

Implementation of Restorative Justice in the Rembang District Attorney's Office Based on Prosecutor's Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice

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Abstract. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is implemented on the basis of case resolution that emphasizes restoration to the original state and not with retaliation. This regulation emphasizes using conscience in resolving cases. The purpose of this study is to determine how the implementation of the termination of prosecution of fraud crimes is based on restorative justice, what are the obstacles, and how effective the implementation of restorative justice is in resolving fraud crimes at the Rembang District Attorney's Office. The research approach used in this study is an empirical legal approach method with a descriptive research type. The problem approach used is to use primary and secondary data obtained from literature studies and field studies at the Rembang District Attorney's Office, then data processing is carried out by evaluating data, classifying data, and systematizing data, then analyzing it using qualitative analysis. The results of the study indicate that the implementation of the termination of prosecution in criminal acts of fraud based on restorative justice at the Rembang District Attorney's Office runs in accordance with applicable laws and regulations and reaches an agreement between the victim and the perpetrator. As for the most dominant obstacle if the victim and the suspect do not reach an agreement to forgive each other and the suspect provides compensation or restitution. Regarding the effectiveness of the implementation of restorative justice at the Rembang District Attorney's Office, it runs well, marked by the achievement of restorative justice between the victim and the suspect.

Keywords: Fraud; Prosecutor's Office; Restorative Justice; Termination of Prosecution.

1. Introduction

A crime can simply be said to be an act whose perpetrator should be punished. A crime is a basic part of a mistake made against someone in committing a crime. So for there to be a mistake, the relationship between the circumstances and the act that causes blame must be

negligence or intent. It is said that intent (*dolus*) and negligence (*culpa*) are forms of error, while the term for the definition of error (*schuld*) which can be the cause of a crime is because someone has committed an act that is against the law so that for his actions he must be responsible for all forms of criminal acts that he has committed to be tried and if it has been proven true that a crime has occurred by someone, then he can be sentenced to criminal punishment in accordance with the articles that regulate it. Focusing on the law with its criminal system, that Indonesia cannot be separated from the process of resolving a criminal case which is generally resolved through formal means, namely the courts (litigation). Settlement of cases using the litigation path in practice does not always run according to what is expected and aspired by the Indonesian people. Because the settlement of cases using the litigation path in the current criminal justice system actually creates new problems, for example, a pattern of punishment that is retaliatory, causes a backlog of cases, does not pay attention to the rights of victims, is not in accordance with the principles of simple justice, the process is long, complicated and expensive, the settlement is legalistic and rigid, does not restore the impact of the crime, does not reflect justice for society and so on, even though the law is made in essence to provide justice and benefits for humans reflected in the values of Pancasila.¹

In this modern era, there are many crimes among Indonesian people that end up in the courts, where people use the courts as an effort to resolve a case that conceptually and theoretically will create justice, but in reality and fact, this is not easy to achieve because of its nature which tends to be a win-lose solution, with this reality, resolving cases through the courts generally often causes disappointment, resentment, feeling unfair, dissatisfied, or even intending to take revenge. People who feel dissatisfied with this decision will usually try to find satisfaction that they think is fair through further trials such as high courts, the Supreme Court and even the Constitutional Court. Of course this causes a backlog of cases that will hamper the justice system. From this phenomenon, according to Joni Emirzon, this can generally be categorized as one of the weaknesses of a litigation institution that cannot be avoided even though it has become a provision.² Satjipto Rahardjo stated that the settlement of cases through the judicial system that culminates in a court verdict is a law enforcement towards a slow path. This is because law enforcement through litigation takes a fairly long process, through various levels starting from the Police, Prosecutor's Office, District Court, High Court, even to the Supreme Court which ultimately has an impact on the accumulation of cases which of course are not small in number in court. This has an impact on causing the criminal justice system to be less than optimal in its implementation. In addition, the justice expected through this formal path does not necessarily reflect a sense of justice, because it is relatively more expensive, prolonged, complicated, and tiring.

With the presence of these various phenomena, in the latest developments a new concept has emerged, namely the concept of restorative justice. This restorative concept or approach

¹Dessi Perdani Yuris Puspita Sari, Application of the Principles of Restorative Justice, Journal of the Faculty of Law, General Soedirman University, p. 105-119.

