

Implementation of Termination of Prosecution Based on Restorative Justice as an Effort to Strengthen the Role of the Prosecutor's Office in Indonesia

Ilhamd Wahyudi^{1*}, Nikmah Rosidah², Elwi Danil³

^{1,2}Faculty of Law, University of Lampung

³Faculty of Law, Andalas University

DOI: <https://doi.org/10.36348/sijlcj.2025.v08i07.004>

| Received: 29.05.2025 | Accepted: 24.07.2025 | Published: 31.07.2025

*Corresponding author: Ilhamd Wahyudi

Faculty of Law, University of Lampung

Abstract

This study aims to analyze the implementation of restorative justice-based prosecution terminations as an effort to strengthen the role of the Prosecutor's Office in Indonesia. To date, the Prosecutor's Office has been more dominant in carrying out conventional prosecution functions oriented towards retaliation. However, with the growing paradigm of restorative justice, an approach focused on restoring relationships, compensation, and reconciliation between perpetrators, victims, and the community has become relevant. This study uses normative legal research methods with a statutory and conceptual approach. The results show that restorative justice-based prosecution terminations, as stipulated in various Prosecutor's Office regulations, offer significant potential to reduce case backlogs, provide substantive justice for victims, and encourage more constructive accountability of perpetrators. The Prosecutor's Office's role in this process is no longer merely to prosecute, but also to facilitate dialogue, mediation, and ensure the achievement of restorative agreements. Effective implementation of this policy is expected to strengthen the Prosecutor's Office's image as a humanistic law enforcement agency responsive to the needs of the community, while supporting the creation of a more just and dignified criminal justice system in Indonesia.

Keywords: Termination of Prosecution, Restorative Justice, Prosecutor's Office.

Copyright © 2025 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

Indonesia's criminal justice system has historically tended to prioritize a retributive approach, focusing primarily on punishing perpetrators. This model often neglects victim recovery and community reconciliation, ultimately leading to dissatisfaction and a sense of injustice among those directly involved in the crime. Consequently, law enforcement agencies, including the Prosecutor's Office, are better known for their role as institutions authorized to prosecute and imprison perpetrators, rather than as facilitators of comprehensive justice.

In the context of law enforcement in Indonesia, the Attorney General's Office of the Republic of Indonesia plays a central role as the institution that exercises state prosecutorial power. However, the high crime rate and the backlog of cases at the prosecution level have posed serious challenges. The limited capacity of correctional institutions and the significant costs of

handling cases often make the criminal justice system less effective and efficient. On the other hand, the public is increasingly demanding alternative, more humane, and recovery-oriented criminal dispute resolution methods.

Bagir Manan stated that law enforcement implemented thus far represents a sustainable development effort. This means that law enforcement adheres to the principle of retaliation enforced by law enforcement. The goal is to create a safe, peaceful, orderly, and dynamic national atmosphere within a free, peaceful, and friendly global environment. Law enforcement is essentially an effort to create justice. The process of fulfilling the public's sense of justice through law enforcement still displays its old face, namely the

law as a tool of oppression (retributive justice).^[1] Braithwaite states that RJ is more concerned with healing or recovery efforts, rather than suffering, moral learning, community participation and community awareness, respectful dialogue, forgiveness, responsibility, apology, and compensation.^[2]

The implementation of the RJ approach was initially used to uphold justice for children, this was done to uphold the best interests of children.^[3] In cases of criminal acts committed by children, restorative justice at least aims to repair/restore (to restore) criminal acts committed by children with actions that are beneficial for the child, the victim and their environment which involve them directly (reintegration and rehabilitation) in solving the problem, and is different from the way adults are handled, which will then lead to the goal of the punishment itself which according to Barda Nawawi Arief the goal of punishment is based on "protection of society" and "protection/development of individual perpetrators of criminal acts".^[4]

The basic idea behind the concept of Restorative Justice (RJ) is simple. Until now, justice has been based on the victim's appropriate retribution to the perpetrator, namely by imposing prison sentences on the perpetrators. However, this concept has been changed by providing moral and material support to the victim and requiring the perpetrator to be held accountable, with the assistance of family and community if necessary. RJ itself contains a definition of a form of settlement carried out by prioritizing justice involving the perpetrator, victim, family and other parties who are victims and involved in a criminal act and together seek solutions to resolve the criminal act and the most important ultimate goal is to restore the situation to its original state.^[5] In order to realize the concept of restorative justice for victims and perpetrators, law enforcers are required to think and act progressively, that is, not to apply regulations textually but to break through the rules (*contra legem*) because in the end the goal of the law is not only bound by text alone in order to achieve the justice that society aspires to.^[6]

The restorative justice paradigm emerged as a response to the limitations of the retributive approach. Restorative justice shifts from "who was at fault and what

is the punishment" to "what harm was caused, who is responsible for repairing it, and how to prevent it from happening again." This concept emphasizes restoration of relationships, restitution, reconciliation, and the active participation of victims, perpetrators, and the community. The application of restorative justice, particularly in the form of discontinuation of prosecution, offers an innovative solution to address these issues.

