

## Legal Protection for Victims of Criminal Acts at the Prosecution Stage Based on Restorative Justice Values

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**Abstract.** *This study aims to determine and examine legal protection for victims of criminal acts at the prosecution stage based on restorative justice values. This study uses a normative legal approach method that is descriptive analytical in nature. The data used are secondary data obtained through literature studies, which are then analyzed qualitatively. Based on the study, it is concluded that legal protection for victims of criminal acts at the prosecution stage is based on restorative justice values, namely the Prosecutor in representing the victim can restore the interests of the victim, both legal interests and interests in terms of restoring the victim's losses due to the crime. As dominus litis, the Prosecutor has the authority to determine the eligibility of a case to be submitted to court through prosecution or the prosecution must be stopped, and with the principle of opportunity or the principle of the policy of prosecuting, the Prosecutor can stop the prosecution, as a form of attention to the interests of the victim and legal protection for victims of crime.*

**Keywords:** Justice; Restorative, Victims.

### 1. Introduction

Crime or what is known as a criminal act is an action that occurs in society and is carried out by a person or group of people which gives rise to humanitarian and social problems.<sup>1</sup>A criminal act is an act or action that is threatened by law, contrary to law, and carried out by a person who is capable of being responsible.<sup>2</sup>

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<sup>1</sup>Gunakaya SA, A. Widiada. (2021). Criminology & Victimology. Cimahi: Guna Harapan Baru, p. vi.

<sup>2</sup>Zulfikar Hanafi Bahri. "Consideration of Semarang District Court Judge's Decision in Case Dropped Because The Crime of Defense of Emergency". Jurnal Daulat Hukum, Vol. 1 No. 2. (2018), p. 495, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3322/2453>, accessed on March 4, 2024.

A crime is a violation of criminal law regulated by the state, so that for violations of criminal law, the law must be enforced. Basically, all humans agree that in their lives they must obey the law, because it will provide peace, order, and a sense of security. When the law is not obeyed, chaos and disorder will arise,<sup>3</sup>so that criminal law enforcement is a necessity. The essence of criminal law is basically an imposition of suffering or misery or other unpleasant consequences.<sup>4</sup>

The legal basis for criminal law enforcement in Indonesia is Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which was enacted on December 31, 1981. The KUHAP prioritizes the resolution of criminal cases through the judicial process and its goal is to punish perpetrators of criminal acts committed by the state, so that in this framework the implementation of victims' rights is ignored and the role and participation of victims is very small in the criminal justice system process. This happens because a crime is considered to violate the interests of the state (violates regulations made by the state), and then the state forms a party to enforce the law that has been violated, especially the Prosecutor who has the authority to prosecute perpetrators of criminal acts to be accountable for their actions. The main goal is to punish the perpetrator, not to protect the rights of victims of crime.

In the concept of the Criminal Procedure Code, victims of crime are only considered as witnesses who play a role in helping the Public Prosecutor to prove his charges and prove the guilt of the perpetrator so that the perpetrator can be punished. The most frequently applied form of punishment is imprisonment, which ultimately creates a situation of great dependence on the instrument of imprisonment without considering the interests of the victim, which ultimately results in the problem of overcrowding or excessive density in State Detention Centers (Rutan) and Correctional Institutions (Lapas). This form of punishment is not in line with the importance of providing recovery for victims of crime.

A new idea emerged by putting forward the values of humanity and justice that the Indonesian people long for by prioritizing the restoration of victims' rights, known as restorative justice.

Restorative justice relies on substantive legal aspects and reason to present aspects of justice in the application of criminal law. The concept of restorative justice is actually related to the idea that to resolve a criminal law problem, it should not be resolved only through formal criminal law procedures.<sup>5</sup>

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<sup>3</sup>Jawade Hafidz. "Cyberbullying, Social Media Ethics, and Legal Regulations". *Jurnal Cakrawala Informasi*, Vol. 1 No. 1. (2021), p. 26, url: <https://itbsemarang.ac.id/sijies/index.php/jci/article/view/147/110>, accessed on March 4, 2024.

<sup>4</sup>Wahyuningsih, Sri Endah. (2013). *Principles of Individualization of Criminal Law in Islamic Criminal Law and Reform of Indonesian Criminal Law*. Second Edition. Semarang: Diponegoro University Publishing Agency, p. 80.

<sup>5</sup>Henny Saida Flora. "Restorative Justice in the New Criminal Code in Indonesia: A Prophetic Legal Study". *Rechtsidee*, Vol. 11. (December 2022), p. 8, url: <https://rechtsidee.umsida.ac.id/index.php/rechtsidee/article/view/836/800?download=pdf>, accessed on March 4, 2024.

