

## **Implementation of Restorative Justice as a Criminal Policy in Court Decisions (Case Study: Decision Number 277/Pid.B/2015/PN Cbd)**

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**Abstract.** *Restorative Justice as the purpose of punishment in Court Decisions has not been fully regulated in laws and regulations. Judges can apply it in considering decisions and making criminal policies in their decisions. The existence of forgiveness and withdrawal of complaints of criminal complaints is a peace between the victim (reporter) and the perpetrator (reported) which contains high values that must be recognized. This study analyzes decision number 277 / Pid.B / 2015 / PN Cbd, this decision has applied restorative justice in its legal considerations and the Judge has made a criminal policy in his decision. This research is a normativeresearch with descriptive analytical nature. The results of research related to the application of restorative justice in court decisions as a criminal policy by Judges can improve the knowledge and ability of Judges in making decisions by applying restorative justice as a criminal policy.*

**Keywords:** *Implementation; Justice; Restorative.*

### **1. Introduction**

Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that "The State of Indonesia is a State of Law", this means that based on these provisions "The State of Indonesia is based on law (rechtstaat) and not based on mere power (machtstaat)."<sup>1</sup>As a country based on law, Indonesia has a series of regulations or laws so that the interests of the

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<sup>1</sup>Anton Susanto, Ira Alia Maerani, and Maryanto. Legal Enforcement by the Police against Child of Criminal Doer of a Traffic Accident Who Caused Death (Case Study in Traffic Accident of Police Traffic Unit of Cirebon City Police Jurisdiction). Journal of Legal Sovereignty: Volume 3 Issue 1, March. (2020), <http://jurnal.unissula.ac.id/index.php/RH/article/view/8402/3928>.

community can be protected.<sup>2</sup>Laws created by humans have the aim of creating an orderly, safe and orderly situation.<sup>3</sup>One of the characteristics of a state based on law is the freedom and independence of the judicial power, especially in its function to uphold law and justice.

At the implementation level, this judicial power is realized through the judicial institution, especially through the judicial apparatus. The court institution as a formal legal institution to resolve conflicts caused by violations of the law (criminal) occupies a very important position in the criminal justice system. The court institution is currently still considered effective in resolving problems that arise in society,<sup>4</sup>so that there is often an expression "The court is the last bastion of justice seekers".<sup>5</sup>

One form of justice known in the criminal justice system is restorative justice. Restorative justice is a model for resolving criminal cases that prioritizes recovery for victims, perpetrators and the community. The interesting thing and question is whether restorative justice is something new or has it existed and is running in the legal system in Indonesia? If we look at the existing laws and regulations, it is clear and firm that there is nothing that regulates restorative justice. However, looking at the concept of restorative justice, it is no different from the resolution of criminal events in customary law communities. There are two approaches to resolving criminal events, namely the magical aspect and the material aspect.<sup>6</sup>Restorative justice already exists and is old, as Eva Achjani Zulfa wrote:

That many authors consider restorative justice is not a new concept. Its existence is probably as old as criminal law itself. Even for thousands of years, efforts to handle criminal cases, the approach is actually placed as the main mechanism for handling criminal acts. Marc Levin stated that the approach that was once stated as obsolete, old-fashioned and traditional is now stated as a progressive approach.<sup>7</sup>

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<sup>2</sup>Asep Sunarsa. Attorney Role In Fighting Crimes Of Motorcycle Gang In Cirebon, *Jurnal Daulat Hukum* Volume 1. No. 2 June. (2018), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3291/2424>.

<sup>3</sup>Supriyono. Criminology Study of Crime of Fencing the Stolen Goods. *Jurnal Daulat Hukum*: Volume 3 Issue 1, March. (2020),<http://jurnal.unissula.ac.id/index.php/RH/article/view/8402/3928>.

<sup>4</sup>Satjipto Rahardjo. No year. *The Problem of Law Enforcement: A Sociological Review*, Bandung. Sinar Baru. p. 75.

<sup>5</sup>Mardjono Reksodiputro. (1999), *Human Rights in the Criminal Justice System* (Third Book Collection), Jakarta, Center for Justice Services and Legal Services, University of Indonesia. p. 8.

<sup>6</sup>Bagir Mana., *Restorative Justice (an introduction)*, *Varia Peradilan Law Magazine*, No. 247, Year XXI, June, (2006), p. 8.

<sup>7</sup>Eva Achjani Zulf., *Restorative Justice in Indonesia (Opportunities and Challenges of Its Implementation)*, searched via the internet <http://evacentre.blogspot.com/p/restorative-justice-di-indonesia.html>, accessed on September 20, 2023.

