

Implementation of restorative justice in the termination of prosecution of crimes at the Tanjung Perak District attorney's office

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ABSTRACT

The criminal justice system involves law enforcement agencies, including the police, prosecutors, courts, and correctional institutions. Many minor cases that should be resolved outside the courtroom must, due to existing legal constraints, go through litigation. The introduction of Restorative Justice policies is presented as an alternative, fairer way of resolving cases, focusing on rehabilitation. The aim of this study is to understand the role of prosecutors in resolving criminal cases through Restorative Justice and the procedures for resolving criminal cases through Restorative Justice at the Tanjung Perak District Attorney's Office. This research uses empirical legal research with a qualitative approach, gathering primary data through interviews and documentation, as well as secondary data from literature and relevant regulations. Data analysis is conducted descriptively and qualitatively to address the research issues. The findings show that prosecutors play a crucial role in the implementation of Restorative Justice, including providing counselling, assessing case eligibility, facilitating mediation, drafting agreements, monitoring implementation, and preparing reports in accordance with applicable regulations. The procedures for resolving criminal cases through Restorative Justice at the Tanjung Perak District Attorney's Office include case identification, mediation between the perpetrator and the victim, report preparation, and case termination based on the agreement.

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1. INTRODUCTION

In the criminal justice system, there are interrelated law enforcement agencies, namely the police, prosecutors, courts, and correctional institutions. The stages in the criminal justice process begin with investigation, prosecution, trial, and execution of court decisions. At each of these stages there are several actions that must be taken in order to enter the next stage. This is done by each institution in accordance with their authority.

The first is the investigation stage carried out by investigators (the police). This stage seeks initial information through witnesses or other evidence regarding an event suspected of being a criminal offence. Then the will collect preliminary evidence to determine whether there is enough

reason to start an investigation. At the investigation stage, further evidence is gathered to support the alleged criminal offence. Actions taken are compiling evidence and identifying suspects, summoning and examining relevant witnesses and arresting suspects. The person suspected of being the perpetrator is designated as the suspect. Furthermore, if the investigation has been completed and declared complete, the case is submitted to the prosecutor's office, which means it enters the prosecution stage.

The prosecution stage is the responsibility of the public prosecutor or prosecutor. Then the public prosecutor examines the case file, and if it is deemed sufficient evidence, then the public prosecutor submits the criminal case to the district court for trial to be examined and later decided by a judge in court. The final stage is execution, where the defendant who is found guilty becomes a convict and serves a sentence of detention in a correctional institution in accordance with the sentence that has been decided by the judge.

However, currently there are many small cases received by the prosecutor's office that can actually be resolved out of court, but due to constraints with the applicable rules, these cases must still be resolved through litigation or through court legal channels. Moreover, there are several minor cases that have circulated among the wider community. With little value and seeing how the reason for the perpetrator, the community can forgive his actions but not for the parties involved. This makes the community respond negatively and assume that these minor cases can actually be resolved in a family manner so there is no need to go to court. The resolution of such cases is solely aimed at retaliation by the perpetrator and often does not bring a sense of justice and expediency in social life. Therefore, it is necessary to carry out legal reform as a manifestation of dynamic law towards progressive law.

Attorney General ST Burhanuddin issued Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The regulation explains that the settlement of criminal cases emphasises restoring the original situation and also provides protection and the interests of victims and perpetrators that are not oriented towards retaliation. Restorative Justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair solution by emphasising restoration to the original state, and not retaliation. Discontinuation of prosecution based on restorative justice is carried out with the principles of justice, public interest, proportionality, punishment as a last resort, fast simple and low cost. The Restorative Justice policy through the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is expected to resolve minor criminal cases or commonly called *tipiring* without going to court.

The application of Restorative Justice has been widely implemented in the Attorney General's Office of the Republic of Indonesia, including the Tanjung Perak District Attorney's Office. Throughout 2024, the Tanjung Perak District Attorney's Office has achieved a number of achievements in various fields. One of them is the performance achievement in the general criminal field, namely winning the 1st best award for handling Restorative Justice in 64 cases at the Regional Work Meeting of the East Java High Prosecutor's Office. The cases included theft, fraud, embezzlement, violence against children, domestic violence, traffic accidents, maltreatment, and narcotics. These cases can be resolved through Restorative Justice based on the conditions determined in accordance with the applicable Restorative Justice guidelines.

