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Legal Analysis of the Termination of Prosecution Based on Restorative Justice in the Indonesian Criminal Justice System

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Abstract

Purpose of the study: The legal regulation of termination of prosecution based on restorative justice, the position and authority of the Prosecutor's Office in exercising that authority, and the conformity of the policy with the theories and purposes of punishment in Indonesian criminal law. **Methodology:** The study employs normative legal research using a statutory approach and a conceptual approach. Primary, secondary, and tertiary legal materials were collected through library research and analysed qualitatively with deductive reasoning. **Main Findings:** The regulation of termination of prosecution based on restorative justice is layered: its legitimacy is drawn from the opportunity principle in Article 30B of Law No. 11 of 2021, while operational norms are contained in Prosecutor's Regulation No. 15 of 2020 and Attorney General's Regulation No. 8 of 2021, both policy regulations (*beleidsregel*) outside the hierarchy of legislation under Law No. 12 of 2011. The Prosecutor's Office exercises authority as *dominus litis* through a tiered mechanism bounded by cumulative formal and material requirements. The policy is coherent with relative and integrative theories of punishment and with the purposes of punishment adopted in the new Criminal Code, though it cannot be justified through absolute theory. **Novelty/Originality of this study:** This study situates restorative-justice-based prosecution termination at the intersection of prosecutorial discretion, criminal law theory, and regulatory hierarchy in Indonesia. It advances existing knowledge by exposing the formal fragility of a substantively justified practice and offering concrete recommendations for statutory anchoring in the forthcoming Criminal Procedure Code, uniform assessment parameters, an objection mechanism for the parties, and external oversight, addressing persistent legal uncertainty in Indonesian criminal justice reform.

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A. Introduction

The concept of a state based on the rule of law is a system of state administration that places law as the primary foundation of every act of government and of society. Within such a state, all activities of national life must be carried out on the basis of applicable legal provisions, so that law becomes the highest guideline in regulating social, national, and state life. In modern times the concept of the state based on law in Continental Europe was developed by, among others, Immanuel Kant, Paul Laband, Julius Stahl, and Fichte through the German term rechtsstaat, while in the Anglo-American tradition the same idea was developed under the pioneering work of A.V. Dicey through the term the rule of law [Asshiddiqie, 2026]. Julius Stahl formulated four essential elements of the rechtsstaat, namely the protection of human rights, the division of powers, government based on legislation, and the existence of an administrative judiciary. Both traditions historically originated from the effort to restrain the arbitrary conduct of rulers, as reflected in the English experience of limiting the absolute power of King John the Lackland in 1215 and in the French experience of ending the absolutism of Louis XVI in 1789 [Pinter Hukum, 2026]. Although the two conceptions differ in their historical and institutional design, both are essentially directed at guaranteeing and protecting human rights and at limiting the exercise of public power through law.

Indonesia expressly adopts this idea in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that Indonesia is a state based on law. The General Elucidation of the 1945 Constitution concerning the System of State Government further explains that Indonesia is a state based on law (rechtsstaat) and not a state based on mere power (machtsstaat), and that the government operates under a constitutional system rather than absolutism. Consequently, the Indonesian conception of the state based on law rests on Pancasila as the national basic law, on the sovereignty of the people, on the principle of equality before the law under Article 27 paragraph (1) of the 1945 Constitution, on judicial power that is free from the influence of other branches, and on the guarantee of fundamental rights under Articles 28A to 28J [Hukumonline, 2026]. Because of these characteristics, the Indonesian legal order is frequently designated as the Pancasila state based on law.

The realisation of the state based on law cannot be separated from the three fundamental values of law formulated by Gustav Radbruch, namely legal certainty, justice, and expediency. Legal certainty requires that legal norms be formulated clearly, firmly, and without room for double interpretation, so that members of society are able to predict which conduct is permitted and which is prohibited. Justice, in the Aristotelian classification, is divided into distributive justice, which concerns the proportional allocation of rights and burdens, and corrective justice, which restores the imbalance caused by a violation of law. Expediency, following the utilitarian tradition of Jeremy Bentham, evaluates law by the extent to which it produces the greatest happiness for the greatest number of people. In practice these three values often stand in tension. The rigid application of legal certainty may generate outcomes that are perceived as unjust, while the pursuit of individual justice may fail to deliver broad social benefit, and an excessive emphasis on expediency may erode predictability. The management of that tension is precisely the terrain on which the debate concerning restorative justice in the Indonesian criminal justice system takes place.

The criminal justice system is the structured and comprehensive legal mechanism through which the state responds to criminal conduct, extending from the stage of inquiry to the execution of punishment, with the objective of enforcing the law, delivering justice, and maintaining public order [Reksodiputro, 1997]. In Indonesia the system consists of several interrelated institutions: the police conduct inquiry and investigation, the Prosecutor's Office conducts prosecution before the court, the court adjudicates the case and imposes punishment, and correctional institutions execute the sentence and provide guidance to inmates [Rohmat, 2024]. Remington and Ohlin describe the criminal justice system as the application of a systems approach to the administration of criminal justice, in which the system operates as the product of interaction among statutory provisions, administrative practices, and social attitudes and behaviour [Hamaminata, 2023]. Law Number 8 of 1981 concerning Criminal Procedure serves as the model of that system in Indonesia and is constructed upon the principle of functional differentiation among law enforcement agencies in accordance with the stages of authority conferred upon each of them [Marmosudjono, 1989]. The integrated criminal justice system therefore presupposes a shared perception of justice and an integrated pattern of administering criminal justice across the components of investigation, prosecution, adjudication, and correction [Reksodiputro, 1994].

