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## Theoretical and practical problems in the implementation of restorative justice

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### Abstract

The purpose of this thesis research is to explain the theoretical and practical obstacles in the implementation of restorative justice policies of the attorney general's office in the jurisdiction of Sabang and the Aceh Besar District Attorney's Office. The method used in this research is the juridical-empirical research method, namely research by conducting a comprehensive study by conducting direct observations and interviews at the research location. To complete this research, a literature review was also carried out. Theoretical obstacles in the implementation of restorative justice. First, the obstacle in legal substance is that there is no law-level regulation that regulates restorative justice policies. Second, the obstacles in the legal structure. Third, the obstacles in the legal culture which include in this case the obstacles from the legal culture side are the perpetrators refusing to admit guilt, the victims being reluctant to participate, not reaching an agreement and binding decisions. Furthermore, the obstacles in implementing restorative justice are the first, the distortion of authority between institutions in the practice of implementing restorative justice. Second, there is no special certification for prosecutors as facilitators/mediators in restorative justice efforts. third, the perpetrator of the crime who does not want to admit his guilt and fourth, the victim asks for compensation that is not fair.

**Keywords:** restorative justice, theoretical and practical problems, policies

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### Introduction

The Prosecutor's Office of the Republic of Indonesia is a government institution that carries out state power in the field of prosecution as well as other authorities and duties based on the law, acts as a public prosecutor, carries out court decisions that have permanent legal force. The Prosecutor's Office is also an authorized institution in law enforcement and justice, the duties and functions of the Prosecutor's Office are getting wider starting from investigations for special crimes, carrying out judges' decisions and criminal cases, supporting order and security, as well as supervising the flow of beliefs that can endanger the state and society.

The Prosecutor's Office as one of the law enforcement agencies is required to play a greater role in law enforcement that is free of corruption, collusion and nepotism (KKN), upholding the rule of law, protecting public interests, and upholding human rights. Referring to Article 2 Paragraph (2) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, a government institution that exercises state power in the field of prosecution must carry out its functions, duties and authorities independently regardless of the influence of government power and the influence of other powers. The Prosecutor's Office has a strategic function in criminal, civil and state administration cases, as well as public order. In the context of public order, one of the functions of the Prosecutor's Office is to increase public legal awareness.

Based on Article 1 point 1 of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the regulation defines that restorative justice is the settlement of criminal cases involving the perpetrator, victim, family, perpetrator, victim, and other related parties to jointly seek a just settlement by emphasizing restoration to its original state, and not retaliation. Imprisonment is currently experiencing a "crisis period", because it is one of the less popular types of crime. Many sharp criticisms are directed at this type of criminal deprivation of liberty, both in terms of its effectiveness and the consequences that accompany or relate to the deprivation of one's independence (Puteri Hikmawati, 2016) <sup>[37]</sup>.

Until now, the effectiveness of imprisonment has been doubted. Based on the results of Djisman Samosir's research at the Cipinang Penitentiary which has found the fact that 85 people out of 100 inmates studied stated that imprisonment is not something scary, because before committing a crime first in this case the perpetrator knows that his actions will be sentenced to imprisonment. This condition also applies to the findings in 2012 regarding the general conditions of life in prisons for 100 inmates where there are discriminatory policies and over capacity (Victory Prawira Yan Lapa, 2014) <sup>[43]</sup>.

Settlement of cases using litigation in practice does not always go according to what is expected and aspired by the community. Because the settlement of cases using litigation in the current traditional criminal justice system

actually creates new problems, for example, the pattern of punishment that is still retaliatory, creates a buildup of cases, does not show the rights of victims, is not in accordance with the principles of simple justice, the process is long, complicated, and expensive and does not reflect justice for society (Ahmad Faizar Azhar, 2016) <sup>[28]</sup>.

Justice in the international criminal justice system is understood as the proof of the indictment and conviction of the perpetrator by the State as the holder of sovereignty in imposing a crime. Such authority or power ultimately results in the unrepresentation of the interests of the victim and the community in a system that is related to one another.

Nowadays, many crimes occur among the Indonesian people which lead to court proceedings, where people tend to use the courts as an effort to resolve a case which they think conceptually and theoretically will create justice, but in reality it is not easy because of its tendency to win lose solution.

