

Implementation of Restorative Justice in Justice-Based Criminal Law Enforcement of Persecution (Case Study Number: PDM-44/Pekal/Eoh.2/09/2022)

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Abstract: *The concept of restorative justice is currently a priority in resolving criminal cases, including criminal acts of abuse. In this case, the Prosecutor's Office issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation gives hope to the public, who have often highlighted minor criminal cases that are not worthy of proceeding to trial. On the other hand, the implementation of restorative justice has many weaknesses and can even give rise to legal uncertainty. This research aims to determine and analyze the current implementation of law enforcement for criminal acts of abuse, to analyze the weaknesses in the implementation of restorative justice in current law enforcement for criminal acts of abuse and to determine the implementation of restorative justice in law enforcement for justice-based criminal acts of abuse Case Number: PDM-44/Pekal/Eoh.2/09/2022. This research uses a sociological juridical approach, the research specifications are analytical descriptive, the types of data used are primary data and secondary data. The data collection method is field study and literature study, while the data analysis method is qualitative analysis. The theories used are legal effectiveness theory, justice theory and progressive legal theory. Based on the research results, it can be concluded that the implementation of law enforcement for criminal acts of abuse is currently carried out based on the provisions of the Criminal Procedure Code and the Prosecutor's Law, and Perja Number 15 of 2020, namely if there is a peace agreement then it is resolved based on restorative justice, and if the parties are not willing then it continues with the prosecution process. . The current weakness in implementing restorative justice in law enforcement for criminal acts of abuse is the absence of statutory regulations governing the implementation of restorative justice to ensure legal certainty, the potential for criminal acts of corruption to occur, and the absence of horizontal supervision between institutions . The implementation of restorative justice in law enforcement*

for justice-based criminal acts of persecution in Case Number: PDM-44/Pekal/Eoh.2/09/2022 is that the public prosecutor offers a resolution based on restorative justice which is then agreed to by the parties. The Public Prosecutor facilitated a peace process which was attended by the perpetrator and the victim, local village officials, namely the sub-district head and RT head. After a peace agreement is reached, the public prosecutor completes the administration to terminate the prosecution.

Keywords: Abuse; Criminal; Implementation; Restorative.

1. Introduction

In the development of criminal law, the term restorative justice is known. This development is because the retributive system that has been implemented so far has not been able to fully fulfill the sense of justice for society.¹ Restorative justice is an effort to provide a restoration of relationships and redemption of mistakes that the perpetrator of a crime (his/her family) wants to do to the victim of the crime (his/her family) (peace efforts) outside the court with the intention and purpose that legal problems that arise as a result of the crime can be resolved properly by reaching an agreement and consensus between the parties.² Restorative justice is considered a new way of thinking/paradigm in viewing a crime committed by someone.³

The concept of restorative justice formally and normatively was first found in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) which regulates the settlement of cases involving perpetrators and victims through restorative justice, the purpose of which is to restore victims and protect the future of child perpetrators. After the SPPA Law, a trend was born to stop criminal cases on the basis of restorative justice including criminal acts committed by adults.⁴

Law enforcement officers are expanding the application of the concept of restorative justice not only limited to criminal cases involving minors. Likewise, the Prosecutor's Office also applies the concept of restorative justice in the process of terminating the prosecution of criminal cases through the

¹Andri Kristanto, Study of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Lex Renaissance, Volume 1 Number 1, January 2022, p. 181.

²Hanafi Arief, et al., Application of Restorative Justice Principles in the Criminal Justice System in Indonesia, Al'Adl Journal, Volume X Number 2, July 2018, p. 1.

³Anita Indah Setyaningrum and Umar Ma'ruf, Diversion as a Form of Settlement of Child Criminal Cases Through a Restorative Justice Approach by Central Java Police Investigators, Khaira Ummah Law Journal Vol. 12. No. 4 December 2017, p. 976.

⁴ Fachrizal Afandi, Restorative Justice, Some of Its Problems, <https://www.youtube.com/watch?v=zbIfiiGdLDA>, accessed November 12, 2023.

Prosecutor's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.⁵

Perja Number 15 of 2020, the Public Prosecutor (JPU) has the right to stop the prosecution of the defendant in certain cases, if the victim and the defendant have agreed to make peace, one of which is in the crime of abuse. Abuse is an act carried out by the perpetrator which is caused by several supporting factors ranging from revenge, displeasure with others, and elements of intent, this act of abuse is the most common act in the community.⁶ Crimes committed against the human body in all its actions that cause injury or pain to the body and even cause death, when viewed from the elements of its error and intent are qualified as mishandeling, which is contained in CHAPTER XX Book II, Articles 351 to 358. The ratification of Perja Number 15 of 2020 can be the hope of the community who have often highlighted minor criminal cases that are not worthy of being continued to the trial process. It is said to be unworthy, because the court costs incurred are not comparable to the value of the loss from the crime, especially if there is a desire from the victim to reconcile. If continued, it has the potential to harm public justice. Moreover, this Perja is also expected to be able to overcome the dilemma of over capacity in the courts.⁷

One of the resolutions of criminal acts of abuse through a restorative justice approach that occurred at the Pekalongan District Attorney's Office was the case with suspect DY who poured water and hit the water basin on the victim so that he was threatened with Article 351 paragraph (1) of the Criminal Code. However, with the agreement of both parties, the case could be resolved based on restorative justice, so that the prosecution was stopped. The legal basis is Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice and the Attorney General's Guidelines Number 24 of 2021 concerning General Criminal Acts.

The legal basis for resolving criminal acts through restorative justice at the prosecution level which is only based on Perja Number 15 of 2020 is considered to have no strong legal umbrella and no legal certainty. This is different from restorative justice in the juvenile criminal justice system, where there is a guarantee of legal certainty in terms of resolving cases through diversion, namely the existence of a court ruling.

