THE PRACTICE OF APPLYING THE CONCEPT OF RESTORATIVE JUSTICE IN LAW ENFORCEMENT IN INDONESIA

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Abstract *– Since the introduction of Restorative Justice in Indonesia through the Juvenile Criminal Justice System, there has been a strong wave of pressure to be applied to Material Criminal Law. Thus, law enforcement institutions are competing to issue rules regarding Restorative Justice. In the end, the concept of Restorative Justice has different meanings. Thus, it impacts the occurrence of differences in law enforcement. This article aims to find an ideal model for applying the concept of Restorative Justice in the realm of criminal law enforcement in Indonesia. Based on this, the limitation of the problem in this study is "How to formulate legal praxis actions concerning handling criminal cases based on the concept of Restorative Justice? This research was carried out using qualitative methods through conceptual approaches, legal approaches, and case approaches, as well as philosophical approaches. The results of this study show the need for a legal umbrella for the concept of Restorative Justice in the form of laws and the granting of authority to the Public Prosecutor to determine the implementation of Restorative Justice since starting from the realm of Investigation.*

Keywords*: Restorative Justice, Law Enforcement, Procedural Law, Public Prosecutor.*

1. INTRODUCTION

The Indonesian nation, since the beginning of independence, has accommodated the principle of the rule of law as an integral part of the legal system in Indonesia through the constitution in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945). As a result, the meaning of this does not stop at the meaning that state administration must be based on law alone [1]. However, furthermore, the State has the obligation to form a State Life Policy—in addition to the obligation to form a Social Life Policy, through the determination and formulation and design of laws and regulations based on spiritual nuances—contextually, by accommodating written rules and unwritten rules. In fact, the State in relation to the legislative activity, must determine two things simultaneously and simultaneously, namely the institution / organ of government charged with carrying out the mandate of the law and determining the "how" to enforce the law[2].

Legal discourse, both theoretically and *practically*, today continues to experience the development of thought that leads to the humanization of law, especially Criminal Law [3]–[5]. Where, in Criminal Law, it does not only dwell on the problem of developing Criminal Law as part of Legal Science. However, it is closely related to the implementation of theoretical studies that underlie the occurrence of criminal processes and decisions. Therefore, a punishment that is seen by society, as the final stage of the work of the Criminal Law in society.

In this position, academics and practitioners of criminal law, often forget that the criminal justice process is a battle between man and man[6]. Thus, the impact on the occurrence of a criminal act both on the victim and on the community becomes neglected to be studied comprehensively. The smell of retribution as a result of the retributive paradigm which is the paradigm of punishment[7] becomes a *common sense* thing.

Trans positional behavior of the State towards the interests of victims[8] In conducting investigations, prosecutions and convictions in the end, it has a detrimental impact, not only for the rotation of the wheels of state administration, but much greater is the shift in social relations in Indonesian society. It is undeniable that punishment based on the retributive paradigm has torn the "principle of harmony" contained in the State of Pancasila Law. Thus, collective social relations turned into individualist social relations, which were marked by the emergence of a "culture of suing" and a "culture of reporting"[9] and eradicate the social influence of community leaders in solving social and legal problems.

However, there is a thesis that this only happens in big cities. However, it is inevitable that there is a pattern of performance of law officers under the auspices of government function administration institutions—including advocates. Where, the common sense logic that is still dominated by the Paradigm of Legal Positivism makes the main factor[10] The occurrence of the split in social relations. The paradigm gap in law and law (*berrechten*) has been felt since the beginning of the independence of this nation. Where, the lack of Human Resources (HR) in the field of Law and the inequality of knowledge sources[11], which is then justified through the principle of concordance, also contributes to perpetuating the establishment of the Paradigm of Legal Positivism, through the inability to transform the living law into the main source of law.

Unawareness of the negative impacts of law and law (*berrechten*) based on the absolute Paradigm of Legal Positivism, since the last 2 (two) decades has raised various problems in the criminal justice process, one of which is the problem of stacking cases that occur not only at the level of investigation and prosecution, even to the resolution of cases in the Supreme Court. Thus, there are efforts to resolve legal problems quickly, which in turn correlate with the occurrence of overcrowding in Prisons (LAPAS) or *overcrwoded*.[9]

The problem of the 'reporting culture' that led to a backlog of cases and led to *overcrowding* in prisons has led to the use of a huge – albeit still insufficient—State Budget. On the social relations side, there has been disharmony in social relations with the emergence of stigmatization (*labelling*) to the perpetrators[12] who atoned for his sins through the execution of punishment.

The unique thing is that it turns out that the condition is already global and universal. Almost all countries in the world, since the XIX century, began to feel the same problem in the process of working the Criminal Justice System[13], [14]. So, it is not surprising that it then raises an *anomaly* in crisis conditions to shift the Retributive Paradigm as normal *science* with the emergence of a new paradigm, namely *Restorative Justice*. The *Restorative* Justice paradigm, in the end, is seen as a concept that attempts to restore the Criminal Justice System[15]. However, the global convention to apply the concept of Restorative Justice has problems in the realm of praxis associated with the diversity of conceptions of the concept of Restorative Justice.

In addition to the problem of praxis problems associated with the diversity of conceptions of the Restorative Justice Concept, other problems in the application of Restorative Justice also occur in its application, recently suspected of being a material for buying and selling law enforcement officials. The emergence of this problem is because the regulation for the implementation of Restorative Justice in Indonesia is still partial by each law enforcement officer, namely the Chief of Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Prosecutor's Regulation No.15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Decree of the Director General of the General Court Agency (*Dirjen Badilum*) of the Supreme Court No.1691/DJU/SK/PS.001/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice.

With the condition of the rule that is still partial, it has the potential to result in various practices of implementing Restorative Justice, and one of them is confusion about what criminal acts RJ can commit. As a result, the problems that arise can reflect legal uncertainty for the community.

Despite the problems as above, so far the application of restorative justice carried out by the Police and Prosecutor's Office is quite significant, in the 2021 period at the investigation stage there were 14,137 cases. Meanwhile, at the prosecution stage, there were 338 cases. Meanwhile, in the 2022 period, there were 15,809 cases in the investigation stage and 1,454 cases in the prosecution stage,

but the large quantity of Restorative Justice Implementation is still not in line with the praxis concept which is associated with the diversity of conceptions of the Restorative Justice Concept.

2. PROBLEM STATEMENT

Based on the descriptions mentioned above, it is important to ask the question "How to formulate legal *praxis* actions in relation to handling criminal cases based on the concept of *Restorative Justice* in Indonesia?"

3. RESEARCH METHODS

This research uses a legal *research method* with a qualitative approach that uses a model of approach methods in legal science, namely the legal approach, conceptual approach, and case approach. The subject of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. Thus, legal research focuses on the inventory of positive law, legal principles and doctrines, legal findings in cases *in concreto*, legal systematics, levels of synchronization, comparative law and legal history.[16]

4. RESULTS AND DISCUSSION

4.1 Legal Politics the Concept of *Restorative Justice* in the Framework of Law Enforcement Based on *Idee des Recht* and the State of Pancasila Law

An understanding or definition of something is the most important thing in studying law. Even understanding the meaning of the law itself is very important. Although we all realize that every jurist is always never the same in giving a definition of a term. This is because of the subjective view that is influenced by the processing of knowledge that exists in him. So that each jurist will provide different views based on their point of view and knowledge. However, an understanding or definition has a fairly important position in the Science of Law.

