



## Implementation of *Restorative Justice* according to prosecutor's regulation number 15 Of 2020

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### Abstract

Restorative justice is an alternative approach to resolving criminal cases that emphasises recovery and reconciliation between offenders, victims and the community. In order to accommodate the achievement of fair justice, especially for all parties involved in it and not just prioritise punishment, the Attorney General's Office of the Republic of Indonesia issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation provides a clear and systematic legal basis for the AGO in carrying out the restorative justice function. Prosecutor's Regulation Number 15 of 2020 is the main reference for the Prosecutor's Office in implementing restorative justice and regulates various aspects related to the implementation of restorative justice, including peace procedures, loss recovery mechanisms, the roles of victims and perpetrators, and supervision of the process. This research will broadly examine the paradigm shift or insight into thinking about punishment which focuses on retribution to recovery in order to achieve effective goals in fostering offenders to become good human beings who look at the effectiveness of the punishment system on the order that arises in society and regarding the tug-of-war between the public's sense of justice which in Prosecutor's Regulation Number 15 of 2020 is manifested by prioritising the dominus litis principle with the principle of legality which is also one of the pillars of legal objectives, namely ensuring legal certainty.

**Keywords:** Implementation, restorative justice, regulation No.15 of 2020

### Introduction

Restorative justice is an alternative approach to criminal justice that emphasises healing and reconciliation between offenders, victims and the community. It aims to resolve conflict through healing, repairing social relationships, and avoiding the imposition of overly severe punishment on offenders <sup>[1]</sup>. Restorative justice is a paradigm that differs from traditional approaches in the criminal justice system. Traditional approaches emphasise punishment as retribution and the separation of offenders from society, whereas restorative justice sees crime as a failure of relationships. social that needs to be fixed <sup>[2]</sup>.

In the context of implementing restorative justice, it is important to ensure that justice and restoration are the main focus. This includes justice for the victim in recovering the harm caused by the criminal offence, justice for the offender in having the opportunity to correct their actions and return to a normal life in the community, and justice for the community in rebuilding social relationships disrupted by the criminal offence <sup>[3]</sup>.

In order to accommodate the achievement of justice that is as fair as possible, especially for all parties involved in it and not just prioritising punishment, the Attorney General's Office of the Republic of Indonesia issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation provides a clear and systematic legal basis for the Prosecutor's Office in carrying out the restorative justice function. Prosecutor's Regulation No. 15/2020 is the main reference for the Prosecutor's Office in implementing restorative justice and regulates various aspects related to the implementation of restorative justice, including peace procedures, loss recovery mechanisms, the roles of victims and perpetrators, and supervision of the process.

The existence of the Prosecutor's Office as a law enforcement institution has a central position and a strategic role in a state of law because it functions as a filter between the investigation process and the examination process in court (dominus litis principle), so that its existence in people's lives must be able to carry out law enforcement tasks <sup>[4]</sup>. As well as being able to carry out reforms in various fields of life, especially in the field of law enforcement to realise the identity of the Prosecutor's Office of the Republic of Indonesia which is more professional and more dynamic in order to face the development of society while being able to provide justice for the community.

There are two principles that apply to the prosecution of criminal cases, namely the principle of opportunism and the principle of legality. On the one hand, the principle of legality requires the prosecution of all cases to court, without exception. On the other hand, the principle of opportunism provides an opportunity for public prosecutors not to prosecute criminal cases in court.

The authority to set aside a case in the public interest is an application of the principle of opportunism which is only owned by the attorney general as stipulated in Article 35 letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, this is different from the termination of prosecution. The authority to discontinue prosecution is owned by the public prosecutor. The termination of prosecution is regulated in Article 140 paragraph (2) of KUHAP, which states that the public prosecutor "may terminate the prosecution" of a case. Criminal cases are born because there is a criminal offence handled by law enforcement. Criminal cases always arise when there is a criminal process. Criminal offences or crimes are an inseparable part of human life in the world. It is clear that crime (criminal offence) is rampant and exists

in all lines of life. It often occurs in the family, group, community, government apparatus, nation or state and even has an international dimension (transnational crime).

Basically, the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice is specific to handling cases as stated in Article 5 paragraph (1) of the Regulation which states "Criminal cases can be closed by law and discontinued prosecution based on Restorative Justice in the event that the following conditions are met

- a. The suspect was a first time offender;
- b. Criminal offences are only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and
- c. The criminal offence is committed with the value of the evidence or the value of the loss incurred as a result of the criminal offence not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah)."

This regulation is part of the Prosecutor's Office's efforts to strike a balance between restoring victims and improving the behaviour of offenders in order to achieve justice. The regulation was realised with the main basis being recovery for the victim as well as prevention of the offender from the negative effects of imprisonment.

