

Legal Reasoning Regarding the Concept of Peace in Criminal Cases at the Investigation Stage

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Abstract. *Legal reasoning skills by investigators are crucial in deciding on a settlement. This ensures that the settlement is not merely a transactional process, but rather truly achieves justice, balance, and restoration of the original situation. An investigator must possess a philosophical understanding of criminal law when deciding the direction of the criminal investigation toward reconciliation between the victim and the perpetrator, in order to balance the principles of certainty, justice, and expediency. The aim of this research is to find out and analyze (1) the nature of peace in criminal cases based on the basis of national criminal law, (2) the legal procedures for peace efforts in criminal cases that have entered the investigation process, (3) the important role of legal reasoning skills for investigators in deciding on peace efforts in criminal cases. The approach method used in this research is normative juridical. The specifications of this research are analytical descriptive. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Based on the results of research and discussion, it can be concluded: (1) Peace efforts in criminal cases in Indonesia are currently accommodated through the Restorative Justice approach, which prioritizes restoration of the situation rather than mere retaliation. The following are laws and guidelines that regulate peace efforts in criminal cases, including Law No. 20 of 2025 concerning the Criminal Procedure Code, which is accommodated through a structured Restorative Justice (RJ) mechanism. (2) The new Criminal Procedure Code regulates procedures that serve as guidelines for National Police investigators in peacemaking in criminal cases through restorative justice with provisions including that the restoration of the original situation must be stated in an agreement. The following are several problematic points that can occur in interpreting criminal peacemaking, namely assuming that peace automatically eliminates the crime, a lack of understanding of the transitory (transitional) principle of the New Law.*

Keywords: Investigation; Legal; Peace; Reasoning.

1. Introduction

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states: that the Republic of Indonesia is a state based on law to Pancasila and the 1945 Constitution which includes contained meaning action, pattern behavior in demand citizens who must also synchronous with the existing norms regulated by the state.¹

The idea of a state based on law aiming for the goal creation life democratic, and protected right basic humans, as well as equitable welfare.² It is the law that determines which actions are permissible done or may carried out. Enforcement supremacy law made into runway state administration including maintain and protect rights inhabitant his country is characteristics from the rule of law. A good law at least must fulfil three matter main something law, namely justice, certainty law and benefits law.

Regulation written in A Constitution is implementation in ensure certainty law so that the state does not do arbitrary. *Criminal Justice System* or *Law Enforcement System* as one of the sub-systems of internal state administration context enforcement law Criminal *Justice System* is a subsystem justice mutually exclusive crimes related including the Police, Prosecutor's Office, Courts and Correctional Institutions with objective overcome crime.³

Activity enforcement law (*law enforcement*) in the narrow sense in the field of criminal involving role Police, Prosecutor's Office, Advocates, and Judiciary.⁴ Police is state institutions that have task main guard security and order public on duty protect, shelter, serve society, as well as uphold law in accordance with mandate 1945 Constitution in Article 30 paragraph (4).

Police is a legal and living institution in community more human big that can form all something that is done organization, then placement institution police in something state organizations become more important, because will influential to implementation duties and responsibilities the responsibilities imposed, as well as performance institution police.⁵ Duties and roles carried out party police the no light in the middle challenges and developments moment This. At first glance, the

¹Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, *Jurnal Daulat Hukum*, 3 (1) March 2020, page 185

²Masyhadi Irfani and Ira Alia Maerani, Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, *Jurnal Daulat Hukum*, 2 (1) March 2019, page 80

³Mardjono Reksodipuro, *The Indonesian Criminal Justice System: Looking at Crime and Law Enforcement within the Boundaries of Tolerance*, Jakarta: Indonesian Faculty of Law, 1993, page 1.

⁴Jimly Asshidiqie, *The Indonesian Constitution and Constitutionalism*, Sinar Grafika, Jakarta: 2010, p. 296

⁵Sadjijono, *Series on Law and the Police, Indonesian National Police and Good Governance*, Surabaya: Laksbang Mediatama, 2008, p. 2.

police are identical with handling various action crime start from conventional crimes to modern with scope wide.⁶

Regulation The Republic of Indonesia Police, namely Constitution Number 2 of 2002 Concerning Republic of Indonesia National Police (hereinafter referred to as called with the Indonesian National Police Law) in Article 19 paragraph (1) confirms that in carrying out duties and authorities, official The Republic of Indonesia National Police always act based on legal norms and respecting religious norms, politeness, morality, and uphold tall right basic humans, and in Article 19 paragraph (2) it is explained that in carry out duties and authorities as intended in Article (1), the Republic of Indonesia National Police prioritizes action prevention.⁷

Every handling action criminal start processed at the stage later investigations to be continued with the usual investigation conducted by investigators or investigator from institution The police provided mandated by law. Maintenance system justice criminal is ⁸a process since he did investigation until decision courts with status *res judicata* (*legally binding; inkracht van gewaijsde*) or already own strength law still.

However, nowadays the way to resolve disputes through the courts received considerable criticism sharp, both from practitioners and theorist law. The role and function of the judiciary, is considered experiencing excessive load (*overloaded*). Slow and a waste of *time of time*). The costs are *very expensive* and unresponsive to public interest. Or considered excessive formalistic and overly technical ⁹.

Penal system at this time it is also considered unsatisfactory to society and ignores the reality of values in Indonesian society. This has triggered a number of studies to conduct alternative efforts to answer problems related to handling criminal acts, one of which is through a peace mechanism. ¹⁰Case resolution criminal law through a peace mechanism is an effort that can be used as implications of the enforcement process involving victims, perpetrators, and the community.

