

Legal Implications of Withdrawing a Criminal Complaint at the Investigation Level

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Abstract. *This research aims to know the legal implications of withdrawing reports/complaints of criminal cases at the investigation level and to know and analyze the obstacles to withdrawing reports/complaints of criminal cases at the investigation level and their solutions. This study uses a sociological legal approach and a descriptive analytical research type. Based on the research, it is concluded that the person who has the right to withdraw a complaint according to the 1946 Criminal Code and the 2023 Criminal Code is the person who filed the complaint within 3 (three) months from the date of submission and the complaint can be withdrawn by the complainant. Several articles in the 1946 Criminal Code and the 2023 Criminal Code as well as PERPOL Number 8 of 2021 regulate criminal acts for which complaints can be withdrawn at the investigation level.*

Keywords: *Investigation; Implications; Legal; Revocation.*

1. Introduction

Pancasila as the state philosophy contains the noble values of the Indonesian nation which must be applied in development, including development in the legal sector.¹In addition to Pancasila as the state philosophy, Pancasila is the basis of the Indonesian state. Pancasila is the source of all sources of law so that Pancasila becomes a measure in assessing the law.²Pancasila as the state philosophy and foundation of the Indonesian state has the consequence that all laws and regulations, their implementation and enforcement should be based on Pancasila.³

Paton as quoted by Mumpuni Moelatiningsih stated that for the Indonesian nation, Pancasila has been agreed upon as the core of philosophy which is a local genius and local wisdom for the Indonesian nation. The position of Pancasila which is so strategic is what confirms Pancasila as a grundnorm or Basic norm (highest norm) for the Indonesian nation. Pancasila is the principle of norms which is also the source for all legal principles, legal norms and laws

¹Dardji Darmodihardjo and Sidaharta, 1999, Main Principles of Legal Philosophy, What and How is Indonesian Legal Philosophy, Jakarta: Gramedia Pustaka Utama, page 227.

²Jazim Hamidi, Legal Position of the Proclamation Manuscript of 17 August 1945 in the Constitutional System of the Republic of Indonesia", Constitutional Journal, Vol. 3 Number 1, Jakarta: Constitutional Court of the Republic of Indonesia, February 2006, page 103.

³Siti Malikhatun Badriyah, 2016, Legal Discovery System in Prismatic Society, Sinar Grafika, Jakarta, page 44.

Master of Law, UNISSULA

that apply in Indonesia, because of that for the Indonesian nation,⁴Pancasila functions as a philosophy of life, the nation's ideology and also as the foundation of the state.⁵

Pancasila is the source of all sources of law, meaning that all forms of law in Indonesia must be measured according to the values contained in Pancasila and in the legal regulations must be reflected the awareness and sense of justice that is in accordance with the personality and philosophy of life of the nation. Pancasila is also a recht idea in the sense that Pancasila is a source of inspiration in the formation of a regulation.⁶

Relevant to justice, the value of justice contained in Pancasila can be the basic foundation for the formation of a just and civilized humanitarian law and social justice for all Indonesian people. Just and civilized humanity is the basis for the protection of human rights, namely humanizing humans in a civilized manner without reducing their rights in the slightest. While social justice is justice that is used to distinguish social justice from the concept of justice in law. Social justice is also one of the principles in Pancasila, namely the fifth principle of Pancasila which is formulated in the Preamble to the 1945 Constitution, paragraph four.⁷

The first to fourth principles are interrelated and cannot be separated. Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy Guided by the Wisdom of Deliberation/Representation. All of these principles must produce social justice for all people, especially the Indonesian people. Therefore, the formulation of the five principles in Paragraph IV of the Preamble to the 1945 Constitution ends with the sentence, "and by realizing social justice for all Indonesian people."⁸

The fourth principle of Pancasila, democracy led by the wisdom of deliberation and representation has the meaning of prioritizing deliberation in decision-making for the common interest. Prayitno as quoted by Constitutional Advocate stated that deliberation to reach consensus includes a spirit of kinship, so that if the philosophy of deliberation is broken down, it contains the following five principles. First, conferencing (meeting to listen and express desires); second, search solution (finding a solution or common ground for the problem being faced); third, reconciliation (making peace with each other's responsibilities); fourth, repair (fixing all the consequences that arise); fifth, circles (supporting each other).⁹

In terms of statecraft, restorative justice finds its basis in the philosophy of the 4th principle of Pancasila. This basis, if implemented in a pattern of resolving criminal cases, contains a principle called VOC (Victim Offender Conferencing). The target in

⁴Mumpuni Moelatiningsih, Inaugural Speech as Professor of Constitutional Law at the Faculty of Law, UNDIP, Semarang, December 2013, pages 14 to 16.