Only by understanding an understanding of the various views of jurists, will we get a complete picture of a term. Where the description describes to the observer of the law, that he will be led to an atmosphere and situation as intended by the term. The description of the meaning of a term will provide a description to the reader not only of the meaning of the term but also the functions and goals to be achieved or expected of the term. So it will require the ability to process the links in the field of law that are decomposed from a term.

In this study, as one of the principles that will be used as an analysis knife for researchers is the principle of the State of Law. From the terminology, we can clearly detect that the term is a merger of two terms, namely State and Law. Thus, there will be no comprehensive understanding of a person when he does not have knowledge of what is "State" and what is "Law". However, the researcher will not go into detail about the definition of the term "State".

Regarding the understanding of the State of Law, in some literature there are many Legal Experts who provide understanding. According to Mochtar Kusumaatmadja[17], The meaning of a state based on law is that power is subject to law and all people are equal before the law. Meanwhile, Sudargo Gautama[18] explain the definition of the State of Law is a state, where individuals have rights to the state, where human rights are recognized by law, where to realize the protection of these rights state power is separated until the organizing body, law-making body and judicial body are in various hands, and with the composition of judicial bodies that are free of position, to be able to provide proper protection to everyone who feels their rights are harmed, even if this happens by the state's own tools. Daniel S. Lev[13], [19], [20] Then explained that the meaning of the rule of law is a state based on the division of power aimed at weakening political elites.

The debate over the concept of the rule of law is a classic debate that has never been resolved until now. Although a classic debate, this concept deserves to be studied continuously academically, considering that this concept always changes along with the times. The rule of law is the *rechtsidee* (mind of law) of a state that departs from the soul of a nation. Its characteristics depend on the values and norms of a nation that form the identity of the nation. The development of this identity meaning demands the elasticity of the concept of the rule of law so that it is timeless[21].

In accepting the influence of foreign cultures, the Indonesian people for centuries succeeded in carrying out the acculturation process, namely to Hindu and Islamic culture in particular. As for western culture, namely modern culture and globalization, a similar process is still ongoing. Especially in facing and responding to modern culture and globalization, which hits all nations on earth, our nation must be extra careful. The reason is that modernity and globalist are based on their own philosophy and ideology. Therefore, it should be understood that in cultural interaction it is not impossible that there will be an ideological, even philosophical, struggle and struggle. The philosophy of Pancasila itself has specific ways of accepting and processing the influence of foreign ideologies and philosophies, namely the ***eclectic-incorporation*** method. That is, the processing of values from outside into the property of the Indonesian nation while still based on the principle of Pancasila. Indeed, such a process has been going on since the beginning of the XIX century with the recognition of modern concepts such as humanism, democracy, nationalism, and socialism. Pancasila itself which was formulated definitively since June 1, June 22, and August 18, 1945 is not free from outside ideological influences, as evidenced by its precepts that adopt modern concepts[22]. The Proclamation of Independence on August 17, 1945 by the leaders of the Indonesian nation on their own initiative and responsibility without formally giving authority to it, but solely motivated by the will to present the Indonesian nation in the world as an independent nation, then at that time there was a revolutionary legal formation in Indonesia.

However, what existed at that time was an unwritten legal order that had not yet shown a clear form and which required further pemositivan. On August 18, 1945, the basic Law was enacted which gave a legal form to the administration of life as an independent nation. With the formation and enactment of the 1945 Constitution, a national legal order was formed that still requires pemositivan into various sets of positive legal rules (legal system)[23].

Sudarta Gautama, for example, gave a view, by equating the term State of Law with *the rule of law*. Similarly, Moch's view. Kusnardi asserted that the rule of law is the same as the rule *of law*. While Indonesian legal figures who use the term *rechsstaat* to describe the Indonesian State of Law include Djokosoetono and M. Yamin.[24] As for Otje Salman and Anton F. Susanto, basically our country has adopted the understanding of the Welfare Law State / *welfare state*, as contained in the Preamble of the 1945 Constitution in the fourth paragraph.[25] Meanwhile, according to Sumrah explained that for Indonesia, the term that is now popular is *the rule of* law is nothing but its content and conception than *rechtsstaat*, *Etat de Droit*, State or government based on law.[26] While the firmer views expressed by Oemar Seno Adji and Padmo Wahyono tried to give birth to their own concept of a typical Indonesian state of law which he called the Pancasila Law State.[27]

To answer this problem, we should return to the view of the philosophy of life of the Indonesian nation contained in the Fourth Paragraph of the Preamble of the 1945 Constitution, as a form of Indonesian Legal Politics which later gave rise to the Indonesian Legal System. It is further affirmed in the Preamble Paragraph of the 1945 Constitution, which affirms "Then from that to form an Indonesian State Government that protects the entire Indonesian nation and all Indonesian bloodshed and to "promote general welfare", educate the life of the nation, and participate in implementing world order based on independence, lasting peace and social justice, the Indonesian National Independence was drafted in a Constitution The State of Indonesia, which is formed in a structure of the Republic of Indonesia that is sovereign of the people based on the One and Only God, just and civilized humanity, Indonesian Unity and Peoplehood led by *wisdom in Consultation/Representation, and by realizing a social justice for all Indonesian people*. "

Based on the editorial "*advancing general welfare*", Azhary emphasized that the concept of the Indonesian legal system is closer to the concept of the State of Welfare Law [26], [28]. In line with these views, Bernard Arif Sidharta further explained that the leadership and organizing element of the political organization is called the government. The government is positioned as *primus inter pares* (not as the owner or ruler of the state and the people), as the pamong, who has the task of leading the community in organizing social and state life, especially in striving to realize the goals of statehood, and as such is obliged to participate the people in the rational decision-making process in

realizing a just and prosperous society. So, the government it is the organization of rational decision-making coordination centers to realize the goals of the state[13].

Against this view, according to Ria Casmi Arrsa[29], that by establishing Pancasila as alegal ideal (*rechtsidee*) as well as a fundamental norm of the state, the direction and goals of development in Indonesia within the theoretical and practical framework cannot be separated from Pancasila as a constitutive legal mind and spirit. So that Pancasila becomes the basis for the validity of the formation of legal norms in the legal norm system in Indonesia. Therefore, Pancasila as a Legal Paradigm (Philosophy) has its own characteristics.

As a philosophy, Pancasila as the basis for the formation of the principle of the rule of law in Indonesia, has the object of study is Indonesian people. When talking about Pancasila's view of humans, the essence will not be separated from Notonagoro's opinion[30] which explains that Indonesian Man is a monopluralist being, namely first, based on the position of Indonesian Human nature which consists of being a personal being standing alone as well as a creature of God; second, based on the composition of Indonesian human nature, which consists of body and soul elements; third, based on the nature of their nature, Indonesian Man, which consists of individual elements and social elements.