Restorative justice is an effort to provide a restoration of relations and redemption of mistakes that the perpetrator of the crime wants to make to the victim of the crime with peace efforts outside the court with the intention and purpose that the legal problems that arise as a result of the criminal act can be resolved properly by reaching an agreement and agreement between the parties <sup>[5]</sup>. It is expected that with the implementation of restorative justice, this justice is a process where all parties involved in a particular criminal act together solve the problem of how to deal with its consequences in the future.

The conventional criminalisation process that has been taking place so far does not open up opportunities for the parties involved to actively participate in solving the existing problems <sup>[6]</sup>. Active participation from the community does not seem to be important because it only seems that the criminal decision is the epicentre without seeing the real problem.

The concept of peace is a criterion set out in this prosecutorial regulation which implies an effort to legally validate the concept of peace into the criminal justice system. This can be seen for example in Article 4 paragraph (2) letter g of the PERJA which requires peace between the victim and the suspect. The term peace is also found in Article 5 paragraph (6) letter b as well as Chapter IV on the procedure for peace in the regulation. These provisions emphasise the achievement of peace, which is the foundation of the realisation of restorative justice, and if peace is rejected by the victim or perpetrator then the public prosecutor will refer the case to court (Article 8 paragraph (7) letter c) of the Regulation.

This research will broadly examine the paradigm shift or insight into thinking about punishment which focuses on retaliation to recovery in order to achieve effective goals in fostering offenders to become good human beings who look at the effectiveness of the punishment system against the order that arises in society and regarding the tug-of-war between the public's sense of justice which in the

Prosecutor's Regulation Number 15 of 2020 is manifested by prioritising the dominus litis principle with the principle of legality which is also one of the pillars of legal objectives, namely ensuring legal certainty.

### Research Method

This type of research uses empirical juridical, namely, research on the role of law enforcers in carrying out their functions, which discusses how the law works in society and customary gampong institutions. The data used are primary data and secondary data. Data collection techniques using interview techniques and reviewing documents and laws related to this research. Furthermore, the data is processed and analysed with qualitative descriptive analysis techniques <sup>[7]</sup>. Based on the background above, the problem formulation in this research focuses on the Implementation of Restorative Justice According to Prosecutor's Regulation Number 15 of 2020.

### Result and Discussion

#### Legal Basis for Discontinuation of Prosecution Based on Peace According to Prosecutor's Regulation Number 15 of 2020

In order to accommodate the achievement of fair justice, especially for all parties involved in it and not just prioritise punishment, the Attorney General's Office of the Republic of Indonesia issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation provides a clear and systematic legal basis for the Prosecutor's Office in carrying out the restorative justice function.

Prosecutor's Regulation No. 15/2020 is the main reference for the Prosecutor's Office in implementing restorative justice and regulates various aspects related to the implementation of restorative justice, including peace procedures, loss recovery mechanisms, the roles of victims and perpetrators, and supervision of the process.

The existence of the Prosecutor's Office as a law enforcement institution has a central position and a strategic role in a state of law because it functions as a filter between the investigation process and the examination process in court (dominus litis principle), so that its existence in people's lives must be able to carry out law enforcement duties <sup>[8]</sup> and be able to carry out reforms in various fields of life, especially in the field of law enforcement to realise the identity of the Prosecutor's Office of the Republic of Indonesia which is more professional and more dynamic in order to face the development of society while being able to provide justice for the community.

The success of the criminal justice system in punishing criminals will bring peace to the community, whereas its failure can shake public confidence in the implementation of the system and can encourage criminals to be more courageous in committing their actions. The ultimate goal of the criminal justice system is the realisation of an orderly, serene, peaceful, just and prosperous society <sup>[9]</sup>. Evil deeds are the source of the value realm, of course the interpretation given to the act or behaviour is very relative. The relativity lies in the judgement given by the community where the act is manifested <sup>[10]</sup>.

In its development, several studies on the effectiveness of punishment argue that imprisonment is not the right choice because criminal law was created to make people aware, obedient, obedient, so as to make people not break the law a

second time, criminal law that can restore the losses arising from the actions of the perpetrator. The law does not lock people up in jail which does not necessarily restore the situation as before. Therefore, imprisonment is not always the right punishment. The right law is a law whose enforcement does not cause conflict and does not make people afraid of the law. Order in society is not because of the punishment, but because there are norms and values that the law seeks to protect.

Imprisonment does not produce the expected output that a person who has served a sentence will become a better person. This phenomenon is called the criminal cycle, i.e. imprisonment is unable to make prisoners into good citizens, even in some cases, they even become more skilled in committing crimes<sup>[11]</sup>. Imprisonment should aim to deter offenders from committing crimes and to prevent people from committing prohibited acts. Prisonisation of prisoners is difficult to avoid, especially if supervision by officers is not carried out optimally<sup>[12]</sup>.

The Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 is in principle constructed for the fulfilment of victims' rights and to avoid retaliatory criminal aspects. As referred to in Article 2 of the Regulation, the termination of prosecution based on restorative justice is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort and fast, simple and low cost. This prosecutor's regulation regulates the principle of implementation and law enforcement of restorative justice carried out by the mechanism of termination of prosecution as stated in Article 4 paragraph (1) of the Regulation, "Termination of prosecution based on Restorative Justice is carried out by taking into account<sup>[13]</sup>

1. Victims' interests and other protected legal interests;
2. avoidance of negative stigma;
3. avoidance of retaliation;
4. community response and harmony; and
5. decency, morality, and public order."

In order to discontinue prosecution under restorative justice, a case must fulfil the requirements, which are broadly divided into

1. Criminal case qualification requirements; and
2. Requirements for the mechanism for discontinuing prosecution of criminal cases.

Regarding the qualification requirements of criminal cases that can be discontinued through a restorative justice approach, in general the requirements are

1. The suspect was a first time offender;
2. Criminal offences are only punishable by a fine or imprisonment of not more than 5 (five) years; and
3. The criminal offence is committed with the value of the evidence or the value of the loss incurred not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).

It should be noted that there are some exceptions to these general requirements, including

For property-related criminal offences

- a. The suspect is a first time offender; and
- b. The criminal offence is only punishable by a fine or imprisonment of not more than 5 (five) years; or the criminal offence is committed with the value of the

evidence or the value of the loss incurred not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah).

For offences committed against the person, body, life and liberty

- a. The suspect is a first time offender; and
- b. Criminal offences are only punishable by a fine or imprisonment of not more than 5 (five) years.

For criminal offences committed due to negligence: the suspect is a first time offender. Regarding the requirements of the mechanism for discontinuing prosecution of criminal cases through a restorative justice approach, in general the requirements are

- a. there has been a recovery of the victim's losses;
- b. there has been a peace agreement between the victim and the suspect; and
- c. the community responded positively.

It should be noted that there are exceptions to these general requirements, namely in cases where the victim and suspect have agreed, the requirement to recover the victim's losses can be waived. Finally, termination of prosecution based on restorative justice is excluded for certain cases, including

1. Crimes against state security, the dignity of the president and vice president, friendly countries, heads of friendly countries and their representatives, public order, and decency;
2. Criminal offences that carry a minimum penalty;
3. Narcotics offences;
4. Environmental offences; and
5. Criminal offences committed by corporations.

Peace as a condition for termination of prosecution based on Restorative Justice PERJA 15/2020 As explained above, termination of cases based on restorative justice must fulfil 6 (six) main requirements, namely

1. The suspect was a first time offender;
2. Criminal offences are only punishable by a fine or imprisonment of not more than 5 (five) years;
3. The criminal offence is committed with the value of the evidence or the value of the loss incurred not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah);
4. There has been a recovery of the victim's losses;
5. There has been a peace agreement between the victim and the suspect; and
6. The community responded positively. The success of the peace process between the suspect and the victim as one of the main requirements that must be fulfilled is done through the peace mechanism.

**Peace in Restorative Justice and the Constraints Faced in Its Implementation.** Restorative justice is a development of a new criminal justice system in Indonesia in resolving criminal cases, which can generally be interpreted as a rearrangement of the punishment system that is fairer for the perpetrators, victims and society<sup>[14]</sup>.

Restorative justice as a concept of out-of-court settlement, views criminal punishment not as the only means of resolving a case but as an effort that aims to emphasise restoring harmony between victims, perpetrators and society

to create a fairer and more balanced settlement for victims and perpetrators.

The method of resolving criminal cases with restorative justice focuses on the concept of mediation with a dialogue process as a solution that creates an agreement on the resolution of criminal cases not only provides protection and recovery to victims, but can foster awareness for the perpetrators to understand the crimes they commit <sup>[15]</sup>.

Along with the development of law enforcement in Indonesia, the Prosecutor's Office as a government agency that has the duty and authority to prosecute a criminal case, it needs to be directed to follow the reform of the criminal justice system by considering the level of harm, losses or consequences caused, the inner attitude of the perpetrator, the legal interests protected, and paying attention to the sense of justice of the community. Restorative justice has been accommodated by the Prosecutor's Office in Prosecutor's Regulation Number 15 of 2020 concerning Termination of prosecution based on restorative justice which regulates case handling procedures at the prosecution level oriented towards the concept of restorative justice.

