

**AN ANALYSIS OF THE IMPLEMENTATION OF THE PROSECUTOR'S REGULATION
NUMBER 15 OF 2020 CONCERNING TERMINATION OF PROSECUTIONS BASED ON
RESTORATIVE JUSTICE AGAINST THE ABUSIVE CRIMINAL ACT**

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ABSTRACT

The termination of prosecution in Erna Wilis's case with Case Register Number PDM-44.SPEM/Eoh.2/07/2020 at the West Pasaman District Attorney Office, the author analyzes the basic considerations of the Public Prosecutor in implementing Restorative Justice, the suitability of the termination of the prosecution with the Prosecutor's Regulation (PERJA) Number 15 of 2020 concerning the termination of prosecution based on restorative justice and the obstacles faced by the Public Prosecutor. The research uses empirical juridical research methods with analytical descriptive studies using primary and secondary data. From the results of the analysis, it was concluded that the consideration of the Public Prosecutor was to apply Restorative Justice based on Article 14 of the Criminal Procedure Code letter h. Article 140 paragraph (2) letter a of the Criminal Procedure Code and Article 3 paragraph (2) letter e of PERJA Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The termination of prosecution is in accordance with PERJA Number 15 of 2020 substantively and the obstacles faced lie in the suitability of the timing of the termination of prosecution based on restorative justice.

Keywords: *Termination of prosecution, restorative justice, criminal acts.*

INTRODUCTION



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One of the duties and responsibilities of the State towards its people, as stated in Article 28D of the 1945 Constitution is that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. The basic rules of the State (*Staats grund gesetz*) at the practical level are still far from reality.

Legal issues do not always discuss how the law is applied and sanctions are imposed, but moral and ethical issues in making legal decisions should also be considered. Such as the case of "Nenek Minah" who stole three cocoa pods in Banyumas, is an example where the law is considered "blunt up but sharp down."¹ So far, it has been seen that the aspired law (*das sollen*) and what is implemented (*das sein*) in the field are out of sync. Therefore, there are still many legal cases like the one that happened to Minah's grandmother and are often found in the practice of applying the law².

Seeing this reality, the Attorney Office presents the concept of Restorative Justice where law enforcement prioritizes the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not revenge. Law enforcement is not just pursuing legal certainty, applying rigid and exclusive Articles, but what is more important and substantial is how law enforcement is able to produce legal justice that is more substantial and inclusive, not merely legalistic-proceduralistic.³

The restorative principle in this context provides an understanding of the possibility of a shift in the settlement of criminal cases which so far has focused on the rights of suspects, convicts, or criminal actors, but pays attention to the rights of

¹ Ridlo Muhammad, "Belajar Dari Kasus Nenek Minah Pencuri Kakao," 2017, <https://www.liputan6.com/regional/read/3203697/belajar-dari-kasus-nenek-minah-pencuri-kakao>.

² Surya Desismansyah Eka Putra, "Bingkai Keadilan Hukum Pancasila Dalam Perspektif Hukum Dan Relevansinya Dengan Keadilan Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 27, no. 1 (2016). p. 49.

³ RI Kejaksaan, "Laporan Keadilan Restoratif Kejaksaan Republik Indonesia Tahun 2020," 2020.

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victims of criminal acts. This means that it is necessary to bring back legal settlement products that include balanced aspects of justice. In the study of victimology, it offers the rationale for the need for the concept of resolving cases outside the judicial system (non-litigation) with the context of restorative justice, a criminal dispute resolution concept that emphasizes the conditions for creating justice and balance between victims and perpetrators of criminal acts.⁴ The concept of restorative justice can be an important answer for parties to get justice, so that there are opportunities for a criminal case that does not lead to conviction and imprisonment.

This needs to be taken seriously by the stakeholders involved, in line with that, according to John Delaney, a criminal is imposed on a defendant, it is necessary to reintegrate prisoners into society and must be carried out with the stages of a self-realization process, namely a process that pays close attention to experience, values, hopes and aspirations of prisoners⁵.

In general, Prosecutor's Regulation Number 15 of 2020 is a directive official script for prosecutors throughout Indonesia, to take bold steps, to stop prosecutions based on restorative justice, by taking the basis of the authority mandated in Indonesian criminal procedure law, to stop prosecutions. Philosophically, the prosecution of cases is only carried out in the following circumstances:⁶ Can be prosecuted because of sufficient evidence, Worthy of being prosecuted even though there is sufficient evidence and need not be ruled out because it does not concern the interests of the nation and state and/or the interests of the wider community.

⁴ Afthonul Afif, "Pemaafan, Rekonsiliasi Dan Restorative Justice," *Pustaka Pelajar, Yogyakarta*, 2015. p. 341-350.

⁵ KuartPuji Prayitno, "Restorative Justice Untuk Peradilan Di Indonesia (Perspektif Yuridis Filosofis Dalam Penegakan Hukum In Concreto)," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 407–20. P. 408

⁶ Kejaksaan, "Laporan Keadilan Restoratif Kejaksaan Republik Indonesia Tahun 2020." p. 13.