The three groups of elements must be balanced and dynamic, so as to create a balance between spiritual and physical interests, a balance of individual life interests and social life interests, a balance of independent personal interests and religious interests, which are directed in harmony with balance and dynamics[31]. Thus, according to Roeslan Abdoelgani, in Pancasila, a balance of spiritual and physical values of Indonesian people is achieved[32].

Such a way of thinking, of course, would be alien to today's legal scientists. Against this, Bernard Arief Sidharta[23] affirming that the starting point of the Indonesian view of life is the belief that humans are created in togetherness with others; The individual and the unity of his association (society) are a dual entity. So togetherness with others or the association of life is an essential element in human existence. The elements of *body*, *taste*, and *ratio* together embody the individualism aspect of man, and the *harmonious* element embodies the sociality aspect of man; this aspect of individualism and the aspect of sociality are an inseparable unity of one from the other.

The principle of harmony or "harmony", according to Soediman Kartohadiprodjo is a complementary tool for humans, other than *Raga*, *Rasa*, and *Ratio*, in group life, and not as beings separated from each other, and then, because of something wants to live together, based on the Principle of Kinship which is the core soul of Pancasila. In the context of the Principle of Harmony, because group life only has benefits if living in harmony, this human equipment tool will be called the Pillar Element in human life. Thus, man consists of these four elements, namely: *Body*, *Taste*, *Ratio* and *Harmony*. It is with this Principle of Harmony that man will achieve happiness in his life. If Indonesian people see that the purpose of human life is to live happily as presented earlier, then the way to find a way to get to that happy life, the way to use the tools of life as well as possible, is the way of deliberation, the way of consensus. This method of deliberation or consensus as a way of obtaining happiness has meaning, recognized or possible *differences* between humans who live in groups in finding the path that leads to a happy life earlier. *Acknowledging* these differences means acknowledging differences in the *personalities* of each human being in the group. And by not declaring that one is wrong; So the opinion of one person will dominate (the opinion) of others, but there must be muyawarah, consensus; so according to the thinking of the Indonesian people, the personality of the individual, not only recognized, but *also protected*[13], [33].

Meanwhile Bernard Arief Sidharta[34], [35] explain through the concept of Pancasila Law which requires order and order in an atmosphere of inner peace, pleasure in getting along with each other, friendliness and welfare that allows true human interaction. Therefore, the law imbued by Pancasila is a law based on the spirit of harmony. Therefore, the law is also directly directed to realize social justice that provides society as a unity and-each citizen of society well-being (material and spiritual) equally in proportional balance. Adrift to the principle of harmony is the principle of propriety. This principle is also the principle of conducting relations between citizens of society in which citizens are expected to behave in a manner consistent with the reality of -social reality. Also in carrying out

legitimate rights and obligations according to law, citizens are expected to pay attention to propriety, namely that citizens of society are expected to behave in such a way as not to degrade themselves and or others. Another characteristic that characterizes the Law of Pancasila is the principle of harmony. This principle requires the establishment of harmony in social life. Based on this principle, the resolution of-concrete problems, in addition to being based on considerations of truth and applicable -legal rules, must also be accommodated to the process -of the social process as a whole by considering the feelings-that really live in society. The principle of harmony, the principle of propriety and the principle of harmony as the -hallmark of the Pancasila Law can be covered by one term, namely familial nature. Therefore, it can be said that the Law of Pancasila is the law of family spirit. The spirit of kinship refers to an attitude based on which the personality of each citizen of society is recognized and protected by society.

When observing, digging, and examining the view of national philosophy based on the Pancasila Philosophy mentioned above, it certainly brings us to the view of Carl von Savigny where he said "*das Recht wird nicht gemacht, est ist und wird mit dem Volke*" or the translation is that law is not made, it grows. and develop into society[36]. Looking at the law, of course, the community must also be considered.

The above, implies a connection with the basic idea of the concept of *Restorative Justice*. Restorative *justice*, which in the beginning, began as an attempt to rethink the needs and implicit role in crime. The *restorative justice* discourse is concerned about unmet needs in ordinary judicial processes. Those involved in the movement also worry that the prevailing understanding of legitimate participants or "*stakeholders*" in justice is too restrictive. Restorative justice expands the circle of stakeholders who have an interest or stand in an event or case, not just the Government and Perpetrators, but also including victims and community members[37].

Restorative Justice or known as "*reparative* justice" is an approach to justice that focuses on the needs of victims, perpetrators of crime, and also involves community participation, and does not solely fulfill legal provisions or solely criminal convictions. In this case, victims are also involved in the process, while perpetrators of crimes are also encouraged to account for their actions, namely by correcting the mistakes they have made by apologizing, returning money that has been stolen, or by doing community service.[13] This, as stated by Tony F. Marshall, in his article "*Restorative Justice an Overview*" says[13] that "*Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future*"

The meaning of *Restorative Justice*, within the framework of national philosophy, has an inter correlation with the views of Gustav Radbruch, who initiated the proposal of law which gives direction to the elaboration of the third goal, namely usefulness (benefit) while in Gustav Radbruch's own work as explained above that expediency is the second goal where it is explained that law needs to lead to a goal full of benefits (*waardvol*). Therefore, according to Gustav Radbruch, the benefit depends on what is the purpose of the law[38] which, according to Gustav Radbruch, is contained in three values that are important to law, namely [39], [40], (1). *Individual were*, personal values that are essential to embody human personality; (2). *Gemeinschaftswerte*, the values of society, that is, values that can only be realized in human society; and (3). *Werkwerte*, values in human work (science, art) and in general in culture. Therefore, in Gustav Radbruch's view, absolute legal certainty is impossible and undesirable [41].

If you pay attention to the opinion of Gustav Radbruch, then, according to Rocky Marbun and Ricca Anggraeni[13], It can be concluded that when there is a conflict between the principle of legal certainty and the principle of justice, the principle of justice must take precedence. So even though, Gustav Radbruch is still classified as positivism, still prioritizing the principle of justice which is full of abstract norms.

4.2 Diversity of Meanings of Restorative Justice as a Legal Concept

The emergence of the concept of *Restorative* Justice, it is undeniable from the fact that dissatisfaction with the Criminal Justice System, is not only Indonesian, but the whole world feels the same way. As stated by UNODC[14], Inmany countries, dissatisfaction and frustration with formal

justice systems or rebirth interests in preserving and strengthening customary law and traditional judicial practices have led to calls for alternative responses to crime and social disruption.

Overcapacity of prisons, one of the social phenomena seen as a failure of the criminal justice system, has occurred since decades ago. As described by Rocky Marbun[42], which refers to data from the Directorate General of Corrections that out of 33 Provincial Regional Offices, 28 of them experience *overcapacity* of prisoners or prisoners. The number of detention centers specifically designated as State Detention Centers (Rutan) is still 264. However, the number has decreased from the previous 291 detention centers. Detention centers do not increase, instead prisoners increase. Since 2007 there have been 86,550 inmates and in 2013 it increased to 108,143 inmates. Data released in May 2016 by the Directorate General of Corrections showed that the number of assisted citizens was 187,000 people occupying 477 prisons and detention centers throughout Indonesia, but in June 2016 the number of assisted citizens throughout Indonesia increased to 193,800 people. Different data was revealed by the Ministry of Law and Human Rights through Yasonna H. Laoly where in October 2015 the number of prisoners throughout Indonesia was 160,722 people, but in April 2016 the number increased to 180,000 people. This means that in a period of 6 months it increased by 23,000 people. Data shows the average increase in 2015 was 1,112 people, and in 2016 the average increase was 1,805 per day.

