Journal of Positive School Psychology http://journalppw.com
2022, Vol. 6, No. 10, 220-236

Restorative Justice As A Model For Termination Of Criminal Prosecutions

Deddi Diliyanto [1*], Amiruddin [2], Gatot Dwi Hendro Wibowo [3], Lalu Parman [4]

[1,2,3,4]Faculty of Laws, Mataram University, Mataram City, West Nusa Tenggara, Indonesia.

Email: diliyanto1982@gmail.com
**corresponding author: diliyanto1982@gmail.com[1]*

Abstract

Through the authority of the prosecutor's office, it is very appropriate to apply the concept of restorative justice as an effort to close cases for legal purposes. The legal breakthrough made by the prosecutor's office to realize justice with a restorative justice approach in the realm of prosecution is currently being realized by issuing Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. The purpose of this study is to examine the essence of the application of restorative justice as a model for terminating prosecution of criminal cases and to examine the model for terminating prosecution of criminal cases based on Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. The method used in this research is normative legal research using statutory, conceptual, and case approaches. The results of the study indicate that the concept of restorative justice is a frame of mind to find a way out in deciding actions in accordance with the conditions of the perpetrators of the crime. The concept aims to create humane justice, bringing victims and perpetrators together to solve problems that occur. Thus, the application of Restorative Justice in the criminal justice system in Indonesia is part of the reform of the criminal law system that applies in the future. In addition, with the issuance of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it has had a very significant impact based on the results of the first semester evaluation dated December 31, 2020, there were requests for 271 criminal cases to be resolved in restorative justice.

Keywords: Criminal Case; Restorative Justice; Termination of Prosecution.

INTRODUCTION

The criminal justice system is a system in a society to deal with crime problems [1]. The criminal justice system is a term to indicate the working mechanism in crime prevention by using a basic systems approach [2]. The term "criminal justice system" can also refer to the mechanism of administration of the criminal justice system as well as the system that results from the interaction of societal norms, administrative procedures, and legal and regulatory requirements [3].

The Indonesian criminal justice system actually still follows the criminal justice system adopted by the Netherlands based on continental European even though Indonesia already has its own criminal procedural law, namely the Criminal Procedure Code based on Law Number 8 of 1981. The Indonesian criminal justice system or what is known as the integrated criminal justice system has a model of enforcement. Duo process of law where the main thing is to enforce the formal law [4].

According to Romli Atmasasmita, in essence, since the criminal justice system is a means of enforcing criminal laws, it is intimately tied to the criminal legislation itself, including both substantive and procedural laws. Due to the fact that criminal law is mostly in abstract form, criminal law enforcement in concrete form will be realized [5]. Meanwhile, according to Muladi, the criminal justice system is a judicial network that uses material criminal law, formal criminal law and criminal law enforcement. Furthermore, the meaning of an integrated criminal justice system) is synchronization and harmony which is distinguished in several ways, namely structural synchronization, substantial synchronization, and cultural synchronization [6].

Refer to the Law Number 8 of 1981 concerning the Criminal Procedure Code which regulates the criminal justice system consisting of components of the legal structure or what is known as law enforcement tools (police, prosecutors, courts) that carry out criminal justice processes starting from the investigation, prosecution, and trial in the context of enforcing material criminal law Criminal Procedure Code in an effort to achieve the objectives and functions of criminal law.

The Indonesian criminal justice system actually still follows the criminal justice system adopted by the Netherlands based on continental European understanding even though Indonesia already has its own criminal procedural law, namely the Criminal Procedure Code based on Law Number 8 of 1981. The Indonesian criminal justice system is the criminal justice system or what is known as the integrated criminal justice system. Which has a duo process of law enforcement model where the main thing is enforcing formal law.

The criminal justice system in Indonesia at the conceptual level is ideal, but at the practical level, the efforts to realize the function of the criminal justice system in Indonesia as a means of protecting human rights through crime prevention and control, still face many obstacles, in the process of realizing its functions and objectives [7]. In addition, the criminal system in Indonesia cannot be separated from written rules originating from the criminal law of the Dutch colonial heritage, known as the Criminal Code as a material law oriented to eradicating criminal acts [8].

In criminal law, to determine whether an act is an act that can be punished, then in criminal law it is known as the principle of legality. This principle has been normalized in Article 1 paragraph (1) of the Criminal Code which stipulates that an act cannot be punished, except based on the strength of the provisions of existing criminal legislation [9].

The application of the concept of “against the law” which has a positive function sometimes leads to disharmony with other legal principles, for example with the principle of legality [10]. 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 disgraceful act must be based on a provision of the existing criminal law (vide Article 1 paragraph (1) of the Criminal Code). On the other hand, if an act is not prosecuted, the community's sense of justice will be disturbed, because for our country (Indonesia) law is not only defined as written law but also as the living law in society (unwritten law- customary law) [11]. As stated in Article 1 paragraph (3) of the 1945 Constitution, "Bahwa Negara Indonesia Negara Hukum," the meaning of the rule of law in the article, has the meaning of written law and unwritten law or law that lives in society [12]. Unwritten laws or laws that live in society are recognized by the state as stated in the 1945 Constitution Article 18B paragraph (2):

> “The state recognizes and respects customary law of citizen and their

> traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Act".

