

## Implementation of Termination of Prosecution of Criminal Acts of Assault Based on Restorative Justice Values (Research Study at the North Lampung District Attorney's Office)

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**Abstract.** *The Indonesian criminal justice system, which remains oriented toward retributive justice, is considered unable to comprehensively resolve assault cases because it emphasizes retaliation and insufficiently considers the restoration of the parties involved. This condition encourages the adoption of restorative justice as an alternative mechanism for case resolution; However, its implementation continues to face normative and procedural obstacles since its legal foundation relies solely on institutional policy, such as the Prosecutor's Regulation (Perja) No. 15 of 2020, rather than higher-level legislation. The purpose of this research is to identify and analyze the implementation of prosecution termination for assault cases based on restorative justice values at the North Lampung District Prosecutor's Office, as well as to examine the obstacles and solutions in implementing prosecution termination for assault cases based on restorative justice values at the same institution. The research method applied in this thesis is a sociological juridical approach. The research specification is descriptive-analytic. The theories employed include the theory of restorative justice and the theory of the legal system. The results of this study are as follows: (1) The implementation of termination for assault cases at the North Lampung District Prosecutor's Office demonstrates that the application of restorative justice serves as an effective and humane solution for resolving cases arising from personal conflicts between the offender and the victim, such as the assault case triggered by a debt dispute in July 2024. Prosecutor's Regulation No. 15 of 2020. (2) The obstacles to implementing prosecution termination for assault cases based on restorative justice at the North Lampung District Prosecutor's Office. In terms of substance, the Criminal Procedure Code (KUHP) does not explicitly regulate prosecution termination based on reconciliation or restorative justice. From the structural aspect, weak oversight*

*mechanisms and unclear internal functional distribution create opportunities for intervention and abuse of authority in the prosecution process. From the cultural dimension, a strong retributive legal mindset still dominates law enforcement practices.*

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

## 1. Introduction

The Republic of Indonesia is a state based on law (*rechtsstaat*) whose law is basically aimed at achieving peace in living together, which is a harmony between order and tranquility, namely by making the 1945 Constitution the main pillar of the state constitution. As stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In a state based on law, state power is based on law. Law and society are two things that are interrelated and cannot be separated.<sup>1</sup>

Regarding abuse in Article 351 of the Criminal Code, R. Soesilo, in his book entitled "Kitab Undang-Undang Hukum Pidana (KUHP)" (Criminal Code) and its complete article-by-article commentary, states that the law does not provide provisions for what is meant by "abuse." According to jurisprudence, "abuse" is defined as intentionally causing discomfort (suffering), pain, or injury. According to paragraph 4 of this article, abuse also includes "intentionally damaging someone's health."<sup>2</sup>

The crime of assault is regulated in Chapter XX Articles 351 to 358 of the Criminal Code, which cover various forms of assault. Article 351 regulates assault in the form of principal (*mishandeling*) which causes pain, serious injury, or harms a person's health, while Article 352 regulates assault in the form of minor (*geprivilegieerde mishandeling*) which does not cause pain, does not hinder the performance of official duties, or livelihood. Article 353 contains provisions regarding planned assault with various consequences, and Article 354 regulates aggravated assault (*gequalificeerde mishandeling*). Furthermore, Article 355 paragraph (1) regulates planned serious assault, Article 356 regulates assault with certain aggravations, and Article 358 regulates assault or fighting.<sup>3</sup>

*Restorative justice* or often translated as restorative justice, is an approach model that emerged in the 1960s in an effort to resolve criminal cases, which differs from

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<sup>1</sup>Sidik Sunaryo, *Criminal Justice System*, UMM Press, Malang, 2004, p. 221

<sup>2</sup>Tjandra Sridjaja Pradjonggo, *The Effectiveness of Law Number 11 of 2008 Concerning Electronic Information and Transactions on the Rise of Criminal Law Violations on Social Media*. *Likhitaprajna*, Vol. 15, No. 1, 2013, pp. 61-68.

<sup>3</sup>Sintia, A. Febuani, et. al., *Application of Sanctions for Criminal Acts of Assault According to Kerinci Customary Criminal Law with the Criminal Code*. *Unes Journal of Swara Justisia*, Vol. 7, No. 1, 2023, pp. 148-160.

the approach used in the conventional criminal justice system, this approach emphasizes the direct participation of perpetrators of criminal acts, victims and the community in the process of resolving criminal cases. Despite the fact that this approach is still debated theoretically, this view is in reality developing and has greatly influenced legal policies and practices in various countries, including Indonesia. Indonesia as a civilized nation needs to carry out its legal functions with dignity.<sup>4</sup>

Restorative justice is regulated in several different regulations, including the Circular Letter of the Chief of Police No. SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, Regulation of the Chief of Police No. 6 of 2019 concerning Criminal Investigations and Regulation of the Prosecutor's Office No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Both regulations specifically regulate the resolution of assault cases with restorative justice mechanisms during the investigation stage, so that cases resolved using these mechanisms do not reach the court stage.<sup>5</sup>

Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice was issued to accommodate restorative justice settlement.<sup>6</sup>Based on the considerations, it is known that the settlement of criminal cases by prioritizing restorative justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system. The authority of the Prosecutor in implementing the termination of prosecution carried out by considering local wisdom and the values of justice that live in society has an important meaning in order to accommodate the development of legal needs and a sense of justice in society that demands a change in the paradigm of law enforcement and solely realizing retributive justice into restorative justice.<sup>7</sup>

Article 1 paragraph (1) of Perja No. 15 of 2020 explains that restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator's or victim's family, and related parties to jointly seek a just resolution

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<sup>4</sup>Ni Nyoman Ayu Pulasari Dewi, et. al., Implementation of Restorative Justice Principles in Ordinary Assault Cases at the Buleleng Police. *Yustisia Community Journal*, Vol. 5, No. 1, 2022, pp. 242-253.

<sup>5</sup>Zaidun and Joko Setiyono, "Resolving Criminal Acts of Assault Using a Restorative Justice Approach," *Indonesian Journal of Legal Development*, Vol. 6, No. 1, 2024, pp. 49-60

<sup>6</sup>Dedy Chandra Sihombing, et al., Strengthening the Authority of Prosecutors as Dominus Litis as an Effort to Optimize Restorative Justice-Oriented Criminal Law Enforcement. *Locus: Journal of Legal Science Concepts*, Vol. 3, No. 2, 2023, pp. 63-75.

<sup>7</sup>Risnawati Br. Ginting, et al., Termination of Prosecution Through the Implementation of Restorative Justice at the Prosecutor's Office Level. *Locus Journal of Academic Literature Review*, Vol. 2, Issue 10, 2023, pp. 789-806.

by emphasizing restoration to the original state and not revenge.<sup>8</sup>The conditions for restorative justice are regulated in Article 5 (five) of Perja No. 15 of 2020, namely that the suspect has committed a crime for the first time, there has been a peace agreement, is only threatened with a fine or imprisonment of no more than 5 years, and the value of the evidence or the value of the loss caused by the crime is no more than IDR 2,500,000 (two million five hundred thousand rupiah). For criminal acts committed against people, bodies, lives and freedom of people, the provisions regarding the limit of the value of losses which is not more than Rp. 2,500,000,- (Two million five hundred thousand rupiah) can be set aside and for criminal acts committed due to negligence, the provisions regarding the threat of criminal punishment which is not more than 5 (five) years and the limit of the value of losses which may not be more than Rp. 2,500,000,- (Two million five hundred thousand rupiah) can also be set aside, unless there are circumstances/criteria which are casuistic in nature which according to the consideration of the Public Prosecutor with the approval of the Head of the Branch of the District Attorney's Office or the Head of the District Attorney's Office cannot be stopped from prosecution based on Restorative Justice.<sup>9</sup>

Friday, July 12, 2024 at around 10:00 WIB, the North Lampung District Attorney's Office read out a decree to stop prosecution using a Restorative Justice approach against a suspect with the initials RA. Witness SP and Witness WI went to the suspect's house in South Kotabumi, North Lampung to collect a debt of Rp. 80,000,000.00. Upon arriving at the suspect's house at around 10:30 WIB, an argument ensued because the suspect stated he had no money and invited the matter to be reported to the police. The argument heated up until the suspect pulled and grabbed SP's hair. and scratched his face, then the suspect's parents pushed SP. when witness WI tried to intervene. The suspect also spat on both witnesses, so they left the scene and reported the incident to the North Lampung Police. The victim who experienced physical violence by the suspect, then the prosecutor through his authority directed the victim that the case could be resolved through restorative justice. Although initially refusing, the victim finally agreed to reconcile with the suspect.<sup>10</sup>

This demonstrates that assault is a crime that can be resolved through restorative justice by all parties. Restorative justice is a form of case resolution that emphasizes the direct participation of the perpetrator, victim, and community.

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<sup>8</sup>Andri Kristanto, Review of Attorney General Regulation Number 15 of 2020 concerning the termination of prosecution based on restorative justice. *Lex Renaissance*, Vol. 7, No. 1, 2022, pp. 180-193.

<sup>9</sup>Iwan Kurniawan, Implementation of Attorney General Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice (A Study at the West Nusa Tenggara High Prosecutor's Office). *Journal of Education and Development*, Vol. 10, No. 1, 2022, pp. 610-618.

