

## The Authority of Public Prosecutor in Stopping the Prosecution of Criminal Cases based on Restorative Justice

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### Abstract.

*The purpose of this study consists of 3 (three) aspects, the first is to analyze Public Prosecutor's Authority in stopping the prosecution of criminal cases on the basis of restorative justice. The second objective is to analyze the mechanism for stopping the prosecution of criminal cases on the basis of restorative justice. The third objective is to analyze the inhibiting factors in carrying out the termination of prosecution of criminal cases on the basis of restorative justice. The research approach method used is sociological juridical. The conclusion of this research is, first the prosecutor's authority to stop prosecution of a criminal case based on the Termination of Prosecution Perja is a form of attribution authority. Second, the mechanism for stopping prosecution based on restorative justice is carried out within a period of 14 (fourteen) days after receiving the handover of responsibility for the suspect and evidence from the investigator which consists of several stages as stipulated in the Perja on Termination of Prosecution. Third, the most dominant obstacle in the process of discontinuing prosecution based on restorative justice is the statutory factor, namely: short period of time in Dismissal of Prosecution not commensurate with the length of the mechanism that must be taken as well as cultural factors, namely the low awareness of the culture of forgiveness by the Victim towards the Suspect which has an impact on the inability to carry out the peace process.*

*Keywords: Criminal; Justice; Prosecutor; Restorative.*

### 1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) stipulates that "the state of Indonesia is a state of law", for this matter, law enforcement becomes one of the parameters in the success of the rule of law.<sup>1</sup> The occurrence of criminal acts in the community has juridical consequences that any person who violates the provisions of material criminal law as stipulated in the Criminal Code (KUHP) as well as the provisions of criminal law laws outside the Criminal Code will be faced with a criminal justice process based on the provisions of formal criminal law as regulated in the Criminal Procedure Code (KUHAP) starting from the stage of investigation by investigators, prosecution by public prosecutors and trial by judges which will lead to the imposition of criminal sanctions or sentencing in accordance with the provisions of the criminal law that was violated as the actualization of law enforcement efforts<sup>2</sup>.

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<sup>1</sup>Sri Endah Wahyuningsih and Rismanto, *Kebijakan Hukum Pidana Terhadap Penanggulangan Money Laundering dalam Rangka Pembaharuan Hukum Pidana di Indonesia*, Jurnal Pembaharuan Hukum, Vol II, No. 1, (2015), p 47. url: <http://jurnal.unissula.ac.id/index.php/PH/article/view/1414>.

<sup>2</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

Sentencing is the embodiment of criminal law in a concrete form, so that it can be interpreted that: Punishment is the culmination of the entire process of being responsible for the actions committed by someone. This matter of course, it has become a widespread paradigm in society that the settlement of criminal cases through the judiciary is the most dominant option compared to the settlement of cases through non-judicial channels, so that in fact it will have an impact on the accumulation of criminal cases both at the investigation, prosecution and judicial levels. In addition, another impact arising from the settlement of criminal cases through trial is the occurrence of overcapacity in correctional institutions caused by the increase in the number of convicts every year.

In response to this, the Prosecutor's Office of the Republic of Indonesia on July 22, 2020 has issued the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (*Perja* Termination of Prosecution) based on the consideration that the settlement of criminal cases by prioritizing restorative justice which emphasizes recovery back to its original state and the balance of protection and interests of victims and perpetrators of criminal acts is a legal necessity of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system.

The conception used in restorative justice is that the mechanism of procedure and criminal justice that focuses on punishment is converted into a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is more just and balanced for the victims and perpetrators.<sup>3</sup> The issuance of the *Perja* on Termination of Prosecution can basically be considered as a legal breakthrough, because the essence of the termination of prosecution in question requires peace between the victim and the perpetrator of the crime. This is of course inversely proportional to the provisions on the abolition of the authority to prosecute criminals as regulated in Articles 76 of the Criminal Code to 85 of the Criminal Code.

