



## Hybrid Restorative Justice: Optimizing Cessation Of Prosecution The Case Theft Through Restorative Judicial House

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### Abstract

*The existence of restorative justice certainly brings a new paradigm in settlement of criminal cases, with the settlement of cases solely out of court. Restorative justice-based law enforcement is manifested in all law enforcement agencies, especially the Prosecutor's Office, in prosecuting cases based on the Republic of Indonesia Prosecutor's Regulation Number 15 of the Year 2020 concerning the Termination of Prosecution Based on Restorative Justice. The amount required to prosecute restoratives can be applied to the crime of theft as the highest case in Indonesia. This happened because Indonesia's disrupted economy after the Covid-19 pandemic created a moral crisis with drastic theft crimes. Meanwhile, it was recently discovered that establishing a restorative justice house in each jurisdiction of the attorney general's office was found to optimize the resolution of all legal problems by screening cases that go to court, socializing the law to residents, and being able to develop local wisdom. Involving local traditional leaders to emphasize deliberation is also another important thing wich must be exereised. This research uses normative legal research methods through applicable laws and regulations and literature study. The legislative approach is sourced from primary data and literature studies. Then in analyzing the problem, the author uses a descriptive analysis approach by applying the deductive method, namely, concluding a general discussion into a specific statement. Of course, the restorative justice house guarantees legal certainty and*



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*is an adequate facility in its implementation. Moreover, the Attorney General's Office has also formed a Quick Response Task Force to maximize the role of the restorative justice house by providing input on cases that deserve to be resolved through restorative justice, one of which is the crime of theft, which is happening.*

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## A. Introduction

The existence of restorative justice certainly brings a new paradigm in settlement of criminal cases, starting from the issue of law enforcement which previously adhered to the view of legalism, only referring to laws and regulations in such a way that it turned into a more complex view. The restorative justice approach tries to place the sentencing process as the ultimum remedium for criminals, that the settlement of cases is solely carried out outside the court with a specific mechanism. Moreover, in principle in positive law, the criminal justice system must emphasize Human Rights (HAM) as the basis for law enforcement to protect each individual's rights and obligations regardless of other problems.<sup>1</sup>

The shift in the orientation of criminal law, which previously focused on punishment as an effort to retaliate, is now trying to restore the original situation to uphold justice and humanity in society. It is undeniable that restorative justice is a necessity in the implementation of law enforcement in Indonesia. According to Jimly Asshidqie, law enforcement is an effort to concretize legal norms as guidelines for behavior in legal relations to provide order in society. Efforts to concretize legal norms as a guide to behavior in legal relations to provide order in life Public.<sup>2</sup> Basically, restorative justice is an approach that balances rights and obligations for the perpetrators and victims to avoid the imposition of criminal sanctions and prioritize mediation efforts, which are expected to reach an agreement between parties and resolve criminal cases effectively. In reality, the implementation of restorative justice-based law enforcement in such a way is manifested in all law enforcement institutions involved in the criminal justice system, especially the prosecutor who has the authority to prosecute by making an indictment containing punishment by the Public Prosecutor (JPU). Termination of the prosecution of cases as a fulfillment of the rights of the perpetrators.<sup>3</sup>

The manifestation of the criminal law paradigm seeks to restore a situation through the humanist role of the prosecutor. The termination of prosecution based on restorative justice is stated in the Indonesian Prosecutor's Office Regulation No. 15 of 2020, which contains the realization of restorative justice through an agreement between the two parties, namely the perpetrator and the victim, by involving the agency and the community in the case settlement process.<sup>4</sup> This provision is explicitly a breakthrough for the prosecutor authorized to terminate charges, directly avoiding a complicated process at the trial stages. On the one hand, it can create a win-win solution for the victims and perpetrators of criminal acts while emphasizing compensation for victims. The crimes committed can be forgiven by victims and the community.<sup>5</sup>

Regarding the implementation of the termination of claims based on restorative justice, there is a limitation on criminal acts, namely minor crimes, one of which is the crime of theft.

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<sup>1</sup> Yunan Hilmy, "Penegakan Hukum Oleh Kepolisian Melalui Pendekatan Restorative Justice Dalam Sistem Hukum Nasional," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 2 (2013).

<sup>2</sup> Azwad Rachmat Hambali, "Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana," *Kalabbirang Law Journal* 2, no. 1 (2020).

<sup>3</sup> S H Irsyad Dahri, *Pengantar Restorative Justice* (Bandung: Guepedia, 2020), hlm 9.

<sup>4</sup> Muhaimin Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019).

<sup>5</sup> Maman Budiman, "Implementasi Prinsip Restorative Justice Dalam Penghentian Penuntutan Perkara Korupsi Oleh Kejaksaan Republik Indonesia," *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 3 (2022).

