

The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)

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Article	Abstract.
<p>Keywords: Idea; Policy; Justice; Pancasila; Restorative.</p> <p>Article History Received: 2022-08-26; Reviewed: 2022-10-04; Accepted: 2022-12-21; Published:2022-12-22.</p> <p>DOI: 10.30659/jdh.v%vi%i.24 290</p>	<p><i>This study aims to analyze the idea (value) of forgiveness as the noble value of the Indonesian nation into a national legal product. History records that in various literatures, when various national problems were recorded, it was revealed that the idea, nature, value of forgiveness became one of the key values for the success of the Indonesian nation in reducing various kinds of criminal and social conflicts problems in society. So that the expected restorative justice for those who are litigated can be achieved. Indeed, the Indonesian people are familiar with this non-penal problem model through deliberation as a step in implementing the values of Pancasila. However, considering that national legal products still use legal products inherited from the colonialists, there are differences in the values adopted by the colonial nation and the noble values of the Indonesian nation. The subject studied in this study is to determine the provisions of the idea of forgiveness in the current positive criminal law policy (Ius Constitutum; future criminal law policy (ius constituendum) and efforts to reconstruct national criminal law policies by prioritizing the idea of Forgiveness as the noble values of the Indonesian nation is based on restorative justice and the values of Pancasila. The research method used in this study is a normative juridical approach. Types and sources of data used are secondary data with data collection methods are through document studies and literature studies. The expected result of this research is the internalization of the value (idea) of forgiveness in national legal products; the accommodation of restorative justice as a solution to various legal and social problems in society; there is the principle of legality and legal certainty in applying restorative justice by law enforcement; and growing confidence to put forward the values of Pancasila in solving legal conflicts and social problems in society.</i></p>
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1. Introduction

The colonialization process left an unpleasant trail for every colonial country. Including Indonesia. Even though it has been decades since the Unitary State of the Republic of Indonesia was independent. However, several legal products still use the legacy of the colonialists. Of course this becomes a "homework" that demands to be completed. Considering that in the formulation stage of the legislative product, some of the values contained therein are different from the noble values of the Indonesian people. Especially is the value of forgiveness.

Value is the basis of norm. Value is a measure that is based on or is not realized by a society or group to determine what is right, good, and so on. Values influence a person's behavior. The value system (value system) of a nation, society or class is not the same. Therefore, the norms that apply in a nation, society or group do not always apply to other nations, communities or groups.¹

The Criminal Code (KUHP) is one of the legal products left by the Dutch colonialists which is still valid today, the principle contained therein is the principle of no forgiveness. A value that is different from the values of the Indonesian nation which is thick with elements of forgiveness so that it is expected to be a solution in society. Including in terms of law enforcement, the idea of forgiveness is put forward so that restorative justice based on Pancasila values is realized. As it is known that Indonesia has been colonized by several countries for centuries. Noted include Portugal, England, the Netherlands and Japan. The Netherlands became the longest colonizer in this country. No less than 350 years. Likewise, Japan was recorded as the shortest country to colonize Indonesia but left a 'dark history' for the colonized country, Indonesia.

Even though since August 17, 1945, the Unitary State of the Republic of Indonesia (NKRI) proclaimed its independence, the process of maintaining independence is not as easy as imagined. The allied colonialists tried to grip back their imperialism in Indonesia. Military Aggression I and II prove this. There is no doubt that the struggle of the heroes has become a concrete manifestation that independence is a fixed price that must be fought for and defended. Thanks to the grace of Allah the Almighty and driven by a noble desire, the Indonesian people declared their independence². A statement of gratitude to God Almighty which is imprinted in the 3rd paragraph of the Preamble to the 1945 Constitution of the

¹Ira Alia Maerani. (2018). *Hukum Pidana & Pidana Mati*. Semarang: Unissula Press, p. 4. Dikutip dari Sudarto. (2009). *Hukum Pidana I*. Cetakan Ketiga. Semarang: Yayasan Sudarto d/a Fakultas Hukum Undip, p. 7.

²Paragraph 3 of the Preamble of the 1945 Constitution of the Republic of Indonesia.

