

Termination of Prosecution Based on Restorative Justice At the Kapuas District Attorney's Office

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Abstrak: *The purpose of this study is to determine the procedure for termination of prosecution through the application of restorative justice at the Kapuas District Attorney's Office and to assess whether the rights and legal interests of victims have been fulfilled in the process. This research uses empirical legal research method by collecting primary data, and secondary data. The results of this study show that the application of restorative justice at the Kapuas State Attorney's Office is in accordance with what is stipulated in the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The process of terminating prosecution through restorative justice goes through several stages of verification and tiered assessment, starting from the analysis of requirements by the Kapuas District Attorney's Office, further verification by the Central Kalimantan High Prosecutor's Office, to the final decision approved by the Attorney General's Office through the Deputy Attorney General for General Crimes. The fulfilment of the victim's legal rights and interests in the application of restorative justice depends entirely on the victim's consent to the actions taken by the perpetrator. This is important because the fulfilment of the victim's rights is the main condition for achieving peace. If the rights of the victim have been fulfilled, a peace agreement will automatically be born, so that the process of termination of prosecution through restorative justice can be implemented effectively.*

Keywords: *Restorative Justice, Termination of Prosecution, Victims' Rights*

INTRODUCTION

Restorative justice is a criminal case resolution model that focuses on restoring the rights of victims, both through out-of-court and in-court channels. This process can be applied at every stage of the examination, from investigation, prosecution, to court. At the police level, restorative justice is regulated in the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice and at the prosecution stage, it is regulated in the Attorney General's Regulation Number 15 of 2020

concerning Termination of Prosecution Based on Restorative Justice, and at the court stage, it is regulated in the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of restorative justice in the General Justice Environment. The application of restorative justice aims to fulfil the principles of fast, simple, and low-cost justice, as well as the principle of *Ultimum Remedium*, which is the use of criminal law as a last resort in case resolution¹. In the Kapuas District Attorney's Office, restorative justice has

¹ Rina Melati Sitompul and Andi Maysarah, "Ultimum Remedium Principles in Criminal

Decisions in Creating Restorative Justice," *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (2021): 32-46.

been successfully applied in the following cases as examples of theft cases: the first case involved the suspect Mahat Bin Darlin who stole an Oppo Reno 6 mobile phone and the second case involved the suspect Ramadhan Als Kana Bin Nanang who stole a gold ring and a suasa ring with eyes². Both cases were successfully terminated through restorative justice.

In this research, the author uses several previous research results as references, especially those relevant to the title of this research. One of the references is a research conducted by Reynaldi Sinyo Wakkary, Jolly Ken Pongoh, and Deizen D. Rompas entitled "Implementation of Restorative Justice Principles in the Prosecution System Based on Attorney General Regulation Number 15 of 2020". The results showed that with the enactment of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, there is a need for recovery where both parties must reach an agreement to reconcile. Restorative Justice is applied in the prosecution system with the aim not only to punish, but also to achieve justice for all parties involved. This is expected to restore the situation as it was before the crime occurred and realise restoration³. Another research that becomes the author's reference is the work of Angela Claudia Scolastika Manurung, Made Sugi Hartono, and Dewa Gede Sudika Mangku with the title "Implementation of Restorative Justice Principles in the Criminal Case of Vandalism (Case Study No. Pdm.532/Bll/08/2020)". The results showed that the Regulation of the Attorney

General of the Republic of Indonesia Number 15 of 2020 regulates the restoration of justice for suspects or perpetrators who have committed a criminal offence for the first time under certain conditions. This termination of prosecution based on restorative justice only applies to first-time offenders, not recidivists, and only for minor crimes. The implementation of this regulation in the Buleleng District Attorney's Office has been running well according to procedures. However, there are obstacles in implementation, namely the 14-day time limit stipulated in Article 9 paragraph (5), which sometimes causes the termination of prosecution to not be carried out optimally. In addition to these obstacles, there are also supporting factors, namely the prosecutor's judgement based on conscience to see the facts that occur⁴. Research conducted by Husein Pohan, Madiasa Ablisar, Marlina, and Mohammad Ekaputra entitled "Settlement of Crimes with a Restorative Justice Approach by the Prosecutor's Office (Case Study at the Medan District Attorney's Office)". Highlighting the implementation of restorative justice in the settlement of criminal offences by the prosecutor's office. Based on article 5 paragraph 1 and paragraph 8 of the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the prosecutor's office is given the authority to streamline law enforcement by paying attention to the principles of fast, simple, and low cost justice, as well as justice based on law and conscience. The stages of implementation at the Medan District

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<https://pji.kejaksaan.go.id/index.php/home/berita/2176>

³ Reynaldi Sinyo Wakkary, "Implementation of Restorative Justice Principles in the Prosecution System Based on Prosecutor Regulation Number 15 of 2020," *Lex Crimen* 10, no. 9 (2021).