The crime is part of a behavioral deviation that takes property belonging to another person and creates unrest in the community. It needs to be resolved without eliminating the perpetrator's rights. This is because the current theft is motivated by the increasing number of unemployed accompanied by unstable national economic conditions after the Covid-19 pandemic. In this case, the economic aspect is a determinant of people's welfare, and as economic stability decreases, there will be a moral crisis with a drastic increase in theft crimes. In Indonesia. Brigadier General Awi Setiyono, as Head of the Public Information Bureau of the National Police Public Relations Division, explained that there was an increase of 522 cases at the beginning of the new average era in July 2022, from 5,035 cases to 5,557 cases every week. In the number of cases, five types of crime cases received the highest: theft of two-wheeled motor vehicles with 223 cases and theft with violence with as many as 119 cases.

The current high rate of theft crimes will lead to excess capacity in prisons. Moreover, theft is not always a serious crime, such as ordinary theft based on article 362 of the Criminal Procedure Code (KUHP) with a penalty of five years imprisonment and a fine of Rp. Nine hundred rupiah. If it is examined more deeply, the prosecutor's termination of restorative justice-based claims can be carried out in cases of criminal acts of theft because the conditions are by the contents of Article 5 Perja No. 15 of 2020. The Public Prosecutor will conduct the case through restorative justice with a first offer to the victim and suspect without coercion and pressure. Then the Public Prosecutor will place himself as a facilitator during the mediation until both parties reach an agreement. However, in the course of law enforcement by the prosecutor's office, essentially it requires a settlement that facilitates the coordination and operation of stopping claims based on restorative justice outside the trial in the area of the local prosecutor's office.<sup>6</sup>

Last April, the Attorney General's Office of the Republic of Indonesia inaugurated restorative justice houses in nine provincial areas to make more optimal efforts to stop the prosecution. Attorney General ST believes that creating a restorative justice house is a breakthrough in law enforcement that is sharp upwards and humane downwards. Humanist law enforcement is a hope for the community and forms a positive stigmatization of the prosecutor's office. The presence of a restorative justice house is merely an embodiment of Perja No. 15 of 2020 by optimizing the termination of claims that prioritize restorative justice as long as the case meets the requirements that can be resolved out of court, later the prosecutor based on his authority will stop the claim before both parties approve it. Moreover, for the theft crime, it is immediately easier to determine the nominal compensation compared to other cases to realize a restoration of the original situation.<sup>7</sup> However, later regarding the implementation of restorative justice, it is necessary to carry out an abstention so that later it will not be likened to a peace agreement because in the process of law enforcement being handled it will fall into the realm of carrying out the function of procedures that contain material truth and justice, which in fact cannot be achieved.<sup>8</sup>

The result of the implementation of mediation that brings together the two parties will determine whether the case is terminated or will be forwarded to the court according to the agreement results. Therefore, the need for a hybrid restorative justice, defined as not always the case resolved, leads to a peace agreement because achieving justice itself is not always oriented to peace but still imposes a prison sentence.<sup>9</sup> The community mostly agrees with the restorative

<sup>6</sup> Wanda Fauzia Faris, "Penyelesaian Perkara Dengan Cara Restorative Justice Menurut Peraturan Kejaksaan Nomor 15 Tahun 2020 Studi Kasus Di Kejaksaan Negeri Sleman" (UNS (Sebelas Maret University), 2022).

<sup>7</sup> Irabiah Irabiah, Beni Suswanto, and Muhammad Ali Alala Mafing, "Penerapan Restorative Justice Pada Tingkat Penuntutan (Studi Kasus Di Kejaksaan Negeri Kotamobagu)," *Perspektif* 27, no. 2 (2022).

<sup>8</sup> Faris, "Penyelesaian Perkara Dengan Cara Restorative Justice Menurut Peraturan Kejaksaan Nomor 15 Tahun 2020 Studi Kasus Di Kejaksaan Negeri Sleman, 2022 "

<sup>9</sup> Sahat Benny Risman Girsang et al., "Penerapan Restorative Justice Dalam Proses Perkara Tindak Pidana Pengerusakan Dihubungkan Dengan Peraturan Jaksa Agung Tentang Penghentian Penuntutan Berdasarkan

justice approach. Still, it should be realized that the restorative justice approach will provide arbitrary action at the bargaining stage to reach an agreement, namely by placing the victim as a party who has no power because many parties claim that the restorative justice approach is the best way, even though in essence it is only as an alternative effort, not as the primary option so that the victim has the opportunity to accept or not the request for peace from the perpetrator. The concept of hybrid restorative justice still maintains imprisonment but imprisonment in a particular place. It is more oriented toward education and rehabilitation, and according to the author, the house of restorative justice is the proper means of implementing the program.<sup>10</sup>