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The public prosecutor in carrying out the termination of prosecution based on restorative justice is based on 3 (three) principal requirements⁷. In addition to fulfilling the terms and conditions above, the termination of prosecution based on restorative justice is carried out by fulfilling other conditions, namely (Article 5 paragraph (6)):⁸

As for the implementation of the Prosecutor's Regulation Number 15 of 2020, the authors get from the data released by the Head of the Indonesian Attorney's Legal Information Center, as follows:⁹

1. Initiation of a Termination of Prosecution Policy with a Restorative Justice Approach.
2. The Indonesian Attorney General's Office has now issued the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, an effort to adjust the paradigm shift that is developing in Indonesian society, from retributive justice to restorative justice.
3. Of course, there are conditions in the implementation of this regulation, including the first time the suspect has committed a criminal act which is punishable by a fine or imprisonment of not more than 5 (five) years and evidence or the value of the case loss is not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiah).
4. The prosecution has carried out 101 cases of termination of prosecution based on Restorative Justice, with details of 97 cases involving individual

⁷ *Ibid*, the suspect has committed a crime for the first time, the threat of a fine or imprisonment is not more than 5 (five) years and the evidence or the value of the case loss is not more than Rp. 2,500,000.00 (two million five hundred rupiah) p. 10.

⁸ Kejaksaan RI, "Peraturan Kejaksaan RI Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif," 2020.

⁹ Kejaksaan RI, "Konferensi Pers Capaian Kinerja 1 (Satu) Tahun Jaksa Agung RI," n.d., <https://www.kejaksaan.go.id/siaranpers.php?idu=0&id=2399>. diakses tanggal 13 November 2020 pukul 12.30 WIB.



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victims and 4 cases involving victims of companies or state institutions spread across 27 provinces and 70 regencies/cities.

The data mentioned above, among 97 cases with individual victims are also cases handled by the Public Prosecutor at the West Pasaman District Attorney. The type of crime handled by the Public Prosecutor is the Crime of Persecution as regulated in Article 351 paragraph (1) of the Criminal Code. The case is that between the perpetrators of the crime and the victims of abuse there is still a family relationship, but because of the disharmonious relationship due to inheritance issues, there was a dispute that led to acts of abuse carried out by ERNA WILIS aka SIEN as the perpetrator against AMRIZAL as the victim. That based on the results of the Visum et Repertum of the Islamic Hospital of Ibnu Sina Simpang Empat Number: 35/AV/IS/V-2020 dated May 15, 2020 against AMRIZAL with the conclusion: "An external examination has been carried out on a male patient aged around fifty-two years, on the results of the examination, it was seen that there were scratches on the left back and bruises on the left shoulder, which prevented him from doing activities caused by the violence of sharp object trauma.

With this case, the author is interested in examining the extent to which the application of PERJA Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is carried out by the Public Prosecutor, what considerations are made by the Public Prosecutor, and what obstacles are experienced in his efforts to implement Restorative Justice. The goal is to measure the extent to which the application of the Indonesian Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is able to provide a sense of justice in the midst of society. Starting from the problems stated above, the writer raises the problem entitled: AN ANALYSIS OF THE IMPLEMENTATION OF THE PROSECUTOR'S REGULATION NUMBER 15 OF 2020 CONCERNING TERMINATION OF PROSECUTIONS BASED ON RESTORATIVE JUSTICE AGAINST THE CRIMINAL ACT OF ABUSE (Case Study on the Name of the Suspect ERNA WILIS aka SIEN With Registration Number: PDM-44/SPEM/Eoh.2/07/2020 at West Pasaman District Attorney).



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METHOD

This research uses empirical juridical research methods, namely field research with several interviews as the main data and library research which sees law as an abstract system of regulations, whose attention is focused on law as a separate subject, regardless of its relationship with matters outside of these regulations.¹⁰ This research consists of primary sources, namely interviews with library materials containing new or up-to-date scientific knowledge. And, secondary sources, namely library materials that contain information about primary materials.¹¹

THEORETICAL REVIEW

1. The Theory of Legal Purpose

The law has a goal to be achieved. And serves as the protection of human interests, the law has a purpose. The purpose of the law is the direction or target to be realized by using the law as a tool in realizing these goals by regulating the order and behavior of the people.

2.

Regarding the theory of legal objectives, there is an interesting table scheme that the author includes, which is as follows: ¹²:

Classic Theory	Ethical Theory	The purpose of law is solely to realize justice
	Utility Theory	The legal purpose is solely to realize utility.
	Legalistic Theory	The purpose of the law is solely to realize legal certainty
Modern Theory	Standard Priority Theory	Legal objectives include: Justice, Expediency and Legal Certainty
	Casuistic Priority	The objectives of the law include justice, benefit, legal certainty, in order of priority, according to the case at hand

¹⁰ Bambang Sunggono, “Metode Penelitian Hukum, Jakarta,” *PT Raja Grafindo Persada*, 2010.

¹¹ Soerjono Soekanto, “Penelitian Hukum Normatif: Suatu Tinjauan Singkat,” 2007.

¹² Achmad Ali, *Achmad Ali, Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence)*, (Jakarta: Prenamedia Group), 2015, p. 294, Jakarta: Prenamedia Group, 2015.

	Theory	and to be solved
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Based on the table above, it is explained the shift in the theory of legal purposes from Classical Theory to Modern Theory that times continue to develop, so that appropriate adjustments are needed to solve problems today. One of the pioneers in Modern Theory, Gustav Rudbuch, in his thesis discusses the ideals of law (idea des recht) which are embodied in the three basic values (Grundwerten) justice, (gerechtigkei), expediency (zwekmaeszgkeit), and legal certainty (rechtsicherheit).¹³ These three basic values are not always in a harmonious relationship with each other but are in conflict with each other.

