice is also regulated in the decision of the Director General of the General Court of the Supreme Court of the Republic of Indonesia number 1691/DJU/SK/PS.00/12/2020 on the implementation of guidelines for the application of restorative justice (Restorative Justice). The principle of restorative justice in this guideline is the recovery of victims who suffer as a result of the perpetrator's crime by providing compensation, peace of the perpetrator doing social work and other agreements. This guideline is applied to the restorative justice approach to minor crimes, child cases, narcotics and women facing the law .

In addition, the head of the Indonesian National Police, on February 19, 2021, re-issued a circular on restorative justice in Circular Number SE/2/11/2021 about ethical cultural awareness to realize a clean, healthy and productive Indonesian Digital space. This circular provides recommendations to investigators to coordinate with the public prosecutor in order to provide mediation space that aims to promote the restorative justice approach as an implementation of the *ultimum remedium* principle.

Furthermore, in the realm of the Supreme Court, the Supreme Court issued regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning guidelines for adjudicating criminal cases based on restorative justice, as explained in Article 1 that restorative justice is an approach in handling criminal cases committed by involving the parties either the victim, the victim's family, the defendant/child, the defendant's family/child, and/or other related parties, with a process and purpose that seeks recovery, and not just retaliation.

The scope of criminal cases that can be resolved through restorative justice in the General Court environment is:

a. Minor Criminal Matters

Criminal cases that can be resolved with restorative justice are cases of misdemeanors with criminal threats as stipulated in articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code with a loss value of not more than Rp.2.500.000,-(two million five hundred thousand rupiah)

b. Children's Things

The juvenile criminal justice system must prioritize the restorative justice approach and each diversion determination is a form of restorative justice, in the event that the diversion is unsuccessful or does not meet the requirements for diversion, the judge seeks a decision with a restorative justice approach as stipulated in Law Number 11 of 2012 article 71 to Article 82.

c. Women facing the law

d. Narcotics Matters

The dispute resolution mechanism based on restorative justice is based on consensus deliberation where the parties are asked to compromise to reach an agreement. Each individual is asked to relent and put the interests of society above personal interests in order to maintain mutual harmony. The concept of deliberation proved to be more effective to resolve disputes in the community amid the failure of the role of the state and the courts in providing justice ¹⁸.

¹⁸ Bruce E. Barnes, *Culture, Conflict, And Mediation In The Asian Pacific* (Maryland: University Press Of America, 2007).

The similarity of restorative justice with local mechanisms (adat) is an advantage because it is more acceptable and practiced by the wider community. In addition, there are several other advantages in applying restorative justice, namely :¹⁹

- 1) Restorative justice focuses on justice for victims according to personal desires and interests, not the state's dictates.
- 2) Recovery for all parties involved.
- 3) Make the perpetrator responsible for the crime he committed.

4. *Palm Oil Theft Practices in Medan Labuhan Subdistrict*

The origin of the name of Medan Labuhan District itself is derived from The Story Of The Deli Kingdom which at that time was led by the Sultan of Kaca Puri, in 1692 there was a port / dock that was visited by many New Delhi (India) so that people called The Place “Delhi Port”. After the Kingdom of Deli at that time, by the Dutch government formed districts, led by a Demang (Camat level) and then formed Lanrat or Attorney / Court. Medan Sub-District is divided into six sub-districts, namely Big sub-district, Tangkahan, Martubung Sub-District, Sei Mati Sub-District, Pelan Labuhan Sub-District, Nelayan Indah Sub-District ²⁰.

Medan Labuhan subdistrict is one of the 10 districts that have the largest agricultural land potential in Medan City ²¹. This is one of the factors causing the large amount of oil palm land in Medan Labuhan district, due to environmental factors that support. So many people who make oil palm as a livelihood and create jobs for local communities.

However, in practice until now there are still frequent crimes committed by the community, namely the theft of palm oil belonging to the community in Medan Labuhan District which of course it harms the landowner. In addition, the act of theft was also in violation of regulations and is a criminal offense. To prove the existence of the practice of oil palm theft in Medan Labuhan district, the authors conducted interviews with two people who own oil palm land and they often experience loss of crops from their oil palm. The results of research that the authors have done as follows :

- a. Mr. RZ, is one of the people in Medan Labuhan sub-district who owns 2 (two) hectares of oil palm land. Based on the results of the study found the answer that he often lost oil palm in his land every week at least lost about 10 (ten) to 15 (fifteen)bunches of oil palm, not only on the fruit that is ready to harvest, but also on the fruits that are not ready to harvest, especially brondolan that falls below also often lost in ²².
- b. Mr. WH, is one of the people in Medan Labuhan district who has 1.5 (One and a half) hectares of oil palm land. Based on the results of the study found the answer that he often experienced a loss of palm oil every week at least 8 (eight) to 15 (fifteen) runs, based on

¹⁹ Dewi D.S. and Fatahilah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice Di Pengadilan Anak Indonesia* (Depok: Indie-Publishing, 2011).

