

## Termination of Prosecution of Criminal Acts of Domestic Violence Based on Restorative Justice

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**Abstract.** *The aim is to analyze the termination of prosecution of domestic violence crimes based on restorative justice. The research method used is a sociological juridical approach to study and find the legal reality experienced in the field which is based on problems regarding legal matters and existing realities. The results of the research through restorative justice policies, the Indonesian criminal justice system has experienced a paradigm shift from retributive justice to restorative justice, where justice is no longer understood solely as revenge against the perpetrator, but also as a process of restoring social balance and protecting the rights of victims.*

**Keywords:** *Domestic; Justice; Restorative; Termination; Violence.*

### 1. Introduction

Indonesia is a country of law because it upholds the law.<sup>1</sup> Seen Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly states "The Republic of Indonesia is a state based on law".<sup>2</sup> This article is one of the bases for law enforcement in Indonesia, so that Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia means that all systems in national, social and state life are based on applicable law.

CST Kansil's opinion states that criminal law is the law that regulates violations and crimes against the public interest, which actions are punishable by suffering or torture.<sup>3</sup> Moeljatno concluded that criminal law has the following foundations and rules:

<sup>1</sup> Maria Farida Indrati. (1998). Legal Science (Fundamentals and Formation). Jakarta: Kansius, p. 1

<sup>2</sup> Diana Halim Koentjoro. (2004). State Administrative Law. Bogor Selatan: Ghalia Indonesia, p. 34

<sup>3</sup> CST Kansil and Christin ST Kansil. (2007). Principles of Criminal Law. Jakarta: Pradnya Paramita, p. 18

- a. Determining actions that may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition.
- b. Determining when and in what cases those who have violated these prohibitions can be subject to or sentenced to the penalties listed.
- c. Determining how the imposition of criminal penalties can be carried out if someone is suspected of violating the prohibition.<sup>4</sup>

The explanation above shows that if an act violates the law, criminal sanctions will be imposed in accordance with the mechanisms in force in Indonesia. One of the violations is Domestic violence (DV) causes physical, sexual, or psychological suffering or misery, or domestic neglect. Domestic violence can occur in various relationships, such as between husband and wife, father and child, uncle and nephew, grandfather and grandson. Victims of domestic violence find it difficult to report their suffering to law enforcement because of the view that the perpetrator's abuse is part of a domestic incident that cannot be reported to the police and because victims of domestic violence continue to suffer without protection.<sup>5</sup>

Domestic violence (DV) is one of the most complex forms of crime because it involves personal, emotional, and social relationships between perpetrators and victims within the family. Law Number 23 of 2004 concerning the Elimination of Domestic Violence emphasizes that any form of violence occurring within the household constitutes a violation of the law and requires legal protection for victims. However, in practice, handling domestic violence cases often faces a dilemma between legal certainty and efforts to maintain the integrity of the household as the smallest social unit in society.<sup>6</sup>

Criminal law policy has historically tended to emphasize a retributive approach, where perpetrators must be punished as a form of retribution for their actions. However, this paradigm is shifting with the development of the concept of restorative justice, which emphasizes restoring relationships between perpetrators, victims, and the community. This approach prioritizes dialogue, peace agreements, and the perpetrator's responsibility to repair the victim's losses, rather than solely imposing criminal penalties.

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<sup>4</sup> Moeljatno. (1993). Principles of Criminal Law. Jakarta: Rineka Cipta, p. 8

<sup>5</sup> La Jamaa, Protection of Victims of Domestic Violence in Indonesian Criminal Law, Jurnal Cita Hukum Vol.02 No.02 Year 2014. Url:<https://journal.uinjkt.ac.id/index.php/citahukum/article/view/1467>, accessed October 23, 2025.

<sup>6</sup> Arigonnanta Bagus Wicaksono, Bambang Tri Bawono, Jawade Hafidz. "The Criminal Law Enforcement on the Criminal Act of Employment". *Journal of Legal Sovereignty* Vol 4, No 1 (2022). url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/20620>, accessed October 20, 2025.

The application of restorative justice in the prosecution process, as stipulated in the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, is a progressive step in the criminal justice system. This regulation authorizes prosecutors to terminate prosecution if certain conditions are met, such as reconciliation between the victim and the perpetrator, and the losses have been recovered. However, the application of this mechanism to domestic violence crimes remains controversial, particularly regarding the protection of victims' rights and the risk of recurrence comfort in household relationships.<sup>7</sup> This research aims to find out termination of prosecution of domestic violence crimes based on restorative justice.