<sup>10</sup>Afina Anindita Ektya Putri and Aidul Fitriadi Azhari, Implementation of Restorative Justice Principles in Criminal Acts of Assault at the Investigation Level (Case Study at the Surakarta Police), *UNES Law Review*, Vol. 6, No. 3, 2024, pp. 8539-8553

Not all crimes require a trial. Prioritizing peace through deliberation to reach a consensus is an integral mechanism in Indonesian society.<sup>11</sup>

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 care for religious norms, decency, and morality, and is obliged to explore the values of humanity, law, and justice that exist in society. In order to strive for the implementation of restorative justice, the Attorney General's Office has issued at least several policies as a form of prosecutorial discretion by the public prosecutor, which is also the embodiment of the principle of *dominus litis*. It is hoped that this can be used by the Attorney General to see and balance between applicable regulations and the principle of benefit to be achieved.<sup>12</sup>

## **2. Research Methods**

The type of research used in this study is Juridical Sociological. The Juridical Sociological approach emphasizes research aimed at acquiring legal knowledge empirically by engaging directly with the subject.<sup>13</sup> This research is descriptive analytical in nature, because the researcher wishes to describe or explain the research subjects and objects, then analyze and finally draw conclusions from the research results.<sup>14</sup> The data used for this study consisted of primary and secondary data. The data analysis method used was descriptive qualitative, where the data obtained provided a description or formulation of the problem presented. The primary and secondary data were then analyzed qualitatively.<sup>15</sup>

## **3. Results and Discussion**

### **3.1. Implementation of the Termination of Prosecution for Criminal Acts of Assault Based on Restorative Justice Values at the North Lampung District Attorney's Office**

The concept of restorative justice emerged as a critique of the conventional criminal justice system, which was deemed ineffective in resolving social conflict. This ineffectiveness stems from the ineffectiveness of the conflicting parties in the

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<sup>11</sup>Aulia Parasdika, et. al., Application of Restorative Justice to Criminal Acts of Assault. PAMPAS: Journal of Criminal Law, Vol. 3, No. 1, 2022, pp. 69-84.

<sup>12</sup>Dian Rosita, The Position of the Prosecutor's Office as the Executor of State Power in the Field of Prosecution in the Structure of the Indonesian Constitution. *Ius Constituendum Journal*, Vol. 3, No. 1, 2018, pp. 27-47.

<sup>13</sup>Soerjono Soekanto, Introduction to Legal Research, Publisher: University of Indonesia Press, Jakarta, 2005, p. 51.

<sup>14</sup>Mukti Fajar ND and Yulianto Achmad, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, 2010, p. 183.

<sup>15</sup>Komang Ayu Henny Achjar et al., Qualitative research methods: a practical guide to qualitative data analysis and case studies, Sonpedia Publishing Indonesia, Jambi, 2023, p. 35

settlement process, leaving victims in a position of suffering, while imprisoned perpetrators create new social problems. Courts, which should adhere to the principles of simplicity, speed, and low cost, instead experience case overload, wasteful processes, and a lack of responsiveness to the interests of the wider community.<sup>16</sup>

According to Marshall, quoted in *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigm*, restorative justice is defined as a process involving the parties involved in a particular crime to restore the impact of the crime and choose the appropriate mechanism to handle the crime. Restorative justice can restore the social security of victims and perpetrators in resolving a criminal case.<sup>17</sup>

The authority of the Public Prosecutor as a law enforcement agency, carried out to address the need for not only legal certainty to achieve justice, but also the benefits of implementing the law itself to achieve true justice. In proving a criminal act committed by a defendant, they must establish evidence as complete as possible as proof related to the crime. This is the role of the Prosecutor's Office in law enforcement efforts. The Prosecutor's Office is one of the bodies or institutions directly responsible for law enforcement, namely at the prosecution stage.<sup>18</sup>

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 pay attention to religious norms, decency and morality, and is obliged to explore the values of humanity, law, and justice that exist in society.<sup>19</sup>

The Attorney General as the highest Public Prosecutor in Indonesia has issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which was promulgated on July 22, 2020. Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice will be a momentum that changes the "face of law enforcement in Indonesia". The presence of Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is expected to further arouse the conscience of Prosecutors as

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<sup>16</sup>Rian Dawansa and Echwan Iriyanto, Termination of Prosecution Based on Restorative Justice, *Unissula Law Journal*, Vol. 39, No. 1, 2025, pp. 12-30

<sup>17</sup>Andrew von Hirsch, et. al., *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Hart Publishing, Oregon, 2003, p. 44

<sup>18</sup>Maharani Adhyaksantari Wicaksana, The Benefits of Terminating Prosecution Based on Restorative Justice in Domestic Violence Cases, *Ranah Research: Journal of Multidisciplinary Research and Development*, Vol. 8, No. 1, 2025, pp. 88-99

<sup>19</sup>Azizah Mutiara Ningrum, et. al., Implementation of Restorative Justice in the Settlement of Criminal Cases of Assault at the Sragen District Attorney's Office, *Justicia Journal*, Faculty of Law, Darul 'Ulum University, Jombang, Vol. 12, No. 2. 2023, pp. 164-176



controllers of criminal cases in seeing the reality that many small and underprivileged people still have difficulty in getting access to legal justice.<sup>20</sup>

