

Juridical Implication of Restorative Justice On Prosecutorial Authority In Penal Mediation

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ABSTRACT

The development of criminal law in Indonesia shows a paradigm shift from a retributive approach to a restorative approach that emphasizes the restoration of victims' losses, the responsibility of perpetrators, and the restoration of social relations. This shift is marked by the presence of a Restorative Justice mechanism in the National Criminal Procedure Code (KUHAP), which can be implemented from the investigation, inquiry, prosecution, to trial. On the other hand, the Prosecutor's Office Law has previously authorized Prosecutors to conduct Penal Mediation as a form of out-of-court criminal case resolution. This condition raises legal issues in the form of potential overlapping authority, dualism in case resolution mechanisms, and unclear relationships between Restorative Justice and Penal Mediation in the national criminal justice system. This research uses a normative legal method with a statutory, conceptual, and systematic approach. Primary legal materials consist of laws and regulations related to the National Criminal Procedure Code, the Prosecutor's Office Law, and other relevant provisions, while secondary legal materials are obtained from literature, journals, and legal doctrine. The research findings indicate that the presence of Restorative Justice mechanisms strengthens the humanist orientation in law enforcement, but simultaneously demands harmonization of norms so that the Prosecutor's authority in Penal Mediation maintains legal certainty. Penal Mediation is essentially a special instrument within the Restorative Justice framework that can be optimized at the prosecution stage. Going forward, regulatory reform is needed that clarifies the limits of authority, implementation procedures, case criteria, and legal consequences of restorative resolution to create an effective, simple, and just criminal justice system.

Keywords: Restorative Justice, Penal Mediation, Prosecutor's Authority, National Criminal Procedure Code, Criminal Justice System.

1. INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state based on law (*rechtstaat*), which means that all aspects of national and state life must be based on law as the primary foundation. The concept of a state based on law not only positions law as a regulatory tool, but also as a means to achieve broader state goals. In this context, law is expected to be able to provide protection for the rights of citizens while also being an instrument for realizing social order and justice. Therefore, the existence of law must be able to guarantee a balance between individual interests and public interests in community life. (Asshiddiqie, 2006; Kansil, 2006)

As a state based on the rule of law, Indonesia has legal objectives that must be realized in the practice of governance and law enforcement: justice, benefit, and legal certainty. These three objectives are inseparable, as each has a complementary role. Justice serves as a moral value that provides legitimacy to the law, benefit relates to the effectiveness of the law in providing benefits



to society, while legal certainty ensures the existence of clear and predictable rules. In practice, these three objectives often do not operate in balance, so efforts are needed to harmonize them to prevent the dominance of one value, which could actually harm society. This thinking regarding the objectives of law aligns with the theory put forward by Gustav Radbruch, who places justice, legal certainty, and benefit as the basic values of law. Radbruch emphasized that law should not only be understood normatively as a collection of rules, but must also be seen as a means to achieve substantive justice. In certain circumstances, when there is a conflict between legal certainty and justice, justice must be prioritized. This thinking demonstrates that law must be dynamic and able to adapt to societal developments and the need for a sense of justice that lives within society. (Rawls, 2006; Hujibers, 1982)

To realize these legal objectives, a structured and integrated legal system is required. Lawrence M. Friedman argues that law is a system consisting of three main elements: legal substance, legal structure, and legal culture. Legal substance encompasses norms, rules, and legal products produced by lawmakers, both written and unwritten. Legal structure relates to institutions authorized to enforce the law, such as the police, prosecutors, and courts. Meanwhile, legal culture reflects the attitudes, values, and behavior of society towards applicable laws. These three elements in the legal system are closely related and mutually influence each other. Good legal substance will not be able to function effectively without the support of a professional legal structure and a conducive legal culture. Conversely, a strong legal structure will be less than optimal if the applicable legal substance is inadequate or does not meet the needs of society. Likewise, a weak legal culture can hinder the implementation of the law even though the legal substance and structure have been well-designed. Therefore, a balance between these three elements is the main key to realizing an effective and just legal system. (Friedman, 1975)

In the context of the Indonesian criminal justice system, the legal structure is regulated through the Criminal Procedure Code (KUHAP), which adheres to the concept of functional differentiation. This concept emphasizes a clear division of authority between law enforcement officials at each stage of the criminal justice process. Investigations are conducted by the police or designated investigators, prosecutions by the prosecutor's office, and case examinations by the courts. This division is intended to create a mutually controlling oversight mechanism between institutions to prevent abuse of authority. Although conceptually, functional differentiation aims to create a professional and accountable justice system, in practice it often gives rise to various problems. One such issue is the overlapping authority in the investigation process, which can lead to conflict between law enforcement agencies. Furthermore, the lengthy and complicated judicial



process also presents a barrier to achieving swift and efficient justice. This situation not only burdens law enforcement officials but also harms the public seeking justice.