²Aertsen, Ivo, Daniela Bivolar, Vicky De Mesmaecker, Nathalie Lauwers, 2011. "Restorative Justice And The Active Victim: Exploring The Concept of Empowerment". TEMIDA, March 2011, str. 5-19, ISSN: 1450-6637. Laumen Institute of Criminology. Pg 178.

is considered to be able to overcome various problems in the justice system as mentioned above. The Attorney General's Office of the Republic of Indonesia on July 22, 2020 has issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Peja Penghentian Peuntutan) based on the consideration that the resolution of criminal cases by prioritizing restorative justice that emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts that are oriented towards retaliation is a legal need of society and a mechanism that must be built in the implementation of the authority to prosecute and the renewal of the criminal justice system or in essence the perpetrators and victims and related parties together seek a fair solution by emphasizing restoration to the original state and not retaliation. Restorative justice is an approach in the criminal justice system that focuses on the recovery, reconciliation, and restoration of relationships damaged by criminal acts. This approach emphasizes efforts to address the root causes and the psychological, social, and emotional impacts of criminal acts, both for victims, perpetrators, and the wider community. The main principle is to shift the focus from punishment and retaliation to problem solving and recovery. Restorative Justice is a popular alternative in various parts of the world for handling legal problems because it offers a comprehensive and effective solution. Restorative Justice aims to empower victims, perpetrators, families, and communities to correct an unlawful act by using awareness and realization as a foundation for improving community life explaining that the concept of Restorative Justice is basically simple.³In the restorative justice approach, there is a dialogue between the victim, the perpetrator, and the community to discuss the consequences of the crime and find a solution that is appropriate for each party. This can be in the form of an apology, restitution, or other actions that can repair the impact of the crime, hopefully reducing the rate of recurrence of crime.

The mechanism for resolving cases based on restorative justice is based on consensus where the parties are expected to compromise to reach a mutual agreement. Each individual is asked to give in and put the interests of society above personal interests in order to maintain mutual harmony. This concept of deliberation is considered more effective in resolving cases in society amidst the failure of the role of the state and the courts in providing a sense of justice. The Attorney General stipulates Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the main objective of which is to fulfill the public's sense of justice by balancing legal certainty (*rechtmatigheid*) and benefit (*doelmatigheid*) in the implementation of prosecution authority based on law and conscience, and is responded positively by the public. In its implementation, the regulation in question must also be supported by leadership policies that are complementary in nature and evaluated as a form of improvement. This is solely done for optimization so that the termination of prosecution based on restorative justice is in line with the legal objectives for justice, certainty, and benefit which are considered by the Public Prosecutor proportionally and with full responsibility.⁴ The Rembang District Attorney's Office is one of the District Attorney's Offices that has succeeded in facilitating the peace process based on restorative justice in the

³Nikmah Rosidah, *Legal Culture of Juvenile Judges in Indonesia*, Semarang; Pustaka Magister, 2014, p. 103.

⁴Circular Letter Number 01/E/EJP/02/2022 Concerning the Implementation of Termination of Prosecution Based on Restorative Justice

fraud case committed by the suspect KHUTZIATUL HIDAYAH with a fraud case that occurred in Rembang Regency, Central Java on August 25, 2023. The perpetrator committed a crime of fraud by tricking Mrs. PUTRI NAWANG who worked at a Brillink kiosk owned by Mrs. SOEMIRAH (THE REPORTER) to transfer some money via OVO and DANA with evidence in the form of 12 (twelve) sheets of transfer receipts and 1 (one) sheet of statement letter. As a result of this incident, the victim SOEMIRAH suffered a loss of approximately IDR 26,500,000-, (twenty six million five hundred thousand rupiah). The suspect's actions are subject to Article 378 of the Criminal Code. In this case, peace was reached between the perpetrator and the victim by the Public Prosecutor of the Rembang District Attorney's Office and stopped the prosecution based on restorative justice.

2. Research Methods

The research approach used in this study uses an empirical legal approach method by examining the law based on facts obtained objectively in the field, both in the form of data, information, and opinions based on legal identification and legal effectiveness, which are obtained through interviews with competent academics related to the problems raised by the author in this study.⁵ Empirical or sociological legal research is a type of legal research that analyzes and studies the workings of law in society.⁶ Which in this case is the problem regarding the Effectiveness of the termination of prosecution against criminal acts of fraud based on restorative justice at the Rembang District Attorney's Office Based on Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

3. Results and Discussion

3.1. Implementation of restorative justice in fraud cases at the Rembang District Attorney's Office

In Article 14 of the Criminal Procedure Code, the public prosecutor's authority is as follows:

1. Receive and examine investigative case files from investigators or assistant investigators;
2. Conducting pre-prosecution if there are deficiencies in the investigation by paying attention to the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions for improving the investigation by the investigator;
3. Granting an extension of detention, carrying out detention or further detention and/or changing the status of the detainee after the case has been transferred by the investigator;
4. Making an indictment;
5. Submitting cases to court;

⁵Accessed from the Internet: <http://repository.umsida.ac.id/bitstream/handle/123456789/22152/7.%20BAB%20III.pdf?sequence=7&isAllowed=y#:~:text=Empirical%20juridical%20research%20is%20a%20specific%20research%20that%20occurs%20in%20society>. On Wednesday, October 2, 2024 at 11:49

⁶Muhaimin, Legal Research Methods, First Edition, Mataram University Press, Mataram NTB, 2020, p. 80.