Dispute resolutions in Indonesian society by prioritizing deliberation to reach consensus based on laws that live in society, which has become a continuous habit [13]. Such as the customary law of Bima land or known as the Hukum Bicara Bima which is regulated in the HATB, regulates the order of social life by protecting the rights of individuals to settle disputes by peaceful means and deliberation, the article that regulates as follows [14]:

> "Sebagai lagi, jikalau ada barang sesuatu hal perbuatan orang dalam negeri kecil (village) bahwa hendaklah segela orang tuanya duduk bersama-sama mencari kebaikan anak buahnya, dapat juga Gelarang (Kepala Village) membaiki dengan "kaleli sebuah" dan "mange satebe" jika kalau tiada boleh Gelarang memperbaiki maka datang di Bima meminta bicara (keputusan hukum)".

Likewise, the customary law of the Lombok (Sasak) community in Sukadana Village, Subdistrict Bayan, Regency Lombok Utara, which is still valid today, namely the wetu telu concept which is a combination of three elements, namely religion, government, and custom, working together in carrying out the customary government system and resolving disputes. Through deliberation to reach an agreement [15]. Likewise, other Sasak tribal areas still treat settlements known in criminal law "penal mediation" with the concept of deliberation.

Judging from the customary law of the lands of Bima (Mbojo) and Lombok (Sasak) in Sukadana Village, it means that dispute resolution by deliberation to reach consensus by prioritizing a sense of kinship was born in Indonesia long before positive law existed. As we know, positive law (KUHP) which is used as a reference in criminal law enforcement is solely oriented to the enforcement of written law and does not see the values of justice that live in society. This is not in line with the renewal of Indonesian criminal law which is oriented to the values contained in Pancasila as stated in Article 1 of the draft of the Indonesian Criminal Code [16]:

> "The purpose of the Indonesian criminal law is to protect the State, society, institutions, as well as citizens of the Republic of Indonesia and other residents against criminal acts that hinder 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 plan. It is stated that the purpose of sentencing is [17]:

1. to prevent the commission of criminal acts for the protection of the state, society and population;
2. to guide the convicts to convert and become virtuous and useful members of society;
3. to remove stains caused by criminal acts.

The idea of a criminal system that is oriented towards recovering the loss and suffering of victims emerged, which is known as the restorative justice approach. Restorative justice prioritizes the process of resolving cases between the parties in social relations [18]. Through group counseling including both victims and offenders, restorative justice is a set of beliefs about justice that presupposes the existence of kindness, empathy, support, and rationality of the human spirit. As a result, the goal is always to uphold values that value the individual [19]. Therefore, restorative justice is

a combination of the conception of relational justice with participatory or consensual justice, then formulated in a crime settlement technique based on participatory program design, implementation and evaluation [20].

There are numerous issues and detrimental effects associated with the notion that criminal matters can only be resolved through legal channels and the doctrine of retributive punishment. Due to this, a shift in strategy is required, specifically through the resolution of criminal matters outside of court using restorative justice principles. Philosophically, restorative justice was first introduced by Albert Eglash in 1977, who distinguished three forms of justice in the criminal justice system, namely redistributive justice, distributive justice, and restorative justice. Distributive Justice focuses on punishing perpetrators for crimes that have been committed, Distributive Justice focuses more on the purpose of punishment for the rehabilitation of perpetrators, while Restorative Justice according to Eglash is basically 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 coined the concept of restorative justice in Islamic law, restorative justice has been known as in the Surah Al-Baqorah Verse 178, which means:

> "Wahai orang-orang yang beriman! Diwajibkan atas kamu (melaksanakan) Qisas berkenaan dengan orang yang dibunuh. Orang merdeka dengan orang merdeka, hamba sahaya dengan hamba sahaya, perempuan dengan perempuan. Tetapi barang siapa memperoleh maaf dari saudaranya, hendaklah dia mengikuti dengan baik, dan membayar diyat (tebusan) kepadanya dengan baik (pula) yang demikian itu keringanan dan rahmat dari tuhan-Mu. Barang siapa melampaui batas setelah itu, maka ia akan mendapat azab yang pedih".

> "O believers! The law of retaliation is set for you in cases of murder a free man for a free man, a slave for a slave, and a female for a female. [1] But if the offender is pardoned by the victim's guardian, [2] then blood-money should be decided fairly [3] and payment should be made courteously. This is a concession and a mercy from your Lord. But whoever transgresses after that will suffer a painful punishment".

In the Al-Quran Surah Al-Baqorah Verse 178, it expressly orders believers to carry out the law of qisos to punish the perpetrators of crimes according to their actions, but if the victim and/or the victim's family forgive him or give forgiveness, then the perpetrator is given forgiveness. by not implementing the qisos law, however, 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 society.

Likewise in the Bible, it has been regulated in Luke Article 17 Paragraphs (3) and (4).

> Ayat (3) "Karena itu, Jagalah dirimu baik-baik. Jika saudaramu berbuat dosa, tegurlah dia. Jika ia menyesal ampunilah dia. Ayat (4) jika ia bersalah padamu tujuh kali sehari dan tujuh kali juga ia kembali kepada mu serta berkata "aku menyesal", engkau harus mengampuninya.

> "[3] So watch yourselves. "If your brother or sister sins against you, rebuke them; and if they repent, forgive them. [4]Even if they sin against you seven times in a day and seven times come back to you saying 'I repent', you must forgive them".

