

# The Concept of Restorative Justice in Law Enforcement During COVID-19 Pandemic

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**Abstract:** The enforcement of justice in social life has a very important meaning in an effort to build a high and dignified nation's civilization. This is closely related to the condition of a pandemic COVID-19 which is still increasing and causing many victims. Not only casualties, but also affects other aspects such as economic life, social life, education, to the religious aspect. In line with this, through the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the prosecutor's office seeks to promote the values of justice in an effort to produce legal products that are more just by taking into account the conditions of the parties, especially victims and perpetrators of crime so that the criminal path is not the only way to go. Therefore, this study will examine several issues including the formulation is how is the concept of restorative justice in the Prosecutor's Office of the Republic of Indonesia (*Perja*) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and its urgency in criminal law enforcement during the COVID-19 pandemic. This research is a juridical-normative legal research with data collection methods, namely literature study and analysis descriptive-qualitative with a juridical philosophical approach. The conclusion of this study is that in terms of legal content, the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is sufficient to meet the aspects of justice and meet the general principles of restorative justice. However, the need for some improvements such as context-related explanations impossible to in Article 5 and implemmentation regulations for law enforcement officers in order to continue to promote a conscience so that law enforcement in Indonesia is getting better future and be able to restore public confidence in law enforcement and justice. In addition, in the midst of a pandemic, this concept is in line with government regulations in an effort to overcome the COVID-19 pandemic so that not all crimes must be resolved criminally as the conditions of prisons in Indonesia have exceeded capacity.

**Keywords:** Restorative Justice, Regulation, Attorney, Urgency, COVID-19

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## 1. Introduction

Symptoms of the COVID-19 pandemic have caused problems in various sectors such as unemployment due to spikes in layoffs, food shortages and rising food prices, as well as the uneven distribution of food aid distribution. This triggers an endemic chain of criminality or criminal impressions from and for humans. One of the crimes that emerged during the COVID-19 pandemic was the increase in crime which was basically only to fulfill daily needs.

The COVID-19 pandemic has brought the economy to a standstill. This affects people's lives, especially families who are economically disadvantaged and their work is disrupted by

the COVID-19 pandemic. In addition, psychologically the masses, this worsening condition has an impact on the emergence of *feeling the heat* turmoil, namely feelings or situations that are uncomfortable from these extreme conditions so that a person can commit acts of violence against anyone, especially those closest to him and are considered weak. This is in line with the opinion of the philosopher Plato who stated that everyone has a tripartite soul. namely, Thoughts (*logistikon*), feelings and passions (*epitlzetikon*), feelings of good and evil (*thumoeides*).

Quoted from the page [1], the National Police Headquarters updated data on crime rates in all regions of the country during the 23rd and 24th Sunday of the COVID-19 pandemic. It was

said that the crime rate in Indonesia on the 24th week compared to the 23rd week experienced a significant increase. Based on statistical data recorded by the police, on the 23rd and 24th Sundays there was an increase of 38.45 percent of Kamtibmas disturbances or an increase of 1,632 cases.

In addition, quoting from the page (jawapos.com, 2020), the Head of Public Relations of the Polda Metro Jaya Kombes Pol. Yusri Yunus stated that there was an increase in IT crimes such as hoaxes, spreaders of hatred, spreading false news about COVID-19. Viewed from the data and information of this, the need for efforts to crime prevention that watched aspect of humanity, especially when past pandemics COVID-19.

De ngan enactment of Regulation Attorney of the Republic of Indonesia Number 15 Year 2020 About Termination of Prosecution Based Restorative Justice on July 22, 2020 actually became a legal breakthrough in efforts to achieve substantive justice especially against the rising crime rate in future pandemics. Therefore, in this study will be examined in regard to how the concept of restorative justice in the Regulation of Attorney of the Republic of Indonesia Number 15 Year 2020 About Termination of Prosecution Based Restorative Justice as well as the urgency in the enforcement of criminal law in the pandemic COVID-19.

In addition, restorative justice is also a good solution to the problem of overcapacity. When there is excess capacity, impacts such as the inmates' health conditions, inadequate sanitation conditions, to the condition of health services in prisons that are not optimal. In addition, the latest news is that there was a fire in the prison which resulted in the death of many people. This requires an alternative that supports law enforcement in Indonesia for the better.

