

# FORENSIC PSYCHOLOGY FOR JUSTICE RESTORATION

Melania Roswita Teme<sup>1</sup>

<sup>1</sup> UPT Kementerian Sosial : Sentra Handayani, Indonesia. [temeroswita@gmail.com](mailto:temeroswita@gmail.com)

---

**Abstract:** *Indonesia is in the fourth of most populous country in the world with a population of around 266,872,775 people (BPS, 2017), which has an impact on the emergence of social problems, crime and others. Central Bureau of Statistics data also illustrates in the period 2014 to 2016 the number of crimes in Indonesia tended to increase significantly in detail years: 2014: 325,317 cases, 2015: 352,936 cases, 2016: 357,197 cases. Meanwhile the number of recidivists also increased significantly. The current legal process, from the beginning to the results of the court rulings, to the correctional stage is deemed not optimal in fostering criminals to reduce recidivist rates. Besides the problem of the accumulation of case files and an overflowing number of prison inmates which have an impact on waste of the state budget. Recently, there has been a punishment paradigm known as restorative justice which encourages perpetrators to repair the losses they have caused to victims, their families and also the community. (Makara, 2013). However, in the Justice Restoration process, law enforcement officials still need a real and objective format not only based on analogy and legal interpretation. To achieve this real, objective format, the use of forensic psychology is very much needed in the criminal justice process not only assisting during the examination at the police, at the prosecutor's office, in court and when the convict is in a correctional facility, but forensic psychology is utilized independently and optimally both at the level and level of collaborative technical applications, accompanied by a more futuristic understanding. Thus, it is hoped that this profession will help realize the supremacy of the legal system under a constitution that is effective and responsive, professional and with integrity in order to achieve the objectives of the law.*

**Keywords:** *Forensic psychology; legal system; justice restoration; law enforcement*

How to Site: Melania Roswita Teme (2024). Forensic Psychology For Justice Restoration. *Honeste Vivere*, 34 (1), pp 153-166. DOI. 10.55809/hv.v34i1.306

---

## Introduction

The process of law enforcement in Indonesia has been in the spotlight since the reform era in 1998, the results of the survey 'World Justice Project 2011 Rule of Law' (Agung, 2012) put Indonesia in 2nd place last for the region and 47th place globally from the total. 65 countries Attorney General ST Burhanuddin<sup>1</sup> also acknowledged that law enforcement in Indonesia has not fulfilled a sense of justice. This condition of course cannot be completely blamed because prosecutors in the regions still adhere to formal juridical principles in enforcing the laws of the Indonesian state. Even though it is realized that legal process justice is not only based on formal juridical but also material juridical roots that are rooted in Indonesian society which is diverse in ethnicity, culture, race and customs with the complexity of its development. In an effort to fulfill justice, of course it is guided by the basic values of the Indonesian state philosophy, namely Pancasila as the foundation of the source of law which is used as a guide for society to become good

---

<sup>1</sup> quoted from <https://nasional.kompas.com> read at 2020/02/17

citizens in the national and state structure, which remains oriented towards humans themselves. Pancasila as the basis of philosophy will certainly result in the application of law that is humanist. (Soepriyono, 2020). Humanist law is a law that is human-oriented, provides protection on the basis of human dignity and pays attention to the weak people on the basis of: upholding human dignity as the image of the creator, using conscience to protect vulnerable people, providing justice and being responsive and anticipatory. The human-oriented legal process itself certainly makes use of mental science. In recent years psychology as a discipline of human behavior has attempted to contribute to law enforcement in the form of providing useful psychological knowledge and interventions, because the decision-making process. It is not only based on written law, but is also influenced by thoughts and feelings, It's means that cannot be separated from the concept of psychology. States that the complexity of legal problems is not only a legal problem but also a problem with the tendency of human behavior<sup>2</sup>. The fact is that in its application, the understanding of human behavior itself is still not optimal, where errors in decisions often occur so that they cannot answer the achievement of justice. How to use effective means for the needs of victims, perpetrators and the interests of society in the legal process to achieve humanist legal justice, as an effort to fulfill the rights of every human being in achieving human dignity.