6. Submitting notification to the defendant regarding the provisions on the day and time of the case being tried, accompanied by a summons, both to the defendant and to witnesses, to attend the appointed hearing;
7. Conducting prosecution;
8. Closing the case for legal purposes;
9. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
10. Carrying out the judge's decision.

Based on Article 140 Paragraph (2) letter a of the Criminal Procedure Code, the public prosecutor can stop prosecution, for the following reasons: stopping prosecution for technical reasons and stopping prosecution for policy reasons. Stopping prosecution for technical reasons, due to circumstances that cause the public prosecutor to make a decision not to prosecute, namely:

1. If there is not enough evidence
2. If the incident is not a criminal act
3. If the case is closed by law

Termination of prosecution for policy reasons, where the prosecutor is allowed to set aside a case even though the evidence is sufficient to be submitted to the court for the public interest or individual interest and is based on unwritten law (principle of opportunity). Based on article 77 of the Criminal Procedure Code, the Attorney General has the authority to set aside a case, where the act of setting aside a case consists of:⁷

1. Dismissal of the case based on the principle of opportunity, on the grounds:
 - a. In the interests of the state (staatsbelang);
 - b. In the interests of society (maatschappelijk belang);
 - c. For personal interests (particular interests).
2. Waiver of cases based on criminal law assessments, in connection with:
 - a. The lapse of the right to sue due to nebis in idem; death of the accused; lapse of time (expiration); amnesty/abolition;
 - b. Withdrawal of complaint;
 - c. Not enough grounds to sue.
3. The waiver of cases on the basis of legal interests, as per the Circular of the Attorney General of the Republic of Indonesia Number SE-001/JA/4/1995 dated 27 April 1995 concerning Guidelines for Criminal Prosecutions, among other things concerning instructions for terminating conditional criminal charges, if:
 - a. The defendant has paid compensation for the losses suffered by the victim;
 - b. The defendant is not of legal age; or

⁷Hendi Suhendi, "Application of the Opportunity Principle in Law Enforcement (A Legal and Sociological Review)", in Anthology of Criminal Law and Criminal Procedure, Editor Andi Hamzah, (Jakarta: Ghalia Indonesia, 1984), p. 154-156

- c. The defendant has student status.

To address the problems related to the settlement of criminal cases that always end in prison sentences, the solution that has recently emerged regarding the authority of the public prosecutor to stop prosecution based on the concept of restorative justice, namely Perja No. 15 of 2020, needs to be appreciated because this concept involves the perpetrator, victim, and community in the process of resolving the criminal case. The considerations in Perja No. 15 of 2020 concerning the termination of prosecution based on restorative justice are:

- a. that the Attorney General's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, decency and morality, and is obliged to explore the values of humanity, law and justice that exist in society;
- b. that the resolution of criminal cases by prioritizing restorative justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts which is not oriented towards revenge is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and the renewal of the criminal justice system;
- c. that the Attorney General has the duty and authority to make the law enforcement process as provided by the Law effective by taking into account the principles of fast, simple and low-cost justice, as well as determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience, including prosecutions using a restorative justice approach carried out in accordance with the provisions of laws and regulations;
- d. that based on the considerations as referred to in letters a, b, and c, it is necessary to stipulate the Prosecutor's Regulation regarding Termination of Prosecution Based on Restorative Justice;

The principles used in terminating prosecution in restorative justice are:

- a. justice
- b. public interest
- c. proportionality,
- d. criminal law as a last resort, and;
- e. fast, easy, low cost.

The public prosecutor has the authority to close a case in the interests of the law based on Article 3 paragraph (2) in the following cases:

- a. the accused died;
- b. statute of limitations for criminal prosecution;

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- c. there has been a court decision that has permanent legal force against a person for the same case (nebis in idem);
- d. complaint for criminal acts the complaint is withdrawn or withdrawn; or there has been a settlement of the case outside the court (afdoening buiten process).

Article 3 paragraph (3) Settlement of cases outside the court by the public prosecutor may be carried out with the following provisions:

- a. for certain criminal acts, the maximum fine is paid voluntarily in accordance with the provisions of statutory regulations; or
- b. there has been a restoration of the original situation using a Restorative Justice approach.

Article 4:

(1) Termination of prosecution based on Restorative Justice is carried out by taking into account:

- a. the interests of the Victim and other protected legal interests;
- b. avoidance of negative stigma;
- c. avoidance of retaliation;
- d. community response and harmony; and
- e. propriety, morality and public order

(2) Termination of prosecution based on Restorative Justice as referred to in paragraph (1) is carried out by considering: the subject, object, category and threat of the criminal act;

- a. background to the occurrence/commission of the crime;
- b. level of depravity;
- c. losses or consequences arising from criminal acts;
- d. costs and benefits of handling cases;
- e. restoration back to its original state; And
- f. there is peace between the victim and the suspect.

