

Effectiveness Of Implementing Termination of Prosecution Through Restorative Justice in the Criminal act of Theft Based on the Value of Legal Certainty (Case Study: Gianyar District Prosecutor's Office)

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Abstract. *The restorative justice approach as an alternative to resolving criminal cases is a solution that prioritizes victim recovery and perpetrator responsibility, compared to criminalization which can cause overcapacity in correctional institutions. The purpose of this study is to analyze the construction of criminal case resolution through the termination of prosecution based on restorative justice in the concept of legal certainty, and to analyze the effectiveness of the implementation of the termination of prosecution through restorative justice in the crime of theft at the Gianyar District Attorney's Office. The approach method used in compiling the thesis is sociological legal research. Specifications in this study descriptive analysis. The theories used include the theory of legal certainty and the theory of legal effectiveness. The results of this study are the construction of criminal settlement through the termination of prosecution based on restorative justice in the concept of legal certainty is based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, the restorative justice mechanism provides space for law enforcement that is oriented towards victim recovery and social reintegration of the perpetrator, without always having to prioritize criminalization. Legal certainty in the restorative justice mechanism is guaranteed through clarity of formal and material procedures, limitations on the prosecutor's authority in exercising his discretion.*

Keywords: *Crime; Justice; Prosecution; Restorative; Termination.*

1. Introduction

Indonesia, as a country of law, follows the basic principle that law is an important foundation that influences all aspects of people's lives in the Unitary State of the

Republic of Indonesia, as explained in Article 1 paragraph (3) of the 1945 Constitution. To achieve the goals of this country of law, clear legal regulations and legislation are needed, as well as law enforcers who have strong professionalism and discipline, supported by adequate legal facilities and infrastructure, and consistent legal behavior. Law has so far only been understood as rigid rules and overemphasizes the legal system aspect without seeing the connection between the legal science and the problems that must be handled.¹

The Attorney General's Office of the Republic of Indonesia, hereinafter referred to as the Attorney General's Office, is a government institution whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on the Law as regulated in Law of the Republic of Indonesia No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, this illustrates that the Attorney General's Office of the Republic of Indonesia can carry out its duties and responsibilities as a government institution that is responsible for carrying out prosecutions independently, without any influence or interference from any party. In carrying out its functions, duties, and authorities, the Attorney General's Office must comply with these principles.²

The implementation of restorative justice can provide benefits, including creating harmony in community life, restoring the losses and suffering of victims, realizing a fast, simple, and low-cost justice system, reducing the problem of overcapacity that occurs in detention centers and correctional institutions because overcapacity has the potential to cause riots, unrest and even prisoner escapes, saving the state budget, and reducing the backlog of cases in the Courts and in the Prosecutor's Office.³

The total number of cases handled by the Gianyar District Attorney's Office in the period 2021-March 2025 is quite high, namely 217 narcotics cases, 340 harda cases (including theft), and 106 kamnegtibum cases. This data reflects the high crime rate in the Gianyar area, especially crimes such as theft and fraud. The fact that 8 theft cases can be resolved through restorative justice shows that there is still room for a more humane approach.

The process of implementing Restorative Justice has not been able to run optimally, there are still criminal cases that should be resolved through the Restorative Justice approach, but the settlement process still uses prison

¹Henry Arianto, *Responsive Law and Law Enforcement in Indonesia*, Lex Journal, Vol. 07 No. 02, 2010, pp. 115-123

²Irfan Ramli (et. al), *Termination of Case Based on Restorative Justice in the Case of Theft in Sorong City*, Journal of Law Justice. Vol. 1, No. 2, 2023, pp. 89-108

³Bambang Waluyo. *The Relevance of Restorative Justice Doctrine in the Criminal Justice System in Indonesia*. Hasanuddin Law Review, Vol. 1, No. 2, 2015, pp. 210-226

sentences, this is because the legal culture in Indonesia still emphasizes prison sentences and other obstacles that hinder the realization of the concept of Restorative Justice in resolving criminal cases. Prison sentences aim for prisons to function as educational institutions where prisoners can develop self-responsibility and improve themselves positively. However, in practice, prisons are not always ideal locations for criminal law violators who should experience a deterrent effect. In fact, this condition is proven by the behavior of criminals who tend to get worse than before and cause overcapacity in prisons

2. Research Methods

This approach method is sociological juridical, namely research into the effectiveness of law, which discusses how law operates in society.⁴ The sociological legal approach emphasizes research that aims to obtain empirical legal knowledge by going directly to the object, namely to find out how restorative justice is applied in the crime of theft at the Gianyar District Attorney's Office. The Legislation Approach is carried out by examining all regulations or laws related to the legal issues to be studied.

3. Results and Discussion

3.1. Construction of Criminal Case Resolution Through Termination of Prosecution Based on Restorative Justice in the Concept of Legal Certainty

The approach to resolving criminal cases through restorative justice in Indonesia has been practiced in various traditional communities or what can be called indigenous communities of Indonesia. Deliberations carried out by indigenous communities are carried out to reach consensus which is the most important value of restorative justice in resolving problems that arise. In the soul and personality of Indonesian society, the concept of restorative justice has been embedded which has taken root in the lives of the community.

