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THE RECONSTRUCTION OF RESTORATIVE JUSTICE BY THE PROSECUTOR'S OFFICE OF THE REPUBLIC OF INDONESIA IN TERMS OF THE PROGRESSIVE LEGAL PARADIGM

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Abstract

The purpose of this study is to analyze: 1) What is the position of Restorative Justice in the Criminal Justice System in Indonesia? 2) What is the Progressive Legal paradigm towards the principle *of doelmatigheid* as a Law Enforcement Policy by the Attorney General of the Republic of Indonesia? 3) *Ratio legis* application of doelmatigheid principle and *rechtmategheid* principlein Indonesia in terms of legal positivism? 4) What is the ideal construction of termination of prosecution by the Attorney General of the Republic of Indonesia?. The research method used is normative juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The settlement of cases that have been implemented in the Prosecutor's Office through alternative *restorative justice* has opened up hope for the community to be able to obtain a sense of justice that can restore peace and harmony in the community, because the settlement of cases that have been carried out through the mechanism of court hearings has not fully touched the sense of justice of the community. 2) For progressive law, Social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the weak by presenting empowering social, economic, and political institutions. Second, every law must position itself as a guide to develop policies to correct the injustices experienced by the weak. 3) This legal certainty comes from Juridical-Dogmatic teachings based on the Positivist school of thought in the legal world which tends to see law as something independent autonomous, because for adherents of this school, the purpose of law is nothing but to guarantee its realization by general law. The general nature of the rules of law proves that law does not aim to bring about justice or expediency, but merely for certainty. 4) Termination of prosecutions based on restorative justice is carried out by the Prosecutor's Office to fulfill the sense of justice of the community by balancing between legal certainty (*rechtmatigheid*) and expediency (*doelmatigheid*) in the exercise of prosecution authority based on law and conscience.

Keywords: Reconstruction, Justice, Restorative, Prosecutor's Office, Republic of Indonesia, Paradigm, Progressive Law.

INTRODUCTION

Background

According to Satjipto Rahardjo, the supporting elements of law enforcement, namely lawmaking, law enforcement and the environment, because law enforcement is a process to realize legal wishes to come true.[1] These legal wishes are set forth in legal regulations by lawmakers and implemented by law enforcement officials including police, prosecutors and judges. That the position of both the duties and functions of the Prosecutor's Office in various parts of the world is almost no different, it is one of the law enforcement institutions of a country. In Indonesia, the Prosecutor's Office of the Republic of Indonesia, its position is within

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the executive power as a government institution whose functions are related to the judicial power that exercises state power in the field of prosecution and other authorities based on the Law which is expressly regulated in article 1 point 1 of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, in addition to carrying out other functions of power conferred by law. [2]

The authority of the Prosecutor in exercising *Prosecutorial discretionary (opportuniteit beginselen*) which is carried out by considering local wisdom and justice values that live in the community has an important meaning in order to accommodate the development of legal needs and a sense of justice in the community that demands a paradigm shift in law enforcement from merely realizing retributive justice (retribution) to justice Restorative. For this reason, the success of the Prosecutor's task in carrying out prosecutions is not only measured by the number of cases transferred to the court, including the settlement of cases outside the court through penal mediation as an implementation of restorative justice that balances fair legal certainty and expediency. [3]

The Prosecutor's Office of the Republic of Indonesia has the main task of screening cases that are worthy of being submitted to court, preparing prosecution files, conducting prosecutions and implementing court decisions.[4] The Prosecutor's Office as a sub-system of the criminal justice system, is regulated in Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia where the Attorney General is the highest Public Prosecutor in the Unitary State of the Republic of Indonesia. [5]

The Karangasem District Attorney's Office which is a District Attorney Work Unit located in Karangasem Regency, Bali Province, is one of the easternmost regencies in Bali Province. The handling of cases at the Karangasem State Prosecutor's Office is dominated by cases of Narcotics Crimes and Crimes against Persons and Property. That there are many cases that can be categorized to be carried out Restorative Justice but the Prosecutor is difficult to implement peace efforts to suspects and victims at the pre-prosecution stage until prosecution, namely when handing over responsibility for suspects and evidence (stage two) by considering the *costs and benefits*, legal certainty and legal expediency of handling the case.