The concept of religion also recognizes to forgive each other in the event of a mistake, not only punishing according to what has been done, it will restore the situation between the

perpetrator and the victim or other parties. In the concept of restorative justice, it aims to emphasize justice in restoring the situation, the perpetrator is given the opportunity to express his regret to the victim and is at the same time responsible and the victim is given the opportunity to convey his demands according to his conscience. This is guaranteed in the constitution as described in Article 28 letter e paragraph 2 and paragraph 3 of the 1945 Constitution The second amendment, namely paragraph 2, states that:

> "Everyone has the right to freedom of belief, expression and attitude according to his conscience"
> and paragraph 3 states "Everyone has the right to freedom of association, assembly and expression".

Based on the constitutional mandate, it is philosophically appropriate to apply restorative justice in Indonesia, because the constitution provides space for everyone to express their thoughts according to their conscience and gather for deliberation. It means that in the enforcement of criminal law, victims or perpetrators are given to express their thoughts and attitudes in accordance with their conscience in solving legal problems faced without any pressure. Thus, in the concept of restorative justice, it gives freedom to solve criminal law problems by gathering together victims, perpetrators, families of victims, families of perpetrators, community leaders, religious leaders, and the government, to conduct deliberation to reach consensus or what is known in criminal law by penal mediation by taking into account the interests of both parties without injuring the value of legal certainty.

Therefore, regarding 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 a Model for Termination of Criminal Cases".

METHODOLOGY

The method used in this article is normative legal research, namely by analyzing the problems in the research ranging from legislation, theories/concepts, and analytical methods included in the discipline of normative law. The approaches used are statutory, conceptual, and case approaches. legislation approach, namely the approach by using legislation and regulations. While the conceptual approach is an approach that is carried out by reviewing the literature that is related to the problem 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 AND DISCUSSION

The essence of the application of Restorative Justice as a Model for Termination of Criminal Cases

Restorative justice contains restoration of relationships and redemption of wrongdoing that the perpetrator of the crime (their family) wants to do against the victim of the crime (their family) peace efforts outside the court with the aim and purpose that legal problems arising from the crime can be resolved by both with the achievement of agreement and agreement between the parties [21].

The idea of restorative justice is a manifestation of criticism of the application of the criminal justice system with punishments that are considered ineffective in resolving various forms of social conflict. This ineffectiveness is caused because the parties involved in the conflict are not involved in conflict resolution. As a result, victims are still victims, while perpetrators who are imprisoned also create new problems for their families and soon [22]. The concept of restorative justice seeks to

resolve criminal justice outside the court by involving the perpetrator and the victim by taking into account the interests between the objectives of criminal law and the function of criminal law to protect the interests of the state, society and individuals.

The use of case settlement outside the court, indeed feels awkward in the enforcement of criminal law based on the ius punale and ius puniendi principles. The ius punale principle gives the state the right to carry out statutory provisions concerning criminal law both materially and formally through state instruments [23]. Meanwhile, the ius puniendi principle gives the state the right to impose a crime on someone who has been proven guilty by a court institution and carries out the execution or implementation of a court decision [24].

According to Mardjono Reksodiputro that the criminal justice system is a system in a society to deal with crime problems, aiming to control crime so that it is within the limits of tolerance and resolve most reports and complaints from people who are victims of crime by submitting criminals to court to be found guilty and get punished [25]. This is an effort to ensure legal certainty runs in accordance with criminal law. This conception ultimately causes problems that affect the judiciary, in the form of a buildup of cases and the performance of judges and prosecutors is questioned because all cases from light to severe must be prosecuted by prosecutors and examined by judges. Such facts seem to show that the Indonesian Prosecutor's Office adheres to the principle of the obligation to prosecute all criminal cases (mandatory prosecution). Numerous criminal conduct offenders received criminal sentences as a result of the prosecutor's office's legal prosecution. The criminal punishment is completed when the offender is placed in a correctional facility as a prisoner. Because of this, the State Detention Center (RUTAN) and Correctional Institution (LAPAS) are overcrowded, which causes complicated issues that prevent the public from understanding the role and goal of these facilities. In this regard, Romli Atmasasmita argues that the only benefit is placing people in prison for a sufficiently long time that the perpetrators of the crime will experience physical and mental isolation and may even be close to “civil death” for the rest of their lives; Worse, lead to death. The state does not benefit, in fact the state bears a high economic burden [26]. Thus, in the criminal justice system in Indonesia, there has been a shift, not only discussing the theory of punishment oriented to retribution and justice which sees victims who must be prioritized for restitutive justice, but also the concept of restorative justice, namely restoring the situation by involving victims and perpetrators as an effort to make peace even though in Indonesia it still sounds new but this concept can provide great benefits.

There are several differences between the three concepts of the purpose of punishment in criminal law in Indonesia, which can be seen from the table below:

Table 1.

Retributive Justice	**Restitutive Justice**	**Restorative Justice**
• Emphasize justice over retaliation; • The focus is on trying to order criminals;	• Emphasize fairness in compensation Focus attention on efforts to recover victims' losses	• Emphasize justice on restoring the situation and restoring balance in society • Perpetrators are given the opportunity to express their regret to the victim and at the same time take responsibility. • Victims are given the opportunity to express their demands

		• Perpetrators and victims are brought together to reduce hostility and hatred. • Community members are involved in the recovery effort.