Establishing a restorative justice house in each attorney's jurisdiction can optimize the resolution of all legal problems by filtering cases that go to court, socializing the law with residents, and developing local wisdom by involving local traditional leaders to emphasize consensus deliberation. Of course, the restorative justice house guarantees legal certainty. As an adequate facility in its implementation, moreover, the attorney general has also formed a quick reaction task force to maximize the role of the restorative justice house by providing input on cases that deserve to be resolved through restorative justice, one of which is the crime of theft which is happening. Thus, the realization of restorative justice within the prosecutor's office will be achieved as a humanist law enforcement agency.<sup>11</sup>

Based on the background above, the author will explain in depth in the discussion section. First, how is law enforcement based on restorative justice by the prosecutor's office against theft? This research uses normative legal research methods through applicable laws and regulations and literature study. The approach to legislation comes from primary data in the Criminal Code and the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Claims Based on Restorative Justice. Then in analyzing the problem, the author uses a descriptive analysis approach by applying the deductive method, namely concluding a general discussion into a specific statement. Sources of data used are secondary data derived from various research literature, books, journals, and other legal materials to support this research. In this case, the research aims to optimize law enforcement based on restorative justice through the role of the prosecutor's office in terminating prosecution for a criminal case of theft accompanied by the presence of a restorative justice house as an optimization of law enforcement in settlement of criminal cases out of court. The increase in the number of criminal acts of theft after the covid-19 pandemic, accompanied by the presence of restorative justice houses, will provide a peaceful settlement for both parties; on the one hand, the parties can avoid complicated stages in the trial process and reduce the prison occupancy rate. A restorative justice house is essential to achieving justice in the community by looking at ordinary theft cases resolved through a restorative justice (RRJ) house. Of course, RRJ is an embodiment of Perja No. 15 of 2020 concerning the Termination of Claims Based on Restorative Justice by prioritizing law enforcement in the area of a humanist prosecutor.

Justice at every level of the prosecutor's office. Based on the presentation of this research, the novelty research is related to Restorative Justice as an Alternative for the Settlement of Criminal Cases by A. A Maarif, Termination of Prosecution in Criminal Cases of Restorative Justice by E. Arofa, then the Concept of Restorative Justice in the Prosecutor's Regulation 15 the Year 2020 concerning termination of prosecution based on legal interests by MM Arofah, Study of Attorney General's Regulation Number 15 of 2020 concerning Termination of

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Keadilan Restoratif (Studi Di Kejaksaan Negeri Pematangsiantar),” *Nommensen Journal Of Legal Opinion* 2, no. 1 (2021).

<sup>10</sup> Fathurokhman Ferry and Yulia Rena, “Restorative Justice, Paradigma Baru Hukum Pidana” (Jakarta: INCA, 2016), hlm 62.

<sup>11</sup> Kristian Kristian and Christine Tanuwijaya, “Penyelesaian Perkara Pidana Dengan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana Terpadu Di Indonesia,” *Jurnal Hukum Mimbar Justitia* 1, no. 2 (2017).

Prosecution Based on Restorative Justice by Kristanto, and Termination of Prosecution of Prosecutor's Regulation of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice by Fauzi, A., & Afandi, A.K, most of whom explained the authority related to the implementation of the implementation as the embodiment of justice, and the author tried to explain specifically related to the practice of implementing hybrid restorative justice through restaurant houses.

## **B. Discussion**

### **1. Restorative Justice-Based Law Enforcement by the Prosecutor Against the Crime of Theft**

The renewal of criminal law using a restorative justice approach stems from the issue of law enforcement using a retributive system deemed not to provide justice in society. The application of the retributive system as a direction of law enforcement is more likely to make the crime violate the law itself, only that the perpetrator has injured the state's rights and placed him as a victim of crime.<sup>12</sup> Protection for the perpetrators and victims seems neglected, given that the losses suffered by victims of criminal acts are material and immaterial losses that have not been guaranteed in the criminal justice system. On the other hand, the perpetrators of all types of crimes are committed do not always lead to imprisonment because there are still alternative solutions by reconciling the victims and perpetrators of the crime. Based on Tony's perspective, f. Marshal that restorative justice is a construction of thinking for all parties involved in certain crimes to jointly hold meetings to resolve cases that have consequences for future interests. Several parties involved in the settlement of the mediation route include mediators, victims, and their families, perpetrators and their families, and local community leaders. During the last 20 years, the concept of restorative justice has developed very rapidly in several parts of the country such as Australia, Canada, England and Wales, New Zealand, and several other countries in Europe and the Pacific region.<sup>13</sup>