In this regard, it is necessary to carry out a comprehensive study in order to identify and analyze all the problems that arise in it. The main problems in this research consist of 3 (three) aspects, namely first regarding the jurisdiction of the Prosecutor in stopping the prosecution of criminal cases on the basis of restorative justice, the two mechanisms for stopping the prosecution of criminal cases on the basis of restorative justice and the three inhibiting factors in carrying out the termination of prosecution of criminal cases on the basis of restorative justice.

## 2. Research Methods

The research method used in this paper is sociological juridical law research. This research is a research that aims to obtain legal knowledge empirically by going

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<sup>3</sup>Anis Nurwianti, Gunarto and Sri Endah Wahyuningsih, *Implementasi Restoratif/Restorative Justice dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas yang Dilakukan oleh Anak di Polres Rembang*, Jurnal Hukum Khaira Ummah, Vol. 12, No. 4, (2017), p 708, [url:http://jurnal.unissula.ac.id/index.php/jhku/article/view/2289](http://jurnal.unissula.ac.id/index.php/jhku/article/view/2289).

directly to the object.<sup>4</sup>The problem approach used in sociological juridical research is to use secondary data as initial data, which is then followed by primary data in the field or to the public regarding the effectiveness of a regulation. This research is a research to find a relationship (correlation) between various symptoms or variables as a data collection tool which consists of the study of documents or library materials and interviews (questionnaires).<sup>5</sup>

### 3. Results and Discussion

#### 3.1. Prosecutor's Authority in Stopping the Prosecution of Criminal Cases on the Basis of Restorative Justice

The juridical conception between authority and authority has a different meaning, as for what is meant by authority in law Article 1 number 5 Act No. 30 of 2014 concerning Government Administration (UUAP) is a right owned by Government Agencies and/or Officials or other state administrators to make decisions and/or actions in the administration of government. Meanwhile, what is meant by authority based on Article 1 point 6 UUAP is the power of government agencies and/or officials or other state administrators to act in the realm of public law.

Constitutionally, the Prosecutor's Office is one of the bodies whose function is to exercise judicial power as regulated in Article 24 Paragraph (1) of the 1945 Constitution, which is an independent power to administer the judiciary to uphold law and justice. Based on this, to strengthen the position of the Prosecutor's Office, Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Act No. 11 of 2021 concerning Amendments to Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor Law).

The Prosecutor's Office in carrying out its functions related to judicial power as regulated in Article 1 point 1 of the Prosecutor's Law has the position as a government institution that carries out state power in the field of prosecution and other authorities based on the law. As for what is meant by prosecution as regulated in Article 1 point 3 of the Law on Prosecution Jo. Article 1 point 7 of the Criminal Procedure Code is the action of the public prosecutor to delegate the case to the competent district court in terms of and according to the method regulated in the criminal procedure law with a request to be examined and decided by a judge in a court session. In line with this, the Prosecutor as the Public Prosecutor also has the authority to stop the prosecution of criminal cases as regulated in Article 140 Paragraph (2) letter a of the Criminal Procedure Code.

There are 2 (two) reasons that can be used to stop the prosecution, namely the first technically and the second from a policy perspective. Regarding the technical reasons, it can be seen in Article 140 paragraph (2) letter a of the Criminal Procedure Code, partly because there is not enough evidence, because the incident was not a criminal act and the case was closed for the sake of law. Meanwhile, the policy reason is based on the existence of a waiver of cases in the public interest which

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<sup>4</sup>Soerjono Soekanto, (1986), *Pengantar Penelitian Hukum*, Jakarta: UI Press., p. 51.

<sup>5</sup>Amiruddin, (2012), *Pengantar Metode Penelitian Hukum*, Jakarta: PT Raja Grafindo Persada. p. 34.

consists of 2 (two) things, namely first, the waiver of cases on the basis of the principle of opportunity for reasons in the interest of the state (*staats striped*), for the benefit of the community (*maatschapelijk belang*), or for personal interest (particular stripes). Second, the waiver of the case on the basis of a criminal law assessment in connection with the loss of the right to sue caused by *nebis in idem*, death of the defendant, expiration, or amnesty/abolition.<sup>6</sup>