Republic of Indonesia (hereinafter abbreviated as: the 1945 Constitution of the Republic of Indonesia). Through the philosophical values of the nation contained in Pancasila, the Unitary State of the Republic of Indonesia has become a unitary state in the form of a republic as stipulated in the Body of the 1945 Constitution of the Republic of Indonesia.³

This lofty desire to live a free national life was achieved by forming the government of the Republic of Indonesia which was compiled in a Constitution. Thus the noble ideals or desires for national life as mandated by the Preamble to the 1945 Constitution of the Republic of Indonesia, are not just aspirations for a free national life but "a free life in order" or "a free life in an atmosphere of order and law". This means that the Proclamation of Independence, as revealed in the Preamble to the 1945 Constitution of the Republic of Indonesia, also mandates legal renewal efforts in Indonesia. The effort to renew national life in an atmosphere of law and order began with the drafting of the Indonesian state constitution.⁴

Legal reform efforts in Indonesia have started since birth of The 1945 Constitution of the Republic of Indonesia cannot be separated from the basis and at the same time the objectives to be achieved as also formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia based on Pancasila". This is the general policy line which is the basis and at the same time the goal of legal politics in Indonesia. This is also the basis and goal of every legal reform effort, including reform in the field of criminal law.⁵

The intention to carry out legal reforms with an Indonesian character is the goal of national legal politics. The ultimate goal and main goal of legal politics is the protection of society to achieve public prosperity. This legal political objective is in line with the 4th paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, which reads in full:

"Then instead of that to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice, the Indonesian national independence was drafted. That is in a Constitution of the State of Indonesia, which is formed in a

³Ira Alia Maerani. (2017). Law Policy Reformulation of Death Sentence in Positive Penal Law Base on Pancasila Values. *The International Journal of Social Sciences and Humanities Invention*. Vol. 4, Issue 10, October 2017. DOI: 10.18535/ijsshi/v4i10.04. ISSN: 2349-2031. <https://journals.indexcopernicus.com/api/file/viewByFileId/284337>

⁴Barda Nawawi Arief. (1986). *Penetapan Pidana Penjara dalam Perundang-undangan Dalam Rangka Usaha Penanggulangan Kejahatan*. Disertasi. Bandung: Universitas Padjadjaran, p. 1-2.

⁵Ibid., p. 2.

composition of the Republic of Indonesia which is sovereign by the people based on: Belief in One Almighty God, just and civilized humanity, Indonesian unity, and democracy led by wisdom in deliberations/representations, as well as by realizing social justice for all Indonesian people.”⁶

The conception of Indonesia's rule of law state has characteristics and characteristics based on the spirit and soul of the Indonesian nation (*volkgeist*), namely Pancasila. Even though the identity and formulation of the characteristics of the Indonesian state based on Pancasila have been formulated, the conception of a Pancasila legal state has not been properly implemented and institutionalized. Therefore there needs to be a systematic, structured, and massive effort⁷ to internalize the Pancasila legal state concept into aspects of national and state life, especially in the renewal of national law.

The values contained in the Pancasila precepts, namely the values of divinity (religious), humanity, unity, democracy, and justice are the values of the nation's philosophy in building Indonesian law in the future. Pancasila as the ideology, basis and philosophy of life for the Indonesian nation is what inspired the author to appoint it as an "analytical knife" in the context of developing Indonesian-style criminal law enforcement.

Apart from being the ideology, basis and philosophy of the state, Pancasila is also the moral ideals and outlook on life of the Indonesian nation which, during the existence of the Indonesian State, has provided views and directions to our nation and country to live the life of a nation in accordance with its identity which distinguishes it from other nations, else in the world. Along with the dynamics of national and state life, Pancasila has become the primary source in solving

⁶Paragraph 4 of the 1945 Constitution of the Republic of Indonesia.