2. METHOD

A research method is a systematic method or procedure used to collect, analyse and interpret data in order to answer a research question or solve a particular problem. The method includes planned steps, from topic selection, data collection, to analysis and conclusion.

2.1 Research Type

Empirical legal research is research whose data collection uses existing sources in the field such as interviews, observations, surveys, and also legal documents. This research focuses on the implementation of normative legal provisions, namely statutory regulations on every legal event that occurs in society which aims to know and understand how the application of law in this legal case study is carried out, obeyed, and functions in people's lives.

2.2 Research Approach

In this research, the author uses a sociological approach. This approach often uses qualitative methods, such as in-depth interviews, participant observation, and content analysis, to gain an in-depth understanding of individual experiences and perspectives. In the research, the author used interviews and document analysis.

2.3 Data Source

There are two kinds of data sources used by the author, namely primary data and secondary data. Primary data sources are data collected directly by the author from the source, without going through intermediaries. This data is in the form of interviews, surveys, observations, experiments, and documentation. In this case the author collects data through interviews with public prosecutors at the Tanjung Perak District Attorney's Office. Secondary Data Sources are data that has been collected and processed by others for specific purposes and reused by the author for further analysis. This data is obtained from some literature in the form of books, theses, journals and other writing reports that are sources of reference. From the mass media in the form of news, reports, or articles related to legal issues and from legal documents, namely laws and regulations. In this case, the author collects data through relevant laws and regulations, namely Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, Guideline Number 18 of 2021 concerning Completion of Case Handling for Crimes of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's *Dominus Litis* Principle, Circular Letter Number: 01/E/EJP/02/2022 concerning Implementation of Termination of Prosecution Based on Restorative Justice.

2.4 Writing Location

The place used to do the writing in order to obtain the data needed in the writing to be done. In this case the author is writing at the Tanjung Perak District Attorney's Office.

2.5 Data Collection Technique

The writing approach method used by the author to collect information needed in a writing. This data collection is obtained from primary data and secondary data. In this case the author chooses to use data collection techniques from primary data sources with interviews, namely collecting information directly from informants related to the author's topic, in this case law enforcement, especially in the prosecutor's office, namely public prosecutors at the Tanjung Perak District Attorney's Office. Collecting information directly from informants related to the author's topic, especially law enforcers in the prosecutor's office, namely public prosecutors at the Tanjung Perak District Prosecutor's Office. Collecting and analysing written sources, namely attachments to the results of interviews that have been conducted with public prosecutors at the Tanjung Perak District Prosecutor's Office.

In addition to primary data, the author also collects data by analysing secondary data sources. With laws and regulations and applicable legal provisions related to writing. In this case the author focuses on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Guideline Number 18 of 2021 concerning the Settlement of Case Handling for Crimes of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the *Dominus Litis* Principle of Prosecutors, Circular Letter Number: 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice.

2.6 Writing Data Analysis

Data analysis is a systematic process for collecting, organising, and evaluating data with the aim of obtaining information to solve a problem. In this writing using qualitative descriptive analysis, namely by collecting, analysing, and interpreting data collected from interviews and data related to the object of writing and then juxtaposing with applicable laws and regulations in accordance with existing provisions. Thus, the data is processed so that conclusions can be drawn to solve problems and can be scientifically accounted for.

3. RESULTS AND DISCUSSION

3.1 Procedures for resolving criminal offences through Restorative Justice at the Tanjung Perak District Attorney's Office

Based on empirical facts obtained in the field, through interviews with the Public Prosecutor at the Tanjung Perak District Attorney's Office. He explained the procedure for resolving cases through *Restorative Justice*, and ensured that the process was still guided by the applicable laws and regulations. Laws that regulate *Restorative Justice*, such as Law Number 11 of 2012 concerning the Juvenile Criminal *Justice* System, Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Restorative Justice, Guideline Number 18 of 2021 concerning Completion of Case Handling for Crimes of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the *Dominus Litis* Principle of Prosecutors, Circular Letter Number: 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice.

The following is a procedure regarding the settlement of criminal offences through *Restorative Justice* at the Tanjung Perak District Attorney's Office based on applicable laws and regulations:

3.1.1 Identification of Cases that Can Be Resolved with *Restorative Justice*

The first stage in the process of resolving criminal offences through *Restorative Justice* is the identification of cases that are eligible to be resolved using this approach. Provisions regarding *Restorative Justice*, including the requirements, what criminal offences and implementation procedures are detailed in Circular Letter Number: 01/E/EJP/02/2022 on the Implementation of Termination of Prosecution Based on Restorative Justice.