Bengkulu Prison is inhabited by 138,000 assisted residents, Teluk Dalam Prison is inhabited by 2,195 assisted residents with a capacity of 366 people, Gorontalo Prison is inhabited by 643 assisted residents with a capacity of 330 people, Medan Prison is inhabited by 3,000 assisted residents with a capacity of 1,000 people, Gayo Lues Prison is inhabited by 93 assisted residents with a capacity of 65 people, Blangkejeren Prison is inhabited by 130 assisted residents with a capacity of 65 people, Pangkalan Bun Prison is inhabited by 550 assisted residents with a capacity of 280 people, Prisons and Detention Centers in Lampung Province are inhabited by 5,700 assisted residents with a capacity of 3,100 people, Paledang Bogor Prison is inhabited by 1,039 assisted residents with a capacity of 634 people, Cipinang Prison is inhabited by 3,213 assisted residents with a capacity of 1,300 people, East Java Medaeng Prison is inhabited by 1,542 assisted residents with a capacity of 504 people, Class IIB Banyuwangi Prison is inhabited by 842 assisted residents with a capacity of 260 people, Class IIB Nyomplong Prison in Sukabumi City is inhabited by 403 assisted residents with a capacity of 200 people, the occupancy capacity of prisons and detention centers in West Java is 15,217 people, resulting in an overcapacity of 2,957 people or 19.43%, including Bekasi, Karawang, Cibinong, Bogor, Subang, Bandung, prisons, Cirebon, Tasikmalaya with a density of 75% to 250%. Prisons and detention centers throughout Riau experienced overcapacity reaching 5,836 people or as much as 288 percent, consisting of 14 detention centers and prisons and branch detention centers throughout Riau with a capacity of 3,101 prisoners. Meanwhile, the existing prisoners reached 8,937 people.

Meanwhile, research conducted by the Center of *Detention Studies* (CDS) released in September 2022, found that there is an overcapacity of 144,253 prisoners in prisons in Indonesia, namely from the prison occupancy capacity of 132,107 people in reality currently inhabited by 276,360 people or more than double the normal occupancy rate[43].

Not much different from World Prison Brief data[44] released in October 2022 shows that the prison occupancy rate in Indonesia reached 275,518 people or 208.6% of the occupancy capacity of 132,107 in 526 prisons in Indonesia. In more detail, it is contained in the following table:

Year	Prison Population Total	Prison Population Rate
2000	53,399	26
2002	67,960	31
2004	87,185	39
2006	116,688	51
2008	137,144	59

2010	117,863	49
2012	150,688	60
2014	163,414	64
2016	202,623	77
2018	246,005	92
2020	249,056	91

Source: https://www.prisonstudies.org/country/indonesia

In addition to the overcapacity of LAPAS-LAPAS in Indonesia, the penal model that prioritizes the State-Perpetrator model, although theoretically and juridical, it has been claimed that the Correctional model is a form of recognition of the modern penal system. However, in reality, such a penal model raises considerable sociological problems. Therefore, in James Dignan's view, the conventional criminal justice system carries a devastating and divisive public stigma that results in an almost permanent stigma, which attaches labels to the offender, revives the offender's self-image, and makes it difficult for the offender to return to being a devout citizen[45].

Moreover, in the era of digital globalization of communication, the criminal justice process that is easily accessible to the public, further strengthens the nuances of labelling in society. Referring to Labelling Theory, there are two things that need to be considered, namely **first**, people behave normally or abnormally, not deviant or deviant depending on how others judge them. This judgment is already determined by classifications connected with the thoughts of others. Anything that is not considered standard (called residual) as standard by the community is automatically designated as deviant (Devian); **Secondly**, over time the assessment changes so that people who are declared sick today can be declared healthy (with similar symptoms) several years later, or vice versa. If a person is given a nickname that refers to crime or criminal behavior, that person can be "careful" to see the negative side (such as people being labeled naughty, criminal, etc.)[46].

Thus, the effect of *labelling*, when it has entered the form of *secondary deviance*, where a person who has been given a stamp (label), begins to stamp has and will be adopted by the recipient of the label or stamp and influences him so that he recognizes with his joints as the label or stamp given by the observer. That is, criminal offenders have begun to be comfortable with the stamp, and society increasingly rejects its existence.

As a result, the emergence of a phenomenon that develops in society at this time that prisoners who have been released from detention centers are not very well received to return to live together in society. Some people think that once a person does evil, then forever that person will do evil for a long time. The public assumption that prisoners who have been in detention centers still have a strong tendency to become recidivists (people who repeatedly commit crimes, in the sense of relapse such as illness). This will confront a prisoner after being released from the detention center, not regaining his humanitarian rights in his community or being discriminated against in his own social environment. The phenomenon of discriminatory treatment of ex-prisoners has a negative impact on ex-prisoners after being released from detention, because they feel depressed and have a heavy moral burden, so they will tend to return to commit crimes they have committed[47].

This phenomenon is inversely proportional to what happened in the Netherlands which incidentally is a country that "imposes" its criminal law paradigm in Indonesia through colonialism, where every year there is a decrease in crime rates by 0.9%, so that in 2016 forced the Netherlands to close 5 (five) prisons which resulted in the dismissal of 1,900 Lapas employees. Like a "joke", there are 2 (two) phenomena, namely **first**, the Netherlands tries to find a solution to the laid-off employees by leasing empty prisons to Belgium and Norway; **secondly**, one of the most violent prisons in the Netherlands, Het Arresthuis in Roermond, near the border with Germany, has now been deformed. The once feared building has now been converted into a luxury hotel. The Dutch Ministry of Justice explained that the Dutch legal system is more focused on not prosecuting crimes that have caused no victimization, rehabilitation, short sentences, skills programs, and reintegration with society[42].

Based on data and facts on today's conditions, it has shown us all that the Criminal Law, although it has adopted the most modern penal theory, still makes society sociologically divided. The development of a "report/prosecution culture", as a result of the use of Criminal Law based on modern penal paradigms. As stated by Lawrence M. Friedmann in his book "*Total Justice*", that the law is an alien object from outer space, which teaches people to sue each other or in common parlance known as "culture of suing". Where, the "culture of suing" is no longer dominated by legal practitioners but also by people who are increasingly open to their understanding of the law. One of the adverse effects of the reform was the belief that the Court was the only institution that could resolve disputes. Almost every issue, even simple disputes/conflicts, has now become a wastebasket. As a result, there was a backlog of cases, and the Judges were pursued —targets to resolve the piled cases, the result being "garbage *in*, *garbage out*".[13]

4.3 Inaccuracy in disseminating a law

There are several things that should be considered in the formation of laws and regulations, both at the central and regional levels, in relation to public policy and its touch to the interests of the community. Laws and regulations made at the central level, will touch the interests of the people throughout Indonesia, and that laws and regulations at the regional level, will affect the interests of local communities. However, the issue of accuracy, absorption (accommodation of community interests), aspiration or not of these laws and regulations, both central and regional, is equally important for the fulfillment of the requirements of ideal laws and regulations[48].