⁷Ira Alia Maerani. Implementasi Ide Keseimbangan dalam Pembangunan Hukum Pidana Indonesia Berbasis Nilai-nilai Pancasila. *Jurnal Pembaharuan Hukum*. Vol. 2, No. 2 May- August 2015, 329-339 <http://jurnal.unissula.ac.id/index.php/PH/article/download/1364/1048> from Arief Hidayat, Pancasila Law State Conception, paper presented at a lecture at the Doctor of Law Program (PDIH) Faculty of Law Unissula, May 24 2015. Internalization of the concept of a Pancasila legal state into aspects of national and state life, especially in the formation of national law, is necessary carried out in a systematic, structured, and massive manner, the meaning is as follows:

- Systematic, meaning that there is a need for careful planning (by design), comprehensive and holistic in internalizing the concept of a Pancasila legal state.
- Structured, meaning that efforts to internalize the Pancasila legal state concept need to be carried out mainly by state administrators and all parties, both the political infrastructure and especially the political superstructure.
- Massive, meaning that efforts to internalize the concept of the Pancasila legal state must be carried out on a national scale which includes the formal, non-formal and informal realms of the state, society and family.

multidimensional national problems. It must be admitted, Pancasila has a strong historical value that can enhance the national spirit, on the other hand Pancasila has a spiritual-ideological value that can be used as a force to observe contemporary and future problems.⁸

It is in this context that Pancasila values become very relevant in order to build a legal identity with an Indonesian character. A legal building that reflects the values, norms, philosophy of the Indonesian nation. Likewise in the realm of criminal law which still applies the Criminal Code (*Wetboek van Strafrecht voor Nederlands Indie*, hereinafter abbreviated as *WvSNI* or *WvS*)⁹ originating from the Netherlands. The Dutch *WvS* originates from the French Penal Code made in 1791. A legal product that does not recognize the value of forgiveness. It is a legal product operating in the public sector which unfortunately does not recognize forgiveness as a noble value and solution to various legal and social problems in society.

2. Research Methods

The problems in this study include the central problem of penal policy, which is part of criminal policy. Therefore the approach cannot be separated from a policy-oriented approach.¹⁰ The approach method in this research is normative legal research. In normative legal research, several approaches are used, namely the statutory approach, conceptual approach and comparative approach.¹¹ As for Soerjono Soekanto, he stated that normative legal research or library law research includes research on horizontal synchronization levels and legal comparisons.¹²

3. Results and Discussion

Formulation of the Idea of Forgiveness in Positive Criminal Law Policy (*Ius Constitutum*) Based on Restorative Justice and Pancasila Values

⁸Adian Husaini. (2015). *Mendiskusikan Pancasila sebagai Worldview dan Pedoman Amal?*, paper at the National Seminar on Nationality with the theme: "Affirming Pancasila as the Ideology and Basis of the State in the 1945 Constitution of the Republic of Indonesia" at the Horison Hotel, Semarang, Monday, 16 February 2015, p. 1.

⁹Article VI Paragraph (1) Act No. 1 of 1946 concerning Criminal Law Regulations reads: The name of the criminal law law "*Wetboek van Strafrecht voor Nederlandsch Indie*" was changed to "*Wetboek van Strafrecht*". Article VI Paragraph (2) Act No. 1 of 1946 reads: "This law can be called the Criminal Code."

¹⁰Barda Nawawi Arief. (1996). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang: Badan Penerbit Universitas Diponegoro, p. 8.

¹¹Johnny Ibrahim. (2005). *Teori dan Metodologi Penelitian Hukum Normatif*. Surabaya: Bayumedia Publishing, p. 444.

¹²Soerjono Soekanto, 1985, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT Raja Grafindo Persada, Jakarta, p. 14.

The current policy formulation in the formulation of the material punishment system in Indonesia (KUHP/WvS) originates from the heritage of the Dutch colonialists whose formulation is more oriented towards the perpetrators of criminal acts. The philosophical values that form the background for the formulation of the Criminal Code/WvS are individualism and liberalism which are inspired by the classical/neo-classical schools which are oriented towards actions and perpetrators of criminal acts. The provisions of material criminal law legislation in Indonesia cannot be separated from the "*Main Provisions*" of the Criminal Code/WvS and provisions of the criminal law outside the Criminal Code.¹³

