Research Article

Implementation of Local Wisdom in Stopping Prosecutions Based on Restorative Justice

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Abstract.
The Constitution of the Republic of Indonesia guarantees certainty, order, and legal protection for every citizen. Crime Statistics in 2021 showed that the number of criminal incidents in 2020 was 247,218 incidents. During the period from 2011 to 2018, theft was the most common crime in villages/the rural community in Indonesia, reaching more than 36-45% of all crimes. The term ”law blunts upwards, sharply downwards” is still often heard as a criticism of the government from justice seekers, especially regarding law enforcement against crimes of a minor or minor nature, such as theft in rural communities. The research method used is normative juridical with a historical approach, a case approach, and a conceptual approach, with a qualitative juridical analysis of legal materials. The results of this study argue that the adoption of the value of local wisdom can be beneficial for the renewal of Indonesian criminal law. The form of renewal is the formation of criminal procedural law to stop the prosecution of light cases. The basis for its implementation can use the theoretical basis of restorative justice, the principle of *ultimum remedium,* and the principle of fast, simple, and low-cost justice. The form of implementation of local wisdom in the termination of prosecutions is community reparation boards and citizen panels.

Keywords: restorative justice, local wisdom, criminal

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1. Introduction

The current condition (different perception on Restorative Justice among law enforcement officials) hinders the implementation of Restorative Justice in Indonesia, especially regarding the types of criminal acts and criminal acts penalty that can be resolved through Restorative Justice, so the writer feels a research about the implementation of local wisdom in Restorative Justice is needed, with hope this research can contribute to improving the implementation of Restorative Justice in Indonesia.

The thinking and patience of society in dealing with crimes and their perpetrators is a measure of the nation’s civilization so that the rationality and neutrality of the regulation of the rights of suspects, even convicts, in the criminal justice system is a mirror of the life of wisdom in society (1). So Winston Churchill stated in his speech. The founders of

Indonesia have vowed to declare that the State of the Republic of Indonesia is a state of law in the current situation. This is based on Pancasila and the Constitution. According to the Republic of Indonesia's 1945 Constitution, the notion of the rule of law exists to provide each individual with clarity, order, and legal protection (2). The state is to be regarded as a legal idea, that is, the state of law, and law is understood and developed as a coherent system (3).

The law enforcement process in Indonesia that has been implemented so far is still far from what the Indonesian nation aspires to do based on the goals and principles of the state of law. This is evidenced by the high number of crimes that occur in Indonesia. Based on data obtained from the Journal of Criminal Statistics Publications in 2021, the total number of crime (total crime) incidents in 2020 was 247,218 incidents.

During the 2020 period, the crime rate indicator was 94, with a crime clock of 00.02'07" (2 minutes 07 seconds). Survey data illustrates that the percentage of the population who were victims of crime in 2020 was 0.78%. At the police report rate, the percentage of Indonesians who experience crimes and then report them to the police is 23.46%, a slight increase when compared to 2019 (22.19%). Based on village potential data collection, during the period 2011-2018, the type of theft incident is the most common crime in villages/the rural community in Indonesia, the number reaches more than 36-45% of all villages/ the rural community (4).

The data is a picture of the reality that occurs today, the high rate of crime that occurs is still dominated by crimes that are mild in nature. Light in the sense that it can be resolved by family deliberation and does not interfere with social conditions in society. For example, in theft cases, not all thefts have to be resolved through court mechanisms.

Various case examples can be used as references such as the case of Grandma Minah who stole three cocoa fruits (5), Comara Saeful a father who stole a cellphone for his son's online school (6), (ARM) the man who was desperate to steal the boat engine for the treatment of his mother and many others. Theft cases where the perpetrator of the crime is a subject with a middle to lower economic level. With various backgrounds of economic issues and needs, they are "forced" to commit despicable acts.

Their actions have fulfilled the formulation of the criminal act article in the context of proving the criminal law. By no means justifying the actions of the perpetrators, but it must be seen the big picture of these cases, is it worth such a case to be put forward in court? such a matter should be resolved in a familial manner.

Our consciences are put to the test in such a situation on the part of the victim, the offender, and all parties concerned, including law enforcement officers. Even today, the phrase "law is blunt upwards, sharp downwards" is frequently used, particularly when

discussing Indonesian law enforcement. Various law enforcement agencies, including the Indonesian Police, the Indonesian Prosecutor's Office, and the Supreme Court of the Republic of Indonesia, are vying with one another to develop new strategies and establish new regulations to address legal problems from a variety of angles. One of them is through implementing a restorative justice strategy at various phases of the Indonesian criminal justice system.

Responding to the dynamics of legal developments and the legal needs of the community in question, at the prosecution stage, the Prosecutor's Office of the Republic of Indonesia as a *dominus litis*, a government institution that exercises state power in the field of prosecution, stipulates the Indonesian Prosecutor's Regulation Number: 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (PERJA 15 Tahun 2020).

