

Transcendental Legal Principles in Restorative Justice A Review of Critical Legal Theory Studies

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ABSTRACT

It is time for Critical Legal Studies as a critical thought to be used to criticize the application of law in Indonesia. This criticism is very useful to build Indonesia which is in a transitional period as it is today from the forces that try to dominate both from our own country and abroad (international capitalist powers) and this is very dangerous. The criticality of Critical Legal Studies which is behind the emergence of a reform of the social reality and legal system that already exists in Indonesia, and its commitment to develop it as a legal theory and give birth to an innovation in the Indonesian judicial system with the application of Restorative Justice in state law enforcement institutions. Thoughts in modern science which have been in the corridor of modernist-positivistic hegemony with empirical, objectivist, and rational doctrines have begun to be challenged by transcendentalists. Transcendental thinking is seen more in religious, spiritual, ethical, and moral values. Restorative justice is an approach that aims to build a judicial system that is sensitive to legal issues, restorative justice is a form of criticism of the criminal justice system in Indonesia today which tends to lead to retributive goals, namely emphasizing justice in retaliation. Restorative justice is one of the spiritual intelligences (Spiritual quotient) for humans according to transcendental law because it is able to build new perspectives and horizons in the life of the criminal justice system in Indonesia that revenge is not the only final goal to achieve justice, that there is a role for victims to participate in determining thought process. Restorative Justice is a human spiritual intelligence capable of building humans to be more creative and able to overcome essential problems.

Keywords: Transcendental Principles, Restorative Justice, Critical Legal Theory Studies

INTRODUCTION

Humans in search of truth is a process that is quite long to learn. Humans try to carry out scientific experiments or research in search of the truth or seek answers, in this framework the researchers put forward the theories needed to explain social, moral, political, legal and other phenomena.

Using theory is a human effort to understand the world which is described in a short formula, but like human creations it is limited by space and time. When applied in other areas, even in other countries, in different conditions and times, it will affect its truth.

Theories related to the natural sciences or exact sciences tend to last longer even though they are not eternal, different from theories related to societies which tend to change rapidly.

The word 'theory' comes from the word *theoria* in Latin which means 'contemplation', which in turn comes from the word *thea* in Greek which means 'way of view or result is a construction in nature of human imaginative ideas about the realities that he encounters in life' experience his life. Some experts provide an understanding of the theory as follows:

1. According to Kerlinger, *Theory is a set of interrelated construct or concept, definition, and proposition that presents a systematic view of phenomena by specifying relations among variables with the purpose of explanation and predicting the phenomena.* That is, theory is a set of interconnected constructs, concepts, definitions, and propositions, which provides a systematic view of phenomena by specifying the relationships between variables with the aim of explaining and predicting phenomena.
2. According to Gorys, a theory is general and abstract principles that are accepted scientifically and at least can be trusted to explain existing phenomena.

In the field of law, there are four paradigms known, namely Legal Positivism, Legal Post-positivism, Critical Legal Theory and Legal Constructivism. Where can we find out the various paradigms in legal science related to the paradigms in social science? We can know this based on the grouping of theories built in the science of law. In the following, a table will be presented which illustrates the relation between paradigms and theories in legal science (Taufani & Suteki, 2020).

Tradition	Paradigm	Legal/Social Theory	Concept	Method
Cognitive-Computational and behavioral	Positivism: Legal Positivism	Internal theory: Pure Law, Stufenbau, Law as Order	Law as a regulatory system	Doctrinal: legislative normative
Quantitative	Post-positivism: Legal Post-positivism	Legal realism; Structural functional	Law in concreto decided by the judge; judge behavior (court behavior)	Doctrinal: study of decisions. Non-doctrinal: a study of judge behavior.
Dialogical	Critical: Critical Legal	Critical Legal; Feminism	Law as a reality that has been formed historically as an accumulation of economic, political, social and cultural processes. Not neutral	Non doctrinal: critical study of law
	Constructivism: Legal Constructivism	Phenomenology, Symbolic Interactionism	Law as a phenomenon meaning as well as a symbol that has its own meaning	Non-doctrinal: Study of the mental construction of the doer subject.
	Participatory: Legal Participatory	Empowerment theory; public participation theory.	Law as an experiential reality in social relations	Non-doctrinal: the study of mental construction through searching for self-experience (experiential reality).