The substance of Book 1 of the Criminal Code is currently the main guideline for the criminal justice system in Indonesia, but the guidelines in criminal formulation are currently only focused on the provisions of criminal acts and errors without including the objectives and principles of sentencing. Therefore, the current criminal law is felt to be rigid and inhuman in its application to minor cases deemed necessary for social justice. The formulation of a master system that does not have goals and principles in sentencing guidelines will not produce an effective law, now an idea has emerged, namely *Rechterlijk Pardon* as one of the concepts in criminal reform that has been used by various countries that implement the civil law system.¹⁴

The urge to apply the value of forgiveness is in line with various supporting factors. There is an opinion that products left by the colonialists are considered not in accordance with the values of the Indonesian nation. Another supporting factor is the desire to make Pancasila values the basis for forming legislation. As the function of Pancasila values as the basis of the state. Including the emergence of legislative products that internalize the value of restorative justice in resolving criminal cases.

According to Kevin I. Minor and JT Morrison in the book "A Theoretical Study and Critique of Restorative Justice, in Burt Galaway and Joe Hudson, eds., *Restorative Justice: International Perspectives*" (1996), restorative justice is a response to criminals to restore losses and facilitate peace between the parties. Restorative justice is a method that is philosophically designed to be a resolution to an ongoing conflict by improving the situation or losses arising from the conflict.¹⁵

¹³Barda Nawawi Arief. (2012). *RUU KUHP BARU sebuah Rekonstruksi Sistem Hukum Pidana Indonesia*. Semarang: Penerbit Pustaka. Magister UNDIP, p. 1-2.

¹⁴Aristo Evandy A. Barlian, Barda Nawawi Arief. (2017). Formulasi Ide Permaafan Hakim (*Rechterlijk Pardon*) Dalam Pembaharuan Sistem Pidana di Indonesia. *Jurnal Law Reform*. 13 (1). 1-17. <https://ejournal.undip.ac.id/index.php/lawreform/article/download/15949/11861>

¹⁵*Restorative Justice: Pengertian dan Penerapannya Dalam Hukum di Indonesia*, KOMPAS, 15 Februari 2022 <https://nasional.kompas.com/read/2022/02/15/12443411/restorative-justice-pengertian->

Case settlement process of criminal justice by prioritizing restorative justice is an alternative solution in the mechanism of the Indonesian criminal justice system. If initially the focus on the application of criminal sanctions shifted to the process of deliberation, dialogue and mediation involving the perpetrator, the victim, the perpetrator's family and the victim's family, the community (religious leaders/community leaders) and related parties such as: the police; attorney; and judge.

The main purpose of implementing restorative justice is to restore the balance process that has been taken by the perpetrator back to its original state; restore the pattern of good relations in the community; creating an agreement between the perpetrator and the victim in resolving criminal cases; accommodate forgiveness as a way of settling criminal cases; awaken a sense of sincerity (Javanese: *legowo*) and patience in dealing with criminal matters; deliberation as one of the implementation of Pancasila values in resolving criminal cases; and produce fair and balanced decisions for victims and perpetrators; as well as building a criminal justice system that cares about the interests of victims.

The Unitary State of the Republic of Indonesia with the values of Pancasila as the nation's ideology confirms that this country is a religious country as evidenced by the sounding of the first precept, namely, "Belief in One Supreme God". The concept of balance as the basic idea of implementing restorative justice is to restore balance to its original state, so the holy book, the Qur'an, has regulated it insurah Al Mulk Verse 3 and Al Qoshosh Verse 77. The command to forgive is also regulated in the Al Qur'an. The following verses read and their meanings are as follows:

الَّذِي خَلَقَ سَبْعَ سَمَاوَاتٍ طِبَاقًا مَا تَرَى فِي خَلْقِ الرَّحْمَنِ مِنْ تَفْوُتٍ فَإِنَّ رَجْعَ الْبَصَرِ
هَلْ تَرَى مِنْ فُطُورٍ

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا
وَإَحْسِنْ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ وَلَا تَبْغِ الْفُسَادَ فِي الْأَرْضِ إِنَّ
اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ

The concept of balance that underlies the application of restorative justice is currently a literature study proving that this restorative justice is adopted and applied by law enforcement agencies in Indonesia. Starting at the level of the police, prosecutors and courts. How is the formulation of the idea of forgiveness in positive criminal law

dan-penerapannya-dalam-hukum-di-indonesia?page=all.

