RECONCEPTUALIZATION OF RESTORATIVE JUSTICE IN THE ATTORNEY GENERAL’S OFFICE OF THE REPUBLIC OF INDONESIA

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ABSTRACT

Purpose: This article examines the regulatory framework and practical application of restorative justice by the Indonesian Prosecutor's Office. The adoption of restorative justice in Indonesia has been delayed by the legalistic and formalistic nature of the Indonesian Criminal Procedure.

Theoretical framework: To address this issue, an Attorney General Regulation has been put in place to oversee and regulate restorative justice practices. Nevertheless, there are still uncertainties regarding the alignment between the Prosecutor's Office's restorative justice concept and its fundamental nature.

Methods: This study uses a normative legal methodology to conduct qualitative research. The research indicates that the Prosecutor's Regulations on Restorative Justice are inherently linked to Indonesia's historical framework of law enforcement.

Results and Conclusion: Consequently, prosecutors continue to handle minor instances, such as those involving Grandma Minah and Grandpa Samirin, much to the public's discontent. In Indonesia, this is evident in the high concentration of prisons.

Research implications: According to this research, there should not be a connection between restorative justice and the resolution of a case. Restorative justice is distinct from the prosecutor's ability to dismiss a case based on the availability of options. Restorative justice aims to reinstate the "initial condition" and safeguard victims.

Originality/value: This redirects the emphasis of restorative justice from halting the case to reinstating it. Restorative justice is a criminal framework that enables prosecutors to pursue alternative forms of prosecution and employ non-incarceration penalties. Prosecutors can utilize restorative justice both before and after the legal process, as well as during the legal process.

Keywords: Restorative Justice, Case Termination, Indonesian Prosecutor's Office.

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RECONCEPTUALIZAÇÃO DA JUSTIÇA REPARADORA NA PROCURADORIA-GERAL DA REPÚBLICA DA INDONÉSIA

RESUMO

Objetivo: Este artigo examina o quadro regulamentar e a aplicação prática da justiça reparadora pelo Ministério Público da Indonésia. A adoção da justiça reparadora na Indonésia tem sido adiada pela natureza legalista e formalista do processo penal indonésio.

Estrutura teórica: Para abordar esta questão, um Regulamento do Procurador-Geral foi posto em prática para supervisionar e regular as práticas de justiça reparadora. No entanto, subsistem ainda incertezas quanto ao alinhamento entre o conceito de justiça reparadora do Ministério Público e a sua natureza fundamental.

Métodos: Este estudo utiliza uma metodologia legal normativa para realizar pesquisas qualitativas. A pesquisa indica que os Regulamentos do Procurador sobre a Justiça Restaurativa estão inerentemente ligados ao quadro histórico de aplicação da lei na Indonésia.

Resultados e Conclusão: Consequentemente, os promotores continuam a lidar com casos menores, como aqueles que envolvem a Vovó Minah e o Vovô Samirin, para grande descontentamento do público. Na Indonésia, isso é evidente na alta concentração de prisões.

Implicações da pesquisa: De acordo com esta pesquisa, não deve haver conexão entre a justiça reparadora e a resolução de um caso. A justiça reparadora é distinta da capacidade do promotor de julgar um caso baseado na disponibilidade de opções. A justiça reparadora visa restabelecer a “condição inicial” e salvaguardar as vítimas.

Originalidade/valor: Isso redirige a ênfase da justiça restauradora de parar o caso para restabelecê-lo. A justiça reparadora é um quadro penal que permite que os procuradores procurem formas alternativas de ação penal e apliquem penas de não-encarceramento. Os promotores públicos podem utilizar a justiça reparadora tanto antes como depois do processo legal, bem como durante o processo legal.

Palavras-chave: Justiça Restauradora, Rescisão De Caso, Ministério Público da Indonésia.

