

THE PROSECUTOR'S LEGAL POLICY IN ENACTING RESTORATIVE JUSTICE ON CRIMINAL CASE

¹HARDIANTO DJANGGIH, ²ELVI SUSANTI SYAM, ³SYAHRUL GUNAWAN,

¹Faculty Of Law, Universitas Muslim Indonesia, Indonesia

²Sekolah Tinggi Ilmu Hukum Pengayoman

³Magister Of Law, Universitas Muslim Indonesia, Indonesia

Correspondent Author, Email: Hardianto.Djanggih@Umi.Ac.Id

Abstract: *The Prosecutor's Office of the Republic of Indonesia has a strategic role and obligation in optimising the law enforcement process, including through progressive policies. One form of this policy is the regulation of the mechanism for stopping prosecution through Prosecutor's Regulation Number 15 of 2020. This study aims to examine two main issues: First, How is restorative justice adopted in Indonesian criminal law? Second, How is the substance in the prosecutor's regulation number 15 of 2020 according to the perspective of restorative justice? This study is a doctrinal legal research with a conceptual and statutory approach. Data was obtained from primary and secondary legal materials which were inventoried through a literature study. The Data were then analyzed qualitatively with descriptive-analytical presentation. The finding concludes that: First, in the Indonesian context, restorative justice was initially unknown in the Criminal Code, but it gradually began to be adopted through criminal law reforms such as the SPPA Law, which regulates restorative justice in the form of a diversion policy. Restorative justice can also be used in certain types of crimes, such as minor offenses, cases involving women in conflict with the law, and narcotics offenses. Second, the substance of Prosecutor's Office Regulation No. 15 of 2020 is primarily consistent with the concept of restorative justice. A number of provisions have prioritized the peace aspect by involving all parties, both victims and perpetrators, in a fair and impartial manner. The basic considerations, qualifications, and exceptions are also prepared proportionally while preserving the law and public interests in mind. As a result of this legal policy, the paradigm in criminal case settlement has shifted from a retributive (punishment) approach based on due process of law to one that is rehabilitative and restitutive based on a restorative justice approach.*

Keywords: *Legal Policy; Prosecutor; Restorative Justice; Criminal Case;*

INTRODUCTION

The Criminal Justice System in Indonesia consists of 4 (four) main components, namely the police, the prosecutor's office, the court, and the prison of the convict. These four elements are expected to synergize in forming an "Integrated Criminal Justice System".¹ The addition of the word "integrated," according to Mahrus Ali, is intended to put more pressure on, so that integration and coordination are given more attention, because fragmentation in the criminal justice system seems to be a disturbing issue in various countries. This integration in the criminal justice system is related to the similarity of procedures, perceptions, and goals.²

Normatively, the criminal justice system is aimed at realizing law enforcement. The existence of a criminal justice system is intended to reduce recidivism and crime in the short term. Meanwhile, in the long term, the criminal justice system is intended to create better social welfare in the future.³ Unfortunately, law enforcement through the criminal justice system is currently still thick with formalistic-legalistic logic that only relies on statutory regulations. This method sees legal issues more as a matter of right and wrong, so it often ignores social and humanitarian aspects.⁴ In fact,

¹ Reksodiputro, M. (1994). Hak Asasi Manusia dalam Sistem Peradilan Pidana. Pusat Pelayanan Keadilan dan Pengabdian Hukum. hlm. 85

² Ali, M. (2007). Sistem Peradilan Pidana Progresif; Alternatif dalam Penegakan Hukum Pidana. Jurnal Hukum Ius Quia Iustum, 14(2). hlm. 217.

³ Zaidan, M. A. (2015). Menuju Pembaruan Hukum Pidana. hlm. 116.