Attorney General Regulation (Perja) Number 15 of 2020 explicitly regulates the implementation of restorative justice. However, its implementation remains limited, including the prohibition of restorative justice for narcotics offenses and offenses carrying a minimum sentence or a sentence exceeding five years in prison. Furthermore, the Supreme Court, through the Directorate General of General Courts, has issued a new policy regarding the implementation of restorative justice, through Decree of the Director General of General Courts 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. This decree limits the application of restorative justice to minor criminal cases, juvenile cases, certain narcotics cases, and cases involving women in conflict with the law.<sup>21</sup>

According to Gustav Radbruch's theory of legal certainty, legal certainty is one of the primary goals of law and an instrument for achieving justice. Legal certainty is realized through impartial implementation and enforcement of laws that apply to everyone without discrimination. With legal certainty, every individual can predict the legal consequences of their actions.<sup>22</sup>

The Public Prosecutor must also be able to ensure that the implementation of the termination of prosecution based on restorative justice must be based on a peace agreement that is carried out fairly and without coercion from any party. The implementation of restorative justice within the Prosecutor's Office must pay attention to the agreement being decided by the perpetrator and the victim, the Public Prosecutor being a facilitator or neutral party who is impartial, the results of the restorative justice agreement are confidential, maintaining an atmosphere of equality and mutual respect.<sup>23</sup>

The settlement between the suspect and victim in North Lampung Regency on July 12, 2024, is a concrete example of the application of humanistic restorative justice. The case began when witnesses SP and WI went to the suspect's house to collect a debt of Rp 80,000,000.00. Tensions arose when the suspect stated his reluctance to pay the debt and instead challenged the matter to be reported to the police. The situation escalated to the point where the suspect grabbed and scratched SP's

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<sup>20</sup>Eddy OS Hiariej, *Principles of Criminal Law*, Cahaya Atma Pustaka, Yogyakarta, 2016, p. 45

<sup>21</sup>Eko Syaputra, "The Application of the Restorative Justice Concept in the Future Criminal Justice System." *Lex lata*, Vol. 3, No. 2, 2021, pp. 233-247

<sup>22</sup>Alfonsus Nahak, *Problems of Executing State Administrative Court Decisions from Gustav Radbruch's Legal Perspective*. *Journal of Social Education and Humanities*, Vol. 2, No. 3, 2023.

<sup>23</sup>Tengku Mabar Ali, *Termination of Prosecution of a Criminal Case by the Public Prosecutor Based on Restorative Justice from the Perspective of Certainty, Justice and Legal Benefit*. *Scientific Journal of Metadata*, Vol. 5, No. 1, 2023, pp. 381-395.

face and spat on both witnesses. The witnesses then reported the incident to the North Lampung Police.

The prosecutor's profiling revealed that the suspect was known in his neighborhood as an active socializer who frequently helped residents. This information serves as a sociological consideration that strengthens the belief that the assault was spontaneous, not motivated by malicious intent or planning. Furthermore, the victim, SP, has forgiven the suspect and expressed his willingness to resolve the case peacefully. Both parties also signed a peace agreement before the restorative justice process began, indicating that the peace agreement was reached voluntarily and without pressure from any party.

In an interview with Mr. Glenn Lucky, SH, MH, Head of Intelligence Division 1 of the North Lampung District Attorney's Office, he emphasized that the choice of restorative justice in this case was based on a comprehensive assessment of both legal and social aspects. According to Mr. Glenn Lucky, "We believe this case is more appropriately resolved through a restorative mechanism because both parties have social relationships that need to be restored. The suspect's actions were not part of a dangerous behavioral pattern, but rather a momentary emotional outburst triggered by a personal conflict. Matters like this are more effectively resolved through mediation than through the court process."<sup>24</sup>

The suspect was charged with Article 351 paragraph (1) of the Criminal Code concerning assault with a maximum prison sentence of two years and eight months. However, based on the results of the deliberations and in accordance with the provisions of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the North Lampung District Attorney's Office then facilitated the case resolution process through a restorative justice approach.

The second phase of restorative justice was carried out on Tuesday, June 24, 2025, followed by a peace effort on Thursday, June 30, 2025, at the Restorative Justice House of the North Lampung District Attorney's Office. This meeting was attended by the Head of the North Lampung District Attorney's Office, the Head of the General Crimes Section, the Facilitator Prosecutor/Prosecutor, the Suspect and the Victim along with their families, community leaders, and police investigators. In the forum, the Suspect apologized directly to the victim, and the victim sincerely accepted the apology both physically and mentally. The agreement reached, the victim stated that he had no objection if the case was resolved through restorative justice and not proceeded to trial. The suspect promised not to repeat his actions and committed to maintaining order and harmony in the community. After the peace process was successfully reached by the parties, the North Lampung District

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<sup>24</sup>Interview with Mr. Glenn Lucky, SH, MH, as Head of Sub-Section 1 for Intelligence at the North Lampung District Attorney's Office on October 29, 2025



Attorney's Office as the facilitator had the responsibility to ensure that all stages of the prosecution termination mechanism ran according to the provisions. The first stage was to compile a report on the implementation of the peace agreement as authentic evidence. This report serves as a document confirming that the perpetrator and victim have resolved the conflict peacefully. The facilitator then submits an official report to the Head of the North Lampung District Attorney's Office stating that the peace agreement has been implemented, serving as a basis for the leadership to determine the next steps in the restorative administration process.

