

Termination of Prosecution Based on Restorative Justice in the Settlement of Conventional Gambling Crimes in Indonesia



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ABSTRACT: This study aims to determine the application of restorative justice principles in the settlement of gambling crimes. The proposed formulation of the problem contains: Why does restorative justice need to be used in the settlement of gambling crimes? and What are the stages of restorative justice in the settlement of gambling crimes in the future? This research includes normative legal research, with data collected based on written regulations and opinions from experts and law enforcement. The results of this study indicate that restorative justice can be applied in the crime of gambling even though it is a victimless crime. Parties that can be carried out restorative justice only target gambling players based on Article 303bis of the Criminal Code based on legal expediency and a sense of justice. Therefore, the implementation of restorative justice emphasizes the benefits to both the state and society. The restorative justice mechanism refers to Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. This regulation regulates all stages of restorative justice for general offenses. For this reason, prosecutors can terminate prosecution in gambling cases based on restorative justice.

KEYWORDS: Gambling, KUHP, Restorative Justice, Termination of Prosecution

1.0 INTRODUCTION

Gambling means playing games for money and risking money on what might happen. A gamester or gambler is a person who engages in games for money (West, 1978). According to Kartini Kartono, gambling is a gamble by deliberately risking a value or something that is considered valuable by realizing the risks and expectations of an event that is unknown or uncertain of the outcome (Kartono, 1981).

Gambling can be divided into two types, namely conventional gambling and online gambling. Conventional gambling is a betting game that is carried out physically, both the means and media for playing gambling can be accessed without the need for an internet channel connected to an electronic device. In contrast to online gambling, which in the implementation of the game is highly dependent on the use of internet network access connected to an electronic media.

Gambling is a category of crime as can be seen from the regulations contained in the second book of the Criminal Code (KUHP) on crimes. In general, conventional gambling is regulated in Article 303 of the Criminal Code and Article 303bis of the Criminal Code. The definition of the crime of gambling based on Article 303 paragraph (3) of the Criminal Code states that "The so-called gambling game is any game, in which in general the possibility of profit depends on mere luck, as well as because the player is better trained or more skilled. This includes all bets on the decision of a race or other game that is not held between those who participate in the race or play, as well as all other bets". The operational definition of all gambling crimes is based on the Article above, which in its application will be adjusted to the role of the perpetrator in the gambling case he has committed.

Although it has been prohibited in Indonesian positive law, gambling activities are still carried out both secretly and openly in society which can involve anyone to access gambling in various ways both online and conventional. The proof is that the government through the National Police institution has secured 1,408 conventional gambling cases involving up to 2,369 suspects throughout 2022 as of September 30, 2022 (Chaterine & Saptohutomo, 2022). With so many gambling cases, of course, it will lead to the swelling of the number of prisoners and the overcapacity of correctional institutions (Lapas) later. Given that Indonesian criminal law is currently characterized by retributive justice which is identical to spanking as punishment.

One alternative case resolution that can be used is the Restorative Justice approach. Restorative justice prioritizes efforts to restore and restore the original state of a problem involving all parties to the case settlement outside the court. Case settlement can be resolved by dialog or deliberation involving the parties involved in a case. The main principle of restorative justice is to restore the situation in a way that is not retaliation but restoration of the situation. Therefore, this concept is very relevant in resolving minor crimes in the most effective and humane way.

In Indonesian criminal law, there have been several guidelines related to restorative justice, one of which is Prosecutor's

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Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which was enacted on July 21, 2020. Prosecutor's Regulation No. 15 of 2020 is an effort by the prosecutor's office to create law enforcement that provides benefits and justice to all levels of society with the principles of justice, public interest, proportionality, punishment as a last resort, simple, fast and low cost. This prosecutorial discretion is relevant to the role of the prosecutor's office, namely the dominus litis principle inherent in the prosecutor's office, namely the control and determination of prosecutorial policies in one hand, namely the Indonesian Attorney General's Office as a law enforcement institution in Indonesia.