⁴ Ali, M. Op.cit., hlm. 210.



criminal law expert Romli Atmasasmita once reminded us that the social aspect based on expediency should also be put forward by the criminal justice system.⁵

As one of the elements in the criminal justice system, the prosecutor's office plays a strategic role in law enforcement, namely the policy of investigation and prosecution. Referring to Law Number 16 of 2004, the Prosecutor's Office is one of the law enforcement agencies that are required to play a role in upholding the rule of law, protecting public interests, upholding human rights, and eradicating corruption, collusion and nepotism. In exercising its authority, the Prosecutor's Office is the pivot and filter between the investigation process and the examination at trial as well as being the executor of court decisions and decisions (executive ambtenaar) so that the Prosecutor's Office is the controller of the case process (*dominus litis*) because only the Prosecutor's Office is the only institution authorized to determine whether to proceed or not. Whether or not a criminal case goes to court is based on legal evidence. The same thing was also emphasized by Reksodipuro, that the most decisive part of the criminal system is the policy of investigation and prosecution, because even courts are limited by the pre-adjudication policy.⁶

However, in practice prosecutors more often use a formal-legalistic approach in handling criminal cases, which results in ineffective case settlement and overcapacity in correctional institutions.⁷ The Institute for Criminal Policy Research, recorded as many as 233,000 people languishing in prisons in Indonesia.⁸ Satjipto Rahardjo also stated that the settlement of cases through the judicial system that led to court verdicts was a law enforcement towards the slow lane. In the end, it has an impact on the accumulation of cases in court.⁹

This becomes interesting to discuss considering that the nature of criminal law itself is *ultimum remedium* which means a last resort taken to resolve cases. The public considers that law enforcement officers, such as prosecutors, should not take all cases to court if they can still be resolved through settlement patterns agreed by both parties. Along with a number of criticisms of criminal law enforcement that put too much emphasis on the aspect of punishment, the idea of renewal emerged through the idea of restorative justice. The concept of restorative justice in general emphasizes the value of balance, harmony, harmonization, peace, tranquility, equality, brotherhood, and kinship in society rather than punishment or imprisonment.¹⁰ Drassler argues that a restorative justice approach can lead to a greater sense of community security, more efficient and effective conflict resolution, and a good ending for all parties involved.¹¹

Flora's research in 2018 concluded that the concept of restorative justice has not been clearly regulated in the Indonesian criminal justice system, thus placing law enforcement in a difficult and dilemmatic position in handling criminal cases. Entering 2020, the Attorney General of the Republic of Indonesia also issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. According to this regulation, the Public Prosecutor (JPU) has the right to stop the process of prosecuting the accused for certain cases, if there is an amicable agreement between the victim and the defendant. Based on this, it is interesting to analyze how the

⁵ Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, Jakarta: Kencana Prenada Media Group, 2020, hlm. 4.

⁶ Hatta, M. (2008). *Sistem peradilan pidana terpadu*. Galangpress Group. hlm. 46.

⁷ The causes of overcapacity of prisons in Indonesia are caused by several things; first, excessive pre-trial detention, in which data received by the directorate general of prisons in 2020 showed that 44.5% of prison or remand center inmates were detainees; Second, the policy of criminal sanctions for drug cases. The occupants of prisons and remand centers are narcotics crimes that should be able to be rehabilitated; Third, the lack of access for convicts to lawyers. More see Rizaldi, R. (2020). *Over Kapasitas Di Lembaga Pemasyarakatan Kelas Ii A Cikarang, Faktor Penyebab Dan Upaya Penanggulangan Dampak*. *Jurnal Ilmu Hukum Dan Humaniora*, 7(3), 628-640., hlm. 638.

⁸ Walmsley, R. (2018). *World Prison Population List* (London: Institute for Criminal Policy Research)., hlm. 2.

⁹ Flora, H. S. (2018). *Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia*. *University Of Bengkulu Law Journal*, 3(2), 142-158.

¹⁰ Dennis Sullivan and Larry Tifft, *Handbook of Restorative Justice: A Global Perspective*, Routledge, Taylor & Francis Group, London and New York, pp.134.

¹¹ Dressler, Joshua, 2002, *Encyclopedia of Crime and Justice: Abortion-Cruel & Unusual Punishment* (Volume 1), Gale Group Thomson Learning, New York, pp. 1333



concept of restorative justice is adopted in criminal law in Indonesia, as well as to analyze the substance of the prosecutor's regulation number 15 of 2020 in the perspective of restorative justice.