⁵Persada Universitas Brawijaya, Dilemma of Restorative Justice and Termination of Criminal Cases for the Sake of Legal Interests, Online Seminar, <https://persada.ub.ac.id>, accessed November 12, 2023

⁶Hiro R. Tompodung, Meiske T. Sondakh, Nongje Rimbing Legal Study of Criminal Acts of Assault Resulting in Death, *Lex Crimen*, Volume X Number 4, April 2021, p. 65

⁷Dessy Kusuma Dewi, The Authority of the Prosecutor to Stop Prosecution for the Sake of Justice, *Dictum: Journal of Legal Studies*, Volume 9 Number 1, May 2021, p. 2.

2. Research methods

2.1. Approach Method

The approach method in this research is sociological juridical, namely a juridical research based on normative legal science while observing the implementation of these norms in society.⁸In this case, it is reviewed from the perspective of legal science and written regulations related to restorative justice and its application in resolving criminal acts of abuse at the Pekalongan District Attorney's Office.

2.2. Research Specifications

The specifications used in this study are descriptive analytical, which is to describe clearly, in detail and systematically. Descriptive research is research that aims to create a systematic picture or painting of the application of restorative justice in resolving criminal acts of abuse at the prosecution level, especially at the Pekalongan District Attorney's Office.

2.3. Data Types and Sources

The types of data used in this study are as follows:

a. Primary data

Primary data is data obtained directly from the source. This data was obtained from the results of interviews with the Pekalongan District Attorney's Office regarding the resolution of criminal acts through restorative justice.

b. Secondary data

Secondary data is data obtained through library research, namely in the form of opinions or writings of legal experts or other authorized parties and also to obtain information in the form of formal provisions or data through existing official documents. Secondary data legal materials consist of:

a. Primary legal materials

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Criminal Code
- 3) Criminal Procedure Code
- 4) Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia in conjunction with Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia.

⁸Mukti Fajar ND and Yulianto Achmad, 2013, *Dualism of Normative and Empirical Legal Research*, Yogyakarta: Pustaka Pelajar, p.47.

- 5) Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
 - b. Secondary legal materials
Secondary legal materials are taken from literature, books and papers concerning the title problem.
 - c. Tertiary legal materials
Legal materials that provide guidance on primary and secondary legal materials such as dictionaries, encyclopedias and so on.
- c. Method of collecting data

The data collection methods used were field studies and library research.

a. Field study

Field studies were conducted through interviews with public prosecutors at the Pekalongan District Attorney's Office regarding the implementation of restorative justice in resolving criminal acts of assault.

b. Literature study

Literature studies are conducted by studying literature, laws and regulations and other matters that are relevant to the problems in the research.

c. Data Analysis Methods

The data analysis method used is a qualitative analysis method, namely an analysis that is non-statistical or non-mathematical in nature. The data that has been obtained will be analyzed using legal principles, legal theories, expert opinions and existing laws and regulations, then compiled narratively in the form of a thesis research.

3. Results and Discussion

3.1. Current Implementation of Law Enforcement of Criminal Acts of Assault

The prosecution process for criminal acts of assault is a very important part of the criminal justice system, because it is a bridge that connects the investigation stage with the examination stage in court. Prosecution is also a filter or screener for a criminal case file whether it is worthy of being submitted to the court.⁹This is as stated in the Criminal Procedure Code that the purpose of prosecution is to refer a criminal case to the competent court with a request that the case be examined and decided by a judge in a court hearing.

The public prosecutor in a criminal case must clearly know all the work that must be done by the investigator from the beginning to the end, all of which must be done according to the law. The prosecutor is responsible for all treatment of the accused from the time the suspect is investigated, his case is examined, detained,

⁹Evi Hartanti, 2009, Criminal Acts of Corruption, Sinar Grafika, Jakarta, p. 48.

and finally whether the charges made by the prosecutor are legal and correct or not according to the law, so that they truly fulfill the sense of justice of the community.

The prosecution procedure based on the provisions of Article 138 of the Criminal Procedure Code is that the public prosecutor after receiving the results of the investigation and the investigator immediately studies and examines them and within seven days is required to notify the investigator whether the results of the investigation are complete or not. In the event that the results of the investigation are incomplete, the public prosecutor returns the case file to the investigator accompanied by instructions on what must be done to complete it and within fourteen days from the date of receipt of the file, the investigator must have returned the case file to the public prosecutor. Furthermore, according to Article 139 of the Criminal Procedure Code, after the public prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether the case file meets the requirements to be submitted to the court or not. In the event that the public prosecutor is of the opinion that the results of the investigation can be prosecuted, then as soon as possible prepare an indictment.

Article 140 of the Criminal Procedure Code regulates the termination of prosecution, which states that if the public prosecutor decides to terminate the prosecution because there is insufficient evidence or the incident turns out not to be a criminal act or the case is closed by law, the public prosecutor shall state this in a decision letter.

In current prosecution practices, termination of prosecution is not only based on the provisions of Article 140 of the Criminal Procedure Code, but the public prosecutor is given the authority to terminate prosecution on the basis of case resolution based on restorative justice. At the prosecution stage, the Prosecutor's Office has issued Prosecutor's Regulation (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Law enforcement against criminal acts of abuse based on restorative justice can be implemented if it meets the provisions of Article 4 of Perja Number 15 of 2020 which states the following:

- (1) Termination of prosecution based on Restorative Justice is carried out by taking into account:
 - a. the interests of victims and other legally protected interests;
 - b. avoidance of negative stigma;
 - c. avoidance of retaliation;
 - d. community response and harmony; and
 - e. propriety, morality and public order.

- (2) Termination of prosecution based on Restorative Justice as referred to in paragraph (1) is carried out by considering:
- a. subjects, objects, categories and threats of criminal acts;
 - b. background to the occurrence of the crime;
 - c. level of depravity;
 - d. losses or consequences arising from criminal acts;
 - e. costs and benefits of handling cases;
 - f. restoration back to its original state; And
 - g. there is peace between the victim and the suspect.