Once approval is obtained, the Public Prosecutor prepares a draft Letter of Decision to Terminate Prosecution (SKPP). The Head of the North Lampung District Attorney's Office is required to issue the SKPP no later than two days after receiving the restorative justice approval. The SKPP must contain a complete description of the case's status, the reasons for terminating the prosecution based on restorative justice, the status of the evidence, details of the Public Prosecutor's appointment order (P-16A), the contents of the settlement agreement, and all supporting documents demonstrating that the requirements for an out-of-court settlement have been fully met. The completeness of these documents forms the legal basis for terminating the prosecution and demonstrates that the restorative justice process has been implemented according to procedure.

Finally, the decision to terminate prosecution based on restorative justice must also be notified to the investigator and the chief justice as a form of implementing the principle of checks and balances. This agreement serves as the basis for the Prosecutor's Office to request termination of prosecution, taking into account the requirements stipulated in Article 5 of Attorney General Regulation Number 15 of 2020, namely, reconciliation between the perpetrator and the victim, an admission of guilt by the perpetrator, a crime punishable by a sentence of less than five years, and public support for a peaceful resolution.

A peace agreement that has been agreed upon voluntarily without any pressure or coercion from any party between the victim and the perpetrator is an indicator of the success of the implementation of Restorative Justice.<sup>25</sup> The agreement reflects a spirit of justice that emphasizes not only punishment but also the restoration of social relationships and moral responsibility. Restorative justice's primary goal is to empower the parties involved to consciously repair the consequences of unlawful acts. Essentially, the concept of restorative justice is a

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<sup>25</sup>Bambang Poernomo, *Principles of Criminal Procedure Law and Several Hopes in the Implementation of the Criminal Procedure Code*, Liberty, Yogyakarta, 1982, p. 89

simple yet meaningful approach, prioritizing resolution through dialogue and moral awareness over mere retribution.<sup>26</sup>

The essence of restorative justice is shifting the orientation from the principle of retributive justice (justice based on retribution) to restorative justice (justice based on restoration). Justice is no longer understood as appropriate retribution against the perpetrator, whether in the form of physical or psychological suffering or criminal punishment, but rather as a healing process for all parties. Victims receive support and a restored sense of security, while perpetrators are given the opportunity to take responsibility for their actions with guidance from family and community. Through a sincere agreement, all parties consciously accept the results of the peace, so that the Restorative Justice process is truly clear and clean, leaving no potential for new demands or conflicts in the future.<sup>27</sup>

The implementation of the termination of prosecution based on restorative justice at the North Lampung District Attorney's Office aligns with the principle formulated by Tony Marshall, which states that restorative justice is a process whereby parties with an interest in a particular violation work together to resolve the consequences of that violation. In this assault case, the prosecutor-facilitated peace mechanism demonstrates that the settlement process is no longer state-oriented, but places the victim and perpetrator as the primary subjects of conflict resolution. This practice fulfills the basic characteristics of Marshall's version of restorative justice, namely open dialogue, admission of guilt, acceptance of responsibility by the perpetrator, and recovery of the victim's condition through mediation.

### **3.2. Obstacles and Solutions to Terminating Prosecution of Criminal Acts of Assault Based on Restorative Justice Values at the North Lampung District Attorney's Office**

#### **1) Weaknesses of Legal Substance**

Article 140 paragraph 2 of the Criminal Procedure Code regulates three circumstances that allow the prosecutor not to prosecute a case for technical reasons, namely there is insufficient evidence, the incident is not a criminal act and the case is closed by law because the defendant died, the case has expired and the case has been decided by the court (*nebis in idem*). In such cases, it does not mean that the termination results in a person being free from legal charges,

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<sup>26</sup>Jhon Merdiosman Purba, Adi Mansar, and Agusta Ridha Minin, Termination of Prosecution Based on Restorative Justice in Criminal Acts of Assault at the Toba Samosir District Attorney's Office, *Iuris Studia: Journal of Legal Studies*, Vol. 5 No. 2, 2024, pp. 404-414

<sup>27</sup>Eva Achjani Zulfa and Indriyanto Seno Adji, *Shifting the Paradigm of Criminalization*, Lubuk Agung, Bandung, 2011, p. 66.

but rather the termination is only temporary, meaning that if new evidence is found, the case will be continued.<sup>28</sup>

