

## Implementation of Restorative Justice Policy against Perpetrators of Criminal Negligence that Causes Death



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**ABSTRACT:** Requests for termination of prosecution against perpetrators of criminal negligence causing death can be rejected or granted even though they use the same technical guidelines, namely Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/EJP/02/2022. The research focuses on understanding the policy parameters of restorative justice for perpetrators of criminal negligence causing death and the ideal implementation of restorative justice for perpetrators of criminal negligence. This research is a normative juridical research with statutory approach, case approach, and conceptual approach. Restorative Justice Application is granted because the parameters of negligent acts are not purely in the perpetrator but also carried out by the victim himself, while the application is rejected because culpa only comes from the actions of the perpetrator. The ideal implementation of restorative justice policy must lead to efforts to restore the original state, no negative stigma from the community, and oriented to technical efficiency and legal certainty for the parties. Suggestions from the research results are that case termination based on restorative justice requires certainty in technical regulations, for example through the Attorney General's Regulation. The ideal implementation of restorative justice policy must pay attention to: a unified written policy / lex scripta that can be accessed by the public, can be tested, integrative between judicial mechanisms and pay attention to functional differentiation of criminal justice, as well as harmonization of subjects and objects in prosecution.

**KEYWORDS:** Restorative Justice Policy, Parameters, Ideal Implementation

### BACKGROUND

Law is a basis that regulates the style or pattern of human life so that it has an important role in achieving peace of life for the community.<sup>1</sup> The Criminal Code compiled by the current Indonesian government aims to reorganize the national criminal law system. Criminal law reform essentially implies an effort to reorient and reform criminal law in accordance with the socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie social policy, criminal policy and law enforcement policy in Indonesia.<sup>2</sup> Crimes or crimes are not only committed by adults, therefore legal protection for children can be carried out as an effort to protect the law against various freedoms and human rights of children. The protection of children also includes interests related to the welfare of children.<sup>3</sup> The handling of legal issues related to children prioritizes peace and the future of children with the issuance of regulations regarding the juvenile criminal justice system, namely Law Number 11 of 2012.

Child Protection prioritizes the principle of the best interests of the child which is implemented with a diversion mechanism.<sup>4</sup> Legal reform is needed to accommodate the settlement of cases in children with a restorative justice approach, namely the settlement of criminal cases by involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair solution emphasizing recovery back to its original state, and not retaliation.<sup>5</sup> The concept of restorative justice does not provide a place for the protection of victims, considering that victims of criminal acts can not only experience material losses but it is very

<sup>1</sup> Hidayat, A., & Arifin, Z. (2019). Political Law Legislation as Socio-Equilibrium in Indonesia. *Journal of Ius Constituendum*, 4(2), 147-159.

<sup>2</sup> Kusuma, J. D. (2016). The Purpose and Guidelines of Punishment in the Renewal of the Indonesian Punishment System. *Journal of Muhakkamah*, 1(2).

<sup>3</sup> Nugroho, O. C. (2017). The role of correctional centers in the juvenile criminal justice system from a human rights perspective. *Journal of Ham*, 8(2), 161-174.

<sup>4</sup> Hidayati, N. (2013). Juvenile criminal justice with restorative justice approach and the best interest of the child. *Ragam*, 13(2).

<sup>5</sup> Amdani, Y. (2016). The concept of Restorative Justice in the settlement of theft cases by children based on Islamic law and Acehese customs. *Al-'Adalah*, 13(1), 81-76.

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possible to experience immaterial losses.<sup>6</sup> Criminal cases that can be resolved with restorative justice are minor criminal cases with criminal penalties as stipulated in articles 364, 373, 379, 384, 407 and article 482 of the new Criminal Code with a loss value of not more than Rp 2,500,000 (two million five hundred thousand rupiah).