In fact, in the work unit of the Karangasem State Prosecutor's Office, since the Attorney General's Regulation was issued, there are still cases that should be sought to be made peacefully so that the purpose of the birth of the Attorney General's Regulation is achieved, but it is not done and is still delegated by Ordinary Examination to the Court so that the principle of *doelmatigheid* and *rechtmategheid* Not well implemented in the work unit. This happens because the Prosecutor does not have the competence and understanding of Restorative Justice. That in line with the opinion of Satjipto Rahardjo who quoted Bernadus Travia Taverne's opinion, where the law without the competence of Law Enforcement Officers, will not produce good results, and the most important element in the law is a good Law Enforcement Officer

The construction of the Attorney General's Regulation in terms of implementing Penal Mediation for Criminal Acts through a restorative justice approach is not ideal, based on the description above, the author is interested in studying further about the Progressive Legal

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Paradigm in the concept of Restorative Justice related to implementation in the field by Law Enforcement Officers which focuses on legal certainty where the big question is *Ratio Legis* Termination of prosecutions based on restorative justice by the Prosecutor's Office of the Republic of Indonesia as a form of application of *the Doelmatigheid principle* and the objectives of law enforcement policy in terms of the progressive legal paradigm contained in the title **"RECONSTRUCTION OF RESTORATIVE JUSTICE BY THE PROSECUTOR'S OFFICE OF THE REPUBLIC OF INDONESIA IN TERMS OF THE PROGRESSIVE LEGAL PARADIGM".**

Problem Statement

1. What is the position of Restorative Justice in the Criminal Justice System in Indonesia?
2. What is the Progressive Legal paradigm towards the principle *of doelmatigheid* as a Law Enforcement Policy by the Attorney General of the Republic of Indonesia?
3. *Ratio legis* application of *doelmatigheid* principle and *rechtmategheid* principle in Indonesia in terms of legal positivism?
4. What is the ideal construction of termination of prosecution by the Attorney General of the Republic of Indonesia?

Theoretical Framework

1. Progressive Legal Theory

The definition of law according to Mochtar Kusumaatmadja is the entire principles and methods that govern people's lives, including institutions and processes to realize the law into reality. Indonesia is a State of Law, the concept of the State of Law is considered as a universal. According to Sri Soemantri, the conception of the State of law is identified with the existence of the country's constitution, so that the State and the Constitution are two institutions that cannot be separated from each other. [6] In line with what Hamid S. Attamimi stated that in the 20th century there was hardly a country that considered it a modern state without calling itself a "state based on law".[7]

2. Law Enforcement Theory

According to Soerjono Soekamto, Law Enforcement is an activity to harmonize the relationship of values described in rules / views of values that are solid and manifest and attitudes of action as a series of final stage value elaboration to create, maintain and maintain social peace. [8] The Law Enforcement Factor is a benchmark in seeing the mentality or personality of Law Enforcement Officers has a very important role, because if the existing legal instruments are good but law enforcement officers are not good, then a problem will arise, therefore the quality of law enforcement officers becomes an important factor in Law Enforcement in Indonesia.

3. Theory of Expediency and Legal Certainty

Legal scholars have divided crimes into three types of acts which they call *crimina atrocissima, atrocia* and *levia* which are not based on a particular principle, but only based on the severity

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of the crime, where the severity of the crime is solely based on the severity of the punishment threatened with each crime. Influenced by the division of crime referred to above, the framers of the *Code Penal* of 1810 in France then also formed a "*division tripartite*" or a division into three types of unlawful acts that they had set forth in article 1 C.P. respectively: crime, delit and *contravention*. Which in Dutch are also referred to as: *misdaden*, *wanbedrijven* and *overtredingen*, which when translated into Indonesian means successively are: crimes, despicable deeds and transgressions. [9] Until finally these changes led to the division of criminal acts in outline, namely crimes and violations regulated in Book 2 and Book 3 of the Criminal Code.

In order to realize legal certainty to the community, Law Enforcement Officers have their respective Duties and Authorities as stipulated in laws and regulations in order to carry out law enforcement.

