

Restorative Justice Policy in Handling General Criminal Acts by the Prosecutor's Office Based on Perja 15 of 2020

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Abstract. *The objectives of the research in this study: 1) to find and analyze how the restorative justice policy in handling general criminal acts by the Prosecutor's Office based on Perja 15 of 2020; 2) to find and analyze what are the obstacles and solutions to the restorative justice policy in handling general criminal acts by the Prosecutor's Office based on Perja 15 of 2020. This study uses a sociological legal approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems were analyzed using legal policy theory and Restorative Justice Theory. The results of the study concluded that: 1) The RJ policy in handling general criminal acts by the Prosecutor's Office based on Perja 15 that restorative justice is the settlement of criminal cases carried out without going through the criminal justice system, but by involving victims, perpetrators and third parties as mediators which are carried out through deliberation to achieve a win-win solution. The settlement of traffic accident criminal cases through restorative justice has actually met. Article 3 of the Regulation of the Indonesian Attorney General No. 15 of 2020 states that the public prosecutor has the authority to close a case in the interests of the law. 2). Obstacles Obstacles in the application of Restorative Justice in resolving cases at the Prosecutor's Office include: a) Limited time. b) One party does not want to reconcile; c) The amount of compensation is so large that it is difficult for the perpetrator or family to fulfill; d) Lack of legal socialization in the community. Then, the inhibiting factor that often occurs in society is the large amount of compensation set by the victim or family so that it is difficult for the perpetrator or family to fulfill, this means that the general public does not understand the essence of the principle of Restorative Justice and the lack of legal socialization in the community which is often ignored by law enforcement as the most important inhibiting factor in the application of Restorative Justice.*

Keywords: *Criminal; Justice; Policy; Restorative.*

1. Introduction

Criminal Justice System is a criminal justice system in the context of law enforcement. This system is a term that indicates a working mechanism in overcoming crime using a system approach. According to Remington and Ohlin, the definition of the system itself is interpreted as an implication of an interaction process that is prepared rationally and maintains efficiency for certain results with all its limitations.¹The criminal justice system includes the stages of investigation, prosecution, trial and execution of the verdict. Restorative justice itself is an effort to resolve criminal cases without trial and imprisonment, but restorative justice seeks to return to the situation before the crime and prevent criminal acts by prioritizing deliberation by both parties accompanied by law enforcement and upholding the values of justice.

In its implementation, the regulation is also supported by the leadership policy which is complementary in nature and is evaluated for its improvement. This is solely done for optimization so that the termination of prosecution based on restorative justice is in line with the legal objectives for justice, certainty, and benefits considered by the Public Prosecutor proportionally and with full responsibility.²Implementation of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and in order to accommodate the idea of balance which includes a mono dualistic balance between public/community interests and individual/personal interests, a balance between the idea of victim protection/interests and the idea of criminal individualization, a balance between objective elements/factors (actions/outward) and subjective (inner person/inner attitude), a balance between formal and material criteria, and a balance between legal certainty, flexibility/elasticity/flexibility and justice.

The Attorney General's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution carried out for justice, benefit and legal certainty while still respecting the values and principles of law in laws and regulations. As a government institution that carries out prosecution duties, prosecutions carried out by the Attorney General's Office need to be directed in order to follow the re-orientation of criminal law reform, considering the level of blameworthiness, the perpetrator's mental attitude, protected legal interests, losses or consequences incurred, and paying attention

¹Romly Atmasasmita, 2010, *Contemporary Criminal Justice System*, Kencana Prenada Media Group, Jakarta, p. 2

²Circular Letter Number 01/E/EJP/02/2022 Concerning the Implementation of Termination of Prosecution Based on Restorative Justice

to the sense of justice of the community including local wisdom.³

Constitutionally, the Prosecutor's Office is one of the bodies that functions to exercise judicial power as regulated in Article 24 Paragraph (1) of the 1945 Constitution, namely an independent power to carry out justice in order to uphold law and justice. Based on this, to strengthen the position of the Prosecutor's Office, Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia was enacted as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Office Law).