In general, the role of psychology is divided into two areas, namely clan and applicative. At the scientific level, psychology plays a role in the process of developing law based on psychological research. Meanwhile, at the applicative level, psychology plays a role in psychological interventions that can assist the legal process. Friedman (in Lumbun, 2008) states that there are three aspects in the legal system. First, the structure, which deals with the institutions that make and enforce the law, including the DPR, police, prosecutors, judges and lawyers. Second, the substance, which concerns the legal material, both written and unwritten, and the third is legal culture, namely people's attitudes towards the law and the legal system which includes beliefs, values, thoughts and expectations. Throughout the time that has passed, psychology has only played a role as part of the judicial process itself integrated in each stage, but based on futuristic phenomena, there is a role for psychology if it can be utilized professionally in the same stage but with different patterns. independently practicing forensic psychology intervention is expected to be able to encourage decision making in the process of solving criminal or civil problems with a humanist approach. In this case, the role of forensic psychology will be described as the main filter for resolving cases that are reported both in litigation and non-litigation objectively to answer the achievement of justice restoration justice.

### Theoretical Basis

The Indonesia Legal system is very specific, different with other countries because it has the following characteristics: enforcing diversity (pluralism) in civil law; make use of unwritten law in addition to written and open laws to form national laws that are able to keep up with community developments and still accommodate the diversity of customary

---

<sup>2</sup> Satjipto Rahardjo, 1983, Masalah Penegakan Hukum, Bandung: Sinar Baru

laws. The definition of law<sup>3</sup> is a regulation that related to human behavior in social interactions, which is held by official state bodies that are compulsory and if there is a violation it can be subject to strict sanctions. Law has a source, namely a material source of law in the form of public awareness as an obligation that has a binding force (must be obeyed) as law, guided by justice that is in line with the goal of law, namely the general welfare. Formal sources of law is a sources of law that are known and explored in their form (statutory regulations). Because of this form, the source of formal law is known and obeyed so as to obtain legal force. Formal sources of law consist of laws, customs, judges' decisions, treaties and opinions of legal scholars (doctrines). Apart from these five sources of law, there is also an abnormal source of law, namely revolution (coup d'etat). The positive aims of law in Indonesian law cannot be separated from the aspirations and goals of the nation's struggle as stated in the Preamble to the 1945 Constitution and the principles of Social Justice as an important part of the Indonesian value system. Other sources of law are regulations made by the executive branch and "customs" that are not against the law related to the customary law system. The main principle of customary law is appropriateness and harmony in social life. In international relations. Indonesia also has own legal basis. Starke in which is binding and must be obeyed in relations between countries<sup>4</sup>. These international laws are all represented through the Establishment of the United Nations (UN). The main objectives of the establishment of the United Nations are to: Maintain international peace and security, Develop brotherly relations between nations, Create cooperation in solving international business problems in the fields of economy, socio-culture and human rights, Make the United Nations the center of efforts in realizing common goals ideals.

In the implementation of justice in Indonesia is in the form of collaboration or cooperation which as a whole has 4 (four) components to drive the system, namely that the Police, Attorney General's Office, Courts and Correctional Institutions. This system has been regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). Marinka, (Bondan 2017), in development, Law No. 18 of 2003 becomes an important legal basis for the advocate profession as one of the pillars of law enforcement so that it becomes 5 (five) components in the criminal justice system. Each institution its has own authority and limits in carrying out which can be described as follows: 1. The police are the first subsystem as the gate keeper of the criminal justice system (Harkrisnowo in Bondan 2019) 2. Attorney: Prosecutors are authorized to carry out prosecutions in general and implementation of the Judge's decision with 3 (three) scopes, Investigation, controlling the case process, determining whether the case file is appropriate to be submitted to the court. 3. Court: The judge has the authority to examine, hear and decide a case that is submitted to the court. 4. Correctional Institution: is the final subsystem of the criminal justice system. The efforts to make prisoners feel sorry for their actions, and return them to be good citizens, obey the law, uphold moral, social and religious values, so as to achieve a safe, orderly and peaceful community life.

---

<sup>3</sup> I Ketut Wirawan, S.H., M.Hum., Dr., et al., Introduction to Indonesian Law Textbook (PHI) Course Code: BNI 1302; Faculty of Law, Udayana University, Denpasar; 2017

<sup>4</sup> *ibid*

5. Advocates: Advocates have the status of law enforcers, that free and independent who are guaranteed by law with the main task of defending clients and ensuring their rights are fulfilled.