PERJA 15 of 2020 although it does not yet have a strong legal basis because there is no Indonesian criminal law that provides an opportunity for prosecutors to stop prosecutions considering the mild nature of a criminal act and the agreement of the victim and perpetrator, the community collectively gives positive appreciation. Therefore, the basis for the legitimacy of the implementation of PERJA 15 of 2020 is the support of the interests of the wider community and the values of local wisdom of the Indonesian people, there is no basis for juridical legitimacy.

The theoretical basis for the implementation of PERJA 15 of 2020 is the theory of restorative justice. Restorative justice is a theory that is the basis for establishing a mechanism for resolving criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing recovery back to the original situation, and not retaliation Restorative justice is an effort to achieve justice for minor general criminal cases and cases that do not harm the public, in the hope of being able to provide a remedies based on justice.

By balancing legal certainty (rechtmatigheid) and expediency (doelmatigheid) in the exercise of prosecution authority based on law and conscience, restorative justice-based prosecutions are terminated in order to satisfy the community's sense of justice. Indonesia is a country of law, which has the effect that all parts of society, including nation and state, must be based on and subject to local customs and legal standards that are applicable in Indonesia. Every effort to address issues affecting individuals, society, and the state must make the law the commander in chief. The writing of this paper was made in the hope of being able to add references and clarify the implementation of the value of local wisdom for the cessation of prosecution based on restorative justice in Indonesia.

Based on the problems that have been stated above, the author focuses in writing is the theoretical basis for the implementation of the value of local wisdom in the criminal justice system and the form of implementation of local wisdom in stopping prosecutions based on restorative justice.

2. Method

The type of research used in writing is normative juridical research (7), that is, the research of the law of literature. A legal research method is carried out by researching library materials or what is called secondary materials, in the form of positive laws and their implementation. Guided by existing regulations to analyze and formulate legal symptoms that arise, then related to research legal issues (8). The type of legal material used is primary legal material, it is a binding legal material (8), in the form of regulations regarding restorative justice regulated in the Prosecutor's Office of the Republic of Indonesia based on PERJA 15 of 2020, secondary legal materials in the form of circulars and official memorandums related to restorative justice, and tertiary legal materials in the form of journals, books, dictionaries, encyclopedias, cumulative indices, both in the form of print and electronic media (9). The technique of collecting legal materials carried out is by conducting library research studies both private and public, including archives, official data of government agencies, and other data such as supreme court jurisprudence (7).

3. Results and Discussion

3.1. Theoretical Basis for the Implementation of Local Wisdom in the Criminal Justice System

3.1.1. Ultimum Remedium Principle

The imposition of sanctions in criminal law is an effort to explicate the perpetrator, on the other hand as a protector of legal interests (individuals, society, and the state). Criminal law is interpreted as a last resort *(ultimum remedium)* that is only carried out, if various other law enforcement efforts are not successfully carried out.

The term *ultimum remedium* was used by the Dutch Minister of Justice to answer questions from an MP named Mackay in the context of discussing the draft Criminal Code, among others, saying the following (10) :

The principle is that those who can be convicted are those who create ”onrecht” (unlawful acts). It is a *conditio sine qua-non*. Second, it is that the condition to be added is that the action against the law in experience cannot be suppressed in any other way. The criminal must still be a last resort Basically against every criminal threat, there are objections. Any reasonable human being can also understand it even without explanation. That does not mean that the conviction should be abandoned, but one must make judgments about its advantages and disadvantages and must keep it from becoming a more disease-aggravating remedy.

According to J. F. Nijboer, the benefits that can be felt by the Dutch state, which applies criminal law as ultimum remedium, are as follows (11) :

1. There are fewer cases entering the criminal justice system.
2. Decreased frequency of imprisonment use
3. The shorter period of imprisonment, reflects the existence of different sentencing policies or different practices from other countries regarding the release of convicts before the end of the sentence period.

In order to get these benefits, in the context of Indonesianness, the application of local wisdom of the community in Indonesian regions in the form of customary law is also relevant to the application of the principle of ultimum remedium. The use of local wisdom first in finding solutions to legal problems in the community can reduce the use of criminal law for all problems in society, so as to prevent excessive use of criminal law.

The weakness of applying criminal law when used excessively is that the more cases burden the criminal justice system, the greater the burden on the state budget to implement the criminal justice system, and result in an increase in negative stigmatization of minor offenders because the criminal justice system has an open system.

3.1.2. Restorative Justice Theory

The idea of restorative justice with its various implementation models can be seen as an appropriate option to be developed in Indonesia as a solution to the weakness of the criminal justice system, which has an open system because of the strong influence of society so as to produce negative stigma and the end result is to threaten the success of the criminal justice system’s own goals. According to Topo Santoso’s evaluation (12), the restorative justice idea excels in terms of the absence of such stigmatization.