*Restorative Justice* recognized by the international world, namely in 2000 the United Nations produced Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which contains a number of basic principles for the use of the restorative justice approach.<sup>8</sup> According to Artidjo Alkotsar, restorative justice has been attempted to be implemented in various countries in the world such as the United Kingdom, Austria, Finland, Germany, the United States, Canada, Australia, South Africa, Gambia, Jamaica and Colombia.<sup>9</sup> Restorative justice in the legal regulations in Indonesia has not been regulated explicitly. According to Setyo Utomo, regarding the regulation of the purpose of punishment, guidelines for punishment and alternative sanctions are only regulated in the Draft Criminal Code,<sup>10</sup> where there is a concept of restorative justice. After being enacted by Law Number 1 of 2023 concerning the Criminal Code, it is specifically regulated regarding the purpose of criminal punishment in Chapter III of the Law which according to the provisions of Article 52 states that, "Criminal punishment is not intended to degrade Human Dignity".<sup>11</sup> Meanwhile, Article 132 letters f and g emphasize that the authority to prosecute is terminated if the complaint is withdrawn in a criminal complaint or if there is a settlement outside the judicial process as regulated by law.<sup>12</sup> The concept of restorative justice regulated in the Criminal Procedure Code Bill referred to by Andi Hamzah is carried out by the Public Prosecutor on the basis of opportunity.<sup>13</sup> If Andi Hamzah only spoke in terms of the authority of the Public Prosecutor, then Surya Jaya spoke in the context of the criminal justice system, restorative justice can be applied.<sup>14</sup>

In practice, based on the results of his decision, the Judge often quotes this concept in his decision. This is because the Judge cannot reject a case that he

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<sup>8</sup>United Nations, Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2000/14, UN Doc. E/2000/INF/2/Add.2 at 35 (2000), which was searched via the internet on the website <https://www.unicef.org/iac/spbarbados/legal/global/cp/basic%2520restorative%2520%justice2520crimina1%2520>, accessed September 20, 2023.

<sup>9</sup>Artidjo Alkotsar. The Urgency of Penal Mediation in Settling Medical Disputes in Criminal Courts, Paper presented in a discussion at the Supreme Court. July 22, 2010.

<sup>10</sup>Setyo Utomo. The Penalty System in Criminal Law Based on Restorative Justice. National Law Magazine. Number 01, Year 2011. pp. 137-162.

<sup>11</sup>Indonesia. Law Number 1 of 2023 Concerning the Criminal Code. State Gazette of the Republic of Indonesia 2023 Number 1.

<sup>12</sup>Ibid.

<sup>13</sup>Andi Hamzah. Restorative Justice and Criminal Law in Indonesia. Paper presented in the National Seminar, "The Role of Judges in Improving the Professionalism of Judges Towards the Supreme Court, in the framework of the 59th anniversary of IKAHI. April 25, 2012.

<sup>14</sup>Surya Jaya. Restorative Justice Demands and Needs in the Criminal Justice System in Indonesia. Paper presented at the National Seminar "The Role of Judges in Increasing the Professionalism of Judges Towards the Supreme Court in the framework of the 59th IKAHI Anniversary. Jakarta. April 25, 2012

must try, as referred to in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, namely:<sup>15</sup>

"The court is prohibited from refusing to examine, try and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it."

According to Bismar Siregar, the judge's crown lies in his legal considerations, which is a correct and appropriate expression, because the legal considerations in the decision must be truly motivated and even truly motivated.<sup>16</sup>The measure of the success of the implementation of criminal justice is the achievement of justice through the judge's decision. The task of justice is: the just allocation of advantages and disadvantages, preventing the abuse of power, preventing the abuse of liberty, the just decision of disputes and adapting to change.<sup>17</sup>In this case, Abraham Blumberg stated that: "The state measure of success is not the number of convictions but their fairness."<sup>18</sup>The realization of justice is given by the Judge through a decision in accordance with the authority granted by law.

A judge's decision that is able to provide justice is a form of upholding the supremacy of law. In practice, it is not easy to choose and sort out which form of punishment theory is used in a judge's decision. Moreover, it has been mentioned that although the regulation of the concept of restorative justice in laws and regulations in Indonesia is still limited to cases of juvenile crimes as regulated in the Juvenile Justice System Law and the Draft Criminal Code which has just been ratified, it turns out that a judge's decision has been found that cites the concept of restorative justice in its decision, namely Decision Number 277 / Pid.B / 2015 / PN Cbd. Cases that are being processed legally as stated in court decisions are interesting because the punishment is based on the concept of restorative justice, while the concept of restorative justice itself has not been regulated. Therefore, it is interesting to study the application of restorative justice in court decisions, including on what legal basis the Judge applies restorative justice and what is the purpose of applying the concept of restorative justice, especially to cases that have been decided in decision Number 277/Pid.B/2015/PN Cbd. Based on this description, the research questions in this paper are how the concept of restorative justice is applied by the judge in his legal considerations and how the form of restorative justice as a criminal policy is realized in the decision of judge Number 277/Pid.B/2015/PN Cbd.

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<sup>15</sup>Indonesia. Law on Judicial Power, Law Number 48 of 2009. State Gazette of the Republic of Indonesia 2009 Number 157. Supplement to the State Gazette of the Republic of Indonesia Number 5076.

<sup>16</sup>Directorate General of General and State Administrative Courts. (1995). Freedom of Judges in the Indonesian State Based on Law. Jakarta. Department of Justice. p. 61.