In fact, there are still the several mistakes in the law in Indonesia due to the vacuum of law which results in uncertainty and chaos in achieving the value of justice that is far from the goal of law. The reasons why Soejono (Widiastuti 2006) had a legal error were : a. The legislators didn't know everything in advance, b. The legislators did not follow the process of community development c. What is proper and reasonable in a particular case also applies to other similar cases, d. Cassation trial by the Supreme Court. Meanwhile, Makarao (2013) added that the failure of the Criminal Justice System caused negative things, such as: a. Dehumanization of a long period of time in the institution, resulting in the inability of the prisoner to continue his life productively outside the institution b. Prisonization: Adaptation with other inmates knowing the beliefs and behavior of the prisoners, which in turn give rise to a criminal's mentality. c. Short-term penalties that do not allow rehabilitation processes are even detrimental for guidance. d. Stigmatization occurs when a person's identity is disturbed or damaged by the views of society. In this regard, the Indonesian Court has adopted a policy to making decisions to apply mediation to the court proceedings based on practical objectives, namely: 1. Overcoming the accumulation of cases. 2. Fast and low cost through peaceful means 3. Provide access for all parties to get a sense of justice. 4. The institutionalization of mediation into the judicial system strengthens the function of the judiciary in dispute resolution. If in the past the function of the court institution that was more prominent than the function of deciding, with the enactment of the Supreme Court's regulation on Mediation, it was hoped that the court institution would not only decide, but also reconcile. Mediation is one of the solutions in overcoming the accumulation of cases in court. (Siregar, 2017) The mediation process in court based on Article 7 paragraph (1) of the Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures at the Supreme Court of the Republic of Indonesia, must be carried out by the litigating parties, must be attended by both parties, who are litigating for together with the panel of judges to take a mediation process, before the examination of a civil case is continued in accordance with the procedure for examining a civil case in court. The main purpose of mediation is compromise in resolving disputes. In the mediation process, a mediator is needed as a third party who tries to make an approach to the parties to minimize differences of opinion in the case at hand to reach an agreement between them towards a win-win solution. According to Manan (2005), mediation has several benefits including: Low cost compared to court proceedings; Efficient on average over a period of 30 days; Effectively 85% of the total can be handled; Informal process, the parties do not have to be accompanied by a lawyer / attorney; Empowerment: the resulting agreement is in direct contact with the interests of the parties while maintaining good relations; Confidentiality is maintained. The information revealed in the mediation will not be known by outsiders; Avoiding the uncertainty and dissatisfaction of the parties (dissatisfaction); Absence of prejudice in mediation.

Mediation is an alternative form of out of court disputes, which is commonly known as ADR (Alternative Dispute Resolution). Taufiq, et al, (2017) said that although in general,

out-of-court dispute resolution only exists in civil disputes, in practice criminal cases are often resolved out of court through various discretions by law enforcement officials or through deliberation / peace mechanisms or forgiveness institutions that is inside. Mediation is basically a form of restorative justice. Manan in (Makarao, 2013), describes "restorative justice" contains the principle of how to "Build joint participation between perpetrators, victims, and community groups in resolving an incident in a criminal case. Placing perpetrators, victims, and society as "stakeholders" who work together and immediately try to find solutions that are considered fair for all parties (win-win solutions)". Restorative justice aims to repair / restore (to restore) criminal acts that lead to the criminal objectives itself with the starting point of "community protection" and "protection / fostering of individual perpetrators of criminal acts as well as children specifically. The historical aspect of the Restorative Justice doctrine is to connecting criminal law and social change. Overcoming crime by using (law) criminal is the oldest way of human civilization "the older philosophy of crime control". In terms of policy, how the crime is handled, prevented or controlled, using criminal sanctions. In its development, determinism emerged which states that people do not have free will in doing an action because it is influenced by their personal character, biological factors (internal) and social environmental factors (external). Therefore, the perpetrator of the crime cannot be blamed for the act and cannot be subject to punishment. Instead, treatment measures aimed at correcting it is are needed.

On the other hand, criminal law adheres to indeterminism which basically argues that humans have free will and this is the cause of all will decisions. Without freedom of will there is no error. If there are no mistakes, there will be no criticism, so there will be no conviction. The view of determinism gave birth to a modern movement. According to Kinberg (Makarao, 2013)<sup>5</sup> crime is generally a manifestation of the abnormality or immaturity of offenders who require treatment rather than crime. Continued by Menninger (Makarao, 2013) there was a shift from criminal attitude to therapeutic attitude. Completed with Gramatica (Makarao 2013): social protection law must replace with the existing criminal law and integrate individuals into social order and not punishment for acts. How to integrate human behavior into a social order requires the application of psychology in the legal process.

