

IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE LEGAL AREA OF THE STATE ATTORNEY OF BANJAR REGENCY, SOUTH KALIMANTAN

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Abstract: Restorative Justice is a criminal settlement that emphasizes justice and creates a balance between the rights of victims and perpetrators. The prosecution has a role to play as the main active element in conducting and creating a result that can resolve a crime and fulfil justice for the victim. This study examines how the enforcement and obstacles and barriers in the implementation of restorative justice as well as the ideal form of the application of restorative justice in the territory of the State Prosecutor's Office of Banjar Regency Kalimantan South Province.

Keywords: Justice; Prosecution; Restorative Justice.

1. INTRODUCTION

Law as a collection of regulations has general and normative content; general means it applies to everyone, and normative means determining what should be done, what should not be done or must be done and how to comply with these legal regulations. In this way, law does not focus on one rule or provision but rather a set of provisions that have unity to be understood as a system. The consequence is that you cannot understand the law if you only look at one provision.

Considering that law contains two elements: formal law and substantive law. Formal law focuses more on formal procedures and what is written in them only. Meanwhile, the law in substance is a law regarding rules or norms that focus on patterns of human behaviour in society within the legal system in the form of a sense of justice in society. However, what is more important is how to achieve the goal of the legal process, namely justice. For justice in the law to be achieved, the reference is not only to formal legal aspects but also to aspects of conscience and morals.

This justice is the basis for the birth of ideal restorative Justice. Reform is needed to resolve criminal cases that emphasise justice and create a balance between the rights of victims and perpetrators of criminal acts. Restorative Justice is a process of resolving criminal cases outside of court that aims to restore the relationship between the parties and the losses experienced by victims of criminal acts. The principle of Restorative Justice in this context is to provide an understanding regarding the possibility of a shift in the resolution of criminal cases, which has so far focused more on the rights of suspects, convicts or criminal perpetrators so that they also pay attention to the rights of victims of criminal acts.

Punishing criminal cases using a restorative approach has begun to be practised in Indonesia. With the presence of a type of resolution of a case such as restorative justice (Restorative Justice), The prosecutor's office as a law enforcement agency is the main element that is active in carrying out and creating the desired results for justice for victims and perpetrators in Indonesia through restorative justice.

Restorative justice is a new model of approach to resolving criminal cases. Although this approach model is still widely debated at a theoretical level by experts, it continues to grow and influence legal policy and practice in many countries. The problem in this research is what is the mechanism for implementing restorative justice in the jurisdiction of the District Prosecutor's Office of Banjar Regency, South Kalimantan.

2. METHODS

This research uses a socio-legal research method using an interdisciplinary approach between normative and sociological research aspects. Data analysis is carried out qualitatively by analysing non-numerical data in depth and holistically. The research location for obtaining primary data was South Kalimantan, specifically the Banjar Regency District Prosecutor's Office. The nature of the research used is research that looks at legal realities that occur in society from an empirical point of view. This research focuses on the Banjar Regency District Prosecutor's Office.

3. RESULTS AND DISCUSSION

3.1. How to Implement Restorative Justice In the jurisdiction of the District Prosecutor's Office, Banjar Regency, South Kalimantan

The justice adopted in the criminal system in Indonesia is justice in nature retributive, namely justice, which focuses on appropriate punishment and the violation committed by the perpetrator. This is almost similar to the legal principle of retribution or house of revenge,, better known as the principle of an eye for an eye, where the perpetrator who has injured another person must be punished with the same injury as the victim who has been harmed. In the context of modern law, the perpetrator who is deemed to have harmed the victim must receive a proportional punishment. with the mistakes the perpetrator made (Maksum, 2023).

Meanwhile, what is meant by restorative justice is justice that focuses on restoring or repairing losses caused by criminals and trying to restore the rights relationship between victims, perpetrators and the community. This approach involves law enforcers and the community (Maksum, 2023).

The development of law and society today demands a recovery process for victims compared to punishing perpetrators. This is because of the needs and developments of the times, which demand that a case or cases be resolved quickly and efficiently.

The Prosecutor's Office, as a law enforcement agency that has the role of exercising state power in the field of law, has experienced a shift in the direction of the

system retributive become restorative and focus from restorative justice to rehabilitation rather than confinement or imprisonment.

In restorative justice, there are five principles: justice, public interest, proportionality, criminal law as a last resort, and fast, simple and low cost (DA, 2023).

There are three conditions for a criminal case to be prosecuted based on the principle of restorative justice. First, The suspect is a first-time criminal. Second, criminal offences are punishable by a fine or imprisonment for under five years. Third, The criminal act is committed with the value of the evidence or losses incurred due to the criminal act not exceeding IDR 2.5 million (DA, 2023).

Based on the results of the author's interview with Pak Joko, he explains the level of effectiveness of the application of restorative justice cases at the Banjar Regency District Prosecutor's Office in the case of abuse committed by the suspect Hadianor alias Kawung against Rahmat as a victim which was carried out through a Restorative justice settlement on March 7, 2023, at the District Attorney's Office. Banjar Regency and the case of destruction & threats carried out by Mustawan as the perpetrator against Muhammad Aris as the victim was resolved through restorative justice on July 27 2023, at the Banjar Regency District Prosecutor's Office (Bima Syahputra Marsana, 2023).

In the case handled at the Banjar Regency District Prosecutor's Office, looking at the contents of Article 351 of the Criminal Code concerning abuse which carries a maximum prison sentence of 2 years and 8 months and Article 406 of the Criminal Code concerning Damage with a maximum penalty of 2 years and 8 months, this is also in line with provisions of Article 5 point 1 of Prosecutor's Regulation No. 15 of 2020:

1. Criminal cases can be closed by law and the prosecution terminated based on restorative justice if the following conditions are met:
 - a. The suspect committed a crime for the first time
 - b. Criminal offences are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years;

- c. Criminal acts committed with the value of the evidence or the value of losses incurred due to the criminal act do not exceed Rp. 2,500,000.00 (two million five hundred thousand rupiah).

Apart from that, the culture of the Banjar district community tends to forgive and maintain harmony in the village because often the perpetrators of criminal acts of abuse are people who live close to each other, for example in a housing complex or village, so for the sake of order and avoiding retaliatory responses, the culture adopted by the surrounding community prioritizes peace that is in line with the traditional culture of accept, where these values are still adhered to by some groups in Banjar district, apart from that, restorative justice is also useful by indirectly filtering or minimizing perpetrators of minor crimes so that in the end it does not add to or help overcome problems over capacity correctional institutions where for minor crimes there is no need to be sentenced to prison so that they can increase space or space for convicts who commit criminal offences that carry the threat of imprisonment for more than five years.

This is also in line with the provisions of Article 4 points 1 and 2 of Prosecutor's Regulation No. 15 of 2020:

- (1) Termination of prosecution based on Restorative justice is carried out by taking into account:
 - a. The interests of victims and other protected legal interests;
 - b. Avoidance of negative stigma;
 - c. Avoidance of retaliation;
 - d. Community response and harmony
 - e. Decency, decency and public order.
- (2) Termination of prosecution based on restorative justice as intended in paragraph (1) is carried out by considering:
 - a. Subject, object, category and threat of criminal acts
 - b. The background to the occurrence/commission of the criminal act
 - c. Accident level
 - d. Losses or consequences arising from criminal acts
 - e. *Cost and benefit*
 - f. Recovery is back to normal
 - g. There is peace between the victim and the suspect.

Based on the results of the author's interview with Mr. Bima Syahputra Marsana SH, he explains that: the effectiveness of implementing restorative justice at the Banjar

Regency District Prosecutor's Office is quite effective because it is granted that this also depends on the perpetrator and victim, because here the role of the Prosecutor's Office is to facilitate and also be a mediator so that this happens. peace and here the prosecutor's office takes the following steps:

1. A summons was made between the victim and the suspect to the Banjar Regency District Prosecutor's Office.
2. The meeting between the victim and the suspect was carried out by deliberation and accompanied by a mediation process carried out by a mediator from the Banjar Regency District Prosecutor's Office and also if necessary, accompanied and witnessed by the family or other people.
3. When the parties have forgiven each other and agreed, the public prosecutor offers peace per restorative justice as regulated in Prosecutor's Regulation No. 15 of 2020 (Bima Syahputra Marsana, 2023).

Based on the results of the author's interview with Mr. Bima Syahputra Marsana SH, he explained that there was a victim who felt in denial (annoyed/angry) because it was caused by the perpetrator's actions, the victim wanted to forgive the perpetrator because he thought that as humans we should forgive each other because it was based on the Islamic religious beliefs held by him. the victim but the victim wants to continue the legal process and continue even though the loss is only $\frac{3}{4}$ million so again it depends on the victim and so far it has been effective because we have done several things to make peace with Restorative Justice and thank God it has all been successful and acc.

After the perpetrator and victim agree to be reconciled, the prosecutor's office then follows Article 8 point 5 of Prosecutor's Regulation No. 15 of 2020, namely that the public prosecutor makes a report on peace efforts to be received by the Head of the District Prosecutor's Office or Branch of the Head of the District Prosecutor's Office to be forwarded to the Head of the High Prosecutor's Office and immediately forwarded to in the procedure:

Article 10 Prosecutor's Regulation No. 15 of 2020, namely;

1. If a peace agreement is reached, the victim and the suspect shall make a written peace agreement before the Public Prosecutor.

2. Agreeing to make peace without fulfilling certain obligations:
 - a. Agree to make peace accompanied by the fulfilment of certain obligations; or.
 - b. Agreeing to make peace without fulfilling certain obligations;

Article 10 point (4) in the case of a peace agreement accompanied by the fulfilment of obligations as intended by paragraph (2) letter a, the Public Prosecutor shall make a minutes of the peace agreement and a memorandum of opinion after fulfilling the required obligations, whereas if the peace agreement is not accompanied by the fulfillment of the obligations as stated in paragraph (2) letter b, the Public Prosecutor shall prepare minutes of the peace agreement and memorandum of opinion.

In this stage, after the public prosecutor has made a report of the peace agreement and minutes of the peace agreement, the public prosecutor is obliged to report to the Head of the District Attorney's Branch or the Head of the District Prosecutor's Office by attaching the minutes of the peace agreement and a note of opinion and after this it is continued again by the Head of the Branch of the Public Prosecutor's Office or the Head of the Prosecutor's Office. The State requests approval to terminate the prosecution based on restorative justice from the Head of the High Prosecutor's Office and at this stage the Head of the High Prosecutor's Office can approve or reject and if the request is approved then within a maximum period of three (3) days after the request is received and accompanied by his considerations. And in the research we conducted at the Banjar Regency District Prosecutor's Office regarding the implementation of Restorative Justice (Restorative Justice) In the legal area of the State Prosecutor's Office, Banjar Regency, South Kalimantan, it runs effectively and its implementation uses a legal basis, namely Prosecutor's Regulation (Perja) No. 15 of 2020 concerning termination of prosecutions based on restorative justice.

3.2. What obstacles hinder the implementation of restorative justice in the Legal Area of the Banjar District Prosecutor's Office, South Kalimantan

The process of enforcing restorative justice starts from resolving a criminal act by not focusing on punishment in the form of imprisonment but rather on restoring it to its original state and by involving the parties involved along with other parties. This is in line with the innovation of Attorney General ST Burhanudin who believes that the

restorative justice method in the Indonesian criminal justice system is a breakthrough with integrity from the initial stages of investigation to the stage of handing down a court decision. Burhanuddin thinks that restorative justice has the advantage of shortening the lengthy judicial process and resolve the issue of excess capacity of correctional institutions (The Batam District Attorney's Office, 2021).

In terms of regulations for the implementation of restorative justice, there are still no relevant statutory regulations that discuss restorative justice because in enforcing restorative justice among law enforcers they still adhere to their respective rules, this is in line with the opinion of the Chief Justice of the Supreme Court Criminal Chamber (MA).) Suharto admitted that it was a problem when the police, prosecutor's office and Supreme Court made their own regulations regarding applying restorative justice (The Batam District Attorney's Office, 2021).

In the process of enforcing restorative justice in the jurisdiction of the Banjar Regency District Prosecutor's Office, several obstacles were encountered in the author's interview with Mr. Bima Syahputra Marsana SH, explaining that: the obstacles faced were juridical obstacles in the sense of article 5 Number (1) letter a of Prosecutor's Regulation No. 15 2020 concerning Termination of Prosecution based on restorative justice states that criminal cases that can be closed by law are criminal acts that are punishable by imprisonment for no more than 5 (five) years, while criminal acts that are punishable by 5 (five) years. Can't (Bima Syahputra Marsana, 2023).

As well as limiting the value of losses to only IDR 2,500,000.00 (two million five hundred thousand rupiah), if there is a theft of a premium brand cellphone such as an iPhone and the market price of an iPhone is certainly above the regulated maximum loss limit of IDR 2,500,000 (Two million five hundred thousand Rupiah) about article 362 of the Criminal Code concerning theft accompanied by violence is threatened with imprisonment for a maximum of 9 (nine) years but the value of the loss of the goods stolen is below Rp. 2,500,000, so restorative justice procedures cannot be used, so the value of the loss is included in the requirements, but the threat of imprisonment is not included in the requirements, that is the problem, but so far, there has been no case

like that handled by the Banjar Regency District Prosecutor's Office (Bima Syahputra Marsana, 2023).

There was also another case handled by Mr. Bima regarding the criminal act of vandalism under Article 406 of the Criminal Code, which carries a penalty of 2 years and eight months, so the terms of the criminal threat are included, but the value of the loss suffered by the victim exceeds 5 (five) million, so the maximum limit of losses is exceeded. The condition for the value of the loss is not included, but there is a circular letter from Jampidum Circular No. 01 /e/ejp/02/2022 These conditions can be waived if the penalty is less than 5 (five) years but the loss is limited to 2.5 million and the suspect is also a first time offender. Main conditions:

- a. The defendant committed a crime for the first time
- b. The threat value of the crime is not more than 5 (five) years
- c. The loss is not more than Rp. 2,500,000 (Two million Five hundred thousand rupiah)

For example, it turns out that the criminal threat is over 5 years but the loss is under Rp. 2,500,000 (Two million five hundred thousand rupiah) may also be submitted for restorative justice, it does not have to be that the three requirements are completed but one can be completed and apart from these conditions, there are still those, but it is not the main requirement;

- a. The victim wants to reconcile with the suspect
- b. There is compensation for losses from the victim.

Based on the author's analysis, the obstacles encountered at the Banjar Regency District Prosecutor's Office are Juridical Constraints, namely restrictions on juridical requirements in implementing Prosecutor's Regulation Number 15 of 2020 concerning termination of prosecutions based on restorative justice, namely:

Termination of prosecution based on restorative justice can be carried out by fulfilling 3 (three) cumulative principle requirements as regulated in Article 5 paragraph (1), namely:

- a. the suspect has committed a crime for the first time;

- b. Criminal acts are only punishable by fines or criminal penalties imprisonment for not more than 5 (five) years; And
- c. the value of the evidence or loss is not more than IDR 2,500,000.00 (two million and five hundred thousand rupiahs).

The requirements in numbers b and c are often the inhibiting factor in the implementation of restorative justice at the Banjar Regency District Prosecutor's Office because there are cases that are handled as per the results of the interview above, for example the requirements for a criminal offence under five years in prison have been fulfilled but the requirements for number c are the value of the loss. The amount experienced by the victim turned out to be above IDR 2,500,000, so implementing restorative justice is impossible because it must fulfil three main conditions.

This is, of course, contrary to the spirit of restorative justice which focuses on resolving cases by prioritizing the interests of victims, and from the results of interviews with the writing team it was found that to resolve obstacles in the implementation of restorative justice in the legal area of the Banjar District Prosecutor's Office, the prosecutor's office uses legal instruments, namely Circular Letter Number 01/E/EJP/02/2022 concerning the implementation of terminating prosecutions based on restorative justice, where the provisions in the circular letter can overcome the obstacles experienced by the Banjar Regency District Prosecutor's Office because in the circular letter the 3 absolute requirements for restorative justice can be deviated from. for example in its application, for certain criminal acts, the 3 (three) principle requirements as referred to in number 1 can be deviated from based on the following provisions:

- a. Article 5 paragraph (2), for criminal acts related to property, prosecution can be terminated based on restorative justice if the suspect is committing the crime for the first time.

criminal and added with 1 (one) other principle requirement (letter a + letter b or letter a + letter c)

Simulation:

- ❖ in The suspect has committed a criminal offense for the first time, is suspected of carrying out abuse with premeditation in violation of Article 353 paragraph (1) of the Criminal Code, the threat of imprisonment is a maximum of 4 (four) years, regardless of the loss, may be more than IDR 2,500,000.00 (two million and five hundred thousand rupiahs).

only the letter a + letter b (the letter "c" is excluded/not considering how much the loss it)	
the suspect has committed a crime for the first time	√
the threat of imprisonment is not more than 5 (five) years	√
the loss may be more than IDR 2.500.000,00 (two million and five hundred thousand rupiahs)	

- ❖ This is the first time the suspect has committed a criminal act, he is suspected of holding the proceeds of a plantation business in violation of Article 111 of the Plantation Law, the threat of imprisonment is a maximum of 7 (seven) years so the loss cannot exceed IDR 2,500,000.00 (two million five hundred thousand rupiah)

the letter a + the letter c (letter b is a free variable, may be < 5 (five) years)	
the suspect has committed a crime for the first time	√
the loss is not more than IDR 2.500.000,00 (two million five hundred	√
the threat of imprisonment may be more than 5 (five) years	

As a result, the authors' team concluded that the obstacles hindering the enforcement of restorative justice in the jurisdiction of the Banjar Regency Public Prosecutor's Office in South Kalimantan can be overcome with the issuance of Circular

Letter Number 01/E/EJP/02/2022 concerning the implementation of terminating prosecution based on restorative justice by adhering to the conditions stipulated in Article 5 paragraph (1) of Prosecutor Regulation No. 15 of 2020.

3.3. What is the Ideal Arrangement for the Implementation of Restorative Justice the jurisdiction of the District Prosecutor's Office, Banjar Regency, South Kalimantan

For the implementation of Restorative Justice in the legal area of the Banjar Regency District Prosecutor's Office, based on the author's team's interview with Mr. Joko Firmansyah he explained the response "the community responded to the Banjar Regency District Prosecutor's Office with a positive response to carry out restorative justice because the people in "Banjar Regency still has family relations with both the suspect and the perpetrator and in addition, compensation payments have been made" (Joko Firmansyah, 2023).

Mr Joko Frimansyah further explained that with restorative justice, from the Public Prosecutor, in implementing restorative justice, there is no coercion on our part, and we always ask the victim whether it is related or not and are asked again whether there are conditions given to the suspect, there are examples of victims who want to do this. Restorative Justice, but he asked the suspect for a condition if he (the suspect) wanted to pay compensation of Rp. 3,000,000 (three million Rupiah) and coincidentally, the perpetrator wanted to go to Restorative Justice (Joko Firmansyah, 2023).

In the interview, the writing team also asked a question about whether the implementation of restorative justice could fail and Mr. Bima Syahputra SH explained, "We actually don't know that restorative justice can be approved if it gets approval from the Jampidum itself, so restorative justice is not approved by the district district attorney's office. Banjar and from our side, we are proposing restorative justice, but there is still a stage of exposure to the High Prosecutor's Office and after it is approved, it will be exposed again to the Jampidum of the Attorney General's Office which has the final authority to approve and if the factors are not approved, there are none so far here the application of restorative justice has been approved by all but it is final. The

victim did not ask for any damages related to the case of damaging the car window” (Bima Syahputra Marsana, 2023).

Based on the analysis of the writing team, some things could potentially hinder restorative justice in the Prosecutor's Regulations No. 15 of 2020 concerning terminating prosecutions based on restorative justice, namely the provisions of Article 12 paragraph 2 (two) which states that based on the public prosecutor's report, the head of the District Prosecutor's Office requests approval to terminate the prosecution. based on Restorative Justice to the Head of the High Prosecutor's Office, in the analysis of this article the author found that there was an approval process to the Head of the High Prosecutor's Office and it took 3 (three) days, if the approval factor to the Head of the High Prosecutor's Office was removed and the approval authority was delegated to the Head of the District Prosecutor's Office it would cut time and simplify the process of resolving the termination of prosecution due to restorative justice.

also for certain cases that require special attention from the leadership, the Head of the High Prosecutor's Office requires approval from the Attorney General according to Article 12 paragraph 5. However, to reduce the approval authority held by the Head of the High Prosecutor's Office, changes or revisions to Prosecutor Regulation No. 15 of the year are needed. 2020 concerning Termination of Prosecution based on restorative justice, in which the approval authority which originally belonged to the head of the High Prosecutor's Office was transferred to the Head of the District Prosecutor's Office, making the implementation of Restorative Justice even more ideal in the legal area of the Banjar Regency District Prosecutor's Office.

4. CONCLUSIONS

Based on the results of our research, it was found that the implementation of Restorative Justice (Restorative Justice) in the legal area of the Banjar District Prosecutor's Office, is running effectively, this is based on the procedures for terminating prosecutions due to restorative justice which are by the stages determined by Prosecutor's Regulation No. 15 of 2020 concerning terminating prosecutions based on restorative justice and also handling cases of abuse, destruction accompanied by

threats that were successfully resolved with restorative justice. The obstacles obtained from the research results are juridical obstacles between the absolute requirements and supporting requirements contained in Article 5 paragraph (1) of Perja No. 15 of 2020, wherein its implementation if the main and supporting requirements are not met then restorative justice cannot be implemented.

5. SUGGESTION

The ideal form for implementing restorative justice is to revise Attorney Regulation No. 15 of 2020 which stipulates Article 12 paragraph 5 (five) which in the case of termination of prosecution due to restorative justice which still requires approval from the Head of the High Prosecutor's Office and/or also for cases that attract the attention of the leadership. then it requires approval from the Attorney General which still requires a grace period. If this article is removed, there is no need to ask for approval from the Head of the High Prosecutor's Office or the Attorney General so that the resolution of Restorative Justice will be faster and more efficient.

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