Peace mechanisms are commonly used in resolving civil cases, by bringing together the disputing parties. resolve the problem amicably, and end up with compensation to the injured party. This settlement pattern is certainly not known

⁶Ismansyah, Criminal Accountability in the Implementation of Police Authority, *Journal of Democracy*, 7 (2) 2008, p. 137

⁷ Article 19 paragraphs (1) and (2) of the Law Number 2 of 2002 Concerning Republic of Indonesia National Police

⁸Anas Yusuf, *Implementation of Restorative Justice in Law Enforcement by the Indonesian Police for the Sake of Realizing Substantive Justice*, Jakarta: Tri Sakti University Publisher, 2016, p. 3.

⁹Anatasyah Nur Ain Wendersteyt, et al. Criminal Law Policy in Resolving Criminal Acts Outside the Court Process. *Lex Crimen*, X (2) March 2021, p. 20 3

¹⁰Agus Rusianto, *Crime & Criminal Responsibility: A Critical Review Through Consistency Between Principles, Theories, and Their Applications*, Jakarta: Kencana, 2016, page 1

in criminal law, considering the existence of criminal law with its legal instruments. The sanctions are either the death penalty, imprisonment, detention or a fine. In civil law, the pattern. Such a solution is indeed required because the purpose of civil law is to protect civil/private rights, while the existence of criminal law with its witnesses intended for the purpose of providing a deterrent effect on perpetrators of criminal acts (*moral and deterrent effects*).

However, in relation to the aim of providing a deterrent effect, Jeremy Bentham, a British philosopher, stated: that criminal penalties have absolutely no justification value whatsoever if they are solely imposed simply to add more suffering. The imposition of punishment through punishment in the form of giving retribution for the suffering of the perpetrator is not something that main.¹¹ Because in principle criminal law applies as *ultimum remedium* which means that criminal law is the last resort used to resolve a legal problem.

Indeed in criminal law positive Indonesian (KUHAP and KUHP) in principle criminal cases cannot be resolved through peace or in the legal sense criminal. No know peace, but in practice there are several problems criminal cases are resolved peacefully, including: through the discretion of law enforcement officers, institutions customs, and the Juvenile Criminal Justice System. This shows that in fact the mechanism peace can be applied in the criminal justice system in Indonesia, it's just that it hasn't been implemented yet explicitly and firmly regulated.

In connection with that matter often found peace between the reporting parties and the reported parties who makes peace both on investigation stage or stage investigation. In the corridor investigation, to start an investigation the police must issue a warrant investigation that assigns investigators to conduct investigations into criminal cases criminal. Once the investigation begins, the investigator must notify the public prosecutor. Investigators are obliged to investigate criminal cases that reach the court. the hands of the police does not mean that every case must be resolved to the end. the court examination stage. Investigators for certain reasons have the right and authorized to stop an investigation even if the investigation is not yet complete.¹² The reasons for terminating the investigation are as stipulated in Article 24 Law Number 20 of 2025 concerning the Criminal Procedure Code is: Insufficient evidence is not obtained; The alleged incident does not constitute a criminal act; Termination of the investigation by law.

But in reality on the ground it is often found that a criminal case that should go through stages inspection at the level investigation, prosecution to finally decided by the party the court only goes as far as investigation stage and ending in the

¹¹Eddy OS Hiariej, *Principles of Criminal Law*. Yogyakarta: Cahaya Atma Pustaka, 2015, p. 30

¹²Richard Dean Anderson Chandra. *The Legal Impact of Peace Agreements between Perpetrators and Victims on Criminal Investigations*. Faculty of Law, Esa Unggul University, Jakarta, *Thesis*. 2014, p. 4

hands of investigators and marked with the issuance of the Order Termination of Investigation (SP3) on the basis that it has occurred peaceful efforts and culminated in peace between the parties entangled in a criminal case.¹³

Issuance of the Order Termination of Investigation (SP3) based on the occurrence of peace efforts has causing a mismatch against criminal law in Indonesia, where in law Indonesian criminal law is not known to be a peaceful effort, even though in Indonesian criminal law it has been regulated regarding matters that can eliminate criminal penalties and also things that cause removal of the authority to sue criminal and carrying out criminal penalties, but in criminal law Indonesia not found the implementation of efforts peace. This refers to nature and legal status the crime itself. Where, it has become common opinion that criminal law is part of public law. With such a position interests to be achieved protected by criminal law is in the public interest so that the position of the state with law enforcement tools become dominant.¹⁴

Position and nature criminal law as law the public then gave birth formal juridical thinking said that there is no peace in law criminal, such as what said by Erdianto Efendi in his book entitled Indonesian Criminal Law that ¹⁵" thus, the adherents of the juridical method of thinking this formal, will refuse the existence of peace institutions in criminal law, because according to this school of thought all cases criminal charges must be filed to court, without except ".

Still in the scope of actualization, reconciliation is often achieved. or peace between the suspect and the reporting party at the investigation stage, so that result in the reporter withdrawing the police report, even though it is not necessarily a case This is a case that is classified as a complaint offense ¹⁶, and also results in on the termination of a case. As the legality of the termination of a case that has been until the investigation stage, the investigator issues a termination order investigation.

