

## Law Enforcement on Ordinary Crimes in Minor Motive using Restorative Justice: Perspective Criminal Law Reform

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ARTICLE INFO	ABSTRACT
<p><i>Keywords:</i> <i>Law enforcement,</i> <i>ordinary crime, petty motive,</i> <i>restorative justice</i></p>	<p><i>The disparity by judges in decisions led to the inability of people facing criminal offenses. Laws are not grounded to small communities, the judicious use of a crime in Indonesia as well as the strength of spider webs in which only able to ensnare minor crimes, but are not able to touch the major crimes that occurred in Indonesia. This study uses normative juridical. The results of this study found that completion ordinary crime patterned petty can be reached with a restorative justice approach, so it can focus on the direct participation of the offender, victim and community.</i></p>
<p>email: jonlarpurba@gmail.com</p> <p>The Southeast Asia Law Journal Volume 1 Nomor 2 Januari - Juni 2016 ISSN 2477-4081 hh. 63-74</p>	<p><i>Terjadinya disparitas oleh hakim dalam menjatuhkan putusan menyebabkan ketidakmampuan masyarakat menghadapi tindak pidana. Hukum tidak membumi terhadap masyarakat kecil, penggunaan secara hukum atas tindak pidana di Indonesia seperti halnya kekuatan jaring laba-laba di mana hanya mampu menjerat kejahatan-kejahatan kecil, namun tidak sanggup untuk menyentuh terhadap kejahatan-kejahatan besar yang terjadi di Indonesia. Penelitian ini menggunakan metode yuridis normatif. Hasil penelitian ini menemukan bahwa penyelesaian tindak pidana biasa bermotif ringan, sehingga dapat menitikberatkan pada adanya partisipasi langsung pelaku, korban dan masyarakat.</i></p> <p>©2016 SALJ. All rights reserved.</p>

## INTRODUCTION

In criminal code (KUHP) there are some crimes on property, object (*vermogendelicten*), if loss caused not exceed twenty-five rupiahs, it's called "misdemeanor (*lichte misdren*)" and only threatened with penalties as severe as imprisonment for three months. These misdemeanors are petty theft (Article 364), petty embezzlement (Article 373), petty fraud (Article 379), ruin other people's stuff (Article 407 Section 1), petty fencing (Article 482).

Misdemeanor as a criminal offense punishable by imprisonment or a maximum of three months' imprisonment and/or fines of up to Rp 7,500, - (seven thousand five hundred rupiah) and petty insults, except for certain violations of the laws and regulations of road traffic, as guidance in handling cases of minor criminal offenses under Article Criminal Code and other legislation. Whereas Hilmy (2013) defined misdemeanor as the practice of criminal procedural law known as "*Tipiring*" (*Tindak Pidana Ringan*), which is an abbreviation of the terms contained in Chapter XVI, Examination in Court of Justice, Part six Quick Inspection, Paragraphs I Interrogation petty crime, Criminal Code.

According to Article 205 paragraph (1) Criminal Code Procedure formulating criteria for minor criminal case is punishable by imprisonment or a maximum of three months' imprisonment or a fine of up to Rp 7,500, - (seven thousand five hundred rupiah) and mild contempt unless specified in paragraph 2 of this section. While based Supreme Court Regulation Number 2 of 2012 about Limitation Adjustment Petty Crime and Amount Fines in Criminal Code Procedure that "Amount of these losses on the legislation above is not in accordance with the currency exchange rate at present."

According to Article 2 paragraph (2) of this Supreme Court Regulation set a value losses of Rp 2,500,000, - (two million and five hundred thousand rupiahs). By the issuance Supreme Court Regulation No. 2 of 2012 it is expected that handling proportionately with quick checks in cases of minor criminal offenses stipulated in the Criminal Code, such as: (i) a petty theft (Article 364); (ii) petty evasion (Article 373); (iii) petty fraud by the seller (Article 384); (iv) petty destruction (Article 407 paragraph (1)) and petty fencing (Article 484).