## 2. Research Methods

This research is a juridical-normative research with data collection methods, namely literature study and qualitative descriptive analysis with a juridical philosophical approach. The legal materials in this study are primary legal materials consisting of legal materials that have binding power as the main basis used in the framework of this research, which consist of: Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System and the Regulation of the Attorney General of the Republic of Indonesia. Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Secondary legal materials consisting of relevant journals, books and research. Tertiary legal material in the form of a legal dictionary. To strengthen the legal material. The analytical method used is descriptive-qualitative to answer the problem formulation.

## 3. Results and Discussion

### 3.1. Criminal Law Enforcement and the Concept of Restorative Justice

The legal system is a unit consisting of elements that

interact and cooperate with one another to realize a goal. As a system, in law, of course, it has components/sub-systems that are interrelated to form a system. Indonesian criminal law recognizes material criminal law sub-systems, formal criminal law sub-systems and criminal law enforcement sub-systems [2]. More specifically, in a formal criminal law sub-systems and sub-systems of criminal law known implementation of the criminal justice system (*criminal justice system*) as the implementation of criminal law enforcement in Indonesia.

Legal protection is a matter of *san gat* important aspect of law enforcement where *p* potential protective law is simply defined as the protection provided by the law, including their rights and obligations [3], in this case that of humans as subjects of law in interaction with fellow human beings and their environment as legal subjects, humans have the right and obligation to take legal action. So, every human action without exception is regulated by law [4].

D nature book of John Rawls 's "*A Theory Of Justice* " or better known as "*Theory of Justice*" she tried reanalyzed the fundamental problems of the study of political philosophy to reconcile the principle of freedom and the principle of equality. John Rawls admits that his work is in line with the tradition of the social contract (*social contract*) that was originally carried by a variety of renowned thinkers, such as John Locke, Jean Jacques Rousseau, and Immanuel Kant. John Rawls argued that justice is the main virtue of the presence of institutions - social institutions (*social institutions*). However, according to him, goodness for the whole community cannot override or interfere with the sense of justice of everyone who has obtained a sense of justice, especially the weak. Therefore, some people assess Rawls' perspective as a "*liberal-egalitarian of social justice*" perspective.

Rawls 's theory of justice, which is called the first principles of justice, departs from a more general concept of justice which he formulates as follows: "*All social values of liberty and opportunity, income and wealth, and the bases of self-respect are to be distributed equally unless and unequal distribution of any, or all, of these values is to everyone's advantage*". (All social values of freedom and opportunity, income and wealth, and foundations of self-esteem should be shared equally unless the unequal distribution of all or all of these values is for the benefit of all [5].

There are two important things that can be noted in connection with the concept of general justice. *First*, freedom is placed on a par with other values, and with that also the general concept of justice does not give a special place to freedom. This is different from Rawls's concept of justice which is rooted in the principle of rights and not on the principle of benefit. *Second*, justice does not necessarily mean that everyone should always get something in the same amount; justice does not necessarily mean that all people should be treated equally regardless of the important differences that objectively exist in each individual. Therefore, from this, peace becomes the main goal.

According to Ganjar L. Bondan, Restorative Justice theoretically and practically can be used in the settlement of a crime with the following explanation:

"In a philosophical framework, the presence of a restorative justice approach in criminal law is not aimed at abolishing criminal law, or merging criminal and civil law, because the restorative justice approach prioritizes mediation between victims and perpetrators. The restorative justice approach actually returns the function of criminal law to its original path, namely the *ultimum remedium* function, an ultimate weapon when other legal remedies can no longer be used in dealing with a crime in society. In practical terms the handling and settlement of criminal cases by using restorative justice approach offers an alternative answers to a number of problems encountered in the system of criminal justice, such as the administration of justice is hard, long, and expensive, stacking cases or court decisions that do not accommodate the interests of the victim " [6].

Moh. Hatta, defines restorative justice as a concept of thought that responds to the development of the criminal justice system by focusing on public order and victims who feel marginalized by the working mechanism of the current criminal justice system [7]. Restorative justice is formed to create conflict reconciliation between victims and perpetrators by involving the government as law enforcers [8]. According to Andri, the mediation in the concept of restorative justice is a combination of victim offender mediation and reparation negotiation programs where the judiciary is still carried out as in the criminal justice system, but law enforcement actively takes a position to reconcile the parties [9]. The concept of restorative justice is a popular alternative in various parts of the world for handling unlawful acts (against the law in a formal sense) because it offers a comprehensive and effective solution [10].