METHOD

Based on the method and analysis used, this study is included as normative legal research or doctrinal legal research. Judging from its nature, this research is included in descriptive-explanative research, which aims to explain the substance of Prosecutor's Regulation Number 15 of 2020 in relation to the idea of restorative justice based on the perspective of theory, legislation and developing legal facts. As usual doctrinal legal research, a conceptual approach and statutory approach are used. This study itself uses secondary data consisting of primary, secondary, and tertiary legal materials, then analyzed qualitatively with descriptive-analytical presentation techniques..

ANALYSIS & DISCUSSION

1. Restorative Justice Concept in Criminal Law

In the Handbook on Restorative Justice Programs published by the United Nations, it is stated that: "Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community." As stated in Document A/CONF.187/8 which was submitted at the 10th United Nations congress on the Prevention of crime and the Treatment of Offenders held in Vienna, 10-17 April 2000, it has included provisions regarding "the alternative of restorative justice". " According to the document, the concept of restorative justice is seen as an alternative model in criminal justice, where all parties play a role in solving legal problems together, including dealing with the consequences and implications for the future. In this model, the emphasis is on remediation and prevention rather than punishment.¹²

The emphasis on restorative justice as an "alternative" in the settlement of criminal cases can be understood by referring to the explanation from James Dignan. According to him, the term restorative justice is usually attributed to Albert Eglash (1977), who sought to differentiate between three distinct forms of criminal justice. The first is concerned with "retributive justice", whose emphasis is on the aspect of retaliation or punishing the perpetrator according to his actions. The second relates to what he mentioned as "distributive justice" in which the primary emphasis is on the rehabilitation of offenders. The third is concerned with "restorative justice", which he broadly equals with the principle of restitution.¹³ Retributive or rehabilitative approaches to crime are currently considered unsatisfactory. This causes the impetus to switch to a restorative justice approach that involves the participation of perpetrators, victims and the community in an effort to create a balance of interests between perpetrators and victims.¹⁴

In relation to criminal cases, Bagir Manan explained that the essence of restorative justice is the principle of building joint participation between perpetrators, victims, and community groups in resolving an event or crime. Placing perpetrators, victims, and the community as "stakeholders" who work together and try to find solutions that are considered fair for all parties (win-win solutions)".¹⁵ According to Adam Agycar, the process of resolving cases through this restorative approach aims to: a) understand the perpetrators that their actions are disgraceful in the eyes of society, b) support and continue to respect a person's humanity even though he has committed a disgraceful act. In the end, both of these things want the perpetrators and victims to be able to return to society and become responsible members of society, obeying the law and upholding the values that live in society.

¹² Lasmadi, S. (2011). Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia. INOVATIF| Jurnal Ilmu Hukum, 4(5). hlm. 2.

¹³ Dignan, J. (2004). Understanding victims and restorative justice. McGraw-Hill Education (UK)., hlm 94.

¹⁴ United Nations Office For Drug Control and Crime Prevention, Handbook on Justice for Victims, centre for International Crime Prevention, New York, 1999, hal. 42- 43

¹⁵ Makarao, M. T. (2013). Pengkajian hukum tentang penerapan restorative justice dalam penyelesaian tindak pidana yang dilakukan oleh anak-anak. Badan Pembinaan Hukum Nasional, Jakarta., hlm. vii.



In the context of criminal law in Indonesia, Hariman Satria stated that the concept of restorative justice itself has not been known since the Criminal Procedure Code was enacted, but does not deny the fact that the core of the concept of restorative justice has actually existed and developed in customary law in various regions in Indonesia. Nevertheless, legislators are fully aware that there must be a different approach in the criminal justice process in certain cases or subjects (adresar), for example against children.¹⁶ Therefore, the restorative justice approach was first applied to the juvenile criminal justice system. The adoption of the concept of restorative justice began with the renewal of Law Number 3 of 1997 concerning Juvenile Court which still emphasizes a retributive approach (punishment), so it is considered not to provide protection to children in conflict with the law. This law is clearly not in line with Article 16 paragraph (3) of Law no. 23 of 2002 on Child Protection (UU PA) which states that "Arrest, detention, or criminal acts of imprisonment of children are only carried out if they are in accordance with applicable law and can only be done as a last resort. Moreover, the Government of Indonesia itself has ratified the Convention on the Rights of the Child through Presidential Decree no. 36 of 1990 concerning the Convention on the Rights of the Child.