In a way policy law, Police Institution namely the Indonesian National Police actually has accommodate peace parameters in investigation case criminal through draft *restorative justice* through Regulation Police Number 8 of 2021 concerning handling action criminal based on justice restorative. However in a way implementation, case criminal own variability alone. Not all case criminal can be

¹³Annisa Delviane, et al. Legal Analysis of the Process of Terminating Investigations Against Perpetrators Traffic Accidents Resulting in Death (Study) Karimun Police Research). *QISTINA: Indonesian Multidisciplinary Journal*, 2 (2) December 2023, p. 1448

¹⁴Mahrus Ali, *Basic Law Criminal Law*, Sinar Grafika, Jakarta, 2011, page 6

¹⁵Erdianto Effendi, *Criminal Law Indonesia*, PT Refika Aditama, Bandung, 2011, p. 48

¹⁶According to Adami Chazawi, a complaint offense is a criminal act that can be carried out criminal prosecution requires first a complaint from the person entitled to file a complaint complaint, namely the victim. See: Adami Chazawi, *Criminal Law Lessons Part I*. Jakarta: Raja Grafindo, 2014, p. 132.

restorative justice in the investigation process. In this case specific in a way reality, functional peace in investigation case criminal need fulfilled ability analysis and interpretation good law towards investigators in handle A case indicated crime For he did A peace.

2. Research Methods

Approach juridical normative is the approach taken based on material law main with method examine theories, concepts, principles law as well as regulation related legislation with study this. Approach This also known as approach library, namely with learn books, regulations legislation and other related documents with study this.¹⁷ Specifications research conducted use method approach descriptive analytical, namely explain and analyze data effectively systematic with Meaning For provide the most accurate data Possible about people, conditions and symptoms other.¹⁸ Descriptive contains the meaning that writer want to describe and provide accurate data possible, systematic and comprehensive. Analytical contain meaning, grouping, combining and comparing related aspects with problem in a way theory and practice. The data used for this research is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials.¹⁹

3. Results and Discussion

3.1. Nature Peace in Case Criminal Based on National Criminal Law Basis

The Republic of Indonesia is a country based on democratic law, based on Pancasila and the 1945 Constitution, not based on on power solely. State of law determine tools equipment that acts obey and be bound to specified regulations moreover first by tools authorized equipment for stage regulations that.²⁰ As for the characteristics typical for a state of law is:

- 1) Recognition and protection on rights basic man;
- 2) Free judiciary from influence something power on other powers and not take sides;
- 3) Legality in the legal sense in all its shape.²¹

¹⁷Rony Hanitojo, *Legal Research Methodology and Ministerial Affairs*, Jakarta: Ghalia Indonesia, 1988, pages 13-14

¹⁸Basrowi and Suwandi, *Understanding Qualitative Research*. Jakarta: Rineka Cipta, 2008, p. 21

¹⁹Hajar M, *Models of Approach in Legal and Jurisprudence Research*, Pekanbaru: Suska Press, 2015, p. 81

²⁰Masrizal Afrialdo. Implementation and Investigation of Criminal Cases by the Police Based on Public Reports at the Lima Puluh Police Sector. *Student Online Journal*, III (2) October 2016, page 2

²¹Andi Hamzah, *Criminal Law Anthology and Criminal Procedure*, Ghalia Indonesia, Jakarta, 1986, p. 13.

The law can interpreted as something that contains authority or authority that can used lead and straighten something condition certain with Meaning For get justice.²² In essence objective law want balance interests, order, justice, tranquility, happiness, peace and prosperity for every man.²³

In a way conceptual, state of law in Article 1 paragraph (3) of the 1945 Constitution is the concept of the rule of law up to date. Certainty about the concept (principle) of the rule of law welfare that is adopted system Indonesian state administration is known from child Fourth Paragraph Sentence the preamble to the 1945 Constitution which relates with the goal of the Republic of Indonesia is " to advance welfare general". If dotted reject from the Fourth Paragraph opening 1945 Constitution can confirmed that goals of the Republic of Indonesia are organize welfare for all Indonesian nation (welfare general).²⁴

Mature This legislation and government hold role in various field arrangement life everyday life. Social processes economics and regulation order in public No Again left alone to chess powers free in society. Even John Chipman Gray²⁵ define law as "the provisions outlined by the parties government arrange legal rights and obligations".

Government try enlarge its influence to public with existing tools to him. One of them from tools That is law criminal. This matter happen naturally No let go from progress and change paradigm public in respond to various changes that occur in society. As consequence logical from changes that occur is birth various type form crime and criminality others. Therefore That government respond to matter the with do criminalization²⁶ to considered actions has bother order in public the.

Pompe stated that law criminal is overall rule provision law about possible actions punished and rules the crime. Apeldoorn stated that law criminal distinguished and given legal meaning criminal material that refers to actions criminal and that due to actions That can convicted, where actions criminal That has two parts, namely part objective and section subjective and legal formal criminal law that regulates method How law criminal material can confirmed.²⁷

²²Erdiansyah. Violence in Investigations: A Legal and Justice Perspective. *Journal of Science Law: Faculty of Law, University of Riau*, 1 (1) August 2010, page 95.

²³Wawan Muhwan Hariri, *Introduction to Science Law*, CV. Pustaka Setia, Bandung, 2012, page 49.

²⁴Hotma P. Sibuea, *Science of the State*, Jakarta: Erlangga Publisher, 2014, p. 143.

²⁵John Chipman Gray, *The Nature and Sources of the Law*, United States of America: The Legal Classics Library, 1990, p. 62

²⁶Criminalization is a policy of determining an act that was previously not a crime (not a crime) to become a crime (an act that can be punished). So, in essence, the criminalization policy is part of the criminal policy (*criminal policy*) using criminal law (*penal*) means, and therefore is part of the 'policy of criminal law' (*penal policy*). See: Barda Nawawi Arief, *Selected Chapters on Criminal Law*, Bandung: Citra Aditya Bhakti, 2010, p. 254

²⁷Teguh Prasetyo, *Criminal Law*, Jakarta: PT. Raja Grafindo Persada, 2012, pp. 4-6

In a way general law criminal interpreted overall regulations containing about actions what is included action criminal or actions what is prohibited done and what sanctions imposed for those who don't pay attention prohibition said. Besides that, it is necessary understood that law criminal no laws that contain new norms, but arrange about violations and crimes on the related legal norms with interest general. So from that, the law criminal is part from law public Because arrange connection between countries and citizens. For example connection between investigator with suspects and so on as arranged in provision law criminal material and formal.

