

**THE ROLE OF THE PROSECUTOR'S OFFICE IN STOPPING THE  
PROSECUTION OF DOMESTIC VIOLENCE CRIMINAL CASES  
BASED ON THE PROSECUTOR'S REGULATION OF THE  
REPUBLIC OF INDONESIA NUMBER 15 OF 2020  
(LABUHANBATU STATE PROSECUTOR'S STUDY)**

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**ABSTRACT**

The role of the Prosecutor's Office has become a hot topic in the legal world in Indonesia today because of the many cases and legal problems that are applied by prioritizing a sense of justice and for the justice-seeking community as well as for law enforcers restorative justice approaches in enforcement and application efforts to obtain meaning from the purpose of the law made. Because restorative justice is a legal necessity that is captured by law enforcement officials. We can see in the development of existing laws and regulations, each law enforcement agency is competing to take part and play a role in implementing the principles of restorative justice according to their respective duties and authorities. Starting from the Police, Prosecutor's Office, Supreme Court, and Prisons, in this case the Prosecutor's Office issued Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

**Keywords:** *The Role of the Prosecutor's Office, Law Enforcement, Termination of Prosecution*

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**INTRODUCTION**

In Article 1 of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, what is meant by Restorative Justice is the resolution of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retribution.

Restorative Justice is not new. First introduced Albert Eglash a psychologist from America in 1977 through his book entitled "Restitution in Criminal Justice: A Critical Assessment of Sanctions". However, long before that, restorative justice had long been applied in the civilizations and traditions of Ancient Arabia, Greece, Ancient Rome, Hidustan, Buddhist, Taoist, and Confucian societies, although it did not use the term restorative justice. Internationally, restorative justice was first discussed through The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century in 2000. Then in 2002, The United Nations Economic and Social Council created Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. Finally, the United Nations Office on Drugs and Crime (UNODC) created a Handbook on Restorative Justice Programmes (Second Edition) in 2020. In this regard, in the context of an integrated criminal justice system, the prosecution function cannot be separated from the investigation function as a thesis premise that will be checked and balanced with the arguments of the defendant/his legal counsel as the

anti-thesis at trial. It is the judge who will make his *sistensis* in the end. The prosecution function is in one breath with the investigation function.

The authority based on the principle of *dominus litis*, made the Prosecutor's Office in 2020 stipulate the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation is based on the consideration of the resolution of criminal cases that prioritize restorative justice that emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal need of the community and a mechanism that must be built in the exercise of prosecution authority and the renewal of the criminal justice system.

In addition, in the perspective of the principle of a single prosecution, the prosecution function cannot be separated from the investigative function even though the prosecution authority is given to the prosecution agency. The policy of handling cases at the investigation and prosecution stage is a policy so as not to cause disparities. Based on this, the Criminal Procedure Code (KUHAP) as the operational basis of the criminal justice system must change the paradigm by applying a single prosecutorial principle that makes the Attorney General the highest public prosecutor who can determine case handling policies at the prosecution and investigation stages. Accountability for the implementation of prosecutions carried out by the Attorney General will later be accounted for in front of the House of Representatives as the representative of the people as the owner of sovereignty/power (vide Article 37 paragraph (2) of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia).

These various legal principles and norms make the public prosecutor have a strategic position, a very important role, and of course the responsibility in determining a case resolved through a trial mechanism or outside the court. The spirit of reinforcement was translated in writing (*lex certa*) and clearly (*lex stricta*) in the new Prosecution Law. Article 37 of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia states that the Attorney General is responsible for prosecutions carried out independently for the sake of justice based on law and conscience. In the explanation of the article explains that as a manifestation of restorative justice, the prosecution is carried out by weighing between legal certainty (*rechtmatigheids*) and expediency (*doelmatigheids*). Please note that in addition to the Juvenile Criminal Justice System Law, Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia is the only legal product that regulates the institution of law enforcement officials which expressly mentions restorative justice as a goal that must be achieved in the implementation of duties, functions and authorities. Article 37 of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia places the Attorney General as the highest Public Prosecutor responsible for realizing restorative justice in the prosecution process that cannot be separated from the investigative function.