The Prosecutor's Office, as the state's representative in the prosecution process, has significant potential to implement restorative justice. By discontinuing prosecutions based on a restorative approach, the Prosecutor's Office not only reduces its caseload but also fundamentally strengthens its role. Its role, which initially focused solely on the formal and procedural aspects of prosecution, can now be expanded to include mediation and facilitator, ensuring the fulfillment of victims' rights, promoting perpetrator accountability, and restoring social peace. This effort aligns with the mandate of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which requires the Prosecutor's Office to be more responsive to societal dynamics and create proportional justice.

Therefore, this research is crucial for in-depth examination of how the implementation of restorative justice-based prosecution termination can be optimized. Furthermore, this study will also analyze the extent to which the implementation of this policy can strengthen the role of the Indonesian Prosecutor's Office in creating a more effective, efficient, and equitable criminal justice system for all levels of society.

METHOD

This research is classified as normative legal research (doctrinal legal research). This approach was chosen because the focus of the research is to examine legal norms, legal principles, and regulations related to the implementation of termination of prosecution based on restorative justice, as well as analyzing its effectiveness in strengthening the role of the Prosecutor's Office in Indonesia. There are two main approaches used in this research: Statutory Approach: This approach is

¹ Bagir Manan, *Restorative Justice (An Introduction)*, in *Reflections on the Dynamics of Law: A Series of Thoughts in the Last Decade*, (State Printing Company of the Republic of Indonesia, Jakarta, 2008), p. 4.

² Braithwaite, John, *Restorative justice and Responsive Regulation*, (New York: Oxford University Press, 2002), p. 69.

³ Nashriana. *Criminal Legal Protection for Children in Indonesia*. (Jakarta: Raja Grafindo Persada, 2011), p. 29.

⁴ Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Jakarta: PT. Kencana Prenada Media Group, 2008), p. 98.

⁵ *The Attorney General's Office Will Revise the Technical Guidelines for Prosecuting Children*, Source: <http://www.tribunnews.com/2012/01/20/kejaksaan-agung-akan-revisi-juknis-penuntutan-anak>, accessed on December 10, 2020

⁶ See Pangestika Rizki Utami, the diversion process is where all parties involved in a particular crime work together to address the problem and create an obligation to make things better by involving the victim, the child, the community, and related parties to find the best solution for the child without any element of retaliation. In *Jurnal Volksgeist*, Vol. 1 No. 1 June 2018, pp. 95-106.

carried out by reviewing all relevant laws and regulations, starting from the 1945 Constitution of the Republic of Indonesia, the Law on the Prosecutor's Office, the Criminal Procedure Code (KUHP), to Prosecutor's Office Regulations and Circular Letters that regulate restorative justice and termination of prosecution. The goal is to identify the legal basis, limitations, and applicable procedures. Conceptual Approach: This approach is used to analyze and understand legal concepts related to restorative justice, the role of the Prosecutor's Office, and the purpose of termination of prosecution. These concepts will be identified from legal doctrine, theories of justice, and the views of experts in the field of criminal law and criminology.

RESULTS AND DISCUSSION

The current situation regarding cases where the losses are deemed minor and can be resolved through non-penal means is currently receiving considerable public attention. In fact, the public generally believes that it is unfair for "minor" cases to be subject to criminal penalties, as they are disproportionate to the value of the assets involved. When compared to perpetrators of serious crimes, such as corruption, this naturally provokes an indignant public reaction. Therefore, cases involving minor losses should not have to go to court.

The primary duty of the Prosecutor's Office in the Indonesian judicial system is prosecution, and conversely, prosecution is the sole authority held by the Prosecutor's Office and not by any other institution. The authority to prosecute is essentially an absolute monopoly of the public prosecutor, commonly referred to as the principle of "dominus litis." The public prosecutor is the sole institution with the monopoly of prosecution in resolving criminal cases. Judges cannot request that criminal cases be submitted to them, as judges are passive in resolving cases and await the transfer of cases from the public prosecutor.

The Attorney General is tasked with and authorized to streamline the law enforcement process as stipulated in the Law, taking into account the principles of speedy, simple, and low-cost justice, and to establish and formulate case handling policies for successful prosecutions carried out independently for the sake of justice based on law and conscience. In this context, prosecutions use a restorative justice approach implemented in accordance with statutory provisions. The resolution of criminal cases by prioritizing restorative justice, which emphasizes restoration to the original state and a balance between the protection and interests of victims and perpetrators of criminal acts, which is not oriented towards revenge, is a legal need of society and a mechanism that must be established in the implementation of prosecutorial authority and the renewal of the criminal justice system.

