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# **Forgiveness and peace agreement as an implementation of living law in certain crimes in Indonesia**

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**Abstract**--Indonesian criminal law system does not regulate pacific settlement mechanisms in the settlement of criminal cases. This does not correspond to reality where for certain types of crime, members of the society tend to resort to pacific settlements such as giving/seeking forgiveness or making peace agreements, which is done to make peace between the perpetrators and their victims, thus settling the case. This article is written based on research that is aimed at finding out the relationship between forgiveness and peace agreements, and the legal system that exist in Indonesia; analyzing the cause/motivation behind the preference for peaceful settlement mechanisms over criminal proceeding at a judiciary, and; analyzing the response of law enforcement officers to the result of peace agreement and reconciliation between victims and perpetrators. This research employs a socio-legal approach and doctrinal, as well as non-doctrinal legal research methods. Several conclusions were drawn as the results of this study; first, forgiveness and peace agreements in pacific settlements of criminal cases are carried out based on consensual basis between the parties involved; second, forgiveness and peace agreements in pacific settlement of criminal cases embody some of the values contained in the state ideology of Indonesia, *Pancasila*, and; third, law enforcement institutions as a part of the criminal justice system have responded positively by accommodating pacific settlement mechanisms between victims and perpetrators with a

restorative justice approach, which is formulated in the internal regulations of each institution.

**Keywords**---Forgiveness, Victim-Perpetrator Peace Agreements, Criminal Cases

## **Introduction**

Generally, in criminal cases, the victim experiences various losses or suffering caused by the actions of the perpetrator. Punishment can be broadly interpreted in criminal law as stages of determining sanctions as well as imposing them (Hamzah, 1986). These sanctions are intended to retaliate against the sufferings and loss that have been caused by the actions of the perpetrator. These sufferings might take form of direct suffering where the loss is immediately resulted from a criminal act, or indirect suffering where the loss is not directly caused by the criminal act itself but is still related to the consequences of said act. Direct suffering experienced by the victim may include physical injury (severe, moderate, or light injury), fear or psychological trauma, and loss of property or wealth of which the crime targeted. Example of indirect suffering are as follows; the victims losing their job because of the serious physical injuries they suffered due to the crime that had happened to them so that they are no longer able to work, or the victims cannot continue their education because they no longer have the wealth to cover the cost of education due to the actions of the perpetrator. Another example of indirect suffering is the disruption of peace and stability of the society. Based on the facts in several types of cases, it is often the case that the perpetrator realizes his/her mistake and the consequences of his/her actions on the victim and on the community in general. The perpetrator, for example, in this case, with his/her own consciousness and willingness, seeks to replace the victim's damaged or lost property, helps the victim to regain his/her original condition before the crime had been committed, or reduce the burden and suffering experienced by the victim. Under such circumstance, although the victim had doubts due to his/her interests being disturbed because of the crime committed by the perpetrator, there was an agreement on a settlement between the two. In the agreement, the perpetrator admits his/her actions and mistakes and is responsible for the victim. The perpetrator also provides compensation for the loss suffered by the victim and restores conditions or other interests that have been disturbed. In other words, there is forgiveness and peace agreement between the perpetrator and the victim, thereby eliminating conflicts that occur both between the perpetrator and the victim, as well as between the perpetrator and members of the community around him/her, and eventually establishing a good communication between the perpetrator, the victim, and the people around them. Under such circumstance, the law according to formal procedures based on criminal procedural law as regulated in Law No. 8 of 1981 Concerning the Criminal Procedure Code (Muhaimin, 2020) is not applied because both the victim and perpetrator prefer a pacific settlement mechanism with the perpetrator sincerely apologizing to the victim, and the victim forgives him/her. In seeking for redemption, the perpetrator also undertakes and provides things that are requested or needed by the victim or the members of the community, so that the

loss or suffering of the victim is recovered completely and the other members of the community no longer feel that their interests are disturbed.

Pacific settlement of criminal cases is not a novelty but has rather long been recognized and practiced as an effective conflict resolution mechanism, both in traditional and developed societies. It is still widely practice by many communities in certain condition. . In other words, pacific settlement of criminal cases is still adopted and practiced as a living law, which is a form of an unwritten customary law. . The term 'living' law was first put forward by Eugen Ehrlich as the antithesis of the term 'state law' (the law enacted by the state, also known as positive law) (Ehrlich, 1936). Thus, in fact, the society is still familiar with other sources of law outside the written legislations (*jus scriptum*) such as laws and regulations enacted by the State.