For this reason, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) as a renewal of the previous rule. The most basic substance in the SPPA Law is an explicit regulation of restorative justice and the presence of a diversion policy which is intended to avoid and keep children away from the judicial process, so that children can avoid stigmatization and can return to the social environment naturally.¹⁷ According to Article 1 point SPPA Law, restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration of the situation return, and not retaliation.

Regarding diversion, the SPPA Law defines it as "The transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice". Diversion itself aims to achieve peace between victims and children; resolve child cases outside the judicial process; Protecting children from deprivation of liberty; encourage people to participate; and instill a sense of responsibility in children. Furthermore, this diversion mechanism consists of three stages as follows:

- 1) The investigation stage, where the investigator is obliged to seek diversion within a maximum of 7 (days) after the investigation begins by implementing restorative justice, namely gathering the perpetrators, victims, families of perpetrators/victims and all parties involved in it to jointly seek alternative solutions that are fair.
- 2) The prosecution stage, where the public prosecutor is obliged to seek diversion no later than 7 (seven) days after receiving the case file from the investigator. The diversion process is carried out no later than 30 (thirty) days.
- 3) In the trial stage, the judge is obliged to seek diversion no later than 7 (seven) days after being appointed by the head of the district court as a judge. The diversion is carried out for a maximum of 30 (thirty) days.

The results of the Diversion agreement may take the form of, among others: a) reconciliation with or without compensation; b) handover to parents/guardians; c) participation in education or training in educational institutions or LPKS for a maximum of 3 (three) months; or d) community service.¹⁸ Nevertheless, there are still restrictions on the diversion policy, namely in the case of a criminal act that is punishable by imprisonment for under 7 (seven) years and is not a repetition of a crime.

In addition to the context of the juvenile criminal justice system, the application of the concept of restorative justice can also be applied to other criminal cases in the general courts. This is as stated

¹⁶ Satria, H. (2018). Restorative Justice: Paradigma Baru Peradilan Pidana. *Jurnal Media Hukum*, 25(1), 111-123.

¹⁷ Lukman, D. R. (2016). Konsep Restorative Justice Dalam Undang-Undang Ri Number 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Jurnal Ius Kajian Hukum Dan Keadilan*, 2(6), hlm. 594.

¹⁸ Widodo. (2015). Diversi dan Keadilan Restoratif dalam Sistem Peradilan Pidana Anak di Indonesia: Urgensi dan Implikasinya, *RechtIdee Jurnal Hukum* 10 (2), hlm. 175.



in the attachment to the Decree of the Director General of the General Judiciary Agency of the Supreme Court Number: 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice. In Chapter I of this guideline, there is a fairly elaborative understanding of restorative justice, namely as an alternative to solving criminal cases that focus on punishment which is converted into a process of dialogue and mediation by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties. to jointly create an agreement on the settlement of criminal cases that is fair and balanced for both the victim and the perpetrator, by prioritizing the restoration to its original state and restoring the pattern of good relations in society. In general, there are three criminal acts that are regulated for restorative justice in addition to children's cases, namely in cases of minor crimes, cases of women dealing with the law, and narcotics cases.

For minor criminal cases, what is meant is criminal acts regulated in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code with a loss value of not more than 2.5 million rupiah. Aspects of restorative justice are carried out through quick hearings by prioritizing peace efforts, accompanied by or without compensation. In the context of cases of women as perpetrators or victims, the concept of restorative justice emphasizes on judges and law enforcers to always consider aspects of justice and gender equality, including by not making statements or questions that intimidate the parties. woman. Including by presenting a companion if the person concerned has physical and psychological barriers. Meanwhile, in the context of narcotics crime cases, a restorative justice approach is applied by providing medical/social rehabilitation policies, but specifically for those who are addicts, abusers, victims of abuse, drug dependence and those who have only used narcotics for one day. Basically the whole restorative justice approach is an implementation of a concept known as penal mediation or in some terms also called mediation in criminal cases, or mediation in penal matters.¹⁹

2. Prosecutor's Regulation Number 5 of 2020 in the Perspective of Restorative Justice

Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, in essence delegates authority to the Public Prosecutor (JPU) to stop the prosecution process against the defendant for certain cases, if a peace agreement is reached between the victim and the defendant. In the preamble chapter, it is stated that the main reason for the formulation of this policy is the legal need of the community for the settlement of criminal cases that prioritize restorative justice, through a mechanism for implementing prosecution authority and reforming the criminal justice system.