⁵WP Djatmiko, 2019, Constructing Legal Culture in Overcoming Carok in Madurese Society Based on Pancasila Values as a Means of Criminal Politics, Thesis, Doctoral Program in Law, Diponegoro University, Semarang, page 114.

⁶<https://repository.unissula.ac.id/17224/4/bab%20I.pdf>, pages clxxiii to clxxiv, downloaded April 2, 2024, at 08.48.

⁷Ferry Irawan Febriansyah, Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation, DiH Journal of Legal Studies Volume 13 Number 25 February 2017, page 6.

⁸*Ibid.*, page 15.

⁹<https://advokatkonstitusi.com/restorative-justica-dan-cita-Hukum-pancasila/3/>, accessed on date January 06, 2024 at 17.41 WIB.

Master of Law, UNISSULA

VOC (Victim Offender Conferencing) is mediation or VOM (Victim offender Mediation), which is an opportunity to make peace and mutually agree on improvements.¹⁰

Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just resolution through peace by emphasizing the return to the original state.¹¹This writing aims to know the legal regulations for withdrawing reports/complaints of criminal cases at the investigation level and knowing what obstacles are faced in withdrawing reports/complaints of criminal cases at the investigation level and their solutions.

2. Research Methods

Research methods consist of: approach methods, research specifications, data collection methods and data analysis methods.

3. Results and Discussion

3.1. Legal provisions for withdrawing criminal complaints at the investigation level

Chapter VII of the 1946 Criminal Code contains provisions regarding filing and withdrawing complaints in cases of crimes that are only prosecuted on complaints. Article 75 of the 1946 Criminal Code stipulates that a person who files a complaint has the right to withdraw it within three months after the complaint is filed. The same provision is stipulated in Article 30 paragraph (1) of the 2023 Criminal Code that a complaint may be withdrawn by the complainant within 3 (three) months from the date the complaint was filed. The 2023 Criminal Code adds a rule that a complaint that is withdrawn cannot be filed again.¹²

Article 75 of the 1946 Criminal Code and Article 30 of the 2023 Criminal Code and articles related to complaints contain 3 (three) important things, namely:

- a. Person entitled to withdraw complaint
- b. Criminal acts for which complaints can be withdrawn
- c. Complaint withdrawal period

a. Persons who have the right to withdraw a complaint according to the 1946 Criminal Code and the 2023 Criminal Code

The 1946 Criminal Code and the 2023 Criminal Code do not regulate who has the right to withdraw a complaint. The 1946 and 2023 Criminal Codes only determine who has the right to file a complaint. The provisions of Article 75 of the 1946 Criminal Code stipulate that "a person who files a complaint has the right to withdraw it". Article 30 of the 2023 Criminal Code stipulates that "a complaint can be withdrawn by the complainant" so grammatically the person who has the right to complain as stipulated in the articles of the 1946 and 2023 Criminal Code is the one who has the right to withdraw the complaint as also explained by

¹⁰*Ibid.*

¹¹Article 1 Number 3 of Police Regulation Number 08 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

¹²Article 30 paragraph (1) of the 2023 Criminal Code.

Master of Law, UNISSULA

the Head of the Criminal Investigation Unit of the Tidore Police, Riyan Permana Putra.¹³The Head of the Criminal Investigation Unit of the Tidore Police added that a guardian or representative (a family member who is still a blood relative) can replace the complainant in withdrawing the complaint, if the complainant has died.¹⁴

Table 1 Persons Who Have the Right to Withdraw Complaints of the Criminal Code 1946 & 2023

PERSONS WHO ARE ENTITLED TO WITHDRAW A COMPLAINT	EXPLANATION
Criminal Code 1946	
Article 72 paragraph (1): His Authorized Representative in Civil Cases	<ul style="list-style-type: none"> • As long as the person affected by the crime may only be prosecuted based on a complaint and <ul style="list-style-type: none"> ▪ The person is under sixteen years of age and is not yet an adult or ▪ As long as he is under pardon caused by something other than extravagance
Article 72 paragraph (2): <ol style="list-style-type: none"> 1. Supervisory Guardian or Supervisory Custodian; or 2. The Assembly which acts as the Supervisory Guardian or Supervisory Trustee; 3. His wife; 4. A blood relative in a direct line & if there is no blood relative in a divergent line up to the third degree. 	If there is no representative, or the representative himself must be reported, or if there is none
Article 73 <ol style="list-style-type: none"> 1. Her parents, 2. His son, or 3. Her husband (wife) who is still alive 	If the person who was convicted of a crime dies within the specified time limit, then the time limit is not extended, unless it turns out that the deceased did not want prosecution.
Criminal Code 2023	
Article 25 paragraph (1): Parents or Guardians	The victim of the criminal complaint is not yet 16 (sixteen) years old.
Article 25 paragraph (2): Blood relatives in a straight line	Parents or Guardians as if they do not exist or the Parents or Guardians themselves must be reported
Article 25 paragraph (3): Blood relatives in the lateral line up to the third degree	There are no blood relatives in a straight line
Article 25 paragraph (4): Yourself and/or companion	The victim of the crime does not have parents, guardians or blood relatives in a straight line up or down to the third degree.
Article 27: Parents, children, husbands or wives of the Victim, unless the Victim has previously expressly not consented.	Victim of Criminal Act reported deceased
Victims under guardianship	

