

Enhancing Legal Certainty Through Restorative Justice: A Focus on the Role of Indonesia's Attorney General's Office

Setia Untung Arimuladi¹

Abstract

Restorative justice holds promise as an alternative to punitive approaches in the juvenile justice system, offering effective means of addressing criminal actions while promoting accountability and reconciliation. This paper explores the implementation of restorative justice in Indonesia's legal landscape, examining its potential benefits, challenges, and regulatory frameworks. Through a normative juridical approach and qualitative analysis of legal documents and literature, the study underscores the importance of enhancing understanding and skills among law enforcement agencies, particularly the Attorney General's Office, in effectively applying restorative justice principles. By upholding values of justice, decency, and morality, the Attorney General's Office can play a pivotal role in fostering a more humane and efficient criminal justice system that serves the interests of society as a whole.

Keywords: Restorative justice, juvenile justice, law enforcement, Attorney General's Office, legal certainty.

Introduction

Recently, restorative justice has promised a bright future for the juvenile justice system. It offers benefits that can address criticisms previously mentioned against the dominant rehabilitative juvenile justice system. Restorative justice is more effective, even in reintegrating offenders. Its straightforward normative approach and retrospective aspects provide more robust criteria for developing legal protections. The emphasis on the personal responsibility of the offender seems more appropriate for responding to severe crimes, and victims fare better with restorative responses than with rehabilitative or punitive responses. Furthermore, as of now, restorative justice does not pose damaging consequences for public safety and has good intrinsic potential for general law enforcement (Elliott & Gordon, 2013).

Many countries have shifted to restorative schemes in their juvenile justice systems to hold young offenders accountable, to benefit victims, and to avoid a shift towards purely punitive approaches. How far this development will go is still being

¹ The author is a research scholar of the Doctoral Program, Universitas Diponegoro, Jalan Imam Bardjo, S.H., No. 1, Semarang City, Central Java 50241, Indonesia. He can be reached at setiauntungarimuladi25@gmail.com

determined. In the most ambitious vision, restorative justice will replace, within decades, the dominant care-based approach and become the primary response to juvenile crime. Others are sceptical, believing that restorative justice will remain just one of the possible reactions to juvenile crime. Juvenile justice will then evolve as a three-tier model. Children and adolescents who, due to age or clear incapacity, are considered to have low levels of responsibility will be referred to welfare institutions operating outside the justice system but possibly under judicial supervision. Most children and adolescents are considered capable of responsibility. They will increasingly be invited (though pressured) to participate in voluntary restorative processes or be subject to judicial sanctions with reparative components. Adolescents considered serious offenders and at risk of repeat offences will receive criminal sanctions based on a mix of capacity restrictions and punishment (Elliott & Gordon, 2013).

During the period from January to November 2023, the National Crime Information Center recorded a total of 394,001 criminal incidents. This figure represents an increase compared to the total crimes from January to December 2022, which amounted to 322,200 cases. The most prevalent type of crime was aggravated theft, accounting for up to 155,361 cases. According to World Prison Brief (WPB) data, Indonesia ranked seventh globally in terms of total prison population. As of October 2023, there were 269,275 inmates in Indonesia, surpassing the count in 2020, which stood at 249,056. The United States leads the world in prison population with 1,767,200 individuals incarcerated, followed by China with 1,690,000 inmates. Brazil ranks third with a total prison population of 839,672, trailed by India with 554,034 inmates. Russia's prison population is 433,006, followed by Turkey with 341,497 inmates. After Indonesia, Thailand ranks 8th with 262,319 prisoners. Additionally, Mexico has a total prison population of 234,561, while Iran detains 189,000 individuals (Jauhari, 2023). Concurrently, prison overcrowding poses issues within correctional facilities, such as decreased supervision and security, leading to the emergence of new criminal activities. These may include inter-prisoner violence, drug trafficking, overcrowding-related incidents like fires or riots, and other forms of crime. The 2014 Joint Regulation on Handling Drug Addicts and Victims of Drug Abuse stipulates that only dealers and syndicate members are subject to imprisonment, while others may undergo rehabilitation. Overcrowding also impacts the ability of inmates to rest and engage in activities, infringing upon their rights and causing further suffering (Abdillah, 2019).