Termination of prosecution is the authority of the Public Prosecutor (JPU) at the Prosecutor's Office. This is the next stage after the case file is submitted by the Police (investigator) and declared complete (P-21). At this stage, the Prosecutor's Office has the discretion to decide whether a case will proceed to trial or whether prosecution will be discontinued. The main legal basis for discontinuing prosecution is in Article 140 paragraph (2) of the Criminal Procedure Code (KUHP). Just like the termination of investigation by the police, the Prosecutor's Office can discontinue prosecution for three main reasons, namely:

- 1) Insufficient Evidence means that even though the investigator declares the case file complete (P-21), the Public Prosecutor (JPU) will still re-examine the available evidence. If, according to the JPU, the evidence collected is insufficient to prove the charges in court (less than two valid pieces of evidence or the available evidence is inconclusive), the prosecution can be discontinued.
- 2) The Incident Does Not Constitute a Criminal Act. In principle, after reviewing the case file, the Public Prosecutor may find that the alleged act, although meeting the formal elements, is not inherently a criminal act. For example, the problem is more appropriately resolved through civil or administrative channels, or even if the act is legally justified.
- 3) Case Discontinued by Law. This termination of prosecution is based on legal obstacles that prevent a case from proceeding. These may include: Death of the Suspect: The criminal process ends when the suspect dies. The Case Has Expired: The statutory time limit for prosecution or the implementation of the sentence has expired. Withdrawn Complaint Offense: For certain crimes that can only be processed based on a complaint (e.g. defamation), if the complaint is withdrawn, the prosecution must be stopped. Nebis in Idem: The same case has been decided by the court and has permanent legal force, so it cannot be filed a second time.

Discretion of Termination of Prosecution by the Attorney General (Diversion and Restorative Justice) which is the reason for termination of prosecution owned by the public prosecutor in addition to the three reasons above, the Prosecutor's Office also has the authority to terminate prosecution based on the principle of opportunity. This principle gives the Attorney General the absolute right not to prosecute a case in the public interest, even if all requirements for prosecution are met. Termination of prosecution based on the principle of opportunity is regulated in Article 35 letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 as amended by Law Number 11 of 2021 concerning the Indonesian Prosecutor's Office.

The stages of the legal process at the prosecutor's office level, namely related to the termination of prosecution by the prosecutor, occur at the prosecution stage. This is a decision taken after the investigation is completed and before or during the submission of charges to the court. This decision is initiated after the prosecutor re-analyzes all the evidence in the hands of the prosecutor. Police: Termination by the police occurs at the investigation stage. This is a decision taken by the Chief Investigator/Police Officer during the process of gathering evidence and the ongoing investigation or after the investigation is deemed sufficient.

In implementing Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the main criteria for terminating prosecution based on restorative justice are: Criminal acts with a penalty of a fine or imprisonment of no more than five years. Not a repeat offense (recidivism). The value of the loss is not too large (for example, under IDR 2.5 million for general crimes). There is reconciliation between the victim and the perpetrator. The perpetrator shows remorse and has good intentions to correct his mistakes.

The current reality is that when the criteria in Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice are implemented with limitations and standards, cases that carry a sentence of less than 5 years and a fine of more than 2.5 million rupiah cannot be terminated.

Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice locks in the provisions and expansions of the provisions of Restorative Justice by prioritizing peace and recovery for both perpetrators and victims of criminal acts who have suffered losses.

In fact, there are currently cases whose prosecution has been terminated based on restorative justice for state security and public order, and other general crimes, showing that there are 129 cases that have requested restorative justice, and 98 of these cases have received restorative justice approval. Therefore, approximately 75% of cases have been successfully resolved through restorative justice. This also illustrates that the handling of termination of prosecution based on restorative justice has been implemented in almost all provinces in Indonesia. Overall, both cases related to people and property, state security and public order, and other crimes, 554 cases out of 648 have been resolved through restorative justice, reaching approximately 85.49%. This figure is certainly a relatively high achievement. Therefore, the author conducted direct interviews to determine the benchmark for achieving case handling based on Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The West Sumatra Jurisdiction is one of the regions with a 100% success rate in resolving cases using restorative justice. The data on case resolution based on Restorative Justice at the West Sumatra High Prosecutor's Office in 2022 is as follows:

Table 1: Number of Case Settlement in 2022 at the West Sumatra High Prosecutor's Office

| No. | Type of Case | Number of Cases Proposed to be Resolved with Restorative Justice (RJ) | Number of Cases Approved |
|-----|--|---|--------------------------|
| 1. | People and Property (Oharda) | 20 cases | 20 cases |
| 2. | Narcotics and Other Addictive Substances | - | - |
| 3. | State Security, Public Order and Other General Crimes (Kamnegtibum and TPUL) | 5 cases | 5 cases |
| | Amount | 25 cases | 25 cases |

Source: Data from the General and Special Crimes Division of the West Sumatra High Prosecutor's Office.

