



## Restorative Justice Alternative Criminal Case Settlement In Indonesia

Ridho Mamonto

Faculty of Law, State University of Gorontalo, Indonesia. Korespondensi: E-mail:[mamontoridho12@gmail.com](mailto:mamontoridho12@gmail.com)

**Abstract:** This study aims to analyze the concept of resolving criminal acts in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, as well as to examine aspects of legal certainty in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The type of research in writing this proposal is normative research, namely research that examines the study of documents such as legislation, court decisions, and legal theory. The approaches used by researchers in compiling this research are, among others: the Invitation Approach (Statue Approach). The results showed that in the Prosecutor's Regulation No. 15 of 2020, criminal cases can be closed by law and prosecuted based on Restorative Justice, except for recidivists. Prosecutor's Regulation No. 15 of 2020 lies in the guidelines that have been created and determined and are limited by requirements in their implementation.

**Keywords:** Legal Certainty; Restorative Justice; Society;

[@2022](#) Mamonto, R.

Under the license CC BY-SA 4

### How to cite (Chicago Style):

Ridho Mamonto. "Restorative Justice Alternative Criminal Case Settlement In Indonesia." *Estudiante Law Journal*. 4, no. 2 (2022): 414-428

## 1. Introduction

The Unitary State of the Republic of Indonesia is a legal state following the basis of the state contained in the 1945 Constitution, in a legal state there are clear laws and regulations to regulate the life of its people to obtain legal certainty. Law is a norm that invites people to achieve certain ideals and conditions, but without ignoring the world of reality, and is therefore classified into cultural norms<sup>1</sup>.

Various cases have sprung up in line with the demands for change, known as reform, seen in various levels of society from top to bottom levels of legal irregularities. The development of civil society is the order of people's lives that have adherence to legal values<sup>2</sup>. The law is not an end, but a means or a tool to achieve non-judicial goals and develops due to stimuli from outside the law. It is the factors outside the law that make the law dynamic.<sup>3</sup>

With the law that can regulate the order of social life, of course, it will provide a sense of justice in the community itself, talking about justice in the development of justice also transforms into a newer direction according to legal developments in the eyes of the community, to achieve justice that is truly felt by the community, of course, requires an important role. Law enforcement officers, one of which is the Prosecutor/General Prosecutor.

In achieving justice, the Public Prosecutor according to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia regulates the duties and responsibilities of the Public Prosecutor in carrying out law enforcement functions in Indonesia. It is expressly stated that within the Prosecutor's Office, the Attorney General has the right to set aside cases based on the public interest. The Attorney General can assume that there will be more losses if he sues both for the community and for the state, then the case is set aside following the principle of opportunity.

If further investigated, the granting of the authority to waive criminal cases to prosecutors is by the principles of criminal procedure law as regulated in Law Number 4 of 2004 concerning Judicial Power, where one of the principles regulates that trials must be carried out quickly, simply, at low cost and free of charge. , fairness and impartiality must be applied consequently at all levels of the judiciary. If you pay attention to these principles one by one, by waiving criminal cases by the prosecutor, the judicial process is enough to be completed at the Prosecutor's Office so that the judicial process does not take a long time. A simple trial and low costs can automatically be realized if the judicial settlement process is completed quickly. This simple nature is obtained because the process is not complicated. The administration of these cases is numerous and is usually made in several copies, of course, this

---

<sup>1</sup>Satjipto Rahardjo, *Ilmu Hukum*, cet 6 (Bandung: Citra Aditya Bakti, 2006) hal. 27

<sup>2</sup>Moeljanto, *Azas-azas Hukum Pidana*, (Jakarta : Bina Aksara, 1988) hal.87

<sup>3</sup>Sudikno Mertokusumo, *Mengenal hukum*, (Bandung : Liberty, 2000) hal.40

requires a lot of money so the principle of low cost that is to be achieved will be very difficult to realize.<sup>4</sup>

The application of the opportunity principle (the principle that gives the public prosecutor the authority not to prosecute someone who violates criminal law regulations by overriding cases that already have clear evidence for the public interest) owned by the Attorney General is of course regulated in Article 35 letter C of the Law. Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. This is different from the termination of prosecution owned by the Prosecutor or Public Prosecutor, regarding the termination of prosecution is regulated in Article 140 yata (2) of the Criminal Procedure Code which confirms that:

1. If the Public Prosecutor decides to stop the prosecution because of insufficient evidence or the incident does not constitute a criminal act or the case is closed for the sake of the law, the Public Prosecutor shall include this in a decree;
2. The contents of the decree are notified to the suspect and if he is detained, he must be released immediately;
3. The derivative of the decree must be submitted to the suspect or his family or legal counsel, officials of the state detention center, investigators, and judges;
4. If later it turns out that there is a new reason, the public prosecutor can prosecute the suspect.