Overcrowding complicates surveillance, prison maintenance, and swift evacuation procedures during emergencies like fires. Furthermore, allowing prisons to remain in poor conditions fundamentally violates human rights. Overcrowding

coupled with inadequate facilities can exert psychological pressure on inmates, endangering prison safety. Insufficient staffing further diminishes security, potentially rendering guards incapable of containing inmate unrest.

The most effective approach to reducing prison populations is addressing root causes, promoting awareness of laws, and educating the public on the consequences of criminal actions. Moreover, prison overcrowding strains correctional budgets, increasing the likelihood of corruption.

The issue of restorative justice is a hot topic in the legal world in Indonesia. It has become popular among justice seekers and law enforcers. Whether because restorative justice is included in the National Medium-Term Development Plan 2020-2024 or because law enforcement agencies capture a legal need. Each law enforcement agency strives to participate and play a role in implementing restorative justice principles according to its respective duties and authorities. Starting from the Police, the Prosecutor's Office, the Supreme Court, and Correctional Institutions (Sihombing et al., 2023).

In 2018, the Chief of Police issued a Circular Letter of the Chief of Police Number SE/8/VII/2018 dated July 27, 2018, regarding the Implementation of Restorative Justice in Criminal Case Resolution (Taneo et al., 2023). In 2019, the Prosecutor's Office issued Regulation of the Attorney General Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. In the same year, the Supreme Court, through the Director General of the General Courts, issued a Decree of the Director General of the General Courts Number: 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020. In 2021, the Chief of Police issued the Regulation of the Republic of Indonesia National Police Number 08 of 2021 concerning the Handling of Criminal Acts based on Restorative Justice (Hawalia, 2022). Finally, in 2021, the Attorney General issued the Guidelines of the Attorney General Number 18 of 2021 concerning the Settlement of Criminal Offense Cases of Drug Abuse Through Rehabilitation with a Restorative Justice Approach (Mugiandono et al., 2022). Unfortunately, these various regulations set different requirements for applying restorative justice. This raises the potential for uncertainty and disparities in its implementation.

The Attorney General explains that since the early development of criminal justice systems in Indonesia and globally, punishment for criminal offenders has remained retributive, focusing on punishing the offender. This punitive orientation aims to retaliate and fulfil public outrage demands due to the offender's actions. However, over time, there has been a shift towards alternative paradigms offered to replace revenge-based justice, namely ideas that emphasise the importance of solutions to improve conditions, reconcile parties, and restore harmony in society while still demanding accountability from the perpetrator, known as restorative

justice (Kuntadi, 2022). The Attorney General stated that there are generally five principles of restorative justice, namely: The principle that emphasises the dangers and consequences of criminal acts, both to the victim, society, and the perpetrators; The principle that emphasises protection of the place from the actions that occur, such as against the perpetrator's family, and the surrounding community; The principle that emphasises inclusive collaborative processes; The principle of involving specific parties in specific cases, such as perpetrators, victims, families, and community members who are deemed legitimately able to be involved; and The principle of correcting mistakes. These principles must always be applied to develop national law so that the noble goals of the law itself, namely justice, certainty, and utility of the law, can be achieved.

Based on the above background, this research aims to analyse the urgency of restorative justice in the context of law enforcement in the prosecutor's office in Indonesia.

Research Methods

This study addresses research subjects using a normative juridical method and descriptive-analytical framework. The normative juridical approach analyses law-related literature or data: literature and legal limits. Primary and secondary texts are used in the investigation (Natalis et al., 2023). This research uses primary materials like laws and regulations and secondary materials like study findings, journals, books, websites, and other significant information. This method helps researchers understand the legal framework governing the research issue and how it is understood and applied. Researchers obtain data by studying relevant documents and sources in the literature. This strategy lets researchers use a range of literature views to improve their work. In addition, this research uses qualitative data analysis. Qualitative research helps researchers understand data's context, meaning, and interpretation and identify patterns, themes, and relationships between relevant concepts or variables. The literature study is comprehensive, incorporating many perspectives and interpretations.

