

The Effectiveness of Implementing Restorative Justice in Terminating Prosecution of Theft Crimes Based on Legal Certainty

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Abstract. Criminal law enforcement in Indonesia is currently experiencing a paradigm shift from a retributive approach to a more humanistic approach through the concept of restorative justice. The Prosecutor's Office as a law enforcement agency has an important role in implementing the mechanism for terminating prosecution based on restorative justice as regulated in Attorney General Regulation Number 15 of 2020. This research aims to find out and analyze effectiveness of implementation restorative justice in terminating the prosecution of the crime of theft at the Tegal Regency District Attorney's Office and how its implementation can realize legal certainty for the parties involved. This research use sempirical juridical method with a qualitative approach. Data were obtained through interviews with prosecutors, relevant law enforcement officers, as well as victims and perpetrators involved in the process. restorative justice, accompanied by a review of relevant legal documents and regulations. The analysis was conducted descriptively, assessing aspects of effectiveness, legal certainty, and fairness for the parties. The results of the study show that the implementation of restorative justice in the theft case at the Tegal District Attorney's Office, the case has been on going quite effective, because it can resolve cases quickly, simply, and cost-effectively, while prioritizing the restoration of relationships between victims and perpetrators. However, there are still obstacles such as a lack of public understanding of the concept of restorative justice and limited technical guidelines for assessing the suitability of cases. Nevertheless, the implementation of restorative justice is still promising. restorative justice stay in line with the principles legal certainty, because it is carried out based on a clear legal basis and transparent mechanisms in accordance with the provisions of the Attorney General's Regulation. Thus, restorative justice in the termination of prosecution of the crime of theft at the Tegal District Attorney's Office, it can be said effective and fulfills the principle of legal certainty, although there is still a need to improve understanding and

strengthen technical regulations so that implementation is more optimal.

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

1. Introduction

As social beings, humans require interaction and order in social life. To maintain this order, law exists as a set of binding rules that protect individual rights and interests. Indonesia, as a state governed by the rule of law, regulates all aspects of social life through a legal system outlined in the 1945 Constitution, with the goal of creating order and justice for society.¹

Law is seen as a guideline containing commands and prohibitions that must be obeyed, as violations can be subject to sanctions by the competent authorities. In the context of criminal law enforcement, Indonesia utilizes formal mechanisms through the judiciary, encompassing the investigative process and oversight of decisions. However, this system often clashes with social realities, particularly as some criminal acts arise from economic pressures and the necessities of life, not simply from malicious intent.²

A crime is understood as a prohibited act that is punishable by criminal sanctions. Theft is one of the crimes regulated by the Criminal Code as a crime against property. In certain contexts, acts of theft committed under duress raise moral questions: can such acts be equated with theft committed with malicious intent?³ Restorative justice developed in response to the weaknesses of the retributive system, which failed to fully satisfy the sense of justice. This approach emphasizes restoring the original state, fulfilling the rights of victims, and balancing the interests of perpetrators. Restorative justice allows communities, victims, and perpetrators to participate in seeking a more proportionate resolution.⁴

The implementation of restorative justice is strengthened by Prosecutor's Regulation Number 15 of 2020, which authorizes prosecutors to terminate prosecutions based on restorative principles. As a law enforcement agency, the Prosecutor's Office is required to maintain legal certainty and justice, while also exploring the humanitarian values inherent in society.⁵ The implementation of restorative justice is seen as an important alternative in building a fairer legal system. Indonesia's criminal justice system has been deemed too perpetrator-centered, resulting in insufficient attention to victims' rights. Yet, victim protection is part of fulfilling human rights and is one of the reasons why implementing a restorative approach is urgent in society.

¹Jimly Asshiddiqie, *Introduction to Constitutional Law*, (Jakarta: Rajawali Pers, 2019), p. 25.

²Van Kan in Sudikno Mertokusumo, *Understanding Law: An Introduction*, (Yogyakarta: Liberty, 2014), p. 55.

³Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2008), p. 65.

⁴Muladi, *Selected Chapters on the Criminal Justice System*, (Semarang: UNDIP Publishing Agency, 2015), p. 143.

⁵Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

One example of restorative justice in action occurred at the Tegal Regency District Attorney's Office in a motorcycle theft case committed by Akhmad Sururi. Through mediation between the perpetrator and the victim, a peace agreement was reached, allowing the prosecution to be dropped. This case demonstrates the power of restorative justice to provide a win-win solution and a sense of justice more in line with humanitarian values.