These issues demonstrate that the current criminal justice system is not fully capable of meeting society's need for substantive justice. In many cases, lengthy judicial processes actually lead to dissatisfaction among the parties involved, both victims and perpetrators. This suggests that the overly formal and procedural approach to criminal law enforcement needs to be evaluated to be more responsive to the evolving needs of society. In response to these problems, the idea emerged to develop a more flexible case resolution model based on mutual agreement. This model, known as the consensus or dialogue model, emphasizes conflict resolution through deliberation and mutual agreement. This approach is based on the belief that justice does not always have to be achieved through formal judicial processes but can be realized through simpler and more humane mechanisms. (Muladi & Arief, 2010; Arief, 2010)

In subsequent developments, this approach became known as Alternative Dispute Resolution (ADR), which initially developed in the realm of civil law. ADR offers various methods of dispute resolution outside the courts, such as mediation, arbitration, and negotiation. As societal needs evolved, the concept of ADR began to be adopted in criminal law as a more efficient and recovery-oriented alternative to case resolution. In criminal law, the application of ADR is known as penal mediation, which is the resolution of criminal cases outside the judicial process through dialogue between the perpetrator and the victim. Penal mediation aims to reach a fair agreement for both parties, while simultaneously restoring social relationships disrupted by the crime. This approach aligns with the concept of restorative justice, which emphasizes restoration, not retribution. Restorative justice provides a space for victims to receive justice directly, while also providing an opportunity for perpetrators to take responsibility for their actions. This approach is considered more humane and capable of providing more sustainable solutions compared to the punishment-oriented retributive approach. Furthermore, restorative justice can also reduce the burden on the criminal justice system and reduce recidivism rates. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Sociologically, the concept of dispute resolution through deliberation has long been recognized in Indonesian society, particularly in customary law. The values embodied in customary law reflect a societal culture that prioritizes balance, harmony, and togetherness. Therefore, the implementation of penal mediation in the national legal system can be considered a form of revitalization of long-standing local values. From a legal perspective, penal mediation is beginning to gain recognition in various Indonesian laws and regulations. Some regulations authorize certain institutions to resolve cases out of court, although these provisions are still partial



and not yet fully integrated. This indicates that recognition of penal mediation is still in its infancy and requires further strengthening. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

One important development is the granting of authority to the prosecutor's office to conduct penal mediation through a change in law. This authority represents a form of prosecutorial discretion, allowing prosecutors to discontinue proceedings in court, taking into account the interests of justice and expediency. This discretion provides prosecutors with greater flexibility in handling criminal cases. Prosecutorial discretion plays a crucial role in accommodating legal developments and societal needs. With this discretion, prosecutors function not only as prosecutors but also as parties capable of seeking the best solutions in resolving criminal cases. This aligns with the evolving paradigm of law enforcement, which is moving toward a more restorative and humane approach. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

However, the implementation of penal mediation by the prosecutor's office still faces various obstacles, particularly the lack of technical regulations detailing its implementation mechanisms. This situation prevents the authority granted by law from being optimally exercised. Without clear guidelines, the implementation of penal mediation has the potential to lead to differences in interpretation and practice in the field. Furthermore, the reform of criminal procedure law through new laws presents its own challenges. The regulations do not explicitly regulate penal mediation, but only address restorative justice mechanisms. This creates ambiguity regarding the position of penal mediation within the applicable legal system and has the potential to create legal uncertainty in its implementation. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

This ambiguity can impact the effectiveness of prosecutors' authority in resolving criminal cases outside the courts. Unclear regulations can lead to doubt in decision-making, making it difficult to achieve the goal of creating a more efficient and just justice system. Therefore, clarity is needed regarding the relationship between penal mediation and restorative justice. In such circumstances, harmonization of laws and regulations is crucial. This harmonization aims to create harmony between the various regulations governing the resolution of criminal cases outside the courts. This harmonization is expected to eliminate overlapping or conflicting norms that could hinder the implementation of the law. Therefore, strengthening the legal basis for penal mediation is an urgent need for reforming the criminal justice system in Indonesia. This effort is expected to create a more adaptive, responsive, and just legal system, capable of responding to the challenges of societal development. Furthermore, this strengthening is also expected to provide legal certainty for law enforcement officials in exercising their authority, so that legal objectives can be optimally achieved. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).



2. RESEARCH METHODS

This research is a normative legal research with a normative juridical approach that examines doctrinal legal sources, in the form of written legal norms and applicable legal principles. The purpose of normative research is to provide legal arguments to assess the morality of an event and appropriate legal action. The approaches used in this research include the statute approach and the conceptual approach. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions. Secondary legal materials consist of legal literature, books, scientific journals, and expert opinions related to Islamic law and notaries. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources. The legal material search technique is carried out through library studies, while the legal material analysis is analyzed grammatically, systematically, and theologically. (Diantha, 2016; Marzuki, 2016).