In addition to the reasons above, criminal cases can also be stopped based on restorative justice, if they meet the requirements as stipulated in Article 5 of Perja Number 15 of 2020, namely as follows:

- (1) Criminal cases can be closed by law and prosecution stopped based on Restorative Justice if the following conditions are met:
- a. the suspect is committing a crime for the first time;
 - b. criminal acts are only punishable by a fine or are punishable by imprisonment of no more than 5 (five) years; and
 - c. the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah).
- (2) For criminal acts related to property, in the event that there are criteria or circumstances of a casuistic nature which according to the considerations of the Public Prosecutor with the approval of the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office, prosecution can be stopped based on Restorative Justice, carried out while still paying attention to the conditions as referred to in paragraph (1) letter a accompanied by one of letter b or letter c.
- (3) For criminal acts committed against people, the body, life and freedom of people, the provisions as referred to in paragraph (1) letter c may be excluded.
- (4) In the event that a criminal act is committed due to negligence, the provisions in paragraph (1) letters b and c may be excluded.
- (5) The provisions referred to in paragraph (3) and paragraph (4) do not apply in the event that there are criteria/circumstances of a casuistic nature which, according to the considerations of the Public Prosecutor with the approval of the Head of the Branch of the District Attorney's Office or the Head of the District Attorney's Office, cannot be stopped from prosecution based on Restorative Justice.

- (6) In addition to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:
- a. there has been a restoration to the original condition carried out by the suspect in the following manner:
 - 1) return items obtained from criminal acts to the victim;
 - 2) compensate the victim for losses;
 - 3) replace costs incurred as a result of criminal acts; and/or
 - 4) repairing damage caused by criminal acts;
 - b. there has been a peace agreement between the Victim and the Suspect;
 - c. the community responded positively.
- (7) If agreed by the victim and suspect, the condition of returning to the original condition as referred to in paragraph (6) letter a may be excluded.
- (8) Termination of prosecution based on Restorative Justice is excluded for cases:
- a. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their representatives, public order and morality;
 - b. criminal acts that are subject to a minimum penalty;
 - c. narcotics crimes;
 - d. environmental crimes; and
 - e. criminal acts committed by corporations.

The provisions of the articles above are the legal basis for resolving cases of abuse based on restorative justice. Therefore, if the case received meets the requirements to be resolved through restorative justice, the public prosecutor will facilitate peace between the two parties. However, if it does not meet the requirements as stipulated in Article 4 and Article 5 of Perja Number 15 of 2020, the case will be continued to the court process.

Based on the results of research at the Pekalongan District Attorney's Office, it is known that in criminal acts of abuse, almost all were prosecuted and continued to court. For more details, the number of abuse cases received from investigators is presented in the following table:

Table 1. Number of Criminal Cases of Assault at the Pekalongan District Attorney's Office in 2022-2023

No	Year	Number of Cases	Completion	
			Restorative Justice	Prosecution

1	2022	4 things	1	3
2	2023	2 things	-	2

Source: Pekalongan District Attorney's Office, 2024

Based on the table above, it can be seen that the number of abuse cases received by the Pekalongan District Attorney's Office in 2022 was 4 cases, with 1 case resolved through restorative justice while 2 cases were prosecuted further to court. Meanwhile, the abuse cases received by the Pekalongan District Attorney's Office in 2023 were 2 cases, both of which continued to court.¹⁰This is because there is no agreement between the perpetrator and the victim. The reason for not reaching an agreement is usually because the amount of compensation requested by the victim cannot be afforded by the perpetrator of the crime of abuse. In addition, there is a desire from the victim to continue the case in the court process. In this case, the victim refuses and does not want to resolve the case peacefully, because the victim wants to provide a deterrent effect to the perpetrator so that he does not repeat his actions again. Another reason for the case not being resolved through restorative justice is because the crime committed by the perpetrator against the victim is not minor abuse. If no agreement is reached through mediation, the public prosecutor does not force mediation, so the case will be referred to the court.¹¹

Basically, the establishment of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is one form of implementing the view of restorative justice in the orientation of punishment. The concept of Restorative Justice places the victim, perpetrator, and community in seeking an agreement that results in peace between the victim and the suspect. However, in practice, peace efforts in law enforcement for criminal acts of abuse facilitated by the Public Prosecutor have failed. Therefore, the prosecution process is continued by the Public Prosecutor to be transferred to the Court.

Based on the description above, it can be seen that the law enforcement of criminal acts of abuse in the Pekalongan District Attorney's Office is still mostly resolved through the courts, namely by prosecuting and referring them to the court. Although the Attorney General's Office has issued Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the regulation has not been effective in its implementation. This can be seen from the large number of abuse cases received by the Attorney General's Office with a total of 6 cases, only 1 case was resolved through restorative justice.

¹⁰Results of an interview with Adi Wibowo as Public Prosecutor at the Pekalongan District Attorney's Office, January 25, 2024

¹¹Ibid

Based on the theory of legal effectiveness according to Soerjono Soekanto, legal effectiveness is influenced by the legal factors themselves, law enforcement factors, facilities and infrastructure factors, community factors and cultural factors.¹²In terms of legal factors, the legal basis for prosecution of criminal acts of abuse by the prosecutor's office is the Criminal Procedure Code and the Prosecutor's Office Law, while in the settlement through restorative justice it is based on Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The Criminal Procedure Code and the Prosecutor's Office Law have provided a legal umbrella and authority for public prosecutors to prosecute perpetrators of criminal acts. Although Perja Number 15 of 2020 allows the settlement of cases through restorative justice, there is no obligation for prosecutors to stop prosecution on the grounds of restorative justice.

Law enforcement of criminal acts of assault is also influenced by law enforcement officers. In this case, the Public Prosecutor has exercised his authority to prosecute the perpetrators of criminal acts of assault. In addition, the Public Prosecutor has also attempted to offer a resolution of the case through restorative justice to the parties when they see that the case has met the formal requirements for resolving the case through restorative justice. However, in practice, there are many failures in mediation efforts, because there is no agreement on compensation between the perpetrator and the victim. Therefore, it is correct if the prosecution process is continued and transferred to the court.