In Constitution No. 11 of 2012 on the Criminal Justice System Child Article 1, item 6 The definition of restorative justice is the completion of the criminal case involving the perpetrator, the victim, the perpetrator's family / victim, and other relevant parties to work together to find a just settlement by emphasizing restoration to its original state, and not retaliation. According to an analysis from the Research and Development Agency for Law and Human Rights, restorative justice is a form of justice that focuses on the needs of victims, perpetrators of crimes, and the community. With the application of restorative justice, it is expected to be able to provide space for the community to deal with legal issues that are felt to be fairer; reduce the burden on the state, for example to deal with criminal acts that can still be resolved independently by the community, police officers, prosecutors, and courts can focus more on eradicating criminal acts whose qualifications are more dangerous.

The concept of restorative justice received views from legal practitioners, one of which was an interview conducted with Mr. Moelyadi, SH, MH, CLA as the Chairman of the DPD IKADIN (Indonesian Advocates Association) D. I. Yogyakarta on 19 May 2018. He gave his opinion on restorative justice which can be summed up as follows:

- 1) Restorative Justice, according to him, cannot be applied in all legal cases, but in certain cases that can be restored or restored and it is clear that the parties related to the

crime committed, such as victims, perpetrators of crimes, and the community.

- 2) If all legal cases are restored, then the court as an institution that carries out law enforcement will lose its authority in an effort to provide a deterrent effect through imprisonment and other sanctions that have been regulated.
- 3) The concept of resorting justice has actually existed in several legal cases, such as cases of drug users who were given rehabilitation sanctions and criminal cases of children. However, there is currently no legislation that specifically regulates restorative justice and for this still exist on the authority and opinion of the judges.

### 3.2. Restorative Justice Principles

Yoachim Agus Tridiatno put forward the principles of restorative justice as follows:

- a) Restorative justice prioritizes recovery or restoration for all parties affected by crime, namely victims, perpetrators, and the community. The victim is the first party who is most harmed by the crime. The victim directly suffers because of the crime. He suffers physically and mentally and even morally and materially. Criminals also suffer losses [11].
- b) Restorative justice focuses on the needs of three parties, namely victims, perpetrators of crimes, and the community, which are not met by the judicial process. In the judicial process, victims of crime are ignored, because crime is understood as an act that is against or is detrimental to the state. The role of the victim is taken by the state so that the state has the responsibility to punish the perpetrators of the crime, while the victim does not get any rights. The punishments given to the perpetrators of crimes are often completely unrelated to the suffering of the victims. Therefore, restorative justice will focus on the needs of the victims.
- c) Restorative justice pays attention to the obligations and responsibilities that arise because of a crime. The perpetrator of the crime is obliged to restore the damage suffered by the victim, and the community. The first obligation is carried out by admitting guilt to the victim. This acknowledgment is important, because it is evidence of an acknowledgment of the suffering experienced by the victim. This is an important process in healing the victims' mental wounds and suffering. After that, the perpetrators of the crime have an obligation to restore physical suffering and other material losses. Criminals must also apologize to the public or people they trust to represent them. As well as compensate for material losses that occur in the community due to crimes committed. The victim's obligation to accept the confession of the perpetrator of the crime and forgive it. Likewise, society is obliged to accept confessions from criminals and forgive them. Thus there will be reconciliation and peace again.

Meanwhile, Rufinus Hotmaulana Hutauruk [12] suggests there are some principles that apply universally inherent in the

concept of approach to restorative in solving crime, among others: Principles of Settlement Fair, Protection Principles Equal, Principles of the Rights of Victims, Principle Proportionality, Principle of Presumption of Guilt, Principle of Right to Consultation or Legal Counsel.

### 3.3. Analysis of the Concept of Restorative Justice in Indonesian Attorney General's Regulations

The restorative justice approach is assumed to be the most recent shift from the various models and mechanisms that work in the current criminal justice system. This is in line with the view of GP Hoefnagels which states that criminal politics must be rational (*a rational total of the responses to crime*) [6].

