

Legal Implications with Drawal of Complaint Criminal Cases at The Investigation Level

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Abstract. *The value of justice contained in Pancasila can be the basic foundation for the formation of humane laws that are fair and civilized and socially just for all Indonesian people. Restorative justice finds its basis in the philosophy of the 4th principle of Pancasila. Restorative Justice is the resolution of criminal acts involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders. Allah SWT in QS Al-Hujurat/49: 10, says that, among other things, you must reconcile differences between your two brothers. The withdrawal of criminal case complaints at the investigation level is regulated in the 1946 and 2023 Criminal Codes and PERPOL Number 08 of 2021. The purpose of writing this thesis is to find out and imply the juridical rules for withdrawing criminal case reports/complaints at the investigation level and to find out and analyze the obstacles to revocation of reports/complaints of criminal cases at the investigative level and their solutions using the Sociological Juridical Approach Method and Analytical Descriptive research type. The data sources for this research were obtained from interviews and literature studies as well as document studies using data collection methods in the form of interviews, observations and literature studies and dialysis using Qualitative Analysis. The juridical implications of the withdrawal of criminal case complaints at the investigation level concludes that the person who has the right to withdraw the complaint according to the 1946 Criminal Code and the 2023 Criminal Code is the person who submitted the complaint within 3 (three) months from the date it was submitted. And the complaint can be withdrawn by the complainant. Several articles in The 1946 Criminal Code and 2023 Criminal Code as well as PERPOL Number 8 of 2021 regulate criminal acts for which complaints can be withdrawn at the investigation level. The withdrawal of criminal complaints is parallel to the values contained in the*

principles of just and civilized humanity which are always imbued with other principles of Pancasila. The withdrawal of criminal case complaints is also in line with Islamic Law and the Theory of Benefits and Progressive Legal Theory. The new peace agreement reached where the investigation files have been handed over to the prosecutor's office is an obstacle to withdrawing the criminal case complaint at the investigation level. The solution to this problem is that the investigator attaches a peace letter from the suspect and victim to the Public Prosecutor. Another obstacle is that one of the parties does not fully implement the contents of the agreement, so the investigator must find a solution to the problem of implementing the peace agreement. This thesis research suggests that the provisions regarding the time for withdrawing complaints from criminal cases should be changed, expiring after the court decision becomes legally binding. This research also suggests that a regulation be made that for all criminal acts where the victim is an individual, the report/complaint can be withdrawn.

Keywords: Juridical Implication; Investigation; Withdrawal of Complaints.

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.¹ Besides serving as the state philosophy, Pancasila serves as the foundation of the Indonesian state. Pancasila is the source of all legal sources, making it the benchmark for assessing law.² Pancasila 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, representing local genius and wisdom for the Indonesian nation. This strategic position of Pancasila confirms its position as the grundnorm or basic norm (highest norm) for the Indonesian nation. Pancasila is the fundamental norm that also serves as

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

²Jazim Hamidi, "The Legal Status of the Proclamation Manuscript of August 17, 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.

the source of all legal principles, legal norms, and laws applicable in Indonesia. Therefore, for the Indonesian nation,⁴ Pancasila functions as a way of life, the nation's ideology and also as the basis of the state.⁵

Pancasila is the source of all legal sources, meaning that all forms of law in Indonesia must be measured by the values contained therein, and these legal regulations must reflect an awareness and sense of justice that aligns with the nation's character and philosophy. Pancasila also serves as a legal idea, meaning it serves as a source of inspiration for the formation of legislation.⁶

Relevant to justice, the values of justice contained in Pancasila can serve as a foundation for the formation of just, civilized, and humanitarian laws, as well as 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. Meanwhile, 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 of Pancasila, namely the fifth principle of Pancasila, formulated in the fourth paragraph of the Preamble to the 1945 Constitution.⁷

The first through fourth principles are interrelated and inseparable. Belief in the One Almighty God, Just and Civilized Humanity, the Unity of Indonesia, and Democracy Guided by the Wisdom of Deliberation/Representation. All of these principles must result in 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 guided by the wisdom of deliberation and representation, means prioritizing deliberation in decision-making for the common good. Prayitno, as quoted by Constitutional Advocate, stated that deliberation to reach consensus encompasses 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