In 2023, the West Sumatra High Prosecutor's Office (PJK) jurisdiction saw a significant increase in case resolutions using restorative justice. Data on case

resolutions based on restorative justice at the West Sumatra High Prosecutor's Office in 2023 shows the following:

Table 2: Number of Case Settlements Through Restorative Justice at the West Sumatra High Prosecutor's Office in 2023

| No. | Type of Case | Number of Cases Proposed to be Resolved with Restorative Justice (RJ) | Number of Cases Approved |
|-----|--|---|--------------------------|
| 1. | People and Property (Oharda) | 54 cases | 54 cases |
| 2. | Narcotics and Other Addictive Substances | 42 cases | 42 cases |
| 3. | State Security, Public Order and Other General Crimes (Kamnegtibum and TPUL) | 2 cases | 2 cases |
| | Amount | 98 cases | 98 cases |

Source: Data from the General and Special Crimes Division of the West Sumatra High Prosecutor's Office.

Based on the existing data, it is clear that the Public Prosecutors in the jurisdiction of the West

Sumatra High Prosecutor's Office have seriously implemented and implemented the Regulation on

Termination of Prosecution Based on Restorative Justice. This achievement also demonstrates the consistency of handling termination of prosecution through restorative justice carried out by the Indonesian Attorney General's Office. Moreover, in the implementation process, restorative justice is carried out through the District Attorney's Office and the District Attorney's Office Branches in each district/city area with several stages that must be followed, namely:

- a. Every case resolution must involve the victim through communication, which will then lead to a summons.
- b. The Public Prosecutor at the local District Attorney's Office/Branch Office issues an official summons to the victim and all involved parties.
- c. Investigators and prosecutors also coordinate intensively beforehand, and the prosecutor appointed by the Chief District Attorney acts as the Public Prosecutor (P-16A) in criminal cases

if the criminal case proceeds to Phase II, namely the transfer of the suspect and evidence by the investigator to the public prosecutor. Investigators request time before the expiry of the detention period, with the maximum detention period being 20 days at the investigation stage. However, investigators may request an extension or additional detention period from the prosecutor's office for up to 40 days. Therefore, investigators can detain up to 60 days.

In 2024, the West Sumatra High Prosecutor's Office also approved a number of cases for resolution through the restorative justice model. This means that from 2023 to 2024, cases carrying a maximum sentence of five years and a fine of Rp 2,500,000 remained the same each year. The number of cases resolved through restorative justice in 2024 can be seen in the following table:

Table 3: Number of Case Settlements Through Restorative Justice at the West Sumatra High Prosecutor's Office in 2024

| No | Article Violated | Amount |
|---------------|--|-----------|
| 1 | Article 480 Number 1 of the Criminal Code | 2 |
| 2 | Article 362 of the Criminal Code | 5 |
| 3 | Article 76C in conjunction with Article 80 paragraph 1 of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection in conjunction with Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection | 1 |
| 4 | Article 310 paragraph (2) of Law No. 22 of 2009 | 1 |
| 5 | Article 44 Paragraph (1) or Paragraph (4) of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence | 1 |
| 6 | Article 374 in conjunction with Article 372 of the Criminal Code | 3 |
| 7 | Article 351 Paragraph (1) of the Criminal Code | 4 |
| 8 | Article 378 or Article 372 of the Criminal Code | 3 |
| 9 | Article 363 Paragraph (1) points 3 and 4 in conjunction with Article 53 Paragraph (1) of the Criminal Code | 1 |
| 10 | Article 372 of the Criminal Code in conjunction with Article 65 of the Criminal Code or both Articles 378 of the Criminal Code in conjunction with Article 65 of the Criminal Code | 1 |
| Amount | | 22 |

Source: Data from the General and Special Crimes Division of the West Sumatra High Prosecutor's Office

Based on the above data, it can be seen that 22 cases were resolved through restorative justice in 2024, consisting of several types of criminal acts and carrying a maximum sentence of 5 years and a maximum fine of IDR 2,500,000. In some of the cases above, 2024 has differences with 2023 because the 2024 data was only taken from a few cases, meaning that not all cases were included as data. Peace efforts that are the basis for implementing case resolution based on restorative justice are more on the role of the facilitator in the mediation process and the agreement of both parties that must be carried out with various approaches. Peace efforts that are the basis of restorative justice are basically more on the mediation process between the suspect and the victim. The peace efforts that have been made by the suspect and the victim, the Prosecutor as the facilitator then stated that the elements of the requirements for

fulfilling the termination of prosecution based on restorative justice as in Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice were fulfilled. For this reason, the prosecutor then made a peace agreement signed by the Victim. The restorative justice efforts undertaken by both parties were successful and resulted in a settlement without the need for further trial. The case also met the requirements and provisions of Regional Regulation No. 15 of 2020, and therefore, prosecution was discontinued.

In reality, restorative justice resolution at the West Sumatra High Prosecutor's Office is not always accepted. Some cases, which carry a maximum sentence of five years and a fine of Rp 2,500,000, have been rejected. This means that not all applications for peace settlement are approved. However, the rejections are

certainly justified by the provisions of applicable laws and regulations, particularly Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Termination of prosecution in the criminal justice system is a crucial instrument that can strengthen the role of the Prosecutor's Office in achieving justice. This practice allows the Prosecutor's Office to discontinue a case even if there is sufficient evidence, taking into account various aspects beyond the formal elements of the crime.