In addition to the advantages of this aspect of stigmatization, according to John Braithwaite (13), the reason why the concept of restorative justice and its programs

were successful in the 1990s across a number of nations was because the mechanism it was based on was better able than the current criminal justice system to repair harm and meet the expectations of victims, offenders, and society. After the fall of Rome, the concept of restorative justice was also accepted in Europe, India, and by followers of ancient Buddhist, Taoist, and Confucian traditions in North Asia. The concept of restorative justice is a broad development of human thought in the traditions of justice from ancient Arabia, Greece, and Roman civilizations that accepted a restorative approach even to the crime of murder (13).

According to John Braithwaite, dramatic change is necessary for restorative justice to function effectively as a political practice or as an intellectual tradition. According to this radical viewpoint, restorative justice is a means of reforming not only the criminal justice system but also the entire legal system, as well as our family and work lives and political practices. The way we approach issues of global justice is evolving in light of this holistic perspective (14).

Restorative justice is about the struggle against injustice in the most restorative way we can. So it is clear that the target is to reduce injustice. He also disagrees with many experts who accept this form of retribution as an acceptable concept in restorative justice. He stated that he agreed with those who saw condemnation as the way in which our children were most concerned with evil or that our nation did not agree with (14).

The understanding and limitations of the concept of restorative justice conveyed by John Braithwaite are very broad, when compared to the understanding and limitations of the scope of the concept of restorative justice conveyed by Lawrence W. Sherman and Heather Strang explained that (15) :

Restorative justice is a way of thinking about what is best for the many connections among crime victims, their offenders and the criminal justice process. Restorative justice advocates suggest that conventional assumptions about these connections may be wrong : that victims should be at the centre rather than excluded from the process, that victims and offenders are not natural enemies, that victims are not primarily retributive in their view of justice, that prisons is not necessarily the best way to prevent repeat crime.

Restorative justice, according to George Ritzer, is a way of thinking that addresses the needs of the community and victim involvement, which are perceived as being excluded from the mechanisms that operate in the current criminal justice system, as a response to the development of the criminal justice system. On the other side, police

enforcement and other professionals can employ restorative justice as a fresh way of thinking when responding to criminal activity (16).

Restorative justice restores conflict to the most impacted parties—victims, perpetrators, and their ”community interests”—and prioritizes their interests, according to Allison Morris and Warren Young (17). Instead of solely giving the offender formal justice in the form of criminal sanctions, when the victim receives no justice, restorative justice emphasizes human rights and the necessity to acknowledge the impact of social injustice and substantive injustice in order to return them.

The application of various criminal case settlement programs with a restorative justice theory approach by returning conflicts to affected parties, that are victims, perpetrators, and the community also conformity with the basic thinking of fast, simple, and low-cost justice.

3.1.3. Principles of Fast, Simple, and Low Cost Justice

The principle of quick, easy, and inexpensive justice needs to be further affirmed in the Indonesian criminal justice system in order to strengthen the mechanism of justice administration. The idea of quick, easy, and inexpensive criminal justice is a component of an endeavor to uphold human rights, particularly through avoiding protracted detentions for a judge’s decision. The word ”immediately” is frequently used to convey the presence of a quick judiciary in Law Number 8 of 1981 about the Criminal Procedure Law (KUHAP) (18).

This principle has been formulated in Article 4 paragraph (2) of Law Number 14 of 1970 concerning the Principles of Judicial Power which states that the implementation of law enforcement in Indonesia must be in accordance with the principle of fast, simple, and low-cost. Although Law Number 14 of 1970 concerning the Principles of Judicial Power is now invalid, the principle of fast, simple, and low-cost justice is still included in the new law and in the same article position, that is Article 4 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power which states: ”The judiciary is done simply, quickly, and at a low cost”. In the explanation, it is stated that this provision is intended to meet the expectations of seekers of justice, and what is meant by ”simple” is that the examination and settlement of cases is carried out with efficient and effective events, while what is meant by ”light costs” is the cost of the case that can be shouldered by the people. Nevertheless, in the examination and settlement of cases does not sacrifice thoroughness in the search for truth and justice.

As stated in the Criminal Procedure Code's General Explanation section, the value of swift, uncomplicated, and inexpensive justice has also been acknowledged as one that the code must uphold. Despite being positively stated in Law Number 14 of 1970, in practice it reveals an unrestorable reality because, as of 1981, Johanes Badar had been held for nine years without having his judicial process completed. Ultimately, the Prosecutor's Office and the Court exchanged accusations before washing their hands (19).

This principle is very important for the protection of the human rights of citizens who are suspects or defendants of a criminal act so that there is no misery, a sense of protracted uncertainty due to the length of the evidentiary process for the allegations or charges against him. Moreover, the allegations or charges are for criminal acts of a minor nature or criminal acts that cause minor losses.

