



## Legal Certainty in the Settlement of Embezzlement in the Family with the Restorative Justice Method

Akhiruddin; Ismansyah; Aria Zurnetti

Faculty of Law, University of Andalas, Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i5.1670>

---

### **Abstract**

Crimes embezzlement in the family is a crime that can be processed if there is a complaint from the injured victim. In the practice of law enforcement against embezzlement in the family in the Jurisdiction of the West Pasaman District Court, the judge in making a decision to grant the request of the victim to withdraw his complaint even though the time period specified in Article 75 of the Criminal Code has been exceeded. Judge Number 137 / Pid.B / 2019 / PN Psb Against Settlement of Dark Family Crimes in the Legal Area of the West Pasaman District Court. The purpose of the study was to see how the judge is considered in making the aforementioned determination. The method used is normative effective. This type of research is descriptive using secondary data.

**Keywords:** *Legal Certainty; Restorative Justice; Embezzlement; Family*

### **Introduction**

The ideal law enforcement in principle must fulfill three basic values of legal objectives, in accordance with Gustav Radbruch's opinion, namely the value of justice, legal certainty and usefulness.<sup>1</sup> These three values must be realized and not only in the normative level or merely theoretical level. The embodiment of these values must also be realized in a balanced manner and as much as possible not to sacrifice other values (goals). Although in law enforcement practice it is very difficult to give the right portion of those three things.

In principle, the Criminal Justice System is a criminal law enforcement process that is carried out in an integrated manner, therefore the criminal justice system is very closely related to the criminal legislation itself both substantive criminal law and criminal procedural law. It can be called so because criminal legislation is basically an abstract law enforcement that will be realized in concrete criminal law enforcement.<sup>2</sup>

---

<sup>1</sup> Darji Darmodiharjo and Shidarta, Principles of Legal Philosophy (what and how Indonesian legal philosophy is), (Jakarta: Gramedia, 2006), page. 161.

<sup>2</sup> Romli Atmasmita in Edi Setiadi and Kristian, Integrated Criminal Justice System and Law Enforcement System in Indonesia, (Jakarta: Publisher Prenadamedia Group, 2017), page. 28.

The characteristics of the Criminal Justice System approach according to Romli Atmasasmita starts with the coordination and synchronization of the components of the criminal justice system (police, prosecutors, courts and correctional institutions) supervision and control of the use of power by the criminal justice component. The efficiency of the crime prevention system is more important than the settlement of the case, the use of law as an instrument to strengthen the administration of justice.<sup>3</sup>

In a crime, knowing clearly the crime that occurred is a must. Some of the crimes that occur must be known meaning and definition including embezzlement. Embezzlement means having goods or something that is owned by someone else but the act is not a crime. In Article 372 the Criminal Code emphasizes embezzlement, namely:

"Anyone who intentionally violates the law owns something or in whole or in part belongs to someone else, but those who are in his power are not because the crime is threatened because of embezzlement, with a maximum of four years or a maximum of nine hundred rupiah."

In addition, Tongat stated his explanation regarding embezzlement, namely:<sup>4</sup>

"Criminal acts as referred to in Chapter XXIV of the Criminal Code Book are more accurately referred to as"

hazawi added an explanation of embezzlement based on Article 372 of the Criminal Code which was stated as follows:<sup>5</sup>

"The verduistering words which are translated into our language literally by embezzlement, are given to Dutch society in a broad sense (*figurlijk*), not to be interpreted as the actual meaning of the word as to make something not bright or dark. It is closer to the understanding that acting to misuse his rights as the owner of an object (possession), which right must not exceed his right as a person who is given the trust to control the object is not due to crime. "

However, in the practicriminal acts of misuse of rights "or" abuse of trust ". Because, the essence of the criminal acts regulated in Chapter XXIV of the Criminal Code is "abuse of rights or" abuse of trust ". Because with this mention, it will make it easier for everyone to find out what actions are actually prohibited and threatened with crime in these provisions. "

Then, Adami Cce of law enforcement against embezzlement as a crime of complaint in the Legal Area of the West Pasaman District Court, it can be seen that the judge has made the determination to revoke the complaint even though the time period (right) granted by the Criminal Code to revoke the complaint has been passed as regulated in Article 75 of the Criminal Code. In addition, the judge also stated that the prosecution by the Public Prosecutor was declared unacceptable. This can be seen in Determination of Judge Number 137 / Pid.B / 2019 / PN Psb., On behalf of Defendant Dewi Hayati Pgl. Wiwik, who is 65 years old.