Since 2012, the criminal justice system in Indonesia has introduced the concept of Restorative Justice, namely in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. In the development of law enforcement in Indonesia, the concept of restorative justice was expanded, not only limited to criminal cases involving minors, in the Indonesian National Police Agency through PERKAP No. 6 of 2019 applies the concept of restorative justice, namely stopping the case in the investigation or investigation process as long as the SPDP (notification letter at the start of the investigation) has not been sent to the Prosecutor / Public Prosecutor. Recently, on July 16, 2020, in applying the concept of restorative justice, the Attorney General issued the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the PERJA was expanded to no longer apply to juvenile criminal cases or in the process of investigation and During the investigation in the Police, the PERJA applied the concept of restorative justice at the Prosecution stage, with the issuance of this Regulation the Attorney General explained that for justice to be truly felt by the public, prosecutors or public prosecutors in carrying out their duties must use conscience.

The attorney general's regulation regulates the method and conditions for a case to be closed based on restorative justice, as Article 5 PERJA No 15 of 2020 explains the conditions for a case to be terminated, namely:

- a. This is the first time the suspect has committed a crime;

---

<sup>4</sup> Yahya Harahap, *PembahasanPermasalahandanPenerapan KUHAP Penyidikan dan Penuntutan*,(Jakarta: SinarGrafika, 2009) hal. 37

- b. criminal acts are only punishable by a fine or punishable by imprisonment of not more than 5 (five) years;
- c. a criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2,500,000,00 (two million five hundred thousand rupiah).

The following conditions, as stated in point 6, are:

1. return the goods obtained from the crime to the victim;
2. compensate for the loss of the victim;
3. reimburse the costs incurred as a result of the criminal act; and/or repair the damage caused by the criminal act;

In addition, the condition for restorative justice is that there has been a peace agreement between the victim and the suspect and the community has responded positively. The concept of restorative justice itself is in principle positive for the development of punishment in Indonesia as a filter for cases that enter the realm of the court, but on the other hand, this contradicts the principle of legal certainty for victims as important actors in the settlement of criminal cases in the perspective of restorative justice tend to refuse to accept justice. be reconciled, not to mention the understanding of law enforcement officers who are still oriented to the crime control model to the sectoral ego between law enforcement agencies that becomes an obstacle or hinders the application of the concept of restorative justice. In addition, another problem is the existence of positive community response phrases that are not fully explained in the PERJA. This conflict occurs related to the aspect of the deterrent effect given to law enforcement of criminal acts, this is important because, in addition to the agreement of the victim and suspect, one of the conditions is a positive response from the community.

The important question is whether a positive response from the community is an absolute requirement or only a supporting condition and if the case can be resolved with restorative justice but the community responds negatively, can the case not meet the requirements? cases of restorative justice but Perja does not explain further about community participation as one of the cases can be resolved through restorative justice.

Regarding the explanation above, according to Fence M. Wantu, "Law without the value of legal certainty will lose its meaning because it can no longer be used as a code of conduct for everyone"<sup>5</sup>Fence M. Wantu further emphasized that "Legal certainty must contain an aspect of stability, namely being able to provide a sense of order and security in society".<sup>6</sup>Therefore, it can be said that the aspect of legal certainty in the settlement of a crime is one of the important things to be realized.

---

<sup>5</sup> Fence M. Wantu, "Antinomi Dalam Penegakan Hukum Oleh Hakim", Jurnal Berkala Mimbar Hukum, Vol. 19 No.3 Oktober 2007, Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, hlm. 388.

