

THE RESTORATIVE JUSTICE APPROACH TO UPHOLDING LAW WITHIN THE FRAMEWORK OF THE PANCASILA LEGAL STATE

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Abstract

Obedying and complying with applicable laws is one of the essence of a rule of law. A country will be able to be a sovereign, strong and respected country by other countries, having prosper society and rapidly developing country if the law enforcement is good. The good law enforcement will create a legal purpose as expected of Indonesian society, namely justice, utility and legal certainty grounded in Pancasila. The rule of law constitutes a principle, a concept that must not only be understood, but also must be practiced and implemented. Concerning the maintenance of the rule of law, the difference between feelings of pity and justice must be eliminated. Accordingly as the middle way of law enforcement, the concept of settlement is offered through a restorative justice approachment.

Keywords: Pancasila, Law Enforcement, Restorative Justice.

1. INTRODUCTION

1.1. Background

In accordance with Article 1, Paragraph (3) of the 1945 Constitution, the Indonesian Constitution declares that Indonesia is a Rechtsstaat following the fourth amendment: “The Indonesian state is a state of law”. (Pemerintah Republik Indonesia, 1945) To become a true legal state, Indonesia must adhere to the rule of law based on Pancasila as the nation's ideology. This implies that all actions taken in the governance of the country, in accordance with the mandate of the law—whether imperative laws, political decisions, or national morals and ethics—must reflect the values of Pancasila.

The values embedded in Pancasila serve as a standard or guideline for living for all layers of society, aimed at realizing the nation's goals of prosperity, peace, civility, and social justice (Kaelan, 2013). Furthermore, Ahmad Basarah, in his book, states that Pancasila is the fundamental norm (*grundnorm*) or the origin of all legal authorities, which is final and authentic (Basarah, 2017).

Additionally, as a consequence of being a legal state, the nation must ensure that all state activities and actions are carried out based on legal regulations. As Aristotle defined, a legal state is one built on the foundation of law, ensuring justice for all its citizens. In this context, justice is the primary element in achieving a happy life for the people.

Legal regulations serve as a reflection of justice in the interactions between members of society. Here, humans do not govern the state; rather, it is the just mind that rules. Humans are granted the authority to uphold the rules and maintain balance (Kusnardi & Ibrahim, 1983).

Pancasila, as the foundation of the state, contains values embodied in its five principles, with its elements deeply ingrained in the Indonesian people as a way of life (*causa materialis*). Pancasila is realized in various aspects of life, including the legal system. As the *Philosophische Grondslag* or the philosophical foundation of the Indonesian state, its essence is that all actors with power in the governance of the nation must be guided by the spirit and values inherent in Pancasila. Pancasila serves as the source of law, (Kartohadiprodjo & Kartohadiprodjo, 2010) that is why Pancasila holds the position of a legal ideal (*the idea of law, rechtsidee*), which serves both constitutional and regulatory functions (Kaelan, 2013).

Gustav Radbruch, a German legal philosopher posited that the goals of law are as follows: (1) fairness; (2) usefulness; and (3) certainty. These three fundamental legal ideals can only be realized through professional legal actions that uphold Pancasila's values by legal enforcers. Professional legal actions aligned with Pancasila's values will foster high public trust in both the law itself and its enforcers. The ideals of legal justice, utility, and certainty, as proposed by Gustav Radbruch, bear similarities to the values embedded in Pancasila, as both emphasize justice and prioritize human rights (HAM). However, Pancasila is far more comprehensive in scope compared to Radbruch's concept of legal objectives. This is because Pancasila encompasses principles of Justice, Unity, Humanity, Democracy, and Divinity, making it broader and more holistic.

Pancasila-based legal jurisdiction, the law enforcement carried out by its officials must take into account the values embedded in Pancasila's principles. Law enforcement actions are a means to achieve legal objectives, and in their execution, all available resources must be empowered to ensure that the law reflects moral values and legal norms. If the law fails to embody moral values and legal norms, it becomes a threat that can undermine the law itself. Law that does not succeed in realizing moral values and legal norms will create a gap and distance between itself and the society. On the contrary, if law enforcement actions can realize these legal values, they will become a benchmark for the legitimacy of the law within the social fabric (Raharjo, 2009).

1.2. Problem Statement

Referring to the explanation above, the research question that serves as the basis for finding solutions to the issue is as follows: How can the concept of law enforcement within the framework of a legal state based on Pancasila be effectively implemented by law enforcement officials?

