



Advancing Justice: Embracing a Progressive Legal Framework for Case Resolution in Central Java Police Criminal Investigation (A Case Study at Polda Ditreskrimsus)

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<http://dx.doi.org/10.18415/ijmmu.v10i12.5333>

Abstract

Progressive law emphasizes the evolution of legal principles, asserting that laws are crafted for the benefit of humans rather than humans existing solely for the sake of the law. It is guided by moral considerations, seeking to incorporate fundamental values and moral principles in the formulation of laws. This approach places a strong emphasis on conscience, viewed through the lenses of empathy, honesty, and courage. Prophetic intelligence, a foundational element of progressive law, highlights human capacity for self-transformation through interactions, socialization, and adaptation, with a focus on upholding basic values that safeguard human rights. These values are articulated in three key aspects: the philosophical aspect, emphasizing justice; the juridical aspect, emphasizing certainty; and the sociological aspect, emphasizing expediency. Restorative justice, as a manifestation of progressive law, offers an alternative approach to resolving criminal cases. It shifts the focus from punitive measures to a peace-oriented process, achieved through mediation between the offender and the victim. This process prioritizes restoring the original condition and rebuilding positive societal relations. The Head of the National Police of the Republic of Indonesia Regulation Number 08 of 2021, addressing the Handling of Criminal Acts based on Restorative Justice, serves as a guideline for the National Police in resolving criminal acts. This regulation underscores the importance of restoring the original state and achieving a balance in protecting the interests of both victims and perpetrators, moving away from a punitive-oriented approach. The implementation of Restorative Justice in the Criminal Investigation Department of the Central Java Regional Police provides an avenue for resolving criminal acts by engaging the perpetrator, victim, their families, legal advisors, and other stakeholders through a peace-focused process, with a central emphasis on restoring the original state.

Keywords: *Progressive Law; Restorative Justice; Investigation*

Introduction

Progressive law, as conceptualized by Satjipto Rahardjo (2011), asserts that the law is designed for humans, and not the other way around. It places a strong emphasis on moral aspects, incorporating fundamental values and moral principles into the formulation of laws. The progressive approach is seen as a government obligation to protect the entire nation in the pursuit of justice under the law.

In the realm of *lex scripta*, where laws are codified, maintaining legal certainty is crucial. Law enforcement officials must view the law not merely as a collection of norms and logic but through the lens of conscience, involving empathy, honesty, and courage. Thus, prophetic intelligence becomes a pillar of progress, signifying the human ability to transform through interaction, socialization, and adaptation.

The foundational values of human rights protection mandated in the 1945 Constitution of the Republic of Indonesia represent the embodiment of basic rights that every individual should enjoy. Legal certainty is to be upheld throughout the criminal justice process, from initial investigation to court proceedings, as stated in the Criminal Procedure Code (KUHAP). Gustav Radbruch (Leawoods, 2000) emphasizes that legal certainty is the essence of the law itself, encompassing the application of laws and legislation. Legal systems should embody three basic values: justice (philosophical aspect), certainty (juridical aspect), and utility (sociological aspect).

Articles 1(3), 28D (1), and 28I(5) of the 1945 Constitution declare that everyone has the right to fair legal recognition, guarantees, protection, and justice, treated equally before the law. Upholding human rights, as articulated in these constitutional provisions, means ensuring that individuals can defend their dignity and status through a fair and legally certain legal process.

However, the principles outlined in the Constitution and the due process of law are not fully realized in the Indonesian Criminal Procedure Law. The formation and application of law are influenced by social and personal forces, as highlighted by Robert B. Seidman and William J. Chambliss (1971). Economic, social, cultural, and political factors play a role in the shaping and implementation of law.

Indonesia's adherence to the Civil law system initially emphasized positive law in its legal enforcement, where judges decide based on written rules and legislation. However, there has been a shift from the Civil law paradigm to the concept of progressive law. Progressive law enforcement goes beyond adhering strictly to written regulations, considering the spirit and deeper meaning of the law. It requires intellectual and spiritual intelligence, emphasizing determination, empathy, dedication, commitment to the nation's suffering, and the courage to explore alternative paths.