Mezger said that law criminal can defined as rule law, which binds to something actions that fulfill conditions certain something consequences in the form of criminal.²⁸ With actions that fulfill conditions certain That intended actions carried out by people, which make it possible existence giving criminal act kind of That can called criminal acts or abbreviated actions evil (*Verbrechen or Crime*). Therefore in actions wicked This must there are people who do it, then problem about actions certain That into two, namely prohibited acts and people who violate them prohibition That.

Indonesian criminal law determines types sanctions criminal on criminal principal and criminal additional. This in a way firm formulated in Article 64 of Law No. 1 of 2023 concerning the Criminal Code (new Criminal Code), namely:

1) Criminal main consists of on:

- a. criminal prison;
- b. criminal cover;
- c. criminal supervision;
- d. criminal fines; and
- e. criminal Work social.²⁹

2) Criminal addition consists of on:

- a. revocation right certain;
- b. confiscation of certain goods and/ or bill;
- c. announcement judge's decision;
- d. payment change make a loss;

²⁸Susiana Kifli, *Op.Cit*, IX (1) 2025, page 183

²⁹ Article 65 paragraph (1) of the Law Number 1 of 2023 concerning the Criminal Code

- e. revocation permission certain; and
- f. fulfillment obligation customs local.³⁰

3) Criminal nature special For Action Criminal certain specified in Which laws exist criminal always dead threatened in a way alternative consists of on:

- a. Criminal prison dropped lifetime life or time certain;
- b. Criminal prison time certain sentenced to a maximum of 15 (fifteen) years in succession participate or at least 1 (one) day, except specified minimum;
- c. In terms of there is choice between criminal death and criminal prison lifetime life or there is weighting criminal on Action The sentence imposed criminal 15 (fifteen) years imprisonment, criminal prison time certain can dropped 20 (twenty) years in succession participate;
- d. Criminal prison time certain No may dropped more from 20 (twenty) years.³¹

As for the law criminal and criminal acts criminal own connection closely, where the law criminal is gathering regulations (rules) basis) which determines prohibited acts, temporary action criminal (*strafbaar*) (*feit*) is actions real violation prohibition said. Criminal law act as instrument juridical processing perpetrator action criminal.

Simons determines that elements action criminal is actions human, threatened with criminal, against law, carried out with error, by a capable person responsible. Next elements Simon divides this into two, namely: elements objective and elements subjective. Element objective covering people's actions, visible consequences from his actions, perhaps existence condition certain accompanying. Then element subjective is a capable person responsible and fault (intentional / *dolus* or negligence / *culpa*).³²

In implementing law criminal, the efforts used by law enforcement officer law in the form of effort enforcement law criminal law enforcement law criminal in apply law criminal is business realizing the idea of justice, certainty law and benefits social. This includes systemic processes implementation law criminal law *application* by the authorities, including stage formulation (legislative), application (judicial), and execution (administrative).³³

³⁰ Article 66 paragraph (1) of the Law Number 1 of 2023 concerning the Criminal Code

³¹ Articles 67 and 68 of the Law Number 1 of 2023 concerning the Criminal Code

³² Simons, *Criminal Law Textbook (Leerboek v an Het Nederlanches) Straftrecht*, Translation from PAF Lamintang, Bandung: Pionir Jaya, 1992, pp. 125-127

³³ Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention*. First Edition, Kencana: Jakarta, 2007, p. 75

Mardjono Reksodiputro mention that enforcement law criminal is effort the apparatus carried out Fensure certainty law, order and protection law in the era of modernization and globalization moment This can implemented, if various dimensions life law always guard harmony and compatibility between moralization civil society based on values actual inside public civilized. As an activity process that includes various party including public in framework achievement the goal is must see enforcement law criminal as system justice criminal.³⁴

Justice criminal can interpreted as a working process a number of institution enforcer law. Mechanism justice criminal the covering gradual activity started from investigation, prosecution, examination in court courts, and implementation judge's decision carried out by the Correctional Institution.³⁵

Enforcement process law criminal law in Indonesia general based on implementation system justice criminal with guidelines law criminal formal (KUHAP) and law criminal material (KUHP and criminal law) special), where enforcement law only relying on the state as giver justice, so that A little role individual in settlement case criminal. Seeker justice fully stuck in the system justice more criminal interpreted with finish all handling case criminal with signs law positive in nature stiff, so that organization enforcement law executed without selection matters and more realizing justice procedural.³⁶

Peacemaking efforts in criminal cases in Indonesia are currently facilitated through a restorative justice approach, which prioritizes restoration rather than mere retribution. The following are the laws and guidelines governing peacemaking efforts in criminal cases:

1) Law No. 1 of 2023 concerning the Criminal Code

The 2023 Criminal Code does not explicitly regulate norms regarding justice. restorative. However, Peace in criminal cases is regulated in Law No. 1 of 2023 concerning the New Criminal Code, especially regarding the philosophy objective criminalization as well as judge's considerations in imposing a sentence like example Article 54 paragraph (2) of the New Criminal Code allows judges to consider various aspects including peace agreements.

a. Article 51 letter c

The essence of this legal substance emphasizes that criminal punishment aims to resolve conflicts arising from criminal acts. Criminal, restoring balance, and