One form of realization of participation from the community is the implementation of a law and regulation. Where, a Law Socialization is the process of introducing and disseminating information about a law to the public at large. This is the right for the community to know and understand their rights and obligations in accordance with the laws and regulations in force in the country.

On the other hand, the socialization of the Law is also an obligation for the state to ensure that the public understands and follows the applicable regulations. The State shall ensure that the dissemination of the Law is carried out effectively so that the public can understand the purpose and content of the Law. In the socialization process, the state must also ensure that the information provided to the public is accurate and can be understood by all circles of society.

With the effective socialization of the Law, it is hoped that the public will comply with applicable laws and regulations and not violate the law. This can help create good governance in the country and strengthen public confidence in the existing legal system.

In order to ensure the effectiveness of the dissemination of the Law, the state must use various means and media that are in accordance with the conditions of society. Some ways that can be done include through socialization campaigns, publishing educational materials, making videos or audio materials, and training activities or workshops.

However, socialization as a movement to provide legal awareness for the community, is currently not going well. Where, the Ministry of Law and Human Rights when carrying out socialization regarding Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims with a discussion mechanism held at the Grage Horizon Hotel Pantai Panjang Bengkulu City. Meanwhile, the mandate of Law No. 12/2011 clearly distinguishes between socialization and discussion, where no ordinary people are present. Or for example, the Ministry of Women's Empowerment and Child Protection (KEMENPPPA) carried out the socialization of Law Number 44 of 2008 concerning the dangers of pornography in the educational environment located at the Grand Asrilia Hotel, Buah Batu [49].

Thus, the institution of authority, or at least, as explained by Padmo Wahyono[2]—as a consequence of the study of Political Law, is charged with socializing the implementation of *Restorative Justice*. Thus, the institution should really be able to carry out socialization on target.

4.4 The Idea of Applying the Concept of Restorative Justice

Since the "viral" concept of *Restorative Justice*, there are many regulations that are still 'thick' with sectoral egoism from each law enforcement institution. The series of regulations are still sectoral and are mostly only policies from the leaders of each institution. Based on the Police Bareskrim Telegram Letter Number: STR/583/VIII/2012 dated August 8, 2012 [STR No. 583/2012], the National

Police Criminal Investigation Agency provides technical instructions for Police Investigators regarding the mechanism for implementing the *restorative justice* concept , which is now strengthened by the Circular Letter of the Chief of the National Police of the Republic of Indonesia Number 08 of 2018 concerning the Application of Restorative Justice) in the settlement of criminal cases [SE Kapolri No. 08/2018].

The interesting thing about the emergence of STR No. 583/2012 is to refer to two legal events, which are as follows:

1. Yogyakarta District Court Decision Number 317/Pid.B/2008/PN. YK dated December 3, 2008 *jo* Yogyakarta High Court Decision Number 01/PID/PLW/2009/PT. YK dated March 3, 2009 *jo* Supreme Court Decision No. 1600 K/PID/2009 dated November 24, 2009

This criminal case began with a Criminal Report No. LP/43/IX/2007/DIRESKRIM POLDA DIY dated September 20, 2007 concerning Alleged Criminal Acts of Fraud and Embezzlement as referred to in Article 378 jo Article 372 *jo* Article 64 paragraph (1) of the Criminal Code.

The loss suffered by the Reporting Victim amounted to IDR 3,000,000,000 (three billion rupiah). Where after the report, at the investigation stage, the Victim/Whistleblower submits a retraction of the criminal report.

Against the attempt to retract the report, the National Police Investigator still believes that there is no legal basis to stop the investigation, so it is still transferred to the Public Prosecutor. Similarly, at the prosecution level, the Victim also applies for the retraction of the report, which the Public Prosecutor opined the same as the Investigator. So that the case was still transferred to the Yogyakarta District Court.

However, the judex *facti* granted the request for retraction of the report and declared the Public Prosecutor's demands inadmissible, which was later strengthened by the *judex juris*.

2. Criminal Report No. LP/78/IV/2012/SULTENG/RES POSO dated April 14, 2012 concerning Alleged Theft Committed by Fitri Giu on behalf of Whistleblower Astri Wisudhawaty.

This case was based on a report from Astri Wisudhawaty (wife of the POSO Police Chief) to her domestic helper Fitri Giu on suspicion of theft of dishes and household furniture, and forced detention efforts had been made. This matter received public attention, because, the value of the loss was very small.

The Central Sulawesi Police Chief then conducted an Anev Check with the Poso Police Chief. Where the Central Sulawesi Police Chief argues that based on the material of the case has fulfilled the criminal element, but because the value of the loss is very small, if the process continues, it will cause negative opinions and polemics against the Poso Police Station. Thus, the Central Sulawesi Police Chief ordered the Poso Police Chief to immediately process the suspension of detention on behalf of the suspect.

The Central Sulawesi Police Chief also ordered the Poso Police Chief to immediately coordinate with the Public Prosecutor to resolve the case to be resolved outside the criminal court (*restorative justice*).

Against the two things mentioned above, the KABARESKRIM POLRI argues in STR No. 583/2012 as follows:

1. Considering the law enforcement process in accordance with the applicable positive law and if the settlement through *restorative* justice is a matter of urgency by looking at the psychological situation of the community in the region and on consideration to meet the sense of justice of the community, the decision is left to the respective region, as far as it can be accounted for by the ultimate effort of *remidium* and coordination with law enforcement in the region;
2. So that in handling cases that tend to be resolved with *restorative* justice by prioritizing the principle of expediency and legal justice instead of a legal certainty approach, carried out selflessly and solely for justice and without reward.

Based on the view of KABARESKRIM in STR No. 583/2012, it orders the National Police Investigator to use Article 18 of Law No. 2/2002, namely to take action on self-assessment based on consideration of the benefits and risks of the action and really in the public interest. STR No. 583/2012 contains an

order to continue to seek *restorative justice* by seeking mediation and orders the National Police Investigator to continue to advise the Whistleblower to withdraw the report/complaint.

The application of the concept of *restorative justice* in STR No. 583/2012 is based on peace, forgiveness or return of losses in a mediation process. If these three things are achieved, then the investigation process can be stopped using the reason for termination, namely "For the sake of law". Therefore, the reason for stopping the investigation has fulfilled one of the reasons of legal certainty, legal justice and expediency. However, successful mediation must also be followed up by making a Minutes of Further Examination (BAP) which contains the retraction of information from the Whistleblower and the Reported Person in the previous BAP.

Based on the Advanced BAP, according to STR No. 583/2012, the evidentiary element in the intended article is reduced, so that the investigation can be stopped on the grounds of "insufficient evidence". That is, according to the Researcher, STR No. 583/2012 has an extensive interpretation of Article 109 paragraph (2) of the Criminal Procedure Code, which is as follows:

1. There is an expansion of the meaning of the phrase "for the sake of law", namely by including conditions that meet one of the three legal principles in the legal ideal, namely legal certainty, legal justice and expediency.