RESULTS AND DISCUSSION

Legal Implications of the Presence of a Restorative Justice Mechanism in the National Criminal Procedure Code on the Authority of Prosecutors in Resolving Cases Through Penal Mediation

1. Paradigm Shift in Criminal Law Enforcement

The introduction of restorative justice mechanisms in the National Criminal Procedure Code (KUHAP) has fundamental legal implications for the criminal justice system, particularly regarding the prosecutor's authority to resolve cases through penal mediation. These implications are evident in the shift in law enforcement orientation, from a retributive approach to a restorative one. In the retributive paradigm, criminal law is positioned as a means of state retaliation against perpetrators of criminal acts through sanctions. This approach positions the perpetrator as the object of punishment and tends to neglect the interests of the victim and the restoration of social relations. In contrast, the restorative approach positions crime as a social conflict that must be resolved by involving all affected parties—the perpetrator, the victim, and the community—with the ultimate goal of restoring the situation to its original state. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

This paradigm shift has legal consequences for how prosecutors view the function and role of prosecutors in the criminal justice system. Prosecutors are no longer viewed solely as those tasked with bringing perpetrators to court, but also as actors with a strategic role in promoting non-litigation resolution of cases. In this context, prosecutors are expected to prioritize a more humanistic approach, taking into account the interests of victims, perpetrators, and the values



of justice prevalent in society. This role becomes even more relevant when faced with cases with certain characteristics, such as minor crimes or cases involving relatively small losses. However, this paradigm shift has not been fully accompanied by the readiness of legal norms that regulate its implementation in detail. Although restorative justice has been accommodated in the National Criminal Procedure Code, there are no regulations that explicitly integrate penal mediation as a concrete instrument in its implementation. This situation has legal implications in the form of a gap between the adopted concept and the available legal instruments. Consequently, the implementation of restorative justice, particularly through penal mediation, is suboptimal due to the lack of a clear and systematic normative foundation. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Furthermore, this paradigm shift also demands a shift in the legal culture of law enforcement officials. Prosecutors, as part of the legal structure, must adapt to a new approach that prioritizes dialogue and restoration. Without a shift in legal culture, the restorative approach has the potential to remain merely a normative concept that is not effectively implemented. Therefore, the legal implications of this paradigm shift extend beyond the normative aspect to include sociological and institutional aspects within the criminal justice system.

2. Shifting Scope of Prosecutor's Authority in Settling Criminal Cases

The introduction of the restorative justice mechanism in the National Criminal Procedure Code has direct consequences for the scope of prosecutors' authority in resolving criminal cases. Prior to the more comprehensive provisions in the new Criminal Procedure Code, prosecutors' authority to resolve cases outside of court through penal mediation gained normative legitimacy, primarily from the Prosecutor's Office Law. Under this regime, prosecutors were positioned as an institution that functioned not only as public prosecutors but also as guardians of the public interest, able to choose the most just, proportional, and beneficial resolution measures for the community. This authority developed in response to the need for criminal law reform, which had previously focused too much on formal punishment and had not fully provided space for victim recovery and perpetrator reintegration. With the implementation of the restorative justice mechanism in the National Criminal Procedure Code, this scope of authority has undergone a fundamental shift. Whereas penal mediation was previously understood as an institutional authority inherent in the Prosecutor's Office, restorative resolution is now positioned as a procedural legal mechanism accessible from the earliest stages of the criminal process. This means that the authority that was previously centralized in prosecutors is now distributed to other law enforcement officials at their respective stages. Investigators can resolve certain cases through a restorative approach during the investigation



phase, while judges can promote peace and restoration during the trial phase. This situation means that prosecutors are no longer the sole central actors in resolving cases outside of formal criminal proceedings. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

These changes have implications for the institutional identity of the Prosecutor's Office itself. The Prosecutor's Office has strived to develop a modern prosecution paradigm that pursues not only punishment but also humane and efficient solutions. When restorative powers are opened up to the entire criminal justice system, the unique role of prosecutors is relatively diminished. Prosecutors remain important, but their position shifts from holding exclusive authority to becoming one of the actors in the national restorative resolution network. This shift should not be understood as a mere weakening, but rather as a systemic transformation toward a more collaborative criminal justice model. In practice, this dissemination of powers can yield benefits in the form of accelerated case resolution. Eligible cases no longer need to wait for the prosecution stage to be restored, as reconciliation can be pursued from the investigation stage. Victims receive faster reparations, perpetrators can be held accountable more quickly, and the state saves on judicial costs. However, from the perspective of prosecutorial authority, this also means a reduction in the number of cases entering the prosecution stage and then resolved through penal mediation by the Prosecutor's Office. In other words, some of the scope previously available to prosecutors could potentially be resolved at an earlier stage. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

On the other hand, this shift in the scope of authority requires prosecutors to develop new, more strategic functions. Prosecutors are no longer simply responsible for implementing penal mediation; they must also be able to evaluate the results of restorative resolutions undertaken during the investigation phase. Prosecutors need to assess whether the reconciliation process was carried out voluntarily, whether the victim's rights were met, whether there was no pressure, and whether the resolution aligns with the public interest. Thus, the prosecutor's role shifts from primary implementer to quality control of the implementation of restorative justice in the previous stages. Furthermore, prosecutors must adapt their prosecutorial approach. In cases that are not resolved at the investigation stage but still have restorative potential, prosecutors still have significant room to facilitate resolution at the prosecution stage. The prosecutor's position is particularly strategic because it lies at the transition point between investigation and trial. Prosecutors understand the evidence, understand the level of culpability of the perpetrator, and can assess the social impact of the case. Therefore, despite the shift in scope of authority, prosecutors remain fully equipped to determine whether a case