The judge in his decision granted the Defendant's request through the family to revoke the complaint, even though it had exceeded the 3 (three) month deadline since the complaint was filed on the alleged crime. Based on the data explained in the police report to the Defendant, it is known that the police report was made on February 20, 2016. While the peace letter given by both parties dated October 2, 2019, far exceeded the time limit stipulated by Article 75 of the Law Criminal Law

In its consideration the judge stated that with the existence of peace and the withdrawal of the complaint letter that made the death or loss of the right of the Public Prosecutor to prosecute, so the judge could state that the prosecution of the case was declared not accepted. However, on the other hand whether the Public Prosecutor can immediately stop the prosecution despite the withdrawal of the

<sup>3</sup>Romli Atmasasmita in Aminanto, *Politics of Criminal Law*, (Jember: Media's Word, 2017), page. 18.

<sup>4</sup>Tongat, *Material Criminal Law*. (Malang: UMM Press, 2006), page. 57.

<sup>5</sup>Adami Chazawi, *Crimes Against Property*. (Jakarta: Bayu Media, 2006), page. 70.

complaint letter given by the family, while the withdrawal of the complaint is known to have passed the revocation deadline for 3 months.

### ***Result and Discussion***

Normatively, the court's decision is interpreted as a statement of the judge pronounced in an open court hearing, which can be in the form of conviction or free from all lawsuits in terms of and according to the way regulated in this law. Meanwhile according to Lilik Mulyadi, a Judge's decision is defined as a decision pronounced by a judge because his position in a criminal case trial that is open to the public after going through the process and procedural law of a criminal procedure generally consists of a criminal sentence or free or release of all legal claims made in written form with written the purpose of completing the case.<sup>6</sup> With this important function, according to Eva Achjani Zulfa,<sup>7</sup> Judges must realize that every decision they make has a broad impact, not only for the accused, the victim or his family but also the community as a whole. Observing the above ideas, then the court's decision should be able to realize the expectations of justice seekers and be able to explore the values the value of law and the sense of justice that lives in society.

Hans Kelsen as explained above argues that law is a norm system. The norm itself is a statement that emphasizes the "should" or *das sollen* aspects by including some rules about what should be done. Norms are deliberative human products and actions. Laws that contain general rules are guidelines for individuals behaving in interacting with the community, both in relationships with individuals and in relations with the community. The rules become a limit for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.<sup>8</sup>

Certainty is a matter of certainty, conditions or provisions. The law must be absolutely certain and fair. Definitely as a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law is considered to be able to carry out its functions. Legal certainty is a question that can only be answered normatively, and not sociology.<sup>9</sup>

Certainty is a value that cannot be separated from the law, especially for written legal norms. A law without a certainty value does not mean anything, nor does it have meaning because it cannot be used as a reference and guide for everyone's life. Certainty is one of the objectives of the law relating to the formation of public order. Regularity is the core of certainty because it causes people to live in a certainty and can carry out their activities with a good reference in social life.<sup>10</sup>

Normative legal certainty is achieved when a regulation is made and promulgated with certainty and regulates clearly and logically. Clearly in the sense of not causing doubt (multi-interpretation) and logical. It is clear in the sense that it becomes a norm system so that one norm and another norm does not clash or cause norm conflicts. Legal certainty also refers to the implementation of clear, permanent, consistent and consistent laws which in their implementation cannot be influenced by subjective

---

<sup>6</sup> Lilik Mulyadi, *Issues of Criminal Law: Perspective, Theoretical and Practical*, (Bandung: Alumni, 2012), page. 121.

<sup>7</sup> Eva Achjani Zulfa and Indriyanto Seno Adji, *Shifting the Criminal Paradigm*, (Bandung: Lubuk Agung, 2014), page. 23.

