

Reconstruction of Minor Criminal Case Settlement By The Prosecutor's Office Through Restorative Justice

Teuku Syahroni, Fauzie Yusuf Hasibuan, Kristiawanto

Universitas Jayabaya Jakarta, Indonesia

E-mail: teukusyahroni20@gmail.com, adv_fauzie@yahoo.com,
drkristiawantopartners@gmail.com

*Correspondence: teukusyahroni20@gmail.com

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ABSTRACT

This study analyzes the implementation of restorative justice in handling minor crimes by the Prosecutor's Office and offers a policy reconstruction to enhance its effectiveness and achieve substantive justice within the criminal law system. Employing a normative juridical method, the research utilizes legislative, case, historical, comparative, and conceptual approaches. The analysis draws on theories of justice by John Rawls, Lawrence M. Friedman's theory of the legal system, and Howard J. Zehr's theory of restorative justice. The findings reveal that restorative justice is not yet optimally implemented due to disparities in regional policy execution, weak legal infrastructure, and a prevailing retributive mindset among officials and the public. As a solution, the study recommends the mandatory implementation of restorative justice for minor crimes meeting specific criteria, clarifying application standards, enhancing law enforcement training, establishing more restorative justice centers, and strengthening supervision and evaluation mechanisms. The novelty of this research lies in identifying multidimensional barriers, integrating a comprehensive theoretical framework, and proposing a more systematic policy reconstruction. With improved implementation, restorative justice can become a primary tool in resolving minor offenses, reducing overcrowding in correctional facilities, and fostering a more equitable, recovery-focused legal system.

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Introduction

Criminal justice in Indonesia is still dominated by the retributive paradigm (Capera, 2021), which is oriented towards punishment of perpetrators without providing space for victim recovery and social reintegration of perpetrators (Priskila Ginting et al., 2024). This phenomenon can be seen from various cases of minor crimes that should have been resolved through a more humane approach, but instead ended up with disproportionate criminal punishment. In fact, in various countries that have adopted the restorative justice

approach, similar cases can be resolved through a mediation process between the victim and the perpetrator, without having to involve the court, which ultimately burdens the justice system.

One of the main problems in the Indonesian criminal justice system is the uneven application of restorative justice in cases of minor crimes (Taqiuddin & Risdiana, 2022). The existence of Prosecutor's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice and Law No. 11 of 2021 concerning Amendments to the Prosecutor's Law of the Republic of Indonesia does provide a legal basis for the implementation of this approach. However, in practice, the application of restorative justice is still hampered by the discretion of the prosecutor who does not have a standard standard in determining cases that deserve this approach.

The phenomenon of injustice in the criminal justice system in Indonesia can also be seen from various cases that have emerged to the public. Examples are the case of Minah's grandmother in Banyumas who was sentenced for stealing three cocoa cocoa for Rp30,000, or the case of AAL, a 15-year-old teenager who was sentenced to prison for stealing flip-flops belonging to a policeman (Amirullah, 2024; Bachari et al., 2019). These two cases illustrate how the legal system is still rigid in applying the principle of justice. On the other hand, cases with actors from the upper economic class or who have wider access to the legal system are more often treated lightly. This shows the inequalities in the application of the law, where small communities are often victims of a system that is insensitive to their socio-economic conditions.

In addition, the application of prison sentences to perpetrators of minor crimes also has various negative impacts on individuals and society (Lisnawati, 2017). One of them is the problem of overcrowding in correctional institutions, which contributes to various other problems such as the high cost of maintaining inmates, limited access to rehabilitation, and increasing recidivism rates (Hamja, 2022). Data from the Ministry of Law and Human Rights shows that the majority of correctional inmates in Indonesia are perpetrators of minor crimes, which can actually be resolved with an alternative approach without having to go through a formal judicial process (Utami, 2017). Thus, restorative justice not only offers a more humane solution in resolving criminal cases, but can also help reduce the burden on the justice and correctional systems.

Restorative justice itself is a concept that focuses on restoring the relationship between perpetrators, victims, and the community, with the main goal of achieving more substantial justice (Junius Fernando, 2020). This concept not only focuses on punishment, but also on resolving conflicts constructively so that it can provide benefits for all parties involved. In various countries, such as the Netherlands, Australia, and the Philippines, the restorative justice approach has been widely applied in the settlement of minor crimes. With a more structured and clear system, these countries have succeeded in reducing unnecessary incarceration rates and increasing victims' satisfaction with the legal process.