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1 INTRODUCTION

Indonesia's criminal justice system has experienced numerous transformations and advancements over its history. Restorative Justice is a concept that has garnered growing interest. This concept originated from the field of criminology and serves as an alternative strategy to dealing with criminal acts. It places focus on reconciliation, recovery, and the active involvement of all parties affected, including victims, perpetrators, and the community. This strategy utilizes alternative ideas compared to the traditional criminal justice system approach that focuses on the enforcement of penalties. Restorative justice, as defined in the Handbook on Restorative Justice Programmes, is a program that operates under the principle that individuals involved in and impacted by a crime should actively engage in the process of repairing the harm caused and implementing measures to avoid future occurrences of the crime.

Restorative justice aims to restore the original condition and involves the involvement of victims in the criminal court system.5

Restorative techniques have been incorporated into the RPJMN 2020-2024 program in Indonesia, namely in Chapter VIII. The objective of this chapter is to enhance political stability, defense law, security, and the transformation of public services. The primary emphasis is placed on the Policy Direction and Strategy of the National Law Enforcement Section, which aims to enhance the efficiency of the criminal and civil law systems by employing specific strategies that adhere to restorative justice principles. This approach prioritizes the utilization of laws and regulations that facilitate the implementation of Restorative Justice.6 The aforementioned campaign promotes the utilization of laws that facilitate the implementation of restorative justice, urging law enforcement agencies, such as the Indonesian Attorney General's Office, to maximize its application. Furthermore, numerous prosecutors play a pivotal job in executing restorative justice determinations. The AGO released AGO Regulation No. 15/2020 in 2020, which pertains to the cessation of prosecution through the implementation of restorative justice. The Prosecution Service enhanced the utilization of the existing rule (Article 140 paragraph (2) KUHAP) by employing a comprehensive interpretation of the concept of adorning buiten procedure, which encompasses restorative justice. Restorative justice serves as a basis for terminating the prosecution process. The Regulation underscores that the utilization of the restorative justice strategy in resolving situations leads to the cessation of prosecution.7

The primary impediment that arises in the introduction of Restorative Justice in the Public Prosecution Service is the prevailing perception that this strategy just concentrates on case resolution. Nevertheless, it is crucial to acknowledge that the notion of Restorative Justice is inherently intricate and encompasses a sequence of profound phases.8 The ultimate objective is to reinstate something to its initial condition, rather than just halting the legal procedure.9 This essay seeks to analyze the implementation of restorative justice in the prosecutor's office, to enhance comprehension regarding the efficacy and advantages of this method in addressing criminal offenses in Indonesia.

2 DISCUSSION

2.1 Restorative justice policies form the bedrock of prosecutorial institutions in Indonesia

Restorative Justice (RJ) is a method that prioritizes the restoration of the harm caused by criminal actions and includes victims in the process of resolving conflicts. It differs from traditional punishment methods, which primarily emphasize punitive measures.10 Eva Achjani Zulfa argues that the traditional justice system has imposed a significant burden on both the

government and society when it comes to addressing criminal cases. The concept of restorative justice is driven by the aim to overcome these problems by providing an alternative approach. This method represents not only a novel tactic in managing criminal cases but also embodies a broader ideology of criminal law. This shift in perspective has wide-ranging repercussions, both in terms of theory and practical application. This method transforms the criminal law paradigm by adopting an inclusive and rehabilitative approach, no longer giving priority to retaliation.11

On 22 July 2020, the Indonesian Attorney General’s Office issued Attorney Regulation Number 15 of 2020, which pertains to the termination of prosecution through the implementation of Restorative Justice. This regulation establishes five fundamental principles for the application of Restorative Justice, namely: justice, public interest, proportionality, punishment as a final option, and an expeditious, uncomplicated, and cost-effective procedure.12 This regulation is established by the Attorney General, taking into account the provisions of Law 16/2004 and Law 11/2021 in the Attorney General’s Office. The Attorney General holds significant responsibilities and authority in enhancing the execution of the law enforcement process, by the provisions of the Law.