Forensic psychology comes from the Latin word *forensis*, which means debate or debate. Forensics itself is defined as a field of science that is used to assist the process of upholding justice through the process to applying science / knowledge. The committee on ethical guidelines for forensic psychology Sammons, (Budisetiyani et al., 2016) defines forensic psychology as all forms of psychological services and studies carried out in the world of law. Bartol continued that Forensic psychology can be divided into: Studies / research related to aspects of human behavior in the legal process (such as decision making of criminals, witness recall, jury / judge decision making, psychological situation when an incident takes place) Psychology profession that provides assistance / assistance

---

<sup>5</sup> Mohammad Taufik Makarao ; Weny Bukano ; Syaiful Azri. .2013. *Hukum Perlindungan Anak Dan Penghapusan Kekerasan Dalam Rumah Tangga*. Jakarta : Rineka Cipta

related to law. The application of psychological science and expertise in relation to individuals involved in legal matters. (Budisetiyani et al, 2016) can reveal things such as :  
1. Does the individual experience complete mental illness and is it potentially dangerous to be hospitalized ?  
2. Is a person accused of a criminal offense mentally competent enough to undergo an examination ?  
3. Does the result of an accident or trauma cause psychological harm to someone, and how serious is it ?  
4. Does a person have normal / healthy mental capacity to understand desires / appetite. Forensic psychology is very important or urgent to use because of the many psychological aspects that accompany a neglected crime. It is necessary to provide opportunities to defend the perpetrator against his actions. The Relationship between Psychology and the World of Law Forensic psychology is a combination of several concentrations in the field of psychology, coupled with knowledge in the world of law, so that forensic psychologists have more specific expertise than other general psychologists. Some of the duties of a forensic psychologist (Budisetiyani et al, 2016):  
1. To perpetrators of crimes  
a. Interrogation, aims to make the perpetrator admit his mistake (Bachelor of Psychology recruited by the police, police who received training from forensic psychologists, or psychologists who were invited by the police).  
b. Criminal profiling, forensic psychologists can help police track down perpetrators by compiling criminal profiles of perpetrators. For example: sodomites, who are 85% profiled as victims in their childhood.  
c. Assessment to provide an overview of the mental condition of the offender.

The issuance of regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts has made a fundamental change in judicial practice in Indonesia. The court is not only tasked with and authorized to examine, hear and resolve cases received, but is also obliged to seek peace between the parties in a case. Supreme Court Regulation No.1 of 2008 further emphasizes that if a judge's decision does not mention any prior mediation efforts, then the decision can be nullified in law. The court has been impressed as a law enforcement and justice institution, but now the court also positions itself as an institution that seeks a peaceful solution between the parties in a case. Manan (2005) suggests that the development of social dynamics is increasingly fast, marked by access to information that is increasingly easy and fast, besides having a positive impact on the progress of human civilization, it can also have negative impacts such as frequent disagreements of understanding and / or interests that are difficult to resolve or find a way. come out quickly. The judicial process that has been pursued so far in resolving civil cases tends to take a long time and costs a lot of money, not to mention that the verdicts cannot satisfy both parties. Such a context makes mediation indispensable as an alternative to the standard (pattern) that has been so far to applied so that the principles of justice are simple, fast, and low cost. However, if you pay close attention, it can be seen that the settlement of civil disputes through mediation in court is not optimal. Settlement of civil cases through mediation is very low. Average settlement of civil cases through courts.

## **Discussion**

The unitary State of the Republic of Indonesia is a constitutional state, which regulates system of government based on legal norms. Law is part of the social order in addition to

other sources of order such as religious norms, decency and decency, which play a role in regulating the fulfillment of citizens' rights and obligations in order to create balance and harmony in maintaining collective order. The law provides boundaries and guidelines for living life as a member of society. The proper and effective application of law will provide order that ensures certainty in running life in an effort to achieve ideals both as a family, community, as well as in the life of the nation and state, namely achieving justice and mutual prosperity. When we try to learn to understand the application of a simple legal process in the community system prior to the enactment of the law, it will give an indication that in daily practice since the days of our ancestors we have tried to apply patterns that can provide or guarantee the implementation of orderliness in society. Although it is carried out informally according to the local context and only relies on existing strengths or potentials. This background will be very good if it explored again as a basic material for the preparation of a legal basis, especially the legal material foundation by actors and law enforcers. This is associated with subsidies, structures, and legal culture based on the demands of society driven by interests, knowledge, experience, ideas, attitudes, beliefs, hopes and opinions (judgments) regarding the justice of the existing legal system. Reflecting on exploring the elements of local wisdom that can be used as a basic material for the formation of legal substance as a material basis, of course it is related to the requirements of legal culture which are expected to answer the needs of legal processes in Indonesia. When this legal culture is able to be standardized to be utilized according to the demands of the existing society, besides the formal foundation, it is hoped that the applicable legal system can run as should be more optimally and effectively respond to the needs of society. It is known that there are still many articles in the legal system in Indonesia that are deemed incapable of answering existing legal issues. In other words, there is a vacuum in our legal system so that the legal culture as an element outside the system is expected to be used as the basic material for the use of legal sources as a material basis in the legal process. This openness of legal culture is related to other sources of legal order, such as factors of decency and courtesy, ideology, politics, economy, history, social culture, and others. In practice, these other factors are of very much needed in the consideration of the formation of legislation or in the legal process as a matter of consideration for a judge's decision where there can also be problems or the risk of misinterpretation if the source of this law is not stipulated in a statutory regulation format. In a legal process that is obliged to have a standard of logical, systematic and continuous substance, in practice there is a high chance of errors that cause problems. Errors can start from the initial reporting process, investigations in the police, prosecutors and courts are still at risk of having errors due to the evidentiary principles adhered to and applied by law enforcers, while the mechanisms that can be used by justice seekers to test whether something is legally proven or not are not yet available in existing system. The public tends to accept the decisions of independent judges who are protected by law. This condition is certainly considered far from the concept of justice in the concept of fulfilling the rights of citizens who need to be protected by their human rights. Even though in practice there are stages of resistance through appeals and the like, there will still be a tone that feels aggrieved as a consequence of legal error in Indonesia.

