



RESEARCH ARTICLE

Comparison of Crime Resolution Based on Restorative Justice in the Police and the Prosecution

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ARTICLE INFO	ABSTRACT
Received: Oct 16, 2024 Accepted: Dec 4, 2024	This research aims to analyze the resolution of criminal acts based on restorative justice in the police with the prosecutor's office and analyze the legal benefits of resolving criminal acts based on restorative justice in the police and prosecutor's office. This research is empirical research with a qualitative approach. The primary data source was obtained from police interviews at the South Sulawesi Regional Police and interviews with prosecutors at the District Attorney's Office and the South Sulawesi High Prosecutor's Office. Secondary data was obtained from documents, books, journals, as well as research results. Data analysis uses qualitative analysis, is descriptive in nature and aims to obtain a complete picture or description of the legal situation. The results of the research show that (1) Requirements for resolving criminal acts based on restorative justice in the police, if the criminal act is not an extraordinary crime and the result of a criminal act does not cause the loss of another person's life or does not cause serious injury to another person, there is no limit to criminal threats and The value of the loss, is different from the Prosecutor's Office, which regulates the limits of the threat of imprisonment for criminal acts and the value of the loss or evidence does not. The police do not set a time limit for each stage, which is different from the prosecutor's office which sets a time limit for each detention in the process of resolving criminal acts based on restorative justice. (2) The percentage of success in implementing restorative justice in the Police is higher than in the Prosecutor's Office. So the legal benefits of resolving criminal acts based on restorative justice in the Police are greater than in the Prosecutor's Office
Keywords Restorative Justice Termination of Investigation Termination of Prosecution Comparative Law	
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INTRODUCTION

The Republic of Indonesia as a state of law, as enshrined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirms its commitment to upholding the fundamental principles of the rule of law. These principles include the supremacy of law, equality before the law, and due process of law. Within the framework of the rule of law, the law functions as an instrument to protect the interests of society, create order, and ensure justice and balance in social life.

One of the growing approaches in the criminal justice system is restorative justice. This approach focuses on restoring the harm suffered by victims of legal offences and aims to empower victims, offenders and the community to play a role in the resolution of criminal offences. In contrast to the

retributive criminal justice system¹, which emphasises punishment of offenders, restorative justice prioritises the moral and social responsibility of all parties involved to repair the damage caused by the violation of the law. In order for the concept of restorative justice to be effectively implemented, it is important to have an integral, consistent and sustainable implementation throughout the criminal justice subsystem, including the police, prosecutors, courts and correctional institutions.²

In order for the concept of restorative justice to be effectively implemented, it is important to conduct an integral, consistent, and sustainable implementation throughout the criminal justice subsystem, including in the Police, Prosecutor's Office, Courts, and Correctional Institutions. This approach requires integration between various law enforcement agencies and good coordination between these institutions.

According to Muladi's view, the success of an integrated criminal justice system is highly dependent on the creation of synchronisation in three main aspects that complement each other, namely structural, substantial and cultural synchronisation. Structural synchronisation refers to the alignment of relationships between law enforcement agencies, where a clear division of tasks and authority is required to prevent overlapping responsibilities or conflicts between agencies. Substantial synchronisation refers to the alignment of the rule of law vertically and horizontally, which ensures legal policies implemented at the central level are aligned with implementation at the regional level and there are no conflicting regulations. Finally, cultural synchronisation emphasises the importance of aligning values, views and perceptions among law enforcers to create a work culture oriented towards justice, transparency and professionalism.

In Indonesia, the implementation of restorative justice³ has been regulated through several regulations that serve as guidelines for law enforcement institutions. Regulation of the National Police of the Republic of Indonesia No. 8 of 2021 regulates the mechanism for implementing restorative justice at the Police level, while Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 provides a legal basis for the application of this approach in the prosecution process at the Attorney General's Office. These two regulations demonstrate a commitment from law enforcement institutions to adopt a more humanist approach in handling criminal cases⁴, particularly those involving minor offences or first-time offenders. Recent data shows significant progress in the implementation of restorative justice. In 2022, a total of 15,809 cases were successfully resolved through this approach in the Police, which increased by 11.8% compared to the previous year. Meanwhile, in the Public Prosecution Service, 3,121 cases were discontinued using restorative justice mechanisms by July 2023. This increase reflects the wider acceptance of restorative justice as a more effective and efficient alternative to the formal justice process, which is often more time consuming and costly.