However, what should be noted is that this reason can only be used for crimes classified as Complaint Offenses only.

2. There is an Advanced BAP process which essentially contains the retraction of information, both by the Whistleblower and by the Reported Person, so that the component of the fulfillment of evidence is reduced. Thus, it is associated as a form or condition of the National Police Investigator not finding sufficient evidence.

Unlike the first extensive interpretation, in the second it is used for crimes classified as Common Offenses/Reports.

The similarity of the two reasons mentioned above, is the existence of a mediation mechanism that leads to an agreement to reconcile with reasons (1). The existence of forgiveness; (2). The existence of a peace agreement; or (3). The existence of a return of losses.

STR No. 583/2012 was then followed up by a Telegram Letter from the Chief of Police of Metro Jaya Number STR/2804/X/2012 dated October 23, 2012. The new thing contained in the Telegram Letter of the Metro Jaya Police Chief Number STR / 2804 / X / 2012 is that the settlement of cases based on *restorative justice* is associated with the obligation for Police Investigators to solve as many cases as one case in one month.

Further developments, the existence of Service Memorandum Number: B/ND-/I/I/2014/Ditreskrimum concerning Instructions for Termination of Investigation dated January 8, 2014 issued by the Dirreskrimum Polda Metro Jaya, which refers, in addition to STR No. 583/2012, also refers to Article 76 paragraph (2) of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 14 Year 12 concerning Management of Criminal Investigation [PERKAP No. 14/2012] which confirms that to stop the investigation must first In the past, 'case titles' were carried out. However, there was a reduction in the instructions from STR No. 583/2012 through the Service Memorandum, where in number 2.c there was a statement terminating the investigation was casuistic (depending on the case). That is, in issuing a decision to stop the investigation process, the National Police Investigator through interpretive cognitive activities sorts out which cases can be applied *restorative justice*.

The latest development is the issuance of SE Kapolri No. 08/2018 to support the application of the concept of restorative justice in solving criminal cases in the realm of investigation and investigation. What is interesting is the juridical basis of the SE Chief of Police No. 08/2018, namely:

1. Article 7 paragraph (1) of the Code of Criminal Procedure which confirms that the Investigator because of his obligation has the authority to carry out other actions according to responsible law;
2. Article 16 paragraph (1) letter L of Law No. 2/2002 jo Article 18 of Law No. 2/2002 *jo* Article 5 paragraph (1) number 4 of the Code of Criminal Procedure , that other actions as referred to in Article 16 paragraph (1) letter L of the Code of Criminal Procedure are acts of investigation and investigation carried out if they meet the following conditions:

a. Not contrary to a rule of law;
b. Aligned with legal obligations requiring such actions to be performed;
c. Must be proper, reasonable, and included in the environment of his position;
d. Proper consideration based on compelling circumstances; and
e. Respect for human rights.

3. Article 18 of Law No. 2/2002 that in the public interest officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment. Article 18 paragraph (2) of Law No. 2/2002, as referred to in Article 18 paragraph (1) of Law No. 2/2002 can only be carried out in very necessary circumstances by taking into account the laws and regulations and the Code of Professional Ethics of the National Police of the Republic of Indonesia; and

4. Article 22 paragraph (2) letter b and c of Law No. 30/2014 which states that every use of discretion of government officials aims to fill legal vacancies and provide legal certainty.

SE Chief of Police No. 08/2002 raises at least two very principle things in the investigation and investigation process in relation to the approval of the Cease Investigation Warrant (SP3), namely:

1. Recognition of discretionary instruments in the realm of investigation and investigation of criminal cases, as one of the legal instruments that can be used by Police Investigators; and

2. Recognition of Law No. 30/2014, which is an acknowledgement of the National Police institution that Police Investigators are part of Government Administration Officials who can exercise discretion and its restrictions.

The issuance of SE Kapolri No. 08/2018 has a philosophical and historical basis that is not much different from STR No. 583/2012, namely:

1. The development of the concept of law enforcement in criminal law enforcement in various countries by adopting the principle of *restorative justice*;
2. The problem of *overcapacity* in prisons;
3. An increasing buildup of things;
4. Unbalanced number of law enforcers;
5. Case costs that do not support the increase in criminal cases; and
6. The impact on changes in the legal culture of the community, especially the way Indonesian people view the criminal law enforcement process.

Thus, SE Kapolri No. 08/2018 does not view the termination of the investigation as a settlement of cases due to the emergence of *peace an sich*, but the application of *restorative* justice as a reflective form of justice and balance in human life. Where deviant behavior from evil behavior is considered as behavior that eliminates the balance of human life. Thus, SE Kapolri No. 08/2018 should be interpreted as an effort to restore the balance of human life. That is, the termination of the investigation is not only based on the word 'peace' from the parties, but to answer the legal needs of the community and fulfill justice for all parties.

However, as STR No. 583/2012, as well as SE Kapolri No. 08/2018 is an internal regulation of the National Police to accommodate the development of Legal Science, it is not part of laws and regulations that are not binding on external parties. Thus, the SE Chief of Police No. 08/2018, if related to Article 80 of the Criminal Procedure Code *jo* Constitutional Court Decision No. 98/2012 still raises the risk of filing a Pretrial application, both by the Public Prosecutor and by Interested Third Parties.

In 2019, the National Police issued PERKAP No. 6/2019 which included regulations regarding the termination of investigations through the Restorative Justice mechanism, and then updated through PERPOL No. 8/2021 by expanding the use of *Restorative Justice*, not only in the field of Investigation, but also into the realm of Investigation.

PERPOL No. 8/2021, regulates the Handling of Criminal Acts based on Restorative Justice, which will be used as a basic reference for solving cases in the process of investigating and investigating criminal acts in order to provide legal certainty, as regulated about the termination of investigation (*SPP-Lidik*) and termination of investigation *(SP3)* for reasons For the sake of a law based on restorative justice.

Based on Article 2 paragraph (1) of PERPOL No. 8/2021, Handling Criminal Acts based on Restorative Justice is carried out in the following activities: (1). Implementation of criminal investigation functions; (2). Investigation; and/or (3). Investigations, which can only be carried out on the completion of Minor Crimes, which must meet the material and formal requirements.

Based on Article 5 paragraph (1) of PERPOL No. 8/2021, the material requirements are:

1. Do not cause unrest and/or rejection from the community;
2. No impact on social conflict;
3. It has no potential to divide the nation;
4. It is not radicalism and separatism;
5. Not a repeat offender based on a Court Decision, and
6. Not a criminal act of terrorism, a crime against state security, no corruption and a crime against people's lives.

Meanwhile, the formal requirements are based on Article 6 paragraph (1) of PERPOL No. 8/2021, which consists of:

1. Peace from both sides, except for Drug Crimes, and
2. Fulfillment of the rights of victims and responsibilities of perpetrators, except for Drug Crimes.