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.

faced); third, reconciliation (making peace with each other's responsibilities); fourth, repair (fixing all the consequences that arise); fifth, circles (supporting each other).⁹

Constitutionally, restorative justice is based on the philosophy of the fourth principle of Pancasila. When implemented in criminal case resolution, this principle embodies the principle known as VOC (Victim Offender Conferencing). The goal of VOC (Victim Offender Conferencing) is mediation or VOM (Victim Offender Mediation), which is the opportunity to reconcile and mutually agree on improvements.¹⁰

Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, the perpetrator's family, the 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.¹¹

The concept of justice according to Islam encompasses various aspects of life, namely justice in various relationships, the relationship between individuals and themselves, the relationship between individuals and other people and their society; the relationship between individuals and judges and litigants, and relationships with various related parties.¹²

Allah SWT in QS Al-Hujurat/49: 10, says which means: "Indeed, believers are brothers, therefore make peace between your two brothers (who are at odds) and fear Allah so that you may receive mercy."

E. Sutrisna stated that in developing national criminal law the following things must be taken into account:¹³

- 1) It must not conflict with the principles of the Almighty God who respects the order of religious life, religious feelings and religion as a great importance.
- 2) Respecting the values of Human Rights, both civil and political rights as well as economic, social and cultural rights and within the framework of relations between nations must respect "the right to development".

⁹<https://advokatkonstitusi.com/restorative-justica-dan-cita-hukum-pancasila/3/>, accessed on the date January 6, 2024 at 17.41 WIB.

¹⁰*Ibid.*

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

¹²Juhaya S. Praja, 1995, Philosophy of Islamic Law, P2U LPPM Unisba, Bandung, page 72 in Rena Yulia, 2013, Victimology of Legal Protection for Crime Victims, First Edition, Yogyakarta: Graha Ilmu, page 136.

¹³E.Sutrisna, 2009, Anthology of Law and Globalization, Yogyakarta: Genta Press, pages 103 to 104.

3) National unity must be based on respect for the concept of "civic nationalism" which appreciates pluralism.

Law Number 1 of 1946 and Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code) regulates the prosecution of perpetrators of criminal acts, some of which depend on the victim's request and some do not depend on the victim's request.

Utrecht argued that criminal procedure before a judge is initiated by the government, namely the prosecutor. However, the prosecutor's initiative is limited to prosecutions of offenses known as complaint offenses (*klachtdelict*). In the case of complaint offenses, whether or not charges are filed depends on the consent of the injured party. Until the injured party has filed a complaint, the prosecutor cannot file charges.¹⁴ 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 prosecution is carried out.¹⁵

The Indonesian National Police (POLRI) in realizing the resolution of criminal acts by emphasizing the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a community need through the Regulation of the Republic of Indonesia National Police Number 08 of 2021. Concerning Handling of Criminal Acts Based on Restorative Justice (hereinafter referred to as PERPOL Number 8 of 2021)¹⁶ promulgated by the Director General of Legislation of the Ministry of Law and Human Rights of the Republic of Indonesia on August 20, 2021.

In the case with the initials MIB (19), the teenager who was the victim of a robbery on the Summarecon Flyover, Irfan, who was the victim of the robbery, was actually made a suspect, because the perpetrator (the robber) died when the teenager fought back. Bekasi City Metro Police Chief, Kombes Pol Indarto, has clarified the status of Mohamad Irfan Bahri as a witness, and even received an award from the police in the form of a certificate of appreciation, by Bekasi City Metro Police Chief, Kombes Pol Indarto.¹⁷

In the case of Murtede alias Amaq Sinta (34), the man who killed two muggers on Jalan Raya Ganti Village, Praya Timur District, Central Lombok, West Nusa Tenggara (NTB), on Sunday, April 10, 2022, namely with the initials P (30), and

¹⁴E. Utrecht, 1986, Series of Lectures on Criminal Law II, Pustaka Tinta Mas, page 257.

¹⁵E. Utrecht, Ibid. and R. Soesilo, 1996 Criminal Code (KUHP) (and Complete Article-by-Article Commentaries), Politeia, Bogor, page 87.