¹³Interview with the Head of the Criminal Investigation Unit of the Tidore Police Resort, North Maluku Regional Police, AKP Riyan Permana Putra, SH, SIK, MH, April 25, 2024.

¹⁴*ibid.*

Article 26 paragraph (1): The guardian	Except for those who are under guardianship due to extravagance
Article 26 paragraph (2): Husband or wife of the victim or blood relatives in a direct line	The guardian is absent or the guardian himself must be reported,
Article 26 paragraph (3): Blood relatives in the lateral line up to the third degree	The victim's husband or wife or blood relatives in a straight line do not exist

b. Criminal acts for which complaints can be withdrawn according to the 1946 Criminal Code Article 75 of the 1946 Criminal Code stipulates that a person who files a complaint has the right to withdraw the complaint that has been filed. Provisions regarding Criminal Complaints in the 1946 Criminal Code whose complaints can be withdrawn during the investigation are regulated in the articles in the Chapter: Crimes Against Morality, Insults, Revealing Secrets, Crimes Against Personal Freedom, Theft, Extortion and Threats, Embezzlement, Fraudulent Acts, Destroying or Damaging Goods, as described in Table 9.

Table 2 Criminal Offenses of the 1946 Criminal Code for Which Complaints Can Be Withdrawn

Criminal Code 1946	CRIMINAL COMPLAINT	
	Chapter	Statement of Criminal Complaint
Chapter XIV consists of Articles 281 to 303 bis	284,287,293	Article 284 paragraph (2) No prosecution is carried out except upon a complaint from the husband/wife who is being sullied, and if Article 27 of the Civil Code applies to them, within a period of three months this is followed by a request for divorce or separation from bed and board for that reason as well.
		Article 287 paragraph (2) Prosecution is only carried out upon complaint, unless the woman is under twelve years of age or if there is one of the things based on articles 291 and 294.
		Article 293 paragraph (2) Prosecution is only carried out upon a complaint from the person against whom the crime was committed.
Chapter XVI consists of Articles 310 to 321.	310 to 321 (Except 316)	Article 319 Insults that are subject to criminal penalties according to this chapter, shall not be prosecuted if there is no complaint from the person affected by the crime, except on the basis of article 316.
Chapter XVII consists of Articles 322 and 323	322,323	Article 322 paragraph (2) If a crime is committed against a specific person, then the act can only be prosecuted upon the complaint of that person.

		Article 323 paragraph (2) This crime is only prosecuted on the complaint of the company's management.
Chapter XVIII consists of Articles 324 to 337	332,335	Article 332 paragraph (2) Prosecution is only carried out upon complaint.
		Article 335 paragraph (2) In the case as formulated in point 2, the crime will only be prosecuted upon the complaint of the person affected.
Chapter XXII consists of Articles 362 to 367.	362 to 367	Article 367 paragraph (2) If he is a husband (wife) who is separated from bed and board or from property, or if he is a blood relative or in-law, either in a direct line or in a second degree deviant line, then it is only possible to prosecute that person if there is a complaint that he has committed a crime.
		Article 367 paragraph (3) If according to the matriarchal institution, the father's authority is exercised by someone other than the biological father (himself), then the provisions of the paragraph above also apply to that person.
Chapter XXIII consists of Articles 368 to 371	368 to 371	Article 369 paragraph (2) Crimes of extortion and threats are not prosecuted except upon complaint from the person who has been the victim of the crime.
Chapter XXIV consists of Articles 372 to 377	372 to 377	Article 376 The provisions in article 367 apply to the crimes formulated in this chapter
Chapter XXV consists of Articles 378 to 395	378 to 395	Article 394 The provisions of Article 367 apply to the crimes formulated in this chapter except those formulated in the second paragraph of Article 393 bis, as long as the crime is committed in relation to a request for divorce or separation from bed and board.
Chapter XXVI consists of Articles 406 to 412	406 to 412	Article 411 The provisions of Article 367 apply to crimes formulated in this chapter.