<sup>17</sup>Dias, RMW, LLB (Cantab). (1985). Jurisprudence, London. Butterworths. p. 66.

<sup>18</sup>A. Blumberg. (1970). Criminal Justice. Chicago. Quadrangle. p. 16.

This study aims to determine and analyze the concept of restorative justice applied by judges in their legal considerations and how the form of restorative justice as a criminal policy is manifested in the judge's decision.

## 2. Research Methods

This study examines legal issues in a normative juridical manner. The nature of this study is descriptive analytical, while the data search technique used to answer questions - which are basically against the decision Number 277 / Pid.B / 2015 / PN Cbd, in this study is by collecting data, In collecting data using primary data and secondary data obtained through Literature Study and interviews.

Data yesThe data obtained is then analyzed using qualitative analysis.

## 3. Results and Discussion

### 3.1 Implementation of Restorative Justice in Judges' Decisions in Court (Analysis of Decision Number 277/Pid.B/2015/PN Cbd)

In this study, it has been limited to the judge's considerations in making his/her decision, especially in the consideration of decisions that are not criminal penalties to see the application of restorative justice in court decisions as the purpose of criminal penalties. The court decision made by the judge is the peak or end or culmination of the entire series of procedural law.<sup>19</sup>

Judges in deciding a criminal case certainly use certain considerations that form the basis of their decisions. In addition to hearing the charges and demands of the Prosecutor / Public Prosecutor, the Judge must also pay attention to the evidence presented in court, then the Judge must also listen to the statements of the victim or perpetrator of the crime and also the statements of other witnesses including witnesses a de charge. According to Bismar Siregar, the crown of the judge lies in his legal considerations is a true and correct expression, because the legal considerations in the Decision must be voldoende gemotiveerd even goed gemotiveerd.<sup>20</sup>Judges are given the freedom to pass judgment in every criminal trial, this is in accordance with Law Number 48 of 2009 concerning Judicial Power Article 1 which states that "Judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila, for the sake of the implementation of the Republic of Indonesia's Legal State". This provision has actually provided space for the acceptance of this progressive legal paradigm, namely with the provision that judges must be able to feel the justice felt by the community. In addition, this provision also implies that the provisions in our positive law actually still provide the possibility for judges to seek justice through other means (not only positive law) namely by exploring the values of community justice. Thus, when legal texts experience a delay in the development

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<sup>19</sup>Nikolas Simanjuntak. (2009). Indonesian Criminal Procedure in the Legal Circus. Bogor. Ghalia Indonesia. p. 223.

<sup>20</sup>Directorate General of General and State Administrative Courts. (1995). Freedom of Judges in the Indonesian State Based on Law. Jakarta. Department of Justice. p. 61.

of values that develop in society, judges must see the changing social context in making legal decisions.<sup>21</sup>

Decision Number 277/Pid.B/2015/PN Cbd did not impose a criminal sentence on the defendant who had been charged with the Primary charge of violating Article 310 Paragraph (1) of the Criminal Code and the Subsidiary charge of violating Article 315 of the Criminal Code. This case is interesting to analyze considering that in its considerations the Panel of Judges did not consider the indictment but instead issued a verdict that was not a criminal sentence by stating that the Public Prosecutor's prosecution was unacceptable. Looking at the type of case, Decision Number 277/Pid.B/2015/PN Cbd is an ordinary criminal case regarding Article 310 (1) of the Criminal Code and 315 of the Criminal Code which is included in Chapter XVI regarding insults, which is a criminal act of defamation which is included in the crime of relative complaints, so that a complaint is a *voorwaarde van vervolgbaarheid* or a requirement to be able to sue the perpetrator on the one hand, while on the other hand, based on the provisions of Article 75 of the Criminal Code, it is emphasized, "That the person who files a complaint has the right to withdraw it within three months after the complaint is filed."

It is interesting to analyze whether there are errors in the court's decision, especially in the decision that does not impose a criminal sentence? What are the judge's considerations in issuing a decision that is not a criminal decision? Has the decision considered justice for the defendant, the victim and even the community?

This case began when the Defendant Empar alias Apih Empar Bin Roja on Wednesday, February 18, 2015 at around 21.00 WIB or at least in February of the year Two Thousand and Fifteen or at least in the year Two Thousand and Fifteen at Sirnagalih Village RT 04 RW 06 Hegarmanah Village, Sagaranten District, Sukabumi Regency which is included in the jurisdiction of the Cibadak District Court together with Witness H. Dudus came to the house of the Victim Witness H. Ali with the intention of asking for medicine in the form of prayers for the healing of Mr. Dodong who had been suffering from stomach ache, legs and vomiting blood for years and it is suspected that the illness was caused by the Victim Witness. The Defendant then said to the Victim Witness, "Jang H. Ali I received a mandate from the late Halimi if it is true that H. Ali did that act, how could he be that cruel, the Defendant also accused Witness H. Ali of committing an act that caused Mr. Dodong was sick with objects in the form of nails and soil wrapped in white cloth that had been placed by H. Ali who had taken it again, because H. Ali who kept it could not possibly forget" and these words were conveyed by the Defendant in front of Witness Hj. Fatimah;

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<sup>21</sup>Dey Ravena in Henny Nuraeni (editor). (2012). *The Face of Criminal Law: Principles and Developments*. Jakarta. Gramata Publishing. p. 23.

