

THE APPLICATION OF *RESTORATIVE JUSTICE* AS A LEGAL GOAL (JUSTICE, UTILITY, CERTAINTY) IN THE JURISDICTION OF THE CENTRAL JAVA HIGH PROSECUTOR'S OFFICE

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Abstract. This paper aims to provide an understanding of the application of *restorative justice* as a legal goal (justice, utility, certainty) in the jurisdiction of the Central Java High Prosecutor's Office. Ideally, law enforcers in enforcing the law must be able to realize three (3) basic values of the law, or often referred to as legal goals, namely justice, usefulness, and certainty for the community. As for the stipulation of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, it is hoped that it will be able to provide justice, usefulness and legal certainty for the community, especially for those who are in legal proceedings.

Keywords: Restorative Justice, Central Java High Prosecutor's Office, Legal Objectives

I. INTRODUCTION

Indonesia, as a country based on law, regulates the process of state and society through the rules of law. Rules regarding procedures for handling criminal acts or crimes are regulated in the formal criminal law or criminal procedure law contained in Law Number 8 of 1981 concerning the Criminal Procedure Law. Meanwhile, the rules and formulations regarding crimes or criminal acts as well as their sanctions are regulated in material criminal law sourced from the Criminal Code.

In the process of criminal law enforcement carried out by the investigating agencies of the Police, the Prosecution Agency at the Prosecutor's Office, court institutions, as well as Detention Houses and Correctional Institutions in various districts and cities, data was found that although the pattern of handling crimes using the current formal law has been implemented, crimes still occur frequently.

The most common crime in Indonesia is conventional crime. Most of these crimes are driven by the problem of meeting the needs of daily life. Theft, embezzlement, and fraud are types of crimes that often occur with the main causes of weak economic conditions of criminals, lack of adequate job availability, and weak public awareness of the law. Therefore, against this background, crimes against property are still the most frequently committed crimes. To overcome this, a better law enforcement process is needed in the future with a restorative justice approach based on conscience and a sense of justice.

Gustav Radbruch identified justice, utility, and certainty of law as the three basic ideas or main goals of law, which can also be considered legal principles. A verdict or court decision must be in accordance with the law because the judge is required to adjudicate based on the law. In addition, the verdict must also reflect fairness, objectivity, and impartiality. Therefore, the ideal verdict is one that contains justice, utility, and legal certainty proportionally. (Nikolas & Dewi, 2023) Among the three principles, the one that is often the main highlight is justice. Friedman mentions that, "*in terms of law, justice will be judged as how law treats people and how it distributes its benefits and costs*". Friedman also stated that, "*every function of law, general or specific, is allocative*." Paying attention to this background, the author is interested in raising the problem that will be found a solution, so that in the future law enforcement carried out by the Central Java High Prosecutor's Office will be able to realize justice, usefulness, and legal certainty for the community. The problem that the author will raise is how to implement the implementation of *restorative justice* as a legal goal (justice, utility, certainty) in the jurisdiction of the Central Java High Prosecutor's Office and what is the positive impact of the implementation of the concept of *restorative justice* in the jurisdiction of the Central Java High Prosecutor's Office;

II. RESEARCH METHOD

This research method uses a qualitative approach with descriptive-analytical methods to understand the application of

restorative justice in the jurisdiction of the Central Java High Prosecutor's Office. Primary data was obtained through in-depth interviews with prosecutors, perpetrators of crimes, victims, and the surrounding community who are involved or affected by the implementation of restorative justice. In addition, direct observation of the restorative justice process at the Central Java High Prosecutor's Office was carried out. Secondary data is collected from the official documentation of the Prosecutor's Office, related laws and regulations, legal literature, and academic journals. The data analysis techniques used include data reduction, data display, and conclusion drawn. To ensure the validity and reliability of the data, this study uses triangulation of sources and methods. The ethical aspect is maintained by obtaining permission from the research subject, maintaining identity confidentiality, and using data only for research purposes. This method provides a comprehensive overview of the effectiveness of the implementation of restorative justice in achieving legal goals, namely justice, usefulness, and legal certainty in society.

III. RESULTS AND DISCUSSION

Implementation of the Implementation of Restorative Justice as a Legal Purpose (Justice, Utility, Certainty) in the Jurisdiction of the Central Java High Prosecutor's Office
The Theory of Legal Goals (Justice, Utility, Certainty)
According to Gustav Radbruch.

