

Reframing Prosecutorial Legitimacy: Embracing Restorative Justice in Criminal Case Discontinuation

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Abstract

This research aims to find out and understand the scope of the Prosecutor's office, especially in the field of prosecution in the criminal justice system, as explained in this journal, namely regarding regulations related to the authority of the Prosecutor in implementing the termination of prosecution for criminal cases based on the principle of restorative justice and regarding obstacles to the implementation of restorative principles. justice at the prosecution stage. This research was carried out using a statutory regulatory approach and a conceptual approach using library data, namely normative juridical, which was carried out by examining library materials or secondary materials that were collected and analyzed qualitatively. The authority of the Prosecutor's Office in implementing the Termination of Prosecution is strictly regulated in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative justice and is supplemented by the Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/EJP/02/2022 dated 10 February 2022 and in its implementation Restorative justice is considered capable of being a solution in resolving cases quickly with the main principle of prioritizing participation between victims, perpetrators and the community as well as restoration of a situation. Furthermore, in implementing the termination of prosecution of a case, it is not impossible that there are obstacles that must be faced by the Prosecutor as Public Prosecutor, especially in reconciling the interests of the victim and the perpetrator in achieving peace.

1. Introduction

Resolving criminal cases through a Restorative Justice approach is the most dominant mechanism used in the history of human life. In Article 1 point 1 of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is explained that Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition, and not retaliation. In principle, criminal cases cannot be resolved through the Restorative Justice process, however in practice criminal cases are often resolved through a mediation process which is a law enforcement initiative as part of case resolution.

Restorative justice focuses on crime as loss/damage and justice is an effort to repair damage with a vision to elevate the role of crime victims, crime perpetrators and society as

three very important determinant dimensions in the criminal justice system for the sake of prosperity and well-being, public security.¹

In the criminal justice system in Indonesia, the investigation and prosecution process is an inseparable part and must be continuous. If there is a cessation of prosecution of a case, it is entirely within the domain and authority of the Prosecutor's Office, in this case the Public Prosecutor, in accordance with the *Dominus Litis* Principle, which emphasizes that no other body has the right to prosecute and settle criminal cases other than the Public Prosecutor, which has an absolute and monopolistic nature. The Public Prosecutor is a Prosecutor who is authorized by law to carry out prosecutions and carry out the judge's decisions.²

The Prosecutor's Office is currently intensively optimizing the implementation of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. It is proven that the Prosecutor's Office has also issued several legal products as guidelines for implementing Restorative Justice, including the Standard Operational Procedure for Termination of Prosecution Based on Restorative Justice in 2021 which is an attachment. from Circular Letter Number: 01 /E/EJP/09/2021 concerning Recommendations for the Technical Working Meeting of the Deputy Attorney General for General Crimes in 2021 and the letter of the Deputy Attorney General for General Crimes Number: B-4301/E/EJP/9/2020 dated 16 September 2020 concerning Guidelines for Implementing Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and most recently in 2022 the Indonesian Attorney General's Office also issued additional provisions regarding procedures for implementing Restorative Justice, namely Circular Letter Number 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice dated 10 February 2022 which essentially aims to optimize the socialization, consolidation, acceleration and uniformity of the flow of implementation of termination of prosecution based on Restorative Justice.

According to T.J. Gunawan in a system that adheres to the understanding of restorative justice, to project the value of the criminal justice system as a fair system in the eyes of society, the criminal system in the future must prioritize returning losses to victims commensurate with those obtained from the convict, then ensuring the victim's satisfaction with the imposition of sanctions for the crime. This crime, however, must have a definite maximum limit.³

Based on the definition above, restorative justice is a vehicle for improving victims, perpetrators and society as a result of crime. So, by using Restorative justice, it prioritizes agreement between the parties involved and working hard to ensure justice, restore honor, foster a culture of shame, healing victims and other things. Therefore, restorative justice is a

¹ Rudi Iskandar, "Kewenangan Kejaksaan Dalam Penyelesaian Tindak Pidana Korupsi Berdasarkan Pendekatan Asas Restoratif," *Matriks Jurnal Sosial Dan Sains* 3, no. 1 (2021): 27-35, <https://doi.org/https://matriks.staiku.ac.id/index.php/jmt/article/view/76>.