c. Criminal acts for which complaints can be withdrawn according to the 2023 Criminal Code Article 24 paragraph (1) of the 2023 Criminal Code outlines that in certain cases, perpetrators of criminal acts can only be prosecuted on the basis of a complaint. In paragraph (2) of Article 24 paragraph of the 2023 Criminal Code it is stated that criminal acts of complaint must be expressly determined in the law. Article 30 paragraph (1) of the 2023 Criminal Code stipulates that a person who files a complaint has the right to withdraw the complaint that has been submitted. The provisions regarding Criminal Complaints in the 2023 Criminal Code, the

complaints of which can be withdrawn during the investigation, are regulated in the articles in the Chapter: Criminal Offenses Against the Dignity of the President and/or Vice President, Criminal Offenses Against Friendly Countries, Criminal Offenses Against Public Order, Criminal Offenses Against the Judicial Process, Criminal Offenses of Forgery of Stamps, State Stamps and State Seals, Criminal Offenses Against Morality, Criminal Offenses, Criminal Offenses of Disclosure of Secrets, Criminal Offenses Against the Freedom of Persons, Criminal Offenses Against the Body, Criminal Offenses of Theft, Criminal Offenses of Extortion and Threats, Criminal Offenses of Embezzlement, Criminal Offenses of Fraudulent Acts, Criminal Offenses Against Trust in Running a Business, Destruction Destruction of Goods and Buildings, Criminal Acts of Receiving, Publishing and Printing, as described in Table 10.

Table 3 Table. Criminal Offences of the 2023 Criminal Code for which Complaints Can Be Withdrawn

Criminal Code 2023	CRIMINAL COMPLAINT	
	Chapter	Statement of Criminal Complaint
Chapter II consists of Articles 217 to 220	218 to 220	Article 220 paragraph (1) Criminal acts as referred to in Article 218 and Article 219 may only be prosecuted based on a complaint.
Chapter III consists of Articles 221 to 231	226 to 229,230	Article 229 paragraph (1) Criminal acts in Articles 226 to 228 can only be prosecuted based on a complaint.
Chapter V consists of Articles 234 to 277.	240,241	Article 240 paragraph (3) Criminal acts as referred to in paragraph (l) may only be prosecuted based on a complaint from the insulted party.
		Article 241 paragraph (3) Criminal acts as referred to in paragraph (l) may only be prosecuted based on a complaint from the insulted party.
Chapter VI consists of Articles 278 to 299.	280	Article 280 paragraph (2) Criminal acts as referred to in paragraph (1) letter b or letter c may only be prosecuted based on a complaint.
Chapter XII consists of Articles 382 to 390	388	Article 388 paragraph (3) Criminal acts as referred to in Article 388 paragraph (1) shall not be prosecuted except on the basis of a complaint from the party whose trademark was forged.
Chapter XV consists of Articles 406 and 427	411,412	Article 411 paragraph (2) No prosecution will be carried out against criminal offences as referred to in paragraph (1) except upon complaint. a. Husband or wife is a person who is bound by marriage.

		<p>b. Parents or their children for people who are not married.</p> <hr/> <p>Article 412 paragraph (2)</p> <p>No prosecution will be carried out against criminal offences as referred to in paragraph (1) except upon complaint.</p> <p>a. Husband or wife is another person who is bound by marriage; or</p> <p>b. Parents or their children for people who are not married.</p>
Chapter XVII consists of Articles 433 to 442	433,434, and 436 to 438	<p>Article 440</p> <p>Criminal acts as referred to in Article 433, Article 434, and Articles 436 to 438 shall not be prosecuted if there is no complaint from the Victim of the Criminal Act.</p>
Chapter XVIII consists of Articles 443 to 445	443,444	<p>Article 443 paragraph (2)</p> <p>If the crime as referred to in Article 443 paragraph (1) is committed concerning another person's secret, it can only be prosecuted upon a complaint from that person.</p> <hr/> <p>Article 444 paragraph (2)</p> <p>The criminal acts referred to in Article 444 paragraph (1) may only be prosecuted upon a complaint from the company's management.</p>
Chapter XIX consists of Articles 446 to 456	448,454	<p>Article 448 paragraph (2)</p> <p>The criminal acts as referred to in Article 448 paragraph (1) letter b can only be prosecuted upon a complaint from a Victim of the Crime.</p> <hr/> <p>Article 454 paragraph (3)</p> <p>Criminal acts as referred to in Article 454 paragraph (1) may only be prosecuted upon a complaint from the Child, Parents or Guardian.</p> <hr/> <p>Article 454 paragraph (4)</p> <p>The criminal acts referred to in Article 454 paragraph (2) may only be prosecuted upon a complaint from the woman or her husband.</p>
Chapter XXII consists of Articles 466 to 473	473	<p>Article 473 paragraph (6)</p> <p>In the case of a criminal act as referred to in paragraph (1) being committed within the bonds of marriage, no prosecution shall be carried out except upon complaint from the victim.</p>
Chapter XXIV consists of Articles 476 to 481	481	<p>Article 481 paragraph (1)</p> <p>Criminal prosecution will not be carried out if the person who committed one of the Criminal Acts as referred to in Articles 476 to 479 is the husband or wife of the Victim of the Criminal Act who is not separated from bed and board or has separate assets.</p>