On the other hand, as a of justice restoration practice, the fulfillment of both victims and perpetrators if it is related to the interests of community values in the ongoing legal process has not been clearly mapped as a guarantee for efforts to achieve justice for all parties regardless of the mistakes that have occurred. In the practice of Restoration Justice the perpetrator is considered as an immature person or unable to take responsibility because it has his own problems, both internally and externally. So that the perpetrator needs its own social protection without neglecting the rights of the injured victim who needs repair services for the damage suffered as a form of fulfillment of the rights of victims with the standard values that apply in society. Why this error tends to occur and will continue to occur because the legal system currently in process still relies on only formal juridical foundations and has not made full use of the material juridical foundation. There is an addition that the level of understanding of law enforcement officials in relation to law violations as a form of wrongdoing by members of the public is very closely related to human behavior. Behavior due to immaturity or cannot be accounted for. So that when the background of the motivational basis or the behavior tendency of the perpetrators who have made mistakes can be identified or known with certainty on the basis of the practice of forensic psychology, it will help effectively determine the appropriate pattern of handling patterns according to the background possessed by the people who are litigating. This analysis of forensic psychology practice can be carried out both individually and in groups as well as internally and externally. The results obtained are expected to be able to direct the form of intervention in an effort to obtain a maximum level of awareness or pure thoughts for victims to be more willing to accept and continue life by accessing repair services by the state. and for the perpetrators when they can reach the point of conversion so as not to become repeat offenders or recidivists again. Examples of interventions against criminal offenders, different from terrorism crimes, different from narcotics criminals, so it has seen from the motive background that has led to the deviant behavior.

Therefore, in enforcing the law itself, based on the authority given to law enforcement officers, it is expected that they will have several alternative options in the case resolution process. To help balance or in the effort to achieve justice in either minor cases or serious cases that fulfill the above elements. Especially cases that are considered to be cases of gray or blank cases because they do not meet the legal elements of one witness and two pieces of evidence, for example. One of the processes commonly used by law enforcement officials is the mediation pattern. The mediation process is a dispute resolution effort in which the disputing parties agree to present a third party who is neutral or not at all related to each party in the case to act as a mediator, aiming to enable the disputing parties to discuss their differences privately with the help of the mediator. This mediation usually occurs based on a number of practical reasons, among others: there is peace so that it does not proceed to the court stage, reduces the pile of cases, this process requires a fast, cheap and effective time to compared towhen entering the litigation process. This process provides space for the parties to access their right to obtain a sense of justice and together find the final result. The mediation process is also expected to maximize the role of the court in its role in resolving disputes on a non-litigation basis. This is supported by several grounds that are recognized as the basis for