The opening of the 1945 Constitution, paragraph IV, implicitly contains recognition of customary law communities, namely in the sentence "protecting the entire Indonesian nation" which means that the state is obliged to protect the entire Indonesian nation, including customary law communities which are the native communities and the native laws of the Indonesian nation which are the soul and personality of the Indonesian nation which have grown and developed since before the formation of the Indonesian State. After the amendment, the state recognized the existence of customary law, as regulated in Article 18B Paragraph (2) of the 1945 Constitution.⁵

⁴Zainuddin Ali, 2011. *Legal Research Methods*, Sinar Grafika, Jakarta, p. 31

⁵Simamora, Janpatar. "Interpretation of the meaning of the rule of law in the perspective of the 1945 Constitution of the Republic of Indonesia." *Journal of Legal Dynamics*. Vol. 14. No. 3, 2014, pp. 547-561.

The similarity of restorative justice with local (customary) mechanisms is an advantage because it is more acceptable and practiced by the wider community. In addition, there are several other possibilities in implementing restorative justice, namely:

- 1) Restorative justice focuses on justice for victims according to their personal wishes and interests, not those determined by the state;
- 2) Offer recovery for all parties involved;
- 3) Make the perpetrator responsible for the crimes he committed.⁶

Restorative justice places a higher value on the direct involvement of the parties. Victims are able to regain control while perpetrators are encouraged to take responsibility as a step in correcting the wrongs caused by the crime and in building their social value system. Community involvement actively strengthens the community itself and binds the community to values of respect and compassion for one another. The role of government is substantially reduced in monopolizing the current justice process. Restorative justice requires cooperative efforts from the community and government to create an environment in which victims and perpetrators can reconcile their conflicts and repair their old wounds.⁷

Adrianus Meliala quotes Morrison's opinion that restorative is "is a form of conflict resolution and seeks to make it clear to the offender that the behavior is not condoned (welcomed), at the same time as being supportive of the individual."⁸Based on this opinion, efforts to resolve the conflict and at the same time heal between the perpetrator and the victim are done by bringing together or introducing the perpetrator in a forum with the victim or his/her family to foster empathy on both sides.

In the process of resolving criminal acts through a restorative approach, individuals are required to play an active role in solving problems and the state is placed as a party that must provide support for individuals or communities who have the desire to resolve the conflicts they experience. In the restorative view, it is actually individuals who must play their roles and responsibilities in resolving conflicts collectively and not be charged to the state, the state is considered not to have an exclusive or dominant role in the resolution process.

⁶Josephin Mareta and JHRRS Kav. "Implementation of Restorative Justice Through Fulfillment of Restitution for Child Victims of Crime." *Jurnal Lex et Societatis*. Vol. 3. No. 1, 2018, p. 104.

⁷Henny Saida Flora, *Restorative Justice Approach in Resolving Criminal Cases in the Criminal Justice System in Indonesia*, *Jurnal Law Pro Justitia*, Vol. II, No. 2, 2017, pp. 41-60

⁸Aris Wahjudi Santoso. *Application of Legal Theory in Restorative Justice*. "Ethics and Law Journal: Business and Notary", Vol. 1. No. 2 2023, pp. 13-21.

The dispute resolution mechanism based on restorative justice is based on deliberation and consensus where the parties are asked to compromise to reach an agreement. Each individual is asked to give in and put the interests of society above personal interests in order to maintain mutual harmony. The concept of deliberation has proven effective in resolving disputes in society amidst the failure of the role of the state and the courts in providing justice.⁹

The current justice system based on retributive and restitutive justice only gives authority to the state that is delegated to law enforcement officers. The perpetrators and their victims have very little opportunity to convey the version of justice that they want. The state determines the degree of justice for the victim by giving the perpetrator a prison sentence. The concept of retributive and restitutive justice based on punishment, revenge against the perpetrator, exile and destruction must be replaced by restorative justice based on reconciliation, victim recovery, integration into society, forgiveness and forgiveness.¹⁰

The implementation 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 conflicts, especially between perpetrators and victims and society (taking away the conflict from them); third, the fact that feelings of helplessness experienced as a result of criminal acts must be overcome in order to achieve reparation.¹¹

The law enforcement process through a restorative justice approach in resolving criminal cases carried out by the Prosecutor's Office refers to the Attorney General's Regulation (Perja) No. 15 of 2020, the definition of 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.

Termination of prosecution based on restorative justice is implemented with the principles of justice, public interest, proportionality, criminal as a last resort, fast, simple and low cost. The Restorative Justice Policy through Perja No. 15 of 2020 which was enacted on July 22, 2021 is expected to be able to resolve criminal cases without going to court. Since the issuance of the Perja, 300 cases have been terminated by prosecutors throughout the country, the issuance of this

⁹Bruce E Barners, *Culture, Conflict, and Mediation in the Asian Pacific*, University Press of America, Maryland, 2007, p. 109.