Facilities and infrastructure also affect the effectiveness of law enforcement for criminal acts of assault. Facilities and infrastructure include adequate human resources, budget and facilities at the Pekalongan District Attorney's Office. Based on the author's observations, the number of human resources, facilities and budgets have been adequate for the implementation of prosecution and for the settlement of cases based on restorative justice.

Community factors are usually the determining factor for the success or failure of resolving criminal acts of abuse through restorative justice. This is because the peace process involves the community itself, including the perpetrators and victims.

If the perpetrator and victim do not reach an agreement, the public prosecutor cannot force the case to be resolved through restorative justice, so the prosecution process is continued in accordance with the Criminal Procedure Code and referred to the court.

Cultural factors function to regulate so that humans can understand how they should act, do, and determine their attitudes when dealing with others. Culture is the main line of behavior that sets rules about what must be done and what is prohibited. The development of the globalization era has more or less changed

¹²Soerjono Soekanto, *Op.Cit.*, p. 8

the culture of society so that it becomes individualistic. The occurrence of criminal acts of abuse is more due to each individual thinking for their own personal interests (prioritizing their own ego), so that violence arises if there is a little friction in society.

The culture of each region is different, which also influences people's behavior. It is undeniable that in today's era, people are more individualistic and materialistic. The failure of peace efforts is mostly due to the lack of agreement between the victim and the perpetrator regarding the amount of compensation to be given to the victim. Where the victim asks for compensation in large amounts, while the perpetrator cannot fulfill it. This is because people today are more materialistic and individualistic.

3.2. The Weaknesses of Restorative Justice in Current Criminal Law Enforcement of Abuse Crimes

Current criminal law enforcement has been developed more towards a restorative justice approach, including in criminal acts of assault. The issue of restorative justice has become a hot topic in the legal world in Indonesia, even becoming a favorite for people seeking justice and for law enforcers. Whether because restorative justice is included in the 2020-2024 National Medium-Term Program Plan (RPJMN) or there is a legal need that is captured by law enforcement officers. Each law enforcement agency is competing to participate and play a role in implementing the principles of restorative justice according to their respective duties and authorities. Starting from the Police, Prosecutor's Office, Supreme Court, and Correctional Institutions.¹³

Restorative justice, although considered as one of the characteristics of law that lives in Indonesia, in positive law in Indonesia it has only been present since around 2020, especially with the existence of the Prosecutor's Regulation and the Police Regulation on restorative justice. In the Criminal Procedure Code, there is no orientation for the implementation of restorative justice because the Criminal Procedure Code emphasizes a formal, orderly judicial process, while restorative justice actually emphasizes an informal process that is expected to have a discourse between the victim and the perpetrator regarding the resolution through restorative justice that seeks to restore the victim's rights proportionally. In this case, the existence of the Prosecutor's Regulation on the resolution of crimes through restorative justice actually confirms that restorative justice is one of the orientations for resolving criminal cases that is recognized in positive law in Indonesia, although there is no affirmation in the Criminal Procedure Code.

In practice, law enforcement against criminal acts of abuse at the prosecutor's office level is often resolved through the judicial process through prosecution.

¹³Attorney General as a Symbol of Restorative Justice, <https://ptsp.kejaksaan.go.id>, accessed February 15, 2024

This is because there are still weaknesses in law enforcement through restorative justice. These weaknesses are:

1. Restorative justice has not been regulated in the law

Currently, there is no law that regulates restorative justice in resolving criminal acts. Currently, the Criminal Procedure Code as a formal legal source is not oriented towards restorative justice, and there is no specific article regarding restorative justice. Currently, the law that explicitly regulates restorative justice is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The regulations regarding the existing ones are still internal to the institution, such as in the Police institution which is guided by Perpol Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, the Prosecutor's Office Regulation of the Prosecutor's Office (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and the court issued Decree of the Director General of the General Courts (Dirjen Badilum) No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts.

At the prosecution level, the termination of prosecution of criminal cases by the Pekalongan District Attorney's Office refers to the Prosecutor's Office Law and Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The Perja also has weaknesses, namely the legal certainty contained in Article 5 paragraph (5), which states that for criminal acts in paragraphs (3) and (4) it does not apply in the event of casuistic circumstances which according to the consideration of the Public Prosecutor with the approval of the Head of the Branch of the District Attorney's Office or the Head of the District Attorney's Office cannot be terminated. Meanwhile, in this Perja itself there is no information regarding what parameters the Public Prosecutor uses in deciding whether a criminal case is casuistic or not, so if referring to this article, the size of what kind of case can or cannot be terminated based on Restorative Justice is still uncertain. Therefore, Article 5 Paragraph (5) can be a loophole for problems and multiple interpretations in the application of criminal acts in Paragraphs (3) and (4). In Perja Number 15 of 2020, there are also no provisions in the article that require the Public Prosecutor (JPU) to stop the case through restorative justice.¹⁴

Based on the description above, it is necessary to revise the Criminal Procedure Code by including provisions on restorative justice in it. The orientation to include provisions on restorative justice in the Criminal Procedure Code is necessary considering that restorative justice is part of the development of global law and can actually revive the noble values of the nation where locally, restorative justice practices have grown in society based on laws that are alive and applicable in society. Regulations on the implementation of restorative

¹⁴Aulia Parasdika, Andi Najemi, Dheny Wahyudhi, Application of Restorative Justice to Criminal Acts of Abuse, PAMPAS: Journal Of Criminal, Volume 3 Number 1, 2022, p. 81

justice in the Criminal Procedure Code will be able to provide legitimacy to give birth to a spirit of reintegration in law, because both victims and perpetrators are given the assistance they need to reintegrate into their communities.¹⁵

2. There is a possibility of corrupt practices in resolving criminal acts of abuse through restorative justice.

Internal regulations governing guidelines for handling criminal acts based on restorative justice are made by each institution, namely the Police, the Prosecutor's Office and the Court. These regulations provide ease in resolving criminal cases without focusing on punishment, but have not regulated clearly and in detail, and do not require coordination and supervision carried out across law enforcement agencies in implementing the restorative justice approach.