Law enforcement on petty crime should be followed in an objective manner (Garoupa, 1997). One of these for knowing, understanding and consider the reasons as well as any action taken process of law enforcement officers. It can be obtained from various

petty criminal motivations, either from not knowing his actions were against the law, an urgent need, or even already a habit (Tittle and Botchkovar, 2005). In this regard, the atmosphere of legal culture society development on petty crime is more oriented to the procedures of justice for a mere legal certainty. The actions of judges on petty crime carries a reaction to dissatisfaction of societies. It also can not be separated from the perspective of society, that enforcement of extraordinary crime, ordinary crime and petty crime, interpret the purpose of criminal law is the act of a criminal act rather than the perpetrator and the victim.

Handling cases of ordinary crime remains a patterned lenient spectrum on legalistic formalistic approach, which emphasizes the rule of law, on the other hand can "sacrificed" sense of justice and social reaction (Barnett, 2014). If the model of handling this kind will continue to be repeated, then it is the likelihood will continue to bring the others "victim". As for the victim, not only party the victims as the injured, but also suspects in the position of small class, where they will become victims of the criminal justice system itself is incompatible with the nature of the criminal purpose to bring justice for both parties (Karp and Breslin, 2001). It is also increasingly inseparable, in which empirically middle of a gap in the achievement of the principle of criminal justice that is fast, simple and low cost, as can be seen that the approach legalistic formalistic systematic in application middle buildup case, expenses are expensive, even overcapacity in prisons (Burke, 2009).

Referring to the condition of law enforcement issues against ordinary petty crime patterned as above, it is necessary to do an analysis of legal arrangements ordinary crime patterned petty and perspective future alternative models settlement ordinary crime patterned petty.

Mediation is a process of problem-solving criminal where outsiders are not impartial and neutral work with the parties to assist them in obtaining a satisfactory agreement with the deal (Bush and Folger, 2005). Mediator in contrast to a judge or arbitrator, because the mediator does not have the authority to decide the dispute between the parties. Mediator only acquire authorization conflicting parties to help the settlement of issues between them. Early mediation is a means of dispute resolution is closely related to labor management conflict, nowadays has used as an important alternative for the adjudication of dispute resolution (Wall, Jr., and Callister, 1995). Settling disputes through adjudication in court by using mediation, conducted on judge actions such

as divorce, family relations, ownership of land-tenants and consumers. This means that mediation is used in the resolution of civil cases.

The development of criminal mediation is influenced by various factors (JA (Wall, Stark, and Standifer, 2001; Huang et al., 2001), First, the crime rate and reaction through criminal justice system. Second, the development of alternative dispute resolution, Third, acceptance by the public values of restorative justice, fourth, victim's rights protection movement, Fifth, the political approach to crime prevention.

The restorative justice approach is a paradigm that is used as a frame of criminal case management strategy aims to answer dissatisfaction with the workings of the criminal justice system that exists today (Van Ness and Strong, 2015), in which the process of resolving criminal cases are conventionally very complicated, require a long time to arrive at a decision by the judge even not necessarily have justice or satisfaction expected by the litigants. Restorative justice the concept of thought to respond to the development of the criminal justice system with emphasis on the need for community involvement and victim were deemed excluded by mechanisms that work in the criminal justice system that exists today (Williams, 2005).

Despite the fact that this approach is still being debated in theory, but the view is in fact growing and influenced the legal policy and practice in many countries. The handling of criminal cases by the restorative justice approach offers different views and approaches in understanding and dealing with a criminal offense. In view of the meaning of the crime of restorative justice is essentially the same as the view of criminal law in general, ie attacks on individuals and society as well as public relations. But in a restorative justice approach, the main victims upon the occurrence of a crime is not a country, as in the criminal justice system that now exists. Therefore, crime creates an obligation to fix the broken relationship due to the occurrence of a crime.

