



# Criminal Law Policy in Efforts to Overcome the Criminal Offence of Maltreatment Based on Restorative Justice by the Prosecutor's Office

(Research Study at the North District Attorney's Office)

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**Abstract.** *The crime of maltreatment is a deliberate act that causes injury, pain or even death to a person. However, efforts to resolve minor persecution crimes can be done through Restorative Justice. Restorative Justice can be done through mediation of victims of persecution. This research formulates the problem of knowing how the legal arrangements by the Prosecutor's Office on Restorative Justice and knowing how the efforts and obstacles to overcoming persecution crimes based on Restorative Justice by the North Padang Lawas State Attorney's Office. This research method is through empirical juridical research with field studies at the North Padang Lawas State Attorney's Office related to countermeasures against criminal acts of persecution based on Restorative Justice. The data collection technique used by the author in this research is Field Research, which includes data sourced from interviews with the Public Prosecutor at the North Padang Lawas State Attorney's Office. Data analysis used in this research is qualitative analysis. The process of applying Restorative Justice in the crime of persecution in the North Padang Lawas District Attorney's Office is carried out by means of the Public Prosecutor offering peace efforts to the victim and suspect. Based on cases that meet the criteria for Restorative Justice, the State Attorney's Office will write to the High Prosecutor's Office and the Deputy Attorney General's Office for General Crimes to seek approval for Restorative Justice. The North Padang Lawas District Attorney's Office prioritizes peace between victims and perpetrators in resolving cases of light maltreatment by involving the families of both parties, such as community leaders, without any pressure, coercion, or intimidation from the Public Prosecutor who acts as a facilitator.*

**Keywords:** *Countermeasures, Crime of Persecution, Restorative Justice*

## 1. INTRODUCTION

Persecution is a legal act that is committed intentionally. What is meant by intentionality is an act that is intended and has a real result that causes someone to experience injury, pain, and even death, but the act of hitting is not all defined as the crime of maltreatment. Nowadays, the crime of maltreatment is often found in everyday life and some people consider it a normal thing because it is considered as giving lessons to people who make mistakes so that they become disciplined. In fact, there are many methods to teach a lesson to a wrongdoer that do not have to cause injury, especially when the act usually causes injury or death.

The regulation related to maltreatment in the Criminal Code (KUHP) in Article 351 paragraph 3 explains that maltreatment is a legal action that stems from all intentions, this intentionality means that the result of an action is desired and it is evident if the result is truly intended by the existence of an action carried out.

The crime against the body of a person in all its acts that result in bodily harm or pain resulting in death is given as maltreatment, which is contained in Chapter XX of Book II Articles 351 to 358, but the main formulation of the crime against the body or abuse is contained in Article 351 paragraphs (1) to (5). Article 351 of the Criminal Code is a standard or primary form of maltreatment that distinguishes it from other forms of maltreatment; therefore, Article 351 maltreatment is referred to as standard maltreatment.

The current development brings crimes experienced by the community, both crimes of violence and persecution, which are the most common cases among the community so that they become victims of the crime of persecution in terms of the perspective of criminal law and also the main problem related to crimes like this.

The fundamental purpose of the law is to provide protection and justice for all social strata. In terms of maltreatment, all actions of a person that are directed towards himself are haram. Persecution is a deliberate legal act that stems from malice. Deliberation is the intention to do an act, and if that intention is to do an act that causes someone to become sick, injured, or die, then that act is maltreatment. However, not all acts of violence or other things that cause suffering are considered maltreatment, and all such cases are settled by the courts.

Therefore, a new method has been devised known as Restorative Justice, which involves resolving criminal cases out of court. Restorative Justice is the resolution of minor criminal cases carried out by investigators in the investigation stage or judges from the beginning of the trial by involving the perpetrator, victim, family of the perpetrator or victim, and relevant community leaders to jointly seek a just settlement by focusing on restoration to a state of return.

A salient feature of Restorative Justice is that it is treated as a phenomenon that is part of social action rather than a criminal offence. Crime is scrutinised as an act that harms people and damages social relations. This is in contrast to criminal law, which has made crime a state issue. Only the state has the right to punish, despite the fact that indigenous communities are capable of delivering punishment.

In accordance with the restorative perspective, while crime does violate the criminal law, the focus is not on the actions of the perpetrator, but on the harm caused to the victim, the community, and even the welfare of the perpetrator. Unfortunately, the criminal justice system that follows a retributive approach largely ignores these important aspects. Approaches based on Restorative Justice also provide convenience for victims to avoid the perpetrator from the criminalisation process which is sometimes considered incompatible with the values

of justice in crime control. In the process of enforcing criminal law, it is important to pay attention to the possibilities that result in a person.