<sup>6</sup> Fence M. Wantu, "Mewujudkan Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Putusan Hakim Di Peradilan Perdata", Jurnal Dinamika Hukum, Vol. 12 No. 3 September 2012, hlm. 483

This is the concern of the authors to examine how the concept of resolving criminal acts in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, as well as to examine aspects of legal certainty in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

## **2. Method**

This type of research in writing this proposal is a normative juridical research method, another name is doctrinal legal research which is also known as library research or document study because this research is carried out or aimed only at written regulations or other legal materials.<sup>7</sup>The approaches used by researchers in compiling this research are, among others: the Legislative Approach (Statue Approach) and; the Case approach (case approach).<sup>8</sup>Data collection was carried out through library research, meaning that the technique of collecting data and information from several books and readings and legislation related to the problem under study.<sup>9</sup>This literature study was conducted in the library. The legal materials used in this study were obtained from searches through literature studies, namely collecting various legal materials, both in the form of laws and regulations, literature, scientific works, results of previous research, documents, opinions of legal practitioners, journals, and various relevant books that related to this essay.

## **3. Criminal Acts of Settlement Concept in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice**

Restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system. On the other hand, restorative justice is also a new framework of thinking that can be used in responding to a crime by law enforcement and legal workers.<sup>10</sup>

The restorative justice approach is assumed to be the most recent shift from the various modalities and mechanisms that work in the criminal justice system in dealing with criminal cases at this time. The United Nations, through the basic principles he has outlined, considers that a restorative justice approach is an approach that can be used in a rational criminal justice system. This is in line with the view of G.P Hoefnagels which states that criminal politics must be rational (a rational total of the responses to

---

<sup>7</sup>SoerjonoSoekanto, dan Sri Mamudji, *PenelitianhukumNormatif*, Cetakan Ke-8, Jakarta, PT Raja GrafindoPersada, 2004, hlm. 14.

<sup>8</sup>YayukRizkiHulukati, Dian Ekawaty Ismail, Novendri M. Nggilu. 2020. PenyalahgunaanNarkotika Oleh Pegawai Negeri SipilDilihat Dari Perspektif Kajian Kriminologi, *JurnalLegalitas* Vol. 13 No.1 (Gorontalo:Universitas Negeri Gorontalo), hlm. 18

<sup>9</sup>*Ibid.*, hlm. 66.

<sup>10</sup> Edward James Sinaga, "*Layanan Hukum Legislasi Dalam Upaya Memberikan Kepastian Hukum*," *Jurnal Penelitian Hukum De Jure* 19, Vol 3, No. 1, 2019, hlm. 87

crime). The restorative justice approach is a paradigm that can be used as a frame of strategy for handling criminal cases aimed at responding to dissatisfaction with the workings of the criminal justice system. currently availabl.<sup>11</sup>

Restorative Justice, according to Lode Walgrave, states that restorative justice is not an "alternative to punishment" but alternative punishment. Meanwhile, Stephen VP Grvey stated restorative justice is a way of responding to crime. Although it is stated that there is a fundamental difference between the concept of restorative justice and the current theory of punishment, not a few view that this theory only complements other theories and relates to the elements in the retributive, rehabilitative, and resocialization paradigms as other sentencing paradigms. that existed before.

Termination of prosecution through reconciliation of victims and suspects is part of a series of law enforcement processes. Law enforcement is defined as the activity of harmonizing the value relationships that are outlined in solid rules and manifested in an attitude of action as a series of final stage value elaborations, to create, maintain and maintain a peaceful social life. Humans have their standards to achieve their life goals, but these standards often conflict between one individual and another.<sup>12</sup>

The conventional criminal process only makes the victim later a witness at the trial level which does not greatly affect the sentencing decision, the task of prosecution is still given to the Prosecutor who only accepts the investigation files to be further processed on the basis for criminal charges, without knowing and understanding the real conditions of the problem, and the perpetrator is ready to accept the criminal sentence that will be imposed on him. While the restorative justice process is carried out through discretion (wisdom) and this diversion is an effort to divert from the criminal justice process outside the formal process to be resolved by deliberation.

Changes in legal orientation are needed to achieve the objectives of the law itself, namely justice and order. The goal is to face the dynamics of a very fast society so that the law is always left behind. The development of modern law which is increasingly technological in nature cannot be used to solve various problems in society because it places more emphasis on rational structures, procedures, and formal formats. Rationality develops in such a way that it reaches the level of rationality above everything else (rationality above else). Law enforcers only prioritize the value of legal certainty without paying attention to the value of expediency and justice.<sup>13</sup>The law cannot be enforced only by simply applying the rules, but must also consider the values and ideals that the law wants to realize, which are not easy to read in the regulations.