In the development of legal theory lately, especially in the XXI (twenty-first)

century, which is also called Critical and Postmodern Legal Studies, with more emphasis on criticism of modern legal practice as a result of the failure of western legal realism, especially the United States of America, with the nature of the study, among others pluralism, local and ethnocentric, interdisciplinary-integrated, critical and radical.

1. *Basic Assumptions of Postmodern & Critical Legal Studies-Theory*

Legal thought that is considered dissatisfied (critical and even rebellious) against the liberal and established paradigm of modern law is categorized as postmodernist thought such as critical legal studies known as Critical Legal Study (CLS) (Absori, 2021).

Critical Legal Theory with its figures including Roberto Mangauher Unger, Duncan Kennedy, David Keirys states that law is a means of criticizing and dismantling a hierarchical system that arises due to political domination. Law is negotiable/subjective and the result of a process that is loaded with political interests. Feminist Legal Theory-Feminist Jurisprudence, that legal reform with a women's perspective, Law as a means of breaking patriarchal domination in society and its radical branches is influenced by the proletarian approach of the Marxian analysis. Legal Hermeneutics, Law is plural and plastic, Interpretation of legal texts is contextual, contextual & decontextual. Law is a product of human interaction (*hermeneun*), with the study of pluralism, local & ethnocentric, interdisciplinary, radical & critical. Critical and Postmodern Legal Studies gave rise to a continental social theory which included Legal Structuralism, Critical Legal Theory, Critical Race Theory, Feminist Legal Theory, Legal Constructivism and Legal Hermeneutics (Wardiono, 2021).

2. *Development of Critical Legal Studies in Indonesia*

In Indonesia, especially among legal experts, Critical Legal Studies is still considered new. However, this criticism is very useful for developing Indonesia which is in a transitional period like now from the forces trying to dominate both from our own country and abroad (international capitalist powers) and this is very dangerous. It is time for Critical Legal Studies as a critical thought to be used to criticize the chaotic application of law in Indonesia.

Many legal experts have expressed their thoughts about the advantages of this Critical Legal Studies. Thoughts about its advantages vary, there are thoughts that are orthodox Marxian to postmodern thinking. Based on these thoughts, there is an understanding that legal neutrality is no longer trusted, the social structure is tiered, certain groups dominate ideology, the desire to overhaul the existing social structure.

The main advantage of critical legal studies is the desire to overhaul the tiered social structure with a commitment to develop it as a legal theory based on direct study of social life or social praxis. The rules, values and legal ratios that have been used by judges and called objectively neutral and fair are again critically analyzed. Another advantage is that critical legal studies pay more attention to the recognition of individuals as subjects in a social order.

The drawback of this theory is that it can get stuck in a circle of endless criticism and only exist in discourse. If it is not used properly, criticism can only end in futility and forget its practical duties to society. Another drawback is that critical legal studies are very difficult to make mainstream in law development because of its original nature that critical thinking always dominates in itself, so that changes and turmoil always occur while in reality society itself tends to maintain old values and orders, changes can be made but not for not instantly but slowly.

When these critical legal studies appeared in Indonesia, it cannot be denied that the legal situation in Indonesia at that time was similar to the legal situation in the United States. Legal experts in Indonesia have been influenced by critical thinking and this thought is very helpful in providing an overview of the legal situation in Indonesia. During the New Order era, according to critical legal studies, the development of law in Indonesia was very easy to criticize because economic and political interests were clearly very dominant in the idea of the rule of law, this was because the interest to increase economic growth forced policies to facilitate business by granting credit to the community, this is of course accompanied by deregulation and de-bureaucratization.