*Restorative Justice* This has been mandated in Attorney General Regulation number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which aims to create harmonisation of justice in society. For example, the Public Prosecutor (JPU) at the North Padang Lawas District Attorney's Office discontinued prosecution based on Restorative Justice in a case of persecution. The termination of the persecution case was based on an amicable agreement between the perpetrator and the victim without any coercion from any party.

In the jurisdiction of the North Padang Lawas State Attorney from 2021 to July 2024, there have been 7 (seven) persecution cases resolved by the North Padang Lawas State Attorney's Office, this can be seen in the following table:

**Table 1** Recapitulation of Data on the Settlement of Crimes of Maltreatment Based on Restorative Justice at the North Padang Lawas State Attorney's Office in 2021 - July **2024**

No	Name of Defendant	Implementation Date	Article
1.	Ansori Gunawan Siregar Als Guna	24 March 2021	351 Ayat (1) KUHP
2.	Muammer Khadapi Siregar	24 March 2021	351 Ayat (1) KUHP
3.	Nuralia Harahap Dkk	26 November 2021	170 ayat (1) jo Pasal 351 ayat (1) KUHP
4.	Nur Asiah Harahap	26 November 2021	170 ayat (1) jo Pasal 351 ayat (1) KUHP
5.	Saleh Harahap Alias Saleket	07 September 2022	351 Ayat (1)
6.	Syawal Hasibuan	28 July 2023	351 Ayat (1)
7.	Saruddin Siregar	03 July 2024	351 Ayat (1)

Efforts to resolve criminal offences of persecution based on Restorative Justice carried out by the North Padang Lawas State Attorney's Office can be resolved outside the court (non-litigation). So that criminal offences no longer pivot on the concept of 'revenge' alone.

## **Problem Formulation**

1. How is the Legal Arrangement by the Prosecutor's Office on Restorative Justice?
2. What are the Efforts and Obstacles in Countering the Crime of Maltreatment Based on Restorative Justice by the North Padang Lawas State Attorney's Office?

## **2. RESEARCH METHODS**

This research method is empirical juridical legal research, namely research or observation in the field field research which focuses on collecting empirical data in the field. Data collection in this research is carried out through field studies at the North Padang Lawas District Attorney's Office related to Criminal Law Policy in Efforts to Overcome Criminal Offences of Persecution Based on Restorative Justice. Data analysis used in this research is qualitative analysis. Qualitative analysis is a specification of the nature of the research to examine between theory and practice related to the application of Restorative Justice to the crime of maltreatment. Conclusions will be drawn from the resolution of the problem formulation carried out in the research.

## **3. RESULTS AND DISCUSSION**

### **Legal Arrangements by the Public Prosecution Service for Restorative Justice**

The Indonesian Criminal Justice System has undergone reform with the introduction of the concept of restorative justice. This involves offenders, victims and other stakeholders in seeking fair and peaceful solutions after a criminal event. The Public Prosecution Service plays an important role in the prosecution, and the principle of 'enn en ondeelbaar' emphasises its functional unity. Restorative Justice is enshrined in legislation, providing an opportunity for victims and perpetrators to participate in the peaceful resolution of cases. Restorative Justice offers an alternative to out-of-court settlements, with a focus on restoration and reconciliation.

The Public Prosecution Service, as an integral part of the criminal justice system, has a unique role as the only institution explicitly given functions in the field of prosecution and other functions described in Article 2 paragraph (1) of the Public Prosecution Service Law. The concept of 'een en ondeelbaar' (one and inseparable) emphasises that the Public Prosecution Service is a single entity that cannot be separated, and this is the main basis for the implementation of its duties and authorities in the field of prosecution. The purpose of this principle is to maintain unity of policy in prosecution, so that the Public Prosecution Service can present a unified identity in its thinking, behaviour and operations.

The Attorney General's Office of the Republic of Indonesia as a government agency that exercises state power in the field of prosecution must be able to realise legal certainty, legal order, justice and truth based on the law and heed religious norms, decency and morality, and must explore human values, law and justice that live in the community. The settlement of criminal cases by prioritising Restorative Justice, which emphasises the restoration to the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation, is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system.

Law in the sense of right and justice is an aspired concept. It means a state of law if it is combined with these two concepts. It is only through a just and righteous legal system that society can live peacefully towards physical and mental prosperity. Interpreting an essential truth and justice, moral reflection is very important.