As a result of the Defendant's actions, the case was processed legally and then the case was transferred on 16 October 2015 with a primary charge of violating Article 310 Paragraph (1) of the Criminal Code and a subsidiary charge of violating Article 315 of the Criminal Code and the trial process has reached the prosecution stage with a demand for imprisonment for 2 (two) months and 14 (fourteen) days with an order that the Defendant be detained and charged court costs of Rp. 1,000.00 (one thousand rupiah);

In its legal considerations, the Panel of Judges considered the fact that during the trial the Defendant and H. Ali as the victim who reported this case had forgiven each other and a joint statement had been made between the Defendant and the victim witness (H. Ali Bin H. Zaenal Mutaqin) on November 13, 2015, which was submitted by the Defendant at the trial.<sup>22</sup>

The Panel of Judges' considerations are as follows:<sup>23</sup>

Considering, that in the statement letter, it is emphasized that in addition to forgiving the Defendant, the victim also stated that he had withdrawn all demands for the legal process that was ongoing at the Cibadak District Court and related to the withdrawal, based on the provisions of Article 75 of the Criminal Code, it is emphasized, "that a person who files a complaint has the right to withdraw it within three months after the complaint is filed."

Considering, that although formally, if we look at this case, it has been going on for more than 3 (three) months since it was reported by the victim, nevertheless the Panel of Judges agrees with Supreme Court Decision Number 1600 K/Pid./2009, which is of the opinion that although the withdrawal of the complaint has exceeded 3 months, which according to Article 75 of the Criminal Code has expired, with the withdrawal the balance that was disturbed by the criminal act has been restored because the peace that occurred between the reporter and the reported party contains a high value that must be recognized, because in any case if this case is stopped the benefits are greater than if it is continued;

Considering, that the restorative justice teaching teaches that conflicts called crimes must be seen not merely as violations against the state with public interest but the conflict also represents the disruption, even the severance of the relationship between two or more individuals in social relations and the Judge must be able to facilitate a satisfactory conflict resolution for the disputing parties; (vide Supreme Court Jurisprudence 2011, pages 305-345);

Considering, that in line with the opinion, the Panel of Judges considers that because in this case the criminal act charged by the Public Prosecutor is a complaint offense and it turns out that during the examination process it has been clear that the Defendant and the victim have forgiven each other and the

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<sup>22</sup>Considerations of the Panel of Judges in Decision Number 277/Pid.B/2015/PN CBD

<sup>23</sup>Ibid.

victim herself as the complainant has firmly withdrawn her complaint, then even though this case is a criminal case, with the withdrawal of all demands for legal proceedings by the victim, this must be seen as a peace between the victim (reporter) and the perpetrator (reported party) which contains a high value that must be recognized, because in any case if this case is stopped the benefits will be much greater than if the case is continued so that by applying the teachings of restorative justice as one of the objectives of criminalization of this case it is appropriate not to be continued legally;

In considerations relating to the verdict, then bearing in mind the provisions of Law Number 8 of 1981 concerning Criminal Procedure Law and other laws and regulations, the Panel of Judges adjudicates as follows:<sup>24</sup>

1. Declaring the Public Prosecutor's prosecution inadmissible;
2. Charging court costs to the state;

The decision given by the Panel of Judges by stating that the Public Prosecutor's prosecution cannot be accepted is a decision that is contrary to existing norms because even though Article 310 paragraph (1) of the Criminal Code and Article 315 of the Criminal Code are complaint offenses that contain a maximum prison sentence of 9 (nine) months for Article 310 paragraph (1) of the Criminal Code and a maximum prison sentence of 4 (four) months 2 (two) weeks for Article 315 of the Criminal Code or a fine for violators of both Articles of a maximum of four thousand five hundred rupiah, according to the provisions of Article 75 of the Criminal Code the withdrawal of the complaint by the victim has passed 3 (three) months. An analysis here is what is the purpose of punishment from the consideration of the decision that has been handed down by the Panel of Judges. According to Muladi, "the purpose of punishment is what binds or connects each stage of punishment into a chain in a rational system of completeness."<sup>25</sup> So according to Solehuddin, "whatever type and form of sanctions in criminal law that will be determined, the purpose of punishment must be the benchmark."<sup>26</sup>

In Indonesia, the formulation of the purpose of punishment in positive criminal law before the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) has never existed. So the discussion about what, why and what form of punishment is, has so far been more theoretical. However, in the new Criminal Code which was just ratified on January 2, 2023 and will come into effect 3 years after that, the purpose of punishment has been regulated. In Article 54 of the new Criminal Code, namely:<sup>27</sup>

- a. The purpose of criminalization is:

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<sup>24</sup>Ibid.