Using the critical legal studies method in analyzing the current legal situation in Indonesia, it is necessary to pay attention to factors that are unique or special that only Indonesia has, such as only the cultural values of society in Indonesia or religious factors.

3. *Epistemology of Transcendental Law*

Transcendental comes from the word transcendental, the Latin word *transcendere* means to climb on/up. For the purposes of this research, the word transcendental means “abstract”, “metaphysical”, and “transcending” (Kuntowijoyo, 2017). A similar understanding conveyed by Achmad Chodjim provides a definition that is more than just going beyond. Transcendent means “beyond everything”. Means transcendent means beyond, nobility, and beyond or not affected by space and time. Transcendental is an adjective of transcendence to show that transcendental, after being juxtaposed with

other nouns, will become something of very important and metaphysical and even mystical value (Chodjim, 2008). Transcendental in the development of science emphasizes the integration between science and religion which occupies a space in the world of science according to the postmodernism school. In this case, science is understood in the eyes of a wider range, including ethical, moral and spiritual values of religion. This is where religion plays an important role in efforts to understand science in a holistic perspective (Absori, 2015).

Immanuel Kant uses the term transcendental as an understanding that goes beyond the boundaries of experience. The scholastics understood that transcendentalism was super categorical, that is, it included things that were broader than the traditional categories, namely form, potential and action. Transcendental is able to reveal the universal and supersensory characteristics of that which is captured through intuition that transcends any experience. Transcendental refers to existence through the accumulation of thinking, consciousness and the world. Transcendent also shows a concept that is universal beyond categories or cannot be classified into just one category (Bagus, 1996).

The integration between science, philosophy and religion is offered as a basis for future epistemology in science learning and research. Ismail Al-Faruqi called it the "Islamization of Science", namely that science must be redesigned by providing new foundations and goals in accordance with Islamic principles and manifesting them in the form of foundations, methodologies and strategies as well as responding to data, problems, goals and aspirations. Epistemology of science assumes that the senses, reason and intuition are valid methods in the development of science. The axiology of science is not independent of knowledge, science is based on faith and good deeds, the Islamization of science is oriented towards the transformation of various fields, such as social, economic, political and legal (Hasyim & Rossidy, 2018).

In western societies, the relationship between science and theology can be seen from Ian G. Barbour's view, which is divided into various typologies, namely conflict, independence, dialogue and integration. Sayyed Hossein Nasr considers that the integration of science and theology as stated by Ian G. Barbour seems to surface that religion or tradition that develops seems to be conquered by science even though religion should be a benchmark for the development of science. In this case Ian G. Barbour allows conceptual changes to theology in the name of learning from science. In fact, the theological implications of science should be assessed from the point of view of the tradition of the truth of its teachings that have lasted for several millennia (Waston, 2014).

In this case, the element of transcendence must become the basis for other elements in the development of science and human civilization. According to Kuntowijoyo, the method of developing science and religion is called prophetic, based on Quran and Sunnah, which is the main basis for the overall development of science. Quran and Sunnah are used as the basis for the entire building of prophetic knowledge, both natural sciences (*Ayat Kauniyah*) as the basis for natural laws, humanities (*Ayat Nafsiyah*) as the basis for meaning, values and awareness as well as divinity (*Ayat Qauliyah*) as the basis of God's law.

In a transcendental perspective, the science of law is not only based on truth at the *haqqalyakin* level, which is collected in Quran and Hadith, but also based on truth that is obtained with human potential through contemplation, reasoning and discourse that develops in society. Humans explore, process and formulate knowledge with the aim not only for knowledge but also for policy, the benefit of the wider community, with the pleasure and love of Allah. Transcendental jurisprudence can only be understood with a holistic approach that sees humans and their lives in a complete form, not merely material in nature but spiritual (immaterial). Transcendental jurisprudence cannot be separated between physical bodies (formal) and transcendental values. The mere justification of transcendental jurisprudence that is pursued is for the sake of justice based on the truth of the power of Allah, the Almighty, the determinant of life and human life. Transcendental jurisprudence is oriented towards the benefit of humans as a form of compassion for their creatures (Absori, 2017a).