---

<sup>11</sup>Muladi, *Alternatif "Penyelesaian Konflik Dala Kaitannya Dengan Kawasan Industri"*, Makalah Seminar Tentang Kawasan Industri (Semarang: UNISSULA, 1992), hlm. 2-3.

<sup>12</sup>M. Ali Zaidan, *Menuju Pembaruan Hukum Pidana*, Jakarta: Sinar Grafika, 2015, hlm. 109

<sup>13</sup>Suwardi Sagama, "Analisis Konsep Keadilan, Kepastian Hukum dan Kemanfaatan dalam Pengelolaan Lingkungan." *Mazahib*, Vol. 15, No. 1, 2016, hlm. 36

Currently, the regulation regarding the termination of prosecution through peace efforts between the suspect and the victim has been regulated by the existence of a legal norm in the form of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Apart from that, the implementation of these rules must also not conflict with the legal norms above, such as the Criminal Code and the Criminal Procedure Code applicable in Indonesia.

In line with this, the Attorney General of the Republic of Indonesia, ST. Burhauddin said that justice is not in books but conscience. In realizing this justice, the Attorney General's Office makes discretion in the form of the Attorney General's Regulation on Termination of Prosecution Based on Restorative Justice as a form of embodiment of more humane law enforcement. In its approach, the Prosecutor's Office is a case-control agency. Restorative justice is the goal of justice to be achieved by restoring to its original state, balancing protection, interests of victims and perpetrators of criminal acts that are not oriented towards revenge.<sup>14</sup>

This change of view is a criminal law policy reform that leads to a change in the purpose of the punishment which is no longer retaliating, but eliminates stigmatization or labeling as perpetrators of crimes and frees the perpetrators' guilt. If in the past, the punishment was considered a moral critique of despicable acts, now it must be a moral critique to reform the behavior of the convict in the future.

The existence of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 seems to be the answer to the long wait for justice fighters who have often been victims of the rigidity of the enforcement of criminal law norms that apply in Indonesia. This rigidity is often related to the implementation of sentencing which only refers to the principle of legality, but often ignores the purpose and function of the law, one of which is justice and legal benefits.

Based on the provisions of Article 2 of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020, it is stated that the termination of prosecution based on restorative justice is carried out based on:

1. justice.;
2. public interest;
3. proportionality;
4. punishment as a last resort; and;
5. fast, simple, and low-cost.

Termination of prosecution based on Restorative Justice is regulated in Article 4 PERJA No. 15 of 2020 which is carried out with attention:

- a. the interests of the Victims and other protected legal interests.;
- b. avoidance of negative stigma;

---

<sup>14</sup> Gita Santika, "Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan", Jurnal PROGRESIF: Jurnal Hukum XVI/No.1/Juni 2021, hlm. 87

- c. avoidance of retaliation;
- d. community response and harmony; and
- e. decency, decency, and public order.

In addition, in terminating the prosecution, the Public Prosecutor shall consider:

- a. subject, object, category, and the threat of crime;
- b. background of the occurrence/commitment of the crime;
- c. level of depravity;
- d. loss or consequence resulting from a criminal act;
- e. costs and benefits of handling cases;
- f. restoration back to its original state; and
- g. the existence of peace between the victim and the suspect.

Especially for criminal acts related to property, if some criteria or circumstances are casuistic in nature which according to the considerations 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 based on Restorative Justice can be carried out with due regard to the conditions as referred to in Article 5 paragraph (1) letter an of Perja Number 15 of 2020 accompanied by either letter b or letter c. As for criminal acts committed against persons, bodies, lives, and the independence of persons, the provisions as referred to in paragraph (1) letter c may be excluded. And if a criminal act is committed due to negligence, the provisions in paragraph (1) letter b and letter c may be excluded.

The conditions that must be met by a suspect who is entitled to a termination of the prosecution of a case based on restorative justice are described in Article 5 PERJA No. 15 years are:

- a. This is the first time the suspect has committed a crime;
- b. a criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and
- c. a criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp.2,500,000,000.00 (two million five hundred thousand rupiah).