The progressive step of the prosecutor's office in terms of handling cases against perpetrators of criminal acts, especially criminal acts of negligence, is the existence of Circular Letter of the Deputy Attorney General for General Crimes (SE Jampidum) Number: 01/E/Ejp/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice. One example of the implementation of the Jampidum Circular Letter is in the termination of the prosecution carried out by the Gorontalo High Prosecutor's Office Number B93/P.5.1/Eku.1./01/2023,<sup>7</sup> where the suspect on behalf of I Kadek Slamet Saputra who was driving a motorcycle due to his negligence caused a traffic accident and resulted in the death of the victim Iwu Langi, the same case also occurred in the case on behalf of the defendant Jihad Halilintar Ravito Al Banjari who accidentally injured the driver of a motorcycle vehicle driven by Mahyudin with the termination of prosecution number R-38/O.3/Eoh.2/02/2023.<sup>8</sup> The reason for the termination of prosecution based on restorative justice in this case is based on the reasons and considerations that the suspect was a first time offender, the victim's family had forgiven the suspect's actions and agreed to reconcile, the suspect had given grief compensation to the victim's family, and the community responded positively. The law has become something that exists (as an object), so the implementation of the law must get rid of the will of the subject, letting go of human subjectivity as the party operating the law.<sup>9</sup> Based on the explanation above, in the settlement of criminal negligence cases through Restorative Justice, a person's guilt is seen from the actual incident factors, what factors cause a criminal offense to occur due to negligence of a person. The crime of negligence is a criminal offense that requires criminal responsibility. Therefore, the author is interested in making a research with the title "Implementation of Restorative Justice Policy Towards Criminal Offenders of Negligence Causing Death (Study of Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/EJP/02/2022 Regarding the Implementation of Termination of Prosecution Based on Restorative Justice)."

Based on the description in the background of the problem above, the problems in this study are formulated as follows:

1. What are the parameters of Restorative Justice Implementation towards perpetrators of criminal negligence causing death?
2. How is the ideal implementation of Restorative Justice for perpetrators of criminal negligence?

## DISCUSSION

### 1. Parameters of Implementation of Restorative Justice Policy Against Perpetrators of Criminal Acts of Negligence Causing Death

(Study of Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/Ejp/02/2022 concerning Implementation of Termination of Prosecution Based on Restorative Justice) Restorative justice means justice that restores, in the conventional criminal justice process is known as restitution or compensation for victims, while restoration has a broader meaning. The current punishment system seems to no longer create a deterrent effect for criminal offenders and weak supervision is not balanced with the massive number of prisoners. The implementation of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and in order to accommodate the idea of balance which includes monodualistic balance between public / community interests and individual / individual interests, balance between the idea of protection / interests of victims and the idea of individualization of punishment, balance between objective elements / factors (act / body) and subjective (inner person / inner attitude), balance between formal and material criteria, and balance between legal certainty, flexibility / elasticity / flexibility and justice. Constitutionally, the prosecutor's office is one of the institutions or bodies that functions to exercise judicial power as stipulated in Article 24 Paragraph (1) of the 1945 Constitution, namely an independent power to carry out justice in order to execute law and justice. The prosecutor as a public prosecutor also has the authority to stop the prosecution of a criminal case as stipulated in Article 140 Paragraph (2) letter a of the Criminal Procedure Code. The conventional criminal justice process is known for restitution or compensation to victims, while restoration has a broader meaning. Restoration involves restoring the relationship between the victim and the perpetrator. This restoration can be based on mutual agreement between the victim and the perpetrator. The restorative justice policy towards the perpetrator of the crime of negligence causing death must be very concerned that the agreement to make peace is an agreement decided by the perpetrator and the victim, the public prosecutor becomes a facilitator or neutral party who does not take sides with the perpetrator or victim. The results of the restorative peace agreement are confidential, keeping the atmosphere always in a state of equality and mutual respect. The emergence of the concept of restorative justice does not mean negating punishments such as imprisonment, because in certain cases that cause mass losses and are related

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<sup>6</sup> Kristanto, A. (2022). Review of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. *Lex Renaissance*, 7(1), 180-193.