The Prosecutor's Office has stopped prosecuting criminal cases based on restorative justice in 1,070 (one thousand seventy) cases. The process of stopping the prosecution was very strict because it was decided by the Junior Attorney General for General Crime. This is done to maintain a policy of stopping prosecutions based on restorative justice. In addition, in addition to various legal products that have been issued by the Attorney General on restorative justice, in 2022, the Attorney General through the Junior Attorney General for General Crime has

instructed all work units of the Attorney General throughout Indonesia to form restorative justice units in their respective jurisdictions, such as restorative justice houses, restorative justice villages, and so on. As a result, to date, the Prosecutor's Office has initiated 410 (four hundred and ten) Restorative Justice Houses spread across 33 (thirty-three) areas of the High Prosecutor's Office in Indonesia. Rumah Restorative Justice is a pure implementation of restorative justice, namely the resolution of cases outside the criminal justice system. This policy is the brainchild of reviving the values that live in the community regarding deliberation by prioritizing communication habits and increasing sensitivity to local wisdom, as the nation's identity in accordance with the values of Pancasila to reach a peace agreement as a form of case resolution. It is very visible that this policy also wants to elaborate the living law with the applicable law (positive law). It is hoped that the regulation of restorative justice (legal substance) and prosecutors as facilitators to facilitate the peace process (legal structure), it is hoped that it will create a legal culture for law enforcement and especially for the community to form awareness in participating in enforcing the law and prioritizing the interests of perpetrators, victims, families of perpetrators, and other parties related, to jointly seek a just and peaceful solution, not revenge. The purpose of this study is to know and analyze the legal regulation on threats or psychological violence within the scope of the household based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence

## **METHOD**

The research method used in this study is the normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data (Soerjono Soekanto, et al. 2003: 13). The research method used by normative law (normative law research) uses normative case studies in the form of legal behavior products, for example reviewing laws. In addition, to obtain information and references, the author also uses a research approach with Legal Principles, Laws and Regulations and, Decision Studies. The subject of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal findings in cases in concreto, legal systematics, synchronization levels, comparative law, and legal history, which aims to describe systematically, factually, and the research material in this study used is the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

## **RESULTS AND DISCUSSION**

### **Legal regulation on threats or psychological violence within the scope of the household based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence**

According to Hakristuti Harkrisnowo (2000: 79), violence against women does not receive adequate attention in the legal system, including law enforcement and legal culture in Indonesian society because of the meaning of violence or perceptions of violence in society. While the definition of violence in the Big Indonesian Dictionary (KBBI) is the act of a person or group of people who cause injury or death to others or cause physical damage or property

to others. In Article 89 of the Criminal Code (KUHP), the definition of violence juridically in is that which makes people faint or helpless is equated with using violence.

Domestic violence, according to Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is: Every act against someone, especially women, which results in physical, sexual, psychological, and/or domestic misery or suffering including threats to commit coercive acts, or unlawful deprivation of independence within the scope of the household.

Domestic violence is a violation of human rights and a crime against human dignity and a form of discrimination that must be eliminated, as stated in the 1945 Constitution Amendment IV Article 28 letter G paragraph (1) which states, "Everyone has the right to protection of himself, family, honor, dignity and property under his control and has the right to the basis of security and protection from the threat of fear to do and or not do something that is a human right." Domestic Violence is defined as a variety of forms of use of violence or threats of violence carried out to control spouses, children, or family members / other people, who live or are within a household scope.

With the birth of a law that specifically regulates acts of violence that occur within the scope of the household, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, more or less the problems of acts of domestic violence have been answered and become legal protection that can provide protection for victims. As for perpetrators and potential perpetrators, the existence of Law No. 23 of 2004 concerning the Elimination of Domestic Violence is a warning that violence that occurs in the household is a criminal act. Acts of domestic violence generally involve perpetrators and victims among family members in the household, while the usual forms of violence are in the form of physical violence, and verbal violence (threats of violence).

Perpetrators and victims of domestic violence usually affect anyone, not limited by strata, social status, education level, and ethnicity. Domestic violence is not only physical violence. There are also many domestic violence where the perpetrator has never committed physical violence but as a result of the perpetrator's actions, the victim experiences severe suffering, namely the psychological violence experienced by the victim. According to Law Number 23 of 2004, Domestic Violence can be divided into four, namely physical violence, psychological violence, sexual violence, and domestic neglect violence. Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Article 7 explains that psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, a sense of helplessness, and/or severe psychological suffering in a person.

Psychological violence is an act of verbal torture such as insulting, speaking rudely, and dirty which results in decreased self-confidence, increased fear, loss of ability to act, and helplessness. This psychological violence, if it often occurs, can cause the victim to become more dependent on the perpetrator even though the perpetrator has made him suffer. On the other hand, psychic violence can also trigger resentment in the victim's heart. Psychic violence is not so easy to recognize. The consequences felt by the victim do not leave a visible mark on others. The impact of this type of violence will affect the situation of feelings and insecurity and comfort, decreased self-esteem and dignity of the victim. Concrete forms of violence or

violations of this form are the use of abusive words, abuse of trust, humiliating people in front of others or in public, making threats with words, and so on.

In Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), what is meant by Domestic Violence (KDRT) is any act against someone, especially women, which results in physical, sexual, psychological, and/or domestic misery or suffering including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household.