According to Muladi, a Criminal Expert, the presence of law that lives in the community does not only serve as a source of law that is 'negative' in nature, but also as a source of positive law nation with different legal backgrounds and needs (Aunuh, Fajrin, Prasetyo, & Tongat, 2020). Incorporating living law into the development of the national law system is an accommodative policy, so that the resulting enacted law is truly a product that is able to protect all components of the heterogeneous Indonesian (Aravik, Hamzani, Mukhidin, & Praptono, 2019). Based on the description above, the object of discussion in this study is the extent of the practice of pacific settlement of criminal cases between victims and perpetrators; the relationship between forgiveness and peace agreements, and the legal system that exist in Indonesia, and; the response of law enforcement officers to peace agreements in criminal cases.

## **A. Research Methods**

This study employs a socio-legal approach. Along with this approach, two types of methods are used, specifically doctrinal legal research method and non-doctrinal research method. In these methods, literature reviews are conducted by reviewing legislations, literatures, results of previous research, and journals related to the object of this study. Additionally, field studies were conducted by carrying out interviews with several experts, law enforcement officers as well as interviews with selected subjects in accordance with the research objectives. Furthermore, the data and facts obtained in the study are processed and analyzed qualitatively and descriptively.

## **B. Analysis**

### **Facts on Peace Agreements between Victims and Perpetrators**

Observing the living law, particularly one related to the process of forgiveness and peace agreement between the victim and the perpetrator of a crime, cannot be separated from the issue of crimes as a whole. Criminal trends within the territory of Indonesia can be seen through data obtained from the Indonesian Central Statistics Agency in 2020. Data obtained from the total incidence of crime during the period of 2017 – 2019 shows a decreasing trend, as demonstrated by Table 1 below:

Table 1  
Total Incidence of Crime in Indonesia, 2017 – 2019

<b>Year</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Total 2017 – 2019</b>
<b>Total Incidence</b>	336,652	294,281	269,324	900,257

Source: processed from Criminal Statistics Data (Central Statistics Agency), 2021  
This table shows a continuing trend of decrease in the period of 2017 – 2019. Subsequently, crime rate (the level of risk of being exposed to a crime) per 100,000 population has also decreased for the same period of time. Crime rate indicates an area's (city, regency, province, etc.) level of vulnerability to crime within a specific period of time. The higher the crime rate, the more vulnerable an area to crime, and vice versa. The decrease of crime rate for three years in a row (2017 – 2019) is demonstrated in the table below:

Table 2  
Overall Crime Rate throughout Indonesia

<b>Year</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Crime Rate</b>	129	113	103

Source: processed from Criminal Statistics Data (Central Statistics Agency), 2021

Data recorded from each regional police in Indonesia shows a more detailed breakdown of the total number of criminal acts reported in 2019 by province. Greater Jakarta Metropolitan Regional Police, which has jurisdiction over the province of the Special Capital Region of Jakarta and its satellite cities in Banten and West Java provinces, reported the highest number of crimes, with 31,934 incidents, followed by North Sumatra Regional Police which handled 30,831 incidents, and East Java Regional Police with 26,985 incidents. Meanwhile, the three provinces with the least number of reported crimes are Southeast Sulawesi with 1,213 incidents, North Kalimantan with 876 incidents, and North Maluku with 718 incidents. The complete list can be seen in table 3 below:

Table 3  
Number of Crimes in 2019 in 34 Regional Police Jurisdictions

<b>Regional Police Jurisdiction</b>	<b>Number of Crimes</b>
Metro Jaya (Greater Jakarta Metropolitan Area)	31,934
North Sumatra	30,831
East Java	26,985
South Sulawesi	16,008
West Java	13,145
South Sumatra	12,861
West Sumatra	11,064

Central Java	10,317
Lampung	8,534
West Nusa Tenggara	8,185
Aceh	7,483
North Sulawesi	7,425
Papua	6,994
Jambi	6,848
Special Region of Yogyakarta	6,650
Riau	6,570
Central Sulawesi	6,263
East Nusa Tenggara	5,865
South Kalimantan	5,375
West Kalimantan	4,721
East Kalimantan	4,417
Maluku	3,495
Bengkulu	3,453
Banten	3,287
Riau Islands	3,159
Bali	3,047
West Papua	2,972
Central Kalimantan	2,444
Gorontalo	2,357
Bangka Belitung Islands	1,953
West Sulawesi	1,803
Southeast Sulawesi	1,213
North Kalimantan	975
North Maluku	718

Source: processed from Criminal Statistics Data (Central Statistics Agency), 2021

Meanwhile, a general overview on the statistics of the victims of crimes can be seen in the data presented by the Central Statistics Agency of the Republic of Indonesia, who has obtained the following data during the period of 1 January – 31 December 2018 as well as 1 January – 31 December 2019:

Table 4  
Percentage of Victims of Crimes Relative to Total Population in 2018 – 2019

<b>Year (% of Victims)</b>	<b>Total Population (people)</b>	<b>Total Population (people)</b>	<b>No. of Victims (people)</b>
<b>2018</b> (1.11)	265 Mio		2,941,500
<b>2019</b> (1.01)		269 Mio	2,716,900

Source: processed from Criminal Statistics Data (Central Statistics Agency), 2021

The data above shows that in 2019 the percentage of the population who fell victims to crime was 1.01 percent of the 269 million population, which was

2,941,500 (two million nine hundred forty-one thousand five hundred) people. This percentage is significantly lower if compared to the number people who fell victims to crime in 2018 which was 1.11 percent of the 265 million population of Indonesia, which was 2,716, 900 (two million seven hundred sixteen thousand, nine hundred) people.

Regionally, the percentage of the population who became crime victims decreased in 32 provinces, namely Aceh, North Sumatra, West Sumatra, Riau, Jambi, Bengkulu, Lampung, Bangka Belitung Islands, Riau Islands, Jakarta, West Java, Central Java, Yogyakarta, East Java, Banten, Bali, West Nusa Tenggara, East Nusa Tenggara, West Kalimantan, Central Kalimantan, South Kalimantan, East Kalimantan, North Kalimantan, North Sulawesi, Central Sulawesi, South Sulawesi, Southeast Sulawesi, Gorontalo, West Sulawesi, North Maluku, West Papua, and Papua. Of all the provinces that experienced decline in 2019, the largest occurred in Riau Islands province. Further details can be seen in table 5 below:

Table 5  
Percentage of Victims Relative to the Total Population in 2018 – 2019 in 34  
Provinces in Indonesia

Province	Victims Relative to Total Population of Province	
	2018	2019
Aceh	0.83	0.71
North Sumatra	1.21	1.18
West Sumatra	1.17	0.98
Riau	1.35	1.24
Jambi	1.05	0.83
South Sumatra	1.26	1.35
Bengkulu	1.45	1.42
Lampung	1.58	1.42
Bangka Belitung Islands	0.78	0.66
Riau Islands	1.43	1.02
Special Capital Region of Jakarta	1.33	1.15
West Java	1.18	1.15
Central Java	0.84	0.8
Special Region of Yogyakarta	1.48	1.35
East Java	0.87	0.82
Banten	1.13	0.8
Bali	0.45	0.42
West Nusa Tenggara	1.94	1.63
East Nusa Tenggara	0.96	0.84
West Kalimantan	0.69	0.63
Central Kalimantan	0.83	0.8
South Kalimantan	1.11	0.84
East Kalimantan	1.27	1.19
North Kalimantan	1.82	1.53
North Sulawesi	0.94	0.78
Central Sulawesi	1.52	1.22

South Sulawesi	1.17	0.96
Southeast Sulawesi	1.16	0.95
Gorontalo	1.04	0.83
West Sulawesi	0.86	0.74
Maluku	1.16	1.19
North Maluku	1.21	1.16
West Papua	2.02	1.66
Papua	1.65	1.36

Source: processed from Criminal Statistics Data (Central Statistics Agency), 2021

Moreover, there are data showing that the percentage rate of reporting to the police (also known as police report rate) every year is still relatively low. In table 6 below, it can be seen that during the 2018–2019 period, the total percentage of Indonesians who have been victims of criminal acts and reported experienced incidents to the police is less than 25 percent. In 2019 it was recorded at 22.19 percent, a decrease when compared to 2018 which was 23.92 percent.

Table 6  
Percentage of Indonesian Population who became crime victims and reported to the Police, 2018 – 2019

<b>Year (% Report Rate)</b>	<b>Total Victims</b>	<b>Total Victims</b>	<b>No. of Reporting Victims</b>	<b>No. of Victims who did not Report</b>
<b>2018</b> (23.92 %)	2,941,500		703,607	2,237,893
<b>2019</b> (22.19 %)		2,716,900	602,880	2,114,020

Source: processed from Criminal Statistics Data (Central Statistics Agency), 2021