Gustav Radbruch, a German philosopher, taught the existence of three basic ideas of law, which most experts in legal theory and legal philosophy, also identified as the three goals of law, namely justice, utility, and legal certainty. (Ali, 2010)

According to Gustav Radbruch, justice, legal certainty, and usefulness (Gerechtigkeit, Rechtssicherheit, Zweckmäßigkeit) are three terms that are often discussed in lecture halls and courtrooms. However, the essence is not necessarily understood or agreed upon in its meaning. Justice and legal certainty, for example, seem to be opposites, but they may not be either. Justice can be an analogous term that includes various forms such as procedural justice, legalist justice, commutative justice, distributive justice, vindictive justice, creative justice, substantive justice, and so on. In this context, justice and legal certainty are not opposite, but side by side. Justice and legal certainty are two axiological values in law. The discourse of the philosophy of law often questions these two values as if they are antinomies, so that the philosophy of law is interpreted as the search for certainty justice or the certainty of justice. (Sidharta & Negara, 2010)

Gustav Radbruch's view is generally interpreted as legal certainty does not always have to be prioritized in every positive legal system. He corrected his theory by stating that the purpose of law, namely justice, legal certainty, and utility, has an equal standing. Radbruch emphasized that good law is a law that contains the values of justice, legal certainty, and utility. Although all three are basic legal values, each has different and potentially conflicting demands, causing tension between them.

According to Radbruch, the law must be a measure for the fairness of the legal system. Therefore, the value of justice is also the basis and moral foundation for the law. Justice functions as a benchmark for the positive legal system, so positive law must be based on justice. Justice is also constitutive because without justice, the law is just a rule that does not deserve to be called law.

In realizing the purpose of law, Radbruch stated the need for a priority principle among the three basic values of law. In practice, legal justice often clashes with the usefulness and certainty of the law, and vice versa. Therefore, when a collision occurs, one of the values must be sacrificed. Radbruch proposed the following order of priorities: Legal Justice, Legal Benefits, Legal Certainty

Legal certainty, as one of the goals of law, is part of efforts to realize justice. The real form of legal certainty is consistent law enforcement regardless of who commits the action. Legal certainty allows everyone to estimate the consequences of a particular legal action and is necessary to realize the principle of equality before the law without discrimination. Certainty is a characteristic that cannot be separated from the law, especially for written legal norms. Laws without certainty will lose their meaning because they cannot be used as a guideline of behavior for everyone.

This theory can be considered in the formation of legal rules, especially in handling general criminal cases with simple legal construction and very small losses. In this context, the priority legal goal is to realize legal justice, followed by legal benefits, and then legal certainty.

The Concept of Termination of Prosecution Based on Restorative Justice

In President Joko Widodo's Vision for Indonesia for 2019 – 2024, it is stated that his Vision includes 5 categories, namely: Accelerating and continuing infrastructure development. Human Resource Development (HR). Invite the widest possible investment to open up jobs. Bureaucratic reform. A focused and targeted state budget.

This is further followed up with the Attorney General's Daily Order in 2021, which is as follows: Fully support government policies in handling Covid-19 and national economic recovery according to the provisions. Use conscience in every implementation of duties and authority. Create innovative and integrated works that can improve public services. Realize the Digital Prosecutor's Office in the implementation of information technology management and the Prosecutor's Office one-data system. Strengthen the principle of dominus litis in every formation of legislation. Immediately synergize the role of prosecution and handling connectivity cases at the Deputy Attorney General for Military Crimes. Maintain the dignity of the institution by working intelligently, with integrity, professionalism and conscience.

In order to implement President Joko Widodo's Vision related to bureaucratic reform and describe the Attorney General's Daily Order, especially in number 2, namely Use conscience in every implementation of duties and authorities and number 5, namely Strengthen the principle of dominus litis in every formation of laws and regulations, the Prosecutor's Office of the Republic of Indonesia has issued the basis of legal

rules that regulate restorative justice as outlined in the Prosecutor's Regulation of the Republic Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

The word "*Restorative Justice*" is used as an umbrella to describe a variety of programs that can see criminal acts and respond with a restorative perspective. Focus *Restorative Justice* is to repair losses caused by crimes, involve victims, see the responsibility of perpetrators, and prevent similar losses in the future. According to John Braithwaite, the main goal *Restorative Justice* is the repair of wounds caused by the actions of the perpetrator and reconciliation and reconciliation among the victims, perpetrators and the community. Such methods will create a sense of shame and personal and family responsibility for their wrongdoings to be adequately corrected (Rochaeti, 2015) The mediation form of *Restorative Justice* It does not always result in compensation, it can also be everything that is basically agreed by the victim and the perpetrator.

Ideally, law enforcers in enforcing the law must be able to realize three (3) basic values of the law, or often referred to as legal goals, namely certainty, justice, and usefulness for society. The enactment of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice is expected to be able to provide justice, usefulness and legal certainty for the community.