<sup>8</sup> Peter Mahmud Marzuki, *Introduction to Legal Studies*, (Jakarta: Pranada Media 2012), page. 58.

<sup>9</sup> Dominikus Rato, *Legal Philosophy: An Introduction to Finding and Understanding Law*, (Surabaya, Laksbang Justitia: 2010), page. 59.

<sup>10</sup> Jaka Mulyata, Justice, *Certainty and Legal Consequences of the Constitutional Court Decision Number 100 / Law-X / 2012 Regarding Judicial Review Article 96 of Law Number 13 Year 2003 Regarding Employment*, Faculty of Law, University of Eleven March, Surakarta, 2015, page . 26.

conditions. Certainty and justice are not just moral demands, but factually characterize the law. A law that is uncertain and does not want to be fair is not just a bad law.<sup>11</sup>

The existence of legal certainty is a hope and form of guarantee for justice seekers (Justia Belen) against the arbitrary actions of law enforcement officials who sometimes always arrogance in carrying out their duties as law enforcers. The existence of legal certainty will make the public know about the clarity of their rights and obligations according to the law. Without legal certainty, people will not know what to do, do not know what is right or wrong, are prohibited or not prohibited by law. This legal certainty can be realized through the realization of good and clear norms in a law and its application will also be clear.

Discussing the legal certainty in law enforcement on the settlement of embezzlement in the family based on the Judgment of the West Pasaman District Court Number 137 / Pid.B / 2019 / PN Psb it can be seen that in the law enforcement the Defendant was charged by the Public Prosecutor with an alternative charge violating Article 372 The Criminal Code Jo Law. Article 376 of the Criminal Code Jo. Article 367 of the Criminal Code or violating Article 378 Book Of Criminal Law. In the indictment the defendant was suspected of committing a crime of embezzlement with a chronological case as follows:

1. Whereas on October 3, 1955 the head of the Koto Baru area, Kenagarian Lungkung Aur, Pasaman sub-district, Pasaman district (now West Pasaman) named Tahin, Datoek Sinaro, Rasab, Datoek Soetan, Rasid, Datoek Maindo Sutan, Koetai, Datoek Radjo Bangoen, and Mocin, Datoek Sinaro, Rasab, Datoek Soetan, Rasid, Datoek Maindo Sutan, Koetai, Datoek Radjo Bangoen, and Mocin, Datoek Sinaro, Rasab, Datoek Soetan, Rasid, Datoek Maindo Sutan, Koetai, Datoek Radjo Bangoen and Mocin, Datoek Sinaro. Radjo Mangkoeto presented a 100 x 200 m vacant plot of land located in Lubuk Lagundi Koto Baru, Kenagarian Lungkung Aur, Pasaman District, Pasaman Regency (now West Pasaman) to the biological son of Alwafir, the title Soetan Bandaro Basa from his wife named Ratna Swastika, Al Kaisul Amri, Dewi Hayati, and AL Ichsan Amri.
2. Whereas in 1997 Ratna Swastika (the recipient's parent) took the initiative to arrange certificates for the donated land without attaching a Certificate of Granting Empty Land on 3 October 1955 and in 1998 a certificate of ownership was issued in the name of Dewi Hayati Chal covering +13,680 M2.
3. - That on September 14, 1998 at the request of Witness Al Ichsan Amri, the defendant Dewi Hayati Pgl. Wiwik made a Statement containing the contents that although the certificate of the vacant land was in the name of Dewi Hayari Chal, but those entitled to the land were 3 (three) people namely Al Khaisul Amri, Dewi Hayati and Al Ichsan Amri.
4. - That on September 26, 2004 Witness Al Khaisul Amri, the defendant Dewi Hayati Pgl. Wiwik along with 5 (five) siblings who are children of Al Wafar Sutan Bandaro Basa and Ratna Swastika made a Statement of Agreement concerning granting all rights to all the other defendant brothers to the +13,680 M2 land.
5. On April 8, 2014 at the request and approval of Al Achsan Amri, the defendant Dewi Hayati Pgl. Wiwik sold the land area of +13,680 M2 to Witness Yulinur Syafrianti (the younger sibling of the defendant) for Rp.1.3 Billion without the approval of Al Khaisul Amri, based on Notary Sale and Purchase Deed of Evi Puspita Hati Number 222/2014.
6. Whereas to obscure his act of selling land which was jointly owned without the consent of Al Khaisul Amri, the defendant Dewi Hayati Pgl. Wiwik drafted a joint statement on 15 January 2016 signed by the defendant Dewi Hayati Pgl. Wiwik as the First Party, Witness Al Ichsan Amri as the Second Party and Witness Al Khaisul Amri as the Third Party which contained in essence they