² Pasal 1 angka 3 Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

³ T J Gunawan, *Konsep Pemidanaan Berbasis Nilai Kerugian Ekonomi: Menuju Sistem Hukum Pidana Yang Berkeadilan, Berkepastian, Memberi Daya Deteren Dan Mengikuti Perkembangan Ekonomi* (Yogyakarta: Genta Press, 2015), hal. 164.

promising program as a strategy to reduce crime. Therefore, restorative justice must be built dynamically and create an order that is used as a guide.⁴

Restorative justice is a theory which states that the victim or his family has the right to treat the convict the same way he treated the victim. Restorative justice places a higher value on direct involvement by parties. The victim is able to restore an element of control, while the perpetrator is encouraged to assume responsibility as a step dalam memperbaiki mistakes caused by crimes and in building a social value system.⁵

In research made by Hariman Satria entitled "Restorative Justice: A New Paradigm for Criminal Justice", this research explains that the direction of criminal justice in Indonesia is currently experiencing a shift from retributive to restorative-rehabilitative or daad-dader-strafrecht or the balance of interests model. This was confirmed and initiated by Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which in Article 6 in conjunction with Article 8 emphasizes the concept of restorative justice through diversion.⁶ Another research conducted by Ahmad Faizal Azhar entitled "Application of the Concept of Restorative Justice in the Criminal Justice System in Indonesia". This research explains that there are differences and inequalities in the application of the concept of restorative justice in the Police, Prosecutor's Office and Supreme Court which regulate procedural law. Regarding the implementation or application of the concept of restorative justice in resolving criminal cases committed by adults, so that the Government and the DPR are expected to immediately formulate policies regarding the concept of restorative justice issued by the criminal justice sub-system into a Legislative Regulation whether in the form Laws or formulated in the Draft Criminal Procedure Code (RKUHAP) and Draft Criminal Code (RKUHP), this is expected to provide legal certainty, legal force and a clear legal basis for law enforcement officials.⁷

In line with this research, Gregorius Hermawan Kristyanto in his research entitled "The Function of the Prosecutor's Office in Realizing Restorative Justice in Handling Children in Conflict with the Law in Indonesia". This research explains that the Prosecutor's Office is a sub-system of the criminal justice system in handling cases of children in conflict with the law so far. Strives to prioritize the interests and welfare of children, including by issuing several strategic policies related to its function in handling children in conflict with the law, including by drafting Attorney General Regulation Number 006 of 2015 concerning Guidelines for Implementing Diversion at the Prosecution Level, providing education and training for Prosecutors who handle children and The implementation of child care programs is included in the Strategic Plan of the Prosecutor's Office of the Republic of Indonesia.⁸

⁴ Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan* (Bandung: Graha Ilmu, 2010), hal. 161.

⁵ Cholida Hanum, "Prospek Keadilan Restoratif Dalam Peraturan Perundang-Undangan Di Indonesia," *Veritas* 7, no. 1 (2021): 1-18, <https://doi.org/https://doi.org/10.34005/veritas.v7i1.1231>.

⁶ Hariman Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Jurnal Media Hukum* 25, no. 1 (2018): 111-23, <https://doi.org/https://doi.org/10.18196/jmh.2018.0107.111-123>.

⁷ Ahmad Faizal Azhar, "Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 134-43.

⁸ Gregorius Hermawan Kristyanto, "Fungsi Kejaksaan Dalam Mewujudkan Restorative Justice Dalam Penanganan Anak Berhadapan Dengan Hukum Di Indonesia," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 5, no. 1 (2018): 459-81, <https://doi.org/https://doi.org/10.32493/SKD.v5i1.y2018.1543>.

From several other studies above, it can be seen that the difference between this research and previous research is that this research does not only explain the authority of the prosecutor's office in carrying out termination of prosecution based on the principles of Restorative Justice as regulated in Attorney General Regulation no. 15 of 2020, but instead reviews several obstacles in implementing the prosecutor's legitimacy in resolving cases using a restorative justice principle approach. In order to guarantee legal certainty in the future, a single rule must be implemented that regulates restorative justice for each law enforcement agency/institution, namely the Police, Prosecutor's Office and Supreme Court in order to provide one guideline and a common perception between law enforcement agencies in order to create legal certainty in the criminal justice system. In Indonesia in the future.