<sup>25</sup>Muladi. (1995). Selected Chapters on the Criminal Justice System. Semarang. Diponegoro University. p. 2.

<sup>26</sup>Solehuddin. (2003). Sanction System in Criminal Law: Basic Idea of Double Track System & Its Implementation. Jakarta. Raja Grafindo Persada. p. 119.

<sup>27</sup>Law Number 1 of 2023 concerning the Criminal Code.



- a. prevent criminal acts by enforcing legal norms for the protection of society;
- b. socialize convicts by providing guidance so that they become good and useful people;
- c. resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace to society; and
- d. freeing the convict from guilt.

(1) Punishment is not intended to cause suffering and degrade human dignity. "

Indeed, the new Criminal Code has been ratified but has not yet come into force so that it does not have binding force, but as a norm of the Law to be enforced, it can be considered. According to Soedikno Mertokusumo, "for unclear and incomplete laws and regulations, the law must be found. The method of finding the law is through interpretation or the method of interpretation.<sup>28</sup>The process and way of thinking of judges to find the law can be grouped into 2 (two) schools, namely the conservative school and the progressive school.<sup>29</sup>Both of these streams were once the prima donnas in their respective times.<sup>30</sup>As a reaction to the lack of legal certainty around 1800, due to the use of diverse customary law, codification movements emerged, accompanied by the emergence of the legalism school which did not recognize law outside the statute. Law and statute are identical, while custom and science are recognized as law if the statute refers to it.

Since the until now, without realizing it, there are groups of judges who prioritize written law as the main source for deciding cases. Groups of judges who think in this way are classified as a conservative school. This means that judges in examining and deciding a case try to maintain the values that exist in society. From its structure, law is seen as something that tends to maintain the status quo. Law tries to avoid change. Law maintains stability.<sup>31</sup>They never think that from their decisions, they can create new values, or they can engineer a new society that is in accordance with the developments of the times and society's technology.

Further developments, as a reaction to the above way of thinking, around 1850, a progressive school emerged which held the view that judges were no longer

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<sup>28</sup>Sudikno Mertokusumo. (2010). *Discovery of Law*. Yogyakarta. Atma Jaya University. p. 73.

<sup>29</sup>Sudikno Mertokusumo and A. Pittlo. (1993). *Chapters on Legal Discovery*. PT. Citra Aditya Bakti. Jakarta. p. 10.

<sup>30</sup>The conservative school became the prima donna in the codification era, the era of legism, where legal science did not recognize laws outside the statute. This view developed in Europe around 1930-1980 which was pioneered by Montesquieu's teachings. After that, the progressive school, the historical school and the freirechtschule emerged, which argued that the statute was incomplete. In addition to the statute, there are still other sources, namely: customs. The figure of Von Savigni gave birth to a system of legal principles. See: Sudikno Mertokusumo. (1993). *Chapters on the Discovery of Law*. Jakarta, PT. Citra Aditya Bakti. pp. 8-11.

<sup>31</sup>Sugijanto Darmadi. (1998). *Legal Position in Science and Philosophy*. Jakarta. CV. Mandar Maju. p. 5.

merely mouthpieces of the law. Judges must be independent, based on their own appreciation to find the law. In this progressive school, it is believed that laws are incomplete, written law is not the only source of law. The law is not identical to the law, because the law is only one stage in the process of forming the law, and judges must seek its completeness in the practice of deciding cases.<sup>32</sup>

Judges in deciding cases, in a case-by-case manner, are always faced with three principles, namely the principle of legal certainty, the principle of justice, and the principle of benefit. In the dictum of their decision, the judge must choose one of the three principles. As if on a line, the judge in examining and deciding a case is between 2 (two) dividing points on the line, namely the point of justice and the point of legal certainty. The principle of benefit is in between.<sup>33</sup>

When a judge decides closer to the point of legal certainty, then automatically he will be far from the point of justice. On the other hand, if he decides close to the point of justice, automatically he will also be far from the point of legal certainty, while the principle of benefit moves between the 2 (two) points, which looks more at the purpose or usefulness of the law to society.<sup>34</sup>

The emphasis of the principle of legal certainty by a judge tends to maintain written legal norms of existing positive law. Statutory regulations must be enforced for the sake of legal certainty. This normative way of thinking will experience a dead end when written provisions cannot answer existing problems. In such a situation, the judge must find a law to fill the completeness of the law.<sup>35</sup>

Emphasis on the principle of justice means having to consider the law that lives in society, which consists of customs and unwritten legal provisions. Sociology of law and legal culture play a very important role in this field. A distinction must be made between the sense of justice of individuals, groups and society. In addition, the sense of justice of a particular society is not necessarily the same as the justice of another society. Judges in their considerations must be able to describe all of this. When they choose the principle of justice as the basis for deciding the case they are facing.

