

**THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA HIGH
PROSECUTOR'S OFFICE THROUGH RESTORATIVE JUSTICE (RJ)**

THESIS



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PROGRAM STUDI (S1) ILMU HUKUM

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

YOGYAKARTA

2024

**THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA HIGH
PROSECUTOR'S OFFICE THROUGH RESTORATIVE JUSTICE (RJ)**

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Diajukan Untuk Memenuhi Persyaratan Guna
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**PROGRAM STUDI HUKUM PROGRAM SARJANA
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2024**

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**THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA
HIGH PROSECUTOR'S OFFICE THROUGH RESTORATIVE
JUSTICE (RJ)**

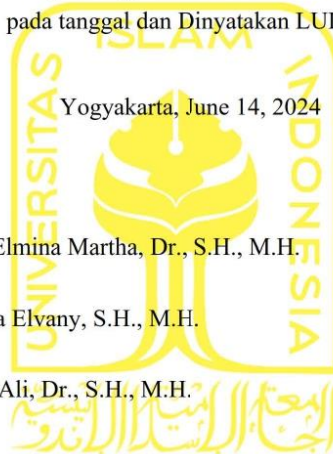
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**THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA HIGH
PROSECUTOR'S OFFICE THROUGH RESTORATIVE JUSTICE (RJ)**

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HALAMAN MOTTO

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

“... Barang siapa yang bersungguh-sungguh, dia pasti berhasil.”

(Rasulullah SAW)

“Jadilah dirimu menjadi sebaik-baiknya dirimu sendiri”

(Ma'soem)

“...Seperti arti nama yang diberikan oleh orang tua yaitu “Anak Besar Alfarid”, sudah menghadapi terpaan halauan serta rintangan di usia muda ini, entah di dalam kampus atau di luar kampus. Serta tidak adanya kata “menyerah” pada setiap hal yang dikerjakan demi masa depan besar yang di cita-citakan”

“Perjalan hidup yang sulit, menciptakan manusia menjadi semakin kuat untuk menghadapi hari esok”

KATA PENGANTAR

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Assalamu 'alaikum Warahmatullahi Wabarakatuh

Alhamdulillah, puji syukur kepada Allah SWT yang telah mengantarkanku hingga titik ini. Terimakasih atas segala rezeki yang diberikan untuk menyelesaikan skripsi yang berjudul “THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA HIGH PROSECUTOR’S OFFICE THROUGH RESTORATIVE JUSTICE (RJ)” Dihaturkan shalawat serta salam untuk tauladan Nabi Muhammad SAW yang menjadi panutan bagi penulis baik pada perilaku serta kebiasaan beliau. Skripsi ini disusun untuk memenuhi persyaratan akademik dalam memperoleh gelar Strata (S1) Sarjana Hukum. Penulis mengangkat skripsi ini untuk meneliti THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA HIGH PROSECUTOR’S OFFICE THROUGH RESTORATIVE JUSTICE (RJ). Penulis berharap penelitian ini membawa manfaat bagi seluruh elemen masyarakat, serta perkembangan ilmu pengetahuan dalam Hukum Pidana. Dalam penulisan skripsi ini, penulis menyadari banyaknya kekurangan dan jauh dari kata sempurna karena keterbatasan kemampuan penulis. terselesaikannya skripsi ini juga karena terdapat orang-orang hebat yang ada di sekitar penulis. Oleh karena itu, dengan segala keikhlasan hati dan kerendahan hati, penulis ingin mengucapkan terimakasih kepada:

1. Allah SWT, atas segala sifat yang dimilikinya salah satunya maha pengasih dan maha penyayang sehingga sampailah penulis di titik ini dengan penuh kelancaran serta keridhaan yang diberikannya;

Wassalamu 'alaikum Warahmatullahi Wabbarakatuh

Yogyakarta 30 Mei

2024

Penulis,

A handwritten signature in black ink, appearing to be 'Ananda Akbar Alfarid', written in a cursive style with a horizontal line underneath.

Ananda Akbar Alfarid

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CHAPTER I

INTRODUCTION

A. Background of Study

Law is an instrument owned by state with the intention of reducing conflict, regulating, and directing the life of a nation in order to achieve justice and balance between rights and obligations. Law consists of a series of rules and regulations that govern the social structure of a society, and as such, must be respected by the society itself. Fundamentally, law is a diverse set of statements and facts, which aim to ensure the harmony of individual freedoms and desires with those of others. At its core, law regulates the relationships between people in society based on a variety of different principles.¹

There are three main factors that are important in the legal norms for implementing criminal law in society. These factors include achieving the desired goals in society, maintaining and applying the high values that exist in society, and maintaining things that are considered good and followed by the community. The purpose of criminal sanctions is strongly influenced by the reasons that form the basis for threatening and imposing criminal punishment. In this case, the considerations taken in the imposition of punishment involve interests, retribution, or a combination of the following purposeful retribution or retribution given to the perpetrator with a specific intent and purpose.²

¹ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: Rajawali Press, 2010). Hlm. 88

² Iba Nurkasihani, "Restorative Justice, Alternatif Baru Dalam Sistem Pidanaan," Setda Kabupaten Tanah Laut, 2019. Diakses di laman https://www.jdih.tanahlautkab.go.id/artikel_hukum/detail/restorative-justice-alternatif-baru-dalam-sistem-pidanaan

Criminal law is one of the official mechanisms of social control, involving rules that are interpreted and enforced by the judiciary, and generally drafted by lawmakers. Its purpose is to maintain the limits of societal behavior, as well as provide a basis for law enforcement officials in determining the circumstances of deviations or unacceptable actions.³

The emergence of criminal cases occurs when the legal system handles criminal cases. Criminal cases always arise in the context of the criminal justice process.⁴ Crime is an integral part of human life. Human activities, whether political, social or economic, have the potential to become cases of crime. Crimes or criminal offenses spread to various aspects of life. They can occur within families, social groups, the general public, government officials, nations or states, and even have an international dimension known as international crimes.⁵

Criminal acts refer to actions that are prohibited by law and are followed by criminal threats or sanctions. The prohibition applies to the act, i.e., a state or event produced by behavior of the individual, while the threat of punishment is aimed at the perpetrator who caused the situation or event.⁶

According to P.A.F. Lamintang's explanation in the Criminal Code, every criminal offense can generally be explained through two types of elements, namely subjective elements and objective elements. Subjective elements refer to elements

³ Andi Hamzah, *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan Dengan Restorative Justice* (Jakarta: Jala Permata Aksara, 2017), Hlm. 118.

⁴ Bambang Waluyo, *Desain Fungsi Kejaksaan Pada Restorative Justice* (Jakarta: Raja Grafindo Persada, 2017), Hlm. 1.

⁵ Fhideal Andik Hibatullah, "Implementasi Prinsip Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Penganiayaan Di Kejaksaan Tinggi Lubuklinggau" (Universitas Sriwijaya, 2022), Hlm. 2.

⁶ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2015), Hlm. 59.

that exist in the perpetrator or are related to the perpetrator himself. Meanwhile, objective elements can be interpreted as elements related to certain conditions, in the form of a situation that requires action from the perpetrator to carry it out.⁷

In the context of the enactment of criminal procedure law and the punishment system in Indonesia, formally there are procedures that must be followed in resolving a criminal case. However, in practice, these procedures can also be used as a repressive tool by law enforcement officials. This is a fundamental problem faced by society, which involves social control with the aim of protecting people's lives and property, as well as creating a desirable social order that includes harmony, order and propriety. To achieve this, it is important that the law is properly executed by the government so that a sense of justice can be realized in society.

The criminal justice system in Indonesia has the main objectives of maintaining justice, ensuring the protection of individual rights, and providing appropriate punishment for perpetrators of criminal acts.⁸ The Public Prosecutor's Office is a government agency responsible for the duties of state power in the field of prosecution and other authorities based on the terms and conditions of laws and regulations.⁹ In carrying out their duties and functions, prosecutors have the responsibility to create legal certainty, legal order, justice, and truth based on the law. They are also expected to pay attention to religious norms, decency, and

⁷ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2014), Hlm. 43.

⁸ Makhrus Munajat, "Transformasi Hukum Pidana Islam Dalam Tata Hukum Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 1–13.

⁹ "Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia".

morality, as well as respect for human values, law, and justice manifested in community life.

In this system, the Yogyakarta High Prosecutor's Office has a central role as a law enforcement agency authorized to handle criminal cases in the region. The Yogyakarta High Prosecutor's Office is tasked with prosecuting the perpetrators of criminal offenses, filing charges with the court, and executing court decisions. Problems in the settlement of criminal cases at the Yogyakarta High Prosecutor's Office are very complex. One of the problems that often arises is the delay in the judicial process. Time-consuming judicial processes can be a source of dissatisfaction for victims waiting for a decision and also for defendants who have to wait for the trial to be completed.

These delays can be caused by various factors, including a lack of human resources, limited facilities and infrastructure, and high case density. In addition, the Yogyakarta High Prosecutor's Office also faces a heavy workload due to the high number of criminal cases it must handle. The large number of cases can result in limited time and resources that can be optimally allocated to each case. As a result, case handling can be hampered, causing delays and affecting the effectiveness of the criminal justice system.¹⁰ It is important to find effective solutions to address these issues and ensure the timely, fair and efficient resolution of criminal cases at the Yogyakarta High Prosecutor's Office.

¹⁰ Olivia Anggie Johar, "Realitas Permasalahan Penegakan Hukum Lingkungan Di Indonesia," *Jurnal Ilmu Lingkungan* 15, no. 1 (2021): 54–65.

In addressing the problems faced in resolving criminal cases, innovative and alternative approaches need to be introduced. One approach that has emerged as an attractive alternative is Restorative Justice. This approach places a focus on recovery and reconciliation between the offender, the victim, and the community, with the aim of repairing relationships and reducing the negative impact of the crime.¹¹ Restorative justice aims to shift the paradigm of criminal case resolution from an orientation that solely considers punishment to the perpetrator to a more holistic orientation, which involves active participation from the perpetrator, victim, and community in the recovery process.¹²

Basically, Restorative Justice has similarities with diversion in terms of resolving criminal cases outside the justice system. However, Restorative Justice does not only focus on resolving criminal cases for juvenile offenders as in Diversion, but can also be applied in general criminal cases. In this thesis, the author **will** discuss the application of general criminal case settlement involving non-difficult evidence and reaching a peace agreement between the perpetrator and the victim.¹³ The following table contains data on several cases that succeeded in RJ and failed RJ.

No.	Perpetrators	Cases	Volated Article	Date of RJ
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¹¹ Ardian Putranto, "Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Di Yogyakarta" (Universitas Atma Jaya Yogyakarta, 2020), Hlm. 3.

¹² M. Alvi Syahrin, "Penerapan Prinsip Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu," *Majalah Hukum Nasional* 48, no. 1 (2018): 97–114.

¹³ Yul Ernis, "Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2017): 163–74.

1.	Yuliana De Falcomeri Widyaningrum	Violation Act	351 Paragraph (1) of the Criminal Code.	February 09, 2023 (Succeed RJ)
2.	Seli Atikasari	Violation Act	351 Paragraph (1) of the Criminal Code.	February 09, 2023 (Succeed RJ)
3.	Ning Hamidah Alias Ning Binti Harjo Wistom (Alm)	Embazzlement	Article 372 or 378 of the Criminal Code	February 16, 2023 (Succeed RJ)
4.	Taufiq Ridho Bin Teguh Rahayu (Alm)	Violation Act	351 Paragraph (1) of the Criminal Code.	March 14, 2023 (Succeed RJ)
5.	Muhammad Khaizudin Zulfa Alias Dani Bin Supriyanto	Threatening and/or Property Damage	This is regulated in Article 335 Paragraph (1) to 1 of the Criminal Code or Article 406 Paragraph (1) of the Criminal Code	April 11, 2023 (Failed RJ)

6.	Asih bin Kasepan	Fisheries Crime	Article 8 paragraph (1) Jo Article 84 paragraph (1) of Law Number 45 of 2009 concerning amendments to Law Number 31 of 2004 concerning Fisheries	August 02, 2022 (Failed RJ)
7.	ALI RASIDIN HASAN bin KHOIRUL HUDA and YOGA PURNAMA bin GUNARTO	Crime of Assault	Article 170 paragraph (1) of the Criminal Code concerning crime of Assault.	July 07, 2023 (Failed RJ)
8.	SIDIK SAMSURI BIN MAWARDI UTOMO	Crime of Theft	Article 363 paragraph (1) of the Criminal Code concerning crime of theft.	July 12, 2023 (Failed RJ)

Based on the explanation above, the author is interested in conducting research with the title : **The Settlement of Criminal Case in Yogyakarta High Prosecutor's Office Through Restorative Justice (RJ).**

B. Problem Formulation

Based on the background above, the problem formulations raised in this study are:

1. How is the implementation of restorative justice in resolving criminal cases at the Yogyakarta High Prosecutor's Office?
2. What are the factors that hinder the Yogyakarta High Prosecutor in implementating restorative justice to resolve criminal cases?