In this regard, the Attorney General has the duty and authority to streamline the law enforcement process provided for by the Act by taking into account the principles of fast, simple, and low-cost justice, as well as establishing and formulating case handling policies for successful prosecutions that are carried out independently for the sake of justice based on law and justice. conscience, including prosecution using a restorative justice approach, carried out by the provisions of the legislation..

According to Article 3 of Perja Number 15 of 2020, the closure of cases for legal purposes is carried out, one of which is that there has been a settlement of cases outside the court. Settlement of cases outside the court referred to can be carried out with the provision that, for certain criminal acts, the maximum penalty is paid voluntarily by



the provisions of the legislation; or, there has been a restoration of the original situation using a Restorative Justice approach.

The settlement of cases out of court using a restorative justice approach as referred to in Article 3 paragraph (3) letter b shall stop the prosecution. Regarding the termination of prosecution based on restorative justice, the Public Prosecutor is responsible and submitted in stages to the Head of the High Prosecutor's Office.

There are 2 (two) types of methods of stopping the prosecution of cases, including peace efforts and the peace process. First, the peace effort offered by the public prosecutor to both parties, namely the suspect and the victim. The flow of the peace effort begins with the summons of the victim by the public prosecutor, followed by telling the reason for the summons. Followed by involving the families of the victims/suspects, community leaders/representatives, and other related parties. During the process, if the offer is accepted, the case is dismissed, if rejected, the case will be transferred to the court. Second, is the peace process. The public prosecutor acts as a facilitator where there is no element of partiality between the two parties between the victim and the suspect with a period of 14 (fourteen) days from the handing over of responsibilities that must be fulfilled by the suspect and carried out at the prosecutor's office. This activity is carried out to resolve cases peacefully and not be followed up in court.<sup>15</sup>

Based on the description of the things above, it can be understood that in principle criminal cases can be closed for the sake of law and the prosecution is terminated based on Restorative Justice is limited only to perpetrators who have recently committed and are not recidivists, and only to certain types of minor crimes.

#### **4. Aspects of Legal Certainty in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice**

Every concept of the state must have a basis of legitimacy as a constitutional basis (remembering the Constitution is the basic law). So that its basis cannot be separated from the rule of law principle. because the rule of law is a reflection of the desire of the community as a whole to submit themselves to a rule that will bind and apply without exception to each of its members. The constitution states that the State of Indonesia is a state of law (*rechtssaat*), not a state of power (*maachtstaat*). In the understanding of the rule of law, the law holds the highest command in the administration of the state. What leads to the administration of the state is the law itself by the principle of the rule of law, and not of man, which is in line with the notion of democracy, namely, power is exercised by law. The rule of law in a material sense aims to protect citizens against arbitrary actions from the authorities to enable humans to gain their dignity as human beings. Therefore, the essence of the rule of law in a material sense is the existence of

---

<sup>15</sup> Gita Santika, *Op. cit*, hlm. 89

guarantees for community members to obtain social justice, namely a condition that is felt by members of the community with reasonable respect from other groups; while each group does not feel disadvantaged by the activities of other groups. Some characteristics of the rule of law according to A.V Dicey which he calls the rule of law, namely; the supremacy of law; equality before the law; and due process of law.<sup>16</sup>

The goals of the Republic of Indonesia include protection for the community and the rights of the people which are guaranteed in every aspect of their lives. This is of course in line with the concept of a rule of law initiated by F.J. Stahl, one of which is “providing recognition and protection of human rights.<sup>17</sup>

Restorative justice is the principle of returning the situation/order to its original state (restoration) as before the crime. The application of this restorative justice emphasizes the return of material and immaterial losses felt by the victim as a result of the crime committed by the perpetrator. This is the purpose and objective of the issuance of Perja Number 15 of 2020. As can be understood in the preamble of Perja Number 15 of 2020. Restorative justice must continue to be put forward to resolve cases. criminal acts by prioritizing recovery as in the initial condition. Protection, balance, and interests of perpetrators and victims are not oriented towards revenge because they are something that is needed by the community.

In addition to these considerations, the termination of prosecution for the sake of law with a restorative justice approach aims to increase the effectiveness of the law enforcement process from the legislation by considering the principles of simplicity, speed, low cost, and being able to formulate and determine policies to handle cases so that the claims filed are successful impartially. for the sake of justice based on conscience and law, filing a claim through restorative justice must be by applicable regulations.

