



Constructing of Restorative Justice Law Enforcement by the Prosecutor: Development Law Theory Perspective

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Abstract

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Abstract

The development and dynamics of society, including law enforcement in Indonesia, are highly complex. Key challenges include prison overcrowding, the handling of minor offenses, legal action involving children, and narcotics issues. Restorative Justice offers a potential solution to these legal problems. This paper employs a normative juridical approach, utilizing both a conceptual and a statutory approach, and is presented from a qualitative descriptive perspective. The findings highlight the critical role of Restorative Justice in the Indonesian criminal justice system and examine how the Prosecutor's Office can implement social engineering through Restorative Justice. The proactive role of the Prosecutor's Office is anticipated to foster a more humane institution and enhance its reputation as a law enforcement agency committed to integrity.

A. Introduction

The COVID-19 pandemic in Indonesia has begun to subside; however, issues related to law enforcement remain persistent and show only marginal improvement. Significant problems include the overcapacity in detention facilities, inadequate protection of children's rights within the justice system, and the general failure of the law to deliver proportional justice. Supporting evidence for these issues is substantial. The Institute for Criminal Justice Reform (ICJR)



reported that, as of January 2022.¹ Indonesia's prisons and detention centers were operating at 223% of their capacity. This overcapacity is largely attributed to the high number of narcotics offenders and individuals sentenced to minor offenses, exacerbated by the pandemic's impact. Specifically, the prison population surged from 131,931 to 270,721 by March 30, 2020.²

In response, the government introduced measures to address the overcrowding, such as accelerating home assimilation policies to reduce capacity to 175%.³ Despite these efforts, by June 2021, the number of inmates increased, leading to a capacity of 200%, which further rose to 223% by January 2022. Additionally, data concerning children in conflict with the law, reported by the Indonesian Child Protection Commission, revealed 123 cases as of August 2020. These cases included physical violence (30), sexual violence (28), traffic accidents (13), theft (12), psychological violence (11), and possession of sharp weapons (9).⁴ These statistics underscore ongoing legal challenges that require effective and efficient resolution.

The author presents these data to contextualize the discussion around the concept of restorative justice.⁵ According to the Guidelines for the Implementation of Restorative Justice in the General Courts Environment, restorative justice is defined as a principle that focuses on resolving criminal cases through dialogue and mediation rather than traditional sentencing.⁶ This approach involves victims, offenders, their families, and other relevant parties in creating a fair and balanced resolution, aiming to restore relationships and return to the original state of affairs.⁷ Restorative justice represents an evolving aspect of Indonesia's criminal justice system⁸, offering a more effective alternative to conventional law enforcement methods, though it remains applicable to only certain cases.

Restorative justice is subject to specific limitations that define its scope of application. It is primarily applicable in cases involving minor offenses, children, women in conflict with the law, and narcotics-related offenses.⁹ Narcotics cases are particularly significant due to their substantial contribution to prison overcrowding in Indonesia. This issue is crucial, as restorative justice offers a potential solution to alleviate the pressures on the prison system.

The relevance of restorative justice to the prosecutor's office is notable, given its central role in the legal system alongside judges and police. The prosecutor's office is instrumental in integrating and promoting restorative justice principles within the criminal justice framework. The research explores how restorative justice, when implemented with an emphasis on legal certainty, can enhance justice and improve legal outcomes. Prosecutors are expected to address prison overcrowding proactively through the effective application of restorative justice strategies.

The author aims to illustrate that restorative justice should be developed and utilized as a tool for social engineering to achieve desired objectives. This paper will focus on two primary issues: first, the importance of restorative justice in law enforcement by the prosecutor's office, and second, the application of restorative justice within the framework of development law

¹ Genta Tenri Mawangi, "ICJR: Beban rutan dan Lapas per Januari 2022 capai 223 persen," 2022.

² Fitriandifa Rizka Ardi dan Pujiyono Pujiyono, "EFFORT OF INDONESIAN CRIMINAL JUSTICE SYSTEM INTEGRATED TO REDUCE OVERCAPACITY," *Tadulako Law Review* 7, no. 1 (Juni 2022): 17–28.

³ Syahirah, "Kemenkumham Perpanjang Program Asimilasi Napi," 2021.

⁴ Dwi Hadya Jayani, "Kasus Kriminalitas Anak Didominasi Kekerasan Fisik," 2021.