In order to realize the objectives of the law, Gustav Rudbruch stated that it is necessary to use the priority principle of the three basic values that are the objectives of the law, this is because the reality of legal justice clashes with each other and even contradicts the benefits and legal certainty, and vice versa. Among the three basic values of the purpose of the law, when there is a conflict, the principle of priority used by Gustav Rudbruch must be carried out in the order of Justice, Legal Benefit and Legal Compliance.¹⁴

2. The Theory of The Termination of Prosecution

The termination of prosecution by the public prosecutor is based on Article 140 paragraph (2) of the Criminal Procedure Code. From the provisions of the article, it is broadly divided: (1) reasons for the termination of prosecutions, and (2) procedures for the termination of prosecutions¹⁵. As for the reasons for the termination of prosecution as stated in Article 140 paragraph (2) letter a of the Criminal Procedure Code, there are 3 (three) reasons that form the basis for the termination of

¹³ *Ibid*, p. 292.

¹⁴ Hamzah Andi, "Asas-Asas Hukum Pidana," *Rineka Cipta, Jakarta*, 2008. p. 31.

¹⁵ Daniel Ch M Tampoli, "Penghentian Penuntutan Perkara Pidana Oleh Jaksa Berdasarkan Hukum Acara Pidana," *Lex Privatum* 4, no. 2 (2016). p. 128.

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prosecution, namely:¹⁶ Due to insufficient evidence, the incident was not a criminal act and the case was closed for the sake of the law.

DISCUSSION

1. An Overview of Restorative Justice

James Dignan describes the historical side of restorative justice, that: *“the term restorative justice is usually attributed to Albert Eglash (1977), who sought to differentiate between what he saw as three distinct forms of criminal justice. The first is concerned with “retributive justice”, in which the primary emphasis is on punishing offender for what they have done. The second relates to what he called “distributive justice” in which the primary emphasis is on the rehabilitation of offenders. The third is concerned with “restorative justice”, which he broadly equated with the principle of restitution*¹⁷. So, restorative justice cannot be separated from Albert Eglash who in 1977 divided three categories of criminal justice, namely retributive justice, distributive justice, and restorative justice. In short, the concept of restorative justice was first introduced by Albert Eglash.

Arrangements regarding restorative justice are regulated in Law Number 11 of 2011 concerning Juvenile Justice. This type of settlement of criminal acts focuses on ending a criminal problem with a Win-Win Solution between the victim and the perpetrator through what is called the Diversion process.

According to Eva, restorative justice is a concept of thought that responds to the development of the criminal justice system focused on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system. According to Bagir Manan, in general, the notion of

¹⁶ Susilo Yustinus, et al, *Modul Penuntutan*, Jakarta: Badan Pendidikan dan Pelatihan Kejaksaan Republik Indonesia, 2020, p. 56

¹⁷ Hariman Satria, “Restorative Justice: Paradigma Baru Peradilan Pidana,” *Jurnal Media Hukum* 25, no. 1 (2018): 111–23.



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restorative justice is a reorganization of the criminal system that is more just, both for perpetrators, victims and the society.¹⁸

Various definitions of restorative justice are classified into narrow and broad groups. The narrow definition emphasizes the meaning of the meeting between parties with an interest in the crime and the period after it, while the broad definition emphasizes the values of restorative justice. Then came the definitions that combine the two and one of them was formulated by Van Ness from Canada by stating: "Restorative justice is a theory of justice that prioritizes the recovery of losses due to evil behavior, where the recovery is completed through an inclusive and cooperative process".¹⁹ Even with Tony F. Marshall by stating: "Restorative justice is a process where all parties with an interest in a particular violation meet together to resolve jointly the consequences of the violation for the sake of the future".²⁰

Based on the above definition, it can be formulated that restorative justice is a way to resolve criminal cases involving the community, victims and perpetrators of crimes aimed at achieving justice for all parties, so that it is hoped that the same conditions as before the crime occurred and prevent further crimes. With such an understanding, justice arises for each party, both victims and perpetrators of criminal acts, because basically justice is the ultimate goal of a legal system, which is closely related to the function of the legal system as a means of distributing and maintaining an allocation of values in the society, which is instilled with a general view of truth that refers to justice.²¹

¹⁸ Albert Aries, "Penyelesaian Perkara Pencurian Ringan Dan Restorative Justice," *Varia Peradilan* 247 (2006): p.3.

¹⁹ Gerry Johnstone and Daniel W Van Ness, "The Meaning of Restorative Justice," in *Handbook of Restorative Justice* (Willan, 2013), 27–45.

²⁰ Marlina Marlina and Restorative Justice Sebagai Alternatif Perlindungan Terhadap, "Pengantar Konsep Diversi Dan Restorative Justice Dalam Hukum Pidana" (Medan: USU Press, 2010).

²¹ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).

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Then, in terms of conception, the Restorative Justice concept is a concept of justice that aims to empower victims, perpetrators, families, and communities to correct an act against the law, using awareness and conviction as a basis for improving social life.