It can be seen from the data above that only a low percentage of crime victims actually reported the incidents that have befallen them, if compared to the total amount of victims. This means that the data on the number of crimes gathered from the 34 regional police jurisdictions do not represent the whole picture, meaning not all crimes experienced by members of the community are actually reported to the police, causing most crimes to be left unreported. One might conclude that the low number of reported cases is an indication to injustice and the State's poor implementation and protection of the human rights of its citizens, especially victims, of the need for access to justice and the principle of equality before the law, but it does not simply mean so. Many factors and reasons may be at play behind the low number of police report rate. One of the reasons that is quite strong and is often found in the community is because there is a peaceful settlement solution between the victim and the perpetrator outside the criminal justice system. The existence of such solution for resolving criminal cases by

carrying out a peaceful process and making peace agreements between the victim and the perpetrator makes the victim or the victim's family, even members of the community no longer want to report the incident in question to the police. They consider making peace over what happened between the victim and the perpetrator as the best solution, is more in line with their wishes and interests, so that it is seen as more appropriate and beneficial for the conflicts that had occurred between them (victims, perpetrators, and members of the community). Meanwhile, filing a report to the police is seen as a formality that will only hinder the desire of the victim and the perpetrator to make peace among them. Thus, the case is not reported and is not included in the register and statistics of cases reported by victims of crimes. Other than acting as the enforcers of the law, the police also serve as protector of the community (Anshar & Setiyono, 2020).

The essence of peace in the context of criminal cases is the existence of forgiveness and agreement between the victim and the perpetrator. In seeking/giving forgiveness and making peace agreements between victims and perpetrators, high values that actually come from living laws, which still exist and are practiced even today, are applied, and they become the basis for consideration in choosing the best and most appropriate solution for resolving conflicts between victims and perpetrators. This statement is also reinforced by John Griffith, who argues that law is a mechanism of social control and provides legal recognition and punishment for disapproved behavior (Abel, 2017). Historically and sociologically, in customary law communities in various regions in Indonesia, forgiveness has long been known as a form of customary sanctions. This customary sanction is imposed on perpetrators who has violated customary criminal law, and the perpetrator is obliged to apologize to the victim and his/her family (Farikhah, 2018, p. 81). The following are some examples of customary laws that exist in indigenous communities and are still often used as a basis for peaceful conflict resolution mechanisms:

1. Living law in the traditions of the Dayak indigenous communities.

Dayak indigenous communities recognize *tumbang anoi*, which contains 9 decision points which include, among other things, complying with the enactment of conflict resolution between residents and between groups decided by the *Rapat Adat Besar* (roughly, the great customary meeting) (History of Kapuas Regency, 1981: 33-34). *Tumbang anoi*, among others, was applied to a case that occurred in Palangkaraya on a person with the initial 'T'. T had served an expert witness in a trial at the Palangkaraya District Court where he made remarks that were considered to have hurt the feelings and dignity of Dayak indigenous communities, as well as offending and harassing the customs and traditions of the Dayak people. For his action, to avoid disharmony and horizontal conflicts that may put people's lives in harm's way, a *tumbang anoi* trial was carried out. The National Dayak Customary Council (*Majelis Adat Dayak Nasional*) filed a suit against T at the *Maniring Tuntang Menetes Hinting Bunu* conference. The Council asked T to account for what he had said by withdrawing his statement and apologizing to the entire members of the Dayak community openly through print and electronic media. This trial prevents an unnecessary and prolonged grudge between the two parties, resulting in peace, reconciliation, kinship, while maintaining the dignity of the Dayak people as a whole.

## 2. Living law in the traditions of the Papuan indigenous communities.

*Bakar batu* (literally, burning the stones) is one of the strongest traditions that can be found in Papuan indigenous communities. This tradition actually belongs to the Dani people in the central mountains of Papua Island. Similar practices can be found although with differing names in several other indigenous communities in Papua, such as *lago lakwi* in Lani indigenous community, *kit oba isago* in Wamena, *mogo gapil* in Paniai, and *barapen* in coastal indigenous communities of Papua (Dinn Wahyudin & Agus Sumule, 2021).

There is a profound meaning that is embedded to *bakar batu* tradition, as it is an expression of gratitude to God, as well as a symbol of strong solidarity between members of the community. *Bakar batu* is a communal cooking ritual that aims at expressing gratitude to God as the giver of life, as a means of keeping in touch with family and relatives, welcoming happy news, or gathering soldiers for war and post-war parties, or even as a medium of peace between warring groups. This tradition is also often done to gather people in processions of land clearing, births, deaths, hunting, building houses, weddings, as well as also other things that require mass mobilization in large numbers.

## 3. Living law in the traditions of the Balinese indigenous communities.

*Pakraman* villages exist across Bali Island, where they enforce *awig-awig*, a set of rules that regulate the social lives of the Balinese people. Basically, *awig-awig* regulates the harmony of humans with their creator (*Sang Hyang Wasa*), relationships with fellow villagers as human beings, and human relationships with the nature that surrounds them. These three aspects are known as *Tri Hita Karana*, which also includes *Parahyangan*, *Pawongan*, and *Palemahan*, which are interrelated and become a source of community welfare and happiness. *Awig-awig* serves as a guideline for members of the indigenous community in living their social lives, and as a medium for resolving cases by means of mediation (I.B.G. Pujaastawa, 2004).