While fairness is defined as the process of finding solutions that occur on a criminal case in which the involvement of the victim, community and offender becomes important in repair business, reconciliation and improvement of business continuity assurance. Restorative justice approach assumed that the latest shifting of various models and mechanisms that work in the criminal justice system in dealing with criminal cases at this time. The UN through basic principles that have been outlined in it is considered that the restorative justice approach is an approach

that can be used in a rational criminal justice system (Moore and Mitchell, 2009). Restorative justice approach is a paradigm that can be used as a frame of criminal case handling strategies aimed at answering dissatisfaction with the workings of the criminal justice system that exists today.

Restorative justice is a concept that responds development thinking of the criminal justice system with emphasis on the need for community involvement and victim were deemed excluded by mechanisms that work in the criminal justice system that existed at this time (Bazemore, 1998). On the other hand, restorative justice is also a new framework of thinking that can be used in response to a crime for the enforcement and legal professionals. Restorative justice has several forms of justice processes as applied in different countries (Latimer, Dowden, and Muise, 2005; Daly, 2002) include: (1) victim-offender mediation, (2) family group conferencing, (3) restorative conferencing, (4) community restorative boards, (5) restorative circles or restorative systems.

Victim-offender mediation or so-called dialogue/meeting/offender-victim reconciliation is usually held between perpetrators and victims, which presents a trained mediator. In the area of criminal cases, models or techniques are used both small cases to reduce the buildup of the case, and serious cases to facilitate forgiveness and the healing process is more profound, both for victims and perpetrators. International data show that this technique successfully applied in Australia (Daly, 2002), New Zealand (Morris and Maxwell, 1998; Maxwell and Morris, 2006), Canada (Bayda, 2000) and Netherlands (Morris, 2002) in various contexts, including the juvenile justice system and succeeded in reducing recidivism.

Family group concerning was a wider circle of participants than the offender-victim mediation, which adds to people associated with the main parties, such as involving friends, family, and professional (Morris and Maxwell, 1998). This technique is the most appropriate system for cases of delinquency, such as in Colombia, Australia and New Zealand. At British Columbia, this model is used in the context of child welfare (Morris, 2002). This process is designed to offer the planning and establishment of cooperative decisions and to rebuild a network of family support (Morris and Maxwell, 1998; Morris, 2002). This model comprises: (a) facilities for families involving children, large families, and other community members in forming judgment on child welfare issues, (b) provide an alternative non-adversarial courts to develop a plan for child protection situations, (c)

can be used to drive the decision, but not limited to, the placement of treatment, Supreme Court Regulation planning, and integration of children with their families, (d) determine families prefer to meet with an impartial coordinator to coordinate and facilitate meetings, (e) authorized the family to refuse the meeting, supports the court, mediation or other alternative process completion.

## **RESEARCH METHODS**

The method used in this research is descriptive analysis method with its main normative juridical approach. Descriptive analytical means to describe and depict something that became the object of critical research through qualitative analysis. Therefore, that is to be examined within the scope of law, then the normative approach, include: principles of law, the synchronization of legislation, including legal discovery efforts *in concreto* (Leeuw and Schmeets, 2016).

In a normative juridical research, statute approach used as an inevitable part (Scheb, Unga, and Hayes, 1989). Because of the logic of the law, normative legal research was based on a study of existing legal materials. Although the example of research conducted since seen any legal vacuum, but the legal vacuum that can be known, because it has the legal norms that require further adjustment in the positive law (Finnemore and Toope, 2001).

In the context of this study, the approach made to the legal norms contained in some of the Act as well as in Act No. 1 of 1946 on the protection of criminal law, Government Regulation In lieu of Act No. 16 of 1960 on Some Changes in Criminal Code; Supreme Court Regulation No. 2 of 2012 on Some Changes in Criminal Code.

