

# Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia

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# Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia



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## ABSTRACT

By law, under the principle of opportunity, public prosecutors have been entitled to the authority to proceed or terminate the criminal cases under their authority. However, the termination of prosecution by the attorney generals is mostly not followed by a victim-oriented settlement. In this case, the principle of opportunity is not in line with the victim interest. On the other hand, the direction of legal reform in Indonesia promotes restorative justice approach in every criminal case settlement. In this regard, this article aims to investigate the way to implement restorative justice in case terminations by General Attorney of Indonesia. This research relies on socio-legal approach. Data were collected through the investigation of regulations and works of literature related to the termination of prosecution of criminal cases and restorative justice. The result of this study indicates that the regulation concerning termination of prosecution based on restorative justice is obviously departed from the public needs. According to General Attorney Regulation, restorative justice which is oriented to the public interest has the chance to be implemented as the basis for termination of prosecution of criminal cases; therefore, the penal court can be addressed as the last option (*ultimum remedium*).



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## 1. Introduction

Restorative Justice is identified as an approach to correct the harm by giving the victim and those responsible for the harm an opportunity of communicating about and addressing their needs following the crime.<sup>1</sup> Restorative Justice is used as well as the strategy of handling the crime to deal with dissatisfaction with the less optimal performance of conventional Criminal Justice System leading to Retributive Justice.<sup>2</sup> Restorative justice is an alternative to the settlement of criminal case with

<sup>1</sup>Moh Iqra, Syabani Korompot, and Al-fatih David, 'The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 12-46. <https://doi.org/10.53955/jhcls.v1i3.13>

<sup>2</sup>Zvi D Gabbay, 'Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices', *Journal of Dispute Resolution*, 2 (2005), 349-98. Shih Ya Kuo, Dennis

an emphasis on integral approach between perpetrator and victim and community to find solution and to get back into good relation pattern in the society.<sup>3</sup>

Restorative Justice, according to Daniel W. Van Ness and Karen Heetderks Strong, emphasizes the correction of the harm generated by criminal behavior, conducted by confronting the parties to decide the best solution to the case occurring. John Braithwaite suggests that the primary purpose of Restorative Justice is to heal the harm resulting from the perpetrator's deed and conciliation and reconciliation among victims, perpetrators, and communities. Thus, the feeling of shyness and personal and family responsibility will grow into their guilt and correct it adequately.<sup>4</sup>

According to Bagir Manan, restorative justice involves the principles to establish joint participation between perpetrator, victim, and community group to resolve a criminal event. It positions the perpetrator, victim, and communities to be "stakeholders" working collectively to find a fair solution for the parties (win-win solutions). Susan Sharpe explains 7 (five) principles in restorative justice: (1) restorative justice involves full participation and consensus, in which victim and perpetrator should participate actively in negotiation to find a comprehensive resolution. It also gives those harmed by the perpetrators an opportunity of discussing to solve this problem; (2) restorative justice looks for solutions to restore and heal the harm due to criminal acts committed by the perpetrator. It involves the attempt to heal the victims for the crime affecting them; (3) Restorative justice gives the perpetrator the full responsibility for his/her deed, in which he/she should be regretful and admit his/her guilt and be aware that it has harmed others; (4) restorative justice tries to reintegrate the perpetrator into the normal life from which he/she has been separated so far due to the crime, through reconciling the victim and perpetrator; (5) restorative justice enables the people to prevent the repeated crime from occurring. Crime harms social life but people can take some lessons from it to reveal genuine justice for all the people.<sup>5</sup>

The provision in Article 3 clause (2) letter (e) of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 concerning Termination<sup>6</sup> of Prosecution Based on Restorative Justice mentions that the closing of case can be

<sup>10</sup> Longmire, and Steven J. Cuvelier, 'An Empirical Assessment of the Process of Restorative Justice', *Journal of Criminal Justice*, 38.3 (2010), 318–28 <https://doi.org/10.1016/j.jcrimjus.2010.03.006>

<sup>13</sup> Vasily Lokteff, *Justice of Both Sides: Transforming Education Through Restorative Justice*, *Journal of Transformative Leadership & Policy Studies* (Harvard Education Press, 2020), ix <https://doi.org/10.36851/jtlps.v9i1.241>

