

The Effectiveness of Termination of Prosecution in Settling Fraud Crimes Based on Restorative Justice

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Abstract. *This study aims to determine and analyze the implementation of the termination of prosecution in fraud crimes based on justice, the weaknesses of the termination of prosecution in fraud crimes based on restorative justice, and the effectiveness of the termination of prosecution in fraud crimes based on restorative justice. The approach method is sociological juridical, the research specification is analytical descriptive. The data used are primary and secondary data and the data collection method is field study and literature study, while the data analysis method uses qualitative analysis. The theories used are restorative justice theory, legal effectiveness theory and progressive legal theory. Based on the results of the study, it can be concluded that the implementation of the termination of prosecution in fraud crimes based on justice in the Pekalongan Regency District Prosecutor's Office has been carried out based on the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice and has reflected the theoretical principles of restorative justice. The weaknesses of the termination of prosecution in fraud crimes based on restorative justice have an impact on the termination of prosecution based on restorative justice not being able to run optimally and has not fully fulfilled the goals of recovery in the criminal justice system. The termination of prosecution in fraud crimes based on restorative justice has been effective, thus making the concept of recovery more acceptable than the retributive approach which emphasizes revenge.*

Keywords: *Criminal Fraud; Restorative Justice; Termination of Prosecution.*

1. Introduction

Indonesia is a country based on law based on Pancasila.¹Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state based on law.²Law

¹Walim, The Concept Of Restorative Justice In The Criminal Legal System: A Breakthrough In Legal Benefits, IJLR: International Journal of Law Reconstruction, Volume 8, Number 1, April 2024, p. 100.

² Wahyu Budi Andrianto and Sri Endah Wahyuningsih, The Implementation of Investigations on Persons of Crime of Corruption at Rembang Polres, Ratio Legis Journal, Volume 1 No. 4, December 2022, p. 450.

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in Indonesia is at the highest level with the aim of maintaining and advancing human dignity and honor.³

Law is a collection of coercive regulations that determine the behavior of society, made by official state bodies and containing sanctions.⁴ Law is also a guideline for society in behaving.⁵ Law functions as a form of social control in society, to prevent behavior that deviates from the law.⁶

Indonesia's concept of a constitutional state is integrative, combining various concepts of the legal state, such as the rule of law, the rule of law, and religious spiritual values. Therefore, laws and regulations (*rechtsstaat*) must be placed within the framework of law enforcement to achieve justice (the rule of law).⁷ The implementation of these regulations is essentially part of law enforcement. Violations of the law are subject to criminal sanctions in accordance with the law.⁸

In enforcing criminal law, law enforcement officers are guided by what has been stipulated in criminal law.⁹ Criminal law is one part of the law that applies in Indonesia, which currently uses Law Number 1 of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations (KUHP).¹⁰ The law enforcement mechanism is guided by Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which is a legal regulation concerning the procedures of the criminal justice system.¹¹

Efforts to enforce criminal law using the Criminal Code as material law have several shortcomings, including not mentioning the objectives and guidelines for sentencing, so that the punishment imposed is interpreted according to the views of law enforcement officers and judges, each of whom has a different interpretation.¹² According to the Criminal Code, if a person's actions fulfill the elements of a crime and the perpetrator is capable of being held responsible, the perpetrator must be punished, even if the loss is small or there has been

³Ong Argo Victoria and Ade Riusma Ariyana, Policy Analysis Study Of The Traffic Accident Of Criminal System Which Makes Loss Of Life, *IJLR: International Journal of Law Reconstruction*, Volume 4, Number 2, September 2020, p. 136

⁴Ishaq, 2012, *Fundamentals of Legal Science*, Sinar Grafika, Jakarta, p. 3.

⁵Alfi Nur Fata and Umar Ma'ruf, The Prosecutor's Authority In Criminal Law Enforcement With Restorative Justice Approach, *Jurnal Khaira Umma*, Vol. 16 No.3, 2021, p.1

⁶Anton Rudiyanto, The Function of Fingerprints in Murder Crime Perpetrators (Case Study at Tegal Police), *Khaira Ummah Law Journal*, Volume 12 Number 4 December 2017, p. 928.

⁷Moh Mahfud MD, 2011, *Debate on Constitutional Law after the Constitutional Amendment*, Rajawali Pers, Jakarta, 2011, p. 52

⁸Gustian Winanda and Jawade Hafidz, Law Enforcement of Corruption Crimes in the Buru District Attorney's Office with Legal Certainty (Case Study: Decision No. 40/Pid.Sus-Tpk/2022/Pn.Amb), *Ratio Legis Journal*, Vol 20. No. September 3, 2025, p. 2582

⁹Bahder Johan Nasution, 2013, *The State of Law and Human Rights*, Mandar Maju, Bandung, p. 1.