		Article 481 paragraph (2) Criminal prosecution can only be carried out based on a complaint from the victim if the perpetrator as referred to in paragraph (1) is the husband or wife of the victim of the crime who is separated from bed and board or has separate assets, or is a blood relative or in-law either in a straight line or in a lateral line up to the second degree.
Chapter XXV consists of Articles 482 to 485	482 to 484	Article 484 The provisions as referred to in Article 481 also apply to Criminal Acts as referred to in Article 482 and Article 483.
Chapter XXVI consists of Articles 486 to 491	486 to 491	Article 490 The provisions as referred to in Article 481 also apply to Criminal Acts as referred to in Articles 486 to 489.
Chapter XXVII consists of Articles 492 to 510	492 to 510	Article 510 The criminal provisions as referred to in Article 481 also apply to Criminal Acts as referred to in Articles 492 to 509, except for the provisions as referred to in Article 509 letter b.
Chapter XXVIII consists of Articles 511 to 520	520	Article 520 paragraph (2) The criminal provisions as referred to in Article 481 also apply to the Criminal Acts as referred to in paragraph (1)
Chapter XXXIII consists of Articles 591 to 596	594 to 596	Article 596 If the nature of the writing or image as referred to in Article 594 and Article 595 constitutes a criminal act that can only be prosecuted upon complaint, the publisher or printer can only be prosecuted upon complaint from the person affected by the criminal act.

The reason for the existence of a complaint offense is that in some cases it is more beneficial for the person concerned not to prosecute the case than it is beneficial for the government (society) if a prosecution is carried out.¹⁵

Complaint offenses do not reduce the principle of opportunity accepted as one of the legal bases of criminal procedure. Although in the case of complaint offenses the Public Prosecutor must wait until the complaint is received, the Public Prosecutor is still not obliged to make a demand. The Public Prosecutor remains authorized to deposit the case in question.¹⁶

There are two types of complaint crimes (offenses), namely: 1. Absolute (permanent) complaint offenses and 2. Relative (relative) complaint offenses. Absolute Complaint Offense

¹⁵E. Utrecht, Op. Cit., page. 87.

¹⁶E. Utrecht, *Ibid.*, page 258.

Master of Law, UNISSULA

is every crime which under any circumstances remains a complaint offence.¹⁷ A relative complaint offense is any crime that only under certain circumstances constitutes a complaint offense, usually the crime is not a complaint offense.¹⁸

According to R. Soesilo, an Absolute Complaint Offense is an offense (criminal incident) that can only be prosecuted if there is a complaint.¹⁹ In this case, a complaint is needed to prosecute the incident, so the request in the complaint must read: "I request that this incident be prosecuted."²⁰

Because what is being prosecuted is the event, then all people who are related (do, persuade, help) with the event must be prosecuted, so this complaint offense cannot be split. A husband if he has filed a complaint against adultery (Article 284 of the 1946 Criminal Code) that has been committed by his wife, he cannot want the man who has committed adultery with his wife to be prosecuted, but his wife (because he still loves her) should not be prosecuted.²¹

d. Period for withdrawal of complaint Criminal Code 1946 and Criminal Code 2023

Article 75 of the 1946 Criminal Code stipulates that a complaint may be withdrawn by the complainant within 3 (three) months from the date the complaint was filed. R. Soesilo is of the opinion that although there are no provisions on how and to whom the withdrawal of the complaint is carried out, in practice this is done in a manner similar to when a person files a complaint and a complaint that has been withdrawn cannot be resubmitted.²²

R. Soesilo's opinion above is in line with the provisions of Article 30 paragraph (2) of the 2023 Criminal Code which stipulates that a complaint can be withdrawn by the complainant and cannot be resubmitted. Article 30 paragraph (1) of the 2023 Criminal Code outlines the same provisions as Article 75 of the 1946 Criminal Code that a complaint can be withdrawn by the complainant within 3 (three) months from the date the complaint was submitted.

Article 75 of the 1946 Criminal Code stipulates that a complaint may be withdrawn by the complainant within 3 (three) months from the date the complaint was filed, as amended by the Decision of the Supreme Court of the Republic of Indonesia (MARI) Number 1600 K/Pid/2009.