<sup>7</sup> Letter of Discontinuation of Prosecution by the Gorontalo High Prosecutor's Office dated January 17, 2023.

<sup>8</sup> Letter of Termination of Prosecution by the South Kalimantan High Prosecutor's Office dated February 14, 2023.

<sup>9</sup> Aditya Yuli Sulistyawan, *Journal of Legal Issues* Volume 41 No. 4: Questioning the Objectivity of Law: A Philosophy of Law Discussion *Journal of Legal Issues*, Semarang: Diponegoro University, 2012, pp. 506-507.

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to a person's life, the form of imprisonment is still possible.<sup>10</sup> Justice that is based on peace from the side of the perpetrators, victims and the community is the moral ethic of restorative justice.<sup>11</sup> Peace without justice is a form of oppression while justice without peace is a form of persecution.<sup>12</sup> It is known that Indonesian criminal law recognizes the principle of proportionality where this principle emphasizes the imposition of punishment on the perpetrator must be balanced or adjusted to the level of the crime committed. The current handling of minor crimes is considered not to show the principle of proportionality. According to Joni Emirzon and his book entitled *Alternative Dispute Resolution Outside the Court*, this condition is a form of weakness in litigation institutions that cannot be avoided even though it has become a provision.<sup>13</sup> The number of problems in handling minor crimes in Indonesia raises hopes for innovation in their resolution. Restorative justice is one of the innovations in handling minor crimes and does not have a wide impact, allowing for deliberation and dialog between the parties. The settlement of minor crimes using this system must prioritize the balance of the interests of the perpetrators and victims and their impact on society. The success of the prosecutor's office in handling minor criminal cases such as the example of a case in this article, namely the South Kalimantan High Prosecutor's Office which succeeded in providing parameters in the implementation of restorative justice on behalf of the defendant Jihad Halilintar Ravito Al Bandari Bin Herdoyo Handono, where there was an accident on October 21, 2022, namely the car driven by the defendant Halilintar Ravito Al Bandari who experienced swerving in the car he was driving which collided with the victim, Mahyudin Bin Rusli and died. Therefore the defendant was charged with violating Article 310 Paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation. The case was finally approved for termination of prosecution based on restorative justice. Of course, the prosecutor in handling and/or responding to this matter has also made adjustments to the criteria and / or standards in applying restorative justice in accordance with applicable laws and regulations, namely by issuing the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/Ejp/02/2022 concerning Implementation of Termination of Prosecution Based on Restorative Justice.

Success in the application of restorative justice in criminal cases for negligence causing the death of another person can increase public confidence in the prosecutor's office so that it is possible to eliminate public perceptions that prosecutions carried out by the prosecutor's office do not pay attention to the sense of justice in the community because it is not uncommon for small and minor cases to be prosecuted by prosecutors.

### 2. Ideal Implementation Of Restorative Justice Against Perpetrators Of Criminal Negligence

The most important and significant value affecting restorative justice is deliberation even if the restorative justice measures implemented are not successful.<sup>14</sup> Criminal law reform with restorative justice is in line with integrative legal theory. This concept is certainly based on the purpose of law for human dignity, happiness, welfare, and glory.<sup>15</sup>

Peaceful settlement of traffic crimes or settlement of traffic crimes using restorative justice methods has not been integrated in the criminal justice system. the issue of the application of restorative justice has not been clearly regulated. However, the settlement of cases using the mechanism or concept of restorative justice has been widely applied in the settlement of traffic accidents in the jurisdiction of the Hulu Sungkai District Attorney's Office and the Gorontalo District Attorney's Office, but the perpetrators of traffic accidents do not necessarily abolish criminal responsibility, if the traffic accident results in fatalities. This is confirmed in Article 310 paragraph (4), which states that; In the event of an accident as referred to in paragraph (3) which results in the death of another person, shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah). Furthermore, the provisions of Article 230 of Law Number 22 of 2009 concerning Road Traffic and Transportation, emphasize; Traffic accident cases as referred to in Article 229 paragraph (2), paragraph (3) and paragraph (4) are processed with criminal justice procedures in accordance with the provisions of laws and regulations. This means that every traffic accident case, whether it is a minor, moderate or serious traffic accident, must be resolved in accordance with the judicial procedures stipulated in the law. In this situation, it can be said that the substance of Law No. 22/2009 has a negative influence on the effectiveness of the application of restorative justice in traffic crime cases that result in fatalities. According to the author, this must also be examined through the legal structure, where it is known that Article 230 of Law Number 22/2009 concerning Road Traffic and Transportation states that "Every traffic accident case that meets the criminal elements must be resolved through the criminal