deserves a restorative resolution or should proceed to trial. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Changes in the scope of authority also require a clear division of cases. Not all cases are suitable for resolution at the investigation stage, and not all cases are ideal for prosecution. Simple cases with small losses, clear parties, and clear evidence may be more appropriately resolved early. Conversely, cases that require more in-depth assessment, involve broader public interests, or require greater accountability guarantees may be more appropriately handled by prosecutors through penal mediation at the prosecution stage. Without such a mapping, authority between institutions has the potential to overlap. From an administrative law perspective, changes in authority without clear technical regulations can create uncertainty and competency conflicts. If investigators, prosecutors, and judges all have restorative space but without clear boundaries, law enforcement can be uneven. In one region, a case is dropped at the investigation stage, while in another region, a similar case is only resolved by prosecutors or even ruled on by judges. Such inequalities have the potential to violate the principle of equality before the law and undermine public trust in the criminal justice system. Therefore, the most important implication of the shift in the scope of prosecutorial authority is the need for institutional repositioning. The Prosecutor's Office must strengthen itself as the center of restorative prosecution policy, the promoter of restorative standards, and the guardian of the balance between legal certainty and substantive justice. Prosecutors should no longer be understood merely as prosecutors in court, but rather as strategic actors who direct the resolution of cases proportionately in accordance with the goals of modern law. (Arief, 2009; Lesmana, 2020; Sumedana, 2020).

3. Potential Disharmony of Norms between the Prosecutor's Office Law and the National Criminal Procedure Code

The inclusion of restorative justice mechanisms in the National Criminal Procedure Code (KUHAP) opens up new issues in the form of potential disharmony between norms and the Prosecutor's Office Law. On the one hand, the Prosecutor's Office Law provides prosecutors with the authority to conduct penal mediation as a form of out-of-court settlement of criminal cases. On the other hand, the National Criminal Procedure Code introduces restorative justice mechanisms as procedures that can be implemented at various stages of the criminal process. Both regulations have the same goal, namely to achieve a more humane justice, but they originate from different legal regimes, raising questions about their relationship. Disharmony arises primarily from the different terminology used. The Prosecutor's Office Law uses the term penal mediation, while the National Criminal Procedure Code uses the term restorative

justice. Conceptually, the two have common ground because they both emphasize dialogue, restitution, perpetrator responsibility, and the resolution of social conflict. However, normatively, the difference in terminology can lead to the interpretation that the two are different mechanisms. Without a uniform definition, law enforcement officials may apply different standards to the requirements, procedures, and legal consequences of each mechanism. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Beyond the issue of terminology, disharmony also relates to the locus of authority. In the Prosecutor's Office Law, penal mediation is closely linked to the authority of the Prosecutor. Meanwhile, in the National Criminal Procedure Code, the restorative approach extends to the investigation, inquiry, prosecution, and trial stages. This could lead to the interpretation that the Prosecutor's authority has been absorbed into the general system of the Criminal Procedure Code, or, conversely, remains a separate authority within the Prosecutor's Office. If this issue is not clarified, uncertainty will arise regarding when the Prosecutor uses authority under the Prosecutor's Office Law and when it uses mechanisms under the Criminal Procedure Code. Another potential disharmony lies in the parameters of cases that can be resolved. The Prosecutor's Office's internal regulations currently recognize certain criteria such as criminal penalties, minimal losses, the existence of reconciliation, and social considerations. If the National Criminal Procedure Code stipulates different or broader parameters, a dualism of standards will emerge. Cases deemed by the Criminal Procedure Code worthy of restorative resolution may not necessarily meet the requirements according to the Prosecutor's Office policy, and vice versa. Consequently, legal certainty is compromised because the outcome of the case is highly dependent on which institution handles the case first. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

Normative disharmony also has the potential to arise in legal consequences. Penal mediation, from the perspective of the Prosecutor's Office, tends to be associated with the termination of prosecution or the discontinuation of a case in court. Meanwhile, restorative justice under the Criminal Procedure Code can take the form of termination of proceedings, out-of-court settlements, or the judge's consideration in issuing a verdict. This distinction in legal consequences is important because it concerns the status of the suspect, the rights of the victim, the rehabilitation of a good name, and the recording of the case. Without synchronization, confusion can arise as to whether a case that has completed restorative justice is still recorded as an active criminal case or has been completely resolved. From the perspective of the principles of legal regulation formation, disharmony indicates a suboptimal horizontal synchronization between equal laws. A good legal system demands consistency

between norms so that they do not negate each other. If two laws regulate the same object with different approaches, law enforcement officials will have difficulty determining which norm should be prioritized. This situation has the potential to give rise to disputes over authority, differences in practice between regions, and even lawsuits from parties who feel aggrieved. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