2. DISCUSSION

When discussing law enforcement, it is also necessary to examine the legal system. Lawrence Meir Friedman states that the legal system consists of three (3) subsystems: legal substance, juridical framework and legal ethos. (Friedman, 2001) Legitimate material is a collection of rules, norms, and the attitudes or behaviors of actors within the system. It can also be understood as a significant body of work in the form of public policy or binding regulations, including laws created by actors within the system (Friedman, 1975).

The legal structure consists of law enforcement institutions and their officers, who are part of the integrated criminal justice system. This system includes the police, who act serving in such capacity; the office of the prosecutor, which serves as the prosecuting authority; the judiciary, which imposes sentences; and correctional institutions, which carry out the sentences. Meanwhile, legal culture encompasses society's attitudes toward the law, the thoughts and expectations underlying the prevailing legal system, and the overall community legal awareness.

In line with the legal structure, Prof. Barda Nawawi Arief argues that the institutions responsible for maintaining order inside the of defendants in criminal cases frequently equated with the criminal law enforcement system, which includes (Arief, 2006):

- 1) The investigative institution, which is the Indonesian National Police (Kepolisian Negara Republik Indonesia);
- 2) The prosecutorial institution, which is the Office of the Attorney General of the Republic of Indonesia (Kejaksaan Agung Republik Indonesia);
- 3) The judicial body, which is the Supreme Court (Mahkamah Agung); and
- 4) The correctional institution, which is the authority responsible for the execution of criminal law.

Quoting further from Barda Nawawi Arief, he asserts that the purpose of law enforcement is to bring about the fulfillment of legitimate aims. Legal intentions are the product of thought by actors in policymaking institutions, which are then formulated into legal regulations. In its implementation, the law plays a crucial role in determining how Law enforcement agents execute the execution of legal statutes (Arief, 2006).

It is further explained that law enforcement is not merely the implementation of legal regulations, nor is it solely the execution of judges' decisions. It is important to clarify that there are several factors that influence the effectiveness of law enforcement (Soekanto, 2011), where these factors are interconnected, specifically:

- 1) Law: This refers to the laws and written regulations established by both central and regional governments, including both provincial and district levels.
- 2) Law Enforcement Officials: These are the personnel tasked with enforcing the law, encompassing law enforcement, prosecutors, the courts, and legal advocates.
- 3) Supporting Facilities and Infrastructure: These are the necessary resources and tools that facilitate law enforcement activities.
- 4) Legal Community: This pertains to the subjects to whom the law applies and who engage in legal processes.
- 5) Culture.

In carrying out law enforcement activities, officials tasked with this duty are expected to realize legal objectives as a consequence of being a legal state. A legal state embodies moral

values, conscience, and a strong concern for its society. Similarly, Indonesia, as a legal state, aims not only to fulfill its governmental responsibilities through the provision of public functions but also seeks to uphold the inherent moral values and strives to maintain and realize these morals. Therefore, the actors involved in the state must conduct their activities with a sense of conscience and possess a high degree of commitment to the nation, while upholding the values of Pancasila (Rahardjo, 2009).

As a Pancasila legal state, the values inherent in Pancasila serve as the fundamental norms for the legal system of Indonesia. Hans Kelsen, in his theory, refers to these fundamental norms as *Grundnorm*. Kelsen effectively illustrates the essence of the legal system as a hierarchical structure of normative relationships culminating in the *Grundnorm*. However, regarding the content of legal norms, Gustav Radbruch provides clarification that the ideals the principles of law include fairness, usefulness, and legal clarity.. In this context, Radbruch positions justice as the crown of the legal system, asserting that justice itself represents a *rechtsidee* (Tanya, 2018).

To achieve the legal objectives grounded in Pancasila, as envisioned by the people of Indonesia, law enforcement officials must implement innovative approaches that respond to the evolving legal needs of society and position justice as the crown of the legal system, as stated by Radbruch, where justice must be accessible to all parties. Furthermore, law enforcement should be able to accommodate the norms that exist within a community as a means of ensuring legal certainty that is beneficial to society.

The settlement of criminal matters through the judicial process in its growth aimed at incarcerating offenders has become the primary sanction for perpetrators of crimes. However, the implementation of imprisonment as a punishment for criminal offenders has led to new issues within society. Therefore, it is expected that law enforcement should not solely focus on incarceration of offenders but should also strive to revert the circumstances to their state before to the commission of the crime. To address these expectations, law enforcement officials (including those within the judiciary, the Indonesian National Police, as well as the prosecutor's office) should adopt an approach that incorporates following the tenets of restorative justice while investigating and prosecuting criminal offenses (Hutahaeon, 2022).