The purpose of stopping prosecution, of course, cannot be separated from the definition of prosecution as regulated in Article 1 point 7 of the Criminal Procedure Code, namely: the action of the public prosecutor to delegate a criminal case to the competent district court in the matter and according to the method regulated in this law with a request that it be examined and decided by a judge in a court session. According to this understanding, prosecution occurs when a case has been delegated to the court, so that the limitation on whether a prosecution has occurred or not is the transfer of a case to a district court by the public prosecutor.<sup>7</sup>

Literally, the meaning of the word termination of prosecution is that a case has been transferred to a district court, then the process is terminated and then withdrawn on the grounds that there is not enough evidence or that the event is not a criminal act. However, these two reasons can also be used to prevent prosecution by the public prosecutor as regulated in Article 46 paragraph (1) letter b of the Criminal Procedure Code, so that it can be interpreted that the case has not been transferred to the district court.<sup>8</sup>

Furthermore, regarding the termination of prosecution on the basis that the case is closed for the sake of law as regulated in Article 140 paragraph (2) letter a of the Criminal Procedure Code, PAF Lamintang explains that the act of closing a case for the sake of law can be carried out by the public prosecutor if it turns out that regarding a criminal act there are grounds that negate the prosecution or it turns out that there is a *vervolgingsuitsluitingsgronden*, because with these grounds it is impossible for the public prosecutor to be able to prosecute someone who by the investigator has been suspected of committing a criminal act.<sup>9</sup>

This is as stated in the 5th (fifth) paragraph of the General Elucidation of the Prosecutor's Law which states that "the authority of the Prosecutor in carrying out the discretion of the prosecution (prosecutorial discretionary *or opportunititeit beginselen*) which is carried out by taking into account local wisdom and values of justice living in the community has the meaning of This is important in order to accommodate the development of legal needs and a sense of justice in society which demands a paradigm shift in law enforcement from merely realizing retributive justice (retaliation) to restorative justice. For this reason, the success of the Prosecutor's Office in carrying out prosecutions is not only measured by the number

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<sup>6</sup>Endi Arofa, *Penghentian Penuntutan dalam Perkara Pidana Berdasarkan Restorative Justice*, Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan, Vol. 7, No. 2, (2020), p 326. [url:http://openjournal.unpam.ac.id/index.php/SKD/article/view/9216](http://openjournal.unpam.ac.id/index.php/SKD/article/view/9216).

<sup>7</sup>Daniel CH. M. Tampoli, , *Penghentian Penuntutan Perkara Pidana oleh Jaksa Berdasarkan Hukum Acara Pidana*, Lex Privatum, Vol.IV, No.2, (2016), p.128. [url:https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/11360](https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/11360).

<sup>8</sup>*Ibid.*

<sup>9</sup>PAF Lamintang, (1984), *KUHAP dengan Pembahasan Secara Yuridis Menurut Yurisprudensi dan Ilmu Pengetahuan Hukum Pidana*, Bandung: Sinar Baru. p. 106.

of cases transferred to the court.

Suhendra in an interview conducted by the author explained that the Prosecutor's Law all aspects of prosecuting criminal cases carried out are the full responsibility of the Attorney General, so that the position of the Attorney General as the head of the Prosecutor's Office can fully formulate and control the direction and policy of handling criminal cases for the success of prosecution, one of which is create efficiency in efforts to enforce criminal law, namely by issuing dismissal of Prosecution.<sup>10</sup> Furthermore, Joko Purwanto in an interview conducted by the author explained that the issuance of the *Perja* Termination of Prosecution is the full authority of the Attorney General as the implementation of the provisions of Article 35 letter a of the Prosecutor's Law. The position of the Discontinuation of Prosecution Service is part of the Prosecutor's Office's efforts to build a new mechanism in the implementation of the prosecution's authority and the renewal of the criminal system which is the current legal need of society, namely the creation of the settlement of criminal cases that prioritizes a balance between protection and interests for victims and perpetrators so that this is no longer the case oriented towards punishment of the perpetrators.<sup>11</sup>