Progressive law aligns certainty, justice, and utility, rejecting a rigid legal system that tends to be unjust. It is not just about procedural bureaucratic formalities but also about substantive material aspects. Crucially, progressive law maintains its character by adhering to conscience and rejecting servitude to materialism.

The concept of progressive law is connected to the law enforcement process, starting from investigation to a series of activities gathering evidence, leading to the identification of suspects and subsequent defendants. The investigative and escalating stages serve as the gateway to establishing someone as a suspect and later as a defendant. The investigation process, particularly at the prosecution level, has developed through the restorative justice approach, emphasizing justice and balance. Restitution or compensation to victims becomes a central focus, aligning with the goals of justice, legal certainty, and utility. The shift from punitive theories signals the abandonment of retribution. The research questions derived from this foundation are: "How does Restorative Justice, as an approach to case resolution at the investigation level, manifest as progressive law?" and "What are the challenges and legal consequences of implementing Restorative Justice in case resolution at the investigation level?"

Research Methods

The research method employed in this study encompasses both juridical normative (legal research) and juridical empirical approaches (field research). The juridical empirical approach is

specifically applied at the investigative level (Police) in resolving cases through the implementation of restorative justice, including its legal consequences (case study). On the other hand, the juridical normative approach is utilized to address the question of the procedural rules and legal provisions within positive law.

The research design is characterized as descriptive-analytical, aiming to depict legal issues, legal systems, legislation, and analyze them in accordance with reality. Legal events occurring at a specific moment heavily depend on the situation and dynamics of the evolving society.

The types and sources of data used in this research are as follows:

- a. Secondary Legal Materials: These are data obtained through literature review, including literature on Restorative Justice, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), Regulation of the Chief of National Police No. 8 of 2021, and other relevant regulations.
- b. Primary Legal Materials: These are materials obtained directly from the research subjects through methods such as observation, interviews, questionnaires (open or closed, face-to-face), sampling, etc.
- c. Tertiary Legal Materials: These are supporting legal materials that provide guidance or explanations for primary and secondary legal materials, such as legal dictionaries, journals, websites.

The data collection techniques used to obtain accurate data in this research are as follows:

- a. Primary Data: Primary data is obtained through direct observation from the research subjects.
- b. Secondary Data: Secondary data in this study comes from the research location, specifically the Directorate of Special Criminal Investigation of the Central Java Regional Police.

Through this research, the author will analyze and draw conclusions using qualitative data analysis methods. Qualitative data analysis involves systematically organizing the obtained data and then analyzing it qualitatively to achieve clarity on the discussed issues. Once the data is collected and complete, it is selected and organized systematically to draw conclusions from the discussion of the issues.

Results and Discussion

Restorative Justice as an Approach to Case Resolution at the Investigation Level as a Form of Progressive Law

Progressive legal theory, proposed by Satipto Raharjo (2011), provides a definition that law is formed for humans, not humans for the law. Law is an institution aimed at leading humans to a just and prosperous life and making humans happy. Furthermore, progressive law does not deny the existence of positive law but asserts that in the paradigm of progressive law, law is not just a captive of the system and laws; rather, justice and the happiness of the people are above the law.

The process of law enforcement, starting from investigation, involves a series of activities to collect evidence that will clarify the case, leading to the identification of suspects. The determination of suspects refers to the Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015, stating, "The Court declares the phrases 'preliminary evidence,' 'sufficient preliminary evidence,' and 'sufficient evidence' contained in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code must be interpreted as 'at least two pieces of evidence' as stipulated in Article 184 of the Criminal Procedure Code."

The basic values of the protection of Human Rights mandated in the 1945 Constitution of the Republic of Indonesia, with Indonesia's position as a constitutional state, must ensure equal treatment of

everyone before the law (*gelijkheid van ieder voor de wet*). Legal certainty must be upheld in the provisions of the Criminal Procedure Code throughout the criminal process, from the beginning of the investigation to the trial. In line with Gustav Radbruch's opinion, legal certainty is the certainty of the law itself. Legal certainty is the application of law, or more specifically, legislation. Gustav Radbruch further believes that the law must encompass three basic values: the value of justice (philosophical aspect), the value of certainty (juridical aspect), and the value of utility (sociological aspect) (Aprilianda, 2017).