Specifications of research that will be used is descriptive analytical, which will provide exposure on the procedure and implementation of the completion ordinary petty crime patterned using restorative justice in the perspective of criminal law reform. Analysis was done legally by learning the principles and theories relevant law to find the conception settlement ordinary crime patterned petty that can be used in the field.

Due to the approach in this study is the approach of legislation, then the data collection tool focused on documents or library materials, such as: legal materials obtained through library research. The legal materials studied in this research, is comprised of: 1) the primary legal materials, 2) secondary legal materials, 3) tertiary legal materials.

In addition to the three types of legal materials in the research will also use primary data or non-legal materials, namely: the results of interviews with some criminal law experts. The interview is the primary data or non-legal material, because in spite of interviews done by referring to a list of written questions has researchers prepared. The interview process is conducted freely, orally and not tied to a list of questions the researchers, so that it can take place flexibly with the direction of a more open, thus, the data information obtained will be much more rich and varied.

In connection with the reasons for the selection of informants as a resource and location of the research is based solely on considerations that are considered to represent in this case the District Court, High Court and the Chief Justice of the Supreme Court, as well as some senior advocate background in academic postgraduate and Professors.

Data obtained in the form of primary legal materials, secondary and tertiary, analyzed qualitatively normative in the sense of systematically arranged and complete. Then, the collected data are reviewed and analyzed in terms of the description without using a mathematical formula, by using the theoretical framework used in this study. Furthermore, the analysis is expressed in a construction discussion of logical, systematic, philosophical, and practical.

After an analysis of the three ingredients that law is done, then the analytical results obtained by the research literature, matched with the primary data or materials that are non-law, namely in the form of interviews from informants, so that of the two can be drawn a conclusion about the problems studied, in particular on the subject matter that is proposed in this study.

## **RESULTS AND DISCUSSION**

### **DYNAMIC RESTORATIVE JUSTICE WITH ALTERNATIVE PROGRESSIVE**

The absence of rules or laws that underlie the action of investigation, prosecution, or the establishment of a court decision from the standpoint of legal positivism is the justification that has no legal basis and hence can not be maintained, despite having a moral basis. Moral judgment can not be established or defended by rational arguments, evidence or proof (Prinz, 2006). This means that the functionalization concept of restorative justice in the practice of criminal justice unsupported by positive law either criminal law formal or substantive (legal event) is the practice of "moral judgment" (Lyons, 1993). It

certainly can be said to be contrary to the principle or legality highly influential in criminal law.

The concept of such a law can be said legalistic character, which in turn is very slow to accommodate the dynamics of society, such as restorative justice demands (Walker, 2006). Therefore, in view of legisme or positivism, legislation often once regarded as sacred objects. It is regarded as a logical system for the implementation and completion of the entire case because it is rational. The theory of rationality in the legal system of the 19th century is indicated by the term "*ideenjurisprudenz*".

#### **RESTORATIVE JUSTICE IN THE CONTEXT OF EDUCATION**

Police are gatekeepers of the criminal justice system. As investigator of criminal offenses, police put in touch with most ordinary or common crimes. Most police work reactive than proactive, with highly dependent on citizens to complain or report the alleged criminal acts. With enough evidence, based Criminal Code Procedure, Police as investigators delegate cases to the Attorney General for prosecution. An important question in this case, is it possible police as investigators apply processes of restorative justice? This is mainly related to the authority of investigators to look for information, making arrests and other necessary actions, detention or stop the investigation.

As stipulated in Article 7 paragraph (1) of Criminal Code Procedure (Act 8 of 1981 about Criminal Code Procedure Jo). Police Act (Act 2 of 2002 about Indonesian National Police), authorized investigators include: receive reports or complaints of criminal activity; perform the first act at the moment in the scene; stoping suspects and examine personal identification of suspects; arrest, detention, search and seizure; conduct inspections and confiscation of letters; fingerprinting and photographing of a person; calling a person to be heard and questioned as a suspect or a witness; bring in the necessary expertise in relation to the case investigation; conducting investigations termination; other actions held responsible according to the law.

