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The Effectiveness of the Implementation of Termination of Prosecution in Criminal Cases of Assault Based on Restorative Justice (Case Study of the Kapuas Hulu District Attorney's Office)

Rustam Efendi P. Simarmata[1)] & Andri Winjaya Laksana[2)]
[1)]Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: rustamefendip.simarmata.std@unissula.ac.id
[2)]Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: andri.w@unissula.ac.id

Abstract. *This research is motivated by the increasing use of restorative justice mechanisms in resolving criminal acts of assault as a form of reforming the criminal justice system oriented towards more humanistic, participatory justice and social restoration. The Kapuas Hulu District Attorney's Office is one of the law enforcement institutions that implements the termination of prosecution based on restorative justice in accordance with the Republic of Indonesia Attorney General's Regulation Number 15 of 2020. This study aims to determine the implementation of the termination of prosecution in assault cases based on restorative justice, analyze weaknesses in its implementation, and assess its current effectiveness and potential effectiveness in the future. The research method used is normative juridical with a socio-legal approach (socio-legal research/studies) needed to address issues of social injustice. Data sources consist of primary, secondary, and tertiary legal materials which are analyzed qualitatively to produce a comprehensive picture of the implementation of the policy of termination of prosecution based on restorative justice. The results of the study indicate that the implementation of restorative justice in the Kapuas Hulu District Attorney's Office has quite high effectiveness, evidenced by the acceleration of case resolution, recovery of victim losses, and the creation of harmonious social relations after the case. However, various weaknesses remain, such as limited mediator capacity, a lack of public understanding of restorative justice, potential social pressure on victims to reconcile, and suboptimal oversight of the implementation of peace agreements. This research emphasizes the need to improve the quality of human resources, strengthen regulations, and optimize institutional support to ensure the implementation of restorative justice is more effective in the future.*

Keywords: *Abuse; Kapuas Hulu District Attorney's Office; Legal Effectiveness; Restorative Justice; Termination of Prosecution.*

1. Introduction

Criminal law itself is a tool or means for resolving problems in society. The existence of criminal law can provide justice and appropriate solutions for that society. Because criminal law is a collection of regulations that regulate actions, both those that order or prohibit actions, as well as prohibit actions or doing something regulated in the law, with criminal sanctions for those who violate them.[1] Meanwhile, the criminal law in force in Indonesia can be divided into two types, namely criminal law as recognized in the Criminal Code (KUHP) and Special Criminal Law which is regulated outside the KUHP.[2]

Criminal law not only provides an understanding of actions prohibited by a legal rule, which prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition, but also includes matters related to the imposition of penalties and how the penalty can be implemented. The prohibition is directed at actions, a condition or incident caused by a person's behavior or actions. The threat of criminal penalties or sanctions is directed at the perpetrator who commits a criminal act, usually referred to as "whoever", namely the perpetrator of the criminal act as a legal subject, namely the supporter of rights and obligations in the legal field.[3]. Therefore, criminal acts are one of the aspects studied in criminal law.

Criminal law enforcement in Indonesia has been dominated by the paradigm of retributive justice, namely the imposition of punishment on perpetrators as a form of state retribution for their actions. This paradigm is deeply rooted in the colonial criminal law system, which views unlawful acts as violations against the state, not merely against the victim.[4] In such contexts, the criminal justice system often creates lengthy, formalistic processes, often far from rehabilitating victims. Meanwhile, perpetrators often lack the space to reflect on the social and psychological impact of their actions.

The crime of assault, as regulated in Article 351 of the Criminal Code (KUHP), is a common form of crime against the body. Assault can result in injury, disability, and even death, but in many cases it is related to personal relationships, family conflicts, neighborhood disputes, and complex social dynamics.[5] In such circumstances, a rigid criminal process is not always the best solution for all parties. In reality, most assault cases stem from interpersonal conflicts that could be resolved through deliberation or penal mediation.