In the development of criminal law in Indonesia, restorative justice is expected to become a new way to resolve cases by providing efficiency and recovery for victims for the impacts caused by perpetrators, accompanied by peace between the two. Restorative justice has a good impact on the efficiency of case resolution but must also be balanced with strict supervision in its implementation.

From the description above, the author then wants to develop it in research by discussing the authority of prosecutors in implementing the termination of prosecution for criminal cases based on the principles of restorative justice and the obstacles to implementing the principles of restorative justice at the prosecution stage.

2. Methods

Research on the above problems was carried out using the normative juridical legal research type, the legal research is based on written positive legal studies.⁹ The approach to the problem raised in this research is a statutory approach and a conceptual approach, namely by analyzing theories related to resolving cases outside of court based on restorative justice. This research uses data analysis techniques with deductive logic. According to Jhony Ibrahim who quoted Bernard Arief Sidharta's opinion, deductive logic is a technique for drawing conclusions from general matters to individual cases.¹⁰ In this research, legal sources were obtained by taking an inventory and reviewing research from literature studies, statutory regulations and other information that can help interpret norms to answer the problems studied. The final stage is to draw conclusions from the legal sources processed.

3. Results and Discussion

3.1. Interpreting Prosecutorial Agency: Enforcing Termination of Prosecution in Criminal Cases via Restorative Justice Principles

Prosecutors are civil servants with functional positions who have specificities and carry out their duties, functions and authority based on the law. The task of the Prosecutor is to carry out pre-prosecution, examination, additional, prosecution, implementation of judges and court decisions, supervision of the implementation of conditional release decisions and other

⁹ Suratman and Philips Dillah, *Metode Penelitian Hukum, Cetakan Ke-2* (Bandung: Alfabeta, 2014), hal. 45.

¹⁰ Jhonny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Banyumedia Publishing, 2013), hal. 249.

legal actions in general criminal cases based on statutory regulations and policies by the Attorney General.¹¹

In Article 1 point 6 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) it is stated that the Prosecutor is an official who is authorized by this law to act as a public prosecutor and carry out court decisions that have obtained force. permanent law. Meanwhile, the public prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and carry out the judge's decisions.

In general, after the enactment of the Criminal Procedure Code, the duties of the Prosecutor are:

1. As a public prosecutor.
2. Executor of court decisions that have permanent legal force (executor).

In his duties as a public prosecutor, the Prosecutor has duties:

- a. Carrying out prosecution.
- b. Carry out the judge's decision.

The Prosecutor's Office, in carrying out its duties, should be independent and free from the influence of government power and other powers in its efforts to realize legal certainty, legal order, justice and truth by avoiding religious norms, decency and decency, and is obliged to explore human values, law, and justice that lives in society. The position of the Prosecutor's Office in criminal justice is decisive because it is a bridge that connects the investigation stage with the examination stage at the court hearing. Based on the applicable legal doctrine, it is said that the Public Prosecutor is the *dominus litis*, which in this case means that the Public Prosecutor is the controller of the case or can monopolize the prosecution, which means that each person can only be tried if there is a criminal complaint from the Public Prosecutor, because only the Public Prosecutor can has the authority to bring a person suspected of committing a crime before a court.¹²

Then, as a guideline in its implementation, the Prosecutor's Law has laid the foundation for prosecutors to be able to explore the value of justice in society. In Article 3 of Prosecutor's Regulation Number 15 of 2020¹³ It is stated that the public prosecutor has the authority to close the case for legal purposes. The closure of a case for legal purposes is carried out when the defendant dies, the criminal prosecution has expired, there has been a court decision which has permanent legal force against a person regarding the same case.

Restorative justice is an action with the aim of restoring relationships or improving the relationship between the perpetrator and the victim. This mediation process involves mitigating the victim's losses and giving the perpetrator the opportunity to atone for his mistakes by providing compensation, social criminal sanctions, or other agreements that can reconcile both parties.¹⁴ The issuance of Republic of Indonesia Prosecutor's Regulation

¹¹ Pasal 1 angka 1 Undang-Undang Negara Republik Indonesia Nomor 11 Tahun 2021 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia.

¹² Yudi Kristiana, *Independensi Kejaksaan Dalam Penyidikan Korupsi* (PT Citra Aditya Bakti, 2018), hal. 52.