However, in Indonesia, this approach is still not the main standard in the settlement of minor crime cases. The prosecutor's office has the authority to stop prosecutions based on restorative justice, but its implementation is still very limited and often depends on the policies of each region. This uncertainty raises problems in the legal system that is supposed to guarantee equality for all citizens. Therefore, it is necessary to reconstruct the policy of resolving minor crimes so that the restorative justice approach can be applied more effectively and evenly.

The novelty of this study lies in the identification of obstacles in the implementation of restorative justice which include policy inconsistencies, differences in legal

interpretation in various regions, as well as social and cultural factors that hinder the effectiveness of implementation. In addition, the study integrates three main theories—Rawls justice, Friedman's legal system, and Zehr's restorative justice—to analyze policy effectiveness and formulate more comprehensive solutions. This research also contributes to the proposal of more systematic policy reconstruction, including the obligation to implement restorative justice in certain cases, as well as strengthening the legal infrastructure and supervision mechanism through periodic evaluations. Practically, this research contributes to the development of fairer and more efficient legal policies. The recommendations submitted can be a reference for the Prosecutor's Office in designing more effective policies, while academically, these findings can be the basis for further studies on the development of a more integrated restorative justice mechanism in the criminal justice system. If implemented optimally, this policy reform will accelerate the resolution of cases, reduce overcrowding in correctional institutions, and improve the quality of justice for victims and perpetrators of minor crimes.

Research Methods

This research uses a normative juridical method (Sonata, 2014), namely a method that focuses on the analysis of applicable legal norms and their application in the criminal justice system, especially related to the settlement of minor crimes by the Prosecutor's Office through a restorative justice approach. This research was conducted by examining various laws and regulations related to restorative justice policies, legal doctrines, and court decisions that reflect legal practices that occur in the field. By using this method, this study is expected to identify the obstacles that still occur in the implementation of restorative justice by the Prosecutor's Office in resolving minor crimes. In addition, this research also aims to formulate policy solutions that can increase the effectiveness and consistency of the implementation of restorative justice, so that it can provide greater benefits for victims, perpetrators, and society as a whole.

Results and Discussions

Implementation of Restorative Justice in the Settlement of Minor Crimes by the Prosecutor's Office

Restorative justice has become one of the approaches that has begun to be applied in the criminal justice system in Indonesia, especially in the settlement of minor crimes (Wulandari, 2021). However, even though it has a legal basis through Prosecutor's Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, its implementation still faces various challenges. Inconsistency in the implementation of this policy in various regions is one of the main problems that cause inequality of justice for perpetrators of minor crimes.

From the perspective of John Rawls' theory of justice, the restorative justice approach in minor crimes should provide equal opportunities for every individual to get fair treatment in the legal system (Hatta Ali, 2012). However, in practice, there are significant differences in treatment between perpetrators and others, depending on the policies taken by the Prosecutor's Office in their respective regions. The prosecutor's great discretion in determining whether a case can be resolved through this mechanism or not causes potential injustice in its application. This is contrary to the concept of justice as fairness proposed by Rawls, which emphasizes that every individual has the right to equal justice without any particular bias or preference in its application.

Furthermore, if it is associated with Lawrence M. Friedman's theory of the legal system, the problems in the implementation of restorative justice can be analyzed through three main components, namely legal structure, legal substance, and legal culture (Sihombing et al., 2023). In terms of legal structure, the Prosecutor's Office has the authority to stop prosecutions based on restorative justice, but not all prosecutors have the same understanding in implementing this policy, so there are often inconsistencies in its implementation. In terms of legal substance, existing regulations still have weaknesses, where there is no clear standard regarding the criteria for cases that must be resolved through restorative justice. As a result, prosecutors have great discretion in determining whether a case deserves this approach or not, which can ultimately create legal uncertainty for both perpetrators and victims.

In addition, from the perspective of legal culture, there is still a conservative view among law enforcement officials and the public who think that justice can only be achieved through punishment. In many cases, law enforcement officials prefer to continue to file cases in court on the grounds that the termination of prosecution through restorative justice is considered to have a less deterrent effect on the perpetrators. In fact, based on Howard J. Zehr's theory of restorative justice, the main goal of the criminal justice system is not only to punish the perpetrators, but also to create redress for the victims, perpetrators, and society (Gultom, 2022). Therefore, the application of restorative justice should not only focus on stopping prosecutions, but must also involve effective mediation mechanisms, so that victims can obtain justice, while perpetrators can be held accountable for their actions without having to serve prison sentences that have the potential to damage their future.