Results and Discussion

The Attorney General's Office of the Republic of Indonesia, from now on referred to as the Attorney General's Office, is a governmental institution responsible for implementing state authority in the field of prosecution and other jurisdictions by the provisions of laws and regulations (Tewernussa et al., 2022). The Attorney General's Office has various functions in carrying out its duties, including formulating implementation and technical policies and providing guidance, mentoring, and permits by applicable laws. The Attorney General's

Office is also responsible for infrastructure development, management training, administration, organisation, and the management of state assets (Anas et al., 2023). Other functions include law enforcement, both preventively and repressively, in criminal law, organising judicial intelligence, providing legal assistance in civil and administrative matters, and implementing the placement of suspects or defendants requiring psychiatric care or other places by the law. The Attorney General's Office also provides legal considerations to government institutions and agencies and enhances legal awareness in society. In carrying out its duties, the Attorney General's Office must realise legal certainty, legal order, justice, and truth based on the law while also considering religious norms, decency, and morality (Sulistiani & Fakhriah, 2023).

The exercise of state authority by the Attorney General's Office through the Attorney General's Office, High Prosecutors' Offices, and District Prosecutors' Offices, which are an integral whole. As one of the law enforcement agencies, the Attorney General's Office is expected to be more active in upholding the rule of law, protecting public interests, enforcing human rights, and combating Corruption, Collusion, and Nepotism by Law No. 16 of 2004 (Kemal, 2023).

In carrying out its duties and authorities, the Attorney General's Office is led by the Attorney General, who oversees several Deputy Attorneys General and Chief Prosecutors in each province. The Attorney General's Office plays a central role in law enforcement, acting as a filter between the investigation and trial processes and implementing court decisions and judgments. The Attorney General's Office is the only institution executing criminal judgments. It has a role in Civil Law and State Administration, where Prosecutors can represent the Government in such cases as State Attorneys. Prosecutors, as the implementers of these authorities, are granted the authority as Public Prosecutors and carry out court decisions and other authorities based on applicable laws (Adiguna, 2021).

The Attorney General's Office of the Republic of Indonesia, as a governmental institution responsible for implementing state authority in the field of prosecution, is responsible for achieving legal certainty, legal order, justice, and truth based on the law. The Attorney General's Office must also consider religious norms, decency, and morality while exploring society's values of humanity, law, and justice (Taher, 2019).

Resolving criminal cases by emphasising the principle of restorative justice, which focuses on restoring the situation to its original state and balancing the protection and interests of both victims and perpetrators without seeking retaliation, is a legal necessity for society (Zulfa, 2011). This also becomes a mechanism that must be built into exercising prosecution authority and reforming the criminal justice system.

Restorative justice brings together those affected by crime or conflict and those responsible for the harm caused, allowing everyone involved in a particular incident to play a role in repairing the damage and finding positive ways forward. This is part of a broader field known as restorative practices (Shapland et al., 2011). Restorative practices can be utilised anywhere to prevent conflicts, build relationships, and repair damages by enabling effective and positive community communication. These practices are increasingly employed in schools, child services, workplaces, hospitals, communities, and criminal justice systems. They can encompass proactive approaches to prevent adverse impacts, conflicts, and activities that address these impacts when conflicts arise.

Facilitated restorative meetings can be conducted in cases where the latter is necessary. This allows individuals and groups to collaborate to enhance mutual understanding of an issue and collectively reach the best solutions. However, a less formal approach based on restorative principles may be more appropriate.

Restorative practices support individuals in realising that all their actions impact others, that they are responsible for their choices and actions, and that they can be held accountable for them. This enables individuals to reflect on their interactions with others and consider the best ways to prevent harm and conflicts.

Restorative Justice is an approach within the criminal justice system that focuses on recovering, reconciling, and restoring relationships damaged by criminal actions. This approach emphasises addressing the root causes and psychological, social, and emotional impacts of criminal actions on victims, perpetrators, and society (Hafrida, 2019).