¹³ Pasal 3 Peraturan Jaksa Agung Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

¹⁴ Arilasman Cornelius and Beniharmoni Harefa, "Penerapan Restoratif Justice Dalam Undang-Undang Sistem Peradilan Pidana Anak," *Jurnal Yuridis* 8, no. 1 (2021): 83-101, <https://doi.org/https://doi.org/10.35586/jjur.v8i1.2734>.

Number 15 of 2020 concerning Termination of Prosecution based on restorative justice is seen as an answer to the voice of justice in society.

In order to align with existing policy progress and to achieve legal and national goals, the prosecutor's office has issued several legal regulations related to restorative justice in handling criminal cases at the prosecution stage (the authority of the prosecutor as *Dominus Litis*).¹⁵

Based on Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is implemented on the basis:

- a. justice;
- b. public interest;
- c. proportionality;
- d. punishment as a last resort; And
- e. fast, simple, and low cost.

Termination of prosecution based on Restorative Justice is carried out with due regard:

- a. Victim's interests and other protected legal interests;
- b. avoidance of negative stigma;
- c. avoidance of retaliation;
- d. community response and harmony; And
- e. propriety, decency, and public order.

Apart from fulfilling the terms and conditions as referred to above, termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

- a. There has been a restoration to its original condition carried out by the suspect by: (can be excluded if there is an agreement between the parties)
 - 1) return items obtained from criminal acts to the Victim;
 - 2) compensate victims' losses;
 - 3) reimburse costs incurred as a result of criminal acts; and/or
 - 4) repair the damage caused by criminal acts.
- b. there has been a peace agreement between the victim and the suspect; And
- c. the community responded positively.

In almost all jurisdictions in the world, prosecutors play a major role in the administration of criminal justice, because prosecutors play an important role in the decision-making process. Even in countries where prosecutors do not conduct investigations, prosecutors still have broad prosecutorial discretion. In other words, the prosecutor has the power to determine whether or not to prosecute almost every criminal case. For this reason, the High Judge of the German Federation, Harmuth Horstkotte, gave the prosecutor the nickname "the boss of the litigation process" (master of the procedure), as long as the case was not submitted to a court hearing.¹⁶

Prosecutor's Regulation Number 15 of 2020 provides legitimacy for prosecutors in carrying out efforts to terminate prosecutions based on restorative justice. Prosecutors who

¹⁵ Marwan Effendy, *Kejaksaan RI: Posisi Dan Fungsinya Dari Perspektif Hukum* (Jakarta: Gramedia Pustaka Utama, 2005), hal. 2.

¹⁶ Waluyo, *Desain Fungsi Kejaksaan Pada Restorative Justice*, hal. 199.

are Dominus Litis (case controllers) should be given the authority to resolve criminal cases outside of court based on restorative justice.¹⁷

In Prosecutor's Regulation Number 15 of 2020, a criminal case can be closed by law and the prosecution terminated based on restorative justice if the following conditions are met:

1. the suspect has committed a crime for the first time; criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years;
2. and the criminal act is committed with the value of the evidence or the value of losses incurred as a result of the criminal act not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah)

Therefore, in the event that all provisions and conditions for implementing restorative justice have been fulfilled, the prosecutor must consider a number of things, such as the subject, object, category and threat of the criminal act; background to the occurrence of the criminal act; degree of blameworthiness; losses or consequences arising from criminal acts; as well as the costs and benefits of handling cases. Enn en ondeelbaar which means the prosecutor's office is one and inseparable, the Prosecutor as Dominus Litis which means as Case Controller, namely having responsibility for law enforcement in the field of prosecution which is a basis for carrying out his duties and authority which aims to maintain unity of policy in the field of prosecution, so that it can display unique characteristics that are integrated in the thinking, behavior and work procedures of the Prosecutor's Office as a progressive step in the scope of law enforcement.¹⁸

3.2. Challenges in Enforcing Restorative Justice: Barriers to Implementing Prosecutorial Termination in Criminal Cases

The concept of restorative justice is a new guideline for implementing criminal law enforcement in Indonesia, even though this concept has long been developed and implemented in the process of resolving criminal cases in several countries that adhere to the common law legal system. Efforts to implement this concept in the justice system in Indonesia still encounter several obstacles, namely the factor of the public not understanding about awareness in law enforcement itself. There are several indicators that can be used to see legal awareness in society, including the following:¹⁹

1. Legal Knowledge, society has conceptual knowledge about society's actions which are regulated by law.
2. Must understand that the public can interpret the rules contained in the law..
3. Attitude, society is biased in assessing moral dimensions.
4. Behavior, society is able to behave in accordance with applicable laws.

