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# Restorative Justice as an Approach to Discontinuing Prosecution of Criminal Cases

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## ABSTRACT

Applying the idea of restorative justice to resolve matters in the best interests of the law is perfectly proper given the prosecutor's office's authority. By adopting the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice, the prosecutor's office has created a legal breakthrough in the area of prosecution by implementing justice using a restorative justice method. This study aims to investigate the nature of using restorative justice as a model for ending criminal prosecutions and to investigate the model for doing so by Prosecutor's Regulation Number 15 of 2020 regarding Termination of Prosecution based on Restorative Justice. Normative legal research employing statutory, conceptual, and case techniques is the methodology employed in this study. The findings demonstrated that the idea of restorative justice offers a framework for thinking through options and choosing measures that align with the circumstances of those who commit crimes. The idea seeks to establish humanitarian justice by uniting offenders and victims to address issues that arise. Therefore, the implementation of Restorative Justice in Indonesia's criminal justice system is a component of the future-applicable criminal law system reform. Furthermore, according to the results of the first-semester evaluation, as of December 31, 2020, 271 requests for criminal cases wanted to be resolved through restorative justice. This indicates that the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice has had a very significant impact.

## KEYWORDS

Restorative Justice;
Discontinuing Prosecution;
Criminal Case

## INTRODUCTION

In criminal law to determine whether an act is a punishable act, it is known as the principle of legality. This principle has been normalized in Article 1 paragraph (1) of the Criminal Code which determines that an act cannot be punished, except based on the strength of the provisions of existing criminal legislation.[1]

The application of the concept against the law that functions positively sometimes causes disharmony with other legal principles, for example with the principle of legality.[2] On the one hand, the principle of legality *(Nullum delictum nulla poena sine praevia lege poenali)* requires that to punish someone who commits an unlawful and reprehensible act must be based on an existing criminal law provision (vide Article 1 paragraph (1) of the Criminal Code). On the other hand, if an act is not prosecuted, the sense of justice of the community will be disturbed, because for our country (Indonesia) the law does not only mean the law (written law) but also the law that lives (living law) in society (unwritten law-Customary law).[3] As stated in Article 1 paragraph (3) of the 1945 Constitution "That the State of Indonesia is a State of Law", the meaning of the state of law in the article means written law and unwritten law or law that lives in society.[4] Unwritten law or law that lives in the community is recognized by the state as stated in the 1945 Constitution Article 18B paragraph (2):

> "*The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law".*

Settlement of disputes in Indonesian society by prioritizing deliberation to reach a consensus based on the laws that live in the community, which has become a continuous habit.[5] Like the customary law of Bima land known as the Bima Talking Law which is regulated in the HATB, regulates the order of social life by protecting the rights of individuals to resolve disputes by peaceful and deliberative means, the article that regulates this:[6]

> *"In addition, if there is anything that people do in a small country (village) that all parents should sit together to find the good of their children, can also Gelarang (Village Head) fix it with "kaleli a" and "mange satebe" if there is no Gelarang can fix it then come to Bima to ask for a talk (legal decision)".*

Likewise, the customary law of the Lombok (Sasak) community in Sukadana Village, Bayan Subdistrict, North Lombok Regency which is still valid today is the wetu telu concept which is a combination of three elements namely religion,

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1 Amiruddin, *Hukum Pidana Indonesia* (Yogyakarta: Genta Publishing, 2015).

2 Hamdan Rampadio, Ana Fauzia & Fathul Hamdani, "The urgency of arrangement regarding illicit enrichment in indonesia in order to eradication of corruption crimes by corporations" (2022) 9:2 J Pembaharuan Huk 225–241.

3 Amiruddin, *supra* note 1.

4 Ana Fauzia, Fathul Hamdani & Deva Gama Rizky Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law" (2021) 3:1 Progress Law Rev 12–25.

5 Ana Fauzia & Fathul Hamdani, "Aktualisasi nilai-nilai pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah" (2021) 2:2 J Indones Berdaya 157–166.

6 Adhar & Ardiansyah, "Penyelesaian Sangketa Melalui Alternative Dispute Resolution (ADR) Menurut Hukum Adat Bima" (2020) 2:1 Jihad J Ilmu Huk dan Adm 41–52.

government, and custom working together in running the customary government system and resolving disputes through deliberation to reach an agreement.[7] Likewise, other Sasak tribal areas still treat the settlement known in criminal law as "penal mediation" with the concept of deliberation.