For a considerable period the operation of that system has been dominated by a retributive orientation, in which the success of law enforcement is measured by the number of cases brought to court and by the severity of the sentences imposed. That orientation has produced serious structural consequences. The volume of criminal cases continues to accumulate at the levels of investigation, prosecution, and adjudication, while correctional institutions experience severe overcrowding. Imprisonment-oriented sentencing burdens the state financially and administratively, and frequently fails to achieve rehabilitation and social reintegration. In many instances punishment aggravates social stigma against the offender and increases the potential for recidivism, so that the objective of protecting society is not optimally attained [Adelia, 2026]. The conventional system also tends to marginalise the victim, whose position is reduced to that of a witness for the prosecution and whose material and immaterial losses are rarely restored by the criminal judgment itself [Flora, 2026]. In this configuration the system produces procedural justice without fully reflecting substantive justice.

Restorative justice emerged as a critique of that condition. Etymologically the term combines restorative, meaning to restore or to repair, and justice, so that it denotes a conception of justice oriented towards restoring the condition and the relationships disturbed by the commission of a criminal offence. Article 1 point 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines restorative justice as the settlement of a criminal case by involving the offender, the victim, the family of the offender or of the victim, and other related parties, in order to jointly seek a fair settlement that emphasises restoration to the original condition rather than retaliation. The idea itself is not novel. Practices of settlement centred on restitution and the repair of social relationships have long been applied by customary communities, including the Maori of New Zealand, Aboriginal communities in Australia, and various customary communities in Africa, as well as by Indonesian customary law, which prioritises deliberation, reconciliation, and the restoration of harmony. In the modern legal system the approach developed through victim-offender mediation programmes in Canada during the 1970s and gained theoretical foundation through Howard Zehr, who reconceived crime as a violation of people and relationships rather than merely a violation of the state [Zehr, 1990]. International recognition followed through the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters of 2002.

In the Indonesian criminal justice system the restorative approach has been introduced progressively at each stage of the process. At the investigation stage the police have been granted the authority to facilitate the settlement of certain criminal cases through a restorative mechanism by bringing together the victim and the offender in order to reach a settlement agreement, directed principally at offences of low seriousness with limited losses. At the prosecution stage the approach is implemented through the authority of the public prosecutor to terminate prosecution on the basis of restorative justice, in which the prosecutor acts not only as the representative of state interests but also as a facilitator who ensures the fulfilment of the victim's interests and the accountability of the offender. At the trial stage the application of the approach remains limited, because the formal and adversarial character of criminal procedure narrows the space for restorative settlement, so that restorative considerations are more frequently positioned as non-juridical mitigating factors in sentencing. Only in juvenile criminal justice, through the mechanism of diversion, is the approach structurally visible in the courtroom [Adelia, 2026].

Quantitatively the policy has produced significant results at the prosecution stage. The Attorney General's Office resolved 2,080 general criminal cases through restorative justice during the period from 1 January to 22 December 2025 [Humam, 2026]. In an earlier reporting period the institution recorded 6,168 cases settled through the same approach and reported the establishment of 4,654 Restorative Justice Houses throughout Indonesia as of 12 November 2024. At the same time the institution emphasised that not every case may be settled restoratively, because a number of cumulative requirements must be satisfied, including the completion of a reconciliation process, the absence of a prior conviction, the status of the suspect as a first-time offender, a statutory threat of fine or imprisonment of not more than five years, an undertaking by the suspect not to repeat the offence, and a reconciliation process conducted voluntarily through deliberation without pressure, coercion, or intimidation [Yozami, 2026]. These figures indicate that the termination of prosecution based on restorative justice is no longer an exceptional practice but has become a routine instrument of case disposition.

The rapid institutionalisation of the practice nevertheless raises a fundamental juridical question. The Criminal Procedure Code recognises only three grounds for the termination of prosecution under Article 140 paragraph (2) letter a, namely insufficient evidence, the absence of a criminal offence, and the closure of the case by operation of law. Restorative settlement is not among them. The operative norms governing the practice are instead contained in Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice and in Attorney General's Regulation Number 8 of 2021 concerning Guidelines for the Application of Restorative Justice in the Settlement of Criminal Cases, both of which are policy regulations that are not enumerated among the types and hierarchy of legislation under Law Number 12 of 2011 concerning the Formation of Legislation. The practice therefore operates in a normative space in which substantive justification is strong but formal legality remains contested.

A review of previous scholarship shows that the discussion of restorative justice in Indonesia has been concentrated on the implementation and effectiveness of case settlement and on the protection of victims. Studies examining the termination of prosecution based on restorative justice from a normative juridical perspective, particularly with respect to the legal basis of its regulation, the limits of the authority of the Prosecutor's Office, and the coherence of the policy with the theories and purposes of punishment in Indonesian criminal law, remain limited. This article is intended to address that gap. Its novelty lies in the integration of three levels of analysis that are ordinarily treated separately, namely the analysis of the hierarchy of norms, the analysis of institutional authority, and the analysis of penal theory, into a single juridical assessment of one concrete instrument of criminal policy.

On the basis of the foregoing description, three research problems are formulated. First, how is the termination of prosecution based on restorative justice regulated within the Indonesian criminal justice system? Second, what is the position and the authority of the Prosecutor's Office of the Republic of Indonesia in implementing the termination of prosecution based on restorative justice? Third, to what extent is the termination of prosecution based on restorative justice consistent with the theories and purposes of punishment in Indonesian criminal law? The study is expected to contribute theoretically to the development of criminal procedural law scholarship concerning prosecutorial discretion, and practically to the formulation of a stronger legal basis for restorative settlement in the ongoing reform of national criminal procedure.

B. Methods

This study is normative legal research, that is, research that focuses on the examination of legal norms originating from legislation, legal principles, legal theories, and relevant literature. The choice of this type of research follows from the focus of the study, which examines the termination of prosecution based on restorative justice in the Indonesian criminal justice system, particularly in relation to the aspects of legal regulation, the authority of the Prosecutor's Office, and the conformity of the policy with the theories and purposes of punishment. Because the object of the study consists of norms and doctrines rather than of social facts, the research does not employ field data collection, and the legal materials examined function as the substitute for data in the empirical sense.