¹⁶Legal Considerations Police Regulation Number 8 of 2021.

¹⁷ <https://www.motorplus-online.com/read/251728513/masih-ingat-korban-begal-yang-jadi-tersangka-akibat-melawan-begini-nasibnya-sekarang?page=all>, accessed on January 4, 2024, 1:55 PM WIB.

OWP (21), dozens of residents stormed the Central Lombok Police office, on Wednesday, April 13, 2022. The residents' action was the result of AS being caught up in the law after fighting a mugger which resulted in the death of the two muggers. After becoming a hot topic of conversation, the case was taken up by the NTB Regional Police (Polda). After conducting a case title, the NTB Regional Police finally stopped the investigation into Murtede alias Amaq Sinta, the mugging victim who became a suspect. In fact, the police have issued a Letter of Order to Terminate Investigation (SP3) regarding Amaq Sinta's suspect status.¹⁸ The descriptions above motivates the author to research the withdrawal of criminal complaints in a thesis entitled: "Legal Implications of Withdrawing Criminal Complaints at the Investigation Level"

2. Research Methods

The approach used in this research is a sociological-juridical approach. A sociological-juridical approach examines legal realities within society. A sociological-legal approach examines legal aspects within social interactions and serves as a support for identifying and clarifying non-legal findings for legal research or writing purposes.¹⁹

3. Results and Discussion

3.1. Legal Analysis with Drawal of Criminal Complaint at Investigation Level

1. Legal provisions for the withdrawal of criminal complaints at the district level investigation

Chapter VII of the 1946 Criminal Code contains provisions regarding the filing and withdrawal of 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 regulated in Article 30 paragraph (1) of the 2023 Criminal Code that a complaint can be withdrawn by the complainant within 3 (three) months from the date the complaint is filed. The 2023 Criminal Code adds a rule that a withdrawn complaint cannot be filed again.²⁰

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

¹⁸ <https://regional.kompas.com/read/2022/04/18/140547878/akhir-perjalanan-kasus-amaq-sinta-yang-bunuh-2-begal-jadi-tersangka-hingga?page=all>, accessed on January 4, 2024 at 1:30 PM WIB.

¹⁹ Zainudin Ali, 2014, Legal Research Methods, Jakarta: Sinar Grafika, page 105.

²⁰ Article 30 paragraph (1) of the 2023 Criminal Code.

- b. Criminal acts for which complaints can be withdrawn
- c. Complaint withdrawal period
- a. Persons who have the right to withdraw complaints 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 Code only determine the person who has the right to file a complaint. The provisions of Article 75 of the 1946 Criminal Code stipulate that "the 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 determined 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 the Head of the Criminal Investigation Unit of the Tidore Police, Riyam Permana Putra.²¹The Head of the Criminal Investigation Unit of the Tidore Police added that a guardian or representative (family member who is still related by blood) can replace the complainant in withdrawing the complaint, if the complainant has died.²²

2. Period for withdrawal of complaint1946 Criminal Code and 2023 Criminal Code

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 can be carried out, in practice this is done in the same way as when a person files a complaint and a complaint that has been withdrawn cannot be resubmitted.²³

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, namely 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.

²¹Interview with the Head of the Criminal Investigation Unit of the Tidore Police Resort, North Maluku Regional Police, AKP Riyam Permana Putra, SH, SIK, MH, April 25, 2024.

²²*Ibid.*

²³R. Soesilo, *Ibid.*, page 89.

MARI accommodated the victim's request not to prosecute even though it had been included in the trial's evidence agenda.²⁴ MARI Decision Number: 1600 K/Pid/2009 is a Cassation Decision in the criminal case of Defendant Ismayawati and Victim Mrs. Emiati (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 Indictments. The First Indictment against Defendant Ismayawati was violating Article 378²⁵ in conjunction with Article 64 paragraph (1)²⁶ Criminal Code. The Public Prosecutor in the Second Indictment charged Ismayawati or in the Second Indictment with violating Article 372²⁷ in conjunction with Article 64 paragraph (1) of the Criminal Code.²⁸ The case of fraud or embezzlement with the defendant Ismayawati and the victim Mrs. Emiati was examined by the District Court, the High Court (Appeal) and the Indonesian Supreme Court.

