

International Journal of Judicial Law

Analysis of the Concept of Restorative Justice in the Criminal Justice System Based on Legal Certainty

Heri Subroto ^{1*}, Agus Widodo ²

Master of Law Study Program, University 17 Agustus 1945 Semarang, Indonesia

* Corresponding Author: **Heri Subroto**

Article Info

ISSN (online): 2583-6536

Volume: 02

Issue: 06

Novembar-Desembar 2023

Received: 10-11-2023

Accepted: 20-12-2023

Page No: 25-31

Abstract

This paper aims to analyze the concept of Restorative Justice is basically carried out through wisdom and diversion, namely the transfer of criminal proceedings outside the formal process to be resolved through deliberation. Settlement through consultation is not new to Indonesia, even customary law in Indonesia does not distinguish between the settlement of criminal and civil cases, all cases can be resolved through deliberation with the aim of obtaining balance or restoring the situation. The Research Method of this Paper is Normative Juridical. The results of this paper's research are the implementation of settlement through the Restorative Justice approach as a manifestation of the expected Legal Certainty values, various positive impacts of Restorative justice must be used as a force to support the supremacy of law in the context of national development. In this case, through the restorative justice approach as a manifestation of the values of Legal Certainty has several positive implications. Therefore, it is very necessary to have a penal mediation law. This law should regulate penal mediation carried out at the level of investigation, prosecution, court and correctional institutions.

DOI: <https://doi.org/10.54660/IJL.2023.2.6.25-31>

Keywords: Restorative Justice, Criminal, Legal Certainty

1. Introduction

Indonesia is a country of law based on Legal Certainty, in organizing the spirit of national and state life based on the values of Legal Certainty. The State of Indonesia places law as the highest commander with the aim of upholding and elevating human dignity. Law is the most appropriate means in forming the character and personality of a country, so that law can be said to be a very vital tool in influencing every aspect of life, therefore law is also called a tool of social control. This provision is regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "The State of Indonesia is a State of Law". A state of law bases all actions or deeds and the formation of state institutions on law as seen in written provisions. By nature, humans are God's creatures who have the same degree in the eyes of God who should be treated equally in accordance with the noble values of humanity ^[1].

Human rights are undoubtedly basic rights that everyone has since birth and must not be violated by anyone, even the state. In fact, the state is required by the constitution, namely the law, to defend the rights of all citizens. The Unitary State of the Republic of Indonesia was founded in 1945. The values of Legal Certainty in Indonesia must be upheld at every level of the legal system, including at the level of legislation—in this case the formation of legislation—and the level of application/implementation, where law enforcement is carried out by the government in accordance with the regulations of the criminal justice system, starting from investigation, prosecution, court decisions, and execution in correctional institutions. The implementation and enforcement of the law cannot be separated from the success or failure of a regulation. Law enforcement officers (Police, Prosecutors, Judges, Correctional Institutions) have a big role in this case. No matter how great the legal product is, its potential will not be maximized if law enforcement does not function effectively. Conversely, no matter how bad the draft law is, justice and legal benefits will certainly be realized if law enforcement is effective.

¹ Muladi, Human Rights: The Essence, Concept and Implications from a Legal and Social Perspective, (Bandung: PT. Refika Aditama, 2009), p. 3

The concept of law enforcement, adopting the theory of Lawrence M. Friedman that the effectiveness and success of a law enforcement process depends on three elements of the legal system, namely the structure of law, the substance of the law and the legal culture. The legal structure concerns law enforcement officers, the substance of the law includes the legal apparatus and the legal culture is the living law adopted in a society^[2]. The legal structure in L. Frieman's theory is applied as a law enforcement apparatus, which is the driving force in this case, namely the one who carries out statutory regulations^[3].

There are many shortcomings and weaknesses in law enforcement in Indonesia. The main issue that needs to be evaluated is not the legal system and its legal outcomes, but rather the law enforcement procedures. Public demand for legal guarantees and certainty is still quite low. This has led to a less than favorable perception of law enforcement in society. Law enforcement and implementation have not adhered to the ideals of justice and truth. Failure to carry out this reform will result in law enforcement deviating far from the principle of Legal Certainty upheld by our ancestors.