(*Ius Constitutum*) of restorative justice in the current statutory product (*Ius Constitutum*)?

The following below are examples of several statutory products that regulate restorative justice in law enforcement agencies:

1. Police Regulation (Perpol) No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice in the Indonesian National Police

The Perpol signed by the National Police Chief on August 19, 2021 is included in the 2021 State Gazette (BN) of the Republic of Indonesia No. 947. This Perpol is a breakthrough made by the National Police to answer the legal needs of the community for justice, benefits and legal certainty by accommodating the values and norms that apply in society.

The Republic of Indonesia National Police Regulation or what is often called the Police Regulation or Perpol concerning Handling of Criminal Acts based on Restorative Justice is a step for the Police in realizing the settlement of criminal acts by prioritizing Restorative Justice which emphasizes restoration to its original state and balance of protection and the interests of the victim and perpetrators of criminal acts that are not oriented towards punishment are a legal necessity in society.¹⁶

Article 1 letter 3 Police Regulation No. 8 of 2021 stipulates that Restorative Justice is the settlement of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair solution through peace by emphasizing re-election on return state.¹⁷

This Perpol regulates that the handling of criminal acts based on restorative justice must meet specific requirements and general requirements. Special requirements apply to the handling of criminal acts at the stage of investigation or investigation.

General requirements apply at the stage of carrying out the Criminal Investigation function (Reskrim), investigation or investigation. Handling of criminal acts based on these general requirements includes material and formal requirements.

¹⁶ <https://kompolnas.go.id/index.php/blog/peraturan-polri-no-8-tahun-2021-about-penanganan-tindak-pidana-berdasarkan-keadilan-restoratif> quoted from Fianhar.com, accessed June 13, 2022 at 17:24 WIB.

¹⁷Article 1 letter 3 Police Regulation No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

General requirements in the form of material requirements consist of:

- a. does not cause anxiety and/or rejection from the community;
- b. does not impact social conflict;
- c. does not have the potential to divide the nation;
- d. no radicalism and separatism;
- e. not a repeat offender based on a court decision; and
- f. not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.¹⁸

While the general requirements in the form of formal requirements include:

- peace from both parties as evidenced by a peace agreement signed by the parties, except for Narcotics crimes;
- fulfillment of victims' rights and perpetrators' responsibilities, in the form of returning goods, compensating for losses, reimbursing costs incurred as a result of criminal acts and/or compensating for damages caused by criminal acts. Evidenced by a statement in accordance with the agreement signed by the victim (except for narcotics crimes).¹⁹

Special requirements, in handling criminal acts based on restorative justice, are additional requirements for other crimes, including:²⁰

a. Information and electronic transaction crime;

Special Requirements for Handling criminal acts based on restorative justice for criminal acts of information and electronic transactions, at least include:

- perpetrators of criminal acts of information and electronic transactions that distribute illegal content;
- the perpetrator is willing to delete the content being uploaded, submitted to investigators in the form of soft copy and hard copy;

¹⁸Article 5 Perpol No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

¹⁹Article 6 Paragraph (1) Perpol No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

²⁰Article 7 Perpol No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

- the perpetrator conveyed an apology through a video uploaded on social media accompanied by a request to delete the content that had been spread, submitted to investigators in the form of soft copy and hard copy; and
- the perpetrator is willing to cooperate with Polri investigators to carry out further investigations.

b. Drug Crime

Special Requirements for handling criminal acts based on restorative justice for drug crimes, including:

- Drug addicts and drug abuse victims applying for rehabilitation;
- when caught red-handed found evidence of narcotics use for 1 (one) day with the classification of narcotics and psychotropics in accordance with statutory provisions, and no evidence of narcotics crime was found but urine test results showed positive drugs;
- not involved in a network of criminal acts of narcotics, dealers and/or dealers;
- an assessment has been carried out by an integrated assessment team; and
- the perpetrator is willing to cooperate with Polri investigators to carry out further investigations.

c. Traffic Crime

Special Requirements for handling criminal acts based on restorative justice for traffic crimes, including:

- a traffic accident caused by driving a motor vehicle in a dangerous manner and condition resulting in material loss and/or minor injuries; or
- traffic accidents on the road due to negligence resulting in human casualties and/or loss of property.