Prosecutor's Regulation Number 15 of 2020 is implemented by the Indonesian Prosecutor's Office in the context of law enforcement against all general offenses. With these guidelines, the Indonesian Attorney's Office needs to try to apply restorative justice as an alternative solution in gambling cases, especially those involving non-bookie gambling players. With restorative justice, it is possible for a gambler to stop his case before it reaches the court. Public prosecutors need to consider and apply restorative justice in certain gambling cases against gambling players if there is no benefit to being prosecuted and imprisoned. The termination of the case does not mean that the actions of the gambler are justified but because of the dominant *mudharat* rather than the benefits obtained in the prosecution.

Gambling can happen to anyone and anywhere in a variety of ways. Gambling players who bet small amounts are still considered to have committed a criminal offense and proceeded to the green table and even imprisoned. As in the case of four porters at the Rau wholesale market in Serang City who were sentenced to prison for 6 (six) months at the Serang District Court in 2019 for playing ludo using 1 (one) cellphone unit by betting two thousand rupiah each. The winner of the game they play is determined based on the player who finishes first, then the losing party will each give two thousand rupiah to the winner (Redaksi, 2019). Based on the conventional approach to justice, countless gambling players will still be tried in court for conviction. Imprisonment should be the last resort in resolving a case. This means that if a case can be resolved outside the court as an alternative solution, it must be done. Therefore, restorative justice needs to be tried in solving gambling crimes.

In general, restorative justice is a criminal settlement that prioritizes victim recovery. On the other hand, the perpetrator of the crime is not punished with imprisonment but the perpetrator is willing to take responsibility for his actions. Victims and perpetrators are given space to resolve problems that occur through dialog and mediation. The goal is that both can reconcile and forgive each other so that the situation after the criminal event can be restored as before the crime occurred. The main principle of restorative justice is to restore the situation by not retaliating. Therefore, this concept is considered to resolve minor crimes in the most effective and humane way.

The Indonesian Attorney General's Office as a law enforcement agency established Attorney Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice on July 21, 2020. This regulation is a form of the AGO's efforts to create law enforcement that provides benefits and justice to all levels of society. Discontinuation of prosecution based on restorative justice is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort, fast, simple and low cost. This prosecutorial discretion is also relevant to the current role of the Indonesian Attorney General's Office with the dominus litis principle inherent in the prosecutor's office, namely the control and determination of prosecutorial policies in one hand, namely the Indonesian Attorney General's Office as a law enforcement institution in Indonesia.

Restorative justice can provide an alternative to public prosecutors in resolving gambling cases involving various levels of society. Moreover, players who play in small amounts and are not involved in the circulation of gambling who are imprisoned do not have a beneficial and restorative effect on them. The gambler also needs to be mentally restored after the termination of the prosecution. This is because gambling is a mental illness that leads to depression and anti-social behavior that must be cured. This tendency is measured by a person's addiction to gambling (Intani, 2021).

Restorative justice is certainly in line with the idea of legal reform in Indonesia. In relation to the eradication of gambling crimes, it can certainly be tried in solving gambling crimes. Moreover, gambling crime is a category of minor crime which is one of the requirements for a criminal offense to be resolved with restorative justice in accordance with Article 5 of Prosecutor's Regulation Number 15 of 2020. Restorative justice can provide an alternative to prosecutors in resolving gambling cases involving various levels of society. Moreover, players who play in small amounts and are not involved in massive gambling circulation whose imprisonment does not provide benefits and recovery to them.

In its development, restorative justice is a new perspective that needs more in-depth research. The effectiveness and efficiency of this concept needs to be harmonized with the settlement of gambling crimes. This study is also interesting regarding gambling articles that do not mention the victim element in it. Crimes like this are usually referred to as victimless crimes. As is known, restorative justice is a concept that adapts the restoration of victims' rights by prioritizing dialogue and mediation. Of course the situation is different from the settlement of other criminal offenses such as theft, persecution, defamation, embezzlement and others which clearly mention the existence of the victim element. This condition encourages the need for a conceptual approach to harmonize the settlement of gambling crimes using restorative justice based on Prosecutor's Regulation Number 15 of 2020.