Criminal cases are usually handled through the Criminal Justice System. The term Criminal Justice System (CJS) refers to a method of performance mechanism that handles crimes using a "system approach". The Criminal Justice System (CJS) is a procedure that begins with an investigation by the police, continues with prosecution by the public prosecutor, determination by the court in the trial process, and ends with detention in a correctional institution. The Indonesian Criminal Justice System (CJS) is regulated by the Criminal Procedure Code (KUHAP).

The integrated criminal justice system is commonly referred to as the integrated criminal justice system. Prof. Muladi in his book states that the meaning in question concerns synchronization and harmony, specifically referring to structural synchronization within a connected framework. There are three main types of synchronization that are important in the context of law enforcement: coordination between institutions, vertical and horizontal alignment in positive law, and cultural consistency in the philosophical attitudes that guide the criminal justice system^[4].

In certain countries, such as Indonesia, there is increasing dissatisfaction and anger towards the formal criminal justice system known as the Criminal Justice System (CJS) paradigm. This is a result of improvements and progress in the criminal justice system which is currently seen as inadequate in protecting human rights and promoting transparency in the best interests of society. New ideas have emerged in addressing the shortcomings of the criminal justice system by making a shift from a formal approach to a non-formal approach, especially through the Restorative Justice paradigm.

Restorative Justice is the settlement of criminal cases outside the formal legal system through wisdom and diversion, through deliberation. Indonesia has a long history of resolving disputes through deliberation, where criminal and civil issues can be resolved through deliberation to restore balance or resolve problems, because customary law in Indonesia treats all cases equally. The justice sought in this

situation is based on the principles and beliefs of the ancestors of a nation contained in the philosophy of Legal Certainty.

This study aims to provide insight and support to readers and law enforcement officers in dealing with criminal activities. It advocates a comprehensive approach that goes beyond simply implementing a criminal justice system model that focuses on legal certainty, to ensure that justice and legal benefits are also achieved. By implementing a restorative justice model in full at every stage, the goal is to meet all aspects of the interests of the perpetrators and victims. Through deliberation, the goal is to achieve a fair and appropriate solution that is in line with the philosophy and values of Certainty. Law is the main source of all sources of law. The author tends to explore the topic further and presents it in a paper entitled "ANALYSIS OF THE CONCEPT OF RESTROTATIVE JUSTICE IN THE CRIMINAL JUSTICE SYSTEM BASED ON LEGAL CERTAINTY"

2. Research methods

The normative legal research method is one of the approaches used in legal research to analyze legal concepts based on existing norms. In the context of research on "Analysis of the Concept of Restorative Justice in the Criminal Justice System Based on Legal Certainty", the normative legal research method can be used to understand and evaluate the concept of restorative justice in the context of a criminal justice system based on the principles of legal certainty.

First, the normative legal research method will involve an analysis of laws and regulations related to the criminal justice system. Researchers will identify legal concepts related to restorative justice and analyze how these concepts are regulated in applicable laws and regulations. In addition, researchers will also see how the concept of restorative justice is implemented in criminal justice practices.

Second, the normative legal research method will also involve analysis of court decisions related to cases involving restorative justice. Researchers will analyze how the concept of restorative justice is applied by the court in deciding cases involving restoration and reconciliation for the parties involved. This analysis will provide a deeper understanding of the role and effectiveness of restorative justice in the criminal justice system.

Third, the normative legal research method will also involve literature studies and references related to the concept of restorative justice. Researchers will collect and analyze various theories, views, and previous studies that have been conducted on restorative justice. Thus, researchers can compile strong and supportive arguments in the analysis of the concept of restorative justice in a criminal justice system based on legal certainty.

By combining these three approaches, the normative legal research method can provide a comprehensive understanding of the concept of restorative justice in the context of a criminal justice system based on legal certainty. Through in-depth analysis, this research is expected to contribute to the development and improvement of a fairer and more effective criminal justice system.