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<sup>10</sup> Yusnita, L. (2018). *Analysis of the Application of Restorative Justice Principles in the Settlement of Traffic Crime Cases*. Thesis, Faculty of Law: Hasanuddin University, Makassar.

<sup>11</sup> Wajdi, F. (2019). *Challenges and Improvements in Law Enforcement*. Republic of Indonesia, 151.

<sup>12</sup> Lohor, P. J., & Nampar, H. D. N. (2021). *The Catholic Church's View on Anti-Violence Education and its Implementation for Church Life*. *Gaudium Vestrum: Journal of Pastoral Catechetics*, 112-124.

<sup>13</sup> Azhar, A. F. (2019). *Application of the concept of restorative justice in the criminal justice system in Indonesia*. *Mahkamah: Journal of Islamic Law Studies*, 4(2), 134-143.

<sup>14</sup> 14 The results of the interview with informant Laxmi as Prosecutor at the Subang District Attorney's Office on June 14, 2023, at 10.15 WIB.

<sup>15</sup> 15 Romli Atmasasmita, *Integrative Legal Theory: Reconstruction of Development Law Theory and Progressive Law Theory*, Genta Publishing, Yogyakarta, 2012, pp. 65-66.

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justice process. The legal structure factor is one of the factors influencing the optimal application of restorative justice in traffic crime cases that result in fatalities in Barabai District and Gorontalo Regency. Thus, the legal structure (law enforcement officials) is passive towards the application of restorative justice principles to perpetrators of traffic crimes resulting in fatalities. Based on the explanation above, the application of restorative justice to traffic crime cases that result in Barabai District and Gorontalo District runs optimally, because in its application there is no specific regulation governing the process of resolving traffic crime cases that result in fatalities. Factors that influence the application of restorative justice to traffic crime cases resulting in fatalities in Gorontalo district and Hulu Sungkai District Attorney of South Kalimantan are; substance, structure, and legal culture. In these three factors, the most influential on the application of restorative justice to traffic crime cases resulting in fatalities is the substance of the law which in fact in Law Number 22 of 2009 concerning Road Traffic and Transportation, the issue of the application of restorative justice has not been clearly regulated and with the provisions governing every traffic crime resulting in fatalities must be resolved in accordance with the judicial procedures stipulated in the law. According to the author, in the future, in order to achieve legal objectives through ideal restorative justice, its application is expected to provide prevention and control of crime, improvement of the perpetrator, prevention of arbitrary actions outside the law, and resolution of conflicts in society. These benchmarks are positioned in the context of community protection achieved through the purpose of punishment. Thus, substantial changes related to the protection of society in overcoming minor crimes can have an impact on aspects of correctional conditions and policies. The ideal implementation that needs to be considered starting from the availability of policies to clear parameters and ensuring the legal certainty of the parties including law enforcers, such as police, prosecutors, judges, and lawyers is one of the approaches needed in strengthening restorative justice. The *Dominus litis* principle, despite being the central principle in prosecution, can no longer be used as a barrier to creating restorative justice policies that restore all aspects and provide legal certainty. By understanding the technical and substantive aspects that are intertwined with each other, the ideal implementation of restorative justice in setting aside prosecution can be carried out with due regard for justice for each party. This implementation is also intended so that the restoration of the situation to its original state can take into account various factors (facts, unity of parameters, offender guilt, and the legal system) in determining the success/failure of restorative justice applications.