Two approaches are applied. The statutory approach is used to examine and analyse the legislation related to the termination of prosecution based on restorative justice, both the instruments of general application and those specifically regulating the subject, including their internal consistency and their position within the hierarchy of norms. The conceptual approach is used to examine the concepts, principles, doctrines, and legal theories relevant to restorative justice, the authority of the Prosecutor's Office, and the purposes of punishment in Indonesian criminal law, in order to construct an analytical framework where the legislation does not provide an explicit answer.

The legal materials used in this study are classified into three categories. Primary legal materials are those possessing binding force because they originate from legislation, comprising the 1945 Constitution of the Republic of Indonesia; Law Number 8 of 1981 concerning the Criminal Procedure Code; Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021; Law Number 12 of 2011 concerning the Formation of Legislation; Law Number 11 of 2012 concerning the Juvenile Criminal Justice System; Law Number 1 of 2023 concerning the Criminal Code; Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice; Attorney General's Regulation Number 8 of 2021 concerning Guidelines for the Application of Restorative Justice in the Settlement of Criminal Cases; and other legislation connected with the termination of prosecution and restorative justice. Secondary legal materials are those that explain and interpret the primary legal materials, obtained from legal textbooks, scientific journals, research reports, scholarly articles, and the opinions of experts. Tertiary legal materials are those that support and complete the understanding of the two preceding categories, comprising legal dictionaries, the Great Dictionary of the Indonesian Language, encyclopaedias, and other relevant references.

The legal materials were collected through library research, namely by tracing, examining, and inventorying the legal materials connected with the problem under study. The inventoried materials were then classified according to the three research problems and arranged systematically before being analysed. The technique of analysis is qualitative and applies deductive reasoning, that is, reasoning that draws conclusions from provisions of a general character towards the more specific problem under examination. The general norms concerning prosecutorial authority, the hierarchy of legislation, and the purposes of punishment are used as the major premise, while the specific norms and practices of the termination of prosecution based on restorative justice function as the minor premise, from which juridical conclusions are drawn. Interpretation is conducted through grammatical, systematic, and teleological methods in order to determine the meaning, the internal coherence, and the purpose of the norms examined. The results of the analysis are then used as the basis for answering the research problems and for formulating conclusions consistent with the objectives of the study. As a consequence of this design, the findings presented in the following section are normative findings, that is, findings concerning the content, structure, and relationships of legal norms, and are not intended to represent statistically generalisable empirical facts.

C. Results

The Regulation of the Termination of Prosecution Based on Restorative Justice

The examination of primary legal materials shows that the Indonesian criminal justice system, historically constructed upon the paradigm of retributive justice, has undergone a shift of orientation towards a more humanistic approach oriented to social justice, namely restorative justice. The Criminal Procedure Code itself adheres in principle to the principle of legality in prosecution, under which every criminal case satisfying the formal and material requirements must be transferred to the court [KUHAP, Article 1 point 3 in conjunction with Article 140]. The development of modern criminal law nevertheless demonstrates that the rigid application of that principle does not always reflect substantive justice, particularly in cases in which the loss is minor and has been restored by the offender.

Restorative justice is understood as a process of settling a criminal case that involves the offender, the victim, the family of the offender or of the victim, and other related parties, in order jointly to seek a fair settlement emphasising restoration to the original condition rather than retaliation [Zulfa, 2011]. The concept departs from the understanding that crime is in essence not merely a violation against the state but also an injury suffered by the victim and by society, so that its settlement should be oriented towards restoring the social relationships damaged by the offence [Arief, 2011].

Normatively, the legal basis for the application of restorative justice at the prosecution stage in Indonesia is contained in Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. That regulation defines the termination of prosecution based on restorative justice as the termination of the settlement of a criminal case outside the criminal court, involving the offender, the victim, the family of the offender or of the victim, and other related parties, in order to reach an agreement that emphasises restoration to the original condition [Perja No. 15 of 2020, Article 1 point 1]. The policy was subsequently reinforced by Attorney General's Regulation Number 8 of 2021 concerning Guidelines for the Application of Restorative Justice in the Settlement of Criminal Cases, which extends the scope of application not only to the prosecution stage but also to the stages of inquiry and investigation.

The authority of the public prosecutor to terminate prosecution on the basis of restorative justice originates from the opportunity principle adopted within the Indonesian system of prosecution, as affirmed in Article 30B of Law Number 11 of 2021 concerning the Amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. That provision confers upon the Attorney General the authority to set aside a case in the public interest, which is subsequently translated technically into the authority of the public prosecutor to terminate prosecution in certain categories of cases on the basis of a restorative approach [UU No. 11 of 2021, Article 30B paragraph (2)]. According to Muladi, the application of the opportunity principle directed towards a restorative approach constitutes a form of modernisation of the criminal justice system that prioritises the effectiveness and efficiency of law enforcement without neglecting the principle of justice [Muladi, 2002].

The findings further show that the regulation of restorative justice in Indonesia is not concentrated in a single instrument but is distributed across the stages of the criminal process and across the levels of the hierarchy of norms. The mapping of that distribution is presented in Table 1.