¹⁰Amrani, Hanafi, *Politics of Criminal Law Reform*, Yogyakarta: UII Press, 2019, p.35

¹¹Hendri Nupia Dinka Barus, 2022, *Legal Reconstruction of Traffic Accident Case Settlement Based on Restorative Justice*, Dissertation, Unissula, Semarang, p. 2.

¹²Noveria Devy Irmawanti and Barda Nawawi Arief, The Urgency of the Goals and Guidelines for Sentencing in the Context of Reforming the Criminal Law Sentencing System, *Indonesian Journal of Legal Development*, Volume 3, Number 2, 2021, p.220

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reconciliation between the perpetrator and the victim. This is because the Criminal Code still derives from the WvS, which still adheres to the retributive (revenge) principle.¹³

As time goes by, the law has developed, and this development has also had an impact on law enforcement in Indonesia.¹⁴ In the development of criminal law in Indonesia, there has been an update, namely the regulation of criminal law from the perspective of achieving justice towards improving or restoring conditions after an event and the criminal justice process, which is known as restorative justice.

Over time, the concept of restorative justice has also been applied to criminal cases involving adult perpetrators. One such crime involving adult perpetrators is fraud, a conventional crime that has received serious attention, given the high number of fraud cases occurring in society.¹⁵

The crime of fraud is regulated in Article 378 of the Criminal Code which states that anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by trickery, or a series of lies, induces another person to hand over something to him, or to grant a loan or write off a debt, is threatened with a maximum prison sentence of 4 years for fraud.

In practice, not all fraud cases can be resolved through restorative justice due to several factors, including the lack of a settlement agreement between the perpetrator and the victim and the significant losses incurred. This presents a unique challenge for prosecutors in determining whether the case is suitable for restorative justice.

At the Pekalongan District Attorney's Office, the resolution of fraud crimes can be resolved based on restorative justice if an agreement has been reached between the perpetrator and the victim and the requirements in Perja Number 15 of 2020 have been met. Termination of prosecution based on restorative justice in the above case is appropriate, in order to realize prosecution that provides a balance between legal certainty, benefit, and substantive justice. The perpetrator committed the crime of fraud for economic reasons, namely to meet daily living needs and children's education costs, so it is important to consider the aspects of humanity and proportionality in law enforcement. The perpetrator did not act solely because of malicious intent or excessive personal gain, but rather due to economic pressure and family responsibilities. Through a restorative justice approach, case resolution can focus on recovering the victim's losses and restoring social relations between the perpetrator and victim, rather than simply punishment. If the perpetrator is cooperative, admits his actions, and is willing to compensate the victim's losses, then terminating the prosecution is a wise and just step.

¹³Eddy Ferari Wiranata and Eko Soponyono, Criminal Law Policy in the Framework of Overcoming Criminal Acts of Fraud and Fraudulent Acceptance Based on Justice, Ratio Legis Journal, Vol 20. No. September 3, 2025, p, 2541

¹⁴Agung Jaya Kusuma, Effectiveness of the Implementation of Restitution Payment Decisions for Victims of Criminal Acts of Fraud, Khaira Ummah, Vol. 20 No. 1, March 2025, p. 125.

¹⁵Abdul Wahid, "Policy on Formulating Fraud Crimes in the New Criminal Code Draft to Combat Crimes in the Technology Sector," Rechtsidee, Vol. 11 No. 2, December 2023, p. 8

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This study aims to examine and analyze the effectiveness of prosecution in resolving fraud crimes based on restorative justice.

2. Research Methods

The sociological-juridical approach uses descriptive analytical research specifications. The data used are primary and secondary data. Data collection methods include field studies and literature reviews, and the data analysis method is qualitative analysis.

3. Results and Discussion

3.1. Implementation of Termination of Prosecution in Fraud Crimes Based on Restorative Justice

Based on the research results, data obtained shows that the Pekalongan Regency District Attorney's Office received 98 fraud cases between 2023 and 2025. In 2023, the Pekalongan Regency District Attorney's Office received 40 fraud cases, all of which were referred to the courts. Meanwhile, in 2024, 28 cases were received, with one case resolved through restorative justice. In 2025, 30 cases were received, none of which were resolved through restorative justice.