While the implementation of restorative justice has shown positive results, there are several challenges that must be faced in practice. One of the main challenges is the difference in criteria and parameters between the Police and the Prosecutor's Office, which can affect the consistency of the implementation of restorative justice. For example, in a case of theft of car parts with a loss value of IDR 20 million, the Police can resolve the case restoratively because it fulfils the conditions specified

¹ Said Karim Muhammad. 2022 Juridical Review of Obstacles in the Implementation of Restorative Justice in the Case of the Crime of Theft, Daengku: Journal of Humanities and Social Sciences Innovation p 266

² Rivanie, S. S., Muchtar, S., Muin, A. M., Prasetya, A. D., & Rizky, A. (2022). Development of Theories of the Purpose of Punishment. *Halu Oleo Law Review*, 6(2), hlm. 183

³ Ahmad Syahird, Musakkir, Amir Ilyas & Naswar, Restorative Justice Approach as Ultimum Remedium of Corruption Crimes. *Pakistan Journal of Criminology* Vol. 16, No. 03, July—September 2024 (949-962) <https://doi.org/10.62271/pjc.16.3.949.962>

⁴ Aswanto Wlima Silalahi, Perlindungan, penghormatan, dan pemenuhan hak asasi manusia domestik dan internasional, Penerbitan Depok : Rajawali Pers, 2021

in Police Regulation No. 8 of 2021. However, in the Prosecutor's Office, a similar case cannot be discontinued because the value of the loss exceeds the maximum limit stipulated in Prosecutor's Regulation No. 15 of 2020. This difference in criteria often leads to confusion among the public, especially victims or complainants, who may feel that a case that is eligible for restorative resolution in one institution cannot be resolved in another. This can lead to dissatisfaction with the legal system and undermine public confidence in the effectiveness and consistency of restorative justice implementation.⁵

RESEARCH METHODS

This research uses an empirical method with a qualitative approach to analyse the application of restorative justice in the settlement of criminal acts in the Police and the Prosecutor's Office. The research was conducted in Makassar City, with locations in the General Criminal Investigation Directorate of the South Sulawesi Regional Police, the Makassar District Attorney's Office, and the South Sulawesi High Prosecutor's Office. The population consisted of 111 police officers and 10 prosecutors who handle restorative justice, with a sample taken through purposive sampling technique, namely 7 respondents from various sub-directorates in the police and prosecutor's office. Primary data was obtained through in-depth interviews, while secondary data was obtained from documents, books, journals and archives. Data analysis was conducted qualitatively with a descriptive analytical approach to obtain an in-depth picture of the implementation of restorative justice, as well as factors that influence its effectiveness in resolving criminal offences.

Criminal offence resolution based on restorative justice in the police and prosecutor's office

Restorative justice, although its main objective is to restore the relationship between victim and offender and avoid wider negative impacts, still faces challenges in its implementation due to the disharmony of existing regulations. Overlapping or inconsistent regulations often become an obstacle in the implementation of this restorative justice principle. Therefore, efforts to harmonise regulations are needed in order to achieve more effective goals in providing justice, not only for victims but also for perpetrators, and society in general. In this case, the Police and the Public Prosecution Service regulate the requirements related to restorative justice. Although the existing regulations in the two institutions are similar in terms of purpose and focus on recovery and peace, there are differences in the application of more specific requirements.⁶

In the Police, according to Police Regulation Number 8 of 2021, there are several material requirements that must be met so that a criminal offence can be resolved based on restorative justice, including: Does not cause unrest in the community, does not have an impact on social conflict, does not have the potential to divide the nation, is not related to radicalism or separatism, is not a repeat offender, is not a criminal act of terrorism, criminal acts against state security, and criminal acts against the life of a person. In addition, this regulation also regulates formal requirements that must be met, such as the existence of peace between the two parties, except for drug offences, as well as the fulfilment of victims' rights and perpetrators' responsibilities. In the Public Prosecution Service, according to Public Prosecution Service Regulation No. 15/2020, the termination of prosecution

⁵ Syarif Saddam Rivanie, Syamsuddin Muchtar, Audyna Mayasari Muin, A.M. Djaelani Prasetya, Ali Rizky(2022). Development of Theories of the Purpose of Punishment. *Halu Oleo Law Review*, 6(2), 176-188.

⁶ Hobson, Jonathan & Twyman-Ghoshal, Anamika & Banwell-Moore, Rebecca & Ash, Daniel. (2022). Restorative Justice, Youth Violence, and Policing: A Review of the Evidence. *Laws*. https://www.researchgate.net/publication/362715488_Restorative_Justice_Youth_Violence_and_Policing_A_Review_of_the_Evidence/citation/download

based on restorative justice must consider various aspects such as the interests of the victim, other legal interests, avoidance of negative stigma, and avoidance of retaliation.⁷

The AGO also provides further provisions regarding criminal offences that can be discontinued prosecution based on restorative justice, among others: The suspect is a first-time offender, the criminal offence is punishable by imprisonment of not more than five years, the value of evidence or loss caused by the criminal offence is not more than Rp 2,500,000. The similarity between the Police and the Public Prosecutor's Office in the application of restorative justice lies in the emphasis on the importance of peace between the victim and the suspect, as well as the fulfilment of the rights of the victim and the responsibility of the perpetrator.