The Prosecutor's Office in carrying out its functions related to judicial power as regulated in Article 1 number 1 of the Prosecutor's Office Law is positioned as a government institution that exercises state power in the field of prosecution and other authorities based on the Law. What is meant by prosecution as regulated in Article 1 number 3 of the Prosecutor's Office Law in conjunction with Article 1 number 7 of the Criminal Procedure Code is the action of the public prosecutor to refer a case to the competent district court in the case and according to the method regulated in criminal procedure law with a request that it be examined and decided by a Judge in a court hearing.

The prosecutor as public prosecutor also has the authority to stop the prosecution of a criminal case as regulated in Article 140 Paragraph (2) letter a of the Criminal Procedure Code which stipulates that if the Public Prosecutor decides to stop 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. Whereas in the case of peace, it is not a truly final decision because at a certain time one of the parties can withdraw the peace decision. Thus, the peace and justice intended and realized through restorative justice have not fully obtained justice and legal certainty.

Implementation Termination of prosecution has so far been the main priority in every termination of prosecution settlement carried out by the Attorney General's Office. This can be seen from the data found by the author, that the Attorney General's Office has terminated 302 cases based on restorative justice, 222 cases in 2020 and 80 cases from January to August 2021 consisting of 73 cases of people and property, and 7 cases related to state security and public order and other general crimes, 4 in 2022. The birth of Perja Number 15 of 2020 provides a new breath in resolving criminal cases that are more equitable. In addition, the duties and authorities of the Attorney General's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice, and truth based on law and

³Accessed from the internet: https://www.Kejaksaan.go.id/profil_Kejaksaan.php?id=1 accessed on August 28, 2024

respect religious norms, decency, and morality, and must explore the values of humanity, law and justice that live in society. Furthermore, termination of prosecution based on restorative justice is also a form of prosecutorial discretion by the public prosecutor. This discretion will look at and balance the applicable rules with the legal objectives to be achieved.⁴As stated in the provisions of Article 2 of Perja Number 15 of 2020, the termination of prosecution based on restorative justice is carried out based on justice, public interest, proportionality, criminal law as a last resort, and fast, simple and low cost. The issuance of the Perja on Termination of Prosecution can basically be considered a legal breakthrough, because the essence of the termination of prosecution requires peace between the victim and the perpetrator of the crime. This is certainly in contrast to the provisions on the elimination of the authority to prosecute criminally as regulated in Articles 76 of the Criminal Code to 85 of the Criminal Code.

Based on the description above, the author is interested in conducting research with the title "Restorative Justice Policy in Handling General Criminal Acts by the Prosecutor's Office Based on Perja 15 of 2020".

This study aims to find and analyze how the restorative justice policy in handling general criminal acts by the Prosecutor's Office based on Perja 15 of 2020, analyze what are the obstacles and solutions to the restorative justice policy in handling general criminal acts by the Prosecutor's Office based on Perja 15 of 2020.

2. Research Methods

This study uses a sociological juridical approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using legal policy theory and Restorative Justice Theory.

3. Results and Discussion

3.1. Restorative Justice Policy in Handling General Criminal Acts by the Prosecutor's Office Based on Perja 15 of 2020

The Attorney General's Office of the Republic of Indonesia as a government institution in the structure of the power of law enforcement and justice agencies is authorized to exercise state power in the field of prosecution. In carrying out prosecution, the prosecutor acts for and on behalf of the state and is responsible according to the hierarchical channels. In carrying out prosecution, the prosecutor must have valid evidence, for the sake of justice and truth based on the Almighty God. As the executor of his role, in carrying out his duties and authorities, the prosecutor acts based on the law and respects religious and moral norms, and is

⁴<https://rri.co.id/nasional/Hukum/1172852/jaksa-agung-penghentian-penuntutan-based-keadilan-restoratif> accessed on August 28, 2024

obliged to explore the values of humanity, law, and justice that live in society.