MARI accommodates the victim's request not to be prosecuted even though it has been included in the trial's evidence agenda.²³ MARI Decision Number: 1600 K/Pid/2009 is a Cassation Decision in the criminal case of Defendant Ismayawati and Victim Mrs. Emiwati (Mrs. Merua Ismiyati) whose case occurred between April 2007 and October 2007 with the locus delicti at Jl. Bhayangkara No. 51 A, Ngupasan Village, Ngampilan District, Yogyakarta City. In the indictment submitted by the Public Prosecutor at the Yogyakarta District Court (PN. Yogyakarta), Defendant Ismiyati was charged as follows in the First and Second Charges. The

¹⁷E. Utrecht, *Ibid.*, page 260.

¹⁸E. Utrecht, *Ibid.*, pp. 260-261.

¹⁹R. Soesilo, *Op.Cit.*, page 87.

²⁰*Ibid.*

²¹*Ibid.*

²²R. Soesilo, *Ibid.*, page 89.

²³Decision of the Supreme Court of the Republic of Indonesia Number: 1600 K/Pid/2009

Master of Law, UNISSULA

First Charge against Defendant Ismayawati was violating Article 378²⁴In conjunction with Article 64 paragraph (1)²⁵Criminal Code.

3.2. Withdrawal of criminal case complaints from the perspective of Pancasila justice, utility and progressive law

The values contained in the principle of just and civilized humanity are always inspired by the other principles of Pancasila, because Pancasila is a complete unity that cannot be separated.²⁶The first to fourth principles are interrelated and cannot be separated. Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy Guided by the Wisdom of Deliberation/Representation. All of these principles must produce social justice for all people, especially the Indonesian people. Therefore, the formulation of the five principles in Paragraph IV of the Preamble to the 1945 Constitution ends with the sentence, "and by realizing social justice for all Indonesian people."²⁷

The withdrawal of criminal case reports/complaints is parallel to the characteristics of justice based on Pancasila which is based on the first principle of Pancasila, namely the Almighty God. The withdrawal of criminal case reports/complaints reflects a form of justice based on the Almighty God. The justice that emerges is justice that comes from God who is represented to humans to create just and civilized humans and justice for all Indonesian people.

Islamic law recognizes the system of forgiveness (the victim's right to give forgiveness), this principle is recognized by modern law today so that Islamic law remains superior to conventional law because it chooses the logic of implementing the forgiveness well. The reason is, the determination of the right to forgiveness for the crime of murder for the crime of murder and will produce peace and harmony and eliminate malice and revenge.²⁸

The emergence of the concept of restorative justice, in principle, had already been introduced by fiqh jinayah as emphasized in the Qur'an Surah Al Baqarah verse 178: "So whoever receives forgiveness from his brother, let the one who forgives follow in a good way, and let the one who is forgiven pay diyat to those who forgive in a good way." Further regulations can be studied through the Al-Qur'an Surah An-Nisa verse 92: "and it is not proper for a believer to kill a believer (another), except because he is wrong (unintentionally), and whoever kills a believer because he is wrong (should) he freed a servant who was a believer and paid the death to his family (the murdered person), unless they (the killed family) gave alms. If he (the murdered person) is from a people (infidels) with whom there is a treaty (peace) between them and you, then (let the murderer) pay the death that is handed over to his (killed person's) family and free his believing servants. Whoever does not obtain it, then let him (the

²⁴Article 378 of the Criminal Code stipulates: "Anyone who with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by trickery, or a series of lies, induces another person to hand over something to him, or to grant a loan or write off a debt, is threatened with fraud with a maximum prison sentence of four years.

²⁶Ferry Irawan Febriansyah, Op.Cit., page 11.

²⁷*Ibid.*, page 15.

²⁸Rena Yulia, Op.Cit., page 122.

Master of Law, UNISSULA

murderer) fast for two consecutive months to accept repentance from Allah. and Allah is All-Knowing, All-Wise.²⁹

Ali Sodikin stated that restorative justice in Islam has special characteristics that distinguish it from other legal systems. Islamic restorative justice integrates 3 aspects: Legal, Moral and Spiritual. This can be seen in the philosophy of law (*ta'abbudi and ta'aqquli*), legal ranking (*detestable and makruh*) and the determination of actions and the diversity of legal sanctions (physical - whipping, financial - fines, moral - execution of punishment in the open, and spiritual -*expiation*), and reasons for the removal of punishment (forgiveness, repentance). The legal aspect aims to guarantee legal certainty, the moral aspect aims to realize social justice, and the spiritual aspect aims to reform perpetrators of crimes.³⁰