⁴ Angela Claudia Scolastika Manurung, Made Sugi Hartono, and Dewa Gede Sudika Mangku, "Implementation of Restorative Justice Principles in Criminal Offences of Vandalism (Case Study No. Pdm-532/Bll/08/2020)," *Yustisia Community Journal* 4, no. 2 (2021): 542-53.

Attorney's Office include Stage I the prosecutor as a facilitator explains the purpose and objectives of the meeting for peace, including the consequences of agreeing or refusing peace. Phase II the suspect is given the opportunity to verbally apologise to the victim and his family, and the victim sincerely and unconditionally apologises, witnessed by the Head of the Medan District Attorney's Office. Phase III the peace agreement is evidenced by the signatures of the parties, public prosecutor, and community leaders on the minutes of the implementation of the peace agreement. Stage IV The public prosecutor made a report on the successful implementation of the peace agreement. Stage V the peace agreement through restorative justice has been implemented in accordance with the applicable legal provisions⁵.

This study is different from previous studies because it focuses on the extent to which the application of Restorative Justice can restore the condition of victims of crime and find out how the procedures and mechanisms for consideration of criminal offences that can be resolved through Restorative Justice. Based on the above, the author is interested in conducting research related to the implementation of Restorative Justice by the Kapuas State Attorney's Office, so this research is entitled "Termination of Prosecution Based on Restorative Justice at the Kapuas State Attorney's Office".

METHOD

This research uses empirical legal research methods to analyse the effectiveness and implementation of law in society⁶, specifically the application of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice by the Kapuas District Attorney's Office. This method involves collecting empirical data of human behaviour through interviews and direct observation⁷. The object of this research study evaluates the role of legal institutions in law enforcement and the application of the rule of law⁸. This study examines the application of the regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in criminal cases to achieve restorative justice by the Kapuas State Attorney's Office, conducting analysis and confirmation related to the application of restorative justice, classification of criminal offences that can be resolved by restorative justice, fulfilment of the rights and legal interests of victims in restorative justice or the Kapuas State Attorney's Office in other words, researchers examine whether the *laws and regulations* made have been implemented in the empirical order⁹ or validate the *law in book and law in action*. This research is descriptive, aiming to provide accurate and complete data about a phenomenon or situation, in order to confirm hypotheses, strengthen existing theories, or build new

⁵ Husein Pohan et al., "Settlement of Criminal Offences with Restorative Justice Approach by the Prosecutor's Office: A Case Study at the Medan State Attorney's Office," *Locus: Journal of Legal Science Concepts* 2, no. 1 (2022): 270-80.

⁶ Zainuddin Ali, *Legal Research Methods* (Sinar Grafika, 2021).

⁷ Kornelius Benuf and Muhamad Azhar, "Legal Research Methodology as an Instrument to Unravel

Contemporary Legal Issues," *Gema Keadilan* 7, no. 1 (2020): 20-33.

⁸ H Ishaq And M Sh, "Legal Research Methods And Writing Thesis Theses And Dissertation," *Bandung: Alfabeta*, 2017. Page 71

⁹ S H I Jonaedi Efendi et al., *Legal Research Methods: Normative and Empirical* (Prenada Media, 2018).

theories¹⁰. This research uses two types of data, namely (1) primary data, and (2) secondary data¹¹. Primary data is empirical data from the community, collected directly through observation and interviews at the research location, which includes the research location (Kapas District Attorney's Office), facts or legal events that occur and respondents who provide information¹². While secondary data is supporting data from laws and regulations, literature, and legal documents related to research¹³. The location of the research on *Restorative Justice* in this criminal case was conducted at the Kapuas State Attorney's Office. The research location was conducted at the Kapuas State Attorney's Office, selected through purposive sampling technique, which selects research samples based on certain reasons and criteria to ensure relevance and suitability to the research objectives¹⁴.

RESULTS AND DISCUSSION

The results of the research related to the legal considerations of restorative justice according to the interviewees during the interview include:

According to Wiwiek Suryani, S.H. M.H as Head of the Pre-Prosecution Section of the General Criminal Division during an interview in Kapuas on 7 September 2023 stated that the Kapuas District Attorney's Office is always guided by the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice So far, the main considerations that must be met are that the perpetrator has never committed a criminal act or is a first time

criminal offender and the criminal sanction carried out is under 5 (five) years and there is prior peace by the perpetrator and victim and their families. The implementation of restorative justice is basically to fulfil the sense of justice that lives and develops in society which is inseparable from the prerequisites that have been determined in the provisions of the applicable law, namely in this case the Regulation of the Attorney General.

According to Alvina Florensia as Head of the Economic and Monetary Section of the Intelligence Division, interviewed in Kapuas on 5 October 2023, the considerations for restorative justice as stipulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice are that the crime committed is under 5 (five) years and the loss incurred is not more than 2.5 million rupiah The perpetrator is not a recidivist and has implemented peace between the victim and the perpetrator of the crime.