Given that the regulations are made internally by each institution, then in the implementation of its authority it seems that it does not provide a control obligation that allows other law enforcement agencies to monitor the handling of criminal acts committed by law enforcement agencies that handle alleged criminal acts that occur. The absence of restorative justice regulations in regulations at the level of laws, especially criminal procedure law, results in the implementation of restorative justice regulated in the internal rules of law enforcement agencies varying in each stage based on the authority held by each law enforcement agency. This is exacerbated by the absence of checks and balances as a form of transparency in the implementation of restorative justice carried out by each law enforcement agency and the low level of public knowledge regarding access to the resolution of criminal cases based on restorative justice.¹⁶

The absence of supervision of the application of the authority of law enforcement agencies horizontally (between law enforcement agencies) creates a gap for the occurrence of criminal acts of corruption, namely transactions between perpetrators and law enforcement officers. The absence of control and supervision between law enforcement agencies has the potential not only in the context of its implementation which is prone to violating the rights of citizens in obtaining services and exercising their legal rights, but also furthermore has the potential to give rise to corrupt practices/cultures that occur in the implementation of restorative justice.

The implementation of restorative justice based on the internal regulations of law enforcement agencies has the potential to create new opportunities in the context of corruption in the criminal justice system which can ultimately lead to

¹⁵Nurul Putri Awaliah Nasution, Jubair Jubair, Abdul Wahid, Restorative Justice: Ideality, Reality, and Problems in the Criminal Justice System in Indonesia, *Rechtsidee*, Vol 11, December 2022, p. 12

¹⁶Iqbal Felisiano and Amira Paripurna, Implementation of Restorative Justice and Loopholes in Corruption Practices, *Integrity: Journal of Corruption*, Vol.9 No. 1, 2023, p.144

injustice for both victims and perpetrators of crimes using the restorative justice approach.

Efforts that can be made to prevent corruption that occurs in the implementation of restorative justice are by harmonizing and standardizing procedures and rules related to case resolution through a restorative justice approach. As is known, existing regulations in the Police, Prosecutor's Office and Courts have different criteria in determining whether or not a case can be resolved using a restorative justice approach. One of the legal regulations that can accommodate the rules for implementing restorative justice is the Criminal Procedure Code.

In addition, there needs to be horizontal supervision between law enforcement agencies. So far, there has been no formal mechanism that requires supervision of the implementation of case resolution with a restorative justice approach between law enforcement agencies. Although each regulation has regulated internal supervision, this supervision still allows for abuse of power. A horizontal supervision system needs to be created by considering the confidentiality of the parties involved in the criminal case whose case is being resolved.

Based on the description above, it can be seen that there are weaknesses in the implementation of restorative justice in law enforcement of criminal acts of assault. Reviewed from the theory of legal effectiveness of Soerjono Soekanto, these weaknesses are influenced by:

1. The legal factor itself, in this case the regulation of the implementation of restorative justice is only at the level of each institution, so it has the potential not to guarantee legal certainty for the community because each institution has the potential to provide interpretations and practices according to the wishes and needs of each institution.
2. Law enforcement factors, in this case law enforcement officers, have the potential to carry out transactions in resolving cases based on restorative justice, considering the absence of supervision between institutions.
3. Community factors, in this case the community also has the potential to commit criminal acts of corruption by transacting with law enforcement officers in order to obtain compensation according to their wishes.
4. Cultural factors, in this case the implementation of restorative justice can foster a culture of corruption in society, by having transactions with law enforcement officers so that the mediation process and compensation value are in accordance with their wishes.

3.3 Implementation of Restorative Justice in Law Enforcement of Criminal Acts of Assault Based on Justice Case Number: PDM-44/Pekal/Eoh.2/09/2022

Law enforcement against criminal acts of abuse at the prosecution stage by the public prosecutor uses formal mechanisms as regulated in Articles 138 to 140 of the Criminal Procedure Code. However, the procedure for resolving cases through the courts often does not provide satisfaction for both parties (the perpetrator and the victim). In addition, the judicial process also results in a backlog of cases that drag on in their resolution.

The solution to overcome the above problems is the settlement of criminal cases through non-formal mechanisms, namely settlement through restorative justice by prioritizing the principle of deliberation. Therefore, with the expansion of the application of the concept of restorative justice, public prosecutors can apply restorative justice in resolving assault cases with the legal basis of Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The procedure for enforcing the law on criminal acts of assault is as regulated in Article 7 of Perja Number 15 of 2020, namely the Public Prosecutor offers peace efforts to the victim and the suspect which are carried out without pressure, coercion, and intimidation. The peace efforts are carried out at the prosecution stage, namely when the responsibility for the suspect and evidence is handed over (stage two).

If the parties agree to make peace, then the next action taken by the Public Prosecutor is as regulated in Article 8 of Perja Number 15 of 2020 which states that for the purposes of peace efforts, the Public Prosecutor summons the Victim legally and properly by stating the reasons for the summons. If deemed necessary, peace efforts can involve the Victim/Suspect's family, community leaders or representatives, and other related parties. The Public Prosecutor informs the intent and purpose as well as the rights and obligations of the Victim and Suspect in the peace efforts, including the right to reject the peace efforts. If the peace efforts are accepted by the Victim and Suspect, the peace process will continue. After the peace efforts are accepted by the victim and suspect, the Public Prosecutor makes a report on the peace efforts received to the Head of the District Attorney's Office or the Branch of the Head of the District Attorney's Office to be forwarded to the Head of the High Prosecutor's Office. In certain cases that receive special attention from the leadership and the community, the report is also submitted to the Attorney General in a hierarchical manner. If the peace efforts are rejected by the victim and/or suspect, the Public Prosecutor:

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

The peace process as stipulated in Article 9 of Perja Number 15 of 2020 is carried out voluntarily, by deliberation to reach a consensus, without pressure, coercion, and intimidation, where the Public Prosecutor acts as a facilitator and has no interest or connection with the case, victim, or suspect, either personally or professionally, directly or indirectly. The peace process is carried out at the Prosecutor's office unless there are conditions or circumstances that do not allow for reasons of security, health, or geographical conditions, the peace process can be carried out at a government office or other place agreed upon with a letter of order from the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office. The peace process and fulfillment of obligations are carried out within a maximum of 14 (fourteen) days from the transfer of responsibility for the suspect and evidence (stage two).