In responding to problems related to the settlement of criminal cases which always lead to imprisonment, alternative solutions appear related to the authority of the public prosecutor to stop prosecution based on the concept of restorative justice, namely the Indonesian Prosecutor's Office Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as *Perja* No. 15 of 2020, it is necessary to give appreciation because this concept involves perpetrators, victims, and the community in the process of resolving these criminal cases. This "*restorative justice approach*" is more focused on the peace agreement between the perpetrator and the victim and how the procedural law recognizes the existence of the peace agreement as an agreement that has legal force. However, what needs to be addressed is not to the application of restorative justice approach is interpreted as limited to a peace deal because if so processes running it will get stuck on a limited function in the procedure only so that the truth (especially the truth material) and justice can not be achieved [13].

In Article 2 of the Regulation of the Attorney General of the Republic of Indonesia (*Perja*) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the termination of prosecution based on restorative justice is carried out on the basis of:

- a) Justice;
- b) public interest;
- c) proportionality;
- d) punishment as a last resort; and
- e) fast, simple, and low cost.

From the basic provisions above, it can be observed that the Prosecutor's Regulation regarding the termination of prosecution based on restorative justice is in line with the principles of restorative justice in general and places the criminal process as a last resort by prioritizing aspects of justice and the public interest. In addition, this process also supports the improvement of the criminal justice system that prioritizes the principles of fast, simple, and low cost. Meanwhile, the terms and conditions related to the termination of the prosecution are contained in Article 4 and Article 5 which states:

#### Article 4

- 1) Termination of prosecution based on Restorative Justice

is carried out by taking into account:

- a) the interests of the Victims and other protected legal interests;
  - b) avoidance of negative stigma;
  - c) avoidance of retaliation;
  - d) community response and harmony; and
  - e) decency, decency, and public order.
- 2) Termination of prosecution based on Restorative Justice as referred to in paragraph (1) shall be carried out by considering:
    - a) subject, object, category, and threat of criminal act;
    - b) the background of the crime being committed;
    - c) the degree of disgrace;
    - d) losses or consequences arising from criminal acts;
    - 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.

#### Article 5

- 1) Criminal cases can be closed by law and prosecution based on Restorative Justice is terminated if the following conditions are met:
  - a) the suspect has committed a crime for the first time;
  - 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 criminal act of not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiah).
- 2) For criminal acts related to property, in the event that there are criteria or circumstances that are casuistic in nature which according to the consideration of the Public Prosecutor with the approval of the Head of the District Attorney's Branch or the Head of the District Attorney's Office, the prosecution based on Restorative Justice can be carried out with due regard to the conditions as referred to in paragraph (1) letter a is accompanied by either the letter b or the letter c.
- 3) For criminal acts committed against persons, bodies, lives, and independence of persons, the provisions as referred to in paragraph (1) letter c may be excluded.
- 4) In the event that a criminal act is committed due to negligence, the provisions in paragraph (1) letter b and letter c may be excluded.
- 5) The provisions as referred to in paragraph (3) and paragraph (4) shall not apply in the event that there are criteria/conditions of a casuistic nature which according to the consideration of the Public Prosecutor with the approval of the Head of the Branch of the District Attorney's Office or the Head of the District Attorney's Office cannot be terminated by prosecution based on Restorative Justice.
- 6) In addition to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), termination of prosecution based on

Restorative Justice is carried out by fulfilling the following conditions:

There has been a recovery back to its original state carried out by the Suspect by:

- i. return the goods obtained from the crime to the Victim;
  - ii. compensate the Victim's loss;
  - iii. reimburse the costs incurred as a result of the criminal act; and/or repair the damage caused by the criminal act;
  - iv. no peace agreement between the victim and the suspect; and
  - v. The community responded positively.
- 7) In the event that the Victim and the Suspect agree, the condition for recovery back to its original condition as referred to in paragraph (6) letter a may be excluded.
- 8) Discontinuation of prosecution based on Restorative Justice is excluded for cases:
- a) Crimes against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and morality;
  - b) Criminal acts that are punishable by a minimum criminal threat;
  - c) Narcotics crime;
  - d) Environmental crime; and
  - e) Criminal acts committed by corporations

In implementing this policy, the prosecutor's office must also be careful so that legal certainty remains the main pillar. The policy of criminalization or decriminalization that occurs in the development of the law should not hinder the noble purpose of this Prosecutor's Regulation. Likewise, the policy of decriminalization by eliminating a crime to be no longer a crime must be a concern of the process of stopping prosecution.