Table 1. Distribution of the Regulation of Restorative Justice by Stage of the Criminal Process

Stage of the process	Principal legal instrument	Character of the instrument
Constitutional foundation	Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution	Constitution; the highest norm
General framework of prosecution	Article 1 point 3, Article 14, and Article 140 paragraph (2) letter a of the Criminal Procedure Code	Law; does not yet regulate restorative termination
Source of authority	Article 30B of Law Number 11 of 2021 concerning the Prosecutor’s Office	Law; attribution of the opportunity principle
Juvenile criminal justice	Article 1 point 6 and Articles 6 to 15 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System	Law; diversion as a statutory model
Direction of national penal policy	Provisions on the purposes and guidelines of sentencing in Law Number 1 of 2023 concerning the Criminal Code	Law; not yet in force at the time of writing
Prosecution stage	Prosecutor’s Regulation Number 15 of 2020 and Attorney General’s Regulation Number 8 of 2021	Policy regulation (beleidsregel)
Investigation stage	Internal police regulations on the handling of criminal offences based on restorative justice	Policy regulation (beleidsregel)

Table 1 discloses an asymmetry that constitutes the first principal finding of this study. The instruments that operate at the level of law either do not regulate restorative termination at all, as in the case of the Criminal Procedure Code, or regulate it only for a specific category of subjects, as in the case of the Juvenile Criminal Justice System. Conversely, the instruments that regulate the practice concretely and operationally, namely Prosecutor's Regulation Number 15 of 2020 and Attorney General's Regulation Number 8 of 2021, are situated at the level of policy regulation. There is consequently a gap between the level at which the authority is exercised and the level at which the authority is regulated in detail.

The Position and Authority of the Prosecutor's Office and the Mechanism of Termination

The second group of findings concerns the institutional position of the Prosecutor's Office and the procedure through which the authority is exercised. Within the Indonesian criminal justice system the prosecutor holds two functions, namely the function of public prosecutor and the function of executor of judicial decisions, while the public prosecutor is authorised to conduct prosecution and to execute the decision of the judge [Marpaung, 2009]. The prosecutor accordingly occupies the position of dominus litis, that is, the controller of the case who determines whether a case is transferred to the court. It is from that position, and not from an independent judicial power, that the authority to terminate prosecution derives.

Based on the examination of case documents and of the application of Prosecutor's Regulation Number 15 of 2020, the mechanism of terminating prosecution on the basis of restorative justice is implemented through several tiered stages involving various parties. Those stages may be described as follows.

1. An application or a proposal for the termination of prosecution based on restorative justice is submitted by the public prosecutor handling the case after that prosecutor has assessed that the case satisfies the formal and material requirements stipulated in the Prosecutor's Regulation.
2. The public prosecutor examines the case file and conducts the reconciliation process between the offender and the victim, which is recorded in the form of a settlement agreement and a recovery agreement.
3. The results of the examination and the settlement agreement are reported to the Head of the District Prosecutor's Office for the purpose of a case exposition involving the Deputy Attorney General for General Crimes.
4. On the basis of the results of the case exposition, the Attorney General or the authorised official issues a decree of termination of prosecution based on restorative justice.
5. The decree of termination of prosecution is communicated to the suspect, the victim, the investigator, and other related parties as a form of legal certainty.

The case exposition referred to above performs the crucial function of an internal control mechanism designed to ensure that the termination of prosecution is not misused and that all prescribed requirements have been satisfied [Perja No. 15 of 2020, Article 9 paragraph (1)]. The process also constitutes a form of institutional accountability of the Prosecutor's Office in exercising a discretionary authority of a sensitive character, given that the termination of prosecution has the direct implication that a criminal case is not continued to the stage of trial [Perja No. 15 of 2020, Article 10]. Andi Hamzah emphasises that a tiered control mechanism of this kind is important in order to preserve the balance between prosecutorial discretion and the principle of legal certainty, so that the termination of prosecution does not become a loophole for the abuse of authority [Hamzah, 2016].

The exercise of the authority is bounded by cumulative requirements of two kinds. The material requirements are regulated in Article 5 paragraph (1) of Prosecutor's Regulation Number 15 of 2020 and comprise three principal elements. First, the settlement must not give rise to public unrest and there must be no rejection by the community [Perja No. 15 of 2020, Article 5 paragraph (1) letter a]. That provision places social acceptance as an important indicator, because restorative justice is fundamentally directed at restoring the social relationships disturbed by the criminal offence, so that a termination of prosecution that itself provokes turbulence within the community would be contrary to that objective. Second, the case must be one that is threatened with a fine or with imprisonment of not more than five years, the suspect must have committed a criminal offence for the first time, and there must have been restitution of the loss or restoration to the original condition [Perja No. 15 of 2020, Article 5 paragraph (1) letters b and c]. Third, there must be a letter of consent or a settlement agreement between the victim or the victim's family and the suspect or the suspect's family, concluded in good faith.

In addition to the material requirements there are formal requirements, namely the sufficiency of evidence, the existence of a settlement agreement drawn up in writing and witnessed by the competent authority, and a recommendation from the public prosecutor handling the case. Attorney General's Regulation Number 8 of 2021 further affirms that the consideration of restorative justice must take into account the benefit to the victim, the offender, and the community in a proportional manner, without setting aside the interest of law enforcement itself [Perja No. 8 of 2021, Article 4]. That formulation corresponds to the view of Van Ness and Strong that the success of a restorative approach is determined by three principal values, namely encounter, reparation, and reintegration [Zulfa, 2011]. The classification of the requirements is summarised in Table 2.

Table 2. Requirements for the Termination of Prosecution Based on Restorative Justice

Category	Requirement	Nature of assessment
Material	Absence of public unrest or community rejection	Evaluative; assessed by the prosecutor
Material	Threat of fine or imprisonment of not more than five years	Objective; verifiable from the indictment
Material	The suspect has committed a criminal offence for the first time	Objective; verifiable from criminal records
Material	Restitution of the loss or restoration to the original condition	Semi-objective; depends on the valuation of the loss
Material	Settlement agreement concluded in good faith	Evaluative; assessed by the prosecutor
Formal	Sufficiency of evidence	Objective; verifiable from the case file
Formal	Written settlement agreement witnessed by the competent authority	Objective; documentary
Formal	Recommendation of the public prosecutor handling the case	Procedural
Formal	Case exposition before the superior level of the Prosecutor’s Office	Procedural; internal control

The findings also show that, in the practice of prosecution, the restorative approach is generally applied to cases with particular characteristics, namely minor offences, offences threatened with a fine, offences committed by first offenders, and cases involving material losses of a relatively small value that have been restored by the offender to the victim. Within that practice, the criteria that most decisively determine whether a proposal for the termination of prosecution is accepted or rejected are the existence of a sincere settlement agreement between the offender and the victim and the subjective assessment of the public prosecutor concerning the good faith of the offender in restoring the loss suffered by the victim. That condition indicates that, although the normative criteria have been regulated in detail, the space of discretion of the public prosecutor remains a determining factor in the application of restorative justice in the field.