According to this explanation, the application of local wisdom in resolving disputes between offenders, victims, and the community has a justification for goals that are in line with the principles of quick, easy, and inexpensive justice because it can provide protection of the human rights of citizens who are suspects or defendants of a criminal act, so that there is no suffering or a feeling of lingering uncertainty caused by the length of the evidentiary process. Additionally, the application of local wisdom in settling disputes between offenders, victims, and communities is equally pertinent to the notion of ultimum remedium and can be carried out utilizing the restorative justice framework.

3.2. Forms of Local Wisdom in Stopping Prosecutions based on Restorative Justice

Local wisdom consists of two syllables, that is wisdom and local. In the English-Indonesian Dictionary (John M. Echols and Hassan Syadily), local means local, while wisdom equals wisdom. In general, local wisdom can be understood as local ideas that are wise, full of wisdom, and of good value, which are embedded and followed by members of the community (20). Forms of local wisdom according to Prof. Nyoman Sirtha can be in the form of values, norms, ethics, beliefs, customs, customary laws and special rules (21).

Local wisdom has importance since it is a concept that is constantly evolving and growing in the collective consciousness of the community. serves to control all aspects of community life, from the profane to those connected to religious life. Language, art, religion, and legal advancements are only a few examples of the archipelago's cultural

diversity. He will continually be reinforced for the better if he views local knowledge as a sort of culture.

In the context and scope of human relations, individual and group relationships can also influence cultural change. One thing is inevitable developments and changes will always occur. Among anthropologists there are three patterns that are considered the most important with regard to the problem of cultural change: evolution, diffusion, and acculturation. The cornerstone of all this is invention or innovation (22).

Based on the dynamic nature of the value of local wisdom for the benefit of humans, it is necessary to analyze and update strategies for Indonesian criminal law to be able to adopt the value of local wisdom as the basis for renewal. The renewal of Indonesian criminal law must be directed to answer the needs of the community in the form of a settlement of criminal cases outside the court. So far, the settlement of criminal cases outside the court has been applied based on the theory of restorative justice as adopted in PERJA No.15 of 2020 which has received very positive appreciation from various circles of society.

3.2.1. Analysis of Criminal Case Settlement based on Restorative Justice Theory

The idea of the State of Law (rechtsstaat) affirms Indonesia's status as a legal nation. It has the effect of being positioned as the commander-in-chief in the dynamics of statehood and society in the framework of being a state of law. Government is, according to the rule of law, a unified system. The system is built on both the principles of a nation of justice, certainty, and order as well as the values of local wisdom that exist and grow in the community.

Criminal Law as one of the pillars of law in force in Indonesia, aims one of them is to organize order. The Criminal Code (KUHP) as one of the sources of criminal law, defines a criminal act *(strafbaarfeit)* as an event that can be punished. Delict is an act in which the perpetrator can be subject to sanctions or punishment (criminal).

Moeljatno explained that criminal acts are acts committed by a rule of law that are prohibited and threatened with criminality, prohibitions are aimed at actions, namely a situation, an event caused by behavior, while a criminal threat is directed at the person who caused the incident (23).

The imposition of sanctions in criminal law is an effort to explicate the perpetrator, on the other hand as a protector of legal interests (individuals, society, and the state). Criminal law is interpreted as a last resort *(ultimum remedium)* that is only carried out,

if various other law enforcement efforts are unsuccessful. The theoretical basis for the implementation of the principle of ultimum remedium in the criminal justice system is the theory of Restorative justice.

Howard Zehr is a pioneer figure commonly called ”the grandfather of restorative justice” explaining that restorative justice programs are not implemented solely to destroy crimes. The decrease in the crime rate is a side effect of the implementation of restorative justice, but in fact the main purpose of the implementation of restorative justice is because restorative justice is the right thing to do.

Quoting Howard Zehr in his book *The Little Book Of Restorative Justice* (24):

“victims needs should be addressed, offenders should be encouraged to take responsibility, those affected by an offense should be involved in the process, regardless of whether offenders catch on and reduce their offending”.

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 settlement by emphasizing recovery back to the original situation, and not retaliation.

Restorative justice strategies are now implemented in various regions of the world as a solution choice for various types of offenses and crimes in the criminal justice system. Restorative justice is viewed as an attempt to bring justice to minor criminal situations in Indonesia. In the hope of being able to prioritize conscience and Indonesian cultural culture in order to give healing based on justice that is advantageous to society (both for victims, perpetrators, and society).

Today’s evolving law enforcement paradigm has undergone a shift. From the beginning of prioritizing criminal sanctions (sanctions) as a form of effort to achieve justice, little by little there has been a shift that justice can be achieved with various mechanisms and prioritizes recovery from all aspects of law enforcement.

This shift was born not spared from the history of the Identity of the Indonesian nation itself as a nation that prioritizes the values of kinship, mutual cooperation and deliberation. This encourages various law enforcement institutions such as the Indonesian Police, the Indonesian Prosecutor’s Office, and the Supreme Court of the Republic of Indonesia to compete to make various policies that facilitate dispute resolution outside the court, one of which is restorative justice.