The withdrawal of criminal case reports/complaints is in line with the second principle of Pancasila, namely just and civilized humanity. Justice is only for the benefit of humans as social beings. Humanity means that justice provides what is the right of humans. The rights given are in the form of justice realized by the ruler or government. The character of this justice provides protection to humans in obtaining justice. Providing protection for human rights as civilized beings by humanizing humans as social beings who need justice.³¹

The concept of justice according to Islam covers various aspects of life, namely justice in various relationships, the relationship between individuals and themselves, the relationship between individuals and humans and their society; the relationship between individuals and judges and litigants and relationships with various related parties.³²

In the case of theft during the time of Umar, there are two stories about the abolition of the law of cutting off hands, namely the story of a slave belonging to Khatib bin Abi Balta'ah who stole a camel belonging to al-Muzanni and the story of two men slaughtering someone else's camel during the famine.³³This condition made Umar not carry out the law of cutting off the hands of thieves even though the strictness of the law of the verse was very clear. The cancellation of the execution of cutting off hands by Umar ibn Khattab in the two cases was due to strong reasons not to carry out the execution. The reason in the two cases above was starvation both individually and in general. The starvation experienced by the slaves during Umar's time was indeed greatly supported by the conditions at that time which were experiencing a famine due to crop failure. This is an aspect of *ad-Dorurot* that Umar found as *illat* (legal argument) in resolving the theft case. If understood in depth, the findings of the case in the time of Umar's companions are very clearly the spirit of the Restorative Justice approach. Umar put aside normative rules in this case the Qur'an al-Maidah verse 38 which talks about the law of cutting off the hands of a thief and tried to find other considerations according to the conditions of the crime of theft.

²⁹Rocky Marbun, July 2017, The Concept of *Diyat* as an Alternative to Punishment in the Criminal Justice System to Overcome the Phenomenon of Correctional Institution Overcapacity, Journal of Law and Justice, Volume 6 Number 2, page 202.

³⁰<https://ilmusyariahdoktoral.uin-suka.ac.id>, *Loc. Cit.*.

³¹Ferry Irawan Febriansyah, *Op.Cit.*, page 21.

³²Juhaya S. Praja, *Loc.Cit.*, page 72 in Rena Yulia, *Op.Cit.*, page 136.

³³Al-Sarkhasiy. al-Mabsuth, Juz IX, Dar al-Ma'arif, Beirut, tt, page 246 in Ahmad Ropei, Implementation of Restorative Justice as an Alternative to Resolving Criminal Problems Based on Islamic Criminal Law, <https://ejournal.stai-mifda.ac.id/index.php/alkainah/article/view/14/9>.halaman 69.

4. Conclusion

Pwithdrawal of report/complaint of parallel criminal case with nthe values contained in the principle of just and civilized humanity which are always inspired by the other principles of Pancasila. The first principle to the fourth principle are interrelated and cannot be separated. Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy Led by the Wisdom of Deliberation/Representation. All of these principles must produce social justice for all people, especially the Indonesian people. According to progressive legal theory, the law cannot force the realization of social order, but the law must adjust to human interests, because according to him the law is made for humans, not the other way around. Bentham's utility theory says that punishment can be justified if its implementation crystallizes two main effects, namely: first, the consequence of the punishment is to prevent the convicted person's crimes from being repeated in the future. Second, the punishment provides a sense of satisfaction for the victim and others. Bentham's utilitarianism will in turn offer a new concept regarding the function and purpose of law. The purpose of law is to provide as much benefit and happiness as possible to the citizens of society and law is a means to achieve this goal.

5. References

Journals:

- Abdul Wahid Haddade, The Concept of Al-Ishlah in the Quran, Tafsere, Volume 4 Number 1, Year 2016.
- Ahmad Ropei, Implementation of Restorative Justice as an Alternative to Resolving Criminal Problems Based on Islamic Criminal Law, <https://ejournal.stai-mifda.ac.id/index.php/alkainah/article/view/14/9>.
- Atip Latipulhayat, "Jeremy Bentham's Treasures" Padjajaran Journal of Legal Studies 2, No. 2, 2015.
- Ayu Noorsanti and Ristina Yudhanti, The Benefits of Jeremy Bentham's Law and Its Relevance to Government Policy Through Direct Cash Assistance for Village Funds, Sultan Jurisprudence: Journal of Legal Research, Vol. 3 No. 2, December 2023.
- Didik Hariyanto, Implementation of Restorative Justice in Resolving Criminal Cases at the Investigation Level at the Banyuwangi City Police Criminal Investigation Unit, Janaloka Journal, Vol 02, No 01, 2023.
- Endang Pratiwi, Jeremy Bentham's Utilitarianism Theory: Purpose of Law or Method of Testing Legal Products?, Constitutional Journal, Volume 19, Number 2, June 2022.
- Faisal, Initiating Legal Reform Through Critical Legal Studies, Ultimatum Journal, Edition II, Jakarta: STIH IBLAM, September 2008.
- Ferry Irawan Febriansyah, Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation, DiH Journal of Legal Studies Volume 13 Number 25 February 2017.
- Frederikus Fios, Jeremy Bentham's Legal Justice and Its Relevance to Contemporary Legal Practice, HUMANIORA Vol.3 No.1, April 2012.
- H. Deni Nuryadi, Progressive Legal Theory and Its Application in Indonesia, De'Jure Scientific Journal of Law, Volume 1~Number 2, September 2016.