Finally, the regulation provides for post-decision supervision. The provisions concerning monitoring and evaluation following the issuance of the decree of termination of prosecution, as regulated in Articles 12 and 13 of Prosecutor's Regulation Number 15 of 2020, demonstrate the intention of the Prosecutor's Office to ensure the continuing compliance of the parties with the agreement that has been concluded, although their implementation in the field still requires further strengthening.

Findings Concerning the Conformity of the Policy with the Theories of Punishment

The third group of findings concerns the position of the termination of prosecution based on restorative justice within the framework of the theories of punishment recognised in Indonesian criminal law scholarship. Three principal theories are relevant. The absolute theory, or the theory of retribution, holds that punishment is imposed because a person has committed a crime, so that punishment is an absolute consequence that must exist as retribution against the person who has committed the crime. The justification of punishment therefore lies in the existence of the crime itself. Johannes Andenaes states that the primary purpose of punishment according to this theory is to satisfy the demand of justice, while any advantageous effect is secondary [Muladi and Arief, 1992]. Andi Hamzah explains that, according to this theory, punishment is not directed towards practical purposes such as the improvement of the offender; the crime itself contains the elements warranting the imposition of punishment, and it is unnecessary to consider the benefit of imposing it [Hamzah, 1993]. J.E. Sahetapy criticises this orientation by observing that, if punishment is imposed solely in order to retaliate and to frighten, the objective is not necessarily achieved, because the accused may not develop any sense of guilt or remorse and may instead harbour resentment [Sahetapy, 1979].

The relative theory, or utilitarian theory, developed as a critique of the absolute theory. According to this theory the principal purpose of punishment is not retribution but the creation of order, security, and protection for society through prevention and the guidance of the offender. Koeswadji formulates the principal purposes of punishment as the maintenance of social order, the repair of the loss suffered by society as a consequence of the crime, the improvement of the offender, the incapacitation of the offender, and the prevention of crime [Koeswadji, 1995]. Muladi and Barda Nawawi Arief explain that, according to this theory, punishment is imposed not quia peccatum est, because a person has committed a crime, but ne peccetur, in order that a person shall not commit a crime [Muladi and Arief, 1992]. The characteristics of the theory include the orientation of punishment towards prevention, the treatment of prevention as an instrument for the higher objective of social welfare, and the forward-looking character of punishment.

The integrative theory holds that the purpose of punishment, in addition to retributing the fault of the offender, is also to protect society by realising order. This theory employs both preceding theories as the basis of punishment, on the consideration that each of them possesses weaknesses. The absolute theory tends to prioritise retribution without considering the aspect of justice as a whole, while the relative theory may generate injustice when an offender who has committed a relatively minor offence is punished more severely for the sake of prevention [Koeswadji, 1995]. Roeslan Saleh adds that punishment should also be understood as something that brings harmony and as an educational process intended to render a person acceptable once again within society [Muladi and Arief, 1992].

Measured against these three theories, the examination shows that the termination of prosecution based on restorative justice cannot be justified through the absolute theory, because it eliminates the imposition of punishment altogether even though an offence has been committed and although guilt is not disputed. Conversely, the policy corresponds closely to the purposes formulated within the relative theory, in particular the maintenance of social order, the repair of the loss suffered as a consequence of the crime, and the improvement of the offender, and it corresponds to the integrative theory in so far as it seeks to balance the interest of the offender, the interest of the victim, and the interest of society. The requirement of restitution of the loss operationalises the purpose of repairing the damage, the requirement that the offender be a first offender operationalises the purpose of prevention through selective intervention, and the requirement of the absence of community rejection operationalises the purpose of maintaining social order.

Findings Concerning the Obstacles Encountered in Practice

The examination of legal materials and of the practice reported in the literature identifies four categories of obstacle in the implementation of the termination of prosecution based on restorative justice.

a. Normative obstacles, namely the absence of harmonisation between the Criminal Procedure Code as the applicable law of criminal procedure and Prosecutor's Regulation Number 15 of 2020, which generates uncertainty concerning the binding force of a termination of prosecution based on restorative justice should it be tested through the pretrial mechanism.

b. Institutional obstacles, namely the limited human resources and the limited time available to public prosecutors for facilitating the reconciliation process optimally, given that the process requires an intensive communicative approach towards both the offender and the victim.

c. Social obstacles, namely the concern within the community that the application of restorative justice may create the impression of selective enforcement or may confer privilege upon offenders who possess the economic capacity to provide compensation to victims.

d. Supervisory obstacles, namely the sub-optimal character of the external supervisory mechanism over the implementation of the termination of prosecution based on restorative justice, because the entire process remains internal to the Prosecutor's Office.

D. Discussion

The findings presented above raise four analytical questions that are examined in turn in this section: the validity of the legal basis of the policy within the hierarchy of norms; the relationship between the principle of legality and the principle of opportunity; the accountability of prosecutorial discretion and the protection of the parties; and the coherence of the policy with the theories and purposes of punishment and with the direction of national penal reform.