According to Mualifatun, S.H as a Prosecutor interviewed in Kapuas on 8 September 2023, the consideration of the implementation of restorative justice is more on minor crimes under 5 (five) years, the consequences of the criminal act do not cause unrest in the community, the perpetrator has only committed a criminal act and the main thing is peace and forgiveness from the victim. In essence, what is required in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice must be fulfilled.

¹⁰ Soerjono Soekanto, *Introduction to Legal Research* (University of Indonesia Publisher (Ui-Press), 2006). Page 10

¹¹ Jonaedi Efendi et al., *Legal Research Methods: Normative and Empirical*.

¹² Soejono Soekanto, "Introduction to Legal Research (Revised Edition)" (Jakarta: UI Press, 2010).

¹³ H Ishaq and M Sh. *Op. Cit.* Pg. 71

¹⁴ M P P Sugiyono and P Quantitative, "Qualitative, and R&D, Bandung: Alfabeta," *Cet. VII*, 2009.

Rischy Akbar Santosa, S.H., as a Functional Prosecutor, interview in Kapuas on 5 October 2023, the consideration of the implementation of restorative justice begins with the first time offender, the criminal act committed is classified as minor and does not exceed the threat of 5 (five) years, the victim's loss does not exceed 2.5 million rupiah and there is peace from both parties, both the victim and the offender.

Hans Reyner, S.H., as a Functional Prosecutor, interview in Kapuas on 5 October 2023, consideration of the implementation of restorative justice is guided by the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice Criminal Acts under the threat of 5 (five) years, first time offenders, losses under 2.5 million rupiah and the existence of peace made between the perpetrator and the victim by providing flexibility for both parties to deliberate on the terms of peace without coercion or pressure from any party.

Data on cases that have been implemented *restorative justice* in the Kapuas District Attorney's Office are as follows:

Table 1. Discontinuation of Prosecution through Restorative Justice 2021

No.	Name	Article
1.	Rahmadi Bin Juni	480 Criminal Code
2.	Rifae'i Bin Muhammad. B	362 Criminal Code
3.	Fathurrahman S.PD.I Bin M. Masdar	351 Criminal Code
4.	Hagy Baptist Als Habi Bin Hadi Surya	351 Criminal Code

Source: Kapuas District Attorney's Office

Table 2: Discontinuation of Prosecution through Restorative Justice in 2022

No.	Name	Article
1.	Abdul Gafur Als Gafur Bin Kasim	362 Criminal Code
2.	Mahat Bin Darlin	362 Criminal Code
3.	Abdul Rahman Als Andut Bin Arpan	362 / 480 Criminal Code
4.	Armin Als Amin Bin Irus	362 Criminal Code
5.	Tura Bin Kondrat	480 Criminal Code
6.	Ramadhan Als Kana Bin Nanang	362 Criminal Code

1.	Abdul Gafur Als Gafur Bin Kasim	362 Criminal Code
2.	Mahat Bin Darlin	362 Criminal Code
3.	Abdul Rahman Als Andut Bin Arpan	362 / 480 Criminal Code
4.	Armin Als Amin Bin Irus	362 Criminal Code
5.	Tura Bin Kondrat	480 Criminal Code
6.	Ramadhan Als Kana Bin Nanang	362 Criminal Code

Source: Kapuas District Attorney's Office

Table 3. Discontinuation of Prosecution through Restorative Justice in 2023 (January to September Period)

No.	Name	Article
1.	Toni Bin Tukit	480 CRIMINAL CODE
2.	Ardiyani Als Boy Bin Jaini	362 CRIMINAL CODE
3.	Padly Noor Bin Rabbani	362 CRIMINAL CODE
4.	Hartono Als Anton Bin Darsah	362 CRIMINAL CODE
5.	Meko Bin Silat Rujan	107 letter a jo Article 55 letter a of Law of the Republic of Indonesia No. 39 of 2014 concerning Plantations jo Article 55 paragraph 1 to 1 of the Criminal Code
6.	Sumanto Bin Echehyelaten	107 letter a jo Article 55 letter a of Law No. 39 of 2014 concerning plantations jo Article 55 paragraph 1 to 1 of the Criminal Code
7.	Abdul Hakim Bin Samsul Bahri	362 Criminal Code

Source: Kapuas District Attorney's Office

The procedure for implementing the termination of prosecution based on restorative justice at the Kapuas District Attorney's Office is as follows:

1. Phase II submission from the Police (Polres or Polsek) to the Kapuas District Attorney's Office.
2. Analysis of case files by researcher prosecutors as required by Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice.
3. Analysis of the case file has fulfilled the subjective and objective requirements of restorative justice, then the facilitator prosecutor brings together the perpetrator and the victim to facilitate the parties to make peace and in the peace process carried out purely the will of the victim and there is no coercion, as well as the results of the peace the legal interests of the victim have been fulfilled.
4. After validating the case file and the parties have reconciled, the facilitating prosecutor makes an expose to the Central Kalimantan High Prosecutor's Office, by submitting a case file that has met the requirements.
5. The Central Kalimantan High Prosecutor's Office verifies the case file submitted by the Kapuas District Attorney's Office for restorative justice, if the case file is verified and deemed eligible, the case file is submitted to the Attorney General's Office, in this case represented by the Deputy Attorney General for General Crimes.
6. The Deputy Attorney General for General Crimes determines whether the case will be approved for restorative justice, if approved then a Decree of Termination of Prosecution (SKP2) will

be issued, while if the case is not approved for restorative justice then the case will proceed to the stage of case submission to the court for trial.

The results of the research in relation to restorative justice procedures are stated in the results of interviews with resource persons at the Kapuas District Attorney's Office:

Theodorus Ludong, S.H., as Kasipidum of the Kapuas District Attorney's Office, interviewed in Kapuas on 2 November 2023, stated that the application of restorative justice in the Kapuas District Attorney's Office is carried out systematically, and in stages, through in-depth analysis regarding the fulfilment of the requirements as stipulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. If the objective and subjective requirements of the perpetrator have been fulfilled, the perpetrator and victim have also agreed to reconcile, then the Kapuas State Attorney's Office exposes it to the Central Kalimantan High Prosecutor's Office for verification of the requirements that have been met, if verification has been carried out, the Central Kalimantan High Prosecutor's Office exposes it to the Attorney General's Office for assessment and approval regarding the termination of prosecution of cases through restorative justice.

According to Wiwiek Suryani, S.H., M.H as the Pre-Prosecution Section Head of the General Criminal Division, during an interview in Kapuas on 7 September 2023 stated that the procedure for implementing restorative justice in the Kapuas District Attorney's Office is that first the researcher prosecutor conducts research on general criminal case files received from the police (Police Resort or Police Sector) in the Kapuas Regency jurisdiction, then if the

alleged crime is included in the subjective and objective requirements of restorative justice as stipulated in the Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, then after stage II (acceptance of suspects and evidence) the research prosecutor as a facilitator carries out a peace process attended by the parties including: the suspect, victim, victim's guardian, community leaders and investigators, after a peace agreement is reached, the facilitating prosecutor will then conduct an expose or presentation to the leadership of both the Head of the Kapuas District Prosecutor's Office, the Central Kalimantan High Prosecutor's Office and the Attorney General's Office, which is usually represented by the Deputy Attorney General for General Crimes to determine whether this case can be terminated based on restorative justice, if approved, a decision letter on termination of prosecution (SKP2) will be issued, but if not approved, the case will continue to be submitted to the court for trial.

The implementation of the restorative justice process is carried out in stages with the aim of supervision and responsibility of the Attorney General's Office so that the restorative justice process is not only carried out partially at the lower level, but is carried out from the lower level to the upper level as the decision maker, this is done so that there are no irregularities and the termination of prosecution through restorative justice is only used as a case transactional tool.

According to Alvina Florensia, S.H as Head of the Intelligence Section of the Kapuas District Attorney's Office, interviewed in Kapuas on 5 October 2023 the procedure that must be carried out in implementing restorative justice is the fulfilment of the requirements as stipulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of

2020 concerning Termination of Prosecution Based on Restorative Justice, then the Kapuas District Attorney's Office submits the case file to the Central Kalimantan High Prosecutor's Office for verification, after verification is completed and deemed complete, the case file is submitted to the Attorney General's Office to obtain approval from the Deputy Attorney General for General Crimes to obtain a decree of termination of prosecution.

Rischy Akbar Santosa, S.H., Prosecutor, interviewed in Kapuas on 5 October 2023, argued that it is the Deputy Attorney General for General Crimes who has the authority to stop prosecution through restorative justice. The Kapuas District Attorney's Office, through the Prosecutor appointed to handle the case, only facilitates that basically the case submitted from the Police has fulfilled the requirements of restorative justice. The Kapuas District Attorney's Office then conducts an expose to the Central Kalimantan High Prosecutor's Office to verify the case file and if it meets the requirements, the case file is submitted to the Attorney General's Office to obtain a decree of termination of prosecution.

Mualifatun, S.H., as Prosecutor, interview in Kapuas on 8 September 2023 explained that the restorative justice process must meet the requirements of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, after the requirements are met, the case file is exposed to the Central Kalimantan High Prosecutor's Office for verification, then the case file that has been verified and deemed to meet the requirements is submitted to the Attorney General's Office to obtain approval for the termination of prosecution through restorative justice by the Deputy Attorney General for General Crimes.