Judging from the aspect of Islamic law, the position of the Termination of Prosecution *Perja* can be categorized in the form of sharia law which contains state issues, namely *Fiqh Siyasa*. Terminologically, *siyasa* is a statutory regulation created to maintain order and benefit as well as regulate the situation, in this case the position of *Fiqh Siyasa*, among others, is to talk about who is the source of power, who is the executor of power, what is the basis of power and how to exercise power given to him and to whom the executor of power is accountable for his power.<sup>12</sup>

There is a new formulation issued by the Attorney General in the form of the Discontinuation of Prosecution *Perja*, then when the Public Prosecutor receives the delegation of criminal case files from the Investigator, which then after examination and identification of the case file is deemed to meet the qualifications for the process of terminating prosecution based on the Termination of Prosecution *Perja*, then The Public Prosecutor is no longer bound by the provisions of Article 14 letter h of the Criminal Procedure Code and Article 140 paragraph (2) letter a of the Criminal Procedure Code.

In relation to the process of stopping prosecutions based on restorative justice, the Prosecutor in his capacity as Public Prosecutor has an important role so that these efforts can be realized, this is as regulated in Article 3 paragraph (5) of the *Perja* on Termination of Prosecution which determines that the termination of prosecution is based on restorative justice as referred to in paragraph (4) carried out by the public prosecutor in a responsible manner and submitted in stages to the Head of the High Prosecutor's Office. Furthermore, the role of the Prosecutor as the

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<sup>10</sup>Interview with Suhendra as the Head of the Demak District Attorney's Office on December 8, 2021, at 13.45 WIB.

<sup>11</sup>Interview with Joko Purwanto as Assistant for General Crimes at the Central Java High Court on December 13, 2021 at 10.15 WIB.

<sup>12</sup>Munawir Sjadzali, (1991), *Islam dan Tata Negara: Ajaran Sejarah dan Pemikiran*, Jakarta: UI Press. p. 2-3.



Public Prosecutor becomes significant if one observes Article 6 of the *Perja* on Termination of Prosecution which stipulates that the fulfillment of the requirements for termination of prosecution based on restorative justice is used as a consideration for the public prosecutor to determine whether or not the case file can be transferred to the court.

Based on these provisions, it can be seen that the Prosecutor as the public prosecutor has absolute authority to carry out the termination of prosecution on the basis of restorative justice. This is if it is correlated with the theory of authority as stated by Prajudi Atmosudirdjo who divides the three sources of authority, namely attribution, delegation and mandate,<sup>13</sup> it can be analyzed that the authority of the Public Prosecutor in stopping prosecution on the grounds of restorative justice falls within the scope attribution authority, namely the authority originating from positive law or statutory regulations, in this case is the Discontinuation of Prosecution Service as determined by the Attorney General of the Republic of Indonesia on dated July 21, 2020 and promulgated by the Director General of Legislation of the Ministry of Law and Human Rights of the Republic of Indonesia on July 22, 2020 and stated in the State Gazette of 2020 Number 811. In addition, this authority is also strengthened by the provisions of Article 30C letter d of the Prosecutor's Law which provide legitimacy to the Prosecutor to conduct penal mediation as the implementation of restorative justice.

### **3.2. Mechanism of Termination of Criminal Case Prosecution on the Basis of Restorative Justice**

Marjuki explained that, the termination of prosecution on the basis of restorative justice based on the *Perja* Termination of Prosecution is an embodiment of progressive law, considering that law enforcement by prioritizing a sense of community justice is currently considered very important because there could be a case that is textually judged to meet the elements juridically in accordance with the Article on the provisions of the criminal law that are violated, but if the case is still carried out the examination process will actually hurt the sense of justice that lives in the community. Thus, every Prosecutor who is currently and will be handling a criminal case has the obligation to act more carefully in providing an assessment of the case in question in order to optimize the application of the Discontinuation of Prosecution *Perja* throughout Indonesia.<sup>14</sup>

Termination of prosecution based on restorative justice is a process of resolving criminal cases by prioritizing the concept of peace between the victim and the suspect. In terms of Islamic criminal law, the threat of certain punishments can be replaced when receiving forgiveness from the victim or the family of the victim of a crime, related to this Islam has 3 (three) levels of punishment, namely criminal equality (*qisas*), fines or compensation (*diyat*) and forgiveness. The position of the doctrine of forgiveness in Islamic law is now recognized as an alternative form of dispute resolution by achieving the most ideal sentencing goal because it can

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<sup>13</sup>Prajudi Atmosudirdjo, (1994), *Hukum Administrasi Negara*, Jakarta: Ghalia Indonesia.p. 120.