Responding to this legal reality, the Police issued a Circular Letter of the Chief of Police of the Republic of Indonesia Number: SE/8/VII/2018 dated July 27, 2018, concerning the Application of Restorative Justice in the Settlement of Criminal Cases. The Prosecutor’s Office established the Prosecutor’s Regulation of the Republic of

Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. And the Supreme Court through the Decree of the Director General of the General Judicial Agency of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.oo/12/2020 dated December 22, 2020, concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

Punishment is only used as a last resort (ultimum remedium) by law enforcement when all other measures have failed to address the issue. Restorative justice emphasizes the necessity of incorporating victims, perpetrators, and the community through methods that operate in the current criminal justice system as a response to the growth of the law enforcement apparatus in criminal justice.

The latest practice of resolving cases based on restorative justice occurred on March 15, 2022, which has been approved by the Young Attorney General for Criminal Justice (Jampidum). The 8 (eight) case files that were stopped by prosecution based on restorative justice are as follows (25):

1. Suspect Wildan Irawan bin Sanid from the Cianjur District Attorney's Office who is suspected of violating Article 480 to 1 of the Criminal Code on Detention;

2. Suspect Jimmy Wedananta Mendrofa bin Bazatulo Mendrofa from the Bandung District Attorney's Office who is suspected of violating Article 351 Paragraph (1) of the Criminal Code on Persecution;

3. Suspect Marwan bin Sahak of the West Pasaman District Attorney's Office who is suspected of violating Article 44 Paragraph (1) jo. Article 5 letter (a) of The Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence or Second Article 351 Paragraph (1) of the Criminal Code concerning Persecution;

4. Suspect Heri Nusantara alias Heri bin Indra from the Rejang Lebong District Attorney's Office who is suspected of violating Article 480 to 1 of the Criminal Code concerning Detention;

5. Suspect Aan Suna bin Suna from the Tarakan District Attorney's Office who is suspected of violating Article 44 Paragraph (1) or Article 44 Paragraph (4) of Ri Law Number 23 of 2004 concerning Elimination of Domestic Violence;

6. Suspect Harwin Avanto bin Joyo from the Tuban District Attorney's Office who is suspected of violating Article 310 Paragraph (1) of Ri Law Number 22 of 2009 concerning Road Traffic and Transportation;

7. Suspect Suyono alias Nothok bin (the late) Semin from the Magetan District Attorney's Office who is suspected of violating Article 351 Paragraph (1) of the Criminal Code on Persecution;

8. Suspect Teguh Wediarto bin Kusyadi from the Bojonegoro District Attorney's Office who is suspected of violating Article 351 Paragraph (1) of the Criminal Code on Persecution;

The settlement of cases based on restorative justice of the eight cases takes into account the aspects of the low nature of the reprehensible nature of the act, the low degree of damage due to the criminal act, and the victim and the perpetrator forgiving each other. The achievement of the awareness of the parties to forgive each other and the perpetrator can be integrated again into society quickly is born from considerations of local wisdom such as the nobleness of the value of marriage ties so that domestic violence cases can also be resolved with the awareness to forgive each other and recommit to knitting more valuable family relationships. Of course, local wisdom in the form of the noble value of marriage ties in Indonesian society is much stronger than in some other countries.

The termination of prosecution for traffic accident cases, detention, and abuse can be done quickly because the parties realize that the damage caused is light and easy to recover so that through deliberative mechanisms and the spirit of mutual respect, the parties can quickly forgive each other and the perpetrators can immediately be integrated again in life in society.

3.2.2. Termination of Prosecution under Restorative Justice

The Republic of Indonesia's Prosecutor's Office is a government agency that carries out other legal authority as well as state power in the area of prosecution. By respecting religious standards, decency, and decency, the Prosecutor's Office was established to realize the certainty of law, law order, justice, and truth based on local law and wisdom living in Indonesia. It is also required to look into the laws, rules, and judicial systems that exist in society.

In line with the vision and mission of the Prosecutor's Office, the Prosecutor's Office as a clean, effective, efficient, transparent, accountable law enforcement agency, is expected to be able to provide excellent service in realizing the rule of law in a professional, proportional and dignified manner based on justice, truth, and the values

of propriety. Carry out their duties independently by upholding human rights in a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

As a government institution that exercises state power in the field of prosecution, it is affirmed that the power of the state is exercised independently. Therefore, the Prosecutor's Office in carrying out its functions, duties, and authorities is independent of the influence of government power and other powers. Furthermore, it is determined that the Attorney General is responsible for prosecutions that are carried out independently for the sake of justice based on law and conscience.

The existing legislation is incomplete in nature. There is no and cannot be a complete legislation as complete as possible and as clear as it is. There is no law that can regulate all activities of human life completely, completely, and clearly. Because the activities of human life are very wide in both types and quantities (26). The birth of various legal systems is dotted with rejecting special events and by linking those events delves into one common feature and shapes it in a system.

