IMPLEMENTATION OF RESTORATIVE JUSTICE TOWARDS CRIMINAL ACTS OF ASSAULT AT THE PEMATANGSIANTAR DISTRICT PROSECUTOR'S OFFICE

Wira Afrianda Damanik [1] Rachmad Abduh [2]

[123] Universitas Muhammadiyah Sumatera Utara
E-mail: wiradamanik05@gmail.com rachmadabduh@umsu.ac.id

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Abstract

Restorative justice is a new approach in Indonesia that closely aligns with the principle of deliberation, the soul of the Indonesian nation. Restorative justice offers the best solution for resolving private crimes between individuals or legal entities, prioritizing the core of the crime. Abuse is an unlawful act, any act or action committed by a person that results in harm to the individual. Ordinary abuse is a legal act that stems from intent. This intent means that the consequences of an act are intended, and this is evident when the consequences are truly intended to cause pain, injury, or death. However, not all acts of hitting or other acts that cause pain are considered abuse.

I. INTRODUCTION

Based on Prosecutor's Regulation (PERJA) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Restorative Justice is the resolution of criminal cases involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution that emphasizes restoration to the original state, rather than retaliation.

The requirements for a criminal case to be legally closed and prosecution discontinued based on Restorative Justice are:

a. The suspect is a first-time offender
b. The offense is punishable only by a fine or imprisonment of no more than 5 (five) years; and
c. The offense is committed with the value of the evidence or the value of the losses incurred as a result of the offense not exceeding Rp2,500,000 (two million five hundred thousand rupiah).

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The functioning of the judicial system in the criminal justice process is based on Law Number 8 of 1981 concerning the Criminal Procedure Code. The criminal justice process under the Criminal Procedure Code focuses heavily on the perpetrator of the crime, both regarding their status from suspect to convict, and their rights as suspects or defendants are strictly protected by the Criminal Procedure Code. Therefore, it can be said that the criminal justice process under the Criminal Procedure Code is an Offender-Minded/Offender-Oriented Criminal Justice Process. Therefore, because it focuses heavily on the interests of the perpetrator, the interests of the victim are not considered within the Criminal Procedure Code.

Restorative justice aligns with penal mediation, and its connection can also be found in the "Explanatory Memorandum" of Council of Europe Recommendation No. R (99) 19 concerning "Mediation in Penal Matters," which explains that there are several models of penal mediation, namely:

i. Informal Mediation
ii. Traditional village or tribal moots
iii. Victim-Offender Mediation
iv. Reparation negotiation programs
v. Community panels or courts
vi. Family and community group conferences

In this case, the author believes that informal mediation is a fairly compatible model of penal mediation implemented by criminal justice personnel in their normal duties. This can be done by the Public Prosecutor (JPU) by inviting the parties to an informal settlement with the aim of discontinuing prosecution if an agreement is reached. It can be done by a social worker or probation officer, a police officer, or a judge.

Regarding "settlement outside of court," the English term for "settlement outside of court" is "settlement outside of court." Meanwhile, Tristam Pascal Moeliono, translator of the book "Inleiding tot de Studie van het Nederlandse Strafrecht," 14th edition (1995) written by Jan Remmelink, defines it as "Complete Settlement Outside the Judicial Process" can be understood as a way of losing the authority to prosecute a crime if the prosecutor/public prosecutor, before commencing the trial, sets one or more

conditions (especially in the form of restitution or specific compensation) to prevent or terminate the continuation of criminal prosecution for a crime.

Criminal cases cannot, in principle, be resolved through restorative justice. However, in practice, criminal cases are often resolved through mediation, an initiative of law enforcement as part of the case resolution process. Therefore, in reality, mediation can be implemented within the Criminal Justice System. Countries that have implemented restorative justice include Austria, Germany, Belgium, France, Poland, the United States, Sweden, England and Wales, Italy, Finland, and the Netherlands. This mediation is referred to as Penal Mediation.

Under current criminal procedure law, all criminal cases must be processed within the criminal justice system. Article 1, number 6, letter a of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) states that a prosecutor is an official authorized by this law to act as public prosecutor and implement court decisions that have obtained permanent legal force. Then, Article 1 number 6 letter b of the Criminal Procedure Code states that the Public Prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and implement judges' decisions. The norms of Article 1 number 6 letter b of the Criminal Procedure Code are exactly the same or duplicated with Article

II. RESEARCH METHODS

This study uses empirical legal research. Empirical legal research is a legal research method that aims to examine law in a concrete sense and examine how it operates in society. Because this study examines people in their social relationships, the empirical legal research method can be described as sociological legal research. Legal research can be said to be derived from facts that exist within a society, legal entity, or government agency. Furthermore, this study also uses field research methods, in which the author conducted this research to obtain primary data through interview techniques. Furthermore, this study also uses books as data sources, or library research, also known as literature study.