3 (three) main requirements in the *Restorative Justice* approach listed in Article 5 Paragraph (1) of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, reads:

- a. The suspect was a first time offender
- b. The criminal offence committed is punishable by a fine or imprisonment for a period not exceeding 5 (five) years.
- c. The criminal offence committed has an evidence value or the value of the loss caused by the criminal offence is not more than Rp.2.500.000,00 (two million five hundred thousand rupiah)

In certain criminal offences, the 3 (three) requirements above can be overridden with the following provisions:

- a. Article 5 paragraph (2) of the Regulation of the Public Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice mentions criminal offences related to property such as theft and hoarding, There are special criteria to still be able to stop prosecution based on Restorative Justice with the conditions as referred to in Article 5 paragraph (1) letter a "The suspect is a first time criminal offender" accompanied by one of letter b "The criminal offence committed is punishable by a fine or imprisonment for a period of not more than 5 (five) years" or letter c "The criminal offence committed has the value of the evidence or the value of the loss resulting from the criminal offence is not more than Rp.2.500,000.00 (two million five hundred thousand rupiah)".
- b. Article 5 paragraph (3) of the Regulation of the Public Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice states that criminal offences committed against the person, body, life, and independence of the person, such as maltreatment, child abuse, and domestic violence, can be stopped prosecution based on Restorative Justice with the conditions as referred to in article 5 paragraph (1) letter a "The suspect is a first time offender" and letter b "The criminal offence committed is punishable by a fine or imprisonment for a period of not more than 5 (five) years".
- c. Article 5 paragraph (4) of the Regulation of the Public Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice states that criminal offences committed due to negligence, such as traffic accidents, can be stopped prosecution based on Restorative Justice with the conditions referred to in article 5 paragraph (1) letter a "The suspect is a first time criminal offender" only. Meanwhile, Article 5 paragraph (1) letter b "The criminal offence committed is punishable by a fine or imprisonment for a period not exceeding 5 (five) years" and letter c "The criminal offence committed has an evidence value or

the value of the loss caused by the criminal offence is not more than Rp.2,500,000.00 (two million five hundred thousand rupiah)" can be excluded.

- d. For narcotics cases, Article 5 paragraph (8) of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice states that narcotics crimes are included in cases that are exempted from termination of prosecution based on Restorative Justice. However, drug offences can be terminated through *Restorative Justice* based on Guideline Number 18 of 2021 concerning the Settlement of Case Handling for Criminal Acts of Drug Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's *Dominus Litis* Principle, with the following conditions: The suspect only abuses drugs for himself; The suspect has a mild dependence on drug use; The suspect does not play a role as a producer, dealer, and courier related to national or international narcotics illicit networks; The suspect is a first-time offender, not a recidivist; The suspect has never been included in the wanted list (DPO); There are examination results that state the suspect is suitable for rehabilitation.

The Restorative Justice approach can only be applied to addicts, abusers, victims of abuse, drug dependence, and daily drug use as referred to in Article 1 of the Joint Regulation Law Number: 01/PB/MA/III/2014 concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions.

3.1.2 Coordination with the Head of the General Crime Section for the implementation of Restorative Justice

Upon receiving the case file from the investigator, the public prosecutor conducts an initial write-up and assessment to assess the feasibility of resolving the case through a *Restorative Justice* approach. If there is potential for an amicable settlement between the victim and suspect, the public prosecutor will coordinate with police investigators to ensure the victim's willingness to make peace with the suspect during the implementation of *Restorative Justice* after the prosecution stage.

After the case file is declared complete and eligible, a P-21 (Notification of Complete Investigation Results) is made. The public prosecutor then coordinates with the Head of the General Crimes Section and the Head of the District Attorney's Office to implement case resolution through the *Restorative Justice* approach.

The Public Prosecutor also considers whether the perpetrator has shown goodwill to confess and a willingness to take responsibility. Likewise, the victim is willing to engage in dialogue with the perpetrator to reach an amicable solution. In addition the harm suffered by the victim can be repaired through compensation or restitution. If these conditions are met, the public prosecutor can proceed with the *Restorative Justice* process.