Criminal Eradication and Relief, among others: The element of forgiveness due to the incapacity experienced by the perpetrator due to the inability to take responsibility due to the imperfect growth of his intellect and the existence of conditions of mental disability or disease, the element of justification due to loss of resistance law. Recognized bases such as : an emergency to fight danger, in terms of forced defense, mandate of law and others as well as mitigating elements, for example still being a child, the existence of the formulation of the offense itself that alleviates the case. In cases where the law is incomplete while the community needs a legal decision on the case that is being experienced, law enforcement officials must seek and find the law (rechtvinding) of concrete events. There are also other legal methods that are utilized, namely the method of interpretation whose justification lies in the use of implementing concrete provisions, in various ways that are only understood by the law enforcement apparatus themselves, although there is many opinions are at risk of errors in this method. So that the use of forensic psychology practice answer need to the recurrence of the same mistakes when the results of the basic analysis of human behavior are utilized in the intended justice restoration practice. The laws that continue to develop or called modern laws today as an example of the emphasis on justice restoration are in a process. The principle is that the law is for humans to deliver human beings to human goals themselves just to achieve, prosperous and prosperous life. The fact is that in Indonesia there are many of local wisdom issues in the form of customary law which can be used as a material or substance basis for restorative justice practices. However, this capital has not been recognized by the state by providing codification as part of national law. Meanwhile, customary law can resolve conflicts that arise in society and provide satisfaction to conflicting parties. Although the Indonesian legal system acknowledges that in Indonesia it does not deny legal sources that come from outside, the utilization of local wisdom values in this legal system has not been used effectively because it has not been regulated. This can be started with a formal basis first, where the mediation must on process, of course, be given a separate room that has independent authority to help resolve or it can be said that the process of selecting cases before proceeding to the litigation process. Formally, the mediation process is carried out as soon as possible when a report is received and it will be more effective if this mediation is carried out before it is decided whether to proceed non-litigation or continue into the realm of litigation. So that the procedures, stages and material basis of the mediation system can be carried out in a more quality manner to ensure the achievement of justice itself, of course by involving every element that is a requirement for achieving standards. This process involves the police as the facilitator and the prosecutor as the determinant of whether the case can be continued or not in the litigation process. In this stage, it is also expected to involve competent parties as a mediator if you pay attention to the specific material basis, in this case the Forensic Psychology Practitioner both as a mediator and as an analyst for human behavior tendencies.

Formally, of course the professional element, in this case forensic psychology, is the right answer in this system as a mediator who does not act as a complementary element to the legal process but as a profession that plays a full role optimally in accordance with

the professional task itself. Why Forensic Psychologists are expected to be able to: understand the root of the problem with the ability to analyze the background that underlies the emergence of the case, both for the victim, the perpetrator and for the benefit of the community both internally and externally; have the ability to approach effective communication by paying attention (expressions, mimics, gestures / body language, verbal language, etc.); the ability to conduct negotiations and persuasion or a humanist approach as well as the ability to solve cases comprehensively. Psychology professionals already have this basic competence in addition to the use of other mediators according to existing material foundations.

The formal mediation process, as what has been going so far when the mediation is carried out in the first trial, it will be a little difficult to incorporate local wisdom values maximally into the legal process. However, when the mediation process is put formally in the first place, when a new case is reported where the non-litigation stage can be very open to access by all parties outside the formal legal system in accordance with applicable regulations, the pattern of local wisdom is expected to be maximally utilized. In this process, the prosecutor as a figure in determining the outcome of the mediation process is facilitated by the police, who of course have fulfilled the investigation stage or even the investigation before entering the prosecution stage with a classification of cases based on patterns that occur, especially related to the pattern of repeated crimes or the number of recidivists that exist. It is only the concept of a formal foundation and a material basis that is needed to change in the legal process that is meant here. In this context there are things that become more important as the basis used to reach a truly fair agreement for the mediation participants, both victims, perpetrators and the community itself. Both in the non-principle cases or in the light criminal category or serious/principle criminal cases that have only been committed at once or have even been repeated, resulting in an increasing number of recidivists. In forensic practice, it is found that in addition to the classification of minor/non-principle or moderate/principle criminal cases, there are several cases which, although classified as serious crimes, are classified as "gray" cases or do not meet the elements to be continued in the legal process. The case in question is said to be ashes, for example : when the case is classified as a serious criminal case or a case which is principled but does not meet the elements to be held in a trial case. For example, 1 (one) witness and 2 (two) pieces of evidence are not fulfilled. Therefore, when in the legal process stage, the forensic psychology profession has been involved since the beginning not only as a mediator but especially in relation to the practical task of forensic psychology, which is to help provide a material foundation related to the human condition in litigation. Scientifically the practice of forensic psychology can be justified as a basis for decision making in the mediation process itself or even if it is continued in the legal process as a reference for determining the concept of an effective form of intervention for the parties in a litigation. The practical stages as a forensic psychologist who plays a role in the legal process are: a. Interrogation, aims to make the perpetrator admit the mistake b. Criminal profiling. Forensic psychologists can help police track down perpetrators by compiling criminal profiles of offenders. For example: a sodomy actor, profiled as a victim in the childhood. c. Assessment to provide an overview of the mental condition of the offender. In this

process, many evidences or basis for the sustainability of the implementation of the legal process.