Based on these facts, this study was conducted to find out the importance of applying restorative justice in gambling cases and how the ideal settlement mechanism is based on the Prosecutor's Regulation Number 15 of 2020. This study uses the legal

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instruments of the Prosecutor's regulation Number 15 Year 2020 because the RI Prosecution is a criminal case control institution in the modern criminal justice system based on *dominus litis*.

2.0 LITERATURE REVIEW

2.1 Crime of Gambling

Gambling is a game that uses money as a bet. According to the legal dictionary, gambling is a game using money as a bet such as playing dice, cards and so on. Gambling is betting a certain amount of money or property in a guessing game based on chance, with the aim of getting a larger amount of money or property than the original amount of money or property (Sudarsono, 2007).

Every person who plays gambling is punishable by a maximum imprisonment of four years or a maximum fine of ten million rupiah. The definition of gambling according to Article 303 paragraph (3) of the Criminal Code "What is meant by a gambling game is any game, where the possibility of winning generally depends on sheer luck, as well as because the player is better trained or more skilled. In the definition of a gambling game also includes all bets on the decision of a race or other game that is not held between those participating in the race or game, as well as all other bets."

Dali Mutiara in the interpretation of the Criminal Code explains that gambling games must be interpreted in a broad sense and also include all bets on the defeat of a horse race or other competitions, or all bets, in competitions held between and people who do not participate in the competitions themselves, for example totitasator, and others. The legal basis for gambling is regulated in Article 303 of the Criminal Code and Article 303bis of the Criminal Code (Mutiara, 1962).

2.2 Restorative Justice

Restorative justice is a global term used internationally introduced by Albert Eglash in 1977. In his writing on reparation, he explained that restorative justice is an alternative restitutive approach to retributive justice and distributive justice approaches. James Dignan revealed in his work *Understanding Victims and Restorative Justice* that the term restorative justice first appeared when Albert Eglash tried to distinguish three forms of criminal justice, namely retributive justice, distributive justice, and restorative justice (Yunus & Dahri, 2021). According to Eglash, the main principle of restorative justice is restitution by involving victims and perpetrators in the settlement process which aims to reparate victims and rehabilitate perpetrators.

According to Braithwaite, from a (procedural) perspective, restorative justice is the process of bringing all interested parties together who have been affected by some harm. Stakeholders connect in a circle to discuss what needs to be done to reach an agreement to repair the harm. Restorative justice offers justice with shared values with varied procedures. In essence, restorative justice is a method to heal the victim, not to harm the perpetrator (Braithwaite, 2002).

It is not surprising that Howard Zehr, a pioneer of restorative justice in the United States, introduced the concept of a "restorative lens" that views crime as a violation of individuals and relationships between individuals. Meanwhile, justice is understood as a joint solution through healing and reconciliation. With this, the understanding of justice shifts from conventional justice, namely violations of norms that cause harm, to crimes against individuals, so that punishment with the imposition of pain is no longer relevant, but rather the recovery of losses experienced by victims. In short, restoring harm is the paradigm of restorative justice. In addition, Zehr considers that restorative justice is a counter to the adversarial system, which is understood as an offense against the state (Zehr, 1990). This is because restorative justice is flexible by encouraging a community to actively participate in problem solving rather than an adversarial system that prioritizes law enforcement through professionals without involving the role of victims (Wahid, 2009).

In general, restorative justice is a case settlement mechanism that carries the concept of restoring the situation as it was before the crime occurred. This concept emphasizes the restoration of victims' rights after a criminal offense. A criminal case that occurs is resolved through dialog between the victim and the perpetrator and other parties affected by the criminal event. One of the main points of this theory is that the perpetrators of criminal acts are not imprisoned but are willing to take responsibility.

2.3 Prosecutor's Regulation Number 15 of 2020 on Discontinuation of Prosecution based on Restorative Justice

The Public Prosecutor's Office of the Republic of Indonesia as a government institution in the power formation system of law enforcement agencies and justice has the authority to exercise state power in the field of prosecution. In conducting prosecutions, prosecutors acting for and on behalf of the state are responsible according to hierarchical channels. The Indonesian Attorney's Office as the party authorized to conduct prosecutions is expected to be able to make charges that have a deterrent effect on the perpetrator with the sentence charged by the Public Prosecutor while still fulfilling the rights of the perpetrator (Ishaq, 2009).