That the settlement of cases through the judicial system that leads to court decisions is a law enforcement towards a slow enforcement path. This is because law enforcement is taken through a long distance, through various levels ranging from the Police, the Attorney General's Office, the High Court and even to the Supreme Court level which in the end has an impact on the accumulation of cases that are not small in number in court (Satjipto Raharjo, 2003) <sup>[25]</sup>.

Restorative justice or in other terms often referred to as restoration justice is a new approach in efforts to resolve criminal cases. The approach or concept of restorative justice or recovery justice focuses more on the participation or direct participation of perpetrators, victims and the community in the process of resolving criminal cases.

Restorative justice is a philosophy, process, idea, theory and intervention, which emphasizes repairing harm caused or expressed by criminal behavior. This process is in stark contrast to the standard way of dealing with crimes that are seen as offenses committed against the state. Restorative justice finds its footing in the basic philosophy of the fourth precepts of Pancasila.

The main problem in implementing or implementing this restorative approach or concept is because the mechanism offered by the restorative justice concept prioritizes the concepts of peace, mediation, reconciliation in which perpetrators, victims, law enforcement officers and the wider community participate directly in solving criminal cases.

As an example of the application of restorative justice, the following case is explained at the Sabang District Attorney with the chronology of the defendant Hendra Gunawan Bin Ridwan's case on Monday, March 23, 2020 at approximately 09:00 WIB at home which has the address at Jurong Sirui Gampong Batee Shok, Kec. Sukaraya Sabang, at least in another place which is still included in the jurisdiction of the Sabang District Court, is suspected of having committed a crime as referred to in Article 378 of the Criminal Code, namely "with the intention of blaming oneself or another person against the law, by using a false name or false dignity, by deceit or a series of lies, to move others to hand over something to him, or to give debts or write off debts. As a result of the perpetrator's actions, the victim Maulina Sari Binti Alm Suryadi suffered a loss of approximately Rp. 8,000,000, - (eight million rupiah).

In its development the case went through mediation so that the prosecution was discontinued. As for acting as a facilitator in the mediation, the Public Prosecutor in this case is Tri Sutrisno and Fickry Abrar Pratama. Based on the Order of the Head of the Sabang District Attorney Number PRINT-218/L.1.16/Eoh.2/09/2020 dated September 4, 2020, they have made peace based on restorative justice in the case mentioned above, to explain more clearly about the parties involved in this case. Peace efforts based on restorative justice at the Sabang District Attorney based on data from the Sabang District Attorney's Minutes of Peace Agreement dated September 8, 2020, were Hendra Gunawan (perpetrator), Maulina Sari (victim), Tri Sutrisno (JPU/Facilitator), Ficky Abrar (JPU/Facilitator), Irawan (Legal Counsel for the Defendant), T. Rizzuwan (witness), Wardani (witness) and Ridwan (witness). Known so far In this case, there are at least three legal cases that were resolved with a restorative justice policy in the Aceh High Court area. Based on the minutes of the peace agreement, it is known that there are at least five parties involved in carrying out a restorative justice process at the Sabang District Attorney, namely the perpetrator, victim, Public Prosecutor, Legal Counsel and Witness with details of their identities as listed above. The Prosecutor's Office as a government institution that carries out state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on the law by observing religious norms, decency, and morality, as well as exploring human values, law and justice that live in society. In this case, the Attorney General as the highest leader in the Indonesian Attorney General's Office has the authority to streamline the law enforcement process, pay attention to fast, simple and low-cost trials, as well as determine and formulate case handling policies for successful prosecutions that are carried out independently for justice based on law and conscience, including carrying out prosecutions. by using a restorative justice approach which is carried out in accordance with statutory provisions. Apong Herina argues that restorative justice is a process in which all parties related to a particular crime jointly solve problems, and how to deal with future consequences or future implications. The current criminal system seems to no longer create a deterrent effect for criminals, over capacity in prisons and detention centers has caused many criminal acts to have occurred in these institutions. Weak and unbalanced supervision, as well as the increasing number of inmates. In its development, prisons seem to no longer be the right place to re-socialize convicts, but prisons have shifted their functions to become the "Academy of crime" which makes the expertise of the inmates in the field of crime increase. Law is not just to create order, more than that the law must provide a sense of justice for the community. The law will not automatically give birth to justice, but to achieve this, legal justice must be upheld.