The main principle of Restorative Justice is to shift the focus from punishment and retaliation alone to problem-solving and recovery. In traditional systems, perpetrators are usually punished with imprisonment or fines, while victims often feel dissatisfied with the outcomes, and long-term impacts persist. In the Restorative Justice approach, there is a dialogue between victims, perpetrators, and the community to discuss the consequences of criminal actions and find suitable solutions for all parties involved. This may include apologies, restitution, or other actions that help repair the impact of the actions. The approach aims to promote accountability and learning from mistakes, thus reducing the rate of repeat offences.

It is noted that the application of restorative justice is based on the Attorney General Regulation of the Republic of Indonesia No. 15 of 2020 and procedural law provisions, namely Articles 139 and 140 of the Criminal Procedure Code. These provisions affirm the authority of the Public Prosecutor over cases that have been declared complete and have undergone Phase II by the Investigator. This authority is further emphasised in the Republic of Indonesia Law No. 11 of 2021 concerning

the Attorney General's Office, as stipulated in Article 30C letter c, which states that the Prosecutor's Office should actively participate in handling criminal cases involving witnesses and victims, as well as the rehabilitation, restitution, and compensation processes. Furthermore, it is reiterated in Article 34A, which allows the Prosecutor and Public Prosecutor to act according to their judgment for law enforcement purposes while considering legal provisions and ethical codes (Bawono, 2021).

In implementing restorative justice by the Attorney General's Office, the primary focus is achieving reconciliation between the parties involved, with the victim and their family offering forgiveness to the perpetrator of the criminal act. The application of restorative justice in a case or proceeding that has reached Phase II is subject to specific limitations outlined in the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020. These limitations include the perpetrator being a first-time offender (not a recidivist), the threat of punishment not exceeding five years, the victim's loss not exceeding Rp2,500,000, and most importantly, the criminal act not having a widespread impact on society (Sukardi, 2014). From these requirements, cases such as rape or sexual harassment, including sexual exploitation, are not eligible for cessation based on restorative justice. Additionally, such cases of rape cause prolonged trauma to the victim and have widespread effects on society.

In implementing the approach outlined in the Attorney General Regulation No. 15 of 2020 regarding the cessation of prosecution based on restorative justice, provisions are also made regarding the termination of prosecution in criminal cases. The philosophical basis for prosecution termination is also regulated in the Criminal Code and the Criminal Procedure Code, where it is stipulated that the right to prosecution lies solely with public prosecution, namely prosecutors authorised by the Criminal Procedure Code number 8 of 1981. Article 1 Clause 7 of the Criminal Procedure Code defines prosecution as follows: Prosecution is the action of the public prosecutor to refer a criminal case to the competent district court by the law, requesting that it be examined and adjudicated by the judge in a court session (Hidayat & Wahyuningsih, 2018).

Based on Article 4 of Regulation No. 15 of 2020, the authority of the Public Prosecutor in terminating prosecution based on Restorative Justice is exercised by considering The interests of the victim and other protected legal interests, Avoidance of negative stigma, Avoidance of retaliation, Community response and harmony; and Appropriateness, morality, and public order. In addition to the above, the Public Prosecutor, in the Termination of Prosecution based on Restorative Justice, also considers The subject, object, category, and threat of the criminal act; the background of the criminal act; the level of harm; the cost and benefit of

handling the case; and the restoration of peace between the victim and the suspect (Wahyuningsih et al., 2023).

However, since prosecutors are law enforcement officers who may not necessarily be accustomed to persuasive approaches for the parties involved, it must be remembered that particular intervention is required for the prosecution to implement restorative justice programs better. In fact, in some cases, prosecutors, as law enforcement officers, may find it confusing to apply restorative justice program interventions in cases with sensitive issues, failing to restore relationships between the parties (victims and perpetrators) and to provide safeguards for the victims. Furthermore, in some countries where attempts are being made to implement restorative justice program interventions in trials through the authority of the public prosecutor, there is reluctance from prosecutors who still believe that restorative justice cannot be applied if the case has reached the trial stage and the case files are under the control of the public prosecutor (Muammar & Roihan, 2021). This reluctance arises due to a lack of comprehensive understanding of the restorative justice concept and because some prosecutors still prefer to “punish the wicked” rather than restore and seek the parties’ best interests.