2. Research Methods

This research uses a juridical-empirical approach, examining legal norms and their implementation in the field. This type of research is descriptive with a qualitative approach, utilizing primary and secondary data.

3. Results and Discussion

3.1. Application of Restorative Justice in Terminating Prosecution of Theft Crimes

The process of resolving cases through restorative justice begins with the case identification stage, where the Public Prosecutor (JPU) assesses the feasibility of implementing restorative justice based on formal and material requirements, the level of social impact, and the willingness of the perpetrator and victim to reach a settlement. If the case is deemed to meet the criteria, the JPU then facilitates penal mediation, bringing the perpetrator and victim together in a dialogical forum. At this stage, the perpetrator conveys an admission and apology, while the victim is given space to express their losses and hopes. The agreement reached, such as a settlement or the award of compensation, is then officially documented in the Minutes of the Settlement, a legal document that serves as the basis for the continuation of the restorative process.⁶

The next stage includes an evaluation by the District Attorney's Office (Kejari), which conducts formal, material, and sociological examinations of all processes and documents, then compiles a legal opinion as the basis for a recommendation from the Head of the District Attorney's Office (Kajari). This is followed by tiered approval from the High Prosecutor's Office (Kejati) and the Deputy Attorney General for General Crimes (JAM Pidum). If all stages are approved, a Letter of Decision to Terminate Prosecution (SKP2) is issued as legal evidence of the case's termination. In the final stage, the Prosecutor's Office conducts limited publications for public education and monitors the implementation of the peace agreement and the social conditions of the community to ensure optimal recovery.⁷

⁶Muladi, *Restorative Justice in the Criminal Justice System*, (Semarang: UNDIP Publishing Agency, 2015), pp. 142–146.

⁷Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Articles 5–10.

3.2 Weaknesses of Restorative Justice in Stopping the Crime of Theft

The implementation of restorative justice still has several weaknesses, both internally and externally. Internally, the 14-day time limit for the reconciliation process, as stipulated in the Attorney General's Regulation, is considered too short, limiting the space for dialogue between the perpetrator, victim, and family, particularly in cases with high sensitivity or complex social relationships.⁸ Externally, the public still lacks understanding of the concept of restorative justice, leading to the perception that this mechanism "frees the perpetrator" without due process. Furthermore, many victims refuse to reconcile due to emotional factors, trauma, or mistrust, often hindering the restorative justice process and preventing it from being implemented optimally.⁹

3.3 Effectiveness of the Implementation of Restorative Justice in Terminating Prosecution of Theft Crimes

The implementation of restorative justice (RJ) at the Tegal Regency District Attorney's Office demonstrated significant effectiveness throughout 2025. This is reflected in the successful resolution of three cases through the RJ mechanism, including the theft case involving Akhmad Sururi. This dialogical resolution of cases aligns with the restorative justice theory proposed by Tony F. Marshall, which views crime as a violation of interpersonal relationships and not merely a violation of the state. Therefore, the resolution process must be directed at restoring social conditions, reparating losses, and restoring relationships between victims and perpetrators, rather than solely on the imposition of punishment.¹⁰

4. Conclusion

The process of resolving cases through restorative justice begins with the identification of the suitability of the case by the Public Prosecutor, followed by penal mediation that brings together the perpetrator and victim to reach a peace agreement which is then stated in the Minutes and evaluated by the Prosecutor's Office until it obtains tiered approval from the High Prosecutor's Office and the General Crimes Investigation Agency before issuing the SKP2 and monitoring the implementation of the agreement; however, this mechanism still faces weaknesses such as the 14-day peace time limit which is considered too short and the lack of public understanding which triggers rejection by some victims, however, its implementation at the Tegal Regency Prosecutor's Office in 2025 has proven effective with the resolution of three cases, in line with Tony F. Marshall's

⁸RI Thontowi, "Restorative Justice as an Alternative for Resolving Criminal Cases in Indonesia," *Ius Quia Iustum Law Journal*, Vol. 27, No. 1, 2020, pp. 45–48.

⁹Muladi, *Restorative Justice in the Criminal Justice System*, (Semarang: UNDIP Press, 2015), pp. 150–152.

¹⁰Tony F. Marshall, *Restorative Justice: An Overview*, Home Office Research Development and Statistics Directorate, 1999, p. 5–7.

theory which emphasizes the restoration of social relations and reparation of losses through dialogue between the perpetrator and the victim.

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