Restorative justice has become a very popular discourse in the midst of the saturation of society, which sees formal law as being dominated by the positivist school of thought and cannot optimally accommodate the community's sense of justice because it prioritizes legal certainty (*rechtssicherheit*) so that it creates a legal benefit.

The benefits of law in restorative justice are needed because everyone expects benefits in implementing the law. Do not let the implementation and enforcement of the law just be something in vain. Because when we talk about legal issues, we only tend to look at the laws and regulations, which are sometimes imperfect and not aspirational with people's lives, in this case a good law must at least fulfill three very principal things, namely justice, certainty and expediency. Benefit is the most important thing in a legal purpose. Related to the usefulness of this law according to the utilitarian theory is the guarantee of happiness in the maximum number. In essence, according to this theory, the law aims to provide benefits in generating great pleasure or happiness for the community. The purpose of the law can be seen in its function as a function of protecting human interests, in this case the law has a target to be achieved. Based on this, if you look at the definition of benefits in the KBBI, benefits in terminology can be interpreted as use or benefit. Restorative justice departs from the ontology question, namely whether by giving sanctions to the perpetrators (convicted), the interests and losses of the victims have been achieved also related to the benefits caused to the victims, even though in reality it cannot be denied that the interests of the victims cannot be fulfilled solely by how the perpetrator is punished. Therefore, the termination of prosecution based on restorative justice should provide broad benefits to the community, especially within the jurisdiction of the Aceh High Prosecutor's Office.

Departing from this background, in this case it is necessary to raise the issue into a thesis research with the title "Termination of Prosecution Based on Useful Restorative Justice (A Research at the Sabang State Prosecutor's Office and Aceh Besar District Attorney's Office)" as a condition for obtaining a Master's degree. Law at the Master of Law Study Program at Syiah Kuala University.

### **Materials and Methods**

The method used in this research is the juridical-empirical research method, namely research by conducting a comprehensive study by conducting direct observations and interviews at the research location.

### **Results and Discussion**

#### **Theoretical and Practical Barriers to the Implementation of Restorative Justice Prosecutor's Policy in the Sabang Legal Area and the Aceh Besar District Attorney's Office.**

##### **1. Theoretical Barriers**

Efforts to settle criminal cases out of court by the Prosecutor through a restorative justice approach are essentially a mechanism or legal system that has many advantages so that it is appropriate to apply it in the criminal justice system in Indonesia. As a system, the effectiveness of the settlement of criminal cases outside the court through a restorative justice approach is strongly influenced by the elements referred to in both theoretical and practical aspects.

The implementation of a case settlement system out of court through a restorative justice approach will be influenced by several factors, as well as other factors affecting law enforcement. In this case Soejono Soekanto explained that there are five factors that influence factors in law enforcement, namely as follows:

1. The legal factor itself, namely the legislation
2. The law enforcement factors, namely the parties that make up the law and those who apply the law.
3. Factors of facilities or facilities, namely equipment or facilities and infrastructure needed to support the law.
4. Community factors, namely the community environment where the law applies.
5. Cultural factors, namely the work, creativity and taste based on human initiative in social life.

These five factors are interrelated because they are the essence of a law enforcement system and are also a measure of the effectiveness of the law enforcement system. A simple opinion was put forward by Lawrence M. Friedman who only mentioned three factors. However, of the three factors proposed by Friedman, it actually includes all the factors proposed by Soejono Soekanto. According to Friedman, the legal system consists of three elements that influence each other, namely as follows:

1. Legal substance, which concerns aspects of legal arrangements or statutory regulations.
2. The legal structure, namely law enforcement agencies along with law enforcement officials in the law enforcement agencies.
3. Legal culture, namely the atmosphere of social thought and social forces and social forces that determine how the law is used, avoided or misused or in other words is the behavior of the community.

Referring to Friedman's description, the discussion regarding the obstacles to the Prosecutor's Office in implementing a case settlement system outside the court through a restorative justice approach based on the theoretical elements that include it will be explained as follows:

##### **a. Barriers in legal substance**

Legal substance is an aspect related to legal arrangements or statutory regulations. When it comes to the application of the principles of restorative justice by the prosecutor, the biggest obstacle for the prosecutor is that

until now there is no regulation that gives the prosecutor the authority to settle criminal cases out of court, especially for minor or minor crimes. Even though the number of small cases that reach the court has become the public spotlight.