Restorative justice (Kepolisian Negara Republik Indonesia, 2021) it is understood as a form of resolution for criminal acts that involves all parties involved, including the offender, everyone with a stake in the outcome, including victims' loved ones, prominent members of the community, religious and traditional authorities, and others, must collaborate to reach a just resolution through reconciliation, with an emphasis on returning the situation to its pre-crime condition.

Restorative justice serves as an alternate approach for adjudicating criminal matters outside of the courtroom, where ways in which the judicial system for crimes, which typically focus on punishment, are evolved become a method of communication and compromise. This procedure entails collaboration among the culprit, victim, their respective families, and other pertinent parties to establish a fair and equitable conclusion of the criminal case. The emphasis

is on restoring the original state and re-establishing positive relationships within the community. The fundamental principle of the concept of restorative justice revolves around a mutual understanding between victims and offenders., which involves restoring the victim who has suffered due to the criminal act committed by the offender. This can include compensating the victim for their losses, achieving reconciliation, performing community service, or other agreed-upon arrangements. A just law within the context of restorative justice must be impartial, unbiased, not arbitrary, and should uphold always telling the truth in line with the rules, but also taking into account the need of fair pay and maintaining a balanced life in all its elements. In this context, the offender has the community engages in the repair process, contributes to the preservation of peace, and the court is tasked with upholding public order.

The subsequent section will articulate the application of the restorative justice approach within institutions that possess the authority to enforce the law, specifically:

A. The Supreme Court of the Republic of Indonesia.

Supreme Court (Mahkamah Agung) and the judicial bodies beneath it, including those across the board in the judicial system, including secular, religious, military, administrative, and constitutional courts, serve as the implementers of judicial power tasked with enforcing the law and justice. The MA has the authority to adjudicate at the cassation level, review regulations subordinate to laws against the Constitution, and exercise other powers granted by law (RI, 1945). As the executor of judicial power, the Supreme Court of the Republic of Indonesia faces rapid changes in the penal system, where previously punishment was directed solely at the offender. However, there has now been a shift toward prioritizing the restoration of the victim as part of the offender's accountability for their actions. To this end, the MA has instructed all judges within the district courts to implement and apply guidelines for applying healing via law in every resolution of criminal cases.

The guidelines for implementing restorative justice are outlined in Number 1691/DJU/SK/PS.00/12/2020, a Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia, pertaining to the Enforcement of Guidelines for the Application of Restorative Justice. Restorative justice is defined in these standards as an approach to criminal case settlement that includes victims, offenders, and their families, and other relevant parties working together to seek a fair resolution, emphasizing the restoration of the situation to its original state rather than seeking retribution.

Crimes that can be resolved through the restorative justice approach include:

- 1) Misdemeanor Crimes (Tipiring): Misdemeanor crimes, as defined in the Criminal Code (KUHP), are those resulting in losses of less than Rp. 2,500,000. This is regulated in various articles of the Criminal Code, including Article 364 on petty theft, Article 373 on minor embezzlement, Article 379 on minor fraud, Article 384 on dishonest sales practices, Article 407 on property damage, and Article 482 on minor receiving stolen goods.

- 2) **Juvenile Offenses:** A restorative justice strategy need to be the system's first priority when dealing with youth offenders. When dealing with juvenile criminals who are under the age of fourteen, the actions taken should not involve punishment but rather measures outlined in the Indonesian Law No. 11 of 2012 on the juvenile justice system. These measures may include returning the child to their parents/guardians, handing the child over to a responsible adult, treatment at a mental health facility, care at a social welfare institution, mandatory participation in rehabilitation for the offence, loss of driving privileges, and formal education or training programs run by private or public organizations.
- 3) **Cases Involving Women in Conflict with the Law:** In adjudicating cases involving female offenders, judges must apply a restorative justice framework while considering legal facts. The judicial decision should embody legal principles, local traditions, and societal notions of justice to promote gender equality. In instances where women are victims, judges must assess the victim's losses and the case's repercussions, alongside the requirements for the victim's rehabilitation. Judges are obligated to inform victims of their rights to restitution and compensation, and the court must facilitate access to a roster of qualified social workers in collaboration with local social services.
- 4) **Narcotics Offenses:** In narcotics-related crimes, a restorative justice method is applicable solely to addicts, abusers, victims of drug addiction, and persons who have used narcotics for one (1) day. When apprehended, if evidence of drug use is found, restorative justice may be considered:
 - (1) Methamphetamine (shabu): 1 gram
 - (2) MDMA (ecstasy): 2.4 grams = 8 pills
 - (3) Heroin (putaw): 1.8 grams
 - (4) Cocaine: 1.8 grams
 - (5) Marijuana: 5 grams
 - (6) Coca leaves: 5 grams
 - (7) Mescaline: 5 grams
 - (8) Psilocybin: 3 grams
 - (9) LSD (d-lysergic acid diethylamide): 2 grams
 - (10) PCP (phencyclidine): 3 grams
 - (11) Fentanyl: 1 gram
 - (12) Methadone: 0.5 grams
 - (13) Morphine: 1.8 grams
 - (14) Pethidine: 0.96 grams
 - (15) Codeine: 72 grams
 - (16) Buprenorphine: 32 mg