To resolve this issue, a systematic interpretive approach is required. The Prosecutor's Office Law needs to be understood as the basis for the institutional authority of prosecutors, while the National Criminal Procedure Code (KUHP) is understood as general procedural law governing the implementation of restorative justice in the criminal justice system. Thus, the two are not positioned as contradictory, but rather as complementary. Penal mediation by prosecutors can be seen as a specific form of restorative justice implementation at the prosecution stage. However, interpretation alone is often insufficient. In the practice of law enforcement bureaucracy, officers require clear and operational written norms. Therefore, ideal harmonization requires revision or adjustment of implementing regulations to standardize terms, requirements, procedures, and legal consequences. Joint guidelines between the Police, the Prosecutor's Office, and the Supreme Court are also crucial for consistent restorative justice implementation from upstream to downstream. Ultimately, the potential for disharmony between the Prosecutor's Office Law and the National Criminal Procedure Code is not merely a technical legislative issue, but rather a matter of the political direction of Indonesian criminal law. If left unchecked, it will hinder the overall goal of criminal law reform, which aims to create a fairer and more efficient system. On the contrary, if properly aligned, the two laws could actually form a strong foundation for a modern law enforcement model that prioritizes recovery without neglecting legal certainty. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).

4. The Need for Policy Reconstruction and Strengthening the Role of Prosecutors

The changing landscape of criminal procedure due to the introduction of restorative justice mechanisms has created an urgent need to reconstruct prosecution policies and strengthen the role of prosecutors. Prosecutors have traditionally been understood primarily as *dominus litis*, the controller of cases who determines whether a case is worthy of being brought to court. In the new paradigm, this function must be expanded so that prosecutors also act as problem solvers, assessing the most appropriate form of resolution for each case. In other words, prosecutors no longer merely bring cases to trial but also determine whether social restitution is more beneficial than formal punishment. Policy reconstruction is necessary because the old approach focused primarily on the number of cases prosecuted and decided, while the new



approach demands a different measure of success. The success of law enforcement is measured not only by the number of criminal convictions but also by the level of victim recovery, reduced recidivism, the creation of social peace, and the efficient use of state resources. Therefore, the prosecutor's performance evaluation system needs to adapt so that prosecutors are encouraged to use restorative approaches appropriately, rather than simply pursuing administrative targets. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Strengthening the role of prosecutors must also be achieved through the development of comprehensive guidelines. Prosecutors need objective standards regarding the types of cases eligible for mediation, indicators of public interest, mechanisms for victim consent, protection of vulnerable parties, and procedures for documenting settlement outcomes. Without detailed guidelines, restorative decisions rely heavily on the subjectivity of officials. This can lead to inconsistent practices and open up the possibility of accusations of discrimination or abuse of authority. In addition to substantive guidelines, improving human resource capacity is crucial. Not all prosecutors automatically possess skills in mediation, negotiation, empathetic communication, and conflict management. Yet, restorative resolution relies heavily on the ability to facilitate a fair dialogue between victims and perpetrators. Therefore, prosecutor education and training need to include curricula on penal mediation, victim psychology, community approaches, and applicable agreement-building techniques. Future prosecutors must possess both litigation and conflict resolution competencies. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

Policy reconstruction also needs to address the relationship between law enforcement agencies. In the new system, prosecutors must work more closely with investigators, community counselors, community leaders, social workers, and the courts. Restorative resolution cannot be implemented sectorally. If investigators resolve cases without coordinating with prosecutors, the quality of the results could be questioned. Conversely, if prosecutors reject settlements without clear reasons, public trust will erode. Therefore, formal coordination mechanisms between institutions must be strengthened through joint forums and integrated information exchange systems. Furthermore, strengthening the role of prosecutors requires modern technology and administrative support. Every restorative case needs to be transparently recorded: the reason for termination, the form of restitution, the parties' agreement, and monitoring of the agreement's implementation. A robust digital system will prevent data manipulation and facilitate the evaluation of national policies. From this data, the state can determine which types of cases are most effectively resolved through restorative means and which areas require further development.



Victim protection must also be a primary focus of policy reconstruction. In some cases, formal reconciliation can occur due to social pressure or the unequal position between the victim and the perpetrator. Therefore, prosecutors must be positioned as guardians of the fairness of the restorative process. Prosecutors are obligated to ensure that victims understand their rights, receive appropriate compensation, and are free to reject reconciliation if they feel aggrieved. In this role, prosecutors not only represent the state but also protect citizens from the possibility of new injustices hidden behind apparent reconciliation. Furthermore, strengthening the role of prosecutors needs to be accompanied by a renewal of institutional culture. Overly formalistic bureaucratic traditions sometimes view out-of-court settlements as a sign of weakness in law enforcement. This paradigm must change. Appropriate restorative resolution reflects the intelligence of law enforcement, as it is able to resolve conflicts quickly, fairly, and sustainably. Prosecutors need to be developed as an adaptive, humanistic profession, yet remain firm in dealing with serious cases that require punishment. Ultimately, the need for policy reconstruction and strengthening the role of prosecutors is a logical consequence of the transformation of the national criminal justice system. If the Prosecutor's Office is able to adapt, it will remain a central actor in maintaining the balance between legal certainty, justice, and expediency. However, if reforms are not implemented, the prosecutor's authority will be further marginalized by new, directionless mechanisms. Therefore, the future of penal mediation and restorative justice depends heavily on the prosecutor's office's readiness to undertake comprehensive internal reform. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).