Hans Reyner, S.H., as a functional prosecutor, interview in Kapuas on 5 October 2023 Stating that the Kapuas District Attorney's Office is only the first facilitator and analysis to determine and ensure that cases submitted from the Police whether they meet the requirements of restorative justice as stated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Cases that are deemed to fulfil the restorative justice requirements are then submitted and exposed to the Central Kalimantan High Prosecutor's Office to verify whether the specified requirements have been met. After verification, the case file is submitted to the Attorney General's Office to be assessed and approved for termination of prosecution based on restorative justice. At this stage, the one who has the authority to approve it is the Deputy Attorney General for General Crimes.

The results of research on the spirit and purpose of the fulfilment of victims' rights through the termination of prosecution based on restorative justice at the Kapuas District Attorney's Office, namely that it has fulfilled the rights of victims through restoring back to the original situation as in the case above through returning the goods of the crime to the victim, paying medical expenses or paying certain costs deemed necessary as compensation for the victim, and handing back the plantation land to the rightful owner. The data above is reinforced by the results of the researcher's interview with the informant, namely as follows:

Theodorus Ludong, S.H., as the Head of the Criminal Division of the Kapuas District Attorney's Office, during an interview in Kapuas on 2 November 2023, explained that the decision to make peace is entirely up to the victim. The peace

process is carried out without pressure and coercion from any party. The Kapuas State Attorney's Office is only a facilitator between the victim and the perpetrator. This is what distinguishes the restorative justice process from the law enforcement process in general. The victim is one of the determinants of the implementation of restorative justice. Restitution is also the victim's right to be fulfilled by the perpetrator so that the victim feels the recovery and compensation due to the perpetrator's actions. Demands for restitution by the victim must also be realistic, lest the victim abuse their rights by asking for things that the perpetrator cannot possibly fulfil. For example, if the perpetrator's actions relate to crimes against property, then the victim can ask for the return of their property, while if the perpetrator's actions relate to crimes against persons such as maltreatment, then the victim can ask for compensation for medical expenses to the perpetrator. The above decision is made if the victim wants to make peace, while if the victim does not want to make peace then the prosecutor will continue the case to be submitted to the court, this is done because basically the prosecutor is the controller of the case.

Wiwiek Suryani, S.H., M.H., Head of the Pre-Prosecution Section of the General Criminal Division, interview in Kapuas on 7 September 2023 stated that in addition to paying attention to the interests of the suspect, the termination of prosecution based on restorative justice must also accommodate and prioritise the interests of the victim where in every stage of the implementation of peace efforts the facilitating prosecutor always seeks to restore the rights of the victim to their original condition, for example in restorative efforts for theft cases. The facilitating prosecutor ensures that the victim's property taken by the suspect can be returned in its original condition or for

example in restorative efforts for light maltreatment cases, the facilitator seeks to have the suspect reimburse the medical expenses that must be borne by the victim because of the injuries he suffered as a result of the criminal act with the sole aim of restoring the rights and interests of the victim to their original state.

Alvina Florensia, S.H as Head of the Economic and Monetary Section of the Intelligence Division, interview in Kapuas on 5 October 2023 Stating that the fulfilment of victims' rights is the main door in terms of peace in order to fulfil one of the requirements for restorative justice, if the rights of victims and the legal interests of victims are not fulfilled then certainly the peace agreement made by the perpetrator and the victim will not be achieved.

Rischy Akbar Santosa, S.H., interview in Kapuas on 5 October 2023 Explained that there was no coercion, and no intervention from the Kapuas District Attorney's Office. The peace agreement is purely from the initiative of the perpetrator and the victim or the perpetrator's family and the victim's family. The prosecutor is only a facilitator who offers a method in resolving criminal cases. Restorative justice cannot be implemented if the victim refuses to reconcile and insists on continuing the case to trial. This refusal to reconcile can occur because an agreement cannot be reached, especially with regard to restoring the rights and legal interests of the victim, such as compensating the victim's losses.

Hans Reyner, S.H., as Prosecutor, interview in Kapuas on 2 November 2023 Stated that one of the requirements for the implementation of restorative justice is that the perpetrator fulfils the rights of the victim by restoring the original situation before the crime occurred. For example, returning the victim's goods that were

stolen or paying and compensating the victim's losses as a result of the criminal offence committed by the perpetrator. The amount of the victim's losses that must be borne by the perpetrator depends on the agreement and the circumstances of the victim.

Mualifatun, S.H., as a functional prosecutor, interview in Kapuas on 8 September 2023 stated that restorative justice cases handled at the Kapuas District Attorney's Office must have fulfilled the rights and legal interests of victims because these conditions are absolute for the realisation of peace. Restoration of the victim's condition is one of the elements that must be fulfilled by the perpetrator of a criminal offence if he wants his case to be resolved through restorative justice.

