

Legal Review of The Implications of The Principle of Dominus Litis for Prosecutors with Restorative Justice Efforts in Criminal Justice Processes (Research Study at The West Halmahera District Attorney's Office)

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Abstract. *Currently, the legal system in Indonesia is experiencing development. This development emphasizes the orientation of criminal case resolution which was initially based on the retributive paradigm that provides retribution for crimes committed by the perpetrator towards a new approach model, namely "Restorative Justice". In order to adapt to existing developments and achieve legal and national goals, the Prosecutor has issued a legal product regarding restorative justice in handling criminal cases at the prosecution stage (the authority of the Prosecutor as Dominus Litis). This study aims to determine and analyze (1) a philosophical legal review of the concept of restorative justice in the Indonesian criminal justice system, (2) the relationship between the principle of dominus litis of the prosecutor and restorative justice efforts in the criminal justice process, and (3) the problem of the function of dominus litis of the prosecutor in applying the concept of restorative justice in the criminal justice process. 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 or from the first source and has not been processed by other parties. While secondary data is obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research and discussion can be concluded: (1) Restorative justice philosophically has a foundation contained in the fourth and fifth principles of Pancasila, which have the essence of meaning towards the values of deliberation and justice. Pancasila as the ideology and outlook on life of the Indonesian nation is used as a guide for all activities in life in every field. (2) This new justice model is then formulated in the form of technical instructions that can be used as a reference in handling cases with a restorative justice approach. On July 21, 2020, the Indonesian Attorney General issued Regulation of the Attorney General of the Republic of Indonesia Number: 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Restorative justice is one of the efforts that can be made by the Prosecutor's Office in functionalizing the principle of Dominus Litis. (3) The regulation regarding the principle of dominus litis through restorative justice in the Criminal*

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Procedure Code (KUHP) in Indonesia is still unclear. Restorative justice is a legal approach that emphasizes reconciliation between perpetrators, victims, and the community, and has not been regulated in detail in the current Criminal Procedure Code.

Keywords: *Dominus Litis; Prosecutor; Restorative Justice.*

1. Introduction

Every country must implement laws that govern its citizens, and Indonesia is no exception. The Indonesian Constitution explicitly emphasizes that Indonesia is a state based on law (rechtsstaat). Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state based on law.¹ The concept of nomocracy, etymologically derived from the Greek words *nomos* and *cratos*, is related to the concept of *rechtsstaat* and the rule of law. *Demos* and *cratos*, or *kratien*, can be used to contrast nomocracy with democracy. In democracy, *nomos* means norm, but *cratos* means power. Norms or laws are the determining factor in the exercise of power. The concept of a state based on the rule of law, or the principle that law is the highest authority, is closely related to the concept of nomocracy.

Legal norms are rules about certain things, such as things that are obligatory or prohibited (verbod). Legal interests can be divided into three categories based on their nature (1) individual pursuits, such as: body, soul, honor, and wealth; (2) Security and peace are a priority for society; (3) State interests include: State security.

Law and society are like two sides of the same coin, inseparable. The Romans referred to the application of law within a social order, known as society, as *ubi societas ibi ius*, illustrating the close relationship between law and society.²

Law serves to protect society from abuse of rights and obligations, as the absence of rules or laws can lead to chaos. From a universal societal perspective, the growth of crime is a major threat that requires attention and anticipation. Efforts to combat this crime are a shared responsibility of all components of the nation, including the government and the community. In this regard, the state, through its organs, has established a law enforcement apparatus authorized to carry out duties and responsibilities related to law enforcement.

The Public Prosecutor holds a central position as one of the gateways to the criminal justice process. Based on his/her duties and authority, the Public Prosecutor, after studying and examining a case file submitted by an Investigator, concludes that if the evidence in a case is sufficient and in accordance with the regulations in the Criminal Procedure Code, he/she will submit a prosecution to the District Court, thus the Public Prosecutor is seen as having a central position in proving a case in court.

¹Anirut Chuasanga and Ong Argo Victoria, Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Volume 2 Issue 1, March 2019, p. 131

²Mochtar Kusumaatmadja, *Concepts in Development*, PT. Alumni, Bandung, 2006, p. 3

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The primary duties of the Prosecutor's Office in law enforcement are carried out by officials known as prosecutors. In many countries, prosecutors have a dual role: as administrators and quasi-judicial officers. As administrators, prosecutors perform the functions of public prosecutors, acting like Rambo, prosecuting cases with the aim of maximizing the sentence imposed by the judge and avoiding a backlog of cases. As quasi-judicial officers, prosecutors perform the functions of "Minister of Justice," acting like the Pope, protecting the innocent, considering the rights of suspects, and preventing prosecutions based on revenge.³

In almost every jurisdiction around the world, prosecutors are the primary or central figures in the administration of criminal justice, as they play a crucial role in the decision-making process. Even in countries where prosecutors do not conduct their own investigations, prosecutors retain broad prosecutorial discretion. In other words, prosecutors have the power to decide whether or not to prosecute almost any criminal case. It is therefore not surprising that the High Court Justice of the German Federation⁴Harmuth Horstkotte nicknamed the prosecutor as the "master of the procedure", as long as the case is not brought to court.

Given the significant role of prosecutors in various criminal justice systems across countries, including their discretionary powers in resolving cases, in many jurisdictions the prosecutor acts as a "semi-judge" or a "quasi-judicial officer." This is why prosecutors may withdraw charges or terminate proceedings with or without conditions. This prosecutorial discretion may include termination of prosecution, probation, dismissal, transaction, or even sentencing with or without court approval.

The main problem with the implementation of the Dominus Litis Principle in Indonesia lies in the legislation, namely in the Criminal Procedure Code. Article 138 paragraph (1) of the Criminal Procedure Code states that the public prosecutor, after receiving the results of the investigation from the investigator, must immediately study and examine them and within seven days must notify the investigator whether the results of the investigation are complete or not. This clause states that communication or the coordination process between the investigator and the public prosecutor is limited to correspondence based on the case files sent by the investigator.⁵

This brief communication, based solely on case files, often presents obstacles that result in ineffective case handling. This is also a serious obstacle because, on several occasions, the prosecutor, acting as public prosecutor, lacks actual knowledge of the cases presented to him and only relies on case files sent by investigators and makes short-term decisions. This situation significantly burdens the Prosecutor's Office in exercising its authority, particularly as the Prosecutor's Office is responsible for presenting evidence in court.

³RM. Surahman. Legal Mosaic I: 30 Selected Discussions, Jakarta: Attorney General's Office Research and Development Center, 1996. p. 69.

⁴RM. Surachman and Andi Hamzah. Prosecutors in Various Countries: Their Roles and Positions, Jakarta: Sinar Grafika, 1996. p. 7

⁵Dedy Chandra Sihombing, et al. Strengthening the Authority of Prosecutors as Dominus Litis as an Effort to Optimize Restorative Justice-Oriented Criminal Law Enforcement, Locus: Journal of Legal Science Concepts, Volume 3, Number 2, June 2023, p. 62

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This naturally raises questions about the existence of the Prosecutor's Office as a case-controlling institution in carrying out its duties and authorities, as well as the essence of the Dominus Litis principle in law enforcement within the Indonesian criminal justice system. Furthermore, the Indonesian legal system is currently undergoing developments. This development emphasizes the orientation of criminal case resolution, shifting from a retributive paradigm that provides retribution for crimes committed by perpetrators to a new approach, namely "restorative justice."⁶The concept of restorative justice is a popular alternative in many parts of the world for dealing with unlawful acts (unlawful in the formal sense) because it offers a comprehensive and effective solution.⁷

In order to adapt to existing developments and achieve legal and national goals, the prosecutor's office has issued legal products regarding restorative justice in handling criminal cases at the prosecution stage (the prosecutor's authority as Dominus Litis).⁸

The Attorney General, as the highest public prosecutor, implemented a legal breakthrough with a restorative justice approach through Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This Attorney General Regulation stipulates that Public Prosecutors have the right to terminate prosecution of defendants in certain cases, if the parties have reconciled. This legal product from the Attorney General's Office emphasizes the resolution of criminal cases by prioritizing restorative justice, which emphasizes restoration to the original state and balances the protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge. Termination of Prosecution Based on Restorative Justice is a legal breakthrough that still needs to be considered in criminal provisions because the implementation of the elimination of prosecution based on restorative justice is considered to erode the principle of legal certainty. This is because the new orientation of case resolution results in disparities in sentencing (sentencing of disparity) and differences in case resolution solutions.