Regulation of Restorative Justice Mechanisms and Penal Mediation in the Future

1. The Urgency of Future Regulations

Establishing restorative justice and penal mediation mechanisms in the future is an undeniable necessity in the development of Indonesia's criminal justice system. The dynamics of modern society demonstrate that criminal case resolution is not always effective if all cases are processed through formal litigation. Conventional criminal justice systems tend to position the state and perpetrators as the primary subjects, while victims are often passive and their interests are not fully accommodated. In many cases, particularly minor crimes, family conflicts, social disputes, and cases involving limited harm, society actually desires restoration of relationships, restitution, apologies, and guarantees of non-repetition. Therefore, restorative justice and penal mediation are crucial instruments for addressing the need for substantive justice. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

In the future, reform of Indonesian criminal law must position restorative mechanisms as an integral part of the criminal justice system, not merely an administrative policy or sectoral program between institutions. Currently, restorative justice provisions are scattered throughout various internal regulations of law enforcement agencies, resulting in inconsistent implementation. This situation has led to differing interpretations of case requirements, implementation procedures, and the legal consequences of restorative resolution. Consequently, legal certainty has not been fully achieved. Therefore, more robust regulations are needed at the legislative level to ensure that restorative mechanisms have clear legitimacy and binding force across all law enforcement agencies. Another pressing issue lies in the issue of overcriminalization and the backlog of cases within law enforcement agencies. Many simple cases that could be resolved amicably are still processed through the courts, wasting time, money, and state resources. Meanwhile, serious cases that require more attention face administrative burdens due to the backlog of minor cases. By strengthening restorative justice and penal mediation, the state can divert certain cases from litigation to more efficient recovery channels, allowing law enforcement capacity to focus on serious and far-reaching crimes. Beyond efficiency, future regulations also need to adapt to evolving global criminal law paradigms. Many countries are moving away from solely repressive approaches to criminal justice and toward more participatory and restorative models. Indonesia, as a modern state based on the rule of law, needs to respond to these developments by adhering to the values of Pancasila, the culture of deliberation, and local wisdom, which has long recognized the need for peaceful dispute resolution. Therefore, future restorative justice regulations will not simply emulate foreign practices but will instead revitalize the nation's original values within the national legal framework. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).

2. The Ideal Concept of Restorative Justice Arrangements in the Future

In the future, restorative justice mechanisms must be established as an integral and permanent part of the national criminal justice system. Restorative justice should no longer be viewed as an alternative policy implemented on a case-by-case basis or solely at the discretion of law enforcement officials, but rather as a primary focus in resolving certain criminal cases. This paradigm shift is crucial because for years the Indonesian criminal justice system has focused heavily on punishment through formal litigation. While this approach is necessary for serious crimes, it is not always appropriate for all types of cases. In many cases, formal punishment fails to resolve the resulting social conflict, fails to redress the victims' losses, and can even lead to long-term stigma for the perpetrators. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

The ideal concept for future regulation should place restorative justice as both a general principle and a procedural mechanism. As a general principle, every law enforcement official is required to



consider the possibility of restorative resolution before bringing a particular case to full litigation. As a procedural mechanism, the law must specifically regulate the stages of implementation, the authority of each institution, the formal and material requirements, the form of agreement, and the legal consequences of reaching a settlement. With such regulations, restorative justice will no longer be subject to the interpretation of each institution but will instead have uniform national standards. Within this ideal framework, restorative justice should be applicable at every stage of the criminal process. During the investigation and inquiry stage, police officers can offer restorative resolutions for minor cases that do not pose a serious threat to society. During the prosecution stage, prosecutors can reassess the appropriateness of restorative justice if the case has not been resolved at the previous stage. During the trial stage, judges can facilitate or consider the settlement agreement as the basis for a verdict. This multilevel model creates flexibility and prevents minor cases from having to constantly navigate the entire criminal justice bureaucracy. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

However, the ideal concept must also provide clear limitations on the types of cases that can be resolved restoratively. Not all crimes are worthy of reconciliation. Serious crimes that threaten state security, undermine public trust, or cause serious suffering to victims must continue to be processed through regular judicial mechanisms. Large-scale corruption, terrorism, human trafficking, serious sexual violence, organized crime, and dangerous repeat offenders are examples of cases that should be excluded. This limitation is crucial to prevent restorative justice from becoming a loophole for impunity. Future arrangements must also place victims at the center of attention. In conventional systems, victims often serve only as witnesses who assist the state in proving the case against the accused. In the restorative concept, victims must be positioned as subjects with a primary say in the form of reparation desired. Victims have the right to compensation, an apology, psychological rehabilitation, guarantees of non-repetition, or other appropriate forms of reparation. Without victim protection, restorative justice will lose its substantive meaning. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Furthermore, the victim's consent must be given freely and consciously. The law should stipulate that every peace process must be free from threats, family pressure, economic pressure, or pressure from the authorities. Under certain circumstances, victims should have the right to be accompanied by legal counsel, a psychologist, or a professional advocate. This is especially important in cases involving unequal power relations, such as domestic violence, labor disputes, or cases involving influential parties. The ideal concept should also include the obligation to monitor the implementation of the agreement. Often, peace is achieved on paper, but the perpetrator fails to fulfill compensation or other obligations. Therefore, the results of a restorative agreement must



have certain legal force and be monitored by authorized institutions. If the perpetrator reneges, the case can be reopened or subject to other legal consequences in accordance with statutory regulations.