B. The Attorney General's Office of the Republic of Indonesia.

The legal basis for the Attorney General's Office to terminate prosecution via a restorative justice approach is established by Regulation Number 15 of 2020 of the Attorney General of the Republic of Indonesia regarding the Discontinuation of Prosecution Based on Restorative Justice. This regulation outlines the authority of the public prosecutor to terminate cases in the interest of justice when certain conditions are met, including the death of the defendant, the expiration of the prosecution period, *nebis in idem* (double jeopardy), withdrawal or retraction of the complaint, and the resolution of the case outside of court (*afdoening buiten proces*). Regarding the resolution in circumstances outside of court, this procedure is applicable solely to specific criminal acts and necessitates the restoration of the original state through restorative justice to terminate prosecution. The execution of restorative justice as a means of terminating prosecution is contingent upon the following criteria:

- (1) This is the first offense that the suspect has been charged with;
- (2) The maximum penalty for this crime is either a fine or five years in prison; and
- (3) The total amount that might have been lost due to this offense is no more than 2,500,000 rupiah.

In addition to the aforementioned criteria, the following requirements must also be met to discontinue prosecution through the restorative justice approach:

- (1) The suspect has restored the situation to its original state by means of:
 - a) Returning the property obtained from the criminal act to the victim;
 - b) Compensating the victim for their losses;
 - c) Reimbursing the costs incurred as a result of the criminal act;
 - d) Repairing the damage caused by the criminal act.
- (2) There has been a reconciliation agreement between the victim and the suspect; and
- (3) The community responds positively.

However, not all crimes can have their prosecution discontinued through restorative justice. In 2020, the Attorney General of the Republic of Indonesia issued Regulation No. 15 on the topic of restorative justice-based prosecution discontinuance. Specifies certain excluded offenses, namely:

- (1) Criminal offenses that violate state security, the dignity of the president and vice president, friendly countries, chiefs of friendly states and their representatives, public order, and morality;
- (2) Criminal offenses that incur a minimum penalty;
- (3) Environmental crimes; and
- (4) Corporate criminal offenses.

According to the previously specified stipulations, the Attorney General's Office, in discontinuing prosecution through restorative justice, is required to adhere to several considerations, namely: attending to the requirements of the victim and other legal interests that necessitate safeguarding, avoiding negative stigma, preventing retaliation, considering how the community reacts and gets along, and ensuring compliance with morality and public order.

In addition, prosecutors in discontinuing prosecution through restorative justice must consider the subject/object/category/seriousness of the crime, the reasons for committing the crime, the degree of blameworthiness, the losses or consequences arising from the crime, the expenses and advantages of managing the case, the reestablishment of the original condition, and the presence of reconciliation between the victim and the perpetrator.

C. The Indonesian National Police.

As the entity responsible for criminal investigations, the Indonesian National Police (Polri) has the authority to act as investigators and general investigators for all crimes, except for those under the jurisdiction of Civil Servant Investigators (PPNS). Polri is tasked with meeting the demands of evolving legal needs, specifically the need for a just legal system. In law enforcement carried out by Polri, it is essential to consider the values, rules, and customs existing within a society to realize equity, practicality, and constitutional clarity grounded on Pancasila. In line with other institutions that also enforce the law, such as the Indonesian National Police (Polri), the Attorney General's Office, and the Supreme Court of the Republic of Indonesia is also granted the authority to resolve criminal cases using a restorative justice approach. This approach is taken in response to the legal needs of the community, which yearns for justice based on Pancasila. The handling of crimes using the restorative justice approach is outlined in the Police Regulation (Perpol) Number 8 of 2021 concerning the handling of criminal offenses based on restorative justice.