In addition to this, it is certainly interesting to study how the actualization of the application of restorative justice by the prosecutor's office as the case controller (Dominus Litis) to ensure the achievement of legal objectives. Because the model of the restorative justice approach is still debated in theory and practice to ensure the achievement of legal objectives. Given the obstacles faced by each component of the criminal justice system in Indonesia, especially the Prosecutor's Office, and the complexity of the orientation of law enforcement based on restorative justice, the Prosecutor's Office faces a significant challenge in strengthening its authority in the effort to enforce law oriented towards restorative justice.

Based on the background of the problem above, the author is interested in discussing more concretely the correlation between the principle of dominus litis of the Prosecutor and the

⁶Flora, Henny Saida. Restorative Justice as an Alternative in Resolving Criminal Acts and Its Impact on the Criminal Justice System in Indonesia, UBELAJ, Volume 3 Number 2, October 2018. p. 145

⁷Bazemore, Gordon and Mara Schiff, Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice, Oregon: Willan Publishing, 2005

⁸Marwan Effendy. The Indonesian Attorney General's Office: Its Position and Functions from a Legal Perspective, Jakarta: PT. Gramedia Pustaka Utama, 2005.

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implementation of the concept of restorative justice within the corridor of the Prosecutor's authority, which the author has outlined in a study entitled: "A LEGAL REVIEW OF THE IMPLICATIONS OF THE PRINCIPLE OF DOMINUS LITIS OF THE PROSECUTOR WITH RESTORATIVE JUSTICE EFFORTS IN THE CRIMINAL JUSTICE PROCESS (Research Study at the West Halmahera District Attorney's Office)".

2. Research Methods

The approach used in this research is sociological juridical. Sociological juridical is an approach based on binding norms or regulations. It is hoped that this approach will reveal how law, which is empirically a societal phenomenon, can be studied as a causal variable that produces consequences in various aspects of social life. This type of sociological juridical research uses primary data, where the primary data is obtained directly from the source and is therefore still in the form of raw data.⁹

3. Results and Discussion

3.1. Philosophical Legal Review of the Concept of Restorative Justice in the Indonesian Criminal Justice System

The development of social life is an inevitability that must be accepted as a consequence of changing times, including the development of science and technology, which impacts legal change, both conceptually (theoretically), culturally, and in practice. Furthermore, developments in social life certainly influence everyday social life, particularly behavioral patterns, both positive and negative.

One example of negative behavior that emerges in society is the emergence of criminal acts that disrupt the social order, whether committed by individuals or collectively (in groups). These crimes can range from minor, moderate, or serious, such as theft, assault, murder, drug abuse, corruption, terrorism, environmental crimes, and so on.

The discourse on crime has been a topic of discussion throughout history and is considered a problem as ancient as human civilization. Crime must be studied through a multidisciplinary approach, considering that crime has both social and human dimensions, and evolves rapidly with the development of society. This has become an object of fascinating attention for experts, including criminal law, criminology, anthropology, sociology, and other social sciences. Each discipline plays a significant role in comprehensively examining the problem of crime and aims to find solutions to address these crimes.¹⁰

The problem of criminal acts, both minor ones (*lichte misdrijven*) and criminal acts in general, is something that always exists and occurs in society and must be seen with consideration of practical interests, namely so that these cases can be tried quickly to avoid the accumulation of cases at the court level, because the number of cases of this type is

⁹Rangga Suganda, Juridical Approach Method in Understanding the Islamic Economic Dispute Resolution System, *Scientific Journal of Islamic Economics*, Vol 8 No 3, 2022, p. 2861

¹⁰M. Mulyadi, *Police in the Criminal Justice System*. Medan: USU Press. 2009

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greater than other types of criminal acts.¹¹ Although, initially the classification of minor crimes was the result of considerations of the lack of courts, currently the existence of minor crimes and minor criminal acts in general can be seen in another context, namely in terms of the need for simple, fast and low-cost justice.

The justice currently applied in Indonesia's criminal justice system is predominantly retributive. However, the desired justice is restorative justice, a process in which all parties involved in a particular crime work together to find solutions (problem-solving) to address its future consequences. Restorative justice is a model for resolving criminal cases that prioritizes and prioritizes recovery for victims, perpetrators, and the community. The main principle of restorative justice is the participation of victims and perpetrators, and the participation of citizens as facilitators in case resolution, thereby creating harmony in society.

The justice that has been applied in the Indonesian criminal justice system is retributive justice, while in reality, the justice that is desired is restorative justice. Although restorative justice is a topic of debate among theorists, in reality, it continues to develop and influence legal policy and practice in various countries. The problems that arise in Indonesian society are part of a social dynamic that has never been absent since the beginning of human existence.¹² This is because humans are naturally social creatures, with diverse desires and interests. The increasing complexity and intensity of competition in social life can give rise to various problems.

If various issues or disputes that arise in society are not promptly resolved properly, they will undoubtedly disrupt social balance, especially if the issue is related to a crime. Recently, when a crime occurs, people have chosen to use the courts, which conceptually guarantees justice. However, data on the ground shows that this is not easy to achieve.¹³ Because the outcome of a dispute resolution mechanism through the courts is inherently win-lose, with both winners and losers. Reconciling with reality and resolving disputes and incidents through traditional judicial channels generally creates a sense of insecurity among the aggrieved parties, leading them to seek further justice. In this regard, an expert stated that the resolution of cases through the judicial system (which ends with a court decision) is slow in prosecution. This is due to significant progress in law enforcement at various levels, from the police to the prosecutor's office and local courts. The net effect of this is the accumulation of numerous lawsuits and disputes in the courts.¹⁴

Therefore, the phenomenon that occurs is that Indonesian law still emphasizes the fact that justice upheld through formal channels is not always able to achieve a sense of justice and is costly, time-consuming, complicated and unresolved that this reflects what we certify. That is a problem. In fact, corruption, collusion, and nepotism can be rampant, because of these

¹¹Karim. *Ius Constituendum (Regulation for the Settlement of Minor Criminal Cases Through Restorative Justice)*. Surabaya: Jakad Media Publishing. 2019

¹²Bambang Waluyo, *Law Enforcement in Indonesia*. Jakarta: Sinar Grafika. 2015

¹³Gholin Noor Aulia Sari, et al., *Philosophical Review of Restorative Justice in the Lens of Justice, Law and Political Theory in Various Perspectives*, Vol 3 2024, p. 254

¹⁴Muhammad Rafi Urrutab, *The Concept of Restorative Justice in Criminal Law Enforcement During the Covid-19 Pandemic*, Syntax Idea, Vol. 3, No. 7, 2021, p. 1695.

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various factors, it is believed that many incidents that occur in society cannot be prosecuted or even punished.

Dissatisfaction with the current criminal justice procedures (one of the reasons being the inability to fulfill the sense of justice and the intended goal of criminal justice, namely the prevention and handling of criminal acts). This has given rise to several ideas for implementing various alternative efforts to address various issues related to the handling of criminal acts that occur. The criminal justice system can be understood as an effort to address various questions regarding the duties of criminal law in the law.

Based on this, in terms of law enforcement in Indonesia today, law enforcement officials, especially the police, prosecutors, and judges, should prioritize the principle of restorative justice. The initial emergence of restorative justice was caused by dissatisfaction and frustration in many parts of the world with formal criminal law and punishment, which in reality is often unable to answer or respond to various problems in the criminal justice system which is considered unable to realize justice, protection of human rights, lack of transparency in handling criminal cases, and the public interest which is often ignored.¹⁵The concept of restorative justice is the most popular alternative in various countries in dealing with unlawful acts because it provides a comprehensive and effective solution. Restorative justice aims to empower victims, perpetrators, families and communities in evaluating an unlawful act by using awareness as a basis for improving society.

There has been a shift in the concept of traditional forms of punishment (retribution and rehabilitation) to forms of punishment that provide justice, namely by providing access to justice itself, most importantly justice intended for justice for the wider community. Certainly, it is something urgent to be reviewed carefully by both academics and legal practitioners because it has values that are the beginning of the birth of restorative justice. Restorative justice becomes a new paradigm in responding to a crime. In the restorative justice mindset, a crime becomes a dispute that damages the relationship between the individual and society (not just a violation of the law where the consequences of the perpetrator will face the state). In other words, the victim of a crime is not a state but an individual. Therefore, crime embodies an obligation to repair the damaged relationship caused by the crime.