Research Methodology

The type of research used is normative juridical, which is a research that emphasizes legal science, but in addition also tries to examine the rules of law that apply in society. [10] By conducting literature research, preliminary data will be obtained to be used in research in the field or to the community in general. [11] The approach method used in this study is descriptive analytical, which describes applicable laws and regulations associated with legal theories and positive law implementation practices concerning the problems studied. [12]

RESEARCH RESULTS

The Position of Restorative Justice in the Criminal Justice System in Indonesia

Currently, the practice of all law enforcement institutions in Indonesia both the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights of the Republic of Indonesia has adopted the principle of restorative justice as one way to resolve a criminal case. In 2012 these four institutions made a joint agreement, namely a Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia Number 131 / KMS / SKB / X / 2012, Number M-HH-07. HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Application of Adjustment of the Limits of Minor Crimes and the Number of Fines, Quick Examination Events and the Application of Restorative Justice.

The principle of restorative justice is one of the principles of law enforcement in solving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enforcement (Supreme Court Regulations and Supreme Court Circulars) but its implementation in the Indonesian criminal justice system is still not optimal The Supreme Court Regulations and Supreme Court Circulars are: 1) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limitation

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of Minor Crimes and the Amount of Fines in the Criminal Code; 2) Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System; 3) Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law; 4) Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning the Placement of Abuse, Victims of Abuse and Drug Addicts into Medical Rehabilitation and Social Rehabilitation Institutions; and 5) Circular Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 3 of 2011 concerning the Placement of Victims of Drug Abuse in Medical Rehabilitation and Social Rehabilitation Institutions. In line with *Economic Analysis of Law* in realizing social justice proposed by Suparji, namely in handling general criminal cases with the implementation of restorative justice which has been echoed by the Prosecutor's Office in 2020. Where as we know that the implementation of the criminal justice system in Indonesia in general is still predominantly retributive in nature which aims as retaliation and prosecution for the actions of perpetrators. Over time, alternatives to retributive punishment methods developed into *Restorative Justice* That is an approach oriented towards restoring the situation, reconciling the parties and restoring harmony in society.

After the conclusion of the Memorandum of Understanding, the Supreme Court, the Attorney General's Office, and the Indonesian National Police made further regulations for each institution as guidelines for solving criminal cases with the principle of restorative justice, including: 1) Circular Letter of the Chief of the National Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Application of Restorative Justice in Criminal Case Resolution (SE Kapolri 8/2018"); 2) Regulation of the Chief of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation (Perkapolri 6/2019); 3) Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perkejaksaan 15/2020; and Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice (Kepdirjenbadilum 1691/2020). [1]

The role of the Prosecutor's Office in solving cases outside the criminal justice system, namely through alternative restorative justice, is expected to revive the values that live in the community regarding deliberation by prioritizing communication habits and increasing sensitivity to local wisdom, as the identity of the nation in accordance with the values of Pancasila to reach a peace agreement as a form of case resolution. So as to create collaboration between living *law* and positive law. It is hoped that with the regulation of restorative justice (legal substance) and the Prosecutor as a facilitator to facilitate the peace process *(legal structure*), it is hoped that it will create a legal culture for law enforcement and especially for the community to form awareness in participating in enforcing the law and prioritizing the interests of perpetrators, victims, families of perpetrators, and other related parties, to be together - Equally seek a just and peaceful solution instead of revenge.

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The settlement of cases that have been implemented in the Prosecutor's Office through alternative *restorative justice* has opened up hope for the community to be able to obtain a sense of justice that can restore peace and harmony in the community, because the settlement of cases that have been carried out through the mechanism of court hearings has not fully touched the sense of justice of the community. In the perspective of the principle of dominus litis, the public prosecutor is the owner of the case from the beginning because what is handed over by the investigator is only the responsibility for the suspect and evidence to the public prosecutor as the owner of the case who will decide whether or not the case can be transferred to the court or not. The indictment is the result of an investigation product that has gone through a case research process by the public prosecutor so that the case carried out by the investigation is considered worthy of prosecution. This makes the principle of functional differentiation adopted in the Code of Criminal Procedure no longer in accordance with the needs of the criminal justice system that should be integrated today. Administratively, the functions in the criminal justice system can be distinguished, but specifically for investigation and prosecution is a thesis premise that is interconnected with each other. [14]