Mrs. Emiati/complainant witness through a letter of request for withdrawal dated October 28, 2008 and read before the Panel of Judges of the Yogyakarta District Court on November 5, 2008 has firmly stated that she withdraws all legal claims against the Defendant Ms. Ismayawati. The reasons for the withdrawal of the legal claims by the victim Mrs. Emiati are because: 1. Defendant Ismayawati is the daughter-in-law of Mrs. Emiati/complainant witness; 2. Defendant Ismayawati has 2 (two) small children who certainly really need a mother's love; 3. Mrs. Emiati/complainant witness has forgiven all the actions of Defendant Ismayawati; and 4. Mrs. Emiati has accepted the loss of money used by Ismayawati (daughter-in-law) and Mrs. Emiati does not sue anymore.

3.2. Withdrawal of Criminal Complaints from the Perspective of Pancasila Justice, Benefit 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

²⁴Decision of the Supreme Court of the Republic of Indonesia Number: 1600 K/Pid/2009

²⁵Article 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 deception, 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 a maximum prison sentence of four years for fraud."

²⁶Article 64 Paragraph (1) of the Criminal Code outlines: "If several acts are connected, so that they must be viewed as one continuing act, then only one criminal provision is used even though each act is a crime or violation. If the punishments are different, then the regulation that applies is the heaviest primary punishment."²⁶

²⁷Article 372 of the Criminal Code stipulates: "Anyone who intentionally and unlawfully possesses something which is wholly or partly owned by another person, but which is in his control not because of a crime, is threatened with embezzlement, with a maximum prison sentence of four years or a maximum fine of nine hundred rupiah."

²⁸MARI Decision Number: 1600 K/Pid/2009, page 14.

unity that cannot be separated.²⁹ The first through fourth principles are interrelated and inseparable. Belief in the One Almighty God, Just and Civilized Humanity, the Unity of Indonesia, and Democracy Guided by the Wisdom of Deliberation/Representation. All of these principles must result in 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."³⁰

The withdrawal of criminal reports/complaints aligns with the characteristics of Pancasila-based justice, which is based on the first principle of Pancasila, namely, the One Almighty God. The withdrawal of criminal reports/complaints reflects a form of justice based on the One Almighty God. The justice that emerges is justice derived from God, represented to humans to create a just and civilized society, and justice for all Indonesians.

Islamic law recognizes the system of forgiveness (the victim's right to receive forgiveness). This principle is recognized by modern law today, so Islamic law remains superior to conventional law because it chooses the logic of implementing forgiveness well. The reason is that establishing the right to forgiveness for murder will bring peace and harmony, as well as eliminate malice and revenge.³¹

The emergence of the concept of restorative justice, in principle, had already been introduced by fiqh jinayah as emphasized in the Al Qur'an Surah Al Baqarah verse 178: "So whoever receives forgiveness from his brother, let the one who forgives follow him in a good way, and let the one who is forgiven pay diyat to the one who forgives 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 (accidentally), and whoever kills a believer because he is wrong (let him) free a faithful servant and pay the death given to his (killed person's) family, unless they (the killed family) give alms. If he (the killed person) is from a people (infidels) with whom there is an Agreement. (peace) between them and you, So (let the murderer) pay the death given to his (killed) family and set free his believing servants. Whoever does not get it, then let him (the murderer) fast for two consecutive months to accept repentance from Allah.³²

Ali Sodiqin argues that restorative justice in Islam has unique characteristics that distinguish it from other legal systems. Islamic restorative justice integrates three

²⁹Ferry Irawan Febriansyah, Op.Cit., page 11.

³⁰*Ibid.*, page 15.

³¹Rena Yulia, Op.Cit., page 122.

