

INDEPENDENCE OF THE PROSECUTOR'S OFFICE REGARDING PROSECUTORIAL DISCRETIONARY IN REALIZING RESTORATIVE JUSTICE (CASE STUDY IN NORTH MALUKU HIGH PROSECUTOR'S OFFICE)

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Abstract

The urgency of this research necessitates prosecutors to implement restorative justice to minor crimes through the principle of *dominus litis*. It must be subject to clear limitations and parameters in the *ius constituendum*. The restorative justice approach aims to restore the condition of the victim, the perpetrator, and the community. The objective of this research is to achieve prosecutorial discretion through restorative justice. The research method used is empirical law. The data types used are primary data (primary, secondary, and tertiary legal materials) and secondary data (literature studies and interviews). The North Maluku High Prosecutor's Office prioritizes restorative efforts in cases of assault. This mechanism involves the victim's family and the perpetrator's family. The number of cases in the jurisdiction of the High Prosecutor's Office in 2024 was 47 cases and 14 of them were resolved using restorative justice. This is in line with the provisions of Article 34A of Law Number 11 of 2021 concerning the Prosecutor's Office, which states that the principle of discretion regulated in Article 139 of Law Number 8 of 1981 concerning Criminal Procedure Law is carried out without ignoring the principle of law enforcement objectives which include achieving legal certainty, a sense of justice, and its benefits in accordance with the principles of restorative justice.

Keywords: *Independence; Prosecutorial Discretionary; Public Prosecutor; Restorative Justice.*

INTRODUCTION

Discretion is an essential and unavoidable part of the legal system including the criminal justice system (Sudirdja, 2023). The functioning of the criminal justice system is highly dependent on the granting of authority to the components of the criminal justice system, in order to carry out its objectives of combating crime and keeping it within the limits of tolerance (Mardjono in Sudirdja, 2023). The intended tolerance does not mean simply allowing crimes to occur in society, nor does it mean enforcing the law inconsistently (Sudirdja, 2023). However, tolerance means that law enforcement officers must be able to filter, sort and choose, and consider when to use criminal law instruments or not. Criminal law enforcement through a systems approach is known as the criminal justice system. In general, the criminal justice system can be defined as a process in which several law enforcement agencies operate through a mechanism encompassing phased activities, starting with investigation, prosecution, court hearings, and the implementation of judges' decisions by correctional institutions.

This process operates sequentially, meaning that one stage cannot override another. The entire process operates within a system, so that each institution constitutes an interconnected subsystem that influences and influences one another (Supriyanta, 2009). Restorative justice it is an alternative to the criminal justice system that prioritizes an integrated approach between the perpetrator, victim, and the community as a whole to find solutions and restore good relationships within society. This approach emphasizes efforts to address the root causes and the psychological, social, and emotional impacts of criminal acts, both on the victim, the perpetrator, and society as a whole (Prima, 2024). The concept of restorative justice is an approach that places greater emphasis on creating justice and balance for both perpetrators and victims. The criminal justice system, focused on punishment, is transformed into a process of dialogue and mediation to create a fairer and more balanced agreement or resolution of criminal

cases for both victims and perpetrators. Criminal Law as the law that regulates acts prohibited by law specifically in the country of Indonesia. Indonesian Criminal Law, adheres to the Criminal Code and the Criminal Procedure Code as well as other regulations that regulate specifically. One of the acts regulated in the Criminal Code is assault. Abuse is an act committed by a perpetrator driven by several contributing factors, including revenge, displeasure with others, and deliberate intent. This act of abuse is the most common in social settings. Abuse has now become commonplace in society and is no longer a new phenomenon. In fact, many of these acts result in the loss of life (Purba, Tarmizi, & Pohan, 2024). In Indonesia, cases of assault remained relatively high in 2024. From the beginning of the year in January to June 3, 2024, the Indonesian National Police prosecuted 20,404 cases of assault. Then, in April 2024, the number of cases handled reached 4,179. Furthermore, the number of people reported in assault cases was 20,436, as stated in an article from the National Criminal Investigation Agency of the Indonesian National Police ("Tiap Hari, Lebih 100 Orang Jadi Korban Penganiayaan," 2024). This factual evidence proves that cases of criminal acts of abuse are quite widespread in Indonesia.

Based on the data outlined above, many cases are still resolved using a retributive approach, and this is quite significant. In 2023, there were 58 cases and in 2024, there were 47 cases, totaling 105 assault cases within the jurisdiction of the North Maluku High Prosecutor's Office. This indicates that efforts to fully enforce the law have not been effective in curbing the number of assaults in Indonesia, particularly in North Maluku Province. Assault cases processed through the courts are often time-consuming, costly, and often lead to a backlog of cases, which can hamper the Indonesian justice system. Furthermore, victims often feel their rights are not being met in the formal law enforcement process. Lengthy judicial processes that focus solely on punishing the perpetrator often neglect the victims' needs and desires for more comprehensive recovery. Therefore, to address these issues, a restorative justice approach can be an effective solution, by implementing restorative justice within the criminal justice system to create justice and legal certainty for all parties involved. (Asti, 2021).

One of the focuses of the researcher's research is independence of the prosecutor's office regarding prosecutorial discretion in ordinary assault crimes in realizing restorative justice. Termination of prosecution based on restorative justice is a form of prosecutorial discretion by the public prosecutor, which also embodies the principle of *Dominus Litis*. Prosecutorial discretion is contained in Article 139 of Law No. 8 of 1981 regarding Criminal Procedure Law, which states, "After the public prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether the case file meets the requirements to be submitted to the court or not."