²Bagir Manan, National Legal Development, delivered as a public lecture at the Faculty of Law, Padjadjaran University, (Bandung: 18 August 1997), p. 8

³Bagir Manan, National Legal Development, delivered as a public lecture at the Faculty of Law, Padjadjaran University, (Bandung: 18 August 1997), p. 8

⁴Muladi, Selected Chapters on the Criminal Justice System, (Semarang: UNDIP Publishing Agency, 1996), p.2.

3. Discussion

3.1. Practice of Restorative Justice Approach as an Manifestation of Values Based on Legal Certainty

The Restorative Justice approach model emerged based on ideas that criticized that law enforcement through the criminal justice system with imprisonment was considered no longer effective in solving problems that occurred in society. This Restorative Justice as an alternative effort in the criminal justice system of course in this case will provide an offer through an integral approach between the perpetrator and the victim to find various solutions or the best way out between both parties^[5]. The repairs referred to in this case will emphasize making compensation for the losses incurred by the perpetrator^[6]. This is in line with what was stated by John Braithwaite, he said that the main purpose of Restorative Justice is the improvement made by the perpetrator and in this case does not ignore the rights of the victim as the injured party through conciliation and reconciliation among the perpetrator, victim and community. The alternative solution in this case focuses more on peace between the victim and the perpetrator which is a win-win solution and in the end will certainly provide substantive justice not just law that is focused on text alone. Law Enforcement through the Criminal Justice System only prioritizes the aspect of legal certainty without considering the aspect of justice and benefits for the community. In fact, law enforcement that is only based on the Law in this case what is achieved is only legal certainty will actually cause the law to lose its true meaning, in this case the true purpose of the law is the law that provides a sense of happiness, benefits and justice for the community in order to ensure the fulfillment of human rights^[7].

The restorative justice approach in resolving criminal cases has been traditionally applied in several indigenous communities in Indonesia. Indigenous communities engage in deliberation to reach consensus, which is the main value of restorative justice to address emerging problems. Restorative justice is ingrained in the life and culture of Indonesian society, reflecting the essence and character of Indonesian civilization. Indonesian customary law was placed under the authority of European (Dutch) law during the Dutch colonial period. After Indonesian independence, customary law communities were implicitly recognized in Paragraph IV of the Preamble to the 1945 Constitution which states the state's obligation to protect the entire Indonesian nation, including customary law. Customary law is considered the original law of the Indonesian nation, which embodies the values of Legal Certainty and reflects the spirit and personality of the Indonesian people. The Indonesian government has made legal progress in response to the recognition of the importance of restorative justice as an integral part of the spirit and personality of the Indonesian people, although this progress is still incomplete.

Indonesian criminal law, now known as Wvs, is a strict legacy of the Dutch State which prioritizes the principle of legality, so that the method of resolving criminal cases through discourse and consensus is not recognized in

Indonesian criminal law. Restorative justice involves a process that emphasizes peace through mediation and reconciliation, where victims, perpetrators, and the community are directly involved in resolving cases. Law enforcement practices in Indonesia still face many problems because they are inversely proportional to the approach model through the criminal justice system^[8].

Restorative justice in the West Virginia Criminal Code has not been officially regulated, but is outlined in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Criminal Code and Criminal Procedure Code have not regulated restorative justice strategies in the application of criminal law at various stages, both investigation, prosecution, and trial.

After completing their sentence, the role shifts from the investigation stage to the supervision stage. The essence of Law No. 11 of 2012 concerning the Juvenile Justice System is to support efforts to provide fair assistance (Restorative Justice) and avoid the involvement of children in the legal process (diversion). Article 7 (1) mandates diversion at the investigation and prosecution stages of children's cases in the district court. However, diversion is not always the right solution for all violations. Diversion is used for crimes that carry a sentence of less than seven years in prison and are not repeated violations. If children are involved in the legal process, the law must ensure that children receive support at all stages of the process. Article 23 paragraph (1) mandates that minors must receive legal assistance and guidance from citizens or other companions in accordance with laws and regulations at all stages of the assessment.