The Position of the Prosecutor's Regulation within the Hierarchy of Legal Norms

From a juridical perspective, the existence of Prosecutor's Regulation Number 15 of 2020 as the foundation of the termination of prosecution based on restorative justice raises a fundamental question concerning its position within the hierarchy of legislation in Indonesia. The Prosecutor's Regulation is a policy regulation (beleidsregel) which is hierarchically not included among the types and hierarchy of legislation regulated in Law Number 12 of 2011 concerning the Formation of Legislation. Its validity nevertheless derives from the attributive authority conferred by Article 30B of the Law on the Prosecutor's Office, so that juridically it retains binding force as an internal guideline for the exercise of prosecutorial authority.

The doctrinal position of policy regulations must, however, be stated with precision. A policy regulation is an instrument through which an administrative organ articulates the manner in which it will exercise a discretionary power that has already been conferred upon it. It does not create new authority; it structures the exercise of existing authority. Its binding force operates primarily inwards, towards the officials within the organ, and only indirectly outwards, through the principles of good governance and, in particular, through the principle of legitimate expectation and the principle of equal treatment. Two consequences follow. First, a policy regulation cannot validly widen the substantive scope of the authority beyond what the enabling statute permits. Second, a citizen cannot ordinarily invoke a policy regulation as the direct source of a subjective right, although the citizen may invoke the administrative principles that oblige the organ to act consistently with its own published policy.

Applied to the present subject, this doctrine yields an ambivalent conclusion. On the one hand, in so far as Prosecutor's Regulation Number 15 of 2020 merely structures a discretion that Article 30B already recognises, it is formally unobjectionable and is indeed desirable, because a structured discretion is more predictable and more reviewable than an unstructured one. On the other hand, the effects that the regulation produces are not confined to the internal sphere of the institution. The termination of prosecution extinguishes the state's claim against a person, terminates the deprivation of that person's liberty, and simultaneously extinguishes the victim's expectation of an adjudicated determination of the offence. Effects of that magnitude are, in the ordinary architecture of criminal procedure, reserved to instruments of statutory rank. The regulation therefore performs, in substance, a function that its form is not designed to carry. This mismatch between the substantive weight of the effect and the formal rank of the instrument constitutes the central juridical weakness of the current arrangement, and it is not cured by the fact that the practice is beneficial.

The Principle of Legality and the Principle of Opportunity in Prosecution

The Constitutional Court has, in several of its decisions, affirmed that the principle of opportunity held by the Attorney General constitutes a legitimate constitutional authority in so far as it is exercised in the public interest and does not violate human rights. On the basis of that consideration, the application of restorative justice in the termination of prosecution may be regarded as a concretisation of the principle of opportunity that already possesses a constitutional umbrella, so that it does not conflict with the principle of legality adopted in the Criminal Procedure Code in so far as its application remains subject to the requirements and limitations prescribed.

That conclusion nevertheless requires an important qualification, which constitutes one of the principal analytical contributions of this study. The authority contemplated in Article 30B is the authority of the Attorney General to set aside a case in the public interest, an authority that is personal to the Attorney General, exercised exceptionally, and traditionally subject to the requirement of consultation with other state institutions. The authority exercised in the practice of restorative termination is different in at least three respects. It is exercised at the level of the public prosecutor handling the case, subject to confirmation by a superior; it is exercised routinely rather than exceptionally, as the figure of more than two thousand cases in a single year demonstrates; and its determining consideration is not the public interest in the constitutional sense but the private reconciliation of the parties together with the absence of community objection. The relationship between Article 30B and the practice is therefore one of analogy rather than of direct derivation. The provision furnishes a principled recognition that Indonesian prosecution is not governed by an absolute principle of legality, but it does not by itself supply the specific competence exercised in restorative termination.

A second problem concerns the Criminal Procedure Code. Article 140 paragraph (2) letter a recognises the termination of prosecution only on the grounds of insufficient evidence, the absence of a criminal offence, or the closure of the case by operation of law. Restorative termination fits none of these three grounds: the evidence is by hypothesis sufficient, since sufficiency of evidence is itself a formal requirement of the restorative procedure; the conduct is by hypothesis a criminal offence; and no statutory ground of extinction such as prescription, death of the suspect, or ne bis in idem is present. The consequence is that the termination of prosecution based on restorative justice does not possess a legal basis at the level of a statute and rests instead upon an internal policy regulation of the Prosecutor's

Office, so that it is vulnerable to objections of legality if assessed strictly against the principle of formal legality in criminal procedural law.

The practical significance of that vulnerability is best appreciated through the institution of pretrial review. The Criminal Procedure Code confers upon the pretrial judge the competence to examine the validity of a termination of prosecution at the request of an interested party. A pretrial judge confronted with a restorative termination is therefore placed in a position of doctrinal difficulty: the ground relied upon by the prosecutor is not among the grounds recognised by the statute under which the judge exercises jurisdiction. The judge may respond in one of two ways. The judge may adopt a formalistic construction and declare the termination invalid because it rests upon a ground unknown to the statute, an outcome that would destabilise thousands of concluded settlements and would defeat the reasonable expectations of offenders and victims who have performed their obligations under a settlement agreement. Alternatively, the judge may adopt a teleological construction, treating the restorative ground as a species of the closure of the case by operation of law, an outcome that is doctrinally strained because the closure contemplated in that provision refers to statutory grounds of extinction rather than to a discretionary determination by the prosecuting authority. Neither route is satisfactory. The existence of that dilemma is itself the strongest argument for statutory regulation, since it demonstrates that the deficiency is not merely theoretical but productive of concrete adjudicative uncertainty.

Discretion, Disparity, and the Accountability of the Exercise of Authority

The findings show that the criteria that most decisively determine the outcome of a proposal are the sincerity of the settlement agreement and the prosecutor's assessment of the good faith of the offender. Both are evaluative criteria, and neither is accompanied by an operational parameter within the regulation. The classification presented in Table 2 makes this asymmetry visible: the objective requirements, such as the statutory threat of punishment and the status of first offender, can be verified from documents and are unlikely to generate disparity, whereas the evaluative requirements, such as the absence of community unrest and the existence of good faith, depend upon appreciation and are therefore the locus at which disparity is generated.