III. RESULTS AND DISCUSSION

Based on Prosecutor's Regulation (PERJA) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Restorative Justice is the resolution of criminal cases involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution that emphasizes restoration to the original state, rather than retaliation. The requirements for a criminal case to be legally closed and prosecution discontinued based on Restorative Justice are:

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IV.RESULTS AND DISCUSSION

The implementation of restorative justice in resolving assault crimes at the Pematang Siantar District Attorney's Office has been carried out in accordance with Indonesian Attorney General's Regulation Number 15 of 2020, emphasizing deliberation between the perpetrator and the victim. This process involves various parties and is facilitated by the prosecutor as mediator, resulting in a peaceful agreement without coercion. This approach has proven effective in restoring relationships and bringing a more humane approach to justice in the community. Obstacles to the implementation of restorative justice for assault crimes at the Pematang Siantar District Attorney's Office include the limited timeframe stipulated in Prosecutor's Regulation Number 15 of 2020 (a maximum of 14 days), difficulties when the victim refuses to reconcile, and challenges in balancing the interests of the perpetrator, victim, and community. Nevertheless, supporting factors such as the prosecutor's conscience and commitment to upholding justice remain key to overcoming these obstacles. Therefore, the issuance of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice must be able to realize legal certainty, legal justice and truth based on law and must explore the values of humanity and justice that live in society. Restorative Justice which can be interpreted as justice without a court process is expected to be implemented professionally, effectively and with authority by every Prosecutor who handles criminal cases so as not to bring a negative impression in the community that allows transactions in law enforcement, so that the purpose of the birth of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 can truly have a positive impact on law enforcement in Indonesia and have benefits in the lives of the community. Improving the quality of every Prosecutor's personnel who carry out duties in the field of law enforcement. Efforts made include increasing understanding in the form of knowledge, skills and attitudes related to restorative justice, taking firm action against violations and abuse of authority committed by Prosecutors in carrying out their duties by providing sanctions consistently and

consequently without discrimination, increasing public knowledge about termination of prosecution through restorative justice so that it makes it easier for Prosecutors to make peace between the two parties. The efforts made include carrying out outreach to the community in collaboration with the local government, holding outreach through local radio and being able to realize the community's hopes for the creation of a professional, proportional and just law enforcement process.

V. RESULTS AND DISCUSSION

A. Legal Status Regarding the Use of Narcotics in Law Number 35 of 2009 Concerning Narcotics

The legal status of narcotics use under Law Number 35 of 2009 is essentially enshrined in a series of very firm and detailed criminal norms. These criminal provisions are compiled in Chapter XV, which contains Articles 111 to 148. The legal structure established in this law demonstrates that the state takes the distribution and abuse of narcotics seriously. This is understandable, as narcotics are not merely a health issue but have become a complex social and legal problem. Therefore, the law systematically categorizes various acts considered unlawful related to narcotics, and each category carries a different criminal penalty.(Munandar 2019)

Broadly speaking, there are four main categories established by law to limit and sanction anyone involved in drug abuse. The first category covers the act of possessing, storing, controlling, or providing narcotics or narcotic precursors. This regulation is outlined in Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics, and Article 122 for class III narcotics, and is further strengthened in Article 129 letter a. This category emphasizes that simply possessing or storing narcotics without authorization is enough to ensnare a person with the threat of criminal penalties. The goal is clear: the state wants to prevent the earliest stages of drug circulation from developing into wider consumption or trade.(Nasution, Terarianto, and Siregar 2022)

The second category regulates the production, import, export, or distribution of narcotics and their precursors. This provision is contained in Article 113 for class I, Article 118 for class II, and Article 123 for class III, and is further clarified by Article 129 letter b. In this context, it is clear that the law not only targets small-scale users or dealers but also targets large-scale production and distribution networks. By criminalizing production, import, and export, the law aims to close the gap for the entry of narcotics in large quantities, whether produced domestically or imported.(Iskandar 2019)

The third category relates to the acts of offering for sale, selling, buying, receiving, acting as an intermediary in the sale, exchange, or transfer of narcotics and narcotic precursors. Articles 114 and 116 regulate Class I, Articles 119 and 121 regulate Class II, while Articles 124 and 126 apply to Class III. Furthermore, Article 129 letter c also emphasizes this prohibition. This demonstrates that the law seeks to eradicate the narcotics trade chain at various levels. Regardless of whether someone acts as a wholesaler, intermediary, or even a buyer, all are considered criminal acts that can be subject to severe sanctions.