The emphasis on the principle of utility is more economic in nature. The basic idea is that law is for humans and the masses. Therefore, the purpose of law must be useful for humans or the masses. From legislation and regulation, there has been an emphasis on the principle of utility.<sup>36</sup>

In this study, in addition to reviewing decisions containing considerations about restorative justice, the author also conducted interviews with sources, namely

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<sup>32</sup>Sudikno Mertokusumo and A. Pittlo. Ibid. pp. 7-8.

<sup>33</sup>Lintong O. Siahaan. The Role of Supreme Court Justices in the Discovery of Law and the Creation of Law in the Era of Reform and Transformation. *Varia Peradilan Magazine* No. 252 November. (2006). p. 57.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid. p. 67

<sup>36</sup>Ibid. p. 68

judges at the Semarang District Court Class IA Special, with the aim of answering questions about the concept of restorative justice applied by judges in their decisions and what form of restorative justice as a criminal policy is manifested in the judge's decision.

From the interview results, the following answers were obtained:

Two Semarang District Court Judges who were interviewed acknowledged that Decision Number 277/Pid.B/2015/PN Cbd which did not impose a criminal sentence on a complaint offense case which according to Article 75 of the Criminal Code had withdrawn the complaint was a progressive decision that had applied restorative justice in its decision considerations.<sup>37</sup>

In the decision, according to Judi Prasetyo, the provisions of Article 75 of the Criminal Code have been set aside as a formal rule in the complaint offense. Although according to him it has violated the formalities of procedural law, the decision can be said to be a form of progressive decision because it has deviated from the legal norms that have been regulated because the Judge based on the legal facts obtained at the trial in this decision, the existence of the victim's forgiveness and the withdrawal of the complaint have been considered in his decision as a basis for issuing a decision on the case.<sup>38</sup> According to Achmad Rasyid Purba, the application of the restorative justice teachings in this decision can be seen from the content of the judge's considerations which refer to the jurisprudence of the Supreme Court's decision in the considerations of its decision and the Judge's considerations not to consider the Public Prosecutor's charges any more as a decision that has entered the prosecution stage by the Public Prosecutor but in its considerations still makes a decision by stating that the charges cannot be accepted, even though the Public Prosecutor still demands that the Defendant be found guilty and proven to have committed the crime he was charged with.<sup>39</sup>

According to Judi Prasetyo, the judge's considerations that look at the legal facts that show that the Defendant and the victim have forgiven each other and the victim herself as the complainant has firmly withdrawn her complaint, then even though this case is a criminal case, with the withdrawal of all demands for legal proceedings by the victim, as a peace between the victim (the complainant) and the perpetrator (the reported) which contains a high value that must be recognized, it is also a form of consideration that contains the application of the restorative justice principle.<sup>40</sup> Meanwhile, according to Achmad Rasyid Purba, the consideration of the Panel of Judges who opined that if this case was stopped,

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<sup>37</sup>Interview with Judi Prasetyo, Deputy Chief Justice of the Semarang District Court and Achmad Rasyid Purba, Judge of the Semarang District Court, January 18 and 29, 2024

<sup>38</sup>Interview with Judi Prasetyo, Deputy Chairman of the Semarang District Court, January 18, 2024.

<sup>39</sup>Interview with Achmad Rasyid Purba, Judge of the Semarang District Court, January 29, 2024.

<sup>40</sup>Interview with Judi Prasetyo, Deputy Chairman of the Semarang District Court, January 18, 2024.

the benefits would be much greater than if the case were continued, clearly shows that the Panel of Judges in deciding this case prioritized restorative justice and did not adopt a formalistic attitude.<sup>41</sup>

The Panel of Judges' consideration stated that with the revocation, the balance that was disturbed by the criminal act has been restored because the peace that occurred between the reporter and the accused contains a high value that must be recognized, because in any case if this case is stopped, the benefits are greater than if it is continued, in line with one of the objectives of criminal punishment which is also adopted in the new Criminal Code, namely that the decision has resolved the conflict caused by the criminal act, restored balance, and brought a sense of peace to society.

In this consideration, the Panel of Judges has also applied the theory of justice as fairness as intended by John Rawls - which is also referred to as the contract theory where the basic structure of society as the main subject of justice has an agreement in choosing a principle where no party is benefited or harmed and is also in line with the theory of justice according to Yudi Latif who reads justice as one of the fifth points in Pancasila as a firm foundation for the Indonesian nation for the harmony and welfare of Indonesian society as a whole which in its application emphasizes the integrity and quality of state administrators, accompanied by the support of a sense of responsibility and a sense of humanity that radiates from every citizen to jointly realize social justice for all Indonesian people.

The attitude of the panel of judges who have considered with the revocation the balance that was disturbed by the crime has been restored because the peace that occurred between the reporter and the reported contains a high value that must be recognized, because in any case if this case is stopped the benefits are greater than if it is continued, and this is in line with the concept of restorative justice, the main goal of which is to restore the relationship between the perpetrator, victim and community where the resolution is with an agreement taken by the perpetrator, victim and community so that no party benefits or is harmed by the criminal incident. The shift in the paradigm of punishment has shifted to a sense of justice that must be obtained by all parties.