Article 5:

(1) Criminal cases can be closed by law and prosecution stopped based on Restorative Justice if the following conditions are met:

- a. the suspect is committing a crime for the first time;
- b. criminal acts are only punishable by a fine or are punishable by imprisonment of no more than 5 (five) years; and
- c. the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah)

- (2) For criminal acts related to property, in the event that there are criteria or circumstances of a casuistic nature which according to the considerations of the Public Prosecutor with the approval of the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office, prosecution can be stopped based on Restorative Justice, carried out while still paying attention to the conditions as referred to in paragraph (1) letter a accompanied by one of letter b or letter c.
- (3) For criminal acts committed against people, the body, life and freedom of people, the provisions as referred to in paragraph (1) letter c may be excluded.
- (4) In the event that a criminal act is committed due to negligence, the provisions in paragraph (1) letters b and c may be excluded.
- (5) The provisions referred to in paragraph (3) and paragraph (4) do not apply in the event that there are criteria/circumstances of a casuistic nature which, according to the considerations of the Public Prosecutor with the approval of the Head of the Branch of the District Attorney's Office or the Head of the District Attorney's Office, cannot be stopped from prosecution based on Restorative Justice.
- (6) In addition to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), termination of prosecution based on restorative justice is carried out by fulfilling the following conditions:
 - a. There has been a restoration to the original state carried out by the suspect in the following manner:
 - 1) return items obtained from criminal acts to the victim;
 - 2) compensate the victim for losses;
 - 3) replace costs incurred as a result of criminal acts; and/or
 - 4) repairing damage caused by criminal acts;
 - a. There has been a peace agreement between the victim and the suspect; and
 - b. The community responded positively
- (7) If agreed by the Victim and Suspect, the condition for returning to the original condition as referred to in paragraph (6) letter a may be excluded.
- (8) Termination of prosecution based on Restorative Justice is excluded for cases:
 - a. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their representatives, public order and morality;
 - b. criminal acts that are subject to a minimum penalty;
 - c. narcotics crimes;

Master of Law, UNISSULA

- d. environmental crimes; and
- e. criminal acts committed by corporations.

Regarding the peace procedures The peace procedures in terminating prosecution based on restorative justice are contained in Articles 7 to 14 of Perja No. 15 of 2020, as follows:

Article 7:

- 1) The Public Prosecutor offers peace efforts to the Victim and the Suspect.
- 2) Peace efforts as referred to in paragraph (1) are carried out without pressure, coercion and intimidation.
- 3) The peace efforts as referred to in paragraph (2) are carried out at the prosecution stage, namely when responsibility for the suspect and evidence is handed over (stage two)

Article 8:

- (1) For the purposes of peace efforts, the Public Prosecutor shall summon the Victim legally and properly by stating the reasons for the summons.
- (2) If deemed necessary, peace efforts can involve the victim/suspect's family, community leaders or representatives, and other related parties.
- (3) The Public Prosecutor informs the intent and purpose as well as the rights and obligations of the Victim and the Suspect in the peace efforts, including the right to reject the peace efforts.
- (4) If the peace efforts are accepted by the Victim and the Suspect, the peace process will continue.
- (5) After the peace efforts are accepted by the Victim and the Suspect, the Public Prosecutor makes a report on the peace efforts received to the Head of the District Attorney's Office or the Branch of the Head of the District Attorney's Office to be forwarded to the Head of the High Prosecutor's Office.
- (6) In certain cases that receive special attention from leaders and the public, the reports as referred to in paragraph (5) are also submitted to the Attorney General in a hierarchical manner.
- (7) In the event that the peace efforts are rejected by the Victim and/or Suspect, the Public Prosecutor:

- a. record the failure to achieve peace efforts in the minutes;
- b. make a note of opinion that the case is referred to the court, stating the reasons; and
- c. submit case files to the court.

Article 9:

- (1) The peace process is carried out voluntarily, through deliberation to reach consensus, without pressure, coercion and intimidation.

Master of Law, UNISSULA

- (2) In the peace process, the Public Prosecutor acts as a facilitator.
- (3) 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.
- (4) The peace process is carried out at the Prosecutor's Office unless there are conditions or circumstances that make it impossible for reasons of security, health or geographical conditions, the peace process can be carried out at a government office or another place agreed upon with a letter of order from the Head of the District Prosecutor's Office Branch or the Head of the District Prosecutor's Office.
- (5) The peace process and fulfillment of obligations is carried out within a maximum of 14 (fourteen) days from the handover of responsibility for the suspect and evidence (stage two).