¹⁰Agus Priyono, *Restorative Justice as an Alternative in Resolving Criminal Cases*, Prodigy, Vol. 9 No. 2, 2021, pp. 293-310

¹¹Dheny Wahyudhi, Herry Liyus *Restorative Justice Approach in Resolving Domestic Violence Crimes*, *Journal of Socio-Human Sciences*, Vol. 4, No. 2, 2020, pp. 495-509

Perja is to restore conditions to their original state before the "damage" caused by the behavior of a person (the suspect).

The conditions for people who are "entitled" to receive restorative justice are:

- a. Criminal acts committed for the first time;
- b. Losses below IDR 2.5 million;
- c. There is an agreement between the perpetrator and the victim.

Regulation No. 15 of 2020 attempts to minimize the overcapacity of prisons which has become a problem for prisons in Indonesia. In addition, the contents of this Regulation also contain the aim of minimizing the abuse of prosecutorial power and directly restoring social conditions in the community. This is also one of the policies in responding to public concerns about the law being sharp downwards, but blunt upwards which has so far seemed to be the norm.¹²

This regulation is one of the innovations of Attorney General ST Burhanuddin to provide legal certainty for ordinary people. This policy was echoed by ST Burhanuddin at the international level. In an event themed "Integrated Approaches to Challenges Facing the Criminal Justice System", the restorative justice method in Indonesian criminal justice is an integrated approach from investigation, inquiry, prosecution, to court ruling. Restorative justice can shorten the lengthy trial process and resolve the issue of overcapacity of prisoners in correctional institutions. Seeing these achievements, the pillars of reform in the Attorney General's Office have been re-established. However, the role of the community is needed to oversee the return of the dignity of the prosecutor's office. That in carrying out the authority of law enforcement, we must not be trapped in the bars of legal certainty and procedural justice alone so that we ignore substantial justice which is actually the main goal of the law itself, even though it must be remembered that *Equum et bonum est lex legum* (what is just and good is the law of the law).¹³

The Prosecutor's Office as the authorized party in the prosecution stage, is expected to provide a deterrent effect on the perpetrators in making charges with the punishment charged by the Public Prosecutor while still fulfilling the perpetrators' rights. In Perja No. 15 of 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

¹²Muhammad Tahir Azhari, *The State of Law: A Study of Its Principles Viewed from the Perspective of Islamic Law, Its Implementation in the Medina State Period and the Present*. 4th ed., Kencana Prenada Media Group, Jakarta, 2010, p. 121.

¹³Dika Pranata, and Jami'atur Robekha. Democratization of Law in the Field of Criminal Law Enforcement Through Restorative Justice. *J-CEKI: Jurnal Cendekia Ilmiah*. Vol. 2. No. 1. 2022, pp. 85-94.

acts that is currently being widely voiced in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to be able 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.

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 states 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.

The paradigm of punishment is not for revenge but as a recovery, the Prosecutor's Office took a strategic step by issuing the Indonesian Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice which was enacted right on the Adhyaksa Bhakti Day (HBA) July 22, 2020. The Indonesian Prosecutor's Office 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 (Mahendra & Prima, 2020).

The Indonesian Attorney General's Regulation No. 15 of 2020 is 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, the perpetrator/victim's family, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state and not retaliation. 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. avoidance of negative stigma;
- c. avoidance of retaliation;
- d. social response and harmony; and e. propriety, morality, and public order.

The Public Prosecutor in Terminating Prosecution based on Restorative Justice also takes into consideration:

- 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.

Perja No. 15 of 2020 gives the Prosecutor the authority 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.

Normatively, the criminal justice system is intended for law enforcement. The 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 policy is crucial considering that the prosecutor's office (Prosecutor) has a strategic position and role in the law enforcement process within the framework of an integrated criminal justice system as a master of process/dominus litis, one of whose functions is to filter a criminal case and determine whether or not a criminal case needs to be continued to trial by considering legal objectives. Therefore, the implementation of restorative justice should provide recovery and dialogue that is built with mutual respect between parties.

The role of the public prosecutor as a facilitator in the implementation of restorative justice is regulated in Article 9 of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perja RJ). The public prosecutor not only functions as the prosecutor, but also as a driver of peace efforts between the victim and the suspect. The duties of the facilitator include offering a restorative justice process, guiding and supervising the peace process, drafting a peace agreement, and determining whether a case should be stopped or

continued based on the results of the peace process. This role requires the public prosecutor to be objective in handling minor criminal cases with an approach that prioritizes dialogue and recovery.

The implementation of peace within the framework of restorative justice according to the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 can be carried out in two main ways: by paying compensation or carrying out certain actions that have been mutually agreed upon by the victim and the perpetrator. Evidence of the implementation of compensation can be proven through receipts, proof of transfer, or statements from victims and witnesses, while the implementation of the form of peace carried out through actions (for example, an open apology, cleaning, or social contribution) can be proven by direct observation, photos, videos, or eyewitnesses. In some cases, an addendum to the agreement can be made if the perpetrator cannot fulfill all the contents of the agreement due to obstacles that can be proven in good faith.