LITERATURE REVIEW

The phrase "determine" is the legal basis for prosecutorial discretion. Prosecutorial discretion will consider and balance the applicable rules (*rechtmaticheid*) with interpretations based on the objective or principle of expediency (*doelmatigheid*) when a case is discontinued or continued to court. At the very least, this discretion is expected to have an impact that can bring justice closer and benefit all parties. The implementation of restorative justice by the Prosecutor's Office is based on the principle of dominus litis and the mandate of Article 139 of the Criminal Procedure Code concerning prosecutorial discretion. Regarding the correlation between prosecution and the implementation of restorative justice, Article 132 paragraph 1 letter of Law No. 1 of 2023 regarding the Criminal Code, it is expressly stipulated that the authority to prosecute is declared to have lapsed if: "there has been a settlement outside the judicial process as regulated by law."

Referring to Article 12 paragraph (9) of the Prosecutor's Regulation No. 15 of 2020 Regarding the Termination of Prosecution Based on Restorative Justice, various results are outlined in the Decree on Termination of Prosecution (SKP2). In carrying out their duties, there is a principle inherent in the Prosecutor and/or Public Prosecutor, namely the principle of dominus litis, which is a form of the Public Prosecutor's authority to refer a criminal case to court or not. Case resolution using the restorative justice concept has been implemented in the Regional Prosecutor's Office of the Republic of Indonesia, particularly in North Maluku Province. In 2023, 34 cases were successfully resolved through restorative justice within the jurisdiction of the North Maluku High Prosecutor's Office. This number includes cases of ordinary assault (Rahmat, 2023).

Article 351 paragraph (1) of the Criminal Code states as follows: "Assault is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah." In the law enforcement process, the attention of law enforcement officers is always focused on the suspect or defendant in a criminal case. In the law enforcement process, law enforcement officers, police, prosecutors or judges and legal advisors seem as if the problem has been resolved if the suspect or defendant in a criminal case has been proven guilty and sentenced. However, in the development of criminal law in Indonesia, the resolution of criminal cases can

be carried out using a Restorative Justice approach. Restorative Justice resolves criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge.

METHOD

This research is an empirical legal study using a statute approach, a conceptual approach, and a case approach. The researcher used a live case study approach as an approach to a legal event whose process is still ongoing. Therefore, the targeted achievement indicators when the researcher conducted observations or research directly in the field to obtain accurate truth in the process of refining this writing. The purpose and purpose of this study are essentially used to show the path to solving the research problem (Muri, 2017). The reason the researcher chose this research location was because he wanted to highlight the implementation of crime prevention policies based on restorative justice using Penal and Non-Penal carried out by the Public Prosecutor by analyzing the restorative justice mechanism in improving the competence of prosecutorial investigators in resolving minor criminal cases at the North Maluku High Prosecutor's Office. (Wardiono, 2019)

The data collection techniques used by the researchers in this study included literature review and fieldwork, including interviews. (Budiono, 2023) These data collection methods are divided into two categories: primary data and secondary data. Primary data was obtained through fieldwork, while secondary data came from literature review. The data sources in this study are explained as follows: First, the author bases it on primary data sources as data obtained directly from the community to be studied. Primary data sources are also called basic data or empirical data. The information sources which are then called key informants here are individuals who understand the research problems that are the object of research, including the Prosecutor Investigators at the North Maluku High Prosecutor's Office. The primary data that will be used in this study are: guided free interviews, namely by preparing questions in advance as a guide, but it does not rule out the possibility of variations in questions according to the situation when the interview takes place. Interviews are conducted by means of direct and in-depth question and answer sessions with research subjects about matters related to the problem.

Second, secondary data sources are data obtained from library materials or literature that is related to the research object, namely by conducting literature study, by examining information obtained from scientific books, research reports, scientific papers, theses and dissertations, regulations, statutes, yearbooks, encyclopedias, and other written sources, both printed and electronic. The results of the field study inventory are analyzed to obtain conclusions, then analyzed using integrative and conceptual analysis methods that tend to be directed at finding, identifying, processing, and analyzing legal materials to understand their meaning, significance, and relevance. The data obtained will be systematically compiled after being selected based on the problem and examined for its compliance with applicable provisions. Then, it will be discussed theoretically and combined with the reality in the field to produce conclusions.

RESULTS AND DISCUSSION

Implementation Termination of Criminal Case of Ordinary Assault by Prosecutor Based on Restorative Justice in the Jurisdiction of the North Maluku High Prosecutor's Office

The state, through its organs or instruments of power, has the authority to determine what actions are prohibited or required to be carried out (criminal law in the objective sense (*ius poenale*)) and at the same time has the authority to impose punishments in accordance with what has been determined by law against anyone who carries out prohibited actions or does not carry out actions that are required to be carried out (criminal law in the subjective sense (*ius puniendi*)) (Meliala, 2015). The logical consequences of a criminal's actions stem from a violation of positive criminal law (criminal regulations) established by the state through lawmakers. Therefore, law enforcement officials, both police and prosecutors, who also represent the state, are obligated to process these violations in accordance with applicable criminal law. Law enforcement officers in crimes and resolve cases using formal law enforcement processes, but there are still many shortcomings, so that resolving cases using a restorative justice approach can be a case resolution that aims to overcome the weaknesses of the criminal justice system because restorative justice prioritizes restoring the situation to its original state (Meliala, 2015). Resolving cases using the concept of restorative justice is carried out based on the principles of justice, public interest, proportionality, criminal penalties as a last resort, and the principles of speed, simplicity, and low cost. This is as stipulated in Article 2 of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning the termination of prosecution based on restorative justice (The Government of the Republic of Indonesia, 2020).

Restorative justice is regulated in the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely in resolving cases through Restorative justice by terminating prosecution to restore the situation as it was originally carried out at the Prosecutor's Office level, the Public Prosecutor has the authority to stop prosecution of a case based on the principle of dominus litis and Article 139 of Law No. 8 of 1981 concerning Criminal Procedure Code which reads: after the public prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether the case file has met the requirements to be able or not to be transferred to the Court. so that the principle of dominus litis and Article 139 of the Criminal Procedure Code are the principles used by the Prosecutor in the prosecution stage to determine whether a case is transferred to the Court or not (Hermawan & Theja, 2022). The principle of opportunity is also a legal principle that gives the public prosecutor the authority to prosecute or not prosecute in criminal cases (Hermawan & Theja, 2022). Given the authority held by the Public Prosecutor, the Prosecutor has the authority to terminate the prosecution of a criminal case through a restorative justice approach. Specifically, the implementation of case resolution using the restorative justice concept is regulated in Article 3, number 1 of Regulation Number 15 of 2020, which states that the Public Prosecutor has the authority to close a case in the interests of the law.