Among the indigenous people of Indonesia as well, the same holds for the views and adheres to the culture of each region. Dispute resolution is carried out internally without involving state officials (customs). Restorative Justice itself is a goal to restore the original situation in the form of rapprochement and make amends for the mistakes that the perpetrators have made of criminal acts outside the court, which is intended so that the problems that occur as a result of the crime will reach a peaceful agreement and an agreement between the two parties.<sup>14</sup>

In realizing restorative justice for law enforcement in Indonesia, on October 17 2012 law enforcement agencies namely the Supreme Court, the Attorney General's Office, the Police of the Republic of Indonesia and the Ministry of Law and Human Rights of the Republic of Indonesia have signed a Memorandum of Understanding concerning the enforcement of restorative justice as a settlement of cases out of court. Then, especially in the territory of the Prosecutor's Office of the Republic of Indonesia, there is the Prosecutor's Office Regulation of the Republic of Indonesia No. 15 of 2020 concerning the termination of prosecution based on restorative justice with the definition as in Article 1 Paragraph 1, namely a form of involvement of the perpetrator, victim, family, and other parties in resolving a case, solely emphasizing the restoration of the state of all and avoiding any form of retaliation.<sup>15</sup>

The prosecutor is one of the law enforcement officers with authority to enforce the law, namely the prosecution of criminal cases as its primary task. In its implementation, the

<sup>12</sup> Pasal 191 ayat (2) Kitab Undang-Undang Hukum Acara Pidana.

<sup>13</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>14</sup> Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2017), hlm 30.

<sup>15</sup> I Putu Asti Hermawan Santosa, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pidana Bagi Perwujudan Keadilan Restoratif," *Jurnal Hukum Positum* 4, no. 1 (2019).

prosecutor can determine whether the case is handled can be brought to court based on the articles and indictments or even request the termination of the prosecution as a manifestation of restorative justice. Restorative justice is a form of implementation based on the principle of justice. Closing the case is a form of legal interest goal by emphasizing the return of a situation to its original state, based on its authority to terminate the prosecution. Regarding the implementation of the termination of claims based on restorative justice, there is a limitation on criminal acts, namely minor crimes, one of which is the crime of theft. The crime is part of a behavioral deviation that takes property belonging to another person and creates unrest in the community. It needs to be resolved without eliminating the perpetrator's rights. Because the current act of theft is motivated by the increasing number of unemployed accompanied by unstable national economic conditions after the Covid-19 pandemic. The consequences of the pandemic, such as the enactment of Large-Scale Social Restrictions (PSBB) and the economic needs that are desperately needed by the community, make someone's intention to commit a crime to arise. By getting money quickly, namely through the crime of theft. According to Mr. W.A. Bonger that

*“In studying the causes of a crime, not only should we pay attention to crime from a juridical point of view, but we must also pay attention to crime from a social, economic point of view, and so on. Therefore, there is a background that results in crimes that often occur in society.”*<sup>16</sup>

In carrying out inclusive and progressive law enforcement authorities, the prosecutor's office should be in a position of certainty and procedural that refers to justice without eliminating justice which is based on the substance, which is the orientation of the legal system, even though it should be remembered that *Equum et bonum est lex legum* (what is and good is the law of the law).<sup>17</sup> From 2020 to 2022, precisely several theft cases were found which are a form of effort to realize restorative justice in the termination of claims which include:

No	Type of Crime Theft	Number of Cases
1	Common theft	1.508
2	Motor vehicle theft	303
3	Violent theft	119
4	Theft weighing	827
Amount		2757

Source: Number of Theft Cases Bappeda Yogyakarta Province 2020-2022

Based on the number of cases above, several cases have been resolved through restorative justice, concluding that there is an optimal fulfillment of the rights and obligations of the parties. Because the theft is sometimes motivated by urgency, the victim often forgives the perpetrator and promises not to repeat his actions. Then in the types of crimes above, the most prominent cases of theft are ordinary theft and theft with violence, which occurs in Indonesia.<sup>18</sup> We need to know that not all thefts can be prosecuted, such as theft with aggravating or violent actions;

<sup>16</sup> Hanafi Arief and Ningrum Ambarsari, “Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia,” *Al-Adl: Jurnal Hukum* 10, no. 2 (2018).

<sup>17</sup> Pardomuan Gultom, “Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indone,” *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 3, no. 1 (2022).