2. Research Methods

The approach used in this paper is a socio-legal research approach. Socio-legal research methods (socio-legal research/studies) are needed to address issues of social injustice. This

[1] Rahman Syamsuddin, 2014, *Merajut Hukum Di Indonesia*, Mitra Wacana Media, Jakarta, p. 192
[2] Rodliyah, 2017, *Hukum Pidana Khusus Unsur dan Sanksi Pidananya*, Cetakan. ke-I, PT. Raja Grafindo Persada, Jakarta, p. 1
[3] Chairul Huda, 2006, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana Prenada Media, Jakarta, p. 127
[4] Muladi, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Badan Penerbit UNDIP, 2005, p. 37

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socio-legal study approach can be identified through two things, namely: first, socio-legal studies conduct textual studies, articles in laws and policies can be analyzed critically and their meaning and implications for legal subjects can be explained. In this case, it can be explained how the meaning contained in these articles is detrimental to or beneficial to certain community groups and in what way.[6]

3. Results and Discussion

3.1. General Overview of Legal Effectiveness

Speaking of effectiveness cannot be separated from the success of a task or policy. Effectiveness is a fundamental element in achieving predetermined goals or objectives within any organization, activity, or program. Effectiveness occurs when the goals or objectives are achieved as previously determined. Likewise, policy implementation is considered effective if the policy is implemented in accordance with the policymaker's expectations.[7]

According to Barda Nawawi Arief, effectiveness means "effectiveness" of influence or effect of success, or efficacy/efficacy.[8] In other words, effectiveness means that previously planned goals can be achieved, or in other words, targets are achieved because of the activity process.[9]

Meanwhile, according to Supriyono, effectiveness is the relationship between the output of a responsibility center and the target. The greater the contribution of the output produced to the value of achieving the target, the more effective the unit can be said to be.[10]

Effendy explains that effectiveness is "communication whose process achieves the planned objectives and is in accordance with the budgeted costs, time, and number of personnel." From the above definition, effectiveness is the achievement of predetermined goals or objectives, namely one measure of how a target has been achieved as previously planned.

Richard M. Steers states that effectiveness is the extent to which a program's efforts as a system, with specific resources and means, achieve its goals and objectives without crippling those methods and resources and without seeking unreasonable pressure on its implementation.[11]

[5] Andi Hamzah, *Delik-Delik Tertentu dalam KUHP*, Jakarta: Sinar Grafika, 2019, p. 112.
[6] Sulistyowati Irianto & Shidarta, *Metode Penelitian Hukum: Konstelasi Dan Refleksi*, Yayasan Pustaka Obor Indonesia, Jakarta, 2013, p. 177-178.
[7] BAPPEDA Kota Yogyakarta, 2016, "*Efektivitas Peraturan Walikota Yogyakarta Nomor 64 Tahun 2013 dalam Mewujudkan Ruang Terbuka Hijau Publik Kota Yogyakarta",* hal 134
[8] Barda Nawawi Arief, 2003, *Kapita Selekta Hukum Pidana*, Citra Aditya Bakti, Bandung, p. 85
[9] Muhammad Ali, 1997, *Penelitian Pendidikan Prosedur dan Strategi*, Bandung, Angkasa, p. 89
[10] Supriyono, 2000, *Sistem Pengendalian Manajemen*, Edisis Pertama, Yogyakarta, BPFE, p. 29
[11] Richard M Steers, 1985*, Efektivitas Organisasai Perusahaan*, Jakarta, Erlangga, p. 87

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Another opinion was also put forward by Agung Kurniawan that effectiveness is the ability to carry out tasks, functions (operational activities, programs or missions) of an organization or similar without any pressure or tension between the implementers.[12]

Based on the expert opinions above, it can be concluded that effectiveness is when a desired goal or objective has been achieved, and thus it can be considered effective. Conversely, if the goal is not achieved within the specified time, the work is considered ineffective. This becomes the objective measure for determining the effectiveness of the outlined goal or objective. In other words, measuring the level of effectiveness is a comparison between the predetermined plan or target and the achieved results.