RESEARCH METHOD

In writing this article the researcher uses a type of normative legal research, the approach taken in this writing includes a conceptual approach. Primary legal materials are the results of literature/document studies, namely searches and searches from the literature including related laws and regulations. The analysis used is descriptive analysis. This analysis is assisted by analysis in the form of grammatical interpretation (grammar) which is tasked with deciphering and explaining the meaning of laws, and extensive interpretation which can broaden the meaning of something that exists. The results of the analysis are used as material for consideration and conceptual improvement of legislation and its application.

RESULT AND DISCUSSION

A. *Transcendental Law*

Transcendental thinking attracts the attention of the founders of science, considered as an alternative future thought in the midst of a pacifistic rationalist dialectic

which is considered to be unable to overcome various problems of life and living. Modern science which is rational-positivistic is considered not everything. Transcendental thinking is related to understanding that places knowledge in a wider range beyond the normative boundaries of rational science rules. Scientists place transcendental studies in the frame of knowledge that is metaphysical or supernatural because it transcends the boundaries of the physical realm and is spiritual in nature.

Transcendental thinking can be seen in religious, spiritual, ethical, and moral values which are full of dynamics and thought struggles that were born in a long history. Modern science, which has been in the corridor of modernist-positivistic hegemony with empirical, objectivist, and rational doctrines, has begun to be sued by transcendental thinkers who put more value and meaning behind it, so that the building of science becomes more open and complete in responding to life and life's problems. In this case, transcendental thinking begins to raise things that are irrational and metaphysical (emotions, feelings, intuitions, values, personal experiences, speculation), morals, and spiritual as an integral part in understanding science (Absori, 2017b).

Criticizing the failure of western science and civilization, Danah Zohar and Ian Marshall in "*Spiritual Intelligence, The Ultimate Intelligence*", introduced spiritual thinking. Ary Ginanjar Agustian combined intellectual, emotional and spiritual abilities called Emotional Spiritual Quotient (ESQ) in answering the problems of human life. ESQ is a universal concept that is able to lead a person to a satisfactory predicate for himself as well as for others. ESQ can also hinder all things that are counterproductive to the progress of mankind. All three must be integrated, there is no separation between the world and the hereafter, between the two of them being able to synergize proportionally to produce a balanced body and soul strength (Agustian, 2009).

According to Satjipto Rahardjo, with a spiritual intelligence approach, the most perfect intelligence (ultime intelligence) will be obtained, carried out by bypassing the lines of formalism (existing rule) and transcendental, so that new thoughts that approach the ultimate truth can be obtained. Humans need a spiritual quote because in western society the meaning of life has occurred in the modern world (the crisis of meaning). Spiritual quotient is a tool for humans to be able to build new perspectives in life, to be able to find broad horizons in a narrow world and to feel the presence of God without meeting God. SQ can be used to awaken hidden human potential, make human beings more creative and able to overcome essential problems. SQ is also a clue when humans are between order and chaos, providing intuition about meaning and value. In the field of law, the science of law no longer places itself in an isolated position intellectually in the face of changing times. If the law is in the context and map of the larger order, then

the substance and alternative arrangements outside the positive law will always exist.

B. Restorative Justice

The restorative justice approach is not a new thing in the justice system in Indonesia, because so far restorative justice has often been used in solving crimes relating to children.

Children as perpetrators of criminal acts are referred to as delinquent children or in criminal law it is said to be juvenile delinquency. Romli Atmasasmita is of the opinion that under the age of 18 and not married is a violation of applicable legal norms and can endanger the child's personal development (Atmasasmita, 1983).