This condition shows that the implementation of restorative justice in Indonesia is still not optimal due to various structural, substantial, and cultural obstacles in the legal system. If this approach is to be implemented effectively, it is necessary to reconstruct the policy so that it is more systematic and consistent in its implementation.

Obstacles in the Implementation of Restorative Justice

Although restorative justice has been regulated in the Prosecutor's Regulations, various obstacles still occur in its implementation. One of the main obstacles is the lack of uniformity in implementation in various regions. Not all prosecutors' offices apply this approach in the same way, so there are still many cases of minor crimes that end in criminal punishment even though they should be resolved through mediation.

From the perspective of John Rawls' theory of justice, this situation reflects an imbalance in the distribution of justice, where some individuals can access restorative justice mechanisms, while others still have to go through a formal legal process. In fact, in the concept of justice as fairness proposed by Rawls, every individual should have equal access to a fair legal settlement mechanism. Therefore, there needs to be a policy that ensures that restorative justice is not only applied selectively, but becomes a standard in handling minor crimes.

Another obstacle is the lack of understanding and socialization about restorative justice. Many victims and perpetrators do not know that they have the option to settle cases out of court. In addition, law enforcement officials, especially prosecutors and judges, also do not fully understand the benefits of this approach, so there is still resistance in its implementation.

For example, in some cases that should have been resolved through mediation, the prosecutor still chooses to proceed to court due to a lack of support from other authorities. This shows that the legal culture that still tends to be retributive is one of the main

obstacles in the implementation of restorative justice. Therefore, concrete steps are needed to change the perspective of law enforcement officials to prioritize recovery-based settlement over punishment.

Reconstruction of Settlement of Minor Crimes Through Restorative Justice

To overcome the various obstacles that have been identified, a more systematic policy reconstruction is needed in the implementation of restorative justice. Some of the steps that can be taken to improve this system include:

- a. Revision of Prosecutor's Regulation No. 15 of 2020 so that restorative justice becomes a mandatory mechanism in the settlement of minor crimes that meet certain criteria, such as first-time offenders, criminal threats under five years, and material losses of not more than Rp2,500,000.
- b. Capacity building for law enforcement officials through intensive training for prosecutors and judges on the application of restorative justice, so that they can understand the benefits of this approach and use it more consistently in practice.
- c. The development of supporting infrastructure, such as restorative justice houses in various regions, which can be used as a place of mediation between victims and perpetrators, so that case resolution can be carried out more effectively and efficiently.
- d. Improving the supervision mechanism, by providing an evaluation system for the implementation of restorative justice in each prosecutor's office to ensure that this policy is really implemented consistently and not just a formal policy.

If linked to Howard J. Zehr's theory of restorative justice, this policy reconstruction is crucial to ensure that justice given to victims, perpetrators, and society can be truly achieved. In Zehr's theory, restorative justice is not only about stopping prosecutions, but also about how to ensure that all parties involved in a case get substantial justice. Therefore, the reconstruction of this policy must pay attention to the aspects of victim recovery, accountability of perpetrators, and balance in the legal system.

By implementing policy reforms based on the principles of restorative justice, the Indonesian legal system can be more responsive in handling minor crimes with a more humane and fair approach. This will help reduce the burden on the criminal justice system, reduce recidivism rates, and create a more inclusive legal environment based on social recovery values.

Conclusion

The application of restorative justice in the settlement of minor crimes by the Prosecutor's Office in Indonesia still faces various structural, substantial, and cultural obstacles. Although Prosecutor's Regulation No. 15 of 2020 has provided a legal basis for the termination of prosecution based on restorative justice, its implementation has not been optimal due to policy inconsistencies in various regions, the breadth of prosecutors' discretion, and the lack of understanding of law enforcement officials and the public. This causes access to restorative justice to be unequal, contrary to the concept of justice as fairness from John Rawls' theory of justice, which emphasizes the need for equal justice for every individual in the legal system. To overcome these problems, a policy reconstruction is needed so that restorative justice becomes a mandatory mechanism in resolving minor crimes with clear criteria. Recommendations for improvement include revising regulations to be more specific in determining cases that are required to use this mechanism, increasing the capacity of law enforcement officials through special training on restorative justice, building restorative justice houses as a place of mediation, and strengthening the supervision and evaluation system so that the implementation of this

policy runs effectively and uniformly throughout Indonesia's jurisdiction. This reform will strengthen substantive justice, reduce the burden of justice, and increase the effectiveness of case settlement with a more humane and social recovery-based approach.

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