Additionally, the Attorney General is responsible for formulating and determining policies that govern case handling. The ultimate goal is to ensure that prosecution can occur independently and by the principles of justice, based on law and conscience. Prosecutor’s Regulation No. 15/2020 pertains to the termination of prosecution through the implementation of restorative justice. It serves as an authoritative directive for all prosecutors in Indonesia. This guideline instructs prosecutors to cease prosecution by the ideals of restorative justice and the power stipulated in the Indonesian criminal procedure legislation. In the aforementioned clause, restorative justice is delineated as the process of resolving criminal cases by engaging offenders, victims, families of perpetrators/victims, and other relevant parties in a collaborative effort to pursue an equitable resolution, with a focus on restoring the situation to its original state rather than seeking revenge.13

The AGO Regulation was inherently intertwined with social factors in the realm of law enforcement in Indonesia. The implementation of law enforcement in this nation typically adopts a legalistic and punitive approach, prioritizing prosecution and sentence. Attorney General Burhanuddin’s speech highlights the importance of acknowledging the historical context of law enforcement in Indonesia. Past events of law enforcement have frequently undermined people’s trust in the legal system. Particularly in cases where a criminal violation is committed by a small community, there are instances where the criminal act is deemed insufficiently comparable and equitable to warrant judicial proceedings.

Various incidents garnered public attention, including the case of Grandma Minah, who was found guilty of pilfering three cocoa beans and received a prison sentence of one month and fifteen days, along with a three-month probationary period. Grandpa Samirin was convicted and sentenced to a prison term of two months and four days for the theft of rubber sap valued at around seventeen thousand rupiahs.14 Hence, this legislation holds significance as

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an endeavor to alter that paradigm. This rule aims to shift the emphasis from punishment alone to repair and reconciliation between the criminal and victim by introducing the notion of restorative justice. This not only signifies a transformation in legal methodologies in Indonesia but also promotes the advancement of a more comprehensive and justice-focused society.\textsuperscript{15}

The fundamental principle of the Prosecutor's Regulation on Restorative Justice is to safeguard small communities, particularly those that are more susceptible to harm. The core principle of Restorative Justice is around the idea of "restoration". Restorative justice involves the process of repairing the disrupted harmony between the victim, perpetrator, and community. The moral and ethical core of restorative justice lies in achieving justice through the establishment of peace among offenders, victims, and society. Justice and peace are fundamentally interconnected. The implementation of this Regulation on Restorative Justice is anticipated to empower prosecutors to pursue cases guided by the principle of conscience. The conscience serves as a catalytic tool to simultaneously accept, unite, and achieve the three lawful objectives. Legal justice will be fully fulfilled when both legal expediency and legal certainty, grounded in conscience, are attained concurrently.

\subsection*{2.2 Factors Considered by Prosecutors in the Implementation of Restorative Justice in Indonesia}

The Regulation on Restorative Justice in the Public Prosecution Service outlines three primary criteria for a case to be terminated based on restorative justice considerations. These criteria include the condition that the accused is a first-time offender, the criminal sentence does not surpass 5 years, and the monetary loss associated with the case does not exceed Rp. 2,500,000.00. Nevertheless, in instances of criminal charges concerning property, individuals, physical harm, life, reputation, and negligence, the rules grant the Public Prosecutor the authority to waive specific fundamental criteria. This flexibility enables the handling of exceptional circumstances by prioritizing concepts of restorative justice.

Furthermore, prosecutors must take into account various factors, including the well-being of victims, the prevention of detrimental social perceptions, the avoidance of retaliatory actions, and the promotion of harmony and communal cohesion. When implementing it, there are additional factors that must be taken into account, including the subject, object, category, and potential consequences of punishment, as well as the background of the criminal offense, the resulting harm, the cost and benefit analysis of handling the case, the restoration of the original state, and the establishment of peace between the victim and the perpetrator.\textsuperscript{16} It is important to emphasize that the implementation of the restorative justice process is contingent upon the presence of substantial evidence to prosecute the wrongdoer, as well as the voluntary consent of both the wrongdoer and the victim to participate in the process without any kind of coercion. Both parties also own the prerogative to terminate the restorative procedure at any given moment. The agreement must be founded on voluntarism and encompass equitable and rational obligations for all parties concerned.