The implementation of criminal case resolution through restorative justice is based on the principle of free will without any coercion, pressure, and intimidation. Especially in cases of ordinary assault under Article 351 point 1 of the Criminal Code, resolving the case through RJ will provide full justice to the victim and perpetrator because the resolution of cases through the Restorative Justice approach prioritizes support and healing for the victim and suspect. The settlement of ordinary assault cases through Restorative Justice in the jurisdiction of the North Maluku High Prosecutor's Office in 2024 was successfully carried out in 14 cases. One of them, the settlement of cases through the Restorative Justice approach in the Ternate District Attorney's Office in 2024 reached a total of 3 (three) cases as per the results of an interview with Mr. Danur Suprpto as Head of the Section for Crimes against Persons and Property at the North Maluku High Prosecutor's Office on August 11, 2025, with the identities of the suspects as follows:

Table 1. Identity data of cases where ordinary assault crimes were successfully resolved through Restorative Justice at the Ternate District Attorney's Office	
No	South Ternate City Police Sector Investigator Notification Letter for the Commencement of the Investigation: SPDP/17/XI/2023/Criminal Investigation Unit Received on November 8, 2023 Case file No. BP/16/XI/2023/Unitreskrim
1	Identity of the suspect Name: M. Yusril Umar Place and date of birth: Ternate, November 11, 2001 Work: students
No.	Suspect Identity Address: Were Village, Weda District, Central Halmahera City, USW, Sasa Subdistrict, South Ternate City, Ternate City
2	Ternate Police Investigator Notification Letter for the Commencement of the Investigation: SPDP/ 27/ III/ RES. 1.6/ 2024/Criminal Investigation Received on April 26, 2024 Case file No. BP/27/IV/RES.1.6/2024/Satreskrim Identity of the suspect

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Name:	Jamil Hasim Rumra
Place and date of birth:	Banda Ely, January 16, 1995
Work:	Self-employed
Address:	Kelapa Pendek Neighborhood RT./RW: 004/ 002, North Mangga Dua Subdistrict, South Ternate District, Ternate City, North Maluku Province

3 Ternate Island Police Sector Investigator
Notification Letter for the Commencement of the Investigation: SPDP/54/ VIII/2024/ Criminal Investigation
Received on September 6, 2024
Case file No. BP/05/VIII/2024/Criminal Investigation
Identity of the suspect
Name: Asyadi S. Ladjim
Place and date of birth: Bicoli, March 8, 1999
Work: Students
Address: Bicoli Raya Street, RT 006 RW 003, Bicoli Village, South Maba District, East Halmahera Regency, Haltim USW Dormitory, Jambula Village, Ternate Island District, Ternate City

Source: Primary data, processed

The table above describes the suspect's identity in a case of ordinary assault based on the provisions of Article 351 paragraph 1 of the Criminal Code. The identity consists of the police station, the number of the notification letter for the commencement of the investigation (SPDP), the date the case file was received, the case file number, the suspect's name, place and date of birth, occupation, and address. One brief description of the case is as follows:

Starting on Thursday, October 26, 2023 at around 18.00 WIT, the suspect YUSRIL went to pick up the victim NITA at the Port by pawning his motorbike for Rp. 500,000 (five hundred thousand rupiah) after arriving at Lelilef Village, then the suspect and the victim headed to Ternate, after arriving at the suspect's boarding house in Sasa sub-district, South Ternate District. In the boarding room, the suspect asked the victim "Why are you cheating, you and your lover go and sleep together", the victim answered "yes", so the suspect hit the victim using his right hand and foot, hitting and kicking repeatedly on the face, hands, neck, and waist, causing swelling, abrasions, and bluish bruises. In accordance with the results of the Visum Et Repertum examination issued by a doctor from the Bhayangkara Hospital TK IV Ternate, Number: 347/Rumkit Bhay Tk IV/X/2023 dated October 28, 2023, signed by Dr. Rdananjaya Wira Husodo. Based on the brief description of the case above, the suspect is threatened with criminal offenses under Article 351 paragraph 1 of the Criminal Code which is categorized as Ordinary Assault, ordinary assault is a criminal act that causes pain and injury, but does not constitute serious assault or death. The case was agreed to be discontinued because the victim and the suspect have forgiven each other and there has been a reconciliation and there has been compensation for medical expenses to the victim.

The prosecutor's office level resolves ordinary assault cases through the concept of Restorative justice at the implementation stage and the peace process is carried out in accordance with the provisions of Article 7 to Article 14 of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This is also applied in the jurisdiction of the North Maluku High Prosecutor's Office to resolve ordinary assault cases through a restorative justice approach based on the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Based on the Author's interview with Mr. Danur Suprpto, SH, MH as the Head of the Section of Crimes Against Persons and Property, he said that the Stage Mechanism for resolving ordinary assault cases in the North Maluku High Prosecutor's Jurisdiction is carried out simultaneously starting from stage II, when the investigator submits the suspect and evidence to the Public Prosecutor after the case file has been declared complete (P-21). Next, the Head of the District Prosecutor's Office appoints a Public Prosecutor to take the expert responsibility for the case, then the Public Prosecutor examines the suitability of the case file by looking at the

position of the case, if the case meets the requirements to be resolved using Restorative justice with the provisions stipulated in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning the termination of prosecution based on Restorative Justice, then an order is issued to facilitate peace based on restorative justice (RJ-1) to the Public Prosecutor appointed to take the expert to become a Facilitator in the peace process. The Facilitator Prosecutor makes a summons letter (RJ-2) to the victim, a summons letter to the suspect, a summons letter to the victim's companion (parents/family), a summons letter to the suspect's companion (parents/family), a summons letter to religious figures, witnesses, RT head/village head, and makes a notification letter regarding the settlement of the case outside the court based on restorative justice (RJ-3) to the Chief of Police along with an invitation to participate in the peace process.