Article 1 point 1 Prosecutor's Regulation Number 15 of 2020 defines Restorative Justice as the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not retaliation." This definition is more or less the same as the restorative justice formulation as stated in Article 1 point 6 of the SPPA Law and the attachment to the Decree of the Director General of the General Court of Justice of the Supreme Court concerning Guidelines for the Implementation of Restorative Justice in the general court environment. This shows that there is consistency from the government both from the executive, judicial and legislative elements in its views on the concept of restorative justice in criminal cases. This definition would be in line with the general understanding of restorative justice, for example the opinion of Tony F. Marshall that restorative justice is a process where all parties with an interest in a particular violation meet together and resolve the consequences of the violation for the sake of the future.²⁰

If the SPPA Law promotes restorative justice through a diversion mechanism, then Prosecutor's Regulation Number 5 of 2020 puts forward restorative justice through a mechanism for stopping prosecution. The literal meaning of the word termination of prosecution is that a case has been transferred to a district court, then the process is terminated and then revoked for certain reasons.²¹

¹⁹ Flora, H. S. Op.cit., hlm. 150.

²⁰ Arofa, E. (2021). Penghentian Penuntutan Dalam Perkara Pidana Berdasarkan Restorative Justice. Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan, 7(2), 321-338.

²¹ Tampoli, D. C. M. (2016). Penghentian Penuntutan Perkara Pidana Oleh Jaksa Berdasarkan Hukum Acara Pidana. Lex Privatum, 4(2)., hlm. 28.



The authority to terminate the prosecution itself has previously been regulated in the Criminal Procedure Code, precisely in Article 140 paragraph (2) which reads: "In the event that the public prosecution decides to stop the prosecution because there is not enough evidence or the event is not a criminal act, or the case is closed for the sake of law, the public prosecutor shall include this in a decree". From this provision, it can be understood that the authority of the public prosecutor in stopping the prosecution is carried out on the basis of special qualifications, namely if the public prosecutor considers a case to be insufficient in evidence, is not a criminal event, or the case is closed for legal purposes. The qualifications regarding "in the interest of law" are further explained in Chapter VII of the Criminal Code which regulates the reasons for the abolition of prosecution authority, namely: a. *nebis in idem* (Article 76 of the Criminal Code); b. the defendant dies (Article 77) c. expired (Article 78-80 of the Criminal Code); d. the fine has been paid (Article 82 of the Criminal Code), and (other than that chapter) e. the complaint offense is revoked (Article 75 of the Criminal Code). It is important to understand that this policy of stopping prosecution should not be confused with deponering as referred to in Article 32 letter c of Law no. 5 of 1991 and the Elucidation of Article 77 of the Criminal Procedure Code. In Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the attorney general has the right to sue or not to prosecute a case to court, either conditionally or unconditionally based on the principle of opportunity.

What is new in Prosecutor's Regulation Number 5 of 2020 can be seen from the use of the phrase termination of prosecution based on "restorative justice", which confirms that there is a difference in paradigm used with the concept of cessation of prosecution known so far. This can be seen, for example, in the normalization of a number of principles in the implementation of the termination of prosecution based on restorative justice which includes: a) the principle of justice; b) public interest; c) proportionality; d) punishment as a last resort; and e) the principle of fast, simple, and low cost. The existence of this principle is very essential considering what A.R. Lacey, "principles may resemble scientific laws in being descriptions of ideal world, set up to govern actions as a scientific laws are to govern expectation".²² In Arief Sidharta's view, the legal principles are born from the content of human reason and conscience which causes humans to be able to distinguish between good and bad and fair/unfair.²³ Thus the purpose of normalizing these principles is not just a sweetener, but is expected to be the foundation and guide for the mind and conscience of the prosecutor.