¹⁷ Candlely Pastorica Macawalang, "Penerapan Dan Pengaruh Keadilan Restoratif Sebagai Alternatif Penyelesaian Tindak Pidana Dalam Sistem Peradilan Pidana Di Indonesia," *Lex Crimen* 10, no. 5 (2021): 142–50, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/33432>.

¹⁸ Wahyu Nurdianto, "Pengaturan Penghentian Penuntutan Berdasarkan Keadilan Restoratif Sebuah Langkah Progresif Kejaksaan," *timesindonesia.co.id*, 2020, <https://www.timesindonesia.co.id/read/news/288144/>, diakses pada 22 Maret 2024.

¹⁹ Ira Andira, "PENERAPAN RESTORATIVE JUSTICE DALAM UPAYA PERLINDUNGAN HUKUM TERHADAP ANAK PELAKU TINDAK PIDANA (Studi Kasus Di Polres Tebing Tinggi)," *Ilmu Hukum Prima (IHP)* 1, no. 1 (2018): 29–43, <http://jurnal.unprimdn.ac.id/index.php/IHP/article/view/72>.

The application of restorative justice by the Prosecutor's Office in the criminal justice system in Indonesia is a breakthrough as a form of regulatory reform for handling criminal cases for the sake of efficient case resolution and for the sake of society who want to obtain justice of the highest quality, but not through formalistic, long, rigid criminal justice processes and is inflexible and expensive.

The prosecutor's obstacles in implementing a system for resolving criminal cases outside of court using a restorative justice approach can be seen from the basis of the laws and regulations in force in Indonesia, including namely:²⁰

1. Legal substance.

Currently there is a provision in Article 8 paragraph (4) of the Judicial Power Law which encourages prosecutors to always act based on the law by paying attention to religious norms, decency and decency and is obliged to explore and uphold the human values that live in society and always maintain honor and dignity. profession, in carrying out their duties and authority. However, because there are no regulations regarding the prosecutor's authority to resolve cases outside of court, these provisions cannot be applied as a basis for implementing restorative justice by prosecutors.

2. Legal structure.

The legal structure is the law enforcement apparatus and its institutions that drive the legal system as regulated in the substance of the law. The legal structure in this case is the prosecutor's office and its apparatus, especially prosecutors. If this legal structure is associated with obstacles to prosecutors in resolving cases outside of court using a restorative justice approach, then the main obstacle is because prosecutors and prosecutors have not been given the authority to do so. Article 8 paragraph (4) of the Judicial Power Law, in carrying out the duties and functions of prosecutors, is obliged to explore and uphold the human values that exist in society.

3. Legal culture.

In summary, legal culture can be interpreted as people's behavior related to the law. In this case, what is meant by society in relation to law is the law that deals with the resolution of criminal cases outside of court by prosecutors through a restorative justice approach. If this legal culture is linked to resolving cases outside of court, it seems that this will not be too much of an obstacle for the prosecutor's office. Because in general the parties are peaceful compared to dealing with law enforcement agencies, whether the police, prosecutor's office or court.

Obstacles in terms of the formulation of statutory regulations, according to Abdul Azis Dumpa as Deputy Director of Legal Aid Makassar, explained that there are no specific regulations regarding Restorative Justice which can be used as a reference or main guideline that can be used by all law enforcement officials so that they will present the same standards in their implementation.²¹

²⁰ Husein Pohan et al., "Penyelesaian Tindak Pidana Dengan Pendekatan Restorative Justice Yang Dilakukan Oleh Kejaksaan: Studi Kasus Di Kejaksaan Negeri Medan," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 1 (2023): 52–62, <https://doi.org/https://doi.org/10.56128/jkih.v3i1.41>.

²¹ Ady Thea D. A., "LBH Makassar Beberkan Tantangan Penerapan Restorative Justice," *hukumonline.com*, 2023, <https://www.hukumonline.com/berita/a/lbh-makassar-beberkan-tantangan-penerapan-restorative-justice-lt646455fc68367/?page=2>, diakses pada 13 April 2024.