The fourth category covers the carrying, sending, transporting, or transiting of narcotics and their precursors. Article 115 regulates Class I narcotics, Article 120 Class II, and Article 125 Class III, with Article 129 letter d as a clarification. Acts in this category typically occur within the context of cross-regional distribution networks. Therefore, the law seeks to ensure that the movement of narcotics from one location to another is also subject to criminalization.(Arifin 2021)

In addition to categorizing acts, the law also establishes a variety of criminal sanctions designed not only to punish the primary perpetrators but also to reach other individuals or parties associated with drug crimes. For example, drug abusers or victims of drug abuse are required to undergo medical and social rehabilitation. This provision demonstrates a dual approach: on the one hand, it is harsh on business- oriented criminals, while on the other hand, it still provides room for rescue for drug abusers who are considered victims.

In addition, the law also implicates other parties, such as parents or guardians, who neglect minors who become drug addicts. Article 128 states that such parents or guardians can be punished with a maximum of six months' imprisonment or a fine of up to one million rupiah. This penalty may seem lenient,

but it carries a strong moral message: that parental responsibility cannot be easily abdicated in cases of children caught up in drug addiction.(Subekti, Arfa, and Prayudi 2022)

Furthermore, the law also explicitly regulates criminal acts committed by corporations. Article 130 stipulates that corporations found guilty of narcotics crimes can be subject to imprisonment and a triple fine. Furthermore, such corporations can be subject to additional penalties, including revocation of their business licenses or revocation of their legal entity status. This is crucial because large-scale narcotics trafficking often involves business entities, both overtly and covertly.

Still within the framework of expanding legal responsibility, Article 131 criminalizes anyone who fails to report a drug crime. Those who know about it but fail to report it can face a maximum prison sentence of one year or a fine of up to fifty million rupiah. Thus, the law seeks to foster a proactive community culture in eradicating narcotics.

Equally important, Article 132 regulates attempted and criminal conspiracy in narcotics crimes. Anyone who attempts or plans a narcotics crime can still be subject to the same prison sentence as the main article. The following paragraph even emphasizes that the prison sentence and fine can be increased by one-third. This emphasizes that the law punishes not only committed acts but also initial attempts or criminal plans that have not yet been realized.

The law is also very strict in cases of child abuse as part of a narcotics crime. Article 133 stipulates that anyone who orders, persuades, coerces, uses violence, uses deception, or involves a child in narcotics abuse can be sentenced to death, life imprisonment, or imprisonment of between five and twenty years and a fine of billions of rupiah. These sanctions are further detailed in the following paragraph, with a penalty of five to fifteen years and a fine of up to ten billion rupiah. This provision reflects the state's determination to provide maximum protection for children as the nation's future generation.(Fazizullah, Marlina, and Sahlepi 2022)

Furthermore, Article 134 emphasizes the obligation of drug addicts to report themselves. Failure to do so can result in a maximum of six months in prison or a fine of two million rupiah, or even three months or a fine of one million rupiah in certain cases. This provision conveys the message that rehabilitation is both a right and an obligation, and the state provides a way for addicts to break free from their addiction by reporting themselves.

Article 135 punishes pharmaceutical industry managers who fail to comply with regulatory obligations. They can face one to seven years in prison and a fine of between forty million and four hundred million rupiah. This serves as a reminder that the pharmaceutical industry bears significant responsibility for managing substances with the potential for abuse.

The law also addresses the laundering of drug proceeds. Article 137 stipulates severe penalties for anyone who controls or exploits the proceeds of drug crimes. The penalties range from five to fifteen years in prison and a fine of billions of rupiah. Article 138 further states that anyone who

obstructs or hinders the investigation, prosecution, and examination of narcotics cases can face up to seven years in prison and a fine of half a billion rupiah.

