

Regulations on Termination of Prosecution of Criminal Acts of Assault Based on Restorative Justice

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Abstract. *This study aims to determine and analyze the application of restorative justice-based termination of prosecution for assault crimes. This study aims to identify and analyze the weaknesses in the current application of termination of prosecution for assault crimes. This study is a normative juridical study. approach method legislation, case approach, the research specifications are descriptive analysis, the data sources used are secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies and analysis techniques using qualitative. The results of the study indicate that the application of termination of prosecution for criminal acts of assault based on restorative justice can only be carried out with the condition that the criminal threat is below five years in accordance with the requirements in Law Number 20 of 2025 concerning the Criminal Procedure Code, and the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. There are weaknesses in the legal structure including limited human resources and facilities, political intervention and corruption, heavy workloads, and a lack of understanding of the concept of restorative justice among law enforcement officers. Weaknesses in the legal substance include, first, regarding the limits of criminal threats; second, the consistency of the implementation of restorative efforts; third, regarding the legal implications for the perpetrator; and fourth, regarding the choice of examination procedures. Weaknesses in the legal culture include, a lack of public understanding of law, a decline in public trust in law enforcement officers, and a legal culture that is difficult to forgive.*

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

1. Introduction

The Republic of Indonesia has a criminal justice system consisting of four components. These components are interconnected in carrying out their respective duties and roles. These components include the Police, the Prosecutor's

Office, the Courts, and Correctional Institutions. These components can work together and create an "Integrated Criminal Justice System."¹

The criminal justice system in the Republic of Indonesia also recognizes restorative justice as a method of resolving criminal cases that emphasizes restoring the victim to their original state and preventing further crimes. Restorative justice is a process of resolving criminal cases outside the criminal justice system, involving the victim, the perpetrator, the victim's family, the community, and other stakeholders involved in the crime to reach an agreement and resolution.²

The restorative justice approach began to be implemented in Law Number 1 of 2023 concerning the Criminal Code. Article 51 of Law Number 1 of 2023 concerning the Criminal Code establishes a highly humanistic and future-oriented goal of sentencing. Sentencing is no longer merely about retribution, but rather aims to:

- (a) prevent criminal acts by enforcing legal norms for the protection and care of society;
- (b) socialize convicts by providing guidance and mentoring to make them good and useful people;
- (c) resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace to society, and
- (d) foster a sense of regret and free the convict from guilt.

Restorative justice regulations are also regulated in Law Number 20 of 2025 concerning the Criminal Procedure Code. Based on Article 80 paragraph (1) of the Criminal Procedure Code, it states that:

"The Restorative Justice Mechanism can be applied to criminal acts that meet the following requirements:

- a. criminal acts are punishable by a maximum fine of category III or are punishable by a maximum prison sentence of 5 (five) years;
- b. first time crime committed; and/or
- c. does not constitute a repetition of a criminal act, except for criminal acts for which the verdict is a fine or criminal acts committed due to negligence."

¹Mardjono Reksodiputro, *Human Rights in the Criminal Justice System*, Jakarta: Center for Justice Services and Legal Services, University of Indonesia, 1997 p. 85

²Selamet Riadi, *The Role of Police Investigators in the Implementation of Diversion for Children in Conflict with the Law (Study at the PPA of the West Lombok Police)*, IUS Journal, Vol IV Number 2, August 2016, p. 127.

Restorative Justice implemented by the Indonesian Prosecutor's Office, namely by terminating prosecution based on restorative justice. This is regulated in Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. Following the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code, which stipulates restorative justice at the prosecution stage, Article 86 of the new Criminal Procedure Code stipulates that a letter of determination to terminate prosecution must be requested by the Head of the District Court no later than three days after its issuance. This determination must then be submitted by the public prosecutor to the investigator, so that there is continuity of supervision between law enforcement officials.³

One of the cases of abuse that was terminated by the prosecution based on restorative justice by the Public Prosecutor, namely at the Tangerang Regency District Attorney's Office in a case of abuse involving two suspects with the initials N and I. The defendants were charged with Article 262 paragraph (2) or Article 466 paragraph (1) in conjunction with Article 20 letter c of Law No. 1 of 2023 concerning the Criminal Code. The termination of the prosecution was in accordance with the provisions, namely obtaining approval from the Banten High Prosecutor's Office and the case had also been exposed together with the ranks of the Deputy Attorney General for General Crimes.⁴

The implementation of the suspension of prosecutions in assault cases based on restorative justice following the enactment of Law No. 1 of 2023 concerning the Criminal Code and Law No. 20 of 2025 concerning the Criminal Procedure Code has brought about a paradigm shift from retributive justice to restorative justice. However, this transition has created legal and technical challenges in the field, namely related to: fulfillment of compensation to victims.

The implementation of the suspension of prosecutions in assault cases based on restorative justice following the enactment of Law No. 1 of 2023 concerning the Criminal Code and Law No. 20 of 2025 concerning the Criminal Procedure Code has brought about a paradigm shift from retributive justice to restorative justice. However, this transition has created legal and technical challenges in the field, namely related to: fulfillment of compensation to victims.

Constraint This is exacerbated by the lack of clear regulations regarding the nominal limits of compensation in the laws governing restorative justice. Compensation that is too small has the potential to disregard the victim's rights,

³Tolib Effendi, Re-Evaluation of the Prosecution System in the Criminal Procedure Code, *Jurnal Media Hukum* Vol. 19, No. 1, June 2012, p. 111

⁴ https://mediabanten.com/kejari-kab-tangerang-selesaikan-kasus-penganiayaan-via-restorative-justice/#google_vignette accessed on April 7, 2026

while compensation that is too large can disproportionately burden the perpetrator and undermine the restorative justice process.⁵

Based on these conditions, this study highlights the lack of norms regarding the nominal limits of compensation in restorative justice mechanisms. Clear and firm regulations regarding the amount of compensation are considered essential to ensure legal certainty, prevent irregularities, protect victims' rights, and ensure that the primary goal of restorative justice, namely the full recovery of victims, can be effectively achieved in law enforcement practices in Indonesia.

Considering the above issues, the current system of termination of prosecution in Indonesia is deemed ineffective and inefficient and does not address a number of issues affecting aspects of justice, as is universally applicable in both civil law and common law countries. Therefore, an update to the current concept of termination of prosecution is needed to achieve an effective concept of termination of prosecution to reduce the backlog of cases in court and the large number of inmates in correctional institutions.

Based on the description above, the author will explain the problem formulation as follows: First, how is the implementation of resolving criminal cases through restorative justice? Second, what are the weaknesses of resolving criminal cases through restorative justice?

2. Research Methods

This research is a sociological juridical type using the statutory approach and case study methods, the research specifications are descriptive analysis, data sources are obtained from primary data and secondary data taken through primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through library studies and field studies, and analysis techniques using qualitative.

3. Results and Discussion

3.1 Implementation of Termination of Prosecution for Criminal Acts of Assault Based on Restorative Justice

The enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP) marks a new chapter in Indonesian legal history. This legal reform aims to replace the Dutch colonial legacy of the *Wetboek van Strafrecht* with a codification of criminal law that better reflects national values and contemporary justice.⁶ One of the

⁵Ishaq, *Fundamentals of Legal Science*, Jakarta; Sinar Grafika, 2009, p. 9

⁶Andi Hamzah, *Law Enforcement Against Minor Crimes with Restorative Justice*, Jakarta; Jala Permata Aksara, 2017, p. 19

clusters of articles that has undergone significant changes is the crime of assault which is regulated in Articles 466 to 471.

Article 466

(1) Any person who commits assault shall be punished with a maximum prison sentence of 2 (two) years and 6 (six) months or a maximum fine of category III.

(2) If the act as referred to in paragraph (1) results in serious injury, the punishment shall be a maximum prison sentence of 5 (five) years.

(3) If the act as referred to in paragraph (1) results in the death of a person, the punishment shall be a maximum prison sentence of 7 (seven) years.

(4) Included in the abuse referred to in paragraph (1) are acts that damage health.

(5) Attempts to commit a crime as referred to in paragraph (1) shall not be punishable.

Article 467

(1) Any person who commits assault with prior planning shall be punished with a maximum prison sentence of 4 (four) years.

(2) If the act as referred to in paragraph (1) results in serious injury, the punishment shall be a maximum prison sentence of 7 (seven) years.

(3) If the act as referred to in paragraph (1) results in the death of a person, the perpetrator shall be punished by imprisonment for a maximum of 9 (nine) years.

Article 468

(1) Any person who seriously injures another person shall be punished for serious assault, with a maximum prison sentence of 8 (eight) years.

(2) If the act as referred to in paragraph (1) results in death, the punishment shall be a maximum prison sentence of 10 (ten) years.

Article 469

(1) Any person who commits serious assault with prior planning shall be punished with a maximum prison sentence of 12 (twelve) years.

(2) If the crime as referred to in paragraph (1) results in the death of a person, the penalty is a maximum prison sentence of 15 (fifteen) years.

Article 470

For criminal acts as referred to in Articles 466 to 469, the penalty may be increased by 1/3 (one third) if the criminal act is committed:

- a. against an Official when or because he is carrying out his legitimate duties;
- b. by providing materials that are dangerous to life or health; or
- c. towards mother or father.

Article 471

(1) Apart from the abuse as referred to in Article 467 and Article 470, abuse that does not cause illness or hinder the person from carrying out a profession or livelihood, is punishable as minor abuse, with a maximum prison sentence of 6 (six) months or a maximum fine of category II.

(2) If the crime as referred to in paragraph (1) is committed against a person who works for him or is his subordinate, the sentence may be increased by 1/3 (one third).

(3) Attempts to commit a crime as referred to in paragraph (1) shall not be punished.

This criminal sanction is a common practice as a form of criminal responsibility in law enforcement. Generally, before proceeding to prosecution, the prosecutor will advise the perpetrator and victim to hold discussions so that the case can be resolved through restorative justice. However, in this case, the crime involved was not merely minor assault, but rather serious assault resulting in death, and therefore should not be considered a case that can be resolved through restorative justice.⁷

Restorative justice It is understood as an approach to resolving criminal cases that involves the perpetrator, victim, family, and community working together to find solutions that emphasize recovery, not punishment. This approach believes that the priority after a crime is to repair disrupted social relationships through apology, admission of guilt, and reintegration of the perpetrator into the social environment, in accordance with customary values that uphold balance and peace.⁸

Examining Article 80 of Law Number 20 of 2025 concerning the Criminal Procedure Code, it explains that the restorative justice mechanism can be permitted for criminal acts that meet the following requirements:

- 1) criminal acts are punishable by a maximum fine of category III or are punishable by a maximum prison sentence of 5 (five) years;

⁷Eva Achjani Zulfa, *Restorative Justice*, Jakarta; FH UI Publishing Agency, 2009, p. 16

⁸Henny Saida Flora, *Restorative justice as an alternative in resolving criminal acts and its influence on the criminal justice system in Indonesia*, University of Bengkulu Law Journal, Vol. 3, No. 2, 2018, p. 147

2) first time crime committed; and/or

3) not a repetition of a criminal act, except for criminal acts for which the verdict is a fine or criminal acts committed due to negligence

One of the cases of abuse that was terminated by the prosecution based on restorative justice by the Public Prosecutor, namely at the Tangerang Regency District Attorney's Office in a case of abuse involving two suspects with the initials N and I. The defendants were charged with Article 262 paragraph (2) or Article 466 paragraph (1) in conjunction with Article 20 letter c of Law No. 1 of 2023 concerning the Criminal Code. The termination of the prosecution was in accordance with the provisions, namely obtaining approval from the Banten High Prosecutor's Office and the case had also been exposed together with the ranks of the Deputy Attorney General for General Crimes.⁹

Normatively, the application of restorative justice in assault cases has a solid legal basis in the national criminal law system. The normative basis for the application of restorative justice is strengthened through Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice and Law Number 20 of 2025 concerning the Criminal Procedure Code. These two regulations provide room for law enforcement officials to terminate a case if a reconciliation has been reached between the victim and the perpetrator, provided the criminal penalty is under five years, the losses have been remedied, and a valid peace agreement exists. However, this transition raises legal and technical issues in the field, namely, firstly, related to fulfillment of compensation to victims. Constraint this is exacerbated by the lack of clear regulations regarding the nominal limits of compensation in the laws governing restorative justice. Compensation that is too small has the potential to disregard the victim's rights, while compensation that is too large can disproportionately burden the perpetrator and undermine the restorative justice process.

The research findings indicate that establishing a nominal limit on compensation in resolving criminal cases through a restorative justice approach is highly urgent, both from the perspective of legal certainty, human rights protection, prevention of arbitrariness, fulfillment of justice, and increased public trust, as well as the efficiency of law enforcement. The absence of clear regulations regarding the nominal limit on compensation has the potential to create legal uncertainty and inconsistency in the application of restorative justice in practice.

From the aspect of legal certainty, research confirms that criminal law does not only function as a means of punishment, but also as an instrument for protecting human rights. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia expressly guarantees the right of every person to recognition,

⁹https://mediabanten.com/kejari-kab-tangerang-selesaikan-kasus-penganiayaan-via-restorative-justice/#google_vignette accessed on April 7, 2026

guarantees, protection, and fair legal certainty as well as equal treatment before the law. In the context of restorative justice, setting the nominal limit of compensation is an important part of this guarantee, because it is directly related to the victim's right to obtain proper recovery and the perpetrator's right not to be burdened with disproportionate obligations. Without clear limits, law enforcement has the potential to be subjective and detrimental to one of the parties.

Based on these findings, the study concludes that the lack of a uniform and systematic regulation of the nominal limit of compensation money in Indonesian law remains a major weakness in the implementation of restorative justice. Therefore, harmonization and updating of regulations that establish a nominal limit or at least proportional, flexible, and equitable calculation guidelines are needed so that the primary goals of restorative justice, namely victim recovery, perpetrator accountability, and legal certainty, can be optimally achieved in the Indonesian criminal justice system.

3.2 Weaknesses in the Current Implementation of the Termination of Prosecution for Crimes of Assault

a. Weaknesses of Legal Structure

1) Limited Human Resources and Facilities

One of the biggest challenges facing the prosecutor's office is limited human resources. The number of available prosecutors is often disproportionate to the number of cases they must handle. This is exacerbated by a lack of adequate training and professional development, which may leave some prosecutors lacking specialized expertise in handling certain cases.

Furthermore, prosecutors' facilities and infrastructure are often inadequate. Lack of infrastructure, such as adequate workspace, information technology tools, and access to legal resources, can hinder prosecutors' ability to prepare and process cases.

2) Political Intervention and Corruption

Political interference is a serious issue that threatens the independence of the prosecutor's office. Pressure from certain parties, including government officials or influential individuals, can influence the prosecution process and prosecutors' decisions. This raises doubts about the integrity and credibility of the prosecutor's office.

Corruption is also a significant obstacle. Corrupt practices within the prosecutor's office can undermine fair and transparent law enforcement efforts. This not only undermines public trust in the justice system but also hinders the prosecution process, which should be conducted in accordance with the law.

3) Heavy Workload

Another challenge faced by prosecutors is the heavy workload. Many prosecutors must handle multiple cases simultaneously, ranging from minor matters to major and complex ones. This often results in a lack of adequate time and attention for each case, resulting in suboptimal case management.

4) Lack of Understanding of the Concept of Restorative Justice Among Law Enforcement Officials

The restorative justice policy in Indonesia aims to shift the approach to law enforcement from a retributive to a rehabilitative one, with the primary focus being on restoring relationships between perpetrators, victims, and the community. Law enforcement officials have a crucial role and function in ensuring the effective implementation of this policy. Law enforcement officials, including police, prosecutors, and judges, act as mediators in the restorative justice process.¹⁰ They not only serve as law enforcers adjudicating cases, but also as facilitators connecting perpetrators and victims. In this role, law enforcement officers are expected to create a safe and open dialogue space where both parties can listen, understand, and express their perspectives. This mediation process is crucial for building mutually beneficial agreements and facilitating better recovery for both victims and perpetrators.

b. Weaknesses of Legal Substance

1) Dynamics of Maximum Limits of Criminal Threats

In the application of restorative justice, the maximum limit on criminal penalties is a fundamental requirement. However, there are indications of inconsistencies in the norms in the Criminal Procedure Code that require attention. Article 80 paragraph (1) states that restorative justice can be applied to crimes with a maximum prison sentence of 5 (five) years. On the other hand, Article 82 letter e jo. Article 204 paragraph (5) letter a implicitly indicates that crimes with a maximum prison sentence of 5 (five) years or more cannot be subject to this mechanism.

This difference in formulation raises legal questions about whether crimes with a maximum sentence of five years meet the requirements. This uncertainty is feared to raise doubts among practitioners in the field. For example, if the Public Prosecutor has reached a settlement and filed a petition with the court, this ambiguity risks the petition being denied, which could ultimately harm the interests of the victim, who should have been accommodated in the settlement agreement.

¹⁰Muhaimin, M. (2019). Restorative Justice in Resolving Minor Crimes. *De Jure Legal Research Journal*, 19(2). <https://doi.org/10.30641/Dejure.2019.V19.hlm>. 185-206

2) Harmonization of Recovery Effort Position

The second point that needs to be considered is the consistency regarding the status of restoration efforts. Article 79 of the Criminal Procedure Code places restoration of the original state as the primary objective, and the agreement must be implemented within 7 days. However, Article 204 paragraph (7) letter b, which regulates the court process, requires that this restoration must occur before the peace agreement is finalized.

This difference in perspective—whether restitution is an "end-goal" or a "pre-requisite"—has the potential to hinder the smooth running of the trial process. Logically, if restitution has been fully met at the initial stage, the urgency of referring the case to court becomes questionable, given that the Public Prosecutor has the authority to resolve the case directly for the sake of efficiency.

3) Optimizing Criminal Diversification for Defendants

Furthermore, it is necessary to review the legal consequences for defendants who cooperate in reaching an agreement. If the case can be discontinued at the investigation and prosecution level, then at the court level, this success can be a mitigating factor or the basis for imposing a supervisory sentence.

It is unfortunate that alternative punishment options are limited to supervision. The author has not yet found a reason for this limitation. Aren't fines or community service as stipulated in Article 65 of the Criminal Code considered lighter? Wouldn't the application of alternative punishments to imprisonment, as long as the conditions for their imposition are met, actually support the success of restorative justice? The defendant should be more motivated to reach a peace agreement if they have received an explanation that their punishment will be commensurate with the principal punishment above.

c. Weaknesses of Legal Culture

1) Lack of Public Understanding of Law

Not everyone is aware of the concept of restorative justice as a substitute for the traditional criminal justice system. This often leads to the inability of one party to attend the investigation or the inability to attend the diversion process at the investigation level. This often occurs in the handling and use of restorative justice in the juvenile justice system, where the victim's family often refuses to attend restorative efforts and insists on completing the investigation. This obstacle is one of the weaknesses of the implementation of restorative justice, which is still not fully implemented in Indonesia. Public awareness and the role of law enforcement in supporting the implementation of restorative justice are still minimal and have not been implemented optimally.

2) Declining Public Trust in Law Enforcement Officials

Public trust in Indonesia's legal system is currently undermined by perceived unfairness and inequality. The phrase "Sharp at the Bottom and Blunt at the Top" illustrates that justice is often harsher on the lower-middle class, while corrupt officials and wealthy individuals are often not prosecuted firmly, even if they misuse public funds for personal gain. Minor cases that could be resolved through a family approach are often exacerbated in court. Law enforcement also frequently exhibits discrimination, particularly in the differential treatment of children of high-ranking officials in legal cases. This situation demonstrates that political and economic power exerts a significant influence on the application of the law, making it blunt when dealing with the powerful and harsh when dealing with the weak. Comprehensive reform is needed to ensure that the law is enforced fairly, transparently, and unaffected by external factors such as power or social status.¹¹.

3) The legal culture of society makes it difficult to forgive

Legal culture public in Indonesia, forgiveness is currently considered difficult if someone has suffered harm. Efforts to reconcile are considered difficult, including achieving peace. This is because many people believe that justice can be achieved by punishing those who commit crimes as severely as possible.

A community's legal culture also becomes an obstacle if individuals or society continue to think retributively. This means that society still believes that justice is achieved when a person facing the law is punished according to their actions, thus providing a deterrent effect for the child. This community's legal culture, which is still considered inexperienced and holds the view that those who commit crimes must be punished, is one of the obstacles that must be overcome in achieving effective restorative justice implementation. law enforcement efforts through peaceful means.

Community culture also influences the implementation of the restorative prosecution termination process. It is important to recognize that the victim and the victim's family are crucial in determining the restorative prosecution termination process, as restorative prosecution termination occurs when there is an agreement between the reporting party (victim/victim's family) and the perpetrator.

¹¹Gilang Putra, Kayus Kayouwan Lewoleba, Addressing the Decline in Public Trust in Law Enforcement Officials in Indonesia, *Journal of Law and Constitutional Studies* Vol. 2, No. 3 September 2024, p. 311

4. Conclusion

The application of termination of prosecution for criminal acts of abuse based on restorative justice can only be carried out if the threat of imprisonment is less than five years in accordance with the requirements in Law Number 20 of 2025 concerning the Criminal Procedure Code, and Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The implementation of termination of prosecution for criminal acts of abuse through restorative justice mechanisms in practice often faces obstacles, particularly regarding the fulfillment of compensation to victims, mainly due to the inability of the perpetrator to fulfill the victim's demands. These obstacles are exacerbated by the absence of clear regulations regarding the nominal limits of compensation in the laws and regulations governing restorative justice. The weaknesses in the current implementation of the suspension of prosecution for criminal acts of assault consist of weaknesses in the legal structure, including limited human resources and facilities, political intervention and corruption, heavy workloads, and a lack of understanding of the concept of restorative justice among law enforcement officials. Weaknesses in the legal substance include, first, the limitations of criminal penalties; second, the consistency of the implementation of restorative efforts; third, the legal implications for perpetrators; and fourth, the choice of examination procedures. Weaknesses in the legal culture include, a lack of public understanding of the law, a decline in public trust in law enforcement officials, and a legal culture that makes it difficult to forgive.

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