<sup>14</sup>Interview with Marjuki as Head of the General Crime Section of the Demak District Attorney on December 9, 2021 at 11.00 WIB.

produce balanced justice between perpetrators, victims and the community, this is what is to be achieved in a restorative justice approach.<sup>15</sup>

In connection with the process of stopping prosecutions based on restorative justice, the results of research conducted by the author at the Demak District Prosecutor's Office indicate that since the issuance of the Termination of Prosecution *Perja*, several attempts have been made to terminate prosecutions based on these provisions, including the following:

Table 1: Efforts to Stop Prosecuting Criminal Cases on the basis of The Termination of Prosecution by the Demak District Prosecutor's Office for as long as year 2021

No	Suspect Name	Article violated	Information
1	Sumiyatun Bint Sudarno	First, Article 44 paragraph (1) of Act No. 23 of 2004 concerning the Elimination of Domestic Violence. Second, Article 351 paragraph (1) of the Criminal Code.	Prosecution of the case was terminated on the basis of restorative justice as stated in the Decision Letter on Termination of Prosecution dated January 25, 2021, based on the fulfillment of the conditions specified in the Discontinuation of Prosecution Act, including: 1) The suspect has committed a crime for the first time; 2) Threat of punishment in the form of imprisonment not exceeding 5 (five) years or a fine; 3) There is a restoration of the original condition of the Suspect by expressing regret and apologies for his actions to the Victim; 4) There is peace between the Suspect and the Victim; 5) There is a positive response and support from community leaders, Non-Governmental Organizations and the Mass Media; 6) The suspect is the victim's mother.
2	1) Maula Fibrian	Article 378 of the Criminal Code Jo.	The termination of the prosecution on the basis of

<sup>15</sup>Nor Soleh, *Restorative Justice dalam Hukum Pidana Islam dan Kontribusinya bagi Pembaharuan Hukum Pidana Materiil di Indonesia*, Isti'dal: Jurnal Studi Hukum Islam, Vol. 2, No.2, (2015), p 127, url: <https://ejournal.unisnu.ac.id/ISHI/article/view/640>.

Ariyandhi Bin Suhartoyo	Bin	Article 55 paragraph (1) of the 1st Criminal Code	restorative justice against the suspect could not be carried out because one of the suspects, Maulana Fibrian Ariyandhi Bin Suhartoyo, was a recidivist. Although in this case the suspect is willing to return the loss suffered by the victim in the amount of Rp. 90,000,000 (ninety million rupiah), the process of terminating the prosecution cannot be carried out because it does not meet the provisions of Article 5 paragraph (1) letters a and c of the <i>Perja</i> on Termination of Prosecution. . So that on September 22, 2021 the Public Prosecutor transferred the case to the Demak District Court.
2) Nurwito Bin Sukadar			
3	Kasminto Bin Jasmani	Article 351 paragraph (2) of the Criminal Code	The termination of prosecution on the basis of restorative justice against the suspect cannot be carried out on the grounds that it does not meet the requirements stipulated in Article 5 paragraph (1) letter b of the <i>Perja</i> on Termination of Prosecution, considering that in this case the article violated by the suspect carries a maximum imprisonment of 5 (five) years, as well as the victim's lack of willingness to make peace with the suspect. Therefore, based on Article 8 paragraph (7) of the <i>Perja</i> on Termination of Prosecution, on November 30, 2021, the Public Prosecutor will delegate the case to the Demak District Court.

*Source: Database of processes for discontinuing prosecution on the basis of restorative justice at the Demak District Attorney in 2021*

Based on these data, it is known that there are limitations in the implementation of the termination of prosecution on the basis of restorative justice, so that not all criminal cases that have been delegated by investigators to the public prosecutor can be terminated on the basis of restorative justice, considering that in



this case there are formal provisions that requires the fulfillment of certain things so that the termination of the prosecution of criminal cases by the public prosecutor can be realized.