The law enforcement process using a restorative justice approach in resolving criminal cases carried out by the Indonesian Attorney General's Office refers to Prosecutor's Regulation Number 15 of 2020 which was promulgated on July 22, 2021. The definition of restorative justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly find a fair solution by emphasizing restoration to the original state, and not retaliation. Discontinuation of prosecution based on restorative justice is carried out with the principles of justice, public interest, proportionality, punishment as a last resort, fast simple and low cost. The restorative justice policy through Prosecutor's Regulation Number 15 of 2020 is expected to be able to resolve minor criminal cases without going to court.

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Discontinuation of prosecution based on restorative justice is a form of prosecutorial discretion by the public prosecutor. This discretion will see and balance the applicable rules with the legal objectives to be achieved. As stated in the provisions of Article 2 of Prosecutor's Regulation Number 15 of 2020 that the termination of prosecution based on restorative justice is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort, and fast, simple and low cost.

With the existence of Prosecutor's Regulation Number 15 of 2020 authorizing prosecutors to stop prosecution based on restorative justice is a breakthrough in resolving criminal acts. This encourages the development of the concept of restorative justice as an alternative form of out-of-court case settlement which is generally often used in civil cases. Article 3 paragraph 2 letter e explains that one of the reasons for closing a case in the interests of the law that can be carried out by the prosecutor is that there has been a case settlement outside the court.

With this regulation, it is hoped that the public prosecutor will use more conscience in carrying out legal process efforts, namely an application of law that prioritizes balanced considerations so that not all criminal acts end up in prison. One of the considerations is that the community's assessment of casuistic cases brought to court is no longer useful for processing defendants, especially small people who have to spend months in prison until the case is decided, which is very detrimental compared to the benefits of law enforcement. For this reason, there is a need for a law enforcement mechanism based on restorative justice for the community that prioritizes recovery processes for victims or perpetrators (Danial, 2022).

2.4 Victimless Crime Theory

In principle, crime is a phenomenon that involves criminals and their victims. According to Arief Gosita, victims are those who suffer physically and mentally as a result of the actions of others who seek the fulfillment of their own or other people's interests which are contrary to the interests of the human rights of the injured party (Gosita, 1983).

In its development, there are many criminal offenses that occur without any party being harmed by the criminal offense. In this situation, the term "victimless crime" has emerged. According to Made Darma Weda, victimless crime is not defined as a crime that does not cause victims, but it means that the victim of this crime is himself. According to Mardjono Reksodiputro, the interpretation of victimless crime must mean the existence of "society" as a victim. The understanding that the criminal act has violated the morals of the people who live in society as part of the affected event (for example in the case of pornography or drug use) (Reksodiputro, 2009). Some behaviors that are categorized as crime without victims are such as drunkenness, vagrancy, gambling, prostitution, and drug use (Santoso & Zulfa, 2017).

3.0 METHOD

This research is a normative legal research conducted by studying library materials or secondary data (Soekanto & Mamudji, 2003). This research is used to trace laws and regulations, legal principles, and doctrines with additional data from interviews with prosecutors to answer legal problems. This research approach uses a qualitative method that requires research in looking at legal issues with interview data conducted by the author. The Viktimology approach is also used in this study on the application of the concept of restorative justice as an alternative solution to criminal crimes. A conceptual approach was also used by the researchers to investigate and see how the statutory regulations related to the research or legal issues raised by the researchers. The rules of law used by the researchers include the Criminal Law and the Prosecutor's Regulation Number 15 of 2020.

4.0 RESULT

4.1 Gambling Offenses Fulfill the Requirements of Restorative Justice

In the formulation of Article 303 of the Criminal Code paragraph (3) above, the operational definition of an act that can be said to be a gambling game has been explained. Article 303 of the Criminal Code also explains the people who are charged with the article, namely people who open or organize gambling for the general public. Furthermore, according to R. Soesilo, the people referred to in Article 303 of the Criminal Code paragraph (1) are bookies or gambling companies that hold gambling. The gambling players will be charged with a different article, namely Article 303bis of the Criminal Code (Soesilo, 2013).