Restorative Justice will be implemented after the prosecution stage (Phase II), which begins with the receipt of suspects and evidence from investigators who are handed over to the prosecutor's office. After that, the mediation process and the preparation of an agreement through the *Restorative Justice* approach will be carried out with the provisions of the implementation time limit, which is no later than 14 days after the prosecution stage is completed.

3.1.3 Mediation Process and Agreement between Victim and Perpetrator

The mediation process is the core stage in the *Restorative Justice* process. At this stage, the public prosecutor acts as a facilitator who mediates communication between the offender and the victim. The mediation process is attended by the public prosecutor, the victim, the perpetrator, the victim's family, the perpetrator's family, and local community leaders. The mediation process aims to provide space for both parties to understand each other, express their feelings, and reach a mutual agreement that can provide restorative justice, both for the victim and the offender, as well as the community as a whole. This agreement may include:

- a. An apology and admission of guilt from the perpetrator to the victim orally or in writing. This acknowledgement aims to provide a sense of justice to the victim and shows the seriousness of the perpetrator in correcting his actions.
- b. Restoration of losses suffered by the victim. This can be in the form of restitution (payment of damages) or compensation to the victim for the losses suffered. For the provision of payment of compensation, it is carried out during the implementation of the mediation process. *The Restorative Justice* process will continue after the suspect has fulfilled his responsibility regarding the compensation.

The public prosecutor acts as a facilitator to ensure that the mediation proceeds fairly and without pressure, and to ensure that the rights of the victim are protected. The public prosecutor must also take care that the perpetrator does not feel coerced in this process and that the outcome of the mediation truly reflects a mutual agreement that is fair and in accordance with applicable legal provisions.

3.1.4 Preparation of Reports and Administration of *Restorative Justice* Agreement Implementation

After the mediation process has been successful and a mutual agreement has been reached between the victim and the offender, the public prosecutor will prepare a report and administrative documents to complete the *Restorative Justice* process. This report records all the steps that have been carried out, starting from the results of the agreement that is written down and followed by a clear commitment regarding the implementation of the agreement, as well as an evaluation of the fulfilment of the perpetrator's obligations. This report is used to ensure that the *Restorative Justice* process is carried out correctly and in accordance with applicable laws. Furthermore, the related report is also useful as a consideration for the Prosecutor's Office in evaluating case settlement policies with *Restorative Justice* in the future.

In addition to the written report, the public prosecutor also prepares administrative documents of *Restorative Justice* requirements signed by all relevant parties, namely the victim, victim's family, perpetrator, perpetrator's family, and approved community leaders. This includes proof of payment of compensation from the suspect to the victim as a form of compensation for the losses suffered by the victim. If this compensation has not been paid according to the agreement, then the *Restorative Justice* case termination process cannot be continued. So that the suspect must first complete the compensation in accordance with the specified time limit, which is no later than 14 days after the prosecution stage is carried out.

After all agreements and documents with the relevant parties are fulfilled, the public prosecutor will prepare a complete administrative file to be submitted to the Head of the Tanjung Perak District Prosecutor's Office and report tiered to the Regional Office, namely to the Head of the East Java High Prosecutor's Office for examination. And for the perpetrators, they are still detained in the correctional institutions that have been determined based on the local jurisdiction until the case termination process is completed.

3.1.5 Case Termination Process

After our report was received by the East Java High Prosecutor's Office, an online expose (case title) was held with the Deputy Attorney General for General Crimes. The expose was conducted by the public prosecutor in the case, the Head of the General Crimes Section, the Head of the Tanjung Perak District Attorney's Office, the Head of the East Java High Prosecutor's Office and his staff and the Deputy Attorney General for General Crimes.

Furthermore, if the Deputy Attorney General for General Crimes has given approval to the use of the *Restorative Justice* approach in the settlement of related cases, while still being guided by applicable laws and regulations, the Head of the East Java High Prosecutor's Office will issue a letter stating approval of case settlement based on *Restorative Justice*. The approval letter is issued and submitted to the Head of the Tanjung Perak District Attorney's Office after obtaining approval from the Deputy Attorney General for General Crimes.

Furthermore, the public prosecutor immediately completes the administration to complete the case termination process. Then the public prosecutor can release the perpetrator from detention with a Decree of Case Settlement Based on *Restorative Justice*.