## 4. Living law in the traditions of the Sasak indigenous communities in Lombok, West Nusa Tenggara.

Sasak indigenous community practices *begundem*, which is a form of deliberation to solve problems and achieve peace. In resolving disputes, Sasak people first give a warning or advice to the parties involved, and if that warning is not heeded, then it will be resolved through *begundem* to achieve peace. *Begundem* is carried out by a traditional institution called *Krama Adat*, which is further divided based on its level and competence (Lalu Pharmanegara, et. al. 2000)

## 5. Living law in the traditions of indigenous communities in Aceh.

The Province of Aceh enjoys a special degree of autonomy if compared to other provinces of Indonesia, namely it has the authority to enact and enforce Islamic laws or also known as *qanun*. There are Provincial Qanuns and Regency/City Qanuns such as Qanun of Central Aceh Regency No. 10 of 2002 Concerning Gayo Customary Law, and Qanun of Aceh Province No. 9 of 2008 dated December 30<sup>th</sup>,

2008, Concerning the Guidance of Customary Life and Customs. Article 13 of the Aceh Qanun states that: "customary conflict resolutions and dispute settlements are resolved in stages," then it is also stated that law enforcement officers provide opportunities so that conflicts and disputes can be resolved first by custom.

Living law functions as a source of peace in the lives of not only indigenous peoples or other traditional communities, but also the society in general which refers to the values that live and are recognized more broadly by every member of society in Indonesia. Peace in the form of forgiveness and victim-perpetrator agreement may even be adopted in the consideration of the judge's decision in the formal criminal justice process, as it is the case in one example below:

1. Reconciliation of a criminal case that occurred in the City of Yogyakarta (Directory of Orders and Decisions of the Supreme Court of the Republic of Indonesia: Order of the Surabaya District Court No. 3175 of 2010).

In a case of fraud and embezzlement that happened in 2009 in Yogyakarta, a daughter-in-law committed fraud on her mother-in-law resulting in a loss of up to IDR 3.9 billion. In this case, the mother-in-law as the victim has reported the daughter-in-law as the perpetrator to law enforcement until finally the son-in-law has to undergo a criminal justice process. In the midst of the judicial process, there was forgiveness from the victim towards her daughter-in-law, resulting in her withdrawing the case. In this case, the reason for the mother-in-law withdrawing her report is because she has forgiven her daughter-in-law, and the consideration of the integrity of the extended family and the consideration that the daughter-in-law has two young children and need intensive care from their parents.

The Yogyakarta District Court then granted the request for withdrawal of the case, but it was later overturned by the Yogyakarta High Court, citing the provision of Article 75 of the Criminal Code as legal basis, where case can only be withdrawn within three months after the report is filed, causing the case could not be withdrawn. This case continued to the Supreme Court level, and the Supreme Court overturned the decision of the High Court, with the primary consideration stating that although the withdrawal by the victim did not meet the provisions of Article 75 of the Criminal Code, the revocation was acceptable because there was peace between the two parties, the victim and the perpetrator who have forgiven each other and agree to prioritize harmony in their family relationships. This peace agreement is considered by the Supreme Court to be of very high value; therefore, the withdrawal of the case is declared valid.

2. A criminal case that occurred in Sumbersari, Lowokwaru, Malang City (Directory of Orders and Decisions of the Supreme Court of the Republic of Indonesia: Malang District Court Order No. 279 of 2017).

This case occurred in 2017, where a 21-year-old woman with the initial PWA has been indicted and found guilty of committing the crime of murder of a newborn baby by its biological mother and was charged under Article 341 of the Criminal Code.

PWA committed her act because she was afraid that it would be known that she had given birth to a baby who was a child as a result of rape that she suffered in 2016, by someone she did not know. In chronological order, the incident occurred in January 2017, where the defendant felt something moving in her stomach, but the defendant did not seek medical attention from the doctor or the public health center. PWA then gave birth alone in her dormitory room, and she did not clean the baby and deliberately left the baby naked with the blood still all over the baby's body. She then left the baby to buy drinks and bread, and after she had come home, she took a cloth to cover the baby's body without cleaning it first and put it on the mattress, and then the defendant rested next to her newborn baby. The defendant had taken a black plastic bag and then put the baby in it and covered it with a coat, as a result, the baby died from cerebral hemorrhage and lack of oxygen. In this case, there was forgiveness from the community for the perpetrator's actions as outlined in a statement from the residents of Summersari Village where the defendant was domiciled. The essence of the statement is that Summersari residents had forgiven the defendant's actions and filed for the revocation of the case report files. The pardon of the community members was later included in the consideration of the judge's decision and is one of the alleviating factors for the defendant. However, the panel of judges still ruled that the defendant was guilty of the charge and was sentenced to 6 (six) months in prison, minus the period of detention that had been served during trial proceedings. The sentence imposed by the judge is quite light compared to the maximum sentence of 7 (seven) years in prison.