<sup>18</sup> Prima Anggara and Mukhlis Mukhlis, “Penerapan Keadilan Restoratif Pada Tindak Pidana Pencurian Ringan,” *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana* 3, no. 3 (2019).

this cannot be done because the criminal threat exceeds the job requirements.<sup>19</sup> 12 If we look at the case of theft classified as a minor crime based on Perja No. 15 of 2020, it is an ordinary theft because the threat of criminal sanctions has been fulfilled. Based on the provisions of Article 362 of the Criminal Code (KUHP):

*"Whoever takes something, wholly or partly belonging to another person, to unlawfully possess it, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs."*

Some of the criteria for cases that can be resolved using the restorative justice approach include the crime committed the first time, not a severe crime, and the value or loss incurred is not too large. In addition, several other factors to consider are people who are economically disadvantaged or are the only breadwinners in the family.<sup>20</sup> As stated more clearly in Article 5 paragraph (1) of the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it reads:

*"Criminal cases can be closed for the sake of law and stopped prosecution is based on Restorative Justice if the following conditions are met:*

- a. The suspect has committed a 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. A criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime is not more than IDR 2,500,000.00 (two million five hundred thousand rupiahs)."*<sup>21</sup>

In this case, the public prosecutor will be a facilitator in handling a case based on Article 9 Perja No. 15 of 2020 with his task first to make an offer to both parties. During mediation, the public prosecutor becomes a guide in reconciling the two parties. When a peace agreement is reached, a termination process will be offered, and a form of supervision over the outcome of the agreement. Finally, the case can be terminated or proceed to court due to the mediation. Establishing a restorative justice house is a breakthrough in law enforcement that is sharp upwards and humane downwards. Humanist law enforcement is a hope for the community and forms a positive stigmatization of the prosecutor's office.<sup>22</sup> The presence of a restorative justice house is merely an embodiment of Perja No. 15 of 2020 by optimizing the termination of claims that prioritize restorative justice as long as the case meets the requirements that can be resolved out of court, later the prosecutor based on his authority will stop the claim before both parties approve it. Moreover, for the theft crime, it is immediately easier to determine the nominal compensation compared to other cases so that a restoration of the original situation is realized a restoration of the original situation.<sup>23</sup> It is hoped that in the settlement of cases of criminal acts of theft that are currently rife, they can be resolved without going through the courts so that

<sup>19</sup> Lisa Yusnita, "Analisis Penerapan Prinsip Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Lalu Lintas," *Fakultas Hukum: Universitas Hasanuddin, Makassar* (Universitas Hasanuddin, 2018).

<sup>20</sup> Zico Junius Fernando, "Pentingnya Restorative Justice Dalam Konsep Ius Constituendum," *Al Ijarah: Jurnal Pemerintahan Dan Politik Islam* 5, no. 2 (2020).

<sup>21</sup> Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian Tuntutan Berdasarkan Keadilan Restoratif.

<sup>22</sup> Arfan Kaimuddin, "Perlindungan Hukum Korban Tindak Pidana Pencurian Ringan Pada Proses Diversi Tingkat Penyidikan," *Arena Hukum* 8, no. 2 (2016).

<sup>23</sup> Mohd Syahputra and Sukri Harriyus, "Analisa Penyelesaian Tindak Pidana Pencurian Ringan Melalui Restorative Justice (Studi Kasus Polsek Senapelan Kota Pekanbaru)" (Universitas Islam Riau, 2020).

they can reduce the number of prison occupancy and prioritize the rights of perpetrators and victims more effectively.<sup>24</sup>

## 2. Optimizing the Termination of Claims through a Humane House of Restorative Justice

The pursuit of crime through peaceful means between the crime and the victims of crime, as well as the families of both parties, is a paradigm shift, which was previously seen only in the form of a "blame and punishment paradigm" into a new paradigm. The concretization of restorative justice presents a meeting point between criminals and victims of crime which is referred to as the power to participate in cases and make decisions, in which efforts to resolve crimes are not only carried out by the government but prioritize human rights and the interests of victims of crimes the perpetrators have. A new paradigm that is effective in inclusive and progressive law enforcement, in its implementation requires a form of embodiment of optimization by optimizing restorative justice houses as a settlement of criminal cases; in this case the author will discuss more specifically related to minor crimes, especially theft in several areas.<sup>25</sup>

Based on the applicable laws and regulations related to minor crimes, especially theft by prioritizing restorative justice, especially in the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and from various supporting literature, the author assumes that it is easier to settle cases than a theft case. by implementing restorative justice, because when trying to reach consensus on the issue of a case that there is more priority to a sense of kinship, namely by doing mediation between the perpetrators of the crime and the victims of crime, as well as the families of both parties so that a common thread can be found in the form of compensation or compensation. Return the goods/property stolen by the perpetrator. The perpetrator of the crime is obliged to provide compensation for the victim's property or return the stolen goods/assets inflicted on the victim and the victim's family. The damage or loss that occurred was initially made with restoration through a peaceful meeting of criminals and victims of crime (a meeting place for people) to find a solution for rebuilding the relationship between the two parties concerned.<sup>26</sup>