Judging from the customary laws of Bima *(Mbojo)* and Lombok *(Sasak)* in Sukadana Village, it means that dispute resolution by deliberation to reach a consensus by prioritizing a sense of kinship has been born in Indonesia for a long time long before positive law existed. As we know, positive law (KUHP) which refers to criminal law enforcement is solely oriented towards enforcing written law and does not see the values of justice that live in society. This is not in line with the reform of Indonesian criminal law which is oriented towards the values contained in Pancasila as in Article 1 of the draft concept of the Indonesian Criminal Code:[8]

> "The purpose of Indonesian criminal law is to protect the State, society, bodies, as well as citizens of the Republic of Indonesia and other residents against criminal acts that hamper and/or hinder the ideals of the Indonesian Nation to realize the Pancasila society".

The purpose of criminal law as formulated above is more concretely emphasized in Article 2 of the draft Criminal Code. It is stated that the objectives of punishment are:[9]

1. to prevent the commission of criminal offenses for the protection of the state, society, and population;
2. to guide the convicted person to realize and become a virtuous and useful member of society;
3. to remove the stains caused by the criminal offense.

The idea of a punishment system that is oriented towards restoring the loss and suffering of victims has emerged, known as the restorative justice approach. Restorative justice prioritizes the process of resolving cases between the parties in the social relations of the community.[10] Restorative justice is a set of ideals about justice that assumes the generosity, empathy, supportiveness, and rationality of the human spirit, through group counseling involving victims and offenders, so that the vision is always based on values that care for individuals.[11] Therefore, restorative justice is a combination of the conceptions of relational justice with participatory or consensual justice, then formulated in a crime resolution technique based on participatory program design, implementation, and evaluation.[12]

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7 Ardiansyah, *Konstruksi Hukum Pengakuan Hak Mayarakat Hukum Adat atas Tanah Ulayat di Desa Sukadana Lombok Utara* Universitas Mataram, 2020) [unpublished].

8 Jacob Elfinus Sahetapy, *Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, 3d ed (Malang: Setara Press, 2009).

9 *Ibid*.

10 Dendy Prasetyo Nugroho, "Konsep Restorative Justice dalam Peradilan di Indonesia (Perspektif Filosofis Pancasila sila ke 4 dan ke 5)", online: <http://pukapaku.com>.

11 Ana Fauzia & Fathul Hamdani, "Restorative Justice: Antara Teori dan Praktik", (2022), online: *HnG Consult* <https://hng.co.id/view/article-details?id_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES>.

12 Widodo, "Perspektif Hukum Pidana dan Kebijakan Pemidanaan: Diversi dan Keadilan Restoratif, Terorisme, Cybercrime" in *Pidana mati, dan Peradil Sesat* (Yogyakarta: Aswaja Presisindo, 2017).

The idea that the settlement of criminal cases can only be done through the courts and the theory of retributive punishment has caused many problems and negative impacts. For this reason, it is necessary to change the approach, namely through the settlement of criminal cases outside the court with the principle of restorative justice. Philosophically, restorative justice was first introduced by Albert Eglash in 1977, who distinguished three forms of justice in the criminal justice system, namely Retributive Justice, Distributive Justice, and Restorative Justice. Retributive Justice focuses on punishing the perpetrator for the crime that has been committed, Distributive Justice focuses more on the goal of punishment oriented to the rehabilitation of the perpetrator, while Restorative Justice according to Eglash is the principle of restitution by involving victims and perpetrators in a process that aims to secure reparations for victims and rehabilitation of perpetrators. However, long before Albert Eglash came up with the concept of restorative justice in Islamic law, restorative justice was already known in the word of Allah in the Quran Surah *Al-Baqorah* Verse 178, which means:

> *"O you who believe! It is obligatory upon you (to perform) Qisas concerning those who are killed. Freeman for freeman, slave for slave, woman for woman. But whoever obtains pardon from his brother, let him follow kindly, and pay him the diyat (ransom) kindly (also), such is the leniency and mercy of your Lord. But whoever transgresses after that, then he will have a painful punishment".*

In the Al-Quran letter *Al-Baqorah* verse 178, explicitly instructs believers to carry out the law of qisos to punish the perpetrator of the crime under his actions, but if the victim and/or the victim's family forgive him or give forgiveness then the perpetrator is given forgiveness by not carrying out the law of *qisos,* but the perpetrator is charged with the obligation to pay diyat in the form of money to the victim and/or the victim's family. This is an effort to restore the situation so that there is no hostility and conflict in the community.