The restorative perspective views crime that although the crime committed also violates the criminal law, the more important aspect is not the act of violation but the process of causing harm to victims of crime, the community and actually violating the interests of the perpetrators themselves. These important parts have been largely forgotten by the criminal justice system from a retributive perspective.²²

The use of a restorative justice approach in handling criminal acts aims to prevent the perpetrators from the sentencing process which is sometimes felt to be unable to reflect the values of justice. Therefore, in its implementation, restorative justice can be implemented in three ways, namely: (1) Mediating the victim with the perpetrator; (2) Family group meeting; and (3) Services in the community that are remediation for both victims and perpetrators.²³

2. An Overview of the Crime of Abuse

a. The Meaning of Absuive Act

Mr. M.H. Tirtaamidjaja defines "abuse" as follows. "to abuse" is to intentionally cause pain or injury to another person. However, an act that causes illness or injury to another person cannot be considered as persecution if the act is carried out to maintain the safety of the body.²⁴ In addition, the Indonesian dictionary states that "abuse" is arbitrary treatment (torture (*penyiksaan*), oppression (*penindasan*), and so on).²⁵

²² Rena Yulia, *Viktimologi: Perlindungan Hukum Terhadap Korban Kejahatan* (Graha Ilmu, 2010).

²³ Apong Herlina, "Restorative Justice," *Indonesian Journal of Criminology* 3, no. 3 (2004): 4244.

²⁴ Marpaung Leden, "Tindak Pidana Terhadap Nyawa Dan Tubuh (Pemberantasan Prevensinya)" (Jakarta, Sinar Grafika, 2002).

²⁵ Badan pendidikan dan Pelatihan Kejaksaan RI, "Modul Tindak Dalam KUHPidana Tertentu" (Jakarta, 2020).



The Criminal Code states that criminal acts against the body are referred to as persecution, regarding the meaning of abuse, legal experts have different understandings in understanding it. Abusive act is defined as “an intentional act to inflict pain on another person's body.” Abusive act is also an act done by someone intentionally or unintentionally to injure another person.²⁶ In order for someone to be called committing abuse, that person must have an opzet or an intentional act.

It can be said that criminal acts of abuse are all acts against the law and actions of a person to people who harm or cause pain to the body or limbs of the human body where the injuries suffered by the victim are in accordance with the category of injuries in article 90 (Criminal Code).²⁷

b. Types of Abusive Act

According to the Criminal Code, abusive act is divided into 5 types, as contained in CHAPTER XX book II, Articles 351 to Article 355 of the Criminal Code/ the following explanations:

1. Common abusive act (Article 351 of the Criminal Code)

Common abusive act is a legal action that comes from an intentional act. Means that the result of an action that is desired turns out to have serious consequences as intended by the act that causes someone pain, injuries resulting in death, but not all acts of hitting or others that cause pain are said to be abusive atc, this is formulated in article 351 KUHP.

2. Minor absive act (Article 352 of the Criminal Code)

It is called minor abusive act because it does not cause injury or illness and does not cause the victim to be unable to carry out daily activities. According to Article 353 paragraph 1 of the Criminal Code, minor abusive act is an act that does not result in a disease or obstacle to carrying out a position or work. meet the following conditions:

²⁶ H Z Ali, *Hukum Pidana Islam* (Sinar Grafika, 2007), <https://books.google.co.id/books?id=uCh9NQAACAAJ>.

²⁷ *Kitab Undang-Undang Hukum Pidana (KUHP) Dan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)* (Jakarta: Sinar Grafika, 2011).

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- a) It is not a premeditated criminal act.
- b) Not an abusive criminal act committed: From the criminal provisions regulated in Article 352 paragraph 1 of the Criminal Code.
- c) Does not cause the person who is being abused to become sick or hindered in carrying out the duties of his position or in carrying out his work activities.²⁸

Article 352 paragraph 2 of the Criminal Code for mild maltreatment is punishable by a maximum imprisonment of 3 months and a fine of three hundred rupiahs, if it is not included in the formulation of Article 353 and Article 356 of the Criminal Code and does not cause illness or an obstacle to carry out his position or work.²⁹

3. Premeditated abusive act (Article 353 of the Criminal Code)

Premeditated abusive act is regulated in Article 353 of the Criminal Code if it causes serious injury and death is in the form of factors or reasons for making an objective crime, premeditated abusive act if it causes serious injury is desired in accordance with (paragraph 2), it is no longer called premeditated abusive act but severe premeditated abusive act (Article 355) of the Criminal Code), if the crime is intended and aimed at death (paragraph 3), it is no longer called premeditated abusive act but premeditated murder (Article 340 of the Criminal Code).

4. Severe abusive act (Article 354 of the Criminal Code)

Categorized as severe abusive act if someone intentionally inflicts serious injury or serious injury on another person. The difference between **Article 354** and **Article 351** paragraph 2 is **Article 354**, the abusive act is carried out intentionally while Article 351 paragraph 2 is carried out accidentally to cause serious injury.

Severe abusive act or it can also be called serious injury to another person's body must be done intentionally. The intention must be about the three elements of a

²⁸ Lamintang PAF and Theo Lamintang, "Kejahatan Terhadap Nyawa, Tubuh, Dan Kesehatan," *Cetakan Kedua. Jakarta: Sinar Grafika*, 2012.