Article 10:

- (1) In the event that a peace process is achieved, the Victim and Suspect will make a written peace agreement before the Public Prosecutor.
- (2) The peace agreement as referred to in paragraph (1) consists of:
 - a. agree to make peace accompanied by the fulfillment of certain obligations; or
 - b. agree to make peace without fulfilling certain obligations.
- (3) The peace agreement as referred to in paragraph (1) is signed by the victim, the suspect and 2 (two) witnesses with the knowledge of the public prosecutor.
- (4) In the case of a peace agreement accompanied by fulfillment of the obligations as referred to in paragraph (2) letter a, the Public Prosecutor shall make a report of the peace agreement and a memorandum of opinion after the fulfillment of the obligations has been carried out.
- (5) In the case of a peace agreement without fulfillment of the obligations as referred to in paragraph (2) letter b, the Public Prosecutor shall make a report of the peace agreement and a memorandum of opinion.
- (6) In the event that the peace agreement is unsuccessful or the fulfillment of obligations is not carried out in accordance with the peace agreement, the public prosecutor:
 - a. record the failure to reach a peace agreement in the minutes;
 - b. make a note of opinion that the case is referred to the court, stating the reasons; and
 - c. submit case files to the court.

Article 11:

- (1) In the event that the peace agreement is unsuccessful as referred to in Article 10 paragraph (6) due to disproportionate demands for fulfillment of obligations, threats or intimidation, sentiment, discriminatory treatment or harassment based on ethnicity, religion, race, nationality or certain groups against the Suspect who acts in good faith, this can be taken into consideration by the Public Prosecutor in carrying out the prosecution.
- (2) The considerations as referred to in paragraph (1) also apply in the event that the

fulfillment of obligations is not carried out in accordance with the peace agreement as referred to in Article 10 paragraph (6) due to economic factors or other reasons which are accompanied by:with good faith from the Suspect.

(3) The considerations as referred to in paragraph (1) and paragraph (2) include:

- a. transfer of cases with a short examination procedure;
- b. mitigating circumstances in filing a criminal claim; and/or
- c. filing of criminal charges with conditions. in accordance with the provisions of laws and regulations, while still paying attention to the Guidelines for Criminal Charges for General Criminal Cases.

Article 12:

- (1) In the event that a peace agreement is reached, the Public Prosecutor reports to the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office by attaching the minutes of the peace agreement and a memorandum of opinion.
- (2) Based on the Public Prosecutor's report as referred to in paragraph (1), the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office requests aproval to terminate the prosecution based on Restorative Justice from the Head of the High Prosecutor's Office.
- (3) The request for aproval as referred to in paragraph (2) must be submitted no later than 1 (one) day after the peace agreement is reached.
- (4) The Head of the High Prosecutor's Office determines his/her attitude of aproving or rejecting the termination of prosecution based on Restorative Justice in writing accompanied by considerations within a maximum of 3 (three) days from the time the request is received.
- (5) In certain cases that receive special attention from the leadership, the Head of the High Prosecutor's Office requests aproval from the Attorney General while still paying attention to the time as referred to in paragraph (3).
- (6) In the event that the Head of the High Prosecutor's Office agrees to the termination of prosecution based on Restorative Justice, the Head of the District Prosecutor's Office Branch or the Head of the District Prosecutor's Office as the Prosecutor The General will issue a Letter of Decision to Terminate Prosecution within a maximum of 2 (two) days from when aproval is received.
- (7) The Letter of Decision to Terminate Prosecution as referred to in paragraph (5) contains the reasons for terminating prosecution based on Restorative Justice and also determines the status of evidence in the criminal case in question.
- (8) Determination of the status of evidence as referred to in paragraph
- (9) implemented in accordance with the provisions of laws and regulations.
- (10) The Letter of Decision to Terminate Prosecution as referred to in paragraph (6) is recorded in the Register of Cases at the Prosecution Stage and the Register of Terminating Prosecution and Setting Aside Cases in the Public Interest.

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- (11) In the event that the Chief Prosecutor rejects the termination of prosecution based on Restorative Justice, the Public Prosecutor shall submit the case files to the court.

Article 13:

1. In the event that the peace efforts or peace process involve pressure, coercion and intimidation from the Victim, Suspect and/or other parties, the Public Prosecutor shall stop the peace efforts or peace process.
2. Termination of peace efforts or the peace process as referred to in paragraph (1) is carried out by the Public Prosecutor by:
 - a. stating that the peace efforts or peace process were not achieved in the minutes;
 - b. make a note of opinion that the case is referred to the court, stating the reasons; and
 - c. submit case files to the court.

Chapter 14:

In the event that a peace agreement is made at the investigation stage, it can be used as a consideration by the Public Prosecutor to stop the prosecution based on Restorative Justice by fulfilling the conditions and procedures for peace as regulated in these regulations.