Master of Law, UNISSULA

Ida Bagus Kade Danendra, Position and Function of the Police in the Organizational Structure of the Republic of Indonesia, *Lex Crimen* Vol.I/No.4/Okt-Des/2012

Jazim Hamidi, Legal Status of the Proclamation Manuscript of 17 August 1945 in the Constitutional System of the Republic of Indonesia, *Constitutional Journal*, Vol. 3 Number 1, Constitutional Court of the Republic of Indonesia, Jakarta, February 2006.

Melani, Building Criminal Law from Retributive to Restorative, *Litigation*, Volume 6 Number 3, October 2005.

Muhammad Yusuf Siregar, et al. Analysis of Criminal Court Judge's Decision on Withdrawal of Complaint Offense Case (Study of Supreme Court Decision Number 1600 K/PID/2009), *USU Law Journal*, Vol.II-No.1, Feb-2014.

Mukhidin, Progressive Law as a Legal Solution that Prosper the People, *Journal of Legal Reform* Volume I No. 3, September – December 2014.

Ryanto Ulil Anshar and Joko Setiyono, Duties and Functions of the Police as Law Enforcers from the Pancasila Perspective, *Indonesian Legal Development Journal*, Master of Law Study Program, Volume 2, Number 3, 2020.

Sri Kusriyah. "Spatial Synchronization and Territorial Planning Policies between Regions and National Spatial Planning". *Journal of Legal Sovereignty* Vol 4, No 2 (2021). p. 110, url :<http://jurnal.unissula.ac.id/index.php/RH/article/view/15714>

Books:

Akhmad Khisni, 2015. *The Development of Islamic Legal Thought*, UNISSULA Press, Semarang;
Ali Murthado, Mustafa Kamal Rokan, 2008, *Legal Research Methodology: Thought and Application*, Medan: Wal Ashri Publishing.

Azhari, 1995, *The Legal State of Indonesia: Normative Legal Analysis of its Elements*, Jakarta: UIPress.

Barda Nawawi Arief, 2008, *Penal Mediation: Settlement of Criminal Cases Outside the Court*, Semarang. Master of Law Program, Diponegoro University.

Ciptono, 2018, *Reconstruction of Criminal Sanction Policy for Traffic Accidents Based on Pancasila Justice Values*, Thesis, Semarang: Doctoral Program in Law, Faculty of Sultan Agung Islamic University.

Dardji Darmodihardjo and Sidaharta, 1999, *Main Principles of Legal Philosophy, What and How is Indonesian Legal Philosophy*, Jakarta: Gramedia Pustaka Utama.

Department of National Education, 2008, *Big Indonesian Dictionary, Fourth Edition*, Jakarta: Gramedia Pustaka Utama.

Douglas Yrn, 1999, *Dictionary of Conflict Resolution*, complete and edited.

E. Utrecht, 1986, *Series of Lectures on Criminal Law II*, Pustaka Tinta Mas.

Eko Soponyono, 2011, *Policy on Formulating a Criminal Justice System Oriented to Korhan*, Thesis, Doctoral Program in Law, Semarang: Undip.

Regulation:

Law Number 1 of 1946 concerning the Criminal Code.

Law Number 1 of 2023 concerning the Criminal Code.

Master of Law, UNISSULA

Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law.

Internet:

Ahmad Muliadi, Paper on Legal Politics, Jakarta: SAP S-2 Jayabaya University, 2012.

Ahmad Ropei, Implementation of Restorative Justice as an Alternative to Resolving Criminal Problems Based on Islamic Criminal Law, <https://ejournal.stai-mifda.ac.id/index.php/alkainah/article/view/14/9>.

Master of Law Study Program, Sultan Agung Islamic University, Guidelines for Writing Thesis Proposals and Dissertations, Semarang, 2023.

Mumpuni Moelatiningsih, Inaugural Speech as Professor of Constitutional Law at the Faculty of Law, UNDIP, Semarang, December 2013.