According to KBBI, a bookie is a person who organizes gambling. Bandar Judi is a role that is pinned for people who organize gambling networks in an area, the number of bookies is usually more than one person. As in a case that occurred to a man with the initials YU (42) arrested by the West Kalimantan Police in Sanggau Regency, West Kalimantan province in June 2012. YU was a bookie who acted as a facilitator by facilitating togel gambling players who wanted to order numbers for betting to send the numbers to a bookie in Jakarta using a fax machine. The turnover earned by the perpetrator in carrying out his activities as a bookie reached 20-40 million every day. With his role as a bookie by facilitating and providing opportunities for players to gamble, he certainly violated Article 303 of the Criminal Code with a threat of 10 years in prison (Khatulistiwa, 2012).

Article 1 point 1 of Prosecutor's Regulation Number 15 of 2020 states that restorative justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation.

The conditions for a case to be carried out restorative justice according to Article 5 paragraph (1) of Prosecutor's Regulation

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Number 15 of 2020 include: (a) The suspect is a first time offender; (b) The criminal offense is only punishable by a fine or punishable by imprisonment of not more 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 Rp2,500,000.00 (two million five hundred thousand rupiah).

Any criminal offense that meets the above conditions can be carried out restorative justice. The first requirement in Prosecutor's Regulation Number 15 of 2020 is that the suspect is a first-time offender or not a recidivist. According to KBBI, a recidivist is a person who has been convicted of repeating a similar crime or a repeat criminal. In criminal law, a recidivist is defined as a person who repeats a criminal offense.

The second requirement of the Prosecutor's Regulation Number 15 of 2020 states that criminal offenses that can be carried out restorative justice are criminal offenses punishable by less than five years or a fine. This means that only certain criminal offenses can be restored which are categorized as minor crimes. The third requirement is the value of evidence or losses not exceeding 2,500,000 million rupiah. The third requirement is related to the victim or the party affected by the loss of the criminal offense. According to Article 1 point 2 of the Prosecutor's Regulation Number 15 of 2020, a victim is a person who suffers physical, mental, or economic losses caused by a criminal offense.

The regulation of criminal penalties regulated against a bookie based on Article 303 of the Criminal Code is a maximum imprisonment of 10 years. Referring to Article 5 paragraph (1) letter b, a bookie who violates Article 303 of the Criminal Code cannot be terminated from prosecution based on restorative justice because it does not meet the requirements.

Apart from the bookies who provide facilities to the general public in playing gambling games, there are other roles that are connected to these activities, namely gambling players. A gambling player is threatened with Article 303 bis of the Criminal Code.

Similar to Article 303 of the Criminal Code, Article 303 bis of the Criminal Code needs to be qualified in advance with the requirements of Prosecutor's Regulation Number 15 of 2020 to determine the applicability of restorative justice. Juridically, Article 5 paragraph (1) letter b can be fulfilled by Article 303 bis of the Criminal Code because Article 303 bis of the Criminal Code threatens a gambling player with a maximum threat of 4 (four) years in prison which is still in the category of under 5 (five) years based on the conditions. There are other conditions that must be met, namely that gambling players are first time offenders (not recidivists). This means that if a gambling player who has been involved in a previous criminal offense then commits a gambling crime, he cannot be subject to restorative justice. Therefore, if it refers to the provisions of Article 303bis of the Criminal Code, a gambling player can be carried out restorative justice provided that he is not tied to a gambling network syndicate and is not a recidivist.

Another requirement is related to the value of evidence or losses from a criminal offense not exceeding Rp. 2,500,000 million. Gambling falls into the category of victimless crime. This theory is not defined as a crime that does not cause victims but the victim of this crime is himself. Based on the Victimless Crime theory approach, the third requirement of Article 5 paragraph (1) of Prosecutor's Regulation Number 15 of 2020 regarding the value of losses can be ignored because the party who bears the loss as a result of the gambling crime is the gambling player himself.