> Likewise, in the Bible, it has been regulated in Luke Chapter 17 Verses (3) and (4): Verse (3) *"Therefore, take heed to yourselves. If your brother sins, rebuke him. If he is sorry, forgive him".* Verse (4): *if he wrongs you seven times in a day and seven times also he returns to you and says "I am sorry", you must forgive him.*

The concept of religion also recognizes forgiving each other in the event of a mistake, not only punishing as much as what has been done, it will restore the situation between the perpetrator and the victim or other parties. The concept of restorative justice aims to emphasize justice on the restoration of the situation, the perpetrator is allowed to express his regret to the victim and at the same time take responsibility and the victim is also allowed to convey his demands according to his conscience. This is guaranteed in the constitution which is elaborated in Article 28 letter e paragraph 2 and paragraph 3 of the 1945 Constitution of the Second Amendment, namely paragraph 2, which states that:

> *"Everyone has the right to freedom of belief, expression of thought and attitude, following his conscience".*
>
> And paragraph 3 states: *"Everyone has the right to freedom of association, assembly, and expression".*

Based on the mandate of the constitution, it is philosophically appropriate to apply restorative justice in Indonesia, because the constitution provides space for everyone to express thoughts according to conscience and gather to deliberate. This means that in criminal law enforcement, victims or perpetrators are given to express their thoughts and attitudes under their conscience in resolving legal issues faced without any pressure. This means that the concept of restorative justice provides freedom to resolve criminal law problems by gathering victims, perpetrators, families of victims, families of perpetrators, community leaders, religious leaders, and the government, to conduct deliberations to reach a consensus or what is known in criminal law as penal mediation by taking into account the interests of both parties without harming the value of legal certainty.

Therefore, towards this legal issue, the author is interested in raising the issue and examining more deeply the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, with the title "*Restorative Justice as an Approach to Discontinuing Prosecution of Criminal Cases*".

## METHOD

The type of research used in the preparation of this article is normative legal research, namely by analyzing the problems in the research starting from laws and regulations, theories/concepts, and analytical methods included in normative legal disciplines.[13] The approaches used are statutory, conceptual, and case approaches. The statutory approach is an approach using legislation and regulations. The conceptual approach is an approach that is carried out by examining the literature that has to do with the problems to be studied. Then the case approach is carried out by examining cases related to the issue at hand and has become a decision that has permanent legal force.

## RESULT & DISCUSSION

### Model of Discontinuation of Prosecution of Criminal Cases based on Prosecutor's Regulation Number 15 of 2020 concerning Discontinuation of Prosecution based on Restorative Justice

The role of the Prosecutor's Office, which determines the running of a criminal case, is very important in seeing the authority it has to enforce the law by focusing not merely on the issue of providing charges for criminal acts committed by a person but being able to realize the values of justice in the criminal process carried out.[14] With the authority possessed by the prosecutor's office, it is very appropriate to apply the concept of restorative justice as an effort to close cases in the interests of the law. This is inseparable from the duties of the Attorney General as an investigator, Public Prosecutor, and Lawyer for the Unitary State

[13] Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

[14] Ana Fauzia & Fathul Hamdani, "Analysis of the Implementation of the Non-Conviction-Based Concept in the Practice of Asset Recovery of Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence" (2021) 11:1 J Jurisprud 57–67.

of the Republic of Indonesia. The authority inherent in the prosecutor's office can be said to be the controller of the case.