There are several examples of injustice in the judicial process, starting from the investigation stage by the police to the execution process by the correctional institution. For example, there is a disturbing case about Mbok Minah, a 55-year-old woman, who challenges the concept of justice. Grandma Minah, a resident of Darma Kradenan Village, Ajibarang District, Banyumas Regency, was sentenced to three months of house arrest for allegedly stealing three cocoa pods from her workplace at PT. Rumpun Sari Antan 4, located near her residence. In 2009, Mbok Minah collected three cocoa pods from the ground to take home and use as seeds. Three cocoa beans were lying on the ground while Mbok Minah was working to clear weeds on the company's cocoa plantation. Furthermore, the plantation supervisor accidentally found three cocoa pods that had been previously determined by Mbok Minah. Simandor looked for the person suspected of stealing the cocoa pods. Mbok Minah admitted to taking the three cocoa pods because she heard something fall from the tree. Mbok Minah was taken to the police station by Simandor on charges of stealing cocoa pods from her company. The case was then taken to court. Mbok Minah was then sentenced to three months of house arrest.

When examining Mbok Minah's situation, resolving the violation is not simply a matter of punishing the wrongdoer; it requires considering the problem from a broader perspective. Deliberation should be sufficient to address minor issues such as those mentioned. Resolving a crime

⁵ Prayitno, KP 2012. Restorative Justice for the Courts in Indonesia (Philosophical Juridical Perspective in Law Enforcement in Concreto). Journal of Legal Dynamics, Vol. 12, No. 3, p. 409

⁶ Nurwianti, A., Gunarto & Wahyuningsih, 2017, Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Committed by Children at the Rembang Police. Khaira Ummah Law Journal, Vol.12, No.4, p. 709

⁷ Yohanes Suhardin, The Phenomenon of Ignoring Justice in Law Enforcement, Jurnal Mimbar Hukum, Vol. 21 No. 2, 2009, p. 342.

⁸ Kristian & Tanuwijaya, C., Settlement of Criminal Cases with the Concept of Restorative Justice in the Integrated Criminal Justice System in Indonesia. Mimbar Justitia Law Journal, Vol.1, No.2, 2015 pp.597-598

involves three parties: the victim, the perpetrator, and the community. Meetings and deliberation circles, when used in a restorative method, meet basic human needs. Every individual has a basic need for recognition and appreciation. Meetings, discussions, and community circles are used to encourage dialogue between the victim and the perpetrator in order to meet their basic needs. The victim can express the suffering caused by the perpetrator through discussion. In turn, the perpetrator listens attentively and acknowledges the victim's account of her experience. After admitting her wrongdoing, the perpetrator may apologize and express regret. The victim may then apologize and agree to compensation for the hardship she has experienced. The deliberation ends when peace and reconciliation are reached, and a certain amount of compensation is agreed upon by both parties. Restorative justice occurs when peace and reconciliation are achieved between the victim, the perpetrator, and the community.

In countries with ineffective legal and judicial systems, a restorative justice approach is more appropriate than retributive measures. Restorative justice ensures social welfare by prioritizing peace and reconciliation, rather than punishment and revenge. An unfair judicial process can exacerbate hostility between victims and perpetrators, potentially triggering violent retaliation. Restorative justice will help eliminate the arrogance of the rich and powerful. The rich and powerful often bring trivial disputes to court because of arrogance, because they have the financial ability to cover legal costs. Similar to the situation of Mbok Minah mentioned earlier. Promoting restorative justice to change arrogance into humility and patience.