After the implementation of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Attorney General's Office has stopped prosecuting 1,070 General Crime cases through a restorative justice approach as of May 2022; in this writing, the author will discuss more specifically related to minor crimes, especially theft. In several areas. The presence of restorative justice in the termination of demands is not oriented to retaliation. The measure of justice is not based on retributive justice in the form of revenge or imprisonment but on conviction and forgiveness.<sup>27</sup> Settlement of criminal cases through a restorative justice mechanism, emphasizing the restoration to its original condition and a balance of protection and the interests of the relationship between the two parties by considering the principle of justice, the principle of proportionality and the principle of subsidiarity in the hope that the community can try to resolve if a problem occurs in a family manner. This, of course, is carried out outside the judicial system, accompanied by

<sup>24</sup> Lilis Retnowati and S H Hartanto, "Penerapan Restorative Justice Sebagai Upaya Penyelesaian Hukum Terhadap Tindak Pidana Pencurian (Studi Kasus Di Wilayah Kepolisian Sektor Laweyan)" (Universitas Muhammadiyah Surakarta, 2022).

<sup>25</sup> Eq R M Surachman, *Eksistensi Kejaksaan: Dalam Konstitusi Di Berbagai Negara* (Jakarta: Sinar Grafika, 2022), hlm 11.

<sup>26</sup> Marwan Effendy, *Kejaksaan RI: Posisi Dan Fungsinya Dari Perspektif Hukum* (Jakarta: Gramedia Pustaka Utama, 2005), hlm 8.

<sup>27</sup> Retnowati and Hartanto, "Penerapan Restorative Justice Sebagai Upaya Penyelesaian Hukum Terhadap Tindak Pidana Pencurian (Studi Kasus Di Wilayah Kepolisian Sektor Laweyan)."



an emphasis that to obtain restorative justice, there are still terms and conditions that must be met, except for drug cases or those that cause fatalities; it cannot be done.<sup>28</sup>

Termination of prosecution in the concept of restorative justice, considering and paying attention to the interests of victims and other protected legal interests, avoidance of negative stigma, avoidance of retaliation, response and community harmony, propriety, decency, and public order. Restorative justice is now in the cessation of demands to be the background for optimizing inclusive and progressive law enforcement so that it focuses on recovering victims and reducing the overcapacity of prison occupancy, which is a scourge for prisons in Indonesia. The theft problem is easier to resolve because it is easier to calculate the nominal loss of criminal acts that are not more than Rp. 2,500,000.00 (two million five hundred thousand rupiahs).<sup>29</sup>

Dr. ST. Burhanuddin, S.H., M.M., as the current Attorney General of the Republic of Indonesia, has created a program of restorative justice houses or houses of restorative justice in several District Attorney's Offices as a solution to legal problems that often arise and occur among the community and increase cooperation in resolving cases outside the court, especially in settlement of cases. Mild cases (no need to go to court).<sup>30</sup> The local prosecutor's office encourages the use of restorative justice by the Prosecutor's Regulation on Termination of Prosecution Based on Restorative Justice as long as it can be handled outside the court. That is, the case does not need to be brought to a court provided that the case can still be settled out of court, so the local prosecutor encourages restorative justice to be applied. Reported from a statement by the Head of the South Kalimantan High Prosecutor's Office, Mukri said that the restorative justice house facilitated coordination in the settlement of minor crimes cases outside the judiciary and the realization of the optimization of the expansion of the construction of restorative justice houses whose existence was not only in the District Attorney's Office but also expanded to include every each district/city.<sup>31</sup>

Nanang Sigit Yuliyanto, as the Head of the Lampung High Prosecutor's Office together with Dewi Handajani as the Regent of Tanggamus, also assumes that the restorative justice house is present as a form of the facility for resolving all legal problems that can be resolved by way of deliberation by the legal corridors that apply in the community. On Thursday, March 24, 2022 at Pekon Dadirejo, Tanggamus Regency, the Head of the Lampung High Prosecutor's Office inaugurated the restorative justice house which was given the title "Lamban Adem," which is a combination of Lampung language and Javanese language, which is interpreted as a cold house, with the hope that all problems among the community can be resolved through deliberation and by applicable legal procedures. In addition to Pekon Dadirejo, Tanggamus Regency, as of Friday, April 1 2022 at the Bandar Lampung District Attorney, the Head of the Lampung High Court inaugurated the restorative justice house which was also given the title "Khagom Seandan."<sup>32</sup>

Restorative Justice House is a new research and education facility for academics and practices related to how the presence of a restorative justice house can change people's behavior by increasing public legal awareness and by promoting the values of justice, deliberation,

<sup>28</sup> Krisna Martha Korelyna Sidauruk, "Penerapan Restorative Justice Terhadap Pelaku Tindak Pidana Pencurian Dengan Kekerasan (Studi Penelitian Di Polrestabes Medan)," *Kumpulan Karya Ilmiah Mahasiswa Fakultas Sosial Sains* 1, no. 1 (2019).