C. Purpose of Study

As the formulation of the problem mentioned above, the objectives of this study are:

1. To analyze how the Yogyakarta High Prosecutor's Office applies a restorative justice approach in resolving criminal cases.
2. To analyze factors that hinder the implementation of restorative justice approach by the Yogyakarta High Prosecutor's Office.

D. Research Originality

To the best of the author's knowledge, no research has been found by other authors about **“The Settlement of Criminal Case in Yogyakarta High Prosecutor's Office Through Restorative Justice (RJ)”** Based on the

literature search and information that I found, I found similar research results with the title of this research, which leads to the same topic, namely:

1. The research written by Ardian Putranto is entitled "Restorative Justice Approach in Criminal Case Resolution in Yogyakarta". The formulation of the problem raised in this research is how is the implementation of the Restorative Justice approach in prosecution in Yogyakarta? This research aims to apply the Restorative Justice approach in resolving criminal cases in Yogyakarta with the aim of providing protection and justice for the community in general. The Restorative Justice approach is used to resolve criminal cases without the use of prison sentences, by maintaining a sense of justice, avoiding negative stigma for the parties involved, and aims to increase awareness and reduce the spread of bad behavior in criminal offenders. This research uses data search techniques to obtain materials/data that can provide information and strengthen primary and secondary data. Existing case documents will be observed and compared with existing facts. The data obtained will be analyzed using normative research methods.

Both studies focus on the Restorative Justice approach in resolving criminal cases in Yogyakarta yet differ in terms of the research scope and the institution. This research focused more on the process of resolving criminal cases at the Yogyakarta High Prosecutor's Office using the Restorative Justice approach. This could involve the concrete steps taken

by the prosecutor's office to implement the approach, as well as its results and effectiveness in resolving criminal cases in the region.

2. The research written by Fhideal Andik Hibatullah is entitled "Implementation of Restorative Justice Principles in the Settlement of Persecution Criminal Cases at the Lubuklinggau District Attorney's Office". This study aims to examine the implementation of the principles of Restorative Justice in resolving cases of criminal persecution at the Lubuklinggau District Attorney's Office. The research method used is empirical legal research with a statutory approach and a case approach. The results showed that the termination of prosecution based on restorative justice at the Lubuklinggau District Attorney's Office was carried out in accordance with PERJA Number 15 of 2020. The role of the Public Prosecutor in the Lubuklinggau District Attorney's Office begins at the stage of handing over responsibility for the suspect and evidence after the file is declared complete (P21).

The difference in this research lies in the research area and the focus of the case under study. This research is more focused on the settlement of criminal cases in the Yogyakarta High Prosecutor's Office through the Restorative Justice approach in general, while the research above is more focused on the implementation of the principles of Restorative Justice in the settlement of persecution cases at the Lubuklinggau District Attorney's Office.

There are differences in the scope and focus of the research that has been submitted. Your proposed research entitled "Settlement of Criminal Cases at the Yogyakarta High Prosecutor's Office Through Restorative Justice (RJ)" is focused on the settlement of criminal cases at the Yogyakarta High Prosecutor's Office using the Restorative Justice approach in general. The research aims to explore the use of the Restorative Justice approach in the context of criminal case settlement at the Yogyakarta High Prosecutor's Office, based on efforts to provide justice and protection for the community.

E. Literature Review

1. Restorative Justice

According to Garner (2004), the definition of restorative justice is as follows:

Restorative justice. An alternative delinquency sanction that focuses on repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions. Restorative-justice sanctions use a balanced approach, producing the least restrictive disposition while stressing the offender's accountability and providing relief to the victim. The offender may be ordered to make restitution, to perform community service, or to make amends in some other way that the court.¹⁴

Substantially, the restorative principle has existed since the time of Aristotle, although at that time it was referred to as the principle of reciprocity).¹⁵ In Indonesia, the concept of Restorative Justice is currently applied in Juvenile Criminal cases in accordance with the provisions stipulated

¹⁴ Bryan A. Garner, *Black's Law Dictionary Eighth Edition* (USA: West Publishing Co, 2004).

¹⁵ Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 173–90.

in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.¹⁶ In addition, there is also a Memorandum of Understanding between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia regarding the implementation of adjustments to the limits of minor offenses and the amount of fines, speedy examination procedures, and the application of restorative justice with the number 131/KMA/SKB/X/2012, M.HH07.HM.03.02, KEP-06/E/EJP/10/2012, B/39/X/2012 of 2012.¹⁷

There are several assumptions that underpin the concept of restorative justice. First, it is important to seek to repair the harm suffered by the victim as a result of the criminal act. Second, the offender must realize that his or her behavior is unlawful and has repercussions for the victim and society. Third, the offender must take responsibility for his or her actions. Fourth, the victim must be given the opportunity to participate in determining the best approach to redress. Fifth, the community also has a responsibility to contribute to this process.¹⁸

Restorative Justice is an approach based on the philosophy and values of responsibility, openness, trust, hope, healing and inclusiveness. It has had a significant impact on policy decision-making in criminal justice systems and

¹⁶ “Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak”.

¹⁷ Maman Budiman, “Implementasi Prinsip Restorative Justice Dalam Penghentian Penuntutan Perkara Korupsi Oleh Kejaksaan Republik Indonesia,” *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 3 (2022): 1045–53.

¹⁸ Rudini Hasyim Rado and Nurul Badillah, “Konsep Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu,” *Jurnal Restorative Justice* 3, no. 2 (2019): 149–63.

legal practitioners around the world. Furthermore, Restorative Justice promises a positive system of justice in the future, capable of addressing conflicts arising from crime and the law in an accountable manner. To achieve restorative justice, attention needs to be focused on the harm caused by crime, shared concerns, a commitment to involve offenders and victims, encouraging offenders to take responsibility, providing opportunities for dialogue between offenders and victims, involving communities affected by crime in restorative processes, and encouraging cooperation and reintegration.¹⁹

The principles contained in the concept of restorative justice include the following:

- a) First, the importance of providing space for personal involvement for all parties concerned, including perpetrators, victims, their families, and the community as a whole. In a restorative approach, the active participation of all these parties is considered essential to the recovery process.
- b) Secondly, in understanding the problem of crime, it is important to see it in a broader social context. This includes understanding the social factors that influence crime, such as environment, education, and socio-economic conditions.

¹⁹ Ahmad Syahril Yunus, *Restorative Justice Di Indonesia* (Jakarta: Guepedia, 2021), Hlm. 43.

- c) Third, forward-looking crime resolution is the main focus of restorative justice. This approach emphasizes efforts to prevent future crimes through repair and reconciliation.
- d) Last, flexibility in restorative justice practices is an important aspect. This approach allows for creativity in finding solutions and approaches that suit each case at hand.²⁰

These principles provide a crucial foundation for the implementation of restorative justice. The main objectives are to create space for personal participation, to look at the problem of crime as a whole, to encourage preventive measures, and to provide flexibility in handling each case with the creativity needed.

2. Violation

Maltreatment can be defined as an improper act committed against another person which can include torturing, insulting, oppressing, and so on. This is regulated in Article 351 Paragraph (1) of the Criminal Code.

3. Embezzlement

Embezzlement can be defined as the improper act of hiding other people's property by 1 party or even more, with the aim of controlling the goods.

This is regulated in Article 372 of the Criminal Code.

4. Fraud

²⁰ Henny Saida Flora, "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia," *University Of Bengkulu Law Journal* 3, no. 2 (2018): 142–58.

Fraud can be defined as an unlawful act in the form of lies aimed at benefiting oneself. This is regulated in Article 378 of the Criminal Code.

5. Threatening

Threatening can be defined as the unrighteous act of forcing someone to do something for the purpose of benefiting oneself. This is regulated in Article 335 Paragraph (1) to 1 of the Criminal Code.

6. Property damage

Property damage can be defined as the unlawful act of damaging goods that are not privately owned. This is regulated in Article 406 Paragraph (1) of the Criminal Code.

7. Fisheries crimes

Fisheries crimes are criminal acts related to the use of waters that are within the sovereignty State of The Unitary Republic of Indonesia and the Economic Exclusive Zone of Indonesian and high seas contain potential fish resources and as land fish cultivation. This is regulated in Law Number 45 of 2009 concerning amendments to Law Number 31 of 2004 concerning Fisheries.

8. Crime of Assault

The crime of beating is defined as an act in which a person openly and with collective force commits violence against another person. This is regulated in Article 170 paragraph (1) of the Criminal Code.

9. Crime of theft

The crime of theft is defined as an act when someone takes someone's property rights in the form of property that is carried out secretly without the knowledge of the owner. This is regulated in Article 363 paragraph (1) of the Criminal Code.

F. Terms and Definitions

1. Restorative Justice (RJ) is an alternative approach in resolving criminal cases that emphasizes the restoration of relationships and the recovery of losses caused by criminal acts by involving the active participation of perpetrators, victims, and related communities.
2. The Yogyakarta High Prosecutor's Office is a high-level prosecutorial institution authorized to prosecute and resolve criminal cases in the Yogyakarta area.
3. Crime is an unlawful act that harms others and has various objectives such as self-benefit and so on.

G. Research Method

1. Research Type

This research uses an empirical legal research, which aims to study the implementation of law in people's lives directly. Empirical legal research is a research that examines legal phenomena using scientific methods and collects empirical data obtained from interviews, questionnaires, document analysis, or other data sources. Empirical legal research aims to understand and explain

human behavior, legal practices, legal impacts, or other aspects related to law objectively and based on observable facts.²¹

The focus of this research is to investigate the process of applying the restorative justice approach in resolving criminal cases at the Yogyakarta High Prosecutor's Office.

2. Research Approach

This study applies sociological approach which is based on the community and family life.

3. Object of Research

The object of this research is the settlement of criminal cases at the Yogyakarta High Prosecutor's Office through restorative justice (RJ) and the obstacles of the Yogyakarta High Prosecutor's Office in resolving criminal cases through restorative justice (RJ).

4. Legal Material/Source of Data

The data sources used in this research are:

a. Primary Data

Primary legal material is the main material in this research which consists of statutory provisions and other positive legal products, including:

1. The Criminal Code (KUHP)
2. Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations

²¹ Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2017), Hlm. 22.

3. Law No. 11/2012 on the Criminal Justice System
4. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Discontinuation of Prosecution Based on Restorative Justice
5. National Police Regulation Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice

b. Secondary Data

Secondary materials in this research can be in the form of:

1. Books, journals, articles, and academic writings related to restorative justice (RJ), criminal case settlement, and the role of the High Prosecutor's Office in the criminal justice system.
2. Decisions of the Supreme Court or courts relating to restorative justice (RJ) or the resolution of criminal cases.
3. Previous reports or research on restorative justice (RJ) in Indonesia or elsewhere relevant to the context of your research.

c. Tertiary Data

Tertiary legal materials refer to legal sources used to explain primary and secondary legal materials. Examples include legal dictionaries, the Big Indonesian Dictionary, and encyclopedias that provide definitions, explanations, and information related to legal terms and relevant concepts.

5. Data Collection Method

Data collection techniques used in this research involve the following methods:

a. Interview

Interviews were conducted with prosecution officers involved in handling criminal cases through restorative justice (RJ) at the Yogyakarta High Prosecutor's Office. These interviews were conducted to understand the process, challenges, benefits, and impact of restorative justice (RJ) in resolving criminal cases. The questions asked could focus on the experience of prosecution officers, the approaches used, the factors that influence the success or failure of restorative justice (RJ) implementation, and their views on the effectiveness of this method.

b. Analyzing Document

This method is used in order to analyze related documents, such as policies, regulations, guidelines, reports, statistical data, or court decisions relating to the settlement of criminal cases through restorative justice (RJ) at the Yogyakarta High Prosecutor's Office. This document analysis will provide an understanding of the framework, procedures, policies, as well as a review of previous cases involving restorative justice (RJ). The documents can also support and complement the research with relevant data.

H. Method of Analyzing Data

In processing and analyzing data, the author uses qualitative descriptive data analysis which involves describing and explaining the data that has been collected

in the study. The data is described and organized systematically in the form of sentences that provide relevant meaning as statements or conclusions. From the factual data obtained, clear conclusions can be drawn to answer research problems and describe and explain the primary data used in this study.

I. Systematization of Writing

The writing of the results of this study consists of four interrelated chapters. The following is the systematic writing:

CHAPTER I: INTRODUCTION

The first chapter of this research writing will provide an overview to the reader regarding the background of the problem, theoretical framework, conceptual, objectives, and benefits of the research. In addition, this chapter will also explain in detail the research methodology used in this study.

CHAPTER II: LITERATURE REVIEW

This chapter contains a literature review examining theories, concepts, and legal foundations related to the settlement of criminal cases and restorative justice (RJ).

CHAPTER III: RESULTS OF RESEARCH

The research results chapter contains the presentation and analysis of the data you have collected. Present the research findings systematically and clearly in accordance with the research objectives and research questions. This chapter will explain the research

findings by linking them to the theories or concepts discussed in the literature review.

CHAPTER IV: CONCLUSION AND RECOMMENDATION

The conclusions and recommendations chapter summarizes the research results and answers the research problem formulation. Explain the main conclusions that can be drawn from the research results. It will also provide concrete and relevant recommendations for improving the settlement of criminal cases through restorative justice (RJ) at the Yogyakarta High Prosecutor's Office based on the research findings.