The Attorney General has the duty and authority to streamline the law enforcement process provided by the Law by taking into account the principles of fast, simple, and low-cost trial, as well as establishing and formulating policies for the success of prosecutions that are carried out independently for the sake of justice based on law and conscience, including prosecutions using a restorative justice approach implemented in accordance with the provisions of laws and regulations

As a *dominus litis*, the Prosecutor's Office has a central role in terms of law enforcement. To respond to the dynamics of legal developments and the legal needs of the community, the Attorney General established Prosecutorial Regulation Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice.

The settlement of criminal cases by prioritizing restorative justice that emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal need of the community and a mechanism that must be built in the implementation of prosecution authority and renewal of the criminal justice system.

The restorative justice framework can be divided into 4 (four) parts, including:

1. Subjects, objects, categories as well as threats of criminal acts ;

2. The background of the occurrence of the criminal act ;

3. Losses incurred, as well as the cost and benefit of handling cases; and

4. Recovery back to its original state (the existence of peace between the perpetrator and the victim).

The main objectives of restorative justice according to Van Ness (27) is to restore the security of the community of victims and perpetrators who have resolved their conflicts. M. Kay Harris quoted the opinion of Bratihwaite and Strang gave 2 (two) definitions of restorative justice, namely (28) :

1. First, restorative justice is a concept of process. That is to bring together the parties involved in a crime to express the suffering they have endured and determine what to do to restore the situation; and
2. Second, restorative justice is a concept of value. Namely, it contains values that are different from ordinary justice because it focuses on recovery and not punishment.

The requirements for the implementation of the principle of restorative justice as regulated in PERJA 15 of 2020, include:

1. Subject: the perpetrator has committed a criminal act for the first time ;
2. Criminal acts: criminal threats in the form of fines or imprisonment for not more than 5 (five) years; and
3. Loss or object not more than Rp. 2.500.000.- (two million five hundred thousand rupiah).

In addition to the principle requirements mentioned above, there are 3 (three) additional conditions in the implementation of the termination of prosecution based on restorative justice, namely:

1. There is a reinstatement from the perpetrator (example: the existence of compensation) ;
2. There has been a peace agreement between the parties; and
3. Positive response from the community.

And there are exceptions as clearly regulated in PERJA 15 of 2020. Which on such exceptions is based on criteria or circumstances of a casuistic nature which the Public Prosecutor considers with tiered consent.

The prosecutor as the Public Prosecutor in the implementation of restorative justice must have a good understanding of the culture of the local community and interpersonal

skills that uphold local wisdom. Be impartial or neutral in carrying out their duties. Respect the parties and ensure both parties respect each other. Have good verbal skills, be able to communicate and dialogue regarding conflict resolution by considering the needs of the parties. As well as providing qualified implementation facilities in the sense of being safe and in accordance with the aim of carrying out the restorative justice process.

3.2.3. Implementation of Local Wisdom in Stopping Prosecutions based on Restorative Justice

PERJA Number 15 of 2020 is set to coincide with Bhakti Adhyaksa Day on July 21, 2020. Based on the submission of the Attorney General of the Republic of Indonesia Prof. Burhanuddin accompanied by the Head of the Legal Information Center (Kapus Penkum) of the Attorney General's Office Leonard Eben Ezer Simanjuntak, on Friday, December 30, 2021, at the 2021 Year-End Reflection activity of the Indonesian Prosecutor's Office, from 2020 to 2021, it was recorded that the Indonesian Prosecutor's Office had carried out restorative justice on 346 cases of 346 cases (29).

In the context of Indonesian criminal law, the concept of restorative justice or restorative justice is well known, especially in the institution of customary deliberations (criminal and customary civil law). When associated with approaches to restorative justice as described above, the approach that is often used in indigenous law institutions in Indonesia is the community reparation boards and citizens' panel.

It is known as the Village Rembug institution in the Java region, for instance, and it works to address the common delik that arises in the neighborhood. In this case, the culprits, victims, and community deliberate to choose the best response to the previous debates. Of course, the settlement takes into account the victim's experience with the violation as well as the perpetrator's capacity to compensate the victim. Minang Kabau, West Sumatra, is home to institutions like Rembug Desa, often referred to as the KAN Institution or the Nagari Customary Density Institution.

In eastern Indonesia, it can be seen that the process of solving minor crimes through local wisdom (customary law) in the Kajang Customary Area of Bulukumba Regency is by deliberation or *a'borong* (30). Then in Javanese society, it can be seen the mechanism for resolving adultery cases carried out by the people of Padukuhan Trengguno Wetan, Sidorejo Village, Ponjong District, Gunung Kidul Regency at the end of 2013 (31) is through a deliberative mechanism that is carried out by bringing in perpetrators and victims and the surrounding community.

