

TERMINATION OF PROSECUTION BASED ON RESTORATIVE JUSTICE IN ASSAULT CASES: A CASE STUDY AT THE PALEMBANG DISTRICT ATTORNEY'S OFFICE

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Abstract

The prosecution authority, as part of the state's law enforcement system, plays a strategic role in ensuring legal certainty, justice, and public order while upholding moral values and human dignity. In this context, the application of restorative justice has emerged as an alternative approach to resolving criminal cases, including assault offenses. This study examines the implementation of termination of prosecution based on restorative justice in an assault case handled by the Palembang District Attorney's Office. The research adopts a normative juridical method, focusing on statutory regulations and prosecutorial guidelines governing restorative justice. The findings indicate that the termination of prosecution was influenced by several key factors: the suspect committed the offense for the first time, the offense carried a maximum statutory penalty of no more than five years' imprisonment, and the value of losses or evidence did not exceed IDR 2,500,000. Additionally, the case demonstrated successful reconciliation between the perpetrator and the victim, supported by community approval. The study concludes that the application of restorative justice in this case reflects prosecutorial discretion aimed at achieving substantive justice, social harmony, and efficiency in criminal law enforcement.

Keywords: termination of prosecution; restorative justice; assault cases; prosecutorial discretion

I. INTRODUCTION

One of the branches of state power that is tasked with carrying out authority in terms of prosecution must ensure legal certainty, legal order, honesty, and truth in accordance with the provisions of the law. In addition, this branch of power must also maintain religious standards, decency, morality, and pay attention to the balance between humanitarian values, law, and the sense of justice that lives in

society. The prosecutor, as the party responsible for carrying out the prosecution, has an obligation to carry out this function through the Republic of Indonesia Prosecutor's Office. Along with that, the Prosecutor's Office needs to adhere to religious values in carrying out the prosecution, carry out legal education in line with applicable social norms, and study the essence of law, justice, and humanity in order to achieve just and dignified legal goals.¹

¹ Wahidur Roychan, Susanto, and Taufikur Rohman, 'Reformulasi Pengaturan Restoratif Justice Dalam Sistem Peradilan Pidana Di Indonesia', *Dekrit:*

Jurnal Magister Ilmu Hukum, 13.2 (2023), pp. 45–67, doi:10.55499/dekrit.v13n2.210.

Prosecutors have the authority to stop prosecution in the interests of the law with a restorative justice approach, which aims to increase the effectiveness of the law enforcement process in accordance with laws and regulations, while paying attention to the principles of simplicity, speed, and low cost. This is in accordance with the provisions of Article 109 Paragraph (2) of the Criminal Procedure Code (KUHP), which stipulates that investigators can stop the investigation if there is insufficient evidence or if the action taken does not constitute a crime, and if the investigation is stopped by law. Furthermore, in Law Number 1 of 2023 concerning the Criminal Code (KUHP), Article 132 Paragraph (1) letter g stipulates that prosecution can be stopped if there is a settlement outside the judicial process, as regulated by applicable regulations.²

In Article 1 number 1 of the Republic of Indonesia Prosecutor's Office Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the definition of "Restorative Justice" is regulated. Restorative justice is explained as a resolution of criminal cases involving the perpetrator, victim, the perpetrator's and/or victim's family, and other

related parties, to jointly seek a fair solution with the aim of restoring the original state, not revenge. Therefore, in order to achieve optimal implementation of this policy, effective implementation is required from the prosecutor's office.³

The current phenomenon shows that the law should be able to apply consistently in every period, but in reality the law often lags behind in responding to the legal needs of society in every era. Restorative Justice (RJ) in Indonesia is a significant development in the criminal justice system, which focuses more on restoring losses for victims and providing opportunities for perpetrators to take responsibility and correct their mistakes. With the existence of supporting regulations, such as the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, RJ is an important alternative to improve the criminal justice system and create a more effective, efficient, and just legal process.⁴

Initially, the criminal justice system in Indonesia, like many other countries, focused on punishment as the main way to resolve criminal cases. This approach often ignored the aspect of recovery for victims and social reintegration for perpetrators. Along with the growing awareness of the importance of

² Andri Kurniawan, 'Politik Hukum Pembentukan Lembaga-Lembaga Penyidik Tindak Pidana Korupsi Dalam Sistem Peradilan Pidana Di Indonesia', 2015 <<https://dspace.uui.ac.id/handle/123456789/8587>>.