The construction of criminal settlement through a restorative justice approach based on legal certainty is a progressive step that balances formal law enforcement with the need for substantial justice for the parties involved. The restorative justice approach shifts the paradigm from merely punishing the perpetrator to restoring the victim's losses and repairing social relations damaged by the crime. This is reflected in the policy of the Attorney General's Office of the Republic of Indonesia through the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 which gives the Prosecutor the authority to stop prosecution if peace has been reached between the perpetrator and the victim. This construction is based on the understanding that not all crimes must be resolved in court, especially if the perpetrator shows remorse, the victim's losses have been replaced, and there is no threat to public order.

Legal certainty in the restorative justice approach can be realized if there are clear guidelines in determining formal and material requirements, the limits of the prosecutor's authority, and control over the possibility of abuse of discretion. Provisions such as the requirement that the perpetrator is not a recidivist, the value of the loss is below IDR 2.5 million, and the victim's consent, need to be considered to prevent the practice of "peace buying and selling" which actually tarnishes the principle of justice. The restorative justice approach needs to be synergized with the national legal system so that there is no clash of norms, for example between Perja 15/2020 and the Criminal Procedure Code. For this reason, strengthening regulations, increasing the capacity of law enforcement officers, and community involvement in supervision are aspects in building legal certainty based on restorative justice.

3.2. The Effectiveness of Implementing Restorative Justice in Criminal Acts of Theft at the Gianyar District Attorney's Office

Law is a series of regulations in the form of norms and sanctions that are officially made by the ruler or government which are binding on every citizen in a country to be obeyed, so that the implementation in community life can create a sense of justice regardless of class. According to Asep Arlan Yusuf in his writing entitled *Law and Justice*, law cannot be separated from the ultimate goal of state and community life itself, namely justice (*rechtsvaardigheid* or justice).¹⁴

The meaning of the understanding of effectiveness in law enforcement in Indonesia is a benchmark for knowing the purpose of enforcing the law must be in line with the purpose of the law itself, namely to provide the greatest happiness to as many people as possible through applicable laws and regulations, but until now it can be said that the implementation of the law through applicable laws and regulations has not been able to make a handful of people happy because it is considered irrelevant to the situation or needs of the community. In implementing the law, of course, the community needs a legal method that is in line with the situation and needs to create a sense of justice that is appropriate for each.¹⁵

The crime of theft is categorized as a general crime because it is regulated in Book II of the Criminal Code, with the Criminal Procedure Code regulating the procedural law relating to the crime of theft. Article 362 of the Criminal Code regulates that theft is taking something, which is wholly or partly owned by another person, which is in his power, with the intention of being owned unlawfully. This violation can be punished with imprisonment, in this case the researcher wants to create a new application of restorative justice in the form of a judge's forgiveness to the perpetrators who are 70 years old because at an age that is no longer productive it is considered ineffective if put in prison and also Indonesia is a country that has eastern customs as stated in the 4th principle of Pancasila "Democracy led by the wisdom of deliberation and representation" which means that the culture of the Indonesian state is to make a decision by deliberation for consensus or in other words, restorative justice provides an opportunity for the perpetrator to become a better person so that he can organize his future life to be better, compared to having to prioritize the retributive justice system which prioritizes the imposition of punishment on the perpetrator's physical body by locking him in detention/prison. Restorative justice is an approach to resolving criminal cases that emphasizes improving

¹⁴Asep Warlan Yusuf, "Law and Justice", *Padjajaran Journal of Legal Studies* Vol. 2, No. 1 (2015), p. 2.

¹⁵Natanael Rumimpunu (et. al). Effectiveness of Law Enforcement by the South Minahasa District Attorney's Office in Resolving Cases Based on the Principle of Restorative Justice, *Unsrat Faculty of Law Journal Lex Privatum*, Vol. 13. No. 2. Jan. 2024, pp. 1-8

social relations and restoring losses due to criminal acts. This approach involves all parties affected, including victims, perpetrators, and the surrounding community. The main goal of restorative justice is to repair the negative consequences of criminal acts, avoid stigmatization, and promote reconciliation and social reintegration.¹⁶

The transformation of the criminal justice paradigm in Indonesia has shown progress with the issuance of the Indonesian Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation is an implementation of the shift in the judicial paradigm from being retributive, with an emphasis on retribution and punishment, to a more humanistic and recovery-oriented approach. Restorative justice is essentially not just an alternative method of resolving cases, but rather a philosophy that sees crime as a destruction of human relations that requires restoration, not merely a violation of state law that requires punishment.

The restorative justice approach has a strong alignment with the values of local Indonesian wisdom, such as deliberation and consensus, *tepo seliro*, and the philosophy of *silih asih*, *silih asah*, *silih asuh* which emphasizes the importance of social balance and collective problem solving. This makes restorative justice not a foreign concept that is imposed, but rather a systematic development of values that have long been embedded in the culture of Indonesian society.

Prosecutor's Regulation Number 15 of 2020 provides formal legitimacy and an operational framework for the application of these values in the modern criminal justice system. Substantially, this regulation sets out relatively clear criteria for the application of restorative justice, such as a maximum sentence of 5 years and material losses of no more than IDR 2,500,000. These limitations serve as a guide for prosecutors in identifying cases that have the potential to be resolved through a restorative approach. In addition, this regulation also requires a statement of peace between the perpetrator and the victim, as well as the return of material losses if any. These requirements ensure that the interests of the victim remain a priority in the case resolution process.