²⁹ Triandy Anugrah, "Tinjauan Yuridis Terhadap Tindak Pidana Penganiayaan Yang Mengakibatkan Luka Berat" (Universitas Hasanuddin, 2016).

criminal act, namely, the prohibited act, the consequences that are the main reason for the prohibition and that the act violates the law.

5. Premeditated severe abusive act (Article 355 of the Criminal Code)

As explained above regarding crimes in the form of premeditated abusive act and severe abusive act, this premeditated severe abusive act is a combined form of severe abusive act (Article 354 paragraph 1 of the Criminal Code) and premeditated abusive act (Article 353 paragraph 1 of the Criminal Code). In other words, a severe abusive act that occurs in a premeditated abusive act, these two forms of abusive act must occur simultaneously/together. Because it must occur together, both elements of severe persecution and elements of premeditated abusive act must be fulfilled.

6. Basis for the Public Prosecutor's Consideration in Implementing Restorative Justice in the Case of the Suspect Erna Wilis aka SIEN who violated Article 351 paragraph (1) of the Criminal Code

The implementation of state power in the field of prosecution is carried out by the General Attorney Office, State Attorney Office, District Attorney Office, and District Attorney Office Branch. Thus, the position of the prosecutor in criminal justice is decisive because it is a bridge that connects the investigation stage with the examination stage in court³⁰.

The prosecutor in carrying out the prosecution acts for and on behalf of the state, so that the prosecutor must accommodate all the interests of the community, the state and victims of crime in order to achieve a sense of community justice. In almost every jurisdiction, prosecutors are the main figures in the administration of criminal justice because prosecutors play an important role in the court decision-making process. In fact, in countries that give prosecutors the authority to carry out their own investigations, prosecutors still have a broad prosecution (discretion) policy. Prosecutors have broad powers, whether a case will be prosecuted to court or not. The

³⁰ Ferdy Saputra et al., "Analisis Yuridis Penerbitan Surat Perintah Penghentian Penuntutan Oleh Kejaksaan Dikaitkan Dengan Asas Oportunitas dan Undang-Undang No 16 Tahun 2004 Tentang Kejaksaan RI," *USU Law Journal* 2, no. 1 (2014): 105–23. P. 111.

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position of the prosecutor is so important, by Harmuth Horstkotte, a High Judge of the German Federation, giving the nickname to the prosecutor as the boss of the case process (master of the procedure), as long as the case is not brought before the court.³¹

In connection with the above authority, the public prosecutor may terminate the prosecution. This is stated in Article 14 of the Criminal Procedure Code letter h and Article 140 paragraph (2) letter a of the Criminal Procedure Code which states that the three conditions for termination of prosecution are insufficient evidence, the alleged act is not a criminal act, and/or closed for legal purposes. Specifically, regarding the last requirement, Bagir Manan describes his understanding of the formulation for the sake of law, he explains the meaning of the formulation is actually for the sake of legal purposes, mentioned several examples of legal objectives, namely public order and a sense of justice. If the case is forced to continue before the court, it is feared that the legal objectives will not be achieved.³²

Closing cases for legal purposes is also accommodated in the Indonesian Prosecutor's Office Regulation Number 15 of 2020, which in Article 3 paragraph (1) states that public prosecutors have the authority to close cases for legal purposes. Then, in Article 3 paragraph (2) letter e states: "The Public Prosecutor has the authority to close the case for the sake of the law in the event that there has been an out-of-court settlement (*afdoening buiten process*). Settlement of cases out of court is carried out provided that there has been restoration of the original situation using a restorative justice approach".³³

In relation to the case being studied, the basis for the consideration of the Public Prosecutor in applying Restorative Justice to the Case of the Suspect ERNA WILIS aka SIEN, apart from considering the authority to prosecute and terminate the

³¹ R M Srachman and Andi Hamzah, "Jaksa Di Berbagai Negara: Peranan Dan Kedudukannya," 1997.

³² Ali, "Menafsirkan Rumusan 'Demi Kepentingan Hukum' Dalam KUHAP," Hukum Online, n.d., <https://www.hukumonline.com/berita/baca/lt4b1dea37d8cd8/menafsirkan-rumusan-demi-kepentingan-hukum-dalam-kuhap/>. Accessed on July 15, 2021, at 12.00 (West Indonesian Time).

³³ Article 3 paragraph (3) letter b of the Republic of Indonesian General Attorney Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

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prosecution, also consider other factors. Based on the results of the interview with the Public Prosecutor, another factor considered by him in implementing Restorative Justice is the fulfillment of the conditions as stated in Article 5 paragraph (1) letters a and b and Article 5 paragraph (6) PERJA Number 15 of 2020 which further stated in the Memorandum of Opinion on Termination of Prosecution Based on Restorative Justice dated September 3, 2020.³⁴ In the Memorandum of Opinion, the Prosecutor contains several considerations as follows:

- a) The relationship between the suspect and the victim is a sibling;
- b) Whereas the suspect is suspected of committing an abusive criminal act of as regulated in Article 351 paragraph (1) of the Criminal Code which carries a maximum sentence of 2 (two) years and 8 (eight) months so that on this basis this case is included in the terms of termination of prosecution based on restorative justice;
- c) That on July 24, 2020, there was an amicable statement between the suspect and the victim;
- d) That in this case the suspect and evidence have been handed over from the investigator to the public prosecutor (second stage);
- e) Whereas the victim and the suspect have agreed to make peace as stated in the Letter of Peace Agreement dated September 3, 2020;
- f) That the criminal act can be closed for the sake of the law and the prosecution terminated based on restorative justice because it has fulfilled the requirements, namely: The suspect has committed a crime for the first time, criminal acts are only punishable by a fine or imprisonment for not more than 5 (five) years and there has been a peace agreement between the victim and the suspect and the community has responded positively.