³ Erasmus A.T. Napitupulu dkk, *Peluang Dan Tantangan Penerapan Restorative Justice Dalam*

Sistem Peradilan Pidana Di Indonesia, Al-Adl : Jurnal Hukum, 2022, x.

⁴ Debi Triyani Murdiyambroto and Daddy Fahmanadie, 'Aspek Kepastian Hukum Dalam Keadilan Restoratif Pada Tahap Penyidikan Tindak Pidana Umum Oleh Kepolisian Republik Indonesia', *Banua Law Review*, 3.2 (2021), pp. 98–115 <<http://balrev.ulm.ac.id/index.php/balrev>>.

human rights, social justice, and more constructive crime prevention, there is a need to find alternatives to resolving criminal cases that are not only oriented towards punishment. Society also increasingly wants a system that is more oriented towards recovery, both for victims and perpetrators, and pays more attention to social justice. Restorative Justice emerged as an answer to this need, emphasizing the restoration of damaged social relationships and the social impact of the crime, rather than simply imposing punishment.⁵

In Indonesia, the implementation of Restorative Justice (RJ) has begun to be carried out formally through various regulations set by the judicial and prosecutorial institutions. One important regulation in this regard is the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation provides a legal basis for prosecutors to stop prosecution of criminal cases that meet certain requirements, such as the willingness of the victim and perpetrator to reconcile, and the absence of state interests being disturbed. In addition, Restorative Justice is also considered as an effort to reduce the number of arrests, because most cases that can be resolved with Restorative Justice do not

require detention or heavy sentences, but rather simply peace between the victim and the perpetrator.⁶

The rapid dynamics of society often lag behind the development of written law. Therefore, a legal breakthrough is needed so that the law can follow the development and needs of society. Currently, the work of the Prosecutor's Office in handling legal cases is no longer limited to a formal legal approach alone. The Prosecutor's Office must view criminal cases comprehensively so as not to cause shock in society. One of the efforts made by the Prosecutor's Office to present justice is through Restorative Justice.

Restorative Justice is a process of restoring relationships that prioritizes the restoration of mistakes made by the perpetrator against the victim, and involves the perpetrator's and victim's families in the out-of-court settlement process. The goal is to effectively resolve legal problems resulting from unlawful acts by creating an agreement between the parties involved. In the criminal justice system in Indonesia, the trials carried out are more directed at compensation, and currently it is hoped that there will be an application of restorative justice. Restorative justice allows all parties involved in a crime to jointly resolve the problems that arise and anticipate the consequences that will arise in

⁵ Gregorius Widiartana, 'Paradigma Keadilan Restoratif Dalam Penanggulangan Kejahatan Dengan Menggunakan Hukum Pidana', *Justitia et Pax*, 33.1 (2017), pp. 1–23, doi:10.24002/jep.v33i1.1418.

⁶ Melati Kusuma Asih, 'Pemberian Restitusi Kepada Anak Korban Kekerasan Seksual (Ditinjau Dari Prinsip Restorative Justice Dan Prinsip Maqasid Syariah Hifdzu Nafs)'.

the future. Restorative Justice is a model for resolving criminal cases that prioritizes rehabilitation for victims, perpetrators, and the community. The main principle of this judicial reform is the active participation of victims, perpetrators, and the community in resolving cases, so that there is a guarantee that perpetrators of crimes can reintegrate harmoniously into society.⁷