Analysis of the implementation of restorative justice in the Kapuas District Attorney's Office must be guided by the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, if it does not pay attention to and consider Article 4 and the requirements that have been determined as Article 5 (five) of the Attorney General's Regulation are not fulfilled then restorative justice cannot be implemented. Prosecutors as case controllers in accordance with the principle of opportunity or the principle of prosecutorial discretion, have the authority to prosecute or not prosecute a criminal case¹⁵, with considerations as required by legal provisions in this case the Attorney General's Regulation on Termination of prosecution based on restorative justice.

Legal considerations in the application of restorative justice in criminal cases at the Kapuas District Attorney's Office, as regulated in Article 4 paragraphs

¹⁵ Bambang Waluyo, *Criminal Case Resolution* (Sinar Grafika, 2020).

1 and 2 of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, include several important aspects as follows:

- a. The interests of victims and other protected legal interests means that this consideration emphasises the importance of protecting the rights of victims of criminal offences. This includes the right to recover for their losses, both material and immaterial¹⁶. The ultimate goal is to ensure that victims receive justice and recognition for their suffering.
- b. The avoidance of negative stigma in the application of restorative justice is important to avoid stigmatisation that only focuses on the perpetrator, thus ignoring the victim. Restorative justice aims to protect the rights and legal interests of the victim, who often suffers more as a result of the offender's actions. It aims to maintain a balance between the interests of the offender and the victim.
- c. The avoidance of retaliation means that restorative justice allows for the effective resolution of criminal cases, responds to the needs of society, and creates a balance of protection. This includes providing a sense of justice for the offender and, importantly, for the victim through the restoration of rights and redress. It avoids a retaliatory approach that focuses solely on punishment for the offender.
- d. Responsiveness and community harmony mean that restorative justice adopts the values of justice

that live and develop in the community. By prioritising the resolution of cases through peace, this approach aims to create harmony and restore relationships in society that have been disrupted by criminal offences.

- e. Decency, decency, and public order means that the settlement of cases through restorative justice must pay attention to the norms of decency that exist in society, maintain the values of decency, and maintain public order. The implementation of restorative justice should not contradict the values of community life or cause turmoil and tension in the community. This approach must go hand in hand with the moral and ethical values held by the community.

Overall, these considerations aim to create a fair and balanced resolution process, which not only takes into account the interests of the perpetrator but also provides rights and protection to the victim and maintains harmony and order in society.

Considerations in the discontinuation of prosecution under *restorative justice*¹⁷ include:

- a. The subject and object of the criminal offence include the subject of the criminal offence, meaning that the main consideration is whether the perpetrator is a first-time offender or a recidivist. The object of the criminal offence means that the criminal offence committed must be included in the category that carries a penalty of less than 5 (five) years or only a fine. Cases that can be applied restorative

¹⁶ Rena Yulia, "Reassessing the Position of Crime Victims in the Criminal Justice System," *Mimbar Hukum-Faculty of Law, Universitas Gadjah Mada* 28, no. 1 (2016): 33-45.

¹⁷ Kurniawan Tri Wibisono, *Restorative Justice in the Indonesian Criminal Justice System*, n.d..

justice must be a minor criminal offence with a loss that does not exceed Rp. 2,500,000,-.

- b. Background to the offence means that restorative justice considers the background to the offence, including the forced circumstances faced by the offender, such as poverty or hunger. Examples of cases include stealing milk for a child who has not had milk for three days or stealing a banana because of hunger.
- c. The level of culpability means that the perpetrator must have committed a crime that is classified as minor according to the law and can still be forgiven by the community. This level of culpability is an important factor in deciding whether restorative justice can be applied.
- d. Loss or impact of the criminal offence, meaning consideration of the loss or impact of the criminal offence, where the loss is considered small and does not cause significant unrest in the community.
- e. Cost and benefit of case handling is an assessment of the costs and benefits of case handling. If the cost of handling a case is greater than the harm caused, the legal process is long, and there is little benefit to the victim by convicting the perpetrator, then restorative justice is favoured. Restorative justice offers lower costs, a faster process, and greater benefits for both parties.
- f. Restoration to the original state means that the restorative justice process is focused on restoring the victim's losses, either by restoring the situation to what it was before

the criminal offence occurred, or by the payment of compensation by the perpetrator.

- g. The existence of peace between the victim and the suspect is a basic requirement for the implementation of restorative justice is the existence of peace and mutual forgiveness between the perpetrator and the victim. This peace is the basis for starting the restorative justice process.

These criteria are designed to ensure that restorative justice is applied in an appropriate, fair and balanced manner, taking into account the rights of the victim, the circumstances of the offender and the interests of society.