To achieve the goal of "restoration to the original state," the prosecutor must take into account that the offender receives a favorable reaction from the community, returns the stolen items to the victim, compensates for any losses, repairs any damages, facilitates reconciliation between the victim and the offender, or fulfills any other mutually agreed-upon conditions. The


Public Prosecutor takes into account the satisfaction of the requirements for ending the prosecution process through Restorative Justice when deciding whether to proceed with submitting the case file to the court.\textsuperscript{17} The restorative outcomes mentioned above are derived from the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. These outcomes, which include reparations, restitution, and social work, are the result of restorative processes. The goal of these processes is to reconcile the needs and responsibilities of both individuals and communities affected by a criminal act and to facilitate the reintegration of offenders and victims.\textsuperscript{18}

The discontinuation of prosecution based on restorative justice is a manifestation of prosecutorial discretion used by the Public Prosecutor, which also embodies the dominus litis concept. The dominus litis principle states that the Public Prosecutor has exclusive authority over the prosecution and resolution of criminal proceedings. The exercise of prosecutorial discretion is evident in Article 139 and Article 140 paragraph (2) letter b of KUHAP. The terms "determine" and "decide" used in these clauses serve as the legal foundation for prosecutorial discretion. In practice, this decision will take into account the equilibrium between adherence to relevant regulations (legality) and the objective of efficiency (effectiveness).\textsuperscript{19} The decision to terminate or proceed with prosecution is anticipated to have a consequential effect that advances the cause of justice and yields advantages for all parties concerned.

2.3 Does Restorative Justice equate to Case Termination?

Restorative justice is closely associated with case closure in the prosecutor's office. Case termination is a concept that stems from prosecutorial discretion within the criminal justice system. Sudirdja argues that directly associating restorative justice with case termination is an unsuitable choice. The restorative justice method should be differentiated from the notion of case termination, which involves prosecutorial discretion guided by the principle of opportunism.\textsuperscript{20} The restorative justice method centers on the restitution of the "initial condition" and the vindication of victims' rights. Case termination in the framework of prosecutorial discretion is dependent on the prosecutor's authority as the holder of the dominus litis principle. This authority allows them to decide whether to send cases to court or not. This decision is primarily aimed at reducing the workload on courts and correctional institutions. Nevertheless, prosecutors may utilize RJ as a factor to decide against referring cases to court, while it is not obligatory. Hence, the efficacy of implementing restorative justice should not be solely gauged based on the closure of the case by the prosecuting authority.

Prosecutors should take into account the implementation of restorative justice as a factor when deciding whether or not to drop a case. On the other hand, the absence of restorative justice implementation does not imply that the matter should automatically go to court and the offender should be penalized. This is because the prosecutor serves as a case controller, following the principle of opportunism and having the responsibility to evaluate and filter cases. Hence, it is essential to perceive restorative justice initiatives and case termination as distinct issues that entail diverse factors in prosecutorial decision-making. As per the scholars, the

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\textsuperscript{17} Bintara Sura Priambada and Pujiyono Suwadi, “Involvement of Children in Legal Issues for Criminal Acts of Terrorism in Indonesia: Phenomenon and Inflicting Factors,” \textit{Migration Letters} 20, no. 6 (2023): 482 – 492.
\textsuperscript{18} Rasdi et al., “Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice.”
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prosecutor's decision to end the case reflects the dominus litis principle, which states that the prosecution has full control over the case.\textsuperscript{21} The prosecutor possesses the discretion to either proceed or decline with the matter at hand. If the end of a case is directly tied to restorative justice, it goes against the premise of restorative justice, which emphasizes the importance of voluntary participation. There is concern that this may result in the implementation of transactional restorative justice settlements. The efficacy of restorative justice settlements is assessed based on the number of cases resolved, rather than the extent to which the original circumstances are restored, particularly in terms of meeting the needs of the victims.