Based on the case of fraud committed by SDR. KHUTZIATUL HIDAYAH, the Head of the Rembang District Attorney's Office issued an Order to facilitate the peace process based on restorative justice based on:

1. Republic of Indonesia Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) Article 8 paragraph (3) a, Article 14 a, b, i, Article 109, Article 110, and Article 138 of the Criminal Procedure Code;
2. Law of the Republic of Indonesia Number 11 of 2021 concerning amendments to Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia;
3. Attorney General Regulation Number PER-006/AJ/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia as has been amended several times by Attorney General Regulation Number 1 of 2022 concerning the Third Amendment to Attorney General Regulation Number PER-006/AJ/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia;
4. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;
5. Guideline Number 24 of 2021 concerning Handling of General Criminal Cases;
6. Cover letter for handing over of suspects and evidence;
7. Memorandum of opinion from the Public Prosecutor to resolve cases based on restorative justice dated January 21 2025.

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By going through several stages such as summoning the victim and the suspect for peace efforts, the Head of the Semarang City District Attorney's Office issued a notification letter regarding the settlement of the case outside the court based on restorative justice to the Rembang Police Investigator.

After the peace efforts based on restorative justice, there was a report on the results of the peace efforts as follows:

1. Admit all his mistakes;
2. Return the total loss of the victim amounting to Rp. 26,500,000-, (twenty six million five hundred thousand rupiah) to the victim;
3. Do not repeat similar actions
4. The suspect and victim forgave each other;
5. The suspect and victim agreed not to pursue the case further.

3.2. Obstacles to the implementation of restorative justice in fraud crimes at the Rembang District Attorney's Office

Based on the results of the research conducted by the author, it is known that there are several obstacles experienced by the Public Prosecutor in carrying out the process of terminating the prosecution based on restorative justice. In relation to this, it will be analyzed based on the theory of legal effectiveness as stated by Soerjono Soekanto, including legislative factors (legal substance), law enforcement factors, means and facilities factors, community factors and cultural factors.⁸The author can analyze the obstacles experienced by the Public Prosecutor in the process of terminating prosecution based on restorative justice as follows:

1. Legislative Factors

Law contains elements of justice, certainty and benefit, in practice, there is often a conflict between legal certainty and justice. The function of law itself is a tool to publish and regulate social interactions in society. The Prosecutor's Office has a legal basis in resolving criminal acts based on restorative justice, namely Attorney General Regulation No. 15 of 2020. If there is no legal basis in the form of Perja Number 15 of 2020, of course Restorative Justice cannot be applied in the Prosecutor's Office. However, obstacles to law enforcement can come from the written regulations themselves.

Where Just as a regulation can be abolished at any time, so too with restorative justice, in the sense that every leader who leads an organization or state institution will definitely change, and each leader has different policies so that restorative justice is not something that is binding or it can be said that there is no binding legal certainty.⁹

2. Law Enforcement Factors

⁸Soerjono Soekanto, "Factors Influencing Law Enforcement", (Jakarta: Rajawali Pers, 2016), p. 8-11

⁹Obstacles to the Principle of Restorative Justice in the Process of Abuse Cases, Rudy Arinugroho, Bambang Santoso, Journal of the Faculty of Law, Sebelas Maret University.

The existence of law enforcement officers occupies a very important position in the implementation of the criminal justice system so that it cannot be denied that the success of criminal law enforcement efforts is largely determined by the existence of these law enforcement officers. The results of the study showed that there were no obstacles in law enforcement factors related to the process of terminating prosecution based on restorative justice, this can be seen based on data obtained by the author at the Rembang District Attorney's Office that throughout 2025 there was 1 (one) criminal fraud case that was resolved through restorative justice on behalf of the suspect SDR. KHUTZIATUL HIDAYAH and, the Public Prosecutor successfully terminated the prosecution based on restorative justice, this can certainly be an indicator of the assessment that law enforcement factors do not provide obstacles in efforts to terminate the prosecution based on restorative justice.

3. Facilities and Amenities Factors

Based on the research results, it shows that in connection with the process of terminating the prosecution based on restorative justice carried out by the Prosecutor. The Prosecutor in general, no obstacles were found that came from the means and facilities factor. This is known based on the availability of quality and quantity of human resources of law enforcement officers, especially at the Rembang District Attorney's Office and the availability of adequate supporting equipment.

4. Community Factors

This factor emphasizes the aspect of public legal awareness to actively participate in the involvement of the process of terminating prosecution based on restorative justice, especially in the scope of peace efforts between the accused and the victim. The results of the study indicate that in principle the community factor does not provide obstacles in the process of terminating prosecution based on restorative justice, considering that in this case the Regulation on Termination of Prosecution based on restorative justice places the involvement of the community and community leaders to provide considerations regarding the implementation of the process of terminating prosecution based on restorative justice.

5. Cultural Factors

This factor is emphasized on the cultural aspect of mutual forgiveness as is common in Indonesian society, the cultural factor is basically in line with the substance of the Perja on Termination of Prosecution, considering that this regulation was issued on the sociological basis that the resolution of criminal cases prioritizes restorative justice which emphasizes restoration to the original state which is not oriented towards revenge as a legal need in society.