In contrast to the Mbok Minah case, a recent incident that has received widespread attention both in cyberspace and the mass media is a police officer who decided to stop the interrogation of a teenager who reported his biological mother. The case began when the young man named M sold his father's inherited land for Rp 200 million. His mother only received Rp 15 million from the proceeds of the inheritance sale. The mother used the funds to buy a motorbike. Furthermore, the motorbike was left at the residence of his relatives at their request. Upon learning this information, the young man (L) objected and then accused his mother of embezzling the motorbike. At that time, the child told the Central Lombok Police about his biological mother. Head of Criminal Investigation Unit of the Central Lombok Police AKP Priyo Suhartono refused to accept the report and admitted to being worried about the case because it involved the imprisonment of the child's biological mother. AKP Priyono instructed the child to resolve the case through family deliberation. The police replaced the money the child requested.

The author argues that the Head of Criminal Investigation Unit of the Central Lombok Police, AKP Priyo Suhartono, showed that not all cases handled through the official settlement process resulted in justice and legal benefits by refusing to acknowledge the child's report. All law enforcement officers must adopt this progressive mentality and implement restorative justice practices. Restorative justice aims to educate individuals in forgiving those who have committed mistakes or engaged in violence by encouraging discussions that help them recognize their

mistakes and their ability to harm others. Being open to speaking during meetings and discussions demonstrates humility and patience. Consistent practice is essential. Restorative conversations can help reduce the severity of the damage caused by large-scale demonstrations targeting public facilities. Restorative justice must be advocated and implemented at all levels of society in this scenario^[9].

3.2. Principles in the Restorative Justice Approach

Every law enforcement officer can enforce internal policies in practice. The public views law enforcers, especially the Indonesian National Police, as the primary enforcers of criminal law, and assesses their fairness in carrying out their duties. It is important for the Indonesian National Police to immediately implement restorative justice in their investigations in order to accelerate the enforcement of justice, thereby ultimately increasing public trust and facilitating the maintenance of public order and security. Susan Sharpe's ideals of restorative justice.

Restorative justice involves full participation and consent. Here, the victim and the perpetrator are meant to connect personally and actively. In addition, it raises the potential for other parties who may suffer harm or disruption due to the perpetrator's actions.

Restorative justice aims to repair the harm caused by a crime. Resolving conflict through a restorative justice approach is beneficial because it allows for a tailored solution, similar to a doctor diagnosing a patient's illness and prescribing the right treatment for recovery. Restorative justice is the right solution for victims seeking healing. In addition to victims, perpetrators also need healing, especially to be free from feelings of guilt and fear. The restorative justice approach model is essential in improving the well-being of perpetrators and victims.

Restorative justice aims to obtain full and direct accountability from the perpetrator. In a settlement model that uses a restorative justice approach, the perpetrator must show the truth of his confession. The perpetrator's confession directly acknowledges the mistake made and ensures that it will not be repeated.

Restorative justice aims to reconcile individuals in society who are separated or divided by a crime. Restorative justice aims to reconcile the healing of the perpetrator after committing a crime that has caused disapproval in society. This effort includes reconciling victims and perpetrators and reintegrating them into society to prevent the labels of "victim" and "perpetrator" from becoming permanent, because both parties have the right to pursue their fate.

Restorative justice aims to increase community resilience to prevent future criminal behavior. Criminal activity is inevitable and occurs due to various factors such as economic conditions and inadequate justice enforcement. Therefore, relocation of both victims and perpetrators is necessary to uphold the integrity of society and create a just and safe living environment. The resolution process with a restorative approach emphasizes the restoration and reconciliation of victims, perpetrators, and the community. This is different from the judicial process, which exclusively includes individuals in the judicial institution including judges, prosecutors, and those involved in the crime and their defense. Restorative justice reduces government

⁹Yoachim Agus Tridiatno, *Restorative Justice*, (Yogyakarta: Cahaya Atma Pustaka, 2015), pp. 51-52

involvement.

Howard Zehr emphasized several principles of restorative justice, namely as follows ^[10]:

1. Restorative justice is sometimes misunderstood as only focusing on forgiveness and reconciliation, so that many people, including victims, believe that restorative justice will pressure victims to forgive and reconcile with the perpetrators of the crime. Restorative justice in this case does not solely emphasize forgiveness and reconciliation. However, the emergence of restorative justice does not eliminate the potential outcome that restorative programs will produce forgiveness and reconciliation.