Interestingly, the law also extends to those who might be considered far removed from drug trafficking, such as ship captains or airline captains who fail to comply with certain provisions. Article 139 stipulates a prison sentence of one to ten years and a fine of up to one billion rupiah. Likewise, Article 140 stipulates sanctions for National Police investigators, National Narcotics Agency investigators, or Civil Servant Officials who fail to fulfill their obligations regarding evidence. Even the head of the district attorney's office is not immune from the threat of Article 141 if he neglects his duties.

Article 142 criminalizes laboratory personnel who falsify test results with a seven-year prison sentence and a fine of half a billion rupiah. Article
143 punishes witnesses who provide false testimony with a penalty of one to ten years in prison and a fine of up to six hundred million rupiah. Article 144 even stipulates that repeat offenders who commit narcotics crimes will be subject to an additional one-third of the maximum sentence. Article 147 also expands the scope to include hospital managers, scientific institutions, pharmaceutical industries, and pharmaceutical wholesalers who violate the provisions. They can be

sentenced to one to ten years in prison and a fine of up to one billion rupiah.

When examined as a whole, Law Number 35 of 2009 presents a very comprehensive criminal sanction system. This law targets not only the direct perpetrators, but also all parties who directly or indirectly support or are negligent in drug abuse. In this way, the law seeks to close any loopholes that could be exploited to perpetuate drug crimes.

From this description, it is clear that the legal standing regarding drug use under this law is very strong and comprehensive. This regulation goes beyond prohibition, but also emphasizes that drug abuse is a serious crime with severe consequences. The state views the drug problem as a multidimensional threat that must be addressed with sharp and harsh criminal law instruments. However, on the other hand, there is also a humanitarian spirit, namely by providing rehabilitation space for abusers who are considered victims. By combining repressive and rehabilitative approaches, this law seeks to balance firm action against crime and efforts to rescue people caught in the clutches of drugs.(Fithri 2020)

B. Implementation of Criminal Penalties for Narcotics Offenders at Kabanjahe Detention Center

The application of criminal penalties for drug offenders in Indonesia, particularly in the Kabanjahe Detention Center, is inextricably linked to the normative foundations stipulated in Law Number 35 of 2009 concerning Narcotics. The initial articles of the law stipulate that narcotics may only be used for two primary purposes: health services and the development of science and technology. This provision demonstrates that narcotics are legally permissible within narrow, limited, and strictly controlled boundaries. However, in social reality, these provisions are frequently violated. Many people abuse narcotics outside of medical or research contexts. Narcotics circulation is increasingly widespread, reaching various levels of society and developing into a multidimensional problem.(Wijaya and Ruslie 2024)

From a legal perspective, the use of narcotics for legitimate purposes is indeed legal, but the use of narcotics outside of legal limits is clearly prohibited. This is what gives rise to various problems in practice. The state, through law enforcement officials, strives to enforce these provisions by arresting perpetrators, prosecuting them in court, and ultimately issuing criminal sentences. The hope is that law enforcement can act as a controlling factor and deterrent to the growing illicit trade and abuse of narcotics. However, the reality on the ground does not always align with these expectations. Instead of decreasing, the rate of narcotics abuse has actually increased year after year. This phenomenon creates a paradox: the stricter law enforcement is, the more sophisticated the methods of drug distribution become. This situation illustrates that the war on narcotics is not just a matter of regulation or enforcement, but also involves broader social, economic, and even political issues.

Law Number 35 of 2009 has attempted to detail the status of drug abusers, but it still leaves serious issues. Article 54 of the law states that both drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision opens up new interpretations. On the one hand, drug abusers can be considered perpetrators of criminal acts for using drugs without authorization. On the other hand, some drug abusers can be categorized as victims, especially if their involvement occurred through persuasion, deception, fraud, coercion, or threats. In other words, this law places drug abusers in a dual position: some are viewed as perpetrators of criminal acts, but others must be positioned as victims of criminal acts.(Lawalata, Titahelu, and Latupeirissa 2022)

In this context, the application of the law often sparks debate. Article 54 clearly mandates rehabilitation for both addicts and victims of abuse, but Article 112 paragraph (1) emphasizes the very severe criminal penalties for those who possess or control Class I narcotics other than plants without the right. The criminal penalties are a minimum of four years' imprisonment and a maximum of twelve years' imprisonment, as well as a fine of between eight hundred million and eight billion rupiah. This duality creates tension between the legal text and its implementation in the field.