Data on the resolution of fraud cases at the Pekalongan District Attorney's Office indicates that the application of restorative justice in fraud cases is very limited, not because of a lack of policy, but because the nature of fraud crimes is substantively inconsistent with the basic principles of restorative justice, which prioritize rapid recovery and modest losses. Fraud is a crime that often involves systematic deception, so it is more often viewed as a crime that requires a trial process to ensure justice.

Thus, although Regulation No. 15 of 2020 provides for the termination of prosecution through restorative justice, its implementation is not automatic but requires a rigorous selection process based on legal requirements, the circumstances of the case, the victim's attitude, and considerations of public benefit. This data demonstrates that restorative justice cannot be applied to all cases, particularly fraud cases with particular complexity and impact. Therefore, prosecution through trial remains the primary option to maintain a sense of justice and legal certainty.

Based on the results of research at the Pekalongan District Prosecutor's Office, the termination of prosecution in criminal acts of fraud based on restorative justice is as follows:¹⁶

1. Receipt and examination of case files
2. Offering peace efforts to perpetrators and victims
3. Implementation of peace (mediation)
4. Reports on successful peace efforts

¹⁶Results of an interview with Tony Aji Kurniawan as Head of the General Crimes Section of the Pekalongan Regency District Attorney's Office, November 24, 2025.

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5. Peace process

6. Application for approval to the Central Java High Prosecutor's Office

7. Termination of prosecution

Based on the description above, it can be seen that the mechanism for terminating prosecution is not carried out immediately, but rather through strict evaluation stages starting from the examination of files by the Public Prosecutor, submission of a restorative justice request to the Head of the District Attorney's Office, to a tiered exposure process at the High Prosecutor's Office and the Attorney General's Office. Once all substantive and administrative requirements are met, such as the loss has been restored, there is a sincere reconciliation without pressure, the perpetrator's status as a non-recidivist, and the value of the loss is relatively small, the High Prosecutor's Office can issue a Letter of Decision to Terminate Prosecution (SKP2).

The issuance of a SKP2 (Solicitation Order) is a letter from the Public Prosecutor officially terminating the prosecution process and preventing the case from being referred to court. Terminating prosecution through this mechanism is not a form of expungement of the criminal offense without justification, but rather a legal remedy that prioritizes substantive justice over formal legal certainty, emphasizing social harmony, reparation for victims' losses, and peaceful conflict resolution.

Regulation 15 of 2020 also emphasizes that prosecutors must act professionally and objectively, have no conflicts of interest, and ensure that the peace process occurs voluntarily. This mechanism ultimately provides significant benefits to the criminal justice system, including reducing the caseload in courts, reducing overcrowding in detention centers and prisons, accelerating case resolution, and restoring social relations between perpetrators, victims, and the community. Therefore, the termination of prosecution based on Regulation 15 is not merely an administrative action, but an implementation of the principle of restorative justice that equitably balances the interests of victims, perpetrators, and the community.

3.2. Weaknesses of Termination of Prosecution in Fraud Crimes Based on Restorative Justice

While the application of restorative justice in the Prosecutor's Office offers a more humane and efficient alternative for resolving cases, it still has several weaknesses that require critical examination. These weaknesses include:

1. Restorative justice is not regulated in the Criminal Procedure Code

The Criminal Procedure Code (KUHP) does not recognize a mechanism for terminating prosecution for restorative justice reasons. The only provision for terminating prosecution based on restorative justice is found in Regulation 15/2020, which is subordinate to the law. Consequently, theoretically, there is a potential conflict of norms, especially for parties adhering to strict legality principles. The lack of a formal basis in the KUHP makes restorative justice policies vulnerable to debate from a legal certainty perspective.

2. Potential abuse of prosecutorial discretion

Restorative justice policies grant prosecutors broad discretionary powers. If left unchecked, this authority can pose risks such as favoritism in determining cases eligible for restorative justice, potential intervention by certain parties, and inconsistent decisions across prosecutorial offices. The lack of objective standards and strict oversight can lead to the misuse of restorative justice as a shortcut.

3. Lack of public understanding

Many people still don't understand the procedures for terminating prosecution in fraud cases based on restorative justice. This is partly due to the suboptimal socialization of restorative justice by law enforcement. The general public stigma remains oriented toward retributive justice, which focuses on punishment as appropriate retribution for the crime committed by the perpetrator. Furthermore, some still believe that resolving cases based on restorative justice is a means for law enforcement officials to trade in justice (cases).