In the event that a peace process is achieved, then based on the provisions of Article 10 of Perja Number 15 of 2020, the victim and suspect make a written peace agreement before the Public Prosecutor, namely in the form of agreeing to make peace accompanied by the fulfillment of certain obligations; or agreeing to make peace without being accompanied by the fulfillment of certain obligations. The peace agreement is signed by the victim, suspect, and 2 (two) witnesses with the knowledge of the Public Prosecutor. In the event that a peace agreement is accompanied by the fulfillment of obligations, the Public Prosecutor makes a report of the peace agreement and a memorandum of opinion after the fulfillment of obligations is carried out. In the event that a peace agreement is not accompanied by the fulfillment of obligations, the Public Prosecutor makes a report of the peace agreement and a memorandum of opinion. In the event that the peace agreement is unsuccessful or the fulfillment of obligations is not carried out in accordance with the peace agreement, the Public Prosecutor:

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

Article 11 of Perja Number 15 of 2020 states that if the peace agreement fails due to disproportionate demands for fulfillment of obligations, threats or intimidation, sentiment, discriminatory treatment or harassment based on ethnicity, religion, race, nationality, or certain groups against suspects who act in good faith can be taken into consideration by the Public Prosecutor in carrying out prosecution. These considerations also apply in cases where the fulfillment of obligations is not carried out according to the peace agreement due to economic factors or other reasons accompanied by the good faith of the suspect. These considerations include:

- a. transfer of cases with a short examination procedure;
- b. mitigating circumstances in filing a criminal claim; and/or

- c. filing of criminal charges with conditions. in accordance with the provisions of laws and regulations, while still paying attention to the Guidelines for Criminal Charges for General Criminal Cases.

In the event that a peace agreement is reached, according to Article 12 of Perja Number 15 of 2020, the Public Prosecutor reports to the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office by attaching the minutes of the peace agreement and a memorandum of opinion, then the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office requests approval to terminate the prosecution based on Restorative Justice from the Head of the High Prosecutor's Office. The request for approval is submitted within a maximum of 1 (one) day after the peace agreement is reached. The Head of the High Prosecutor's Office determines the attitude of approving or rejecting the termination of the prosecution based on Restorative Justice in writing accompanied by considerations within a maximum of 3 (three) days from the time the request is received. In the event that the Head of the High Prosecutor's Office approves the termination of the prosecution based on Restorative Justice, the Head of the District Prosecutor's Office Branch or the Head of the District Prosecutor's Office as the Public Prosecutor issues a Letter of Determination to Terminate Prosecution within a maximum of 2 (two) days from the time the approval is received which contains the reasons for terminating the prosecution based on Restorative Justice while also determining the status of evidence in the criminal case in question. Determination of the status of evidence is carried out in accordance with the provisions of laws and regulations. The Letter of Decision on Termination of Prosecution is recorded in the Register of Cases at the Prosecution Stage and the Register of Termination of Prosecution and Case Waiver for the Public Interest. In the event that the Head of the High Prosecutor's Office rejects the termination of prosecution based on Restorative Justice, the Public Prosecutor submits the case files to the court.

Peace efforts must not be subject to pressure, if in the peace process there is pressure, coercion, and intimidation from the victim, suspect, and/or other parties, then according to Article 13 of Perja Number 15 of 2020 the Public Prosecutor stops the peace efforts or peace process. The termination of the peace efforts or peace process is carried out by the Public Prosecutor in the following ways:

- a. stating that the peace efforts or peace process were not achieved in the minutes;
- b. make a note of opinion that the case is referred to the court, stating the reasons; and
- c. submit case files to court

Based on the results of research at the Pekalongan District Attorney's Office, after the formal provisions for the requirements for terminating prosecution

based on restorative justice have been fulfilled, the Public Prosecutor who has been appointed based on the Letter of Appointment (P16) will prepare several administrative matters for its implementation and as material to be reported to the leadership, namely:¹⁷

1. Note of Opinion on Case Research Results (SOP FORM 07)
2. Order to Facilitate Peace Process Based on Restorative Justice (RJ-1)
3. Summons Letter for Victim/Suspect/Parent or Guardian of Victim or Community Member (RJ-2)
4. Notification of Settlement of Cases Outside the Court Based on Restorative Justice (RJ-3)
5. Peace Effort Opinion Note (RJ-4)
6. Peace Process Opinion Note Successful/Accepted (RJ-5)
7. Peace Efforts Opinion Note Successful (RJ-7)
8. Peace Process Opinion Note Successful (RJ-8)
9. Memorandum of Opinion on the Implementation of Peace Implementation (RJ-9)
10. Minutes of Peace Implementation (RJ-10)
11. Peacemaking Success Report (RJ-11)
12. Request for Dismissal of Prosecution (Kejari) (RJ-12)
13. Request for Dismissal of Prosecution (Kejati) (RJ-13)
14. Letter of Decision to Terminate Prosecution (Kejari) (RJ-14)
15. Notice of Termination of Prosecution Based on Restorative Justice (RJ-15)

The implementation of restorative justice in law enforcement of criminal acts of abuse is carried out by the appointed Public Prosecutor and acts as a facilitator to make peace between the suspect and the victim. The peace process is carried out in the following stages:¹⁸