⁵ Mimi E. Kim, "Transformative justice and restorative justice: Gender-based violence and alternative visions of justice in the United States.," <https://doi.org/10.1177/0269758020970414> 27, no. 2 (November 2020): 162–72, <https://doi.org/10.1177/0269758020970414>.

⁶ Ridhollah Agung Erinsyah, Elwi Danil, dan Yoserwan Yoserwan, "Reform of Criminal Law through Restorative Justice in Returning State Losses from Corporation as the Perpetrator of Corruption," *International Journal of Multicultural and Multireligious Understanding* 6, no. 6 (Desember 2019): 497–508, <https://doi.org/10.18415/IJMMU.V6I6.1252>.

⁷ Alejandra Díaz Gude dan Iván Navarro Papic, "Restorative justice and legal culture.," <https://doi.org/10.1177/1748895818796549> 20, no. 1 (September 2018): 57–75, <https://doi.org/10.1177/1748895818796549>.

⁸ Decree of the Director General of the General Judiciary Agency, No.169/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts.

⁹ Chapter II, Contents of Guidelines for the Implementation of Restorative Justice in the General Courts.

theory. The research employs a normative juridical approach, using both conceptual and statutory methods. Data is drawn from secondary sources and analyzed qualitatively to provide a descriptive understanding of the topic.

B. Discussion

1. The Urgency of Law Enforcement with Restorative Justice by the Prosecutor

Restorative justice represents a new concept that Indonesian law enforcers seek to implement consistently. To understand its application, it is essential first to define restorative justice. According to Ogugua, restorative justice is described as follows: "Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. The concept, sometimes referred to as reparative or transformational justice in other jurisdictions, involves applying some components of alternative dispute resolution (ADR) to criminal matters. Emerging as a social movement for justice reform, restorative justice focuses on the needs of the victim, offender, and the community, rather than merely satisfying abstract legal principles of punishing offenders. In this approach, victims play an active role in the justice process, while offenders are encouraged to take responsibility for their actions by making amends through apologies, restitution, compensation, community service, and other reparative actions."¹⁰

This definition clarifies that restorative justice emphasizes repairing the harm caused by criminal behavior and involves practical applications from ADR to criminal issues. As a social movement for justice reform, it prioritizes the needs of victims, offenders, and the community over traditional punitive measures. Victims are actively involved in the justice process, and offenders are encouraged to repair the damage through various forms of restitution.¹¹ In Indonesia, restorative justice is anticipated to be implemented by law enforcers, including the Prosecutor's Office of the Republic of Indonesia. The urgency of involving the prosecutor's office in this process is supported by the author, who provides a basis for this necessity.

The criminal justice system is structured with distinct components, each serving specific roles. The police function as investigators, the prosecutor's office acts as public prosecutors, the court is responsible for adjudication, and correctional institutions focus on rehabilitating convicted individuals. This integrated system aims to achieve the core objectives of law enforcement: justice, certainty, and benefit.

Given this framework, the role of the prosecutor's office in implementing restorative justice is particularly urgent. While the police are primarily tasked with investigation, the prosecutor's office plays a crucial role in the judiciary and in the application of restorative justice principles.

Additionally, the prosecutor's office is considered the "dominus litis" or controller of legal proceedings. This role involves evaluating cases and determining whether they should proceed to court based on the validity of evidence.¹² The prosecutor's office also holds the designation of Executive Ambenaar, signifying its authority to conduct criminal prosecutions.

Given these responsibilities, the author asserts that the implementation of restorative justice by the prosecutor's office is essential.¹³ The proactive involvement of prosecutors, compared to other law enforcers like judges, is crucial for the successful application of restorative justice principles. This urgency is also supported by legal and regulatory demands.

¹⁰ Ogugua V C Ikpeze, "THE CONCEPT OF RESTORATIVE JUSTICE AND CRIMINAL JUSTICE," *JOURNAL OF INTERNATIONAL HUMAN RIGHTS AND CONTEMPORARY LEGAL ISSUES (JIHRCLI)* 01 (2021): 92–106.

¹¹ Slamet Tri Wahyudi, "PERAN KEJAKSAAN DALAM PENYELESAIAN PERKARA TINDAK PIDANA KORUPSI MENGGUNAKAN PENDEKATAN RESTORATIVE JUSTICE," *Masalah-Masalah Hukum* 51, no. 1 (Januari 2022): 61–70, <https://doi.org/10.14710/MMH.51.1.2022.61-70>.

¹² Alvi Syahrin, Madiasa A Dedy Chandra, "Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif," *Locus: Jurnal Konsep Ilmu Hukum* 2, no. 1 (2022).