Why the result of forensic psychology practice are important because the basic profile description and mental health conditions are complemented by the results of interviews, which can find out the motives, motivations, needs and things that are the background of a person's behavioral tendencies, this is not only useful at the mediation stage but during the process this will continue in the stages of examination, investigation, termination of eligibility for trial, verdicts of cases to the implementation of guidance in the correctional institutions. Both for the victim to be able to access repair services for the damage suffered, as well as for the perpetrator to be able to describe the immaturity needs experienced to be able to recommend the right form of intervention both non-litigation resolution to be able to access social protection if they are truly immature to be responsible as well as when the process must continue into the realm of law by means of litigation since the initial BAP in the police, examination at the prosecutor's office, trial for decisions until when they have to enter a correctional facility. When the overall background and behavioral tendencies of both the victim and the perpetrator can be described in detail and can be scientifically accounted for. The results of this description of psychological practice are used as the basis for making decisions on the sustainability of the case process itself. This pattern will certainly greatly facilitate the work of law enforcement officials, prevent the accumulation of cases and it is hoped that it can also ensure the formation of pure thoughts for perpetrators so that they are converted and do not repeated crimes. It is hoped that the achievement of this target will occur as a result of providing the right pattern of intervention during the ongoing legal process to achieve community value standards. This standard is also important for the work of law enforcement officials in the stages of fulfilling the elements in accordance with the applicable law. The function of psychological standards is also expected to be able to minimize the prevailing view that the law which is interpreted as normative is very much influenced by the personalities of law enforcers such as police, prosecutors, lawyers and judges. Personality (which is owned by a law enforcer that comes from within it self (subjective), this is the point of study of an external legal reviewer as an observer who sees whether the rules apply or not, whether they are obeyed or not depends on the internal factors of the law enforcer. So that in this process a solid foundation is needed that can be believed by the public in both the non-litigation process assisted by a mediator with scientific techniques and the litigation process by finding a basis for decision making that can be justified scientifically through the practice of forensic psychology.

When this process can run as it should, the work of law enforcement officials (APH) in the legal process, in addition to being selected, it will be more focused and hopefully able to answer the interests of getting justice both for victims, perpetrators and for the community. Especially the cases in quotation marks are in the gray area or have not fulfilled the legal elements based on the applicable provisions. On the other hand, based on the type of case settlement category, even though it is only in the stages of agreement based on a joint decision in the mediation process, the results of the practice of forensic

psychologists can also help guide appropriate referrals to access forms of social protection both victims and perpetrators that are beneficial to their future for the creation of public order in achieving prosperity. So that victims or perpetrators, both in the non-litigation process through mediation and the litigation process of the legal process, are expected to be more focused and get the right handling of case resolution based on the results of forensic psychology practice, in the end achieving genuine awareness for the perpetrator, especially so that there are no recurring crimes or the emergence of recidivists. The consequence of course will be to reduce the number of recidivists in addition to creating a sense of justice for the victim and the perpetrator and the creation of a society in accordance with the objectives of the applicable law in Indonesia as a form of fulfilling human rights.

## **Conclusion**

Pancasila as an open basic ideology can certainly be developed to develop the noble values to anticipate global values that continue to erode human values. The strength of Pancasila as the foundation as well as the frame for the life of the nation and state has been tested to make law truly oriented of humans to create harmony in life in the community, the community to the nation and state in all spheres of life. Indonesia has many noble cultures that originate from human values and its adherents in the form of humans who still obey the rules or positive laws that continue to develop as a form of local wisdom. This potential requires a solid foundation as a foundation or a guideline that can be used as a basis for providing legal certainty through a material juridical foundation for human welfare because it has acted as a cultural heritage of our ancestors. The regularity set out in this invitation letter has been described from the beginning without neglecting universal values that have been valid and recognized but it is hoped that you can make maximum function of the values of noble local wisdom as the basic material for the formation of laws and regulations for the benefit of the Indonesian people themselves through the practice of restoration justice. However, the basic material of local wisdom needs to be framed on a scientific basis that can be formally accounted for which is expected to achieve the value of justice itself in accordance with the character of the nation. Forensic psychology is a profession that is very appropriate to be part of the 'Gate keeper' who in professional competence can be involved in the non-litigation stage of the mediation process or the litigation stage in the legal process with the practice of forensic psychology. The results of forensic psychology practice through the process of interrogation (investigative interview techniques), Criminal Profiling and assessment techniques can produce a whole picture of the trend of the behavior of the personnel in a case. The results of this practice are expected to be the basis or as a starting point for determining the direction and policy decisions for the ongoing legal process with targets in addition to achieving a sense of justice, the fulfillment of personal human rights in litigation as well as preventing recurring patterns of crime (recidivist), of course by providing the right intervention pattern. based on the concept of the results of the practice of forensic psychology. It is hoped that the practice of forensic psychology can support efforts to achieve order, which is a fundamental requirement for achieving community welfare. When law leads to justice, there is no place for arbitrariness as a negative form of abuse of power, because arbitrariness is