Restorative justice does not only include mediation. In this scenario, restorative justice strategies emphasize meetings, but the focus is not only on mediation. Mediation programs such as VORP, VOM, FGC, and justice circles are early forms of restorative justice. Terms used include conference, debate, or deliberation. Restorative justice cannot be achieved without interaction between the victim and the perpetrator.

Restorative justice does not aim to provide a deterrent effect so that the perpetrator does not commit crimes again. If the perpetrator repeats his actions after the application of the restorative justice approach model, it does not indicate the failure of the model. The fundamental focus of the restorative justice approach model is the needs of all parties involved, including victims, perpetrators, and the community.

Restorative justice is not a pre-existing program; rather, it must be developed based on the specific conditions and needs of a community. Community initiative is essential in a restorative justice program while remaining true to the ideals of restorative justice.

Restorative justice is not limited to small or recent cases. It can be applied to cases of any scale and involves individuals of all ages.

Restorative justice does not aim to replace the legal system. It cannot replace incarceration and retribution. It focuses on healing the harm and brokenness caused by criminal acts. Retributive and legal approaches focus only on the public and societal aspects, ignoring the local and personal components, thus leaving the responsibility to the state. Restorative methods achieve balance by focusing on the local and intimate aspects.

The basic concept of restorative justice is to focus on the restoration or repair of all individuals affected by the crime, such as the victim, the perpetrator, and the community. The victim is the primary individual who suffers the most from the actions of the perpetrator. Restorative justice, which focuses on the restoration of three parties, cannot be achieved through the judicial procedure in this scenario. Victims of crime are often ignored in the judicial process, because crimes are usually viewed as violations against or detrimental to the State. In this scenario, the state takes on the role of the victim. The state is responsible for punishing the perpetrator of the crime, while the victim does not get any rights. In this scenario, the state, through law enforcement, cannot provide assistance to victims who face challenges and hardships. Punishment for the perpetrator of the crime is not related to the suffering of the victim, because the victim's needs are ignored. Restorative justice focuses on meeting the needs of the perpetrator and victim of the crime ^[11].

Implementation of restorative justice in future criminal law

policy The founding fathers of Indonesia designed the 1945 Constitution which declared Indonesia as a state of law. This concept is evident in the General Explanation of the Law (rechtsstaat) and is not rooted in power (machtsstaat). The term "Rechtsstaat" in the Explanation of the 1945 Constitution as a whole does not correspond to the meaning of "Rechtsstaat" as used in the civil law system. Instead, it only refers to the concept of the supremacy of law as a whole. Its affirmation is now stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia after being amended. The Indonesian state of law is a unique blend of the state of law rechtsstaat and the state of law, with Indonesian characteristics. Establishing Legal Certainty as the basis for national and state affairs known as the State of Legal Certainty.

I Dewa Gede Atmadja defines a state of law that has legal certainty as a state based on the principles of family, deliberation, protection of deliberation, and maintenance of human rights, while maintaining a balance between rights and obligations and upholding the role of law. The Concept of Legal Certainty The State of Law recognizes the concept of restorative justice, some of which are regulated in various criminal law regulations such as the SPPA Law and the Papua Province Special Autonomy Law. This law recognizes the use of "deliberation by consensus" as one way to enforce criminal law. The Criminal Code and Criminal Procedure Code have not regulated the "deliberation by consensus" process, which is a fundamental aspect of restorative justice in handling criminal cases.

Legal rules are needed to regulate the implementation of restorative justice in criminal law enforcement, both at the investigation, prosecution, and trial stages, from the perspective of law formation. Soedarto defines legal policy as the process of formulating appropriate regulations based on current state conditions and policies, carried out by authorized bodies to reflect societal values. These limitations will ultimately lead to the realization of the desired results. Barda Nawawi Arief emphasized that the main objective of implementing and formulating criminal law regulations is to prevent crime, so that criminal law policy is essentially identical to the concept of "crime prevention policy through criminal law". Criminal law efforts to eradicate crime are essentially a component of law enforcement, so that criminal law policy is an inseparable part of law enforcement policy. Criminal law policy includes policies related to substantive criminal law, procedural criminal law, and criminal enforcement law. Barda Nawawi Arief emphasized that crime prevention through legislation is very important to protect society, making criminal law policy an important component of social policy. The definition of social policy includes social welfare policy and social defense policy.