The need for case settlement based on Restorative Justice in overcoming cases of persecution in the North Padang Lawas State Attorney's Office is considering the frequent occurrence of cases of persecution between Suspects and Victims who are still related by blood (Father / Mother and Child) or fraternal relations in the jurisdiction of the North Padang Lawas State Attorney's Office, therefore the North Padang Lawas State Attorney's Office offers the Victim and Suspect to resolve the persecution case based on restorative justice as a form of overcoming cases of persecution in the jurisdiction of the North Padang Lawas State Attorney's Office.

The implementation of termination of prosecution must be guided by Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In accordance with Article 5 paragraph (1) of the Attorney General's Regulation Number 15 of 2020, which states that 'Criminal cases can be closed for the sake of law and discontinued prosecution based on Restorative Justice in the event that the following conditions are met:

- a. The suspect is a first time offender
- b. The criminal offence is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years
- c. And the criminal offence is committed with the value of goods or evidence of the value of the loss incurred as a result of the criminal offence is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah)'

This law is one of the foundations for the application of restorative justice in the resolution of criminal offences. This means that as long as the crime committed by the perpetrator does not depart from these conditions, restorative justice can be applied in resolving criminal offences.

Broadly speaking, the stages of implementing Restorative Justice in the Prosecutor's Office are contained in Prosecutor's Regulation Number 15 of 2020 Chapter IV of the procedures for peace, including:

- a. The public prosecutor offers a peace offering to the victim and suspect,
- b. Peace efforts as referred to in paragraph 1 shall be made without coercion, pressure and intimidation,
- c. Peace efforts as referred to in paragraph 2 are made at the prosecution stage, namely at the time of handing over responsibility for the suspect and evidence (stage 2)
- d. For the purpose of peace efforts, the public prosecutor shall summon the victim legally and properly by stating the reason for the summons,
- e. In the event that it is deemed necessary, peace efforts may involve victims or suspects, community leaders or representatives, and other related parties,
- f. The public prosecutor informs the purpose and objective as well as the rights and obligations of the victim and suspect in the peace effort, including the right to refuse the peace effort,
- g. In the event that the peace effort is accepted by the victim and suspect, the peace process shall be conducted,
- h. After the peacemaking attempt is accepted by the victim and suspect, the public prosecutor makes a report of the accepted peacemaking attempt to the head of the district prosecutor's office or the branch of the head of the district prosecutor's office to be forwarded to the head of the high prosecutor's office,
- i. In certain cases that receive special attention from the leadership and the public, the report referred to in paragraph 8 is also submitted to the attorney general in stages.
- j. In the event that a peace effort is rejected by the victim/ or suspect, the public prosecutor shall, for example, state the failure of the peace effort in the official report, make a memorandum of opinion that the case be submitted to the court by stating the reasons and submit the case file to the court.

The settlement of criminal cases by prioritising the principle of Restorative Justice, which emphasises the restoration to the original state, the balance of protection and the interests of victims, perpetrators of criminal acts that are not oriented towards retaliation, is a

legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system. Criminal justice is carried out based on criminal procedural law which is divided into several stages, each stage involving certain institutions.

### **B. Efforts and Obstacles in Countering the Crime of Maltreatment Based on Restorative Justice by the North Padang Lawas State Attorney's Office**

Based on the results of research at the North Padang Lawas State Attorney's Office, the efforts of the North Padang Lawas State Attorney's Office in resolving persecution cases based on restorative justice are as follows:

- a. The North Padang Lawas District Attorney through the Public Prosecutor has the responsibility to assess whether a case is eligible to be resolved through restorative justice. The Public Prosecutor must consider the type of crime, the harm suffered by the Victim, and the goodwill of the Suspect.
- b. As a facilitator to conduct mediation between the parties involved in the case, namely the Suspect, the victim, and the community. The Public Prosecutor will facilitate dialogue and negotiation to reach an agreement, such as an apology from the suspect or compensation to the victim.
- c. Establish a Restorative Justice House located in Purba Sinomba Village, Padang Bolak Sub-district, North Padang Lawas Regency as a forum for the implementation of follow-up to the case settlement process based on Restorative Justice, involving elements from the community in every effort to settle cases by involving victims, suspects, village heads, community leaders or community representatives, and other related parties.

The process of resolving persecution cases based on Restorative Justice at the North Padang Lawas State Attorney's Office is that initially the North Padang Lawas State Attorney's Office receives a Notice of Commencement of Investigation (SPDP) from the Police Investigation, then the Head of the North Padang Lawas State Attorney's Office appoints a Public Prosecutor to examine the case file whether the settlement can be implemented based on Restorative Justice or not. If the Head of the North Padang Lawas District Prosecutor's Office together with the Head of the General Crimes Section and the Public Prosecutor initiate the settlement of this case through the Restorative Justice mechanism, a peace process will be carried out between the Suspect and the Victim.