The Prosecutor's Office, as the party with authority in the prosecution stage, is expected to provide a deterrent effect on the perpetrator in making the indictment with the punishment imposed by the Public Prosecutor while still fulfilling the perpetrator's rights.⁵In Perja No. 15/2020, it contains the authority of the Prosecutor to stop prosecution based on restorative justice as a breakthrough in resolving criminal acts. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing a win-win solution, and emphasizing that the victim's losses are replaced and the victim forgives the perpetrator of the crime.

Currently, the practice of all law enforcement institutions in Indonesia, namely the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights of the Republic of Indonesia have adopted the principle of restorative justice as one way to resolve a criminal case. In 2012, these four institutions made a joint agreement, namely the Memorandum of Understanding between the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police Number 131/KMS/SKB/X/2012, Number M-HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Adjustment of the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Implementation of Restorative Justice.⁶

The principle of restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of implementing policies (Supreme Court regulations and Supreme Court circulars), but its implementation in the Indonesian criminal justice system is still not optimal. The Supreme Court regulations and Supreme Court circulars are:⁷

1. Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code
2. Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014

⁵Ishaq, Basics of Legal Science, Sinar Grafika, Jakarta, 2009, p. 9

⁶Covid 19 in the Framework of Communication. IAIN Parepare Nusantara Press.

⁷Implementation of restorative justice in the general court environment, Attachment to the Decree of the General Court of the General Court Number 1691/DJU/SK/PS00/12/2020, 22 December 2020 concerning the Implementation of Restorative Justice in the General Court

concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.

3. Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law.

4. Circular of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions

5. Circular of the Chief Justice of the Republic of Indonesia No. 3 of 2011 concerning the Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation Institutions.

After the Memorandum of Understanding was agreed upon, the Supreme Court, the Attorney General's Office, and the Indonesian National Police made further regulations for each institution as guidelines for resolving criminal cases with the principle of restorative justice, including:⁸

1) Circular Letter of the Chief of the Republic of Indonesia National Police Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases (SE Kapolri 8/2018”);

2) Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation (Perkapolri 6/2019);

3) Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Regulation of the Attorney General 15/2020; and Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice (Kepdirjenbadilum 1691/2020).

Based on the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja No. 15 of 2020, it clearly contains how restorative justice seeks to involve the perpetrator, victim, and community in the process of resolving the criminal case. In the implementation of the restorative justice approach based on the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020, it can be seen that the regulation emphasizes the peace agreement between the perpetrator and the victim and how the procedural law then recognizes the existence of the peace agreement as an agreement that has legal force. As a concrete infestation of a paradigm of punishment not for revenge but as recovery, the Attorney General's Office took a strategic step by issuing the

⁸ibid

Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Justice.

Restorative which was enacted right on the Adhyaksa Bhakti Day (HBA) July 22, 2020. In other matters, the Indonesian Attorney General's Regulation No. 15 of 2020 also contains restrictions on the implementation of restorative justice so that it is not only interpreted as a peace agreement because if so, the ongoing process will actually be trapped in only carrying out procedural functions so that truth (especially material truth) and justice cannot be achieved.⁹

This regulation is also considered as a legal substance formulated to eliminate the rigid positivistic understanding by prioritizing progressive law labeled restorative justice. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state and not retaliation.¹⁰

Based on the provisions of Article 4 of Perja Number 15 of 2020, the authority of the Public Prosecutor in Terminating Prosecution based on Restorative Justice is carried out by considering: a. the interests of the Victim and other protected legal interests; b. avoiding negative stigma; c. avoiding retaliation; d. community response and harmony; and e. propriety, morality, and public order. In addition to the above, the Public Prosecutor in Terminating Prosecution based on Restorative Justice is also carried out by considering:

- a. subjects, objects, categories and threats of criminal acts;
- b. the background to the occurrence of the crime;
- c. level of reprehensibility;
- 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.