¹³ *Op.Cit.*, Slamet Tri, Peran Kejaksaan dalam..., hlm. 63

The legal framework guiding the prosecutor's office in implementing restorative justice is outlined in the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020, concerning the Termination of Prosecution Based on Restorative Justice. This regulation defines restorative justice in Article 1, paragraph (1) as follows:¹⁴

“Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.”

In response to concerns about the handling of minor crimes, the Supreme Court issued Regulation (*PERMA*) Number 2 of 2012, which addresses the adjustment of limits for minor crimes and fines under the Criminal Code. The regulation highlights the growing number of minor crime cases entering the court system, which has generated negative feedback from the community.¹⁵ This dissatisfaction stems from the perception that the existing justice system in Indonesia does not adequately fulfill the community's sense of justice. Specifically, actions that might warrant lighter penalties are often subjected to criminal sanctions, and the fines stipulated in the Criminal Code are considered too minimal and not reflective of contemporary societal conditions, rendering them ineffective as alternative penalties.¹⁶

To address these issues, the author aims to inventory the juridical provisions and implementation rules that underscore the urgency of applying restorative justice. The following rules are crucial for understanding how restorative justice can be effectively integrated into the legal system and provide a more balanced and fair approach to resolving minor criminal cases.

- a. *Perma* Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code
- b. *Perma* Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.
- c. *Perma* Number 3 of 2017 concerning Guidelines for Prosecuting Women's Cases in Confrontation with the Law.
- d. Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation institutions.
- e. Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian Police and the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia and the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 166A/KMA/SKB/XII/2009, 148 A/A/JA/12/2009, B/45/XII/2009, M.HH-08 HM.03.02 Year 2009, 10/PRS-s/KPTS/2009, 02/Men.PP and PA/XII/ 2009 on Handling Children in Conflict with the Law.
- f. Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Indonesian Police Number KEP-06/E/EJP/10/2012, Number B/39/x/2012 concerning the Implementation of the Implementation of Boundary Adjustments Minor Crimes and the Number of Fines for Quick Examination Procedures and the Application of Restorative Justice.

¹⁴ Article 1 paragraph (1), Peraturan Kejaksaan Republik Indonesia No 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif

¹⁵ Agung Irawan, “Peranan Kejaksaan Dalam Implementasi Penegakan Hukum Peraturan Mahkamah Agung Ri Nomor : 02 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam Kuhp Terhadap Penyelesaian Tindak Pidana Harta Kekayaan (Dalam Sistem Peradilan Pidana Di Indonesia),” *Riau Law Journal* 3, no. 2 (2019).

¹⁶ Andi Suharto, Syawal Abdulajid, dan Suwanti Suwanti, “Efektivitas Penuntut Umum dalam Penanganan Kasus Kekerasan Dalam Rumah Tangga (KDRT) melalui Penerapan Prinsip Keadilan Restoratif,” *Syntax Literate ; Jurnal Ilmiah Indonesia* 7, no. 1 (Januari 2022): 828–44, <https://doi.org/10.36418/SYNTAX-LITERATE.V7I1.5887>.

- g. Joint Regulation of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Head of the Indonesian Narcotics Agency Number 01/PB/MA/III/2014 Number 03 of 2014 Number Per-005/A/JA/03/2014, Number Perber/01/III/2014/BNN concerning Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

Based on these regulations, it is evident that the prosecutor's office plays a significant role in advancing restorative justice within Indonesia's criminal justice system. This initiative aims to facilitate peaceful resolutions between the suspect and the victim, ensuring that these agreements are reached without pressure, coercion, or intimidation. Efforts toward restorative justice are undertaken during the prosecution stage, where the public prosecutor acts as a facilitator, overseeing the transfer of responsibility for the suspect and the associated evidence. To date, the Attorney General's Office has resolved approximately 1,000 cases utilizing restorative justice principles.¹⁷

2. Construction of Social Engineering in Realizing Restorative Justice by Attorney Law Enforcers

Since around 1974¹⁸, the practice of Restorative Justice (RJ) has evolved globally, with significant development occurring locally through consultations with community justice stakeholders.¹⁹ Restorative Justice is inherently linked to the social conditions of the community it serves. This principle aims to improve community order by fostering more inclusive and rehabilitative approaches to justice.²⁰ According to Martina's perspective:

Restorative Justice conceptualizes crime not merely as a legal violation warranting public condemnation, but as an injury affecting real individuals and their relationships, necessitating healing. The repercussions of crime generate a multifaceted array of justice needs for those involved—needs that the conventional justice system often fails to address comprehensively. While the traditional system is not entirely indifferent to these needs, its primary focus on determining guilt and imposing punishment frequently overshadows efforts to address the full scope of the offender's experience and needs. Victims and offenders alike are left with diverse physical, emotional, psychological, spiritual, and material needs, which must be addressed for justice to be perceived as genuinely served. Offenders, too, have justice needs, including a fair trial, due process, and an opportunity to reconcile with the consequences of their actions while being held accountable.²¹

According to this perspective, Restorative Justice understands crime not merely as a legal infraction necessitating public condemnation but as an injury to individuals and relationships that requires healing. The impact of crime thus generates a complex set of justice needs for all involved—needs that conventional justice systems often struggle to address adequately. While not entirely indifferent, the traditional system's primary focus on determining guilt and administering punishment frequently overlooks the broader realities of the offender's experience and needs. Victims and offenders alike are left with various physical, emotional, psychological, spiritual, and material needs, which must be addressed for justice to be perceived

¹⁷ "Mengenal Dasar Keadilan Restoratif/ Restorative Justice Di Lingkungan Kejaksaan Republik Indonesia - Kejaksaan Negeri Samarinda," diakses 24 Oktober 2022, <https://kejari-samarinda.kejaksaan.go.id/index.php/2022/05/20/mengenal-dasar-keadilan-restoratif-restorative-justice-di-lingkungan-kejaksaan-republik-indonesia/>.

¹⁸ Daye Gang et al., "A Call for Evaluation of Restorative Justice Programs," *Trauma, Violence, and Abuse* 22, no. 1 (Januari 2021): 186–90, <https://doi.org/10.1177/1524838019833003>.

¹⁹ Muhammad Asadullah, "Decolonization and Restorative Justice: A Proposed Theoretical Framework.," *Decolonization of Criminology and Justice* 3, no. 1 (2021): 27–62, <https://doi.org/10.24135/dcj.v3i1.25>.

²⁰ Courtney Julia Burns dan Laura Sinko, "Restorative Justice for Survivors of Sexual Violence Experienced in Adulthood: A Scoping Review.," *Trauma, violence & abuse*, Juli 2021, 15248380211029408, <https://doi.org/10.1177/15248380211029408>.

²¹ *Op.Cit.*, Oguqua..., hlm.94

as fully served. Offenders also require a fair trial, due process, and an opportunity to come to terms with the consequences of their actions and assume responsibility.

This viewpoint underscores the necessity of addressing the justice needs of both perpetrators and victims, with a particular emphasis on the victims. Juridical punishment alone is insufficient to resolve the multifaceted problems—physical, emotional, psychological, and material—that arise from crime. Consequently, the concept of Restorative Justice serves as a social engineering tool aimed at fostering an ideal society. Restorative Justice is grounded in several principles, as articulated by Stacy-ann Robinson:

“The Restorative Justice identifies several: empowerment, honesty, respect, engagement, voluntarism, healing, restoration, personal accountability, inclusiveness, collaboration and problem-solving. Moralizing, healing, empowering and transforming are other principles noted in the literature.”²²

Based on this opinion, several principles of Restorative Justice (RJ) are essential, including empowerment, honesty, respect, involvement, volunteerism, healing, recovery, personal accountability, inclusivity, collaboration, problem-solving, moralization, and transformation. The author argues that RJ must be implemented by the prosecutor's office and integrated into the social engineering agenda pursued by law enforcement. This perspective aligns with Mochtar Kusumaatmadja's theory of development law.

According to Kusumaatmadja's theory, the law encompasses not only a set of rules and principles but also the institutions and processes necessary to actualize legal principles in practice.²³ His theory is grounded in two key aspects: first, the belief that the law can either facilitate or obstruct societal change; and second, the recognition that societal attitudes in Indonesia are evolving towards a more modern legal framework. Kusumaatmadja posits that the primary aim of the law is to establish order, which is fundamental for a well-functioning society. Furthermore, he views the law as a tool for societal transformation²⁴, serving as a means of development or "social engineering." This view supports the discussion in this paper, which asserts that the law includes the institutions and processes required for its effective implementation. The Prosecutor's Office, as an institution, plays a crucial role in shaping social order through the application of Restorative Justice principles.