<sup>15</sup> Michele R. Decker and others, 'Defining Justice: Restorative and Retributive Justice Goals Among Intimate Partner Violence Survivors', *Journal of Interpersonal Violence*, 2020, 0886260520943728 <https://doi.org/10.1177/0886260520943728>

<sup>9</sup> Alejandra Díaz Gude and Iván Navarro Pápic, 'Restorative Justice and Legal Culture', *Criminology and Criminal Justice*, 20.1 (2020), 57–75 <https://doi.org/10.1177/1748895818796549>

<sup>23</sup> Raymond Ali, 'Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia', *Sch Int J Law Crime Justice*, 4.2 (2021), 27–33 <https://doi.org/10.36348/sijlcj.2021.v04i02.001>

done for the sake of law, among others if there has been a case settled out of the court.<sup>7</sup> Furthermore, Article 3 clause (3) of the Office of Attorney General of the Republic of Indonesia's Regulation explains that the process can be done with the following provisions: (1) for certain crimes with maximum fine to be paid voluntarily according to the provision of legislation; or (2) restoration has been made into original condition using some approach.<sup>8</sup>

The five following points should be considered to terminate the prosecution using the restorative justice approach, as confirmed in the Article 4 clause (1) of the Office of Attorney General of the Republic of Indonesia's Regulation: (1) victim interest and other legal interests protected; (2) negative stigma annulment; (3) revenge annulment; (4) community response and harmony; and (5) properness, decency, and public orderliness. Public prosecutor pays attention to points, as specified in Article 4 clause (4) of the Office of Attorney General of the Republic of Indonesia's Regulation: (1) subject, object, category, and potential crime; (2) background of crime; (3) dishonor; (4) harm or consequence resulting from the crime; (4) cost and benefit of case management; (5) restoration to its original state; and (5) reconciliation between victim and suspect.

The handling of crime based on retributive justice is offender-oriented. Repressive and coercive characteristics are the center point. Punishment is considered fair retribution for the loss resulting from the perpetrator of the crime's deed. For that reason, the punishment is justified morally.<sup>9</sup> Punishment expresses that the perpetrator of a crime has responsibility for the Article of Law he/she has broken. The criminal justice system with the retributive justice paradigm is closely related to imprisonment. Imprisonment as one basic punishment is the type of punishment mostly threatened in the Penal Code and so is the criminal provision beyond KUHP, formulated either singly or cumulatively-alternatively with other criminal sanctions. The number of imprisonments included in Penal Code reaches 98% (ninety-eight percent) of total crime. Meanwhile, in the punishment provision beyond Penal Code, imprisonment reaches about 92%.

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<sup>7</sup>Abraham Ethan Martupa Sahat M<sup>35</sup>une and Teguh Prasetyo, 'Efforts to Stop Prosecutions Based on the Regulation of the Prosecu<sup>28</sup>ts of the Republic of Indonesia Number 15 of 2020 Perspective of the Theory of Dignity Justice', *Budapest Intern<sup>48</sup>ational Research and Critics Institute (BIRCI-Journal): Humanities and Social Science* <sup>21</sup>5.1 (2022), 133-42 <https://doi.org/10.33258/birci.v5i1.3586>

<sup>8</sup>Daye Gang and others, 'A Call for Evaluation of Restorative Justice Programs', *Trauma, Violence, and Abuse*, 22.1 (2021), 186-90 <https://doi.org/10.1177/1524838019833003>; Daniel W Van Ness, *The Shape of Things to Come: A Framework for Thinking about a Restorative Justice System, Presented at the Four<sup>3</sup>th International Conference on Restorative Justice for Juveniles* (Willan, 2000).

<sup>9</sup>Ahmad Syaafi, Diana Haiti, and Mursidah, 'Application of Restorative Justice Val<sup>5</sup>ues in Settling Medical Malpractice Cases', *International Journal of Criminology and Sociology*, 10.7 (2021), 103-10 <https://doi.org/10.6000/1929-4409.2021.10.14>

## 2. Research Method

This study is socio-legal research that is equipped with regulatory investigations. The main legal source is the laws and regulations concerning the Attorney General's Office of the Republic of Indonesia. Secondary legal materials are obtained from the literature that shows the urgency of restorative justice in criminal cases. After the data is obtained, it is analyzed using a legal system theory approach, which includes legal substance, legal structure, and legal culture.