3.1.6 Type of offence

There are several types of criminal cases that can be terminated by *Restorative Justice*. The application of *Restorative Justice* based on the provisions of the Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of *Restorative Justice* (*Restorative Justice*) is applied to types of cases including: Misdemeanours; Women in conflict with the law cases; Child cases; Narcotics cases.

The following are some types of criminal offences that can be resolved through restorative justice and their legal basis:

- a. Theft (Article 362 of the Criminal Code, Article 363 of the Criminal Code, Article 365 paragraph (1) of the Criminal Code)
 - Article 362 of the Criminal Code: Article 362 of the Criminal Code regulates theft, which is the taking of property belonging to another person with the intention of unlawfully possessing it. This crime can be resolved through *Restorative Justice* if the perpetrator and victim agree to mediation and compensation.
 - Article 363 of the Criminal Code: Article 363 of the Criminal Code regulates theft with aggravation, which is theft committed under certain aggravating circumstances, such as committed at night, in an inhabited house, or by damaging goods. Although more severe than Article 362, a *Restorative Justice* approach can still be considered if there is an agreement between the perpetrator and victim for an out-of-court settlement.
 - Article 365 paragraph (1) of the Criminal Code: Article 365 paragraph (1) of the Criminal Code regulates theft committed with violence or threat of violence against another person. This criminal offence is more serious as it involves physical violence. However, in certain cases, *Restorative Justice* can be applied with the aim of achieving reconciliation and healing for all parties involved.
- b. Fraud (Article 378 of the Criminal Code)

Article 378 of the Criminal Code regulates fraud, namely the act of deceiving others with the aim of unlawfully benefiting oneself or others. Settlement through *Restorative Justice* can be done with an agreement between the perpetrator and the victim.
- c. Espionage (Article 480 paragraph (1) of the Criminal Code)

Article 480 paragraph (1) of the Criminal Code regulates storing, buying, keeping or selling the proceeds of crime. *Restorative Justice* can be used if the parties involved agree to resolve the case without litigation.
- d. Embezzlement (Article 372 KUHP or Article 378 KUHP.)

Article 372 of the Criminal Code regulates embezzlement, which is taking goods that are unlawfully controlled, while Article 378 of the Criminal Code regulates fraud that can harm other parties. *The Restorative Justice* approach provides an opportunity for the perpetrator to compensate the victim and make amends.
- e. Domestic Violence (Article 44 paragraph (1) and 45 paragraph (1) of the Law of the Republic of Indonesia Number 23 Year 2004 on Physical and Psychological Violence within the Sphere of the Household)

Article 44(1) deals with physical violence that causes pain or injury, while Article 45(1) deals with psychological violence that causes psychological suffering. *Restorative Justice* can be applied to find a fair and sustainable solution, involving the victim, perpetrator, and family.
- f. Child Abuse (Article 80 paragraph (1) of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection)

Article 80(1) deals with physical violence against children that results in injury or illness. *Restorative Justice* aims to protect the best interests of the child and ensure recovery from trauma.
- g. Persecution (Article 351(1) and 335(1) of the PC)

Article 351 paragraph (1) deals with maltreatment that causes injury or pain, while Article 335 paragraph (1) deals with unpleasant acts that cause others to feel threatened. Settlement through *Restorative Justice* can be done if there is agreement from all parties involved.
- h. Narcotics (Article 127 and Article 132 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics)

Article 127 regulates the abuse of narcotics for oneself, while Article 132 regulates the act of conspiracy to commit a drug offence. *Restorative Justice* can be applied to assist drug addicts in rehabilitation and recovery.
- i. Traffic accidents (Article 310 paragraph (4) of Law of the Republic of Indonesia Number 22 Year 2009 concerning Road Traffic and Transport)

Article 310 paragraph (4) regulates traffic accidents that result in the death of the victim. *Restorative Justice* can be used to resolve this case by involving all parties involved in finding a fair solution.
- j. Minor Damage (Article 407 of the Indonesian Penal Code):

Article 407 of the Criminal Code regulates the damage or destruction of property belonging to another person of small value. *Restorative Justice* can be applied to resolve this case by involving all parties in finding a fair solution and reconciliation.

- k. The Law on Juvenile *Justice* System (Law No. 11/2012) stipulates that *Restorative Justice* can be applied to criminal offences involving children under 18 years of age.