Due to the rapid development of Indonesian society and global progress, as well as the increasing need for justice and legal certainty, some criminal problems can no longer be handled effectively by the existing Criminal Code and Criminal Procedure Code. As a result of this situation, the Indonesian National Police at the investigation level have taken policy steps to enforce the law. The Indonesian National Police must focus on legality and legitimacy, including local and situational understanding in their approach to society. The validity of this police policy can still be questioned from a normative perspective. This policy is

¹⁰ Ibid. pp. 39-41

¹¹ Ibid. p. 35

considered inconsistent with current regulations, including the Criminal Code and Criminal Procedure Code. Andi Hamzah assessed that criminal procedures must strictly comply with the rules contained in Article 1 of the Dutch Criminal Procedure Code, emphasizing that norms under the law cannot regulate criminal procedures in a formal capacity. From the perspective of *ius constituendum*, the theory of the rule of law and criminal law policy is in line with Satjipto Rahardjo's progressive legal theory, which emphasizes the need for law to continue to progress and be future-oriented, prioritizing individual welfare rather than strict law enforcement. To advance legal development, humans need to make breakthroughs in establishing legal principles, implementing the law effectively, and overcoming the shortcomings of norms. This includes the development and application of the legal principle of restorative justice in handling criminal cases at the investigation stage. Future legislation must be adjusted to reflect changes in society. Therefore, it is necessary to make changes to both substantive criminal law and procedural criminal law that are in line with the value system that reflects Legal Certainty as a representation of Indonesian society.

There are several stages that must be passed to reach the willingness to forgive and reconcile, according to Olga Botcharova in her idea of the circle of violence, these stages are as follows:

1. Expressing sadness;
2. Accepting loss/loss and daring to face fear;
3. Thinking about the perpetrator's condition in this case raises the question of why they did that;
4. Moving beyond tolerance;
5. Choose to forgive;
6. Negotiate problem solving;
7. Establish restorative justice;
8. Move towards reconciliation.

However, if the stages above cannot be processed and passed properly, what happens is an act of justified aggression. However, according to Botcharova and she believes that in the human soul there are basic goodness that can prevent humans from wanting to retaliate with violent actions. This can be proven by the case of Mr. Suroto and Mrs. Elisabeth Diana who were willing to forgive the two people who killed their only child. This attitude of forgiveness was shown when the two teenage killers came directly to their house to pay their respects. This attitude of forgiveness should be our example in the future in every resolution of problems or conflicts that occur in society through deliberation.

The entire deliberation process must lead to the restoration of relations between the victim and the perpetrator. The perpetrator must admit, regret, and be responsible for his actions, and culminate in a willingness to apologize to the entire victim's family. The deliberation also discusses the damages and compensation borne by the perpetrator. Of course, in this case it is not easy to determine the amount of damages or compensation, because no matter how much the damages or compensation are, it will not be balanced with the suffering of the victim. The amount of damages and compensation in this case is a symbol of the perpetrator's regret and responsibility.

In responding to future crimes, the paradigm of crime and punishment must be changed. If someone commits a crime, it does not mean that they only think about the punishment for the perpetrator, but also the recovery of the victim. Focusing

on the punishment for the perpetrator will only increase the desire for revenge, while the victim who is really suffering is ignored. Instead, attention must be directed to the victim. The victim must be healed physically and mentally. The victim must receive compensation for their suffering. On the other hand, the perpetrator of the crime must be held accountable for their actions. First of all, the perpetrator must admit their actions and explain the reasons that drove them to commit the crime. Then the perpetrator must provide compensation to the victim and apologize for their actions. By being accountable for their actions, the perpetrator's dignity as a responsible human being is restored. All of these series are carried out in the context of deliberation in society, communities, or associations. Thus, a harmonious life will be established between the victim, the perpetrator and the community so that this reflects the culture of the Indonesian nation by prioritizing deliberation and consensus in every problem that occurs in accordance with values that are based on Legal Certainty.