The only provisions that fully regulate the application of restorative justice by prosecutors and other law enforcers that are currently in force are the provisions in Law Number 11 of 2012 which regulates the settlement of juvenile criminal cases through a diversion mechanism, namely the transfer of settlement from the judicial process. criminal proceedings to proceedings outside the Criminal Court. Such efforts should be pursued at every stage of the trial.

In the matter mentioned above, there is a provision in Article 8 paragraph (4) of Law Number 16 of 2004 which encourages prosecutors to always act according to the law by heeding religious norms, decency, morality, and is obliged to explore and uphold human values. who lives in society, and always maintains the honor and dignity of his profession, in carrying out his duties and authorities. However, because there are no rules regarding the prosecutor's authority to settle cases out of court, this provision cannot be applied as the basis for the implementation of restorative justice by the prosecutor. Because the main means for prosecutors in making legal discoveries is to use the principle of opportunity. However, since 1961 until now, the principle of opportunity has only been under the jurisdiction of the Attorney General as stipulated in Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office.

With the granting of opportunity authority only to the Attorney General, if a prosecutor wishes to rule out a prosecution or criminal case, the person concerned must submit an application to the Attorney General in stages in accordance with the applicable provisions in the prosecutor's bureaucracy. The application must go through the local Head of the High Prosecutor's Office, and after that it will only be submitted to the Attorney General.

Such a mechanism, of course, greatly hinders the realization of efficiency and effectiveness in law enforcement. Because this requires a fairly long procedure and of course it takes quite a long time. In addition, the Attorney General will find it difficult because he has to handle requests for waiver of cases from all prosecutors in Indonesia. Moreover, the elucidation of Article 35 letter c of Law Number 16 of 2004 stipulates that the authority of the Attorney General to rule out prosecutions based on the principle of opportunity must take into account the suggestions and opinions of state power agencies that are related to the matter.

Another important obstacle from the aspect of legal substance is that the opportunity authority possessed by the Attorney General as regulated in Article 35 letter c of Law Number 16 Year 2004 has narrowed the notion of public interest. In the elucidation of Article 35 letter c of Law Number 16 of 2004 concerning the Public Prosecution, what is meant by public interest is the interest of the nation and state and/or the interests of the wider community. In this case, as previously written, in various countries the public interest is interpreted broadly to include punishment that is deemed less effective, for example in the case of theft of flip-flops, punishment is considered not a solution and is considered unfair and there are other sanctions that are considered effective, such as compensation, administrative sanctions and so on.

These various obstacles cause efforts to resolve criminal cases outside the court using a restorative justice approach, especially for small cases, cannot be carried out by prosecutors. Therefore, it is necessary to update the rules of law and legislation so that prosecutors can apply crimes outside the court. In this reform, the principle of opportunity needs to be given to every prosecutor who handles cases and is not only the authority of the Attorney General. In addition, the notion of "in the public interest" must also be expanded and in setting aside cases there is no need to ask for consideration from other institutions.

## **b. Barriers to Legal Structure**

The legal structure is law enforcement and its institutions that drive the legal system as regulated in the substance of the law. The structure in this case is the Prosecutor's Office and its apparatus, especially prosecutors. The prosecutor's organization structure is still thick with the unitary command structure, so that the leadership's dominance is very strong in making a prosecution (discretion) policy.

The emergence of "unity of command" in the organizational structure of the prosecutor's office seems to be influenced by a number of factors. There are at least three factors that influence the emergence of this. First, the emergence of the concept of unity of command is a negative excess of the configuration of the political system during the New Order era which was dominated by the military. Currently, the attorney general's office has been led by the military for a long time, in fact all of the Attorney General's Offices are from the military except Attorney General Siggih.

After the fall of the New Order regime, along with the coming of the reform era, the position of the Attorney General was indeed mostly held by civilians, but it seems that the unity of command has not been completely eliminated. This condition is still ongoing today, because the legal system as proposed by Friedman is not only a matter of legal culture, but also involves legal substance and legal structure. However, efforts to make prosecutors as independent officials in carrying out their duties have begun, especially since the launch of the Prosecutor's Agenda on Bhakti Adhyaksa Day, during the leadership of Attorney General Abdurrahman Saleh. The reform of the Public Prosecution Service was carried out comprehensively through the Public Prosecution Service Bureaucratic Reform Program, which was launched to the public on September 18, 2008.