Based on this description, it can be analyzed that the most dominant inhibiting factors have an influence on the termination process. prosecution based on restorative justice consisting of 2 (two) factors, namely:

1). The regulatory factor, in this case restorative justice is not something that is binding or it can be said that there is no binding legal certainty. In addition, the mechanism that must be taken by the Public Prosecutor in the process of terminating the prosecution is quite long, including:

- a. Provide analysis and conclusions as to whether a criminal case being handled can be terminated by prosecution or not;
- b. Providing peace offers to the Suspect and Victim;
- c. Summoning the victim by involving the victim/suspect's family, community leaders or representatives and other related parties;
- d. Make a report on whether or not the peace process is accepted to the Head of the District Attorney's Office to be forwarded to the Head of the High Prosecutor's Office;
- e. Making minutes and opinion notes after the fulfillment of certain obligations from the Suspect to the Victim if in this process the Victim wants the Suspect to fulfill the obligations;
- f. Make a report to the Head of the District Attorney's Office by attaching the minutes and opinion memo, after which the Head of the District Attorney's Office requests aproval to terminate the prosecution based on restorative justice from the Head of the High Prosecutor's Office;
- g. The Head of the District Attorney's Office issues a letter of determination to stop prosecution based on restorative justice if he receives aproval from the Head of the High Prosecutor's Office, whereas if he does not receive aproval, the criminal case is referred to the court.

2). Cultural factors, in this case, are the culture of forgiveness that exists in Indonesian society. The low awareness of Victims to forgive Suspects for their actions provides a significant obstacle in the process of terminating prosecution based on restorative justice considering that the willingness of Victims to forgive Suspects followed up with peace efforts is an important requirement for termination of prosecution based on restorative justice to be carried out. Considering that termination of prosecution based on restorative justice cannot be separated from the peace factor between Victims and Suspects, which in this case has a close relationship with awareness of the culture of mutual forgiveness, so that this does not become an inhibiting factor in the process of terminating prosecution. Based on restorative justice, there is a need for an active role and expertise of the Prosecutor as a party who acts as a facilitator or organizer of the penal mediation process in order to provide a comprehensive understanding of the importance of peace, especially from the aspect of the culture of forgiveness by the Victim. Apart from that, there are also obstacles that exist in 2 (two) conditions, namely internal obstacles and external obstacles.

1. Internal Barriers

The aplication of restorative justice by investigators in the investigation process is a breakthrough as a form of regulatory reform for handling criminal cases for the sake of resolving cases in a society that wants to obtain justice of the highest quality, but not through a formalistic, long, rigid, inflexible and expensive criminal justice process.

Obstacles to the prosecutor's office in implementing a criminal case resolution system outside the court through a restorative justice aproach, along with efforts that must be made to

Master of Law, UNISSULA

overcome them, namely:¹⁰

a. Legal Substance

Law contains elements of justice, certainty and benefit, in practice, there is often a conflict between legal certainty and justice. The function of law itself is a tool to publish and regulate social interactions in society. The Prosecutor's Office has a legal basis in resolving criminal acts based on restorative justice, namely Attorney General Regulation No. 15 of 2020. If there is no legal basis in the form of Perja Number 15 of 2020, of course Restorative Justice cannot be applied in the Prosecutor's Office. However, obstacles to law enforcement can come from the written regulations themselves.

Where Just as a regulation can be abolished at any time, so too with restorative justice, in the sense that every leader who leads an organization or state institution will definitely change, and each leader has different policies so that restorative justice is not something that is binding or it can be said that there is no binding legal certainty.

b. Legal structure

The legal structure is the law enforcement apparatus and its institutions that drive the legal system as regulated in the substance of the law. The legal structure in this case is the prosecutor's office and its apparatus, especially the prosecutor. In carrying out the duties and functions of the prosecutor, it is mandatory to explore and uphold the values of humanity that live in society, it seems that this is not too much of an obstacle for the prosecutor's office.

Restorative justice very thick with the culture of Indonesian society which is very familial. Then from the aspect of society that influences, from the community itself fully supports this restorative justice system which can be seen from the participation of community representatives during the restorative justice process. So that the implementation of restorative justice itself has been going quite well.

The absence of legal rules that regulate and become the basis for legitimacy in making decisions in the investigation process whether based on the concept of restorative justice or other approaches that are in accordance with the sociological jurisprudence school so that it is considered an abuse of discretionary authority. The absence of formal procedural procedures or mechanisms to implement it is also an obstacle in the application of restorative justice.

2. External Barriers

Obstacles in reconciling the interests of the parties are very possible, considering that the benchmarks used are very subjective in nature, namely depending on the needs of each party, so that in practice in the field several possible conflicts of interest arise, such as:

- a. If the perpetrator is unable to provide compensation or provide assistance to the victim, or the victim requests compensation/benefit beyond the perpetrator's ability to provide it.

