PROSECUTORIAL APPLICATION OF RESTORATIVE JUSTICE: OVERVIEW, MECHANISM, COMMENTARY ON PROSECUTION CESSATION

Jefferson Hakim
Public Prosecutor of the Public Prosecution Office of the Republic of Indonesia
Jeffersonmanurung@gmail.com
Azeem Marhendra Amedi
University of York
Ama682@york.ac.uk

Abstract

This article discusses the implementation of prosecution cessation based on restorative justice by the Indonesian Public Prosecution Service. Restorative justice was introduced as an out-of-court criminal case settlement with certain conditions. Nevertheless, an unpopular opinion against the implementation of the prosecution cessation based on restorative justice as it is considered to deviate from the Indonesian Criminal Procedure Code. The purpose of the research in this article is to describe the concept of restorative justice, the implementation of the prosecution cessation based on restorative justice by the Indonesian Public Prosecution Service, as well as a juridical study of the implementation of prosecution cessation based on restorative justice in the perspective of the Indonesian Criminal Procedure Code. The research method in this article is normative juridical. Restorative justice is considered to be able to meet a sense of justice for the victim and society, as the perpetrator is required to be responsible for restoring the victim's condition to its original state by prioritizing mediation and dialogue. Coming from the perspective of the Indonesian Criminal Procedure Code, the implementation of stopping the prosecution based on restorative justice has the potential to become an object of pretrial. However, from the perspective of the idea of law, the prosecution

cessation based on restorative justice satisfies the triad of justice and utility as the idea of law.
Keywords: Criminal Settlement, Kejaksaan RI, Pretrial, Prosecution, Restorative Justice.

Introduction

Criminal law, particularly the application of criminal law in Indonesia, cannot be separated from the existence of criminal acts and criminal sanctions such as the death penalty, imprisonment, confinement, fines, and certain crimes regulated in laws and regulations. This is because the form of justice applied in Indonesian criminal law since the Dutch Colonial Government period until this moment tends to use a retributive justice approach. From the perspective of retributive justice, criminal prosecution of criminals is the only way to achieve justice for victims and society.[1]

Nevertheless, the main question for legislators and law enforcement officers as the executors of laws and regulations is whether the retributive justice approach could settle and restore the rights of victims whom the criminal acts of the perpetrators have injured. Could the imposition of criminal sanctions such as imprisonment ensure that the perpetrator and the family of the victim and/or perpetrator do not have a grudge against each other after the perpetrator has completed his prison term? Could the imposition of a crime by prioritizing "suffering" for perpetrators achieve the objectives of the function of the correctional system in Indonesia as referred to in Article 2 of Law Number 22 of 2022 on Corrections?

During the perfection of the legal theories, the retributive justice approach as the primary in resolving criminal cases has begun to be abandoned by various European countries because the "final result" obtained could not meet the expectations of the parties involved in the criminal cases in question. Furthermore, punishment prioritizing retributive justice given by the court of law to the perpetrator is deemed unable to fulfill a sense of justice for victims and the society who are harmed by the actions of the said crime; moreover, settling cases by means of the court's session will consume long haul and are likely

[1] Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia," Jurnal Lex Renaissance 6, no. 2 (2021): 230.

corruption practices to occur. Consequently, the imposition of criminal sanctions by the court is not necessarily able to satisfy the victim and society's demand, and there will be ambivalence on the end of the victim and the society's losses, both physical, material, and psychological.[2]

Responding to the above issues, the Public Prosecution Service of the Republic of Indonesia (hereinafter referred to as "**Kejaksaan RI**") issued Public Prosecution Service Regulation Number 15 of 2020 on Prosecution Cessation Based on Restorative Justice (hereinafter referred to as "**RJ Regulation**") on 21 July 2020. In its preamble, it is stated that the resolution of criminal cases by prioritizing restorative justice emphasizes restoration back to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge.[3] According to Article 5 (1) of RJ Regulation, the principal requirements to be satisfied on a case shall be as follows:

a. The perpetrator committed the crime for the first time;
b. Criminal acts are only threatened with a fine or are threatened with imprisonment of not more than 5 (five) years; and
c. The crime is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiah).

Kejaksaan RI further regulates certain conditions that may waive the principal requirements as outlined under the RJ Regulation. For instance, the public prosecutor may terminate the prosecution of the case in the event that the perpetrator has committed a crime for the first time and is added with one of the other principle requirements (for example, letter a is added by letter b or a plus letter c, as referred to in Article 5 (1) letter a, b, and c of RJ Regulation above) as referred to in Article 5 (2) of RJ Regulation in connection with Section E – No. 2 letter a of CL No. 1/2022 (as defined below). For illustration, Mr. A has committed a crime for the first time and is alleged to be committing theft in violation of Article 362 of the Penal Code; the threat of

[2] Henny Saida Flora, "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia," University Of Bengkulu Law Journal 3, No. 2 (October 2018): 144–145, https://ejournal.unib.ac.id/index.php/ubelaj/article/view/6899.

[3] Consideration letter b of RJ Regulation.

imprisonment in this provision is a maximum of 5 (five) years in prison. In this case, the value of the evidence or the value of the loss may exceed Rp.2,500,000,000.00. It is because the requirements of letters a and b have been met. The details shall be described below.

As of early July 2023, the Deputy Attorney General for General Crimes at the Kejaksaan RI (hereinafter referred to as "**JAMPIDUM**"), Fadil Zumhana, described that the Kejaksaan RI had terminated the prosecution of at least 3,121 criminal cases utilizing the restorative justice approach.[4] In essence, the Attorney General of Kejaksaan RI, ST Burhanuddin, encourages every prosecution office unit of Kejaksaan RI to prioritize restoration of the victim's original state in handling criminal cases that meet the requirements referred to in RJ Regulation, rather than focusing on providing criminal sanctions in the form of depriving a person of independence. On 26 September 2022, the Attorney General of Kejaksaan RI was granted a special achievement award by the International Association of Prosecutors (IAP) due to its success in implementing the restorative justice policy, which is considered to meet the sense of justice in society.[5] According to the survey conducted by the National Commission on Human Rights (*Kominisi Nasional Hak Asasi Manusia*) and Litbang Kompas between the fourth week of September to the second week of October 2021, 85.2% (eighty-five-point two percent) agreed that the category of minor criminal acts shall be resolved by restorative justice approach.[6]

With that being said, an unpopular opinion among the law enforcement officers declares that the prosecution cessation based on restorative justice by Kejaksaan RI, in this case, is the public prosecutors (*penuntut umum*), is not following the Indonesian criminal procedure law as regulated under Law Number 8 of 1981 on Criminal Procedure Code

---

[4] Detik News, "*Restorative Justice, Kejagung Hentikan Penuntutan 3.121 Perkara"*, available online from: https://news.detik.com/berita/d-6834467/restorative-justice-kejagung-hentikan-penuntutan-3-121-perkara [accessed July 23,2023].

[5] Detik News, "*Jaksa Agung Terima Penghargaan dari Asosiasi Jaksa Internasional*", available online from: https://news.detik.com/berita/d-6313638/jaksa-agung-terima-penghargaan-dari-asosiasi-jaksa-internasional [accessed October 10, 2022].

[6] CNN Indonesia (2022), *Kejagung Selesaikan 821 Kasus dengan Restorative Justice*, available online from: https://www.cnnindonesia.com/nasional/20220317141942-12-772613/kejagung-selesaikan-821-kasus-dengan-restorative-justice [accessed July 1,2022]

as its several articles have been materially tested by the Constitutional Court of Republic of Indonesia (hereinafter referred to as "**Criminal Procedure Code**"). This opinion is raised since prosecution cessation based on restorative justice by Kejaksaan RI is not included as the justification to terminate prosecution based on Article 140 (2) letter a of the Criminal Procedure Code, notably for the sake of law (*demi kepentingan hukum*). Therefore, this opinion may lead to a pretrial hearing according to Article 77 of the Criminal Procedure Code.

The first research, written by Henny Saida Flora, entitled "*Keadilan Restoratif Sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya dalam Sistem Peradilan Pidana di Indonesia*" describes the history, concept, and application of restorative justice in general. The second research, written by Gita Santika, entitled "*Peran Kejaksaan Mewujudkan Keadilan Restoratif sebagai Upaya Penanggulangan Kejahatan*," provides the concept of restorative justice in the settlement of criminal cases in general and mentions the provisions of the RJ Regulation in the implementation of prosecution cessation by the Kejaksaan RI based on restorative justice. Meanwhile, the third research written by Iqbal Risha Ahmadi and Suteki, entitled "Restorative Justice as a Basis for Stopping Prosecution by Prosecutors in a Human Rights Perspective," explains the provisions in the RJ Regulation concerning the settlement of criminal cases through prosecution cessation by the Kejaksaan RI based on restorative justice in human rights perspective.

Compared to the three studies above, the differences and novelties in this study are in the form of a more detailed explanation of the requirements, mechanisms, and provisions for the exclusion of stopping the prosecution by the Indonesian Prosecutor's Office based on restorative justice in RJ Regulation and CL No. 1/2022 which was reviewed from the internal point of view of the Indonesian Prosecutor's Office itself as well as the researcher's comments regarding whether the prosecution cessation by the Kejaksaan RI based on restorative justice legally accepted according to the Indonesian criminal procedural law.

Based on the above issue, the normative judicial method is used as the research in writing this article. In brief, this research method will analyze the prevailing laws and regulations related to the discussion herein, especially the Criminal Code, Criminal Procedure Code, and RJ Regulation. Furthermore, this article shall describe the issues associated with the concept of restorative justice in criminal acts settlement, the

implementation of stopping the prosecution based on restorative justice by Kejaksaan RI, and the legal analysis of prosecution cessation based on restorative justice by Kejaksaan RI according to Criminal Procedure Code.

The Concept of Restorative Justice in Criminal Acts Settlement

In the conservative view, a crime act is considered an act that is against society, the authority of the state, and the values that have been agreed upon by the community. Upon the society's values which have been drawn into the state law violated by the perpetrator, the state is given legitimacy (in this case, law enforcement officers) to position itself as a substitute for victims and communities whose rights have been injured to give punishment to perpetrators of criminal acts according to the relevant laws and regulations.[7] Comprehensively, the state's action in ruling criminal sanctions towards perpetrators is the form of protection against legal interests, creating public order, and protecting from "rape" against the laws and regulations that have been agreed upon by the society.[8]

The above-mentioned view is the logical consequence of the operation of criminal law positioned from the perspective of retributive justice. In the theory of retributive justice, the imposition of a criminal sanction is a form of retaliation against the perpetrator of criminal acts committed by him/her. Bemmelen described that there is no other goal to be achieved other than revenge against the perpetrators of crime when viewed from the perspective of retributive justice. According to Professor Romli Asmasasmita, the punishment shown to the perpetrators of crimes in the retributive theory is justified on the following grounds:[9]

a. Punishment of the perpetrators of crimes will provide a sense of satisfaction with the revenge or revenge possessed by the victim, as well as a feeling of justice for family, friends, and society.

[7] Gregorius Widiartana, "Paradigma Keadilan Restoratif Dalam Penanggulangan Kejahatan Dengan Menggunakan Hukum Pidana," Justitia et Pax 33, no. 1 (November 2017) : 2.
https://ojs.uajy.ac.id/index.php/justitiaetpax/article/view/1418.

[8] Failin Alin, "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia," JCH (Jurnal Cendekia Hukum) 3, no. 1 (2017): 15.

[9] Romli Atmasasmita, Kapita Selekta Hukum Pidana Dan Kriminologi (Bandung: Mandar Maju, 1995): 25.

b. Punishment is a form of "warning" to the perpetrators and other members of the society that every criminal act harming others or gaining unfair advantage from others will receive the appropriate punishment.

The Indonesian Penal Code (*Wetboek Van Strafrecht* or *Kitab Undang-Undang Hukum Pidana*) (hereinafter referred to as "**Penal Code**") as "the parent" of material criminal provisions in Indonesia prioritizes the retributive justice paradigm. It is because criminal regulations in Indonesia seem to view the punishment of criminals as the primary way to achieve justice for victims and society.[10] Judging by the types of punishment in the Penal Code, Article 10 of the Penal Code distinguishes punishment into basic punishment (i.e., capital punishment, imprisonment, light imprisonment, and fine) and additional punishment (i.e., deprivation of certain rights, forfeiture of specific property, and publication of judicial verdict). Therefore, the Penal Code in Indonesia is likely to use a retributive justice approach in imposing criminal sanctions towards the perpetrators.[11]

However, the reality unfolds that the application of punishment by retributive justice approach (i.e., imprisonment) does not necessarily shape someone who is sentenced to imprisonment to become a better person and return to carrying out his/her social life in society. This phenomenon is called the "criminal cycle," whereby prisons cannot make prisoners become good citizens; in fact, in some cases, they even become more skilled in committing crimes.[12] It would certainly be contrary to the expectations of the purpose of imprisonment. Judging from the purpose of imprisonment punishment, it should have made the perpetrators of the crime aware of their wrongdoings and would not commit violations in the future. The aim should be to make the perpetrators deterrent because of their actions and to prevent someone from committing prohibited acts.[13]

---

[10] Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia.": 231.

[11] Dede Kania, "Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia," *Yustisia Jurnal Hukum* 3, no. 2 (2014): 55.

[12] Pajar Hatma Indra Jaya, "Efektifitas Penjara Dalam Menyelesaikan Masalah Sosial," Hisbah: Jurnal Bimbingan Konseling dan Dakwah Islam 9, no. 1 (June 2012): 2, http://ejournal.uin-suka.ac.id/dakwah/hisbah/article/view/091-06.

[13] I Wayan Putu Sucana Aryana, "Efektivitas Pidana Penjara Dalam Membina Narapidana," *DiH: Jurnal Ilmu Hukum* 11, no. 21 (2015): 39–44.

Based on the above, the punishment of criminals applying a retributive justice approach as reflected in the Penal Code and various criminal laws and regulations in Indonesia is no longer relevant to the legal needs of the society, or at least, the application of punishment with a retributive justice approach could only be applied to exclusive criminal acts. Considering the Penal Code's background, the Penal Code is an "inheritance" from the Dutch Colonial Government, which is still used in Indonesia today. Furthermore, practice shows that the application of the Penal Code and other criminal regulations is carried out haphazardly, meaning that every dispute in society will be resolved criminally, albeit not every issue must be resolved through the conviction of a person. As universally known, criminal law encourages the principle of "*ultimum remedium*" which means that punishment is the last resort in the event that other sanctions cannot be used. Therefore, it is the precise thing for the Indonesian government to form regulations, especially criminal regulations, by prioritizing the values that live in society and prioritizing the interests of the community, as in line with the legal definition initiated by Carl Von Savigny, the law is not deliberately made; instead, it grows naturally in society.[14]

In the 20th century, legal science introduced an idea of justice as an alternative to resolving criminal cases, namely restorative justice. The term restorative justice was introduced by Albert Englash in 1977 in his writings on compensation or reparations. It should be noted that restorative justice focuses on restoring relations between the parties involved therein, namely, victims, perpetrators, and the community in connection with the crimes committed by the perpetrators.[15] In addition to recovering the situation, the settlement of criminal cases with a restorative justice approach encourages criminals to realize their mistakes and be responsible for resolving problems and all the consequences that arise by speaking, mediating, or other methods that are considered appropriate so that the rights of victims and the community can be immediately restored.

Howard Zher, a pioneer of restorative justice in the United States, defines restorative justice as a process involving parties with

[14] Fadillah Mursid, "Penyelesaian Perkara Pidana Melalui Mediasi Penal Dalam Perspektif Restorative Justice," Jurnal Fiat Justicia 4, no. 1 (April 2018): 3.

[15] Martin D Schwartz and Suzanne E Hatty, Controversies in Critical Criminology (Routledge, 2003) : 100-101.

interest in a particular violation, jointly identifying losses, fulfilling obligations and needs, and placing redress as a right that must be received.[16] According to Muladi, restorative justice is part of the criminal justice system seeking to listen and pacify those who a crime has harmed by a crime and to restore, to the fullest extent, disputes in the right and just direction between the disputing parties, with a focus on resolving disputes problems through mediation, conciliation, dialogue, and restitution, to reciprocally remedy social harm and possibly express remorse and forgiveness.[17]

In various literatures, it is stated that the original concept of restorative justice practice inhabits from peacekeeping practices used by the tribe of Maori, an indigenous people of New Zealand. When a conflict arises, restorative practices will deal with the perpetrator, victim, and stakeholder. In Indonesia, the resolution of disputes in society by utilizing a restorative justice approach has actually been practiced in indigenous people, as practiced in Papua, Bali, Toraja, Minangkabau, Kalimantan, Central Java, and other communities that still firmly hold their respective culture. It can be reflected in existing practices such as holding meetings between community leaders, the perpetrator, the victim, and the families of the perpetrator/victim to reach a mutual consensus to repair and adjust mistakes arising from violations committed by the perpetrator. It is the core value and characteristic of the philosophy of the Indonesian, which is contained in the 4th Principle of Pancasila, "the unity arising out of deliberations".[18]

The concept of restorative justice in the settlement of criminal cases is an excellent legal breakthrough in criminal law practices as it is based on the idea those involved in the conflict are parties who play an active role in resolving existing problems and reducing negative consequences that can arise afterward. It is worth noting that restorative justice is an approach prioritizing the involvement of the victim,

---

[16] Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence)* (Jakarta: Kencana Prenada Media, 2009).

[17] Muladi, "Implementasi Pendekatan 'Restorative Justice' Dalam Sistem Peradilan Pidana Anak," Pembaharuan Hukum Pidana 2, no. 2 (2019): 63, https://ejournal.undip.ac.id/index.php/phpidana/article/view/25036.

[18] Septa Candra, "Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia," Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional 2, no. 2 (August 2013): 271,https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/76.

perpetrator, and society as well as other stakeholders as facilitators jointly mediate on how to resolve these problems and the form of recovery must be given to victims and the society, thereby minimizing the possibility of disputes between the perpetrator and the victim and the community in the future.[19]

In conjunction with the principles above, another thing that needs to be considered is the idea of "just peace" between the perpetrator, the victim, and society. The idea is peace and justice are one and cannot be separated. Peace without justice is oppression; and justice without peace is a new form of persecution or oppression. The connection between the settlement of criminal cases through restorative justice and "just peace" is that the perpetrators of crimes are given the opportunity to restore the state of losses suffered by victims and the community so that this form of recovery will provide justice for the victim and the society as well as peace between perpetrator, victim, and the society afterward.[20] Based on the above, the settlement of criminal cases utilizing restorative justice approach is not only seen from a legal perspective, but also includes moral, social, economic, religious, and local customs and other considerations.[21]

Prosecution Cessation Based on Restorative Justice by Kejaksaan RI

In terms of prosecution, it cannot be separated from the universally recognized principle of *dominus litis*. Fundamentally, *dominus litis* means "prosecutor as the controller of the case" in the criminal justice process and is authorized to determine whether a case can be prosecuted in court or not. *Dominus litis* emphasizes that no other agency has the authority to implement prosecution other than the public prosecutor, which is absolute and monopolistic as the consequence of

[19] Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," Al-Adl : Jurnal Hukum 10, no. 2 (August 2018): 173, https://ojs.uniska-bjm.ac.id/index.php/aldli/article/view/1362.

[20] Prima Anggara and Mukhlis Mukhlis, "Penerapan Keadilan Restoratif Pada Tindak Pidana Pencurian Ringan," Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana 3, no. 3 (2019): 471-472.

[21] Juhari , "Restorative Justice Dalam Pembaharuan Hukum Pidana Di Indonesia," Spektrum Hukum 14, no. 1 (2017): 105,http://jurnal.untagsmg.ac.id/index.php/SH/article/view/1104.

the Public Prosecutor's authority to monopolize the trial and execution of criminal cases.[22] In fact, judges in a criminal case are not able to request criminal cases to be submitted, instead, the judges must wait for the prosecution of the criminal case by the Public Prosecutor. Therefore, the Public Prosecutor, as the holder of prosecutorial authority, is the controller or authority of the case so the Public Prosecutor has the authority to determine whether or not a case can be prosecuted in court.

According to Article 1 point 7 of Criminal Procedure Code in connection with Article 1 point 4 of Law Number 11 of 2021 on the Amendment to Law Number 16 of 2004 on the Public Prosecution Service of the Republic of Indonesia (hereinafter referred to as the "**Prosecutor Law**"), prosecution is the action of the public prosecutor to prosecute the case to the competent district court based on the methods regulated in the criminal procedural law with a request to be examined and decided in a court hearing. In Indonesia, the Kejaksaan RI is an institution that adheres to the principle of *dominus litis* as reflected in Article 1 point 1 of the Prosecutor Law. In such an article, Kejaksaan RI is described as the government institution executing state power in the field of prosecution. Additionally, the position of Kejaksaan RI as *dominus litis* is strengthened under Article 1 point 7, Article 13, Article 14, and Article 137 of the Criminal Procedure Code, where it is explained the authority to carry out prosecutions is held by the prosecutor as the public prosecutor. Therefore, Kejaksaan RI executes an essential role in the continuation of a criminal case, considering that the Kejaksaan RI shall act as a "bridge," which means an intermediary between the investigation stage and the examination stage in court.[23]

In terms of the prosecution cessation by Kejaksaan RI, the Attorney General of Kejaksaan RI, ST Burhanuddin, explained justice is not in books, the Penal Code, and the Criminal Procedure Code. Still a sense of justice is in the hearts of the society. In carrying out this

[22] Didik Kurniawan, Heni Siswanto, and Dini Nurina Chairani, "Principle of Prosecutors Independency in Deponering Criminal Cases for Public Interest in Indonesia," Scholars International Journal of Law, Crime and Justice 5, no. 4 (2022): 166.

[23] Dian Rosita, "Kedudukan Kejaksaan Sebagai Pelaksana Kekuasaan Negara Di Bidang Penuntutan Dalam Struktur Ketatanegaraan Indonesia," Jurnal Ius Constituendum 3, no. 1 (2018): 43.

phenomenon, Kejaksaan RI enacted a legal breakthrough in the form of RJ Regulation as a form of embodiment of more humane law enforcement with the aim of through restorative justice in the settlement of criminal cases.[24] Article 1 point 1 of the RJ Regulation emphasizes the settlement of criminal cases using such mechanism shall not prioritize retaliation, yet seeks a fair solution by restoring to its original state by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties jointly.

The prosecution cessation based on restorative justice by Kejaksaan RI shall be under the principles of justice, public interest, proportionality, punishment as a last resort, and fast, simple, and low cost, as referred to in Article 2 of the RJ Regulation. It is worth noting that the implementation of the prosecution cessation shall be the part of the authority of Kejaksaan RI, in this case, the public prosecutor, in closing the case for the sake of law related to the settlement of the case outside the court (*afdoening buiten process* or *penyelesaian perkara di luar pengadilan*) in the form of the restoration of the original state being achieved in connection with using the restorative justice approach as referred to in Article 3 (1), 2 letter e and Article 3 letter b of the RJ Regulation.

Before implementing the mechanism in question, the public prosecutor shall be required to observe the main requirements that must be met as reflected under Article 5 (1) of the RJ Regulation, amongst others:

a. The perpetrator committed the crime for the first time;
b. Criminal acts are only threatened with a fine or are threatened with imprisonment of not more than 5 (five) years; and
c. The crime is committed with the value of the evidence or the value of the loss caused due to the crime of not more than Rp.2,500,000,000.00 (two million five hundred thousand rupiah).

However, the above main requirements have been developed with some exceptions by Kejaksaan RI according to the Circular Letter of the Attorney General of the Republic of Indonesia Number: 01/ E/EJP/ 02/2022 on the Implementation of Termination of

[24] Gita Santika Ramadhani, "Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan," PROGRESIF: Jurnal Hukum 16, no. 1 (June 2021): 87, https://www.journal.ubb.ac.id/index.php/progresif/article/view/1898.

Prosecution Based on Restorative Justice of 10 February 2022 (hereinafter "**CL No. 01/2022** "), as follows:

a. For criminal acts related to property, in the event that there are specific criteria or are casuistic in nature, the public prosecutor may stop prosecuting the case in the event that the perpetrator has committed a crime for the first time and is added with one of the other principle requirements (for example, letter a is added by letter b or a plus letter c, as referred to in Article 5 (1) letters a, b, and c of RJ Regulation above) as referred to in Article 5 (2) of RJ Regulation in connection with Section E – No. 2 letter a of CL No. 1/2022.
   For illustration, Mr. A has committed a crime for the first time and is alleged to be committing theft in violation of Article 362 of the Penal Code; the threat of imprisonment in this provision is a maximum of 5 (five) years in prison. In this case, the value of the evidence or the value of the loss may exceed Rp.2,500,000,000.00. It is because the requirements of letters a and b have been met.
b. For criminal acts related to person, body, and life and the person independence, the provisions in Article 5 (1) letter c of the RJ Regulation may be excluded. It means that the conditions that must be met are that the perpetrator has committed a crime for the first time and the criminal offense is only threatened with a fine or is threatened with imprisonment of not more than 5 (five) years as referred to in Article 5 (2) of RJ Regulation in connection with Section E – No. 2 letter b of CL No. 1/2022.
   For example, suppose Mr. B has committed a crime for the first time. In that case, he is suspected of committing an offense with a prior plan to violate Article 353 paragraph (1) of the Penal Code, which carries a maximum imprisonment of 4 (four) years. In this case, the exception in RJ Regulation and CL No. 1/2022 shall be there is no limit on the value of the loss, so that it may exceed Rp.2,500,000,000.00 (two million five hundred thousand rupiah).
c. For criminal acts committed due to negligence, the provisions in Article 5 (1) letters b and c of the RJ Regulation may be exempted. It means that it is sufficient for the perpetrator to commit a criminal act for the first time, as referred to in Article

5 (4) of RJ Regulation in connection with Section E – No. 2 letter c of CL No. 1/2022.

For example, a suspect who has committed a crime for the first time is suspected of being negligent in causing a traffic accident with the victim dying in violation of Article 310 (4) of Law Number 22 of 2009 on Road Traffic, which carries a maximum imprisonment of 6 (six) years imprisonment and the value of the loss may exceed Rp.2,500,000,000.00 (two million five hundred thousand rupiah).

It is worth noting that CL No. 1/2022 reminds the public prosecutor that the fulfillment of the requirements of Article 5 (1) of the RJ Regulation and all forms of the exceptions above (Article 5 (2), (3), and (4) of the RJ Regulation) shall not apply naturally; however, it must remain in the prosecution's policy stems corridor based on the principle of opportunity for the public prosecutor, proportionality, and subsidiarity, taking into account and considering Article 4 and the criteria/conditions that are casuistic in nature which according to the consideration of the public prosecutor with the approval of the Head of the District Prosecution Office (*Kepala Kejaksaan Negeri*) or the Head of the Branch Office of the District Prosecution Office (*Kepala Cabang Kejaksaan Negeri*) can be stopped based on restorative justice.

Nevertheless, Article 5 (8) of the RJ Regulation expressly states the provision of stopping the prosecution based on restorative justice excludes:

a. criminal acts against state security, the dignity of the president and vice president, friendly states, heads of friendly states and their representatives, public order and morality;
b. a criminal act that is punishable by a minimum criminal threat;
c. narcotic crime;
d. environmental crime; and
e. criminal acts committed by corporations.

In addition to the said prerequisite, it should be noted regarding the conditions related to the recovery of the victim's condition as referred to in Article 5 (6) of the RJ Regulation, including:

a. there has been a return to its original state carried out by the perpetrator by:
    1. return the goods obtained from the crime to the victim;

2. compensate the victim's loss;
3. reimburse the costs incurred as a result of the criminal act; and/or
4. repair the damage caused by the criminal act.

b. there has been a peace agreement between the victim and the suspect; and
c. society responded positively.

The mechanism for the prosecution cessation based on restorative justice may only be proposed by the public prosecutor on the assumption the requirements described under Article 5 of RJ Regulation have been satisfied, as regulated under Article 6 of RJ Regulation. Shortly, the RJ Regulation sets the mechanism for the prosecution cessation based on restorative justice into 3 (three) stages, including:

a. Peace Attempt (*Upaya Perdamaian*)

A peace attempt is an attempt undertaken by the public prosecutor to offer peace efforts to victims and perpetrators carried out without pressure, coercion, and intimidation. This action is carried out at the prosecution stage, meaning at the time of handing over responsibility for the suspect and evidence (stage 2)[25] by the investigator to the public prosecutor, as regulated under Article 7 of RJ Regulation.

In this case, the public prosecutor shall be obliged to deliver a legal and proper summons to the victim by stating the reason for the summons. Furthermore, if deemed necessary, the public prosecutor may involve the families of the victims and/or suspects, society leaders or representatives, and other related parties. After the victim, suspect, and associated parties come to attend the peace effort, the public prosecutor is obliged to notify the intent and purpose as well as the rights and obligations of the victim and suspect in the peace effort, including the right to refuse the peace effort as mentioned under Article 8 of RJ Regulation. The peace effort referred to can lead to 2 (two) decisions, namely:

[25] In practice, the stage 1 (*tahap satu*) is known as handing over the case file (*penyerahan berkas perkara*) from the investigator (*penyidik*) to the public prosecutor (*penuntut umum*), while handing over the perpetrator and evidence (*penyerahan tersangka dan barang bukti*) is known as the stage 2 (*tahap dua*).

1. the peace attempt is accepted, and the public prosecutor shall continue the peace effort between the victim and the suspect to the next stage of the peace process. In addition, the public prosecutor is required to submit a report on efforts for reconciliation to be received by the Head of the District Prosecution Office or the Branch of the Head of the District Prosecution Office to be forwarded to the Head of the High Prosecution Office.
2. the peace attempt is rejected, then the public prosecutor:
   a) to state the non-achievement of peace efforts in the official report;
   b) make a note of opinion that the case is transferred to the court and state the reasons; and
   c) delegate the case file to the court.

b. Peace Process

Given the peace attempt is agreed upon by the victim and the perpetrator, the public prosecutor as the facilitator accommodates the peace process between the victim, perpetrator, and related parties, which is carried out voluntarily, without pressure, coercion, or intimidation. Such process shall be carried out at the Prosecutor's Office; however, at this moment, many Prosecution Offices have inaugurated and appointed a place called the "Restorative Justice House" or "*Rumah Restorative Justice*" as a place to carry out a series of restorative justice mechanisms between victims, perpetrators, and other related parties. It is worth noting that the peace process and fulfillment of obligations are carried out within a maximum of 14 (fourteen) days after the handover of responsibility for the suspect and evidence (stage 2) as regulated under Article 9 of RJ Regulation.

In terms of the peace agreement mutually agreed by the victim and the perpetrator, the peace agreement could be in the form of an agreement to declare peace with the fulfillment of specific obligations or an agreement to declare peace without the fulfillment of specific obligations. In the case of a peace agreement accompanied by the fulfillment of certain obligations, the victim may ask the perpetrator to return the goods obtained from the crime to the victim (usually related to

the crime of theft and embezzlement), compensate the victim (usually associated with the crime of theft, embezzlement, persecution), replace costs arising from the consequences of a criminal act, and/or repair the damage caused by a criminal act. To strengthen the evidence of the peace process, in practice, receipts from victims prove this, transfer evidence, testimony from witnesses and victims, as well as other electronic evidence.[26] Meanwhile, in the case of a peace agreement without the fulfillment of obligations, the public prosecutor draws an official report or minutes of meeting on the peace agreement and a memorandum of opinion.

Article 10 (6) of the RJ Regulation constitutes should the peace agreement is not successful or the fulfillment of obligations is not carried out under the peace agreement, the public prosecutor must:

a) to state the failure of a peace agreement in the minutes;
b) draw a memorandum of opinion that the case is handed to the court by stating the reasons; and
c) hand the case file over to the court.

c. Expose

Once the public prosecutor reports the peace agreement to the Head of the District Prosecution Office and the Head of the Branch of District Prosecution Office by attaching the minutes of the peace agreement, the Head of the District Prosecution Office or the Head of the Branch of District Prosecution Office requests approval for stopping the prosecution to JAMPIDUM through the Head of the High Prosecutor's Office within a maximum period of 1 (one) day after the peace agreement is reached by using the fastest means as regulated under Article 12 (1) to (3) of RJ Regulation in connection with Section E – No. 4 letter a of CL No. 1/2022, which in practice is done through video conferencing media (e.g., *Zoom*). Subsequently, the expose shall be carried out no later than 2 (two) days following the application is received by JAMPIDUM, where the said expose is an act of brief chronological explanation of the case, peace

[26] Andri Kristanto, "Kajian Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif," Jurnal Lex Renaissance 7, no. 1 (2022): 190.

attempt, peace process, and peace agreements facilitated or penal mediation by the public prosecutor as referred to Section E – No. 4 letter c, d, and e of CL No. 1/2022.
In the event JAMPIDUM approves the request for prosecution cessation based on restorative justice, the Head of the High Prosecution Office produces an approval for such stopping in writing with consideration based on the results of the exposure within 1 (one) day as the date of approval. Following that, the public prosecutor summons the parties to notify the agreement to stop the prosecution and request verification of evidence of the implementation of the peace agreement. Based on the verification of the peace agreement, it has been proven that the public prosecutor prepares a report to the Head of the District Prosecution Office or the Head of the Branch of the District Prosecution Office by attaching evidence of the peace agreement implementation. Concerning the report submitted by the public prosecutor, the Head of the District Prosecution Office or the Head of the Branch of District Prosecution Office issues a Prosecution Cessation Decree (*Surat Ketetapan Penghentian Penuntutan* or SKP2) within no later than 1 (one) day from the implementation of the peace agreement as regulated under Section E– No. 4 letter f, g, h, i, and j of CL No. 1/2022.

Stopping the Prosecution Based on Restorative Justice According to the Criminal Procedure Code

The presence of the RJ Regulation is considered a legal breakthrough in the criminal justice mechanism in Indonesia, which initially only focused on punishment into an arrangement of dialogue and mediation processes. Additionally, the presence of the RJ Regulation also responds to the problems of the criminal justice system in Indonesia, which tends to be rigid and too formalistic.[27] As explained above, Article 2 of the RJ Regulation explicitly states that the "product" of stopping the prosecution based on restorative justice is part of "the case is closed for the sake of law".

[27] Ahmad Faizal Azhar, "Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Di Indonesia," Mahkamah : Jurnal Kajian Hukum Islam 4, no. 2 (2019): 137, https://www.syekhnurjati.ac.id/jurnal/index.php/mahkamah/article/view/4936.

In essence, the Indonesian Criminal Procedure Code provides the public prosecutor with the authority to terminate the prosecution due to: (i) the absence of sufficient proof, (ii) such event is not a criminal action, or (iii) the case is closed for the sake of law, as regulated under Article 140 (2) letter a of Criminal Procedure Code. In this case, the Criminal Procedure Code does not elaborate further on the terms, conditions, and/or definition of each reason for stopping the prosecution.

Pointing out the absence of sufficient proof, M. Yahya Harahap exposes that this reason is based on avoiding the perpetrator's acquittal from the charges accused by the public prosecutor since the case in question have not sufficient evidence, therefore, instead of handing over the case to the court, it is wiser for the public prosecutor to terminate the prosecution. Furthermore, the term "such event is not a criminal action," M. Yahya Harahap narrates this reason due to the public prosecutor's case study. As such, it could be concluded that what was alleged by the investigator is not a crime. Should the prosecution continue, this will risk ending with a judge's decision in the form of releasing the defendant from all lawsuits (*onstag van rechtvervolging* or *lepas dari segala tuntutan hukum*).[28]

Meanwhile, the prosecution cessation due to the case is closed for the sake of law is elaborated by M. Yahya Harahap based on the following reasons:[29]

a. the perpetrator/defendant passed away, which means that if the defendant passed away, then according to the law, action must be taken to terminate the prosecution. It is based on the legal principle adopted that a criminal act can only be accounted for to the person who committed the crime himself so that responsibility for the crime in question cannot be transferred to other people or the family of the suspect/defendant, as regulated under Article 77 of the Penal Code.
b. *nebis in idem*, which means that the public prosecutor shall not charge a person twice for the same crime. Basically, this principle asserts that a person may only be sentenced once for the same crime or offense. Therefore, if the public prosecutor receives the

[28] M Yahya Harahap, Pembahasan Permasalahan Dan Penerapan KUHAP, 2nd ed. (Jakarta: Sinar Grafika, 2006) : 436-437.

[29] Ibid : 437-438.

examination file from the investigator, then from the results of the research, it turns out that what is suspected of the perpetrator/defendant is a criminal event that has been prosecuted and decided by the judge in a court hearing and the decision has obtained permanent legal force (*inkracht*), the public prosecutor must close the examination of the case for the sake of law. It is regulated in Article 76 of the Penal Code.

c. the case has expired, which means that the public prosecutor cannot prosecute the case due to its expired period as stipulated in Article 78 to Article 80 of the Penal Code.

In line with M. Yahya Harahap's, H.M.A. Kuffal also stated that stopping the prosecution by the public prosecutor is legally possible on the condition that the perpetrator has passed away, the right to prosecute has been eliminated due to expiration, and the case is closed for the sake of law based on the reason that the absence of sufficient evidence or the event is not criminal action.[30] The similarity of the opinion of M. Yahya Harahap and H.M.A. Kuffal above, in particular to stopping the prosecution due to the case is closed for the sake of law, that the legal basis for that reason is regulated in the Law (*Undang-Undang)*, namely the Penal Code.

Other than the above, the prosecution cessation by the public prosecutor is possibly carried out provided the victim revokes his complaint in the event that the crime in question is a complaint offense (*delik aduan*) as mentioned under Article 72 to Article 75 of the Penal Code, for example, the complaint offense is adultery as referred to in Article 284 of the Penal Code, slander as referred to in Article 311 of the Penal Code. Additionally, the public prosecutor's authority in the prosecution of criminal offenses punishable by a fine is terminated once the perpetrator voluntarily pays the maximum fine and the costs incurred if the prosecution has begun as regulated under Article 82 of the Penal Code.[31]

---

[30] H M A Kuffal, Penerapan KUHAP Dalam Praktik Hukum, 8th ed. (Malang: Universitas Muhammadiyah Malang, 2005): 217-218.

[31] Iqbal Risha Ahmadi and Suteki Suteki, "Restorative Justice as a Basis for Stopping Prosecution by Prosecutors in a Human Rights Perspective," Melayunesia Law 5, no. 1 (June 2021): 107, https://myl.ejournal.unri.ac.id/index.php/ML/article/view/7806.

Along with the development of criminal law in Indonesia, Law Number 11 of 2012 on the Child Criminal Justice System (hereinafter referred to as "**CCSJ Law**") introduces "diversion," which means the transfer of settlement of child cases from the criminal justice process to a process outside the criminal justice system. In principle, CCSJ Law explicitly mandates law enforcers to prioritize a restorative justice approach in implementing the child criminal justice system. Furthermore, Article 5 and Article 7 of CCJS Law obliges diversion efforts at the level of investigation, prosecution, and examination of children's cases in state courts in the event that the crime committed is (i) punishable by imprisonment of less than 7 (seven) years; and (ii) does not constitute a repeat of a crime.

According to the above, it can be concluded that the prosecution cessation by the public prosecutor, both in general and related to the diversion under CCJS Law, is regulated in the form of Law. Moreover, the issue arises whether stopping the prosecution of criminal cases based on restorative justice by Kejaksaan RI, in this case, the public prosecutor, violates the applicable criminal procedural law and the doctrine of criminal law in Indonesia. If and only if viewed narrowly, the prosecution cessation of criminal cases due to the case being closed for the sake of law arguably must be regulated in the form of Law. Nonetheless, if viewed broadly, the prosecution cessation in question must be understood as related to the idea of law.

Prof. Bagir Manan, former Chief Justice of the Supreme Court of the Republic of Indonesia and Professor of the Faculty of Law, Padjadjaran University, breaks down the formulation "for the sake of law" in the provisions of Article 140 paragraph (2) letter c of the Criminal Procedure Code could be interpreted as "in the interest of the idea of law," one of which is order common sense and sense of justice.[32] Associated with the context of law enforcement, Prof. Bagir Manan views law enforcement in Indonesia as a "*communist opinion doctorum*", which means that law enforcement currently has failed to achieve the

[32] Hukumonline.com, *Menafsirkan Rumusan 'Demi Kepentingan Hukum' dalam KUHAP*, available online from:https://www.hukumonline.com/berita/a/menafsirkan-rumusan-demi-kepentingan-hukum-dalam-kuhap-lt4b1dea37d8cd [accessed July 2,2022]

objectives required by the Law.[33] Hence, the settlement of criminal cases through a restorative justice approach can be an alternative in realizing a sense of justice not only for victims but also for perpetrators and society.

According to Gustav Radbruch, the idea of law includes the triad of justice, benefits, and legal certainty. However, such ideas of law may contradict one another, and as such, law enforcement has to determine which legal purposes shall take priority. The "prioritize scale" theory of Radbruch clearly describes the first priority as justice, the second priority as benefits, and the third as legal certainty. Therefore, justice and benefits may override legal certainty.

Notwithstanding Professor Bagir Manan and Gustav Radbruch's argumentation, any act of the public prosecutor of Kejaksaan RI related to stopping the prosecution based on restorative justice has the potential to become an object of pretrial. It is because such action is likely considered to deviate from and contradict the applicable criminal procedural law, whereby restorative justice is not included in the reasons for stopping the prosecution of criminal cases by the public prosecutor as regulated in the Criminal Procedure Code, mainly due to the case is closed for the sake of law as regulated under Article 140 (2) letter a of Criminal Procedure Code. Albeit the opinion thereof is not famous yet, the public prosecutor of Kejaksaan RI shall anticipate any action taken by a third party positioning the prosecution cessation based on restorative justice as the object of pretrial on whether or not such stopping of prosecution as referred to in Article 77 of the Criminal Procedure Code is legally accepted.

According to Article 77 and Article 80 of the Criminal Procedure Code, the investigator, public prosecutor, or the interested third party is eligible to request an examination on whether the prosecution's cessation is legally accepted. Exclusively, discussing the possibility of a pretrial request by an interested third party for the termination of prosecution based on restorative justice by the public prosecutor, the Criminal Procedure Code itself does not explain further who the intended third party is. Responding to such issue, the Constitutional Court of the Republic of Indonesia on Constitutional Court Decision Number 76/PUU-X/2012 of 8 January 2013

[33] Rudi Rizky, *Refleksi Dinamika Hukum (Rangkaian Pemikiran Dalam Dekade Terakhir)* (Jakarta: Perum Percetakan Negara Indonesia, 2008): 4.

(hereinafter referred to as "**CC Decision No. 76/2012**") interprets the formulation in a broad sense, namely not limited to witnesses of victims of criminal acts or reporting, but also includes the wider community who have the same interests and goals to fight for the public interest (public interest advocacy) such as Non-Governmental Organizations (NGOs) or other community organizations.

As the consequence of the broad interpretation of "interested parties" in Article 77 and Article 80 of the Criminal Procedure Code in connection with CC Decision No. 76/2012, it is inevitable the public with specific interests, NGOs, or other community organizations are dissatisfied with the results of stopping the prosecution based on restorative justice by the Kejaksaan RI to submit a pretrial petition to the relevant district court. Granting the fact that the judge of the pretrial in favor of the NGOs and/or community organizations, therefore the court shall declare stopping the prosecution by Kejaksaan RI, in this case, is the public prosecutor, is legally unaccepted and the prosecution of the perpetrator must be continued based on Article 82 (3) letter b of Criminal Procedure Code.

In fact, if viewed from the perspective of the victim and the perpetrator, Kejaksaan RI's "product" in the form of stopping the prosecution based on restorative justice with the restoration of certain conditions by the perpetrator could uphold the victim's sense of justice. However, if there is room for other parties to file a pretrial and the pretrial is accepted so that the prosecution must continue, it will be very detrimental to the interests of the victim and suspect and can negate legal certainty for victims and perpetrators in this case.

Based on the above, the legal basis for the prosecution cessation based on restorative justice by the Kejaksaan RI must be established in the form of a Law (*Undang-Undang*). Therefore, it is necessary to reform formal criminal law (i.e., renewal of the Criminal Procedure Code) and construct the Restorative Justice Law to accommodate the legal basis for the implementation of restorative justice and its prosecution cessation so that this will be binding on the parties involved in the criminal justice system.

As of 2 January 2023, the President of the Republic of Indonesia and the Indonesian Representative Council (*Dewan Perwakilan Rakyat Indonesia*) promulgated the New Penal Code under Law Number 1 of 2023 on Penal Code (hereinafter referred to as "**New Penal Code**"), it

implicitly accommodates the principle of restorative justice in the settlement of criminal cases where "forgiveness from the victim and/or his family" as well as "the values of law and justice are living in society" must be taken into consideration in sentencing as referred to in Article 54 (1) letter j and k of the Penal Code Draft. Furthermore, Article 53 of the New Penal Code implies the court shall prioritize the sense of justice over the legal certainty should the conflict above arise. However, please note that the New Penal Code shall be legally effective for 3 (three) years following the promulgation of the said regulation. It is expected that this can be used as a basis for consideration not to impose a crime or not to take action by taking into account the aspects of justice and humanity.

Conclusion

The approach in settling criminal cases based on restorative justice is considered as a positive legal breakthrough, where the settlement of criminal cases prioritizes restoring the victim's condition by prioritizing dialogue and mediation between victims, perpetrators, and the community (if needed) so that a sense of justice for victim, perpetrator, and society could be satisfied. Stopping the prosecution based on restorative justice by the Public Prosecutor is in line with the *dominus litis* principle to not prosecute the suspect for the sake of law, and ultimately, to achieve the legal purpose of justice and benefits.

Kejaksaan RI issues the RJ Regulation as the legal basis for public prosecutors to terminate the prosecution based on restorative justice by considering the requirements contained in the RJ Regulation in connection with CL No. 1/2022 and the relevant mechanism. Nevertheless, an unpopular opinion among the legal enforcement views that prosecution cessation by Kejaksaan RI is arguably deemed as a form of deviation from the Criminal Procedure Code since it is not included as the reason for the case being closed for the sake of law, so it has the potential to be used as an object of pretrial. It is worth noting that the implementation of RJ regulation shall complete the sense of justice for the victim and society as well as satisfy the idea of the law of justice and benefits. Therefore, to fulfill the legal certainty, prosecution cessation based on restorative justice by the Kejaksaan RI must be regulated in the form of Law (*undang-undang*) through the renewal of material criminal law and criminal procedural law in Indonesia.

Bibliography

Ahmad Faizal Azhar, "Penerapan Konsep Keadilan Restoratif (Restorative Justice) dalam Sistem Peradilan Pidana di Indonesia", *Jurnal Kajian Hukum Islam*, Vol. 4 No. 2 (2019), p. 137.

Ali Ahmad, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)*, Jakarta: Kencana Prenada Media,2009.

Andri Kristanto, "Kajian Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif", *Jurnal Lex Renaissance*, Vol. 7 No. 1 (2022), p. 190.

Brilian Capera, "Keadilan Restoratif sebagai Paradigma Pemidanaan di Indonesia", *Jurnal Lex Renaissance*, Vol. 6, No. 2 (2021), p. 230-231.

CNN Indonesia (2022), *Kejagung Selesaikan 821 Kasus dengan Restorative Justice*, available online from: https://www.cnnindonesia.com/nasional/20220317141942-12-772613/kejagung-selesaikan-821-kasus-dengan-restorative-justice [accessed July 1,2022]

Dede Kania, "Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia", *Yustisia Jurnal Hukum*, Vol. 3 No. 2 (2014), p. 55

Detik News, "*Jaksa Agung Terima Penghargaan dari Asosiasi Jaksa Internasional*", available online from: https://news.detik.com/berita/d-6313638/jaksa-agung-terima-penghargaan-dari-asosiasi-jaksa-internasional [accessed October 10, 2022].

Detik News, "*Restorative Justice, Kejagung Hentikan Penuntutan 3.121 Perkara"*, available online from: https://news.detik.com/berita/d-6834467/restorative-justice-kejagung-hentikan-penuntutan-3-121-perkara [accessed July 23,2023]

Dian Rosita, "Kedudukan Kejaksaan sebagai Pelaksana Kekuasaan Negara di Bidang Penuntutan dalam Struktur Ketatanegaraan Indonesia", *Ius Constituendum*, Vol. 3 No. 1 (2018), p. 43.

Didik Kurniawan, Heni Siswanto, and Dini Nurina Chairani "Principle of Prosecutors Independency in Deponering Criminal Cases for Public Interest in Indonesia", *Scholars International Journal of Law, Criminal, and Justice*, Vol. 5 No. 4 (2022), p. 166

Fadillah Mursid, "Penyelesaian Perkara Pidana Melalui Mediasi Penal dalam Perspektif Restorative Justice", *Fiat Justicia*, Vol. 4 No. 1 (2018), p. 3.

Failin Alin, "Sistem Pidana dan Pemidanaan di Dalam Pembaharuan Hukum Pidana Indonesia", *JCH (Jurnal Cendekia Hukum)*, Vol. 3 No. 1 (2017), p. 15.

Gita Santika, "Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan", *PROGRESIF: Jurnal Hukum*, Vol. 16 No. 1 (2021), p. 87.

Gregorius Widiartana, "Paradigma Keadilan Restoratif dalam Penanggulangan Kejahatan dengan Menggunakan Hukum Pidana", *Justitia et Pax*, Vol. 33 No. 1 (2017), p. 2.

H.M.A. Kuffal, *Penerapan KUHAP dalam Praktik Hukum*, 8th edition, Malang: Universitas Muhammadiyah Malang, 2005, p. 217-218

Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia", *Al-Adl : Jurnal Hukum*, Vol. 10 No. 2 (2018), p. 173.

Henny Saida Flora, "Keadilan Restoratif sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya dalam Sistem Peradilan Pidana di Indonesia", *UBELAJ*, Vol. 3 No. 2 (2018), p. 144-145.

Hukumonline.com, *Menafsirkan Rumusan 'Demi Kepentingan Hukum' dalam KUHAP*, available online from:https://www.hukumonline.com/berita/a/menafsirkan-rumusan-demi-kepentingan-hukum-dalam-kuhap-lt4b1dea37d8cd [accessed July 2,2022]

I Wayan Putu Sucana Aryana, "Efektivitas Pidana Penjara dalam Membina Narapidana", *DiH: Jurnal Ilmu Hukum*, Vol. 11 No. 21 (2015), p. 41.

Iqbal Risha Ahmadi and Suteki, "Restorative Justice as a Basis for Stopping Prosecution by Prosecutors in a Human Rights Perspective", *Melayunesia Law*. Vol. 5 No. 1 (2021), p. 107.

Juhari, "Restorative Justice Dalam Pembaharuan Hukum Pidana di Indonesia", *Spektrum Hukum*, Vol. 14 No. 1 (2017), p. 105.

M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, 2nd edition, Jakarta: Sinar Grafika, 2006, p. 436-437

Martin D. Schwartz and Suzanne E. Hatty, *Controversies in Critical Criminology*, Routledge,2003, p. 100-101.

Muladi, "Implementasi Pendekatan "Restorative Justice" dalam Sistem Peradilan Pidana Anak", *Pembaharuan Hukum Pidana*, Vol. 2 No. 2 (2019), p. 63.

Pajar Hatma Indra Jaya, "Efektifitas Penjara dalam Menyelesaikan Masalah Sosial", *Hisbah: Jurnal Bimbingan Konseling Dan Dakwah Islam*, Vol. 9 No. 1 (2012), p. 2

Prima Anggara and Mukhlis, " Penerapan Keadilan Restoratif pada Tindak Pidana Pencurian Ringan", *JIM Bidang Hukum Pidana*, Vol. 3 No. 3 (2019), p. 471-472.

Romli Atmasasmita, *Kapita Selekta Hukum Pidana dan Kriminologi*, Bandung: Mandar Maju, 1995, p. 25.

Rudi Rizky, *Refleksi Dinamika Hukum (Rangkaian Pemikiran Dalam Dekade Terakhir)*, Jakarta: Perum Percetakan Negara Indonesia, 2008, p. 4

Septa Candra, "Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana di Indonesia". *Jurnal Rechtsvinding*, Vol. 2 No. 2 (2013), p. 271.