The concept of Restorative Justice, regulated in various regulations in Indonesia, is a systematic response to unlawful acts, focusing on the healing of victims, perpetrators, and the community caused by crime. The difference lies in the approach used compared to conventional methods. The current criminal justice system uses a normative approach, determining what criminal acts were committed, how to prove these acts, and the impact of the acts, including appropriate punishment. This formal legal enforcement is perceived to neglect the rights of children, lack solutions, and only focus on the perpetrators. In contrast, restorative justice focuses on the victim, examining the impact on both the victim and the community, with a familial and comprehensive approach different from formal law (Dignan, 2012).

Restorative Justice emphasizes healing for victims, perpetrators, and the community affected by crime. The term is often used to describe an approach in the criminal justice system that focuses on the parties involved, including victims and the community, and disregards punishment for the perpetrator. The application of restorative justice began in 1974 in Ontario through a reconciliation program between victims and perpetrators, expanding to other countries such as the United States and New Zealand. The focus is on healing victims, perpetrators, and the community affected by crime (Gavrielides, 2007).

The implementation of Restorative Justice at the investigation level involves individuals who already have the status of suspects. In the position of a suspect, the resolution uses the principles of restorative justice, involving law enforcement and authorities. The success is highly effective, and agreements in restorative justice are accepted by all parties, with the community acknowledging the solutions reached. The parties create a peace agreement, ensuring that the suspect has compensated the losses suffered by the complainant, proven by a statement, a peace agreement, and other documentation. These requests are submitted to the investigator, and after meeting formal requirements, the investigator requests that the case be resolved through Restorative Justice. The essence of Restorative Justice is to restore the victim's losses to the original state.

Based on the Restorative Justice method within the progressive legal paradigm, it earns the label of good law when, in substance, it adapts to the development of the times or, in other words, is commonly referred to as 'law for humans.' The concept of progressive law is linked to the law enforcement process, starting from investigation to a series of activities collecting evidence that will clarify the case, leading to a process that places someone as a suspect and then becomes a defendant. Investigations and the progression of the investigation stages are the gateway to someone being proven to have committed an alleged criminal act, developed through the restorative justice approach, emphasizing the creation of justice and balance, with one of the legal goals being justice, in addition to legal certainty and utility. The shift away from retribution theory has occurred, and the application of Restorative Justice emphasizes the last remedy of the law.

Obstacles and Legal Consequences of Implementing Restorative Justice in Resolving Cases at the Investigation Level

The operation of the law that has been established is greatly influenced by its operation within society. The Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation emphasizes that the investigation process can be carried out with restorative justice, meeting both material and formal requirements. Furthermore, Regulation of the Chief of the Indonesian National Police Number 08 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

Restorative Justice in Article 1 paragraph 3 of Regulation of the Chief of the Indonesian National Police Number 08 of 2021 on the Handling of Criminal Acts Based on Restorative Justice states that the resolution of criminal acts involving perpetrators, victims, families of perpetrators, families of victims, community figures, religious figures, traditional figures, or stakeholders is done collaboratively to seek a fair resolution through peace, emphasizing a return to the original state. The Indonesian National Police responds to the evolving legal needs of society that meet the sense of justice for all parties, in accordance with the authority under Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, prioritizing a new concept in criminal law enforcement that accommodates prevailing norms and values in society as a solution while providing legal certainty, especially for the benefit and sense of justice of the community.

Gustav Radbruch in Richard Langen (1972) "Strafrechtsreform, Reform im Dilemma" states: "Reforming criminal law does not mean improving criminal law but replacing it with something better." According to Radbruch, the reform of criminal law (not formal or material law) means not just improving criminal law but also replacing it with something better.

Radbruch's view articulates four fundamental things related to the meaning of legal certainty: First, positive law means legislation; Second, law is based on facts, meaning it is based on reality; Third, facts must be formulated clearly to avoid misunderstandings, and they should be easy to implement; Fourth, positive law should not be easily changed. Radbruch's opinion is that legal certainty is the application of law or, more specifically, legislation. He further believes that the law must embody three basic values: the value of justice (philosophical aspect), the value of certainty (legal aspect), and the value of usefulness (sociological aspect). Every legal regulation must be able to justify its validity based on these three basic values.