The Indonesian government, particularly through the Attorney General's Office, has been actively promoting the implementation of RJ. Since the issuance of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the number of cases resolved through restorative justice has continued to increase. By 2024, there will be more than 4,654 Restorative Justice Houses throughout Indonesia to support the resolution of cases using this approach. Although restorative

¹⁶Sindhi Cintya and Hery Firmansyah. Implementation of Restorative Justice as a Form of Judge's Forgiveness in Criminal Acts of Theft by the Elderly, *USM Law Review Journal* Vol. 6. No. 2, 2023, pp. 543-553.

justice provides many benefits in reducing the burden of justice and creating more equitable solutions for victims and perpetrators, challenges such as lack of public understanding, limited resources, and social stigma against perpetrators still need to be overcome so that its implementation is more optimal.¹⁷

The role of prosecutors has undergone a significant transformation from mere prosecutors to facilitators of justice. Prosecutors no longer act solely as enforcers of rigid laws, but as mediators who facilitate dialogue between perpetrators, victims, and the community to reach an agreement that satisfies all parties. The penal mediation process facilitated by prosecutors provides space for victims to express the impact of the victimization they have experienced, while also providing an opportunity for perpetrators to admit their mistakes and take responsibility for repairing the losses caused.

Various cases of theft that have been resolved through a restorative approach have shown promising effectiveness. In several areas of Gianyar, cases of minor theft motivated by economic factors have been successfully resolved with agreements that not only include the return of goods, but also the opportunity for the perpetrators to work.¹⁸

Based on data on the number of cases handled by the Gianyar District Attorney's Office (Kejari) during the period 2021 to March 2025, there were 217 narcotics cases, 340 cases of people and property (Oharda), and 106 cases of state security and public order (Kamnegtibum). Of the total data, the Oharda category occupies the highest position, which includes cases such as theft, embezzlement, fraud, and other minor crimes, most of which have the potential to be resolved through the restorative justice (RJ) mechanism. This is in line with the spirit stipulated in the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020, which encourages the settlement of cases outside the judicial process for minor crimes and perpetrators who are involved in crime for the first time.

The implementation of Restorative Justice by the Public Prosecutor is based on the principle of discretion. Discretion refers to the authority of law enforcement officers, such as prosecutors, to make decisions in handling cases based on their professional considerations and judgments. In the context of Restorative Justice, prosecutors have the freedom to choose whether a case can be directed to the restorative process or remain through the formal court process. The prosecutor's discretion in this case allows for a more flexible and adaptive approach in handling criminal cases, especially when the aspects of reconciliation and

¹⁷Soritua Agung Tampubolon (et. al), Termination of Prosecution of Criminal Acts of Abuse Based on the Restorative Justice Approach, *Locus Journal of Academic Literature Review*. Volume 2 Issue 3, March 2023, pp. 193-202

¹⁸Chalisna Paristiana Putri and Dian Esti Pratiwi, Effectiveness of Restorative Justice Implementation in Handling Traffic Accident Cases at Surakarta City Police Resort, *Legal Standing: Journal of Legal Science*, Vol. 7 No. 2, September 2023

recovery are considered more effective and beneficial for all parties involved. Thus, the goals of Restorative Justice and the concept of diversion have similarities in the effort to achieve more holistic justice, involving recovery, reconciliation, and behavioral change as an integral part of handling criminal cases. In its implementation, the principle of prosecutorial discretion becomes an important foundation in choosing the most appropriate approach for each situation and case faced.¹⁹

The implementation of restorative justice is carried out by the Gianyar District Attorney's Office as an effort to enforce the law in the midst of society. Where law enforcement is carried out in order to create safe and peaceful conditions, and to reconcile the parties involved in the case.²⁰Based on data from the Gianyar District Attorney's Office, the Gianyar District Attorney's Office has completed 6 theft cases from 2022-2024 through restorative justice.

When associated with the total case data handled by the Gianyar District Attorney's Office in the period 2021 to March 2025, it can be seen that out of 340 cases of people and property (Oharda), at least six cases have been resolved using the restorative justice approach. This is indeed still a small part, but it shows the real implementation of the restorative justice policy in responding to minor crimes that are incidental and do not involve serious physical violence. The Oharda category, which includes theft, embezzlement, and the like, has characteristics that allow the application of RJ, such as compensable losses and restoreable social relationships, making the restorative justice approach an effective alternative in easing the burden of justice.

The theory of legal effectiveness according to Soerjono Soekanto is that the effectiveness or ineffectiveness of a law is determined by several factors, namely the legal factor itself (legal substance), the law enforcement factor, now the parties who form or apply the law (legal structure), the factor of means or facilities that support law enforcement (facilities and infrastructure), community factors. The factors that influence the effectiveness of the application of termination of prosecution through restorative justice by the Public Prosecutor can be analyzed by the author as follows:

1) Legislative factors (legal substance)

Talking about the substance of law, we must see the reality of the pluralistic social order of society and in addition we also refer to the basic philosophy of the state, namely Pancasila. Based on this, the substance of law is the result of an actualization of the values and legal rules that live in society (living law), both in the sense of written law and unwritten law. For this reason, respect and

¹⁹Marlina, *Juvenile Criminal Justice in Indonesia*, Refika Aditama, Bandung, 2009.