The principle of justice, for example, is at the heart of the idea of restorative justice as an effort to find a solution that is considered fair for all parties (win-win solutions). The same thing was stated by John Braithwaite who said that restorative justice focuses on justice and welfare or a balance between rehabilitation and retribution. This aspect of justice is reflected in a number of provisions in Prosecutor's Regulation No. 15 of 2020, including in the procedures and the peace process. For the procedures for peace in Prosecutor's Regulation No. 15 of 2020 is regulated in Article 7 to Article 8. Where in Article 7 the Public Prosecutor offers victims and suspects to make peace efforts carried out without pressure, coercion and intimidation. This means that the peace agreement is really left to the results of negotiations and agreements between the victims and perpetrators as well as their respective families. Furthermore, the provisions of article 9 substantially guarantee the neutrality of law enforcement as peace facilitators, where the public prosecutor as referred to in paragraph (2) has no interest or connection with the case, the victim, or the suspect, either personally or professionally, directly or indirectly.

The offer and the peace process are all carried out at the prosecution stage, which at the same time reflects the criminal principle as a last resort (*ultimum remedium*). This can be seen from the provisions of Article 3 regarding the terms of case closure for legal purposes, one of which can be done in the event that there has been an out-of-court settlement (*afdoening buiten proces*). The formulation of the regulation reflects the legal politics of Prosecutor's Regulation No. 15 of 2020, which as much as possible wants to reduce the handling of cases with a formal approach that leads

²² Mahadi (2003), *Falsafah Hukum Suatu Pengantar*, Alumni, Bandung. Hlm. 120.

²³ Atmadja, I. D. G. (2018). *Asas-asas hukum dalam sistem hukum*. Kertha Wicaksana, 12(2), 145-155., hlm. 146.



to punishment, which so far has had an impact on the accumulation of cases. In addition, in the perspective of restorative justice, physical sanctions in the form of imprisonment are not always effective in responding to violations. As Bernes and Teeters have warned, prisons have grown into places of pollution that must be avoided. Because in prison, accidental offenders and newcomers (novices in crime), are damaged through their interactions with chronic criminals.²⁴

The principle of public interest, for example, can be seen in the regulation of Article 4 paragraph (1) which requires the termination of prosecution by taking into account the interests of the victim and other protected legal interests. This includes community response and harmony, as well as other social values such as propriety, decency, and public order. While the principle of proportionality, for example, is contained in the basis for consideration of stopping prosecution (Article 4) and the conditions for cases and perpetrators who can be terminated based on restorative justice (Article 5). Termination of prosecution based on Restorative Justice must consider a number of things proportionally, such as the subject, object, category, and threat of a criminal act. Including the level of disgrace, the proportion of losses or consequences that arise, to the calculation of the costs and benefits of handling cases. Termination of prosecution can only be carried out on perpetrators or suspects who have committed a crime for the first time. Regarding the crime, two further conditions apply: First, the crime committed is only punishable by a fine or a maximum imprisonment of five years; Second, a criminal act is committed with a value of evidence or a loss value of not more than 2.5 million rupiah (Article 5 paragraph (1)).

Next, Prosecutor's Regulation also adheres to the principles of fast, simple, and low cost. For example, as contained in the provisions of Article 11, that if the peace agreement is not successful, then the suspect with good intentions can be considered by the prosecutor in carrying out the prosecution, one of which is the delegation of the case with a brief examination procedure. The simplicity of the procedure is also reflected in the arrangements regarding the peace procedure, the needs needed, to the process of stopping the prosecution. The principle of low cost is shown in the provision that the termination of prosecution must take into account the costs and benefits of handling a case (Article 4(2) letter e). So far, the cost aspect of handling criminal cases has often escaped the consideration of law enforcement. The formal-legalistic handling of criminal cases also often ignores aspects of greater benefits than just punishing someone in the name of justice and revenge. The mechanism for stopping prosecution with the principle of fast, simple and low cost is basically in line with the idea of restorative justice which, according to Howard Zehr, one of the main elements is that the criminal justice process must facilitate the roles of victims, perpetrators, and the community to find solutions to the conflict.²⁵