After the summons is issued, the summoned parties attend the place of implementation, the peace process is carried out after the summons is received by the parties and in accordance with the date specified in the summons, for the peace process to be carried out within a maximum of 14 days (fourteen days) from the second stage in accordance with the provisions stipulated in the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning the termination of prosecution based on Restorative Justice. In line with the statement of Mr. Danur Suprpto SH, MH, based on an interview with Mr. Abdullah Bachruddin, SH, as the Functional Prosecutor of the Ternate District Attorney's Office and as a facilitator prosecutor, during an interview with the Author, he said that the mechanism for resolving ordinary assault cases through Restorative Justice has a similar procedure. Its implementation is based on Regulation of the Supreme Court Number 15 of 2020 concerning the termination of prosecution based on Restorative Justice. The case resolution mechanism consists of several stages starting from making a summons to the victim, a summons to the suspect, a summons to the victim's companion (family), a summons to the suspect's companion (family), a summons to Religious Leaders, Witnesses, RT/Village heads. After giving the summons to the Victim, Perpetrator, and other parties, the related parties are summoned on the same day determined based on the summons.

The implementation of the peace process is carried out at the District Attorney's Office or other agreed upon location based on a letter of instruction from the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office as per the results of an interview with Mr. Abdullah Bachruddin, SH, as the Functional Prosecutor of the Ternate District Attorney's Office (as the Facilitator Prosecutor) stating that at the Ternate District Attorney's Office the peace process between the victim and the perpetrator lasts a maximum of 3 days until the victim and the perpetrator reach a peace agreement. The form of the peace process is carried out in a closed manner to the public, only the summoned parties can attend the peace process, the peace process is carried out by bringing the victim together with the suspect and other parties directly, then the Prosecutor Facilitator informs the purpose and objectives of the meeting and provides understandings to reconcile the victim and the suspect, In the peace process directly the victim and the suspect are given the opportunity to convey what both parties feel and their respective views. In cases of ordinary assault crimes in peace efforts, victims often propose an agreement for the perpetrator to reimburse medical expenses as a condition for the victim to forgive the perpetrator. This is done so that the peace efforts of both parties can reach an agreement and run smoothly. After the peace process is carried out, if the perpetrator agrees to the agreement and both parties have forgiven each other, the Prosecutor Facilitator will make a report, minutes and a memorandum of opinion on the success of the peace. For the parties attending the peace, they are required to sign some of the documents. Some of the documents that must be prepared after the peace is reached are as follows:

1. Memorandum of Opinion on Successful Peace Process (RJ-8) regarding notification of peace results to the Head of the District Attorney's Office and the Head of the General Crimes Section.
2. Memorandum of Opinion on the Implementation of Peaceful Settlement (RJ-9), notification that the implementation of peaceful settlement has been implemented and has been successfully carried out because it meets the requirements of Regulation of the Supreme Court Number 15 of 2020 concerning the termination of prosecution based on restorative justice.
3. Report on successful peace (RJ-10),
4. Peace Agreement (RJ-16), contains evidence of the success of the peace agreement in the Agreement letter without any elements of coercion, pressure or fraud from any party and is proven by being signed by the facilitator prosecutor, victim, suspect and other parties.
5. Minutes of the Successful Peace Process (RJ-18)
6. Report on the Peace Process Received (RJ-25)
7. Minutes of Peace Implementation (RJ-27)

8. The peace statement contains the signatures of the victim, perpetrator and witnesses from both parties as well as the reasons why the victim forgives the perpetrator (in written form on paper).

Based on the description above, all the documents mentioned will later become evidence that the peace process has been carried out with the right procedures and has achieved a peace that is valid according to law. According to the explanation of Mr. Abdullah Bachruddin, SH, as the Facilitator Prosecutor, said that After the peace process was successful, the Public Prosecutor as the facilitator submitted the documents to the Head of the District Attorney's Office. Next, a letter of application was made to the High Prosecutor's Office (RJ-33) regarding the request for approval of the settlement of the case based on restorative justice with the aim of stopping the prosecution of the case, the letter of application for approval was submitted to the High Prosecutor's Office if approved then the case was submitted to the Deputy Attorney General for General Crimes (Jampidum) through the Expose process to obtain approval to stop the prosecution.

After the peace process is successful, the deadline for requesting approval to terminate prosecution based on restorative justice to the Head of the High Prosecutor's Office is submitted within a maximum of 1 day after the agreement is reached. After the application is submitted, the Head of the High Prosecutor's Office determines whether it is approved or not by considering a maximum time of 3 (three) days from when the High Prosecutor's Office receives the request. If the Head of the High Prosecutor's Office (Kajati) and the Deputy Attorney General agree to terminate prosecution based on Restorative Justice, the Head of the District Prosecutor's Office as the Public Prosecutor issues a Letter of Decision to terminate prosecution within a maximum of 2 (two) days from when the approval is received. This provision refers to Article 12 numbers 3, 4, and 6 in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice (Attorney General of the Republic of Indonesia, nd). The letter of request for approval of case settlement based on Restorative Justice can be approved by the Head of the High Prosecutor's Office based on the Case Position, the Results of the Visum Et Repertum, Documents after the successful peace process, and the fulfillment of the requirements for termination of prosecution based on the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020. The requirements that must be met are:

1. The suspect committed a crime for the first time;
2. The prison sentence is not more than 5 years;
3. The losses incurred are no more than IDR 2,500,000.00 (two million five hundred thousand rupiah);
4. The suspect and victim are still related;
5. There is a peace agreement between the victim and the suspect;
6. The public responded positively.