<sup>29</sup> Endi Arofa, "Penghentian Penuntutan Dalam Perkara Pidana Berdasarkan Restorative Justice," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 7, no. 2 (2021).

<sup>30</sup> Daniel Ch M Tampoli, "Penghentian Penuntutan Perkara Pidana Oleh Jaksa Berdasarkan Hukum Acara Pidana," *Lex Privatum* 4, no. 2 (2016).

<sup>31</sup> Romel Legoh, "Penghentian Penuntutan Demi Kepentingan Hukum," *Lex Et Societatis* 2, no. 2 (2014).

<sup>32</sup> Mia Miftakhur Rohmah, "Konsep Restorative Justice Dalam Peraturan Jaksa No. 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Kepentingan Hukum Prespektif Maqāsid Al-Sharī'ah Muhammad Tahir Ibnu 'Ashur" (UIN Sunan Ampel Surabaya, 2021).

unification in society, and the benefits of law and law to create harmony. and compatibility.<sup>33</sup> The Perja contains material content, minimizes deviations from prosecution power and directly restores social conditions in the community. It is also one of the policies in responding to public unrest about the law, which is sharp downwards but bluntly upwards, which so far seems to be the norm. The existence of a restorative justice house by the Attorney General's Office of the Republic of Indonesia as a forum for resolving criminal cases of termination of prosecution is the background for optimizing inclusive and progressive law enforcement so that it focuses on recovering victims, reducing prison overcapacity which is a scourge for prisons in Indonesia and more serious theft issues.<sup>34</sup> Easy to solve because it is easier to calculate the nominal loss (criminal offense is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiahs), which is based on the provisions of the Prosecutor's Office Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. It was found that the application of restorative justice in several regions by prioritizing the settlement of criminal cases outside the court by considering the principles of justice, the principle of proportionality, and the principle of subsidiarity in a number several regions, namely:

1. South Jakarta District Attorney In the case of the theft of a mobile phone, the motive for the perpetrators (Eed and ST) took action because they planned to buy catfish feed at a pet shop. It turned out that a cell phone belonged to the victim; at that time, the victim turned his back on the perpetrator. So that the intentions and opportunities and crimes by the perpetrators arise. The mediation results resulted in peace, so the South Jakarta District Attorney decided not to continue the prosecution through the Termination of Prosecution Decision Letter (SKP2) based on the realization of restorative justice dated 18 May 2022.
2. Bandar Lampung District Attorney In the case of weighted theft, the victim reported to the perpetrator that he had suffered losses of three avocados worth Rp. 20,000.00 (twenty thousand rupiahs), after mediation/settlement with the family, was made, and a Minutes of Peace was also made. Dated October 5, 2020, the prosecutor's office decided to approve the termination of the prosecution of the head of the Lampung High Prosecutor's Office. In this case, the perpetrator is suspected of Article 363, paragraph (1) number 4 of the Criminal Code.
3. Gorontalo District Attorney In the case of theft. The suspect, Muliyanto Musa as Ijan, was suspected of violating Article 362 of the Criminal Code concerning theft. The Deputy Attorney General for General Crimes approved the request for termination of prosecution based on restorative justice dated May 18, 2022, because a peace agreement was found between the suspect and the victim.
4. South Lampung District Attorney In the case of rubber theft weighing 30 kilograms, the victim (PTPN VII Bergen) suffered a loss of Rp 525,000.00 (five hundred and twenty-five thousand rupiahs), where the defendant was a driver. The Prosecutor assumed that the amount was small. The value of the loss and the perpetrator did this was due to the demands to meet the necessities of life (having a wife and three young children). The mediation resulted in peace, so the South Lampung District Attorney decided not to continue the prosecution through the Termination of Prosecution Decision (SKP2) based on restorative justice. In this case, the perpetrator is suspected of being under Article 374 of the Criminal Code concerning embezzlement with a penalty of 5 (five) years in prison.
5. Pasuruan District Attorney In the case of theft. As of March 2022, the defendant Angga Ismawahyudi Bin Maman took two black cell phones without the knowledge and

<sup>33</sup> Muhammad Khuzral, Mhd Lubis, and Teguh Syuhada, "Efektivitas Penerapan Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Melalui Perdamaian Korban Dan Tersangka (Studi Di Kejaksaan Tinggi Sumatera Utara)" (UMSU, 2021).