## 3. Results and Discussion

Restorative Justice approach in Criminal Justice System will be well implemented if it meets the following requirements: (1) the perpetrators should admit or state to be guilty; (2) the victims should agree that the crime is settled out of Criminal Justice System; (3) Police or Attorney as the institution with discretionary authority should approve the implementation of Restorative Justice; and (4) the implementation of settlement out of Criminal Justice System should be supported by local community. In principle, Restorative Justice can be applied in all stages of Criminal Justice System. Referring to the provision of Criminal Procedural Code, Criminal Justice System consists of investigation (*opsporing*), prosecution (*vervolging*), trialing (*rechtspraak*), judge decision implementation (*executie*), and judge decision supervision and observation. The stages of process are interrelated toward one shared goal, law enforcement.<sup>10</sup>

Restorative Justice can be applied in all stages of Criminal Justice System in principle. Considering the provision of Criminal Procedural Code, Criminal Justice System consists of Investigation (*Opsporing*), Prosecution (*Vervolging*), Trialing (*Rechtspraak*), Judge Decision Implementation (*Executie*), and Judge Decision Supervision and Observation processes. The stages of process are interrelated with one shared goal, law enforcement. Restorative Justice approach in Criminal Justice System will be implemented well, when the following requirements are met: (1) perpetrators admit or state their guilt; (2) the victims agree to settle the crime out of Criminal Justice System; (3) Police or Attorney, as the institution with discretionary authority, approves the implementation of Restorative Justice; and (4) local community supports the implementation of settlement out of Criminal Justice System.

One of Subsystems in Criminal Justice System is the prosecution done by the Office of Attorney through public prosecutor. The prosecution refers to legality and opportunity principles. Legality principles is the obligation of public prosecutor to prosecute any case filed to it based on the principle of equality before the law, while the principle of opportunity is the public prosecutor's right to continue or to

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<sup>10</sup> Stacy ann Robinson and D'Arcy Carlson, 'A Just Alternative to Litigation: Applying Restorative Justice to Climate-Related Loss and Damage', *Third World Quarterly*, 42.6 (2021), 1384-95 <https://doi.org/10.1080/01436597.2021.1877128>

discontinue the case filed to it “for the sake of public interest”.<sup>11</sup> A method to examine and to understand the legal problem better is to use system approach. William A. Shore and J.R Voich defines system as “a set of interrelated parts, working independently and jointly, in pursuit of common objectives of the whole, within a complex environment.

Furthermore, Shore and Voich explain the basic definition of system, including: (1) system is always purpose oriented; (2) whole or more than the number and its parts; (3) a system interacting with the larger one, its environment; (4) the performance of the system’s parts or elements create something valuable; (5) each of parts should match each other; and (6) there is a uniting power that bind the system. The comprehension on system can be defined as a series or a number of interrelated elements to achieve certain objective. Muladi in his book entitled “Kapita Selektta Sistem Peradilan Pidana” states that system should be viewed from the context, either physical system in the sense of a set of elements working in integrated manner to achieve an objective or abstract system in the sense of ideas constituting an organized arrangement of interdependent elements. Considering those varying definitions of system aforementioned, legal system, according to Sudikno Mertokusumo, is defined as a unified whole composed of closely interrelated parts or elements. Satjipto Rahardjo states that legal system moves between 2 (two) different worlds: value and daily or social reality. As a result, dissension often occurs when the law is applied. When the law replete with value will be realized, it should face various factors affecting its social environment. Thus, law is one of subsystems among social, like social, cultural, political, and economical subsystems. It means that law is inseparable from society as its work base.<sup>12</sup>

Lawrence M. Friedman suggests three components of legal sub-systems affecting the performance of legal system: First, legal substance is a set of principle values and legal norms existing or commonly called law in the books in legal system. Friedman explains the legal substance as follows: “By this is meant the actual rules, norms, and behavior patterns of people inside the system. This is, first of all, “the law” in the popular sense of the term the fact that the speed limit is fifty-five miles an hour, that burglars can be sent to prison, that “by law” a pickle maker has to list

