



LICS 2023

Muhammad Fariza

Implementation of Restorative Justice by the Prosecutor's Office in Settlement of General Criminal Cases (Study of The Kebumen District Prosecutor's Office)

Muhammad Fariza

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: MuhammadFariza.std@unissula.ac.id

Abstract. *This study aims to determine, examine, and analyze: (1) the implementation of restorative justice by the prosecutor's office in resolving general criminal cases at the Kebumen District Attorney's Office, (2) the obstacles and solutions in the implementation of restorative justice by the prosecutor's office in resolving general criminal cases at the Kebumen District Attorney's Office, (3) as well as the conception of the implementation of restorative justice by the prosecutor's office in resolving general criminal cases in the future based on the Value of Justice. The approach method used in this study is sociological juridical. The specifications of this study are descriptive analytical. Based on the results of the study, it can be concluded that (1) the implementation of restorative justice by the prosecutor's office in resolving general criminal cases at the Kebumen District Attorney's Office is carried out based on the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. (2) Obstacles and solutions in the implementation of restorative justice by the prosecutor's office in resolving general criminal cases at the Kebumen District Attorney's Office are in the field of legal factors themselves, law enforcement factors, legal facilities or infrastructure factors, community factors, and also cultural factors, where the cultural factor is not considered an obstacle. To address these obstacles, the Kebumen District Attorney's Office is using a solution by conducting socialization about prosecutorial regulations to the public. (3) The concept of implementing restorative justice by the prosecutor's office in resolving general criminal cases in the future based on the Value of Justice, with existing rules and policies, can be formulated into a legal regulation to provide legal certainty, legal strength, and a clear legal basis for law enforcement officers in applying restorative justice.*

Keywords: *Implementation; Justice, Prosecutor's; Restorative.*



LICS 2023

Muhammad Fariza

1. Introduction

Indonesia is a country based on law as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia.¹ Law is a mandatory regulation, which determines human behavior in a social environment made by official bodies in charge, violation of which regulations will result in the taking of action, namely the existence of certain punishments. The law must be enforced in order to achieve the goals and ideals of Indonesia as formulated in the opening of the 1945 Constitution, paragraph four, namely to form an Indonesian state government that protects all Indonesian people and all Indonesian blood and to advance public welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace and social justice.

Criminalization is the embodiment of criminal law in concrete form, so that criminalization is the culmination of the entire process of being responsible for actions committed by a person. Factually, it will have an impact on the accumulation of criminal cases both at the investigation, prosecution and trial levels. In addition, another impact arising from the settlement of criminal cases through trials is the occurrence of overcapacity in correctional institutions caused by the increase in the number of convicts each year.

Legal Facts of the prosecution of the case study that the author raised, namely the case at the Kebumen District Attorney's Office which was related to a general criminal case, namely theft of a cellphone with two cases, namely the case with the suspect named Saliyanto and the case with the name Sugiman who was suspected of violating Article 362 of the Criminal Code concerning Theft which states that anyone who takes an item, which is the same as the intention to own the item against the right, is punished for theft, with a maximum prison sentence of five (5) years and a maximum fine of Rp. 900 (Nine hundred rupiah).

In line with this, related to the implementation of Restorative Justice by the Prosecutor's Office in handling criminal cases, it must be carried out with various reviewers of massive and comprehensive studies in order to analyze the basic problems that cause it. Restorative justice is a theory of justice that emphasizes the repair of damage caused by criminal behavior.² Another expected goal of restorative justice is the sincerity of the perpetrator to take responsibility for the criminal act he committed which harmed the victim.³

¹The 1945 Constitution of the Republic of Indonesia, Chapter I, Article 1 Paragraph 3

²Strong Praise Prayitno, "Restorative Justice", Postgraduate Program in Law, (General Soedirman University, Purwokerto, 2013) p. 4

³ Eva Achjani Zulfa, Shifting Paradigms in Criminal Procedure, (Bandung: Lubuk Agung, 2011), p.75



LICS 2023

Muhammad Fariza

Based on the background that has been described, this paper examines the Implementation of Restorative Justice by the Prosecutor's Office in Resolving General Criminal Cases (Study of the Kebumen District Attorney's Office).