In dealing with children as perpetrators of criminal acts, law enforcement officials must always pay attention to the conditions of children who are different from adults. The basic nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society who still need protection can be used as a basis for finding an alternative solution how to prevent children from a formal criminal justice system, placing children in prison, and stigmatization on the status of children as prisoners.

One solution is to divert or place child offenders out of the criminal justice system. This means that not all cases of delinquent children must be resolved through formal justice channels, and provide alternatives for settlement with a justice approach in the best interest of the child and taking into account justice for victims known as a restorative justice approach.

The Restorative justice approach in the juvenile justice system is part of the implementation of diversion. The main principle of implementing the concept of diversion is a persuasive approach or non-penal approach and provides an opportunity for someone to correct mistakes (Pradityo, 2016a). The formulation of diversion is even regulated clearly in Indonesian positive law, to be precise in article 1 number 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which reads as follows:

“Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice.”

Restorative Justice itself in article 1 number 6 of the Law on the Juvenile Justice System is formulated as follows:

“Restorative justice is the settlement of criminal cases involving perpetrators,

victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.”

The Covenant on Civil and Political Rights in Article 24 paragraph (1), states that every child has the right to obtain the right to protective measures, because his status as a minor should be used as a legal basis for Judges to stop child cases. This formulation is the legal basis for implementing restorative justice. Such a decision is valid because the judge is indeed given the freedom to explore, follow and understand the legal values and sense of justice that live in society.

Restorative Justice according to criminal law expert Mardjono Reksodiputro is an approach that aims to build a justice system that is sensitive to legal issues, restorative justice is important to be associated with victims of crime, because this approach is a form of criticism of the current criminal justice system in Indonesia which tends to lead to retributive, namely emphasizing justice on retaliation, and ignoring the role of the victim to participate in determining the process of the case (Ferrawati, 2019).

Restorative justice can be formulated as a thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who are felt to be excluded from the mechanisms that work in the existing criminal justice system. In addition, restorative justice can be used as a frame of mind that can be used in responding to a crime for law enforcers (Pradityo, 2016b).

In various principles and models of restorative justice approaches, the process of dialogue between perpetrators and victims is the basic capital and the most important part of the application of this justice. Direct dialogue between perpetrators and victims allows victims to express what they feel, express hopes for the fulfillment of rights and desires from a settlement of criminal cases. Through dialogue, it is hoped that the perpetrators will be moved to self-correct, realize their mistakes and accept responsibility as a consequence of a crime committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, basically restorative justice is also known as settlement of cases through mediation (mediation penal).

Penal mediation in criminal law has a noble goal in resolving criminal cases that occur in society. Conceptually, said Stefanie Trankle in Barda Nawawi Arief, the penal mediation that was developed departs from the following working principles and ideas:

1. 1. Conflict Handling (*Konfliktbearbeitung*): The mediator's job is to make the parties forget about the legal framework and encourage them to get involved in the communication process. This is based on the idea that crime has created interpersonal conflict. Conflict is what the mediation process aims at.
2. Process-oriented (*Process Orientation/Prozessorientierung*): Penal mediation is more oriented to the quality of the process than the results, namely: making the perpetrators of a crime aware of their mistakes, conflict needs are resolved, calming victims from fear, etc.
3. Informal proceedings (*Informal Proceedings/Informalität*): Penal mediation is an informal process, not bureaucratic in nature, avoiding strict legal procedures.
4. There is active and autonomous participation of the parties (*Active and autonomous participation/Parteiautonomie/Subjektivierung*): The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act of their own free will (Arief, 2012).