So based on Prosecutor's Regulation Number 15 of 2020, a bookie cannot be applied restorative justice. Only gambling players can be carried out restorative justice if the person is a first-time criminal offender. Considerations for the implementation of restorative justice are based on the provisions of the conditions stipulated in Article 5 paragraph (1) of Prosecutor's Regulation Number 15 of 2020.

4.2 Legal Expediency of Applying Restorative Justice to Gambling Settlements

With regard to legal expediency, Gustav Radbruch relates it to the goal of justice or finality, namely something that causes goodness or benefits (Hujbers, 1982). In relation to the settlement of criminal cases, it can be measured in terms of the benefits or harms from the settlement of the case. The benefit is not only seen from one party involved in a criminal case, but also covers all parties including the perpetrator, victim, state, and society. This means that an application of the law must consider the benefits obtained by the community and the state.

Gambling is a mental illness often known as gambling disorder, which is an uncontrollable behavior or urge to continue gambling even at the cost of one's life. This behavior has a destructive pattern that is harmful psychologically, financially, and socially. In the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5 released by the American Psychiatric Association (APA), gambling disorder is an addictive behavior that is classified as an addictive disorder. About 1 percent of the world's population meets the criteria for this disorder (Anggraini, 2015). This behavior causes the gambler to become addicted to playing gambling which can result in depression for the person.

The current criminal law paradigm has shifted to a restorative-rehabilitative approach or *daad-dader-strafrecht* or balance of interest model. This approach allows for the termination of prosecution of a case while still prioritizing the restoration of the situation of the perpetrator of the victim (Satria, 2018). Gambling players need to make restorative justice efforts if it is the first time they have committed a gambling crime. Apart from the fact that there are no victims caused by his actions but himself. Even so, the public prosecutor needs to have careful consideration in carrying out restorative justice against gambling players, which in its

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application must consider the will of the community. Decision making must also be based on dialog or deliberation with related parties such as family, community, and other related parties. Restorative justice is possible so that gambling players can be given the opportunity to correct their mistakes by not engaging in gambling again after the termination of prosecution and being restored. The application of restorative justice for gambling players is quite important because its application contains rehabilitative value. This is in line with the understanding of restorative justice which prioritizes restoring the situation to its original state.

There are several cases that can be a reference for the need to resolve gambling crimes with restorative justice. As in the case of four porters at the Rau main market in Serang City who were sentenced to 6 months in prison at the Serang District Court in 2019 for playing ludo using 1 (one) cellphone unit by betting two thousand rupiah each. The winner of the game they played was determined based on the player who finished first, then the losing party would each give two thousand rupiah to the winner.¹² Likewise, the incident that happened to a mother with the initials OK (42) who worked as a vegetable seller was arrested by Polresta Kupang on August 20, 2022 at her residence on charges of being involved in togel type gambling, even though at the time of the incident she was not playing gambling. the evidence found was taken from the mother's bag in the form of money worth Rp. 75,000 thousand rupiah which the mother admitted was money from selling vegetables (CNN, 2022).

The importance of restorative justice for gambling also provides benefits to the state. The benefits in question relate to the state's efforts in handling prison over capacity in Indonesia. According to data from the Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham RI) as of September 12, 2021, the capacity of prisons in 33 Regional Offices for 134,835 thousand people, but the number of residents reached 271,007 people. This means that there is an excess capacity of 136,173 prisoners or twice the total (101%) (Afdini & Sudiro, 2023).

The retributive justice commonly used in the criminal justice system in Indonesia is certainly not in line with the prevention of prison overcapacity. This retributive justice model illustrates that when someone commits a crime, the sanctions received by the perpetrator are a form of retaliation for the actions committed by the perpetrator against the victim. By emphasizing on retaliation and punishment of the perpetrator, imprisonment is very much attached to the retributive justice model. Meanwhile, restorative justice is in line with the prevention of prison over-capacity (Kejaksaan, 2021). With a settlement that occurs outside the court, the prosecutor can terminate the prosecution so that eligible gambling players do not need to be imprisoned but want to take responsibility for their actions and restore their condition and no longer repeat their actions. With the concept of restorative justice, at least it can help and have a positive impact on the state and government in efforts to deal with prison overcapacity.