CHAPTER II

GENERAL OVERVIEW of Restorative Justice, Prosecutor, Violation Crime, Embezzlement Crime, Fraud Crime, Threatening, Property damage offenses, Fisheries Crime, Assault crime, theft crime and Restorative Justice in the view of Islamic Criminal Law.

A. General Overview of Restorative Justice

1. Definition and Historical of Restorative Justice

The term restorative justice was first introduced in contemporary criminal justice literature and practice in the 1970s. In some developed countries, restorative justice is not just a discourse by criminal law and criminology academics. Several developed countries, namely North America, Australia, and several European countries apply restorative justice as an implementation of justice at the level of conventional criminal justice processes that have been applied starting from the investigation, prosecution, adjudication and execution stages.²²

The call for alternative responses to crime and social disruption has arisen because many States are dissatisfied and frustrated with the formal justice system, or because of the importance of maintaining and strengthening customary law and traditional justice practices. Many of these alternatives provide the parties involved and the surrounding community with an opportunity to participate in resolving the conflict and dealing with

²² Wahid, E. (2020). *Keadilan Restoratif dan Peradilan Konvensional Dalam Hukum Pidana*. Jakarta: Universitas Trisakti

its consequences. Restorative justice programmes argue that parties to a conflict should actively participate in resolving the problem and reducing its negative impact. The programme is also based on several things, such as the desire to return to the local community and decision-making. In addition, this approach is considered a way to encourage peaceful expression of conflict, promote tolerance and inclusion, foster appreciation for diversity, and encourage responsible community practices. (Crime, 2019).²³

Restorative justice was first introduced by Albert Eglash who offered an alternative paradigm to replace the punitive paradigm that is often practised in the criminal justice system. Who introduced restorative justice theory by Albert further differentiated criminal justice into 3 (three): retributive justice, distributive justice and restorative justice. (Syahril)²⁴ Retributive justice emphasises the form of punishment against the perpetrators of criminal offences. Distributive justice highlighted the rehabilitation of offenders. Restorative justice is the principle of restitution that involves the perpetrator and victim in the process of resolving the case with the intention of returning losses to the victim and rehabilitation for the perpetrator.²⁵

According to a criminal law expert named Eva Achjani Zulfa, restorative justice is a concept of thought in responding to the development

²³ United Nations Office on Drugs and Crime, 2006, Handbook on Restorative Justice Programmes, United Nation, New York dalam buku Kwat Puji Prayitno, *Aplikasi Konsep Restorative Justice dalam Peradilan Indonesia*, Genta Publishing, Yogyakarta, 2012, hal. 8

²⁴ Ahmad Syahril Yunus, Irsyad Dahri, *Restorative Justice di Indonesia*, Guepedia, Bogor, 2021, hlm. 19

²⁵ *Ibid*

of the criminal justice system by emphasising the need to involve community participation and victims who are excluded from the mechanisms that work in the current criminal justice system.²⁶ Restorative justice is also a framework for thinking in an effort to find an alternative solution to criminal cases that occur. Alternative solutions are carried out as a settlement effort that creates humane justice.²⁷

Bagir Manan also argued that restorative justice is a different approach to the concept of punishment that is not only limited to formal or material criminal law. However, restorative justice is seen as a concept of punishment that must prioritise real justice. So that it prioritises the rearrangement of a fairer punishment system, both for perpetrators, victims and society.²⁸ The ultimate goal of restorative justice is "*a meeting place for people*" to find solutions and agreements to repair relationships from the damage caused by crime.²⁹

Restorative Justice is a process in which the victim and the perpetrator (suspect) sit together in a meeting to talk together. In the meeting the mediator gives the perpetrator the opportunity to provide a clear description of the actions he has taken. At this mediator, the perpetrator describes the actions that he/she has missed and the reasons why the

²⁶ Eva Achjani Zulfa, *Loc.Cit*

²⁷ Marlina, *Peradilan Pidana Anak Di Indonesia: Pengembangan konsep Diversi dan Restorative Justice*, Refika Aditama, Bandung, 2009, hlm.182-183

²⁸ Bagir Manan, *Loc.Cit*

²⁹ Muladi dan Barda Nawawi Arief, *Ibid.*, hlm.3

perpetrator has committed these actions. The victim has an obligation to listen carefully to the perpetrator's explanation.

Restorative Justice offers the best solution in solving crimes by giving primacy to the core issues of the crime. The important resolution is to repair the damage caused by the crime.

Restorative Justice is often defined as 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 its original state, not retaliation. Justice produced by Stage holders (perpetrators, victims, society) autonomously, to resolve criminal cases, with an emphasis on restoring the original state and not retaliation RJ contains elements of dialogue (deliberation), restorative (healing, repair, recovery), conflict resolution (conflict oplossing), equality of position (the balanced approach), forgiveness, responsibility, moral learning, participation and community concern, is a win-win solution RJ contains justice that is autonomous, authentic, substantive and non-procedural.

The History of the Restorative Justice Movement and Its Origins It may date back as far as the criminal law itself. As stated in "Restorative Justice in Texas: Past, Present, and Future" by Marc Levin, approaches that were previously considered outdated, archaic, and traditional are now considered progressive. With the launch of the "Victim Offender Recociliation Programme" (VORP) in Ontario in 1974, the restorative justice movement expanded in North America and the United States. In

1978, experimental programmes such as VORP emerged in the UK and Indiana.

Psychologist Albert Eglash coined the term Restorative Justice in 1977 in his writings on reparation. Restorative justice focuses on rebuilding relationships after a criminal offence, not just repairing the relationship between the offender and society. (Muladi: The implementation of the "Restorative Justice" approach in the criminal justice system and how it is applied in SPPA).

Restorative Justice as a Peaceful Process Restorative justice is essentially a peaceful process that is not adversarial or adversarial. In practice, offenders and those collectively identified as victims of harm have an obligation and a need to care for and treat victims as best they can..

Restorative justice as an attempt to facilitate conversation Restorative justice goes beyond making decisions about who wins and who loses in an adversarial or adversarial criminal justice system. Restorative processes aim to facilitate conversations between all parties affected by a crime, including offenders, victims, their supporters, and society as a whole. It encompasses a process in which all those at risk of being involved in a particular crime endeavour to collectively reach consensus on how to deal with the problem after the fact and the impact it will have in the future (Marshall, 2002).

According to Braithwaite (2002) in a national seminar presentation, Restorative Justice is more concerned with healing or restoration than

suffering, moral learning, community participation and care, respectful dialogue, forgiveness, responsibility, apologies, and restitution. As such, it rejects the idea that Restorative Justice coddles the person who committed the offence.

The Restorative Justice philosophy consists of principles such as responsibility, openness, trust, hope, healing, preventing injustice, gratitude, forgiveness, forgetting the past, and "inclusiveness", which focuses on reparation of the harm caused by crime and encourages offenders to take responsibility for their actions by providing opportunities to those directly affected by the crime, namely victims, offenders, and the community.

In Criminal Law Enforcement, Restorative Justice is conducted outside of Court Settlement. The outcome of Restorative Justice requires "legal recognition" from the APH or the Stipulation of the Head of the District Court (diversion in the SPPA Law). Thus, the legal process is stopped, investigation is stopped, or prosecution is not conducted. This removes the authority to prosecute.

Police regulations 8 of 2021, Prosecutor regulation No. 15 of 2020

1. The results of the restorative justice assessment are used as a consideration or policy in sentencing.
2. Restitution of state financial losses (TP Corruption) (considered one of the values of restorative justice), "discourse", for a maximum loss of Rp. 50,000,000, - no prosecution is carried out.

3. In terms of the application of the RJ concept at the Pre-Adjudication stage, it is more appropriate to be the authority of the Prosecutor's Office, related to the function of the Prosecutor as the Controller of the Case (*Dominus Litis*).

2. Theory of Restorative Justice

The concept and theory of punishment continues to evolve, ranging from traditional justice theories such as attributive justice to modern justice theories such as Restorative Justice. It is not easy to provide a definition of Restorative Justice, because there are many variations of models and forms that have developed in its application. Therefore, many terminologies are used to describe the concept of Restorative Justice, such as communitarian justice, positive justice, relational justice, reparative justice and community justice)

Restorative justice is a concept that focuses on the conditions of the creation of justice and balance for offenders and victims. The concept of restorative justice has the main goal of restoring a faded situation, not to punish the perpetrators of criminal offences and not merely a deviation from the law.³⁰ Thus, the basic concept of the restorative justice approach is an action to rebuild relationships that have faded due to criminal offences between victims, perpetrators, and the community to restore the condition to its original state.

³⁰ Emilia Susanti, *Mediasi Pidana Sebagai Alternative Penyelesaian Perkara Pidana Berbasis Kearifan Lokal*, Pustaka Ali Imron, Bandar Lampung, 2020, hlm. 46-47

The concept of restorative justice focuses on the active voluntary involvement of all parties who are directly or indirectly affected by the criminal offence to encourage the achievement of a solution and not only rely on law enforcement with rigid punishment mechanisms.³¹ Therefore, it requires the willingness and participation of the victim, perpetrator, family and community in the settlement effort.

The concept of restorative justice itself prioritises the recovery of two things, namely the losses suffered by the victim and the restoration to the original state rather than just giving suffering to the perpetrator. This provides a perspective that the concept of restorative justice is a consequence of the legal movement of retributive justice (*lex talionis*) which emphasises restorative efforts. Since retributive and legalistic remedies are in fact more difficult to treat the victim's wounds, the concept of restorative justice attempts to emphasise the responsibility of the perpetrator to restore harm to others through his or her actions and to restore the situation to what it was before the crime occurred.³²

Restorative Justice is a criticism of the application of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. The reason is that the parties involved in the conflict are not involved in resolving the conflict. The victim remains a

³¹ Afthonul Afif, *Pemaafan, Rekonsiliasi & Restorative Justice; Diskursus Perihal Pelanggaran di Masa Lalu dan Upaya-Upaya Melampauinya*, Pustaka Pelajar, Yogyakarta, 2015, hlm. 328.

³² H Siswanto Sunarso, *Viktimologi Dalam Sistem Peradilan Pidana*, Sinar Grafika, Jakarta, 2014, hlm.157

victim, the perpetrator who is imprisoned also raises new problems for the family and so on.³³

A prominent characteristic of Restorative Justice is that crime is viewed as a symptom of social behaviour rather than a mere violation of criminal law. Crime is seen as an act that harms others and damages social relations. This is in contrast to criminal law, which has recognised crime as a state problem. Only the state has the right to punish, although in fact indigenous communities can provide sanctions. The implementation must prioritise justice, which is emphasised by the term integrated justice, namely justice for the perpetrator, justice for the victim and justice for the community. In the implementation of Restorative Justice, there needs to be a format for follow-up steps after mediation, so that victims are still protected and their interests are served. The practice of mediation is not only carried out for criminal offences of theft, embezzlement and destruction of property, but is extended to other criminal offences committed by children. The implementation of mediation needs to be open between perpetrators, victims and law enforcement, so that the parties really get the benefits of this mediation. It is necessary to educate law enforcers about mediation and its implementation.³⁴

³³ Setyo Utomo, 2014. *Sistem Pemidanaan Dalam Hukum Pidana Yang Berbasis Restorative Justice*, Mimbar Justitia Fakultas Hukum Universitas Suryakencana, Cianjur, Vol. V No. 01, hlm. 86.

³⁴ Jurnal Hukum Khaira Ummah Vol. 12. No. 4 Desember 2017 *Implementasi Restoratif / Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang*, Annis Nurwianti* , Gunarto** , Sri Endah Wahyuningsih

Meanwhile, Burt Galaway and Joe Hudson argue that the concept of restorative justice includes several key elements, namely:³⁵

- a. Crime is seen as a conflict between individuals that can result in injury or loss to the victim, society, or the perpetrator themselves;
- b. The goal of the criminal justice process should be to create peace in society with the participation of the parties concerned and to repair existing injuries;
- c. Law enforcers provide a forum for victims, perpetrators, and the community to play an active role in finding solutions and resolutions.

The elements underlying the restorative concept provide an understanding that the victim as a party who experiences the impact of loss or damage arising from the occurrence of a criminal offence and the community is also indirectly affected by the crime that occurred, so that the victim has the full right to participate in the process of resolving and restoring criminal acts. Likewise, the role of law enforcement is to provide facilities and become a bridge for victims, perpetrators, and the community in order to create a fair settlement.