Eglash stated that restorative justice is a form of constructive, creative action, which is determined independently with the presence of assistance and opens up opportunities for group involvement. Restorative efforts are a form of criminal justice system that focuses on efforts to restore or restore the detrimental effects of a person's actions, and actively involves all parties in the judicial process. Restorative justice is an alternative effort or opportunity aimed at the perpetrator and victim to restore their relationship, where there is an opportunity for the perpetrator to find a way to repair the damage he has done to the interests of the victim.<sup>6</sup>

The Prosecutor's Office as one of the drivers of the criminal justice system, can play an active role in trying to meet between the perpetrator of the crime and the victim to reach an agreement and can be included in the indictment. This is in line with the mandate in the provisions of Article 8 paragraph (4) of Law Number 11 of 2011 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which states that: "In carrying out his duties and authorities, the Prosecutor always acts based on the law and conscience by respecting religious norms, politeness, morality, and is obliged to explore and uphold the values of humanity that live in society, and always maintain the honor and dignity of his profession."

As an implementation of the provisions of Article 8 paragraph (4) of Law Number 11 of 2011, as an alternative effort in enforcing criminal law, the Prosecutor's Office applies a restorative justice approach, which is further regulated in the scope of the Republic of Indonesia Prosecutor's Office, restorative justice is regulated in the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The application of restorative justice by the Prosecutor's Office is basically a form of legal protection for victims of criminal acts in the field of prosecution with the discretionary authority held by the Prosecutor to determine whether or not a case can be submitted to court and what articles will be charged.<sup>7</sup>

The purpose of this study is to determine and examine legal protection for victims of criminal acts at the prosecution stage based on restorative justice values.

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<sup>6</sup>Rahmawati, Maidina, et al. (2022). Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia. Jakarta: Institute for Criminal Justice Reform, p. 35.

<sup>7</sup>Situmeang, Sahat Maruli Tua. (2020). Indonesian Legal System; Components of Legal Substance and Criminal Justice Institutions. First Edition. Bandung: Logoz Publishing, p. 112.

## 2. Research methods

The type of research used in writing this legal journal is normative juridical, which is descriptive analytical. The data used in this study is secondary data. According to the data that has been obtained, it is then analyzed using qualitative data analysis.

## 3. Results and Discussion

There is no crime without a victim, no victim without a perpetrator. The victim of a crime is not always an individual or person, but can also be a group of people, a community, or a legal entity. These victims will experience losses both material and immaterial due to the crime, so that anyone who commits a crime and harms others will be punished according to the law, namely a form of criminal prosecution through legal or criminal channels.

The prosecution efforts are carried out by the Prosecutor's Office as one of the processes in the criminal justice system in the context of enforcing criminal law. The criminal justice system as a legal effort if used by the parties, of course, requires a lot of time, energy, and costs for those seeking justice,<sup>8</sup> However, this must still be implemented for the sake of enforcing criminal law.

Law enforcement is an indicator of a state of law,<sup>9</sup> and law enforcement is one of the parameters for the success of a state of law.<sup>10</sup> Consistent law enforcement will provide a sense of security, justice and certainty.<sup>11</sup> Law enforcement is the process of making efforts to uphold or ensure that legal norms function in real terms as a guideline for behavior in social and state life.<sup>12</sup> Law enforcement activities towards upholding the law, aim to create justice, protection of human dignity, order, peace, and legal certainty in accordance with applicable

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<sup>8</sup>Andri Winjaya Laksana. "Restorative Justice in Resolving Cases of Children in Conflict with the Law in the Juvenile Criminal Justice System". *Journal of Legal Reform*, Volume IV No. 1. (January-April 2017), p. 57, url: <https://jurnal.unissula.ac.id/index.php/PH/article/view/1644>, accessed on March 4, 2024.

<sup>9</sup>Alvi Syahri. "Law Enforcement against Policies Who Breached the Code of Conduct", *Jurnal Daulat Hukum*, Vol. 3 No. 3, (September 2020), p. 313, url: <http://jurnal.unissula.ac.id/index.php/RH/article/download/11238/4399>, accessed on March 4, 2024.

<sup>10</sup>Sri Endah Wahyuningsih and Rismato. "Criminal Law Enforcement Policy on Money Laundering Prevention in the Framework of Criminal Law Reform in Indonesia". *Journal of Legal Reform*, Vol. II No. 1. (January-April 2015), p. 47, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4136/2887>, accessed on March 4, 2024.