The existence of Perja No. 15/2020 which gives the Prosecutor the authority to stop prosecution based on restorative justice is a breakthrough in resolving criminal acts. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace

⁹Mahendra, Adam Prima, "Penal Mediation at the Investigation Stage Based on Restorative Justice", *Jurnal Jurist-Diction*, 3(4), 2020, p. 1153–1178.

¹⁰*Ibid*

by prioritizing a win-win solution, and emphasizing that the victim's losses are replaced and the victim forgives the perpetrator of the crime. Normatively, the criminal justice system is intended for law enforcement. This system is an operational tax on statutory provisions in order to overcome crime to produce legal certainty. The implementation of social defense can be facilitated by the criminal justice system in order to realize better social welfare. Social aspects based on benefits (expediency) should be considered by the criminal justice system.

This criminal justice system is intended to reduce recidivism and crime in the short term. While in the long term, the criminal justice system is intended to create better social welfare in the future. If these goals cannot be achieved, then there is an irregularity in the justice system that has been implemented. The problem of implementing human rights is an issue that is a serious demand for the state to respect, protect, defend and guarantee the basic rights of citizens and residents without discrimination. Human rights protection is always related to how far the implementation of the state government in paying attention to the rights of citizens (civil rights). Therefore, paying attention to human rights principles in the implementation of the legal system is an indicator that can be used as a reference is the availability of state instruments in protecting and respecting human rights.¹¹ Since 2012, restorative justice has been echoed as a form of fulfillment of criminal justice that has been. This policy is actually based on the understanding that restorative justice is a different approach to criminal law. In addition to imprisonment which has consequences for the family of the prisoner, the current system is considered not to relieve or heal the victim. Moreover, the legal process takes a long time. On the contrary, in the restorative model, what is emphasized is conflict resolution. The idea of restorative justice has also been accommodated in the Draft Criminal Code, namely the introduction of an alternative criminal system in the form of social work sentences and supervision sentences.

In the development of criminal law, the term restorative justice is known. This development is because the retributive system that has been applied so far has not been able to fully fulfill the sense of justice for the community. Criminal law according to retributive justice is an orientation of justice aimed at violators and solely because of their violation of the law, violation of criminal law is a violation of the rights of the state so that the victim of the crime is the state, so that the concept of retributive justice does not provide a place for protection for victims. Given that victims of criminal acts can not only experience material losses but are very likely to experience immaterial losses. The definition of restorative justice is an effort to provide a restoration of relationships and redemption of mistakes that the perpetrator of the crime (his family) wants to do to the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems arising from the occurrence of the criminal act can be resolved properly

by reaching an agreement and agreement between the parties.¹¹

It is expected that with the implementation of restorative justice, namely this justice is a process where all parties involved in a particular crime together solve the problem of how to handle the consequences in the future. In other cases, the application of restorative justice to resolve traffic accident cases as part of the fulfillment of human rights. The application of restorative justice as part of the fulfillment of human rights in resolving criminal cases, is based on several policies, namely: first, criticism of the criminal justice system that does not provide opportunities, especially for victims (criminal justice system that disempowers individuals); second, eliminating conflict, especially between perpetrators and victims and society (taking away the conflict from them); third, the fact that the feeling of helplessness experienced as a result of a crime must be overcome in order to achieve improvement (in order to achieve reparation).¹²

3.2. Obstacles and Solutions to Restorative Justice Policy in Handling General Criminal Acts by the Prosecutor's Office Based on Perja 15 of 2020

The Attorney General's Office of the Republic of Indonesia issued a legal product on Termination of Prosecution Based on Restorative Justice, namely the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, the regulation gives the Public Prosecutor the right to stop prosecuting a case against a defendant in certain cases, if the parties have agreed to reconcile. The Attorney General's Office of the Republic of Indonesia is a state institution that exercises state power, especially in the field of prosecution. As an authorized body in the field of law enforcement and justice, the Attorney General's Office is led by the Attorney General who is elected by and responsible to the President. Referring to Law Number 16 of 2004 which replaced Law Number 5 of 1991 concerning the Attorney General's Office of the Republic of Indonesia. The Attorney General's Office as a law enforcement institution is required to play a greater role in upholding the supremacy of law, protecting public interests, enforcing human rights and eradicating Corruption, Collusion and Nepotism.

Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 explains the meaning of restorative justice "Restorative justice is the settlement of criminal cases by involving the Perpetrator, Victim, Family of the Perpetrator/Victim and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation". This regulation seeks to provide a second chance to perpetrators of minor crimes who have committed a crime for the first time with a criminal penalty of no more than 5 (five) years in prison and the value of evidence resulting from the crime of no more

¹¹Hanafi Arief, et al., "Implementation of Restorative Justice Principles in the Criminal Justice System in Indonesia", *Al'Adl Journal*, Volume X Number 2, July 2018, p. 1

¹²Ivo Aertsen, et, al, "Restorative Justice and the Active Victim: Exploring the Concept of Empowerment", *TEMIDA Journal*, 2011, p. 8-9.

than IDR 2,500,000 (two million five hundred thousand rupiah) and other conditions as referred to in this regulation. Society is a social creature that is close to problems of disputes, quarrels, feuds, or various kinds of conflicts between individuals, groups, families, ethnicities, even between nations that result in minor or serious criminal acts. Criminal acts are social conflicts that can occur as a result of negative human social interactions. According to Moeljatno, criminal acts are acts that are prohibited by a legal rule, the prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the rule. Wirjono Prodjodikoro also stated that criminal acts are violations of norms in three areas, namely civil law, constitutional law and government administrative law which are responded to by lawmakers with criminal penalties.

Regulations related to Termination of Prosecution based on Restorative Justice through the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, should better accommodate every criminal case with a criminal threat of less than and above 5 (five) years and a loss value that is not only limited to IDR 2,500,000 (two million five hundred thousand rupiah). In addition, it is hoped that there will be synergy or understanding between the Attorney General's Office and the Indonesian Police and other related institutions together to make regulations that are not only sufficiently regulated by regulations at the level of the Attorney General's Regulation (Perja) but by forming joint regulations regarding the implementation of restorative justice through a power of Law. The peace efforts of both parties in each case must first be resolved with restorative justice efforts so that the legal objectives of upholding justice, obtaining legal certainty and obtaining benefits can be achieved properly. Then the Attorney General's Office must also pay more attention to increasing understanding regarding the concept and regulations concerning restorative justice for prosecutors as the front line. In addition, socialization to the community is also important to be implemented so that the community also knows the essence of implementing restorative justice.

The prosecutor as a public prosecutor is obliged to provide the best justice so that there is no deviation from justice or unwanted legal resistance and is carried out with transparency to the public regarding the meaning of restorative justice that the essence of restorative justice itself is not only to protect several groups but for all levels of society in Indonesia but besides that the prosecutor must also be able to take a better approach so that this restorative justice can run well and there is no doubt in the community regarding this matter. According to the author, basically the implementation of restorative justice has provided space, especially in the terms and conditions in the Prosecutor's Regulation. In addition, the settlement of the termination of prosecution based on restorative justice which positions the prosecutor as a facilitator is a way for the prosecutor to prioritize restorative justice in every case resolution.

The evaluation related to the regulation in the Prosecutor's Regulation (Perja), especially regarding the type of criminal act, is a consideration in improving the regulation of restorative justice in the future. Furthermore, the law enforcement factor also has a very important influence in the implementation of restorative justice. This is due to the large role of the Prosecutor as a facilitator in providing mediation between the suspect and the victim. Furthermore, according to the author, the existence of human resources in this case the prosecutor as a facilitator, is expected to be able to provide mediation to both parties, both the suspect and the victim, by providing a complete understanding of peace efforts based on restorative justice. For this reason, the implementation of restorative justice is in line with improving the capacity of human resources, especially within the scope of the District Attorney's Office.