The incomplete standardization of the restorative justice process by the Prosecutor's Office can lead to inconsistencies in implementation in various prosecutorial areas and there must be limitations stated in additional regulations regarding implementation standards for terminating prosecutions based on restorative justice as explained by Taufik Rachman, as a Criminal Law Expert at Airlangga University in a webinar held by Brawijaya University and the Indonesian Attorney General's Office which essentially states that there must be a benchmark for a criminal case to have been restored by restorative justice and there must be a controlling party to maintain accountability and transparency over the implementation of restorative justice.²²

Reda Manthovani as a lecturer at the Faculty of Law, Pancasila University and STIH Adhyaksa, in his writings for the legal online editor, expressed his view that problems in implementing restorative justice in Indonesia can occur because the implementation regulations are still partial in that each law enforcement apparatus has its own rules for implementing restorative justice and there may be conflicts between regulations, giving rise to legal uncertainty for the community.²³

The legal uncertainty that exists in the implementation of restorative justice currently occurs because it has not been comprehensively regulated in one main legal regulation regarding case resolution that prioritizes the restoration of justice and in practice, it is spread across the internal regulations of each law enforcement agency which can lead to disharmony between provisions, as The National Police of the Republic of Indonesia has Police Regulation no. 8 of 2021 concerning handling criminal acts based on restorative justice, the Indonesian Prosecutor's Office with Prosecutor's Regulation no. 15 of 2020 concerning termination of prosecutions based on restorative justice and finally the judicial institution, namely the Supreme Court, also has regulations regarding restorative justice which are contained in the Decree (SK) of the Director General of the General Justice Agency (Dirjen Badilum) MA Number: 1691/DJU/SK/PS. 00/12/2020 concerning Implementation of Guidelines for Implementing Restorative Justice.

With the spread of regulations regarding restorative justice in the various institutions above, there may be a lack of synchronization and conflicts of interest in handling and resolving criminal cases using a restorative justice approach in Indonesia, for example, police institutions can stop handling cases using restorative justice without having to involve the prosecutor's office. even though within its authority to carry out inquiries and investigations into a case, the Prosecutor's Office has the authority to accept or not accept the investigation files as part of the Pre-Prosecution duties carried out by the Prosecutor's Office as regulated in Articles 110 and 138 (1) and (2) of the Criminal Procedure Code. Meanwhile, the Prosecutor's Office carries out restorative justice after starting with the pre-prosecution process, then the case files for which the prosecution is terminated through restorative justice are resolved administratively based on the prosecutor's standard operational procedures by involving

²² Pradnya Wicaksana, "Pakar Hukum Pidana Unair Berikan Catatan Kritis Dalam Penerapan Keadilan Restoratif," fh.unair.ac.id, 2022, <https://fh.unair.ac.id/pakar-hukum-pidana-unair-berikan-catatan-kritis-dalam-penerapan-keadilan-restoratif/>, diakses pada 13 April 2024.

²³ Reda Manthovani, "Melihat Urgensi Terbitnya UU Keadilan Restoratif," hukumonline.com, 2023, <https://www.hukumonline.com/berita/a/melihat-urgensi-terbitnya-uu-keadilan-restoratif-lt63d752f9bad03/?page=all>, diakses pada 15 April 2024.

other institutions, namely the district court, by being given a notification letter of termination of prosecution based on restorative justice. the head of the district attorney's office to the chairman of the district court according to their jurisdiction

For the sake of the progress of the criminal justice system in Indonesia, the implementation of restorative justice that is considered good must also be improved on the legal foundation by having a standard rule regarding problem resolution through a restorative justice approach in the form of a separate Law and/or government regulation that is binding on all law enforcement agencies so that The implementation of restorative justice has the same standardization in its application and creates maximum efficiency and legal certainty for the community.