Termination of investigations and investigations with reasons for the sake of law based on restorative justice is carried out by submitting a written request²¹, made by the perpetrator, the victim, the perpetrator's family, the victim's family or other related party accompanied by a letter of peace requirements and evidence that the victim's rights have been restored, addressed to the Criminal Investigation Headquarters of the National Police at the Headquarters level, the Regional Police Chief at the Polda level, while for the Polres and Polsek levels addressed to the Chief

²¹Article 13 Perpol No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

of Police.²²

Based on the letter requesting the termination of the investigation and investigation, the investigator in investigative activities will examine the completeness of the documents, clarify the parties as outlined in the minutes, carry out a special title, and if the results are met, an order for termination of the investigation will be issued (SPP-Lidik) and a letter decision to terminate the investigation (SK.Lidik) with reasons for the sake of law.

While investigators in investigative activities after receiving a letter of request for termination of investigation will carry out additional examinations as outlined in the minutes, clarification of the parties as outlined in the minutes, carry out special titles, and if the results are fulfilled then an order for termination of investigation (SP3) will be issued and letter of decision to stop investigation (SK.Sidik) with reasons for the sake of law based on restorative justice, send a letter of notification of termination by attaching a letter of decision to stop investigation to the public prosecutor.

A research conducted in Lasem Sector Police (Polsek) by students of the Master of Law Science Faculty of Law Unissula applies restorative justice to cases of criminal acts of persecution. Restorative justice is used in order to reach a peace agreement between the victim and the perpetrator of the crime of persecution mediated by the police. The penal mediation model used by the Lasem Polsek is the Victim Offenders Mediation and Family and Community Group Conferences penal mediation model.²³

Restorative justice is also applied at the Central Semarang Police in cases of criminal acts of persecution. This is known through research conducted by Master of Law students at the Faculty of Law, Unissula. The application of restorative justice still pays attention to the applicable legal regulations, especially related to evidence in accordance with Article 184 of the Criminal Procedure Code (KUHAP). One of the solutions offered by the police in this non-penal mediation process is to maximize the role of Bhabinkamtibmas (Bhayangkara Pembina Security and Public Order) as

²²Article 15 Perpol No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

²³Arif Septria Hendra Saputra, Gunarto, Lathifah Hanim. The Application of Restorative Justice as an Alternative to Completion of Criminal Acts of Persecution at the Lasem Police Criminal Investigation Unit. *Journal of Sovereign Law*. Vol.1, No. 1, March 2018. 157-162.

<https://media.neliti.com/media/publications/324320-penerapan-restoratife-justice-As-al-de6eece4.pdf>

an executive officer as well as representing the presence of the state in society.²⁴

2. Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice at the Attorney General's Office of the Republic of Indonesia

The Attorney General's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, decency and decency, and must explore human values, law and justice who live in society.²⁵

The Attorney General's Office of the Republic of Indonesia seeks to prioritize restorative justice in resolving criminal cases by emphasizing restoration to its original state and balance of circumstances. Especially the balance and recovery of the victim's condition. Does not prioritize punishment and is not oriented towards retaliation against perpetrators of crimes (criminal acts). So that the law enforcement process is pursued based on the principles of fast, simple and low-cost justice as well as establishing and formulating case handling policies for successful prosecutions carried out independently for justice based on law and conscience, including prosecutions using a restorative justice approach carried out in accordance with statutory provisions.²⁶

This prosecutor's regulation regulates restorative justice settlement of cases crime involving perpetrators, victims, families of perpetrators/victims, and other related parties jointly seek a just solution by emphasizing restoration to the original state, and not retaliation.²⁷ Termination of prosecution based on restorative justice is carried out on the basis of:

- a. justice;
- b. public interest;
- c. proportionality;
- d. crime as a last resort; and

²⁴M. Gargarin Friyandi, Aryani Witasari. Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Semarang. Journal of Sovereign Law. Vol. 2, No. 1, March 2019. 39-44.