3. Settlement of Criminal Case through Restorative Justice

³⁵ Ahmad Syahril Yunus, Irsyad Dahri, *Ibid.*, hlm.98

The relationship with criminal offences is inseparable from the Criminal Justice System. The Indonesian Criminal Justice System is regulated in Law No. 8 of 1981 on Criminal Procedure, which is a system that always follows the development of community life. The relationship is evident by seeing the criminal justice system work along with crime still present in society. As the view of Remington and Ohlin who said that the criminal justice system is the application of an approach to criminal justice mechanisms as a result of the interaction between legislation, administrative practices, and social behaviour.³⁶

The settlement of cases with punishment is often unsatisfactory to the litigants and does not have a positive impact on the perpetrators, victims and society. Satjipto Rahardjo argues that the settlement of cases through the judicial system which leads to a court verdict is a law enforcement towards the slow lane. This is because law enforcement goes through a long distance, through various levels starting from the police, prosecutors, district courts, high courts and even to the Supreme Court. In the end, it has an impact on the accumulation of cases that are not small in number in court. In addition, justice that is expected through formal channels has not been able to reflect a sense of justice, is expensive, prolonged, tiring and does not solve problems and what is even worse is that it is full of corrupt practices, collusion and nepotism.³⁷

³⁶ Ali Zaidan, Menuju Pembaharuan Hukum Pidana, Sinar Grafika, Jakarta, 2015, hlm.115

³⁷ Kristian & Christine Tanuwijaya, *Op.Cit*, hlm.594

Seeing the weaknesses of the court channel, the criminal justice system came up with the idea of resolving criminal cases through out-of-court channels with restorative justice values, namely implementing Alternative Dispute Resolution (ADR).⁸¹ ADR itself includes the concept of restorative justice, as a new trend in seeking to resolve conflicts between perpetrators and victims or parties in dispute by using third parties, namely mediators who are neutral, impartial, and not as decision makers. The tendency for people to resolve conflicts with ADR is due to the fact that many cases through the courts do not reach the target and justice.³⁸ The application of restorative justice is carried out as a means to solve a conflict problem that occurs between the parties to the dispute and restore community peace.³⁹

Initially, ADR was generally used in civil cases, with no exception for criminal cases. The current legislation in Indonesia's positive law essentially means that criminal cases cannot be settled out of court, but under certain conditions it is possible to settle cases out of court.⁴⁰ The forms of Alternative Dispute Resolution (ADR) refer to Article 1 point 10 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution, namely consultation, negotiation, mediation, arbitration, and expert judgement.

³⁸ Glery Lazuardi, "Pendekatan Restorative Justice Dalam Tindak Pelaku Penyebaran Hoaks", *Jurnal Kertha Semaya*, Vol. 8 No. 9 Tahun 2020, hlm.1360

³⁹ *Ibid*

⁴⁰ Barda Nawawi Arief, ... *Loc.Cit*, hlm.2

The Indonesian criminal justice system has basically been implemented in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which regulates the diversion system, the output of which is penal mediation. Penal mediation in criminal law in Indonesia itself has the aim of resolving conflicts or criminal cases that occur in the community. Penal mediation is a form of ADR that is only known in private law.⁴¹

Implementation of penal mediation in out-of-court settlements to obtain justice. This out-of-court settlement paradigm aims to achieve justice that prioritises consensus by bringing together the litigants with the aim of achieving a win-win solution. The settlement of criminal cases with restorative justice that is carried out in a balanced manner through deliberation between the perpetrator and the victim will be the most important thing to reach an agreement and a win-win solution that can satisfy all parties. This is important because the process of resolving criminal cases in the criminal justice system does not provide space for the parties involved, namely victims and perpetrators as well as the community to actively participate in solving problems.

Communication tools play a crucial role in the successful implementation of restorative justice, which is based on the concept of mediation. The restorative justice process can be carried out with several mechanisms depending on the conditions and situations of community

⁴¹ *Ibid*

habits. Models of out-of-court case settlement through restorative justice that are still used today include:⁴²

a. Victim-Offender Mediation (Mediasi Penal)

VOM is meeting which involves the victim and the offender led by a mediator. This is originated from Canada and is known as an alternative to court sanctions. The mediator acts as a coordinator and facilitator of the forum, helping the parties communicate to reach a mutual agreement.⁴³

VOM was created to seek the victim's priority needs to be heard regarding the responsibility of the perpetrator, treatment or assistance for the victim, and the victim's wishes are heard by the perpetrator, the victim is directly involved to develop a plan to compensate the perpetrator for what they have suffered, and the perpetrator is responsible for their actions. In its application, this model is applied to all criminal offenders, namely, specifically juvenile offenders; certain types of criminal offences (e.g. stalking, robbery, and acts of violence). It is mainly aimed at novice offenders, child offenders, serious offences and even recidivists.⁴⁴

b. Conferencing or Family Grup Conference (FGC)

⁴² *Ibid.*, hlm.93

⁴³ *Ibid.*, hlm.168

⁴⁴ *Ibid*

FGC parties are broader than VOM. FGC involves the immediate family, friends and experts in addition to the offender and victim. Generally, this model is used in the criminal justice system for offences where the perpetrator is a child. The focus of this model is on educating the offender for what he or she has done to the victim. This programme is used by Australia and New Zealand. In Brazil, this type of programme is called Restorative Conferencing (RC).

c. *Circles*

The implementation of circles in conflict resolution was first practised in Yukon, Canada. In its implementation, it involves several parties, namely the perpetrator, the victim, the perpetrator/victim's family, and the community involved with the case, as well as the mediator or facilitator, all participants as coordinators sitting in a circle (like a circle). The perpetrator starts by explaining everything he/she has done. Next, all participants are given the opportunity to speak about what they hope to achieve.

In its implementation, a mediator or facilitator has a crucial role to enlighten each party to get the same understanding and keep the discussion conducive. This model is carried out by the perpetrator starting by explaining everything he did, then all participants sitting in a circle are

given the opportunity to speak to convey what they expect.

At the end of the discussion, if an agreement is reached and a settlement is reached, namely restitution or compensation or other sanctions or no sanctions but forgiveness of the perpetrator by the community and the victim.

d. Reparative Board/Youth Panel

This model involved a mentoring agency of people trained in problem-solving negotiations, discussing the planning of appropriate restorative justice programmes involving perpetrators and victims. The meeting is also attended by representatives from the court. Here the participants discuss with the perpetrator the problem and its solution over a period of time. Once the programme is agreed upon, the decisions reached are then reported to the court for approval and the board's involvement ends.

Restorative justice has also been applied by the Attorney General's Office of the Republic of Indonesia as an alternative to out-of-court criminal case settlement at the prosecution stage carried out by a criminal justice process to an out-of-court criminal process in the form of a transfer from the prosecution stage to the termination of prosecution. In terms of out-of-court case settlement, according to Article 3 of Perja No. 15/2020, it can be interpreted as the closure of a case in the interests of the law in the

event that there has been an out-of-court case settlement (afdoening buiten process). Out-of-court case settlement as intended can be carried out with the following provisions:

- a. The suspect was a first time offender;
- b. criminal offenses are punishable only by a fine or punishable by imprisonment of not more than than 5 (five) years; and;
- c. The criminal offense is committed with the value of evidence or the value of losses incurred as a result of the criminal offense is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah) ⁴⁵

In this case, the prosecutor in carrying out his main task as a public prosecutor must understand the entire contents of the laws and regulations and heed the moral rules in society. In relation to efforts to realise substantial justice, prosecutors have an important role in the application of restorative justice, namely being a mediator for the parties. If peace is achieved, then the prosecutor's office issues a product, namely a letter of termination of prosecution based on the agreement of all parties involved in the settlement of a case to restore the situation to its original state. The implementation of out-of-court settlements still emphasises professionalism, integrity, proportionality, and orderly case administration.⁴⁶

B. General Overview of Prosecutors

1. Duties and Authorities of Prosecutors

⁴⁵ Pasal 3 ayat 3 Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian penuntutan berdasarkan keadilan restoratif

⁴⁶ Bambang Waluyo, *Penyelesaian Perkara Pidana...*, Op.Cit., hlm.84.

Law enforcement in the context of criminal law, recognises the term integrated criminal justice system. Integrated criminal justice system can be used as a system and process. As a system, there is a functional and institutional relationship between each sub-system in the context of law enforcement. Meanwhile, as a process, it means that the judiciary takes the process in accordance with the provisions of the criminal law and the applicable criminal procedure law.⁴⁷ The implementation of law enforcement in the Integrated criminal justice system consists of at least 4 (four) components, namely the Police, the Prosecutor's Office, the Court and the Correctional Institution which have been regulated in the Criminal Procedure Code regarding their respective duties and authorities which are integrated and cannot affect each other's authority.

The Public Prosecutor's Office of the Republic of Indonesia is a government institution that carries out the power of the State in the field of prosecution and other authorities based on the law, as well as carrying out the power of the State independently carrying out its functions, duties and authorities without being influenced by government power and other powers. Constitutionally regulated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The regulation explains that the

⁴⁷ Jevons Baweke, "Integrated Criminal Custice System terhadap Sistem Peradilan Tindak Pidana Perikanan", *Lex Crimen*, Vol. II/No. 7/November/2013, hlm.100

Prosecutor's Office in carrying out its duties to strive to realise legal certainty, legal order, justice and truth by heeding religious norms, decency, and morality, and must explore human values, law and justice that live in society.

The Attorney General's Office as an authorised body in the enforcement of law and justice, the Attorney General's Office is led by the Attorney General who is elected by and responsible to the President. The Attorney General's Office, the Attorney General's Office, the High Prosecutor's Office, and each level of the Attorney General's Office have jurisdictions, all of which are an integral unit that cannot be separated.

The Prosecutor's Office as the controller of the case process (*Dominus Litis*) has a central position in the law enforcement process and is the only agency that can determine whether a case in a criminal case can be submitted to the Court based on valid evidence according to the Criminal Procedure Law. Aside from being the bearer of *Dominus Litis*, the Public Prosecutor's Office is also the only agency that executes criminal decisions (*executive ambtenaar*).⁴⁸ This authority is the monopoly of the prosecutor's office, which is the only institution that has and monopolises the prosecution and settlement of criminal cases in terms of

⁴⁸ Dedy Chandra Sihombing, *Op.Cit*, hlm.284

prosecution.⁴⁹

Regarding the duties and authority of the Prosecutor's Office regulated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it has several fields, namely the criminal, civil and state administrative fields as well as the field of order and public welfare. However, the author here limits the issue of authority in the criminal field. The duties and powers of the Public Prosecutor's Office in the criminal field are regulated in Article 30 paragraph (1) of Law Number 16 of 2004 concerning the Public Prosecutor's Office of the Republic of Indonesia, namely:

- a. conduct prosecution;
- b. implementing judges' determinations and court decisions that have obtained permanent legal force;
- c. to supervise the implementation of conditional sentence, supervision sentence, and conditional release decision;
- d. to investigate certain criminal offences under the law;
- e. completing certain case files and for that purpose can conduct additional examinations before being submitted to the court, which in its implementation is coordinated with investigators.

C. General Overview of Violation Crime

1. Types of Violation Crime

The definition of maltreatment as previously discussed by the author is that maltreatment in the Criminal Code is referred to as a criminal offence against the body, while experts formulate

⁴⁹ RM. Surahman, *Mazaiik Hukum I:30 Bahasan Terpilih* , Sumber Ilmu Jaya, Jakarta, 1996,hlm.83

maltreatment as an act of intentionally harming someone with pain felt on the body such as getting wounds all over the body.⁵⁰ As for the forms or types of crimes against the body or maltreatment, based on the element of guilt, crimes against the body consist of 2 (two) forms, namely;⁵¹

a. Crimes against the body committed with deliberate intent, which are qualified as maltreatment, are contained in Chapter XX of Book II which includes:

- 1) Ordinary maltreatment as set out in Article 351 of the Penal Code
- 2) Ordinary maltreatment as set out in Article 352 of the Penal Code
- 3) Aggravated maltreatment as set out in Article 353 of the Penal Code
- 4) Serious maltreatment as set out in Article 354 of the Penal Code
- 5) Aggravated Serious Offences as set out in Article 355 of the Penal Code
- 6) Offences against persons of a certain quality as set out in Article 356 of the Penal Code

b. Crimes against the body due to negligence, contained in Article

⁵⁰ Leden Marpaung, Op.Cit, hlm. 5

⁵¹ Tongat, 2003, Hukum Pidana Materiil, Tinjauan Atas Tindak Pidana Terhadap Subyek Hukum Dalam KUHP, Jakarta; Djambatan, hlm. 67

360 of Chapter XXI of the Penal Code, known as the qualification of negligently causing injury.

2. Elements of Violation Crime

The crime of maltreatment consists of 2 (two) types, but there are only 5 (five) types and the elements of maltreatment which the author will describe one by one from those mentioned above as follows:⁵²

a. Ordinary maltreatment article 351 KUHP.

Ordinary maltreatment is an event that causes pain or obstruction to routine work or mental disturbance that does not last longer than four weeks, the pain can be expected to heal and there is no danger of death.

Simple offences under Article 351 of the Penal Code are described as follows:

- 1) Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred Rupiahs.
- 2) If the act results in serious injury, the offender shall be punished by a maximum imprisonment of five years.
- 3) If it results in death, it is punishable with a maximum imprisonment of seven years.
- 4) With maltreatment shall be equated intentional damage

⁵² Ibid,hlm. 68- 102

to health.

5) Attempt to commit this crime is not punishable.