1. At the beginning of the meeting, the Public Prosecutor as a facilitator provided an explanation regarding the intent and purpose of the meeting in the context of peace carried out by the Prosecutor's Office, namely regarding the consequences if the parties agree or disagree to peace, including regarding the time period for the peace process. After that, the parties were asked to provide their opinions by stating that they understood and agreed to the peace process offered by the Public Prosecutor and agreed to resolve the case through a restorative justice approach (RJ-7)

¹⁷Interview with Adi Wibowo as Public Prosecutor of the Pekalongan District Attorney's Office, January 25, 2024

¹⁸Ibid

2. The Public Prosecutor as a facilitator provides an opportunity for the suspect and the victim to forgive each other, then the peace agreement is stated in the Peace Report (RJ-8) and Peace Report (RJ-9).
3. All parties involved put their signatures on the minutes of the implementation of the peace agreement as evidence of the peace that has been completed. (RJ-10)
4. After an agreement is reached, the Public Prosecutor then makes a Report on the Successful Implementation of Peace. (RJ-11)
5. The peace agreement through a restorative justice approach has been implemented in accordance with applicable regulations and continued by issuing a Letter of Decision on Termination of Prosecution signed by the Head of the Pekalongan District Attorney's Office which is equipped with complete administration and documentation of the implementation of peace activities.

To find out the implementation of restorative justice in enforcing the law on criminal acts of persecution based on justice, the following is a description of a case example in case Number PDM-44/Pekal/Eoh.2/09/2022 with suspect DY. The chronology of the case is that the victim (WKJ) came to DY's house with his friend with the aim of collecting motorcycle installments, because DY felt emotional because when the victim collected the money, according to DY, it was impolite and seemed arrogant. Finally, DY took a basin/water container, then poured it on the victim 2 (two) times so that the victim was soaked. After that, the victim continued to talk, making the suspect even more emotional and then hit the basin towards the victim WKJ 1 time and hit the victim's cheek so that the suspect's actions were threatened with Article 351 paragraph (1) of the Criminal Code.

The facts revealed from the results of the examination are as follows:

1. Witness testimony
 - a. The victim witness (WKJ) gave information that the cause of the assault was because the perpetrator was late.paid the motorcycle installment at the Wom Finance witness office for 2 installments and the victim asked the perpetrator to pay it back, there was an argument which then the victim was doused with water 3 times but missed 1 time, then hit with a bucket and chased while being shouted at as "thief". After that the victim went to the hospital for a medical examination and reported the incident to the police.
 - b. Witness UK, gave the same statement as the victim's statement, because the witness was a friend of the victim who came to the perpetrator's house.
 - c. Witness BDP, is the Branch Collection Had/Head of Collection Division at WOM Finance Bentengan. During the examination, he gave information that the cause of the incident of abuse against WKJ was because the

perpetrator felt emotional with the way the victim collected the installments. The abuse was carried out by being doused with water how many times the witness did not know for sure, but when the witness arrived at the perpetrator's house and WKJ was already soaking wet, and the witness did not know how many times he was hit, but the witness saw claw marks on the left side of his neck and bruises on the right cheek. The witness did not see the perpetrator directly committing the alleged criminal act of abuse against the victim, but was told by the victim that the perpetrator carried out the abuse using his bare hands and using a tool in the form of a basin. After the incident of abuse, the witness told the victim to leave the perpetrator's house.

2. Suspect's statement

The suspect admitted to assaulting the victim by pouring water and hitting him using a plastic basin/water container on his right cheek. The reason the suspect assaulted the victim was because the suspect felt emotional because at that time the victim was collecting motorcycle installments in a way that the suspect thought was impolite and seemed arrogant, from there the suspect felt emotional, finally the suspect took a plastic basin/water container that was already filled with water, then the suspect splashed the victim 2 (two) times so that he was soaked, then the suspect hit the basin and hit the victim's right cheek.

3. Letter

By referring to the provisions of Article 187 letters a, b and d of the Criminal Procedure Code, in this case there is written evidence, namely: the existence of an Examination Report made by the Police Investigator No. LP/B/113/VII/2022/SPKT/Pekalongan City Police/Central Java Police.

4. Evidence

- 1 (one) pair of black trousers;
- 1 (one) blue and white shirt, CHIS brand;
- 1 (one) white and blue basin.

5. Proof:

Based on the facts, the proof of the elements of the criminal act charged is the charge of Article 351 Paragraph (1) of the Criminal Code, namely "Assault is punishable by a maximum prison sentence of two years and eight months or a maximum fine of four thousand five hundred rupiah". Fulfillment of the elements of Article 351 paragraph (1) of the Criminal Code is:

- a. Whoever, what is meant here is the suspect DY
- b. Intentionally, where the perpetrator intentionally committed assault on the victim, namely WKJ, with his bare hands so that the victim felt shocked, soaked and his face hurt, after the incident the victim checked the wounds

that the witness suffered at Bendan Hospital to get medical treatment, and then the doctor gave him medicine and told him to go home, and the victim felt difficulty in carrying out activities because of the bruises that the victim experienced on his face and could not carry out activities as usual.

- c. Causing unpleasant feelings/suffering or pain/injury, namely the suspect has intentionally committed violence against the victim resulting in the victim feeling shocked, soaked and having a sore face, after committing the act. After being examined by a doctor, he was given medicine and then told to go home. The victim had difficulty carrying out activities because of the bruises on his face and could not carry out activities as usual.
- d. Damaging the health of others, as a result of the suspect's actions, the victim felt shocked, soaked and his face felt sore, after the incident the victim could not carry out normal activities or tasks and had to rest a lot.