Observing the existence of forgiveness and peace agreements or peace made between victims and perpetrators, both in communities with strong traditional traditions and in more modern societies in Indonesia, which have been described in several cases above, it can be seen that pacific settlement is the best solution for those in conflict. Peace also arises from the strong desire of the community itself to forgive and make peace with what had happened to them. In other words, forgiveness and peace agreements are carried out consensually and without coercion, at the will of the victims and perpetrators of the crime themselves, who view reconciliation as a way that is most appropriate and in accordance with their wishes, and it shows the generosity of each party.

### **The Relationship between Forgiveness and Peace Agreements and Living Law in Indonesia**

The applicability of a living law does not depend on certain philosophical foundations or on the recognition of a particular State or society, but rather on how the law exists in the midst of society, is recognized, develops, and is used as a tool to find solutions to problems that might arise in the community. Law reflects the ideals, wills, and desires of the community, thus living law cannot be separated from living values, which are understood as values that bring justice and benefit to the community.

The concept of the rule of law adheres to a universal concept, but at the implementation level it is influenced by the various characteristics of the state and its people (Jacobs, 2007). A state that observes rule of law aims at maintaining legal order (Aryani, Astariyani, & Hermanto, 2020), specifically an order that is based on laws that exist in the community so that the legal order is not disturbed, and everything can run smoothly and in accordance with the law (Fadjar, 2004). Indonesia observes the rule of law, as stated in its constitution, specifically in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, thus, its legal system so far has prioritized the law in the sense of positive, written, statutory laws and regulations. Although the State uses a statutory legal system, where it recognizes only the positive law, in reality, this does not abolish the practice of unwritten customary law in people's daily lives. This means that customary law cannot be denied in the social order of society, because in reality it is still attached to people's lives as living laws. Therefore, the two do not have to cancel each other out, because as a matter of fact, each serves as an expression and embodiment of the principles of law and justice.

How can something be accepted as a custom and then become a living law in society? Fitzgerald argues that there are several conditions that make a custom a living law; first, it is proper or reasonable or appropriate; second, there is an acknowledgment of its existence and validity, and; third, it has a background of origin that is no longer known (Rahardjo, 2000). Therefore, a custom does not automatically become a customary law, but it depends on several factors such as its suitability and appropriateness with a measure of justice and legal expediency. In addition, this custom must be recognized openly and firmly by the community, because it has been formed, developed, and practiced for a very long time. Only then it can be classified as a living law.

We actually see the law in its true nature when speaking of living law. The sociological jurisprudence school of thought believes that a good law is a law that lives in society. Sociological jurisprudence exhibits a mindful compromise between written law as the needs of the society as a legal community for the creation of legal certainty (positivism law) and living law as a form of appreciation for the important role of society in law formation and legal orientation (Rasjidi & Rasjidi, 2007). Therefore, the law cannot be separated from the society where the law grows and develops. A good law is a law that is able to accommodate various community interests and resolve conflicts that occur in society (Milovanovic, 1994). Correspondingly, in Indonesia, the living law is very dependent on the Indonesian people because the law is part of the soul of the nation, where the

people are (Kabalmay, 2010). This means that the law that lives in Indonesian society is based on values which reflect the nation's view of life. The view of life in question is a common view of life shared by a society or a nation, serving as a guide for all members of the society in living and behaving in their social lives. The living law is actually a law that reflects the personality of the nation, and contains the values of the nation, which von Savigny calls the soul of the nation (*volksgeist*). In this regard, Dardji Darmodiharjo argues that if we want to find laws that are considered fair by the Indonesian people, we must also pay attention to unwritten laws, especially their principles that are in accordance with national development goals (Darmodiharjo, 2000).

Indonesia as a plural and heterogeneous nation, consisting of various ethnic groups, has a view of life which is the philosophical and ideological basis of the nation for national unity, and it is none other than the *Pancasila*. The preamble to the 1945 Constitution of the Republic of Indonesia also mentions Pancasila as the national principle. As the national principle, Pancasila is the political agreement of the Indonesian nation, and firmly places Pancasila in a strategic position which is as the guideline for the people in living in their life in the society, nation, and state.