The elements of ordinary maltreatment are:

- a) The element of intent
- b) The element of action
- c) The element of the effect of the act (intended), namely:
 - Pain
 - Injury to the body
- d) Which element of effect is the sole objective

Article 351 paragraph 2, namely ordinary maltreatment resulting in serious injury, is actually the same as the elements in Article 351 paragraph 1, but the element of consequence is different where the element of consequence is serious injury as stipulated in Article 90 of the Criminal Code whereas if the injury is a minor injury and is not related to the injury in Article 90 of the Criminal Code then the injury is a minor injury, Furthermore, in Article 351 paragraph 3 maltreatment causing death where the element of effect, the effect in this article is death, where this death is not the result of death that is done intentionally or intended by the perpetrator whereas if this death is done intentionally then it is no longer included in Article 351 paragraph 3 but is included in Article 338 of the Criminal Code on the crime of murder. Article 351 paragraph 4 maltreatment

in the form of intentionally damaging health basically means that the perpetrator intended to commit the act and knew that the act would cause damage to health. Doctrinally, damaging health is defined as damaging physical health, in the sense that the act makes an already sick person sicker, as in the following examples:

For example, giving murus medicine to someone who is sick with diarrhoea, so that because of the administration of the drug, the diarrhoea becomes worse.⁵³

b. Ordinary maltreatment Article 352 KUHP

Ordinary maltreatment is an event that does not result in illness or in the inability to perform an office or job.

- 1) Except as provided in 353 and 356, maltreatment which does not result in illness or an obstacle to the performance of official or professional activities, shall, as light maltreatment, be punished by a maximum imprisonment of three months or a maximum fine of three hundred rupiahs.
- 2) Attempt to commit a criminal offence..

The elements of light maltreatment are:

- 1) Not premeditated maltreatment
- 2) Not maltreatment committed:
 - a. Against his/her legal mother or father, wife or child.
 - b. A public servant who is and/or was in the performance

⁵³ Ibid, hlm. 68- 88

of his/her lawful duty.

c. Life or health, i.e. the introduction of substances harmful to life or health to be eaten or drunk.

3) Not causing illness or hindrance to the performance of one's occupation, position or livelihood.

c. Aggravated maltreatment Article 353 of the Penal Cod

Article 353 of the Penal Code on premeditated maltreatment reads as follows: 1) Any person who with deliberate intent seriously injures another person, shall, being guilty of serious maltreatment, be punished by a maximum imprisonment of eight years. 2) If the fact results in death, the offender shall be punished by a maximum imprisonment of ten years.

Aggravated maltreatment under Article 353 of the Penal Code, has 3 (three) forms, namely:

1) Aggravated maltreatment that does not result in serious injury or death.

There are 5 (five) elements of premeditated maltreatment that do not result in serious injury or death, namely:⁵⁴

a) Element of intent (opzet)

This element is the element of intentionality from awareness and intentionality in the consciousness of

⁵⁴ Fikri, Op.Cit, hlm.6

certainty. the element of intentionality is categorised as committing maltreatment even though the result is serious injury.

b) The element of action, namely premeditation, this element of action has 3 conditions, namely;

(1) Deciding the will in a calm atmosphere;

(2) Availability of sufficient time from the inception of the will to the execution of the will;

(3) The execution of the will or act of persecution is done in a state of tranquility;

c) Body elements of others.

In this case, the act intended by the perpetrator must be an act directed against another person. The maltreatment must be directed at the body of another person, because basically maltreatment is not known as maltreatment of oneself. As in the crime of murder, where the law has never made suicide a criminal offense, this is also the case in maltreatment. Persecution against oneself is not included in the formulation of the crime.

d) Which result is the only purpose of the perpetrator.

e) Planning in advance.

2) Aggravated maltreatment resulting in serious injury

That in this maltreatment the perpetrator actually only wanted and planned to cause bodily harm and pain to his intended victim, but because the actions taken by the perpetrator were excessive, this maltreatment caused serious injury.

3) Aggravated maltreatment resulting in death.

That in premeditated maltreatment resulting in death it is not an act that is unwanted and planned by the perpetrator, because the perpetrator only wants to cause pain and bodily injury, but because the perpetrator is not controlled his actions then his actions result in death.

D. General Overview of Embezzlement Crime

1. Definition of Embezzlement Crime

The term embezzlement as commonly used by people to refer to the type of crime in Book II Chapter XXIV (24) of the Criminal Code is a translation of the Dutch word "verduistering".⁵⁵ In the case of a criminal offense, it is imperative to have a clear understanding of the crime that occurred. Some criminal offenses that occur must be known in meaning and definition, including the crime of embezzlement.

The juridical definition of embezzlement is contained in Article 372 of the Criminal Code (KUHP), namely "Whoever deliberately and

⁵⁵ Effendy, Rusli dan Poppy Andi Lolo. *Asas-asas Hukum Pidana*. (Ujung Pandang: Leppen-UMI, 1989) Hal.49. 1989.

unlawfully possesses property which wholly or partially belongs to another and which he has not acquired by crime, shall be punished for embezzlement with imprisonment for a term not exceeding four years or a maximum fine of nine hundred rupiahs.”

Lamintang states his explanation of the crime of embezzlement, namely the criminal offense as mentioned in CHAPTER XXIV of the Criminal Code which is more appropriately referred to as "criminal offense of abuse of rights" or "abuse of trust". This is because the essence of the criminal offense regulated in CHAPTER XXIV of the Criminal Code is "abuse of rights" or "abuse of trust". Such mention will make it easier for everyone to know what actions are actually prohibited and punishable in the provision.

Emphasizing the definition of embezzlement, Tongat stated that if an object comes into a person's possession not because of a criminal offense, but because of a legitimate act, for example because of a storage, entrustment agreement, and so on. Then the person who is entrusted with the storage and so on controls the goods for himself unlawfully, then that person is committing "embezzlement”.

Adami Chazawi added an explanation of embezzlement based on Article 372 of the Criminal Code which is stated as follows. The word *verduistering*, which in our language is literally translated as embezzlement, for the Dutch community is given a broad meaning, not

interpreted as the actual meaning of the word as making something unclear or dark. It is closer to the meaning that the defendant abuses his right as the one who controls an object (possession), which right must not exceed his right as a person who is entrusted with the control of the object not because of a crime.⁵⁶

The Criminal Code in Book II Chapter XXIV also regulates the crime of general embezzlement in Article 372, namely "Whoever deliberately and unlawfully possesses property which wholly or partially belongs to another and which he has not acquired by crime, shall be punished for embezzlement with imprisonment for a term not exceeding four years or a maximum fine of nine hundred rupiahs."

The Penal Code in Book II Chapter XXIV also regulates the crime of light embezzlement in Article 373, namely "The act described in Article 372, if the embezzled property is not livestock or its value does not exceed two hundred and fifty rupiahs, shall be punished as light embezzlement by a maximum imprisonment of three months or a maximum fine of nine hundred rupiahs." The Criminal Code in Book II Chapter XXIV also regulates the crime of embezzlement with aggravation in Article 374, namely "Embezzlement committed by a person who has control over the goods by virtue of his office or by virtue of his occupation or by virtue of being remunerated therefor, shall be punished by a maximum imprisonment of five years."

⁵⁶ Chazawi, Adami. Op.Cit. Hal.70.

The Criminal Code in Book II Chapter XXIV also regulates the crime of embezzlement in the household in Article 375, namely "Embezzlement committed by a person to whom the goods are forced to be given for safekeeping, or by a guardian, administrator or executor of a will, administrator of a social institution or foundation, against goods under his control as such shall be punished by a maximum imprisonment of six years."

The Criminal Code in Book II Chapter XXIV also regulates the criminal act of embezzlement in helping Article 376, namely "The provisions of Article 367 apply to the crimes described in the embezzlement chapter." For this reason, it is necessary to elaborate on the formulation in Article 367 paragraph (2) of the Criminal Code which reads, namely "If he (the perpetrator or accomplice of one of the crimes in the embezzlement chapter) is a husband (wife) who is separated from table and bed or separated from property, or if he is a blood relative or cousin, either in the straight line or in the second degree of the deviant line, then a prosecution may only be held against that person if there is a complaint that the crime has been committed."

The Criminal Code in book II Chapter XXIV also regulates the punishment of the perpetrators of the crime of embezzlement, namely in Article 377 "First, in the event of conviction for one of the crimes described in Articles 372, 374, and 375, the judge may order the announcement of his verdict and the revocation of the rights referred to

in Article 35. Second, if the guilty person commits the crime in his work, his right to carry out the work may be revoked.”

2. Elements of Embezzlement Crime

- a. Objective elements consisting of :
 - 1) Claiming to be one's own property;
 - 2) The property;
 - 3) Wholly or partially belongs to another person;
 - 4) Which is in his power not because of a crime.
- b. Subjective elements consisting of:
 - 5) Element of Willfulness;
 - 6) The Element of Unlawfulness.

Based on the explanation above, it can be described as follows:

- a. Objective Elements
 - 1) Claiming as one's own

Adami Chazawi explains that the act of possession is the act of controlling an object as if he were the owner of the object.⁵⁷ With this understanding, it can be explained that the perpetrator, by performing the act of possessing an object that is in his power, is performing an act as the owner performs an act on the object.

Thus, it can be concluded that in the crime of

⁵⁷ Chazawi, Adami. Op.Cit. Hal.72.

embezzlement, it is required that the act of "controlling" must have been carried out or completed. For example, the goods have been sold, used, exchanged, and so on.

2) The property

The act of controlling an item that is in his power as explained above, cannot possibly be done on items whose material nature is intangible. Because the object of embezzlement can only be interpreted as goods whose material properties are tangible, and or movable.

According to Adami Chazawi, in his explanation of this element, explains that. The definition of goods in his power as the existence of a direct and very close relationship with the goods, which is the indicator that, if he wants to take action against the object, he can do it directly without having to take another action first, is only for tangible and moving objects, and it is impossible for intangible and fixed objects to occur.⁵⁸

3) Wholly or partially belongs to another person

This element implies that the object taken must be goods or objects that belong either wholly or partially to another person. So there must be an owner as explained above, goods or objects that have no owner or no owner

⁵⁸ Chazawi, Adami. Op.Cit. Hal.77.

cannot be the object of embezzlement.

Thus, in the crime of embezzlement, it is not required that the stolen goods belong to another person as a whole. Embezzlement still exists even if it is only partially owned by another person.

4) Which is in his power not because of a crime

The first thing that must be discussed here is the meaning of control. In the crime of theft, mastering is a subjective element whereas in embezzlement, it is an objective element. In theft, mastering is the goal of the perpetrator so the element of mastering does not need to be accomplished at the time of the prohibited act. In this case, it is the intent of the perpetrator that must be proven. Whereas in embezzlement, mastering is not the purpose of the perpetrator so that the act of mastering in embezzlement must be present in the perpetrator.

In the crime of embezzlement, the act of controlling not because of crime, is not the main feature. This element is a differentiator from the crime of theft. As it is known that an item can be in the possession of a person, it does not necessarily have to be subject to a criminal offense. The possession of goods by a person can occur due to lease agreements, buying and selling,

borrowing and so on.

If an item is in the possession of a person not by crime but because of a legitimate act, then the person who is entrusted with storing and so on controls the item for his own benefit unlawfully, then the person is committing embezzlement. The act of unlawful possession is not only limited to the unlawful possession of the object in fact, then it can be said to be embezzlement, it can also be said to be embezzlement of the act of unlawful possession of objects that are not directly controlled by the person.

b. Subjective Elements

1) Element of Willfulness

Adami Chazawi classifies the perpetrator's intent in embezzlement to mean:

- a) The perpetrator knows, is aware that the act of possessing someone else's property that is in his power is an unlawful act, an act that is contrary to his legal obligations or contrary to the rights of others;
- b) The perpetrator with such awareness wills to commit the act of possession ;
- c) The perpetrator knows, realizes that he commits the act of possession of an object, which he is aware that

it belongs to another person partly or wholly;

- d) The perpetrator knows, realizes that the object belonging to another person is in his power not because of a crime.

2) The Element of Unlawfulness

When discussing theft, enough has been said about this unlawful element. Therefore, it will not be discussed again here. In relation to intent, it is important to note that the intent of the perpetrator must also be addressed to this unlawful element, the definition of which has been explained above.

2. Types of Embezzlement Crimes

The crime of embezzlement is regulated in several articles, namely Article 372 of the Criminal Code up to Article 377 of the Criminal Code, then the crime of embezzlement can be classified into several types, namely :

- a. Embezzlement in the principal form,

The crime of embezzlement in the main form in Article 372 of the Criminal Code is a crime committed by a person who intentionally unlawfully controls an object that wholly or partially belongs to another person. However, the person in obtaining the goods in his power is not due to a crime.

- b. Simple embezzlement,

The meaning of simple embezzlement is as explained in Article 373 of the Criminal Code, which is a crime of embezzlement committed by a person where the embezzlement is not against livestock or the value is not more than two hundred and fifty thousand rupiah. Why it is mentioned that the embezzled goods must not be livestock, because it should be remembered that livestock is an aggravating element, so that livestock is considered a special item.

c. Embezzlement with aggravation,

The crime of embezzlement with aggravation is regulated in Article 374 of the Criminal Code. Article 374 of the Criminal Code states that embezzlement with aggravation is embezzlement committed by those who control an object because of their position or because of their work or because they get money in return.