Constitutionally, the prosecutor's authority is not explicitly regulated but is included in the judicial power in Article 24 paragraph (2) of the 1945 Constitution:

> *"Judicial power is exercised by a Supreme Court under which there are general courts, religious courts, military courts, state administrative courts, and a constitutional court".*

It is further regulated in Article 24 paragraph (3) regarding other bodies whose functions are related to the judicial power are regulated by law. Therefore, in a broader sense, the authority of the prosecutor's office includes the judicial power. According to Indriyanto Seno Adji, the Attorney General's Office of the Republic of Indonesia as an institution that exercises state power in the field of supreme prosecution in criminal cases independently, is one of the law enforcement apparatus that is een en *ondelbaar* in the constitutional structure.[15]

In Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office, Article 2 paragraph (1) is emphasized, namely:

> *"The Attorney General's Office of the Republic of Indonesia is a government agency that exercises state power in the field of prosecution as well as other authorities based on the law".*

The position of the prosecutor as the implementation of the law in the field of prosecuting cases to court, becomes the authority of the prosecutor's office in assisting the judiciary. This means that the prosecutor as a public prosecutor functions as a judiciary. For this reason, the prosecutor's office must be able to realize legal certainty, legal order, justice, and truth based on the law and heed religious norms, decency, and morality, while still being obliged to explore the human values of law and justice that live in society.[16]

Furthermore, the Attorney General's Office is tasked and authorized to streamline the law enforcement process provided by law by paying attention to the principles of fast, simple, and low-cost justice, as well as determining and formulating case-handling policies for successful prosecution which are carried out independently for the sake of justice based on law and conscience, including prosecution using a restorative justice approach which is carried out by statutory provisions.

The Attorney General's Office of the Republic of Indonesia as a government agency that exercises state power in the field of prosecution must be able to realize the principles of legal certainty, justice, and truth based on the law and heed religious norms, decency, and morality, and must explore human values, law, and justice that live in society.

That based on Article 14 of the Criminal Procedure Code as a criminal procedure law provides the authority of the prosecutor's office as a public prosecutor and is emphasized in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of

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[15] Farida Patitting et al, *Kedudukan Kejaksaan Republik Indonesia dalam Sistem Ketatanegaraan* (Yogyakarta: Penebit Litera, 2021).

[16] ST Burhanudin, *Kejaksaan untuk Indonesia (Analogi Pemikiran Jaksa Agung RI ST Burhanudin)* (Jakarta: Fakultas Hukum Universitas Pancasila, 2021).

Indonesia, which also regulates the duties and authority of the Prosecutor's Office, among others:

Article 30 specifies, namely:

(1) In the criminal field, the Public Prosecutor's Office has the duties and authority to:
   a. Conduct prosecution;
   b. Execute judges' determinations and court decisions that have obtained permanent legal force;
   c. Supervise the implementation of conditional criminal verdicts, supervision of criminal verdicts, and conditional decisions;
   d. Carry out investigations into certain criminal offenses based on the law;
   e. To complete certain case files and for that purpose may conduct additional examinations before being submitted to the court, the implementation of which is coordinated with investigators.

(2) In the field of civil and state administration, the Public Prosecutor's Office by special authorization may act inside and outside the court for and on behalf of the state or government.

Article 30C specifies, namely:

In addition to carrying out the duties and authorities as referred to in Article 30, Article 30A, and Article 30B of the Prosecutor's Office:

a. Organizing criminal statistics and judicial health activities of the Public Prosecution Service.
b. Participating and actively seeking the truth in cases of gross human rights violations and certain social conflicts for the realization of justice.
c. Participate and be active in the handling of criminal cases involving witnesses and victims as well as the process of rehabilitation, restitution, and compensation.
d. Conduct penal mediation, confiscate execution for payment of fines, and substitute punishment as well as restitution.
e. Can provide information as information and verification material on the existence or absence of alleged violations of the law that are being or have been processed in criminal cases to occupy public positions at the request of the authorized agency.
f. Carrying out functions and authorities in the civil and/or other public fields as stipulated in the Law.
g. Conducting seizure of execution for payment of fines and restitution.
h. To file for judicial review.
i. Conduct wiretapping based on a special law that regulates wiretapping and organize a monitoring center in the field of criminal acts.