The purpose of the prosecutor's bureaucratic reform is to build a profile and shape the behavior of prosecutors' employees who have high integrity, high productivity and responsibility, and prioritize public services in order to create a cleaner, more efficient and accountable bureaucracy. The target of the prosecutor's bureaucratic reform

in general is to change the mindset and work culture (culture set) and the prosecutor's management system, in order to foster a professional and high-performing organizational culture and create public prosecutor's human resources with high integrity, competence, professionalism, and performance. high, prosperous and honorable.

In order to maintain the objectivity and professionalism of the prosecutor in resolving criminal cases outside the court, the duties and functions of the prosecutor in this regard must be supported by supervision. For example, by reporting to the High Court, every month. However, such reporting must be done after the policy is taken. The supervisory mechanism after the issuance of the policy is intended to maintain the independence of the prosecutor in handling cases. This mechanism must have a system, so that the provisions of Article 42 paragraph (5) of the Draft Criminal Procedure Code which requires prosecutors to report the use of the opportunity principle to the Head of the High Prosecutor's Office is indeed very necessary.

This report is needed so that the High Prosecutor's Office can monitor and evaluate whether the decision to settle criminal cases outside the court carried out by the prosecutor is in accordance with the applicable legal rules and is in accordance with the community's sense of justice. If it turns out that it is not in accordance with the applicable legal rules and because of certain interests, then in this case the High Prosecutor's Office can recommend sanctions for the prosecutor concerned. The sanction must be a note that must be considered by the head of the prosecutor's office in fostering the career of the prosecutor concerned.

### **c. Barriers to Legal Culture**

In short, legal culture can be interpreted as community behavior related to law. In this case, what is meant by law is the law that regulates the settlement of criminal cases outside the court by the prosecutor through a restorative justice approach. If this legal culture is related to the settlement of cases outside the court, it seems that this need not be an obstacle for the prosecutor. Because in general the parties involved in criminal cases prefer a peaceful settlement than dealing with law enforcement agencies, both the police, prosecutors, and courts.

Based on the results of research conducted by Eva Achhani Zulfa, as many as 82% of respondents stated that peaceful efforts are the main choice in solving problems that arise from criminal acts that occur. The peace initiative comes from relatives, officials and the rest comes from friends or opponents. Peace efforts are not only in the form of compensation but are mostly carried out through direct apologies. Based on these facts, it shows that from a legal culture perspective, people actually prefer to settle criminal cases peacefully, without going through a formal court institution.

It is known that people outside of those who are directly involved in a criminal case, generally still lack confidence in prosecutors and the Prosecutor's Office and many still doubt the professionalism and integrity of prosecutors. That it is possible that the parties involved in criminal cases also object to the settlement of criminal cases outside the court carried out by the prosecutor. Included in this are obstacles from the legal culture perspective, namely the perpetrator refusing to admit guilt, the victim reluctance to participate, not reaching an agreement and binding decisions.

To overcome these various problems, there must be rules in the procedural law governing the objections of the parties to the settlement of criminal cases outside the court carried out by the prosecutor. The provisions are basically as follows:

1. Victims or families and communities of each party who feel aggrieved by the settlement of criminal cases outside the court conducted by the prosecutor, may file an objection to the court.
2. The filing of an objection is accompanied by a request that the court order the prosecutor to file a prosecution with the court.
3. An objection to the court can also be submitted by the victim or his family, if the results of the mediation are not carried out properly by the perpetrator.
4. In the event that the perpetrator refuses to admit his guilt or the victim is reluctant to participate or does not reach an agreement, then the settlement of the case returns to the conventional mechanism.

Provisions regarding objections to the settlement of criminal cases outside the court by the prosecutor are needed as a means of social control from the community towards the implementation of the case aside by the prosecutor. This is at the same time as a means of external supervision to complement the means of internal supervision, namely in the form of reporting to the High Prosecutor's Office. Because if it is only a means of internal control, it is feared that the public still does not fully trust the Prosecutor's Office.