Effectiveness is defined as the achievement of goals. This can be considered effective if the desired goal or objective is achieved according to the original plan and has the desired or expected effect or impact. The level of effectiveness can be measured by comparing the predetermined plan or target with the achieved results. The effort or result of the work is considered effective. However, if the effort or result of the work undertaken does not achieve what was planned, it can be considered ineffective.

Legal effectiveness is the conformity between what is regulated in the law and its implementation. It can also be due to public compliance with the law due to the coercive element of the law. Laws made by authorized authorities are sometimes not abstractions of values within society. If this is the case, the law becomes ineffective, unenforceable, or even, in certain cases, civil disobedience emerges. In the reality of social life, law enforcement is often ineffective, making this discourse an interesting topic to discuss from the perspective of legal effectiveness.

The issue of legal effectiveness is closely related to the application, implementation, and enforcement of law in society to achieve legal objectives. This means that the law truly applies philosophically, juridically, and sociologically.

Soerjono Soekanto argues that legal effectiveness is closely related to the following factors:

a. Efforts to instill law in society, namely the use of human resources, tools, organizations, recognition, and obedience to the law.

b. Societal reactions based on the prevailing value system. This means that people may reject or oppose the law out of fear of officials or the police, obey a law simply out of fear of their peers, or obey the law because it aligns with their values.

c. The duration of legal instillation, namely the length or shortness of time over which these instillation efforts are carried out and are expected to yield results.

[12] Agung Kurniawan, 2005, *Transformasi Pelayanan Publik*, Yogyakarta, Pembaharuan, p. 109

3.2. General Overview of the Settlement of Assault Cases

The resolution of assault cases is a crucial part of the criminal justice system, aiming to uphold the law and protect the rights of victims. Assault can have significant physical and psychological impacts, therefore, its handling requires an appropriate and effective legal approach. This resolution process includes investigation, prosecution, trial, and execution of the verdict. In practice, law enforcement must balance the interests of the victim, the public interest, and the rights of the suspect to achieve substantive and restorative justice.[13]

Procedures for resolving assault cases are regulated by the Criminal Code (KUHP) and related laws and regulations. The articles on assault stipulate various criminal sanctions, ranging from fines and imprisonment to imprisonment. This resolution emphasizes valid and convincing proof of the act in court. The Prosecutor's Office acts as the public prosecutor, presenting evidence and legal arguments, while the judge decides based on the facts and applicable legal provisions.

In practice, resolving assault cases often faces challenges such as a lack of evidence, witnesses' reluctance to testify, and a lack of public legal awareness. This can cause the legal process to be slow or ineffective. Therefore, law enforcement officials need to conduct professional investigations and be sensitive to the victim's circumstances to ensure justice is achieved.

In addition to formal channels, assault cases can also be resolved through restorative justice mechanisms, especially for minor cases. Restorative justice emphasizes restoring the relationship between the victim and the perpetrator, compensating for losses, and social rehabilitation. This approach allows for a faster and more acceptable resolution for both parties, reduces the burden on the courts, and prevents the escalation of social conflict.

Case studies show that the Kapuas Hulu District Attorney's Office sometimes utilizes mediation as an alternative in resolving assault cases. For example, cases of abuse between neighbors can be resolved through mediation involving community leaders and family members. This resolution expedites the legal process, restores social relationships, and provides a sense of justice to the victim without compromising the perpetrator's right to fair legal treatment.

Resolving abuse is also linked to the protection of witnesses and victims. Law enforcement officials must ensure that victims receive psychological, physical, and legal protection, including legal representation during the investigation and trial. This protection is part of fulfilling human rights and increasing public trust in the justice system.[14]

Abuse cases often occur in various forms, ranging from mild physical abuse and emotional violence to severe, life-threatening abuse. Therefore, treatment must vary depending on the

[13] Lilik Mulyadi, *Penegakan Hukum di Indonesia*, 2021.
[14] Lilik Mulyadi, *Perlindungan Korban dalam Hukum Pidana*, 2021.