Restorative justice is a philosophy, idea, concept that emphasizes repairing the harm caused by criminal behavior.¹⁶This idea is completely contrary to the standard procedure for dealing with crimes which are considered as violations committed with the aim of the state.

Restorative justice, often translated as restorative justice, is an approach that emerged in the 1960s in efforts to resolve criminal cases. Unlike the approach used in conventional criminal justice systems, this approach emphasizes the direct participation of perpetrators, victims, and the community in the criminal case resolution process.

¹⁵Mohamad Mikrojo & Adang Djumhur, Restorative Justice as the Manifestation of Justice from the Perspective of the Theory of Welfare, Tahkim, Vol XIX No 2, December 2023, p. 244

¹⁶Ahmad Ubbe, Customary Justice and Restorative Justice. Rechtsvinding. Vol 2 No 2, August 2013, p. 161

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Liebmann simply defines restorative justice as a legal system that "aims to restore the well-being of victims, perpetrators and communities damaged by crime, and to prevent further violations or criminal acts."¹⁷

Liebmann also provides a formulation of the basic principles of restorative justice as follows:

- 1) Prioritize victim support and healing.
- 2) Perpetrators of violations are responsible for what they do.
- 3) The community also helps in integrating the two parties, both the victim and the perpetrator.¹⁸

A British criminologist, Tony F. Marshall, in his article "Restorative Justice an Overview" said: "Restorative Justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."¹⁹

The explanation of the definition of restorative justice put forward by Toni Marshal in his writing "Restorative Justice an Overview", was developed by Susan Sharpe in her book "Restorative Justice a Vision For Hearing and Change" which reveals 5 key principles of restorative justice, namely:

- a. *Restorative Justice* contains full participation and consensus;
- b. *Restorative Justice* trying to repair the damage or loss that occurs as a result of a crime;
- c. *Restorative Justice* provide direct accountability from the perpetrator in full;

Meanwhile, Marlina stated in her book that the concept of restorative justice is a process of resolving legal violations that occur by bringing the victim and the perpetrator (suspect) together to sit in a meeting to be able to talk.²⁰ As Marlina's opinion, it can be understood that resolving a criminal case through restorative justice is basically a resolution carried out jointly between the perpetrator and the victim in a forum.

Restorative justice is philosophically based on the fourth and fifth principles of Pancasila, which essentially embodies the values of deliberation and justice. Pancasila serves as the ideology and way of life of the Indonesian nation.²¹ It serves as a guide for all activities in every area of life. Pancasila is positioned as a prismatic proposition or a counterweight to

¹⁷Marian Liebmann, *Restorative Justice, How it Works*, London and Philadelphia: Jessica Kingsley Publishers, 2007, p. 25

¹⁸*Ibid*, p. 26

¹⁹*Ibid*

²⁰Marlina, *Juvenile Criminal Justice in Indonesia, Development of the Concept of Diversion and Restorative Justice*, First Edition, Bandung: Refika Aditama, 2009, p. 180.

²¹Anang Dony Irawan, *The Impact of the Pandemic on Creating Socioeconomic Inequality Between State Officials and the Public*, *Citizenship Virtues Journal*, Vol 2 No 1, 2022, p. 253

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the legal system of the noble values that have grown and taken root in the Indonesian nation.²²

Essentially, the philosophy of restorative justice is to realize justice based on deliberation, thereby creating peace and justice for all parties. The concept of fair justice in restorative justice is inherently truthful, impartial, and non-arbitrary. This form of justice serves as the moral and ethical parameter of the restorative justice paradigm. Therefore, this justice is known as the just peace principle.²³

The philosophical dimension of restorative justice is closely linked to the values embodied in deliberation as a priority in decision-making. Its goal is to "humanize" the justice system, prioritizing the interaction between the parties and providing a sense of justice that meets the true needs of all involved. Furthermore, restorative justice offers a strategy of "more justice, less crime, and a way forward," meaning holding more perpetrators accountable, helping more victims, preventing more crimes, and reducing government costs.²⁴

The existence of restorative justice as a replacement for procedures in resolving criminal cases aims to minimize any shortcomings in the criminal justice system by directly involving the participation of victims and perpetrators. In its implementation, restorative justice serves as a bridge between theory and philosophy. It aims to foster legal values within society, thus providing a legitimate basis for the development of the law itself.²⁵ Restorative justice places a higher value on the direct participation of the parties involved. Victims can change their initial control, while perpetrators are encouraged to take responsibility as a way to correct the wrongs caused by the crime and to revitalize their social value system.

Restorative justice is used to resolve criminal cases that have caused public unrest or discomfort. Restorative justice, as explained above, is a part of justice theory that emphasizes resolving the harm caused by criminal behavior. It is best done when the parties involved consciously meet to agree on how to resolve the case.

The various elements that serve as guidelines in restorative justice provide the meaning that the victim, as the party who experiences the impact of loss or damage resulting from a criminal act, has full rights to be involved in the mechanism for resolving and restoring the criminal act.

This understanding has logical consequences for the meaning and terminology of criminal acts, which are no longer considered unlawful or unlawful behavior that must be sanctioned by the state, but rather actions that must be remedied through compensation or other sanctions that are less likely to result from imprisonment. Restorative justice is the resolution of a case that involves the community, victims, and perpetrators. This participation aims to achieve justice for all parties. Thus, it creates justice for perpetrators

²²Achmad Hariri, Deconstruction of Pancasila Ideology as a Form of Legal System in Indonesia, *Adjudication: Journal of Legal Studies*, Vol 3 No 1, June 2019, p. 8

²³Barda Nawawi Arief and Muladi, *Criminal Theories and Policies*, Bandung: Alumni, 1998, pp. 77–78.

²⁴Lawrence W Sherman and Heather Strang, *Restorative Justice: The Evidence*, The Smith Institute: London, 2007, p 24

²⁵Mira Maulidar, Philosophical Correlation between Restorative Justice in the Islamic Criminal Law System. *At-Tasyri' Scientific Journal of the Muamalah Study Program*, Volume 13, Number 2, December 2021, p. 144.

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who declare their freedom of expression. However, restorative justice does not apply to cases that are divisive in nature.

Philosophically, restorative justice has been practiced for many years in Indonesia's indigenous communities, such as Bali, Toraja, and Minangkabau, as well as in several other regions that still maintain strong cultural traditions. In indigenous communities, if someone commits a crime, the dispute is resolved internally and peacefully without involving state officials. Criminal acts commonly committed by the community itself violate positive law, but because of the discovery of procedural evidence, harmony is achieved within the community.²⁶ The restorative justice process for resolving disputes is based on deliberation and consensus, and encourages all parties to compromise to reach an agreement. Each individual is required to compromise and create a community that they feel can mediate their disputes.

The measure of justice is not solely based on retributive justice, namely revenge and imprisonment, but also on repentance and forgiveness (restorative justice). Although the handling of common crimes itself contradicts existing positive law, this is evidenced by procedures that have successfully maintained harmony in society. The involvement of law enforcement officials often complicates matters. When the criminal justice system is based on Western law, every crime is a violation of the law against the state, not against the individual.