In Indonesia, termination of prosecution is regulated by the Criminal Procedure Code (KUHP) and other relevant laws. Its goals are diverse, including strengthening restorative justice by prioritizing out-of-court settlements and focusing on restoring relationships between perpetrators, victims, and the community. This is often applied to minor crimes with recoverable losses or where a peace agreement has been reached between the parties.

Beyond restoration, the purpose of discontinuing prosecution by the Prosecutor's Office is to improve the efficiency of the justice system by reducing the caseload in courts, allowing legal resources to be allocated to more complex and serious cases. Furthermore, discontinuing prosecution serves to protect the rights of suspects/defendants in certain cases. Discontinuing prosecution can prevent stigmatization or other disproportionate negative impacts on suspects, particularly if their culpability is minor or other factors indicate that prosecution would not significantly benefit justice. A further objective is the public interest, based on the principle that the Prosecutor's Office has the discretion to discontinue prosecution if there is no compelling public interest to continue the case, for example, because compensation has been paid or the perpetrator has demonstrated remorse and good intentions.

Regulation Number 15 of 2020 concerning the Discontinuation of Prosecution Based on Restorative Justice stipulates that the Prosecutor's authority to discontinue prosecution based on restorative justice is a breakthrough in resolving criminal offenses. Restorative justice is an approach to resolving criminal offenses that is currently being widely advocated in various countries. Through a restorative justice approach, victims and perpetrators of criminal acts are expected to reach peace by prioritizing win-win solutions, emphasizing compensation for the victim's losses and forgiveness for the perpetrator.

According to Indonesian Attorney General Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, restorative justice clearly outlines how restorative justice seeks to involve the perpetrator, victim, and community in the criminal case resolution process. The implementation of the restorative justice approach, based on Indonesian Attorney General Regulation No. 15 of 2020, emphasizes a peace agreement between the perpetrator and victim and how procedural law recognizes the existence of this peace agreement as legally binding. As a concrete manifestation of a paradigm of punishment that focuses not on retribution but rather on restoration, the Attorney General's Office has taken a strategic step by issuing Indonesian Attorney General Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Indonesian Attorney General's Regulation No. 15 of 2020 also contains restrictions on the implementation of restorative justice so that it is not only interpreted as a peace agreement because if so, the ongoing process will actually be trapped in merely carrying out procedural functions so that truth (especially material truth) and justice cannot be achieved.⁷ This regulation is also considered a legal substance formulated to eliminate rigid positivistic understanding by prioritizing progressive law labeled restorative justice. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state and not retaliation. Based on the provisions of Article 4 of Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the authority of the Public Prosecutor in Terminating Prosecution based on Restorative Justice is carried out by taking into account the interests of the victim and other protected legal interests, the avoidance of negative stigma, the avoidance of retaliation, the response and harmony of society and propriety, morality, and public order.

Restorative justice is a popular alternative for addressing unlawful acts worldwide because it offers comprehensive and effective solutions. Restorative justice aims to empower victims, perpetrators, families, and communities to correct unlawful acts by using awareness and repentance as a foundation for improving community life.⁸ The settlement of criminal cases inside or outside the court process which emphasizes deliberation and direct participation of the perpetrator, victim and community in the process of resolving

⁷ Mahendra, Adam Prima, "Penal Mediation at the Investigation Stage Based on Restorative Justice", *Jurnal Jurist-Diction*, 3(4), 2020, pp. 1153–1178.

⁸ D.S., Dewi and Fatahilah A. Syukur, *Penal Mediation: Implementation of Restorative Justice in Indonesian Children's Courts*, Indie-Publishing, Depok, 2011, p. 4

criminal cases which returns the situation to its original state (recovery) is restorative justice.

Recovery for victims of crime in the criminal justice system according to Stanciu as quoted by Teguh Prasetyo, what is meant by victim in the broad sense is a person who suffers as a result of injustice.⁹ Stanciu further stated that there are two fundamental (inherent) characteristics of victims: suffering and injustice. The emergence of victims cannot be viewed as the result of illegal acts, because the law also creates injustice, which in turn creates victims, such as victims resulting from legal procedures.

The prosecution stage by the prosecutor and the examination of criminal cases by the judge in court are basically inseparable from the existence of Article 183 and Article 184 of the Criminal Procedure Code concerning proof and evidence. Article 183 of the Criminal Procedure Code requires at least two valid pieces of evidence and obtains the judge's conviction that a crime actually occurred and that the defendant is guilty of committing it. In the application of Article 183 of the Criminal Procedure Code, it cannot be separated from Article 184 of the Criminal Procedure Code which states the various types of valid evidence that are applicable in determining whether an act is criminal or not.