In penal mediation as well as in restorative justice which puts forward the concept of mediation in the dialogue process, it is known as a communication medium which is the main capital in organizing mediation institutions. That whole process can be found in the model of administering restorative justice, as stated by DS. Dewi and Fatahillah A. Gratitude, the following:

- a. Victim Offender Mediation (VOM: Mediation between perpetrators and victims), namely a forum that encourages meetings between perpetrators and victims who are assisted by mediators as coordinators and facilitators in these meetings.
- b. Conferencing is a forum that is the same as VOM, but in this form, there are differences, namely the involvement of the settlement does not only involve the perpetrator and the direct victim (primary victim), but also the indirect victim (secondary victim), such as the victim's family or close friends as well as family and friends. near the perpetrator. The reason for the involvement of these parties is because they may be directly or indirectly affected by the criminal acts that have occurred or they have a high concern for and interest in the outcome of the deliberations and they can also participate in pursuing the success of the process and its ultimate goal.

- c. Circles is a model of implementing restorative justice with the most extensive involvement compared to the previous two forms, namely forums where not only victims, perpetrators, families or mediators but also members of the public who have an interest in the case. The three basic models of the form of application of the restorative justice approach are basically forms that are variations of the dialogue model which is the implementation of deliberation and consensus forms. It is from this basic value that restorative justice as the implementation of the basic values that exist in Indonesian society has a strong foundation of values (Syukur & Dewi, 2011).

C. Principles of Transcendental Law in Restorative Justice in the Legal System in Indonesia

In Indonesia, especially legal experts view Critical Legal Studies as something new. The main advantage of critical legal studies is the desire to overhaul a tiered social structure with a commitment to develop it as a legal theory based on direct learning of social life or social praxis. The legal order, values, and ratios that have been used by judges and called objectively neutral and fair are again critically analyzed. Another advantage is that critical legal studies pay more attention to the recognition of individuals as subjects in a social order. However, this criticism is very useful for developing Indonesia which is in a transitional period like now from the forces trying to dominate both from our own country and abroad (international capitalist forces) and this is very dangerous. It is time for Critical Legal Studies as a critical thought to be used to criticize the chaotic application of law in Indonesia.

The critical nature of Critical Legal Studies is in line with transcendental legal thinking which emphasizes irrational, metaphysical (emotional feelings, intuition, values, personal experience, speculation) moral and spiritual which are different from modern science which has been in the corridor of modernist-positivistic hegemony with empirical, objectivist, and rational doctrines. Transcendental thinking was born in a long history and is full of dynamics and thought struggles because it sees religious, spiritual, ethical and moral values as an integral part of understanding science. With a spiritual intelligence approach, the most perfect intelligence (ultime intelligence) will be obtained, so that new thoughts can be obtained that are closer to the essential truth (the ultimate truth).

Spiritual Intelligence (Spiritual Quotient) is a tool for humans to be able to:

1. Building new perspectives in life,
2. Finding broad horizons in a narrow world,
3. Awakening hidden human potential,

4. Making human beings more creative and able to overcome essential problems.

The criticism from Critical Legal Studies which is the background to the emergence of a reformation of the social reality and legal order that already exists in Indonesia, and the commitment from Critical Legal Studies to develop legal theory in Indonesia has led to an extraordinary innovation in the Indonesian justice system with the application of Restorative Justice in the law enforcement agencies of the Indonesian National Police (POLRI) and the Attorney General's Office of the Republic of Indonesia.

Settlement of criminal cases in Restorative Justice is one of the spiritual intelligences (Spiritual quotient) for humans in criticizing the criminal justice system in Indonesia which tends to lead to retributive goals that emphasize justice only in retribution. Settlement of cases with this system is the method of solving criminal acts by involving perpetrators, victims, families of perpetrators/victims, and other related parties in order to jointly seek a fair solution not by retaliation, but by emphasizing restoration to its original state. Restorative justice is human spiritual intelligence capable of building new perspectives and horizons in the life of the criminal justice system in Indonesia that retaliation is not the only end goal to achieve justice, that there is a role for the victim to participate in determining the process of thought. Restorative justice is human spiritual intelligence capable of building humans to be more creative and able to overcome essential problems.

The application of restorative justice to its implementation requires a long journey in the legal system of the Republic of Indonesia which emphasizes justice only on retaliation for an act committed and is contrary to positive law, so that retaliation is not the only ultimate goal to achieve justice.