If these conditions are met or meet the requirements stipulated in articles 4, 5, and 6 of Regulation of the Supreme Court Number 15 of 2020 concerning the termination of prosecution based on restorative justice, the Head of the High Prosecutor's Office can approve the application letter requesting approval for case settlement based on Restorative justice. Mr. Danur Suprpto as Head of the Section of Crimes Against Persons and Property in the General Crimes Division at the North Maluku High Prosecutor's Office stated that the results of the peace process from the District Prosecutor's Office will then be exposed online through a zoom meeting with the High Prosecutor's Office and the Deputy Attorney General for General Crimes. The authority to carry out the exposure lies with the High Prosecutor's Office, the Exposure activity is carried out in the office meeting room or video conference room respectively, both at the District Prosecutor's Office, High Prosecutor's Office and the Deputy Attorney General for General Crimes.

The exposure activity involves the District Attorney's Office presenting or reporting cases that have successfully undergone a peace process in the form of photos or videos related to the implementation of the peace process using a restorative justice approach, accompanied by minutes and a peace statement or documentary evidence of the success of the peace process through a zoom meeting. After presenting the video or photos related to the peace process, the Head of the High Prosecutor's Office and the Assistant for General Crimes request approval from the Deputy Attorney General for General Crimes to discontinue prosecution. The presentation in the exposure activity is what the Deputy Attorney General for General Crimes and the Director of Crimes Against Persons and Property (Oharda) consider to grant permission or approve the case to discontinue prosecution based on restorative justice. If the Deputy Attorney General for General Crimes and the Director of Crimes Against Persons and Property (Oharda) agree to the termination of the case based on restorative justice, the District Attorney's Office, as the Public Prosecutor, can issue a letter of determination to terminate the prosecution within a maximum of 2 (two) days from the date of receipt of the approval. The letter of determination of prosecution contains the reasons for the prosecution based on restorative justice and determines the status of the evidence in the criminal case. However, if the case is

rejected or not approved for termination of prosecution, the case file will be transferred or forwarded to the District Court. Cases that have been approved to be discontinued through restorative justice by the Deputy Attorney General for General Crimes, after which a notification letter is issued to the Police and District Court that the case has been resolved through restorative justice and after that the case is declared officially closed. The suspect is still being detained in the case of ordinary assault even though the threat of imprisonment is 2 (two) years and 8 (eight) months. However, after the case was stopped prosecution and declared officially finished. Therefore, the Public Prosecutor is obliged to release and release the suspect from detention as the results of the interview with Mr. Abdullah Bachruddin, SH, as the Functional Prosecutor of the Ternate District Attorney's Office (As the Facilitator Prosecutor) stated that this is as stated in Article 15 numbers 1 and 2 of Regulation of the Supreme Court Number 15 of 2020 concerning the termination of prosecution based on restorative justice, which reads:

1. Detention, suspension of detention, and/or suspension of detention of suspects is carried out in accordance with the provisions of laws and regulations.
2. In the event that a suspect is detained and the prosecution is terminated based on restorative justice, the Public Prosecutor will immediately release the suspect after the letter of decision to terminate the prosecution is issued.

The suspect must be detained in accordance with the provisions of the regulations. The suspect may be released from detention after a decree terminating the prosecution is issued. A brief outline of the stages of the case process through the RJ for ordinary assault is as follows:

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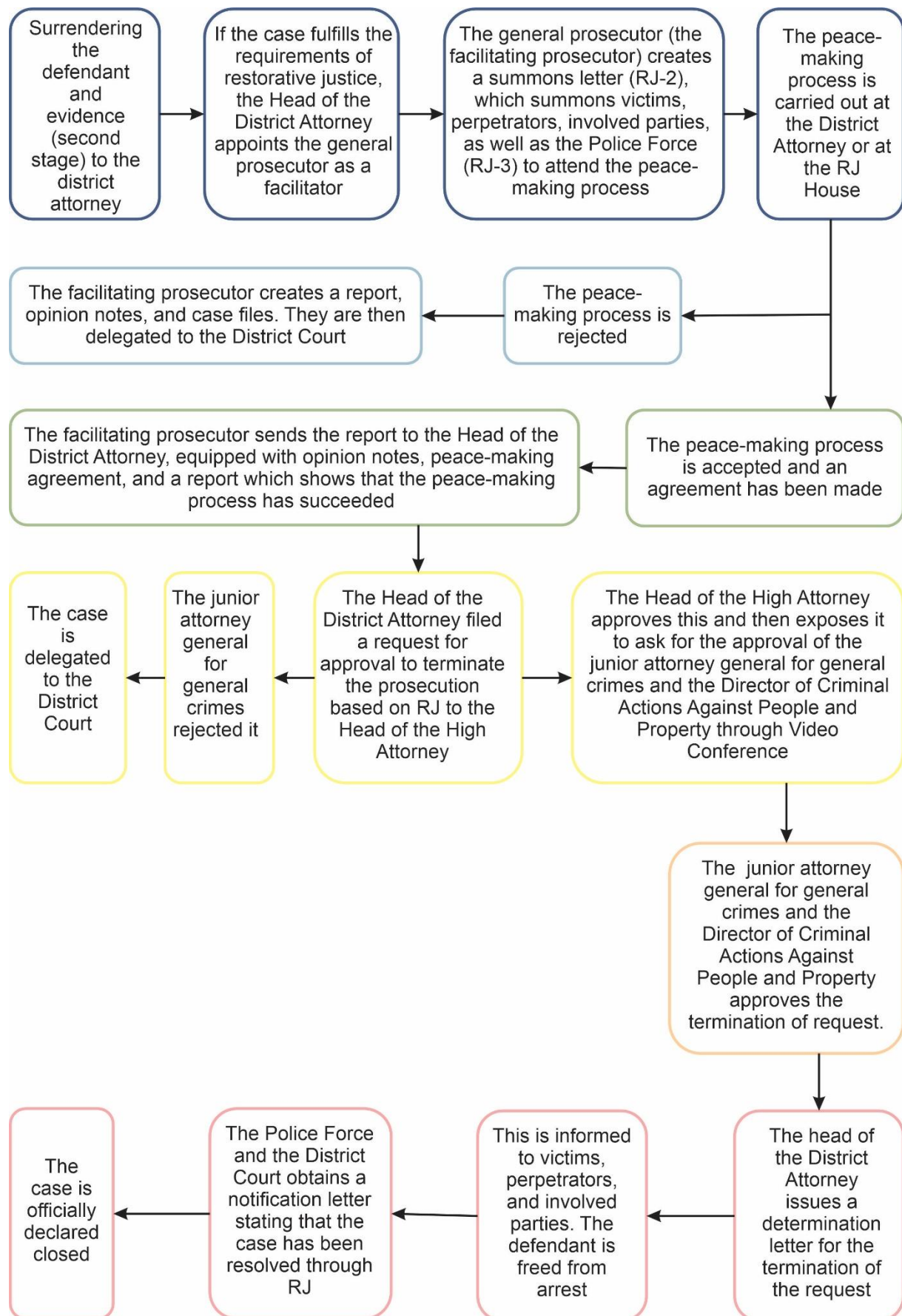