The analysis of the procedure for discontinuing prosecution through restorative justice at the Kapuas State Attorney's Office, as described in the data and interview results, refers to the basic concepts of restorative justice, particularly the concept of *Transformative*¹⁸. This concept emphasises a change in perspective in resolving criminal cases with the aim of achieving social justice. Restorative justice here focuses on restoring the relationship between the perpetrator, the victim, and the community, as well as on restoring the losses suffered by the victim. The change in perspective towards the resolution of criminal cases, including the restorative justice procedure applied in the Kapuas District Attorney's Office, shows a change in perspective from the traditional justice system that is oriented towards punishment, towards a more inclusive and recovery-oriented approach. This approach recognises that in many cases, out-of-court settlements can be more effective in providing justice and healing for both

¹⁸ Bambang Waluyo, *Design of Prosecution Function in Restorative Justice* (PT Raja Grafindo Persada, College Book Division, 2016).

victims and offenders. 2. The implementation stage is data collection and initial verification. The procedure began with data collection and initial verification at the Kapuas District Attorney's Office, where in-depth analyses were conducted regarding the qualifications of cases to be proposed as cases that could be resolved through restorative justice. After the initial stage, the case is exposed to the Central Kalimantan High Prosecutor's Office. At this stage, further verification and analysis is conducted to ensure that all restorative justice requirements are met. Final verification and approval at the AGO. The case file that has been verified by the High Prosecutor's Office is then sent to the Attorney General's Office for approval. This approval is required for the issuance of a Decree of Discontinuation of Prosecution by the Deputy Attorney General for General Crimes. 3. The application of restorative justice values means that this procedure also accommodates the main values of restorative justice, such as the restoration of victims' losses. The main focus is on the recovery of losses suffered by victims, both material and immaterial. Participation and peace, the process emphasises the active participation of victims, perpetrators and communities, and encourages peace and rapprochement between all parties involved. Prevention of stigma and retaliation, by providing an opportunity to resolve the case out of court, this process helps prevent negative stigma against the perpetrator and avoid retaliation that may occur if the case is processed through traditional justice channels. 4. Decency and morality means that the restorative justice process also takes into account decency and morality, as well as maintaining public order by ensuring that the solution reached does not contradict the

values that exist in society. Overall, the procedure for discontinuing prosecution through restorative justice implemented in the Kapuas District Attorney's Office and linked to the Transformative concept shows an effort to better integrate social needs and values in the law enforcement process, while promoting fairer and more effective solutions for all parties involved.

The analysis of the implementation of restorative justice in the Kapuas District Attorney's Office focuses on the fulfilment of the rights and interests of victims as the main element. Restorative justice cannot be realised without ensuring the rights and interests of victims are fulfilled. In practice, in cases of theft (Article 362 of the Criminal Code) the perpetrator is required to return the stolen goods to the victim to fulfil the victim's right to his/her property. In the case of stolen goods (Article 480 of the Criminal Code) the perpetrator is obliged to return the goods that belong to the victim. In the case of light maltreatment (Article 351 of the Criminal Code) the perpetrator must pay for the victim's medical expenses and compensate for losses arising from the perpetrator's actions. In violation of Law No. 39/2014 on Plantations (Article 107 letter a), the perpetrator is required to stop activities on plantation land and return the land to the victim or its legal owner. The importance of fulfilling the rights and interests of the victim is outlined in a deed of peace agreed by the victim and the perpetrator. This process aims to restore the victim's condition to its original condition and improve the relationship between the perpetrator and the victim¹⁹.

Based on the results of the interviews and the concepts of reparative justice and encounter in restorative justice, it can be concluded that reparative justice

¹⁹ Azwad Rachmat Hambali, "Law Enforcement Through Restorative Justice Approach in Criminal

Case Settlement," *Kalabbirang Law Journal* 2, no. 1 (2020): 69-77.

prioritises restoring the rights and interests of victims of crime, with the aim of rebuilding harmony between offenders and victims. It involves a process of reconciliation and mutual forgiveness for the harm done, where the offender is expected to fulfil his or her responsibilities by restoring the victim's rights or compensating for the losses incurred. Encounter refers to out-of-court settlement by bringing the offender and victim together. The purpose of this encounter is to enable both parties to sit together and resolve the criminal issues that have arisen, as well as to arrange for the recovery of the victim's losses. The implementation of restorative justice has been shown to be effective in resolving criminal cases outside of formal justice, with a primary focus on restitution to restore the legal rights and interests of victims. In this way, restorative justice not only resolves legal issues but also seeks to repair relationships and restore the victim's situation, in line with the fundamental purpose of restorative justice²⁰. The implementation of restitution or restoration of the rights of victims of crime is carried out through a process of dialogue and deliberation, with the aim of reaching an agreement on compensation and restoring the victim's condition to its original state²¹. In the context of restorative justice, the victim becomes the central point and the main actor in this process. Restoration of the rights and interests of victims must be accommodated by the state through law enforcement institutions and especially by the perpetrators of criminal offences as a form of accountability²². Restorative justice can only be realised if the victim accepts the restitution offered by

the perpetrator. If the victim rejects the offer of restitution because they feel that the compensation offered is not in accordance with the losses they have suffered, then the peace process will not be achieved. Thus, the agreement between the victim and the offender is very important to ensure the implementation of restorative justice. If the compensation offered does not meet the expectations or needs of the victim, then this disagreement can hinder the achievement of peace and the desired settlement in restorative justice.