<sup>11</sup>Anggrin Gayuh Praptiwi and Lathifah Hanim. "Effectiveness And Role Of The Food Duty Unit Of Police Region Of Central Java In Law Enforcement In The Field Of Food In The Regional Law Of POLDA Central Java". *Journal of Legal Sovereignty*, Vol. 2 No. 3. (September 2019), p. 387, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5669>, accessed March 4 2024.

<sup>12</sup>Melisa Dewi Nur Aeni and Bambang Tri Bawono. "The Death Penalty in the Perspective of Human Rights", *Proceedings of the Unissula Student Scientific Conference (KIMU)* 4. (October 28, 2020), p. 449, url: <https://jurnal.unissula.ac.id/index.php/kimuh/article/view/11643>, accessed March 4, 2024.

provisions.<sup>13</sup>The law will not by itself give birth to justice, but to achieve justice the law must be enforced.<sup>14</sup>

Prosecution, which is one of the stages in the criminal justice system, carried out by the Prosecutor's Office, is in the form of imposing a sentence on the perpetrator of a crime carried out by the Public Prosecutor, who is not only a representative of the state but also a victim of the crime. Wirjono Prodjodikoro stated that prosecution or charging a defendant before a criminal judge is to submit a defendant's case with his case files to the Judge with a request that the Judge examine and then decide the criminal case against the defendant.<sup>15</sup>

In the previous prosecution stage, the victim was represented by the Public Prosecutor and only to strengthen the evidence, usually the victim concerned was made a witness (victim). In reality, often, the Public Prosecutor does not feel that he represents the interests of the victim and acts according to his will, so that the obligation to protect and the rights of the victim are neglected.<sup>16</sup>

Prosecution by the Prosecutor's Office has so far been carried out with the aim of bringing perpetrators of criminal acts to court to be examined and sentenced by a judge, so that the rights of suspects, defendants and convicts are protected in the Criminal Procedure Code so that they are not treated arbitrarily by the authorities even though they have committed a crime.

The background of protecting the interests of criminals is because the criminal justice system is organized to try suspects/defendants and does not serve the interests of victims of crime. In addition, crime is a form of violation of the public interest (criminal law as public law), so that crime prevention becomes a monopoly of the state as a representative of the people or society. This results in victims whose rights are violated and suffer from crimes being ignored by the criminal justice system.

It is undeniable that the criminal justice system is considered effective if law enforcement can prosecute perpetrators of crimes to receive punishment, but in many cases, it turns out that the community often wants that in several cases, especially minor cases, prosecutions are not carried out by the Prosecutor's Office, because they consider such prosecutions to be unfair in relation to the

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<sup>13</sup>Meta Suryani and Anis Mashdurohatun. "Law Enforcement Against the Existence of Public Motorized Becak (Bentor) Based on Law Number 22 of 2009 concerning Traffic and Road Transportation". *Journal of Legal Reform*, Volume III No. 1. (January-April 2016), p. 26, url: <https://jurnal.unissula.ac.id/index.php/PH/article/view/1341>, accessed on March 4, 2024.

<sup>14</sup>Ibnu Suka, Gunarto and Umar Ma'ruf. "The Role and Responsibilities of the Police as Law Enforcers in Implementing Restorative Justice for Justice and the Benefit of Society". *Khaira Ummah Law Journal*, Vol. 13. No. 1. (March 2022), p. 120, url: <https://garuda.kemdikbud.go.id/documents/detail/1913046>, accessed March 4, 2024.

<sup>15</sup>Rahmad, Riadi Asra. (2019). *Criminal Procedure Law*. First Edition. First Printing. Depok: Raja Grafindo Persada, p. 65.

<sup>16</sup>Siregar, Gomgom TP and Silaban, Rudolf. (2020) *Victims' Rights in Criminal Law Enforcement*. First Edition. Medan: Manhaji Medan, p. 12.

violations of the law committed by the perpetrators and cannot accommodate the interests of the victims.

The legalistic prosecution by the Prosecutor's Office has resulted in many criminals being sentenced to criminal penalties. The end result of the sentencing is that the convict becomes a prisoner in the Correctional Institution. The impact is that the State Detention Center (RUTAN) and Correctional Institution (LAPAS) are full, which gives rise to complex problems so that the purpose of the correctional institution and its benefits cannot be felt by the community.<sup>17</sup>

Victims in this justice system are only used for the interests of the authorities in order to enforce the law, so that in essence, the victims and other parties involved in the implementation of criminal justice do not enforce the law perfectly.<sup>18</sup>

The position of the Prosecutor as a public prosecutor in the criminal justice system, in essence represents the interests of the victim of the crime. The Prosecutor, with his authority, begins the legal process in the form of prosecution against the suspect who has harmed the interests of the victim.