## 2. Research Methods

Writing Methods Used sociological juridical, a research approach that seeks to discover legal realities experienced in the field or an approach that is based on problems concerning legal matters and existing realities. Sociological juridical legal research primarily examines primary data as well as data sourced from secondary data.<sup>8</sup> This research is more appropriate to use sociological juridical, because in the formulation of the problem the data obtained is more accurate, by using this approach it is intended to obtain a clear picture and understanding of the problems that will be discussed in the research.<sup>9</sup> Analytical descriptive research specifications address a problem or focus on a problem at the time the research is conducted, and the results are processed and analyzed. Data sources consist of primary and secondary data. Legal sources consist of primary, secondary, and tertiary legal materials. The data collection method consists of three stages. First, researchers collect data through observation and questioning; second, they conduct library research by reading, reviewing, and analyzing literature, laws and regulations, articles, or writings related to the research topic.<sup>10</sup> The data analysis method was conducted qualitatively and presented in the form of words or sentences. Qualitative data were analyzed using a deductive approach. One way to draw specific conclusions about general matters is by using an interactive

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<sup>7</sup> Ira Alia Maerani, Siti Rodhiyah Dwi Istinah. "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)." *Journal of Legal Sovereignty* Vol.5 No. 4 (2022), Url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688>, accessed October 22, 2025.

<sup>8</sup> Ronny Hanitijo Soemitro. (2006). *Legal Research Methodology and Jurimetrics*. Jakarta: Ghalia Indonesia, p. 10

<sup>9</sup> Hilman Hadi Kusuma. (2012). *Methods for Writing Legal Papers or Theses*. Bandung: CV. Mandar Maju, p. 34

<sup>10</sup> Abdulkadir Muhammad. (2004). *Law and Legal Research*, First Edition, Bandung: Citra Aditya Bakti, p. 50

analysis model. Therefore, the qualitative data analysis method collects and selects data from literature studies.<sup>11</sup>

### 3. Results and Discussion

The criminal justice system is essentially an integrated mechanism involving various law enforcement agencies, namely the police, prosecutors, courts, correctional institutions, and advocates as part of the criminal law enforcement subsystem. The primary objective of this system is to enforce the law, protect the public from crime, and provide justice for both victims and perpetrators of crime. Therefore, this system is based on the principle of functional differentiation among law enforcement officials in accordance with the authority granted by law.<sup>12</sup>

One of the definitions of the criminal justice system according to Mardjono Reksodiputro is that:

The criminal justice system is a crime control system consisting of police institutions.<sup>13</sup> The prosecutor's office, courts, and correctional facilities for convicts. It was also stated that the criminal justice system is a system within a society for combating crime. Combating crime is defined as controlling crime to keep it within the limits of societal tolerance. Controlling crime within the limits of societal tolerance does not mean tolerating a particular crime or allowing it to occur. This tolerance is an awareness that crime will persist as long as there are humans in society. Therefore, wherever there is society, there will always be crime.<sup>14</sup>

According to him, the criminal justice system is a system within society for addressing crime, with the primary goal of preventing crime and preventing perpetrators from repeating their actions, thereby achieving security and order in society. This means that the criminal justice system does not stand alone but rather serves as an instrument of criminal policy and social policy.<sup>15</sup> Thus, in essence, the criminal justice system is a unit consisting of components of judicial institutions that aim to combat crime and enforce the law, both material and formal criminal law.

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<sup>11</sup> Ibid,

<sup>12</sup> M. Yahya Harahap. (2009). Discussion of Problems and Application of the Criminal Procedure Code: Investigation and Prosecution. Jakarta: Sinar Grafika, p. 90

<sup>13</sup> Mardjono Reksodiputro. (1993). The Indonesian Criminal Justice System (Looking at Crime and Law Enforcement Within the Bounds of Tolerance). Jakarta: Faculty of Law, University of Indonesia, p. 1

<sup>14</sup> Romli Atmasasmita. (1996). The Criminal Justice System: Existentialism and Abolitionism Perspectives. Jakarta: Bina Cipta Publishers, p. 15

<sup>15</sup> Mardjono Reksodiputro, Op.cit.,

While law enforcement is inseparable from the criminal justice system, it demands a harmonious relationship between administrative subsystems in the implementation of an integrated criminal justice system. The issue of judicial administration within the criminal justice system is a significant factor in the principle of law enforcement and justice through the integrated criminal justice system subsystem. If judicial administration issues are not sound in concept and implementation, the objectives of an integrated criminal justice system will be impossible to achieve. Instead, the opposite will occur: the legal principles and principles that underlie the normative framework of an integrated criminal justice system will fail.<sup>16</sup>

Thus, it can be concluded that the criminal justice system always has the following consequences and implications:

- a. All subsystems will be interdependent because the product (output) of one subsystem is input for another subsystem.
- b. The systems approach encourages interagency consultation and cooperation which in turn will increase efforts to formulate strategies for the entire system.
- c. Policies decided and implemented by one subsystem will have an impact on other subsystems.<sup>17</sup>