²⁰ Siti Aisyah H. E. Hutagalung, *Kecamatan Medan Labuhan Dalam Angka 2023* (Medan: Bps Kota Medan, 2024).

²¹ (Abdina, 2023)

²² RZ, “Wawancara Pribadi, Kecamatan Medan Labuhan.”

the information of the local community that committed the crime of theft is the communities in the district of Medan Labuhan itself, of course as a person who experienced the crime of theft feel ²³.

From the interview between the author and the speaker who is the owner of oil palm land in the district of Medan Labuhan found the answer that the perpetrators of the crime of theft of oil palm in the District of Medan Labuhan is a local community that is the community of Medan Labuhan district. Therefore, the owners of oil palm land in the district of Medan Labuhan want regulations or legal regulations that can provide a deterrent effect in addition to giving a term of detention to the perpetrator because based on the practices that have occurred it does not provide a deterrent effect to the perpetrator.

The practice of theft in oil palm land that occurs in the district of Medan Labuhan is certainly based on several factors, based on the results of research that the authors have done in the district of Medan Labuhan found factors rampant theft of oil palm land is the lack of jobs that result in people committing crimes such as theft, the next factor is the environmental factors in which the rampant use of narcotics in the district resulted in the local community committed the crime of theft in oil palm land owned by others.

5. Analysis of the application of Restorative Justice on the crime of oil palm theft in Medan Labuhan subdistrict Islamic Criminal Law perspective

Based on the Indonesian National Police Regulation number eight of 2021 on handling criminal acts based on restorative justice, Article 1 Paragraph 3 explains that restorative justice is the settlement of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, Indigenous leaders or stakeholders to jointly seek a fair settlement through peace by emphasizing recovery back to the original state. Based on these provisions, it can be seen that the basic purpose of restorative justice is to restore the situation, establish friendship and stay between the two parties. In line with this, if restorative justice is carried out in the settlement of this oil theft crime, it aims to establish a relationship between the rights of the neighbor, but the thing that must be considered is that the settlement of the case in a restorative manner must still provide a deterrent effect to the perpetrator and not harm the victim.

Furthermore, in Article 2 Paragraph 4 it is explained that no crime that can be solved with restorative justice is a misdemeanor. As for the process of restorative justice settlement in the police sphere, Article 13 explains that the settlement of minor crimes is carried out by submitting a written application letter to the head of the resort police and the head of the sector Police which can be made by the perpetrator, victim, perpetrator's Family, victim's family, or other related parties. The application letter must also be completed with a peace declaration document and proof that the victim's rights have been restored.

²³ WH, "Wawancara Pribadi, Kecamatan Medan Labuhan."

Based on this explanation, the process of resolving criminal acts in restorative justice can be done by applying to the head of the resort or sector police, but before that, what the parties must do is carry out a peace process and obtain a statement of peace and the perpetrator must restore or restore rights to the victim, in this case what is meant is the loss obtained by the victim from the loss of palm oil stolen by the perpetrator. Usually the crime of theft is committed on the basis of the will or coercion of a person to commit the crime. So that if the theft is committed can be created justice and compensation from the perpetrator to the victim.

The main purpose of implementing restorative justice in the crime of oil palm theft that occurred in Medan Labuhan District because the perpetrators of theft are local people where Of course there is a kinship relationship or know between the victim and the parties so based on that when the process is continued to the court then it is possible to close the, therefore, with the application of restorative justice is expected to provide justice for both parties that is not harming the victim and provide justice to the perpetrator and the most important thing is to remain friendly.

Restorative dispute resolution does not only apply in the police field but also applies in the Attorney General's office and the Supreme Court. In the realm of the prosecutor's office, there is a requirement to obtain restorative justice in this case in theft cases which must meet the elements in Article 5 Paragraph (1) of Prosecutor's Regulation Number 15 of 2020 concerning termination of prosecution on the basis of restoration of Justice. Dismissal of the prosecution and dismissal of the criminal case by law on the basis of the right of restoration of justice if it meets the conditions as to obtain restorative justice in the case of theft, namely:

- a. The suspect is the perpetrator of a criminal offense for the first time.
- b. Criminal threat of fines and imprisonment of not more than 5 years.
- c. The value of stolen goods or losses resulting from criminal acts is not more than Rp. 2.500.000,00.