4.3 Stages of Restorative Justice in the Settlement of Gambling Crimes in the Future

Profesor Eddy O.S Hiariej said that in essence restorative justice is a legal effort that prioritizes the restoration of justice. Furthermore, restorative justice has two meanings, namely the concept and process. The definition of the concept is the restoration of justice that does not emphasize punishment. While the definition of the process is the settlement of cases involving perpetrators and victims of criminal acts (Kompas, 2021). Restorative justice can be applied by public prosecutors based on Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice.

The crime of gambling is a criminal offense prohibited in book II of the Criminal Code concerning crimes. Every person who commits the crime of gambling as a gambling player (player) can be charged with Article 303bis paragraph (1) of the Criminal Code. Juridically, Article 303bis paragraph (1) of the Criminal Code which threatens gambling players meets the conditions for the application of restorative justice based on Article 5 paragraph (1) of the Prosecutor's Regulation Number 15 of 2020. Every criminal case that meets the requirements in Article 5 paragraph (1) of Prosecutor's Regulation Number 15 of 2020 can be carried out restorative justice on the basis of the principle of equality before the law (equality of a person before the law) and avoiding disparities in case handling.

The general rules regarding restorative justice by the Indonesian Prosecutor's Office are regulated in Prosecutor's Regulation Number 15 of 2020. However, the regulation contains rules for the mechanism for implementing restorative justice that causes victims of other parties as well as implementing regulations. Meanwhile, in the form of Victimless Crime cases, it does not contain technical rules for resolving cases with restorative justice. As is known that Article 303bis paragraph (1) of the Criminal Code is included in the form of Victimless Crime as well as being one of the reasons for the rare application of restorative justice against gambling players.

It should be noted that the legal basis for restorative justice against gambling can refer to Prosecutor's Regulation Number 15 of 2020 as a basic rule of restorative justice for general offenses. In connection with the crime of gambling is a general offense regulated in the Criminal Code so that the procedures for implementing restorative justice still refer to the basic regulations. Therefore, gambling can be applied, it is just that certain adjustments are needed due to the absence of victims on other parties in gambling cases.

Restorative justice in gambling cases still refers to Prosecutor's Regulation Number 15 of 2020. This regulation regulates the stages of restorative justice for all general offenses. Restorative justice for gambling cases can be applied by referring to chapter 4 (four) of the Prosecutor's Regulation Number 15 of 2020 concerning procedures for peace. Gambling is a Victimless Crime so it needs adjustments in its application such as no need for penal mediation between the two parties, namely the victim and the

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perpetrator. In this case, the prosecutor acts as a direct representative of the state to assess and consider whether or not a gambling case handled by him can be applied restorative justice. In this assessment, the prosecutor needs to see the community's response and weigh the aspects of the benefits of prosecuting this gambling suspect.

The process that must be passed before the core process of restorative justice for suspected gambling players is the screening and validation process. First, screening is necessary to collect data related to the crime of gambling in a gambling case. the screening process is a study of a gambling suspect's file conducted by the public prosecutor in order to obtain suspect information such as personal information related to the background and personality of the suspect to the criminal gambling case he committed. Secondly, it is necessary to carry out validation to verify the truth of the data researched by the public prosecutor from the collection and research of the suspect file. From these two processes the public prosecutor can consider and assess a case for the application of restorative justice.

In applying restorative justice to a gambling player, the public prosecutor needs to consider important aspects of the gambling suspect in addition to the juridical requirements above, including (Hakim, 2022): (a) That the gambling player is not a gambling player within the scope of the international network; (b) The perpetrator is a single gambling player who is not part of a group or corporation; (c) Gambling games are not used as a livelihood but as a result of the influence of the social environment; (d) The results of gambling games are not used for other crimes or money laundering; (e) The perpetrator is not a worker in a corporation that organizes gambling games; and (f) Considering the will of the community.