The consideration of the Public Prosecutor regarding the relationship between the suspect and the victim is that of siblings as the first consideration, meaning that it appears that the Public Prosecutor is considering the case, whether it concerns the interests of the people or not. In the main case, the abusive act was carried out by a

³⁴ Interview with Mr. Suwardi, SH., on November 20, 2020, at 12.30 (West Indonesian Time).

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sibling against a younger sibling, so that the interests did not concern the wider community. The first point of emphasis is by looking at the above, whether the public interest is disturbed by the criminal acts committed by the perpetrators of ERNA WILIS aka SIEN.³⁵

1. The process of handling the case and the application of PERJA Number 15 of 2020 by the Public Prosecutor in the Case of the Abusive Criminal Act on behalf of the Suspect ERNA WILIS aka SIEN in violation of Article 351 paragraph (1) of the Criminal Code

The process of handling the suspect's case on behalf of ERNA WILIS aka SIEN starts from the pre-prosecution stage until the termination of prosecution based on restorative justice. The chronology of case handling is as follows:

1. Pre-Prosecution Stage

Notification Letter on the Commencement of Investigation (SPDP) of the reported party. ERNA WIKLIS aka SIEN who was suspected of violating Article 351 paragraph (1) of the Criminal Code Number: SPDP/102/V/2020/Reskrim dated 30 May 2020 was received at the West Pasaman District Attorney on June 3, 2020, and investigators did not arrest the reported party. Based on the SPDP, the Public Prosecutor has appointed the Public Prosecutor to follow the progress of the investigation into the criminal case (P-16) Number: PRINT-119.a/L..23.3/Eoh.1/06/2020 On June 3, 2020, namely SUWARDI, S.H. and RUDI FERNANDES, S.H.

Case file on behalf of Suspect ERNA WILIS aka SIEN Number: BP/45/VI/2020/Reskrim dated June 16, 2020, with Letter Number: R/253/VI/2020ResPasBar dated June 16, 2020, then received at the West Pasaman District Attorney (Phase I) on June 16, 2020, on suspicion of violating Article 351 paragraph (1) of the Criminal Code. After being received by the Prosecutor and conducting research on the case file, the Research Prosecutor concludes that the case file is incomplete and does not meet the formal and

³⁵ Interview with Mr. Suwardi, SH., on November 20, 2020, at 12.30 (West Indonesian Time).

material requirements so that P-18 can be issued and sent to investigators by letter with number: B-946/L.3.23.3/Eoh.1/06/2020 dated June 23, 2020, followed by the issuance of Letter P-19 to be sent to Investigators by letter Number: B-953/L.3.23.3/Eoh.1/06/2020 dated June 23, 2020.

Furthermore, on June 30, 2020, the West Pasaman District Attorney received the case file Back on behalf of the suspect ERNA WILIS aka SIEN from the West Pasaman Police Office which was submitted by letter Number: R/278/VII.2020/ResPasBar on 30 June 2020 and after careful scrutiny , on July 02, 2020, the Research Prosecutor made a Minutes of Opinion on the Results of the Case File Research (P-24) with the conclusion that the file had met both formal and material requirements so that it met the requirements to be transferred to the Court based on Article 139 of the Criminal Procedure Code.

That with the conclusion that the Research Prosecutor stated that the case file was complete, then an Exposure was carried out and continued with the issuance of Letter P-21 with the Number: B-997/L.3.23.3/Eoh.1/07/2020 dated July 2, 2020, to be submitted to the Investigator. Then, with the receipt of Letter P-21, the West Pasaman District Attorney Office received the delivery of the suspect and evidence on behalf of the suspect ERNA WILIS Call SIEN from the West Pasaman Police which was submitted by Letter Number: R/309/VII/2020/ResPasBar dated July 20, 2020.

2. Prosecution Stage and Implementation of the Peace Process in accordance with PERJA Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Based on the delivery of the Suspect and Evidence, a Public Prosecutor has been appointed for the settlement of a criminal case (P-16A) Number: PRINT-120/L.3.23.3/Eoh.2/7/2020 dated July 20, 2020, namely Suwardi, S.H. and Rudi Fernandes, S.H. and based on the Warrant Number: PRINT/L.3.23.3/Eoh.2/07/2020, The appointed prosecutor has carried out Phase II Examination of the Suspect on behalf of ERNA WILIS aka SIEN as



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outlined in the Minutes of Admission and Investigation of the Suspect (BA-4) dated July 20, 2020.