In this concept of restorative justice, the handling of crimes or crimes committed is not only delegated to the responsibility of the state alone, but also transferred to the responsibility of society. Therefore, the concept of restorative justice states that crimes that cause harm (to both victims and society) must be repaired, regardless of whether the harm is borne by the victim or the community. Therefore, community connection and participation are very important in order to correct the mistakes that occur in society. The concept of restorative justice is actually contained in the core philosophy of the Indonesian state, namely Pancasila, the legal foundation of the Indonesian state. The fourth principle defines the philosophy of deliberation that supports deliberation in decision-making, ensuring that decisions taken are morally accountable to God Almighty and that humanity is free from harm while still prioritizing the common good of various values of truth and justice.²⁷

Criminal procedural law is like a railroad that directs the criminal justice system's journey to stay on the right track. The criminal justice system and criminal procedural law are two key components that interact with each other in realizing justice. The criminal justice system functions as an important component of the national legal system to uphold justice. As part of the national legal system, the criminal justice system plays a crucial role in maintaining public order and security. Therefore, the criminal justice system in each country has its own characteristics, reflecting the unique social, cultural, and political conditions of each country. Despite having the same goal, namely upholding justice, criminal justice systems in

²⁶TJ Gunawan, *The Concept of Criminalization Based on the Value of Economic Loss*. Yogyakarta: Genta Press, 2015

²⁷Henny Saida Flora, *Restorative Justice as an Alternative in Resolving Criminal Acts and Its Influence on the Criminal Justice System in Indonesia*. UBELAJ Journal, Vol 2 No 2, October 2018, p. 148

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various countries show significant diversity due to the influence of social, cultural, and political factors.²⁸

The implementation of restorative justice has fundamental ontological implications for understanding the nature of crime and justice itself. In the restorative paradigm, crime is no longer viewed solely as a violation of state law, but rather as a breakdown in human relationships that requires restoration. This aligns with philosopher Martin Buber's view of the nature of humans as relational beings bound within a web of relationships.²⁹ This ontological understanding also resonates with the African concept of ubuntu which emphasizes the interconnectedness of human beings - "I am because we are".³⁰ In Indonesia, this perspective finds its foundation in the philosophy of mutual cooperation and kinship, which form the basis of social life. This ontological transformation has implications for redefining the purpose of the criminal justice system—from merely punishing to restoring social balance and the dignity of all affected parties.

Epistemologically, restorative justice brings a shift in how we understand and construct knowledge about justice in the criminal context. This paradigm challenges the dominance of legal positivism, which tends to reduce the complexity of justice issues to formal-legalistic categories. Instead, restorative justice adopts a more holistic and contextual epistemology, recognizing the multiplicity of ways of knowing and understanding justice. This approach integrates various sources of knowledge not only from legal science but also from local wisdom, psychology, sociology, and anthropology. In Indonesia, this is reflected in efforts to integrate customary law and traditional dispute resolution mechanisms into the formal justice system.³¹ These epistemological implications encourage the development of more participatory and dialogue-oriented research methodologies and judicial practices.

At the axiological level, restorative justice brings about a fundamental transformation in the values underlying the criminal justice system. This paradigm prioritizes values such as healing, reconciliation, and empowerment—replacing an exclusive focus on retribution and deterrence. Howard Zehr, a pioneer of restorative justice, asserts that this approach is based on fundamental values such as respect, responsibility, and relationships.³² In Indonesia, these values align with Pancasila, particularly the second and fifth principles, which emphasize humanity and social justice. This axiological transformation has implications for redefining indicators of the justice system's success—from mere levels of punishment to levels of recovery and social reintegration. It also encourages the

²⁸Romli Atmasasmita, *Contemporary Criminal Justice System*, Jakarta: Kencana. Bakhri, 2010, p. 4

²⁹The "I-Thou" (I-Thou) relationship network in Martin Buber's thought is a concept of relationship that prioritizes direct and authentic encounters between two subjects, not as objects. This relationship is spontaneous, not bound by rules, and transcends the boundaries of space and time, built on the basis of equality. See Muhammad Hilal, *In the Philosophy of Dialogue by Martin Buber*, Pusaka Journal, Vol. 1 No. 2 January-June 2014, p. 67

³⁰The African concept of Ubuntu is an idea about humanity and interdependence, emphasizing that a person is human because of others. It is a popular philosophy in Africa, emphasizing the importance of compassion, understanding, and sharing. See Adrian D. van Breda, *Developing the Notion of Ubuntu as African Theory for Social Work Practice*, Scielo: South Africa, Vol. 55 No. 4, Stellenbosch 2019.

³¹Barda Nawawi Arief, *Comparative Criminal Law*. Jakarta: RajaGrafindo. Persada, 2015

³²Howard Zehr & Ali Gofar, *The Little Book of Restorative Justice*. Good Books Address 3510 Old Philadelphia Pike United States, 2002

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development of programs oriented toward victim empowerment and perpetrator rehabilitation.

The philosophical implications of restorative justice also extend to the practical realm, transforming the way the criminal justice system operates in concrete ways. This paradigm encourages the development of alternative mechanisms for resolving criminal cases that are more participatory and dialogue-oriented. In various countries, including Indonesia, this has given rise to innovations such as victim-offender mediation, family group conferencing, and peace circles.³³ This practical transformation also has implications for the role and competence of law enforcement officers, shifting from mere rule enforcers to facilitators of dialogue and recovery. This requires reforms in legal education and training for law enforcement officers to develop the sensitivity and skills required for a restorative approach. Furthermore, this transformation also encourages more active civil society involvement in the criminal justice process, strengthening its character as community-based justice.

Law plays a central role in regulating national life. Indonesia is a country based on the rule of law, where the legal system is binding and compels its citizens to obey. As a country based on the rule of law, Indonesia has a concrete and complex unified system that creates a peaceful and orderly environment by regulating relationships between people in their lives within society.³⁴

The first weakness is that restorative justice for all criminal acts has not been regulated by law. At the legal level, Restorative Justice is regulated in a limited manner in the Juvenile Criminal Justice System Law (UU SPPA) with also limited requirements. Meanwhile, at the investigation stage, it is regulated in Perpol Number 8 of 2021 and in Prosecution, it is regulated in Perja Number 15 of 2020. These limited regulations have an impact on its implementation. Perkap and Perja apply internally to every law enforcer and cannot deviate from the law. Therefore, if there are law enforcers who continue to prioritize the Criminal Procedure Code, then this cannot be considered a mistaken view. In Indonesia, Restorative Justice was first recognized in legislation in the Juvenile Criminal Justice System Law. Article 1 point (6) U SPPA states "Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge."

Based on Article 7 paragraph (1), in the investigation, prosecution, and examination of children, diversion must be carried out. Diversion is the settlement of cases outside the court by involving the perpetrator, victim, law enforcement, and other interested parties. In this context, diversion is the implementation of restorative justice in the juvenile criminal justice system.

³³Henny Saida Flora, Comparison of the Restorative Justice Approach and the Conventional Justice System in Handling Criminal Cases, *Al Manhaj: Journal of Law and Social Institutions*, Volume 5 Number 2, July-December 2023, p. 1944

³⁴Tiara Yahya Deramayati and Satria Unggul Wicaksana, Trial In Absentia in Corruption Crimes and the Defendant's Right to Defense from a Human Rights Perspective, *Journal of Legal Communication (JKH)*, Vol 7 No 2, August 2021, p. 571

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In terms of institutional policy through internal regulations, at the investigation level with the application of restorative justice, if drawn to the function of law enforcement and legal protection of the community, the police have the authority to ensure that the law truly provides protection and justice for the community without any discrimination. One of the actions is the implementation of restorative justice carried out by the police, which is a manifestation of carrying out the function of law enforcement and legal protection for the community through police authority strengthened through internal regulations (Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice), because restorative justice is not regulated in the Criminal Procedure Code (KUHP) which has been used as a legal basis (principle of legality) for all law enforcement officers in the realm of practice. Therefore, the Regulation on restorative justice when linked to the police function as regulated in the Police Law has legal force even though its hierarchy is below the Criminal Procedure Code. The paradigm shift in law enforcement and legal protection for the community, especially for victims of criminal acts within the police realm/level (investigation) through restorative justice, is part of the criminal law implementation policy, the regulation of which is actually strengthened by internal police regulations (Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice) rather than in the Criminal Procedure Code.

In relation to the principle of restorative justice in the Police Regulation, Adrianus Meliala³⁵ revealed that restorative justice in the Regulation of the Chief of Police is a manifestation of police discretion. This is in line with Article 18 paragraph (1) of Law Number 2 of 2002, which emphasizes that the Indonesian National Police, when carrying out their duties and authorities, can act according to their own judgment. This means that decision-making through discretion refers to the principle of necessity. Viewed from a formal criminal law perspective, police actions in resolving cases through restorative justice are not procedurally regulated in the Criminal Procedure Code.