<http://jurnal.unissula.ac.id/index.php/RH/article/download/4204/2910>

²⁵Considering the Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

²⁶Ibid.

²⁷Article 1 Ibid.

e. fast, simple, and low cost.²⁸

Public Prosecutor authorized close the case for the sake of law.²⁹ Case closure for the sake of law is carried out in terms of:

- a. the accused died;
- b. expiration of criminal prosecution;
- c. there has been a court decision that has permanent legal force against someone above the same case (*nebis in idem*);
- d. complaints for criminal offenses complaints are withdrawn or withdrawn; or
- e. there has been a settlement of cases outside the court (*afdoening buiten process*).³⁰

Settlement of cases outside the court as referred to in Article 3 Paragraph (2) Letter e can be carried out with conditions:

- a. for certain criminal acts, the maximum criminal fines are paid voluntarily in accordance with the provisions of the legislation; or
- b. there has been a restoration of the original state using a Restorative Justice approach.

Article 4 Paragraph (1) Prosecutor's Regulation No. 15 of 2020 regulates about termination of Prosecution based on Restorative Justice is carried out by taking into account:

- a. Victim's interests and other protected legal interests;
- b. avoidance of negative stigma;
- c. avoidance of retaliation;
- d. community response and harmony; and
- e. decency, decency and public order.³¹

Termination of prosecution based on Restorative Justice is carried out by considering:

- a. subject, object, category, and threat of crime;
- b. background of the commission of the crime;

²⁸Article 2 Ibid

²⁹Article 3 Paragraph (1) Ibid.

³⁰Article 3 Paragraph (2) Ibid.

³¹Article 4 Paragraph (1) Ibid.

- c. level of disgrace;
- d. losses or consequences arising from criminal acts;
- e. costs and benefits of case handling;
- f. restoration back to its original state; and
- g. reconciliation between the victim and the suspect.³²

The conditions for a criminal case to be closed by law and the prosecution to be terminated based on restorative justice are:

- a. the suspect is the first time committing a crime;
- b. criminal acts are only punishable by fines or punishable by imprisonment of not more than 5 (five) years; and
- c. the crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime of no more than IDR 2,500,000.00 (two million five hundred thousand rupiah).³³

Termination of prosecution based on Restorative Justice is carried out in compliance with the conditions: a. there has been a restoration to its original state which was carried out by the Suspect by means of:

- 1) return goods obtained from criminal acts to victims;
- 2) compensate the victim's loss;
- 3) reimbursing costs incurred as a result of a criminal act; and/or
- 4) repair the damage caused by the crime.
- b. there has been a peace agreement between the victim and the suspect; and
- c. society responds positively.³⁴

The requirements of Article 5 Paragraph (6) Letter a above can be waived if there is an agreement between the suspect and the victim.³⁵ It can be indicated that this agreement occurred because of the forgiveness of both parties in the case, both the suspect and the victim. After forgiveness occurs through this deliberation path, restorative justice is realized by restoring balance to its original state, restoring harmony in society.

Termination of prosecution based on Restorative Justice is excluded for cases:

- a. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives,

³²Article 4 Paragraph (2) Ibid.

³³Article 5 Paragraph (1) Ibid.

³⁴Article 5 Paragraph (6) Ibid.

³⁵Article 5 Paragraph (7) Ibid.

public order and decency;

- b. criminal acts that are punishable by minimum criminal penalties;
- c. narcotic crime;
- d. environmental crime; and
- e. criminal acts committed by corporations.³⁶

Procedures for peaceful efforts between Victims and Suspects are offered by the Public Prosecutor without pressure, coercion and intimidation.³⁷The inculcation of Pancasila values, especially the 4th precept, appears in the editorial of Article 9 Paragraph (1) Perja No. 15 of 2020 reads, "The peace process is carried out voluntarily, with deliberations to reach a consensus, without pressure, coercion and intimidation."