As noted above, the normative-positivistic way of thinking, in Indonesia there has been no specific legislation or specific provisions regulating of restorative justice in investigation process, such as for juvenile delinquency, as in the countries mentioned above.

Changes in the investigation of a model that is solely punitive (punishing) towards restorative (recovery perpetrators and victims) are more than just techni-

cal changes, but the culture of the investigation (Van Ness and Strong, 2013; Groenhuijsen, 2004). Therefore, it requires a long process of adaptation, which apparently can not be delayed. For example, a scheme involving the victim (victims' participation scheme) in the process of investigation or proceeding is not easy because it requires a change from the usual patterns "closed" to be more "open". Not to mention the issue, victims' participation itself is difficult to define, what it means to the extent that participation is possible, although the overall potential to give expediency restorative, especially the recovery and rehabilitation of victims.

#### **RESTORATIVE JUSTICE IN CONTEXT PROSECUTION**

Prosecution as a subsystem of the criminal justice system, has a strategic position also in the realization of restorative justice concept. Generally, restorative justice associated with each stage of the prosecutor's authority to make arrests, pre-prosecution, indictments and criminal charges, as well as the legal remedy. The most extreme conditions on the role that can be played by the prosecutor in the implementation of restorative justice, that is to divert prosecution to achieve settling disputes out of court in certain cases. Diversion prosecution itself has been the trend in the area of criminal law reform in the criminal justice system in many countries. Diversion can be conditional discharge, simplified procedure, and decriminalization of certain conduct (Cushing, 2014; Haines et al., 2013; DeMatteo and Heilbrun, 2012). These things are not set explicitly in Criminal Code Procedure, except for termination of prosecution.

Implementation of restorative justice certainly requires creativity prosecutor to develop restorative programs, so as to minimize settling disputes in court. In that context, the prosecutor is required to leverage or build strategy or problem-oriented approach. It is not an easy task because it shifts the paradigm of the prosecutor who had been considered as "case processors" into "problem solvers", for community involvement. The public prosecutor has been precisely tended to pass resolution of cases through the formal criminal justice process to obtain a court decision which is legally binding rather than completing the restorative models.

#### **RESTORATIVE JUSTICE IN CONTEXT HEARINGS**

Examination of the trial court in a criminal case in Indonesia based Criminal Code Procedure or special criminal procedural law is not designed to resolve interpersonal matters. The design is built into the criminal justice system in Indonesia, namely the

court serves to determine whether the criminal law has been violated and, if violated, the offender was sentenced; or if not violated, then the defendant acquitted or released from all charges (Hilmy, 2013). The role of the traditional court as it was clearly different, even opposite concepts of restorative justice which intends to restore balance in social relations in addition to the results of the judicial process, which is an acceptable compromise on a reciprocal basis between the victim, the community and the criminal or crime (Groenhuijsen, 2004; Bazemore, 1998). In other words, traditional character "adjudicative", the concept of restorative offers a model of "negotiations".

On the basis of this, the question to be asked, namely what are the role of courts and judges in developing and implementing initiation of restorative justice? Before discussing the role of judges, it requires a change in the paradigm that the criminal procedural law governing the inspection procedure at the court level, can criss for the expediency of restorative justice (Moore and Mitchell, 2009; Walker, 2006; Latimer, Dowden, and Muise, 2005; Morris, 2002). This paradigm clearly shows the liberation of criminal procedural law, which has been the limitation trial examination.

The law applied not just to fulfill will of the law (norma an sich), but must see the value-rational sociological law that calls for more utility value in order to achieve equality (Habermas, 1996). Mindset and understanding of the socio-juridical carry law, the enforcement is not merely embodying legal certainty, but also presents expediency and justice for the people. This is also consistent with the development model in studying law. This model suggests that the laws are not understood in linear and deterministic as tradition in jurisprudence, but conscious of the complexity of the relation between law and the social, political, and economic. Law is not determined by the law itself, but rather is driven by the dynamics that take place in society.