To address situations using the restorative justice approach, certain prerequisites must be fulfilled, encompassing both general and specialized criteria. The overarching needs encompass both material and formal prerequisites, while the specific requirements apply to crimes involving information and electronic transactions, as well as narcotics offenses and traffic violations.

The material requirements include criminal cases that:

- 1) Avoid inciting discontent or community rejection;
- 2) Prevent the emergence of social strife;
- 3) Refrain from fostering national division;
- 4) Are not associated with radicalism and secession;
- 5) Are not recidivists as determined by judicial rulings; and
- 6) Are not associated with terrorism, offenses against state security, corruption, or crimes against human life.

The formal requirements are as follows:

- 1) There has been a reconciliation agreement between both parties, as demonstrated by a written peace accord (except for narcotics offenses);
- 2) The victim's rights have been respected and the offender has fulfilled their responsibilities, as shown by a statement that follows the victim's signed agreement. This includes returning property, compensating for losses, repaying costs incurred as a result of the crime, and repairing damages caused by the crime.

The specific requirements for cases involving information and electronic transactions state that the resolution of such cases through restorative justice can be pursued if:

- 1) The perpetrator of crimes involving information and electronic transactions who spreads unlawful material;
- 2) The offender is prepared to remove the uploaded content;
- 3) The perpetrator expresses regret in a video message posted on social media, requesting the removal of the shared material;
- 4) The offender is open to collaborating with the Indonesian National Police (Polri) investigators for the purpose of conducting future investigations.

Meanwhile, the specific requirements for narcotics offenses include:

- 1) Drug addicts and victims of substance abuse who seek rehabilitation;
- 2) At the time of being caught, evidence of drug use from one (1) day prior is found, with the classification of narcotics and psychotropic substances in accordance with legal regulations, Notwithstanding the lack of proof of any illegal drug use, a positive result for drugs was revealed in the pee test;
- 3) Not engaged in drug trafficking networks, distributors, or traffickers;
- 4) An evaluation has been performed by a comprehensive assessment team; and
- 5) The criminal is prepared to collaborate with the Indonesian National Police (Polri) for further investigation.

The precise criteria for traffic violations encompass:

- 1) Traffic incidents that result in minor injuries and/or material losses to victims are caused by the operation of a motor vehicle in a perilous manner or under hazardous conditions;
- 2) Negligent drivers causing traffic accidents that kill people and destroy property.

For criminal acts that meet the criteria outlined in the formal and material requirements above, the handling can be conducted with an emphasis on restorative justice. If all the material and formal requirements have been fulfilled, the next action taken by the investigator is to terminate the investigation or inquiry.

To terminate a criminal case that is currently being handled, a written application must be submitted to the The national police headquarters' Chief of the Criminal Investigations Bureau (Kabareskrim), the regional police headquarters' Chief of the Police (Kapolda), and the resort police headquarters' Chief of the Police (Kapolres). The application can be submitted by the offender, the victim, the families of both the offender and the victim, or other relevant parties. The application letter must be accompanied by a reconciliation agreement and proof to the restoration of the victim's rights.

If the application letter is deemed complete, the investigator can submit a request for approval to conduct a special case review. The special case review is attended by the investigator handling the case, the supervising investigator, internal oversight functions, professional and security functions (Propam), and legal functions. Additionally, it must be attended by the reporter or the reporter's family, the reported party or the reported party's family, or representatives from community leaders, religious figures, traditional leaders, or stakeholders (Kepolisian Negara Republik Indonesia, 2021).

3. CONCLUSION

Based on the SLR using PRISMA protocol, this paper selected and analyze scholars' findings in 24 studies. The analysis of those 24 articles through a synthesize method discovered that the need to create qualified-products closely depends on the management of customer's satisfaction. The levelling of customer's satisfaction itself has been studied by numerous studies on the Kano Model.

In light of the Kano Model to achieve customer's satisfaction, it is suggested that manufacturers, producers or creators of products have to consider, at least, six factors: understanding customer need, optimizing product design, management of quality, product operation/functionality, compliance, and after-sales service.

By synthesizing those factors, the results of this study reveals that each of those six factors has several parameters to be followed in order that a product gains and sustains satisfaction from its customer, which is considered within the "One-dimensional" level or "Attractive" level in the Kano Model concept. Indeed, the Kano Model guides other models of quality management for the purpose of achieving customer's satisfaction.

Nonetheless, the most important finding in this study is that compliance can be actually used to achieve customer's satisfaction, and therefore, compliance management for the purpose of managing product quality to satisfy customers can be considered as a novelty to be studied further..

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