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severity and the harm experienced by the victim. An appropriate legal approach will ensure that sanctions are proportionate and can act as a deterrent to the perpetrator.

In practice, resolving abuse cases requires coordination between agencies, such as the police, the prosecutor's office, and the courts. The prosecutor's office, as the public prosecutor, plays a central role in assessing the completeness of files and evidence, and determining charges. Delays or lack of coordination between agencies can hamper the legal process and diminish the victim's sense of justice.

A sociological juridical approach is highly relevant in resolving abuse because it allows for an understanding of the social context behind the crime. For example, abuse arising from family or social conflict often requires mediation and restorative justice. By considering social factors, law enforcement can provide more effective and socially acceptable solutions.

The resolution of abuse cases also emphasizes the rehabilitation of the perpetrator, especially in minor cases. Perpetrators can be directed to participate in counseling, educational programs, or social activities as a form of accountability. This approach not only enforces the law but also reduces the risk of perpetrators repeating their actions in the future.

An effective abuse resolution process requires clear standard operating procedures. The prosecutor's office and police must have technical guidelines for everything from receiving reports, investigations, preparing files, and filing charges. These guidelines ensure consistency and professionalism in handling cases.

Barriers to resolving abuse cases often arise from a lack of public legal awareness. Victims or witnesses are reluctant to report cases due to fear of social conflict or stigma. Restorative justice approaches, mediation, and legal outreach are important strategies to encourage the public to report abuse cases and trust the justice system.

The abuse case in Kapuas Hulu demonstrates that resolving cases through formal legal channels can sometimes take a long time. Therefore, alternative resolutions through mediation or restorative justice can reduce the burden on the courts and accelerate the victim's recovery. The prosecutor's office plays a crucial role in facilitating this process to ensure it adheres to the law.

The resolution of abuse cases must also consider preventative factors. Preventive approaches through legal counseling, anti-violence education, and public awareness campaigns can reduce abuse cases. Law enforcement alone is insufficient if the public does not understand the consequences of criminal acts and the rights of victims.

Restorative justice emphasizes the active participation of victims, perpetrators, and the community in resolving abuse. This approach focuses on reparations, strengthening social relationships, and peaceful conflict resolution. The Prosecutor's Office needs to have an internal policy to integrate restorative justice into abuse case resolution procedures.

This approach also emphasizes transparent and accountable case documentation. Every stage of the abuse resolution process must be recorded in detail, from the initial report to the judge's verdict. This documentation is essential for internal evaluation and to ensure that the rights of both victims and perpetrators are met.

3.3. Overview of Restorative Justice

Restorative justice is a stage in out-of-court settlement involving the victim, perpetrator, their families, the community, and other stakeholders to reach a settlement agreement that satisfies both parties' sense of justice, emphasizing restoration to the original state rather than retaliation. According to Lynne N. Henderson, in her article "The Wrongs of Victims' Rights," restorative justice is a manifestation of the evolution of criminal acts from a "private" or personal context to a "public or social" context. The criminal justice system before restorative justice focused on enforcing criminal acts through a limited trial, with the defendant being charged by the public prosecutor and then sentenced by the judge. This system focused solely on the perpetrator and the state, and over time, it led to the neglect of victims' rights, as punishment was directed solely at the perpetrator. For example, under the Criminal Procedure Code (KUHAP), victims of criminal acts are positioned solely as witnesses who assist the public prosecutor in proving their charges. Restorative justice is an alternative approach to the criminal justice system that emphasizes restoring relationships between victims, perpetrators, and the community. The primary focus is not solely on punishment, but also on reparation, perpetrator rehabilitation, and social reintegration. This approach emphasizes dialogue, active victim participation, and perpetrator responsibility, making the legal process more humane and constructive. Restorative justice is considered an effective way to reduce conflict, reduce recurrence of criminal offenses, and increase legal legitimacy in the eyes of the community.[15]