Legal certainty regarding fairness in handling a case is one of the main things. Fulfillment of the principle of certainty in *Perja* Number 15 of 2020, based on the theory of legal ideals by Gustav Rudbruch, justice, certainty, and expediency cannot be fulfilled at one time. Therefore, the Prosecutor's Office issued a *Perja* in terms of its legal content more to uphold justice. While for legal certainty, a short business is to be adapted to the existing provisions in the Criminal Code so far not deviate or abuse so discount a strong legal certainty.

One of the weaknesses in this *Perja* is the legal certainty contained in Article 5 paragraph (5), which states that for criminal acts paragraphs (3) and (4) do not apply in the event of a casuistic situation which according to the consideration of the Public Prosecutor with the approval of the Branch Head The District Attorney's Office or the Head of the District Attorney's Office cannot be stopped from prosecuting. Meanwhile, in this *Perja* itself, there is no information regarding the parameters used by the Public Prosecutor in deciding whether a criminal case is casuistic or not, so when referring to this article, the size of the case that can or cannot be terminated based on Restorative Justice is still uncertain. Therefore, Article 5 (5) This could be a loophole to the

problem and also to multiple interpretations in the application of the crime of paragraph (3) and (4).

### 3.4. The Urgency of a Restorative Justice Approach in Law Enforcement during the COVID-19 Pandemic

According to the latest data on the number of prison occupants per regional office, quoted from <http://smslap.ditjenpas.go.id/> in September 2020, there are only 8 provinces whose prison population does not exceed capacity, namely DI Yogyakarta, Gorontalo, Maluku, North Maluku, East Nusa Tenggara, Papua, West Sulawesi and North Sulawesi. The rest or about 25 other provinces exceed capacity. From this data, it is necessary to have an alternative for punishment and better prison governance apart from the assimilation program so that prisoners get their human rights well, especially during the COVID-19 pandemic which has not yet ended.

The Prosecutor's Office as part of the criminal justice system is essentially the only institution that has a function in the field of prosecution and other functions that are expressly stated in Article 2 paragraph (1) of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. *Ennenondeelbaar* which means that the prosecutor's office is one and inseparable, is a foundation in the implementation of its duties and authorities in the field of prosecution which aims to maintain a unified policy in the field of prosecution so that it can display characteristics that are integrated in the thinking, behavior, and working procedures of the Prosecutor's Office. The existence of the Attorney as an institution of criminal law enforcement have accrued to the central and strategic role as the controlling case (*dominus litis*), and as a filter between the investigations and the inspection process in the trial, as well as the executor against a decision of the criminal justice who already have permanent legal force (*in kracht van gewijsde*).

In the time of the COVID-19 Pandemic, everyone can talk about law enforcement but not everyone can put it in an objective situation, because most see it from the point of subjectivity of each depending on where the person's perspective looks at it. This kind of situation has the potential to endanger the existence of the law and its enforcement itself. Law enforcement seems to be held hostage and forced to pay attention and start from the point of view of each person concerned. Every step law enforcement officers are asked to pay attention to and stand above the interests of individuals or groups one by one.

Law Number 6 of 2018 concerning Health Quarantine, in particular article 93, has already regulated the rules for violators of large-scale social restrictions (PSBB) threatening a maximum criminal sanction of 1 (one) year and/or a maximum fine of Rp. 100,000. 000.00 (one hundred million rupiahs) In addition to Article 218 of the Criminal Code, it is stated that there is a threat of imprisonment for a maximum of four months and two weeks or a fine of a maximum of nine thousand rupiahs for anyone when the people come together, intentionally not leaving immediately after being ordered three times by or on behalf of the competent authority. This

was then followed up by the government by issuing Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). Therefore, when a Government Regulation has been officially issued, the police, as mandated by the President, strictly take action to enforce law for violators. That is, the prevention of a pandemic outbreak COVID-19 has to do with sanctioning punishment for people who commit offenses. Through the Decree of the Chief of Police Number Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of the Corona Virus, then the police took action to secure people who did not obey the rules regarding the PSBB [14].