The principles regulated in relation to efforts to terminate prosecution on the basis of restorative justice can be identified in several provisions contained in the Discontinuation of Prosecution Act, including:

*First*, Article 2 of the *Perja* on Termination of Prosecution stipulates that the termination of prosecution is carried out on the basis of: a. Justice; b. public interest; c. proportionality; d. punishment as a last resort; e. fast, simple and low cost.

*Second*, Article 4 of the *Perja* on Termination of Prosecution stipulates that: (1) Termination of prosecution based on restorative justice is carried out by taking into account: a. the interests of the victim and other protected legal interests; b. avoidance of negative stigma; c. avoidance of retaliation; d. community response and harmony; d. Propriety, decency and public order. (2) termination of prosecution based on restorative justice as referred to in paragraph (1) shall be carried out taking into account: a. subject, object, category and threat of criminal act; b. the background of the occurrence/commitment of the crime; c. the degree of disgrace; d. losses or consequences arising from criminal acts; e. costs and benefits of handling cases; f. Restoration back to its original state; g. peace exists between the victim and the suspect.

*Third*, Article 5 of the *Perja* on Termination of Prosecution stipulates that (1) criminal cases can be closed for the sake of the law and the prosecution terminated on the basis of restorative justice in the event that the following conditions are met: a. the suspect has committed a crime for the first time; b. a criminal offense is only punishable by a fine or imprisonment of not more than 5 (five) years; c. a criminal act committed with the value of evidence or the value of the loss resulting from a criminal act of not more than Rp. 2,500,000,000.00 (two million five hundred thousand rupiah). (2) for criminal acts related to property, In this case, there are criteria or circumstances of a casuistic nature which according to the considerations of the Public Prosecutor with the approval of the Head of the District Attorney's Branch or the Head of the District Attorney's Office, prosecution based on restorative justice can be terminated by taking into account the conditions as referred to in paragraph (1) letter a accompanied by one of the letters b or letter c. (3) For criminal acts committed against persons, bodies, lives and independence of persons, the provisions as referred to in paragraph (1) letter c may be excluded. (4) in the event that a criminal act is committed due to negligence, the provisions in paragraph (1) letter b and letter c may be excluded. (5) the provisions as referred to in paragraph (3) and paragraph (4) shall not apply in the event that there are criteria/conditions of a casuistic nature which according to the consideration of the Public Prosecutor with the approval of the Head of the Branch Office of the District Attorney or the Head of the District Attorney's Office cannot be terminated based on restorative justice. (6) in addition to meeting the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3) and paragraph (4), termination of prosecution based on restorative justice is carried out by fulfilling the following requirements: a. there has been restoration to its original condition carried out by the suspect by: 1. returning the goods obtained from the crime to the victim; 2.

compensate the victim's loss; 3. replace the costs incurred as a result of the criminal act; and/or 4. repair the damage caused by the criminal act. (7) a. there has been a peace agreement between the victim and the suspect; and b. society responded positively. (8) in the event that the victim and suspect agree, the condition for recovery back to its original condition as referred to in paragraph (6) letter a may be excluded. (9) termination of prosecution based on restorative justice is excluded for cases: a. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and morality; b. a criminal act that is punishable by a minimum criminal threat; c. narcotic crime; d. environmental crime; and e. criminal acts committed by corporations.

*Fourth*, Article 6 of the *Perja* on Termination of Prosecution stipulates that the fulfillment of the conditions for termination of prosecution based on restorative justice is used as a consideration for the Public Prosecutor to determine whether or not the case file can be transferred to the court.

The mechanism for termination of prosecution based on restorative justice as regulated in the *Perja* on Termination of Prosecution, among others, is as follows:

*First*, the termination of prosecution based on restorative justice is carried out by the Public Prosecutor on the basis of the principles as stipulated in Article 2 of the *Perja* on Termination of Prosecution, namely the principle of justice, the principle of public interest, the principle of proportionality, the principle of last resort criminal and the principle of quick, simple and low cost. In addition, the process must be carried out responsibly and submitted by the Public Prosecutor in stages to the Head of the High Prosecutor's Office.