In a state that adheres to the principle of protecting human rights, the law should function to protect human interests. To protect human interests, the law must be enforced. Law enforcement can be carried out normally and peacefully. Violations of the law occur when certain legal subjects fail to fulfill their obligations or violate the rights of other legal subjects. Therefore, legal subjects whose rights have been violated must receive legal protection.¹⁰ Legal protection for the people is a universal concept, with each country having its own way of achieving it and the extent to which it is provided. Similarly, in the legal world, victims are also seen as needing protection.

Protection for victims will undoubtedly implement the concept of rehabilitation for crime victims. This means that Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice by the Prosecutor's Office not only terminates prosecution but also seeks to restore victims of violence or criminal acts, both physically and psychologically. This is the central concept in developing a restorative justice approach, which seeks to restore victims and even perpetrators, not solely focusing on retaliation through imprisonment.

In principle, victim rehabilitation through restorative justice instruments is an effort that truly fulfills a sense of justice and expediency. This is evident in the large number of criminals who are sentenced to prison for their crimes. This is normatively possible, according to the provisions of the law. However, not all laws prioritize imprisonment as a sanction; many prioritize alternative measures. Therefore, in implementing this effort, the values of justice and expediency, longed for by the Indonesian people, regarding the supremacy of sanctions imposed, can have a direct impact on both perpetrators and victims. Because the concept that is being developed is recovery for both the victim and the perpetrator, although stopping the prosecution is the first step towards reconciliation, after that other efforts must be made, namely to protect and restore the victim.

Restorative justice aims to empower victims, perpetrators, families, and communities to correct unlawful acts by using awareness and repentance as a foundation for improving community life. Punishment using restorative justice aims to restore victims of criminal acts to the fullest extent possible before the incident. It focuses not only on how to punish the perpetrator, but also on reparating the losses suffered by the victim and/or community as a result of the perpetrator's actions, and on actively and directly involving both perpetrators and victims in the resolution of the case.

The implementation of restorative justice is expected to shift the paradigm of law enforcement, which consistently leads to imprisonment, namely the imposition of criminal sentences based on a legally binding court decision. This has resulted in overcrowding of prisons and even overcrowding, a major problem within Indonesian prisons. In carrying out the prosecution task, the prosecutor is independent and has the policy (discretion) to continue or stop the prosecution based on the sufficiency of evidence, applicable laws and regulations and existing conditions at that time while continuing to act professionally and independently within a legal framework that can be accounted for in accordance with a sense of justice. Article 3 paragraph (1) Jo Article 3 paragraph (3) letter b Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, gives the public prosecutor the authority to stop the case in the interests of law, one of the reasons is that there has been a settlement of the case outside the court (*afdoening buiten proces*) with the provision that if there has been a restoration of the original situation using a restorative justice approach.

⁹ Siswanto Sunarso, *Victimology in the Criminal Justice System*, Jakarta: Sinar Grafika, 2012, p. 42.

¹⁰ Dikdik M. Arief Mansur & Elisatris Gultom, *The Urgency of Protecting Crime Victims Between Norms*

and Reality, Jakarta: PT. Raja Grafindo Persada, 2006, p. 24.

When examining the provisions contained in Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, there are procedures for implementing peace as contained in Articles 10 to 15 of Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. In general, the implementation of restorative justice is carried out through three stages, namely: peace efforts, the peace process, and the implementation of the peace agreement. The implementation of peace itself is divided into two methods, namely:

- 1) Conducted by Compensation Payment, the proof process can be done with a receipt from the victim and supported by proof of transfer or witness/victim testimony.
- 2) Conducted by Doing Something, the proof process can be done by directly observing the process, providing information from witnesses, or providing photographic/video evidence.

The agreement also includes an addendum, which is given to the suspect when the perpetrator, despite their best efforts to fulfill the agreement, is unable to fulfill it, even if they are in good faith. The addendum process still requires the victim's approval. Certain articles can be amended to the peace agreement, or, if the victim allows, certain conditions can be met. These conditions may include restitution for the victim resulting from the crime. To ensure the addendum is meaningful and meaningful, it must be implemented beyond a mere agreement.

The Public Prosecutor (Public Prosecutor) summons the victim and notifies them of the intent to reach a peace settlement. In this case, the Public Prosecutor also involves the perpetrator, the perpetrator/victim's family, and other relevant parties, if necessary. If the offer of peace is accepted by both the victim and the perpetrator, the victim and perpetrator must then undertake the peace settlement process within 14 days of the handover of responsibility. Once the peace settlement process is reached, the perpetrator and victim must enter into a written peace agreement before the Public Prosecutor, either with or without the fulfillment of certain obligations.

Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, in principle, does not yet reflect the fulfillment of the rights of victims and perpetrators of criminal acts, prioritizing reconciliation based on the intentions of both victims and perpetrators. This is because victims and perpetrators are the parties who committed the offense and suffered both physical and non-physical harm. In addition to the provisions contained in Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, there are also provisions in the National Police Chief Regulation and the Criminal Procedure Code, which still adhere to existing provisions

for implementing termination of investigations and termination of prosecutions. Therefore, a model is needed that can expand the concept of restorative justice, aiming to benefit both perpetrators and victims of criminal acts, prioritizing reconciliation.