Article 34A reads, namely:

*"In the interest of law enforcement, prosecutors and/or public prosecutors in carrying out their duties and authorities may act according to their judgment with due observance of the provisions of laws and regulations and ethical rules."*

Article 137 of the Criminal Procedure Code stipulates that:

*"The public prosecutor is authorized to prosecute anyone charged with committing a criminal offense within his jurisdiction by submitting the case to the court with jurisdiction to hear the case."*

Furthermore, Article 139 of the Criminal Procedure Code determines, namely: *"After the public prosecutor receives or receives back the complete results of the investigation from the investigator, immediately determine whether the case file meets the requirements to be transferred to the court."*

The principle of discretion stipulated in Article 139 of the Criminal Procedure Code regulating the authority of the prosecutor's office is carried out without ignoring the principles of law enforcement objectives which include achieving legal certainty, a sense of justice, and benefits following the principles of restorative justice and diversion which are in line with the development of criminal law in Indonesia.[17] In carrying out the prosecution, the prosecutor has the authority to close the case in the interests of the law which is carried out in the case of:

a. The defendant passed away;
b. Expiration of criminal prosecution;
c. There has been a court decision that has obtained permanent legal force against a person for the same case *(nebis in idem)*;
d. The complaint for a complaint criminal offense is revoked or withdrawn; or
e. There has been an out-of-court settlement *(afdoening buiten process).*

The attribution authority granted by the law provides space for prosecutors, to make policies to prosecute cases in court with out-of-court settlements through restorative justice approaches, although this is not explicitly regulated in the law, it is very common in practice when case files are sent to the Prosecutor's Office and have been examined or corrected by the Public Prosecutor and the case has been declared complete (P-21), the case will be tried in court. However, the existence of an out-of-court settlement through a restorative justice approach is a new thing in the criminal justice system in Indonesia.

The legal breakthrough made by the prosecutor's office to realize justice with a restorative justice approach in the realm of prosecution, where currently the Attorney General's Office of the Republic of Indonesia has issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice.

The authority of the Attorney General's Office with the birth of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as the Restorative Justice Regulation) which was promulgated on July 22, 2020, comes from the authority of Attribution, namely the Prosecutor's Office Law and the Criminal Procedure Code (KUHAP). Philosophically, the regulation was born as in its consideration, namely:

(1) (1) the Public Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice, and

[17] Suryaden, "UU 11 tahun 2021 tentang Perubahan UU 16 tahun 2004 tentang Kejaksaan", online: <https://www.jogloabang.com>.

truth based on the law and heed religious norms, decency, and morality, and must explore human values, law, and justice that live in society;

(2) Whereas the settlement of criminal cases by prioritizing restorative justice that emphasizes restoration to the original state and balances the protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system;

(3) That the Attorney General has the duty and authority to streamline the law enforcement process provided by law by taking into account the principles of speedy, simple, and low-cost justice, as well as to establish and formulate case handling policies for successful prosecution which are carried out independently for the sake of justice based on law and conscience, including prosecution using the restorative justice approach which is carried out following the provisions of laws and regulations.

The philosophy is to realize true legal justice and to further humanize humans before the law. In crystallizing how conscience can be applied properly and wisely in the corridor of law enforcement. The juridical basis for the birth of the Regulation, namely:

(1) Law Number 8 of 1981 concerning Criminal Procedure (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to State Gazette of the Republic of Indonesia Number 3209);

(2) Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2004 Number 67, Supplement to State Gazette of the Republic of Indonesia Number 4401);

(3) Presidential Regulation Number 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia as amended by Presidential Regulation Number 29 of 2016 concerning Amendments to Presidential Regulation Number 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2016 Number 65);

(4) Regulation of the Attorney General Number: PER006/A/JA/07 /2017 concerning the Organization and Work Procedure of the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2017 Number 1069) as amended by Regulation of the Attorney General Number 6 of 2019 concerning Amendments to Regulation of the Attorney General Number: PER-006/A/JA/07/2017 concerning the Organization and Work Procedure of the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2019 Number 1094).

It will be a momentum that changes “the face of law enforcement in Indonesia.” There will be no more cases like Grandma Minah and Grandpa Samirin that reach the court. The philosophy of this Restorative Justice Regulation is implemented to

protect the small community. The essence of Restorative Justice is "restoration". Restoration of the peace that had faded between victims, perpetrators, and the community. Justice that is based on peace between the perpetrator, the victim, and the community is the moral and ethical principle of Restorative Justice.

In this 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. The Attorney General's Office policy in issuing Regulation No. 15/2020 provides a legal breakthrough in dispute resolution that emphasizes a win-win solution and avoids friction that occurs in society.