In addition, in the perspective of the principle of sole prosecution, the prosecution function cannot be separated from the investigative function even though the prosecution authority is given to the prosecution agency. The policy of handling cases at the investigation and prosecution stage is a policy so as not to cause disparities. Based on this, the Criminal Procedure Code as the operational basis of the criminal justice system must change the paradigm by applying the principle of a single prosecution that makes the Attorney General the highest Public Prosecutor who can determine policies for handling cases at the prosecution and investigation stages.

These various legal principles and norms make the public prosecutor have a strategic position, a very important role, and of course the responsibility in determining a case resolved through a trial mechanism or outside the court. The spirit of reinforcement was translated in writing (lex certa) and clearly (lex stricta) in the new Prosecution Law. Article 37 of the Prosecutor's Law states that the Attorney General of the Republic of Indonesia is responsible for prosecutions carried out independently for the sake of justice based on law and conscience. In the explanation of the article explains that as a manifestation of restorative justice, prosecution is carried out by weighing between legal certainty (*rechtmatigheids*) and expediency (*doelmatigheids*). [15]

Progressive Legal Paradigm on *Doelmatigheid Principle* as Law Enforcement Policy by the Attorney General of the Republic of Indonesia

The Progressive Law of Peace originated from Satjipto Rahardjo's opinion where law is interpreted as an "institution that aims to deliver humans to a just, prosperous life and make people happy".[16] Satjipto Rahardjo's Progressive Legal Theory which states that the law is for humans not for themselves, if there is a problem with the law then the law is defeated, not the human being. [17]

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Law enforcement is very close to society, as the theory put forward by Carl von Savigny, where according to him "*Das recht wird nicht gemacht, est ist und wird mit dem volke*" (the law is not made but grows and develops with society. [18] According to Satjipto Rahardjo, "the law is not absolutely driven by positive law or legislation, but the law also moves on a non-formal basis".[19] According to Gustav Radbruch, that a law enforcer in this case is a policeman, prosecutor and judge, can ignore the written law (statutory law / state law) if the written law turns out in practice does not meet the sense of justice expected by the justice-seeking community. [20]

Progressive law enforcement is intended to fight for social justice, which in John Rawls' conception[21] is oriented to *the difference principle and the principle of fair equality of opportunity*. The essence of *the difference principle*, is that social and economic differences must be regulated in order to provide the greatest benefit to those most disadvantaged. While *the principle of fair equality of opportunity* refers to those who have the least opportunity to achieve prospects for welfare, income and authority. It is these people who should be given special protection.

For progressive law, social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the weak by presenting empowering social, economic, and political institutions. Second, every law must position itself as a guide to develop policies to correct the injustices experienced by the weak. What the Constitutional Court (MK) has done so far has shown the character of progressive law enforcement. The judges applied not only the principle of *rechtsmatigheid*, but also *doelmatigheid.* Doelmatigheid can be interpreted as harmony that refers to legal goals beyond legal certainty as taught by the principle of legality. Therefore, the judge's approach when conducting legal discovery (interpretation and / or legal construction) must reach to the purpose (*doel*) of the existence of a law, not stop at the formulation of the text. [22]

***Ratio legis* The application of *the Doelmatigheid* principle and *the Rechtmategheid principle* in Indonesia is viewed from the aspect of legal positivism**

Gustav Radbruch suggested that the law must contain 3 (three) identity values, namely the principle of legal certainty (rechmatigheid), this principle is viewed from a juridical point of view, the principle of legal justice (*gerectigheit)*, this principle is viewed from a philosophical angle, where justice is equal rights for all people before the court, the principle of legal expediency (zwechmatigheid) or doelmatigheid or utility. [23] Utrecht suggests that legal certainty contains two understandings, namely first, the existence of general rules that make individuals know what actions can or cannot be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what can be imposed or done by the State on individuals.