³²Rocky 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.

aspects: legal, moral, and spiritual. This is evident in the philosophy of law (*ta'abbudi and ta'aqquli*), legal ranking (*mandub 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 (sorry, 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.³³

The withdrawal of criminal reports/complaints aligns with the second principle of Pancasila, namely just and civilized humanity. Justice is solely for the benefit of humans as social beings. Humanity implies that justice provides what is due to humans. These rights are granted in the form of justice realized by the authorities or government. This character of justice provides protection to humans in obtaining justice. Protecting human rights as civilized beings means humanizing humans as social beings in need of justice.³⁴

The concept of justice according to Islam encompasses various aspects of life, namely justice in various relationships, the relationship between individuals and themselves, the relationship between individuals and other people and their society; the relationship between individuals and judges and litigants, and relationships with various related parties.³⁵

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 another person's camel during the famine.³⁶ This situation prevented Umar from implementing the law of hand amputation for thieves, despite the clear legal implication of the verse. Umar ibn Khattab's cancellation of the hand amputation in these two cases was due to strong reasons for not carrying out the executions. The reason in both cases was famine, both individual and general. The famine experienced by the slaves during Umar's time was indeed strongly 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 identified as *illat* (legal argument) in resolving theft cases. When understood in depth, the findings of these cases during the time of Umar's companions clearly reflect the spirit of the Restorative Justice approach. Umar, may Allah be pleased with him, set aside normative rules, in this case, verse 38 of the Qur'an al-Maidah, which discusses the law of hand amputation for thieves, and sought other considerations in accordance with the circumstances of the

³³<https://ilmusyariahdoktoral.uin-suka.ac.id>, Loc.Cit.:

³⁴Ferry Irawan Febriansyah, Op.Cit., page 21.

³⁵Juhaya S. Praja, Loc.Cit., page 72 in Rena Yulia, Op.Cit., page 136.

³⁶Al-Sarkhasiy. al-Mabsuth, Juz IX, Dar al-Ma'arif, Beirut, tt, page 246 in Ahmad Ropei, Application of Restorative Justice S14 7 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.

crime of theft. Upon closer examination, Umar considered the humanitarian aspect as a consideration and the basis for resolving theft cases at that time. It is very clear that normative rules such as statutory texts are not the only way to seek legal justice, because there are still other alternatives such as trying to apply the concept of the Restorative Justice approach.³⁷

The philosophy of Islamic criminal law is restorative justice and not retributive justice. Restorative justice is an alternative solution to criminal problems with an emphasis on resolving problems/conflicts and restoring balance in society. The focus of this approach is to repair the damage or loss caused by the crime, so it needs to be supported by the concept of restitution, namely efforts to restore the losses suffered by the victim.³⁸

Bentham's utility theory states that punishment is justified if its implementation crystallizes two main effects: first, the consequence of the punishment is to prevent the convicted person from committing the crime again in the future. Second, the punishment provides a sense of satisfaction for the victim and others. The hallmark of this type of punishment is its preventive effect on the future, preventing people from repeating their actions and satisfying the feelings of those involved in the legal case.³⁹

Utilitarianism Bentham, in turn, proposed a new concept regarding the function and purpose of law. The purpose of law is to provide maximum benefit and happiness to citizens, and law is the means to achieve this goal. From a utilitarian perspective, benefit is the primary goal of law, and benefit in this context is defined as happiness or pleasure (happiness). Therefore, the emphasis is not on whether a law is just, but rather on the extent to which the law can provide happiness to humans.⁴⁰ To realize individual and social happiness, the law must achieve four goals, namely providing a source of subsistence, abundance, security, and equality.⁴¹

According to progressive legal theory, the law cannot force the realization of social order, but the law must adapt to human interests, because according to him the law is made for humans, not the other way around. It is clear that progressive legal theory and development legal theory are both benchmarked on the theory of sociological jurisprudence, but development legal theory is also mixed with analytical jurisprudence thinking while progressive theory is mixed with the school of critical legal studies which tends to be a priori to all circumstances and has an anti-foundationalist attitude. Law enforcement through the perspective of progressive legal theory is to implement the law not only

³⁷Ahmad Ropei, *Ibid.*

³⁸*Ibid.*

³⁹Frederikus Fios, *Op.Cit.*, page 304.

⁴⁰Lilik Rasyidi in Zainuddin Ali, *Op.Cit.*, page 59 in Atip Latipulhayat, *Op.Cit.*, page 418.