One of the biggest obstacles in the process of implementing restorative justice in Indonesia is the rejection from both victims and perpetrators who are accustomed to the conventional criminal justice system. In addition, the challenges and obstacles to implementing restorative justice in the criminal justice system in Indonesia are that the resolution of cases through restorative justice must be able to find a fair and mutually beneficial solution for both parties, both victims and perpetrators. Unfortunately, there are still many parties who have not realized the benefits (win-win solution) for both parties, both victims and perpetrators, or even the public prosecutor himself. The perpetrator's admission of guilt is a prerequisite for restorative justice.

Without the confession of the person who committed the crime, the desired restorative justice in solving the problem will be difficult to achieve. Based on these challenges and obstacles, it is necessary to regulate laws and regulations governing the implementation of restorative justice with an element of confession of guilt from the perpetrator of the crime as a prerequisite for restorative justice. 3. The amount of compensation is so large that it is difficult for the perpetrator or family to fulfill it. Within the scope of the Prosecutor's Office, the limitation of the application of restorative justice is that criminal acts with a sentence of less than 5 years and losses of more than IDR 2,500,000 cannot be applied to restorative justice. The mechanisms presented are also different, in the application of restorative justice in the police and prosecutor's office focusing on the process of terminating the case if there is compensation and peace.¹³

After the issuance of Prosecutor's Regulation Number 15 of 2020 with the recent intensification of restorative justice in Indonesia by law enforcement, in fact the public still needs an understanding of what restorative justice is, how its mechanism is and how this restorative justice can be accepted and implemented properly by law enforcement and the Indonesian people. Therefore, good legal

¹³Maidina Rahmawati, "Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia", (Jakarta: Institute for Criminal Justice Reform, 2022), p.386.

socialization is needed by law enforcement itself so that the public can play an active role in the implementation of restorative justice because its basic principles prioritize human values. In legal theory, it is said that one of the factors causing the ineffectiveness of law enforcement in Indonesia is not only caused by the mental attitude of law enforcement officers themselves but also lies in the legal socialization factor which is often ignored, thus impacting the progress of law enforcement in Indonesia.

Public knowledge of regulations is still very lacking, many people do not care about regulations, this is an obstacle for law enforcement officers in carrying out their duties, without the role of the community, law enforcement will be difficult to create an effective legal situation, here a balance is needed between law enforcement officers, the Law, and the community. Law enforcement agencies must carry out their duties properly and in accordance with their respective roles as regulated in laws and regulations. In carrying out these duties, they must prioritize justice and professionalism, so that they become role models for the community and gain the trust of all parties including members of the community.¹⁴

The consequences of public ignorance about the law and the lack of socialization by law enforcers will be an obstacle to law enforcement in Indonesia. Because after all the law is made for the community and will be implemented by the community. If there is inequality in it, the law in Indonesia will not run effectively. After the issuance of Prosecutor's Regulation Number 15 of 2020, of course this regulation is still in the spotlight for both law enforcers and the wider community. Because basically the restorative justice method is the opposite of the conventional criminal justice system which prioritizes punishment with imprisonment as the final solution. With the presence of the restorative justice method which is known as a bridge from the transition of the criminal justice system towards a better direction by prioritizing humanitarian values through peace by emphasizing restoration to its original state, not just revenge against perpetrators of criminal acts.