<sup>11</sup>Nazif Firdaus et al, "The Application of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in Narcotics Crimes" Journal of Law, Juridical Insights, No. 2 (September 2019): page. 156.

agreed to revoke the guideline of the actions of the defendant Dewi Hayati Pgl. Wiwik and the defendant Dewi Hayati Pgl. Wiwik will pay Al Khaisul Amri's rights at Rp 300,000,000 (three hundred million rupiah).

7. That the mutual agreement dated January 15, 2016 was only the strategy of the defendant Dewi Hayati Pgl. Wiwik alone and the payment of Al Khaisul Amri's rights amounting to Rp 300,000,000 (three hundred million rupiah) were never given by the defendant Dewi Hayati Pgl. Wiwik.

The judge in his decision granted the Defendant's request through the family to revoke the complaint, even though it had exceeded the 3 (three) month deadline since the complaint was filed on the alleged crime. Based on the data explained in the police report to the Defendant, it is known that the police report was made on February 20, 2016. While the peace letter given by both parties dated October 2, 2019, far exceeded the time limit stipulated by Article 75 of the Law Criminal Law

In the case of discussing legal certainty towards law enforcement against embezzlement in this family, the author will look at the aspect of legal certainty based on the opinion of Lon Fuller and a reference to the opinion of Gustav Radbruch. Lon Fuller stated that there are 8 (eight) things that must be fulfilled to determine the law to run effectively in society. But in the application of the above case, the writer will analyze 7 (seven) things out of 8 (eight) things mentioned by Lon Fuller, namely:<sup>12</sup>

1. *Prospectivity* or the law is not retroactive;  
In the case of law enforcement against embezzlement in the household above, it can be seen that law enforcement does not apply retroactive laws because judges apply juridically the provisions stipulated in the Criminal Code as a codification of Indonesian criminal law.
2. *Promulgation* or the law must be announced;  
In the case of law enforcement against the embezzlement of crimes mentioned above, then with the enactment of the Criminal Code since 1 century in Indonesia, of course it has also indirectly confirmed that the legal provisions stipulated in the Criminal Law Book are known by every people in Indonesia.
3. *Clarity* or the law must be clear;  
In the case of the embezzlement case above, it is expressly stated that the rule of law that applies to embezzlement in the family as a complaint offense and the time limit for the withdrawal of the complaint as regulated in Article 75 of the Criminal Code has clearly and clearly stated that no more from 9 months. So that what causes ambiguity is when the judge makes clear the provisions of Article 75 of the Criminal Code and allows the complaint to be revoked even though it has been passed 3 months after the complaint is received.
4. *Consistency or avoiding contradiction* or consistency or avoidance of contradictions;  
The practice of law enforcement carried out by judges through the judging of embezzlement above opens opportunities for inconsistencies in the application of law by Judges. Because if it is seen based on legal considerations carried out by the judge, the judge considers that because the crime is a criminal act that looks at the interests of the person or individual victim committed and the existence of family relations, a solution that is beneficial to both parties is the best thing. However, if we consistently look at legal certainty, then the resolution of the crime will not necessarily be applicable to every case that has similarities, because it is caused by the direction of the judge's judgment and the understanding used by the judge.
5. *Possibility of obedience* or the possibility of compliance or must be carried out;

<sup>12</sup>Gunawan Widjaja, Lon Fuller Lawmaking and Interpretation of Law, Law Review, Faculty of Law, University of Pelita Harapan, Vol. VI. No. 1 July 2006.