Police Regulation No. 6 of 2019 provides investigators with a method for implementing restorative justice during the investigation phase. However, the Regulation does not specify the procedures investigators can follow, whether to issue a Notice of Investigation (SP3) or other procedures. Therefore, the Regulation was later refined by Indonesian Police Regulation No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. The Regulation emphasizes that the implementation of a Restorative Justice Order (SP3) can be completed after an investigation. The second section of the Regulation addresses the termination of investigations and inquiries. Furthermore, Article 7 of the Regulation regulates three specific crimes that can be terminated: Electronic Information and Transactions (ITE), Narcotics, and Traffic Crimes. However, these provisions differ from the Attorney General's regulations at the prosecution level.

In addition to the Investigation Regulation, the Restorative Justice Regulation also regulates restorative justice. The Prosecutor's Office, as a government institution that has functions related to judicial power in the field of prosecution and other authorities based on law in order to exercise state power, is certainly different from other law enforcement agencies

³⁵Adrianus Meliala, *Alternative Dispute Resolution*. Alumni. 2010

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such as the Police and Courts. In this context, the Prosecutor's Office actually has the authority to specifically prosecute or other authorities as regulated by law, such as stopping the prosecution of criminal cases in the public interest (deponering) or stopping the prosecution of criminal cases through restorative justice (restorative justice), which is actually not regulated in the Criminal Procedure Code or the Prosecutor's Law, but is regulated in the Indonesian Prosecutor's Regulation No. 15/2020.³⁶

In July 2020, the Attorney General of the Republic of Indonesia issued a Restorative Justice Regulation. This is essentially a further regulation of the Criminal Procedure Code regarding the Authority to Terminate Prosecution held by the Public Prosecutor. Article 140 paragraph (2) of the Criminal Procedure Code provides three reasons for the public prosecutor to terminate the prosecution, namely the act does not constitute a criminal act, insufficient evidence, and closed by law. Closed "by law" then refers to the provisions of material law. According to Eddy OS Hiarij³⁷, the reasons for dropping a prosecution are based on provisions within the Criminal Code and outside the Criminal Code. Provisions outside the Criminal Code are contained in Chapter VIII of Book I of the Criminal Code concerning the Elimination of the Authority to Prosecute and the Authority to Execute Criminal Sentences. Closed by law based on the Criminal Code means if the case is *Ne Bis in Idem* (Article 76), the defendant dies (Article 77), and the case has expired (Article 78). Moreover, the Restorative Justice Regulation adds a reason for stopping the prosecution, namely "there has been a settlement of the case outside the court (afdoening buiten process)".

The Restorative Justice Regulation also provides further provisions regarding the requirements for out-of-court settlements. One of the requirements is that "there has been a restoration of the original state using a Restorative Justice approach." In this context, the Restorative Justice Regulation is in accordance with the principle of *restitutio in integrum*. As previously stated, the issuance of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 provides a legal umbrella for prosecutors to prioritize conscience and humanity in carrying out their duties not only as law enforcement officers but also as protectors of the community. This is also in accordance with the direction of the Attorney General and one of the 7 (seven) priority work programs of the Republic of Indonesia Prosecutor's Office for 2021, namely "Just law enforcement, and providing benefits, especially in restoring crime victims and reforming perpetrators."

In addition to the concepts in Investigation and Prosecution, the Supreme Court also applies the concept of restorative justice in its decisions. In Supreme Court Decision Number 1600 K/Pid.2009 as explained above, in the decision the Supreme Court released the Defendant on the grounds that the reconciliation between the Victim and the Defendant has a very high value and must be appreciated. Therefore, the compensation and the withdrawal of the complaint must be respected by the court, even though the embezzlement and fraud in the case are not the offenses in the complaint. The Regulation of the Chief of Police, the Regulation of the Chief of Police, and the Supreme Court Decision serve as the basis that Indonesian society is ready for restorative justice. Therefore, the implementation of

³⁶Ribut Baidi Sulaiman, Restorative Justice: Implementation of Sentencing Policy in the Indonesian Criminal Law System, *Indonesia Criminal Law Review*, Vol 2 No 1, February 2023, p. 14

³⁷Edward Omar Hiarij, *Principles of Criminal Law*. Cahaya Atma Pustaka, 2015

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restorative justice is a necessity in other criminal law cases, in addition to juvenile criminal cases.

In addition to these decisions, at the end of 2020, the Directorate General of General Courts of the Supreme Court issued Decree of the Director General of Badilum MA Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Restorative Justice Guidelines in the General Courts. In the Decree Guidelines, Restorative Justice can be applied to four types of cases, namely minor crimes with losses under Rp2,500,000 (Chapter II Sub Chapter A), child cases (Chapter II Sub Chapter B), women in conflict with the law (Chapter II Sub Chapter C), and narcotics cases (Chapter II Sub Chapter D).

The implementation of restorative justice also differs in each case. In the handling of minor crimes through expedited trials, the judge will examine the settlement agreement between the defendant and the complainant to be included in the considerations. Furthermore, in juvenile cases, the implementation of restorative justice strengthens the diversion provisions as stipulated in the Juvenile Justice and Child Protection Law, where the judge actively creates a peace forum involving all parties. Furthermore, in cases involving women in conflict with the law, the guidelines only emphasize examination procedures, which must be based on Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law. However, there is no emphasis on restorative justice. Meanwhile, in narcotics cases, the emphasis is more on providing social and medical rehabilitation to drug abusers. Of these four concepts, the guidelines only serve to strengthen existing regulations but do not provide significant new procedures in regulating restorative justice.

Handling criminal acts using restorative justice is not only viewed through a legal lens, but can also be related to religious, moral, economic, social, and customary or local wisdom aspects. Furthermore, the development of criminal law also recognizes penal mediation. The application of criminal law in the use of penal mediation is considered a derivative of restorative justice, considering that in principle there is a similarity in that it does not require a judicial process through the courts. Although out-of-court settlements are commonly applied in civil cases, and criminal cases cannot be resolved out of court, in practice, in certain cases it can be applied, and alternative dispute resolution (ADR) can even be very ideal. The emergence of theoretical discourse and criminal law reforms in various countries tends to use penal mediation as an alternative method in resolving problems in the field of criminal law.³⁸It cannot be denied that the practice of law enforcement in Indonesia regarding criminal cases outside the court is carried out through discretion by law enforcement officers, so that a demand to make alternative dispute resolution more positive is becoming stronger.

Formally, the criminal justice process takes a long time and does not guarantee certainty for either the perpetrator or the victim. Furthermore, the litigation process is not immediately able to fulfill or restore the relationship between the victim and the perpetrator. Conventional criminal proceedings only make the victim a witness in court, which does not

³⁸Bambang Joyo Supeno, The Effectiveness of Criminal Policy in Combating Narcotics Crimes (within the Framework of National Legal Reform), Journal of Law and Social Dynamics, Vol. 14 No. 1, 2016, p. 14

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significantly influence the sentencing decision. The authority for prosecution remains with the prosecutor, who has received the investigation file that is processed into the basis for the criminal charge, without knowing and understanding the real conditions of the problem. Meanwhile, the perpetrator's position is in the defendant's chair and must always be ready to accept the criminal sanctions that will be imposed on him. Of course, the litigation process is in contrast to the non-litigation process through restorative justice in criminal cases. The concept of restorative justice offers a recovery process that directly involves the perpetrator and the victim or the victim's family in resolving the problem. The development of criminal law in non-litigation problem solving is also known as the penal mediation system. Applied to criminal law practice, penal mediation is considered a derivative of restorative justice, because it does not require criminal law to be enforced through the courts.

3.2. The Relationship of the Prosecutor's Dominus Litis Principle to Restorative Justice Efforts in the Criminal Justice Process

The administration of justice to uphold law and justice by independent and impartial judicial authorities is a manifestation of the principle of a state of law that has been concretely accommodated in the life of society, nation, and state through the 1945 Constitution of the Republic of Indonesia (UUD 1945). The principle of an impartial and independent state of law certainly provides a direction for law enforcement towards the creation of certainty and justice for every citizen as an inseparable part of the issue of protecting human rights (HAM) for the realization of a dignified life. In the realm of criminal law enforcement, the process of administering justice that involves other bodies as components of criminal justice is carried out through an effort called "due process of law". Due process of law is a legal process that is correct, proper, just, and appropriate (fair trial) and makes it a principle that underlies universal procedural law.³⁹

According to Aristotle, a good state is one governed by a constitution and has the sovereignty of law. Aristotle further stated that there are three elements of a constitutional government: first, government is implemented for the public interest; second, government is implemented according to laws based on general provisions, not arbitrary laws that disregard conventions and the constitution; third, constitutional government means government implemented based on the will of the people, not in the form of pressures implemented by despotic governments.⁴⁰

Law enforcement is essentially a systemic effort undertaken to maintain a balance of rights and obligations for the sake of the integrity of life together in society due to the interests or rights of individuals or groups being violated on the one hand, then followed up with demands for accountability based on the law on the other hand. Law enforcement functions to maintain order, justice, certainty, and benefits for society. In order for law enforcement to run according to expectations, efforts made include regulating the functions, duties, and authorities of institutions tasked with enforcing the law according to the proportion of the

³⁹Rahmat Efendy Al Amin Siregar, Due Process of Law in the Criminal Justice System in Indonesia in Relation to Human Rights Protection, *Fitrah*, Vol 01 No. 1, June 2015, p. 37

⁴⁰Ridwan HR, *State Administrative Law*, Jakarta: PT Raja Grafindo Persada, 2008, p. 2.