<sup>11</sup> Masahiro Suzuki and Xiaoyu Yuan, ‘How Does Restorative Justice Work? A Qualitative Metasynthesis’, *Criminal Justice and Behavior*, 2021, 0093854821994622 <https://doi.org/10.1177/0093854821994622>

<sup>12</sup> Abdul Kadir Jaelani and Resti Dian Luthviati, ‘The Crime Of Damage After the Constitutional Court’s Decision Number 76/PUU-XV/2017’, *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2007–12 <https://doi.org/10.53955/jhcls.v1i1.5>; Daniel W Van Ness and Karen Heetderks Strong - Restorative Justice: Justice That Promotes Healing BT - Restoring Justice (Fifth Edition), ed. by Daniel W Van Ness and Karen Heetderks B T - Restoring Justice (Fifth Edition) Strong (Boston: Anderson Publishing, Ltd., 2015), pp. 43–60 <https://doi.org/https://doi.org/10.1016/B978-1-4557-3139-8.00003-0>

his ingredients on the label of the jar.”<sup>13</sup> Second, legal structure, in this theory called structural system, determines whether or not the law is implemented well. Friedman explains legal structure as follows: “To begin with, the legal system consists of elements of the kind: the number and size of courts; their jurisdiction Structure also means how the legislature is organized, what procedures the police department follow, and so on. Structure, in way, is a kind of cross section of the legal system...a kind of still photograph, with freezes the action.” Third, legal culture is closely related to the society’s legal consciousness. The higher the society’s legal consciousness, the better will be the legal culture created and the better will be the people’s mindset on the law. Simply, the level of compliance constituting the society culture to the law is an indicator of the legal function. Friedman explains legal culture as follows: “...people’s attitudes toward law and legal system—Their beliefs, values, ideas, and expectations... The legal culture, in other words, is the climate of social thought and social force which determines how law is used, avoided, or abused. Without legal culture, the legal system is inert—a dead fish lying in a basket, not a living fish swimming in the sea. Consequence and implication of the relationship between subsystems are, among others: (1) all subsystems will be interdependent, because product (output) of a subsystem is the input to other subsystem, and (2) system approach encourages the interagency consultation and cooperation that in turn will improve the attempt of arranging the strategy of entire system.”<sup>14</sup>

Considering the literature study and the field observation related to the implementation in the Office of Attorney General of Republic’s Regulation, some gaps are found and will be analyzed using Lawrence M. Friedman’s system approach. The Office of Attorney General of Republic’s Regulation is in line with the general principles and puts the criminal process to be the last resort by prioritizing the aspect of justice and public interest.<sup>15</sup> However, there are some weaknesses related to law certainty contained in Article 5: (1) criminal case can be closed for the sake of law and the prosecution can be terminated if the following requirements have been met: a) the suspect commits the crime for the first time; b) the crime is threatened with fine sanction or no more than 5 (five)-year imprisonment only; and c) the crime is committed with the values of evidence or loss resulting in no more than IDR 2,500,000 (two million and five hundred rupiah). (2) The prosecution against the property-related crime can be discontinued in the

<sup>13</sup> Kerry Clamp, *Restorative Justice in Transition, Restorative Justice in Transition* (Routledge, 2013) <https://doi.org/10.1080/13249780203715192>

<sup>14</sup> Kimberly de Beus and Nancy Rodriguez, ‘Restorative Justice Practice: An Examination of Program Completion and Recidivism’, *Journal of Criminal Justice*, 35.3 (2007), 337–47 <https://doi.org/10.1016/j.jcrimjus.2007.03.009>

<sup>15</sup> Bona Fernandez Martogi Tua Simbolon, Alvi Syahrin, and Madiasa Ablisar, ‘Juridical Review of Comparative Prosecution Systems in Indonesia and the United States of Prosecutors Based on Restorative Justice’, in *Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021)* (Atlantis Press, 2022), pp. 85–91 <https://doi.org/10.2991/assehr.k.220204.014>

case of casuistic criteria or condition is met based on the deliberation of Public Prosecutor and the approval of the Head of District Attorney Subsidiary Office by considering the precondition as mentioned in clause (1) letter a, and followed with letter b or letter c.