This legal certainty comes from Juridical-Dogmatic teachings based on the Positivist school of thought in the legal world which tends to see law as something independent autonomous, because for adherents of this school, the purpose of law is nothing but to guarantee the realization of general law. The general nature of the rules of law proves that law does not aim

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to bring about justice or expediency, but merely for certainty. [24] Legal certainty means the exact law, its subject and object and the threat of its law. However, legal certainty should probably not be regarded as an element that absolutely exists at all times, but the means used in accordance with situations and conditions with regard to the principles of benefit and efficiency. [25]

In the application of the concept of restorative justice as an alternative in solving criminal acts in the jurisdiction of the High Prosecutor's Office, it has been applied for the realization of the law enforcement process carried out by law enforcement officials, especially the Prosecutor as government law enforcer, who has a central position in the criminal justice system and as the holder of the principle of dominus litis, so as to create a legal goal, namely legal certainty (rechtmatigheid), Legal justice (*gerechtigheid*) and legal expediency (*doelmatigheid*) in public life. [26]

The ideal construction of termination of prosecution by the Prosecutor's Office of the Republic of Indonesia

Juridically, the act of stopping prosecution based on restorative justice is a form of prosecutorial discretion by the public prosecutor as well as an embodiment of the principle of dominus litis which emphasizes that no body or institution has the right to carry out prosecutions other than the public prosecutor which is absolute and monopoly. [27]As the controller of the case, the legal direction of the investigation process and whether or not a case can be prosecuted is absolutely the authority of the public prosecutor, as well as in the case of termination of prosecution based on restorative justice. Furthermore, in Article 139 and Article 140 paragraph (2) point b of the Criminal Procedure Code, there are phrases "determine" and "decide" so as to indicate the existence of a legal basis or form of legal certainty over the discretionary authority of the prosecution. Prosecution discretion will balance between the applicable rules (rechtmatigheid) and the principle of expediency (doelmatigheid) to be achieved, so that when a case is stopped from being prosecuted or continued to court, it is expected to create a sense of justice and benefit to all parties. [28]

The termination of prosecutions based on restorative justice is carried out by the Prosecutor's Office to fulfill the sense of justice of the community by balancing between legal certainty (*rechtmatigheid*) and expediency (*doelmatigheid*) in the exercise of prosecution authority based on law and conscience. To address the dynamics of legal developments and the legal needs of the community, the Attorney General of the Republic of Indonesia issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.[29]

Based on the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja Number 15 of 2020 clearly contains how restorative justice seeks to involve perpetrators, victims, and the community in the process of solving criminal cases. In the implementation of the restorative justice approach based on the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020, it can be seen that the regulation focuses on the peace agreement

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between the perpetrator and the victim and how then the procedural law recognizes the existence of the peace agreement as an agreement that has legal force. As a concrete infestation of a criminal paradigm is not for retaliation but as a remedy, the Prosecutor's Office took a strategic step by issuing Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which was promulgated on Bhakti Adhyaksa Day (HBA) July 22, 2020.[30]

In its implementation, the resolution of criminal cases through a restorative justice approach is carried out to optimize the termination of prosecutions based on restorative justice in line with the legal objectives for justice, certainty and expediency considered by the Public Prosecutor proportionately and responsibly.

Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice always prioritizes the purpose of criminal law itself in terms of relative theory or goal theory (*doel theorien*), which is to change one's evil nature into good and no longer put forward absolute theory or theory of retaliation (*vergeldings theorien*) because *restorative justice* carried out by the Prosecutor's Office aims to restore the situation to its original state by improving the relationship between victims and perpetrators of criminal acts.

The conditions for termination of prosecution based on restorative justice at the Prosecutor's Office as described in Chapter III of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice are as follows:

> *"Article 6 of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice explains that the fulfillment of the conditions for termination of prosecution based on restorative justice is used as a consideration for the Public Prosecutor to determine whether or not the case file can be transferred to the court".*