Furthermore, the interdependence of subsystems within the criminal justice system will naturally transform it into an integrated system with a common goal. The justice system has a primary goal: to protect society and uphold the law.<sup>18</sup> In the criminal justice system, investigation and prosecution are two distinct yet closely interrelated stages. Over time, the implementation of the criminal justice system has been widely criticized for being too oriented toward retributive justice, with punishment as its primary objective. Several major problems within the criminal justice system include overcriminalization and prison overcapacity. Many minor crimes are still subject to imprisonment, resulting in overcrowding. This aims to strive for reform of criminal law. So that the reform of criminal law is essentially part of a rational effort to make law enforcement more effective by improving legal substance, a rational effort to overcome crime (evil acts both by law and by society), a rational effort to overcome social problems that can be resolved through law.<sup>19</sup>

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<sup>16</sup> Sidik Sunaryo. (2006). *Selected Chapters on the Criminal Justice System*. Malang: UMM Press, p. 256

<sup>17</sup> Ibid,

<sup>18</sup> Tolib Effendi. (2013). *Criminal Justice System: Comparison of Components and Processes of Criminal Justice Systems in Several Countries*. Yogyakarta: Pustaka Yustisia, p. 145

<sup>19</sup> Syamsul Fatoni. (2015). *Reforming the Criminal Justice System: Theoretical and Pragmatic Perspectives for Justice*. Jakarta: Setara Press, p. 32

To date, the criminal justice system has been dominated by a retributive approach, which emphasizes the imposition of criminal sanctions as a form of retribution for the perpetrator's actions. This approach positions the state as the primary party confronting the perpetrator, while often neglecting the interests of the victim. As a result, the criminal justice process is often solely oriented toward punishment, without providing adequate space for reparation, satisfying the victim's sense of justice, or improving social relations within the community. Over time, this retributive model has been deemed ineffective in comprehensively resolving legal issues. Furthermore, the modern legal paradigm demands a shift from mere punishment to restoration efforts that focus on the interests of all parties.

The existence of criminal law reform can be interpreted as legal politics in the post-factum sense, or legal politics implemented after concrete situations have occurred in society. This is in line with Sunaryati Hartono's explanation, as quoted by Barda Nawai Arif, who stated that legal politics is inseparable from the social and traditional realities of a country.<sup>20</sup> So that legal reform, especially criminal law, is felt to have a high level of urgency regarding the following 3 (three) things:

- 1) The political reason is that an independent country must have its own laws of a national nature, for the sake of national pride.
- 2) Sociological reasons are reasons that require laws to reflect the culture of a nation.
- 3) The practical reason is that we want the law that applies in a country to be the law in the original language of that country, not a translation of the law from which it originated.<sup>21</sup>

Based on this, the idea of restorative justice emerged as an alternative approach in the criminal justice system. Restorative justice emphasizes not only the imposition of sanctions but also dialogue, mediation, and agreement between the perpetrator, victim, and community. Thus, case resolution not only restores legal balance but also repairs social relations damaged by the crime. This is a case of domestic violence (KDRT) resolved by the Public Prosecutor at the Tidore Islands District Attorney's Office. Domestic violence (KDRT) is one of the most common crimes in Indonesia and has serious impacts on victims, both physically, psychologically, and socially.

To address this issue, the state has enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This law emphasizes that domestic violence is a crime that must be dealt with firmly because it violates human rights principles and undermines family resilience. In practice, law enforcement against domestic

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<sup>20</sup> Barda Nawawi Arief. (2012). *Anthology of Criminal Law Policy (Developments in the Drafting of the New Criminal Code)*. Jakarta: Kencana Prenada Media Group, p. 36

<sup>21</sup> Muladi. (2015). *Conditional Sentence Institution, Third Edition*. Bandung: Alumni, p. 71

violence often faces a dilemma. On the one hand, the state is obliged to protect victims through a strict legal process, but on the other hand, many victims and perpetrators' families desire a peaceful resolution to maintain family integrity and avoid social stigma. This creates problems, as a judicial process oriented toward punishment does not necessarily resolve the root of the problem and sometimes even worsens family conditions. In response to the need for a more humane legal solution, the Indonesian Attorney General's Office issued Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation allows prosecutors to terminate prosecutions if certain conditions are met, such as a peace agreement between the perpetrator and victim, restitution of losses, and consideration of social interests. The application of restorative justice is expected to provide a resolution to cases that not only emphasizes revenge, but also restoration of relationships, protection of victims, and harmony in society.