Article 375 of the Criminal Code states that embezzlement with aggravation is embezzlement committed by those who have been entrusted with objects that have been entrusted to them as guardian, curator, power of attorney to manage other people's property, executor of a will and the position of managing the objects of a charity or foundation.

d. Embezzlement as a complaint offense,

This crime as a complaint offense is summarized in Article 376 of the Criminal Code which refers to Article 367 paragraph (2) of the Criminal Code. With this provision, it means that a person who has a family relationship commits embezzlement or assists in embezzling the property of other family members who live in the same house can only be prosecuted against them only if there is or there are complaints from parties who have been harmed by the crime of embezzlement..

- e. Embezzlement by a public servant due to his/her position,

This type of embezzlement is not regulated in Book II Chapter XXIV of the Criminal Code but in Chapter XXVIII which regulates so-called official crimes. Embezzlement committed by a public servant in his/her position is called official embezzlement. The provisions on embezzlement in office are set out in Article 415 and Article 417 of the Criminal Code which regulate a public servant who, because of his/her position, allows money or valuable papers to be taken or embezzled by another person.

E. General Overview of Fraud Crime

1. Definition of Fraud Crime

The crime of fraud or "bedrog" contained in Articles 378-395

of the Criminal Code Chapter XXV is fraud in a broad sense, while Article 378 of the Criminal Code mentions the term "oplichting" which means fraud in a narrow sense.⁵⁹ According to KBBI, the definition of fraud is the act of deceiving or deceiving, speaking dishonestly, falsely and so on with the intention of misleading and / or benefiting from it..⁶⁰

Article 378 of the Criminal Code provides that if a person with the purpose or intention of obtaining benefits for himself or others by unlawfully or unlawfully, using a false identity or using deception to move others to hand over an item or object can be punished with a prison sentence of four years.

Against the criminal act of fraud "bedrog" Article 378 of the Criminal Code, Soesilo in his book entitled Basic General Criminal Law and Special Delicates formulates the act as follows:

- a. The crime of fraud, where a fraudster, among other things, invites or seduces someone to trust and give an object, make a debt or eliminate a debt. The purpose of seducing and deceiving is to benefit oneself in an unlawful manner.
- b. The object to be possessed must belong to someone else and have a deliberate intention.⁶¹

⁵⁹ Wirjono Prodjodikoro, Loc. Cit

⁶⁰ Ananda, 2009, Kamus Besar Bahasa Indonesia, Surabaya, Kartika, hlm. 364

⁶¹ Soesilo, 1991, Pokok – Pokok Hukum Pidana Peraturan Umum dan Delik Khusus, Bogor, Politeia, hlm. 87

The elements contained in Article 378 of the Criminal Code and must be fulfilled to be said that a person has committed a criminal act of fraud are as follows:⁶²

- a. Objective element (element of the act committed)
 - a. Using a false name;
 - b. Using false circumstances;
 - c. Using a series of false words;
 - d. Using deception;
 - e. In order to hand over an item;
 - f. To create a debt;
 - g. To cancel a receivable.
- b. Subjective element (element of intent or purpose)
 - 1) Benefiting oneself or others;
 - 2) Breaking the law.

F. General Overview of Threatening

1. Definition of Threatening

Threatening is a crime, and it can hurt someone both physically and mentally. Even if the act doesn't actually hurt the victim, it still deserves to be punished accordingly. Threats are virtual, utilizing electronic devices. The rise of this incident makes people need to know the legal steps when they feel threatened or

⁶² Ibid, hlm.89

terrorized via WhatsApp, so that no one else commits this despicable act for personal gain.

To review further how the laws and regulations are applied, it is important to get to know what provisions that regulate the criminal acts of perpetrators which can be the subject to criminal penalties. Threatening Law, Can Snare Perpetrators of Threatening Acts The Indonesian government has regulated the law on threatening, where if someone commits such acts for personal gain and risks harming someone, then he will be strictly sanctioned. Through the government's law on threatening, we know that the arbitrary actions against others can violate the act of unpleasantness.

Threatening, once being reported by the victim, is going to be charged. That is why people are supposed to be alert to behave in such a good manner as we will never know this could happen to anyone even though without the intention of threatening. In addition, cyber bullying, which is currently rife in social media and the internet world, can violate the applicable threatening laws. The actions taken can threaten the victim physically, psychologically and materially. There are still many Indonesians who do not know this legislation, because many perpetrators are caught and feel unaware of their mistakes and end up apologizing

to the victim, even though they have caused harm.⁶³

Being wise in using social media and expressing opinions to others, is one way for you to prevent violations of the threatening law. Punishment for Threatening Offenders, Based on the Law.

In accordance with Article 368 of the Criminal Code paragraph 1, it is written that anyone who commits threatening and extortion is subject to a maximum imprisonment of 9 years. This article applies, if the perpetrator does it directly. There are other provisions, regulating if the act is carried out through electronic devices. Therefore, it is important for users to know how to report cases of SMS terror, so that no similar incidents occur again.

In accordance with Article 29 of the ITE Law, it states that acts of coercion, threatening or deliberately frightening victims through electronic devices, can be punished with a criminal sanction of 4 years in prison and a fine of 750 million. Through the law on threatening has been made by the government, there should be no more perpetrators who commit such acts. But unfortunately there are still perpetrators who act this way, because they feel that they will not be reported. Do not make the perpetrators of the act of threatening act so, the more users report their actions, the less the perpetrators of threatening dare to launch

⁶³ Prof. Dr. H.R Otje salman soemadiningrat, S.H, pengantar ilmu hukum, cetakan pertama, (bandung refika aditama 2010) hal. 23.

their actions. The making of the threatening law, of course, aims to prevent similar cases that can harm someone, both in terms of material, physical and mental health.⁶⁴

G. General Overview of Property Damage Offenses,

1. Definition of Property Damage

According to the KBBI (Kamus Besar Bahasa Indonesia) the word "Perusakan" cannot stand alone as a meaning. However, the word "rusak" means that it is no longer perfect (good, whole), it can also mean destroyed and perished. So destruction can mean the process, method, and act of damaging by a person or group of people so that it becomes imperfect (good, whole) again. Meanwhile, the word destruction is a noun that means the process, action, and method of destroying. Meanwhile, destruction is also a noun that means the process, the act of damaging. The meaning of destruction and damage in criminal law is to do harm to another person's property without taking the property. The destruction of public facilities is very detrimental, whether the damaged goods are only partially or completely, so that the community cannot use the facilities provided by the government anymore. In addition, the goods that have been damaged are something of value to the

⁶⁴ Dr. E. Sundari, S.H., M.Hum, Prof. Dr. M.G Endang Sumiarni, S.H., M.Hum. politik hukum, tata hukum indonesia (Yogyakarta cahaya atma pustaka, 2015), hal. 123.

community, with the destruction of these goods greatly disturb the peace of the community. Destruction in the Criminal Code is classified as a crime. Destruction is contained in Book II of the Criminal Code, which can be seen in Chapter V on Crimes against Public Order, namely in Article 170 and Chapter XXVII on Destroying or Damaging Goods starting from Article 406 to Article 412 of the Criminal Code. Destruction in Article 170 of the Criminal Code is as follows:

Any person who openly and with united forces uses violence against persons or property, shall be punished by a maximum imprisonment of five years and six months.

As the rules set forth in Article 406 of the Indonesian Criminal Code, this is indeed the result of legal development. The issue of criminal sanctions for perpetrators of damage to public facilities is reviewed according to criminal law, especially the application of Article 406 (1) of the Indonesian Criminal Code, which stipulates that:

- 1) Any person who with deliberate intent and unlawfully destroys, damages, renders useless or removes any property which wholly or partially belongs to another, shall be punished by a maximum imprisonment of 2 (two) years and 8 (eight) months or a maximum fine of Rp.4500,- (four thousand five hundred rupiahs).

- 2) The same punishment shall also be imposed on the person who with deliberate intent and unlawfully kills, damages, renders useless or removes an animal which wholly or partially belongs to another.

For the perpetrators of the destruction of goods according to the provisions of the Criminal Code Article 406 of the Criminal Code which threatens the defendant with a sentence of 2 (two) years 8 (eight) months imprisonment. Article 406 is also the legal basis for perpetrators of property damage who commit crimes.

H. General Overview of Fisheries Crime

1. Definition of Fisheries Crime

Fisheries is an activity related to the management and utilization of fish resources. Criminal acts in the field of fisheries are criminal acts outside the Criminal Code that are regulated deviantly, because the criminal acts can cause damage in the management of Indonesian fisheries which results in harm to the community, nation and state. With high and severe criminal penalties as one way to be able to overcome criminal acts in the field of fisheries. Many people misuse fisheries activities as a benefit for themselves without thinking about the marine ecosystem, for example by using prohibited fishing gear which results in the marine ecosystem. Now fisheries crimes are in the public spotlight due to the rise of criminal acts regarding fisheries, for example criminal acts of fishing with prohibited tools, fish bombing, illegal fishing business without having a license and many other cases.

Crimes in the field of fisheries according to Law of the Republic of Indonesia No. 45 of 2009 amending Law No. 31 of 2004 concerning fisheries (hereinafter abbreviated as Law of the Republic of Indonesia concerning fisheries) which include crimes are regulated in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, and Article 94, as well as Article 100A and Article 100B, while those that include violations are regulated in Article 87, Article 89, Article 90, Article 95, Article 96, Article 97, Article 98, Article 99, Article 100 and Article 100C.⁶⁵

I. General Overview of Assault Crime

The crime of assault is a criminal offense that does not only involve one or two people, but involves many people and commits violence in public. The regulation of the criminal offense of Brawling is regulated in the Criminal Code in Article 170 of the Criminal Code. Factors causing the occurrence of criminal acts of beating are divided into 2 (two), namely internal factors and external factors. Internal factors include intelligence factors, age factors and gender factors. While external factors include economic factors, environmental factors, social factors, and mass media factors. Efforts to overcome the crime of beating can be divided into 2 (two), namely efforts through penal and non-penal channels.

⁶⁵ Muh. Faizal Al-Fitrah, Skripsi: *Tinjauan Yuridis terhadap Tindak Pidana Perikanan dalam Hubungannya dengan Perizinan*, (Makassar: Universitas Hasanuddin, 2016), hal. 3

J. General Overview of Theft Crime

The crime of theft is a criminal offense that occurs very often in the community and is a criminal offense that can be said to be the most troubling to the community. Article 362 of the Criminal Code states that: Any person who takes property, wholly or partially belonging to another, with intent to unlawfully possess it, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of six hundred Rupiahs.

The crime of theft is a criminal offense that occurs very often in the community and is a criminal offense that can be said to be the most troubling to the community. Article 362 of the Criminal Code states that: Any person who takes property, wholly or partially belonging to another, with intent to unlawfully possess it, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of six hundred Rupiahs.

K. General Overview of Restorative Justice in the View of Islamic Criminal Law

The concept of Restorative Justice is widely discussed in the scope of criminal law in Indonesia, but long before that Islamic law had regulated and implemented the concept in the form of Qisas and payment of diat. More or less the same as Indonesian Criminal Law, in Islamic

Criminal Law, Restorative Justice prioritizes justice and compensation.⁶⁶ This restorative concept also already exists in the criminalization system in civil society. Civil society is based on the concept of the City of Medina in 622 AD which was created by Rasulullah Muhammad SAW. The concept of civil society is written in the Madinah charter which has an Islamic character, containing freedom of religion, brotherhood between religions, peace and peace, unity, political ethics, rights and obligations of citizens, and consistency in law enforcement based on truth and justice." The concept of the Medina community in the Medina Charter is essentially the formation of a society based on democracy, and respect for human rights between communities in accordance with the rules determined by the Al-Quran.

In the concept of civil society based on the values of revelation in the Qur'an, the problem-solving mechanism that occurs between individuals prioritizes the concept of brotherhood among Muslims. The concept of forgiveness is better than revenge, as found in the Qur'an surah An-Nisa verse 149 :

شَا۟ءَ اِذَا كَانَ عِفۡنٌ لِّلۡاٰرۡ ۙ جَعَلۡهُ سِۡءَۙ فَاِذَا جَعَلۡهُ خۡبۡرًا
اَتۡذٰخۡرًا لِّمَا اُنۡجۡرَ اِ

“If you bring forth a good deed or conceal or forgive a wrong, then surely Allah is Forgiving, Most Powerful.”⁶⁷

⁶⁶ Ramadhanti, S. N., Nurensa, A., & Rianto, S. A. (2022). Konsep Restorative Justice Dalam Perbandingan Hukum Pidana Di Indonesia Dengan Hukum Islam. PESHUM: Jurnal Pendidikan, Sosial dan Humaniora, 1(4), 417-423.

⁶⁷ Departemen Agama RI, Terjemah & Tafsir Al-Qur'an 30 Juz Huruf Arab & Latin, Hal 301.

Criminal problem solving in the restorative concept focuses on efforts to resolve between the victim of the offender and the family. and restorative justice aims for reconciliation, peace, apology and closure. This application in Islam has already been applied in Islamic criminal law, namely Qhisas Diyat (Murder and Persecution) if in Indonesian criminal law it is a type of severe punishment that cannot be applied to the restorative concept. that in Islam is regulated in surah Al Baqarah (2): 178.