Therefore, it is crucial for prosecutors not only to be involved in discussions on criminal case resolution from the outset (especially with the parties involved) but also crucial for prosecutors to undergo training and be provided with comprehensive information on the ideal concept of restorative justice so that they can understand and apply restorative justice principles. Additionally, prosecutors (and law enforcement officers in general) need to have a comprehensive blueprint of restorative justice implementation and how this design can be applied in everyday law enforcement. If these aspects can be implemented effectively, prosecutors, who have the role and responsibility to create a safer societal order, can achieve that goal by using restorative justice program interventions, thereby creating a more humane and effective criminal justice system.

Conclusion

The Attorney General’s Office of the Republic of Indonesia plays a crucial role in upholding legal certainty, law and order, and justice based on the law within society. The Attorney General’s Office is responsible for law enforcement, protecting public interests, and upholding human rights through its various functions and authorities. Implementing restorative justice is essential to resolving criminal cases, aiming to restore disrupted relationships caused by criminal actions, mitigate the negative impacts, and reduce the recidivism rate. However, to effectively implement a restorative approach, the Attorney General’s Office must enhance prosecutors’ understanding and skills in restorative program interventions

and ensure that justice, propriety, and morality are consistently upheld in every legal enforcement step. Thus, the Attorney General's Office can become one of the frontline defenders in creating a more humane and effective criminal justice system for society.

References

- Abdillah, A. M. (2019, May 15). *Restorativejustice, Solusi Over Kapasitas Lapas Rutan*. Kementerian Hukum Dan HAM Republik Indonesia Kantor Wilayah Sulawesi Selatan. <https://sulsei.kemenkumham.go.id/pusat-informasi/artikel/4443-restorativejustice-solusi-over-kapasitas-lapas-rutan>
- Adiguna, L. (2021). The Prosecutor's Authority to Conduct a Criminal Investigation Based on The Government Administration Law. *Administrative and Environmental Law Review*, 2(1), 11–20. <https://doi.org/10.25041/aelr.v2i1.2214>
- Anas, R., Riswadi, R., & Fakrulloh, Z. (2023). The Attorney's Role in Saving State Assets as Prevention of Corruption Crimes. *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, May 6 2023, Salatiga, Central Java, Indonesia*. Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, May 6 2023, Salatiga, Central Java, Indonesia, Salatiga, Indonesia. <https://doi.org/10.4108/eai.6-5-2023.2333545>
- Bawono, B. T. (2021). Restitution Rights as a Construction of Justice Referring to the Law on Protection of Witnesses and Victims. *International Journal of Law Reconstruction*, 5(1), 25–36. <https://doi.org/10.26532/ijlr.v5i1.15321>
- Elliott, E., & Gordon, R. (2013). *New Directions in Restorative Justice*. Taylor & Francis.
- Hafrida, H.-. (2019). Restorative Justice In Juvenile Justice To Formulate Integrated Child Criminal Court. *Jurnal Hukum Dan Peradilan*, 8(3), 439–457. <https://doi.org/10.25216/JHP.8.3.2019.439-457>
- Hawalia, M. (2022). Implementation of Restorative Justice Based on Decree of the Directorate General of General Justice Agency of the Supreme Court Number 1691/Dju/Sk/Ps.00/12/2020 Concerning Implementation of Guidelines for Implementation of Restorative Justice in General Court. *Ox Justi: Jurnal Ilmu Hukum*, 12(2), 131–136. <https://doi.org/10.58471/justi.v12i2.651>
- Hidayat, A., & Wahyuningsih, S. E. (2018). Role Of Prosecutor General Prosecution Of Actors In The Implementation Of Abuse Of Narcotics Crime (Case Study in Magelang District Attorney). *Jurnal Daulat Hukum*, 1(2), 445–452. <https://doi.org/10.30659/jdh.v1i2.3290>
- Jauhari, S. S. (2023, December 5). *Data Polri: Pencurian Jadi Kejahatan yang Paling Banyak Terjadi Sepanjang 2023*. GoodStats Data. <https://data.goodstats.id/statistic/sarahjauhari/indonesia-masuk-10-negara-dengan-jumlah-tahanan-penjara-terbanyak-di-dunia-oREQu>
- Kemal, G. (2023). Authority of the Prosecutor's Office as a Single Prosecution System in Corruption Crime Cases. *Ratio Legis Journal*, 2(1), 142–150.
- Kuntadi, K. (2022). House of Restorative Justice as a Forum of Actualising the Nation's Culture in Solving Criminal Cases. *Jurnal Dinamika Hukum*, 22(2), 323. <https://doi.org/10.20884/1.jdh.2022.22.2.3242>
- Muammar, M., & Roihan, M. I. (2021). An Analysis of the Implementation of the Prosecutor's Regulation Number 15 of 2020 Concerning Termination of