2. Research Methods

The approach method used in this study is sociological juridical. The specifications of this study are descriptive analytical. The data sources used are primary data and secondary data. Primary data is data obtained directly from the field in this case through interviews. While secondary data is obtained from literature study research consisting of primary legal materials, secondary legal materials, and testier legal materials.

3. Results And Discussion

3.1. Implementation of Restorative Justice by the Prosecutor's Office in Resolving General Criminal Cases at the Kebumen District Attorney's Office

In practice, the restorative justice approach is always applied in cases outside the norm, such as the theft case that was recently resolved by the Kebumen District Attorney's Office. Because a policy must be implemented in order to have the desired impact or goal.⁴The resolution of criminal cases by prioritizing restorative justice does not merely apply decisions about who wins and loses but emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge.⁵

An example of the implementation of facts that have been handled by the Kebumen District Attorney's Office as in 2022, there were two general criminal cases handled by the Kebumen District Attorney's Office which implemented a settlement of the case based on restorative justice, a cell phone theft case with the first case carried out by Saliyanto Bin Damin against the victim witness Sutiman which was carried out on Monday, June 27, 2022 at around 04.30 WIB at the victim Sutiman's stall. And the second case, namely the theft committed by Sugiman Bin Siswandi against the victim witness Usi Wahono, which was carried out on Thursday, June 23, 2022 at around 22.00 WIB, at a fried rice stall located in the former Prembun terminal. In the implementation of the peace agreement, it was carried out on Friday, September 9, 2022 at 11.00 WIB to 12.00 WIB at the Kebumen District Attorney's Office meeting room accompanied by the Public Prosecutor. Both cases above are suspected of the same article, namely violating Article 362 of the Criminal Code concerning Theft. Based on the

⁴Budi Winarno, Public Policy (Theory, Process, and Case Studies), (Yogyakarta: CAPS, 2012), p. 34.

⁵Eko Syaputra, Implementation of the Restorative Justice Concept in the Criminal Justice System in the Future, lex lata Scientific Journal of Law, Faculty of Law, Sriwijaya University, Vol. 3, No. 2, July 2021.



LICS 2023

Muhammad Fariza

results of interviews with the Public Prosecutor handling both cases, it was stated that the termination of the prosecution of this case was in the form of fulfilling the requirements for terminating the case based on Restorative Justice, one of which is the restoration of the victim's condition as before, which is marked by the achievement of an agreement to make peace between the two parties as evidenced by a peace letter.⁶

That based on the Decree on Termination of Prosecution (SKPP) of the Head of the Kebumen District Attorney's Office Number: Print-03/M.3.25/Eoh.1/08/2022, dated September 9, 2022, it was determined to stop the prosecution of the case with the name of the suspect Saliyanto Bin Damin and the confiscated object/evidence in the form of a Realme 6 pro brand cellphone was returned to the victim Sutiman. While for the second case, based on the Decree on Termination of Prosecution (SKPP) of the Head of the Kebumen District Attorney's Office Number: Print-02/M.3.25/Eoh.1/08/2022, dated September 9, 2022, it was determined to stop the prosecution of the case with the name of the suspect Sugiman Bin Siswandi Soleh and the confiscated object/evidence in the form of a Vivo V5 brand cellphone was returned to the victim Usdi Wahono.

The Head of the General Crime Section of the Kebumen District Attorney's Office also revealed that the peace process was carried out voluntarily, with deliberation to reach a consensus, without pressure, coercion, and intimidation. In the peace process, the Public Prosecutor acts as a facilitator and has no interest or connection with the case, victim, or suspect, either personally or professionally, either directly or indirectly. The peace process is carried out at the prosecutor's office as agreed with a letter of order from the Head of the District Prosecutor's Office Branch or the Head of the District Prosecutor's Office. The peace process must be carried out no later than 14 (fourteen) days after the transfer of responsibility for the suspect and evidence. If the peace agreement is agreed upon in writing in front of the Public Prosecutor.⁷

From the explanation above, the author can conclude that the Implementation of Restorative Justice by the Prosecutor's Office in handling General Crimes such as the theft case above which was resolved by the Public Prosecutor at the Kebumen District Attorney's Office has run well and optimally as it has successfully implemented it by referring to the applicable laws and regulations as a reference point, so that in its implementation until now it has run as expected.

⁶Results of Interview with the Public Prosecutor of the Kebumen District Attorney's Office who handled the case on October 13, 2024.