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scope of their respective duties, and based on a good cooperation system and supporting the goals to be achieved.

One of the administrative instruments in law enforcement in Indonesia is the integrated criminal justice system, also known as the Integrated Criminal Justice System. Its primary goal is to achieve legal certainty and ensure that perpetrators are deterred from committing further crimes. The term "integrated" in the criminal justice system is an interesting topic, as it, like any system, naturally implies integration. Therefore, it's no surprise that Muladi...⁴¹explained that the word "integrated" is intended as a form of pressure, so that integration and coordination are given more attention, in law enforcement practices that involve officers from several cross-administrations as well as cross-authorities - because fragmentation in the criminal justice system seems to be a disturbing issue in various countries.⁴²

According to Samuel Walker⁴³, the dominant paradigm in the criminal justice system in the United States is a system perspective where the administration of justice consists of a series of decisions regarding a criminal case by authorized officers within a framework of interrelationships between law enforcement officials in the context of legal reform. The framework of interrelationships between law enforcement officials that Walker refers to is connected as expressed by Mardjono Reksodiputro⁴⁴by using the term "interrelationships" between the subsystems of the criminal justice system, namely the police, prosecutors, courts, and correctional facilities. The interrelationships between subsystems are like "vessels connecting." Every policy in one subsystem will have implications for the other subsystems.

*Disturbing issue*One of the issues identified in the criminal justice system, as mentioned by Muladi, concerns the issue of authority of each institution within its subsystems. The authority of each subsystem in the criminal law enforcement process falls under the purview of criminal procedural law. Philosophically, criminal procedural law implies that procedural law limits power and authority based on the constitution through authority and authority based on law.⁴⁵Criminal procedural law is also defined as the entire legal regulations that regulate how law enforcement agencies implement and uphold criminal law.

In the context of substantive law enforcement, criminal procedural law provides a framework for law enforcement officials to carry out their duties. The state institution known as the Indonesian Attorney General's Office is responsible for exercising state authority, most importantly in the area of prosecution. The Attorney General, appointed by

⁴¹Muladi, *Selected Chapters on the Criminal Justice System*, Semarang: Diponegoro University Publishing Agency, 2018, p. 1

⁴²*Ibid*

⁴³Syaiful Bakhri, *Criminal Justice System: In the Perspective of Justice Reform, Theory, and Practice*, Yogyakarta: Pustaka Pelajar, 2015, p. 239

⁴⁴Mardjono Reksodiputro, *Criminal Justice System*, Depok: Raja Grafindo Persada, 2020, p. 348

⁴⁵Rocky Marbun et al., *Selected Chapters on Criminal Law Enforcement (Procedures): Uncovering Speech Acts and Instrumental Communication of Law Enforcement Officials in Criminal Justice Practice*, Jakarta: Publica Indonesia Utama, 2021, p. 7

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and responsible to the President, oversees the Attorney General's Office, which is the institution authorized to enforce law and justice. State power lies within the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office, most importantly in the area of prosecution. All of these are inseparable entities.

The definition of the prosecutor's office according to Article 2 paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia is "a government institution that exercises state power in the field of prosecution and other authorities based on law."

The definition of a prosecutor in Article 1 paragraph (6) letter a of the Criminal Procedure Code is: "A prosecutor is an official who is authorized by this law to act as a public prosecutor and implement court decisions that have obtained permanent legal force." Furthermore, the definition of a prosecutor according to Article 1 paragraph (2) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, namely: "A prosecutor is a functional official who is authorized by law to act as a public prosecutor and implement court decisions that have obtained permanent legal force and other authorities based on law." It is explained that the meaning of a prosecutor in the Criminal Procedure Code and Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia has the same function, namely a prosecutor as a public prosecutor. However, in the provisions of Article paragraph (1) of Law of the Republic of Indonesia No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia has broader authority, namely other authorities based on law.

The Attorney General's Office, as a law enforcement agency, is required to play the most active role in upholding the rule of law, safeguarding public interests, upholding human rights, and eradicating corruption, collusion, and nepotism (KKN) based on Law of the Republic of Indonesia No. 11 of 2021, which has been amended by Law of the Republic of Indonesia No. 16 of 2004. According to the new Law on the Attorney General's Office of the Republic of Indonesia, the Attorney General's Office is a government agency related to judicial power that carries out state duties. powers in the field of prosecution and other authorities according to the law independently, free from the influence of government power and other powers. Paragraph 1 Article 2 of Law No. 11 of 2021).

In the Criminal Procedure Code (KUHP), the position of the Public Prosecutor's Office is very urgent. This is because the Prosecutor's Office of the Republic of Indonesia is a government agency tasked with prosecuting criminal perpetrators responsibly to achieve legal certainty, justice, and utility for the public by taking into account norms, culture, and social wisdom. The position of the Public Prosecutor is considered the center of gravity in the integrated criminal justice system in resolving a criminal case. This is because the Public Prosecutor adheres to the principle of *dominus litis*, which states that the Public Prosecutor

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is obliged to ensure the achievement of the legal objectives of justice, certainty, and utility by transferring criminal cases to the courts.⁴⁶

In the same space and time, there are legal principles and norms that are no less strong referring to the meaning of restorative justice as part of the duties and authorities of prosecutors as holders of state power in the field of prosecution. The Prosecutor's Office in a chain of law enforcement, is universally recognized as an institution that controls cases or as the owner of cases. Its position as a case controller is known as the principle of *dominus litis*, a principle contained in the Guidelines on the Role of Prosecutors adopted from the 8th (eighth) UN Congress on the Prevention of Crime and Handling of Criminals, in Havana, Cuba in 1990. *Dominus litis* comes from Latin, *dominus* meaning "owner" and *litis* meaning "case", so it can literally be interpreted as a prosecutor as the owner or controller of the case. As the owner, it means he has the right and authority according to legal provisions to handle the case.⁴⁷

As the case controller, the Prosecutor's Office occupies a central position in law enforcement, as it is responsible for formulating and controlling law enforcement policies to ensure their effectiveness. This is inseparable from its position as a government institution whose functions are related to the judicial power, which exercises state prosecutorial power and other statutory powers.

The prosecutor's office can also determine whether a case can be declared complete or not and determine whether a case can be submitted to court or not. In the Criminal Procedure Code, the principle of *dominus litis* can be seen in Article 139 as a basis for prosecutors in granting discretion when handling a criminal case. Article 139 of the Criminal Procedure Code states "After the public prosecutor receives or receives back complete investigation results from the investigator, he immediately determines whether the case file has met the requirements to be submitted to the court or not." Based on Article 139 of the Criminal Procedure Code, there is attributive authority given to prosecutors as a component of the criminal justice system that serves as a connecting axis between the investigation function and then being transferred to the court.

Based on the results of the researcher's interview with the party within the Prosecutor's Office as a resource person, namely Kusumo Jaya Bulu, that the principle of *dominus litis* based on the legal systematics is stipulated in the legal substance of Law Number 11 of 2021. According to Kusumo Jaya Bulu, If in the Criminal Procedure Code the position of the Prosecutor and public prosecutor is only partially regulated in the implementation of their duties and authorities, in Law Number 11 of 2021 the institutional position of the prosecutor is clearly stated according to Article 1 number 1, namely "... The Prosecutor's Office is a government institution whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on the Law". If

⁴⁶Marjudin Djafar, Tofik Yanuar Chandra, and Hedwig Adianto Mau, The Authority of the Public Prosecutor as *Dominus Litis* in Terminating Prosecution Based on Restorative Justice, *SALAM: Jurnal Sosial dan Budaya Syar-i*, Vol 9 No. 4, 2022, p. 1076.