During the peace process, the suspect admitted and regretted his actions and apologised to the victim. After that, the victim accepted the apology from the suspect and also requested that the legal process being undertaken by the suspect be stopped.

After reaching a peace agreement, the Head of the North Padang Lawas District Attorney's Office will submit a request for termination of prosecution based on restorative justice to the Head of the North Sumatra High Prosecutor's Office. After studying the case file, the Head of the North Sumatra High Prosecutor's Office will have the opinion to terminate prosecution based on restorative justice and will submit a request to the Deputy Attorney General for General Crimes (JAM-Pidum), then JAM-Pidum will conduct a Case Exposure to approve the application for case settlement based on the restorative justice mechanism.

The administrative requirements for terminating prosecution based on Restorative Justice are: The appointed Public Prosecutor will prepare a number of administrations necessary for its implementation and as a report to the leadership. The administration includes a Memorandum of Opinion on the Results of Case File Research, an Order to facilitate a peace process based on restorative justice, a Summons to the relevant parties, a Notice of out-of-court settlement based on restorative justice to the investigator, as well as a number of other documents such as a Memorandum of Opinion on the effort / peace process, a Peace Agreement, and a Decree of Termination of Prosecution from the Chief Prosecutor. Thus, the process of resolving criminal cases based on restorative justice at the North Padang Lawas District Attorney's Office must be completed to ensure its implementation in accordance with established procedures.

Peace efforts are made without coercion and are carried out at the prosecution stage, namely at the time of handing over the suspect and evidence (Phase II) from the investigator (police) to the Public Prosecutor (Attorney).

Based on the results of the interview with Mr Dona Martinus Sebayang, S.H, the obstacles of the North Padang Lawas District Attorney's Office against the handling of persecution crimes based on Restorative Justice, namely:

**a. Factors of Lack of Public Legal Awareness**

The low legal awareness of the people of North Padang Lawas Regency about the concept of case settlement based on restorative justice can hinder the mediation process and the agreement between the suspect and the victim. Communities often focus more on resolving cases through the courts with prison sentences rather than restorative justice for Victims and Suspects.

**b. Terms of Agreement factors that are not fulfilled**



The terms of the peace agreement that were not fulfilled by the suspect were a factor in not achieving the process of resolving cases based on restorative justice at the North Padang Lawas District Attorney's Office. One example of the terms of the peace agreement between the Victim and the Suspect is that the victim asked for an agreement by paying an exorbitant amount of money to the Suspect as a form of peace. However, the suspect did not agree to the agreement considering that the suspect is a poor community.

### c. Internal Community Factors

The feeling of not wanting to give in between the suspect and the victim is a factor in not achieving the process of resolving cases based on restorative justice at the North Padang Lawas District Attorney's Office. There are often internal community factors during the mediation process and agreement between the Suspect and Victim that can not achieve the mediation process and agreement.

*Restorative justice* This is an approach to justice that aims to hold offenders accountable, gain an understanding of the impact of the harm caused, provide opportunities for offenders to make improvements, and prevent the recurrence of crimes in the future. The main focus of this approach is to create opportunities for offenders to take responsibility for their actions, understand the consequences of the harm experienced by victims and society, and work towards self-improvement. In addition, Restorative Justice can also strengthen in preventing the recurrence of criminal acts in the future.

In handling cases of maltreatment, Restorative Justice can be implemented by strengthening the prosecutor's authority as a public prosecutor. However, in practice, there are several obstacles that need to be overcome, such as legal substance, legal structure, and legal culture. It is important to have a clear and comprehensive legal framework governing the powers and duties of public prosecutors. If the substance of the law is not clear enough or is open to varying interpretations, this can lead to uncertainty in decision-making.

## 4. CONCLUSIONS

The conclusions of this research are:

1. The Attorney General's Office legal arrangements related to Restorative Justice are regulated in Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
2. Efforts to resolve persecution cases based on Restorative Justice by the North Padang Lawas State Attorney's Office due to the frequent occurrence of persecution cases between the Suspect and the Victim who still have blood relations (Father / Mother and

Child) or fraternal relations in the jurisdiction of the North Padang Lawas State Attorney's Office, therefore the North Padang Lawas State Attorney's Office offers the Victim and the Suspect to resolve the persecution case based on restorative justice (Restorative Justice) as a form of effort to overcome persecution cases in the jurisdiction of the North Padang Lawas State Attorney's Office. As well as obstacles that occur in the North Padang Lawas Prosecutor's Office in resolving criminal offences of persecution based on Restorative Justice due to lack of public legal awareness, legal requirements for agreements that are not fulfilled and internal factors of the community in North Padang Lawas Regency.

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