Image 1: The Stages of Resolving a Case Through the RJ for Ordinary Assault

According to Mr. Abdullah Bachruddin, SH, a Functional Prosecutor at the Ternate District Attorney's Office (as the Facilitator Prosecutor), based on an interview with the author, the peace process for ordinary assault cases through Restorative Justice was carried out freely without any coercion, intimidation, or pressure. The Facilitator Prosecutor reconciled the victim and the suspect using religious, emotional, and psychological approaches, which are crucial for the peace process to run smoothly. In connection with the Author's interview with Mr. Danur Suprpto SH, MH, as Head of the Section of Crimes Against Persons and Property, he said that the thing that needs to be considered in resolving ordinary assault cases through restorative justice is the relationship between the victim and the suspect because it is possible that if the victim and the suspect have a close relationship or still have family ties with each other if the case is not resolved through restorative justice and does not prioritize the rights of the victim, the perpetrator and other related parties, it will have an impact on the family relationship of the victim or perpetrator. The impact is usually that the relationship between the perpetrator and the victim and the victim/perpetrator's family becomes strained, whether it is a personal relationship or a kinship relationship because there will be resentment towards each other. Resolving cases of criminal assault through a restorative justice approach can have a positive impact on restoring the original situation and harmonizing and strengthening family relationships because resolving cases through restorative justice aims to restore the original situation as if there were no problem. In addition, the concept of restorative justice aims to focus on justice based on peace, not justice based on revenge (Leo&Sinaga, 2023), because problem solving through restorative justice focuses on several principles, namely:

1. Prioritize recovery of losses experienced by victims in the form of physical, material and emotional losses;
2. Applying dialogue and mediation techniques to all parties in the peace process to help find and understand the best solution.

The principles outlined above have been used in efforts to resolve ordinary assault crimes through a restorative justice approach in the jurisdiction of the North Maluku High Prosecutor's Office, including the Ternate District Prosecutor's Office. This includes prioritizing recovery for physical, emotional, and material losses. This also includes fostering effective dialogue and mediation aimed at fostering understanding between the parties and strengthening and improving the relationship between the victim and the perpetrator. In the Author's opinion, the Prosecutor's Office in the jurisdiction of the North Maluku High Prosecutor's Office, especially the Ternate District Prosecutor's Office, emphasizes that in efforts to resolve cases of ordinary assault through restorative justice, a primary solution is to resolve cases fairly and remain based on the terms and procedures for peace as stipulated in the Provisions of the Republic of Indonesia Prosecutor's Office Regulation number 15 of 2020 concerning the termination of prosecution based on restorative justice. Thus, the North Maluku High Prosecutor's Office jurisdiction has made efforts to resolve ordinary assault through a restorative justice approach in accordance with the provisions of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning the termination of prosecution based on restorative justice.

Implementation of Law on Prosecutorial Discretionary, Obstacles, and Solutions Faced by Prosecutors Regarding the Implementation of Restorative Justice in the Settlement of Cases of Ordinary Assault in the Jurisdiction of the North Maluku High Prosecutor's Office.

Prosecutorial discretion can be simply defined as the authority granted to the Public Prosecutor to decide whether or not to prosecute a defendant accused of committing a criminal act in court, even if there is strong evidence to prove his guilt and there is no legal obstacle to prosecuting. The Public Prosecutor's authority to exercise prosecutorial discretion is an implementation of the prosecution model based on the principle of opportunity or often called the expediency principle. As the opposite, the legality principle is known, namely the prosecution model that requires prosecution (compulsory prosecution) for every criminal act as long as there is sufficient evidence to prove the act in court (Peter in Kindangan, 2023: 89).

The general explanation of Law Number 11 of 2021 states that penal mediation is a case resolution outside the court as an implementation of restorative justice that balances fair legal certainty and the benefits and embodiment of the Prosecutor's Authority in exercising prosecutorial discretion (prosecutorial discretionary or opportunititeit beginselen) which is carried out by considering local wisdom and the values of justice that live in society. On the other hand, Article 34A of Law Number 11 of 2021 also stipulates that for the purposes of law enforcement, the Prosecutor and/or Public Prosecutor in carrying out their duties and authorities may act according to their judgment while taking into account the provisions of laws and regulations and the code of ethics. The explanation of Article 34A states that the principle of discretion regulated in Article 139 of Law Number 8 of 1981 concerning Criminal Procedure Law is carried out without ignoring the principle of the objectives of law enforcement which include achieving legal certainty, a sense of justice, and its benefits in accordance with the principle of restorative justice