### **3.2 Form of Judge's Policy Implemented in His Decision as a Form of Implementation of Restorative Justice.**

Decision Number 277/Pid.B/2015/PN CBD which did not impose a criminal sentence on a complaint offense case where according to Article 75 of the Criminal Code the withdrawal of the complaint has expired as described above can be said to be a brave decision. The decision is considered by some people as a controversial decision, because it is considered not to implement formal rules

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<sup>41</sup>Interview with Achmad Rasyid Purba, Judge of the Semarang District Court, January 29, 2024.

or has acted beyond the legal provisions regarding the withdrawal of complaints in criminal acts that are complaint offenses.

According to Judi Prasetyo and Achmad Rasyid Purba, among judges, there has been a development of thinking about the application of the teachings of restorative justice and according to them, the form of the judge's policy applied in this decision can be seen from the verdict which issued a decision stating that the Public Prosecutor's demands cannot be accepted, this simultaneously ignores the Public Prosecutor's criminal demands by not considering the indictment as is the case with a decision based on the provisions of Article 191 paragraph (1) and Article 193 paragraph (1) connected to Article 182 paragraph (1) and paragraph (2) which legally and formally states that if the examination is declared complete and the Public Prosecutor has submitted his demands and the Defendant has submitted his defense, then the examination is declared closed, then the Panel of Judges issues a decision with the opinion that if the results of the examination prove the Defendant is guilty of the act charged against him, then he is sentenced to criminal punishment, if not proven guilty then he is acquitted and if the act is proven but the act is not a criminal act then he is declared free from all legal charges.<sup>42</sup>

The Judge's considerations that considered that in the statement letter, it was emphasized that in addition to forgiving the Defendant, the victim also stated that he had withdrawn all demands for the legal process that was running at the Cibadak District Court and set aside the provisions of Article 75 of the Criminal Code with the consideration that even though formally, if you look at this case has been running for more than 3 (three) months since it was reported by the victim, but with the withdrawal the balance that was disturbed by the crime has been restored because the peace that occurred between the reporter and the reported party contains a high value that must be recognized, because in any case if this case is stopped the benefits are greater than if it is continued, in the author's opinion has applied the theory of Progressive law.

Progressive efforts in law enforcement according to Satjipto Rahardjo in the concept of Progressive Law Enforcement are implementing the law not only according to the black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the statute or law. Law enforcement is not only with intellectual intelligence, but with spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to seek other paths than those usually taken.<sup>43</sup>

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<sup>42</sup>Interview with Judi Prasetyo, Deputy Chief Justice of the Semarang District Court and Achmad Rasyid Purba, Judge of the Semarang District Court, January 18 and 29, 2024.

<sup>43</sup>Satjipto Rahardjo. (2009). *Law Enforcement: A Sociological Review*, Yogyakarta, Genta Publishing. p. xiii.

The Panel of Judges has also thought progressively, because they dare to get out of the absolutist legal thinking, then place the law in a relative position. In this case, the law must be placed in the whole issue of humanity. Towards a Progressive legal approach is a willingness and readiness to free oneself from the legal-positivistic understanding. The idea of self-liberation is closely related to the psychological factor in law enforcers, namely courage. This courage factor broadens the legal approach, namely not only prioritizing the regulatory aspect (rule), but also the behavioral aspect (behavior).<sup>44</sup>

The decision of the Panel of Judges stating that the Public Prosecutor's prosecution is unacceptable, as a response to the withdrawal of the complaint by the Victim even though it violates the provisions of Article 75 of the Criminal Code, shows that from the theoretical and practical dimensions of the trial, the formal provisions set aside by the Panel of Judges have realized the purpose of punishment with the concept of restorative justice, the main purpose of which is to restore the relationship between the perpetrator, victim and society where the resolution is through an agreement taken by the perpetrator, victim and society so that no party benefits or is harmed by the criminal incident. The paradigm shift in punishment has shifted to a sense of justice that must be obtained by all parties.

The above situation reflects the principle adopted in criminal procedure law, namely equal treatment of every person before the law without distinguishing between treatment (equality before the law). Such a decision also shows a sense of justice for both the victim and the defendant. This can be seen from the fact that the participation of the victim has been considered in the settlement of the case being carried out by the defendant because the victim or the general public is also considered to have an interest there. The provision of equal space between the victim or the public and the convict in considering a decision minimizes the possibility of errors or inaccuracies in the court decision, even though the law has been followed carefully and the process has been carried out properly and fairly. This is also as John Rawls said, even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome.<sup>45</sup>

In relation to the above, John Rawls further emphasized in his theory, the strict form of pure procedural justice according to John Rawls, is that the procedure for determining fair results must be carried out properly, because in this case there are no independent criteria that can be used as a reference for real results to be fair.<sup>46</sup> From these things John Rawls concludes, we can not say that a particular state of affairs is just because it could have been reached by following a fair

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<sup>44</sup>Faisal. (2010). *Breaking Through Legal Positivism*. Yogyakarta. Rangkang Education. p. 90.