Therefore, legal science today-must be willing to develop the rule of law which is the object that is no longer the norm narrow positive character, but rather an open system as principle. As an open system, the law will be easy to transact with the social environment (which becomes the object of study of the social sciences) in the items social facts input, processes it in the system as through puts that is socially relevant for the majority then to be output as back to the community as a truly functional of socio-legal judgements.

Model perspective of alternative settlement ordinary petty crime patterned for future

Normative or doctrinal perspective view of the law in the legal system itself used and be the size of the behavior (Hadfield, 1994). Law enforcement understood and accepted as the activity of applying the norms or rules of positive law (ius constitutum) on a concrete event (Habermas, 1996). Law enforcement works like an automatic machine model, in which work to enforce the law into subsumsi activity automaton. The law is seen as a clear and defined variable that should be applied to events that are also clear and definite (Rahardjo, 2004). Law enforcement is constructed as it is rational logical follow presence of the rule of law. Logic becomes the credo in law enforcement.

The dimensions of moral, political, cultural, and human institutions as implementers of law enforcement is not a variable that counts in law enforcement (Steiner, Alston, and Goodman, 2008), for law (Act) has its own logic and how it works in accordance with the logic syllogism, ie the major premise, minor premise and a conclusion.

Logic syllogism in positive law requires a written document or written evidence to believe and underlying processes or legal transactions as demanded by the principle of rationality in substantive law and procedural law (Mousourakis, 2015). Additionally, required also gone through procedures and mechanisms for enforcement. Without that law enforcement, can not be executed. That point of view and the legal conviction of law enforcers (police, prosecutor, and judge) in enforcing or applying the law to a case. The necessity of positive law in accordance with the principle of legality, and the availability of written evidence, procedures and mechanisms remain in its manifestations, often felt to be unfair for certain aggrieved parties or victims (under public law) who do not have enough evidence.

Cases of human rights violations for example, that in fact is a new type of actions defined as a crime by law, will certainly face obstacles at the level of substantive law, formal, procedures, mechanisms and human capabilities implementing that law. There is a possibility of material and formal law is not clear enough or is not appropriate to regulate the procedures and the mechanism is complicated and law enforcement officials are not trained or familiar with the way of thinking sylogisme so that enforcement of human rights law does not run as expected or even disappointing.

The phenomenon of law enforcement within the framework of the normative perspective it has been criticized as a law enforcement blind to the reality in which the law was made to live and work. Formal justice which refers entirely to the fulfillment of the material elements of the action as well as the procedures and mechanisms of implementation of the law regardless of their social aspects, moral, political, cultural and human law enforcement (Habermas, 1996). Exactly what was said by Fukuyama that law enforcement in Indonesia experienced a "moral miniaturization" or moral stunting (Goldsmith, 2005), a critical expression in appreciating the enforcement of denying aspects of justice in a practical level (Tambunan, 2000).

Instead of a normative approach is sociological approach. This approach views the law and law enforcement from outside the law because the law is and to be part of the social system and social system that gives meaning and effect to the law and law enforcement.

The human factor in the perspective of sociology of law is very important because people are so involved in the enforcement of the law. Law enforcement is not a logical process alone, but loaded with human involvement. Law enforcement can not be seen as a logical-linear process, but rather something that is complex. Law enforcement is no longer the result of logical deduction, but rather is the result of those choices. Law enforcement is not in a vacuum, but being and become part of the social reality in which the law was made and implemented. Law enforcement is not just a mere juridical phenomenon, but also a social phenomenon that must be viewed as part of a social system in which the law is upheld and even on what the case law was applied.