In the right of law enforcement, there is very little chance that other Judges in criminal offenses also apply the same provisions to embezzlement in the family. Because in view of Article 75 of the Criminal Code which has explicitly explained the deadline for complaints can be revoked, it opens the opportunity that there will be many cases that overlap the application of the law.

6. *Constancy through time or avoidance of frequent change* or constancy through time or avoid frequent changes;

The application of the law by the West Pasaman District Court judge in deciding the case of embezzlement in the household described above, judging from the theory of legal certainty, it will be possible to change or be inconsistent in time considering the determination is based on the consideration of a judge who, according to the author, is not supported by a reason or a strong legal basis considering rigidly set limits on when a complaint can be withdrawn.

7. *Congreunce between official actions and declared rules* or compliance with implementing laws and regulations.

Talking about this aspect and relating to law enforcement that has been carried out by judges in accordance with the Decree of the Court above, it can be seen that the determination made by the Judge in considering and applying the law against embezzlement in the family is contrary to the Criminal Code because violating Article 75 of the Criminal Code, as a reference in determining the time limit for a complaint can be revoked. Bearing in mind that the time limit is regulated in the Criminal Code Act so that each party understands the legal consequences that occur when the time limit is passed, and also provides space for families to be able to immediately resolve cases that occur in accordance with the time limit. Aside from that, according to the author that adherence to these provisions will also have implications for Indonesia's legal authority as something that is respected. Authoritative law will make order in society because society will obey the law regardless of volunteerism or compulsion. While law that is not authoritative tends to have implications for community lawlessness as well.

In addition, legal certainty will guarantee everyone to carry out acts that are in accordance with applicable legal provisions, and vice versa without legal certainty, a person will not have a reference in determining his behavior.

Gustav Radbruch revealed there are four references relating to the meaning of legal certainty, namely:<sup>13</sup>

1. the law is based on facts that are not formulations that are based on Judges' judgment, the facts must be clearly formulated to avoid ambiguity or misinterpretation of the law.
2. the law is positive in the form of legislation,
3. positive law is not easy to change.
4. justice and legal certainty are fixed parts of the law. He believes that justice and legal certainty must be considered, legal certainty must be maintained for the security and order of a country. Finally, positive law must always be obeyed so that its benefits can be felt by each party.

Referring to the opinion of Gustav Radbruch which is connected with law enforcement against criminal acts of embezzlement in the household it can be seen that:

1. referring to Gustav Radbruch's opinion that the law is based on a fact, so that embezzlement in the household and the overdraft of the withdrawal of the complaint becomes a legal fact that cannot be refuted according to legal certainty that the judge should not judge the fact in accordance with the judge's judgment;
2. with a positive legal view, we must consistently apply the rule of law in the norms of the Criminal Code consistently and consistently;

<sup>13</sup>Sulardi, "Legal Certainty, Utilization and Justice Against Criminal Cases of Children", Judicial Journal Vol. 8 Number 3 December (2015), page. 261.

3. Article 75 of the Criminal Code is a written legal norm that expressly provides a time limit for revoking a complaint, so that by taking into account the difficulties in making changes to the norm, such norms must be obeyed;
4. However, in the fourth formulation of Gustav Radbruch's opinion, it was also stated that the application of legal certainty needs to also pay attention to justice and expediency. So according to this writer, it needs to be interpreted that certainty of a legal norm must indeed be strictly applied as the enactment of Article 75 of the Criminal Code in applying the law to embezzlement in the family. However, with peace taking place after a 3-month time limit has passed between the victim and the perpetrator, it does not mean that Article 75 of the Criminal Code can be set aside, but in Gustav Radbruch's view, the judge must provide justice by providing a conviction (if proven legally) and convincing) which is lighter or applies conditional penalties to the perpetrators.