The concept of restorative justice is a framework of thinking to find a way out in deciding actions in accordance with the conditions of the perpetrators of the crime. The concept aims to create humane justice, bringing victims and perpetrators together to solve problems that occur. Refer to the purpose of restorative justice law, it talks more about aspects of justice and the benefits of law in order to provide balance in human life. The concept of restorative justice leaves the criminal law paradigm of the perpetrators of their crimes in accordance with their actions or rehabilitates the perpetrators to become good human beings again in society, but this does not provide benefits and a sense of justice in society.

The restorative justice approach is a way of solving that is more forward to a sense of kinship, for the benefit of the law for many people. According to Jeremi Betham, usefulness is defined the same as happiness, so the main goal of the law is to provide the greatest benefit and happiness to as many people as possible, meaning the measure of justice for Betham when the law provides happiness for as many people as possible [27]. This is in line with the concept of restorative justice which is oriented towards happiness and benefit for victims and perpetrators as well as the community. The development of restorative justice in its application gives birth to a win-win solution, meaning that no one is harmed, both the victim and the perpetrator, so that both can live peacefully and without conflict or revenge.

“Restorative justice usually recognizes a place for hostility professional approach and role and recognizes the important role for country. However, restorative justice emphasizes the importance participation by those with a direct interest in the event or violation that are, those who are involved, affected, or who have righted the interest of the violation” [28].

In fact, the application of restorative justice has often been applied to every region in Indonesia in different ways in accordance with prevailing customs, and in essence remains through a family-friendly approach to settlement with the involvement of all parties. Although in positive law in Indonesia the concept of restorative justice is new and has not been widely applied. Normatively it is only regulated in Law Number 11 of 2006 concerning the Government of Aceh and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, the two laws are limited in scope and specifically on the Aceh Government and the Juvenile Criminal Court.

The application of Restorative Justice in the criminal justice system in Indonesia is part of the reform of the criminal law system that applies in the future, therefore it is a constructive legal breakthrough, it is hoped that a clear legal will be given in the future both in material law and formal law, because it aims to [29]:

1. Is a solution to reduce the accumulation of cases in various stages of law enforcement;
2. To lessen the number of detainees who can be held in prisons at various stages of case resolution and execution;
3. It is a process of restoring the relationship between the victim and the perpetrator;
4. Can provide the widest possible access to parties, both as perpetrators of crimes and victims of crimes, to obtain justice;

5. Enhancing Indonesia's criminal justice system to better handle criminal cases in each law enforcement facility;
6. To give victims of crime emotional support and to respect the dignity of offenders in order to prevent a continuing conflict in the neighborhood.

The idea of restorative justice in the criminal justice system in Indonesia is a necessity for solving criminal cases in the current era and urgent to be implemented so that it can be used as an operational basis for law enforcement in resolving criminal cases both inside and outside the court. In a journal written by Tina S. Ikpa that restorative justice provides improvements related to problems and the criminal justice system that applies retributive sanctions.

> “Restorative justice has been shown to provide the kind of improvements that the current retributive justice system needs” [30].

In the process of resolving criminal cases, it is through the process of investigation, investigation, prosecution, court examination, judge's decision, and implementation of judge's decision [31].

From a series of criminal justice processes in the criminal justice system, a very important role in determining whether a case is appropriate or not to be brought to court is the prosecutor as a public prosecutor. Because only the Prosecutor's Office can decide whether a case can be brought to court based on admissible evidence in accordance with the Criminal Procedure Code, the Prosecutor's Office holds a crucial position in law enforcement as the controller of the case process (Dominus Litis). In addition to possessing Dominus Litis, the Prosecutor's Office is the only body responsible for carrying out criminal judgments (executive ambtenaar).

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

The role of the prosecutor, which determines the running of a criminal case, is very important regarding the authority for law enforcement by focusing not solely on the issue of giving demands for criminal acts committed by someone but being able to realize the values of justice in the criminal process carried out [32]. Through the authority of the prosecutor's office, it is appropriate to apply the concept of restorative justice as an effort to close cases for legal purposes. This is inseparable from the duties of the Attorney General as an investigator, public prosecutor, and attorney for the Unitary State of the Republic of Indonesia. The authority attached to the prosecutor's office can be told as controlling the case.

Constitutionally, the prosecutor's authority is not explicitly regulated, but belongs to the judiciary in Article 24 paragraph (2) of the 1945 Constitution state:

> “Judicial power is exercised by a Supreme Court which is under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a constitutional court”.

Then it is further regulated in Article 24 paragraph (3) regarding other bodies whose functions are related to judicial power as regulated in law. Therefore, in a broader sense, the authority of the prosecutor's office includes judicial power. According to Indriyanto Seno Adji that the Prosecutor's Office of the Republic of Indonesia as an institution that exercises state power in the field of the highest prosecution in criminal cases independently, is one of the laws enforcement officers who are een en ondelbaar in the constitutional structure [33].

Refer to the Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Article 2 paragraph (1) affirms that:

> "The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities based on the law".

The position of the Prosecutor as the implementation of the Law in the field of prosecuting cases to the court, becomes the authority of the Prosecutor in assisting the judiciary. It means that the prosecutor as a public prosecutor function as a judiciary. For this reason, the prosecutor's office must be able to actualize legal certainty, legal order, justice, and truth based on the law, as well as pay attention to religious standards, decency, and morality, while yet being required to investigate human values of law and justice that exist in society [34].
Additionally, the Attorney General's Office is responsible for establishing and formulating case handling guidelines for successful prosecutions that are carried out independently for justice based on law and sincerity, including prosecution using a restorative justice approach carried out in accordance with the principles of quick, easy, and inexpensive justice.