Based on the descriptions as above, the defendant has been legally and convincingly proven guilty of committing the crime of assault as regulated in Article 351 paragraph (1) of the Criminal Code. Furthermore, the Public Prosecutor in this case facilitated the resolution of the case through restorative justice. The legal basis for resolving the case based on restorative justice is:

- a. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;
- b. Attorney General's Guidelines Number 24 of 2021 Concerning Handling of General Criminal Cases;
- c. Order for Appointment of Public Prosecutor for Settlement of Criminal Case Number: PRINT-52/M.3.12/Eoh.2/10/2022 dated October 10, 2022;
- d. Letter of Order to Facilitate the Peace Process Based on the Restorative Justice Process Number: PRINT-774/M.3.22/Eoh.2/10/2022 dated October 10, 2022.

The public prosecutor is of the opinion that the requirements for resolving the case based on restorative justice in the case have been met, so that efforts can be made to terminate it based on restorative justice. The fulfillment of these requirements is as follows:

- a. The suspect committed a crime for the first time;
- b. The crime committed by the suspect is punishable by imprisonment of no more than 5 (five) years;
- c. The value of the loss incurred as a result of the criminal act committed by the Suspect is no more than IDR 2,500,000 (two million five hundred thousand rupiah).
- d. There has been a peace agreement between the victim and the suspect;
- e. The community responded positively.

In case number PDM-44/Pekal/Eoh.2/09/2022, the settlement was carried out based on restorative justice by considering the following matters:

- a. The suspect is a mother who has 4 (four) small children.
- b. The suspect's poor economic condition has resulted in his inability to pay the motorbike credit installments which triggered this criminal incident.
- c. The suspect is seen as a good person in society and has never committed a crime;
- d. The losses suffered by the victim due to the actions of the suspect have been resolved properly by the suspect by replacing all of his medical expenses.
- e. The suspect and the victim have forgiven each other and agreed to make peace and hope that this case will not be continued to court.
- f. In this case, a peace process can be implemented.

The steps taken by the public prosecutor in implementing restorative justice in the abuse case are as follows:

1. By fulfilling the requirements for the case to be terminated based on restorative justice, the Public Prosecutor as facilitator summons the parties consisting of:
 - a. MR as the Head of Kauman Village, East Pekalongan District, Pekalongan City with a summons letter Number B-300/M.3.12/Eoh.1/ 10/2022 dated October 7, 2022
 - b. IY as the Head of RT.005/002 Kuman Village, East Pekalongan District, Pekalongan City with a summons letter Number B- 1301/M.3.12/Eoh.1/10/ 2022 dated October 7, 2022
 - c. WK as the victim with summons letter Number B-1299/M.3.12/Eoh.1/0/2022 dated October 7, 2022
 - d. DY as a suspect with summons letter Number B-1297/M.3.12/Eoh.1/10/2022 dated October 7, 2022
 - e. NY as the suspect's husband with summons Number B-1298/M.3.12/Eoh.1/10/2022 dated October 7, 2022
2. The peace efforts were carried out on Monday, October 10, 2022 at the Adhiyaksa Peace House, Jl. Kurinci No. 02, Podosugih Subdistrict, West Pekalongan District, Pekalongan City, with the Public Prosecutor as Facilitator being Jasa M, Prosecutor SD and Prosecutor AW. The Public Prosecutor as facilitator explained the intent and purpose of the peace efforts, the consequences if the parties agree to carry out a peace process with a time limit.
3. The peace process was carried out on Monday, October 10, 2022 at the Adhiyaksa Peace House, Jl. Kurinci No. 02, Podosugih Subdistrict, West

Pekalongan District, Pekalongan City with the Public Prosecutor as the Facilitator.

The results achieved in the peace process for the criminal act of abuse committed by suspect DY against victim WK are as follows:

1. The suspect and victim agreed to the peace process offered by the Public Prosecutor as a facilitator, and agreed to carry out the peace process on Monday, October 10, 2022 at the Adhiyaksa Peace House, Jl. Kurinci No. 02, Podosugih Subdistrict, West Pekalongan District, Pekalongan City
2. The result of the peace agreement that was agreed upon by the suspect and the victim was that the suspect DY admitted his actions and apologized to the victim and was willing to bear the medical costs for the injuries suffered by the victim.
3. In the event that the suspect is unable to implement the peace agreement within 14 days after the transfer of stage II, the Public Prosecutor as Facilitator shall state that the peace process has not been successfully implemented in a memorandum of opinion and report to the Head of the Pekalongan City District Attorney's Office in preparation for the transfer of the case to the court.

4. Conclusion

The implementation of law enforcement for criminal acts of assault is currently carried out based on the provisions of the Criminal Procedure Code and the Prosecutor's Office Law, and Perja Number 15 of 2020. In the event that the case received meets the formal requirements for settlement based on restorative justice, the public prosecutor will offer a case settlement based on restorative justice and the public prosecutor will facilitate peace efforts for both parties. However, if the parties involved are unwilling or there is no agreement, the prosecution and transfer of the case to the court will continue. So far, law enforcement for criminal acts of assault at the Pekalongan District Attorney's Office has almost all been carried out by prosecution and only one case has been resolved based on restorative justice. This is because there is no peace agreement from the suspect or victim. There are weaknesses in the implementation of restorative justice in the current law enforcement for criminal acts of assault, namely the absence of regulations at the level of laws governing the implementation of restorative justice, where currently the regulations for the implementation of restorative justice are still internal to each institution, namely the Police, Prosecutor's Office and Court. The absence of integrated regulations can lead to legal uncertainty because in practice it will be interpreted according to the wishes and needs of each institution. In addition, the absence of horizontal supervision between institutions has the potential for corruption, where there are transactions between law enforcement officers and parties involved in the crime. This condition can foster a culture of corruption within the scope of criminal justice in Indonesia. The implementation of restorative justice

in enforcing the law on criminal assault based on justice in Case Number: PDM-44/Pekal/Eoh.2/09/2022 is that the public prosecutor offers a settlement based on restorative justice which is then agreed to by the parties. Furthermore, the Public Prosecutor facilitates a peace process at the Adhiyaksa Peace House which is attended by the perpetrator and the victim, local village officials, namely the village head and the RT head. After the peace agreement, the public prosecutor completes the administration for the termination of the prosecution.

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