Ideally, in enforcing the law, law enforcers must be able to realize three (3) basic values of the law, or often referred to as legal objectives, namely justice, usefulness and legal certainty (Hutahaean & Indarti, 2019). For this reason, by stipulating Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. It is expected to be able to provide justice, usefulness and legal certainty for the community, especially for those who are in legal cases.

Gustav Radbruch called justice, usefulness and certainty of law as the three basic ideas of law or the three purposes of law, and can also be equated with legal principles. A verdict or court decision must be in accordance with the law because the judge must adjudicate based on the law. The verdict must also contain fairness, objectivity and impartiality. Therefore, the ideal verdict is one that contains justice, usefulness, and legal certainty proportionally. (Sidharta & Negara, 2010)

Some important things regulated in the Indonesian Prosecutor's Regulation Number 15 of 2020 are as follows:

Article 4

1. The termination of prosecution based on restorative justice is carried out by taking into account: a. The interests of victims and other protected legal interests; b. Avoidance of negative stigma; c. Avoidance of retaliation; d. Response and harmony of the community; e. Propriety, decency, and public order.
2. The termination of prosecution based on restorative justice as intended in paragraph (1) is carried out by considering: a. Subjects, objects, categories, and threats of

criminal acts; b. Background of the occurrence/commission of the crime; c. The level of reprehension; d. Losses or consequences arising from criminal acts; e. Cost and benefit of handling cases; f. Recovery returns to the original state; and g. There was peace between the victim and the suspect.

Article 5

1. Criminal cases can be closed for the sake of law and the prosecution can be stopped based on restorative justice if the following conditions are met: a. The suspect is the first time to commit a criminal act; b. Criminal acts are only threatened with a fine or threatened with imprisonment for not more than 5 (five) years; and c. The criminal act is committed with the value of evidence or the value of losses incurred as a result of the criminal act not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).
2. For criminal acts related to property, in the event that there are criteria or circumstances of a casuistic nature that according to the consideration of the public prosecutor with the approval of the Head of the District Attorney's Branch or the Head of the District Attorney's Office, the prosecution may be terminated based on restorative justice while still paying attention to the conditions as intended in paragraph (1) letter a accompanied by either letter b or letter c.
3. For criminal acts committed against persons, bodies, lives, and the freedom of persons, the provisions as intended in paragraph (1) letter c may be exempted.
4. In the event that the criminal act is committed due to negligence, the provisions in paragraph (1) b and c may be excluded.
5. The provisions as referred to in paragraphs (3) and (4) do not apply in the event that there are criteria/circumstances of a casuistic nature that, according to the consideration of the public prosecutor with the approval of the Head of the District Prosecutor's Branch and the Head of the District Attorney's Office, the prosecution cannot be stopped based on restorative justice.
6. In addition to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the termination of prosecution based on restorative justice is carried out by fulfilling the following conditions: a. There has been a restoration to the original state carried out by the suspect by:
 - a. Return goods obtained from criminal acts to the victim;
 - b. Compensate the victims;
 - c. Reimbursing costs incurred as a result of criminal acts; and/or
 - d. Repairing damage caused by criminal acts; b. There has been a peace agreement between the victim and the suspect; and c. The community responded positively.
7. In the event that the victim and the suspect agree, the condition of restoration to the original state as referred to in paragraph (6) letter a can be waived.

8. Termination of prosecution based on restorative justice is excluded for the following cases: a. Criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their deputies, public order, and morality; b. Criminal acts that are threatened with minimal criminal threats; c. Narcotics crimes; d. Environmental crimes; and e. Criminal acts committed by corporations.

Implementation of Termination of Prosecution Based on Restorative Justice at the Central Java High Prosecutor's Office.

In the jurisdiction of the Central Java High Prosecutor's Office, the termination of prosecution based on restorative justice has been implemented to fulfill the sense of justice in the community, provide legal certainty, reduce the accumulation of cases in court, as well as recover victims' losses and prevent criminal offenders from prison sentences. Based on available data, from 2020 to June 2022, the Central Java High Prosecutor's Office has stopped the prosecution of 53 cases.

The termination of this prosecution is carried out on the basis of conscience and consideration of the sense of justice in the community, by paying attention to the interests of the victims, avoiding negative stigma, preventing retaliation, responding to and maintaining community harmony, and considering propriety, decency, and public order. The process of terminating the prosecution considers the subject, object, category and threat of the crime, the background of the crime, the level of reprehension, the loss or consequences caused, *the cost and benefit* of handling the case, the restoration of the original situation, and the existence of peace between the victim and the suspect.

The termination of prosecution is also considered if the suspect commits a criminal act for the first time, the criminal act is only threatened with a fine or imprisonment of not more than five years, and the value of losses due to the criminal act is not more than Rp. 2,500,000,-. In addition, the termination of prosecution is carried out if the suspect has returned the goods obtained from the crime to the victim, compensated the victim's losses, reimbursed the costs incurred, repaired the damage, and there was a peace agreement that was positively welcomed by the community.