4. Does not guarantee a general deterrent and preventive effect

Discontinuing prosecution can reduce the general deterrent effect on society. Without criminal penalties, perpetrators may repeat their actions (recidivism), especially if the economic motive is strong. There are concerns that restorative justice is perceived as a concession to certain perpetrators. This occurs because the primary focus of restorative justice is not on punishment, but rather on reparation, reconciliation, and improving social relationships between the perpetrator and the victim. As a result, perpetrators, especially in minor or first-time cases, often do not experience the significant pressure or consequences associated with punishment in the formal criminal justice system. The absence of the threat of harsh sanctions has the potential to deter some perpetrators from feeling the firmness of the state, thus increasing the possibility of recidivism.

5. The absence of post-restorative justice monitoring mechanisms

Once a case is dismissed, there is no formal monitoring system for the perpetrator to determine whether they comply with the agreement or repeat their actions. This makes restorative justice vulnerable to ineffectiveness if not accompanied by guidance. Regulation No. 15 of 2020, restorative justice procedures only regulate the requirements, stages, and technicalities for dismissing a prosecution, but do not provide guidelines for monitoring the perpetrator after the issuance of a Letter of Intent (SKP2). Consequently, once a peace agreement is reached and the case is dismissed, the perpetrator is essentially no longer under the control or supervision of law enforcement officials, leaving no guarantee that the perpetrator's commitments, such as promises not to repeat the offense or certain social obligations, are actually carried out.

The lack of post-restorative justice monitoring also eliminates the opportunity to measure the effectiveness of restorative justice programs in preventing recidivism. Without ongoing data and evaluation, the Prosecutor's Office cannot determine whether restorative justice solutions have truly changed the offender's behavior or simply made them feel free from legal consequences.

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The lack of a post-restorative justice monitoring mechanism is a structural weakness that requires attention. Moving forward, the Prosecutor's Office needs to establish an evaluation and monitoring system so that the restorative justice process doesn't stop at the reconciliation stage but also ensures the implementation of perpetrator commitments, victim protection, and the ongoing, tangible restoration of social relations.

Based on the description above, it can be seen that in the termination of prosecution based on restorative justice, there are still several weaknesses, including the lack of regulation of restorative justice in legislation, where the regulations used are still internal to the prosecutor's office, the lack of supervision after restorative justice, and the risk of abuse of authority by prosecutors. This is different from the regulation of restorative justice in the Netherlands, which has been regulated in law.

Dutch law itself is based on the principles of individualization and liberalization, which are characteristic of civil law. Similarly, Indonesia's legal system also adheres to civil law.¹⁷ Restorative justice in the Netherlands has been implemented by local police, granting probation, and cases can be resolved within a day. Deputy Chief Public Prosecutor Openbaar Ministerie explained that one method of restorative justice in the Netherlands, for example, is when someone steals from a store and is then reported to the police. The person is given a probationary sentence and ordered to apologize and return the stolen goods. Therefore, in this case, there is no prosecutor or court involvement, which allows the case to be resolved much more quickly.

In the Netherlands, the public prosecutor is responsible for promptly providing information to the police about restorative justice mechanisms to both the perpetrator and the victim. The court will then consider the parties' agreement when imposing a sentence.

The Dutch legal system applies alternative punishments to criminals facing sentences of less than six years. These penalties include community service. This non-imprisonment-based punishment has successfully reduced prison occupancy rates in the Netherlands. In fact, in some areas, prison occupancy rates are as low as 70%.¹⁸

Section 147 Article 144 paragraph (1) of the Dutch Criminal Procedure Code states that the Prosecutor's Office, for the purposes of investigation, in criminal cases can request assistance from people and bodies working in the field of trials (Reclassering Nederland) or similar fields, and give the necessary assignments to these people or bodies in accordance with the rules stipulated by Government Decree. Reclassering Nederland has 3 main (tasks), namely:

1. Carrying out execution and supervision of the implementation of social work sentences and special conditions in conditional sentences (14 C of the Dutch Criminal Code);

¹⁷Maroni, Problems of Replacing Colonial Laws with National Laws as Legal Politics, Journal of Legal Dynamics, Vol 12, no. 1 (2012), p. 88.