Restorative justice can be implemented across the entire criminal justice process, encompassing pre-adjudication, adjudication, and post-adjudication stages. This stands in opposition to the notion of diversion, which typically only pertains to the stage before a formal decision is made. Sudirdja's research highlighted three important distinctions between the notions of restorative justice and diversion, underscoring their inherent dissimilarity.\textsuperscript{22} Restorative justice prioritizes the safeguarding of victims as its primary concern, whereas diversion tends to prioritize the protection of offenders, particularly in the case of young delinquents. Furthermore, restorative justice exhibits the capacity to be implemented at every phase of the criminal justice system, whereas diversion is confined solely to the pre-adjudication stage. Furthermore, diversion frequently culminates in the termination of a case, whereas restorative justice does not invariably result in case termination. Restorative justice assumes a role as a mitigating factor and a significant factor for law enforcement officials, including prosecutors, when making decisions.\textsuperscript{23}

Restorative Justice is a method that seeks to address harm and find resolutions by including victims, perpetrators, and communities. The primary emphasis is placed on the process of reconciliation and restoration, to reinstate social equilibrium. Conversely, diversion seeks to redirect individuals who have committed minor offenses or are first-time offenders away from the official criminal justice system. This is accomplished by offering alternatives to legal proceedings, such as educational programs or therapeutic interventions. Restorative Justice does not inherently preclude the establishment of a criminal record, but Diversion aims to mitigate the consequences of a criminal record for the perpetrator. Although they have contrasting characteristics, both promote compassionate and non-retributive options, exemplifying advancements in the criminal justice system aimed at ensuring justice for all individuals involved.\textsuperscript{24}

2.4 Is Restorative justice employed to address problems related to overcrowding?

The Indonesian penal system is confronted with a significant issue of prison overpopulation. This section examines the viability of utilizing the notion of restorative justice as a means to address the issue of prison overpopulation. According to data from 2022, the total

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number of detainees or inmates in Indonesia amounted to 275,518 individuals, surpassing the maximum capacity of 132,107 individuals in 526 correctional facilities. Indonesia's occupancy rate exceeds the existing capacity by 208.6%, placing it as the eighth country with the greatest jail overcrowding rate globally.

Restorative justice has been incorporated into Indonesia’s national priority programs, specifically outlined in the National Medium-Term Development Plan (RPJMN) 2020-2024. It is particularly emphasized in the 7th national program, which focuses on enhancing political, legal, defense, and security (polhukhankam) stability, as well as transforming public services. The primary objective of this strategy is to enhance the criminal and civil law systems by employing techniques to effectively implement the concept of restorative justice. A topic about criminal law that has been brought up in the RPJMN is the problem of correctional establishments being overcrowded. Hence, restorative justice is inherently connected to endeavors aimed at mitigating the issue of overcrowding in Indonesia's penitentiaries.

Restorative justice is believed to possess the capacity to alleviate prison overpopulation through the enlargement of case resolution alternatives, the incorporation of prosecutorial alternatives, and the implementation of alternative penalties to incarceration. This discourse examines the possible implementation of restorative justice in the Indonesian setting to identify an efficient resolution to the issue of excessive jail population. Although there is a connection between the two notions, scholars are uncertain if it is appropriate to directly associate restorative justice with the lowering of jail overcrowding. The objective of this study is to analyze the influence of implementing restorative justice in prosecutorial institutions on the reduction of jail overcrowding in Indonesia.

As previously discussed, restorative justice encompasses more than simply closing a case; it also involves recreating the original circumstances with a wider perspective than mere case termination. The reason for this is that the fundamental principle of restorative justice is to return to the initial condition. Restorative justice is a sentencing paradigm that goes beyond simply closing a case and embraces a wider element and breadth. In addition to its application by prosecutors during the pre-adjudication stage, restorative justice can also be employed throughout the adjudication stage, specifically during the trial phase.