The Republic of Indonesia's Prosecutor's Office, which exercises state power in the area of prosecution, must be able to realize the principles of legal certainty, justice, and truth based on the law and respect religious norms, decency, and morality. It also needs to investigate how society's practice of law and justice affects living human values.
It based on Article 14 of the Criminal Procedure Code as a criminal procedure law, it gives the prosecutor's authority as a public prosecutor and is confirmed in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. has also regulated the duties and authorities of the Prosecutor's Office, among others:
Article 30 determines, namely:

1) In the criminal field, the Prosecutor's Office has the following duties and authorities:
    a. Carry out prosecutions;
    b. Carry out judges' decisions and court decisions that have permanent legal force;
    c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and conditional decisions;
    d. Carry out investigations into certain criminal acts based on the law;
    e. Completing certain case files and for that purpose can carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators.
2) In the field of civil and state administration, the Prosecutor's Office with special powers can act inside or outside the court for and on behalf of the state or government.

Article 30C determines, 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 Attorney General's Office.
b. Participate and be active in the search for the truth in cases of serious human rights violations and certain social conflicts in order to achieve justice.
c. Participate and be active in handling criminal cases involving witnesses and victims as well as the process of rehabilitation, restitution and compensation.
d. Conduct penal mediation, confiscate executions for payment of criminal fines and substitute penalties as well as restitution.

e. May provide information as material for information and verification regarding whether or not there is an alleged violation of the law that is being or has been processed in a criminal case to occupy a public office at the request of the competent authority.
f. Carry out its functions and authorities in the civil and/or other public fields as regulated by law.
g. Carry out execution confiscations for payment of criminal fines and replacement money.
h. File a Review.
i. Conduct wiretapping based on a special law that regulates wiretapping and organizes a monitoring center in the field of criminal acts.

In Article 34A it 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 judgments by taking into account the provisions of laws and regulations and codes of ethics."

Article 137 of the Criminal Procedure Code determines, namely:

> “The public prosecutor has the authority to prosecute anyone who is accused of committing a criminal act within his jurisdiction by delegating the case to a court that is competent to adjudicate.”

Furthermore, Article 139 of the Criminal Procedure Code determines, namely:

> "After the public prosecutor receives or receives back the results of a complete investigation from the investigator, immediately determine whether the case file meets the requirements to be submitted to the court."

The principle of discretion as regulated in Article 139 of the Criminal Procedure Code that regulates the authority of the prosecutor's office is carried out without ignoring the principles of law enforcement objectives which include the achievement of legal certainty, a sense of justice, and its benefits in accordance with the principles of restorative justice and diversion which encourage the development of criminal law in Indonesia [35]. In carrying out the demands, the prosecutor has the authority to close the case for legal purposes which is carried out in the case of:

a. Defendant dies;
b. Expiration of criminal prosecution;
c. There has been a court decision that has permanent legal force against someone in the same case (nebis in idem);
d. Complaints for criminal offenses are withdrawn or withdrawn; or
e. There has been a settlement of cases out of court (afdoening buiten process).

The attribution authority granted by the law provides space for prosecutors, in taking the policy of prosecuting cases in court with out-of-court settlements through a restorative justice approach, even though this is not explicitly regulated in the law, it is a very common thing in law enforcement. In practice, when the case file is sent to the Prosecutor's Office and has been examined or corrected by the Public Prosecutor and the case has been declared complete (P-21), the case will surely be tried in the 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.

Legal breakthroughs made by the prosecutor's office to bring about 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 issuance of Prosecutors' Regulation

Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as Restorative Justice Perja) which was promulgated on 22 July 2020, stems from the Attribution authority, namely the Prosecutor's Law and the Criminal Procedure Code (KUHP). KUHAP). Philosophically, the Perja was born as in its preamble, namely:

1) The Prosecutor's Office of the Republic of Indonesia must be able to achieve legal certainty, legal order, justice, and truth based on the law, respect religious norms, decency, and morality, and must multiply human values, law, and justice that exist in society;
2) Restorative justice, which prioritizes restoration to its original state and strikes a balance between the interests of victims and offenders of crimes who are not motivated by retaliation, is a legal requirement for society and a mechanism that must be built into the prosecution process and the reform of the criminal justice system;
3) That it is the responsibility and authority of the Attorney General to establish and formulate case handling guidelines for successful prosecutions that are carried out independently for justice based on law and sincerity, including prosecutions using a restorative justice approach carried out in accordance with the provisions of the law, and to streamline the law enforcement process as provided for by the law by taking into account the principles of quick, easy, and inexpensive justice.

Philosophically, to realize true legal justice and to more 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 Perja, as follows:

1) Law Number 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the 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 the State Gazette of the Republic of Indonesia Number 4401);
3) Presidential Regulation Number 38 of 2010 concerning Organization and Work Procedure of the Prosecutor's Office of the Republic of Indonesia as amended by Presidential Regulation Number 29 of 2016 concerning Amendment to Presidential Regulation Number 38 of 2010 concerning Organization and Work Procedure of the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia Year 2016 Number 65);
4) Attorney General Regulation Number: PER006/A/JA/07/2017 concerning Organization and Work Procedure of the Attorney General's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2017 Number 1069) as amended by Attorney General's Regulation Number 6 of 2019 concerning Amendments to the 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).