The case is closed by law as a reason for stopping the prosecution in principle based on the same reasons as the reasons for stopping the investigation, namely *ne bis in idem* (Article 76 of the Criminal Code), the defendant has died (Article 77 of the Criminal Code), the statute of limitations for criminal prosecution (Article 78 of the Criminal Code), the absence of a complaint in the complaint offense (Article 72 of the Criminal Code) and *affdoening buiten proces*, namely the cancellation of the right to prosecute due to the voluntary payment of the highest fine for violations (Article 82 of the Criminal Code).<sup>29</sup>

Prosecution in the Criminal Procedure Code is based on the principle of legality, meaning that all actions of the public prosecutor in carrying out prosecution must be based on the provisions of statutory regulations where the public prosecutor must prosecute a suspect to be tried in court.<sup>30</sup>

Although Indonesian Attorney General's Regulation No. 15 of 2020 represents a legal breakthrough, it is only an internal regulation, ranking at the level of statutory regulations and therefore not equal to a statute in the hierarchy of statutory regulations. The absence of explicit provisions regarding restorative justice in the Criminal Procedure Code (KUHAP) leaves prosecutorial discretion vulnerable to legal challenges.<sup>31</sup>

This aligns with what Mr. Glenn Lucky stated, emphasizing that the lack of an explicit legal basis in the Criminal Procedure Code (KUHAP) is a major obstacle to the implementation of restorative justice at the prosecution stage. "Normatively, prosecutors are fully bound by the principle of legality. Because the KUHAP does not mention reconciliation as a reason to stop prosecution, the implementation of restorative justice can only be carried out by referring to Perja Number 15 of 2020. This makes its position vulnerable to questioning, especially in the context of accountability and legal certainty."<sup>32</sup>

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<sup>28</sup>Jesica Kristi Tumbel, A Review of the Public Prosecutor's Authority in Conducting Prosecutions Before a Court Hearing. *Lex Crimen*, Vol. 10, No. 5, 2021.

<sup>29</sup>Tengku Mabbar Ali, Legal Certainty of Termination of Investigation by Perpetrators of Murder Crimes Based on Forced Defense Actions That Exceed the Limits (*Noodweer Excees*). *Scientific Journal of Metadata*, Vol. 5, No. 2, 2023, pp. 176-182.

<sup>30</sup>Muhammad Ghifari Satria Negara, et. al., The Effect of the Implementation of the Presumption of Innocence Principle on the Protection of the Rights of Suspects in the Investigation Process. *Journal of Legal Studies and Public Policy*, Vol. 3, No. 1, 2025, pp. 206-213.

<sup>31</sup>I Putu Agus Eka Sanjaya, et. al., The Role of Prosecutors in Resolving Criminal Acts Committed by Adults Through the Restorative Justice Process (Study at: East Lombok District Attorney's Office). *Innovative: Journal of Social Science Research*, Vol. 4, No. 1, 2024, pp. 7246-7258.

<sup>32</sup>Interview with Mr. Glenn Lucky, SH, MH, as Head of Sub-Section 1 for Intelligence at the North Lampung District Attorney's Office on October 29, 2025

Article 14, Letter h of the Criminal Procedure Code (KUHP) stipulates that the public prosecutor may close a case by operation of law. However, the term "by operation of law" is not explicitly defined by the KUHP, leaving the concept open to broad interpretation. In practice, "closed by operation of law" typically relates to objective and limiting circumstances, such as the death of the suspect, the expiration of the statute of limitations, or the application of the principle of *ne bis in idem*. If the termination of prosecution on the basis of a settlement is considered part of the "closed by operation of law" category, then explicit affirmation of the norm is still needed to avoid differences in interpretation among law enforcement agencies.

The concept that a settlement can waive prosecution actually finds its basis in the Criminal Code, particularly Article 82, which stipulates the waiver of the right to prosecute upon voluntary payment of the maximum fine. However, this article is not designed for restorative justice, which emphasizes recovery. The Indonesian legal system has not fully accommodated the concept of restorative justice as an integral part of the criminal procedure process. Consequently, existing legal instruments are unable to provide certainty and protection for prosecutors' decisions to terminate prosecutions on restorative grounds.<sup>33</sup>

The lack of clarity regarding restorative justice at the prosecution stage also impacts synchronization between law enforcement agencies. The Supreme Court has issued Supreme Court Regulation No. 1 of 2024, which regulates the application of restorative justice at the trial level, but these guidelines only apply once a case has reached court. Meanwhile, the Indonesian National Police (Polri) issued Regulation No. 8 of 2021. Consequently, each law enforcement agency operates under its own guidelines without a unified legal basis. This situation results in suboptimal coordination between the various stages and the potential for disharmony in the application of restorative justice.