Decree of the People's Consultative Assembly No. III/MPR/2000 states that legal sources consist of written and unwritten legal sources. It is also stated that the primary source of the national law is Pancasila as written in the Preamble to the 1945 Constitution and spelled out in the body of the 1945 Constitution. Furthermore, Article 2 of Law Number 12 of 2011 Concerning the Formation of Legislation states that Pancasila is the source of all sources of State law. Thus, the basis of both written law as product of legislation and unwritten law as living law in Indonesia, philosophically clearly boils down to the values of Pancasila. Pancasila contains fundamental values which in essence contain the basic values of divinity, humanity, unity, democracy, and social justice. Pancasila is even believed to provide a clear direction of behavior for all Indonesians in living their lives in the society, nation, and state (Yuningsih & al., 2020).

The phenomenon of forgiveness and peace agreements that often occurs in Indonesian society, including in criminal cases, is actually an elaboration of the values of Pancasila which is a living law in Indonesia. In this case, peace can be identified, among other things, with the desire to resolve conflicts or problems that occur in a 'familial' manner by giving forgiveness and establishing an agreement between the victim and the perpetrator so the conflict between them can be resolved. This is in accordance with the fourth principle of Pancasila, which is "democracy guided by the inner wisdom in the unanimity arising out of deliberations among representatives". This principle also mentions the term 'deliberation' or consultation, which is a typical procedure for the Indonesian personality, to formulate and/or decide something based on the will of the people, until a decision is reached based on unanimous opinion and consensus. The principle also emphasizes how the Indonesian people will continue to maintain and develop the spirit of deliberation in their democratic life.

Correspondingly, in the context of social life, the spirit of deliberation will continue to color the resolution of various problems that occur in society,

including in resolving conflicts between victims and perpetrators of crimes in certain cases. This is actually a proof that forgiveness and peace are not novelties for Indonesian people, rather they have existed long before this country was founded. Forgiveness and peace are an elaboration of the values of Pancasila which have been recognized as the philosophy of the Indonesian nation and the source of all sources of law. Pancasila as the source of all sources of law is regulated in the Decree of the People's Consultative Assembly No. XX/MPRS/1966 Concerning the Memorandum of the House of Representatives Concerning the Sources of Law of the Republic of Indonesia and the Order of Law of the Republic of Indonesia (Bo'a, 2018).

### **Response of Law Enforcement Officers to Forgiveness and Peace Agreements in Criminal Cases**

In formal juridical terms, there are several regulations on the process of settling criminal cases such as Law No. 8 of 1981 Concerning the Criminal Procedure Code, as well as the Criminal Code, where Article 10 of the Criminal Code states that punishment is divided into two forms, namely; (1) primary penalties; and (2) additional penalties (Amdani & Krisna, 2019). Provisions of the Criminal Procedural Code do not regulate pacific settlement of criminal acts. According to the Criminal Procedural Code, the settlement of criminal is based on the principle of legality, which in essence is the obligation to prosecute anyone suspected of committing a crime, except in criminal cases where the perpetrator is a juvenile, then peace is viable if it is agreed upon by the perpetrator and the victim as well as both their families. According to Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System, deliberation and reconciliation in juvenile cases are carried out through an out-of-court settlement process called diversion. Diversion is carried out with a restorative justice approach to child offenders who commit criminal acts with maximum criminal penalties of below 7 (seven) years.

In reality, however, peaceful settlement of criminal cases often occurs in the wider scope of the community, outside of juvenile cases. This is reinforced by the internal policies of each law enforcement agency, such as the Indonesian National Police, the Attorney General's Office, and the Courts in the judicial system. These agencies, in their internal regulations are employing the restorative justice approach. Restorative justice is a new breakthrough to fulfill the need for justice. Restorative justice has been practiced in various legal aspects, it focuses on the justice seekers, and it is considered as a contemporary justice mechanism in the criminal justice world (Daly, 2005). The restorative justice approach was initially met with criticism by some experts and practitioners of criminal law (Braithwaite, 1999).

Restorative justice approach encourages the settlement of criminal cases by making peace between the victim and the perpetrator. In developing an understanding of restorative justice, questions often arise about how to incorporate it into the Criminal Justice Program of the criminal justice system, to prevent and treat crime along with the current legal system that is widely applicable in countries around the world, including Indonesia (Zulfa, 2020). Regulation of the Chief of the Indonesian National Police No. 6 of 2019 regulates pacific settlement mechanism of criminal cases with the following requirements:

1. Does not cause public unrest or rejection from the community;
2. Does not trigger a social conflict;
3. A statement from all parties involved stating not to object, and waive the right to sue before the law;
4. Limiting principles;
  - a. On the perpetrator;
    - i. The level of seriousness of the perpetrator's intentional act is relatively light;
    - ii. The perpetrator is not a recidivist;
  - b. On the stages of the criminal proceeding;
    - i. Preliminary investigation, and;
    - ii. Full investigation, before the notification letter for the commencement of the investigation is sent to the Public Prosecutor.