- Prosecutions Based on Restorative Justice Against the Abusive Criminal Act. *Jurnal Al-Dustur*, 4(2), 253–277. <https://doi.org/10.30863/jad.v4i2.1842>
- Mugiandono, A. A., Ruhuri, E. D., & Pratiwi, M. G. (2022). Challenges and the Overcoming Strategies in Implementation of Attorney General's Guidelines Number 18 of 2021. *Jurnal Dinamika Hukum*, 22(1), 72–86. <https://doi.org/10.20884/1.jdh.2022.22.1.3236>
- Natalis, A., Purwanti, A., & Asmara, T. (2023). Determining Appropriate Policies for Prostitution Reform in Indonesia: Evaluating Harm Reduction Versus Harm Elimination Strategies. *Journal of Southeast Asian Human Rights*, 7(2), 176–213. <https://doi.org/10.19184/jseahr.v7i2.37952>
- Shapland, J., Robinson, G., & Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. Taylor & Francis.
- Sihombing, R. M., Siregar, M. Y., Tampubolon, W. S., & Hakim, A. (2023). 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). *Journal of Social Research*, 2(6), 2076–2084.
- Sukardi. (2014). Legitimacy of the Restorative Justice Principle in the Context of Criminal Law Enforcement. *Indonesia Law Review*, 4(2), 196–214. <https://doi.org/10.15742/ilrev.v4n2.111>
- Sulistiani, L., & Fakhriah, E. (2023). The Effect of Extra Judicial Settlement in Criminal Cases Based on the Principle of Ultimium Remedium. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10(3), 300–320. <https://doi.org/10.22304/pjih.v10n3.a1>
- Taher, T. (2019). Ethics of the Prosecutor's Profession Related to Legal Fact Engineering in Indonesia. *Jurnal Scientia Indonesia*, 5(1), 1–18. <https://doi.org/10.15294/jsi.v5i1.36059>
- Taneo, R. A., Masu, R. R., & Resopijani, A. (2023). The Application of Restorative Justice in the Settlement of Criminal Cases in the Kupang City Resort Police. *Indonesian Journal of Law*, 1(5), 374–405.
- Tewernussa, H. E., Arpangi, A., & Suharto, R. B. (2022). Legal Analysis of the Participation of the Prosecutor Agency in Eradication of Narcotics Crime. *Law Development Journal*, 4(3), 446–453. <https://doi.org/10.30659/ldj.4.3.446-453>
- Wahyuningsih, S. E., Marsudi, E. B., Ma'ruf, U., & Prasetyo, D. (2023). Model of Termination of Prosecution Restorative Justice by the Prosecutor in Criminal Case Settlement in Indonesia. *International Journal of Management Studies and Social Science Research*, 04(06), 217–225. <https://doi.org/10.56293/IJMSSSR.2022.4541>
- Zulfa, E. A. (2011). Restorative Justice in Indonesia: Traditional Value. *Indonesia Law Review*, 1(2), 33–43. <https://doi.org/10.15742/ilrev.v1n2.81>