Directions for termination of prosecution that support restorative justice include: Expanding case criteria: Expanding the types of cases that can be resolved through restorative justice, not just limited to minor crimes. Strengthening penal mediation: Increasing the capacity of prosecutors to facilitate the mediation process between victims and perpetrators. Focus on restoration: Emphasizes reparation for victims and perpetrators, as well as fostering reconciliation. By prioritizing restorative justice, the prosecution can reduce the court's caseload, restore damaged social relationships, and provide more substantive justice for the parties.

Directions for discontinuing prosecutions for efficiency include: Measured discretion: Implementing clear and measurable guidelines to determine when a case can be discontinued. This prevents abuse of authority and ensures consistency. Case prioritization: The Prosecutor's Office can prioritize prosecution of major or high-impact cases, while less serious cases can be resolved through other means. Utilization of technology: Utilizing technology for data analysis and information systems to support better decision-making regarding discontinuing prosecutions. This allows the Prosecutor's resources to be allocated more optimally to handle more complex and high-impact cases.

Strengthening the Prosecutor's Role as Dominus Litis, meaning that the Prosecutor is the primary controller in the prosecution process. Appropriate directions for discontinuing prosecutions will strengthen this role by granting prosecutors greater authority and clearer responsibilities. This aspect of strengthening the Dominus Litis role. Furthermore, regarding independence in decision-making: Prosecutors are given greater independence in deciding to discontinue prosecutions based on considerations of law, justice, and expediency. Clear accountability: While granted discretion, prosecutors remain accountable for every decision to discontinue prosecution, with a transparent oversight mechanism in place. Enhanced professionalism: Prosecutors' competence in analyzing cases, assessing evidence, and exercising discretion wisely is enhanced. By strengthening the role of prosecutors as dominus litis, the criminal justice system will be more dynamic and responsive to the needs of the community.

The direction of discontinuing prosecutions aims to prevent case backlogs by focusing on maximum diversion, especially in juvenile cases, to avoid formal judicial proceedings. Expanded mediation. Furthermore, encourage the use of criminal mediation for eligible adult

cases. **Non-Prosecution Policy:** Develop a clear policy regarding the types of cases that should not proceed to prosecution for public interest or humanitarian reasons. Through this effort, the Prosecutor's Office can significantly reduce the number of cases going to trial, allowing them to focus on cases that truly require the judicial process.

By implementing a direction of discontinuing prosecutions that focuses on restorative justice, efficiency, strengthening the role of prosecutors, and preventing case backlogs, the Prosecutor's Office will be more robust in carrying out its function as a guardian of the public interest and an enforcer of just law. Furthermore, to implement this, a model is needed that can implement sanctions that are more pro-humane and favor the good intentions of perpetrators and victims of criminal acts, so that discontinuing prosecutions focuses more on efforts that can lead to good intentions for perpetrators and victims to reconcile.

Termination of prosecution based on restorative justice is not only a case resolution mechanism, but also a strategic effort to strengthen the role of the Indonesian Attorney General's Office in the criminal justice system. The role of the Attorney General's Office is no longer merely as a "prosecutor" oriented towards revenge, but also as a "restorer" and "facilitator of justice" oriented towards resolving social problems. Traditionally, the Attorney General's Office's role is very strong in enforcing retributive criminal law (revenge or punishment). The main focus is to prove the defendant's guilt and demand an appropriate punishment. However, with the adoption of restorative justice, a paradigm shift occurs: From a Focus on the Perpetrator to the Victim and Community: The Attorney General's Office focuses not only on how to punish the perpetrator, but also how to restore the victim's losses and maintain harmony in society. From Formal Processes to Conflict Resolution: The Attorney General's role evolves from merely carrying out formal legal procedures to facilitating dialogue and mediation to resolve social conflicts arising from criminal acts. From Pure Prosecutor to Justice Facilitator: Prosecutors now act as mediators, negotiators, and overseers of peace agreements, not simply as "prosecutors."

Strengthening the Role of the Prosecutor's Office as a Driver of Modern Prosecution. The implementation of termination of prosecution based on restorative justice (through Indonesian Prosecutor's Regulation No. 15 of 2020 and its provisions in the Draft Criminal Procedure Code) significantly strengthens the role of the Prosecutor's Office in several aspects:

- a. **Increased Public Trust:** By facilitating problem-solving that focuses on peace and recovery, the Prosecutor's Office demonstrates its concern for victims and the community. This creates a more humane and responsive image of the Prosecutor's Office, which in turn can increase

public trust in law enforcement agencies. The public sees that the Prosecutor's Office is not only focused on punishment, but also on seeking the best solutions for all parties involved.