CONCLUSION

The implementation of restorative justice in the Kapuas State Attorney's Office has been carried out in accordance with the requirements stipulated by the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice. This procedure is carried out in stages, starting from the initial level at the Kapuas State Prosecutor's Office, then the requirements are verified by the Central Kalimantan High Prosecutor's Office, and finally assessed and decided by the Attorney General's Office through a decision letter of the Deputy Attorney General for General Crimes on the termination of prosecution based on restorative justice. The implementation of restorative justice by the Kapuas District Attorney's Office has ensured the fulfilment of the rights and legal interests of victims. This is important because if the rights and legal interests of the victim are not fulfilled, restorative justice cannot be implemented and the criminal case will proceed to trial.

²⁰ Waluyo, *Design of Prosecution Function in Restorative Justice*.

²¹ Josephin Mareta and JHRRS Kav, "The Application of Restorative Justice through the Fulfilment of Restitution for Victims of Child

Crimes," *Journal of Lex et Societatis* 3, no. 1 (2018): 104.

²² Irvan Maulana and Mario Agusta, "The Concept and Implementation of Restorative Justice in Indonesia," *Datin Law Journal* 2, no. 11 (2021): 46-70.

BIBLIOGRAPHY

- Ali, Zainuddin. *Legal Research Methods*. Sinar Grafika, 2021.
- Benuf, Kornelius, and Muhamad Azhar. "Legal Research Methodology as an Instrument to Unravel Contemporary Legal Issues." *Gema Keadilan* 7, no. 1 (2020): 20-33.
- Hambali, Azwad Rachmat. "Law Enforcement Through Restorative Justice Approach in Criminal Case Settlement." *Kalabbirang Law Journal* 2, no. 1 (2020): 69-77.
- Ishaq, H, and M SH. "Legal Research Methods and Writing Thesis and Dissertation." *Bandung: Alfabeta*, 2017.
- Jonaedi Efendi, S H I, S H Johnny Ibrahim, M M Se, and others. *Legal Research Methods: Normative and Empirical*. Prenada Media, 2018.
- Kurniawan Tri Wibisono. *Restorative Justice in Indonesia's Criminal Justice System*, n.d..
- Manurung, Angela Claudia Scolastika, Made Sugi Hartono, and Dewa Gede Sudika Mangku. "Implementation of Restorative Justice Principles in Criminal Offences of Vandalism (Case Study No. Pdm-532/BII/08/2020)." *Yustisia Community Journal* 4, no. 2 (2021): 542-53.
- Mareta, Josefhin, and JHRRS Kav. "Implementation of Restorative Justice through Restitution Fulfilment for Victims of Juvenile Offences." *Journal of Lex et Societatis* 3, no. 1 (2018): 104.
- Maulana, Irvan, and Mario Agusta. "The Concept and Implementation of Restorative Justice in Indonesia." *Datin Law Journal* 2, no. 11 (2021): 46-70.
- Pohan, Husein, Madiasa Ablisar, Marlina Marlina, and Mohammad Ekaputra. "Settlement of Criminal Offences with Restorative Justice Approach by the Prosecutor's Office: A Case Study at the Medan District Attorney's Office." *Locus: Journal of Legal Science Concepts* 2, no. 1 (2022): 270-80.
- Sitompul, Rina Melati, and Andi Maysarah. "Ultimum Remedium Principles in Criminal Decisions in Creating Restorative Justice." *JCH (Journal of Legal Scholarship)* 7, no. 1 (2021): 32-46.
- Soekanto, Soejono. "Introduction to Legal Research (Revised Edition)." Jakarta: UI Press, 2010.
- Soekanto, Soerjono. *Introduction to Legal Research*. University of Indonesia Publisher (UI-Press), 2006.
- Sugiyono, M P P, and P Quantitative. "Qualitative, and R&D, Bandung: Alfabeta." *Cet. VII*, 2009.
- Wakkary, Reynaldi Sinyo. "Implementation of Restorative Justice Principles in the Prosecution System Based on Prosecutor Regulation Number 15 of 2020." *Lex Crimen* 10, no. 9 (2021).
- Waluyo, Bambang. *Design of the Prosecutor's Function in Restorative Justice*. PT Raja Grafindo Persada, College Book Division, 2016.
- . *Criminal Case Settlement*. Sinar Grafika, 2020.
- Yulia, Rena. "Re-examining the Position of Crime Victims in the Criminal Justice System." *Mimbar Hukum-Faculty of Law, Universitas Gadjah Mada* 28, no. 1 (2016): 33-45.