²⁰Dedy Syahputra Bintang, *Effectiveness of Restorative Justice Implementation in Resolving Criminal Cases in the Puncak Jaya Police Jurisdiction*, Syntax Idea, Vol. 3, No. 6, June 2021

strengthening of local wisdom and customary law must be a special concern. So that the *volksgeist* referred to by Savigny is truly well accommodated in a statutory regulation and in the end the legal product that is born becomes functional in the life of the nation and state (positive law).²¹

Afterwards, the public prosecutor summons the victim and through a summons letter, and if necessary, involves the victim's and perpetrator's families, as well as community leaders. These parties will be officially invited to follow the case resolution process with a restorative justice approach. If peace is achieved, then a memorandum of opinion and a report on the success of the peace efforts will be made which will then be reported to the Head of the District Attorney's Office to be forwarded to the Head of the High Prosecutor's Office. In the event that peace is not achieved, the public prosecutor will make a report on the failure to reach an agreement and continue the case to court.

The peace process is carried out within a maximum time limit of 14 days since the second stage of transfer, and its implementation can take place at the prosecutor's office or at other locations such as restorative justice houses that have been provided in a number of villages. If peace is achieved, the victim and perpetrator will sign a written peace agreement before the public prosecutor, accompanied by the fulfillment of obligations or without certain obligations, and witnessed by two witnesses. The public prosecutor then reports the agreement to the Head of the District Attorney's Office.

After receiving the report, the Head of the District Attorney's Office will submit an application for approval to terminate the prosecution to the Head of the High Prosecutor's Office, accompanied by supporting documents such as videos and presentation slides. This application must be made within a maximum of one day after the peace agreement is reached. If the application is approved, a Letter of Determination to Terminate Prosecution will be issued and recorded in the case register. However, if the application is rejected by the Head of the High Prosecutor's Office or the Attorney General, the public prosecutor will make a report on the failure to reach an agreement and refer the case to the court.

Involving related parties, such as victims, perpetrators, families, and community leaders, is not always easy to do in a limited time frame, especially if they are in a geographical location far from the prosecutor's office. The prosecutor's office as a facilitator is responsible for facilitating the deliberation process, but does not have the authority to forcefully summon parties who are reluctant or unable to attend.

This creates obstacles because the effectiveness of the restorative justice process is highly dependent on the active participation of all parties. Therefore,

²¹Azmi Fendri, Legal System Improvement in Legal Development in Indonesia, *Journal of Legal Science*, Vol. 2, No. 1, 2011, 96-107

although restorative justice brings a new, humanist paradigm to the resolution of criminal cases, its implementation is still constrained by administrative time constraints and limitations in summons authority, which ultimately risks hindering the achievement of genuine and sustainable peace.

2) Law Enforcement Factors

Factors that influence the law enforcement process according to Soerjono Soekanto are law enforcement officers. On the one hand, law enforcement officers are people who are entrusted to enforce the law. On the other hand, law enforcement officers are also part of society who have families and various material needs that must be met.²²

In the context of implementing restorative justice at the Gianyar District Attorney's Office, the legal culture of the community greatly influences the success of this approach. The success of restorative justice is not only determined by written rules and law enforcement officers, but also by the extent to which the community understands, accepts, and is willing to participate in the process of deliberation to resolve cases outside the court.

In Balinese society, especially Gianyar, local wisdom values such as *menyama braya* (brotherhood) and deliberation and consensus are actually strong social capital in supporting the restorative justice approach. However, not all elements of society have an understanding of the legal mechanisms used in restorative justice, including their rights and obligations in the process. In some cases, victims are still reluctant to reconcile because of the perception that justice can only be obtained through punishment.

Based on an Interview with Mr. Julius Anthony:²³

"In Gianyar, the restorative justice approach is actually in line with the culture of the community that prioritizes family resolution. But we face our own challenges, because not all people understand what restorative justice is. Some think that reconciliation means that the perpetrator is not punished at all, or the victim feels that they have lost their rights."

"Our task is not only to facilitate peace, but also to provide legal education so that all parties are aware that this process does not mean eliminating justice, but rather changing its form to be more humane and touching on recovery. This is where the legal culture of society still needs to be built and strengthened."

3) Community Factors

²²Rai Iqsandri, Political Influence on the Law Enforcement Process in Indonesia, *Journal of Criminology and Justice*, Vol. 2, No. 1, 2022, pp. 1-3

²³Interview with Mr. Julius Anthony, SH, as Head of the Pre-Prosecution Sub-Section for General Crimes at the Gianyar District Attorney's Office on May 1, 2025

Society is one of the important things that hinder Restorative justice implemented by prosecutors. Law enforcement comes from society and aims to achieve peace in society, therefore viewed from a certain angle, society can influence law enforcement.