In this case, of course, the crime of oil palm theft meets these three elements to carry out restorative Justice, because usually the amount of oil palm theft does not exceed the nominal Rp. 2.500.000,00. In addition, the consideration for restorative justice in the case of oil palm theft is that the thief is a local community which of course the landowner and the thief's parents know each other, and with the criminal punishment of the perpetrator, of course, it provides a estrangement of the relationship between the victim and the defendant's family. So that with restorative justice can provide a deterrent effect to the perpetrator and restore losses due to criminal acts committed by the perpetrator against the victim.

The application of restorative justice can be done when both parties agree to make peace or mediate in order to find a bright spot from the crime of oil palm theft committed by the defendant or victim. With the application of restorative Justice in the settlement of oil palm theft in Medan Labuhan district, the perpetrator is subject to criminal elimination in accordance with Article 4 paragraph (1) and Paragraph (2) of Attorney General Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice. In Paragraph (1) penalization shall be carried out with due regard to:

- a. Protection of the common interests of the victim and the applicable law.
- b. Avoid negative prejudices against the offender.
- c. Avoid retaliation from victims or the public.
- d. Pay attention to people's responses.
- e. Pay attention to public order and decency.

If the application of restorative justice is not carried out in the realm of the prosecutor's office, it can be carried out in the realm of the Supreme Court in accordance with the regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 on guidelines for adjudicating criminal cases based on restorative justice. Based on Article 1 Paragraph 1, it is explained that restorative justice is an approach in handling criminal cases committed by involving the parties either the victim, the victim's family, the defendant or the child, the defendant's family or the child, and or other related parties, with a process and purpose that seeks recovery and not just retaliation. This is in line with the opinion according to Tony Marshall, restorative justice is a process that involves all parties who have an interest in a particular violation problem to come together to resolve collectively how to address and resolve the consequences of the violation and its implications for the future.²⁴

In Article 4, it is explained that this regulation also applies to criminal cases included in the scope of jinayat and also military crimes, furthermore, in Article 6, it is explained that a criminal case can be carried out the application of restorative justice is the same as the provisions in the realm of the prosecutor's office, namely the losses received by the victim should not be more than Rp. 2,500,000.00 and the threat of punishment should not exceed five years in prison. Therefore, as long as the amount of loss received by the victim is not more than Rp2, 500, 000, restorative justice can be applied. In Paragraph 2, it is also explained that the judge cannot perform restorative justice if the victim or defendant refuses to make peace and also if the defendant has committed a similar crime for a period of 3 years.

In the settlement of criminal cases committed by applying restorative justice in accordance with Article 13 states that it can be applied if both parties and four reach a peace agreement without any error, coercion or fraud from one party. So during the trial process, both parties still have the opportunity to make peace, and when the peace agreement is reached and signed by both parties in front of the judge, the judge has the authority to declare the prosecution null or unacceptable, but provided that the peace process takes place in reaching his agreement before criminal charges are dropped. In the sense that when the peace agreement does not exist until the criminal charges are dropped, the judge is not authorized to declare that the prosecution is null or unacceptable and the defendant must still receive criminal sanctions for the criminal acts he has committed, and forgiveness on the part of the victim's family or the victim cannot drop criminal charges against the victim only that it can ease the punishment for the victim because both parties forgive each other.

²⁴ John Braithwaite. 2019. Restorative justice and Responsive Regulation. Oxford: Oxford University Press.

Based on the above explanation, it can be concluded that in every realm of settlement of cases both at the police, prosecutor's office and court level or in the Supreme Court there is an opportunity to apply Restorative Justice which aims to restore peace between the two parties by not excluding losses from the victim.

Peace is the best way to resolve disputes between the parties, as there is actually some tension or disagreement, which leads to hostility and anger, resulting in the loss of good relations or family ties. In order to restore a harmonious relationship between two disputing parties, the wishes of both parties must be fulfilled in order for them to recover again. Recovering the desired is not only limited to the substance of the problem, but also includes recovering psychologically. This can be done through a peaceful resolution of the dispute that accommodates the wishes of both parties. Including in this case the crime of theft of oil palm fruit that occurred in the district of Medan Labuhan as long as the loss does not reach Rp.2,500,000 can then be applied restorative justice. This is because based on legal facts that occur in the field that the thief is a local community, so that by applying restorative justice can still restore harmony between both parties and the families of both victims and perpetrators, and punishment or sanctions given to perpetrators can provide a deterrent effect so that perpetrators do not make the same mistake again and harm other victims.