CONCLUSION

Based on a number of descriptions above, it can be concluded that there are two main things: first, that the idea of restorative justice emphasizes the principle of joint participation between perpetrators, victims, and community groups in resolving an event or crime. In the legal context in Indonesia, restorative justice was initially unknown in the Criminal Code, but over time it began to be adopted through criminal law reforms such as the SPPA Law which explicitly regulates restorative justice and the presence of a diversion policy that is intended to divert and keep children away from the conventional judicial process. In addition to the context of the juvenile criminal justice system, the application of the concept of restorative justice can also be applied to other types of crimes such as minor criminal cases, women's cases in conflict with the law, and narcotics cases. Basically the whole restorative justice approach is an implementation of a concept known as penal mediation or in some terms also called mediation in criminal cases, or mediation in penal matters. Second, the substance of the regulation in Prosecutor's Regulation number 15 of 2020 is principally in line with the concept of restorative justice. A number of provisions have prioritized the peace aspect by

²⁴

https://www.bphn.go.id/data/documents/laporan_akhir_pengkajian_restorative_justice_anak.pdf Hlm. 25

²⁵ Howard Zehr, *Changing lenses : A New Focus for Crime and justice*, (Waterloo: Herald Press, 1990), hlm. 181.

involving the participation of all parties involved, both from the side of victims and perpetrators in a fair and impartial manner. The formulation of the basic considerations, qualifications and exceptions is also prepared fairly proportionally by taking into account legal interests and public interests. Thus, basically the legal politics of the preparation of Prosecutor's Regulation Number 15 of 2020 is to shift the paradigm in the settlement of criminal cases which previously used a retributive (punishment) approach based on due process of law, to become rehabilitative and restitutive (recovery of the original state) based on a restorative justice approach.