The various formulations of these rules are needed so that the restorative justice mechanism can be carried out by prosecutors and their implementation is not misused. Thus, the implementation of the restorative justice mechanism is expected to have a positive impact that is directly felt by the perpetrator and his family, the victim and his family, the perpetrator or victim community, and the community. The application of this concept (restorative justice) can also have a positive impact on every component of the criminal justice system, so that law enforcement officials can focus more on the problems of criminal acts that really require attention and thought as well as threats of great danger to society.

The advantages of the restorative justice mechanism are seen especially in the aspects of its conformity with the principle of *constante justitie*, the nature of the settlement, the form of settlement and the final goal. Judging from its compatibility with these principles, the restorative justice mechanism is faster, simpler, and costs less than the criminal justice process. From the aspect of the nature of the settlement, the criminal justice process emphasizes the suffering of the perpetrator, while the interests of the victim are often ignored. Meanwhile, the

restorative justice mechanism emphasizes aspects of improvement for both parties. And in terms of the form of settlement, in the criminal justice process there are parties who are won and there are parties who are defeated, while in the restorative justice mechanism all parties are won because each party is involved in finding a form of settlement.

In terms of the ultimate goal, the criminal justice process aims to integrate perpetrators back into society to become good citizens. However, by returning the perpetrator to the community and becoming a good citizen, this may not necessarily eliminate the suffering and grudges that exist in the victim and her family. Meanwhile, in the restorative justice mechanism, the ultimate goal is to restore relations between stakeholders and victims and their communities so that the grudges between perpetrators can be abolished. With the restoration of the situation to conditions as before the crime occurred, it is hoped that it can foster peace and peace in social life.

## **2. Practical Barriers**

### **a. Distortion of Inter-Agency Authority in Restorative Justice Implementation Practice**

Currently, it is known that restorative justice is not only a product of the Prosecutor's Office of the Republic of Indonesia, but is also a product of the Indonesian National Police. the law, but because both parties have reconciled at the investigation level and the complainant retracted the report so that the case was stopped at the investigation level based on Perpol No. 8 of 2021 concerning Termination of Investigations Based on Restorative Justice which is contrary to the legality principle of the criminal justice system where it should be cases whose investigations have begun must be continued or transferred to the Public Prosecutor, but by the authority granted by law to Polri investigators so that the case can be stopped at the investigation level.

The position of the Prosecutor in the investigation should run side by side with the investigator conducting the investigation. The Prosecutor's position allows the Prosecutor to correct investigators. So that when the Prosecutor has directly assisted the investigation process, it is expected to be able to shorten the course of the criminal procedure law and be able to fulfill the evidence to be proven in court and be able to weigh the feasibility of a case. The prosecutor in this case is the main figure in the administration of criminal justice. In terms of stopping a case, it should be the authority of the Prosecutor (opportunity principle). In practice in the field, if there are two institutions that have almost the same authority, it is certain that there will be sectoral ego in implementing their authority.

Not to mention that in Aceh Province, Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs is enacted. The local wisdom of the gampong community in Aceh in resolving disputes/disputes has been firmly confirmed in Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs. Article 13 of the Qanun clearly states that there are 18 types of disputes/disputes that can be settled by custom, including: domestic disputes; disputes between families related to faraid; disputes between citizens; meusum seclusion; disputes over property rights; theft in the family (minor theft); dispute over common property; petty theft; pet cattle theft; violation of adat regarding livestock, agriculture, and forest; disputes at sea; disputes in the market; minor abuse; forest burning (on a small scale to the detriment of indigenous communities); harassment, slander, sedition, and defamation; environmental pollution (mild scale); threatening threats (depending on the type of threat); and other disputes that violate customs and customs.

It was also emphasized that the settlement of disputes/disputes between customs and customs as referred to above will be resolved in stages (Article 13 paragraph (2) of Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs). This means that, as far as possible, the cases referred to above should be resolved first at the gampong judicial level by the gampong apparatus. That is, the types of cases above are not immediately taken out of the village to solve them, either by the police or by other parties. In fact, in the next paragraph, it is emphasized again, that law enforcement officers provide an opportunity for disputes/disputes to be settled first by custom in the gampong.

In Aceh Qanun Number 4 of 2003 concerning Gampong Government, which is described by the Aceh Governor's Regulation Number 25 of 2011 concerning Guidelines for the Implementation of Gampong Government, it has been determined that one of the duties and functions of the keuchik is as a village judge who seeks to resolve legal issues related to disputes/disputes that may arise. happened in the village. Dispute resolution at the gampong level often encounters obstacles related to not all geuchik having the ability to carry out a mediation. Thus, many cases that should be carried out by restorative justice go up to the conventional court process.

### **b. There is no Special Prosecutor's Certification as a Facilitator/Mediator in Restorative Justice Efforts**

With the provision that allows the prosecutor to act as a mediator/facilitator and initiate peace between the perpetrator and the victim, it is hoped that it will provide benefits for the community, especially for the perpetrators and victims. That with the existence of peace between the parties, this can eliminate the right of the public prosecutor to carry out prosecutions. With this certainty, it is hoped that it can encourage perpetrators to consciously and voluntarily carry out the punishment as agreed upon in the peace forum. If this can be done, then the victim can also feel the benefits and advantages, namely that his demands are fulfilled voluntarily by the perpetrator. This can have implications for peace and security in social life.

Criminal mediation is a problem-solving process in which an impartial and neutral outside party works with the disputing parties to help them reach a satisfactory agreement. The mediator is different from the judge or arbitrator, because the mediator does not have the authority to decide disputes between the parties. The mediator

only obtains power from the conflicting parties to help resolve the problems between them. Early mediation was a dispute resolution tool related to conflict management and nowadays it has been used as an important alternative for dispute resolution.

The development of criminal mediation is influenced by various factors, firstly the level of crime and reactions through the criminal justice system. Second, the development of dispute resolution, third, the acceptance by the public of the values of restorative justice, the fourth movement to protect the rights of victims, and the fifth political approach to crime prevention.

Based on the explanation of the Head of the General Criminal Section of the Aceh Besar District Attorney, during the enactment of Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, there has been no special training for prosecutors who act as facilitators in cases where restorative justice will be applied. The provision of special training on facilitators and mediators in cases where a restorative justice approach will be applied is not without reason. In carrying out mediation, of course, special skills and abilities are needed so that open-minded parties accept peace as a solution and do not put their own egos forward. This training is the same as the Mediator Judge who has been given a special certification as a mediator in mediating the conflicting parties.

### **c. C. Criminals Who Don't Want To Admit Their Mistakes.**

The confession of guilt of the perpetrator of a crime is a prerequisite for restorative justice. Without the recognition of the person who committed the crime, the desired restorative justice in problem solving will be difficult to achieve. Accepting and acknowledging mistakes is part of accepting responsibility for the actions that have been done. In addition, community involvement is also very important and determines the success of restorative justice.

Policy makers and law enforcement officers in Indonesia have paid attention to the restorative justice approach in recent years. This approach is considered as the answer to the problem of resolving cases through formal judicial institutions in the criminal justice system (SPP).

Article 1 point 6 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System defines Restorative Justice as the settlement of crime cases by involving the perpetrator, victim, the perpetrator's family/victim's family, and other related parties to jointly seek a fair solution by emphasizing the restoration to its original state, and not retaliation. This law requires law enforcement officers to prioritize a restorative justice approach in the juvenile criminal justice system (SPPA).

Director of the Center for Study and Advocacy for the Protection and Quality of Life of Children at the University of Indonesia, Santi Kusumaningrum, said that the SPPA Law is one of the efforts to implement restorative justice in legal and social development, especially for children. This is important to use in resolving cases of children in conflict with the law.

The most recent regulation relating to justice is the Attorney General's Regulation (Perja) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This Perja was made partly because the restorative justice approach has become a legal necessity for the community and a mechanism that must be developed in the implementation of prosecution authority and reform of the criminal justice system.

The presence of Perja Restorative Justice has criticized its substance, especially with regard to the absence of an admission of guilt and the problem of community involvement. Article 5 paragraph (1) Perja No. 15 of 2020 stipulates that criminal cases can be closed for the sake of law and the prosecution is terminated based on restorative justice if three conditions are met. First, the suspect has committed a crime for the first time. Second, criminal acts are only punishable by a fine or punishable by imprisonment of not more than 5 years. Third, the crime is committed with the value of the evidence or the value of the loss caused by the crime of not more than 2.5 million rupiah.