## 2) Weaknesses of Legal Structure

Within the Indonesian constitutional structure, the Prosecutor's Office occupies a position within the executive branch. Although not explicitly mentioned in the 1945 Constitution, the Prosecutor's Office, as a law enforcement institution, is closely and inseparably linked to the judicial function.<sup>34</sup>

Prosecution, which is the responsibility of a prosecutor, is an active task to submit case files to the court (judge). The Republic of Indonesia Prosecutor's Office as a

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<sup>33</sup>Budi Suhariyanto, The Position of Peace as a Way to Eliminate Criminal Punishment in Order to Achieve Justice in Criminal Law Reform. *Jurnal Rechts Vinding: Media for National Legal Development*, Vol. 6, No. 1, 2017, pp. 1-19.

<sup>34</sup>Dian Rosita, The Position of the Prosecutor's Office as the Executor of State Power in the Field of Prosecution in the Structure of the Indonesian Constitution. *Ius Constituendum Journal*, Vol. 3, No. 1, 2018, pp. 27-47.

government institution carries out functions and authorities in the field of law enforcement and has responsibilities related to maintaining order and security. The function of law enforcement by the prosecutor's office in the criminal field has been regulated in Article 30 paragraph (1) of the Prosecutor's Office Law, which contains authorities such as carrying out prosecutions for cases that have permanent legal force, supervising the implementation of conditional sentences and conditional release decisions, carrying out investigations into certain crimes in accordance with statutory regulations, perfecting case files, and carrying out additional examinations before the case is submitted to the court, the implementation of which is coordinated with investigators.<sup>35</sup>

Prosecution is a series of actions taken to transfer a case file to the competent court, carried out by the public prosecutor so that the file is continued for examination in court to be examined and decided by a judge. Indonesian positive law regulates that prosecution is only carried out by the prosecuting agency, in this case the public prosecutor in accordance with the principle of *dominus litis*, which has a strategic role in determining whether or not a case can be continued to court. The public prosecutor itself can come from the prosecutor's office or the Corruption Eradication Commission (KPK).<sup>36</sup>

The prosecutor's office, which is under one organization, the prosecutor's office, in its understanding of its duties and authorities in Article 2 paragraphs 1 to 3 of Law Number 11 of 2021 concerning the Prosecutor's Office, shows that the position of the prosecutor's office is classified as a dilemma because it faces a dual obligation situation, namely on the one hand as a law enforcer who carries out duties related to prosecutorial powers that must be independent and free from any intervention from any party including the executive (President) on the other hand as a State official (President's subordinate) in the context of government management with the attorney general who must have high loyalty to the government. This dilemma position can also be affected by the independence of the prosecutor's office in prosecution as an effort to enforce the law in the criminal justice system.<sup>37</sup>

These unethical actions were carried out by certain prosecutors through various methods such as extortion, extending the investigation period to open up room for negotiation of settlement money, sending summonses with unclear status, then demanding a sum of money so that the case status is not raised to suspect. Other methods include negotiating the release of suspects through SP3, drafting vague charges so that the defendant is free at trial, eliminating cases due to family

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<sup>35</sup>Nia Gabriella Kaihena, *The Position and Function of the Prosecutor's Office in the Indonesian Employment System*. *Lex Privatum*, Vol. 11, No. 1, 2023.

<sup>36</sup>Liberty Keni, *Handover of Case Investigation Files from Investigators to Public Prosecutors Based on the Criminal Procedure Code*. *Lex Crimen*, Vol. 10, No. 7, 2021.

<sup>37</sup>Yessyurun Oscar Janfaron Siregar and Tundjung Herning Sitabuana. *The Indonesian Attorney General's Office in State Institutions*. *Cahaya Mandalika Journal*, Vol. 4, No. 2, 2023, pp. 692-696.

ties with officials, bargaining for charges, reducing the severity of charges, and various other practices. The various deviations carried out by these certain prosecutors indicate weaknesses in the legal structure, where the integrity of prosecutors is eroded because they are willing to accept payments to "secure" a case.

The weak legal structure within the Attorney General's Office demonstrates the lack of a clear division of functions between prosecution, case management, and internal integrity oversight. This lack of clarity creates overlapping authority, which empirically opens up opportunities for abuse. Prosecutors handling cases can interact directly with litigants without any checks and balances, making the legal process highly vulnerable to negotiation. This situation indicates that the Attorney General's Office's institutional structure is not designed to minimize conflicts of interest.

### 3) Weaknesses of Legal Culture

Resistance to retributive legal culture has emerged as a strong phenomenon in societies that view resolving legal issues as a process of retaliation against perpetrators. In this culture, justice is often understood as "just retribution," so that corporal punishment or imprisonment are considered the only legitimate forms of law enforcement. This mindset is shaped by the long history of the Indonesian legal system, inherited from the colonial regime, and supported by modern legal structures that still prioritize retribution. This condition has led society to place greater trust in harsh sanctions than in dialogue or mediation, which are considered ineffective deterrents.<sup>38</sup>

Resistance to retributive legal culture also stems from a social structure that believes law enforcement must be firm in prosecuting crime. In this view, law enforcement officers are considered weak if they resolve criminal cases through deliberation. This is exacerbated by high public expectations for law enforcement officers to impose severe penalties as a symbol of order and legal certainty. Therefore, mediation- or deliberation-based settlement models are seen as inconsistent with public expectations regarding the state's role as a "punisher" protecting them from potential security threats. This resistance intensifies when major cases or crimes receive widespread attention, where the public demands maximum penalties as a form of solidarity with the victims. Consequently, restorative justice is often deemed inappropriate. The mismatch between public expectations oriented toward retribution and the goals of modern law that emphasize restoration is a major obstacle to the acceptance of restorative justice.