This Perja will be a momentum that will change “the face of law enforcement in Indonesia”. There will be no more cases like Minah's grandmother and Samirin's grandfather who reach the court. The philosophy of the Restorative Justice Perja is implemented to protect the small community. The essence of Restorative Justice is "restoration". Restoration of peace that had faded between victims, perpetrators, and the community. Justice based on peace between perpetrators, victims and the

community are what constitutes moral ethics. In this Perja, the termination of prosecution based on restorative justice is carried out on the basis of justice; public interest; proportionality; punishment as a last resort; and fast, simple, and low cost. The Attorney General's Office policy in issuing Perja Number 15 of 2020 provides legal breakthroughs in dispute resolution that emphasizes win-win solutions and avoids friction that occurs in society.

Facts that occur in law enforcement in Indonesia, especially by the prosecutor who has the authority to determine criminal proceedings against criminals to be prosecuted in court after the birth of Perja Number 15 of 2020 is more effective and has greater benefits for both the state and society, than taking action. Prosecution of every case, especially crimes against property, the dignity of a person, and traffic crimes.

This is in contrast to law enforcement oriented towards legalistic positivist law enforcement which places more emphasis on legal certainty than benefits and justice because the law as stated by Sajipto Rahardjo that law enforcement must be conscientious, because law is not for law but law for humans. The law experiences a static situation while human behavior is always dynamic, this is in line with what was stated by Sunarto, namely:

> The positivist legalist assumes that the implementation of criminal law only dwells in the world of law, so that it is more dogmatic towards the legal order that has been made by the legislators… The application of the positivist legalistic causes criminal law to be unable to follow the development of a changing society, so that it raises legal problems called criminalization and decriminalization which are actually part of criminal law reform (criminal policy or strafrechts politiek). Therefore, the main existence of positivist legalistic understanding places humans as objects of inanimate objects, which negates the most essential human nature that has will and feelings. Law enforcement considers the Criminal Code and the Criminal Procedure Code as "holy books" that cannot be changed [36].

Based on this, the existence of Perja Number 15 of 2020 follows the development of the times in criminal acts through a restorative justice approach, and is not merely a positivist legalistic oriented punishment, but will terminate criminal cases against things that are not too serious, such as a suspect for the first time committing a crime. criminal acts (not recidivists), criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years and the crime is committed with the value of the evidence or the value of the loss caused by the crime of not more than two million five hundred thousand rupiah, as regulated in Article 5 paragraph (1) of the Perja, that criminal cases can be closed for the sake of law and terminated based on Restorative Justice in the event that they meet the following requirements:

a. the suspect has committed a crime for the first time;
b. criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and
c. criminal act is committed with the value of evidence or the value of the loss arising from the crime of not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiah).

So far, the presence of the Perja has had a very significant impact. Based on the results of the first semester evaluation, dated December 31, 2020, there have been requests for 271 criminal cases to be resolved in restorative justice. Of these, 222 cases were successfully terminated based on restorative justice. The crimes that are mostly resolved with a restorative justice approach are crimes of assault, theft, and traffic. If calculated systematically, within a span of 6 months, 222

cases have been resolved. This means that every day there are more than 1 (one) case that has been successfully resolved with restorative justice [37]. That as of December 2021, there were 490 cases throughout Indonesia that were successfully resolved using the Restorative Justice approach.

So far, the implementation of the termination of prosecution based on Restorative Justice by the District Attorney in the working area of the West Nusa Tenggara High Prosecutor's Office until November 2021 is 16 (sixteen) cases. One of them is the case of detention handled by the Sumbawa District Attorney, which is threatened with Article 480 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. In accordance with the requirements of restorative justice, namely in Article 5 of Perja Number 15 of 2020, the parties involved in the application of restorative justice in this case include the public prosecutor, suspects, victims, families of suspects and victims, as well as local village heads. The agreement taken is that the suspect agrees to pay for the loss of the victim in the amount of Rp. 15,000,000.00 (fifteen million rupiah) [38].

Another case from the application of Perja Number 15 of 2020 is the case of Domestic Violence (KDRT) with the suspect Lalu Riyadin Pratama which is handled by the Dompu District Attorney, the article that is suspected of being the suspect is Article 44 paragraph 4 of Law Number 23 of 2004. Chronology of physical violence within the scope of the household, went to witness Sri Ariyana Ariani to ask for a marriage book but the witness did not give it and the witness pulled the suspect's motorbike. In accordance with the requirements of restorative justice, namely in Article 5 Perja Number 15 of 2020, the parties involved in the application of restorative justice in this case include the public prosecutor, the suspects agreed to make peace without conditions [39].

Through this restorative justice approach, conflict in the community does not continue as an act of revenge against 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 redressing the situation by compensating the victim or the community affected, as long as it is not a serious crime that cannot be tolerated by law, such as murder or sexual violence:

> "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 a responsibility of offenders" [40].

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

"For criminal acts related to property, in

> the event that there are criteria or circumstances that are casuistic in nature which according to the consideration of

> the Public Prosecutor with the approval of the Head of the Branch of the District Attorney or the Head of the District Attorney's Office, prosecution based on Restorative Justice shall be carried out with due regard to the conditions as referred to in paragraph (1) letter a is accompanied by either the letter b or the letter c".