The court as an instrument of judicial power, especially the judges who are the last bastion of justice is often in carrying out its obligations to uphold the values of justice is inseparable from a problematic for concocting two worlds that are diametrically different. The difference is seen with the wishes of the victim or his family who expect that the judge will give the maximum sentence to the defendant, but instead the defendant and his family expect the sentence as light as possible by presenting legal reasons that can also convince the judge. Judges' decisions must be arranged in a systematic, juridical and logical manner, all of which must reflect the value of justice.

As the ultimate holder of the power to examine and try a case, the court's decision made by a judge will have a significant influence on the realization of the rule of law in Indonesia. If the judge's decision is incorrect and contrary to the community's sense of justice, then of course the decision will cause distrust of the court's decision which not only leads to the judge and the court, but will also affect the entire judicial system. Because judicial decisions are the culmination of the operation of the criminal justice system.<sup>14</sup>

The position of legal considerations in decisions is very important. It can even be said to be the juridical core of a Judge's ruling. Aside from being a consideration for a Judge's ruling, in the context of diversion mature legal considerations are also needed in an effort to implement diversion against children in conflict with the law. A legal consideration is deemed sufficient if it meets the minimum conditions for consideration as follows:

1. Legal and statutory considerations. The Judge (Law Enforcement) in making a decision on a case being tried must make judgments based on legal and / or legal jurisdiction which includes formal and material law both written and unwritten.  
Likewise, legal considerations in the attempt to implement diversion, must pay attention to legal and / or legal aspects of the judiciary. The legal aspects must include formal law and material law.
2. Consideration for the sake of realizing justice. One of the goals of laws and regulations is for the creation of justice. Justice must always be inherent in a Judge's decision because justice is the main objective of the law and the law itself. It is to uphold the law and justice that a court is built. A fair trial is expected to bring order, peace and peace.  
The consideration of this aspect of justice is a very basic and core consideration, which consideration should be placed first and foremost priority over consideration according to law and legislation, because it turns out that the consideration for the realization of justice is a consideration that has a very comprehensive content including philosophical considerations, sociology, psychological, and religious.  
In the context of diversion, in order to realize the principle of best interests for children, it is not only the consideration of the Judge that is important, but the consideration of other Law Enforcement, in each stage of diversion at each level of the process starting from the investigation, prosecution, until the process of court hearing.

<sup>14</sup>Eva Achjani Zulfa and Indriyanto Seno Adji, *Op.Cit.*, page. 23.

Judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition it also contains benefits for the parties concerned so this judge's consideration must be addressed carefully, both , and careful. If the judge's judgment is not thorough, good, and careful, then the judge's decision derived from the judge's consideration will be overturned by the High Court / Supreme Court.<sup>15</sup>

In the consideration of judges stated in the Establishment of the West Pasaman District Court Number 137 / Pid.B / 2019 / PN Psb there are at least a number of considerations that could be the main discussion and reference of the West Pasaman District Court Judges in the settlement of criminal cases in the family, namely:

1. Considering, that in the hearing on Wednesday 2 October 2019 with the examination of Witnesses from the Public Prosecutor, the Public Prosecutor presented Eka Desnita who was the biological child of the complainant / victim in this case namely AL Khaisul Amri;
2. Considering, that Eka Desnita's trial submitted the withdrawal of this case complaint from AL Khaisul Amri in accordance with the letter dated October 2, 2019 that had been received by the Judge before the trial;
3. Considering, that upon filing the withdrawal of the case complaint, the Public Prosecutor stated that he had no objection and submitted it fully to the Judge while the Defendant justified and approved the revocation of this case;
4. Considering, that in this case the relationship between the Defendant and the complainant AL Khaisul Amri when the case occurred and was reported to the Police was as a sibling where the Defendant was the younger brother of the AL Khaisul Amri complainant so that the case charged was an offense of relative complaint;
5. Considering, that since this type of case is a complaint offense, the complainant has the full right to revoke his complaint letter at all stages of the examination of the case including the trial stage;
6. Considering, that in Article 75 of the Criminal Code it is determined that the person who filed the complaint has the right to withdraw his complaint within three months after the complaint is filed;
7. Considering, that in this case the complaint made by AL Khaisul Amri to the West Sumatra Regional Police was on February 20, 2016 so that it was more than the time determined in Article 75 of the Criminal Code;
8. Considering whereas that the Judge is of the opinion that if a criminal act is a violation of an individual's interest and not merely a violation of the public or state interests as in this case then with the forgiveness of the victim against the Defendant by withdrawing his complaint even though it is past time, it can become a primary consideration to stop the case because the complainant / victim has felt healed and forgives the Accused;
9. Considering, that this is in line with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 1600K / Pid / 2009 Jis. Yogyakarta High Court Decision No. 01 / Pid / PLW2009 / PTY Jis. Yogyakarta District Court Decision No. 317 IPid.Bt2008 / PN.YK;
10. Considering, that accordingly the withdrawal of the complaint by Al Khaisul Amri as the complainant / victim can be granted;
11. Considering, that because the withdrawal of a complaint was granted, the prosecution authority of the Public Prosecutor was nullified and the prosecution of the Public Prosecutor must be declared unacceptable;
12. Considering, that because the Prosecution cannot be accepted, the Defendant must be released and released from city custody;
13. Considering, that furthermore the evidence that has been legally confiscated in this case must be returned to where the evidence was confiscated;