Currently, family approaches are used with community institutions for deliberation in the creation of the completion of small criminal offenses under customary law. Currently, the base continues to categorize infractions as minor crimes using a regulatory approach (32). Additionally, by emphasizing the fulfillment of victim justice through the concepts of equality, partnership, reconciliation, and participation, the restorative justice approach to social conflict resolution actually uses traditional patterns with conflict resolution values that exist in local cultural diversity (33).

The author sees that the mechanism for stopping prosecutions is based on local wisdom that grows and develops in Indonesia, in line with the spirit to optimize the use of restorative justice approaches in the settlement of criminal cases, especially at the prosecution stage. As well as the results of monitoring the implementation of the case settlement program through the termination of prosecutions based on Restorative Justice (Restorative Justice), as regulated in PERJA Number 15 of 2020, positive response results were obtained from the community so as to increase application for settlement of cases through termination of prosecutions based on restorative justice.

In order to follow up on the positive response of the community, the Attorney General has established a policy to establish Restorative Justice Villages (RJ Villages) throughout Indonesia. Through the Young Attorney General for General Crimes, with the issuance of Letter Number: B-475 /E/Es.2/02/2022 concerning the Establishment of Restorative Justice Villages.

The purpose of the establishment of the Restorative Justice Village is as a place for the implementation of deliberations of consensus and peace to solve problems or criminal cases that occur in the community. Which was mediated by the Prosecutor with witnesses from community leaders, religious leaders and local traditional leaders.

With the aim of resolving cases quickly, simply and at low cost, as well as the realization of legal certainty that prioritizes justice that is not only for suspects, victims and their families, but also justice that touches the community, by avoiding negative stigma.

The establishment of Kampung Restorative Justice is not intended to solve all problems that occur in the community, but is limited to criminal law problems that occur in the community in order to eliminate minor cases to be resolved through peace mediated by the Prosecutor.

Based on the author's observation that our legal practice has accepted the settlement of criminal cases outside of trial, but our criminal procedural law has not adopted it.

Therefore, the renewal of criminal law must be directed to accommodate the development of criminal law enforcement practices in the form of resolving criminal cases outside the court.

The author agrees with the concept of the Draft Criminal Code. Article 145 of the Draft Criminal Code states that the prosecution authority falls if:

1. there has been a judgment which has acquired the force of a fixed law,
2. the defendant dies,
3. decade,
4. out-of-process settlements,
5. the maximum penalty of fines paid voluntarily for criminal acts committed is only threatened with a maximum fine of category II,
6. the maximum penalty of fine paid voluntarily for criminal acts committed is only threatened with imprisonment for a maximum of 1 (one) year or a maximum fine of category III,
7. the president grants amnesty or abolition,
8. the prosecution was terminated because the prosecution was handed over to another state under the agreement,
9. a criminal offence of a complaint for which no complaint or complaint is withdrawn, or
10. the imposition of the principle of opportunity by the Attorney General.

Taking into account Article 145 of the Draft Criminal Code, it can be seen that there is a mechanism for resolving criminal cases outside the process, the maximum fine paid voluntarily for criminal acts committed is only threatened with a maximum fine of category II, the maximum fine is paid voluntarily for criminal acts committed is only threatened with imprisonment for a maximum of 1 (one) year or a maximum fine of category III, and the imposition of the principle of opportunity by the Attorney General.

The author also sees the urgency of ratifying the formulation of Article 42 paragraph (2) and paragraph (3) of the R-KUHAP, which has adopted a mechanism for resolving criminal cases outside the court into a concept that will be applied in Indonesia. This mechanism can be applied to criminal acts committed are minor, criminal acts committed are threatened with a maximum imprisonment of 4 (four years), criminal acts committed

are only threatened with fines, the age of the suspect at the time of committing the crime is above 70 (seventy) years, and/or losses have been replaced.

For the author, the provisions in Article 42 paragraph (3) point b, namely criminal acts committed with a maximum imprisonment of 4 (four years) are still too low because the crime of theft with a maximum criminal threat of 5 (five) years cannot be applied to the mechanism of *afdoening buiten* proces. Seeing the characteristics of criminal acts of theft, which are often carried out by those who experience economic difficulties, the mechanism of *afdoening buiten* proces should be applied to criminal acts of theft. Therefore, on humanitarian grounds and protecting the human rights interests of those who are economically incapable, the 4 (four) year limit should be raised to 6 (six) years.

Although the R-KUHP and R-KUHAP have not yet been passed, the termination of prosecution based on restorative justice has been implemented using various local wisdom values such as village rembug forums and nagari customary density institutions. Such local wisdom can be implemented in the criminal justice system with the instrument of building an ”RJ house”.

Some of the cases that have been dismissed from prosecution based on restorative justice are as follows:

1. Suspect Wildan Irawan bin Sanid from the Cianjur District Attorney’s Office who is suspected of violating Article 480 to 1 of the Criminal Code on Pendahan for receiving a pawn of a Honda Beat motorcycle for Rp. 2.2 million. The termination of the prosecution is carried out based on the existence of peace between the victim and the perpetrator, there is a recovery of the situation because the motor is returned to the victim and the low legal knowledge of the perpetrator.