¹⁸Ulfatul Hasanah and Tazkiatul Aulia, Comparative Study: Restorative Justice in Indonesia and the Netherlands as an Alternative for Resolving Criminal Cases, Sapientia et Virtus, Volume 9 Number 2, September 2024, p. 424

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2. Providing advice to prosecutors and judges regarding the actions and penalties that should be taken against suspects and/or defendants. The official Reclasserin website suggests that such advice is given based on a request from the prosecutor or judge. It is unclear whether this advice can only be given at the request of the prosecutor or judge or whether it can be done at Reclasserin's own initiative.

3. Supervise convicts who receive conditional release.

The concept of restorative justice in the Netherlands is regulated in the Criminal Code. This emphasizes the restoration of victims' losses resulting from criminal acts and the relationship between victims and perpetrators after the crime. In practice around the world, the application of restorative justice is being encouraged, especially with the growing understanding of the philosophy of restorative justice in criminal law. The philosophy of restorative justice in criminal law emphasizes that modern criminal law is not merely concerned with retaliation and inflicting physical suffering on perpetrators.

The weakness of the restorative justice-based termination of fraud prosecutions can impact the effectiveness of the law during the prosecution phase. This aligns with Soerjono Soekanto's theory of legal effectiveness, which states that legal effectiveness is influenced by five factors: legislation, law enforcement, facilities and infrastructure, community, and cultural factors.

3.3. The Effectiveness of Termination of Prosecution in Fraud Crimes Based on Restorative Justice

Indonesian law enforcement cannot rely solely on legal certainty but must also observe the actualization of law within society. When law enforcement's ideology rests solely on legal certainty, justice will be difficult to achieve, as legal certainty is closely tied to the desire to maintain the status quo. Therefore, as law enforcement officers, we must view the law dynamically while remaining grounded in statutory regulations. We must also ensure humane law enforcement and exercise conscience in punishing perpetrators of criminal acts.¹⁹

Restorative justice is considered an effort to renew legal culture. Restorative justice is not solely aimed at the perpetrator of the crime (dader) but rather rehabilitates the conflict between justice and the law violated by the perpetrator.²⁰ Restorative justice is an alternative within the criminal justice system that focuses on victim recovery, perpetrator accountability, and community involvement in conflict resolution. Termination of prosecution based on restorative justice in fraud crimes can be effective as long as it meets the criteria stipulated in Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.²¹

¹⁹Tarmizi and Muhammad Ikhwan, 2025, Termination of Prosecution Based on Restorative Justice from the Perspective of Law Enforcement by Public Prosecutors, SANKSI (National Seminar on Law, Social and Economics), p. 144

²⁰Ibid.

²¹Results of an interview with Fitriana Charrisa Putri, as Head of the Pre-Prosecution Sub-Section at the General Crimes Section of the Pekalongan District Prosecutor's Office, November 28, 2025.

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In general, the termination of prosecution based on restorative justice in criminal acts is effectively carried out through a criminal case resolution process involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation. The effectiveness of the termination of prosecution based on restorative justice in fraud crimes at the Pekalongan Regency District Attorney's Office is reflected in the termination of prosecution process which is in line with Perja Number 15 of 2020. The facilitator prosecutor has conducted a case file research since receiving the case file and there has been an initiative for a case resolution based on restorative justice. So that when the suspect and evidence are handed over, they can immediately be prepared for peace efforts. The termination of prosecution of fraud crimes based on restorative justice has met the formal and material requirements as stipulated in Perja Number 15 of 2020.

The peace process in this case has been supported by adequate facilities and infrastructure for case resolution based on restorative justice. The Pekalongan District Prosecutor's Office has been supported by 5 (five) Restorative Justice Houses located at the Kedungwuni District Office, Wiradesa District Office, Kajen Village Office and at the Pekalongan District Prosecutor's Office. Regarding the existence of the Restorative Justice House, it is a program from the Prosecutor's Office as a place to resolve minor criminal cases outside the litigation/trial path which aims to prioritize mediation, deliberation and peace between the parties by involving the perpetrator, victim, family and other related parties with the hope of restoring social relations and jointly seeking a fair solution by emphasizing restoration to the original state, and not revenge/punishment.

4. Conclusion

The implementation of the termination of prosecution in fraud crimes based on justice at the Pekalongan Regency District Attorney's Office has been carried out based on Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice and has reflected the theoretical principles of restorative justice. The weakness of the termination of prosecution in fraud crimes based on restorative justice has resulted in the termination of prosecution based on restorative justice not being able to run optimally and not fully fulfilling the purpose of recovery in the criminal justice system. The termination of prosecution in fraud crimes based on restorative justice has been effective, thus making the concept of recovery more acceptable than the retributive approach that emphasizes revenge.

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