In this case, the Restorative Justice Regulation does not at all regulate the importance of admitting guilt from the suspect. In fact, recognition is a prerequisite for achieving restorative justice. Recognition is the beginning of taking responsibility. Restorative justice cannot be separated from the responsibility of the perpetrator to restore the victim and the community. Restorative justice is a process of accepting responsibility.

### **d. Victims Ask for Unfair Compensation.**

The victim is the party who was harmed in the occurrence of the crime. Losses experienced by victims can be in the form of physical, psychological and material losses. The emergence of law is basically with the aim of ensuring security, order and realizing justice. One of the rights of the victim is to get compensation, especially from the perpetrator, so that it can help the victim to reduce his suffering.

When the crime that befell the victim is a property crime with material loss, the compensation referred to is the return of the victim's belongings or the perpetrator to compensate the victim's loss. So that in the case of a crime where the victim's loss is in the form of property, what is expected by the victim is basically his property back, not a matter of punishment.

By providing compensation to the victim, the perpetrator is expected to realize and admit that the crime he committed was wrong and had a detrimental and unpleasant impact on the victim (Sherly Tricia Ningsih, 2014). The implementation of compensation for victims of property crimes, especially theft and motor vehicle theft, can be carried out through a process based on restorative justice outside the court, or through a judge's decision in

court. However, this needs to be straightened out because the principle of restorative justice is resolved by customary law in the community, not involving the courts.

Based on Article 5 paragraph (1) Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, criminal cases can be closed for the sake of law and terminated prosecution based on restorative justice if the following conditions are met:

1. The suspect has committed a crime for the first time.
2. Criminal acts are only threatened with a fine or imprisonment of not more than 5 (five) years.
3. The crime is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2,500,000,000.00- (two million five hundred thousand rupiah).

It is known that based on empirical facts, there are victims of criminal acts who ask for peace terms in the form of compensation that is beyond reasonable. In this case, the Head of the General Crime Section of the Aceh Besar District Attorney's Office, Wahyu Ibrahim, explained that the obstacle in carrying out the mediation process between the victim and the perpetrator was that the victim asked for compensation which was difficult for the defendant to fulfill. Indeed, Perja does not contain the minimum and maximum amount of compensation, but is determined by the victim and the defendant. For example, in the case of minor maltreatment that resulted in injuries, the cost of hospital treatment ranges from Rp. 2,000,000.00- (two million rupiah) to Rp. 5,000,000.00- (five million rupiah) depending on the injuries suffered by the victim (Wahyu Ibrahim, 2022).

If the mediation process fails because the request for compensation desired by the victim is beyond reasonable, in this case the facilitator who is also the Public Prosecutor will make a report in the form of a report explaining that restorative justice has failed to be implemented. In this case the public prosecutor will consider the defendant's desire to reconcile with the victim in the Minutes of Examination and his claim. It should be noted that the agreement of the parties in the restorative justice process is determined by the victim (Ardiyansyah, 2021). This is in accordance with the provisions in Article 11 Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely "in the event that the peace agreement is not successful due to a disproportionate request for fulfillment of obligations, threats or intimidation, sentiment, discriminatory treatment or harassment based on ethnicity.", religion, race, nationality, or certain groups of suspects who have good intentions can be considered by the Public Prosecutor in carrying out prosecutions.

### Conclusion

Theoretical obstacles in the implementation of restorative justice. First, the obstacle in legal substance is that there is no law-level regulation that regulates restorative justice policies implemented by the prosecutor's office in detail. The two obstacles in the legal structure are known. The legal structure is law enforcers and their institutions that drive the legal system as stipulated in the legal substance and currently the prosecutor's organizational structure is still thick with a unitary command structure, so that the leadership's dominance is very strong in making a prosecution (discretion) policy. Third, the obstacles in the legal culture which include in this case the obstacles from the legal culture side are the perpetrators refusing to admit guilt, the victims being reluctant to participate, not reaching an agreement and binding decisions. Furthermore, the obstacles in implementing restorative justice are the first, the distortion of authority between institutions in the practice of implementing restorative justice. Second, there is no special certification for prosecutors as facilitators/mediators in restorative justice efforts. third, the perpetrator of the crime who does not want to admit his guilt and fourth, the victim asks for compensation that is not fair.

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