In line with that, Islamic Criminal Law, explains that certain criminal threats can be replaced when getting forgiveness from the victim or family of the victim of a criminal offense. Related to that, Islam has 3 (three) levels of punishment, namely first criminal equality, second forgiveness, and, third diyat²⁵. This shows that Islam recognizes two paradigms in resolving cases, namely litigation and non-litigation paradigms. The litigation paradigm is a fundamental belief that the only proper institution for resolving cases is through the courts. In contrast, the non-litigation paradigm departs from the basic assumption that the settlement of cases is not always through the law and the courts. Out-of-court means are part of the model that is not abandoned and have proven effective in resolving cases without leaving lasting wounds and resentments. This last method is now called the restorative justice approach.

In Islamic criminal law there is also the concept of *Islah* which can be used as an alternative to solving criminal problems. *Al-Islah* or peace can abort the punishment for the perpetrators of crimes such as in the case of murder and theft. Islamic criminal law also recognizes the existence of a system of reconciliation (*al-Islah*) or peace between the parties to the dispute in an effort to find a legal settlement. As mentioned in the Qur'an surat *Al-Hujarat* verse 9:

Allah Subhanahu Wa Ta'ala:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا ۗ... (سورة الحجرات/ ٤٩ : ٩)

²⁵ Nor Soleh, "Penerapan Reporative Justice Dalam Hukum Pidana Islam Dan Kontribusinya Bagi Pembaharuan Hukum Pidana Materiil Di Indonesia," *Isti'dal : Jurnal Studi Hukum Islam* 2, no. 2 (2015): 126.

Meaning: "and when two groups of believers fight, then make peace between them. If one of them wrongs the other, then fight the wrongdoers until they return to Allah's command. If they return, then reconcile between them with Justice, and be just. God loves the righteous."

Sayyid Sabiq explained that *islah* is a kind of contract to end hostilities between two people who are at enmity. Furthermore, Sayyid Sabiq called the litigants and was holding the *islah* with *musalih*. As for the matter that is disputed is called *musalih 'anh*, and the thing that is done by each party to the other party to decide the dispute is called *musalih' alaih*²⁶.

In the application of restorative justice according to Islamic criminal law must meet several aspects, namely, aspects of Justice, Humanity, public interest, forgiveness, peace²⁷. The most basic thing according to the author in the application of restorative justice according to Islamic criminal law is the principle of forgiveness. Forgiveness from the victim or his family can be considered by the judge in deciding the case. In the Criminal Code Bill Article 55 paragraph (1) has also actually been contained in point (j) that in the case of conviction must consider aspects of forgiveness from the victim and/or his family.

So based on the explanation above, it can be concluded that in Islamic criminal law, restorative justice is also known in resolving criminal cases that have been used since ancient times. Of course, this is a guideline that in resolving the case of oil palm theft that occurred in Medan Labuhan district can be resolved with a restorative Justice approach as long as it meets the elements mentioned, one of the most important is the element of forgiveness from the victim or the victim's family, in this case the owner of the oil palm land.

CONCLUSION

Crime of theft on oil palm land owned by the community in the district of Medan Labuhan still occurs today as evidenced by the results of interviews with two speakers who are the owners of oil palm land in the district of Medan Labuhan. Of course, the crime of theft is detrimental to the landowner, and the perpetrator must get a punishment that is commensurate with the consequences of his actions. But another problem that arises is that the perpetrators of the crime are not the criminal theft of oil palm is a community in the district of Medan Labuhan itself, so that by punishing the perpetrator with confinement or detention period has not been effective in providing a deterrent effect to the perpetrator, especially the victim and the majority of the perpetrator's family know each other, of course by doing body confinement will create discord between the victim's family and the perpetrator. Therefore, to provide a deterrent effect and protect the rights of victims, there is a need for regulations or regulations that can provide protection to both peacefully, namely by way of restorative Justice or peace between the victim and the perpetrator by making certain agreements and providing compensation to the victim. Restorative justice contained in Islamic criminal law is seen in the imposition of sanctions for *jarimah qishash* and *diyat*. Forgiveness given by the victim or his family can abort the punishment of *qishash*. Through the concept of *diyat*, compensation for the consequences of crime can be felt directly by the

²⁶ Sayyid Sabiq, *Fiqih Sunnah, Jilid III* (Jakarta: Pena Pundi Aksara, 2012).

²⁷ Ahmad Ropei, "Penerapan Restorative Justice Sebagai Alternatif Penyelesaian Masalah Pidana Berdasarkan Hukum Pidana Islam," *Al-Kainah : Journal Islamic Studies* 1, no. 2 (2022): 67.

victim or his family. The peace process carried out in the settlement of cases has provided a fair share by bringing together the interests of perpetrators, victims, and the community.

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