Based on Article 6 paragraph (2) of PERPOL No. 8/2021, a Peace must be proven by a peace agreement letter and signed by the Parties.

Although there are exceptions for certain crimes, PERPOL No. 8/2021 also provides additional requirements for certain crimes, namely

1. Electronic Information and Transactions,

a. Perpetrators of Information and Electronic Transactions that disseminate illegal content;
b. Perpetrators are willing to delete content that has been uploaded;
c. The perpetrator expressed an apology through a video uploaded on social media accompanied by a request to remove the content that had spread; and
d. The perpetrator is willing to cooperate with police investigators to conduct further investigations.

2. Narcotic

a. Drug Addicts and Drug Abuse Victims applying for Rehabilitation;
b. At the time of being caught:
1) Evidence of drugs used for 1 day with narcotic classification was found; and
2) No evidence ofNarco-Drug Crime was found, but urine test results showed positive for drugs;
c. Not involved in drug crime networks, dealers and/or dealers;
d. Assessment has been carried out by an integrated assessment team; and
e. The perpetrator is willing to cooperate with the National Police Investigator to conduct a Further Investigation.

3. Traffic

a. Traffic accidents caused by driving a motor vehicle in a dangerous manner and circumstances resulting in material losses and/or minor injuries; or
b. Road traffic accidents due to negligence resulting in human casualties and/or property losses.

In PERPOL No. 8/2021, the initiator in submitting a written application is from the Perpetrator, Victim, Perpetrator's Family, Victim's Family or Other Related Parties. This is different from the SE Chief of Police No. 08/2018 which ordered the Investigator to be active as a mediator.

A similar potential also threatens the existence of the decision to stop the investigation process when it is relied on PERKAP No. 6/2019 and/or PERPOL No. 8/2021. Therefore, these two arrangements do not have a juridical root basis to the Criminal Procedure Code, which with reference to Article 2 *and* Article 3 of the Criminal Procedure Code, which affirms that all judicial processes—including in the realm of Pre-Adjudication, must refer to the Criminal Procedure Code.

The implementation of *restorative justice* 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 No. 15/2020) based on: (a) justice; (b) legal interests; (c) proportionality; (d) criminal as a last resort; and (e) fast, simple, and low cost.

To be able to carry out the settlement of cases outside the court, there are 2 (two) provisions, namely (a) for certain crimes, the maximum criminal fine is paid voluntarily in accordance with the provisions of laws and regulations; or (b) there has been a restoration of the original state using the Restorative Justice approach.

According to the provisions of Article 4 of PERJA No. 15/2020, the authority of the Public Prosecutor in terminating prosecutions based on restorative justice needs to pay attention to several things, namely:

1. The interests of the Victim and other protected legal interests;
2. Avoidance of negative stigma;
3. Avoidance of retaliation;
4. Community responsiveness and harmony; and
5. Decency, decency, and public order.

Furthermore, the Public Prosecution in terminating prosecutions based on restorative justice also considers the following:

1. Subjects, objects, categories, and threats of criminal acts;
2. The background of the commission of the crime;
3. The degree of reproach;
4. Losses or consequences arising from criminal acts;
5. Cost and benefit of handling cases;
6. Restoration back to its original state; and
7. There is peace between the victim and the suspect.

Specifically regarding the conditions that must be met if you want to stop the prosecution based on *Restorative Justice* as stated in Article 5 paragraph (1) of PERJA No. 15/2020, namely:

1. The suspect is committing a criminal offense for the first time;
2. Criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years; and
3. Criminal acts are carried out with the value of evidence or the value of losses incurred as a result of criminal acts not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah).

Other conditions that need to be met in an effort to stop prosecution based on *restorative justice* as stated in Article 5 paragraph (6) of PERJA No. 15/2020, namely:

1. 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. Indemnify Victims;
c. Reimburse costs incurred as a result of criminal acts; and/or
d. Repair damage caused by criminal acts;
2. There has been a peace agreement between the Victim and the Suspect; and
3. The community responded positively.

If the victim and the suspect have agreed, the condition of restoration to the original state as referred to in paragraph (6) point a can be excluded.

A further question is, can all criminal offences be subject to termination of prosecution by the Public Prosecutor? The answer to this question has been answered through the provisions of Article 5 paragraph (8) of PERJA No. 15/2020. The crimes that are exempt from obtaining a termination of prosecution by the Public Prosecutor are as follows:

1. Criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their deputies, public order, and decency;
2. Criminal offenses punishable with minimal criminal threat;
3. Narcotics crimes;
4. Environmental crimes; and
5. Criminal acts committed by corporations.

Factually speaking, the implementation of peace can be divided into 2 (two) ways, namely:

1. Done with Payment of Compensation, the evidentiary process can be carried out with receipts from victims and strengthened by proof of transfer or witness / victim statements;
2. Done by doing something, the process of proof by looking directly at the implementation process, information from witnesses or photo/video evidence;

Since the emergence of PERJA No. 15/2020, the Attorney General's Office has contributed to the phenomenon of "garbage in, *garbage out*" by stopping prosecutions, although it is still limited to the field of People and Property (OHARDA)—from the data obtained. Where, the Prosecutor's Office of the Republic of Indonesia in 2020-2021 conducts data collection on *Restorative Justice* Applications and approved applications. The data is summarized in the following table:

TEAK	**OHARDA**			
	2021		**2022**	
	M	S	M	S
ACEH	4	4	28	22
NORTH KOREA	8	8	58	51
WEST WEST	3	3	58	51
RIAU	10	10	6	6
JAMBI	1	1	-	-
SOUTH KOREA	3	3	9	9
BENGKULU	3	2	9	9
LAMPUNG	9	4	4	4
JAKARTA	2	2	5	3
WEST JAVA	-	-	10	10
CENTRAL JAVA	13	4	13	13
YOGYAKARTA	3	3	5	5
EAST JAVA	22	18	24	15
KALBAR	-	-	5	5
TURKEY	5	5	21	21
SOUTH KALIMANTAN	8	7	2	2
EAST KALIMANTAN	3	3	2	2
SULUT	8	8	20	20
CENTRAL SULAWESI	3	2	10	10
SULTRA	2	2	1	1
SOUTH SULAWESI	23	16	24	22
BALI	2	2	2	0
NTB	6	6	11	11
NTT	4	3	10	8
MALUKU	5	5	11	11
PAPUA	3	3	2	2
MALUT	3	3	9	9
BANTAM	-	-	7	7
BABYLON	1	1	14	13
GORONTALO	4	4	1	1
KEPRI	2	2	3	3
SULBAR	1	1	15	13
WEST PAPUA	2	1	1	1
SUM	**166**	**136**	**353**	**320**

In terms of transparency, the performance of the Prosecutor's Office of the Republic of Indonesia has shown the transparency of case handling. Where, it becomes very accessible information by ordinary

people. However, as with PERPOL No. 8/2021, the existence of PERJA No. 15/2021, which carries out extensive interpretation of the concept of "for the sake of law", also still has vulnerabilities when related to Article 80 of the Criminal Procedure Code *jo* Constitutional Court Decision No. 98/2012 still raises the risk of filing Pretrial applications, both by the Investigator and by Interested Third Parties.