Restorative Justice emerged as a response to dissatisfaction with the conventional criminal justice system, which tends to only involve the state and perpetrators, and does not involve victims or local communities in resolving conflicts. This is different from the Restorative Justice system, where victims and communities are involved in resolving the problem. The emergence of Restorative Justice was driven by the failure of the conventional criminal justice system to provide space for the interests of potential victims and defendants, which often causes dissatisfaction and disappointment. In the application of Restorative Justice, Fadil stated that various parties, including community leaders, traditional leaders, and law enforcement officers such as investigators and courts, are involved. By involving the community, it is hoped that the application of Restorative Justice can be accepted by the community. Thus, the Prosecutor's Office can

still receive input and suggestions for improvement. The law enforcement process also seeks to realize substantive justice, because true justice is that which can provide benefits to the community.⁸

Data from the Palembang District Attorney's Office shows that in the last three years there has been significant development related to the implementation of Restorative Justice. In 2022, there were 11 cases resolved using the Restorative Justice approach. In 2023, 3 cases were resolved involving the perpetrator, victim, and other parties in mediation, while in 2024 (until September), there were 9 cases whose prosecution was stopped through restorative justice.

For example, on November 25, 2023, suspects Novita Sari Binti Ruslan and Lupia Hariani Binti Harmoni were involved in a case of abuse that occurred on Jalan Pasar Perum Sako, Palembang. This case began with an argument between the two suspects which ended in a physical fight. The results of the post-mortem showed that both suspects suffered minor abrasions and trauma. Although both reported each other, the prosecution process for this case can be resolved through Restorative Justice by involving the victim, the suspect, and the

⁷ Widiartana, 'Paradigma Keadilan Restoratif Dalam Penanggulangan Kejahatan Dengan Menggunakan Hukum Pidana'.

⁸ Wahyu Adhi Kusuma, Khalisah Hayatuddin, and Abdul Latif Mahfuz, 'Perlindungan Hukum

Terhadap Anak Pelaku Kejahatan Ketika Diadili Sudah Berumur Lebih Dari 18 Tahun Berdasarkan Undang-Undang Sistem Peradilan Pidana Anak', *Jurnal Tana Mana*, 3.2 (2023), pp. 85-98, doi:10.33648/jtm.v3i2.241.

surrounding community to carry out mediation and peace.⁹

In this case, judges play an important role in resolving criminal cases. The existing criminal justice system is often unable to tackle organized crime or detect crime effectively. Police practices face legal and non-legal obstacles in investigations, especially in identifying key witnesses. In the trial process, the judge's conviction is the main factor that determines the final decision, as stipulated in Article 183 of the Criminal Procedure Code, which states that if the judge is not convinced of the guilt accused of the defendant, then the defendant must be acquitted or released.¹⁰

Overall, Restorative Justice provides an important alternative in the criminal justice system, which does not only focus on punishment, but also on the recovery and reintegration of the perpetrator into society, as well as providing justice for the victim. This law enforcement process, with the active participation of all parties involved, can create more substantial justice and be accepted by society.¹¹

II. RESEARCH METHOD

This study employs a normative juridical research method with a qualitative analytical approach. Normative legal research focuses on examining law as a system of norms by analyzing legal principles, doctrines, and statutory regulations relevant to the research problem. The study relies exclusively on secondary legal materials, which include primary legal materials such as laws and regulations, prosecutorial guidelines, and court decisions, as well as secondary legal materials consisting of legal textbooks, peer-reviewed journal articles, legal commentaries, and scholarly opinions. These materials are systematically collected through library research and analyzed using legal interpretation and doctrinal analysis to assess the implementation of termination of prosecution based on restorative justice. The qualitative approach is applied to provide an in-depth and coherent legal analysis of the normative framework and its application in practice..¹²

II. RESEARCH RESULTS AND DISCUSSION

Restorative Justice (RJ) is a legal approach that emphasizes more on restoring relationships

⁹ Berlian Simarmata, 'Menanti Pelaksanaan Penahanan Dan Pidana Penjara Yang Lebih Humanis Di Indonesia', *Jurnal Konstitusi*, 7.3 (2016), p. 069, doi:10.31078/jk733.