The peace process is carried out by the parties through deliberation to reach a consensus without intimidation, without coercion, without pressure, and voluntarily. During the peace process, the role of the Public Prosecutor is as a facilitator, meaning that he has no interest/related to the suspect, the victim, or the case, either personally, professionally, directly or indirectly. The reconciliation process and the fulfillment of obligations are carried out within a maximum of 14 (fourteen) days after the handover of responsibility for the suspect and evidence.

If the victim and the perpetrator have carried out a peace process, but if there is no agreement on reconciliation or the obligations are not carried out according to the

---

<sup>16</sup>Lisnawaty W. Badu dan Ahmad, 2021, *Purifikasi Pemberian Amnesti dan Abolisi: Suatu Khtiar Penyempurnaan Undang-Undang Dasar 1945*, Jurnal Jus Civile Vol. 5 No. 2, (Aceh: Universitas Teuku Umar), hlm. 104-105

<sup>17</sup>Moh. Rusdiyanto U. Pulu Hulawa, Jufryanto Pulu Hulawa, dan Moh. Fahrurrozie Hidayatullah Nur Musa, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Penganiayaan Menggunakan Panah Wayer Oleh Anak Di Kota Gorontalo (Studi Kasus Polres Gorontalo Kota)*, Jurnal Yuridis Vol. 6 No. 2, (Gorontalo: Universitas Negeri Gorontalo), hlm. 94-95

memorandum of agreement, the Public Prosecutor has the right to: a. include the failure of the peace process in the minutes; b. make a memorandum of opinion stating that the case is proceeded to the court along with the reasons; and file court cases.<sup>18</sup>

If the victim and the perpetrator have carried out a peace process, but if there is no agreement on reconciliation or the obligations are not carried out according to the memorandum of agreement, the Public Prosecutor has the right to: a. include the failure of the peace process in the minutes; b. make a memorandum of opinion stating that the case is proceeded to the court along with the reasons; and file court cases.

If the peace agreement as mentioned above is not successful due to disproportionate demand for the fulfillment of obligations, harassment (class, nationality, race, religion, ethnicity), sentiment, threats/intimidation, discriminatory treatment of suspects who have good intentions, the Public Prosecutor will consider when filing a claim. Failure to fulfill obligations due to economic factors or other reasons accompanied by good faith from the suspect will also be considered.

In this regard, in restorative justice in the prosecutor's regulation number 15 of 2020, it is not impossible to cause ambiguity. This is based on the fact that restorative justice emphasizes the construction of settlements for criminals. Therefore, this allows victims to feel that they do not get legal certainty in solving criminal cases.

In this case, the theory of legal certainty in Gustav Radbruch's thought does not avoid conflicts or clashes between the values of justice and certainty and benefits. So further exploration in the study of this theory leads the author to the realization of Gustav's concept through standard priorities and casuistic priorities. This is because the realization of Gustav Radbruch's concept of three basic legal values which include aspects of justice, expediency, and legal certainty has the potential to create tension between each aspect.<sup>19</sup>

There are times when justice conflicts with benefits, or other times justice conflicts with legal certainty, it is also possible that there is a tension between benefits and justice. To anticipate this condition, Gustav Radbruch provides a way out through 2 (two) teachings, namely standard and casuistic priorities. Because of standard priorities, the law provides a benchmark in deciding a case, where the priority is justice, the second is the benefit and the third is legal certainty.<sup>20</sup>

Standard priority teachings are relatively wiser and wiser, compared to extreme teachings such as the ethical law school which only focuses on justice, the utilitarian school which only focuses on the usefulness of the law, and the legalistic dogmatic school (legal positivism) which only focuses on legal certainty. Whereas in the case of

---

<sup>18</sup>Barda Nawawi Arief, *Tujuan dan Pedoman Pemidanaan*, Pustaka Magister, Semarang, 2017, hlm. 47

<sup>19</sup>Miftahul Huda, "Hak Atas Memperoleh Kepastian Hukum Dalam Perspektif Persaingan Usaha Melalui Telaah Bukti Tidak Langsung", *JURNAL HAM* Volume 11, Nomor 2, Agustus 2020, hlm. 264

<sup>20</sup>*Ibid*

casuistic priorities, which is the cause of the increasingly complex interests in everyday life, the teaching of standard priorities is felt to no longer meet the expected ideals. For the teaching of casuistic priorities, which allows the three basic values above in turn according to the context of the problem, they can become the dominant elements, so that each of the basic legal values can, in turn, become the dominant element in certain cases.<sup>21</sup>

Criminal Law itself regulates about:<sup>22</sup>

1. Determine which actions should not be taken, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition.
2. Determine when and in what cases those who have violated the restrictions may be subject to or punished for being threatened,
3. Determine in what way the imposition of a crime can be carried out if someone is suspected of violating the prohibition.