Termination of prosecution based on restorative justice has certain limitations and does not apply to all types of cases. Article 5 paragraph (8) of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice states that there are exceptions to the following cases: Criminal offences against state security, the dignity of the president and vice president, friendly countries, heads of friendly countries and their representatives, public order, and decency; Criminal offences punishable by a minimum criminal penalty; Narcotics criminal offences; Environmental criminal offences; Criminal offences committed by corporations.

3.1.7 Deviations between roles and procedures with applicable laws and regulations

Based on empirical facts obtained in the field, through interviews with the Public Prosecutor at the Tanjung Perak District Attorney's Office. He explained whether or not there were any deviations that occurred between the role of the public prosecutor and *the Restorative Justice* procedure with the applicable statutory provisions. Regarding the implementation of *Restorative Justice*, the public prosecutor ensures that there are no deviations from the applicable laws and regulations. The role of the public prosecutor is to ensure that the entire *Restorative Justice* process is carried out in accordance with existing regulations and legal principles. Every step is taken based on the voluntary agreement of all parties involved, and their rights and obligations are respected. Public prosecutors also provide clear and complete information to victims, offenders and the community about their rights and obligations in this process. Neutrality and transparency are always maintained so that no party feels disadvantaged.

In addition, the public prosecutor follows several steps to ensure that no irregularities occur in the implementation of *Restorative Justice*. Firstly, maintaining neutrality and not favouring one of the parties. Second, ensuring all decisions are made based on mutual agreement and the process is conducted transparently. Finally, always follow the applicable legal procedures and the principles of Restorative Justice. However, public prosecutors are also aware of potential deviations that may occur, such as non-neutrality or imposition of *Restorative Justice* processes without the voluntary consent of the victim and perpetrator. Other deviations include non-compliance with applicable legal procedures and lack of transparency in the mediation process.

3.1.8 Unsuccessfulness of Restorative Justice Process

Based on empirical facts obtained in the field, through interviews with the Public Prosecutor at the Tanjung Perak District Attorney's Office. He explained examples of cases that failed when the *Restorative Justice* process was carried out. In the application of *Restorative Justice*, there are several cases that are unsuccessful and the legal process continues by submitting the case to court. For example in his own case, at stage II at the Tanjung Perak District Attorney's Office, *Restorative Justice* was implemented after fulfilling all applicable requirements. However, during an expose with the Public Prosecution Service, the *Restorative Justice* proposal was rejected because the defendant admitted that he had twice committed theft in the same place and had received the money from the sale of the stolen goods. The defendant's awareness that he had committed the offence more than once was the benchmark used by the Public Prosecution Service in assessing this case.

The offender's willingness to reoffend is an important factor in assessing whether *Restorative Justice* is applicable. The public prosecutor must ensure that the offender shows remorse and a commitment not to reoffend. If the offender has repeatedly committed the same crime, this indicates that the offender is not suitable for *Restorative Justice* processes, and the public prosecutor should consider more conventional legal procedures. Once the *Restorative Justice* process has been rejected by the Public Prosecution Service, the applicable legal procedure is to refer the case file to the court, where the public prosecutor will prepare the case file and submit it to the court, and wait for the court date to be set to continue the legal process in accordance with the applicable procedure.

4. CONCLUSION

Public prosecutors, based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, have an important role in the criminal justice system, including in the application of Restorative Justice. In addition to the main duties such as investigation, prosecution, and execution of decisions, public prosecutors also play a role in the termination of prosecution of cases through Restorative Justice, especially for minor offences. This role includes counselling, assessing the appropriateness of the case, and facilitating mediation between the victim and offender. The public prosecutor also develops fair agreements, monitors their implementation, and reports the results to the court. The aim is to repair the relationship between victim and offender and create restorative and rehabilitative justice. The procedure for resolving criminal offences based on Restorative Justice at the Tanjung Perak District Attorney's Office involves several important stages. First, the public prosecutor identifies cases that are eligible to be resolved amicably, taking into account factors such as the type of criminal offence, the loss of the victim, and the goodwill of the perpetrator. Next, a mediation process between the offender and victim is facilitated by the public prosecutor to reach an agreement, which may include restitution or an apology. After successful mediation, the public prosecutor prepares a report and administrative documents to ensure the completeness of the Restorative Justice process. Finally, after obtaining approval from the High Prosecutor's Office, the case can be discontinued with the issuance of a letter of approval to discontinue the case, and the perpetrator can be released from detention based on applicable provisions.

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