The Gianyar community has social values that are quite supportive of the implementation of restorative justice, such as the tradition of deliberation and conflict resolution within the family. Local values such as *ngayah* (devotion), *sekala-niskala* (belief in the balance of the physical and spiritual worlds), and *menyama braya* (brotherhood) are cultural capital in seeking a harmonious resolution. However, on the other hand, not all levels of society fully understand the principles, mechanisms, and objectives of restorative justice. There are still some people who demand a form of retributive justice or revenge, especially in certain cases such as theft which is considered shameful or socially detrimental.

The involvement of community leaders or religious leaders in the peace process is often a key factor, both as mediators and as providers of moral legitimacy for the agreements made. However, if these community leaders are not involved or do not understand the principles of restorative justice, the peace process can be hampered.

If analyzed through the approach of Soerjono Soekanto's legal effectiveness theory, then the implementation of the termination of prosecution through the restorative justice approach at the Gianyar District Attorney's Office shows indications of being quite effective, although it still faces a number of obstacles. Soerjono Soekanto explained that the effectiveness of the law is determined by five factors, namely: legal substance, law enforcement, infrastructure, legal culture, and society. These five factors are the benchmarks in assessing the extent to which the law, in this case the Indonesian Attorney General's Regulation No. 15 of 2020, can function optimally in society.

In terms of legal substance, Perja No. 15 of 2020 has provided a normative framework in regulating the termination of prosecution based on the principle of restorative justice. This substance contains formal procedures and material requirements such as the value of the loss, the character of the perpetrator, and the victim's willingness to reconcile. At the Gianyar District Attorney's Office, all cases resolved through RJ have been proven to have met these normative requirements, so that the application of its substance can be said to be effective. However, the 14-day time limit to complete the peace process has proven to be an obstacle in the deliberation process given the very limited time.

4. Conclusion

The construction of criminal settlement through termination of prosecution based on restorative justice in the concept of legal certainty is a form of progressive legal innovation that integrates the values of justice with legal

certainty. Based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, the restorative justice mechanism provides space for law enforcement that is oriented towards victim recovery and social reintegration of perpetrators, without always having to prioritize criminalization. The success of the restorative justice approach is highly dependent on the understanding of law enforcement officers, support for facilities, and public awareness to uphold the values of deliberation and justice. Legal certainty in the restorative justice mechanism is guaranteed through clarity of formal and material procedures, limitations on the authority of prosecutors in exercising their discretion. The application of restorative justice is an answer to the challenges of the criminal justice system which often takes a long time, is expensive, and is not necessarily able to fulfill the sense of justice of the community.

5. References

Al-Qur'an:

Q.S. AlBaqarah (2):178-179

Journals:

Agus Setiawan, *Restorative justice Terhadap Pelaku Tindak Pidana Ringan Berupa Pencurian Ditingkat Penuntutan*, Jurnal Juristic, Vol. 3, No. 03, 2022,

Bambang Waluyo. Relevansi Doktrin *Restorative justice* dalam Sistem Pemidanaan di Indonesia. *Hasanuddin Law Review*, Vol. 1, No. 2, 2015,

Hanafi Arief dan Ningrum Ambarsari, Penerapan Prinsip *Restorative justice* Dalam Sistem Peradilan Pidana di Indonesia, *Al-Adl: Jurnal Hukum*, Vol. 10, No. 2, 2018,

Henny Saida Flora, Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia, *UBELAJ*, Vol. 3, No. 2, 2018,

Henry Arianto, Hukum Responsif dan Penegakan Hukum di Indonesia, *Lex Jurnal*, Vol. 07 No. 02, 2010,

Irfan Ramli (et. al), Penghentian Perkara Berdasarkan *Restorative justice* Dalam Perkara Tindak Pidana Pencurian Di Kota Sorong, *Journal of Law Justice*. Vol. 1, No. 2, 2023,

Kristian dan Christin Tanuwijaya, Penyelesaian Perkara Pidana dengan Konsep Keadilan Restoratif (*Restorative justice*) dalam Sistem Peradilan Pidana Terpadu di Indonesia, *Jurnal Hukum Mimbar Justitia*, Vol. 1, No. 2, 2015,

Nopiana Mozin dan Yasmirah Mandasari Saragih, Peran Unit Ppa Dalam Menerapkan Teori *Restorative justice* Pada Tindak Pidana Pencurian Terhadap Pelaku Anak Di Kota Gorontalo, *JSEH (Jurnal Sosial Ekonomi dan Humaniora)*, Vol. 7, No. 2, 2021,

Suaibatul Aslamiyah, dan Agus Nita Tuti Arianti Waruwu. Efektivitas Pelaksanaan Pendidikan Al-Qur'an Di Tpa Al Hidayah, Kampung Bukik, Jorong Batang Umpai, Kec. Pasaman, Kab. Pasaman Barat: Efektivitas Pelaksanaan Pendidikan Al-Qur'an Di Tpa Al Hidayah, Kampung Bukik, Jorong Batang Umpai, Kec. Pasaman, Kab. Pasaman Barat. *Jurnal Pavaja: Jurnal Pendidikan Islam Anak Usia Dini*, Vol. 4, No. 2, 2022,

Hana Krisnamurti, *Kedudukan Saksi Anak Dalam Pembuktian Perkara Pidana*, Wacana Paramarta, Jurnal Ilmu Hukum, Vol. 15 No. 2 Oktober 2016.