“Those who believe, the qishaash is obligatory upon you in respect of those who are killed: free man for free man, slave for slave, and woman for woman. So whoever is forgiven by his brother, let him (the forgiving one) follow in kind, and let him (the forgiven one) pay (the compensation) to the forgiving one in kind. Such is a concession from your Lord and a mercy. Whoever transgresses after that, then for him is a very painful punishment.”

The explanation in the Quranic verse above is to proof that Islam emphasizes forgiveness and expediency, in terms of the expediency explained in the verse above is an effort by the victim or the victim's family who do not have a sense of revenge. Islam does not like retaliation, but rather by solving problems peacefully by carrying out the concept of forgiveness between the two parties, both victims and perpetrators. The purpose of the concept of forgiveness in Islam is in line with the restorative justice system, which does not make settlements in court but outside the court involving victims, perpetrators and the community. The concept of forgiveness is carried out in accordance with regulatory policies in Islamic law.

Peace is a goal in Islamic law, peace to realize the best results for victims, perpetrators and the community to keep in touch with each other. This concept is then seen from Islamic criminal law. This concept is then seen from Islamic criminal law. In peace, it is important for both parties to reconcile with each other. in Islam, this enforcement must still be applied and implemented in order to realize the common good and to make a change in the context of criminal punishment.

CHAPTER III

THE SETTLEMENT OF CRIMINAL CASES IN YOGYAKARTA HIGH PROSECUTOR'S OFFICE THROUGH RESTORATIVE JUSTICE (RJ)

A. The Implementation of Restorative Justice in Resolving Criminal Cases in Yogyakarta High Prosecutor's Office

Restorative justice in Indonesia is aimed at reforming the existing criminal justice system which is to ensure justice for perpetrators, victims and society as a whole. Restorative justice, as a method of resolving cases outside of the justice system, views punishment not as the only way to resolve a case, but rather as a tool that emphasises restoring harmony between victims, offenders and the community. This approach seeks to create a fairer and more balanced solution for all parties involved. The restorative justice approach to resolving criminal cases prioritises mediation and dialogue as a means of reaching a settlement. This process aims to reach an agreement in resolving the case, while providing protection and recovery to the victims. In addition, it seeks to increase the offender's understanding of the criminal offence he/she committed.⁶⁸

As a government institution that has the authority to prosecute criminal offences, the Public Prosecution Service must be directed to follow the reform of the criminal justice system in line with the development of law enforcement in Indonesia. This reform must consider the level of offence,

⁶⁸ Taufik Makarao, *Pengkajian Hukum Tentang Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak -Anak*, Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, Jakarta, 2013, hlm.31

the loss or effect caused, the inner attitude of the perpetrator, the legal interests protected, and the public's sense of justice. The Prosecutor's Regulation No. 15/2020 on Termination of Prosecution Based on Restorative Justice regulates procedures for handling cases at the prosecution level that focus on the concept of restorative justice. The Prosecutor's Regulation allows prosecutors to maximise their role to resolve cases through restorative justice, so that criminal punishment can be used as a last resort when peace can be achieved.

Prosecutor's Regulation No. 15/2020 on Discontinuation of prosecution based on restorative justice addresses case closure, the requirements for doing so, peace procedures, and detention. According to Article 1 paragraph (1) of the Prosecutor's Regulation, restorative justice is an out-of-court criminal case resolution process that involves perpetrators, victims, families of perpetrators or victims, and other relevant parties to work together to reach a fair settlement with a focus on restoring the original state rather than retaliation. According to the Prosecutor's Regulation, a criminal case can be closed by law after an out-of-court case has been resolved against a specific criminal offence and the situation has been remedied through a restorative justice approach.⁶⁹

Article 5 of Prosecutor's Regulation No. 15 of 2020 on Discontinuation of prosecution based on restorative justice outlines the

⁶⁹ Pasal 3 ayat (3) Peraturan Kejaksaan Nomor 15 Tahun 2020 tentang Penghentian penuntutan berdasarkan keadilan restoratif.

conditions that prosecutors acting as public prosecutors must consider when determining whether a case can be resolved through restorative justice. Not all criminal cases can be legally closed and discontinued by the Public Prosecution Service.

In an interview with Ms Nurul Fransisca as a Functional Prosecutor of the Yogyakarta High Prosecutor's Office explained:

That restorative justice efforts can be carried out against certain types of criminal offences if the formal requirements are fulfilled, namely that the suspect is a first time offender, the threat of a fine or imprisonment is not more than 5 (five) years and the value of losses and evidence is not more than Rp 2,500,000.00 (two million five hundred thousand rupiah).⁷⁰

Then, Mrs Nila Maharani as an Associate Expert Prosecutor. At the Yogyakarta High Prosecutor's Office also explained:

That, in addition to the formal requirements listed in Article 5 paragraph (1), also pay attention to the material requirements listed in Article 5 paragraph (6), namely the restoration of the original situation carried out by the suspect, which can be in the form of the return of goods obtained from persecution, reimbursement of losses or medical expenses, and restoration of damage caused by persecution. The community also welcomed the fact that all parties reached a peace agreement.⁷¹

Criminal cases that can be applied restorative justice include maltreatment in violation of Article 351 of the Criminal Code, which basically does not include serious and light maltreatment with a prison sentence of under 5 years and fulfils the material requirements. In terms of the criminal offence of maltreatment itself, Article 5 paragraph (3) of the Prosecutor's Regulation Number 15 of 2020 states that the loss or value of

⁷⁰ Interview with Ms. Nurul Fransisca, S.H., M.H., Functional Prosecutor of the Yogyakarta High Prosecutor's Office on October 12, 2023.

⁷¹ Interview with Ms. Nila Maharani, S.H.Mhum, Associate Expert Prosecutor. At the Yogyakarta High Prosecutor's Office on October 12, 2023.

evidence can be excluded if it exceeds the stipulated nominal value. If there are circumstances or criteria of a casuistic nature, the crime of maltreatment can be resolved through restorative justice with the approval of the Chief Public Prosecutor, in accordance with the consideration of the Public Prosecutor. Prosecutor's Regulation No. 15/2020 on Discontinuation of prosecution based on restorative justice.

Regarding these requirements, Mr Sabar Sutrisno as an Examiner at the Yogyakarta High Prosecutor's Office added:

That if the formal and material requirements of Article 5 are met, whether a case of maltreatment should be discontinued and legally closed. In addition, in its implementation, this must consider the sociological aspects and perspectives of the Prosecutor as the Public Prosecutor, as stated in Article 4 of Prosecutor's Regulation Number 15 of 2020.⁷²

More specifically, Article 4 of Prosecutor's Regulation No. 15/2020 on Discontinuation of prosecution based on restorative justice regulates what prosecutors must consider in its application regarding sociological aspects and whether a case of maltreatment is appropriate for restorative justice. Restorative justice requires sociological considerations such as the interests of the victim and the law being protected by society, preventing retaliation by the perpetrator in the future, and avoiding negative stigma from the family, neighbourhood, and immediate community to the perpetrator and victim. In addition, the community must provide a positive

⁷² Interview with Mr. Sabar Sutrisno, S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023.

response that can harmonise the relationship between the offender and the victim, as well as between their family and environment.

In addition, consideration of the circumstances carried out by the Prosecutor considers many things, such as the subject, object, category, and threat of the criminal offence, the background of the criminal offence, the severity of the criminal offence, the loss or effect caused, the costs and benefits of handling the case, restoring the original situation, and peace between the perpetrator and the victim.

Chapter IV, specifically Articles 7-14 of Prosecutor's Regulation No. 15/2020 on Discontinuation of Prosecution Based on Restorative Justice, discusses the mechanism for resolving cases through restorative justice. Based on the findings from interviews with resource persons, the process of implementing restorative justice case resolution in the Yogyakarta High Prosecutor's Office is described. Based on the practices that have been carried out by the organisation, the following is a summary:

a) Identification stage of criminal case files.

In the pre-prosecution stage, or stage I, the examination of criminal case files sent by investigators to the Public Prosecution Service, the identity of criminal case files is carried out. Furthermore, the Public Prosecutor appointed by the Chief Public Prosecutor is responsible for monitoring the progress of the investigation and examining the case file based on the findings of the investigation. The Public

Prosecutor acting to settle the case reviews and assesses the suitability of the case file. Criminal offences with a requirement to discontinue prosecution based on restorative justice based on the results of the investigation. If the Public Prosecutor is of the opinion that there is a possibility that the case will be resolved by restorative justice, then the Public Prosecutor requests guidance from the Head of the Public Prosecution Section and approval from the Head of the High Prosecution Unit. According to an interview with Ms Nurul Fransisca when identifying the file, the case did not fulfil the requirements. Therefore, the second stage will begin with the investigator transferring the suspect and evidence to the Public Prosecutor for prosecution in Court. Once the complete document (P-21) is submitted, the Chief Public Prosecutor agrees. The Public Prosecutor will examine the victim and the police investigator first. After that, a formal summons will be made to the suspect and victim, as well as their families and relevant community leaders to ask them to attend the Office of the Public Prosecutor. This is done to explain the reason for the summons for the peace process.

Mrs Nila Maharani explained

That, after receiving the case file from the investigator (stage I), the prosecutor as public defender can consider whether a case is theoretically feasible for resolution through restorative justice.⁷³

In relation to this statement, Mr Sabar Sutrisno added that the Public Prosecutor must also coordinate and optimise the presence of investigators and related parties in the peace process. This is regulated in the Circular Letter of the Attorney General for General Crimes Number: B-4301/E/EJP/9/2020 concerning Guidelines for the Implementation of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of prosecution based on restorative justice.⁷⁴

b) Peacemaking Stage

Peace efforts are required in restorative justice processes to discontinue prosecution. Conducted during the handover of responsibility of the suspect and evidence (phase II), attended by the suspect, victim, their family, community leaders, and investigators. In accordance with the previous Prosecutor's Official Summons, the presence of the relevant parties, especially the victim who was summoned for the summons, confirmed whether the maltreatment case could be resolved through restorative justice. In practice, with the assistance of the

⁷³ Interview with Ms. Nila Maharani, S.H.Mhum, Associate Expert Prosecutor. At the Yogyakarta High Prosecutor's Office on October 12, 2023.

⁷⁴ Interview with Mr. Sabar Sutrisno S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023

Head of the Public Prosecution Section, the Public Prosecutor will make peace efforts with the suspect and victim.

Mr Sabar Sutrisno gave an explanation:

During the peacemaking process the Public Prosecutor must explain the time, place and brief description of the criminal offence committed by the suspect, the purpose and objectives of the peacemaking process, the rights and obligations of the victim and suspect, including their right to refuse.⁷⁵

If the settlement is agreed by both parties, it will proceed to the next stage. The Public Prosecutor will make a report on the peace efforts agreed by both parties, which is then submitted to the Chief Prosecutor and then forwarded to the Chief Prosecutor. If it is not agreed by both parties, the case will be directly submitted to the Court.

c) Peace Process Stage

A peace agreement made between a suspect and victim in the presence of a public prosecutor who functions as a facilitator is known as a peace process. In the Public Prosecutor's Office, the peace process is conducted behind closed doors by the facilitator with the presence of the suspect and victim, witnessed by the Head of the General Crimes Section and representatives of community leaders and police investigators. To restore the relationship between the parties, the peace process was

⁷⁵ Interview with Mr. Sabar Sutrisno S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023

conducted through consensus. To reach an amicable agreement, the victim and suspect must talk to each other in the process. In this process, the facilitator also provides an opportunity for all parties involved to provide comments or suggestions about the problem. Mr Sabar Sutrisno explained:

“That during the peace process, the victim can request compensation for medical expenses with the amount they want or not at all because everything is decided based on the agreement of the parties”.⁷⁶

Furthermore, Mrs Nurul Fransisca explained:

A peace process where the parties can express their feelings about the offence committed by the perpetrator and the compensation they have to pay. In the same way, the parties present have the ability to provide feedback or recommendations to the litigants in an effort to keep the peace.⁷⁷

If the victim and suspect reach a peace agreement, this peace agreement is referred to as an unconditional and conditional peace agreement. Mrs Nurul Fransisca explained:

A conditional settlement allows the victim to seek compensation for the maltreatment, whereas an unconditional settlement does not allow the victim to seek compensation. Once the parties reach an agreement to reconcile, the next stage will include the implementation of the agreement. However, if an agreement is not reached, the case file is brought to court and a memorandum of opinion is written on the failure of the peace process.⁷⁸

d) Implementation Stage of the Peace Agreement Results

⁷⁶ Interview with Mr. Sabar Sutrisno S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023

⁷⁷ Interview with Ms. Nurul Fransisca S.H., M.H., Functional Prosecutor of the Yogyakarta High Prosecutor's Office on October 12, 2023

⁷⁸ Interview with Ms. Nurul Fransisca, S.H., M.H., Functional Prosecutor of the Yogyakarta High Prosecutor's Office on October 12, 2023

Currently, as a result of the peace agreement being implemented, the suspect must fulfil the victim's request from the previous peace agreement. Mr Sabar Sutrisno explained that the victim and suspect will make a written peace agreement signed by the victim, suspect, and 2 (two) witnesses in the presence of the facilitator and supervised by the Head of the General Crime Section. After that, the suspect is punished and returned to his original state. Furthermore, the facilitator will make a report on the implementation of the peace agreement, along with other administrative requirements, and submit the results of the peace agreement in the Minutes of the Peace Agreement.