The Regulation of the Republic of Indonesia National Police (Perpolri) Number 08 of 2021 regulates the Handling of Criminal Acts based on Restorative Justice, which will be used as a basic reference for resolving cases in the process of investigating and investigating criminal acts in order to provide legal certainty, as regulated regarding the termination of investigation (SPP-Lidik) and termination of investigation (SP3) for legal reasons based on restorative justice. Article 1 Number 3 of the Regulation of the Chief of Police Number 8 of 2021 states that, Restorative justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace by emphasizing restoration to the original state. Restorative justice is applied to

¹⁴Romli Atmasasmita, Loc.cit.

cases that are not too big or small cases that do not all have to go to court. Therefore, the Chief of Police issued a policy in the form of Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, which requires that for criminal cases that are not classified as major cases, efforts are made to mediate between the two parties, in accordance with applicable laws and regulations. In Chief of Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Article 6 Paragraph (3) has provided an example of restorative justice, namely: returning goods; replacing losses; replacing costs incurred as a result of the crime; and/or replacing damage caused by the crime. The fulfillment of these rights is proven by a statement letter in accordance with the agreement signed by the victim.

Handling of criminal acts based on restorative justice must meet general and special requirements. General requirements apply to criminal acts based on restorative justice at the stage of implementing the criminal investigation, investigation or inquiry function. Special requirements only apply to handling criminal acts based on restorative justice at the investigation or inquiry stage. Special requirements only apply to handling criminal acts based on restorative justice at the investigation or inquiry stage. General requirements consist of material requirements and formal requirements. In Article 5 of the Regulation of the Chief of Police Number 08 of 2021, material requirements include:

1. Does not cause unrest and/or rejection from the community; 2. Does not result in social conflict;
3. Does not have the potential to divide the nation;
4. Not radical or separatist;
5. Not a repeat offender based on a court decision;
6. Not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption or a criminal act against people's lives.

The formal requirements regulated in Article 6 paragraph (1) of Police Regulation No. 8 of 2021 are as follows:

1. Peace from both parties, except for drug crimes;
2. Fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes.

The statement above provides an understanding that the resolution of criminal acts is carried out by making peace between the two parties with the investigator as the mediator, to reach a mutual agreement in order to achieve the justice desired by both parties.

While the solutions are: a) giving a time grace period; b) providing an understanding of the importance of peace; c) reviewing the amount of compensation; d) encouraging socialization in the community.

4. Conclusion

The RJ policy in handling general criminal acts by the prosecutor's office is based on Perja 15 that restorative justice is the settlement of criminal cases carried out without going through the criminal justice system, but by involving victims, perpetrators and third parties as mediators which is carried out through deliberation to achieve a win-win solution. The settlement of criminal cases of traffic accidents through restorative justice has actually fulfilled. It is stated in Article 3 of the Regulation of the Indonesian Attorney General No. 15 of 2020 that the public prosecutor has the authority to close the case in the interests of the law. What is meant by public interest includes the defendant's death, the expiration of the criminal prosecution, and there has been a court decision. Obstacles in the implementation of Restorative Justice in resolving cases at the Prosecutor's Office include: a) Limited time, b) One party does not want to reconcile, c) The amount of compensation is so large that it is difficult for the perpetrator or family to fulfill, d) Lack of legal socialization in the community. The peace process that takes a long time and is coupled with the lack of human resources in the Prosecutor's Office can result in cases that should have been terminated but failed due to deadlines and limited human resources. In addition, one of the parties who does not want to make peace is caused by the community who still prioritizes the emotional side by expecting an appropriate response to the perpetrator and the lack of public understanding of the principles of Restorative Justice so that some people prefer to resolve cases through legal channels. Then, the inhibiting factor that often occurs in society is the large amount of compensation set by the victim or family so that it is difficult for the perpetrator or family to fulfill, this means that the general public does not understand the essence of the principle of Restorative Justice and the lack of legal socialization in the community which is often ignored by law enforcement as the most important inhibiting factor in the implementation of Restorative Justice. While the solution is: a) providing a time limit; b) providing an understanding of the importance of peace; c) reviewing the amount of compensation; d) encouraging socialization in the community.

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