---

<sup>15</sup>Mahzaniar, "Judge's Rationale in Dropping Decisions of Gambling Cases" *Journal of Public Administration*, Vol. 7 No. December 2 (2017), page. 129.



14. Considering whereas that due to the prosecution of the Public Prosecutor the case costs could not be borne by the state;

From the fourteen considerations of the Judge above, the judge of the West Pasaman District Court made a decision regarding the resolution of a criminal act within the family environment based on the view of restorative justice.

A review of the restorative justice approach emphasizes the direct participation of perpetrators, victims and the community in the process of resolving criminal cases.<sup>16</sup> *Restorative justice* considered as a modern and more humanized model of punishment that prioritizes recovery or compensation for the victims rather than the punishment of the perpetrators. This theory is also able to offer a comprehensive and effective solution, the measure of justice is not based on the kind of retaliation that the victim sends to the offender either psychologically, physically or punished, but the actions of the painful perpetrators are healed by giving support to the victim and socializing the perpetrators to be responsible.<sup>17</sup>

The concept of restorative justice is also in line with the concept of progressive law, justice in the concept of restorative justice requires efforts to recover damages or consequences caused by criminal acts, and the perpetrators in this right are given the opportunity to be involved in the recovery effort. Progressive law is a concept of how to judge. The way to judge is not only one but diverse, progressive law has its own place.<sup>18</sup> In the idea of progressive law, the law is for humans, not vice versa.<sup>19</sup> Therefore, even though the law starts from the text, but then the work of law is taken over by humans, meaning that it is humans who will look for deeper meaning from the texts of the law and then make a decision.

Progressive law can also be interpreted as testing the limits of legal ability, if it is said that running the law is to create justice in society, then the law is an effort to realize that justice.<sup>20</sup> The progressive law never stops, but continues to flow to realize its ideas, namely the law for humans.<sup>21</sup>

The application of the law in the resolution of criminal acts through a court decision with a restorative justice approach is a means to mediate conflict or hostility between the parties and facilitate the recovery due to the crime and if the court succeeds in resolving the criminal case by enforcing the restorative justice, then the community will benefit because after the judicial process is expected to result in reconciliation between the perpetrators and victims so that the implication is that there will be no more resentment that triggers further conflict, so that peace, tranquility and harmony can be realized with the existence of a judge's ruling that reflects the value of justice, legal certainty and usefulness.

## Conclusion

Judge in Determination of Judge Number 137 / Pid.B / 2019 / PN Psb Against Settlement of Dark Family Crimes in the Legal Area of the West Pasaman District Court making the decision based on non-judicial considerations because the criminal act committed is related to the interests of the injured individual in the case this, the individual is a sibling. In addition, the judge's rationale for making the decision is based on the view of the restorative justices for remedying conditions such as before the crime was committed. The judge's consideration is also based on the judge's jurisprudence.

---

<sup>16</sup>Strong Praise Prayitno, "*Restorative justice for Justice in Indonesia*", Journal of Legal Dynamics, Vol. 12 No. September 3 (2012), page. 409.