4.5 The idea of handling criminal cases based on the concept of restorative justice

Restorative Justice, as a legal concept in the development of legal thinking, which is always associated with legal actions in the process of punishment, has several weaknesses in the level of legal *praxis*. This is due to the submission of the criminal law system in Indonesia with the Legal System in the Continental European family, namely the *civil law* legal system. Where, a legal system that focuses on the existence of laws and regulations as the main source of formal law.

However, as an ethical system in legal life in Indonesia, it is not possible, *Restorative Justice* as a legal concept related to "how to" solve criminal law problems against criminal offenders, only stops at the regulatory level under the law by utilizing the legal concept of "Discretion" as a free authority from Law Enforcement Officers. Therefore, its application can lead to transactional actions and non-uniformity, even though *Restorative Justice* is closely related to Procedural Law.

What should be appreciated, at the *praxis* level, is the agreement—albeit partially, between law enforcement institutions that view the concept of *Restorative Justice* as an effort to restore conditions and avoid social divisions in society. However, because the nature of *civil law* is a *top-bottom mechanism*, legislative action is needed to determine legal politics at an abstract level as a philosophical basis for the realization of normative juridical foundations.

Of course, it becomes an interesting thing when Legal Politics for the concept of Restorative Justice is based on the view of national philosophy which provides color and inner nuances for legislative action in abstracting the concept of *Restorative Justice* is the restoration of the original state, namely the principle of harmony. Thus, the implementation of the Principle of Harmony – in the Pancasila Legal Philosophy, is a manifestation of the *implementation of idee des recht* which precipitates its primary aspect, namely the benefits of law based on the culture of the Indonesian people.

In this case, in order to achieve the principle of legal expediency, it is certainly not possible to ignore the Principle of Legality which prioritizes the Principle of Legal Certainty through the principle of *lex certa* and the principle of *lex scripta*. Thus, the fulfillment of the Principle of Legal Certainty—which gives rise to the Principle of Expediency—is not interpreted as an absolute authority for Law Enforcement in carrying out legal actions based on the *Restorative Justice Concept*. However, it is precisely a legal protection for all citizens regarding the existence of legal guarantees on the predictable principle – is one of the principles of the concept of the Modern Legal State, from a measure of legal action in carrying out the law enforcement process.

In relation to the law enforcement process, which refers to the views of Soerjono Soekanto, legal action will always be based on a pattern of interpretation—which is intenentive, through the discretionary authority of each Law Enforcement Officer as an inherent authority of every Public Official. Thus, patterns of interpretation—in order to fulfill the principle of predictive bias from the concept of the Modern Legal State, are based on certainty of meaning so as to bring about justice and expediency.

Thus, in this case, *idee des recht* works as a form of philosophical reflection on the concept of *Restorative Justice* which can be divided into 3 (three) patterns, namely *first*, based on aspects of Ontology, then the achievement of the principle of benefit for all citizens—especially in this case are parties related to a criminal case, based on the *second* aspect i.e. legal certainty as an epistemological aspect, through the principle of predictability, interpretation and meaning. Thus, the *third* is the fullness of the axiological aspect – in philosophical reflection activities, which is in the form of fullness of social justice.

One of the important elements in Legal Politics, in order to ensure the Epistemological aspect, is to determine in a legal system related to government institutions / institutions that have law

enforcement functions against their authority and authority in implementing the concept of *Restorative Justice* in Indonesia.

In the Criminal Justice System—especially those that are institutions / institutions that carry out government functions, have the function of implementing law enforcement functions are Investigators, Public Prosecutors and Judges. In this case, every component of the Criminal Justice System, is forced to be able to understand Law and Legal Science simultaneously.

Law is always introduced to prospective Law Graduates as a system of laws and regulations that are arranged logically and consistently. In addition to this logical and consistent understanding, there is usually still added the understanding of a closed system, because in fact what is studied is only within the framework of positive legal regulations. The science of law is a *deductive* science. The aim was to apply these legal regulations to everyday events in society [47].

Therefore, in turn, the implementation of legal rules by authoritative decision makers demands flexibility. So, on the one hand, decision makers must adapt the rule of law to situations whose concrete form is exactly impossible to anticipate or imagine by the framer of the law (framer of the law), but, on the other hand, must remain predictable (predictable). In that tension between stability and flexibility, the implementation of law must always bring about a compromise between predictability and justice, using appropriate methods of juridical interpretation and construction with reference to the ideal of law. Therefore, decision makers will be encouraged to consider " *policy*" and teleological aspects that underlie the relevant legal rules[11].

Paul Scholten[51] explain the work of Legal Science. Legal Science interprets the rules of law. That is, Legal Science seeks to summarize unwritten rules in a certain formula, Legal Science also explains the rules set by the authority, determines the range (meaning) contained in it through historical interpretation and teleological interpretation, by placing these rules into a system that houses them. Then, Legal Science analyzes these rules in such a way that they are ready to be applied to concrete events that face them or in a futuristic (interpretation) way to concrete events that will arise. The working pattern of such interpretation will always occur based on a certain perspective and way of thinking, the history of law, its legal logic, sense of justice, and lead to a certain goal, namely the application and transformation of law into real life. The framework of legal science, simultaneously constructs law. The science of Law places certain abstractions of public relations in authoritative texts, these authoritative texts are rules subordinate to authoritative texts that have a more general and wide reach, and in such a way will construct a whole.

Thus, to implement the Law, according to Paul Scholten, can only be done by educated Law Scholars. That is, not just someone obtaining a Bachelor of Laws degree, but must be educated[52]. That is, educated understand Law as a Science, and not just a *praxis* of law. Thus, if the description is applied as a filter, then only the Prosecutor's Office and Judges, are able to academically apply law with double standards, namely law as Science and law as *praxis*. Meanwhile, the Investigator—with reference to the Criminal Procedure Code, only receives criminal investigation education and not Law as a Science.

Based on this, in order to maintain flexibility and predictability, the patterns of legal interpretation as part of the working pattern of the Law—as Science, on concrete facts—contained in an event that is suspected to be a criminal event, should naturally get a touch from the realm of investigation. This is to avoid fragmentary thinking patterns towards concrete facts and legal norms that are based on a legal event.

5. CONCLUSION

Based on the descriptions mentioned above, the researcher said that the process of handling criminal cases based on the Principle of Restorative Justice – as a consequence of the development of thought in Legal Science, since it was first normative, experienced different perspectives on the praxis mechanism his law. Each institution of government – which performs law enforcement functions, and institutions of judicial power issue regulations on "how to" apply the Restorative Justice Principles differently. The concept of Restorative Justice as part of positive law, should first experience abstraction in legal politics as outlined in the legal system. This is to provide a philosophical

foundation and normative juridical basis for Law Enforcement Officers in utilizing the legal concept. The study of legal politics, wants that—based on *idee des recht* and the Principle of Legality, in the legal system has determined government institutions—which are educated in Legal Science, to carry out the mandate of implementing law enforcement with certainty. Thus, giving rise to legal behavior that is just—axiological, and expediency as a consequence of the Ontological aspect.

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