Today, restorative justice is not only focused on solving crimes involving children, but over time it has been applied to certain cases in general crimes. Settlement of cases relating to children is further regulated in the Justice System Law, but in certain criminal cases in general crimes it is also regulated regarding restorative justice in the form of circular letters or regulations.

1. Attorney General of the Republic of Indonesia, Restorative Justice is regulated through Attorney General Regulation (PERJA) Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice,
2. Indonesian National Police, Restorative Justice is regulated through the Chief of Police Circular Letter Number SE/2/II/2021 on February 19 2021 concerning

Awareness of Ethical Culture to create a Clean, Healthy and Productive Indonesian Digital Space.

The Republic of Indonesia Police in handling criminal acts that can be resolved by means of restorative justice, namely certain cases such as defamation, slander, or insults, and the perpetrators are not detained, the Chief of Police through circular letter Number SE/2/II/2021 on February 19 2021 regarding Ethical Cultural Awareness to create a Clean, Healthy and Productive Indonesian Digital Space asked investigators to have the principle that criminal law is the last resort in law enforcement and prioritizes restorative justice in case settlement. In this circular letter, restorative justice does not apply to cases that have the potential to divide, SARA, radicalism, and separatism.

The same thing applies to Restorative Justice which is implemented by the Attorney General's Office of the Republic of Indonesia through the Attorney General Regulation (PERJA) Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, this PERJA requires that restorative justice can only be carried out against:

1. Not a recidivist
2. there is peace,
3. Criminal threats under 5 (five) years, compensation and losses under IDR 2.500.000 (two million rupiah).

Regarding this extraordinary innovation with the implementation of restorative justice in the justice system in Indonesia, this is not yet a perfection in the rule of law so that it is final in its implementation by law enforcement agencies in Indonesia, but on the contrary, this is only the beginning, so ideas or new ideas regarding this rule. The weakness of this rule can be seen from the very limited material that can be applied in restorative justice because of the special requirements that must be applied, this needs to be reviewed regarding the broad scope of this restorative justice. Soerjono Soekanto believes that in law enforcement there are influencing factors, namely:

1. The law,
2. Law enforcer
3. Means or facilities;
4. The people; and
5. The culture.

The spirit raised by these two law enforcement agencies in implementing restorative justice should also be supported by other institutions so that the rules regarding Restorative Justice are not only contained in the form of circular letters or regulations of the same level, but to be regulated by stronger and binding regulations and included in legislation program in the legislature in Indonesia.

CONCLUSION

In Indonesia, especially legal experts view Critical Legal Studies as something new. However, this criticism is very useful for developing Indonesia which is in a transitional period like now from the forces trying to dominate both from our own country and abroad (international capitalist powers) and this is very dangerous. It is time for Critical Legal Studies as a critical thought to be used to criticize the application of law in Indonesia.

The critical nature of Critical Legal Studies which is the background to the emergence of a reform of the social reality and legal system that already exists in Indonesia, and the commitment of Critical Legal Studies to develop legal theory in Indonesia has led to an extraordinary innovation in the Indonesian justice system with the application of Restorative Justice (restorative justice) in the law enforcement agencies of the Indonesian National Police (POLRI) and the Attorney General's Office of the Republic of Indonesia.

Thought in modern science that has been in the corridor of modernist-positivistic hegemony with empirical, objectivist, and rational doctrines has begun to be sued by transcendentalists. Transcendental thinking is more seen in religious, spiritual, ethical, and moral values which are full of dynamics and thought struggles that were also born in a long history.

Restorative Justice is an approach that aims to build a justice system that is sensitive to legal issues, restorative justice is important to be associated with victims of crime, because this approach is a form of criticism of the current criminal justice system in Indonesia which tends to lead to retributive goals, namely emphasizing justice on retaliation, and ignoring the role of the victim to participate in determining the case process.

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