REFERENCES

- [1] Ali, M. (2007). *Sistem Peradilan Pidana Progresif; Alternatif dalam Penegakan Hukum Pidana*. Jurnal Hukum *Ius Quia Iustum*, 14(2).
- [2] Arofa, E. (2021). *Penghentian Penuntutan Dalam Perkara Pidana Berdasarkan Restorative Justice*. Jurnal Surya Kencana Dua: *Dinamika Masalah Hukum dan Keadilan*, 7(2), 321-338.
- [3] Atmadja, I. D. G. (2018). *Asas-asas hukum dalam sistem hukum*. *Kertha Wicaksana*, 12(2), 145-155.
- [4] Braithwaite, John, 1998, *Restorative Justice*, dalam Michael Tonry, *The Handbook of Crime and Punishment*, Oxford University Press, New York.
- [5] Dennis Sullivan and Larry Tifft, *Handbook of Restorative Justice: A Global Perspective*, Routledge, Taylor & Francis Group, London and New York, pp.134.
- [6] Dignan, J. (2004). *Understanding victims and restorative justice*. McGraw-Hill Education (UK).
- [7] Dressler, Joshua, 2002, *Encyclopedia of Crime and Justice: Abortion-Cruel & Unusual Punishment (Volume 1)*, Gale Group Thomson Learning, New York.
- [8] Flora, H. S. (2018). *Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia*. *University Of Bengkulu Law Journal*, 3(2), 142-158.
- [9] Gaycar, A. (2002). *Dalam Australian Institute of Criminology, trends and Issues in crime and criminal justice. Bullying and Victimisation In School: A Restorative Justice Approach*, (219), 2-3.
- [10] Gunarto, M. P. (2009). *Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan*. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 21(1), 93-108.
- [11] Hatta, M. (2008). *Sistem peradilan pidana terpadu*. Galangpress Group.
- [12] Howard Zehr, *Changing lenses : A New Focus for Crime and justice*, (Waterloo: Herald Press, 1990).
- [13] Hutchinson, Terry, and Nigel Duncan. "Defining and describing what we do: Doctrinal legal research." *Deakin L. Rev.* 17 (2012): 83.
- [14] Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode dan Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media.
- [15] Lasmadi, S. (2011). *Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia*. *INOVATIF| Jurnal Ilmu Hukum*, 4(5).
- [16] Legoh, R. (2014). *Penghentian Penuntutan Demi Kepentingan Hukum*. *LEX ET SOCIETATIS*, 2(2).
- [17] Lukman, D. R. (2016). *Konsep Restorative Justice Dalam Undang-Undang Ri Number 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*. *Jurnal Ius Kajian Hukum Dan Keadilan*, 2(6).
- [18] Mahadi (2003), *Falsafah Hukum Suatu Pengantar*, Alumni, Bandung.
- [19] Makarao, M. T. (2013). *Pengkajian hukum tentang penerapan restorative justice dalam penyelesaian tindak pidana yang dilakukan oleh anak-anak*. *Badan Pembinaan Hukum Nasional*, Jakarta.
- [20] Srachman, R. M., & Hamzah, A. (1997). *Jaksa di berbagai negara: peranan dan kedudukannya*, (Jakarta: Sinar Grafika, 1996).
- [21] Reksodiputro, M. (1994). *Hak Asasi Manusia dalam Sistem Peradilan Pidana*. *Pusat Pelayanan Keadilan dan Pengabdian Hukum*.
- [22] Rizaldi, R. (2020). *Over Kapasitas Di Lembaga Pemasyarakatan Kelas Ii A Cikarang, Faktor Penyebab Dan Upaya Penanggulangan Dampak*. *Jurnal Ilmu Hukum Dan Humaniora*, 7(3), 628-640.
- [23] Atmasmita, R. (2010). *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana Prenada Media Group, 2020.
- [24] Satria, H. (2018). *Restorative Justice: Paradigma Baru Peradilan Pidana*. *Jurnal Media Hukum*, 25(1), 111-123.
- [25] Tampoli, D. C. M. (2016). *Penghentian Penuntutan Perkara Pidana Oleh Jaksa Berdasarkan Hukum Acara Pidana*. *Lex Privatum*, 4(2).
- [26] United Nations Office For Drug Control and Crime Prevention, *Handbook on Justice for Victims*, centre for International Crime Prevention, New York, 1999.



- [27] United Nations, *Handbook on Restorative Justice Programmes*, (New York: United Nations Publication, 2006).
- [28] Walmsley, R. (2018). *World Prison Population List* (London: Institute for Criminal Policy Research).
- [29] Widjayanti, A. A., & Muchamad Iksan, S. H. (2021). *Analisis Yuridis Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif, Ditinjau dari Prespektif Asas Kepastian Hukum, Asas Keadilan, dan Asas Kemanfaatan (Studi Kasus Perkara Pidana Penganiayaan oleh Tersangka Kasemi dengan Masiyem di Kejaksaan Negeri Gunung Kidul)*, Universitas Muhammadiyah Surakarta).
- [30] Widodo. (2015). *Diversi dan Keadilan Restoratif dalam Sistem Peradilan Pidana Anak di Indonesia: Urgensi dan Implikasinya*, *RechtIdee Jurnal Hukum* 10 (2).
- [31] Yananda, S. (2021). *Peran Kejaksaan dalam Mewujudkan Keadilan Restoratif Pasca Diterbitkannya Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif di Kejaksaan Negeri Bantul* (Doctoral dissertation, Universitas Gadjah Mada).
- [32] Zaidan, M. A. (2015). *Menuju Pembaruan Hukum Pidana*.

World Wide Web:

- [1] [Katadata.co.id Ketidakstabilan Penegakan Hukum di Indonesia, dikutip dari https://databoks.katadata.co.id/datapublish/2020/01/17/ketidakstabilan-penegakan-hukum-di-indonesia](https://databoks.katadata.co.id/datapublish/2020/01/17/ketidakstabilan-penegakan-hukum-di-indonesia)
- [2] <https://worldjusticeproject.org/sites/default/files/documents/Indonesia%20%28Bahasa%20Indonesia%29.pdf>.
- [3] https://www.bphn.go.id/data/documents/laporan_akhir_pengkajian_restorative_justice_anak.pdfHlm. 25