The facts that occur in law enforcement in Indonesia, especially by the prosecutor's office, which has the authority to determine the criminal process against criminals to be prosecuted in court after the birth of Regulation No. 15 of 2020, are more effective and have greater benefits for both the state and society, rather than taking action on every case, especially crimes against property, dignity, and traffic crimes.

This is inversely proportional to law enforcement oriented towards legalistic positivist law enforcement which emphasizes legal certainty rather than expediency and justice because the law as stated by Sajipto Rahardjo that law enforcement must be conscientious because the law is not for the law but the law for humans. Law experiences a static state while human behavior is always dynamic, this is in line with what Sunarto stated, namely:

> Legalistic positivism assumes that the implementation of criminal law only revolves around the world of laws so it is more dogmatic towards legal rules that have been made by lawmakers...The application of legalistic positivism causes criminal law to be unable to keep up with the development of a changing society, so it raises legal issues called criminalization (criminalization) and decriminalization (decriminalization) which is part of criminal law reform (criminal policy or *strafrechts politiek*). Therefore, the main existence of positivist legalism places humans as inanimate objects, which negates the most essential human nature that has will and feelings. Law enforcers consider the Criminal Code and KUHAP as "holy books" that cannot be changed.[18]

Based on this, the existence of Perja No. 15 of 2020 follows the times in eradicating criminal acts through a restorative justice approach, and is not solely legalistic positivist with a punitive orientation, but terminates criminal cases on less serious matters such as first-time suspects (not recidivists), the criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years and the criminal offense is committed with the value of evidence or the value of the loss caused by the criminal offense is not more than two million five hundred thousand rupiah, as stipulated in Article 5 paragraph (1) of the Regulation, that a criminal case can be closed by law and the prosecution is stopped based on Restorative Justice if the following conditions are met:

a. the suspect is a first-time criminal offender;

[18] Sunarto DM, *Rekostruksi Hukum Pidana Era Transformasi dan Globalisasi Dalam Penegakan Hukum Secara Integratif* (Bandar Lampung: Universitas Lampung, 2009).

b. the criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and
c. the criminal offense is committed with the value of evidence or the value of losses incurred as a result of the criminal offense is not more than Rp2,500,000.00 (two million five hundred thousand rupiah).

So far, the presence of the regulation has had a very significant impact based on the results of the first-semester evaluation as of December 31, 2020, 271 requests for criminal cases wanted to be resolved through restorative justice. Of this number, 222 cases were successfully stopped based on restorative justice. The most common criminal offenses resolved with a restorative justice approach are assault, theft, and traffic offenses. If calculated systematically, in 6 months 222 cases have been resolved. This means that every day there is more than 1 (one) case that is successfully resolved with restorative justice.[19] That as of December 2021, 490 cases throughout Indonesia have been successfully resolved using the Restorative Justice approach.

So far, the implementation of termination of prosecution based on Restorative Justice by the State Attorney's Office within the scope of the West Nusa Tenggara High Prosecutor's Office working area until November 2021 is 16 (sixteen) cases. One of them is a case of storing handled by the Sumbawa District Prosecutor's Office, which is threatened with article 480 to -1 of the Criminal Code on behalf of the suspect Saguni alias Lo Ak Hasyim, where the suspect has sold one buffalo resulting from the crime of theft. By the requirements of restorative justice, namely in Article 5 of Perja No. 15 of 2020, the parties involved in the application of restorative justice, in this case, include the public prosecutor, the suspect, the victim, the families of the suspect and victim, and the local village head. The agreement taken was that the suspect agreed to pay the victim's loss of Rp15,000,000.00 (fifteen million rupiah).[20]

Another case of the application of Regulation No. 15/2020 is a case of domestic violence with the suspect Lalu Riyadin Pratama handled by the Dompu District Prosecutor's Office, the article charged to the suspect is article 44 paragraph 4 of Law Number 23 of 2004. The chronology of physical violence within the scope of the household, came to the witness Sri Ariyana Ariani to ask for the marriage book but the witness did not give it and the witness pulled the suspect's motorcycle. By the requirements of restorative justice, namely in Article 5 of Regulation No. 15 of 2020, the parties involved in the application of restorative justice, in this case, include the public prosecutor, and the suspects agreed to make unconditional peace.[21]

With this restorative justice approach, conflicts in the community do not continue as acts of revenge on the perpetrator by the victim or the victim's family. This will reduce the number of continuing crimes because there has been peace between the perpetrator and the victim. The perpetrator is responsible and charged with restoring the situation by compensating the victim or the affected community, provided that it is not a serious crime that cannot be tolerated in law such as murder or sexual violence.