From this opinion, criminal law regulates prohibited actions accompanied by criminal threats and determines criminal responsibility. As formal criminal law, criminal law regulates how law enforcement procedures carry out their duties in enforcing material criminal law. Law enforcers ranging from the police to the courts in carrying out their duties to enforce criminal law based on the values of life in society so that dignified justice will be achieved. However, in its development, legal certainty in criminal law is no longer seen to impose a crime but to resolve criminal problems with the agreement of the suspect and the victim..

Legal certainty should be aimed at protecting the interests of each individual so that they know what actions are permissible and vice versa which actions are prohibited so that they are protected from arbitrary actions. These individuals are called justice seekers who do need certainty, but real certainty is not aimed at mere form or formality but at the desire to provide justice. As stated by Sudikno that:<sup>23</sup>

“It is not the application of the legal text as it is that provides legal certainty, but the will to give justice seekers what they demand based on propriety, therefore we may say that the former false certainty, which was based on always few texts, was replaced by certainty. in a higher level, the certainty that is generated by seeking propriety”

In this regard, legal certainty must, in principle, be seen in the provisions of the law because only then can the legal provisions be verified. What is outside the law cannot be entered as law. If you look at the prosecutor's regulation no. 15 of 2020, in essence,

---

<sup>21</sup> M. Muslih, 'Negara Rukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)', *Jurnal Legalitas*, Legalitas Edisi Juni 2013, 2013. hlm 150

<sup>22</sup> Husni Thamrin, *Hukum Pidana dan Kebudayaan*, *Jurnal Ilmiah Keislaman*, Vol.14 , No.1 , Januari - Juni 2015, hlm. 41

<sup>23</sup> Kuart Puji Priyanto, *Pengantar Ilmu Hukum*, Yogyakarta, Kanwa Publisher 2011, hlm. 211.

it has provided legal certainty because it has helped to formulate the arguments and norms of the restorative justice mechanism at the prosecutor's office..

In its development, the legal certainty of restorative justice has long been known by the Indonesian people by conducting deliberation and mediation. Legal certainty in the law that lives in many communities is spread out and is not (always) formulated in writing by the principles of formal legality. Although this has been formally confirmed in the prosecutor's regulation number 15 of 2020.

Based on this, it can be stated that the basic principle of law is to provide legal certainty that fulfills a sense of justice to every citizen equally and without exception.<sup>24</sup>Legal products that are made must not open many interpretations by law enforcers, including prosecutors and judges based on their wishes and desires. Therefore, service regulation Number 15 of 2020 is intended so that there is a progressive linkage and construction between legal certainty and justice, through which restorative justice is given a clear and firm, and comprehensive legal basis, to help support law enforcement that has legal certainty. From a legal perspective, this effort is realized by criminal law. Criminal law is expected to be able to fulfill the ideals of public order.<sup>25</sup>

## 5. Conclusion

Prosecutor's Regulation Number 15 of 2020 in principle places restorative justice with all its terms and conditions. In the Prosecutor's Office Regulation Number 15 of 2020, criminal cases can be closed for the sake of law and the prosecution is terminated based on Restorative Justice, which is limited to perpetrators who have recently committed and are not recidivists, and only to certain types of minor crimes.

The aspect of legal certainty in restorative justice as regulated in Prosecutor's Regulation Number 15 of 2020 lies in the guidelines that have been created and determined and are limited by the requirements in their implementation. Service regulation Number 15 of 2020 is intended so that there is a progressive linkage and construction between legal certainty and justice, through which restorative justice is given a clear and firm, and comprehensive legal basis, to help support law enforcement that has legal certainty.