The Public Prosecutor plays an important role as a facilitator for achieving peace between perpetrators of criminal acts and victims where in the peace process with steps and authorities based on the Prosecutor's Regulation on *Restorative Justice*, the steps taken are as follows: 1) Conditions for alternative solutions through *Restorative Justice* it has already been fulfilled first; 2) Summons against criminal offenders and victims; 3) A deliberation process is carried out between the parties, namely the perpetrator of the criminal act / Victim, the family of the perpetrator of the crime / Victim, Witnesses and other people related to the case; 4) The perpetrator admits his mistake and is willing to take responsibility for losses arising from the actions he has committed; 5) The Public Prosecutor facilitates the peace process based on Prosecutor's Regulation Number 15 of 2020 without pressure, coercion, or intimidation from anyone.[31]

In other cases, the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice also contains restrictions on the implementation of restorative justice so that it is not only interpreted as a peace agreement because if so, the process that runs will be stuck in carrying out functions procedurally, so that truth (especially material truth) and justice cannot be achieved. This

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regulation is also considered as a legal substance formulated to eliminate rigid positivism by prioritizing progressive laws labeled restorative justice. Restorative justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state and not retribution.[32]

Based on the provisions of Article 4 of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the authority of the Public Prosecutor in Termination of Prosecution based on Restorative Justice is carried out by taking into account: a. the interests of the Victim and other protected legal interests; b. avoidance of negative stigma; c. avoidance of retaliation; d. community responsiveness and harmony; and e. decency, decency, and public order. In addition to the foregoing, the Public Prosecutor in the Termination of prosecution based on Restorative Justice is also carried out by considering: a. the subject, object, category, and threat of criminal acts; b. the background of the commission of the crime; c. degree of reproach; d. losses or consequences arising from criminal acts; e. *cost and benefit* of handling cases; f. restoration to its original state; and g. peace between the Victim and the Suspect.[33]

CONCLUSION

The results showed that;

a. The settlement of cases that have been implemented in the Prosecutor's Office through alternative *restorative justice* has opened up hope for the community to be able to obtain a sense of justice that can restore peace and harmony in the community, because the settlement of cases that have been carried out through the mechanism of court hearings has not fully touched the sense of justice of the community.

b. For progressive law, social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the weak by presenting empowering social, economic, and political institutions. Second, every law must position itself as a guide to develop policies to correct the injustices experienced by the weak.

c. This legal certainty comes from Juridical-Dogmatic teachings based on the Positivist school of thought in the legal world which tends to see law as something independent autonomous, because for adherents of this school, the purpose of law is nothing but to guarantee the realization of general law. The general nature of the rules of law proves that law does not aim to bring about justice or expediency, but merely for certainty.

d. The termination of prosecutions based on restorative justice is carried out by the Prosecutor's Office to fulfill the sense of justice of the community by balancing between legal certainty (*rechtmatigheid*) and expediency (*doelmatigheid*) in the exercise of prosecution authority based on law and conscience.