¹⁰Husein Pohan, "Resolving Criminal Acts with a Restorative Justice Approach Carried Out by the Prosecutor's Office", Vol. II (1), Journal of Legal Science Concepts, (Medan: Locus Media, 2022), p. 277-278

- b. If the victim (or his/her family) does not need compensation or benefits, and would rather punish the perpetrator.
- c. If there is coercion from the perpetrator towards the victim
- d. If there is more than one victim, one party receives compensation/benefits, but the other party does not.

3.3. The Effectiveness of Restorative Justice Implementation in Fraud Crimes in Prosecutor's Office The Land of Rembang

The approach to resolving criminal cases through restorative justice in Indonesia has been practiced in various traditional communities or what can be called indigenous communities of Indonesia. Deliberations carried out by indigenous communities are carried out to reach consensus which is the most important value of restorative justice in resolving problems that arise. In the soul and personality of Indonesian society, the concept of restorative justice has been embedded which has taken root in the lives of the community.

An approach that focuses on the conditions for creating justice and balance for both victims and perpetrators of criminal acts is the concept of the restorative justice approach. The mechanism of criminal procedure and justice that focuses on punishment is changed into a process of dialogue and mediation to create an agreement on a fairer and more balanced criminal case resolution for the victim and the perpetrator. Recovery must be based on a mutual agreement between the victim and the perpetrator. The victim can convey the losses they have suffered and the perpetrator is given the opportunity to atone for them, for example through compensation mechanisms, peace, social work, or other agreements.¹¹

The Rembang District Attorney's Office is one of the law enforcement institutions that is expected to be able to implement the restorative justice mechanism to uphold justice in society. The implementation of restorative justice at the Rembang District Attorney's Office has been running effectively. The effectiveness of resolving restorative justice in fraud crimes at the Rembang District Attorney's Office is quite good, but the effectiveness of resolving restorative justice in repeating criminal acts by perpetrators depends on each individual perpetrator. In cases of fraud, this restorative resolution makes the perpetrator realize his mistake and regret it. As the resolution of the fraud case at the Rembang District Attorney's Office based on restorative justice, the following agreement was reached:

1. Admit all his mistakes;
2. Return the total loss of the victim amounting to Rp. 26,500,000-, (twenty six million five hundred thousand rupiah) to the victim;
3. Do not repeat similar actions
4. The suspect and victim forgave each other;
5. The suspect and victim agreed not to pursue the case further.

¹¹Grees Ayu Alamdari, 2023, "The Effectiveness of Restorative Justice in Resolving Criminal Acts in the Lengkong Bandung Police Sector", Journal of ADVANCES in Social Humanities Research, Vol. 1 No. 5, p. 813

The agreement is an indication of the achievement or effectiveness of the implementation of restorative justice in fraud cases at the Rembang Prosecutor's Office. The restorative justice settlement that is often used is an agreement to replace losses with a nominal figure by the perpetrator to the victim of the crime or commonly called compensation. So that perpetrators who feel capable and sufficient can replace losses easily. Thus it is possible that in some cases the settlement carried out by means of restorative justice does not deter the perpetrators. This depends on each perpetrator's self-awareness of the crime.

The success of the implementation of restorative justice is in line with the theory of Progressive Law. According to Satjipto Rahardjo, progressive law enforcement is implementing the law not only in black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the law or law in a broad sense. Law enforcement is not only intellectual intelligence, but also with spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find another way than what is usually done.

4. Conclusion

The implementation of the termination of prosecution in fraud crimes based on restorative justice is seen in Article 140 Paragraph (2) letter a of the Criminal Procedure Code, the public prosecutor can terminate the prosecution, for the following reasons: termination of prosecution for technical reasons and termination of prosecution for policy reasons. Termination of prosecution for technical reasons, because of circumstances that cause the public prosecutor to make a decision not to prosecute. By going through several stages such as summoning the victim and the suspect for peace efforts, the Head of the Rembang District Attorney's Office issued a notification letter regarding the settlement of the case outside the court based on restorative justice to the Rembang City Police Investigator. Obstacles to the implementation of termination of prosecution in fraud crimes based on restorative justice are internal and external obstacles. Internal obstacles However, obstacles in law enforcement can come from the written regulations themselves. Where a regulation can be removed at any time, so is restorative justice, in the sense that every leader who leads an organization or state institution must change, and each leader has different policies so that restorative justice is not something that is binding or can be said that there is no binding legal certainty. External obstacles include if the perpetrator is unable to provide compensation or provide assistance to the victim, the victim (or his/her family) does not need compensation or assistance, there is coercion from the perpetrator to the victim in seeking peace, and there is more than one victim, on one side receiving compensation/assistance, but the other party does not receive it.

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