<sup>17</sup>AbintoroPrakoso, 2013, Reform of the Criminal Justice System for Children, Yogyakarta: PT . Laksbang Grafika, page. 162.

<sup>18</sup>Satya Arinanto, 2011, Understanding Law, PT Raja Grafindo Perada, Jakarta, page. 3

<sup>19</sup>Rudini Hasyim, "The Concept of Restorative Justice in the Integrated Criminal Justice System", Journal of Restorative Justice, Vol. 3 Number 2, November (2019), page. 151.

<sup>20</sup>Liky Faizal, "Progressive Legal Problems", Journal of Ijtima'iyah, Vol. 9., No. August 2 (2016), page. 5

<sup>21</sup>M. Yasin Al Arif, "Law Enforcement in the Perspective of Progressive Law" Law: Journal of Law Vol 2 No. 2 (2019), page. 173.

## References

### 1. Books

- Abintoro Prakoso, 2013, *Reform of the Criminal Justice System for Children*, Yogyakarta: PT. Laksbang Grafika.
- Adami Chazawi, *Crimes Against Property*. (Jakarta: Bayu Media, 2006).
- Darji Darmodiharjo and Shidarta, *Principles of Legal Philosophy (what and how Indonesian legal philosophy is)*, (Jakarta: Gramedia, 2006),
- Dominikus Rato, *Legal Philosophy: An Introduction to Finding and Understanding Law*, (Surabaya, Laksbang Justitia: 2010).
- Eva Achjani Zulfa and Indriyanto Seno Adji, *Shifting the Criminal Paradigm*, (Bandung: Lubuk Agung, 2014).
- Lilik Mulyadi, *Issues of Criminal Law: Perspective, Theoretical and Practical*, (Bandung: Alumni, 2012).
- Peter Mahmud Marzuki, *Introduction to Legal Studies*, (Jakarta: Pranada Media 2012), page. 58.
- Romli Atmasasmita in Aminanto, *Politics of Criminal Law*, (Jember: Media's Word, 2017).
- Romli Atmasasmita in Edi Setiadi and Kristian, *Integrated Criminal Justice System and Law Enforcement System in Indonesia*, (Jakarta: Prenadamedia Group, 2017).
- Satya Arinanto, 2011, *Understanding Law*, PT Raja Grafindo Perada, Jakarta.
- Tongat, *Material Criminal Law*. (Malang: UMM Press, 2006).

### 2. Journal

- Gunawan Widjaja, Lon Fuller Lawmaking and Interpretation of Law, *Law Review*, Faculty of Law, University of Pelita Harapan, Vol. VI. No. 1 July 2006.
- Jaka Mulyata, *Justice, Certainty and Legal Consequences of the Constitutional Court Decision Number 100 / Law-X / 2012 Regarding Judicial Review Article 96 of Law Number 13 Year 2003 Regarding Employment*, Faculty of Law, University of Eleven March, Surakarta, 2015.
- Liky Faizal, "Progressive Legal Problems", *Journal of Ijtima'iyah*, Vol. 9., No. August 2 (2016).
- M. Yasin Al Arif, "Law Enforcement in the Perspective of Progressive Law" *Law: Journal of Law* Vol 2 No. 2 (2019).
- Mahzaniar, "*Judge's Rationale in Dropping Decisions of Gambling Cases*" *Journal of Public Administration*, Vol. 7 No. December 2 (2017).
- Nazif Firdaus et al, "*The Application of the Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversity in Narcotics Crimes*" *Journal of Law, Juridical Insights*, No. 2 (September 2019).
- Prayitno, "*Restorative justice for Justice in Indonesia*", *Journal of Legal Dynamics*, Vol. 12 No. September 3 (2012).
- Rudini Hasyim, "*The Concept of Restorative Justice in the Integrated Criminal Justice System*", *Journal of Restorative Justice*, Vol. 3 Number 2, November (2019).

Sulardi, "Legal Certainty, Utilization and Justice Against Criminal Cases of Children", *Judicial Journal* Vol. 8 Number 3 December (2015).

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).