Three risks follow from the concentration of decisional weight upon evaluative criteria. The first is geographic disparity. In the absence of uniform parameters for assessing good faith and the quality of the settlement agreement, materially identical cases may be resolved differently in different districts, which is difficult to reconcile with the principle of equality before the law affirmed in Article 27 paragraph (1) of the 1945 Constitution. The second is the risk of substitution of economic capacity for moral accountability. Romli Atmasasmita warns that the application of restorative justice without adequate supervision risks becoming an instrument through which parties possessing greater economic power escape criminal responsibility [Atmasasmita, 2010]. Because the restitution of loss is a requirement, an offender who is able to pay is structurally better positioned than an offender who is not, even where the culpability of the two is identical. The finding that the community perceives a risk of selective enforcement is therefore not a misperception to be corrected through communication; it is an accurate perception of a structural feature of the instrument, which can be mitigated only through design, for instance by admitting non-monetary forms of reparation such as labour, formal apology, or community service. The third is the risk of the transactional degeneration of the process, in which the reconciliation session becomes a negotiation over price rather than an encounter in the sense intended by Van Ness and Strong.

Against these risks the regulation offers only internal control. The case exposition mechanism is valuable and should not be undervalued, since it introduces a second and a third pair of eyes into a decision that would otherwise rest with a single official. Its limits are, however, structural. The reviewing officials belong to the same institution and share its institutional interest in efficient case disposition; the review is conducted on the basis of the file assembled by the proposing prosecutor; and the process is not open to the public. Internal control of that character is capable of detecting manifest irregularity but is poorly suited to detecting systematic bias, precisely because systematic bias is invisible from within the system that produces it. The provisions on monitoring and evaluation in Articles 12 and 13 of Prosecutor's Regulation Number 15 of 2020 partially address the problem of post-decision compliance, but they do not address the problem of the quality of the decision itself.

Procedural Justice for the Victim and the Absence of an Objection Mechanism

The absence of a mechanism of objection or of legal recourse for a victim or an offender who does not agree with the outcome of the settlement agreement has the potential to generate procedural injustice, particularly in circumstances in which there is an imbalance in the bargaining position of the parties. This deficiency merits separate treatment because it goes to the internal coherence of the restorative idea itself rather than merely to the external control of prosecutorial power.

Restorative justice, in Zehr's formulation, is organised around the harms and needs of those affected, the obligations that arise from the causing of harm, and the engagement of the stakeholders in the process through which those obligations are determined [Zehr, 1990]. Van Ness and Strong express the same commitments through the values of encounter, reparation, and reintegration. Each of these commitments presupposes that participation is genuine, which in turn presupposes that participation is voluntary and informed. The structural difficulty is that the victim participates in a process convened and facilitated by the authority that will also decide the outcome, at a moment when the victim ordinarily lacks legal representation, and in circumstances where the alternative to agreement is a lengthy trial with an uncertain result and no assurance of compensation. Consent obtained under such conditions may be formally free while being substantively constrained. Where the victim subsequently concludes that the agreement was improvident, or where the offender fails to perform the agreed reparation after the decree has been issued, the regulation provides no avenue through which the determination may be revisited.

This deficiency also affects the offender, although the point is less frequently noticed. The offender who participates in a restorative process is required in substance to acknowledge responsibility and to provide reparation, without the benefit of the procedural guarantees that attach to a criminal trial and without any judicial determination of guilt. Where the process does not culminate in a termination of prosecution, the acknowledgment and the reparation already furnished may prejudice the position of the offender in the subsequent proceedings. The absence of an explicit rule insulating statements made during the reconciliation process from later use in the prosecution is therefore a further gap in the present design.

Coherence with the Theories and Purposes of Punishment

The findings recorded in the preceding section indicate that the termination of prosecution based on restorative justice cannot be justified through the absolute theory but corresponds closely to the relative and integrative theories. That conclusion requires elaboration, because the appeal to the relative theory is frequently made too quickly.

Under the absolute theory the justification of punishment lies in the crime itself, and the demand of justice is satisfied only by the imposition of a penalty proportionate to the fault. Restorative termination is irreconcilable with that position in its strict form. It is, however, worth observing that the absolute theory in its refined versions is concerned with censure and with the vindication of the norm rather than with suffering as such. Understood in that manner, a process in which the offender acknowledges the wrong, confronts the person harmed, and repairs the damage caused is not the abandonment of censure but its expression through a different medium. The tension with the absolute theory is thus real but narrower than it first appears: what is abandoned is the state's monopoly over the form in which censure is expressed, not censure itself.

Under the relative theory the justification of punishment lies in its consequences, and here the correspondence is direct. Of the five purposes formulated by Koeswadji, restorative termination advances at least three. The maintenance of social order is advanced through the requirement of the absence of community rejection and through the restoration of the relationship between the parties. The repair of the loss caused by the crime is advanced through the requirement of restitution, and is advanced more effectively than through conviction, since a custodial sentence transfers no resources to the victim. The improvement of the offender is advanced through the avoidance of the criminogenic effects of imprisonment and of the stigma of a conviction, particularly for a first offender, which is precisely the category to which the instrument is confined. The purpose of general prevention presents the most serious difficulty for the policy, since the prospect of settlement may in principle attenuate the deterrent force of the criminal prohibition. Three features of the design mitigate that objection: the confinement of the instrument to offences threatened with imprisonment of not more than five years, the exclusion of repeat offenders, and the fact that the offender must actually bear the cost of reparation, so that the offence remains costly even though it does not result in conviction.