which encourages the development of criminal law in Indonesia. To accommodate developments in society that want minor crimes or crimes with low economic losses not to be continued with the criminal process in the principle of law enforcement efforts that prioritize justice. This is in line with the doctrine of Prosecutorial discretionary and the policy of leniency. The legal basis for out-of-court settlement as stipulated in Law Number 11 of 2021 is further reaffirmed in Article 132 paragraph 1 letter g of Law Number 1 of 2023 concerning the Criminal Code, which stipulates that one of the reasons for the lapse of prosecution authority is the existence of a settlement outside the judicial process as stipulated in the Law. The explanation of Article 132 further states that in this provision, what is meant by "prosecution" is the judicial process that begins with the investigation. Based on the description above, it is clear that the issuance of Law Number 11 of 2021 provides a basis and clarity regarding the application of prosecutorial discretion in Indonesia (Kindangan, 2023: 95-96). Thus, the author focuses on application of law prosecutorial discretion in resolving cases of ordinary assault in the jurisdiction of the North Maluku High Prosecutor's Office.

Considering that the crime of ordinary assault is a criminal act that is very detrimental to the victim physically, emotionally, and psychologically. The crime of ordinary assault is defined as a criminal act that causes pain and injury, and results in obstacles in carrying out daily activities or work. Victims who experience ordinary assault, Article 351 paragraph 1 of the Criminal Code, are parties who feel the impact of the act, either in the form of pain or injury resulting from the perpetrator's actions. Therefore, the crime of ordinary assault is generally seen as a crime whose resolution must go through a formal law enforcement process or through the District Court. However, the suffering experienced by the victim tends to require more recovery from the victim's physical, emotional, and material condition. Therefore, resolving ordinary assault cases is more efficient using a restorative justice approach aimed at restoring the victim's condition and focusing on the victim's rights. However, sometimes the implementation of resolving ordinary assault cases through an approach in the form of a peace process carried out by the Prosecutor's Office often encounters obstacles faced by the Prosecutor's Office, whether these obstacles come from the victim, the perpetrator, or the victim/perpetrator's family.

One of these efforts is the successful resolution of ordinary assault cases through restorative justice at the Ternate District Attorney's Office, which involved approximately three cases in 2024. Despite the success of the settlement, the Public Prosecutor still faces obstacles in the settlement process. According to Mr. Abdullah Bachruddin, SH, as the Facilitator Prosecutor, the obstacles encountered in the implementation of ordinary assault cases through restorative justice in 2024 at the Ternate District Attorney's Office include the following (Syuhrah, 2025):

1. Difficulty in bringing the parties together: The Facilitator Prosecutor is required to summon the victim, perpetrator, the victim/perpetrator's family, religious leaders, and related parties, as stipulated in Article 8, points 1 and 2 of Regulation of the Supreme Court Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. However, the Facilitator Prosecutor sometimes faces difficulties in bringing the parties, including the victim, suspect, victim/suspect companion, religious leaders, RT/Village Head, and other related parties. This can be an obstacle that hinders the peace process because the presence of the parties is very necessary to help provide solutions and support the smooth peace process. Furthermore, the absence of the parties will delay the implementation of the peace process.
2. The victim finds it difficult to forgive the perpetrator: One of the main requirements for reaching a settlement agreement, and for the prosecution to be discontinued, is for the victim and suspect to forgive each other and be willing to reconcile. In assault cases, the victim is often someone who has suffered significant losses. Therefore, they often harbor feelings of resentment and are unwilling to forgive. If the victim cannot forgive the perpetrator, the settlement process cannot proceed smoothly.
3. The victim's family refused to make peace: One of the key factors in achieving a peace process lies in the victim's decision. The victim may forgive the perpetrator. However, due to the physical, emotional, and material suffering caused by the victim, the victim's family is unable to forgive the perpetrator. Therefore, some victims prefer to respect the family's decision as a form of obedience to their parents and follow their family's wishes to maintain a strained relationship with their parents. This obstacle can hinder the success of the peace process in cases of ordinary assault.
4. The perpetrator has not yet paid off the material losses: The success of the peace process in ordinary assault cases through Restorative Justice is not solely because the victim forgives the perpetrator, but in achieving the peace process there is an agreement between the victim and the perpetrator, such as the perpetrator paying the victim's losses in the form of medical expenses or reimbursing the victim's medical expenses. The perpetrator can pay in stages, either through installments or paying part of the loss costs. However, after the

case is stopped, the perpetrator tends to delay paying the loss costs, this obstacle can result in the failure of the successful resolution of assault cases through Restorative Justice.

5. Lack of public understanding regarding restorative justice: The public often assumes that disputes are best resolved through the criminal justice system. Some are unaware of the existence of peace settlement through RJ. They also lack an understanding of how restorative justice works and its benefits. This hinders public support for the peace process.
6. The perpetrators find it difficult to gain acceptance from society: Perpetrators of ordinary assaults often face a negative stigma from society. People tend to think that if a perpetrator commits a crime, they are inherently evil. This perception prevents them from accepting and responding positively. These responses and thoughts can hinder the peace process.