During the second stage of examination, a statement was found by the suspect who said: *"klo bisa pak ini karena sudah damai, adik saya juga menerima dan telah selesai perkaranya secara kekeluargaan* (If possible, sir, because this is peaceful, my sister has also accepted and the case has been settled amicably)", In the end, the Prosecutor questioned him, because he did not really believe it, checked the information by asking him to present the victim.³⁶ However, after phase II was carried out, the victim Amrizal had an accident so that the Public Prosecutor could not meet the victim. And even to delegate to the Court, the Prosecutor concerned thinks to continue to resolve this case by using a restorative justice approach, even though the procedures in PERJA 15 of 2020 do not meet the time requirements as stipulated in article 9 paragraph (5) of PERJA 15 of 2020. Therefore, the Public Prosecutor postponed the delegation to the Court and continued to terminate the prosecution based on Restorative Justice by waiting for the victim to recover from the hospital.

After the Phase II examination was carried out, the Public Prosecutor took the initiative to continue to apply Restorative Justice to the case as stipulated in PERJA Number 15 of 2020, but when he was about to implement Restorative Justice through the peace process, Victim Amrizal was being treated at the Hospital due to an accident that he experienced, so that the Public Prosecutor postponed to carry out the peace process.

Furthermore, based on the Warrant of the Head of the West Pasaman District Attorney Number: PRINT/644/L.3.23/Eoh.2/08/2020 dated August 3, 2020 regarding the Implementation of Peace Efforts Based on Restorative Justice, the Prosecutor appointed to carry out the peace process against the suspect on behalf of ERNA WILIS Call SIEN and the AMRIZAL Victim who had

³⁶ Recap result of the interview with Prosecutor Suwardi, S.H., on November 20, 2020, at 12.30 (West Indonesian Time).

recovered and returned from the hospital witnessed by the head of Jorong and Ninik Mamak (an elder or exalted person who has a position in family customs) as part of the settlement of local wisdom which is still thick in the area of West Sumatra Province. And for the purposes of the peace effort, the public prosecutor made a summons as stated in the summons for peace efforts dated August 31, 2020, against Victim AMRIZAL, Perpetrator ERNA WILIS, Ninik Mamak YELFA LINDA, and Head Jorong RIKI HERISTIAN to attend on Thursday, September 3, 2020 at 10:00 (West Indonesian Time) at the West Pasaman District Attorney Office, Jl. Soekarno Hatta, West Pasaman Regency who was legally and appropriately summoned by stating the reasons for the summons as stipulated in Article 8 paragraph (1) and paragraph (2) of the Republic of Indonesia Prosecutor Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Then during the peace process, the public prosecutor initiated a question to the victim, namely AMRIZAL and continued with a question to the suspect ERNA WILIS regarding what he wanted to convey or were there any objections to the things being pursued in the peace, followed by asking for opinions and views from representatives or figures the community represented by YELFA LINDA and RIKI HERISTIAN which was held on Thursday, September 03, 2020 at 10.00 WIB at the West Pasaman District Attorney Office.

The parties involved in the peace effort based on restorative justice proposed by the public prosecutor basically accept and agree because there has been restoration of the original condition carried out by the suspect by way of replacing the costs incurred as a result of the crime and/or repairing the damage caused resulting from the criminal acts contained in the peace agreement made before the public prosecutor, as follows:

- a. The parties have agreed to fulfill efforts to resolve problems that occur amicably by using restorative efforts.
- b. The Public Prosecutor as the facilitator opens the peace agreement, after explaining the aims and objectives as well as the procedures for

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the implementation of the peace agreement deliberation, then the facilitator explains the time, place and brief description of the crime suspected of ERNA WILIS aka SIEN.

- c. Furthermore, the facilitator provides an opportunity for the victim and the defendant to express the existing problems because the Defendant and the Victim still have a sibling relationship, until finally an agreement was reached to resolve the problem by entering into a peace agreement on the condition that the suspect was willing to give Rp. 3,000,000 (three million rupiah) to the victim.

The process then continued with the signing of the minutes of the peace agreement by the parties before the public prosecutor which had been documented. After that, the public prosecutor made a memorandum of opinion on the termination of prosecution based on restorative justice on the same date, namely September 3, 2020, which in essence has reached peace efforts by the parties who, on the advice of the Head of the General Crimes Section and the Head of the West Pasaman District Attorney Office, agreed to propose the termination of the prosecution. based on restorative justice against cases on behalf of ERNA WILIS aka SIEN which have violated Article 351 paragraph (1) of the Criminal Code.

Based on the public prosecutor's report as explained above, the Head of the West Pasaman District Attorney Office requested approval for the termination of prosecution based on restorative justice to the West Sumatra State Attorney Office through Letter Number: B-108/L.3.23/Eoh.2/09/2020 dated September 03, 2020, regarding termination of prosecution based on restorative justice in the case of the abusive criminal act of ERNA WILIS aka SIEN who has a sibling relationship with the victim. On the request for approval above, the Acting Head of the West Sumatra State Attorney Office agreed by sending a reply to the letter with the number: B-397/L.3/Es/09/2020 dated September 10, 2020, regarding the Approval for Termination of Prosecution Based on Restorative Justice in Criminal Cases The suspect ERNA WILIS aka SIEN



violated Article 351 paragraph (1) of the Criminal Code, with the following considerations:

1. The interests of AMRIZAL as the victim have been protected
2. Avoidance of retaliation against the suspect on behalf of ERNA WILIS aka SIEN
3. The threat of punishment for criminal acts committed under 5 (five) years, in this case violating Article 351 paragraph (1) of the Criminal Code, is threatened with imprisonment for a maximum of 2 (two) years and 8 (eight) months.
4. The level of disgrace is low because it only concerns the victim and the suspect and does not harm others.
5. If the case is put in trial, it will cost the State Finance.
6. The suspect had handed over Rp. 3,000,000, - (Three Million Rupiah) as the cost for treatment.
7. There has been peace between the victim and the suspect according to the peace agreement dated September 3, 2020.
8. The suspect has committed a crime for the first time and has never been sentenced based on a court decision that has permanent legal force.