Then there is also the main obstacle at this time when viewed in terms of fulfilling the requirements or provisions for the implementation of restorative justice in several laws and regulations, especially Prosecutor's Regulations RI No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is that challenges and difficulties in reconciling the interests of the parties are very likely to occur, considering that the benchmarks used and contained in several regulations regarding restorative justice can be said to be subjective, namely depending on the wishes and satisfaction of each party, so that in its application it is very possible for conflicts of interest to arise, such as if a peace agreement is not found between the victim and the perpetrator with the following conditions:²⁴

1. If the perpetrator is unable to provide compensation or support the victim, or the victim asks for compensation/compensation beyond the perpetrator's ability to fulfill it.
2. If the victim (or his family) does not need compensation or compensation, and prefers punishment for the perpetrator.
3. If there is coercion on the part of the perpetrator on the victim in seeking peace..
4. If there is more than one victim, one party receives compensation/compensation, but the other party does not.
5. If the victim finds it difficult to forgive and does not receive any form of compensation or compensation.

Success in implementing restorative justice is very dependent on a peaceful meeting point between the victim and the perpetrator, as stated by Tony F. Marshall who stated that restorative justice is a process where all parties related to a criminal act work together to resolve the problem and how to deal with the consequences. has occurred or the implications that may occur in the future.²⁵

Restorative justice is very closely related to the very family culture of Indonesian society. Then from the aspect of influencing society, the community itself fully supports this restorative justice system which can be seen by the participation of community representatives during the restorative justice process. So the implementation of restorative justice itself has gone quite well. The absence of legal rules that regulate and serve as a basis for legitimacy in making

²⁴ Pohan et al., "Penyelesaian Tindak Pidana Dengan Pendekatan Restorative Justice Yang Dilakukan Oleh Kejaksaan: Studi Kasus Di Kejaksaan Negeri Medan."

²⁵ Apong Herlina, "Restorative Justice," *Indonesian Journal of Criminology* 3, no. 3 (2004): 4244, <http://journal.ui.ac.id/index.php/jki/article/view/1247>.

decisions in the investigation process, whether based on the concept of restorative justice or other approaches that are in line with sociological jurisprudence, is therefore considered an abuse of discretionary authority. The absence of formal procedural procedures or mechanisms to implement it is also an obstacle in implementing restorative justice.

Thus, in line with the improvement and progress of law in Indonesia, especially regarding Restorative justice, which has been the main focus in the development of the criminal justice system, it must be formulated in separate regulations in the form of Laws or Government Regulations and serve as the main guidelines for all Law Enforcement Agencies, namely The Police, Prosecutor's Office and Supreme Court must create standard and comprehensive regulations to achieve legal objectives, namely justice and legal certainty.

4. Conclusions

The role and authority of the Prosecutor's Office in implementing the termination of prosecution based on the principle of restorative justice approach has been specifically regulated in Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. Restorative justice must be based on fairness, public interest, proportionality, punishment as a last resort and fast, simple and low cost while still prioritizing the interests of victims, avoidance of negative stigma, avoidance of revenge, response to social life, and propriety, decency and public order. The conditions for the implementation of Restorative justice are that the suspect has committed the act for the first time, only being threatened with a fine or imprisonment of less than 5 (five) years and a loss value of less than two million five hundred thousand rupiah. Then it continued with recovery, a peace agreement, and a positive response from the community. In achieving a fair agreement for both the victim and the perpetrator, in this case the role of the prosecutor is very crucial because the prosecutor can bring together the parties plus the community who will also be able to participate.

In implementing the termination of prosecution using the Restorative justice principle approach, there are still obstacles both internal and external which make it difficult to achieve peace between the parties, namely in terms of the legal factors themselves, starting from the substance, structure and culture of the law which must be in line with the goal of reforming case resolution through restorative justice. Incomplete standardization of the restorative justice process by the Prosecutor's Office or other law enforcement agencies can result in inconsistent implementation or inconsistency of certain provisions and there must be limitations stated in separate regulations regarding standards for implementing termination of prosecution based on justice that apply generally to all law enforcement agencies. Problems in implementing restorative justice in Indonesia can occur because the implementation regulations are still partial in that each law enforcement officer has its own rules for implementing restorative justice and there is a high possibility of conflict between regulations and/or between institutions so that a separate regulation must be formed in the form of a Law. -Laws or Government Regulations specifically regulate restorative justice to create legal certainty for the community. Then, obstacles in bringing together the interests of the parties are very likely to occur, considering that the benchmarks used are very subjective in nature, that is, they depend on the needs and interests of the victim and the perpetrator, so that in practice in the field the possibility of clashes and differences between the parties is very large

and can be very difficult. peace process and agreement as the main conditions for implementing restorative justice.

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