## CONCLUSIONS

Based on the results of research and discussion regarding the implementation of restorative justice policies against perpetrators of criminal negligence causing death (study of Circular Letter of the Deputy Attorney General for General Crimes Number 01/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice), it can be concluded as follows:

1. There are different restorative justice policy implementations that follow parameters based on the burden of guilt or responsibility of the parties. First, the parameters in the implementation of restorative justice for perpetrators of criminal acts of negligence that cause death, namely in the Restorative Justice Request Letter Number: R38/O.3/Eoh.2/02/2023 and Number: B-93/P.5.1/Eku.1/01/2023, which have been successful and granted this restorative justice request, of course each prosecutor's office has seen that the parameters for the success of a negligent act or culpa are not purely in the perpetrator but negligence is also carried out by the victim himself. Secondly, the parameters of restorative justice in the request for termination of prosecution letter Number: R-3241/M.2/Eoh.2/03/2022 as quoted from decision Number: 66/Pid.sus/2022/PN.Sng, are not fulfilled, so that the implementation of restorative justice in this traffic accident case is rejected, where the prosecutor's office has an assessment of the parameters for rejecting requests for restorative justice, namely that negligence or culpa only comes from the actions of the perpetrator while the victim is purely a victim who has no element of negligence from his actions.
2. As stipulated in Article 5 paragraph (1) of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. So that ideally the implementation of restorative justice does not focus on retaliation for the perpetrators of criminal acts, but rather seeks a fair solution by emphasizing recovery back to its original state and there is no negative stigma from the community. Finally, and also very important, the implementation of restorative justice policies in the future must pay attention to designs that are oriented towards technical efficiency and legal certainty for the parties. The centralized policy model through Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/EJP/02/2022 implies that the process of termination through restorative justice must wait for the bureaucracy in stages and is heavily burdened by the center, namely the attorney general's office. The ideal implementation that needs to be considered, starting from the availability of policies to clear parameters and ensuring the legal certainty of the parties including law enforcers, such as police, prosecutors, judges, and lawyers, is one of the approaches needed in strengthening restorative justice. The *Dominus litis* principle, despite being a central principle in prosecution, can no longer be used as an obstacle to creating restorative justice policies that restore all aspects and provide legal certainty. The Attorney General's Office must also pay attention to this principle to strengthen and bridge structurally and functionally to encourage restorative justice policies.



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### ADVICE

1. The implementation of Restorative Justice is currently still using Circular Letter of the Deputy Attorney General for General Crimes Number 01/E/EJP/02/2022, so that the process of resolving minor criminal cases, especially to reach the prosecution stage, does not have definite regulations, so it is hoped that in the future this circular letter can be formed as a regulation of the attorney general. Thus, with the new attorney general regulation, all prosecutors are obliged to implement the regulation which applies specifically to similar cases. It is also expected that in the implementation of restorative justice in the future, technically every parameter of the criminal offense formulation must be clear and written, so that in its implementation it must be seen from the side of both parties, namely between the perpetrator and the victim of the existing reality. The existence of clear instruments and parameters, then in the future there will be no confusion in the implementation of restorative justice in the prosecutor's office.
2. By understanding the technical and substantive aspects that are intertwined with each other, the ideal implementation of restorative justice in setting aside prosecution can be carried out with due regard for justice for each party. This implementation is also intended so that the restoration of the original situation can take into account various factors (facts, unity of parameters, offender guilt, and the legal system) in determining the success/failure of the application of restorative justice. The ideal implementation thus must pay attention to: a unified written policy / *lex scripta* that is publicly accessible, testable, integrative between judicial mechanisms and pay attention to the functional differentiation of criminal justice, as well as harmonization of subjects and objects in restorative justice-based prosecution. Substantively then, the prosecution also continues to be built and applied based on legal developments both in the new Criminal Code and later in the Criminal Procedure Code which more technically regulates prosecution and restorative justice.

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