Based on the description above, there are obstacles faced by the Prosecutor/Facilitator Prosecutor which resulted in hampering the peace process. The obstacles faced by the Prosecutor/Facilitator Prosecutor. The obstacles faced are not easy for the Prosecutor or Facilitator Prosecutor to overcome these obstacles. However, the Prosecutor Facilitator managed to find solutions and ways to ensure the case remains successful, namely the case can be resolved using a restorative justice approach. According to Mr. Abdullah Bachruddin's statement in an interview with the author, the Prosecutor Facilitator plays a very important role in the peace process. The solutions provided by the Prosecutor or Facilitator Prosecutor in overcoming obstacles in implementing the settlement of ordinary assault cases through Restorative Justice are as follows (Syuhrah, 2025):

1. Developing the communication and mediation skills of the Prosecutor Facilitator: The Prosecutor Facilitator plays a crucial role in ensuring the smooth implementation of reconciliation between the victim and the perpetrator. The Prosecutor Facilitator's role is to provide understanding and build trust with the victim, the perpetrator, and all other parties involved. The Prosecutor Facilitator's communication and mediation skills are essential for mediating conflicts and helping both parties reach a just peace agreement. Developing the Prosecutor Facilitator's communication and mediation skills can be a key solution for the victim to forgive the perpetrator, for both parties to forgive each other, and for the victim's family to accept the reconciliation and apology from the perpetrator.
2. Promoting Peace through Religious, Emotional and Psychological Approaches: The solution to overcome the obstacles of victims who have not been able to forgive the perpetrator is a religious, emotional and psychological approach. The Prosecutor Facilitator in reconciling the victim with the suspect and the parties involved by using religious values by presenting Religious Figures to encourage the perpetrator to admit mistakes and apologize to the victim, as well as an emotional approach by the Prosecutor Facilitator communicating personally with the victim and the perpetrator to understand and understand each other's feelings and a psychological approach so that both parties easily accept peace and the peace process runs smoothly.
3. Peace through an approach from the social and family environment: The social and family environment plays a significant role in assisting the peace process between the perpetrator and victim. The presence of the neighborhood head (RT)/village head (Kepala RT) or community leaders from the perpetrator's neighborhood can help support the peace process, as the perpetrator may be known in his daily life as a helpful and kind person to his neighbors. Furthermore, the family approach involves bringing the perpetrator's family to reassure the victim, and the victim's family provides assurance that a similar incident will not happen again. This support from the social and family environment is very influential in providing solutions for the successful peace process.
4. Conducting legal counseling regarding restorative justice: Some members of the public do not yet understand the concept of restorative justice and its purpose, making it difficult for perpetrators to gain acceptance from the community. Therefore, to overcome this obstacle, the Public Prosecutor's Office of the District Attorney holds legal counseling sessions aimed at increasing public understanding and awareness of its importance. Furthermore, a mandatory solution in restorative justice peace efforts is to provide the parties with a fundamental understanding of case resolution through restorative justice before the peace process is implemented.
5. Attorney Facilitator Facilitates Additional Agreements: For perpetrators who cannot pay the medical expenses properly, the Facilitator facilitates an additional agreement with the perpetrator to restructure the payment scheme. If the perpetrator is experiencing financial difficulties, this can take the form of other compensation, such as providing assistance in the form of goods, helping the victim or the victim's family with work, and providing financial support to community leaders.

According to Mr. Danur Suprpto, based on the exposure activities seen, the obstacles faced by the Public Prosecutor in the jurisdiction of the North Maluku High Prosecutor's Office including the Ternate District Prosecutor's Office are Victims and Perpetrators who do not want to reconcile, usually the one in control to overcome these obstacles is the role of the Facilitator Prosecutor both through Communication and Mediation. Based on the explanation, the results of the Author's investigation that the implementation of the resolution of ordinary assault criminal cases through Restorative justice carried out in the jurisdiction of the North Maluku High Prosecutor's Office including the Ternate District Prosecutor's Office, the implementation stages are carried out based on the provisions of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In addition, the Public Prosecutor of the Ternate District Prosecutor's Office continues to strive to overcome obstacles in resolving Ordinary Assault Criminal Cases by fulfilling the requirements of Regulation of the Supreme Court Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

CONCLUSION

Based on the research results and discussion above, the following conclusions can be drawn: The North Maluku High Prosecutor's Office prioritizes restorative efforts in cases of assault. The mechanism for terminating prosecution through reconciliation between the two parties can be seen in the reconciliation mechanism between the victim and the suspect, which involves the victim's family and the perpetrator's family. Therefore, the crime of ordinary assault is an act that harms the victim physically, emotionally, and psychologically. The number of cases in the jurisdiction of the High Prosecutor's Office in 2024 was 47 cases, of which 14 cases were successfully terminated based on restorative justice. One of them was in the Ternate District Prosecutor's Office with 3 cases. The implementation and procedures for resolving criminal acts of assault in the jurisdiction of the North Maluku High Prosecutor's Office through RJ are based on Regulation of the Supreme Court Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Prosecutorial discretion, obstacles, and solutions faced by prosecutors regarding the implementation of restorative justice in resolving cases of ordinary assault in the jurisdiction of the North Maluku High Prosecutor's Office are in line with the provisions of Article 34A of Law Number 11 of 2021 concerning the Prosecutor's Office, which states that the principle of discretion regulated in Article 139 of Law Number 8 of 1981 concerning Criminal Procedure Law is carried out without ignoring the principle of law enforcement objectives which include achieving legal certainty, a sense of justice, and its benefits in accordance with the principles of restorative justice. Then it is reaffirmed in Article 132 paragraph 1 letter g of Law Number 1 of 2023 concerning the Criminal Code which stipulates that one of the reasons causing the cessation of prosecutorial authority is that there has been a settlement outside the judicial process as regulated in the Law. There are several obstacles faced by the facilitator prosecutor, one of which is that the victim finds it difficult to forgive the perpetrator. To overcome this obstacle, the solution implemented by the facilitator prosecutor is: Developing the facilitator prosecutor's communication and mediation skills and encouraging peace through a religious, emotional and psychological approach.

Then, it is suggested that Restorative justice requires a peace process that seeks to restore victims through a psychological approach throughout the North Maluku District Attorney's Office, not just the Ternate District Attorney's Office. This approach is expected to allow victims to recover more quickly from the trauma they experienced, feel they have received restorative justice, and reduce the number of cases of ordinary assault within the jurisdiction of the North Maluku High Prosecutor's Office. Law enforcement agencies should conduct a special training program for prosecutors and law enforcement officers on the principles of restorative justice. This training can enhance prosecutors' ability to handle ordinary assault crimes using a restorative justice approach, thereby enhancing the peace process through restorative justice.

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