There is a crisis of confidence in law enforcement in Indonesia, of course, it must be immediately restored. The community seems to have been indoctrinated with the words "the law is only sharp downwards", so that people tend to be bored and discouraged about the law enforcement process which is considered not to reflect a sense of justice. This gives rise to the phenomenon of "community law" which actually reflects arrogance but is considered more fair and objective for the community. The perpetrators of crimes, especially minor crimes by the community, are tried by themselves without going through legal procedures, either through physical courts or courts of opinion. In addition, protest attitudes that show excessive courage against law enforcement officers often cause friction and anarchic events that ultimately seem to undermine the authority of law enforcement itself. This kind of incident cannot be separated from the existence of two conflicts of interest, namely the interest of law enforcement for legal certainty based on the legislation, and the interest of law enforcement for the sake of justice in society. Terutama in the pandemic COVID-19 that show crime rising, then it can not be denied vigilantism could keep going.

Restorative Justice is one way to solve legal problems by taking into account the obligations and responsibilities that arise because of the crimes committed. This is the principle of restorative justice which emphasizes the aspect of recovery for all parties affected by the crime. Therefore, this concept should be developed in the country as a legal state based on Pancasila so that it is in accordance with the existing conditions of society and culture. Bagir Manan describes the substance of "restorative justice" which contains the principles, among others: "Building joint participation between perpetrators, victims, and community groups to resolve an event or criminal act; Placing perpetrators, victims, and the community as "stakeholders" who work together; and immediately try to find a solution that is considered fair for all parties (*win-win solutions*) [15]. Between justice and injustice are two categories that are interrelated with each other, as Roxanne Varzi said, "*there is no justice without crime*" which is perceived as a form of injustice. So in realizing a peace, the logical consequence is how to make philosophical and subjective justice for everyone able to be embodied in a legal regulation so as to be able to create lasting peace [16].

Currently, the public wants law enforcement that is not always rigid and strict with the sound of laws and regulations, but rather the law that flows. There is a reorientation of the

public's perspective on law enforcement like this, of course, it must be accompanied by responsive law enforcement officers to realize law enforcement that does not only use formal-positivistic theory. Law enforcement officials are required to not only carry out their duties by relying on one leg only through a legal approach, provided that they only fulfill the elements of the provisions of the article, it is said that all the conditions have been fulfilled. Law enforcement officials must now also use a case approach by examining several cases for reference material, as well as a conceptual approach by moving on from developing views and doctrines that can later give birth to relevant legal ideas and concepts.

Indeed, law enforcement officers are asked to not only fixate on what legal norms are prohibited or recommended, but are asked to think further to the extent of what consequences can result from law enforcement against the prohibition or recommendation of the legal norm. Law enforcement officers are expected to be able to break through rigid positivism by prioritizing the values of justice and conscience but still within the corridors of the applicable law.

As a concrete manifestation of a paradigm of punishment not for retaliation but for reparation, the Prosecutor's Office took a strategic step by issuing the Indonesian Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which was promulgated right on Bhakti Adhyaksa Day (HBA) on July 22, 2020. This regulation as *legal substance*, it is formulated to eliminate rigid positivistic notions by prioritizing progressive law labeled *restorative justice*. Restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation.

In the provisions of the formal criminal law master book (KUHP), not all law enforcement must end in court. The criteria are in the event that there is not enough evidence, or the incident does not constitute a criminal act, or the case is closed for the sake of law, the Public Prosecutor terminates the prosecution by placing it in a Decision Letter. Cases closed by law can be caused by the death of the defendant, the case has expired, *nebis in idem* or the offense has been withdrawn within the specified time limit.

Normatively, there is no reason to stop the prosecution because of restorative justice in regulations equivalent to the law, but in fact the expression *ubisocietesiubi* which means where there is a community there is law brings the consequence that the law must continue to develop as society develops. No exception to the provisions of the regulations for the criminal law enforcement process which are the basis for law enforcement officers in carrying out their formal legal duties, of course, they are required to continue to be relevant to community developments so that the clauses must continue to be adjusted.

The regulation of termination of prosecution due to restorative justice explicitly in a Prosecutor's Regulation becomes the basis for the next component of the legal system,

namely the *legal structure* in carrying out its duties. Especially during the COVID-19 pandemic, prosecutors as law enforcement officers are asked to be able to prioritize the values of justice and conscience but remain within the applicable legal channels. The results of the work of the legal structure are expected to form a progressive legal *mindset* that is believed in society as a causal and sustainable legal culture. Sebagaimana proposed by Dignan that restorative justice menjadi a basic attitudes and values used in responding to criminal matters. There is a need to balance the focus of attention between the interests of the perpetrator and the victim and take into account the impact of the settlement of the criminal case on the community [17].