## References

### Book:

Arief, B. N. *Tujuan dan Pedoman Pemidanaan*. Semarang: Pustaka Magister. 2017

---

<sup>24</sup>Lisnawaty W. Badu dan Apripari, 2019, *Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer dalam Perkara Pidana*, Legalitas Vol. 14 No. 1, (Gorontalo: Universitas Negeri Gorontalo), hlm. 63

<sup>25</sup>Aniza Lakoro, Lisnawaty W. Badu, dan Nuvazria Achir, 2020, "Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online", Jurnal Legalitas Vol. 13 No.1, (Gorontalo: Universitas Negeri Gorontalo), hlm. 35

- Harahap, Y. *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*. Jakarta: Penerbit Sinar Grafika. 2009
- Mertokusumo, S. *Mengenalhukum*. Bandung: Liberty. 2000
- Moeljanto. *Azas-azas Hukum Pidana*. Jakarta: Bina Aksara. 1988
- Muhammad, A. *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti. 2004
- Priyanto, P. K. *Pengantar Ilmu Hukum*. Yogyakarta: Kanwa Publisher. 2011
- Rahardjo, S. *Ilmu Hukum*. Bandung: Citra Aditya Bakti. 2006
- Zaidan, M. A. *Menuju Pembaruan Hukum Pidana* Jakarta: Sinar Grafika. 2015

**Journal article:**

- AnizaLakoro, Lisnawaty W. Badu, dan NuvazriaAchir, 2020. "LemahnyaKepolisianDalamPenangananTindakPidanaPerjudianTogel Online". [Jurnal]. Gorontalo: Universitas Negeri Gorontalo
- Edward JamesSinaga. *Layanan Hukum Legislasi Dalam Upaya Memberikan Kepastian Hukum*. [Jurnal]. Jakarta: Kementerian Hukum dan HakAsasiManusia. 2019
- Fence M. Wantu. *Antinomi Dalam Penegakan Hukum Oleh Hakim*. [Jurnal]. Yogyakarta: Universitas Gajah Mada. 2007
- \_\_\_\_\_. *Mewujudkan Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Putusan Hukum Di Peradilan Perdata*. [Jurnal]. Banyumas: Universitas JendralSoedirman. 2012
- Gita Santika. *Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan*. [Jurnal]. Bangka Belitung: Universitas Bangka Belitung. 2021
- Lisnawaty W. Badu dan Ahmad, , *PurifikasiPemberianAmnesti dan Abolisi: SuatuKhtiarPenyempurnaanUndang-Undang Dasar 1945*, *JurnalIus Civile* Vol. 5 No. 2, Aceh: Universitas Teuku Umar, 2021
- Lisnawaty W. Badu dan Apripari. "MenggagasTindakPidanaMiliterSebagaiKompetensi Absolut PeradilanMiliterdalamPerkaraPidana". [Jurnal]. Gorontalo: Universitas Negeri Gorontalo. 2019
- M. Muslih. *Negara Rukun Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)*. [Jurnal]. Jambi: Universitas Batanghari. 2013
- MiftahulHuda. *Hak Atas Memperoleh Kepastian Hukum Dalam Perspektif Persaingan Usaha Melalui Telaah Bukti Tidak Langsung*. [Jurnal] Jakarta: Kementrian Hukum dan HakAsasiManusia. 2020
- Moh. Rusdiyanto U. Puluhulawa, JufryantoPuluhulawa, dan Moh. FahrurrozieHidayatullah Nur Musa. "KebijakanKriminalDalamPenanggulanganTindakPidanaPenganiayaanMenggunakan

- PanahWayer Oleh Anak Di Kota Gorontalo (StudiKasusPolres Gorontalo Kota)". [Jurnal]. Gorontalo: Universitas Negeri Gorontalo. 2019*
- SuwardiSagama. *Analisis Konsep Keadilan, Kepastian Hukum dan Kemanfaatan dalam Pengelolaan Lingkungan, [Jurnal]. Samarinda: Universitas Islam Negeri Sultan Aji Muhammad Idris. 2016*
- YayukRizkiHulukati, Dian Ekawaty Ismail, dan Novendri M. Nggilu. 2020. *"PenyalahgunaanNarkotika Oleh Pegawai Negeri SipilDilihat Dari Perspektif Kajian Kriminologi", [Jurnal]. Gorontalo:Universitas Negeri Gorontalo*