The prosecution carried out by the Public Prosecutor is retaliation for the perpetrator's previous actions against the victim, therefore it will be complete if in carrying out the authority of the prosecution, the Prosecutor represents the victim to be able to restore the victim's interests, both legal interests and interests in terms of restoring the victim's losses due to the criminal act.<sup>19</sup>

The very large role and function of the Prosecutor's Office in the criminal justice process, makes the Prosecutor the controller of the case handling process or *dominus litis*. As *dominus litis*, the Prosecutor is an official who has the authority to determine whether a case is worthy of being submitted to prosecution or whether the prosecution should be stopped. The Prosecutor's authority to stop or continue the prosecution process also means that the Prosecutor is free to apply which criminal regulations will be charged and which will not, in accordance with the Prosecutor's own conscience and professionalism.<sup>20</sup>

With this authority, the Prosecutor can resolve criminal cases outside the court. Through the settlement of criminal cases outside the court, the Prosecutor can

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<sup>17</sup>Waluyo, Bambang. (2017). *Design of Prosecutor's Function in Restorative Justice*. First Edition. Second Printing, Depok: Raja Grafindo Persada, p. 12.

<sup>18</sup>Ni Putu Rai Yuliantini. "The Position of Crime Victims in the Criminal Justice System in Indonesia Based on the Criminal Procedure Code (KUHP)". *Journal of Legal Communication*, Volume 1, Number 1. (February 2015), p. 84, url: <https://ejournal.undiksha.ac.id/index.php/jkh/article/view/5006>, accessed March 4, 2024.

<sup>19</sup>Rena Yulia. "Reexamining the Position of Crime Victims in the Criminal Justice System". *Mimbar Hukum*, Volume 28 Number 1. (February 2016), p. 44, url: <https://media.neliti.com/media/publications/138314-none-1d579663.pdf>, accessed on March 4, 2024.

<sup>20</sup>Waluyo, Bambang. *op. cit.*, p. 198-199.

implement the principles of restorative justice in carrying out his duties and functions as a Public Prosecutor.

As is known, in carrying out the task of prosecution, the Prosecutor is given the authority to determine whether or not a case can be submitted to court and what article will be charged, namely with the principle of opportunity, and with the principle of opportunity or the principle of the wisdom of prosecuting, the Prosecutor can stop the prosecution. This principle of opportunity is the basis for the Prosecutor to resolve criminal cases outside the court using a restorative justice approach.

A. Zaenal Farid explains that the principle of opportunity is a principle that gives the Public Prosecutor the authority to prosecute or not to prosecute unconditionally a person or corporation that has committed a crime in the public interest, while according to Andi Hamzah, the principle of opportunity is a legal principle that gives the Public Prosecutor the authority to prosecute or not to prosecute in the public interest with conditions or without conditions, a person or corporation that has committed a crime.<sup>21</sup>

The application of restorative justice by the Prosecutor's Office can be done by setting aside the prosecution of criminal cases and resolving them through mechanisms outside the court. The basis for the Prosecutor in resolving cases outside the court or setting aside prosecution is by using the principle of opportunity, as a form of attention to the interests of victims and legal protection for victims of crime.

Legal protection for victims of crime as part of protection for society can be realized in various forms, for example through the provision of restitution and compensation, medical services and legal aid. It is time to give special attention to victims, in addition to positioning themselves as witnesses who know that a crime has occurred. This is because the position of victims as legal subjects has an equal standing before the law (equality before the law).<sup>22</sup>

The handling of criminal cases carried out by the Prosecutor's Office so far has resulted in many minor cases that the public thinks do not need to be prosecuted and tried in court. As a result, the Prosecutor ignores these cases, so that the public considers the Prosecutor to be sensitive to the values of justice that exist in society. Justice is increasingly growing and developing in society. For this reason, the right of the Public Prosecutor not to prosecute is very important for the public interest, so that law enforcement carried out by the Prosecutor and the Prosecutor's Office can satisfy the public's sense of justice.

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<sup>21</sup>Alfitra. (2018). *The Elimination of the Right to Sue & Execute Criminal Sentences*. Revised Edition. Third Printing. Jakarta: Raih Asa Sukses, p. 89.