³⁴Mardjono Reksodiputro, *Op.Cit*, 199 3, p. 76

³⁵Supriyanta. Development of the Criminal Justice System. *Journal of Legal Discourse*, 2 (4) 2003, page 1

³⁶Manggala Saraya, Legal Status of Peace Agreements Through Penal Mediation Criminal Case Process. *Poenale Journal*, 6 (3) May 2018

bringing a sense of security and peace in community.³⁷ This forms the philosophical basis for restorative justice in the new Criminal Code. It serves as a new paradigm in the criminal justice system, including from the police to the courts, especially for certain criminal cases that meet the requirements.

b. Article 54 paragraph (2)

Provides space for judges to consider from aspect justice and humanity with consider lightness actions, conditions personal perpetrator, or state at the time done Action Criminal and what happened Then can made into base consideration For No drop criminal or No wearing actions, including peace agreements between the perpetrator and the victim, in determining the severity of the crime.³⁸

c. Article 71

If someone do Action The only crime threatened with criminal imprisonment under 5 (five) years, while the judge is of the opinion No need drop criminal prison after consider objective criminalization and guidelines criminalization, the person can sentenced criminal which fine only can dropped If without victims, no victims take issue with, or No repetition action criminal.³⁹

d. Article 94 in conjunction with Articles 81-83

These articles regulate full restitution *for* victims through additional penalties in the form of compensation. If the perpetrator pays compensation agreed upon through deliberation, this can affect the severity of the sentence or be part of restorative *outcomes*. recovery in context loss real is through payment change loss by the perpetrator to the victims of consequence from action the crime he committed.⁴⁰

e. Article 132 paragraph (1)

This article state that authority prosecution fall if has There is settlement outside the judicial process. This provides base law that case certain (usually minor / crime complaint) can stopped If achieved peace / deliberation between the victim and the perpetrator.⁴¹

2) Law No. 20 of 2025 concerning the Criminal Procedure Code

³⁷ Article 51 letter c of the Law Number 1 of 2023 concerning the Criminal Code

³⁸ Article 54 paragraph (2) of the Law Number 1 of 2023 concerning the Criminal Code

³⁹ Article 71 paragraphs (1) and (2) of the Law Number 1 of 2023 concerning the Criminal Code

⁴⁰ Article 94 in conjunction with Articles 81-83 Constitution Number 1 of 2023 concerning the Criminal Code

⁴¹ Article 132 paragraph (1) letters f and g Constitution Number 1 of 2023 concerning the Criminal Code

Peace in the new Criminal Procedure Code (Law No. 20 of 2025) is accommodated through mechanism Justice Structured Restorative Justice (RJ), placing recovery condition back to the beginning as objective main. Peace must done in a way voluntary, without coercion, and focusing on external solutions track formal criminal law, including request forgiveness and recovery which are accommodated in CHAPTER IV about mechanism justice restorative that regulates terms and procedures from stages investigation and inquiry, prosecution until stages court through Articles 79 to 88.⁴²Article 204 paragraphs (5) to (9) are provision in scope of the Judge for strive peace between perpetrator and victim with requirements certain as category action criminal offenses that can be become mitigating reasons punishment and/ or become consideration drop criminal supervision.⁴³ The judge facilitates agreement peace in court with proof written agreement signed by the parties. The mechanism This allows case stopped after agreement peace fulfilled, giving greater justice fast and fulfilling principle balance and humanity.

3) Law no. 11 of 2012 concerning System Justice Child Criminal

Peace in Law No. 11 of 2012 concerning System Justice Child Criminal Procedure Code (SPPA) is realized through Diversion, namely diversion settlement case child from the judicial process conventional to external processes judiciary. Approach This must prioritizing restorative justice restorative) in order to achieve peace, victim recovery, and interests best for child. Substance effort peace in this law accommodated in a number of chapter among others:

a. Article 5

This article confirm that paradigm criminalization in System Justice Mandatory Child Criminal Procedure prioritize approach justice restorative in every judicial process (investigation, prosecution, trial) children) which is mandatory attempted diversion.⁴⁴

b. Articles 6-8

In the article This arrange about interpretation provision which diversion⁴⁵which diversion aim reach peace between the victim and the child, complete Children's cases outside the judicial process, preventing children from robbery independence, encouraging public participate and instill a sense of responsibility answer to Children. The provisions can implementation diversion with conditions

⁴² Look in Article 79 - Article 88 of the Law Number 1 of 2023 concerning the Criminal Code

⁴³See Article 204 paragraph (5) - paragraph (9) Law No. 1 of 2023 concerning the Criminal Code

⁴⁴ Article 5 of the Law Number 11 of 2012 concerning System Justice Child Criminal

⁴⁵Diversion is the transfer of juvenile cases from the criminal justice process to a process outside the criminal justice system. See : Setya Wahyudi, *Implementation of the Diversion Idea in Reforming the Juvenile Criminal Justice System in Indonesia*. 1st edition, Yogyakarta Genta Publishing, 2011, p. 56

action crimes committed threatened with criminal imprisonment under 7 (seven) years and not is repetition action criminal (recidivist).⁴⁶

c. Article 9

Investigators, Public Prosecutors, and Judges in carry out Diversion must consider category action criminal, child's age, results study community from Bapas, and support environment family and society.

4) Regulation Supreme Court (PERMA) No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Justice Restorative

This Perma emphasize peace between the accused and the victim as base recovery circumstances. This effort can pushed If there is agreement peace, responsibility answer defendant on victim's loss, and regret perpetrators, especially For action criminal with threat light (maximum 5 years) or without any casualties, however still entered in decision end of the judge.