This is in accordance with article 12 paragraph (4) PERJA Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which states that the Head of the State Attorney Office shall determine the attitude of agreeing or rejecting the termination of prosecution based on restorative justice in writing accompanied by considerations within a maximum of 3 (three) days since the request was received.

After receiving the Approval Letter from the Acting Head of the West Sumatra State Attorney Office through Letter Number: B-3397/L.3/Es/09/2020 dated September 10, 2020, the Head of the West Pasaman District Attorney as the Public Prosecutor issued a Decision Letter on Termination of Prosecution within a period of time. no later than 2 (two) days since the approval is received as stated in Letter Number: Print-659/L.3.23/Eoh.2/09/2020 dated September 15, 2020. This is in accordance with Article 12 paragraph (6) of PERJA Number 15 of 2020 concerning Prosecution Based on Restorative Justice.

That furthermore, the Prosecutor appointed to complete the handling of criminal cases shall make a Report on Termination of Prosecution Based on

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Restorative Justice of the Criminal Case of the suspect ERNA WILIS aka SIEN with Letter Number: B-1359/L.3.23/Eoh.2/09/2020 Date September 15, 2020 addressed to the Head of the West Sumatra State Attorney Office.

Thus, according to the author, substantively the termination of prosecution of cases on behalf of ERNA WILIS aka SIEN with Case Register Number PDM-44/SPEM/Eoh.2/07/2020 at the West Pasaman State Attorney Office has been in accordance with PERJA number 15 of 2020 concerning Termination Prosecution Based on Restorative Justice, but technical administratively needs to be adjusted to the instructions for implementing PERJA 15 of 2020, which is contained in the Letter of the Deputy Attorney General for General Crimes Number B-4301/E/EJP/9/2020 dated September 16, 2020.

In addition to technical administrative discrepancies, it was also found that there was a lack of completeness of the administrative format/template for criminal acts to stop cases based on restorative justice. This deficiency is understandable because the implementation of the termination of prosecution based on the restorative case an ERNA WILIS aka SIEN with Case Register Number PDM-44/SPEM/Eoh.2/07/2020 which violates Article 351 paragraph (1) of the Criminal Code by the Public Prosecutor is carried out when the the Letter of the Deputy Attorney General for General Crimes Number: B-4301/E/EJP/9/2020 Dated September 16, 2020 Regarding: Guidelines for the Implementation of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice have not been received by the Public Prosecutor.

CONCLUSION

Based on the description and discussion that has been put forward in the previous sections, it can be concluded:

1. The basis for consideration of the Public Prosecutor applying Restorative Justice at the Prosecution stage against the authority to terminate the prosecution based on Article 14 KUHAP letter h, Article 140 paragraph (2) letter a of



Criminal Procedure Code (KUHAP) and Article 3 paragraph (2) letter e PERJA Number 15 of 2020 concerning Termination of prosecution based on justice. In addition, the public prosecutor's considerations are also based on legal facts obtained by the public prosecutor. Based on the results of interview with the Public Prosecutor, another factor that he considered in implementing Restorative Justice was the fulfillment of the conditions as stated in Article 5 paragraph (1) letters a and b and Article 5 paragraph (6) PERJA Number 15 of 2020 hereinafter stated in the Memorandum of Opinion on Termination of Prosecution Based on Restorative Justice dated September 3, 2020.

2. Implementation of termination of prosecution based on Restorative Justice in cases of criminal acts of persecution on behalf of ERNA WILIS Pgl SIEN with Case Register Number PDM-44/SPEM/Eoh.2/07/2020 at the West Pasaman District Attorney, is substantively in accordance with the Regulations of the Attorney General of the Republic of Indonesia Number 15 of 220 concerning Termination of Prosecution Based on Restorative Justice, as follows: the defendant has committed a crime for the first time, there has been a restoration to its original state carried out by the defendant by replacing the victim's loss and repairing the damage caused by the criminal act, and there has been a peace agreement between the victim and the defendant and the community responded positively. However, technical administratively, there are still some shortcomings, namely not meeting the time requirements as stipulated in Article 9 paragraph (5) of PERJA 15 of 2020.
3. Based on the results of interviews with the prosecutor who handle the case, the main obstacle in implementing PERJA 15 of 2020 in cases of criminal acts of persecution on behalf of ERNA WILIS Pgl SIEN with case register number PDM-44/SPEM/Eoh.2/07/2020 at the West Pasaman District Attorney is there on time, because the peace process and fulfillment of the obligations specified in Article 9 paragraph (5) PERJA 15 of 2020 is carried out within a "maximum" 14 (fourteen) days since the handover of responsibility for the suspect and evidence (stage two). However, in practice, the appointed Prosecutor was

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constrained in carrying out the peace process because when he was about to carry out Restorative Justice through the peace process, the victim AMRIZAL was being treated at the hospital due to an accident, so the Public Prosecutor delayed carrying out the peace process until the victim was completely healed.

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