The integrative theory offers the most adequate framework for evaluating the policy, because it accepts that the purposes of punishment are plural and require balancing rather than ranking. Roeslan Saleh's observation that punishment should bring harmony and should operate as an educational process directed at the reacceptance of the offender within society [Muladi and Arief, 1992] describes the aspiration of restorative settlement with considerable accuracy. On that view, restorative termination is not an exception to the system of punishment but an instrument within it, appropriate where the balance of the plural purposes is better served by reparation than by conviction, and inappropriate where it is not, which is precisely the judgment that the requirements in Article 5 are designed to structure.

This assessment is reinforced by the direction of national penal reform. Law Number 1 of 2023 concerning the Criminal Code articulates the purposes of punishment expressly, including the prevention of the commission of criminal offences, the rehabilitation of the convicted person, the resolution of conflict arising from the criminal offence, the restoration of a state of balance, and the creation of a sense of peace within society, while at the same time affirming that punishment is not intended to degrade human dignity. The inclusion of conflict resolution and the restoration of balance among the statutory purposes of punishment is significant for the present subject, because it indicates that the restorative orientation has been received into the national penal policy at the level of law and is no longer confined to the internal policy of a single institution. The termination of prosecution based on restorative justice is therefore consistent with the direction of Indonesian criminal law reform, even though the procedural instrument through which it is presently effected has not yet been raised to that level.

Implications and the Direction of Reform

Notwithstanding the problems identified above, the termination of prosecution based on restorative justice continues to make a positive contribution to the reduction of case congestion in the courts and provides a space for the restoration of the social relationship between the offender and the victim that cannot be obtained through the formal judicial process. The appropriate conclusion is therefore not that the practice should be discontinued but that its normative foundation should be strengthened.

The implication of the four categories of obstacle identified in the findings is the need to strengthen the legal foundation of the termination of prosecution based on restorative justice through regulation in the new draft Law on Criminal Procedure, so that the authority is not derived solely from an internal policy regulation of the Prosecutor's Office but possesses a stronger legal umbrella that binds externally. Statutory regulation would resolve the difficulty of pretrial review described above, since the ground of termination would be recognised by the same statute that confers jurisdiction upon the pretrial judge. It would also permit the legislature, rather than the prosecuting authority alone, to determine the categories of offence in which restorative settlement is admissible, which is a question of penal policy properly reserved to the legislature.

Beyond statutory anchoring, three further measures follow from the analysis. First, the Attorney General's Office should formulate measurable and uniform parameters for assessing good faith and the quality of the settlement agreement, including the express recognition of non-monetary forms of reparation, in order to reduce disparity between regions and to attenuate the structural advantage enjoyed by offenders of greater economic means. Second, an external supervisory mechanism involving the Prosecutorial Commission or another independent supervisory body should be established, together with the periodic publication of aggregated data concerning the offences, the profile of the parties, and the forms of reparation involved in terminated cases, since transparency of that kind is the precondition of any meaningful external control. Third, the capacity of public prosecutors should be strengthened through training in penal mediation, so that the facilitation of reconciliation between offender and victim is conducted in a manner that is professional, fair, and balanced towards both parties, and so that the requirement of voluntariness is substantive rather than formal.

E. Conclusion

This study has examined the termination of prosecution based on restorative justice in the Indonesian criminal justice system from three angles, and reaches three conclusions. First, with respect to the regulation of the institution, the authority to terminate prosecution on the basis of restorative justice originates from the principle of opportunity affirmed in Article 30B of Law Number 11 of 2021 concerning the Prosecutor's Office and is technically implemented through Prosecutor's Regulation Number 15 of 2020 and Attorney General's Regulation Number 8 of 2021. That regulation constitutes a form of the paradigmatic shift from a retributive to a restorative approach that emphasises the restoration of the relationship among the offender, the victim, and society. Its position within the hierarchy of legislation nevertheless remains that of an internal policy regulation which does not yet possess an explicit legal basis at the level of a statute, so that there exists an asymmetry between the substantive weight of the effects that the instrument produces and the formal rank of the instrument that produces them.

Second, with respect to the position and authority of the Prosecutor's Office, the institution exercises the authority in its capacity as dominus litis through a tiered mechanism extending from the examination of the case by the public prosecutor, through the facilitation of the settlement agreement and the case exposition at the level of the High Prosecutor's Office and the Attorney General's Office, to the issuance of the decree of termination of prosecution. The exercise of that authority is bounded by cumulative formal and material requirements under Article 5 of Prosecutor's Regulation Number 15 of 2020, namely the absence of public unrest, a relatively light statutory threat of punishment, the status of the suspect as a first offender, the restitution of the loss, and a settlement agreement concluded in good faith. Because the decisive requirements are evaluative rather than objective in character, and because the control mechanism is entirely internal, the arrangement carries a structural risk of disparity between regions and of the substitution of economic capacity for moral accountability. Third, with respect to conformity with the theories and purposes of punishment, the termination of prosecution based on restorative justice cannot be justified through the absolute theory in its strict form, but corresponds closely to the relative theory and is most adequately explained through the integrative theory, which accepts the plurality of the purposes of punishment and requires their balancing. That conclusion is reinforced by Law Number 1 of 2023 concerning the Criminal Code, which includes the resolution of conflict and the restoration of a state of balance among the statutory purposes of punishment. The policy is accordingly consistent with the direction of Indonesian criminal law reform, and the deficiency identified in this study is one of legal form rather than of penal substance.

Taken together, the three conclusions indicate that the termination of prosecution based on restorative justice is substantively justified yet formally fragile. Its consolidation requires the explicit regulation of the institution within the forthcoming Law on Criminal Procedure, the formulation of uniform and measurable parameters for the evaluative requirements, the establishment of a mechanism of objection for the parties concerned together with external supervision involving an independent body, and the strengthening of the capacity of public prosecutors in penal mediation. Further research is recommended, particularly empirical research concerning the perceived justice of victims following the termination of prosecution based on restorative justice, in order to complement the normative juridical study conducted here.

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