Another important aspect is the integration of local values and Indonesian culture. Many indigenous peoples and local communities in Indonesia have long recognized conflict resolution through deliberation, apology, restoration of good name, and payment of customary compensation. These values align with the spirit of restorative justice. Therefore, future regulations must allow for the recognition of local mechanisms as long as they do not conflict with human rights and the principles of the rule of law. Therefore, the ideal concept for future restorative justice regulations must combine legal certainty, victim protection, case limitation, implementation oversight, and recognition of community social values. Through a comprehensive design, restorative justice can function as a modern, humane, and effective dispute resolution instrument. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).

2. Regulation of Penal Mediation as the Authority of the Prosecutor

In the future, penal mediation needs to be more clearly defined as one of the prosecutor's strategic powers during the prosecution phase. The prosecutor's office holds a crucial position in the criminal justice system, sitting at the midpoint between the investigation and the trial. The prosecutor receives the investigation results, assesses the sufficiency of the evidence, considers the legal interests, and determines whether the case will be brought to trial. This position makes the prosecutor the best equipped to assess whether a particular case is more beneficially resolved through regular prosecution or penal mediation. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

Penal mediation has often been understood as part of internal policy or institutional discretion. Going forward, this understanding must be elevated to a statutory authority. Legal norms need to explicitly state that prosecutors have the authority to facilitate case resolution through penal mediation for certain eligible cases. With a clear legal basis, prosecutors' authority will no longer rely solely on administrative interpretation but will instead be fully legitimized within the national legal system. These regulations must detail the scope of prosecutors' authority. Prosecutors need to be empowered to summon victims and perpetrators, offer a forum for dialogue, appoint a mediator if necessary, assess the parties' agreement, and decide to discontinue prosecution if the goal of restitution has been achieved. This authority must be accompanied by written procedures so that prosecutors' decisions can be objectively tested and avoid the appearance of arbitrariness. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

Penal mediation by prosecutors must also be considered a modern and responsible form of prosecutorial discretion. In a state governed by the rule of law, discretion does not mean unlimited



freedom, but rather the scope for legal choices used to achieve substantive justice. Therefore, every prosecutor's decision to resolve a case through penal mediation must be based on clear parameters, such as the nature of the crime, the harm caused, the perpetrator's attitude, the victim's interests, the social impact, and the public interest. Prosecutors also need to be given the opportunity to consider sociological factors prevalent in society. In some cases, the conflict is more personal or communal in nature than a serious threat to public order. In such circumstances, formal punishment can sometimes exacerbate hostilities. Penal mediation provides prosecutors with the opportunity to choose a resolution that calms the social situation, maintains community harmony, and reduces the potential for further conflict. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

At the same time, this authority must be strictly limited to prevent abuse. Future regulations should emphasize that penal mediation cannot be applied to certain cases that have widespread impacts or are detrimental to the public interest. Furthermore, decisions to terminate prosecution through penal mediation must be accompanied by written reasons, recorded in the case administration system, and subject to internal and external oversight. To support this function, improving the human resource capacity of the Prosecutor's Office is crucial. Future prosecutors must not only be skilled at drafting indictments and presenting evidence in court, but must also possess skills in negotiation, mediation, interpersonal communication, conflict psychology, and victim protection. Specific training in restorative justice and penal mediation must be part of the prosecutor's professional education. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

In addition to improving personnel quality, the Prosecutor's Office also needs to establish a special unit or restorative service center to assist in the implementation of penal mediation. This unit can function as an administrative facilitator, a data center for restorative cases, a supervisor of agreement implementation, and a consultation center for victims and perpetrators. With institutional support, penal mediation will not simply be a normative concept but can be implemented professionally. Therefore, the regulation of penal mediation within the Prosecutor's jurisdiction in the future must position the Prosecutor not only as a prosecutor but also as a legal conflict resolver oriented towards substantive justice. This role will strengthen the Prosecutor's Office's position as a modern institution that adapts to evolving societal needs. (Arief, 2009; Lesmana, 2020; Sumedana, 2020).