⁴¹Atip Latipulhayat, *Ibid.*

according to written regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of a statute or law. The idea of law enforcement in progressive legal theory is to free humans from the shackles of law because in essence the law functions to provide guidance and not shackle and humans have a more important role.⁴² The essence that is no less significant of progressive law is to leave the empirical entity called law as it is.⁴³

Bad regulations do not have to be a barrier for progressive legal practitioners to bring justice to the people and justice seekers, because they can interpret a regulation in a new way every time, at this point according to Satjipto Rahardjo the law must be allowed to flow naturally, shifting the legal paradigm of positivism to find its own goals. In order for the law to be felt to be beneficial, it requires the services of legal practitioners who are creative in translating the law into social interests that it must serve.⁴⁴

The spirit and soul of Progressive Law, namely to provide justice and provide happiness to the people, is in line with the objectives of the formation of the Indonesian government as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia with the points of Pancasila, as the nation's philosophy and the body of the 1945 Constitution of the Republic of Indonesia as the legal ideal and legal basis for the nation and state:⁴⁵

- a. In the fourth paragraph of the Preamble to the 1945 Constitution, the purpose of establishing the Indonesian government is stated as "(...) to establish an Indonesian government that protects all Indonesian people (...)" This phrase mandates the Government to provide protection to all Indonesian people without exception. The goal to be achieved by the Government is in line with the goal of Progressive Law to provide justice and happiness to the people;
- b. Pancasila, the second principle "Just and civilized humanity," and the fifth principle "Social justice for all Indonesian people." The second principle requires placing humans in a place that is in accordance with their natural dignity, as noble creatures, in a just and civilized manner. Placing all humans in a place of equal honor and no one marginalizes others. Justice is the right of every human being. Likewise, the fifth principle shows that the Indonesian nation must have and have a vision to create social justice. The spirit of the second and fifth principles of Pancasila is in accordance with what Progressive Law aims to achieve, namely providing justice to society.

⁴²Satjipto Rahardjo, Loc. Cit. in Marwan Effendy Loc. Cit.

⁴³Marwan Effendy, Ibid., page 31.

⁴⁴Ciptono, Op.Cit, page 53.

⁴⁵H. Deni Nuryadi, Op.Cit., pages 404 to 405.

3.3. Obstacles and Solutions in Withdrawal of Criminal Complaint at Investigation Level

The legal consequences of withdrawing a criminal case report/complaint, in principle, result in the investigator having to stop the criminal case (not proceed to the prosecution stage), however, after an agreement was made between the perpetrator of the crime and the victim, obstacles were found to withdraw the criminal case report/complaint at the investigation stage.

If obstacles are encountered in withdrawing a criminal report/complaint at the investigation stage after a peace agreement has been reached, investigators must find a solution to the problem of implementing the peace agreement. The Indonesian National Police, based on legal considerations in the issuance of Police Regulation Number 8 of 2021, needs to realize the resolution of criminal acts by prioritizing restorative justice, which emphasizes restoration to the original state and balances the protection and interests of victims and perpetrators of criminal acts, without focusing on punishment, which is a legal need of society. Police Regulation Number 8 of 2021 was also born based on the consideration that the Indonesian National Police must respond to the evolving legal needs of society that fulfill the sense of justice for all parties.⁴⁶

Withdrawal of criminal case reports/complaints at the investigation levelThis relates to the perpetrator's willingness to accept responsibility and voluntarily compensate. This is ineffective and even creates a dilemma and burden for investigators, for example, if the perpetrator is unable to pay compensation due to poverty and lack of family support.⁴⁷ To resolve problems like this, investigators must be able to provide understanding to the victim so that the victim or their family does not object to the agreement reached during the restorative justice phase. Investigators in the restorative justice phase merely act as intermediaries in resolving the problem.⁴⁸

Withdrawal of criminal case reports/complaints at the investigation stageIn cases of assault, the obstacle is that a settlement agreement is only reached after the investigation files have been transferred to the prosecutor's office. Investigators cannot simply halt the legal process, as prosecution will be pursued. To resolve this issue, investigators submit a settlement letter from the suspect and victim to the public prosecutor.⁴⁹

Another obstacle to withdrawing a criminal complaint/report at the investigation stage is that one of the parties (the suspect or victim) fails to fully comply with the terms of the agreement, leading to objections. This relates to

⁴⁶Interview with the Head of the Criminal Investigation Unit of the Tidore Police Resort Loc.Cit.