contrary to justice. There are also no acts of anarchy as a result of power that is not regulated by law. Based on Pancasila, it is hoped that Indonesia's scientific condition which is still developing. Of course, will have to open opportunities to develop values based on local wisdom as a legal material basis that will support the formal values that exist in efforts to develop Justice restoration in the legal process in Indonesia, in terms of Preventive, Curative, Rehabilitative to integrative.

There are another consequence with the function of forensic psychology is hoped when the recidivists will re-mingle with the community, how can they optimally adapt to the stigma when they have passed the right foundation in the stages of intervention carried out. So that all processes of extracting the values of local wisdom to become material for assistance with the material foundation of the legal process require a long process, but when the opportunity door to bring up the practice of implementing forensic psychology can create a sense of justice, it is hoped that it will further strengthen the legal process. Even though because of the differences or diversity, the practice will differ from one region to another in accordance with the prevailing positive standard norms. While the sense of justice that is expected from law enforcement is not expected to be enjoyed by the people of this country, when the criminal justice system in Indonesia begins to regulate the rights of victims, especially from vulnerable groups such as groups of women, children and people with disabilities as well as the elderly as the essence of protection of human rights human. Efforts to achieve targets according to legal objectives that are in accordance with the values of Pancasila values that are socially just will certainly be created by involving related elements ranging from the government, the private sector and even the community both in the non-litigation process and the litigation process. In this case, the focus here is a change in the formal legal basis to form utilization through mediation space at an early stage after reporting by involving community participation or stakeholders related to local wisdom as a material legal basis in accordance with applicable regulations and especially involving the practice of forensic psychologists who competent both as a mediator and as an assessor with other related institutions. This reference covers the ideological, political, economic, social, cultural and other fields in order to create public order in an effort to achieve common prosperity, especially related to the fulfillment of legal objectives that guarantee human rights in the territory of the beloved Unitary State of the Republic of Indonesia.

## **Recommendation**

According to Widiastui (2013), the final hope is not to talk about repair and renewal (repair and replace) but demand replacement (replace) of the existing system and theory in the forms of:

- a. Decarceration (decarceration or deinstitutionalization), namely the abolition of imprisonment and replacing it with control, guidance and service to open society ;

- b. Diversion (diversion), namely preventing the perpetrators of criminal acts from the formal judicial process and replacing them with a community-oriented institutional system ;
- c. Decategorization, including delabeling and destigmatization by breaking various knowledge systems and discussions that create categories of deviant actions. In this regard, if decriminalization is a means of reducing the scope of state power to declare that an act of a crime, then abolitionism wishes to eliminate the whole concept of crime;
- d. Delegalization (delegalization, deformalization, informal justice) means finding something new and strengthening traditional dispute resolution and conflict management methods, forms of justice outside the formal criminal justice system;
- e. Deprofessionalization (deprofessionalization), which implies that in order to replace the structure of professional monopoly and power (in criminal justice, social work or psychologists and psychiatry), it is necessary to establish a network of public control of public participation, mutual assistance and informal services.

### **Daftar Pustaka**

Abdul Manan; The Urgency of the Psychological Approach in the Implementation of Mediation in Courts / Psychological Approach Importances in Mediation Process; Changing Aspects of Law (Jakarta: Kencana Prenada Media, 2005). November 2017 JOURNAL OF LAW AND JURISDICTION 6 (3): 447 DOI: 10.25216 / JHP.6.3.2017.447-462

Gandjar Laksmana Bonaprpta Bondan; Information book module 02 of law and criminal justice system - kpk (aclc.kpk.go.id.); 2019

Hanafi Arief, et al; Application of the Principles of Restorative Justice in the Criminal Justice System in Indonesia Faculty of Law, Kalimantan Islamic University, MAB, Banjarmasin, South Kalimantan Email: [hanafi\\_arief@yahoo.com](mailto:hanafi_arief@yahoo.com);

I Ketut Wirawan, S.H., M.Hum., Dr., et al., Introduction to Indonesian Law Textbook (PHI) Course Code: BNI 1302; Faculty of Law, Udayana University, Denpasar; 2017

Satjipto Rahardjo, 1983, Masalah Penegakan Hukum, Bandung: Sinar Baru

<https://nasional.kompas.com> read at 2020/02/17