<sup>34</sup> Aulia Ramadhani and Edy Herdyanto, "Kajian Kesesuaian Tata Cara Penghentian Penuntutan Perkara Tindak Pidana Penganiayaan Berdasarkan Restorative Justice," *Verstek* 10, no. 1 (2022).

permission of their owners, namely victim witness Wajemiyati, so that victim witness Akhmad Fahrur Rozi suffered a loss of approximately Rp. 2,300,000.00 (two million three hundred thousand rupiahs), the purpose of stealing because they are forced and want to open a catfish trading business, but the economic crisis amid the covid-19 pandemic. In this case, the perpetrator is suspected of Article 362 of the Criminal Code.<sup>35</sup>

After the inauguration of the restorative justice house, it is hoped that its presence will be able to provide a form of optimizing the concept of restorative justice without the need to be resolved in the court realm, but only with mediation/settlement based on the principle of justice, the principle of proportionality and the principle of subsidiarity through the realization of a restorative justice house for the realization of the optimization of inclusive law enforcement. And progressively focus on victim recovery and reducing the overcapacity of prison occupancy, which is a scourge for prisons in Indonesia. The theft problem is easier to solve because it is easier to calculate the nominal loss (criminal offenses of not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiahs)).<sup>36</sup>

In the process of implementing restorative justice houses, the Attorney General's Office of the Republic of Indonesia has also formed a Quick Response Task Force to provide input to the leadership of the Prosecutor's Office on cases that deserve restorative justice, provided that they are not carried out in the regions, to prevent irregularities and abuse of the implementation of restorative justice in the regions. The realization of optimizing the expansion of restorative justice houses in addition to an alternative form of solving legal problems among the community, as well as being an inclusive and progressive legal breakthrough by promoting peace (consensus) that upholds the values of justice. So that the embodiment of restorative justice within the prosecutor's office will be more optimal, and in the future, when faced with an increase in theft cases, it can be resolved through a restorative justice house.<sup>37</sup>

The novelty of this research is about law enforcement applying restorative justice and a more effective paradigm in efforts to resolve crimes by optimizing restorative justice houses for minor crimes.

### **C. Conclusion**

Restorative justice is an approach that balances the rights and obligations of the perpetrators of crimes and victims of crime to avoid the imposition of criminal sanctions and prioritize mediation efforts, which are expected to reach an agreement in resolving criminal cases effectively. The existence of restorative justice raises the point of punishment as an effort to retaliate; it cannot be denied that restorative justice is a necessity in the implementation of law enforcement in Indonesia. The restorative justice approach tries to place the sentencing process as the *Ultimum Remedium* for criminals, that the settlement of cases is solely carried out of court with a specific mechanism. A new paradigm that is effective in inclusive and progressive law enforcement, in its implementation, requires a form of realization of optimization by optimizing restorative justice houses as a forum for resolving criminal cases, especially minor crimes that include the realization of restorative justice through an agreement between the two parties, namely the perpetrator and the victim.

<sup>35</sup> Antonius De Andrade Fahik, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Implementasi Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 (Studi Kasus Di Kejaksaan Negeri Jember)," *Jurnal Konstruksi Hukum* 3, no. 2 (2022).

<sup>36</sup> Ari Darman, Dewa Gede Sudika Mangku, and Made Sugi Hartono, "Penolakan Penghentian Penuntutan Berdasarkan Restorative Justice Terhadap Dugaan Modus Operandi Tindak Pidana Pencurian (Studi Kasus SK Kejati Sumbar No: B-/L. 3/Es/10/2020 Dan Putusan No. 177/Pid. B/2020/PN PNN)," *Jurnal Komunitas Yustisia* 5, no. 1 (2022).

<sup>37</sup> Maulana Syaifurasyid, "Penerapan Asas Restorative Justice Dalam Tindak Pidana Penganiayaan Di Wilayah Hukum Kejaksaan Negeri Kampar" (Universitas Islam Riau, 2022).

Involving institutions and the community in the process of resolving cases. The manifestation of the criminal law paradigm seeks to restore a situation through the humanist role of the prosecutor. Optimizing the realization of restorative justice houses, the Attorney General of the Republic of Indonesia established a Quick Response Task Force which aims to provide input to the leadership of the Prosecutor's Office on cases that deserve to be categorized as restorative justice to become breakthroughs in law enforcement that is inclusive and progressive by prioritizing deliberation and consensus that upholds the values of God. and family.

From the explanation of the problems above, the author suggests that the termination of restorative justice-based claims against the crime of theft, which is currently rife, becomes urgent in a humanist law enforcement system. The existence of a restorative justice house, currently Law Enforcement Monograph Based on Restorative Justice Towards a Humanist Prosecutor 19 provides an optimization of the means of implementing the terms of claims by the prosecutor's office, as well as the application of the concept of hybrid restorative justice in providing education and rehabilitation programs for perpetrators. Then in the future implementation, it is hoped that procedures will be established through more specific legal rules in terminating demands at restorative justice homes, such as operations and functions of restorative justice houses, so that all cessation of lawsuits for minor criminal acts, especially theft, can be more optimally implemented in the future. Thus, the prosecutor's office as a legal institution can realize restorative justice as a humanist direction of law enforcement.

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