Mochtar Kusumaatmadja argues that the definition of law as a means extends beyond merely being a tool.²⁵ This perspective is supported by two key reasons: First, in Indonesia, legislation plays a more prominent role in legal reform compared to the United States, where jurisprudence—particularly Supreme Court decisions—is more central. Second, viewing law solely as a "tool" may lead to outcomes similar to those produced under "legism," a concept applied during the Dutch East Indies era, which reflects a community sensitivity and resistance in contemporary Indonesia.²⁶

The author asserts that the concept of Restorative Justice, as enshrined in various laws and regulations, functions as a mechanism for effectuating legal reforms. This broader understanding of law as more than a mere tool can significantly impact the shaping of societal order. The author will further illustrate the role of the prosecutor's office in implementing social engineering through Restorative Justice.

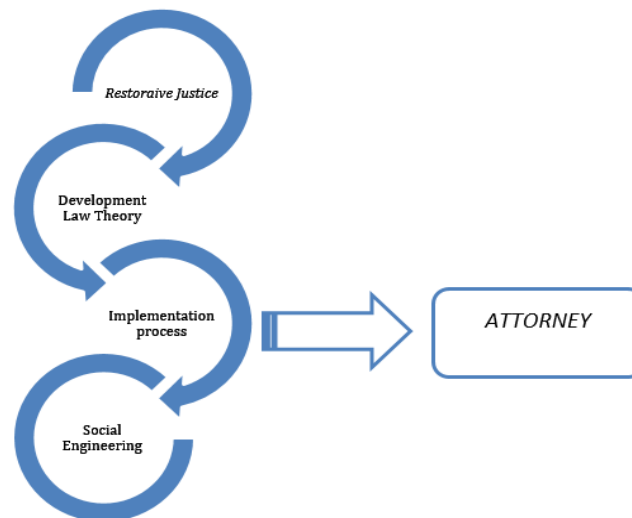
²² Stacy ann Robinson dan D'Arcy Carlson, "A just alternative to litigation: applying restorative justice to climate-related loss and damage," *Third World Quarterly* 42, no. 6 (2021): 1384–95, <https://doi.org/10.1080/01436597.2021.1877128>.

²³ Myrna A. Safitri Shidarta, *Mochtar Kusumaatmadja dan Teori Hukum Pembangunan* (Jakarta: Epistema Institute, 2012), hlm 12.

²⁴ Lilik Mulyadi, "Teori Hukum Pembangunan Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M.," *Jurnal Hukum Indonesia* 8, no. 2 (2009): 1–29, https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analisis_teor_i_hukum_pembangunan.pdf. hlm 4

²⁵ Nazarudin Lathif, "Teori Hukum Sebagai Sarana/Alat Untuk Memperbaharui Atau Merekayasa Masyarakat," *Pakuan Law Review* 3, no. 1 (2017): hlm.78-87.

²⁶ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: Alumni, 2002).hlm.3



Source: Social Engineering Process

The illustration demonstrates that the process of social engineering begins with legislation, aligning with the theory of development law. Once Restorative Justice (RJ) is established with a robust legal foundation, it will be implemented by state institutions, particularly the prosecutor's office. With its role as *dominus litis* and executive arm, the prosecutor's office is poised to enhance the effectiveness of RJ's application. Ultimately, this process aims to establish the desired social engineering order envisioned by law enforcers. Additionally, this approach is expected to bolster the image of the prosecutor's office as a humanistic institution within the Indonesian legal system.

C. Conclusion

Based on the discussion, it can be concluded that the implementation of Restorative Justice by the Attorney General's Office is crucial. As an integral institution in the criminal justice process, the Prosecutor's Office plays a significant role in the successful application of Restorative Justice. Serving as an executive arm, the Prosecutor's Office has implications for conducting criminal courts. Its active engagement with Restorative Justice is supported by existing laws and regulations in Indonesia.

The process of social engineering, aimed at realizing Restorative Justice by the Attorney General's Office, is informed by the theory of development law. This theory views law as encompassing not only rules and principles but also the institutions and processes involved. With Restorative Justice embedded in regulations, the Prosecutor's Office is positioned to effectively fulfill its role. This approach aims to align social order with legal objectives, enhancing the humanistic image of the Prosecutor's Office in the community. However, there remains a lack of harmony between the Prosecutor's Office and the police regarding the implementation of Restorative Justice, highlighting the need for a comprehensive new regulation to address the most effective application of Restorative Justice.

The novelty of this research lies in the approach to law enforcement through Restorative Justice, incorporating values of legal certainty to achieve justice and the benefits of legal application. The Prosecutor's Office, in its role in social engineering, must proactively address these issues to help alleviate prison overcrowding.

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