Meanwhile, the practice of pacific settlement that uses the restorative justice approach by prosecutors is carried out based on the Regulation of the Attorney General's Office of the Republic of Indonesia No. 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice. This regulation lays out provisions on requirements for the implementation of peace agreements, namely:

1. The suspect has no prior criminal record;
2. The crime committed carry a maximum sentence of fine or imprisonment of no more than 5 (five) years;
3. The criminal act is committed with the value of the evidence, or the value of the loss caused as a result of the crime of not more than IDR 2,500,000.

Based on the Regulation of the Attorney General's Office, there are also restrictions on criminal acts that cannot be resolved by a pacific settlement or restorative justice mechanism, such as:

1. Crimes against state security, dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order, and morality.
2. Crimes that carry the minimum sentence;
3. Narcotics crimes;

4. Environmental crimes;
5. Crimes committed by corporations;
6. Corruption crimes.

Similar to the National Police and the Attorney General's Office, the Supreme Court also has internal regulations on peaceful settlement mechanisms that use restorative justice approach, such as the Decree of the Directorate General of the General Judiciary of the Supreme Court of the Republic of Indonesia No. 1691/Dju/SK/PS.00/12/2020 Concerning Guidelines on the Application of Restorative Justice. It is stated in the decree that restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator and/or victim, as well as other concerned parties to jointly seek a fair solution by emphasizing on restoration and recover, and not retaliation. The scope of the application of restorative justice is on minor crimes; matters relating children; cases involving women; and narcotics crime cases, specifically for addicts, abusers, victims of abuse, narcotics dependents and 1-day narcotics users as regulated in Article 1 of Joint Regulation of the Supreme Court No. 01/PB/MA/III/2014 Concerning Handling of Narcotics Addicts and Victims of Narcotics Abusers in Rehabilitation Institutes.

Observing the regulations in each of these law enforcement institutions, it appears that there is an understanding in thoughts and intentions as well as policy steps taken in responding to community tendencies towards peaceful means such as forgiveness and peace agreements in resolving problems or conflicts that have occurred. This understanding is realized by prioritizing forgiveness and a peace agreement between the perpetrator and the victim as a system of behavior and a value system attached to the litigants as well as other members of the community. In integrative legal theory, it is stated that the law should also be interpreted as a value system, in addition to a system of norms and a system of behavior (Atmasasmita, 2012). In relation to forgiveness and reconciliation or peace agreements carried out in several cases as in the examples above have shown, it becomes clear that the law is not just what is formally written and enacted. A living value system, which is not normalized in written law, is also a law if it becomes a community choice that is patterned in a behavioral system. Forgiving is not just an outward act but also accompanied by a commitment to be ready to accept and be sincere about the act of forgiveness itself (Jamal, Thoif, & Zamroni, 2012). Thus, apologies can be interpreted as a form of restoring a situation that has been damaged due to human mistakes, and forgiveness is also a way to improve human life (Farikhah, 2018, p. 84). Criminal cases are no exception, if forgiveness and peace between victims and perpetrators are their mutual choice, and it provides peace in a bigger scope, affecting other members of the community, then that is the 'law' that they want. In fact, this will only further strengthen our belief that forgiveness and peace are integral part of our cultural values and are the hallmarks of the character of the Indonesian nation. Therefore, the settlement of criminal cases does not have to be completely dependent on the State through law enforcement officials in the criminal justice system, but it is important to provide opportunities for resolution to the parties who are actually involved in the conflict, namely victims and perpetrators. Thus,

the law will be understood as a system that regulates people's lives, which cannot be separated from the culture and law that live in the community itself.

## Conclusion

Forgiveness and peace agreements that occur in criminal cases are carried out at the wishes of the victims and the perpetrators themselves, who view peace as a simpler way that is able to neutralize and resolve conflicts or problems that have occurred, in a way that suits them and shows the generosity of each party. Forgiveness and peace agreements in criminal cases essentially reflect the elaboration of some of the values embedded in Pancasila, which is the source of all sources of law in Indonesia. In this case, the community wants peace to be carried out as the best solution for resolving conflicts that occur between perpetrators and victims, including other members of the community. Law enforcement institutions in the criminal justice system have responded very well to the practices of pacific settlement mechanisms in criminal cases such as forgiveness and peace agreements that often occur in society. These institutions, namely the National Police of the Republic of Indonesia, the Attorney General's Office of the Republic of Indonesia, and the Supreme Court of the Republic of Indonesia, have accommodated a peace mechanism between victims and perpetrators with a restorative justice approach, which is formulated in the internal regulations of each institution.

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