⁷Ibid.



LICS 2023

Muhammad Fariza

3.2. Obstacles and Solutions to the Implementation of Restorative Justice by the Prosecutor's Office in Resolving General Criminal Cases at the Kebumen District Attorney's Office

1. Obstacles to the Implementation of Restorative Justice by the Prosecutor's Office in Resolving General Criminal Cases at the Kebumen District Attorney's Office

The main principle of Restorative Justice is the participation of victims and perpetrators, the participation of citizens as facilitators in resolving cases, so that there is a guarantee that children or perpetrators will no longer disrupt the harmony that has been created in society.⁸Placing perpetrators, victims, and the community working together and directly trying to find a solution that is considered fair for all parties (win-win solutions).⁹The implementation of restorative justice by the Prosecutor's Office in resolving General Criminal Cases at the Kebumen District Prosecutor's Office cannot be denied, as the results of an interview with the Head of the General Criminal Section of the Kebumen District Prosecutor's Office stated that in the implementation of restorative justice by the Kebumen District Prosecutor's Office, there are also several obstacles as follows:¹⁰

1) Legal Factors

The law referred to is a law or written regulation that is generally applicable and made by the government.¹¹The legal factors in question start from the law itself, whether it is problematic or not.¹²Associated with the obstacles faced based on the results of an interview with the Head of the General Crimes Section of the Kebumen District Attorney's Office in the implementation of restorative justice where the prosecutor's office has a legal basis for its resolution, namely the Republic of Indonesia District Attorney's Regulation Number 15 of 2020, where like a rule can be abolished at any time, the same is true regarding restorative justice, which means that the obstacle in the legal factor itself is the absence of binding legal certainty.¹³

⁸ Apong Herlina, et al., Protection of Children in Conflict with the Law, (Jakarta: PT Raja Grafindo Persada, 2004), p. 203.

⁹Bagir Manan, Restorative Justice (An Introduction): Reflection of the Dynamics of Series Law in the Last Decade, (Jakarta: Perum Percetakan Negara RI, 2015), p. 10

¹⁰Results of Interview with the Head of the General Crime Section of the Kebumen District Attorney's Office on October 13, 2024.

¹¹Rudy Arinugroho and Bambang Santoso, Obstacles to the Principle of Restorative Justice in the Process of Abuse Cases, Verstek Vol 11 No. 4, 2023.

¹² <https://business-law.binus.ac.id/2018/12/26/penegakan-law-problem-apa/>, accessed on October 14, 2024 at 14.39 WIB.

¹³Op.Cit.

2) Law Enforcement Factors

What is meant by law enforcers are parties who are directly or indirectly involved in law enforcement, starting from the Police, Prosecutor's Office, to the Judiciary.¹⁴ Related to the obstacles faced based on the results of the interview with the Head of the General Crimes Section of the Kebumen District Attorney's Office in the implementation of restorative justice where the prosecutor's office has in its resolution, namely not ruling out the possibility that there are prosecutors who abuse their authority in carrying out their duties such as asking for compensation to reduce a sentence and so on.¹⁵

3) Supporting Legal Facilities or Facilities Factors

The obstacles faced based on the results of the interview with the Head of the General Crimes Section of the Kebumen District Attorney's Office in the implementation of restorative justice where the prosecutor's office in its resolution, namely legal facilities, greatly influences the restorative justice process, but in its implementation at the Kebumen District Attorney's Office related to factors of supporting legal facilities and facilities, there have been no serious obstacles in implementing restorative justice.¹⁶

4) Community Factors

Indonesia is a pluralistic society with so many ethnic groups with a variety of different cultures. Associated with the obstacles faced based on the results of interviews with the Head of the General Crimes Section of the Kebumen District Attorney's Office in the implementation of restorative justice where the prosecutor's office in its resolution is related to the still low level of public knowledge regarding victims being able to obtain their rights in obtaining justice. Apart from that, society is not an inhibiting factor because society responds positively to the implementation of restorative justice.¹⁷

5) Cultural Factors

Culturally, there are still some people who are indifferent to criminal acts and do not want to get involved in resolving criminal cases, so that the information obtained is difficult to obtain in its entirety.¹⁸ Related to the obstacles faced based on the results of the interview with the Head of the General Crimes Section of the Kebumen District Attorney's Office in the implementation of

¹⁴Ibid.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Ibid.