¹⁰ Agum Marenra and others, 'Penegakan Hukum Oleh Penyidik Kepolisian Terhadap Pelaku Tindak Pidana Pembunuhan Berencana (Studi Putusan Nomor 174/Pid.B/2021/PN Plg)', *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana*, 5.1 (2023), p. 1305, doi:10.46930/jurnalrectum.v5i1.3036.

¹¹ Murdiyambroto and Fahmanadie, 'Aspek Kepastian Hukum Dalam Keadilan Restoratif Pada Tahap Penyidikan Tindak Pidana Umum Oleh Kepolisian Republik Indonesia'.

¹² Yudin Citriadin, *Penelitian Kualitatif: Metode Penelitian Kualitatif*, Sanabil, 2020, v <<http://belajarpsikologi.com/metode-penelitian-kualitatif/>>.

between perpetrators, victims, and society, rather than simply imposing punishment. In the context of the assault case that occurred on November 25, 2023, the implementation of Restorative Justice at the Palembang District Attorney's Office in 2023-2024 provides a clear picture of how RJ is implemented in criminal cases.¹³

In this case, there is a strong legal basis to terminate the prosecution based on the principle of restorative justice, even though the case involved is assault. The decision of the Palembang District Attorney's Office to resolve this case using the Restorative Justice approach (mediation) reflects the implementation of applicable regulations, taking into account the provisions in the Criminal Code (KUHP) which regulates the crime of assault. However, termination of prosecution must still pay attention to the principle of justice, especially regarding the protection of the victim's rights and the public interest. One key factor in this case is the victim's willingness to resolve the case peacefully. For example, in this case, the victim and the perpetrator agreed to resolve the problem without continuing the legal process.¹⁴

The legal basis for the implementation of Restorative Justice can be found in the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, which regulates the implementation of Restorative Justice in handling criminal cases at the prosecutor's office level. In addition, the Criminal Code (KUHP) provides a legal basis for criminal acts of assault and their prosecution mechanisms. However, the decision to terminate prosecution through Restorative Justice aims to prioritize peaceful resolution, taking into account common interests. Furthermore, Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) regulates the legal procedures that must be followed in criminal cases, including granting the prosecutor the authority to terminate prosecution.¹⁵

The application of Restorative Justice in this case was seen after the incident of abuse between the suspects. NS and LH on November 25, 2023, which started from a verbal argument that escalated into a physical fight. Although both parties reported each other, the prosecutor's office considered terminating the prosecution with a Restorative Justice approach. This step was taken based on the willingness of the victim and perpetrator to

¹³ Niko Muhammad Insani, 'Paradigma Restorative Justice Dalam Penegakan Hukum Pidana (Studi Kasus Pencurian 1 Unit Handphone Di Provinsi Nusa Tenggara Barat Tahun 2023)', 4.6 (2024), pp. 2403–11.

¹⁴ Penias Isba, Marius Suprianto Sakmaf, and Jumiran, 'Evaluasi Penerapan Restorative Justice Dalam Penyelesaian Konflik Pidana: Perspektif Korban Dan Pelaku Evaluation of Restorative Justice

Implementation in Criminal Conflict Resolution: Victim and Offender Perspectives', *Delictum: Jurnal Hukum Pidana Dan Hukum Pidana ISLAM*, 4.2 (2024).

¹⁵ Lasmin Alfies Sihombing, 'Restorative Justice, Kejahatan, Hukuman, Dan Peradilan Pidana: Sebuah Analisis Kesejarahan, Peluang Dan Tantangan', *Unes Law Review*, 6.3 (2024), pp. 8902–9 <<https://doi.org/10.31933/unesrev.v6i3.1777>>.

reconcile, as well as a mutual agreement involving independent mediators and facilitators to assist the mediation process.¹⁶

In relation to the application of the theory of restorative justice, which emphasizes the principle of justice based on peace, the case resolution process does not involve the principle of revenge or punishment of the perpetrator. In this context, there are several factors that influence the termination of prosecution based on restorative justice.¹⁷

First, the Victim's Availability and Willingness to Forgive. One of the main factors in the implementation of restorative justice is the victim's readiness to forgive the perpetrator. Forgiving does not only mean freeing the perpetrator from criminal responsibility, but also providing an opportunity for the perpetrator to change and improve themselves. If the victim is willing to forgive and states that they no longer feel emotionally or physically affected by the perpetrator's actions, then this can be a factor that supports the termination of prosecution based on the principle of restorative justice.