5) Regulation (Perja) No. 15 of 2020 concerning Termination Prosecution Based on Justice Restorative

Peace in Job No. 15 of 2020 is condition absolute termination prosecution based on Justice Restorative (RJ), where the perpetrator and victim agree restore condition originally. Peace must sincere without coercion, marked with recovery loss / condition of the victim, and agreed family second split party as well as figure community. Perja This own condition in termination prosecution only for case with threat criminal penalties under 5 years, new first time done, and the value loss No more from Rp. 2,500,000.00 (two million five hundred thousand rupiah).

6) Regulation Police Regulation (Perpol) Number 8 of 2021 concerning Handling Criminal Acts Based on Justice Restorative

Police Regulation This give base strong law for investigator Indonesian National Police For finish case action criminal certain, especially those involving loss small, perpetrator child, or action criminal light, so as not to enter to justice general. If peace reached and agreed upon, investigation case can terminated (SP3) according to with regulated mechanisms in regulation.

Change paradigm criminalization through transformation law criminal with the birth of the new Criminal Code and Criminal Procedure Code mark fundamental transformation of paradigm retributive (retribution) to direction paradigm justice corrective, rehabilitative, and restorative. Focus law criminal shift from just punish perpetrator become recovery balance social, humanizing perpetrators, and protect the victim.

⁴⁶ Article 6-8 of the Law Number 11 of 2012 concerning System Justice Child Criminal

Not all type crime or case criminal can agreed completed through penal mediation or justice restorative. Cases involving crime Serious or cases that require enforcement strict laws No can done settlement case criminal through effort peace.⁴⁷ Because of that that, the decision use mechanism peace in case criminal must be considered with carefully by the parties involved especially law enforcers law, with notice justice, security society and interests general in a way the whole which must be based on legitimacy certain law law.

3.2. Procedure in a way Juridical Peace Efforts in Case Crimes that have entered the investigation process

Criminal law is base determine whether actions That as actions criminal or no, besides it's also for determine problem accountability, which includes There is element error. Determination element error This in a way normative, meaning based on applicable law, so that in determine error This must more Formerly determined his actions whether as actions criminal or no. This is in frame give protection to right basic man.⁴⁸ However in its development case criminal There is alternative the solution, namely with peace.

Peace is a purposeful process reach agreement or reconciliation between the conflicting parties in A conflict or dispute. Peace process often involves negotiation, mediation, or various effort diplomacy reach a profitable and satisfactory solution for all parties involved. In law civil, peace can defined as a process in which the parties involved in dispute or dispute reach agreement finish conflict they are outside court. This is usually achieved through negotiation or mediation, and can covers distribution assets, payments change loss, or various form compromise other.⁴⁹

Mediation and peace generally at in realm law civil and have different characteristics with law criminal.⁵⁰ Difference main between mediation / peace in law civil and legal criminal among others:

1) Focus: In law civil, mediation and peace often related with settlement dispute between parties private sector, such as individuals, companies, or organization, related with problem contracts, property, or problem others. On the other hand, in law criminal, mediation generally focused on solving case crime between perpetrator crime and victims, with effort for reach reconciliation or restoration;

⁴⁷Aby Maulana. The Concept of a Defendant's Confession of Guilt on the 'Special Route' According to the Criminal Procedure Code and Its Comparison with the Practice of Plea Bargaining in Several Countries. *Jurnal Cita Hukum*, 3 (1) 2015

⁴⁸Kuswadani & Fajar Ilhamsyah. Penal Mediation in the Tourist Accident Cases. *International Journal of Sciences: Basic Applied Research (IJSBAR)*, 52 (1), 2020, pp. 164-172

⁴⁹Hanafi Arief and Ningrum Ambarsari. Application of Restorative Justice Principles in the Criminal Justice System in Indonesia. *Al-Adl: Jurnal Hukum*, 10 (2) 2018, p. 173

⁵⁰Sabela Gayo, *Criminal Mediation in Indonesia*. Publisher Madza Media, 1st Edition, 2023, page 21

2) Parties Involved: In mediation civil, parties involved usually is parties private sector involved in disputes, such as parties involved in contract or agreement. On the other hand, deep mediation criminal, parties involved covering perpetrator crime, victims, and sometimes public or party the third is affected by the action crime.

3) Settlement Objectives: In mediation civil, purpose main is reach profitable settlement for all parties involved, often with find solution compromise or road middle. Meanwhile that, in mediation criminal, purpose main Possible covers recovery loss, reconciliation between perpetrator and victim, or rehabilitation perpetrator.

4) Arrangements: Mediation process in law civil often more loose in matter rule procedural and regulatory compared to with mediation in law criminal law tend own more rules strict regulations governing the mediation process, especially Because serious implications from action crime.

5) Consequences: In mediation civil, an agreement reached by the parties involved generally produce agreement that has strength law and can enforced in court. On the other hand, mediation criminal often more focus on the rehabilitation process or reconciliation rather than on the consequences formal law.⁵¹

Although there is difference fundamental between mediation and peace in law civil and legal criminal, both own same goal in reach satisfactory resolution for parties involved in conflict or crime.