In the event that the public prosecutor considers that the case can be carried out restorative justice after going through screening and validation, the next mechanism will be the core process. The core process is the process of restorative justice stages that will be carried out against this gambling player. The restorative justice process for gambling players is carried out based on the provisions of Prosecutor's Regulation Number 15 of 2020. That after the submission of the suspect and evidence (stage 2) by the investigator, efforts to resolve restorative justice are made within 14 (fourteen) days with the following stages (Hakim, 2022): (a) The Head of the District Attorney's Office issues an Order to Facilitate the Peace Process Based on Restorative Justice (RJ 1) then the prosecutor who has been given the order conducts the process of resolving gambling cases with restorative justice within 14 (fourteen) days; (b) The prosecutor summons the suspect's family, community leaders, religious leaders, psychologists, and other related parties (RJ-2) and investigators (RJ-3); (c) After deliberation with the suspect's family, community leaders, religious leaders, and other relevant parties and investigators, the prosecutor makes a Memorandum of Opinion on the results of the prosecutor's assessment (Assessment results received) (RJ-4); (d) Then the Head of the State Prosecutor's Office makes a Report on the results of the assessment (RJ-5).

In the stage of requesting approval from the Deputy Attorney General for General Crimes through a case title with the following stages (Hakim, 2022): (a) Based on the Public Prosecutor's report that the gambling crime case meets the requirements for restorative justice settlement, the Head of the District Prosecutor's Branch or the Head of the District Prosecutor's Office submits a request for a case title to the Deputy Attorney General for Public Crimes through the Chief of the High Prosecutor's Office within no later than 1 (one) day by using the fastest means; (b) The request as referred to in letter a shall be submitted by attaching the minutes of the community assessment deliberation and the memorandum of opinion of the Public Prosecutor; (c) The case title as referred to in letter a shall be conducted within 2 (two) days at the latest since the request is received by the Deputy Attorney General for General Crimes and shall be held using electronic means (video conference); (d) The case title as referred to in letter c shall be conducted by the Public Prosecutor along with the Heads of the Branches of the State Attorney's Office and the High Prosecutor's Office in the presence of the Deputy Attorney General for Public Crimes; (e) The case title as referred to in letter d is carried out by presenting a brief chronology of the case, peace efforts, the assessment process, responses from community leaders, and the results of the assessment conducted by the Public Prosecutor; (f) In the event that the Deputy Attorney General for General Crimes approves, the Head of the High Prosecutor's Office shall make a recommendation to the Public Prosecutor.

5.0 CONCLUSION AND RECOMMENDATION

Based on the results of research conducted by the author, it can be concluded that the reasons for the need to apply restorative justice in the settlement of gambling crimes are because non-recidivist gambling players can be carried out restorative justice based on Prosecutor's Regulation Number 15 of 2020. The application of restorative justice by the prosecutor's office considers the benefits of law and a sense of community justice. In restorative justice for gambling players, it is also necessary to take rehabilitative action against the suspect after the termination of prosecution in order to be restored both physically and mentally by independent means or through mental rehabilitation institutions. Restorative justice in gambling cases is rarely and almost not applied by the Indonesian Attorney General's Office because there are no guidelines that carefully regulate the stages of restorative justice for gambling players. Even though Prosecutor's Regulation Number 15 of 2020 regulates that every general criminal offense can be carried out restorative justice including gambling offenses. The implementation of restorative justice for gambling crimes is guided by Prosecutor's Regulation Number 15 of 2020 with adjustments needed because the form of gambling crime does not cause victims to the second party. Restorative justice for gamblers is determined by the results of the prosecutor's assessment.

Based on the results of the research conducted by the author, recommendations can be submitted, namely Public prosecutors

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must be careful in applying restorative justice which prioritizes the principle of legal expediency with the aim that the application of restorative justice can be right on target and not misused. Public prosecutors must also have the courage to apply restorative justice to gambling cases that fulfill a sense of justice and benefit and must have the courage to build legal arguments to the leadership to apply restorative justice to gambling. On the other hand, the government needs to make a law that embraces a new criminal law paradigm oriented towards restorative-rehabilitative justice so that its application to criminal cases can run more effectively. In the case of gambling, for example, it is necessary to make rules regarding mental rehabilitation for gamblers who can be categorized in the addiction stage.

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