*Second*, the Public Prosecutor studies the criminal case files by adjusting the matters as regulated in Articles 4 and 5 of the *Perja* on Termination of Prosecution.

*Third*, in the event that the case file is judged to meet the qualifications for the termination of the prosecution process based on restorative justice, then based on the provisions of Article 7 *Perja* on Termination of Prosecution, the Public Prosecutor offers peace efforts to the Victim and the Suspect.

*Fourth*, based on Article 8 of the *Perja* on Termination of Prosecution, the Public Prosecutor shall summon the Victim by involving the family of the Victim/Suspect's family, community leaders and other related parties in the context of peace efforts carried out at the local Prosecutor's Office. If the reconciliation effort is approved, then the reconciliation process will be continued and reported to the Head of the District Attorney's Office/Head of the District Attorney's Office to be forwarded to the Head of the High Prosecutor's Office, if the case receives special attention from the public, the report is forwarded to the Attorney General of the Republic of Indonesia.

*Fifth*, based on Article 9 paragraph (5) of the Discontinuation of Prosecution *Perja*, the reconciliation process is carried out within a period of 14 (fourteen) days from the receipt of the handover of responsibility for the suspect and evidence from the investigator.

*Sixth*, in the event that the reconciliation effort is rejected by both the Victim and the Suspect, then based on Article 8 paragraph (7) of the Discontinuation of Prosecution Service, the Public Prosecutor will make an official report, make a

memorandum of opinion that the criminal case will be transferred to the court and immediately delegate the case file to the court. .

*Seventh*, based on the provisions of Article 10 *Perja* on Termination of Prosecution, if the peace process is reached, the Victim and the Suspect make a peace agreement in writing and signed by the Victim and the Suspect witnessed by a minimum of 2 (two) witnesses with the knowledge of the Public Prosecutor. At this stage the suspect can make efforts to restore it to its original state as regulated in Article 5 paragraph (6) of the Discontinuation of Prosecution Service in the form of returning goods obtained from a criminal act to the victim, compensating for the victim's loss, replacing costs arising from the consequences of a criminal act and/or repair the damage caused by the criminal act.

*Eighth*, in the event that the peace agreement is not successful, then based on Article 10 paragraph (6) of the *Perja* on Termination of Prosecution, the Public Prosecutor shall state the failure to reach a peace agreement in the minutes, make a memorandum of opinion that the case has been delegated to the court and immediately transfer the case file to the court. .

*Ninth*, if a peace agreement is reached, then based on Article 12 of *Perja* on Termination of Prosecution, the Public Prosecutor shall report the matter to the Head of the District Attorney's Branch/Head of the District Attorney's Office by attaching an official report and a memorandum of opinion so that approval for the termination of prosecution based on restorative justice is requested to the Head of the High Prosecutor's Office. The request for approval is submitted to the Head of the High Prosecutor's Office no later than 1 (day) after the peace agreement is reached, and the Head of the High Prosecutor's Office within 3 (three) days of receiving the request shall immediately determine whether or not the prosecution can be terminated based on restorative justice.

*Tenth*, in the event that the Head of the High Prosecutor's Office approves the termination of prosecution based on restorative justice, the Head of the District Attorney's Branch/Head of the District Attorney's Office shall issue a Decision Letter on Termination of Prosecution no later than 2 (two) days after the approval of the Head of the High Prosecutor's Office is received. However, if the Head of the High Prosecutor's Office refuses to terminate the prosecution based on restorative justice, the Public Prosecutor will transfer the case file to the court.

### **3.3. Inhibiting Factors in the Implementation of Termination of Criminal Case Prosecution on the Basis of Restorative Justice**

Observing the substance of the Discontinuation of Prosecution *Perja*, it can be analyzed that the application of restorative justice is intended as a settlement of a criminal case that does not end with a decision on who the losing party is and who the winning party is because the process of stopping the prosecution carried out is not based on the aspect of material evidence related to the crime committed by the suspect. The process carried out prioritizes an open dialogue between the victim.