2. Suspect Jimmy Wedananta Mendrofa bin Bazatulo Mendrofa from the Bandung District Attorney’s Office who is suspected of violating Article 351 Paragraph (1) of the Criminal Code on Persecution

3. Suspect Marwan bin Sahak of the West Pasaman District Attorney’s Office who is suspected of violating Article 44 Paragraph (1) jo. Article 5 letter (a) of The Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence or Second Article 351 Paragraph (1) of the Criminal Code concerning Persecution;

4. Suspect Heri Nusantara alias Heri bin Indra from the Rejang Lebong District Attorney’s Office who is suspected of violating Article 480 to 1 of the Criminal Code concerning Detention;

5. Suspect Aan Suna bin Suna from the Tarakan District Attorney's Office who is suspected of violating Article 44 Paragraph (1) or Article 44 Paragraph (4) of Ri Law Number 23 of 2004 concerning Elimination of Domestic Violence;
6. Suspect Harwin Avanto bin Joyo from the Tuban District Attorney's Office who is suspected of violating Article 310 Paragraph (1) of Ri Law Number 22 of 2009 concerning Road Traffic and Transportation;
7. Suspect Suyono alias Nothok bin (alm) Semin from the Magetan District Attorney's Office who is suspected of violating Article 351 Paragraph (1) of the Criminal Code on Persecution;
8. Suspect Teguh Wediarto bin Kusyadi from the Bojonegoro District Attorney's Office who is suspected of violating Article 351 Paragraph (1) of the Criminal Code on Persecution.

According to the Attorney General's Office, restorative justice led to the termination of the prosecution in eight cases where the suspects had committed crimes for the first time or had never been found guilty. the prospect of a fine or 5-year maximum sentence in jail. The culprit has expressed regret and the victim has accepted responsibility in a peace process. The suspect vowed to refrain from doing the same thing again. The peace process is carried out willingly, with discussions aimed at consensus, and free from force, intimidation, and other forms of pressure (34).

Restrictions on termination of prosecutions under Restorative Justice (35) as stipulated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 can be seen in the modus operandi such as the crime of theft crime in the West Sumatra Prosecutor's Decree No:B-/L.3/Es/10/2020, along with the legal consequences of refusing to stop prosecution in Decision No.177/Pid.B/2020/PN. PNN). The restriction on the application of the termination of the prosecution is to maintain the trust of the community so that the quality of the case submitted to be resolved through restorative justice remains in accordance with the ideals of justice, legal certainty, and expediency.

Based on the aforementioned description, a table of the flow of implementation of local wisdom in stopping prosecutions based on restorative justice can be shown as follows:

4. Conclusion

The theoretical basis for the implementation of the value of local wisdom in the criminal justice system is the theory of restorative justice, the principle of *ultimum remedium*,

Table 1

Examples of the Value of Local Wisdom	Examples of Forms of Local Wisdom	Implementation of local wisdom in laws and regulations
The noble value of marriage ties The noble value of family kinship,Nilai luhur gotong royong, The noble value of forgiving each other and helping each other, The noble value of educating children.	Village deliberations, Nagari Customary Density Institute, Forum a'borong in the Kajang Traditional Area of Bulukumba Regency	Law No.11 of 2012 on Juvenile Criminal Justice System. Decree of the Director General of the General Judicial Agency of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.oo/12/2020 dated December 22, 2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice. Regulation of the Prosecutor's Office of the Republic of Indonesia Number: 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice, July 21, 2020. Circular Letter Number: 01/E/Ejp/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice. Letter Number: B-475 /E/Es.2/02/2022 concerning the Establishment of Restorative Justice Villages. Circular Letter of the Chief of Police of the Republic of Indonesia Number: SE/8/VII/2018 dated July 27, 2018 concerning the Application of Restorative Justice in The Settlement of Criminal Cases.

and the principle of fast, simple, and low-cost justice. The form of local wisdom in stopping prosecutions based on restorative justice is the community reparation boards and citizens' panel which in the context of Indonesian society has been known in the form of village rembugs, Nagari Customary Density Institutions, deliberative forums or a'borong in the Kajang Customary Area of Bulukumba Regency, or other forms.

On the noble values of marriage ties, family kinship, mutual cooperation, and forgiveness and helping one another, which can be the key to achieving forgiveness for victims and perpetrators and the community, various forms of the application of local wisdom in the settlement of criminal cases can be built. It can be suggested that the establishment of "RJ houses" in every region of Indonesia be able to support the strengthening of the results of the implementation of local wisdom from the aspect of legal certainty because it involves law enforcement and in a more formal forum so that it has strong juridical legitimacy. This will help to stop prosecutions based on restorative justice.

Conflict of Interest

The authors need to declare that there is no conflict of interest related to the writing or publication of this article.

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