The restorative justice approach differs from the traditional retributive system, which focuses on punitive action. In restorative justice, the case resolution process is more flexible, allowing victims and perpetrators to reach mutual agreements. For example, perpetrators can compensate victims for material or non-material losses and engage in activities that have a positive impact on the community. Thus, restorative justice emphasizes reconciliation and social recovery, rather than mere punishment.

Restorative justice can be applied to various types of crimes, including assault, minor theft, and social conflict. The advantages of this approach include faster resolution, reduced burden on the courts, and providing a space for victims to be heard. In the context of assault, restorative justice allows victims to receive compensation or psychological recovery directly from the perpetrator, thereby minimizing trauma.

The basic principles of restorative justice are based on the idea of fair and impartial law enforcement. With the application of restorative justice, the alignment of the criminal justice system not only focuses on the accountability of the perpetrator but also on the interests of

[15] Soerjono Soekanto, *Restorative Justice dalam Sistem Hukum Indonesia*, 2021.

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victim recovery, including through compensation, reconciliation, community service, and other agreements. The criminal justice system, unfamiliar with restorative justice, has also led to a tendency to use imprisonment as a means of punishment. This, in turn, has led to overcrowding in state detention centers and correctional institutions. According to data from the Directorate General of Corrections website of the Ministry of Law and Human Rights as of January 23, 2024, the Correctional Technical Implementation Unit (UPT) has reached 77 percent overcrowding, with 228,204 inmates out of a capacity of 128,656.

The concept of restorative justice arose from an awareness of the failure of the criminal justice system to accommodate victims, initiated by a women's movement called the "National Association for Victim Assistance Schemes." Then, in 1973, the first international meeting was held to discuss victims' rights in the criminal justice system, which became the forerunner to the formation of the World Society of Victimology in 1979. In 1985, the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. These movements paralleled the emergence of the concept of restorative justice. The term "restorative justice" was first introduced in several writings by Albert Eglash in the 1950s and became widely used in 1977.

The definition of restorative justice, or what is known in Indonesian positive law as Restorative Justice, is regulated in Article 1, point 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the Juvenile Criminal Justice System Law). In addition to the Juvenile Criminal Justice System Law, restorative justice provisions in Indonesian legislation are also found in:

a. Law Number 31 of 2014 concerning Protection of Witnesses and Victims;

b. Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims;

c. Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age;

d. Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation;

e. Regulation of the Indonesian Prosecutor's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;

f. Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice; and

g. Attorney General's Guideline Number 18 of 2021 concerning the Settlement of Narcotics Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle.

4. Conclusion

Implementation of termination of prosecution in assault cases based on restorative justice. The implementation of restorative justice at the Kapuas Hulu District Attorney's Office has been carried out in accordance with Perja 15 of 2020. The process begins with submitting an application, verification, implementing penal mediation, and issuing a letter of termination of prosecution after a peace agreement is reached between the perpetrator and victim. In practice, the prosecutor plays an active role as a mediation facilitator, involving the victim, perpetrator, family, and community leaders. This mechanism helps create a quick, affordable, and more humane resolution than litigation. Weaknesses in the implementation of restorative justice. The implementation of restorative justice still faces several obstacles, including: Lack of public understanding of the concept of RJ, leading some parties to consider peace synonymous with "forgiveness without legal process." Potential pressure from family/community on victims to accept peace. Lack of mediator capacity and supporting facilities in the mediation process. Suboptimal oversight of the implementation of post-mediation agreements. Geographical constraints often make the mediation process take longer. These obstacles hinder the implementation of RJ and potentially reduce the quality of justice that victims should receive.

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