4. Closing

Conclusion

In order to uphold the values of Legal Certainty and strengthen the supremacy of law in national growth, the positive consequences of restorative justice must be utilized. The restorative justice approach that embodies the values of Legal Certainty has various good consequences in this scenario. Therefore, it is very important to form a law on criminal mediation. This law must regulate criminal mediation carried out at various stages including investigation, prosecution, court, and correctional institutions. In addition, this regulation regulates the formation of new organizations, mediator officers, and the procedures and contents of prison mediation. The criminal justice system includes criminal mediation at the investigation level, which involves communication between the perpetrator and the victim. The police carry out the criminal mediation process. If prison mediation is effective, peace is achieved through compensation, reconciliation, avoiding court proceedings, or withdrawing cases. If criminal mediation is unsuccessful, they will return to the criminal justice system. We continue to strive to implement restorative justice by following all processes within the framework of societal, communal, or associational discourse. A harmonious relationship must be fostered between victims, perpetrators, and the community that reflects Indonesian culture by prioritizing deliberation and consensus in resolving problems with the principle of legal certainty.

Restorative justice contains full participation and consensus (Restorative justice invites full participation and consensus). In this case, it means that the victim and the perpetrator are directly and actively involved. In addition, it also opens up opportunities and chances for other people or third parties who, if there is a loss and feel disturbed due to the effects of the perpetrator's actions.

5. References

1. Arief BN. *Anthology of Criminal Law Policy*. Jakarta: Kencana; c2016.
2. Muladi. *Human Rights (Essence, Concept and Implications in the Perspective of Law and Society)*. Bandung: PT. Refika Aditama; c2009.
3. Muladi. *Selected Chapters on the Criminal Justice System*. Semarang: UNDIP Publishing Agency; c1996.

4. Atmasasmita R, in Anwar Y, Adang. Criminal Justice System; Concept of Components & Its Implementation in Law Enforcement in Indonesia. Bandung: Widya Padjajaran; c2009.
5. Rahardjo S. Let the Law Flow, Critical Notes on the Struggle between Humans and the Law. Jakarta: Kompas; c2007.
6. Restorative Justice. Yogyakarta: Cahaya Atma Pustaka; 2015.
7. Sutra Disemadi H, Prananingtyas P. Corporate social responsibility (CSR) policy as a legal strategy in community empowerment in Indonesia. *Wawasan Yuridika*; 2020;4(1):1.
8. Kristian, Tanuwijaya C. Settlement of criminal cases with the concept of restorative justice in the integrated criminal justice system in Indonesia. *Mimbar Justitia Law Journal*; 2015;1(2).
9. Nurwianti A, Gunarto, Wahyuningsih. Implementation of restorative justice in the settlement of traffic accident crimes committed by children at the Rembang Police. *Khaira Ummah Law Journal*; 2017;12(4).
10. Prayitno KP. Restorative justice for the courts in Indonesia (philosophical juridical perspective in law enforcement in concreto). *Journal of Legal Dynamics*; 2012;12(3).
11. Putra IKC. The relevance of the concept of the rule of law of legal certainty with the welfare state in its implementation with public services in Indonesia. *Udayana Master of Law Journal*; 2017;6(1).
12. Friedmann W. *The State and the Rule of Law in Mixed Economies*. London: Steven & Son; c1971.
13. Suhardin Y. The phenomenon of ignoring justice in law enforcement. *Jurnal Mimbar Hukum*; 2009;21(2).
14. Yusriando. Implementation of penal mediation as a manifestation of the values of legal certainty to support the supremacy of law in the context of national development. *Journal of Legal Reform*. 2015;2(1).