Both also agree that criminal offences that can be resolved using a restorative justice approach should not involve repeat offences or fall into the category of extraordinary crimes, such as terrorism or crimes against life. However, the main difference between the two institutions lies in the maximum limit of the value of evidence or loss that can be resolved through restorative justice. In the Police, there is no such limit, while in the Prosecutor's Office, there is a specific provision that the value of evidence or loss should not exceed IDR 2,500,000 and the punishment should not exceed five years. In addition, the Police allow drug cases to be resolved using a restorative justice approach, while the Public Prosecution Service excludes drug cases from the application of this principle. In practice, despite the differences in requirements and application, both agencies must still consider non-legal factors, such as community response, the degree of culpability of the offender, and the potential social impact of the criminal offence. Greater regulatory harmonisation between the Police and the Public Prosecution Service would strengthen the application of restorative justice, avoid inequalities in the legal process, and provide greater opportunities for offenders and victims to reach a more peaceful and rehabilitative settlement.

Article 5 paragraph (6) of Prosecutor's Regulation No. 15/2020 sets out the conditions for discontinuation of prosecution based on restorative justice principles, in addition to fulfilling the conditions in the previous articles. Discontinuation of prosecution can only take place if a number of specific requirements are met, including:

- Restoration of the original situation by the suspect:
- Return of goods obtained from the criminal offence to the victim.
- Compensate the victim's loss arising from the criminal offence.
- Reimbursement of costs arising from the criminal offence, such as medical expenses or repairs.
- Repairing the damage caused by the criminal offence.
- Peace agreement between the victim and the suspect.
- Positive community response to case resolution.

Settlements can still be made through restorative justice even if not all conditions such as the return of goods or losses are met, as long as there is an agreement between the victim and the suspect, as explained in an interview with Brigpol Muhammad Kurniawan Arpal from the South Sulawesi Regional Police.

However, Article 5 paragraph (7) of Prosecutor's Regulation No. 15/2020 sets stricter limits on the termination of prosecution in relation to property cases. Prosecution can be discontinued if the punishment is under five years, regardless of the value of the loss arising from the criminal offence. The conditions for discontinuation of prosecution include restoration of the original situation, such as return or replacement of goods and payment of losses to victims.

⁷ Police Prioritize Restorative Justice in Solving Cases in The Society, <https://inp.polri.go.id/artikel/police-prioritize-restorative-justice-in-solving-cases-in-the-society>

Similarities between the Police and the Public Prosecution Service

Both institutions require reconciliation between victims and suspects and the fulfilment of victims' rights.

Both ensure there is no social conflict and no criminal offences resulting in serious injury or death.

Key differences

The police are more flexible on the limits of loss value and criminal offences, allowing cases to be resolved even if the loss value is greater than IDR 2,500,000 or the criminal offence is more than five years, as long as there is an amicable agreement and the community is not disturbed.

The Prosecutor's Office has stricter provisions, with settlement only possible if conditions, such as a criminal charge of less than five years or a loss of less than Rp 2,500,000, are fully met.

In the case of crimes against body, life or liberty, neither the Police nor the Public Prosecution Service allow restorative justice solutions if the crime is of a particularly serious nature, including terrorism or crimes that result in death or permanent disability of the victim.

Legal Expediency of Restorative Justice Approach In Police And Prosecutorial Institutions

The application of restorative justice in the resolution of criminal offences in Indonesia has shown varying results between the Police and the Public Prosecution Service, depending on the requirements and procedures applied by each. This approach aims to provide a more humane and rehabilitative solution, prioritising the restoration of relationships between victims and offenders and reducing reliance on lengthy and complex formal justice processes. The application of restorative justice has shown positive results, both in the South Sulawesi Regional Police and in the Public Prosecution Service, with each institution having its own characteristics in its application.

South Sulawesi Regional Police

In the South Sulawesi Regional Police, the application of restorative justice is flexible because there are no strict limits on the value of losses arising from criminal offences, the criminal penalties that can be imposed, or the time limit in the case settlement process. This gives the police the flexibility to resolve cases based on an agreement between the victim and the offender, which prioritises dialogue and the restoration of social relations. This approach allows the parties to reach a mutually beneficial agreement without having to go through the formal justice process. In 2021, all 40 cases requested to be resolved through restorative justice were approved, with a 100% success rate. This consistent success was also reflected in 2022 and 2023, where each year, all cases requested, 130 cases in 2022 and 78 cases in 2023, were successfully resolved using restorative justice mechanisms. No cases were rejected or failed to be resolved using this approach. This continued success demonstrates that the mechanism implemented by the South Sulawesi Police has reduced the caseload for the courts, while providing a quicker and more efficient solution to less serious offences.