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Foot Notes

1) Satjipto Rahardjo, 1983, *Law Enforcement Problems: a Sociological Review*, Bandung: Citra Aditya Bakti, Pp. 23-27;
2) Article 1 point 1 of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia;
3) *Ibid.* p. 2;
4) Tolib Effendi, 2013, *Criminal Justice System,*Yogyakarta: yustisia library, pp. 147-148;
5) Law Number 11 of 2021 ... *Op Cit*, Article 18;
6) Sri Soemantri, 1987, *Procedure and System of Constitutional Amendment*, Bandung: Alumni, pp. 2-3.
7) A. Hamid S. Attamimi, 1994, "*Der Rechtsstaat of the Republic of Indonesia and its Perspectives according to Pancasila and the 1945 Constitution", Paper in a one-day seminar in the framework of the 42nd Anniversary of the University of 17 August Jakarta*, Jakarta, p. 6;
8) Soerjono Soekanto, 2004, *Factors Affecting Law Enforcement Fifth Printing*, Jakarta : Raja Grafindo Persada, p. 42;
9) *Ibid*, pp 208-209;
10) Ronny Hanitijo Soemitro, 1990, *Legal and Jurimetric Research Methodology,* Jakarta : Ghalia Indonesia, p. 106;
11) Zainudin Ali, 2009, *Legal Research Methods,* Jakarta : Sinar Grafika, p. 30;
12) *Ibid*, pp. 97-98;
13) Otong Rosadi &; Aswad Satria, Juridical Implications of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice Against Criminal Suspects, Unes Law Review Volume 5, Issue 1, September 2022, 103.
14) Risnawati Br Ginting, Termination of Prosecution through the Application of Restorative Justice at the Prosecution Level, Locus Journal of Academic Literature Review Volume 2 Issue 10, October 2023, 790.
15) Besse Yusnani et al, Application of the Concept of Restorative Justice as an Alternative in Solving Criminal Cases Case Study at the South Sulawesi High Prosecutor's Office, Journal of Lex Philosophy (JLP), Vol. 3, No. 2, December 2022, 287.
16) Satjipto Rahardjo, Progressive Law, A Legal Synthesis, Genta Pulishing, Yogyakarta, 2009, p. 116
17) Dwi Wahyono, Peace Reconstruction in the Investigation of Traffic Crimes Based on Progressive Law, Journal of Law Reform Volume I No. 3 September – December 2014, 378.
18) Darji Darmodiharjo and Shidarta, Fundamentals of Legal Philosophy: What and How of Indonesian Legal Philosophy, Jakarta: PT. Gramedia Pustaka Utama, 2008, p. 124.
19) Darji Darmodiharjo and Shidarta, Fundamentals of Legal Philosophy: What and How of Indonesian Legal Philosophy, Jakarta: PT. Gramedia Pustaka Utama, 2008, p. 124.
20) Suteki, Alternative Dispute Resolution (ADR) in the criminal justice system, especially minor crimes (TIPIRING). Paper delivered at Polda Jawa Tengah, Semarang, December 1, 2010, p. 7
21) About John Rawls' Theory of Justice can be read in, A Theory of Justice, Harvard University Press, Cambridge, Massachusetts, 1995, which has been translated in Indonesian with the title, Theory of Justice, Basics of Political Philosophy to Realize Social Welfare in a Country, Student Library, Yogyakarta, 2006.

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ISSN 1533-9211

DOI: 10.5281/zenodo.10902410

22) Suparman Marzuki, The Politics of Law Resolving Past Human Rights Violations: Perpetuating Impunity, 190.

23) Achmad Ali. 1996. Unveiling the Law. Yasrif Watampone. Jakarta. p. 65

24) Riduan Shahrani. 1999. Summary of the Essence of Legal Science. Citra Aditya: Bandung. p. 23

25) Toar Neman Palilingan, Challenges and Development of Administrative Efforts in Land Case Resolution, Amanna Gappa, Vol. 31 No. 2, 2023, 103.

26) Bondan Subrata, Mechanism for Termination of Prosecution of Cases for Legal Purposes by Public Prosecutors in the Context of Achieving Restorative Justice, Journal of Rectum Volume: 5, Number: 2, (2023), May : 56 - 69

27) Hari Sasongko, Prosecution and Indictment Techniques, Surabaya, Dharma Surya Berlian, 1996, p.26.

28) Rian Dawansa & Echwan Iriyanto, Termination of Prosecution Based on Restorative Justice, UNISSULA Law Journal Volume 39 No. 1, March, 20.

29) Andri Kristanto, Review of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, LEXRenaissance NO. 1 VOL. 7 JANUARY 2022: 180-193

30) Hanafi Arief, et al, "Application of Restorative Justice Principles in the Criminal Justice System in Indonesia", Al'Adl Journal, Volume X Number 2, July 2018

31) D.S., Dewi and Fatahilah A. Syukur, Penal Mediation: Application of Restorative Justice in Indonesian Juvenile Court, Indie-Publishing, Depok, 2011, p. 4

32) Andi Hamzah, Law Enforcement Against Light-Motivated Crimes with Restorative Justice, Jala Permata Aksara, Jakarta, 2017, p. 19

33) Besse Yusnani et al, Application of the Concept of Restorative Justice as an Alternative in Solving Criminal Cases Case Study at the South Sulawesi High Prosecutor's Office, Journal of Lex Philosophy (JLP), Vol. 3, No. 2, December 2022, 287.

Bibliography

1) Hamid S. Attamimi, 1994, "*Der Rechtsstaat Republik Indonesia and its Perspective according to Pancasila and the 1945 Constitution", Paper in a one-day seminar in the framework of the 42nd Anniversary of the University of 17 August Jakarta*, Jakarta

2) Achmad Ali. 1996. Unveiling the Law. Yasrif Watampone. Jakarta.