<sup>45</sup>John Rawls. (1971), *A Theory of Justice*. Massachusetts. Harvard University Press. matter. 86

<sup>46</sup>*Ibid.* p. 58.

procedure. According to John Rawls, we cannot say that a particular state of affairs is just because it could have been reached by following a fair procedure.<sup>47</sup>

The decision that takes into consideration restoring the relationship between the perpetrator, victim and society where the resolution is through an agreement taken by the perpetrator, victim and society in line with the reform of criminal law that is oriented towards the victim is an essential aspect. This opinion is emphasized by Mudzakir in more detail as follows:<sup>48</sup>

Crimes or violations of criminal law occur not consisting of one party who is then called the "violation" by criminal law, but there are two parties, namely one party called the "violation" and the other party called the "victim". Then why is attention only directed to one party, namely the offender and what about the victim? In accordance with the legal concept of "protection" that the law must protect everyone, both those who are suspects, defendants or convicts (violators) and those who are victims. Violators of criminal law in their status as suspects, defendants or convicts, have now obtained sufficient legal protection, while victims of crime both in their status as reporters, witnesses and parties who are harmed in criminal law (victims of crime) have not received legal protection.

Mudzakir further said that:

Victim-oriented criminal law reform is needed as a manifestation of the implementation of the Indonesian legal state where everyone has access to justice (not only violators) and as a balanced policy in criminal law reform. So criminal law reform does not prioritize the protection of the interests of violators, borrowing Groenhuijsen's term, the policy towards victims is not a priority for victims only but also for violators and victims.<sup>49</sup>

Based on the description above, the decision Number 277/Pid.B/2025/PN CBD in its decision considerations and in its decision order has applied restorative justice as the purpose of sentencing. Although this decision is not a landmark decision, in its considerations it has cited the considerations of the decision that became a landmark decision so that it can fulfill what Muladi meant from the judge's decision, namely:<sup>50</sup>

In addition to trying and providing justice for the parties to the case and providing assessments for the parties to the case, there are other functions that must be reflected in the judge's decision, including: the function of legal

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<sup>47</sup>Uzair Fauzan and Heru Prasetyo. (2011). *Theory of Justice* (Translation of A Theory of Justice written by John Rawls). Yogyakarta. Pustaka Pelajar. p. 102.

<sup>48</sup>Mudzakir, *Legal Position of Crime Victims in the Criminal Justice System*, Dissertation, Postgraduate Program, Faculty of Law, UI, 2001, p. 295.

<sup>49</sup>Ibid.

<sup>50</sup>Muladi. (1995). *Selected Chapters on Criminal Law*, Semarang. Diponegoro University, p. 16, as quoted by Pontang Moerad. (2005), *Formation of Law Through Court Decisions in Criminal Cases*, first edition. Bandung. Alumni. p. 312.

education for the community, the function of legal renewal through the process of legal discovery and conflict resolution in general.

This decision has resolved the conflict between the victim, the perpetrator and the community. Thus the purpose of restorative justice of this decision has been implemented and justice is also felt by the perpetrator, the victim and the community, justice where no party is benefited or harmed, justice as fairness as a form of justice which is one of the fifth points in Pancasila as a firm foundation for the Indonesian nation for the harmony and welfare of the Indonesian people as a whole which in its implementation emphasizes the integrity and quality of state administrators, accompanied by the support of a sense of responsibility and a sense of humanity that radiates from every citizen to jointly realize social justice for all Indonesian people.

#### **4. Conclusion**

Based on the discussion that has been described above, it can be concluded that the consideration of the Panel of Judges who issued Decision Number 277/Pid.B/2015/PN Cbd has applied the concept of restorative justice in its legal considerations by setting aside the formality of Article 75 of the Criminal Code which limits the withdrawal period in complaint offenses and considering the legal fact that the Defendant and the victim have forgiven each other and the victim himself as the complainant has firmly withdrawn his complaint which is seen as a reconciliation between the victim (reporter) and the perpetrator (reported) which contains a high value that must be recognized, so that it can be concluded that if the case is stopped, the benefits will be much greater than if the case is continued. The statement of the Panel of Judges which explicitly makes the legal facts that are the basis for the consideration as the application of the restorative justice teaching which is also one of the objectives of criminal punishment shows that the Panel of Judges has applied restorative justice in the consideration of the decision while the form of restorative justice as a criminal policy is manifested in the decision of judge Number 277 / Pid.B / 2015 / PN Cbd is by issuing a decision that is not a criminal decision with its ruling stating that the Public Prosecutor's criminal charges cannot be accepted, which shows that from the results of the examination of the case, the Defendant was not given a criminal decision because the Public Prosecutor's charges which represent a criminal process with restorative considerations have been set aside and not considered by the Panel of Judges who view that forgiveness and withdrawal of complaints are peace between the victim (reporter) and the perpetrator (reported) which contain high values that must be recognized.



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