Second, the Role of Mediation in Conflict Resolution. Mediation is an important instrument in the restorative justice process, where the prosecutor's office acts as a mediator

between the victim and the perpetrator. In mediation, it is very important to build open communication and mutual understanding between the two parties. If the perpetrator admits his mistake and is willing to communicate directly with the victim, this will open up opportunities to reach an agreement on the corrective steps that need to be taken.

Third, Repair or Reparation Made by the Perpetrator. One of the key principles in restorative justice is the existence of repair or reparation efforts made by the perpetrator towards the victim. Perpetrators who admit their mistakes and try to compensate or make amends to the victim can support the termination of prosecution. Reparation can be in the form of material, such as payment of medical compensation or replacement of damaged goods, or in the form of non-material steps, such as a sincere apology and a commitment not to repeat the same mistake in the future. If the perpetrator shows sincere remorse and tries to repair the harm caused by his actions, the prosecutor's office can consider terminating the prosecution, because this reflects that the perpetrator has taken moral responsibility and tried to correct his mistakes.

From the perspective of utilitarianism theory, reparation made by the perpetrator,

¹⁶ Puguh Aji Hari Setiawan Hamamudin, Dewi Iryani, 'Restorative Justice Pada Tindak Pidana Penganiayaan Berdasarkan Peraturan Perundang-Undangan Untuk Mewujudkan Kepastian Hukum Hamamudin , Dewi Iryani , Puguh Aji Hari Setiawan Universitas Bung Karno , Indonesia PENDAHULUAN Hukum Pidana Nasional Disertai', *Mutiara Journal Law*, 2.12 (2024), pp. 1–9.

¹⁷ Irfan Ramli, Wahab Aznul Hidayat, and Muharuddin Muharuddin, 'Penghentian Perkara Berdasarkan Restorative Justice Dalam Perkara Tindak Pidana Pencurian Di Kota Sorong', *Journal of Law Justice (JLJ)*, 1.2 December (2023), pp. 89–108, doi:10.33506/jlj.v1i2.2868.

whether in material form (for example, compensation) or non-material (such as a sincere apology), serves to restore the balance disturbed by the crime. Reparation made by the perpetrator is part of an effort to restore the losses suffered by the victim, which ultimately provides emotional and material benefits to the victim. In addition, if the perpetrator attempts to repair the losses caused, this shows that the perpetrator is responsible for his actions and is trying to improve the situation. This action provides benefits for the perpetrator who has the potential to return to society with a more positive status, as well as for society which gains more responsible individuals.¹⁸

In the context of the Legal Utility Theory, there is a consideration of “the extent to which the punishment is beneficial.” If the abuse is a minor crime and the victim has not suffered significant harm (either physical or emotional), then it may be more beneficial to stop the lengthy and arduous criminal justice process. In this case, the decision to stop the prosecution may benefit both parties by allowing them to resolve the dispute more quickly and efficiently, and avoiding wasting legal resources that could be used to deal with more serious cases.¹⁹

Fifth, Perpetrators' Social and Economic Factors. The perpetrators' social and

economic backgrounds can be factors that support the implementation of restorative justice. For example, if the perpetrator comes from a disadvantaged background or is facing psychological or emotional difficulties, this can be a consideration in terminating the prosecution. The restorative justice system does not only consider the legal aspects, but also the social conditions of the perpetrators that can influence their behavior.

Sixth, Follow-up and Commitment of the Offender to Change. One aspect that is very much considered in the restorative justice approach is the commitment of the offender not to repeat his actions in the future. If the offender shows a cooperative attitude and is willing to follow a rehabilitation program or other corrective steps, then the termination of the prosecution can be considered.