3) Andi Hamzah, Law Enforcement Against Lightly Motivated Crimes with Restorative Justice, Jala Permata Aksara, Jakarta, 2017.

4) Andri Kristanto, Review of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, LEXRenaissance NO. 1 VOL. 7 JANUARY 2022

5) Besse Yusnani et al, Application of the Concept of Restorative Justice as an Alternative in Solving Criminal Cases Case Study at the South Sulawesi High Prosecutor's Office, Journal of Lex Philosophy (JLP), Vol. 3, No. 2, December 2022

6) Bondan Subrata, Mechanism for Terminating Prosecution of Cases for Legal Purposes by Public Prosecutors in the Context of Achieving Restorative Justice, Journal of Rectum Volume: 5, Number: 2, (2023)

7) D.S., Dewi and Fatahilah A. Syukur, Penal Mediation: Application of Restorative Justice in Indonesian Juvenile Court, Indie-Publishing, Depok, 2011

The Seybold REPORT

ISSN 1533-9211

DOI: 10.5281/zenodo.10902410

8) Darji Darmodiharjo and Shidarta, Fundamentals of Legal Philosophy: What and How of Indonesian Legal Philosophy, Jakarta: PT. Gramedia Main Library, 2008

9) Dwi Wahyono, Peace Reconstruction in the Investigation of Traffic Crimes Based on Progressive Law, Journal of Law Reform Volume I No. 3 September – December 2014

10) Hanafi Arief, et al, "Application of Restorative Justice Principles in the Criminal Justice System in Indonesia", Al'Adl Journal, Volume X Number 2, July 2018

11) Hari Sasongko, Prosecution and Indictment Techniques, Surabaya, Dharma Surya Berlian, 1996

12) John Rawls can be read in, A Theory of Justice, Harvard University Press, Cambridge, Massachusetts, 1995, which has been translated into Indonesian with the title, Theory of Justice, Basics of Political Philosophy to Realize Social Welfare in a Country, Student Library, Yogyakarta, 2006.

13) Otong Rosadi &; Aswad Satria, Juridical Implications of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice Against Criminal Suspects, Unes Law Review Volume 5, Issue 1, September 2022

14) Article 1 point 1 of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia

15) Rian Dawansa & Echwan Iriyanto, Termination of Prosecution Based on Restorative Justice, UNISSULA Law Journal Volume 39 No. 1

16) Riduan Shahrani. 1999. Summary of the Essence of Legal Science. Citra Aditya: Bandung.

17) Risnawati Br Ginting, Termination of Prosecution through the Application of Restorative Justice at the Prosecutor's Level, Locus Journal of Academic Literature Review Volume 2 Issue 10, October 2023.

18) Ronny Hanitijo Soemitro, 1990, *Legal and Jurimetric Research Methodology,* Jakarta : Ghalia Indonesia

19) Satjipto Rahardjo, 1983, *Law Enforcement Problems a Sociological Review*, Bandung: Citra Aditya Bakti

20) Satjipto Rahardjo, Progressive Law, A Legal Synthesis, Genta Pulishing, Yogyakarta, 2009

21) Soerjono Soekanto, 2004, *Factors Affecting Law Enforcement Fifth Printing*, Jakarta: Raja Grafindo Persada

22) Sri Soemantri, 1987, *Procedures and Systems for Constitutional Change*, Bandung : Alumni

23) Suparman Marzuki, The Legal Politics of Resolving Past Human Rights Violations: Perpetuating Impunity

24) Suteki, Alternative Dispute Resolution (ADR) in the criminal justice system, especially minor crimes (TIPIRING). Paper delivered at Central Java Regional Police, Semarang, December 1, 2010

25) Toar Neman Palilingan, Challenges and Development of Administrative Efforts in Resolving Land Cases, Amanna Gappa, Vol. 31 No. 2, 2023

26) Tolib Effendi, 2013, *Criminal Justice System,* Yogyakarta: judicial library

27) Zainudin Ali, 2009, *Legal Research Methods,* Jakarta : Sinar Grafika