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[19] ST Burhanuddin, *Keadilan Restoratif: Dalam Bingkai Hati Nurani* (Jakarta: Fakultas Hukum Universitas Pancasila, 2021).
[20] Kejaksaan Tinggi Nusa Tenggara Barat, "Data Pelaksanaan Penghentian Penuntutan Berdasarkan Keadilan Restoratif Periode Tahun 2020 s/d 2021", (2021).
[21] *Ibid*.

> *"Central to restorative justice is the idea of making things right or, to use a more active phrase often used in British English, "putting right." As already noted, this implies a responsibility on the part of the offender to, as much as possible, take active steps to repair the harm to the victim (and perhaps the impacted community). In cases such as murder, the harm obviously cannot be repaired; however, symbolic steps, including acknowledgment of responsibility or restitution, can be helpful to victims and are the responsibility of offenders".*[22]

The success of the prosecutor's office in resolving cases outside the court is quite effective with a very significant number, but many obstacles occur, especially regarding the authority that has not been explicitly regulated, whether the prosecutor terminates the case in the interests of the law, by setting aside the criminal elements committed by the perpetrator, this raises legal issues because it will injure the value of legal certainty. Not to mention that the norms in Perja 15/2020 are still ambiguous regarding Article 5 paragraph (2) which reads:

> "For criminal offenses related to property, if there are criteria or circumstances of a casuistic nature which according to the consideration of the Public Prosecutor with the approval of the Head of the State Prosecutor's Branch or the Head of the State Prosecutor's Office, prosecution based on Restorative Justice can be discontinued by continuing to pay attention to the conditions as referred to in paragraph (1) letter a accompanied by one of letters b or c."

The problem with the application of the norms in Article 5 paragraph (2) of the Regulation is that there is confusion in the interpretation of law enforcement officials. Thus, in the implementation in the field, it will provide space for unscrupulous law enforcement officers to use circumstances or situations because in Article 5 paragraph (2) of the wording some criteria or circumstances are casuistic. That is, in other words, law enforcement officials may apply the articles according to their tastes and needs, which will harm the sense of justice and legal certainty. If there is a vagueness of norms in legal science, it will lead to multiple interpretations in the application of these norms so the norms must be clear and detailed, moreover Government Regulation Number 15 of 2020 in the order of laws and regulations based on Law Number 12 of 2011, its position is under Law Number 8 of 1981 concerning Criminal Procedure so that the Government Regulation must not conflict with the norms above it.

This is legally a conflict of norms because based on the legal principle of lex superior derogat legi inferior, the Perja has a position under the Criminal Procedure Code and when talking about law enforcement, it certainly talks about how to carry out the law by the legal procedures regulated in the Criminal Procedure Code. Normatively, there is a conflict of norms when talking about legal certainty oriented to Law Number 12 of 2011 concerning the Formation of Legislation, because the Law is higher than the Government Regulation, moreover, the position of the Attorney General's Regulation is below the law, this weakness in the application of restorative justice has an impact on legal certainty.

The problem of legal certainty in the implementation of restorative justice in Perja 15 of 2020 is constrained because there is no law regulating the closure of

[22] Howard Zehr, *The Little Book of Restorative Justice* (United States of America: Good Books, 2014).

cases based on restorative justice by the prosecutor's office. The concept of restorative justice has not been normalized in the form of a law so it has no executorial power, no legal certainty, and is not binding. Because the meaning of criminal law is a public law that applies universally, it must have a basis in determining which actions to carry out restorative justice, especially criminal law which adheres to the principle of legality which is so strict to protect and regulate from unfair law enforcement actions and abuse of power.

Therefore, a law must be made in determining the classification of acts that must be carried out by restorative justice, because talking about restorative justice is inseparable from the objectives of criminal law and the objectives of criminal law itself are inseparable from punishment, to determine acts that can be punished in legislative policy must be based on the law, as stipulated in Article 15 paragraph (1) of Law No.12 of 2011, namely content material regarding criminal provisions can only be contained in laws, provincial regulations, district/city regional regulations.