⁴⁷R. Muhamad Ibnu Mazjah, Quo Vadis Police Regulation Number 8 of 2021 in the Vortex of the Prosecutor's Authority as *Dominus Litis*, *State of Law: Building Law for Justice and Welfare*, Vol 15 No 1 August 2024, p. 74

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we remain steadfast in the doctrine of integration in the context of achieving the objectives of the criminal justice system, one of which is to organize the functions, duties, and authorities of its implementing components, the arrangement of the duties of each of these components based on the principle of impartial legal certainty must be a serious concern.⁴⁸

Dominus litis From the handling of criminal cases in the implementation of their duties and functions, it is possible for a prosecutor to take policy (discretion). The position of a prosecutor in various jurisdictions is actually a prosecutor "half judge" (semi-judge) or a "quasi-judicial officer". That is why the prosecutor may withdraw charges or stop the case process, even discretionary decisions in the form of actions to stop prosecution, set aside cases, and transactions. The pseudo-judicial function of the prosecutor comes from the role and function of the prosecutor which is dual because as a prosecutor: "Has the power and authority to function as an administrator in law enforcement which is an executive function, while he must make decisions that are somewhat judicial in nature that determine the outcome of a criminal case, even the final result."

Essentially, true justice requires law enforcement to apply the law when handling minor cases. For these cases, alternative resolutions are preferable. Viral cases, from flip-flops to the theft of a carton of baby milk, are like the tip of the iceberg, indicating that society currently demands legal reform. Justice is more cost-efficient when it achieves maximum justice (benefit), when cases or conflicts between victims and defendants are resolved prior to the transfer of justice (outside the courtroom), rather than after the transfer.

This concept contains the teaching that judicial behavior needs to be changed so that both the regulations (legal), the behavior of law enforcers (attitudinal) and law enforcement strategies (strategic) can achieve maximization of social welfare and justice (Pareto improvement).⁴⁹This could serve as an example for the Prosecutor's Office to make a breakthrough within the existing legal framework. By reaffirming and reinforcing its identity as the holder of *dominus litis*, it is determined that not all criminal cases must be referred to court. The legal basis is Article 139 of the Criminal Procedure Code, guided by the aspect of achieving the legal objectives of justice and expediency, not merely certainty or procedural justice, but also viewing it as substantive justice.

This can also strengthen the position of the Public Prosecutor as *dominus litis* in a criminal justice system. Therefore, criminal law policy reform leads to a change in the purpose of punishment. It is no longer about revenge, but rather eliminating stigmatization or labeling as a criminal and absolving the perpetrator of guilt. If previously punishment was considered a moral criticism of reprehensible actions, now it must be a moral criticism to reform the behavior of convicts in the future.⁵⁰If previously crime was a conflict that had to be resolved between the state and the perpetrator of the crime, without regard for the victim, now

⁴⁸Results of an Interview with Kusumo Jaya Bulu as Head of the West Halmahera District Attorney's Office, Held on April 29, 2025

⁴⁹Sulardi, Sastra, Irmayadi. Checks and Balances of State Institutional Power to Establish Good Government. *Replica Law Journal*, Vol. 5 No. 2, 2017, pp. 184–199

⁵⁰Ferdy Saputra, Legal Analysis of the Issuance of a Letter of Order to Terminate Prosecution by the Prosecutor's Office in Connection with the Principle of Opportunity and Law No. 16 of 2004 Concerning the Indonesian Prosecutor's Office, *USU Law Journal*, Vol II-No 1, February 2014, p. 113

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crime is seen as a conflict that must be resolved between the perpetrator and the victim, so that social harmony can be restored (the aim of punishment in the latest Criminal Code).

Given the developments in the handling of minor cases and the newest model of justice, restorative justice, there must be a reform of prosecution within the Prosecutor's Office. The Attorney General has promised to revolutionize and reformulate law enforcement policies within the Prosecutor's Office. As the controller of prosecution, the Attorney General has the authority to issue such policies to implement appropriate prosecution policy norms (beginselen van een behoorlijk vervolgingsbeleid—decently prosecution or indictment policy).⁵¹which is oriented towards the interpretation of laws, both in theory and practice.

That the Attorney General has the duty and authority to optimize the law enforcement process mandated by law by paying attention to the principles of fast, simple and low-cost justice and 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 implemented in accordance with the provisions of laws and regulations.

This new justice model was then formulated in the form of technical guidelines that can be used as a reference in handling cases using a restorative justice approach. On July 21, 2020, the Indonesian Attorney General'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. Restorative justice is one of the efforts that the Attorney General's Office can undertake to functionalize the principle of Dominus Litis. Referring to Regulation of the Attorney General Number 15 of 2020, the definition of restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family and other related parties to jointly seek a just solution by emphasizing restoration to the original state and not retaliation. Termination of prosecution based on restorative justice is implemented with the principles of justice, public interest, proportionality, criminal as a last resort and prioritizing the principles of speed, simplicity, and low cost.

However, the above principle requirements can be excluded if: First, for criminal acts related to property, in the case of there are criteria or circumstances of a casuistic nature which according to the consideration of the Public Prosecutor with the approval of the Head of the Branch of the District Attorney or the Head of the District Attorney can be stopped prosecution based on Restorative Justice carried out by still taking into account that the perpetrator is still a first-time criminal act accompanied by one of the conditions only the criminal threat is a fine/imprisonment of no more than 5 years or BB/loss of no more than Rp. 2.5 million. Second, For criminal acts committed against people, bodies, lives, and freedom of people the provisions related to the requirement of BB/loss of no more than Rp. 2.5 million can be excluded. Third, In the case of a crime committed due to negligence, the

⁵¹Mardjono Reksodiputro, Reconstruction of the Indonesian Criminal Justice System, Jurnal Lex Specialis, Vol 11 2017, p. 3.

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provisions of the criminal threat of a fine/imprisonment of no more than 5 years or BB/loss of no more than Rp. 2.5 million can be excluded.⁵²

In the provisions of the instructions in the JAM Pidum letter, the Public Prosecutor must pay attention to the progress of the case from the beginning to more quickly determine his stance and the Public Prosecutor must also be able to ensure that the peace process is carried out without any pressure from any party.⁵³

From the perspective of the dominus litis principle, the public prosecutor is the owner of the case from the beginning because what the investigator has handed over is only responsibility for the suspect and evidence to the public prosecutor as the owner of the case who will decide whether or not the case can be transferred to the court. The indictment is the result of an investigation product that has gone through a case research process by the public prosecutor so that the case being investigated is deemed worthy of prosecution. This makes the principle of functional differentiation adopted in the Criminal Procedure Code no longer in accordance with the needs of the criminal justice system which should be integrated today. While administratively, the functions in the criminal justice system can be distinguished, specifically for investigation and prosecution, it is a thesis premise that is interconnected with each other.

According to Kusumo Jaya Bulo, in the perspective of the principle of single prosecution, the function of prosecution cannot be separated from the function of investigation even though the authority of prosecution is given to the prosecution agency. The policy of handling cases at the investigation and prosecution stages is a single policy so as not to cause disparities. Based on this, the Criminal Procedure Code as the operational basis of the criminal justice system must change the paradigm by implementing the principle of single prosecution which makes the Attorney General as the Highest Public Prosecutor who can determine the policy of handling cases at the prosecution and investigation stages, which has significant implications for the supremacy of law established by the Prosecutor for the efforts of restorative justice with the main intention of realizing an effective and efficient criminal justice process.⁵⁴

These various legal principles and norms give the public prosecutor a strategic, crucial position, and a responsibility to determine whether a case should be resolved through or outside of court. This strengthening spirit is also translated into written (*lex certa*) and clear (*lex stricta*) terms in the new Prosecutor's Office Law. Article 37 of the Prosecutor's Office Law states that the Attorney General is responsible for prosecutions carried out independently for the sake of justice based on law and conscience. The explanation of this article explains that as a manifestation of restorative justice, prosecutions are carried out by

⁵²Results of an Interview with Kusumo Jaya Bulo as Head of the West Halmahera District Attorney's Office, Held on April 29, 2025

⁵³Results of an Interview with Kusumo Jaya Bulo as Head of the West Halmahera District Attorney's Office, Held on April 29, 2025

⁵⁴Results of an Interview with Kusumo Jaya Bulo as Head of the West Halmahera District Attorney's Office, Held on April 29, 2025

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weighing legal certainty (*rechtmatigheids*) and its benefits (*doelmatigheids*).⁵⁵It should be noted that, in addition to the Juvenile Criminal Justice System Law, the Prosecutor's Office Law is the only legal product regulating law enforcement institutions that explicitly mentions restorative justice as a goal to be achieved in carrying out its duties, functions, and authorities. Article 37 of the Prosecutor's Office Law positions the Attorney General as the Highest Public Prosecutor responsible for realizing restorative justice in the prosecution process, which cannot be separated from the investigative function.