¹⁸Prayogi Widodo, Obstacles to the Implementation of Termination of Prosecution of Criminal Cases Based on Restorative Justice, *Ius Publicum Law Journal*, Vol. 4, No. 2, November 2023.



LICS 2023

Muhammad Fariza

restorative justice where the prosecutor's office in resolving it, namely related to cultural factors, this is not an obstacle experienced by the Kebumen District Attorney's Office because the parties between the victim, the suspect and other community leaders have agreed to forgive each other.¹⁹

2. Solutions to the Implementation of Restorative Justice by the Prosecutor's Office in Resolving General Criminal Cases at the Kebumen District Attorney's Office

Basically, the aim of Restorative Justice is as an alternative to resolving criminal cases in the criminal justice system,²⁰ However, daIn practice, there are still several obstacles in the implementation of restorative justice in general criminal cases. Facing these obstacles, the Kebumen District Attorney's Office has several solutions so that restorative justice can be implemented properly. The solutions implemented by the Kebumen District Attorney's Office are as follows:²¹

- 1) Conducting socialization regarding prosecutorial regulations to the public so that the public understands the rules and concepts of the restorative justice approach in resolving General Criminal Cases because basically this concept will create a fast, simple and low-cost justice system.
- 2) Improving the quality of law enforcement officers, in this case the prosecutor's office, so that in resolving cases, especially general crimes, they use the concept of restorative justice to avoid irresponsible individuals.
- 3) Continue to improve facilities and infrastructure supporting framework used to facilitate the implementation of restorative justice in resolving general criminal cases in order to realize the values of legal certainty, legal benefits and justice.
- 4) Creating a safe and supportive environment for victims and perpetrators to meet for dialogue and determine joint decisions.
- 5) Building good coordination between other law enforcement officers so that they can continue to resolve cases with restorative justice for the common welfare.

¹⁹Ibid.

²⁰<https://fahum.umsu.ac.id/restorative-justice-pengertian-dasar- Hukum-jual-dan-penerapan/>, accessed on October 11, 2024 at 14.30 WIB.

²¹Results of Interview with the Head of the General Crime Section of the Kebumen District Attorney's Office on October 13, 2024.



LICS 2023

Muhammad Fariza

3. Concept of Implementation of Restorative Justice by the Prosecutor's Office in the Settlement of General Criminal Cases in the Future Based on the Value of Justice

Restorative Justice is a legal system that aims to restore the welfare of all simultaneously, both victims, perpetrators and society damaged by crime, and to prevent further violations or criminal acts.²²The restorative justice approach emerged in the Netherlands since the 1990s, marked by various initiatives and movements by civil society. Starting from mediation practices in Maastricht and Limburg since 1999²³Although various programs related to restorative justice have been well received, many programs have not been continued due to the lack of regulations, policies and budget.

Different in Indonesia, the regulation of termination of prosecution by the public prosecutor is based on the law in Article 140 paragraph (2) of the Criminal Procedure Code. In line with the above, the Prosecutor's Office issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as Perja No. 15/2020). According to this regulation, the Public Prosecutor (JPU) has the right to stop prosecution of the accused in certain cases, if the victim and the accused have agreed to make peace.²⁴

Linked to justice theory, Pancasila provides justice for all citizens without exception according to their rights.²⁵Law contains elements of justice, certainty and benefit, which in its application often occur due to a lack of synchronicity between legal certainty and justice.²⁶The author concludes that the implementation of Restorative Justice in resolving general criminal acts in the future is based on the value of justice, that the policies and regulations made and issued are not uniform or similar both regarding the criteria for a criminal case that can be resolved through restorative justice and regarding its implementation, so that in the future the existing rules and policies can be formulated into a regulation, either in the form of a Law or formulated into the Draft Criminal Procedure Code (RKUHAP) and the Draft Criminal Code (RKUHP),

²²Marian Liebmann, *Restorative Justice, How it Works*, (London and Philadelphia: Jessica Kingsley Publishers, 2007), Pg 25.

²³Claessen, et al, 2015 quoted from Wolthuis, et al, 2019, Dutch Developments: Restorative Justice in Legislation and In Practice, *The International Journal of Restorative Justice*, April 2019, p. 118

²⁴Dessy Kusuma Dewi, loc.it.

²⁵Ferry Irawan Febriansyah, *Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation*, *GiH Journal of Legal Studies*, 2017.

²⁶Rudy Arinugroho and Bambang Santoso, *Obstacles to the Principle of Restorative Justice in the Process of Abuse Cases*, *Verstek* Vol 11 No. 4, 2023.



LICS 2023

Muhammad Fariza

in order to provide legal certainty, legal force and a clear legal basis for law enforcement officers in implementing restorative justice.

4. Conclusion

The implementation of restorative justice by the prosecutor's office in resolving general criminal cases at the Kebumen District Attorney's Office, namely based on Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, has been implemented and implemented well, especially in the resolution of General Criminal Acts by the Kebumen District Attorney's Office. Obstacles and solutions to the implementation of restorative justice by the prosecutor's office in resolving general criminal cases at the Kebumen District Attorney's Office, namely in the field of legal factors themselves, law enforcement factors, legal facilities or facilities, community factors, and cultural factors. To deal with these obstacles, the Kebumen District Attorney's Office uses a solution by carrying out socialization of prosecutorial regulations to the public. The concept of implementing restorative justice by the prosecutor's office in resolving general criminal cases in the future based on the Value of Justice, namely with the existing rules and policies that can be formulated into a statutory regulation, either in the form of a Law or formulated into the Draft Criminal Procedure Code (RKUHAP) and the Draft Criminal Code (RKUHP), in order to provide legal certainty, legal force and a clear legal basis for law enforcement officers in implementing restorative justice.

5. References

Journals:

Claessen, et al, 2015 quoted from Wolthuis, et al, 2019, Dutch Developments: Restorative Justice in Legislation and In Practice, The International Journal of Restorative Justice, April 2019.

Eko Syaputra, Implementation of the Restorative Justice Concept in the Criminal Justice System in the Future, lex lata Scientific Journal of Law, Faculty of Law, Sriwijaya University, Vol. 3, No. 2, July 2021.

Ferry Irawan Febriansyah, Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation, GiH Journal of Legal Studies, 2017.

Prayogi Widodo, Obstacles to the Implementation of Termination of Prosecution of Criminal Cases Based on Restorative Justice, Ius Publicum Law Journal, Vol. 4, No. 2, November 2023.

Rudy Arinugroho and Bambang Santoso, Obstacles to the Principle of Restorative Justice in the Process of Abuse Cases, Verstek Vol 11 No. 4, 2023.



LICS 2023

Muhammad Fariza

Books:

Achjani Zulfa, Eva. 2011. *Shifting Paradigms of Criminalization*. Bandung: Lubuk Agung.

Apong Herlina, et al. 2004. *Protection of Children in Conflict with the Law*. Jakarta: PT Raja Grafindo Persada.

Liebmman, Marian. 2007. *Restorative Justice, how it Works*. London and Philadelphia: Jessica Kingsley Publushers.

Manan, Bagir. 2015. *Restorative Justice (An Introduction): Reflection of the Dynamics of Series Law in the Last Decade*. Jakarta: State Printing Company of the Republic of Indonesia.

Praise Prayitno, Kwat. 2013. *"Restorative Justice", Postgraduate Program in Law: Jenderal Soedirman University, Purwokerto*.

Soekanto, Soerjono. 1988. *Effectiveness of Law and Application of Sanctions*. Bandung: CV. Ramadja Karya.

Soekanto, Soerjono. 2007. *Factors Influencing Law Enforcement*. Jakarta: PT Raja Grafindo Persada.

Winarno, Budi. 2012. *Public Policy (Theory, Process, and Case Study)*. Yogyakarta: CAPS.

Legislation:

Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Criminal Code (KUHP).

Criminal Procedure Code (KUHAP).

Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

The 1945 Constitution of the Republic of Indonesia.

Internet:

<https://fahum.umsu.ac.id/restorative-justice-pengertian-dasar- Hukum-jual-dan-penerapan/>,

<https://www. Hukumonline.com/berita/a/mengenal-restorative-justice-lt62b063989c193/>



LICS 2023

Muhammad Fariza

<https://business-law.binus.ac.id/2018/12/26/penegakan-law-problem-apa/>,

Interview:

Head of the General Crime Section of the Kebumen District Attorney's Office on October 13, 2024.

Public Prosecutor of the Kebumen District Attorney's Office on October 13, 2024.