The existence of a procedural mechanism that must be followed and the existence of several requirements that must be fulfilled have shown that not all criminal cases currently being handled by the Public Prosecutor can be immediately

terminated by the prosecution, but there are indicators that determine the success of termination of prosecution based on restorative justice. This is reinforced by research data obtained by the author, that throughout 2021 the Demak District Prosecutor's Office has attempted to terminate prosecutions based on restorative justice against 3 (three) criminal cases that are considered to meet the qualifications as stipulated in the *Perja* on Termination of Prosecution, but for 3 (three) cases In this case, only 1 (one) case was successfully terminated, namely on behalf of Suspect Sumiyatun Binti Sudarno.

Marjuki explained that the benchmarks for success as well as obstacles that occur in the prosecution process based on restorative justice are strongly influenced by the things regulated in the *Perja* on Termination of Prosecution. In other words, when facts or circumstances make it possible to terminate the prosecution, the Public Prosecutor is obligated to seek all the process flow as regulated in the Discontinuation of Prosecution *Perja* so that the case can be immediately terminated, on the contrary when the facts and circumstances that occur do not meet the qualifications to be carried out. Upon termination of the prosecution, the Public Prosecutor shall immediately delegate the criminal case to the Court.<sup>16</sup>

Based on the results of the research conducted by the author, it is known that there are several obstacles experienced by the Public Prosecutor in carrying out the process of stopping prosecution based on restorative justice. In connection with this, it will be analyzed fundamentally on the theory of legal effectiveness as stated by Soerjono Soekanto, which includes statutory factors (legal substance), law enforcement factors, facilities and facilities factors, community factors and cultural factors.<sup>17</sup>The results of the research conducted by the author show that the most dominant inhibiting factor influencing the termination of prosecution based on restorative justice consists of 2 (two) factors, namely first, factors of laws and regulations, in this case the short period of time given by the Discontinuation of Prosecution Service to carry out the peace process and fulfill certain obligations, namely 14 (fourteen) days from the receipt of the delegation of responsibility for the suspect and evidence from the investigator. This period of time is considered too short considering that the mechanism that must be followed by the Public Prosecutor in the process of stopping the prosecution is quite long. Second, the cultural factor, in this case is the culture of forgiveness that lives in Indonesian society.

#### 4. Conclusion

Based on the results of the research and discussion, the following conclusions are obtained: first, the authority of the prosecutor in stopping the prosecution of criminal cases based on restorative justice is a form of attribution authority, namely the authority sourced from statutory regulations in this case is the Prosecution Law and the Termination of Prosecution Act. Second, prosecution termination

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<sup>16</sup>Interview with Marjuki as Head of the General Crime Section of the Demak District Attorney on December 9, 2021 at 11.00 WIB

<sup>17</sup>Soerjono Soekanto, (2007), *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: PT Raja Grafindo Persada. p. 8-11.

mechanism based on restorative justice carried out through several stages starting from the stage of analyzing criminal cases by adjusting matters as regulated in Articles 4 and 5 of the *Perja* on Termination of Prosecution, offering peace efforts to the Suspect and Victim, making summons to the parties in the context of penal mediation which was carried out for 14 (fourteen) days. fourteen) days, making a written peace agreement as well as carrying out restoration to its original state by the suspect, making a report to the Head of the District Attorney/Head of the District Attorney's Branch for approval from the Head of the High Prosecutor's Office, and the final stage is publicationa letter of determination to terminate the prosecution by the Head of the District Attorney's Office/Branch Head of the District Attorney's Office. Third, the inhibiting factor in the process of terminating the prosecution of criminal cases on the basis of restorative justice is influenced by 2 (two) most dominant factors, namely first, the statutory factor in this case is the Discontinuation of Prosecution Service which contains rules regarding the settlement period of only 14 (fourteen) days from the receipt of the handover of responsibility for the suspect and evidence from the investigator. In short, this period of time is not commensurate with the length of the mechanism that must be taken. Second, the cultural factor, namely the low awareness of the culture of forgiveness by the Victim towards the Suspect which has an impact on the inability to carry out the peace process.

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