Legal and law enforcement in the perspective of sociology of law can not only be seen as an autonomous institution in society, but as an institution that works for and in the community. The law does not move in the vacuum chamber and dealing with things that are abstract, but always in a certain social order and human beings live (Rahardjo, 2004). Even law can't be properly understood if it is separate from social norms as "living law," and the living law interpreted as a law which controls life itself, though he was not included in law (Murphy, 2014).

Law enforcement in the courtroom in the perspective of sociology of law must be seen in the context of broad social, not just factors laws, factors apparatus of law enforcement, cultural factors or cultural community, supporting infrastructure such enforce-

ment, but also the political context (legal) where and when the rule of positive law is created and implemented. By combining analysis of the normative perspective and sociology of law will obtain a comprehensive picture of the complexity of the issues surrounding the process and decision of the judge in the courtroom, which incidentally is a "social."

The process of hearing and deciding who do judge is the process of hearing and deciding dimensional human behavior. The first dimension, it is a human being, an individual creature, God's creation is still to be respected, protected and fulfilled their human rights. Legal values, principles and norms of the law was created for man so that man personally and social life of the community, the nation and the state can take place and take place with civilized. Because it is not true and can not be understood if the law is enforced on the principles of humanity.

Equality before the law principle, presumption of innocence, *in dubio pro reo* (in case of doubt the judge must decide a way that benefits the defendant), and *audie et alteram partem* (both parties must be heard) are the principles of law that are loaded with the values and humanitarian messages to the judge so that the judge did not sacrifice humans and humanity defendant, but rather emphasizes the human and humanity itself. The second dimension, people who are dealing with that law are social creatures. It is part of a small community and a large community with all sorts of problems and social background of their life. What and how to treat the law with all its instruments will be a lesson for small communities and large communities.

The consideration and decision of the judge-dimensional and also have long-term implications on small community, a great community, state and nation; far exceeding the legal considerations and implications of the judgment on individual perpetrators.

Seeing the human rights dimension in the judge's decision in this research not just look at it from the perspective of the perpetrators being prosecuted or the victims, but more than that, namely humanitarian perspective wide and long. Nor is it merely photographing the material and formal legal considerations the judge on the case itself, but also the norms of human rights law nationally and internationally. Including a look at how the legal texts were interpreted in a social context and the context of the case heard (Murphy, 2014).

Before outlining more about the philosophy and the phenomenon of the court, it helps explain the definition of court. Court is a judicial body which hears

and makes decisions on legal cases. Another definition says, that the court is any official tribunal (court) presided by a judge or judges in which legal issues and claims are heard and determined (Ginsburg, 2003). Definition of judges also gave a philosophical value that can be studied in more depth. Judge is a public official with authority to hear cases and pass sentences in a court of law or a person whose opinion on a particular subject is usually reliable. There is also a constrain judges is one capable of making rational, dispassionate, and wise decisions.

Therefore, between the court and the judge are two integral components, one being part of the other. Judge became the main entity who interpret the word court, the spot is held or ceremony process called prosecute. While the court as an institution or institutions, are required to hold for prosecuting a professional manner with the support of the professional administration of justice as well. The quality of the professional administration of justice and the high acceptance of seeking justice on the decision as one that mutually reinforcing for the birth of respect and authority of the law in public. But conversely, poor quality of the administration of justice and the judge's decision is unfair and unjust, it becomes a perfect blend birth of the bad image of the court.

Public confidence in the courts is a very important factor for the establishment the rule of law in a country. The low level of public confidence in the courts, with all the tools and process, would be bad for the various aspects of social life of the country. Brennan, a former Australian Supreme Court Judge stated (Rose, 1999):

"The rule of law depends in the ultimate analysis upon public confidence in the competent and impartial administration of justice according to law by the courts of each country... In today's interdependent world, it is not only the confidence of our own people in the administration of justice according to law that is important for the welfare of our nation; the confidence of the people in the states of trading partners in the court system of our own country is essential to our peace and economic wellbeing."