⁴⁷*Ibid.*

⁴⁸*Ibid.*

⁴⁹*Ibid.*

the perpetrator's obligation to provide compensation voluntarily as a condition of the settlement. As a result, one party may file a pretrial motion or other legal action to object to the investigation. To resolve this issue, the investigator must proceed with the prosecution process with the Public Prosecutor.⁵⁰ For criminal complaints, the Criminal Code stipulates that a withdrawn complaint cannot be submitted again.⁵¹

4. Conclusion

1. The legal implications of withdrawing a criminal case report/complaint at the investigation level from this thesis are concluded as follows: a. Legal provisions for withdrawing reports/complaints of criminal cases at the level of investigation: 1) Persons who have the right to withdraw complaints according to the 1946 Criminal Code and the 2023 Criminal Code. Article 75 of the 1946 Criminal Code stipulates 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." Grammatically, the person who has the right to file a complaint is the person who has the right to withdraw the complaint. 2) Criminal acts for which complaints can be withdrawn according to the 1946 Criminal Code are: Articles 284, 287, 293, Articles 310 to 321 (Except Article 316), Articles 322, 323, Articles 332, 335, Articles 362 to 367, Articles 368 to 371, Articles 372 to 377, Articles 378 to 395 (Except Article 393 bis) and Articles 406 to 412. Criminal acts for which complaints can be withdrawn according to the 2023 Criminal Code Article 218 to 220, Articles 226 to 229, 230, Articles 240, 241, Articles 280, Articles 388, Articles 411, 412, Articles 433, 434, Articles 436 to 438, Articles 443, 444, Articles 448, 454, Articles 473, Articles 481, Articles 482 to 484, Articles 486 to 491, Articles 492 to 510 and Articles 520 and Articles 594 to 596. 3) 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. Article 30 paragraph (1) of the 2023 Criminal Code outlines the same provisions as Article 75 of the 1946 Criminal Code, that a complaint may be withdrawn by the complainant within 3 (three) months from the date the complaint was filed. Article 30 paragraph (2) of the 2023 Criminal Code, which stipulates that a complaint may be withdrawn by the complainant, cannot be resubmitted. 4) Handling of criminal acts based on PERPOL Number 8 of 2021 must meet the following requirements: general; and/or specific. General requirements for handling criminal acts based on Restorative Justice consist of General Material Requirements and General Formal Requirements. General Material Requirements include: not causing unrest and/or rejection from the community, not having an impact on social conflict, not having the potential to divide the nation, not being radical or separatist, not being a repeat offender of a criminal act based on a Court Decision and not being a criminal act of terrorism,

⁵⁰Ibid.

⁵¹Article 30 paragraph (1) of the 2023 Criminal Code.

a criminal act against state security, a criminal act of corruption and a criminal act against people's lives. General Formal Requirements include: peace from both parties, except for drug crimes and fulfillment of the victim's rights and the perpetrator's responsibilities, except for drug crimes. Special Requirements are Additional Requirements for criminal acts involving information and electronic transactions, narcotics and traffic. b. Pwithdrawal of parallel criminal case report/complaint with nThe values contained in the principles of just and civilized humanity are always inspired by the other principles of Pancasila. The first to the fourth precepts are related to each other and cannot be separated. Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity, Democracy Led by Wisdom in Deliberations/Representatives. All these principles must produce social justice for all people, especially the Indonesian people. According to progressive legal theory, the law cannot enforce social order, but rather must adapt to human interests, as he believes the law was created for humans, not the other way around. Bentham's utility theory states that punishment can be justified if its implementation crystallizes two main effects: first, the consequence of the punishment is to prevent the recurrence of the convicted person's crimes. Second, the punishment provides a sense of satisfaction for both the victim and others. Bentham's utilitarianism, in turn, offers a new concept regarding the function and purpose of law. The purpose of law is to provide maximum benefit and happiness to all citizens, and law is a means to achieve that goal.

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