Aris Wahjudi Santoso. Penerapan Teori Hukum Dalam *Restorative justice*." *Ethics and Law Journal: Business and Notary*, Vol. 1. No. 2 2023,

Maidin Gultom dan Sahata Manalu, Pendekatan *Restorative justice* Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Ringan Di Kejaksaan Negeri Medan, *Fiat Iustitia: Jurnal Hukum*, Vol. 4, No. 1, 2023,

Sholeh Nur Wibawa, Andrie Irawan, dan Fifi Fatmawati. Pentingnya Restoratif Justice Dalam Hukum Pidana Indonesia. *Indonesian Journal of Law and Justice*, Vol. 1. No. 1, 2024,

Bambang Sutyoso. Mencari Format Ideal Keadilan Putusan Dalam Peradilan. *Jurnal Hukum Ius Quia Iustum*, Vol. 17, No. 2, 2010,

Ahmad Bahiej. Arah dan Tujuan Pemidanaan dalam Hukum Pidana Nasional Indonesia. *Supremasi Hukum*, Vol. 1, No. 2, 2012,

Rai Iqsandri, Pengaruh Politik Terhadap Proses Penegakan Hukum di Indonesia, *Journal of Criminology and Justice*, Vol. 2, No. 1, 2022,

Indha Auliya Rahayu, Eksistensi *Restorative justice* Dalam Perkembangan Sistem Hukum Pidana Indonesia: Studi di Kepolisian Resort Kota Besar Makassar, *Journal of Lex Generalis (JLS)*, Volume 3, Nomor 4, April 2022,

Maidin Gultom, Pendekatan *Restorative justice* Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Ringan Di Kejaksaan Negeri Medan, *Fiat Iustitia: Jurnal Hukum*, Volume 4 No. 1 September 2023

Books:

Adib Bisri dan Munawir AF, 1999, *Kamus Al-Bisri*, Pustaka Progresif, Surabaya,

- Andi Hamzah, 2009, *Delik-Delik Tertentu (Speciale Delicten) di dalam KUHP*, Sinar Grafika, Jakarta,
- Bambang Waluyo, 2002. *Penelitian Hukum*, Sinar Grafika, Jakarta,
- Bruce E Barners, 2007, *Culture, Conflict, and Mediation in the Asian Pasific*, University Press of America, Maryland,
- Dadang Kahmad, 2000, *Metode Penelitian Agama*, Pustaka Setia, Bandung,
- Dian Novita. Sanksi Administrasi Terhadap Retribusi Dalam Pelaksanaan Pajak Kendaraan Bermotor. *Jurnal Jendela Hukum*, Vol. 6, No. 2, 2019,
- DS Dewi Fatahilla dan A Syukur, 2011, *Mediasi Penal: Penerapan Restorative justice di Pengadilan Anak Indonesia*, Indie Pre Publishing, Depok,
- Eriyantouw Wahid, *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana*, Universitas Trisaksi, Jakarta, 2009,
- Fadhallah, 2021, *Wawancara*, UNJ Pers, Jakarta,
- Muhammad Tahir Azhari, 2010, *Negara Hukum: Suatu Studi tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah dan Masa Kini cet. ke-4*, Jakarta: Kencana Prenada Media Group,
- Muladi, 2013, *Restorative justice Dalam Sistem Peradilan Pidana Dan Implementasinya Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak*, Puslitbang SHN BPHN, Jakarta,
- Nandang Sambas, 2010, *Pembaruan Sistem Pemidanaan Anak di Indonesia*, Graha Ilmu, Jogjakarta,
- Paulus Hadisuprpto, 2014, *Peradilan Restoratif: Model Peradilan Anak Indonesia Masa Datang*, Universitas Diponegoro, Semarang,
- Peter J. P TAK, (2004). *Task and Powers of The Prosecution services in The EU Member States*, Wolf Legal Publishers, Netherland
- Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta,
- Sudikno Mertokusumo & A. Pitlo, 1993, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya Bakti, Bandung,
- Suharto, 1995, *Kamus Umum Bahasa Indonesia*. Indah, Surabaya,
- Tatang M. Amirin, 1995, *Menyusun Rencana Penelitian*, Cet.3, Raja Grafindo Persada, Jakarta,

Regulation:

The 1945 Constitution of the Republic of Indonesia

Law Number 1 of 2023 concerning the Criminal Code

Law Number 11 of 2021 concerning Amendments to Law Number 16 ...2004 about the Attorney General's Office of the Republic of Indonesia

Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020.
Termination of Prosecution Based on Restorative Justice

Interview:

Interview with Mr. Julius Anthony, S.H., as Head of the General Crime Pre-Prosecution Sub-Section at the Gianyar District Attorney's Office