Crimes solved with peace personal, occurs between individual, the loss personal and valuable the loss relatively small. If between the perpetrator and the victim have peace, perpetrator willing fulfil the rights of the victims and the victims have forgive the actor who is embodied with deed peace, then objective law Already achieved. If objective law has achieved, then coercion enforcement state law to citizens with all the formalities will become in vain.⁵²

In the case of criminal, peace no delete than actions criminal, peace only limited to give relief threat the crime that will be dropped to the judge. Indeed, in law Criminal No known the term peace process so that a case No to be continued until to Court. In practice existence peace of the parties usually only made into basis by the Public Prosecutor and Judge for relieve punishment for perpetrator crime. Most during this is what bridges peace in case criminal is the Police with a number of his authority in stages investigation like termination investigation, restorative

⁵¹Yuni Priskila Ginting. *Op.Cit*, April 2024, page 7 7

⁵² Waluyadi, *Op.Cit*, May-August 2014, page 31

justice efforts and accompanied by making deed peace agreed upon by the parties and subsequently executed in accordance with the agreement.⁵³

There is an obligation investigator investigate case action criminal penalties that have been reached to hand police No means that every case the must finished until to stage inspection court. Investigator with reasons certain entitled and authorized stop investigation although investigation That Not yet finished. Reasons it is determined in a way limited by Law No. 20 of 2025 (new Criminal Procedure Code) in Article 24 paragraph (2), namely:

- a. There is no Enough tool proof;
- b. Incident the No is action criminal;
- c. Investigation stopped by law;
- d. There is Decision The court that has get strength law still to Suspect on the same thing;
- e. expired;
- f. Suspect die;
- g. Pulled Complaints on action criminal complaint;
- h. Achieved settlement case through mechanism Justice Restorative;
- i. Suspect pay maximum criminal fine on action criminal offenses that only threatened with criminal the biggest fine category II;
- j. Suspect pay maximum criminal fine category IV above action the criminal penalties that are threatened with criminal imprisonment for a maximum of I (one) year or criminal the biggest fine category III.⁵⁴

Police as investigators handling the case something case criminal law in agencies first, sometimes go through policy No continue case the prosecutor general if between the victim/ affected party action crime and perpetrator action criminal achieved agreement or the usual peace realized in a way written in which it is stated that with occurrence peace so the victim/ affected party No criminal state No do demands whatever Good in a way criminal or demands other.⁵⁵

⁵³Herman Bastiaji Prayitno, Cecep Miptahudin. Legal Certainty of Peace Deeds Made by Notaries by Setting Aside Criminal Acts. *Pamulang Law Review*, 4 (2) November 2021, p. 185

⁵⁴ Article 24 paragraph (2) of the Law Number 20 of 2025 concerning the Criminal Procedure Code

⁵⁵Steven Sumampouw. Settlement of Criminal Cases Through Peaceful Negotiations Outside the Court. *Lex Crimen*, VIII (3) March 2019, p. 14

4. Conclusion

Peace efforts in case criminal law in Indonesia at the moment This accommodated through approach Justice Restorative Justice, which prioritizes recovery condition than just revenge. Following is regulation legislation and guidelines that regulate effort peace in case criminal including Law No. 1 of 2023 concerning the Criminal Code for Peace in case criminal arranged in the New Criminal Code, especially related with philosophy objective criminalization as well as judge's considerations in drop criminal like for example, article 54 paragraph (2) of the new criminal code allows judges to consider various aspect including agreement peace. then in law no. 20 of 2025 concerning the criminal procedure Code is accommodated through mechanism Justice Structured Restorative Justice (RJ), placing recovery condition back to the beginning as objective main. Peace must done in a way voluntary, without coercion, and focusing on external solutions track formal criminal law, including request forgiveness and recovery which are accommodated in CHAPTER IV about mechanism justice restorative that regulates terms and procedures from stages investigation and inquiry, prosecution until stages court through Articles 79 to 88. The guidelines investigator Police in implementation of restorative justice to realize effort peace in case criminal with existence transformation source law criminal formal that is the issuance of Law Number 20 of 2025 concerning the Criminal Procedure Code, which now includes restorative justice accommodated direct in levels law (new Criminal Procedure Code), increasing the status of regulation sectoral (Perpol / Perja) becomes a legal norm binding national law. New Criminal Procedure Code arrange procedural that becomes guidelines for investigator Indonesian National Police in peace case criminal through restorative justice with provisions including (1) recovery condition back to the beginning must poured in agreement; (2) Agreement must implemented in term maximum period of 7 (seven) days; (3) Revocation Report or Complaint only can carried out after perpetrator fulfil all over agreement; (6) After all over agreement implemented, the case must stopped and requested determination court; (7) If agreement No carried out by the perpetrator until with the end term time (maximum 7 days), Investigator must make minutes of implementation mechanism Justice Restorative that contains identity of the parties, content agreement, evidence implementation part or all over agreement as well as reason No fulfilled agreement by the perpetrator; (8) The minutes become part No inseparable from file case as base For continue the judicial process; (9) Mechanism Justice Restorative can charged to action criminal offenses that meet the conditions categorization action criminal certain.

5. References

Journals:

- Aby Maulana. Konsep Pengakuan Bersalah Terdakwa Pada 'Jalur Khusus' Menurut Ruu KuhaP dan Perbandingannya dengan Praktek Plea Bargaining di Beberapa Negara. *Jurnal Cita Hukum*, 3 (1) 2015
- Anatasyah Nur Ain Wendersteyt, dkk. Kebijakan Hukum Pidana dalam Penyelesaian Tindak Pidana di Luar Proses Pengadilan. *Lex Crimen*, X (2) Maret 2021
- Annisa Delviane, dkk. Analisis Yuridis Proses Penghentian Penyidikan Terhadap Pelaku Kecelakaan Lalu Lintas yang Mengakibatkan Meninggal Dunia (Studi Penelitian Polres Karimun). *QISTINA: Jurnal Multidisiplin Indonesia*, 2 (2) Desember 2023
- Ariyani, Fikri, Andi Marlina. Konsep Al-Islah dan Pendekatan Restorative Justice dalam Penyelesaian Perkara Pidana. *Delictum: Jurnal Hukum Pidana dan Hukum Pidana Islam*, Agustus 2023
- Aulia Kadri Pratiwi. Mekanisme Pelaksanaan Pembuatan Laporan Pengaduan Polisi Model B di Sentra Pelayanan Kepolisian Terpadu (SPKT) Polrestabes Medan. Fakultas Ilmu Sosial dan Ilmu Politik Univ Medan Area: Medan, *Laporan KKL*, 2019
- Avif Alfiyah, Metode Penafsiran Buya Hamka Dalam Tafsir Al-Azhar, *Jurnal Ilmiah Ilmu Ushuluddin*, 15 (1) 2017
- Bambang Tri Bawono, Tinjauan Yuridis Hak-Hak Tersangka dalam Pemeriksaan Pendahuluan, *Jurnal Ilmu Hukum*, 245, Agustus 2011
- Barda Nawawi Arif. Mediasi Penal : Penyelesaian Perkara Pidana di luar Pengadilan. *Makalah disampaikan dalam "Dialog Interaktif Mediasi Perbankan"*. Bank Indonesia: Semarang, 2006
- Dewa Putu Hendra Widiatmaka. Penerapan Perpol Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif di Direktorat Reserse Kriminal Umum Polda Bali. *IJOLARES: Indonesian Journal of Law Research*, 1 (1) Maret 2023
- Edwin W. Patterson, Logic in the Law, *University of Pennsylvania Law Review*, 90, 1942
- Elfina Dwi Rahayu dan Margo Hadi Pura. Analisis Proses Penyidikan Pelaku Tindak Pidana Pencurian Terhadap Benda Sitaan. *Jurnal Ilmiah Wahana Pendidikan*, 9 (1) Mei 2023
- Ibnu Artadi. Dekonstruksi Pemahaman Penyelesaian Perkara Pidana melalui Prosedur Perdamaian. *Jurnal Hukum Pro Justisia*, 25 (1) Januari 2007
- Ismansyah, Pertanggungjawaban Pidana dalam Pelaksanaan Kewenangan Kepolisian, *Jurnal Demokrasi*, 7 (2) 2008
- Jimly Asshidiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta: 2010

- John Kenedi, Kebijakan Kriminal (Criminal Policy) dalam Negara Hukum Indonesia: Upaya Mensejahterakan Masyarakat (Social Welfare), *Al-Imarah: Jurnal Pemerintahan dan Politik Islam*, 2 (1), 2017
- Kuswadani & Fajar Ilhamsyah. Penal Mediation in the Tourist Accident Case. *International Journal of Sciences: Basic Applied Research (IJSBAR)*, 52 (1), 2020
- Manggala Saraya, Kedudukan Hukum Kesepakatan Damai Melalui Mediasi Penal Pada Proses Perkara Pidana. *Jurnal Poenale*, 6 (3) May 2018
- Mary Massaron Ross, A Basis for Legal Reasoning: Logic on Appeal. *Journal of the Association of Legal Writing Directors*, 46 (4) 2006
- Masrizal Afrialdo. Pelaksanaan dan Penyidikan Perkara Pidana oleh Kepolisian Terhadap Laporan Masyarakat di Polisi Sektor Lima Puluh. *Jurnal Online Mahasiswa*, III (2) Oktober 2016
- Masyhadi Irfani and Ira Alia Maerani, Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, *Jurnal Daulat Hukum*, 2 (1) March 2019
- Nor Sholeh, Restorative Justice Dalam Hukum Pidana Islam dan Kontribusinya bagi Pembaharuan Hukum Pidana Materiil di Indonesia. *Isti'dal: Jurnal Studi Hukum Islam*, 2 (2) Juli-Desember 2015
- Novem S Hutauruk. Penerapan Upaya Damai oleh Pihak Kepolisian dalam Penyelesaian Perkara Tindak Pidana di Wilayah Kepolisian Sektor Lima Puluh Kota Pekanbaru. *Jurnal Online Mahasiswa*, 1 (2) Oktober 2014
- Herman Bastiaji Prayitno, Cecep Miptahudin. Kepastian Hukum Akta Perdamaian yang dibuatkan oleh Notaris dengan Mengesampingkan Perbuatan Tindak Pidana. *Pamulang Law Review*, 4 (2) November 2021

Books:

- Adami Chazawi, *Pelajaran Hukum Pidana Bagian I*. Jakarta : Raja Grafindo, 2014
- Agus Rusianto, *Tindak Pidana & Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Konsistensi Antara Asas, Teori, dan Penerapannya*, Jakarta: Kencana, 2016
- Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika, 2010
- Anas Yusuf, *Implementasi Restorative Justice Dalam Penegakan Hukum Oleh Polri Demi Mewujudkan Keadilan Substantif*, Jakarta: Penerbit Universitas Tri Sakti, 2016
- Andi Hamzah, *Bunga Rampai Hukum Pidana dan Acara Pidana*, Ghalia Indonesia, Jakarta, 1986
- Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*. Cet 1, Yogyakarta Genta Publishing, 2011
- Simons, *Kitab Pelajaran Hukum Pidana (Leerboek Van Het Nederlanches Straftrecht)*, Terjemahan dari PAF Lamintang, Bandung : Pionir Jaya, 1992
- Soedrajat Bassar, *Tindak-tindak Pidana Tertentu*, Bandung: Ghalian, 1999

Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 1986
Sudarto, *Hukum dan Hukum Pidana*, Penerbit: Alumni, Bandung, 1981

Regulation:

The 1945 Constitution of the Republic of Indonesia

Constitution Number 2 of 2002 concerning Republic of Indonesia Police

Law Number 1 of 2023 concerning the Criminal Code

Constitution Number 20 of 2025 concerning the Criminal Procedure Code

Constitution Number 11 of 2012 concerning System Justice Child Criminal