The violence that occurs in the household, according to Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), includes:

1. Physical violence, based on Article 6 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence Physical violence is an act that results in pain, falling ill or serious injury.
2. Psychological violence, based on Article 7 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence Psychological violence is an act that results in fear, loss of self-confidence, loss of action, a sense of helplessness and/or severe psychological suffering in a person.

**The Role of the Prosecutor's Office and Procedures for the Implementation of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in Domestic Violence Cases (Study of Termination of Prosecution Provisions (SKP2) Number: 03/L.2.18/Eku.2/03/2022)**

Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Article 1 Paragraph (1) states that the Prosecutor's Office is a Government Institution that exercises State Power in the Field of Prosecution and other authorities based on the Law. From this formulation, it can be concluded that the Prosecutor's Office is a Government Institution, thus in terms of exercising State power, the Prosecutor's Office is one of the State apparatuses. This power according to Article 1 Paragraph (2) is exercised independently.

The Prosecutor's Office is one and not separated (Article 1 Paragraph 3). These things need to be understood to know the position of the Prosecutor's Office both in the government and as the carrying out of State duties. The prosecution defends the interests of the public, and considers whether the public interest requires that punishable acts be prosecuted or not. So in the criminal field, the Prosecutor's Office has duties and authorities;

- 1) Prosecuting;
- 2) Carry out the determination of judges and judgments that have obtained permanent legal force;
- 3) Supervise the implementation of conditional criminal judgments, supervisory criminal judgments, and conditional release decisions;
- 4) Conduct investigations into certain criminal acts based on the law;
- 5) Complete certain case files and for that can conduct additional examinations before being transferred to the court which in its implementation is coordinated with investigators;

Article 1 Paragraph (6) point states that the Prosecutor is an official authorized by the Indonesian Civil Code to act as a public prosecutor and execute court decisions that have obtained permanent legal force. Thus, the Prosecutor is a position, in the provisions of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, a functional position is stated to be a prosecutor who carries out the task of prosecution or trial of cases based on a valid warrant called the public prosecutor. In Law Number 8 of 1981 Article 1 Paragraph (6) point b states that the public prosecutor is a prosecutor who is authorized by this law to conduct prosecutions and determine judges.

The prosecutor is authorized to be a public prosecutor and execute decisions that have obtained permanent legal force (execution). Therefore, the prosecutor has two powers, namely;

- 1) As public prosecutor
- 2) As executor

Prosecutors who handle cases in the prosecution stage are called public prosecutors. It is the public prosecutor who can carry out the judge's determination, while other prosecutors (not public prosecutors) who by law are not authorized as public prosecutors cannot carry out prosecutions and carry out executions. Prosecutors who serve outside the prosecution are still called prosecutors.

The requirements for termination of prosecution in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice are:

Pasal 4

1. Termination of prosecution under Restorative Justice is carried out taking into account:
  - a. the interests of the Victim and other protected legal interests;
  - b. avoidance of negative stigma;
  - c. evasion of retaliation;
  - d. community responsiveness and harmony; and
  - e. decency, decency, and public order.

(2) The termination of prosecution based on Restorative Justice as referred to in paragraph (1) shall be carried out by considering:

- a. the subject, object, category, and threat of a criminal act;
- b. the background of the commission of the crime;
- c. degree of reproach;
- d. losses or consequences arising from criminal acts;
- e. cost and benefit of handling cases;
- f. restoration back to its original state; and
- g. the existence of peace between the Victim and the Suspect.

Article 5

(1) A criminal case may be closed by law and the prosecution terminated under Restorative Justice if the following conditions are met:

- a. the suspect has committed a crime for the first time;

b. criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years; and

c. the crime is committed with the value of evidence or the value of losses incurred as a result of the crime not exceeding Rp. 2,500,000,00 (two million five hundred thousand rupiah).

(2) For property-related crimes, in the event that there are casuistic criteria or circumstances which, in the judgment of the Public Prosecutor with the approval of the Head of the District Attorney Branch or the Chief District Attorney, may be terminated, the prosecution based on Restorative Justice shall be carried out while taking into account the conditions referred to in paragraph (1) letter an accompanied by one of the letters b or letter c.

(3) For criminal acts committed against persons, bodies, lives, and liberties of persons, the provisions referred to in paragraph (1) point c may be excluded. (4) In the event that a criminal offense is committed due to negligence, the provisions of paragraph (1) point b and letter c may be excluded. (5) The provisions referred to in paragraph (3) and paragraph (4) shall not apply in the event that there are casuistic criteria/circumstances which, in the judgment of the Public Prosecutor with the approval of the Head of the District Attorney's Branch or the Chief District Attorney, cannot be stopped from prosecution based on Restorative Justice.