The issue of applying the norms in Article 5 paragraph (2) of the Perja is ambiguous in the interpretation of law enforcement officials. Thus, in the implementation in the field, it will provide space for law enforcement officers to use circumstances or situations because in Article 5 paragraph (2), there are criteria or circumstances that are casuistic in nature. It means, in other words, law enforcement officers may apply articles according to the needs, this will adversely affect the sense of justice and legal certainty. If there is a blurring of norms in legal science, it will lead to multiple interpretations in the application of these norms, so that the norms must be clear and detailed, moreover Perja Number 15 of 2020 in the order of laws and regulations based on Law Number 12 of 2011, its position is under the Law Number 8 of 1981 concerning the Criminal Procedure Code, so that the Perja cannot conflict with the norms above. This is legally a conflict of norms because it is based on the legal principle of lex superior derogat legi inferior, because Perja has a position under the Criminal Procedure Code and when it comes to law enforcement, of course it talks about how to carry out the law in accordance with the legal procedures stipulated in the Criminal Procedure Code. Nomatively, there is a conflict of norms when it comes to legal certainty that is oriented to Law Number 12 of 2011 concerning the Formation of Legislation, because it obviously that the Law is higher than the Government Regulation, especially the position of the Attorney General's Regulation that its position is under the Law, this weakness in the application of restorative justice has an impact on legal certainty.

The problem of legal certainty in the application of restorative justice in Perja 15 of 2020 is constrained because there is no law that regulates the closure of cases based on restorative justice by the prosecutor. The concept of restorative justice has not been normalized in the form of a law so that it has no executive power, no legal certainty, and is not binding. Because the meaning of criminal law is public law that applies universally, so it must have a basis in determining which actions to carry out restorative justice especially with regard to criminal law that adheres to the principle of legality that is so strict in order to protect and regulate from unfair law enforcement actions and abuse of power.

Therefore, a law must be made in determining the classifications of actions that must be carried out by restorative justice, because speaking of restorative justice cannot be separated from the purpose of criminal law and the purpose of criminal law itself cannot be separated from punishment, to determine actions that can be punished in legislative policy must base on the law, as regulated in Article 15 paragraph (1) of Law Number 12 of 2011, namely the content of criminal provisions can only be contained in laws, provincial regulations, district/city regulations.

CONCLUSION

The idea of restorative justice in the criminal justice system in Indonesia is a necessity for solving criminal cases in the current era and urgent to be implemented so that it can be used as an operational basis for law enforcement in resolving criminal cases both inside and outside the court. In the process of resolving criminal cases, it is through the process of investigation, investigation, prosecution, court examination, judge's decision, and implementation of judge's decision. From a series of criminal justice processes in the criminal justice system, the public prosecutor plays a very important role in determining whether a case is appropriate or not to be brought to court. Since only the Prosecutor's Office can decide whether a case can be filed to the Court based on admissible

evidence in accordance with the Criminal Procedure Code, it holds a crucial position in law enforcement as the controller of the case process (Dominus Litis). In addition to possessing Dominus Litis, the Prosecutor's Office is the only body responsible for carrying out criminal judgments (executive ambtenaar). With the establishment of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, it 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 Perja Number 15 of 2020 provides a legal breakthrough in dispute resolution that focuses more on win-win solutions and avoids friction that occurs in society. However, it is necessary to make a law in determining the classifications of actions that must be carried out by restorative justice, because speaking of restorative justice cannot be separated from the purpose of criminal law and the purpose of criminal law itself cannot be separated from punishment, to determine actions that can be punished in legislative policy must be based on Constitution.

REFERENCES

[1] Reksodiputro, M. (1997). Kriminologi dan Sistem Peradailan Pidana. Jakarta: Pusat Pelayanan dan Pengabdian Hukum Universitas Indonesia, pp. 84.
[2] Huda, C. (2013). Penerapan Mekanisme Small Claim Court Dalam Sistem Hukum Nasional (Perspektif Hukum Pidana). Jakarta: Fakultas Hukum Universitas Muhammadiyah Jakarta, pp. 27.
[3] *Ibid*.
[4] Fauzia, A., & Hamdani, F. (2021). Penegakan Miranda Principles Melalui Pemberian Bantuan Hukum Pendampingan di Masa Pandemi Covid-19. Seminar Nasional Hukum Universitas Negeri Semarang, 7(1), 15.
[5] Waskito, A. B. (2018). Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi. Jurnal Daulat Hukum, 1(1), 288.
[6] *Ibid*.
[7] Subekti, N. (2015). Peradilan Restoratif Dalam Bingkai Empiris, Teori dan Kebijakan. Yogyakarta: Genta Publishing, pp. 11.
[8] Fauzia, A., & Hamdani, F. (2022). Pembaharuan Hukum Penanganan Tindak Pidana Korupsi oleh Korporasi melalui Pengaturan Illicit Enrichment dalam Sistem Hukum Nasional. Rewang Rencang: Jurnal Hukum Lex Generalis, 3(7), 503.
[9] Amiruddin. (2015). Hukum Pidana Indonesia, Cetakan I. Yogyakarta: Genta Publishing, pp. 7.
[10] Rampadio, H., Fauzia, A., & Hamdani, F. (2022). The Urgency of Arrangement Regarding Illicit Enrichment in Indonesia in Order to Eradication of Corruption Crimes by Corporations. Jurnal Pembaharuan Hukum, 9(2), 62.
[11] Amiruddin, *Op.Cit.,* pp. 62.
[12] Fauzia, A., Hamdani, F., & Octavia, D.G. R. (2021). The Revitalization of the Indonesian Legal System in the Order of Realizing the Ideal State Law. Progressive Law Review, 3(1), 14-15.
[13] Fauzia, A., & Hamdani, F. (2021). Aktualisasi Nilai-Nilai Pancasila dan Konstitusi melalui Pelokalan Kebijakan Hak Asasi Manusia (HAM) di Daerah. Jurnal Indonesia Berdaya, 2(2), 158.
[14] Adhar & Ardiansyah. (2020). Penyelesaian Sangketa Melalui Alternative Dispute Resolution (ADR) Menurut Hukum Adat Bima. Jurnal Jihad: Jurnal Ilmu Hukum dan Administrasi, 2(1), 46.
[15] Ardiansyah. (2020). Konstruksi Hukum Pengakuan Hak Mayarakat Hukum Adat atas Tanah Ulayat di