One concrete example is seen in Supreme Court Decision Number 3790 K/PID.SUS/2020 on January 13, 2021. In this case, defendant Prasetyo Febriono was sentenced to two years

and six months in prison, even though the law stipulates a minimum sentence of four years. This decision demonstrates the difference between law on the books, namely the law as written in the law, and law in action, namely the law as applied by judges in real cases. This phenomenon shows that judges in certain situations can use discretionary authority or subjective judgment, for example considering humanitarian factors, the level of involvement of the defendant, or even their background as victims of abuse.(Suisno 2017)

Kabanjahe Detention Center, as a correctional institution, serves as a place where court decisions against drug offenders are carried out. The criminal justice process here encompasses the stages of admitting inmates, carrying out the sentence according to the verdict, and providing guidance aimed not only at punishing but also at guiding inmates to reintegrate into society with a better life. In drug cases, guidance is often accompanied by medical and social rehabilitation programs, in line with the mandate of Article 54. This emphasizes that the Indonesian correctional system is not only retributive but also rehabilitative.

However, rehabilitation at Kabanjahe Detention Center and other correctional facilities in Indonesia still faces numerous obstacles. Medical facilities and professional staff are often limited, while the number of drug inmates continues to rise. This situation results in less than optimal rehabilitation. Furthermore, the social stigma surrounding drug abuse remains strong, so rehabilitation is often seen as disproportionate to the victims' suffering. In many cases, society advocates for harsh prison sentences rather than rehabilitation. Yet, from a public health perspective, rehabilitation is the most logical path to overcoming drug addiction.

Legal provisions also have dual consequences. Drug abusers who intentionally use drugs without authorization are clearly considered perpetrators of the crime, but those proven to have used drugs due to coercion or inducement should be positioned as victims. Unfortunately, in judicial practice, this distinction is not always smooth. Law enforcement officials often struggle to distinguish between genuine victims and active perpetrators. This situation leads to inconsistencies in court decisions and the application of criminal penalties in correctional institutions.

From a normative legal perspective, drug abusers who are considered victims should be directed to rehabilitation institutions. Conversely, those who clearly use drugs knowingly and without authorization must serve the punishment stipulated by law. However, in reality, this dividing line is often blurred. This forces correctional systems like the Kabanjahe Detention Center to fulfill both functions simultaneously: serving prison sentences for those convicted and providing rehabilitation programs for those deemed victims.

Another emerging issue is the fact that the more aggressive authorities are in cracking down on drug trafficking, the more sophisticated drug networks become. This means that law enforcement alone is insufficient. On the one hand, court decisions enforced at the Kabanjahe Detention Center have a deterrent effect, but on the other hand, they don't necessarily stop drug trafficking outside. In other words, correctional facilities merely serve as the final stage of the legal process, while the root causes of drug abuse continue to thrive within society.(MEDAN, nd)

However, the implementation of criminal penalties at the Kabanjahe Detention Center cannot be considered unimportant. This is precisely where the law is truly enforced. Drug inmates held there must comply with applicable regulations, whether in prison or rehabilitation. The guidance provided is also expected to reduce their tendency to return to drug use after release. Overall, the ultimate goal is social reintegration, ensuring they are accepted back into society without repeating their actions.

From this, it can be concluded that the application of criminal penalties for drug offenders in the Kabanjahe Detention Center is complex. On the one hand, the law demands strict enforcement with the threat of severe penalties. On the other hand, there is a need for rehabilitation, which positions some drug users as victims. The tension between these two approaches persists to this day. Therefore, the ideal solution lies not solely in the application of criminal penalties, but also in improving the rehabilitation system, enhancing correctional facilities, and shifting the societal paradigm regarding drugs.

VI. CONCLUSIONS AND RECOMMENDATIONS

The implementation of restorative justice in resolving assault crimes at the Pematang Siantar District Attorney's Office has been carried out in accordance with Indonesian Attorney General's Regulation Number 15 of 2020, emphasizing deliberation between the perpetrator and the victim. This process involves various parties and is facilitated by the prosecutor as mediator, resulting in a peaceful agreement without coercion. This approach has proven effective in restoring relationships and bringing a more humane approach to justice in the community.

Obstacles to the implementation of restorative justice for assault crimes at the Pematang Siantar District Attorney's Office include the limited timeframe stipulated in Prosecutor's Regulation Number 15 of 2020 (a maximum of 14 days), difficulties when the victim refuses to reconcile, and challenges in balancing the interests of the perpetrator, victim, and community. Nevertheless, supporting factors such as the prosecutor's conscience and commitment to upholding justice remain key to overcoming these obstacles.

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