The Prosecutor's Regulation is the basis for prosecutors in resolving cases through restorative justice by maximising their role in its implementation, so that if peace is sought, criminal punishment can be used as a last resort.

Prosecutor's Regulation Number 15 of 2020 concerning Termination of prosecution based on restorative justice contains case closure, conditions for termination of prosecution, peace procedures, and detention. Referring to Article 1 paragraph (1) of the Prosecutor's Regulation, it states that restorative justice is the settlement of criminal cases outside the court by involving perpetrators, victims, families of victims or perpetrators, and other related parties to jointly seek a fair solution by emphasising restoration to the original state rather than retaliation. According to the Regulation, a criminal case can be closed by law if there has been an out-of-court settlement of a particular criminal offence and there has been a restoration of the original situation using a restorative justice approach.

The Banda Aceh District Attorney's Office has implemented restorative justice in 6 (six) criminal cases based on the Prosecutor's Regulation on the termination of prosecution based on restorative justice. In the process of implementing the termination of prosecution based on restorative justice, not all criminal cases can be closed by law and terminated by the Public Prosecutor's Office. The conditions that become the initial consideration of the prosecutor acting as a public prosecutor to determine whether or not a case can be resolved through restorative justice are listed in Article 5 of Prosecutor's Regulation Number 15 of 2020 concerning Termination of prosecution based on restorative justice. More clearly, the things that become the basis for prosecutors to consider in their application related to sociological aspects and considering the circumstances of a persecution case whether or not restorative justice is feasible are regulated in Article 4 of Prosecutor Regulation Number 15 of 2020 concerning Discontinuation of prosecution based on restorative justice. That the concept of restorative justice is applied in the process, it must pay attention to the sociological side such as the interests of victims and other laws that are protected in society, avoiding retaliation by the perpetrator in the future and negative stigma from both the family, the immediate environment or the community to the perpetrator and the victim, as well as a positive response

from the community that can harmonise good relations between the perpetrator and the victim, as well as between their respective community environments in the process. Prosecutors are based on the norms of decency, decency, and public order that exist in society.

Factors that may contribute to the unsuccessful implementation of restorative justice include the following. The conditions contained in Prosecutor's Regulation No. 15/2020 on Discontinuation of prosecution based on restorative justice are not fulfilled.

Unsuccessful efforts to apply restorative justice to a case can be based on several factors, but the factor of not fulfilling the requirements for termination of prosecution based on restorative justice is a crucial factor which if it is not fulfilled, restorative justice cannot automatically be implemented. Failure to fulfil the requirements in seeking termination of prosecution based on restorative justice as stipulated in Prosecutor's Regulation Number 15 of 2020 can be in the form of:

- a. The crime committed by the perpetrator does not constitute ordinary maltreatment, the perpetrator is a recidivist, carries a sentence of more than 5 (five) years.
- b. No peace agreement was reached between the victim and the perpetrator.
- c. There was no support or positive response from the community regarding the settlement of cases using restorative justice against perpetrators.
- d. The background of the criminal offence committed by the perpetrator cannot be tolerated. Despite fulfilling the requirements of restorative justice, in relation to the actions of the perpetrator there are several considerations that cannot be understood so that restorative justice cannot be pursued. This can be seen from the background of the criminal offence committed by the perpetrator, which was committed repeatedly against the victim, causing the victim to experience both physical and mental health problems that caused trauma to the victim. The background of the perpetrator of the criminal offence and the actions of the perpetrator that caused serious injury to the victim and/or caused the victim to die, usually the victim wants the perpetrator to be severely punished.

#### Conflict of interest between litigants

The process of resolving cases of criminal offences of persecution through restorative justice is carried out by first exploring the victim's willingness to make peace efforts and based on an official summoning letter to both the victim and the suspect who are called to jointly attend to conduct deliberations. In its implementation there may be a possibility that one party or both of them will not want to make peace with excuses.

#### Conclusion

In order to accommodate the achievement of justice that is as fair as possible, especially for all parties involved in it and not just prioritising punishment, the Attorney General's Office of the Republic of Indonesia issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation provides a clear and systematic legal basis for the Prosecutor's Office in carrying out the restorative justice function. Prosecutor's Regulation Number 15 of 2020 is the main reference for the Prosecutor's Office in implementing

restorative justice and regulates various aspects related to the implementation of restorative justice, including peace procedures, loss recovery mechanisms, the roles of victims and perpetrators, and supervision of the process. Factors that may be the cause of unsuccessful implementation of restorative justice include non-fulfilment of the conditions contained in Prosecutor's Regulation Number 15 of 2020 concerning Termination of prosecution based on restorative justice and Conflict of interest between the parties to the case.

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