Prosecutors can bring forth criminal accusations that do not involve punishment through incarceration but instead utilize alternative punishments. Restorative justice enables prosecutors to select alternatives to prosecution and non-incarceration choices for defendants. By utilizing a conditional sentence, prosecutors can accuse a defendant of a criminal act, while also granting the defendant the opportunity to avoid serving the sentence by abiding by the terms of probation. This is a method of implementing restorative justice to mitigate the consequences of jail overpopulation without completely dismissing the case. Furthermore, the 2023 Criminal Code incorporates social penal consequences within the scope of national

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criminal law. Consequently, prosecutors possess greater leeway in selecting the appropriate penalty for the criminal, which may involve employing a restorative justice methodology.\(^{29}\)

This aligns with the principle of restorative justice, as described in the UN Handbook on Restorative Justice Programmes, which can be utilized at every phase of the criminal justice system. Therefore, a comprehensive comprehension of restorative justice will expand the range of prosecutorial case resolution by including not only case termination but also the use of alternative prosecution and alternative sanctions for offenders.\(^{30}\)

By thoroughly comprehending the restorative method, it is anticipated that the process of healing and reconciliation among offenders, victims, and the community may effectively tackle the issue of prison overpopulation. By employing this strategy, the objective is not alone to diminish the repercussions on correctional facilities, but also to offer chances for criminals to enhance themselves and make amends to victims, thereby reinstating the disrupted equilibrium.\(^{31}\)

The primary emphasis in tackling prison overpopulation should be placed on the pre-incarceration stages before persons become involved in legal proceedings and enter the correctional system. The primary emphasis should be placed on the pre-adjudication phase, which occurs far in advance of the offender's court trial.\(^{32}\) This strategy holds immense importance as it has the potential to avert the imprisonment of all wrongdoers, as certain offenses can be settled during this phase. Restorative justice is recognized as a crucial factor in alleviating prison congestion and minimizing its adverse effects. However, this can only be achieved if restorative justice is reinstated as a punishment paradigm rather than a means of terminating cases.\(^{33}\)

Several crucial considerations need to be taken into account while implementing restorative justice ideas in the Public Prosecution Service.\(^{34}\) Prioritizing the assessment of the relevance of connecting restorative justice methods with the issue of jail overcrowding is crucial. Although this method prioritizes reconciliation and alternative dispute resolution, its specific impact on alleviating congestion needs to be evaluated within a wider framework.\(^{35}\) Restorative justice should be regarded as a sentencing framework that guides all decisions made by prosecutors, rather than being only linked to the resolution of criminal cases. Restorative justice is simply one factor that prosecutors take into account when deciding how to conclude criminal cases that are being terminated based on the concept of opportunism. This is because

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prosecutors have additional factors to consider beyond the implementation of restorative justice.36

Restorative justice is an approach that suggests justice can be reinstated by facilitating a process of reconciliation between offenders and victims. Restorative justice offers a more efficacious alternative to punishment, prioritizing reconciliation and rehabilitation over mere incarceration, hence aiding in the alleviation of prison overpopulation. Restorative justice can additionally contribute to the reduction of crime rates by affording criminals the chance to rectify their wrongdoings and enhance their rapport with society.

3 CONCLUSION

The Attorney General’s Office of the Republic of Indonesia, responsible for executing state power in the field of prosecution, has implemented the concepts of restorative justice in criminal law enforcement in Indonesia. Restorative Justice is a distinct method of addressing criminal offenses that prioritizes reconciliation, recovery, and the involvement of all relevant parties, such as victims, perpetrators, and the community. Restorative Justice has been acknowledged and incorporated into the RPJMN 2020-2024 program as a strategy to address issues within the criminal justice system, particularly the problem of overcrowding in correctional facilities. The Prosecutor's Regulation defines Restorative Justice as a foundation for halting proceedings at the pre-adjudication stage of prosecution. An assessment of the implementation of Restorative Justice in the Public Prosecution Service is imperative, given its significance in mitigating jail congestion. Restorative Justice should be acknowledged as a sentencing framework that includes all prosecutorial determinations, rather than solely case termination. Restorative Justice involves a wider range of restoration measures beyond simply ending a case, alluding to the fundamental nature of Restorative Justice as a process of rehabilitation. Restorative Justice enables prosecutors to select alternatives to prosecution and other non-incarceration options for defendants.

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