When linked to the theoretical approach to the workings of law formulated by Robert Seidman, as quoted by Rahardjo, it is as follows:

- a) How a role holder is expected to act is indicated in each legal regulation.
- b) Every person who plays a role in acting and making decisions in response to legal regulations is subject to and controlled by the applicable legal regulations. Every sanction resulting from the activities of the implementing agency and all the social, political, and other forces operating within them are subject to their influence.
- c) Implementing agencies respond to legal regulations by taking action that is dependent on and controlled by applicable legal regulations. Any sanctions resulting from the activities of the implementing agency and all the social, political, and other forces operating on it, as well as from data feedback from stakeholders and the bureaucracy, are also affected.
- d) The steps taken by lawmaking institutions (legislatures) in response to legal regulations will determine the functioning of the existing legal regulations. Every sanction from the complex social, political, and other forces acting on them also represents feedback from stakeholders and the bureaucracy.<sup>22</sup>

Analysis of the implementation of the termination of prosecution of domestic violence (KDRT) crimes based on restorative justice at the Tidore Islands District Attorney's Office using Robert B. Seidman's Theory of the Working of Law. In practice, it is possible to terminate the prosecution of domestic violence cases through the Restorative Justice (RJ) mechanism, as stipulated in the Indonesian Attorney General's Regulation Number 15 of 2020. This mechanism is

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<sup>22</sup>Camblis and Robert B. Seidman. (1971). *Law, Order, and Power*, Reading, Mass Addison, Wesley, quoted from Satjipto Rahardjo. (1992). *Legal Science*. Bandung: Alumni, p. 21



implemented by considering the interests of the victim, the perpetrator, and the community. However, the success of implementing the termination of prosecution based on Restorative Justice is not only determined by formal rules, but also by how the law works in society, as explained in Robert B. Seidman's Theory. According to Seidman, the working of the law is influenced by three main components, namely:

(1) *Legal Institution*(law-making and implementing agency), in this case the Tidore Islands District Attorney's Office as the institution authorized to carry out prosecution and terminate prosecution.

(2) *Rules*(rule of law), in the form of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 8 of 1981 concerning the Criminal Procedure Code, and Prosecutor's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

(3) *Behavior of Role Occupants*(behavior of legal subjects/actors), the behavior of prosecutors, victims, perpetrators, families, and the community who interact in domestic violence cases.

Analysis of Implementation at the Tidore Islands District Attorney's Office from the Legal Institution (Prosecutor's Office) perspective The Prosecutor's Office plays an important role as a gatekeeper in deciding whether a domestic violence case is worthy of being terminated using the RJ approach. In Tidore Islands, prosecutors assess formal requirements, criminal threats of under 5 years, the existence of peace, and restoration of social conditions. as well as material requirements (the interests of the victim are prioritized over the imprisonment of the perpetrator). Then from the rules side (Legal Rules) in the Indonesian Prosecutor's Office Regulation No. 15 of 2020 provides a clear legal umbrella, but in the context of domestic violence there is tension: on the one hand, domestic violence is a crime that touches the private sphere, on the other hand the state has an obligation to protect victims. Therefore, the application of Restorative Justice must be truly selective so as not to ignore the rights of victims. Legal rules sometimes clash with local cultural values that emphasize family peace rather than punishment.

Based on the analysis above, the relationship with Seidman's theory is that law works when all three components (institutions, rules, and behavior) support each other. If one of them is weak, the implementation of restorative justice will be ineffective. In practice in Tidore, regulations are in place (Perja No. 15/2020), the prosecutor's office is functioning, but the behavior of the parties (especially victims) is still influenced by socio-cultural factors that can give rise to the risk of "forced peace." Seidman's theory emphasizes that legal rules are not automatically effective; they must be interpreted by institutions and implemented according to the behavior of the parties involved.



Thus, using Robert Seidman's Theory of the Working of Law approach, it can be concluded that restorative justice can only be effective if there is harmony between clear legal rules, professional law enforcement institutions, and the behavior of the parties that is truly oriented towards restoration and substantive justice. That is, success Restorative Justice does not automatically arise from the existence of regulations, but is largely determined by how legal institutions interpret these rules and how society and the parties implement them in practice.

#### 4. Conclusion

Based on the description above, it can be concluded that Through this policy, the Indonesian criminal justice system has experienced a paradigm shift from retributive justice to restorative justice, where justice is no longer understood solely as revenge against the perpetrator, but also as a process of restoring social balance and protecting the rights of victims. The existence of This restorative approach positions victims not merely as witnesses in the legal process, but as the primary party with the right to reparation. Meanwhile, perpetrators are positioned not merely as objects of punishment, but as subjects responsible for redressing the consequences of their actions. Thus, the justice achieved is not merely formal justice (legal justice), but also substantive justice that aligns with the values of humanity and social justice as mandated by Pancasila. The application of restorative justice at every stage of the criminal justice system, from investigation and prosecution to correctional treatment, is expected to strengthen efforts to humanize Indonesian criminal law. This concept does not eliminate law enforcement, but rather enhances it by adding moral, social, and humanitarian dimensions to the legal process.

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**Regulation:**

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Law No. 8 of 1981 concerning the Criminal Procedure Code

Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.