- e) The application stage for termination of prosecution based on restorative justice

After the Public Prosecutor reports that the peace process has been successful, the Chief Prosecutor will seek the approval of the Chief of the High Prosecutor's Office to discontinue prosecution based on restorative justice. Subsequently, the Chief Prosecutor will provide legal material or minutes to the Deputy Attorney General responsible for general criminal matters. The Public Prosecutor and the Chief Prosecutor give a presentation on the results of the application of restorative justice during an exposition or case title conducted remotely via video conference.

The Chief Prosecutor, with the approval of the Prosecutor General, decides to approve or reject the request for discontinuation of prosecution based on restorative justice. In cases of reported abuse, the Chief Public Prosecutor shall order to discontinue legal proceedings based on restorative justice.

Mrs Nurul Fransisca explained:

That the case title is conducted to directly monitor and supervise the process of termination of prosecution based on restorative justice by the leadership. This is done to prevent prosecutors from abusing their authority. The results of the case review can also determine whether or not the termination of prosecution based on restorative justice in a case of maltreatment is approved.⁷⁹

Mr Sabar Sutrisno also stated

As prosecutors often abuse their authority, the community does not trust the Public Prosecution Service to resolve out-of-court cases on their own. Therefore, the exposé was conducted to ensure that prosecutors do not abuse their authority in handling cases of maltreatment through restorative justice.⁸⁰

f) Stage of Implementation of Case Termination Based on Restorative Justice

At this stage, after obtaining approval to discontinue prosecution of the maltreatment case based on restorative justice, the Chief Public Prosecutor as the Public Prosecutor then issued a Decree of Discontinuation of Prosecution based on restorative justice.

⁷⁹ Interview with Ms. Nurul Fransisca S.H., M.H., Functional Prosecutor of the Yogyakarta High Prosecutor's Office on October 12, 2023

⁸⁰ Interview with Mr. Sabar Sutrisno S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023

If the Decree of Discontinuation of Prosecution Based on Restorative Justice is issued after the implementation of restorative justice in case settlement, it is about the prosecutor who has the authority to stop the prosecution. Prosecutor's Regulation No. 15/2020 on Termination of Prosecution Based on Restorative Justice authorises prosecutors to terminate cases in the interest of the law due to insufficient evidence; the event is not a criminal offence, and the event is not a criminal offence. The results of the investigation of a criminal offence by the investigator will not bring the public prosecutor to court. However, both of these do not aim to set aside or dismiss a criminal case. Therefore, there is a clear distinction between the legal actions mentioned in Article 35 letter c of Law No. 16/2004 on the Public Prosecutor's Office of the Republic of Indonesia as case setting aside or seponering. This is based on Article 77 of the Criminal Procedure Code, which states that a request to examine whether or not the termination of an investigation or prosecution is valid can be submitted to the prosecutor if there is a legal challenge to the continuation of the process. Termination of prosecution for the sake of law is carried out by the prosecutor if there is a legal remedy for the continuation process. Prosecution of the suspect must continue if the pretrial decision determines that the termination of prosecution is invalid.

Due to SKP2, the prosecution can discontinue charges due to lack of evidence in the interest of the law. The judge will request the Public Prosecutor to discontinue the prosecution and the victim from prosecuting once the restorative justice process is successful.

B. The factors that hinder the Yogyakarta High Prosecutor in implementating restorative justice to resolve criminal cases

After knowing how restorative justice is applied in the Yogyakarta High Prosecutor's Office, it cannot be denied that there are several things that hinder the application of restorative justice principles in resolving criminal cases. In reality, not all criminal cases can be resolved through restorative justice because there are still many criminal cases that are submitted to the court, as listed in this table:

Tabel I

Data on the number of successful RJ and failed RJ cases in the Yogyakarta High Prosecutor's Office in 2023

Nama Instansi	Jumlah	Diselesaikan dengan Keadilan Restoratif	Dilanjutkan ke Pengadilan
Kejaksaan Tinggi Yogyakarta	8	4	4

Sumber : Kejaksaan Tinggi Yogyakarta

Based on the table above, it can be seen that since the establishment of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Yogyakarta High Prosecutor's Office has a total of 8 cases that are trying to be resolved with RJ. 4 cases continued to court and 4 cases that have been successfully resolved through restorative justice in 2023

Based on the results of the author's research at the Yogyakarta High Prosecutor's Office, there are several inhibiting factors in the implementation of restorative justice which the author then concludes based on the results of interviews with resource persons from the Yogyakarta High Prosecutor's Office, namely Ms Nurul Fransisca and Mr Sabar Sutrisno as follows:⁸¹

1. Inhibiting Factors

a. Non-fulfillment of the conditions contained in Prosecutor's Regulation No. 15/2020 on Discontinuation of prosecution based on Restorative Justice.

In any given case, the failure of restorative justice efforts can be due to many factors, but one very important one is the inability to fulfil the conditions for termination of prosecution based on restorative justice. Restorative justice cannot be implemented automatically if these conditions are

⁸¹ Interview with Ms. Nurul Fransisca S.H., M.H., Functional Prosecutor at the Yogyakarta High Prosecutor's Office on October 12, 2023

not met. According to Prosecutor's Regulation No. 15 of 2020, drafted by Mr Sabar Sutrisno and Ms Nurul Fransisca of the Yogyakarta High Prosecutor's Office, fulfilment of the requirements necessary to seek a termination of prosecution based on restorative justice may include:

- a) The crime committed by the perpetrator does not constitute ordinary maltreatment, the perpetrator is a recidivist, is subject to a sentence of more than 5 (five) years and the post-mortem showed serious maltreatment.
- b) No peace agreement was reached between the victim and the perpetrator.
- c) Absence of support or positive response from the community regarding case settlement using restorative justice against perpetrators.
- d) The background of the criminal offence committed by the perpetrator cannot be tolerated. Despite fulfilling the requirements of restorative justice, in relation to the actions of the perpetrator there are several considerations that cannot be tolerated so that restorative justice cannot be pursued. According to Mr Ahamd, this can be seen from the background of the criminal act committed by the perpetrator, which

was committed repeatedly against the victim, causing the victim to experience both physical and mental health problems which caused trauma to the victim. Mr Sabar Sutrisno further explained that the background of the criminal offence and the actions of the perpetrator that caused serious injury to the victim and/or caused the victim to die, usually the victim wants the perpetrator to be severely punished.⁸²

b. There is a conflict of interest between the parties involved.

The first exploration asked the victim to make a peaceful attempt in a case of maltreatment in restorative justice. Through a formal summons, the suspect and victim are also asked to attend for deliberation. It is possible that one of the parties or both do not want to reconcile for reasonable reasons, said Ms Nurul Fransisca in her implementation. In maltreatment cases, both the perpetrator and the victim have different interests on how the case should be resolved. Prosecutors will find challenges that may

⁸² Interview with Mr. Sabar Sutrisno S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023

occur when they consider the interests of these two parties.⁸³

Bearing in mind that the benchmarks used are subjective and depend on the needs of each party, there may be incompatibilities or conflicts of interest that may cause difficulties for the parties to come together, such as:

- a) There are various reasons why victims or their families may not be willing to reconcile. For example, they may not apologise to the perpetrator for reasons of pride, because of a pre-existing grudge, or because they are ashamed of the injuries caused by the assault..
- b) Victims and their families do not want compensation from the perpetrator and prefer to deter the perpetrator with a criminal sentence.
- c) The victim requested too much compensation and the perpetrator was unable to fulfil her request.
- d) The perpetrator did not feel guilty towards the victim and did not want to reconcile with them.
- e) Perpetrators do not want to take responsibility for their own actions.

c. Prosecutors' hesitation in pursuing restorative justice.

⁸³ Interview with Ms. Nurul Fransisca S.H., M.H., Functional Prosecutor at the Yogyakarta High Prosecutor's Office on October 12, 2023

In maltreatment cases, the public prosecutor's hesitation about their judgement in determining whether restorative justice can be used to resolve a case is critical. This is because their hesitation can be a barrier. Sometimes, prosecutors serving as Public Prosecutors are unsure of the case to be pursued through restorative justice.

Mr Sabar Sutrisno argued that the duty of the Public Prosecutor is to encourage restorative justice as a determinant of the case. However, it is not uncommon for Public Prosecutors to be concerned about the condition of the victim or the actions of the perpetrator in their attempts to discontinue prosecutions based on restorative justice. As a result, if the victim refuses to make peace, the Public Prosecutor becomes unwilling to make peace.⁸⁴

In addition, if the rules that prosecutors use to resolve cases through restorative justice are unclear, it can lead to multiple interpretations and hinder prosecutors in pursuing restorative justice.

According to Ms Nurul Fransisca, seeking restorative justice is often difficult at the pre-prosecution stage, especially if the perpetrator, victim or community is seeking

⁸⁴ Interview with Mr. Sabar Sutrisno S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023

an amicable resolution. This is because there is no law requiring prosecutors to seek a termination of prosecution based on restorative justice.⁸⁵

The inhibiting factors in the implementation of restorative justice at the Yogyakarta High Prosecutor's Office are one of the new law enforcement systems implemented without taking into account the factors that determine how effective law enforcement is. According to Soerjono Soekanto, law enforcement is influenced by five (5) factors: the law itself, law enforcers, facilities and infrastructure, the last was society and culture as the main significant factor.⁸⁶

Indonesia is a socially and culturally plural society with various ethnic groups. A law enforcer must recognize the social stratification or layering of society that exists in an environment, as well as the existing order of status or position and role. Law enforcers also need to understand the social institutions that live and are valued by citizens. This effort facilitates the process of identifying values, norms or rules that apply in the environment. For people who do not really understand the law, providing legal knowledge can make it easier for citizens to identify the values and norms that apply in their environment⁸⁷.

⁸⁵ Interview with Ms. Nurul Fransisca S.H., M.H., Functional Prosecutor at the Yogyakarta High Prosecutor's Office on October 12, 2023

⁸⁶ Soerjono Soekanto, *Faktor-Faktor Yang Memengaruhi Penegakan Hukum*, Jakarta, PT. Raja Grafindo Persada, 2013, hlm.8

⁸⁷ Soekanto, S. (2004). Faktor-faktor yang mempengaruhi penegakan hukum.

CHAPTER IV

CLOSURE

A. Conclusion

Based on the description of the research results and the previous discussion, it can be concluded as follows:

1. The Yogyakarta High Prosecutor's Office has used restorative justice in the settlement of maltreatment cases in accordance with the Prosecutor's Regulation No. 15/2020 on Discontinuation of prosecution based on restorative justice, which is applied through the stages of identification of criminal case files, peace efforts, peace processes, and implementation of the results of peace agreements.
2. The following factors hinder the use of restorative justice in the resolution of maltreatment cases at the Yogyakarta High Prosecutor's Office:
 - a) The legal factors fulfil the requirements of Prosecutor's Regulation 15/2020. However, the absence of rules requiring prosecutors to pursue restorative justice may lead to inconsistent interpretations and lack of clarity on how restorative justice should be applied.
 - b) Law enforcement factors relating to Prosecutors' knowledge and understanding of restorative justice concepts; however, Prosecutors' hesitancy in pursuing restorative justice can be a barrier.
 - c) Facilities and infrastructure factors related to the availability of special space in the process of implementing restorative justice, as well

as the skills and abilities of prosecutors in implementing restorative justice.

d) Litigants' openness to legal reform will encourage them to reach an agreement. However, the failure of litigants to co-operate due to conflicts of interest can be an obstacle.

e) Cultural factors of the community outside the litigants in responding positively to the application of prosecution discontinuation based on restorative justice.

B. Recommendation

To minimise the inhibiting factors in the application of restorative justice to the settlement of criminal cases, the suggestions that the authors convey are as follows:

1. The aim is for law enforcement officials and communities to maximise the use of restorative justice. The general public, including victims and offenders, should adopt an open-minded approach and realise the importance of understanding the law reforms around the concept of restorative justice. All parties involved must be willing to work together in order to effectively implement restorative justice. Resolving criminal offence cases through restorative justice offers greater fairness and benefits to all parties concerned.
2. The prosecutor's provisions on the discontinuation of prosecution through restorative justice need to be improved, particularly in

article 5 which regulates certain situations. These improvements should aim to clarify the regulations and establish a strong legal framework. This will enable cases involving criminal offences to be effectively resolved through restorative justice, thereby removing any uncertainty within the Public Prosecutor's office. Thus, decisions made regarding the application of restorative justice will be in line with the objectives of the law, so that justice seekers can obtain the benefits and certainty of the law.

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C. Peraturan Perundang-undangan

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D. Wawancara

- Interview with Mr. Sabar Sutrisno, S.H., M.H., Examiner at the Yogyakarta High Prosecutor's Office on October 12, 2023.

Interview with Ms. Nurul Fransisca, S.H., M.H., Functional Prosecutor of
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Interview with Ms. Nila Maharani, S.H.Mhum, Associate Expert Prosecutor.
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