Makassar District Attorney's Office

In the Makassar District Attorney's Office, the application of restorative justice shows a slightly different dynamic due to the more stringent and structured requirements. The Prosecutor's Office sets limits on the value of losses that can arise from criminal offences, the criminal penalties that can be imposed, and also more detailed time limits in the case settlement process. This makes the selection of cases for restorative justice more selective. The Public Prosecution Service is more careful in selecting cases that can be resolved through this approach, taking into account various factors, such as the seriousness of the criminal offence and the impact on the community. In 2021, out of 33 cases requested to be resolved through restorative justice, only 24 cases were approved, resulting in a success percentage of 72.7%. This shows that not all cases can fulfil the strict

requirements set by the Public Prosecution Service, so some cases must be resolved through formal justice channels.

However, in 2022, the success of restorative justice implementation increased rapidly, with all 126 cases requested approved for resolution through this mechanism, with a 100% success rate. This increase suggests that the Makassar District Attorney's Office is becoming more flexible in applying restorative justice principles, allowing greater space for non-litigation settlements. In 2023, although the number of cases requested decreased slightly to 114, the success rate of restorative justice implementation remained high, with 113 cases approved and only 1 case rejected, resulting in a very high success percentage of 99.12%. This increasing success reflects that the application of restorative justice in the Makassar District Attorney's Office is increasingly accepted as an effective alternative in resolving criminal cases. This approach does not only focus on the legal aspects, but also pays attention to the restoration of relationships between victims and perpetrators, which ultimately provides more benefits to society. The Makassar State Attorney's Office has demonstrated its commitment to applying restorative justice more broadly, albeit with stricter selection.

South Sulawesi High Prosecutor's Office

At the South Sulawesi High Prosecutor's Office, the implementation of restorative justice has shown very positive results. In 2021, 2022 and 2023, all cases requested to be resolved through restorative justice were approved, with the percentage of success recorded at 100% each year. In 2021, there were 4 cases requested to be resolved, all of which were approved. In 2022, the number of cases requested increased to 11, and in 2023 to 20, with all cases successfully resolved through restorative justice. This continued success demonstrates that the South Sulawesi Provincial Attorney's Office has been successful in implementing restorative justice effectively and efficiently. The approach adopted by the South Sulawesi Provincial Attorney's Office allows for a more amicable resolution of cases, without the need to engage in lengthy and resource-intensive formal judicial processes.

This of course provides greater benefits greater benefits for the community, especially in reducing the burden of cases that must be handled by the courts, as well as accelerating the recovery process for victims. handled by the courts, as well as accelerating the recovery process for victims and perpetrators. and perpetrators. The South Sulawesi High Prosecutor's Office has shown that the application of restorative justice is not only an efficient solution, but also contributes to better social contributing to better social recovery.

Analysis Based on Jhering's Theory If analyzed through the perspective of Jhering's theory, theory perspective, which states that the main purpose of law is to achieve the greatest welfare for the people. welfare for the people, the application of restorative justice in the South Sulawesi Police and South Sulawesi High Prosecutor's Office. South Sulawesi Regional Police and the South Sulawesi High Prosecutor's Office strongly reflects this goal. In Jhering's theory, the law is expected to produce greater benefits for society, and the application of restorative justice is is proven to provide a faster and more appropriate solution to resolve criminal cases. criminal cases. This is also in line with the goal of restorative justice, which is not only to resolve cases but also to repair relationships between criminals. not only resolving the case but also repairing the relationship between victims and perpetrators. The process of resolving cases through restorative justice has been proven to be more efficient, reduce the accumulation of cases in the courts, and improve relationships between victims and perpetrators.

This success reflects that the law, in this case through the application of restorative justice, can work for the welfare of society in a more humane and recovery-oriented way, rather than solely on punishment. The application of restorative justice also shows that the law must be able to adapt to social needs and the progress of society.

CONCLUSION

The implementation of restorative justice in the South Sulawesi Regional Police, the Makassar District Attorney's Office, and the South Sulawesi High Prosecutor's Office shows positive results in resolving criminal cases. In the Police, case resolution is carried out without detailed limitations regarding the value of losses, criminal threats, or time limits, which allows all cases requested to be resolved using this mechanism. Meanwhile, in the Public Prosecutor's Office, there is stricter selectivity, with more specific requirements for loss value and punishment. Successful application of restorative justice increased significantly in 2022 and 2023, reflecting the increased flexibility in its application. Based on Jhering's theory, which emphasizes the importance of public welfare in the application of the law, restorative justice provides greater benefits to society, reduces court backlogs, and improves relationships between victims and offenders.

To increase the effectiveness of restorative justice implementation, it is recommended that wider socialization of restorative justice principles and procedures, development of clearer procedural guidelines, and expansion of implementation to other institutions, with the support of a stronger support system to ensure smooth and successful case resolution

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