- b. **Efficiency and Effectiveness of Case Handling:** Restorative justice allows the Prosecutor's Office to shift its focus from minor cases that can be resolved out of court. This reduces the trial workload and allows Prosecutor's Office to focus more on serious criminal cases that truly require litigation. Thus, the Prosecutor's Office's resources (time, effort, and costs) can be allocated more efficiently and effectively.
- c. **Innovation and Adaptation to Legal Developments:** The Prosecutor's Office demonstrates its ability to innovate and adapt to global trends in more inclusive and participatory law enforcement. This demonstrates that the Prosecutor's Office is a dynamic and proactive institution in addressing the challenges of justice in the modern era.
- d. **Optimizing the Prosecutor's Role as Dominus Litis:** As Dominus Litis (case controller), the Prosecutor has discretionary authority to determine whether a case should be brought to court. Restorative justice provides a clearer legal basis and guidelines for Prosecutors to exercise this discretionary authority responsibly, taking into account the interests of all parties and the values of substantive justice.
- e. **Improving the Quality of Human Resources (HR) in the Prosecutor's Office:** The implementation of restorative justice requires Prosecutors to possess additional skills, such as mediation, negotiation, and an understanding of the psychology of victims/offenders. This encourages improving the quality of Prosecutor's HR through training and competency development beyond formal legal aspects, making Prosecutors more professional and multi-competent.

The termination of prosecution based on restorative justice is not merely a new legal procedure, but rather a fundamental transformation in the role and function of the Prosecutor's Office. This is an essential step forward in building a criminal justice system more oriented toward substantive justice, restoration, and community participation, which will ultimately strengthen the Prosecutor's Office's position as the guardian of justice in Indonesia.

CONCLUSION

The implementation of the termination of prosecution based on restorative justice is a progressive and strategic step in the Indonesian criminal justice system, particularly for the Prosecutor's Office. This initiative marks a fundamental shift from a retributive approach centered on revenge to a more humanistic and

holistic paradigm that prioritizes victim recovery, reconciliation of perpetrators with the community, and peaceful conflict resolution. Substantially, the implementation of restorative justice has successfully optimized the role of the Prosecutor's Office. The Prosecutor's Office is no longer viewed solely as a prosecutorial institution aimed at imprisoning perpetrators, but rather has transformed into a justice facilitator that ensures the fulfillment of victims' rights and promotes constructive accountability of perpetrators. This role significantly strengthens the Prosecutor's Office's image as a responsive, restoration-oriented law enforcement agency that cares about substantive justice in society. Furthermore, the implementation of this policy has had a positive impact on the efficiency and effectiveness of case handling, reducing the backlog of cases in the courts, and diverting resources to more serious crimes. Thus, the cessation of prosecutions based on restorative justice not only supports the creation of a more just and dignified criminal justice system, but also positions the Prosecutor's Office as a pioneer in legal innovation and progressive legal development in Indonesia. While still facing challenges such as changing mindsets and resource availability, the significant potential of this approach to increase public trust and achieve true justice makes the cessation of prosecutions based on restorative justice a crucial element in strengthening the role of the Prosecutor's Office in the future.

REFERENCES

- Attorney General's Office Will Revise the Technical Guidelines for Prosecuting Children", Source: <http://www.tribunnews.com/2012/01/20/kejaksaan-agung-akan-revisi-juknis-penuntutan-anak>, accessed on December 10, 2020
- Bagir Manan, Restorative Justice (An Introduction), in *Reflections on the Dynamics of Law: A Series of Thoughts in the Last Decade*, (State Printing Company of the Republic of Indonesia, Jakarta, 2008), p. 4.
- Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Jakarta: PT. Kencana Prenada Media Group, 2008), p. 98.
- Braithwaite, John, *Restorative justice and Responsive Regulation*, (New York: Oxford University Press, 2002), P. 69.
- D.S., Dewi and Fatahilah A. Syukur, *Penal Mediation: Implementation of Restorative Justice in Indonesian Children's Courts*, Indie-Publishing, Depok, 2011, p. 4
- Dikdik M. Arief Mansur & Elisatris Gultom, *The Urgency of Protecting Crime Victims Between Norms and Reality*, Jakarta: PT. Raja Grafindo Persada, 2006, p. 24.
- Mahendra, Adam Prima, "Penal Mediation at the Investigation Stage Based on Restorative Justice", *Jurnal Jurist-Diction*, 3(4), 2020, pp. 1153–1178.
- Nashriana. *Criminal Legal Protection for Children in Indonesia*. (Jakarta: Raja Grafindo Persada, 2011), p. 29.
- See Pangestika Rizki Utami, the diversion process is where all parties involved in a particular crime work together to address the problem and create an obligation to make things better by involving the victim, the child, the community, and related parties to find the best solution for the child without any element of retaliation. In *Jurnal Volksgeist*, Vol. 1 No. 1 June 2018, pp. 95-106.
- Siswanto Sunarso, *Victimology in the Criminal Justice System*, Jakarta: Sinar Grafika, 2012, p. 42.