It is not easy to apply these three basic values, whether the principle of legal certainty comes first, followed by justice and then the usefulness of the law, or vice versa. Sometimes, conflicts of interest make it difficult to make a decision when faced with concrete issues because legal certainty, justice, and the usefulness of the law do not always align in the same direction. When prioritizing legal certainty, justice, and usefulness may be sacrificed, and the same applies when prioritizing justice or usefulness.

Based on Regulation of the Chief of the Indonesian National Police Number 08 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, Article 3 paragraph (1) fulfills the requirements of general and/or specific, and Article 4 emphasizes that general requirements include material and formal. Criminal acts that can be resolved through the Restorative Justice method include electronic information and transaction crimes, drug crimes, and traffic offenses.

The practice of applying Restorative Justice at the investigation level in the Criminal Investigation Unit of the Central Java Regional Police, from 2021 to the present, has successfully resolved 21 special criminal cases. No obstacles were found in the Restorative Justice process because all parties agreed and could demonstrate formal requirements. The basis and foundation met formal and material requirements. Formal requirements include requests from all parties. The material requirements include criminal acts that fall into the category of cases that can be resolved through Restorative Justice. Regulation of the Chief of the Indonesian National Police Number 08 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice is not an obligation for investigators but can be implemented. If the parties do not want to settle through Restorative Justice, the case is continued to the prosecution stage. Subsequently, the investigator issues a letter to terminate the investigation through Restorative Justice. According to Article 109 paragraph (2) of the Criminal Procedure Code, the termination of the investigation is based on three conditions: insufficient evidence, the event is not a criminal act, or the investigation is terminated for legal reasons (the defendant has died, the criminal case has expired). Restorative Justice aligns with the principle of simple, fast, and inexpensive justice.

The authority of investigators in achieving the resolution of cases through the Restorative Justice approach, as an institution that serves as the main gateway to law enforcement, optimizes every law enforcement process carried out by investigators without conflicting with legal provisions to achieve legal certainty and justice.

Conclusion

Based on the research findings obtained by the author, a conclusion is drawn as follows: The criminal justice system has traditionally employed a normative approach, focusing on what criminal actions were committed, how to prove these actions, and the consequences of such acts, including the appropriate legal penalties. This has evolved towards a more humanistic legal resolution through a progressive approach known as Restorative Justice at the investigative level. Achieving the establishment of justice and the protection of human rights for suspects during the investigative examination can be realized.

The responsiveness of law enforcement, as well as the community seeking justice through the utilization of Restorative Justice in criminal case resolution, further optimizes the attainment of the principles of utility, justice, and legal certainty. Restorative Justice emphasizes restoring the situation to its original state and maintaining a balance between the protection and interests of victims and the rehabilitation of offenders, moving away from punitive measures. This has become a legal necessity in Indonesia, a multicultural society, emphasizing the need for justice that aligns with the cultural diversity of the community.

References

- Aprilianda, N. (2017). *Sistem Peradilan Pidana Indonesia: Teori dan Praktik*. Universitas Brawijaya Press.
- Chambliss, W. J., & Seidman, R. B. (1971). *Law, Order, and Power*. Addison-Wesley Pub. Co.
- Dignan, J. (2012). Restorative Justice and the Law: The Case for an Integrated, Systemic Approach. In *Restorative justice and the law* (pp. 188–210). Willan.
- Gavrielides, T. (2007). *Restorative Justice Theory and Practice: Addressing the Discrepancy*. European Institute for Crime Prevention and Control, affiliated with the
- Langen, R. (1972). *Strafrechtsreform: Reform im Dilemma*. Langen Muller.
- Leawoods, H. (2000). Gustav Radbruch: An Extraordinary Legal Philosopher. *Journal of Law and Policy*, 2, 489–515.
- Rahardjo, S. (2011). Hukum Progresif: Hukum yang Membebaskan. *Jurnal Hukum Progresif*, 1(1), 1–24. <https://doi.org/10.14710/hp.1.1.1-24>.

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