## CONCLUSION

The establishment of Prosecutor's Regulation No. 15/2020 on Termination of Prosecution based on Restorative Justice shows a legal breakthrough made by the prosecutor's office. The regulation is based on justice; public interest; proportionality; punishment as a last resort; and fast, simple, and low cost. The Attorney General's Office policy in issuing Regulation No. 15 of 2020 provides a legal breakthrough in dispute resolution that emphasizes win-win solutions and avoids friction that occurs in society. However, it is necessary to make a law in determining the classifications of acts that must be carried out in restorative justice, because talking about restorative justice is inseparable from the objectives of criminal law and the objectives of criminal law itself are inseparable from punishment, to determine acts that can be punished in legislative policies must be based on law.

## DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

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## REFERENCES

**BOOK**

Amiruddin, *Hukum Pidana Indonesia* (Yogyakarta: Genta Publishing, 2015).

Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

Ardiansyah, *Konstruksi Hukum Pengakuan Hak Mayarakat Hukum Adat atas Tanah Ulayat di Desa Sukadana Lombok Utara* Universitas Mataram, 2020) [unpublished].

Burhanuddin, ST, *Keadilan Restoratif: Dalam Bingkai Hati Nurani* (Jakarta: Fakultas Hukum Universitas Pancasila, 2021).

Burhanudin, ST, *Kejaksaan untuk Indonesia (Analogi Pemikiran Jaksa Agung RI ST Burhanudin)* (Jakarta: Fakultas Hukum Universitas Pancasila, 2021).

DM, Sunarto, *Rekostruksi Hukum Pidana Era Transformasi dan Globalisasi Dalam Penegakan Hukum Secara Integratif* (Bandar Lampung: Universitas Lampung, 2009).

Patitting, Farida et al, *Kedudukan Kejaksaan Republik Indonesia dalam Sistem Ketatanegaraan* (Yogyakarta: Penebit Litera, 2021).

Sahetapy, Jacob Elfinus, *Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, 3d ed (Malang: Setara Press, 2009).

Zehr, Howard, *The Little Book of Restorative Justice* (United States of America: Good Books, 2014).

**BOOK CHAPTER & JOURNAL**

Adhar & Ardiansyah, "Penyelesaian Sangketa Melalui Alternative Dispute Resolution (ADR) Menurut Hukum Adat Bima" (2020) 2:1 Jihad J Ilmu Huk dan Adm 41–52.

Fauzia, Ana & Fathul Hamdani, "Aktualisasi nilai-nilai pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah" (2021) 2:2 J Indones Berdaya 157–166.

———, "Analysis of the Implementation of the Non-Conviction-Based Concept in the Practice of Asset Recovery of Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence" (2021) 11:1 J Jurisprud 57–67.

Fauzia, Ana, Fathul Hamdani & Deva Gama Rizky Octavia, "The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law" (2021) 3:1 Progress Law Rev 12–25.

Rampadio, Hamdan, Ana Fauzia & Fathul Hamdani, "The urgency of arrangement regarding illicit enrichment in Indonesia in order to eradication of corruption crimes by corporations" (2022) 9:2 J Pembaharuan Huk 225–241.

Widodo, "Perspektif Hukum Pidana dan Kebijakan Pemidanaan: Diversi dan Keadilan Restoratif, Terorisme, Cybercrime" in *Pidana mati, dan Peradil Sesat* (Yogyakarta: Aswaja Presisindo, 2017).

**WEBSITE**

Fauzia, Ana & Fathul Hamdani, "Restorative Justice: Antara Teori dan Praktik", (2022), online: *HnG Consult* <https://hng.co.id/view/article-details?id_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES>.

Kejaksaan Tinggi Nusa Tenggara Barat, "Data Pelaksanaan Penghentian Penuntutan Berdasarkan Keadilan Restoratif Periode Tahun 2020 s/d 2021", (2021).

Nugroho, Dendy Prasetyo, "Konsep Restorative Justice dalam Peradilan di Indonesia (Perspektif Filosofis Pancasila sila ke 4 dan ke 5)", online: <http://pukapaku.com>.

Suryaden, "UU 11 tahun 2021 tentang Perubahan UU 16 tahun 2004 tentang

Kejaksaan", online: <https://www.jogloabang.com>.