Based on the Theory of Benefit, in order for termination of prosecution through restorative justice to be implemented effectively, a supportive policy is needed from the prosecutor's office. Policies that support termination of prosecution based on restorative justice can be seen as a step towards achieving greater social benefits, because the legal process will be more efficient and more focused on social recovery rather than just punishment. This approach can reduce the

¹⁸ Endang Pratiwi, Theo Negoro, and Hassanain Haykal, ‘Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?’, *Jurnal Konstitusi*, 19.2 (2022), p. 268, doi:10.31078/jk1922.

¹⁹ Hasaziduhu Moho, ‘Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan,

Dan Hasaziduhu Moho. “Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, Dan Kemanfaatan.” *Jurnal Warta* 13, No. 1 (2019): 138–49. Kemanfaatan’, *Jurnal Warta*, 13.1 (2019), pp. 138–49.

burden on the already crowded criminal justice system and allow the legal system to focus on handling more serious or complex cases.

In the context of restorative justice, this theory of legal benefit can be understood in an effort to restore social relations and reconcile both parties, namely the perpetrator and the victim. Instead of imprisoning the perpetrator, which can actually increase social, economic, and psychological suffering, restorative justice seeks to resolve problems more productively and benefit all parties, especially the victim, the perpetrator, and the community.²⁰

In the context of restorative justice, mediation plays an important role as a conflict resolution tool. Through mediation, perpetrators and victims can meet in a dialogue guided by a neutral party (facilitator), with the aim of understanding each other's perspectives and finding a peaceful solution that benefits both parties. This results in a more productive and peaceful mutual agreement, rather than just prioritizing punishment. In cases of abuse, termination of prosecution through restorative justice allows perpetrators to admit their mistakes, apologize, and commit not to repeat them. Thus, termination of prosecution is not a waiver of the law, but rather a step to focus on

social improvement and moral recovery of the perpetrator, while providing a sense of justice for the victim.

The role of the community is also very important in the restorative justice process, as reflected in the participation of the community and witnesses in mediation. The community plays a role in resolving this problem, which in turn strengthens social awareness and corrects unacceptable behaviour.

III. KESIMPULAN

This study concludes that the termination of prosecution based on a restorative justice approach in assault cases at the Palembang District Attorney's Office is influenced by a combination of legal, criminological, and proportionality-based considerations. First, the status of the suspect as a first-time offender plays a decisive role in the application of restorative justice. This factor reflects the absence of a pattern of criminal behavior and indicates that the offender does not pose a continuing threat to public order. Consequently, restorative justice becomes a rational alternative that emphasizes behavioral correction, accountability, and social reintegration rather than retributive punishment.

Second, the statutory limitation of the offense—namely criminal acts punishable by imprisonment of no more than five years—

²⁰ Muhamad Khalil and others, 'Efektivitas Dan Tantangan Pelaksanaan Restoratif Justice Dalam

Komponen Sistem Peradilan Pidana Indonesia', *Jurnal Hukum*, 4.1 (2024), pp. 1–21.

constitutes a key normative threshold for the termination of prosecution. This limitation demonstrates the proportional nature of restorative justice, ensuring that its application remains confined to less serious offenses where community-based resolution and reconciliation can effectively replace formal penal proceedings without undermining legal certainty or public trust in law enforcement institutions.

Third, the relatively minor value of the losses incurred, not exceeding IDR 2,500,000, further strengthens the justification for discontinuing prosecution. In cases involving limited material harm, the restorative justice mechanism allows for a more efficient, humane, and victim-centered resolution, prioritizing restitution, dialogue, and the restoration of social harmony over procedural formalism and custodial sanctions.

Overall, these factors collectively affirm that restorative justice serves as a substantive and proportional legal instrument within Indonesia's criminal justice system. Rather than merely functioning as an alternative procedural mechanism, restorative justice embodies a paradigm shift toward reconciliation, victim recovery, and the reintegration of offenders into society. The findings of this study underscore the importance of consistent guidelines and careful discretion by prosecutors to ensure that the termination of prosecution under restorative justice principles upholds both justice and societal order.

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