(6) In addition to fulfilling the terms and conditions referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the termination of prosecution based on Restorative Justice shall be carried out by fulfilling the following conditions:

a. there has been a restoration to the original state carried out by the Suspect by:

1. return the goods obtained from the crime to the Victim;
2. indemnify the Victim;
3. reimburse costs incurred from the consequences of criminal acts; and/or
4. repair damage arising from the consequences of criminal acts;

b. there has been a peace agreement between the Victim and the Suspect; and

c. the community responded positively.

In the Peace Effort and the process of implementing procedures, the application of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is contained in Articles 7 to Article 14 of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, carried out through the District Attorney's Office in each district/city area with several stages that must be carried out first previously. First, every settlement of the case must involve the victim by communicating for further summons. Furthermore, the Prosecutor's Office made a formal summons against the victim and the parties involved. Investigators and Prosecutors also coordinate in advance intensively. Then, the Prosecutor is appointed by the Chief District Attorney who acts as the Public Prosecutor in criminal cases when the criminal case goes through Phase II, namely the transfer of suspects and evidence by the Investigator to the Public Prosecutor. The prosecutor as a facilitator mediates between the suspect and the victim. The meeting between the victim and the suspect is part of a peace effort through dialogue. One of the basic formulations of the principles of restorative justice is the existence of dialogue between victims and perpetrators

to achieve understanding. Furthermore, both the victim and the suspect agreed to reconcile because the suspect begged and apologized to the victim and promised not to repeat it again.

Termination of prosecution based on restorative justice, the Public Prosecution needs to consider several things. For example, the subject, object, category and threat of a criminal act, the background of the occurrence of a criminal act, the level of reproach, losses or consequences arising from a criminal act, the costs and benefits of handling the case, restoration back to its original state, and the existence of peace between the Victim and the Suspect.

One example of a case that occurred at the Labuhanbatu District Attorney's Office which succeeded in stopping prosecutions based on restorative justice for cases of Domestic Violence crimes. Kajari Labuhanbatu officially issued a Decree of Termination of Prosecution (SKP2) of the Chief Prosecutor of Labuhanbatu District Number: 03/L.2.18/Eku.2/03/2022 dated March 7, 2022, which stipulates the termination of the prosecution of criminal case files Number: BP/11/I/RES.1.6/2022/Reskrim dated January 17, 2022 on behalf of suspect P.S based on restorative justice for cases of Domestic Violence crimes that violate Article 44 paragraph (1) of RI Law No. 23 of 2004 concerning Domestic Violence Ladder. The crime occurred because the suspect felt disrespected by the victim witness K.S who was the suspect's wife he called the victim witness K.S from outside the house many times but the victim witness K.S did not hear the Suspect's call so the suspect became emotional and committed Domestic Violence and for the suspect's actions, the victim witness K.S was injured.

The termination of prosecution in the Domestic Violence case was carried out by the Public Prosecutor at the Labuhanbatu District Attorney's Office based on the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. Based on the Letter of the Chief Prosecutor of North Sumatera Number: R-2132/L.2.18/Eku.2/03/2022 dated March 7, 2022, it was declared approved to terminate the prosecution based on restorative justice in the case of Domestic Violence crimes on behalf of P.S violating Article 44 paragraph (1) of RI Law No. 23 of 2004 with the consideration that the suspect had committed a crime for the first time and there had been a peace agreement between the victim and the suspect as per the Letter Peace dated February 25, 2022 attended by the Public Prosecutor, Investigators, Victims, Suspects, and Suspects' Families. The success of stopping the prosecution is inseparable from the efforts of the Chief Prosecutor of Labuhanbatu State who initiated the Public Prosecutor who acts as a facilitator to sit together with investigators and community leaders in achieving a way out (peace).

## **CONCLUSION**

In these various legal principles and norms, the public prosecutor has a strategic position, a very important role, and of course the responsibility in determining whether a case is resolved through a trial mechanism or outside the court. The spirit of strengthening was also translated in writing (*lex certa*) and clearly (*lex stricta*) in Law Number 16 of 2004 concerning the Prosecutor's Office. Article 37 of Law Number 16 of 2004 concerning the Prosecutor's Office states that the Attorney General is responsible for prosecutions carried out independently for the sake of justice based on law and conscience. In the explanation of the article explains that as a manifestation of restorative justice, the prosecution is carried out by weighing between

legal certainty (*rechtmatigheids*) and expediency (*doelmatigheids*). So that the Role of the Prosecutor's Office and the Authority that exists in the Prosecutor's Office based on the principle of *dominus litis*, makes the Prosecutor's Office of the Republic of Indonesia in solving legal problems not only prioritize Legal Certainty, but the Prosecutor's Office of the Republic of Indonesia in accordance with the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation is based on the consideration of the resolution of criminal cases that prioritize restorative justice that emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal need of the community and a mechanism that must be built in the exercise of prosecution authority and the renewal of the criminal justice system.

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