<sup>22</sup>Kenedy, John. (2020). *Protection of Witnesses and Victims (Study of Legal Protection of Crime Victims in the Criminal Justice System in Indonesia)*. First Edition. Yogyakarta: Pustaka Pelajar, p. 81.

The application of the restorative justice approach by the Prosecutor's Office is beneficial for victims and perpetrators, because through restorative justice, perpetrators can realize their mistakes and be held accountable for their actions towards the victim. Restorative justice for victims is useful in rehabilitating and providing compensation or restitution to victims, without causing hatred between the perpetrator and the victim.

Not only rehabilitation and compensation for victims, the application of the restorative justice approach by the Prosecutor's Office to resolve cases outside the court has positive legal implications for victims of crime. Settlement of cases outside the court provides an opportunity for victims to convey their demands and interests to the perpetrator. This peace agreement between the victim and the perpetrator shows satisfaction for the victim, so that they are ready to forgive the perpetrator. In addition, the compensation paid by the perpetrator to the victim can also be used as capital for the victim to rebuild their life.

The interests and desires of the victim in restorative justice are considered, as are the interests and desires of the perpetrator. The values of restorative justice give equal attention to the victim and the perpetrator, and place the victim and the perpetrator in the same position before the law. The power to obtain justice lies in the hands of the parties and the resolution efforts are also in the hands of the parties, not in the hands of the state (law enforcement), so that what is achieved is a beneficial win-win solution.

The implementation of restorative justice also brings many benefits to society and the justice system, including the creation of harmony in community life, as well as the creation of a fast, simple and cheap justice system, as well as minimizing excess capacity in Detention Centers and Correctional Institutions, so that it will save the state budget and reduce the backlog of cases in the Courts and Prosecutors' Offices.

To strengthen efforts to resolve criminal cases using a restorative justice approach by the Prosecutor's Office, a legal policy has been issued in the form of Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

In the Prosecutor's Regulation Number 15 of 2020, it is stated that the settlement of criminal cases using a restorative justice approach is carried out by the Prosecutor's Office through termination of prosecution. It is stated in Article 2 of the Prosecutor's Regulation Number 15 of 2020, that:

Termination of prosecution based on restorative justice is carried out on the basis of:

- a. Justice;
- b. Public interest;
- c. Proportionality;
- d. Criminal action as a last resort; and



e. Fast, simple and low cost.

The application of restorative justice by the Public Prosecutor by using the authority to close a case in the interests of the law, as stated in Article 3 of the Prosecutor's Regulation Number 15 of 2020. Considerations for the implementation of termination of prosecution based on the restorative justice approach by the Prosecutor's Office are stated in Article 4, Article 5 and Article 6 of the Prosecutor's Regulation Number 15 of 2020. Fulfillment of the requirements for termination of prosecution based on restorative justice is used as a consideration by the Public Prosecutor to determine whether or not the case files can be submitted to the court.

Regarding the peace procedures in the implementation of restorative justice in the Prosecutor's Office, it is regulated in Chapter IV concerning Peace Procedures, in Articles 7-14 of the Prosecutor's Office Regulation Number 15 of 2020). Regarding detention, it is regulated in Chapter V in Article 15 of the Prosecutor's Office Regulation Number 15 of 2020.

The existence of a peace agreement between the parties, then this is a victory for all parties, especially for the perpetrators and victims of crime, this is the achievement of the highest justice from a dispute resolution process. The realization of the highest justice is the main foundation for reconciliation efforts, restoring balance and bringing a sense of peace and tranquility to the perpetrators, victims, and society.<sup>23</sup>

#### **4. Conclusion**

Legal protection for victims of criminal acts at the prosecution stage is based on restorative justice values, namely the Prosecutor in representing the victim can restore the interests of the victim, both legal interests and interests in terms of recovering the victim's losses due to criminal acts. In the application of restorative justice by the Prosecutor, as *dominus litis*, he has the authority to determine the suitability of the case to be submitted to court through prosecution or the prosecution must be stopped, and with the principle of opportunity or the principle of the policy of prosecuting, the Prosecutor can stop the prosecution, as a form of attention to the interests of the victim and legal protection for victims of crime. The legal basis for the Prosecutor's Office to use the restorative justice approach is Prosecutor's Regulation Number 15 of 2020, which will ultimately realize the highest justice in a peace agreement between the victim and the perpetrator.

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<sup>23</sup>Waluyo, Bambang. *op. cit.*, p. 220-222.

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