In carrying out legal policies during the COVID-19 pandemic, the government must be able to minimize deaths from the 2019 coronavirus disease (COVID-19) and the economic impact of the spread of the virus. Minimizing deaths as low as possible will be the highest priority for individuals, therefore the government must implement measures to remedy the unavoidable economic crisis as well as wise legal policies so that criminal sanctions both imprisonment and fines are not wise policies in the midst of an economic crisis and uncertain situation. in today's society [18]. Therefore, with the existence of *Perja* Number 15 of 2020, it should be implemented properly in order to realize justice in the community in the midst of a pandemic condition and strive to continue implementing health protocols so that peace efforts as regulated can be carried out properly.

David Easton's view when the government makes public policies, at that time the government also allocates values to the community, because every policy contains a set of values in it. For example, when the government enacted Law no. 22 of 1999, the value to be pursued is respect for democratic values and empowerment of the community and local government [19]. In this case, the Prosecutor's Regulation must be implemented with adequate mechanisms and facilities so that the public can accept it. Especially when this *Perja* is legally enforced during the COVID-19 pandemic. All provisions and mechanisms must be carried out by law enforcement officers fairly when crime increases during the COVID-19 pandemic.

In the context of the application of the Attorney Regulation, the restorative justice should be directed to a solution for resolution of law, especially on minor criminal offenses such as in the provision of short busines. So that when the perpetrator and the victim agree to make peace, the community is also involved in the settlement of peace so as to re-create the conditions of order and security as before. As research that has been done by Chalida Hanum in VERITAS: Journal of the Postgraduate Program in Law Vol. 7 No. March 1, 2021 The Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is recognized in Law Number 12 of 2011 concerning Procedures for Establishing Legislation. In addition, the categories/types of regulations are classified as special regulations which are subject to the principle of *lex specialis derogat legi generalis*. So, in essence, this *Perja*

must be further improved in its legal position so that it can become a separate law in the future [20].

Need in the note that the implementation of policy is a very important stage in the overall structure of the policy, because through this procedure the overall policy process can be influenced by the level of success or failure of achieving goals. This was emphasized by Chief JO Udoji (1981) who said that policy implementation is something that is very important than policy making. In terms of implementing this Prosecutor's Regulation, the victim's interest is actually the main one, so the victim must really agree on the effort to stop the prosecution without any coercion so that the process is carried out in a transparent and fair manner. With the existence of this Prosecutor's Regulation, minor criminal cases during the COVID-19 pandemic as well as cases that are heart-wrenching and injure the sense of justice such as the case of mbok minah who stole 3 cocoa beans should no longer be on the judge's table in court.

## 4. Conclusion

Upholding justice in society is of huge penting in an effort to build a high civilization and dignity. Positif law sometimes does not fully guarantee the sense of justice, and vice versa often do not have a sense of justice kepast i's law, so that the middle road is how to keep the law Positif i f there is always a reflection of a sense of justice. In line with this, through the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the prosecutor's office seeks to promote the values of justice by paying attention to the conditions of the parties, especially victims and perpetrators of crimes so that the criminal path becomes the last resort. This is related to the condition of the COVID-19 pandemic where the crime rate is increasing, especially minor crimes just to meet the daily needs or the learning needs of children who need gadgets to study where in some areas this is quite difficult to obtain. Therefore, after an analysis, the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in legal terms has fulfilled the aspects of justice and general principles of restorative justice by prioritizing efforts to return to its original condition by involving parties, especially victims and perpetrators. In addition, this regulation is also appropriate if it is carried out outside of pandemic conditions or under normal conditions because basically justice is the most important thing for every citizen. However, improvements to the legal content of this Prosecutor's Regulation must continue to be carried out, one of which is in a caseistic context that must be clarified and in accordance with the regulations contained in the Criminal Procedure Code.

The implementation of this regulation is the most important part so that the aspect of justice can be achieved. Therefore, the practice of restorative justice should be based on the participation of law enforcement officers who prioritize conscience and moral values so that it is hoped that law

enforcement in Indonesia will be better in the future and able to restore public trust in law enforcement and justice efforts. In addition, in applying the Prosecutor's Office Regulation of the Republic of Indonesia (*Perja*) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, law enforcers must understand the mechanisms and techniques so that the prosecutor's office must provide technical guidance or continuous training education so that this regulation can be implemented properly.

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