The peace process can be carried out at prosecutor's office or government office or other agreed location due to geographical, health, security and other factors.³⁸The peace process and the fulfillment of this obligation are carried out within a span of 14 days from the transfer of responsibility for the suspect and evidence (stage two).³⁹If peace is reached, then the suspect and victim make a peace agreement in writing before the public prosecutor.⁴⁰

3. Decree of the Directorate General of General Courts No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment

Supreme Court in Attachment to the Decree of the Directorate General of General Courts (hereinafter abbreviated as: Decree of the Director General of Badilum) No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for Restorative Implementation *justice* in the General Courts environment, it is stated that the principle of restorative justice as an instrument for restoring the situation in the law enforcement process has been carried out in the Supreme Court environment. This policy is implemented through a Supreme Court Regulation (Perma) and a Supreme Court Circular (SEMA). However, its implementation in the Indonesian criminal justice system has not been optimal.

³⁶Article 5 Paragraph (8) Ibid.

³⁷Article 7 Paragraph (1),(2) Ibid.

³⁸Article 9 Paragraph (4) Ibid.

³⁹Article 9 Paragraph (5) Ibid.

⁴⁰Article 10 Paragraph (1) Ibid.

The Supreme Court Regulations and the Supreme Court Circular are:⁴¹

- a. Supreme Court Regulation (PERMA) No. 2 of 2012 concerning Adjustments to the Limits of Misdemeanor Crimes and the Amount of Fines in the Criminal Code.
- b. Supreme Court Regulation (PERMA) No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.
- c. Supreme Court Regulation (PERMA) No. 3 of 2017 concerning Guidelines for Trying Women Against the Law.
- d. Supreme Court Circular Letter (SEMA) No. 4 of 2010 concerning Placement of Abuse, Abuse Victims and Narcotics Addicts into Medical and Social Rehabilitation Institutions.
- e. Supreme Court Circular Letter (SEMA) No. 3 of 2011 concerning the Placement of Victims of Narcotics Abuse in Institutions for Medical and Social Rehabilitation.
- f. Joint Decree of Chief Justice of the Supreme Court, Attorney General, Chief of Police, Minister of Law and Human Rights (HAM), Minister of Social Affairs, Minister of Women and Children's Empowerment No. 166A/KMA/SKB/XII/2019, 148 A/A/JA/12/2009, B/45/XII/2009, M.HH-08 HM 03.02 Year 2009, 10-PRS - s/KPTS/2009, 02 /Men.PP and PA/XII/2009 concerning Handling of Children in Conflict with the Law.
- g. Memorandum of Understanding with Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General, Chief of Police No. 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number KEP-06/E/EJP/1-/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Implementation of Adjustments to the Limits of Misdemeanor Crimes and the Amount of Fines, the Procedure for Examination and the Implementation of Restorative Justice.
- h. Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, National Police Chief, Head of the National Narcotics Agency (BNN) No. 01/PB/MA/III/2014, Number 03 of 2014, Number 11 of 2014, Number 3 of 2014 Number Per-005/A/JA/03/2014 Number 1 of 2014, Number Perber/01/III/2014/ BNN regarding the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

The purpose of issuing these technical instructions is:

⁴¹Attachment to the Decree of the Director General of the General Judiciary Agency No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment.

a. Facilitate the courts in the general justice environment in understanding and implementing the implementation of Supreme Court Regulations, Supreme Court Circulars and Decisions of the Chief Justice of the Supreme Court governing Restorative Justice.

b. Encouraging the increased application of restorative justice that has been regulated by the Supreme Court in decisions produced by the assembly/judge.

c. Fulfillment of justice principles that are fast, simple and low cost with balanced justice.

The scope of the guideline the application of restorative justice applies and must be guided by all district courts in Indonesia in minor crimes; cases of women in conflict with the law; child cases and drug cases.

4. Conclusion

The implementation of Pancasila values in the process of law enforcement is one of the keys to the success of creating justice, benefits and legal certainty in society. Including prioritizing the value of forgiveness as one of the noble values of the Indonesian nation. The Indonesian people who are religious as stated in the 1st Precepts of Pancasila, namely Belief in One Almighty God, are the foundation for laying down policies in the state. This religious value is implemented in the act of doing good to others as in the second precept, just and civilized humanity.

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