The process of terminating the prosecution based on restorative justice is carried out when the suspect and evidence from the investigator are sent to the public prosecutor, through deliberation between the victim and the suspect to reach an agreement. Furthermore, reporting is carried out in stages from the public prosecutor to the Head of the District Attorney's Office, the Head of the High Prosecutor's Office, and the Attorney General's Office.

The positive impact of the implementation of the concept of restorative justice in the jurisdiction of the Central Java High Prosecutor's Office.

Based on the positive law currently in force in the criminal justice system, the pattern of handling criminal cases, including minor crimes, still has a number of negative impacts or fundamental weaknesses. *First*, as an effort to overcome symptoms, the use of criminal law means to overcome criminal

acts only treats symptoms after the criminal act has occurred. *Second*, complex negative impacts such as *Stigmatization*, *Dehumanization* and *Imprisonment* become a social problem that is difficult to overcome. *Stigmatization* related to the legal awareness of the community who tend to label the perpetrators of criminal acts negatively. *Dehumanization* Demand public legal awareness to accept back the perpetrators of criminal acts after they have served their sentences. *Imprisonment* requires adequate facilities and infrastructure from correctional institutions and requires sufficient supervision to ensure effective and humane criminal execution.(Sunaryo, n.d.)

Facts obtained in the field show that the application of positive laws related to the handling of minor crimes in Indonesia currently has a negative impact on criminals. One of them is the length of the legal process starting from investigations, prosecutions, to trials in court, which causes the accumulation of cases and delays in court decisions. While waiting for the legal process, the perpetrator of the crime can be in custody in the State Detention Center for about 2-3 months. As a result, after the case is decided in court, they can be sentenced to prison in the Correctional Institution.

This system also results in excess capacity in Correctional Institutions, reaching 200-300% of its normal capacity. This condition hampers the effectiveness of the correctional process for convicts. Convicts are also psychologically disturbed, they miss their families left behind and are involved in new communities with various social backgrounds, which can worsen their social situation within institutions. After serving their prison sentences, without adequate social security, they risk facing economic problems that push them back into the path of crime. In addition, the negative stigma from society towards former inmates is difficult to remove, making it difficult for them to be readmitted into society.

In an effort to implement President Joko Widodo's Vision regarding bureaucratic reform and pay attention to the Attorney General's Daily Order, especially in emphasizing the use of conscience in the implementation of duties and authorities, as well as number 5 which emphasizes the strengthening of the principle of *dominus litis* in the formation of laws and regulations, the Prosecutor's Office of the Republic of Indonesia has issued Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. With the implementation of the termination of prosecution based on restorative justice, several positive impacts have been felt in the handling of cases, including:

- The avoidance of criminals from prison sentences and the negative stigma it causes.
- The recovery of the losses suffered by the victims from the crimes that befell them.
- The creation of peace between victims and perpetrators of crimes through deliberation.
- The accumulation of cases that must be tried in court is reduced and the number of inmates in correctional institutions is reduced.

- e) Saving the state budget in handling cases as well as costs for the living needs of convicts in correctional institutions.
- f) Criminals who are the backbone of the family can still provide for their families because they are not sentenced to prison.

The application of the termination of prosecution based on restorative justice with a conscience has fulfilled the sense of justice in the community

IV. CONCLUSION

Implementation of the Implementation of Restorative Justice as a Legal Purpose (Justice, Utility, Certainty) in the Jurisdiction of the Central Java High Prosecutor's Office. The Prosecutor's Office of the Republic of Indonesia has issued Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. In the jurisdiction of the Central Java High Prosecutor's Office, the termination of prosecution based on restorative justice has been implemented to fulfill the sense of justice in the community, provide legal certainty, reduce the accumulation of cases in court, as well as recover victims' losses and prevent criminal offenders from prison sentences. Based on available data, from 2020 to June 2022, the Central Java High Prosecutor's Office has stopped the prosecution of 53 cases. Positive Impact of the Implementation of the Restorative Justice Concept in the Jurisdiction of the Central Java High Prosecutor's Office. The avoidance of criminals from prison sentences and the negative stigma it causes. The recovery of the losses suffered by the victims from the crimes that befell them. The creation of peace between victims and perpetrators of crimes through deliberation. The accumulation of cases that must be tried in court is reduced and the number of inmates in correctional institutions is reduced. Saving the state budget in handling cases as well as costs for the living needs of convicts in correctional institutions. Criminals who are the backbone of the family can still provide for their families because they are not sentenced to prison. The application of the termination of prosecution based on restorative justice with a conscience has fulfilled the sense of justice in the community

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