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<sup>38</sup>Faidatul Hikmah and Rio Armanda Agustian. Convergence of the Concepts of Retribution and Rehabilitation in Contemporary Indonesian Criminal Law Philosophy. *Crepido*, Vol. 5, No. 2, 2023, pp. 217-228.



The solution to address the obstacles in implementing the termination of prosecution based on restorative justice at the North Lampung District Attorney's Office is:

1) Revision of the Criminal Procedure Code

Revision of the Criminal Procedure Code (KUHP) is an urgent step to address the lack of norms regarding termination of prosecution based on restorative justice. To date, prosecutors' discretion in implementing restorative justice has relied solely on Indonesian Attorney General's Regulation No. 15 of 2020, which holds a weak position in the hierarchy of laws and regulations. This unclear legal framework makes all terminations of prosecution based on peace vulnerable to challenge, as they are considered to violate the principles of legality and *dominus litis*. By including explicit provisions regarding restorative justice in the KUHP, termination of prosecution through peace mechanisms will have strong legal legitimacy and no longer rely on internal regulations. The KUHP revision also needs to clarify the formal and material requirements for implementing restorative justice. These requirements must clarify the types of crimes that can be resolved restoratively, the peace procedures, the roles of victims, perpetrators, and the community, and provisions regarding monitoring the implementation of agreements. These norms are crucial to prevent the impression that restorative mechanisms are merely a shortcut for perpetrators to avoid the judicial process. The certainty of this norm will prevent subjective interpretation and avoid non-uniformity in application between the Prosecutor's Office, Police, and Courts.

2) Strengthening the institutional independence of the Prosecutor's Office

Strengthening the institutional independence of the Attorney General's Office is the primary solution to addressing the structural problems that have weakened the prosecution function. Because its position is subordinate to the executive branch, the Attorney General's Office is vulnerable to political interference and pressure from the authorities. The prosecutor's dilemma, which requires loyalty to the President while also requiring independence as law enforcers, significantly impacts the objectivity of prosecutorial decisions. Therefore, systemic reforms are needed to limit the scope for executive intervention through the reconstruction of institutional relationships, for example through reforming the governance of the Attorney General's appointment or establishing an independent board to oversee strategic processes related to prosecution.

Structural reforms must also address internal and external oversight. Strong internal oversight is necessary to ensure that every prosecutor exercises their authority professionally and free from conflicts of interest. However, internal oversight alone is insufficient, as it is vulnerable to collusion or institutional loyalty. Therefore, external oversight systems, such as independent ethics commissions or integration with cross-institutional oversight systems, must be strengthened.

### 3) Strengthening the understanding of restorative justice among law enforcers and the community

Strengthening legal culture is a fundamental aspect in promoting the successful implementation of restorative justice and preventing misconduct by law enforcement officers. Establishing a legal culture cannot be achieved instantly, but rather requires a gradual shift in the mindset of officers and the public. Law enforcement officers must be trained in the principles of restorative justice. When officers understand that justice involves not only retribution but also restoration, their work orientation will be more balanced and less focused on a retributive approach. Public education is needed to reduce resistance to resolving cases through penal mediation or other restorative mechanisms. The public must be made aware that restorative justice is not simply "forgiving the perpetrator," but rather a process of restoring social relationships, compensating victims for their losses, and preventing recurrence of conflict. This outreach needs to be conducted through the media, educational institutions, community leaders, and civil society organizations to ensure that the paradigm of justice no longer relies on retribution.

## 4. Conclusion

The implementation of the termination of prosecution in an assault case at the North Lampung District Attorney's Office demonstrates that restorative justice can be an effective, humane, and socially rehabilitative case resolution mechanism. However, its implementation still faces obstacles in terms of substance, structure, and legal culture. The absence of explicit provisions in the Criminal Procedure Code (KUHP), the position of Perja Number 15 of 2020 as an internal regulation, weak institutional oversight, and a legal culture that remains retributive make the implementation of restorative justice vulnerable to questioning and difficult for the public to accept. Strengthening regulations through revisions to the Criminal Procedure Code, increasing integrity and oversight within the Prosecutor's Office, and educating the public and officials about restorative values are necessary so that the termination of prosecution based on restorative justice can be carried out with greater certainty, transparency, and justice.

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#### **Interview:**

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