3. Harmonization of Legislation and Future Policy Formulation

Future arrangements for restorative justice and penal mediation mechanisms will not be effective without harmonization of existing laws and regulations. Currently, various norms regarding restorative justice are scattered across the Criminal Procedure Code (KUHP), the Prosecutor's Office Law, police regulations, Supreme Court policies, and the internal regulations of



each institution. This fragmentation has given rise to overlapping authority, differing case requirements, and procedural inequalities in practice. Therefore, legal reform must be directed at comprehensive synchronization so that all legal instruments operate within a unified framework. The National Criminal Procedure Code (KUHAP) should serve as the primary legal umbrella governing the general principles of restorative justice, implementation stages, victims' rights, procedural guarantees, and the legal consequences of case resolution. As a general criminal procedure law, the KUHAP needs to serve as a central reference for all law enforcement officials. This will eliminate fundamental differences in understanding of the restorative concept between institutions. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Meanwhile, the Prosecutor's Office Law must include more specific provisions regarding penal mediation at the prosecution stage. These provisions include the prosecutor's authority, procedures for terminating prosecution, parameters of public interest, and forms of internal oversight. In this way, the relationship between the Criminal Procedure Code (KUHAP) and the Prosecutor's Office Law is complementary, not contradictory. Furthermore, the Police Law and investigative regulations need to emphasize the space for restorative resolution at the initial stage of a case. The police, as the gateway to the criminal justice system, must have clear guidelines regarding which cases are eligible for settlement from the outset, the mechanism for reporting settlement results to the public prosecutor, and how victim protection is guaranteed. (Arief, 2009; Lesmana, 2020; Sumedana, 2020)

Judicial power also needs to be integrated into this grand design. Courts should be empowered to validate specific restorative agreements, oversee the legality of settlements, or consider reconciliation as a reason for mitigating sentences. The role of judges is crucial to ensure that restorative mechanisms remain within the due process of law and prevent arbitrary action. In addition to harmonizing norms, the future of restorative policies requires an integrated, technology-based case administration system. All cases resolved through restorative mechanisms must be recorded nationally. This data includes the type of case, the identity of the perpetrator, the form of restitution, the implementation of the agreement, and the potential for reoffending. This transparency is crucial for policy evaluation and prevents individuals from repeatedly using restorative mechanisms to avoid criminal liability.

Future policies must also establish national standards through joint guidelines across law enforcement agencies. These guidelines should address case requirements, mediation procedures, victims' rights, mediator ethical standards, forms of oversight, and dispute resolution mechanisms in the event of disagreements between agencies. Without joint guidelines, normative harmonization will not automatically translate into harmonization of practice. Furthermore, the state needs to



build supporting institutional infrastructure, such as criminal mediation centers, professional facilitators, victim psychological services, and post-agreement monitoring mechanisms. Restorative resolution is not sufficient with written norms alone; it requires institutions that work effectively to ensure the process is fair and effective.

Legal culture also requires attention. Law enforcement officials need to be trained to avoid viewing punishment as the sole symbol of success. The public also needs to be educated that restorative justice does not mean exonerating the perpetrator, but rather demands real accountability in the form of restitution and improved social relations. Therefore, harmonization of laws and regulations and future policy formulation must be directed toward the establishment of an integrated, modern, and humane criminal justice system. This system must be able to maintain legal certainty while simultaneously providing a fairer, more efficient, and more responsive solution to the needs of Indonesian society. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).

4. CONCLUSION

The introduction of the Restorative Justice mechanism in the National Criminal Procedure Code (KUHAP) has significant legal implications for the authority of prosecutors in resolving cases through Penal Mediation. This new regulation broadens the orientation of the criminal justice system from a repressive model to a restorative model that emphasizes the restoration of victims' losses, the responsibility of perpetrators, and the restoration of social harmony. In this context, the prosecutor's authority is no longer understood solely as a prosecutor, but also as a case controller with discretion to assess whether a case is worthy of being resolved through a restorative approach. However, the existence of the Restorative Justice mechanism in the KUHAP also creates a normative overlap with the authority of Penal Mediation previously granted to the Prosecutor's Office through the Prosecutor's Office Law. The unclear boundaries between the two mechanisms have the potential to create dual authority, procedural differences, and inconsistent implementation in the field. Therefore, a systematic interpretation is needed that Penal Mediation is a special instrument within the scope of Restorative Justice, while the prosecutor remains the central actor in determining the feasibility of resolving cases at the prosecution stage based on the principles of legal certainty, justice, and expediency. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003)

Future arrangements for Restorative Justice and Penal Mediation mechanisms must be directed toward establishing an integrated, clear, and procedurally certain legal system. Regulatory reforms need to emphasize the relationship between the National Criminal Procedure Code (KUHAP) and the Prosecutor's Office Law to avoid conflicting norms regarding the prosecutor's



authority. Furthermore, uniform implementation guidelines should be developed regarding the requirements for cases to be resolved restoratively, the stages of mediation, the protection of the rights of victims and suspects, the role of law enforcement officials, and the legal consequences of achieving peace. Strengthening the Prosecutor's Office is also crucial by increasing the capacity of prosecutors as professional, independent penal mediators oriented toward resolving social conflicts. Thus, future regulations should position Restorative Justice not merely as a normative slogan, but as a concrete mechanism that effectively suppresses the backlog of cases, reduces the excessive use of imprisonment, and creates a more humane, responsive, and equitable Indonesian criminal justice system. (Liebmann, 2007; Zehr, 2002; McCold & Wachtel, 2003).

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