Village Sukadana Lombok Utara. Mataram: Program Studi Magister Kenotariatan Fakultas Hukum Universitas Mataram, 147.
[16] Sahetapy, J.E. (2009). Ancaman Pidana Mati Terhadap Pembunuhan Berencana, Cetakan Ketiga. Malang: Setara Press, pp. 13.
[17] *Ibid*., pp. 14.
[18] Nugroho, N. P. Konsep Restorative Justice dalam Peradilan di Indonesia (Perspektif Filosofis Pancasila Sila ke 4 dan ke 5). Retrieved from http://pukapaku.com.
[19] Fauzia, A., & Hamdani, F. Restorative Justice: Antara Teori dan Praktik. Retrieved from https://hng.co.id/view/article-details?id_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES
[20] Widodo. 2017. Perspektif Hukum Pidana dan Kebijakan Pemidanaan: Diversi dan Keadilan Restoratif, Terorisme, Cybercrime, Pidana Mati, dan Peradilan Sesat. Cetakan Pertama. Yogyakarta: Aswaja Presisindo, pp. 6-7.
[21] Arief, H., & Ambarsari, N. (2018). Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana di Indonesia. Jurnal Al'Adl, 10(2), 174.
[22] Danil, E. (2012). Konstitusionalitas Penerapan Hukum Adat dalam Penyelesaian Perkara Pidana. Jurnal Konstitusi, 9(3), 592.
[23] Zulfa, E. A. (2010). Gugurnya Hak Menuntut: Dasar Penghapus, Peringan, dan Pemberat Pidana, Cetakan Pertama. Jakarta: Ghalia Indonesia, pp. 37.
[24] *Ibid.*
[25] Reksodiputro, M. (1997). Hak Asasi Manusia Dalam Sistem Peradilan Pidana. Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi, Universitas Indonesia, pp. 84.
[26] Atmasasmita, R. (2013). Efektivitas Hukuman Badan (Penjara), dalam: Harian Seputar Indonesia, pp. 3.
[27] Fauzia, A., & Hamdani, F. (2021). Sanksi Penundaan atau Penghentian Jaminan Sosial pada Masa Pandemi Covid-19. Jurnal Kajian Pembaruan Hukum, 1(2), 141.
[28] Zehr, H. (2014). The Little Book of Restorative Justice. United States of America: Good Books, pp. 21.
[29] *Ibid.*
[30] Tina S. I. (2017). Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System. Journal of Law & Policy, 24(301), 325.
[31] Fauzia, A., & Hamdani, F. (2021). Legal Development Through the Implementation of Non-Conviction Based Concepts in Money Laundering Asset Recovery Practices in Indonesia. Proceedings of the 2nd International Conference on Law and Human Rights (ICLHR 2021), Atlantis Press, 592, 507.
[32] Fauzia, A., & Hamdani, F. (2021). 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. Jurnal Jurisprudence, 11(1), 60.
[33] Patitinggi, F., et. all. (2021). Kedudukan Kejaksaan Republik Indonesia Dalam Sistem Ketatanegaraan, Cetakan Pertama. Yogyakarta: Litera, pp. 21.
[34] Burhanudin, S. T. (2021). Kejaksaan untuk Indonesia (Analogi Pemikiran Jaksa Agung RI ST Burhanudin), Cetakan Pertama. Jakarta: Fakultas Hukum Universitas Pancasila, pp. 63.
[35] Suryaden. Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan. Retrieved from https://www.Jogloabang.com.

[36] Sunarto D. M. (2009). Rekonstruksi Hukum Pidana Era Transformasi dan Globalisasi Dalam Penegakan Hukum Secara Integratif. Bandar Lampung. Universitas Lampung, pp. 9.

[37] Burhanudin, S. T. (2021). Keadilan Restoratif: Dalam Bingkai Hati Nurani, Cetakan Pertama. Jakarta: Fakultas Hukum Universitas Pancasila, pp. 69.

[38] Kejaksaan Tinggi Nusa Tenggara Barat. Data Pelaksanaan Penghentian Penuntutan Berdasarkan Keadilan Restoratif Periode Tahun 2020 s/d 2021, Mataram, 16 November 2021.

[39] *Ibid*.

[40] Zehr, H., *Op.Cit*., pp. 3