Public confidence is needed by the world court in any legal system, because the court is not only a venue for settlement of legal disputes in the modern legal system, but also the birthplace of the sources of law, the place that determines what and how the rule of law implemented. Even the portrait that can describe how the civilization of a nation.

Public confidence in the judge and the court is not determined by the legal system to be used, but how

the attitude, behavior and quality of the judge's decision. That legal systems differ in several aspects is the fact that is indisputable, but how the judges and the court system to translate it into practice an indicator that affects the image and public perception of judges and/or courts.

In simple terms a judge can be defined as someone who as his main function is to examine and decide cases. However, in reality the function of a judge is not as simple as that definition. In court, judges often face issues regarding complicated and complex cases or cases handled, so the judges in their duty not merely checking and deciding cases. Facing the judge is required to have the capability and competence and personal integrity is not in doubt.

In performing its main function of the judge is required to have moral integrity and good character, can be independent and impartial, have the administrative ability, the ability to speak and write, have a good reason, a broad vision. In short, in addition to the problem of personality, judges are required to have knowledge and expertise. Because it can be said that the functions carried judges is a function that focuses on aspects of individual expertise and independence.

Problems expertise of judges and the independence of judges is increasingly important given in making the decision, the judge did not base itself solely on the sound of article legislation and regulations. The process of making the decision is a treatment process of intellectual ability, technical mastery of substantive, legal procedures and knowledge of judges on social values that exist and thrive in society. Aspects of human rights will always be associated with the function or role of judges, among other things, as right to life, right as a person before the law, quality before the law, ex post facto law, fair trial.

Overall aspects of human rights mentioned above, is now regulated and guaranteed in various international and national legal instruments. In international legal instruments, it is for example contained in Universal Declaration of Human Rights/UDHR) and International Covenant on Civil and Political Rights/ICCPR). As for the national legal instruments, can be found in Constitution of the Republic of Indonesia as well as in various national legislations, such as Act No. 39 of 1999 on Human Rights.

## **CONCLUSION**

The setting is patterned petty ordinary crime is a criminal offense regulated in Criminal Code as well as in other legislation. However, distinguish



it must be seen against the backdrop of actors, motives and consequences of crimes are not to cause loss concerns and community. But the practice of law enforcement a lot of disturbing sense of justice, as resolved by the trial court to unnecessary or can be reached with the process outside the court, with emphasis on peace deliberations to reach a consensus is an integral mechanism in the lives of people in Indonesia.

Completion of ordinary petty crime patterned can be reached with the mediation penal called restorative justice approach, which focuses on the direct participation of the offender, victim and community to interpret the criminal act is basically an attack on individuals and society as well as community relations. Then justice is defined as the process of finding the settlement of problems that occur on a petty criminal case unusual patterned with the involvement of the victim, the community and actors to be important in the repair business, reconciliation and the improvement of business continuity assurance.

Restorative justice based on embracing the principles differ from the trial court examination into the most obvious problem at this level. In the context of the criminal justice system of Indonesia, the provi-

sions on openness has been very firmly and clearly arranged in Criminal Code Procedure, derived from the principles of the trial court examination open to the public. Meanwhile, conference, meeting, from restorative justice typically arranged by private setting, so the question of how judges and lawyers considered that the interests of each party are respected.

Legal reform in Indonesia, is inseparable from the objective conditions of Indonesian society that upholds the values of religious law in addition to the traditional laws that need to be explored legal products sourced and rooted in cultural values, moral and religious.

Related to this research, also forward the concept of restorative justice as a concept of thought that responds to the development of the criminal justice system with emphasis on the needs of community and victims who felt marginalized by a mechanism that works in the criminal justice system that existed at this time. On the other hand, restorative justice is also a new framework of thinking that can be used in response to a crime for the enforcement and legal professionals.

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