Based on the provisions of the articles of Prosecutor's Regulation Number 15 of 2020, there is legitimacy for the authority to implement restorative justice by the Prosecutor's Office, and this authority must be granted to Prosecutors in order to realize a sense of justice in society. Prosecutors, as holders of *dominus litis* (control), are very worthy of being given the authority to implement restorative justice and can set aside cases in the public interest, therefore Prosecutors are the ones authorized to determine the submission of cases to the Court.

The existence of the authority to resolve criminal cases through restorative justice, then this opens the door for Prosecutors to make legal discoveries in carrying out their duties and authorities, which is also in line with the provisions of Article 8 paragraph (4) of Law Number 16 of 2004 in conjunction with Law Number 11 of 2021, which states that: "In carrying out their duties and authorities, Prosecutors always act based on law and conscience by paying attention to religious norms, politeness, morality, and are obliged to explore and uphold the values of humanity that live in society, and always maintain the honor and dignity of their profession."

4. Conclusion

Philosophically, restorative justice is based on the fourth and fifth principles of Pancasila, which embodies the essential meaning of the values of deliberation and justice. Pancasila, as the ideology and way of life of the Indonesian nation, serves as a guide for all activities in every field. Pancasila is positioned as a prismatic proselytizer, or a balancing act for the legal system, reflecting the noble values that have grown and taken root within the Indonesian nation. The philosophical dimension of restorative justice is closely linked to the values embodied in deliberation as a priority in decision-making. The goal is to "humanize" the justice system, prioritizing inter-stakeholder engagement and providing a sense of justice that meets the true needs of all parties involved. Furthermore, restorative justice offers a strategy of "more justice, less crime, and a way forward," meaning holding more perpetrators accountable, helping more victims, preventing more crimes, and reducing government costs. The Restorative Justice Working Regulation provides further regulations regarding the conditions for out-of-court settlements. One of the requirements is that "there has been a restoration of the original situation using a Restorative Justice approach." The issuance of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 provides a legal umbrella for prosecutors to prioritize conscience and humanity in carrying

⁵⁵Besse Yusnani, et al. Implementation The Concept of Justice Restorative Justice as Alternatives in Settling Criminal Cases: A Case Study at the South Sulawesi High Prosecutor's Office, *Journal of Philosophy (JLP)*, Volume 3 Number 2, December 2022, p. 281

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out their duties not only as law enforcement officers but also as protectors of the community. This is also in accordance with the direction of the Attorney General and one of the 7 (seven) priority work programs of the Republic of Indonesia Attorney General's Office for 2021, namely "Just law enforcement, and providing benefits, especially in restoring crime victims and reforming perpetrators."

5. References

Journals:

- Anirut Chuasanga and Ong Argo Victoria, Legal Principles Under Criminal Law in Indonesia Dan Thailand, *Jurnal Daulat Hukum*, Volume 2 Issue 1, March 2019
- Bambang Joyo Supeno, Efektivitas Kebijakan Kriminal dalam Penanggulangan Tindak Pidana Narkotika (dalam Kerangka Pembaharuan Hukum Nasional), *Jurnal Hukum dan Dinamika Masyarakat*, Vol. 14 No. 1, 2016
- Choky Risda Ramadhan dkk., Konsep dan Penerapan Plea Bargaining di Beberapa Negara, *Jurnal Peradilan Indonesia Teropong*, Vol.3, Juli-Desember 2015
- Dedy Chandra Sihombing, dkk. Penguatan Kewenangan Jaksa selaku Dominus Litis sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif, *Locus: Jurnal Konsep Ilmu Hukum*, Volume 3, Nomor 2, June 2023
- Ferdy Saputra, Analisis Yuridis Penerbitan Surat Perintah Penghentian Penuntutan Oleh Kejaksaan dikaitkan dengan Asas Oportunitas Dan Undang Undang No 16 Tahun 2004 Tentang Kejaksaan RI, *USU Law Journal*, Vol II-No 1, Februari 2014
- Gholin Noor Aulia Sari, dkk, Tinjauan Filosofis Keadilan Restoratif dalam Lensa Teori Keadilan, *Hukum dan Politik dalam Berbagai Perspektif*, Vol 3 2024
- Hanafi Arif dan Ningrum Ambarsari. Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *Jurnal Al' Adl*, Volume X Nomor 2, 2018
- Imron Rosyadi dan Isnaini Putri Wulandari, Penegakan Hukum Lingkungan Terhadap Pencemaran Udara Akibat Aktivitas Industri Di Kabupaten Gresik, *Al-Qānūn: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, Vol 24 No. 2, Desember 2021
- Mardjono Reksodiputro, Rekonstruksi Sistem Peradilan Pidana Indonesia, *Jurnal Lex Specialis*, Vol 11 2017
- Nor Soleh, Restorative Justice dalam Hukum Pidana Islam dan Kontribusinya Bagi Pembaharuan Hukum Pidana Materiil Indonesia, *Isti'dal Jurnal Studi Hukum Islam*, Vol. 2 No. 2, Juli-Desmber 2015
- R. Muhamad Ibnu Mazjah, Quo Vadís Peraturan Polri Nomor 8 Tahun 2021 dalam Pusaran Kewenangan Kejaksaan sebagai Domíuus lítís, *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, Vol 15 No 1 Agustus 2024

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Sulardi, Sastra, Irmayadi. Check And Balances Kekuasaan Lembaga Negara Guna Menata Pemerintahan Yang Baik (Good Government). *Jurnal Hukum Replik*, Vol 5 No. 2, 2017

Tiar Adi Riyanto, Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana di Indonesia, *Jurnal Lex Renaissance*, Vol 6 No. 3, Juli 2021

Veive Large Hamenda, *Tinjauan Hak Asasi Manusia Terhadap Penerapan Hukuman Mati Di Indonesia*, Jurnal, Vol.II No.1, Jan-Maret 2013

Z.D. Gabbay, Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices. *Journal of Dispute Resolution*, Vol 2. 2005

Books:

B. Arief Sidharta, *Ilmu Hukum Indonesia*, FH Unika Parahyangan, Bandung, 2010

Edward Omar Hiariej, *Prinsip-Prinsip Hukum Pidana*. Cahaya Atma Pustaka, 2015

Hans Kelsen, *Pengantar Teori Hukum*, Penerbit Nusa Media, Bandung, 2009

Jhon E. Conklin, *The Impact Of Crime*, McMillan Publishing Co, New York, 1975

Kahar Masyhur, *Membina Moral dan Akhlak*, Kalam Mulia, Jakarta, 1985

L.J Van Apeldoorn, *Pengantar Ilmu Hukum*, Jakarta : Noordhoff- Kolff, 1958

M. Faal, *Hukum Pidana*, Pradnya Paramita: Jakarta, 1991

O.C Kaligis, *Perlindungan Hukum atas Hak Asasi Tersangka. Terdakwa dan Terpidana*, Alumni, Bandung, 2006

Syaiful Bakhri, *Sistem Peradilan Pidana: Dalam Perspektif Pembaruan, Teori, dan Praktik Peradilan*, Yogyakarta : Pustaka Pelajar, 2015

T.J. Gunawan, *Konsep Pemidanaan Berbasis Nilai Kerugian Ekonomi*. Yogyakarta: Genta Press, 2015

W. Friedman, *Legal Theory*, Fourth Edition, Stevens and Son Limited, London, 1960

Regulation:

The 1945 Constitution of the Republic of Indonesia;

Criminal Code

Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia

Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice