



# The Role of Law Enforcement in Case Resolution Through Restorative Justice

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**Abstract.** Restorative Justice is one alternative for resolving criminal cases. This is because the concept offers peace to the parties involved. Additionally, with restorative justice, it is hoped that the conditions of the parties can be restored. However, there are instances of misappropriation in the implementation of restorative justice. Some law enforcement officials exploit this opportunity for personal gain. This study aims to examine the technical regulations of restorative justice in Indonesia and the role of law enforcement officials in resolving cases through restorative justice. This research is a normative juridical study that utilizes secondary data. The results of this study indicate that the technical implementation of restorative justice is governed by State Police Regulation Number 8 of 2021 on Handling Criminal Acts Based on Restorative Justice and Prosecutor Regulation Number 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice. Each law enforcement official plays a significant role in resolving criminal cases using the concept of restorative justice. In implementing restorative justice, there should be no bribery between parties and law enforcers.

**Keywords:** Restorative Justice, Law Enforcement, No Bribery

## 1. Introduction

Restorative justice has become popular in resolving criminal cases. The concept of restorative justice prioritizes peace and the interests of the parties, perpetrators, victims, and the community, so it is often used as the first alternative agreed upon by the parties. Justice based on peace between perpetrators, victims, and the community is the moral ethic of restorative justice: peace without justice is oppression, and justice without peace is persecution. The restorative justice approach aims to restore the damage caused by crime by bringing together victims, perpetrators, and the community.[1]

Case resolution through restorative justice emerged as a response to case resolution through formal justice channels that focus on punishment and will produce win-lose solutions so that there will be winners and losers. This often leads to feelings of dissatisfaction, unfairness, or the intention to take revenge. If this happens to the losing party in court, then he or she will seek "justice" at a higher judicial level even up to the cassation level, causing cases to enter the courts to accelerate and cause a buildup of cases in the courts.[2]

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The settlement of criminal cases in restorative justice can bring together both parties to the case and involve both parties in reaching a mutually beneficial agreement so that the case does not have to go to court proceedings and a judge's decision that can cause resentment for the party sentenced by the judge. Restorative justice is basically a peaceful process that involves as far as possible those who have a role in a particular criminal offense and are collectively identified as suffering losses, and at the same time have needs and obligations with the intention of restoring them as much as possible and treating them as well as possible.[3] According to Shapland, the implementation of restorative justice should be offered to parties and not as an automatic service because of the voluntary nature of the parties.[4]

There is no legislation that specifically regulates the concept of restorative justice, but its spirit is contained in several articles that regulate the diversion of children, such as Law No. 11 of 2012 concerning the Child Criminal Justice System and Law No. 1 of 2023 concerning the Criminal Code. Meanwhile, the implementation of regulations regarding the concept of restorative justice is contained in National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice and Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Restorative justice in Indonesia can be implemented using a deliberative institutional model. Thus, law enforcement agencies can make restorative justice a solution to overcome obstacles to law enforcement in handling cases in the field.[5] This is in accordance with the settlement of cases through restorative justice, which is carried out by the parties concerned with the investigator or prosecutor as the mediator, assisted by advocates as the legal representative of the perpetrator and/or victim in the case concerned.

In this restorative justice practice, negotiations occur between the perpetrator and the victim regarding the amount of loss that the perpetrator must return to the victim and the victim's forgiveness of the perpetrator, so that there is a mutually beneficial agreement for the perpetrator and victim. Sometimes, this effort is misinterpreted by the parties and society in general that the law can be paid as long as there is money. Thus, by paying money, the perpetrator can be free from all criminal charges. This assumption can be justified because some unscrupulous investigators in the police and public prosecutors in the prosecutor's office often ask for 'administrative fees' for the revocation of files or termination of criminal charges. Likewise, advocates sometimes act as liaisons between perpetrators and victims, and law enforcement. Thus, in the interests of the parties, both perpetrators and victims must fulfill the requests of law enforcement officials. On the other hand, the concept of restorative justice has now become necessary because it is considered more effective in resolving criminal cases.

According to Pajar in Capera, imprisonment does not produce much of the expected output, namely, that someone who has served a sentence will become a better person. This phenomenon is called the criminal cycle, that is, prison cannot make prisoners into good citizens; what happens is that they become even more

skilled in committing crimes.[6] Restorative justice can avoid the overcapacity of correctional institutions and restore the rights of victims. Therefore, the author is interested in examining the technical regulation of restorative justice in Indonesia and the role of law enforcers in resolving cases through restorative justice. In this paper, the author aims to describe the role of each law enforcer, from the police and prosecutors to advocates, and the relationship between them in collaborating when resolving criminal cases through restorative justice. In contrast to previous writings that only discussed the duties and roles of each law enforcer without any correlation between them. Among them are the writings of I Made Tambir entitled *Restorative Justice Approach in Criminal Settlement at the Investigation Level*, Husein Pohan et al entitled *Criminal Settlement with Restorative Justice Approach by the Prosecutor's Office*, then Jessi Septamirza Risaputra and Junior B Gregorius entitled *The Role of Advocates Regarding the Implementation of Restorative Justice in Criminal Justice Practice in Indonesia*.

## **2. Problems**

From the explanation contained in the introduction, this article will raise issues about how technical regulations regarding restorative justice and how the role of law enforcers in resolving cases through restorative justice.

## **3. Method**

This research was categorized as normative juridical. Normative juridical research is legal research that places the law as a building system of norms. The system of norms in question concerns principles, norms, rules from laws and regulations, agreements and doctrines.[7] The statute approach is used, namely, by examining all laws and regulations related to the problems (legal issues) being faced.[8] This study was conducted on applicable positive law and focused on the provisions governing the role of law enforcers in resolving cases through restorative justice.

The data used in this study are secondary data, which are divided into three categories: primary legal materials in the form of laws and regulations, State Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, and Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Secondary legal materials in the form of legal expert doctrines were taken from books and scientific journals, and tertiary legal materials in the form of dictionaries and encyclopedias. The data were analyzed using descriptive analysis, and inductive inference was then drawn.

## **4. Discussion**

### **4.1 Technical Regulation of Restorative Justice in Indonesia**

Restorative justice is an alternative problem for victimization/criminal acts that does not use the criminal justice system. Restorative justice is oriented towards fulfilling the interests of the victim, and is realized by replacing the damage experienced by the victim due to victimization. In addition, there is encouragement for the perpetrator so that he realizes his guilt and is responsible for restoring the victim to create community peace.[9]

A Review of the Concept of Restorative Justice Proposed by Howard Zehr in Angkasa, that: Viewed through a restorative justice lens, crime is violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.[9] According to Kuat, Restorative Justice is an alternative to criminal justice by prioritizing the integration approach of the perpetrator on the one hand and the victim/community as a unit to find solutions and return to good relations in society.[1]

The concept of restorative justice is based on a shift in the values and objectives of punishment, which initially aims to retaliate against the perpetrator's crime and then develops into socializing the offender. When considered carefully, these two approaches are only oriented towards the offender without paying attention to the interests of the victim. With the development of laws that prioritize justice for the parties, restorative justice offers criminal case resolution as an answer to the issues of problems in the criminal justice system, including those conveyed by Ivo Aertsen et al., namely, the first criticism of the criminal justice system that does not give victims a chance. Second, conflicts occur, especially between perpetrators, victims, and the community. Third, helplessness experienced as a result of criminal acts must be overcome to achieve improvement. According to McCold and Wachtel, the practice of restorative justice is as much as possible to deal with criminal acts by identifying problems to take steps to repair losses, involving interested parties, and changing the paradigm of the state and society from the imposition of criminal sanctions against the perpetrator to a pattern of relationships between the perpetrator, the victim, and the community. The main principles of the restorative justice approach are, first, placing crime not only as a criminal offense but also as part of social action. Second, the restorative justice view focuses on crime as an act against the victim and society, and not against the state. Third, it views crime as an act that harms the victim, not as a state problem. Fourth, criticism of the criminal justice system with imprisonment as its output is not effective in resolving conflicts in society.[1]

The concept of restorative justice has a special place in Indonesian legislation. Although it is still technically issued by the police and prosecutor's office, this is good as a reference for law enforcement officials, in this case investigators and prosecutors, in resolving criminal cases through restorative justice. As stipulated in National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, case settlement through restorative justice must meet formal and material requirements. Mentioned in Article 5 regarding material requirements include:

- a. Does not cause public unrest and/or there is no rejection by the community;

- b. There was no impact on social conflict;
- c. Does not have the potential to divide the nation;
- d. Not radicalism and separatism;
- e. Not a repeat offender of a criminal offense based on a court decision; and
- f. Not a criminal offense of terrorism, criminal offense against state security, criminal offense of corruption, or criminal offense against the life of a person.

The formal requirements are mentioned in Article 6 as follows.

- a. Peace from both parties, in this case evidenced by the signing of the parties' memorandum of agreement; and
- b. Fulfillment of the rights of the victim and the responsibility of the perpetrator, namely by returning goods, compensating for losses, compensating for costs incurred as a result of criminal acts, or compensating for damage caused by criminal acts.

The police are then in charge of handling criminal acts based on restorative justice, namely *Bimas* and *Samapta Polri*, in the implementation of the criminal investigation function, namely, by resolving minor crimes. Meanwhile, *Polri* investigators are in charge of investigating and investigating activities, namely by discontinuing investigations or investigations. For the handling of criminal offenses based on restorative justice that is carried out with the termination of investigation or investigation, it begins by submitting a request letter from the parties, be it the perpetrator, victim, victim's family, or other related parties to the Police Chief/Police Chief/Police Criminal Investigation Division, by completing a statement of peace and evidence of restoration of victims' rights.

A Public Prosecutor with the principle of opportunity can prosecute or not prosecute a person or corporation that has committed an offense in the public interest. Thus, prosecutors have authority to continue or discontinue criminal charges.

Prosecutors carrying out prosecution duties are independent and have the discretion to continue or stop prosecution based on the sufficiency of evidence, applicable laws and regulations, and conditions that exist at that time while still acting professionally and independently within a legal framework that can be accounted for in accordance with a sense of justice.[10]

The processing of criminal offenses carried out at the prosecution stage in the prosecutor's office is regulated in Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Article 5 states several conditions for the termination of the prosecution of criminal cases based on restorative justice:

- a. The suspect is the first-time perpetrator of a criminal offense;
- b. the criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and

- c. The criminal offense is committed with the value of evidence, or the value of losses incurred as a result of the criminal offense is not more than Rp2,500,000.00 (two million five hundred thousand rupiah).

In addition, there are other requirements for the termination of prosecution based on restorative justice, namely:

- a. There has been a restoration to the original situation carried out by the suspect by (1) returning the goods obtained from the criminal offense to the victim, (2) compensating the victim, (3) compensating the costs incurred as a result of the criminal offense, and/or (4) repairing the damage caused by the criminal offense.
- b. there has been a peace agreement between the victim and the suspect; and
- c. The community responded positively.

The peace process between the victim and perpetrator was carried out voluntarily by prioritizing the principle of consensus without any pressure. In this case, the Public Prosecutor acted as a neutral facilitator. The termination of prosecution begins with an offer of peace to the victim, and is suspected at the prosecution stage. The Public Prosecutor summons the parties, including the victim, suspect, and family of the victim/offender, and involves community leaders. If the parties agree to reconcile, the Public Prosecutor makes a report that is then forwarded to the Chief Prosecutor. Peace agreements may or may not be accompanied by the fulfillment of certain obligations. If peace is attempted, the case file is submitted to the court.

#### **4.2 The Role of Law Enforcement Officials in Resolving Cases Through Restorative Justice**

Based on the concept of restorative justice described above, the next question concerns how law enforcement implements restorative justice. If we look back, before the existence of National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice and Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, law enforcement officials could also apply the concept of restorative justice with their authority. This is evidenced by the existence of regulations that give law enforcement officials the freedom of action. Among them, Law Number 2 of 2002 regulates the Indonesian National Police. Article 16, paragraph (1), letter l states that in order to carry out tasks in the field of criminal proceedings, the State Police is authorized to take other actions according to the law that is responsible. This article provides signs for investigators to take other actions, which in this case can be in the form of bringing the perpetrator together with the victim and the community, so that the case is not continued. Andi Hamzah said, in carrying out law enforcement practices, the police are always faced with two choices, namely law enforcement as the procedural law stipulated in the Criminal Procedure Code, or actions that emphasize personal morals and legal obligations to provide legal protection to the community (discretion). [11] This is in line with what Satjipto rahardjo said, that it is actually in the hands of

police behavior that the law finds its meaning. Of course, lawmakers do not plan to create noise, which is why discretion is required.[12]

More specifically, after the existence of National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, investigators have been given a wider space to resolve criminal offenses using the concept of restorative justice. This Perkap explains in detail the requirements, including formal and material requirements and procedures for resolving criminal cases based on restorative justice, starting from the settlement of minor crimes and termination of investigations and supervision. During this process, a meeting was held between the perpetrator, victim, and community, with the investigator as a neutral mediator.

At the prosecutor's office level, the concept of restorative justice can already be implemented even before the existence of Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This can be seen in Law Number 8 of 1981 concerning Criminal Procedure. It is stated in Article 139 that after the public prosecutor receives back the complete investigation results from the investigator, he immediately determines whether the case file meets the requirements to be submitted to the court or not. Then in Article 35 letter c of Law No. 16/2004 on the Attorney General's Office of the Republic of Indonesia, it is stated that among the powers of the Attorney General is to set aside cases in the public interest. When reflecting on these two articles, the public prosecutor has full authority to submit or not submit case files to the court. This article is a signpost or guideline for public prosecutors to exercise discretion. At this stage, it is possible for the public prosecutor not to forward the case file to the court with several considerations. Thus, this is a good opportunity for the public prosecutor to implement restorative justice by bringing together the perpetrator with the victim and the community to make peace.

Then, the authority of the public prosecutor in resolving criminal offenses was expanded and emphasized after the existence of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

This regulation is one of the ideas of the Attorney General, ST Burhanuddin, which aims to provide legal certainty to ordinary people. According to Burhanuddin, restorative justice techniques in Indonesian criminal justice are an integrated approach that covers everything from investigation, prosecution, and court decisions. Restorative justice can streamline lengthy legal procedures and address the problem of prison overcrowding. The pillars of change in the Attorney General's Office are back on their feet thanks to these achievements. He also said that the sense of justice is found in the conscience, not in the KUHP or KUHAP.[13]

This technical regulation clearly explains the role of the public prosecutor in resolving criminal offenses based on restorative justice. Article 9 paragraph (2) states that the public prosecutor acts as a facilitator. The settlement of criminal cases is resolved through peace by bringing together the perpetrator with the victim and the community. If peace efforts are achieved, the case is terminated and the file is not submitted to the court.

From some of the above regulations, the role of investigators and public prosecutors in resolving criminal cases through the concept of restorative justice can

be found. Not just a mere regulation, investigators and public prosecutors can provide opportunities for the parties to meet and resolve the case with peace. Victims, perpetrators, and their families, as well as community leaders, are involved in the settlement of criminal cases. This concept is a step towards reforming the criminal justice system in Indonesia. Restorative justice is a legal need of the community that needs to be implemented. Restorative justice, which is more concerned with restoring the original state of the loss suffered by the victim rather than retaliation against the perpetrator's actions that will cause revenge, is one of the legal efforts that is considered proportional. Criminal punishment is used as an *ultimum remedium* in the process of resolving criminal cases. The implementation of restorative justice aims to repair and/or restore (to restore) criminal acts committed by the perpetrator with actions that are beneficial to the perpetrator, victim, and their environment that involve them directly in solving problems that are different from the way adults are handled, and then it will lead to the purpose of the crime itself so that the purpose of punishment focuses on "protection of society" and "protection/development of individual offenders".[14]

In Addition to state law enforcers (police and prosecutors), advocates as *officium nobile* also have an important role in achieving restorative justice. Advocates have an important role in creating or realizing the principles of the rule of law in the life of society and the state in Indonesia, in addition to the existence of judicial institutions and law enforcement agencies such as the police and prosecutors, especially since the enactment of Law Number 18 of 2003 concerning Advocates. The existence of Advocates is one of the elements of the law enforcement apparatus in Indonesia. Advocates in carrying out their profession are always based on the law to achieve justice for the benefit of society.[15] In relation to the implementation of restorative justice in the criminal justice system, advocates have an important role in the peace process such as negotiation or mediation.[16] In this case, the advocate whose position is as a legal advisor will professionally provide advice and direction to his client. Advocates contribute greatly to resolving criminal offenses with the concept of restorative justice. Article 5 paragraph (1) of Law Number 18/2003 on Advocates states that advocates have the status of law enforcers, free and independent guaranteed by laws and regulations. Article 15 also states that advocates are free in carrying out their professional duties to defend the cases they are responsible for while adhering to the professional code of ethics and laws and regulations. The nature of the discretion contained in this advocate makes it easy for him to direct his clients, both as perpetrators and victims, to be resolved peacefully based on the principle of restorative justice.

The position of advocates in the criminal justice system in Indonesia is stipulated in Article 54 of Law No. 8 of 1981 concerning the Criminal Procedure Code which states that for the purpose of defense, the suspect / defendant is entitled to legal assistance from one or more legal counsel during the time and at every level of examination, according to the procedures regulated in the law. The advocate's free and independent position can be included in every legal process, from investigation, prosecution, and examination in court. This makes it easier for him to direct his clients to resolve their criminal cases based on the principles of restorative justice at every stage of the criminal justice sub-system. Although advocates are not state law



enforcers whose authority is clearly regulated regarding the resolution of criminal acts through the concept of restorative justice, the efforts made by advocates use a personal approach and emotional approach to their clients, in this case on the part of the perpetrator and victim, so that the parties consciously and voluntarily want to sit together in order to conduct mediation so that the interests of the parties can be fulfilled. On the one hand, the victim's rights are restored, and on the other hand, the perpetrator is free from all criminal charges and can be accepted back into society.

From the description above, it can be seen the role of each law enforcer, from the police, prosecutors, and advocates in resolving criminal cases using the concept of restorative justice. Law enforcers can collaborate with each other so that perpetrators, victims and the community can solve their problems peacefully so that the conflict between the parties no longer ends in punishment. In addition, it is hoped that no second victimization will occur. Each law enforcer has a major contribution in achieving restorative justice.

However, it should be carefully noted that in the process of resolving criminal cases based on the concept of restorative justice, it must not be tainted by despicable acts in the form of legal transactions in the form of bribery between the victims and perpetrators with law enforcers. Law enforcement officials in carrying out their profession are limited by the signs that have been determined by the law and the code of ethics of their respective professions. Regulation of the Chief of the Indonesian National Police Number 6 of 2020 concerning Gratification Control within the Indonesian National Police regulates the prohibition of gratuities for the National Police. Prosecutor's Regulation Number 3 of 2019 concerning Gratification Control within the Prosecutor's Office of the Republic of Indonesia also prohibits gratification practices for prosecutors. Article 3 paragraph (1) states that every employee is obliged to reject gratuities that are known from the beginning to be related to their position and contrary to their obligations or duties.

## **5. Conclusion**

The concept of restorative justice in Indonesia has received its formality in the form of National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice and Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice so that each law enforcer gets the flexibility to act so that conflicts that occur between perpetrators and victims and the community can be resolved peacefully based on the principles of restorative justice. The role of law enforcers both in the police, prosecutor's office, and advocates is very large, they can coordinate so that the case does not proceed to a higher stage. The author's suggestion is that the concept of Restorative Justice should not be tainted by bribery among law enforcers.

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