Article 5 clause (5) mentions "The provision as mentioned in clauses (3) and (4) does not apply in the case of there is casuistic criteria or condition and according to the deliberation of Public Prosecutor with the approval of the Head of District Attorney Subsidiary Office, prosecution cannot be discontinued". Meanwhile, in the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice<sup>16</sup> there is no information on the parameter used by the Public Prosecutor in deciding whether or not criminal case contain casuistic condition. Thus, referring to this article, there has been no criterion to decide whether or not the case can be discontinued based on Restorative Justice. Therefore, This Article 5 clause (5) can result in multi-interpretation in the application of crime.

In legal structure aspect, based on the Experience of the Attorney in Central Java Provincial Attorney Office's jurisdiction, some challenges are found in the implementation of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution. No monitoring and evaluation mechanism available can lead to the deviation in the implementation of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice.<sup>17</sup> The deviation very potentially occurs when the process of settling the crime using Restorative Justice is made transactional. Supervision through monitoring and evaluation mechanism is an important fortress to prevent this deviation. Legal culture is people's attitude, value, and view on law. Legal culture influences strongly the component in the terms of legal substance and legal structure. Therefore, different views on the meaning of justice among the parties also contribute to the successful implementation of Restorative Justice in the process of settling the criminal case.<sup>18</sup>

The parties participating in the settlement of case using the approach including victim, perpetrator, law enforcer, and those related tend to be varying. Generally, Restorative Justice is a process of settling the crimes by involving those affected by the crime to participate actively in discussing the resolution to repair or to restore

<sup>16</sup> Nuannuan Lin, 'The Restorative Role of Apology in Resolving Medical Disputes: Lessons From Chinese Legal Culture', *Journal of Bioethical Inquiry*, 12.4 (2015), 699-708 <https://doi.org/10.1007/s11673-015-9657-1>

<sup>17</sup> Syahreni Agustin, Ismansyah Ismansyah, and Aria Zurnetti, 'Implementation of the Regulation of the Prosecutor of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice in the Jurisdiction of the High Prosecutors of West Sumatra', *International Journal of Multicultural and Multireligious Understanding*, 8.11 (2021), 506-20 <https://doi.org/10.18415/ijmmu.v11i.3205>

<sup>18</sup> Deri Mulyadi and others, 'Medical Negligence Dispute Settlement in Indonesia', *Indian Journal of Forensic Medicine and Toxicology*, 14.4 (2020), 4229-33 <https://doi.org/10.37506/ijfmt.v14i4.12304>



the loss generated in the crime. However, in its implementation, Restorative Justice is still defined as a reconciling attempt that is output oriented (reconciliation). Meanwhile, the concept of Restorative Justice is not always outcome oriented, but process-, program choice, and then outcome-oriented. As governed in the United Nation Basic Principles on The Use of Restorative Justice Programmes in Criminal Matter, Restorative Justice Programme is defined as any program using restorative process and attempt to achieve restorative outcome. Therefore, culturally a comprehensive intact comprehension should be created in legal education to the people by involving public participation to comprehend a variety of legal products concerning Restorative Justice.<sup>19</sup>

To achieve a successful implementation of Restorative Justice in the implementation of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice, some strategic measures are proposed to address the factual problem focusing on legal substance, structure, and culture. The explanation related to casuistic context in Article 5 of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice is required. To prevent the deviation in the application of Article 5 of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice, further explanation is required related to the parameter used by Public Prosecutor in deciding whether or not there are casuistic criteria in a criminal case.<sup>20</sup>

The integration of basic provisions of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice into the Draft of the Amendment to the Law Number 16 of 2004 about the Office of Attorney General of Republic of Indonesia. The change of Retributive Justice into Restorative Justice paradigm is a part of the amendment to the Law Number 16 of 2004 about the Office of Attorney General of Republic of Indonesia.<sup>21</sup> Therefore, basic provision of the termination of prosecution for the sake of Restorative Justice application can be included into the draft to provide stronger legal foundation and to guarantee the actual implementation.

Anticipative measure is important to take to deal with the deviation in the application of restorative justice through establishing monitoring and evaluation mechanism related to the implementation of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of

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<sup>19</sup> Christopher D. Marshall, 'Restorative Justice in Religion Matters: The Contemporary Relevance of Religion' (Springer, Singapore, 2020), pp. 101–17 [https://doi.org/10.1007/978-981-15-2489-9\\_7](https://doi.org/10.1007/978-981-15-2489-9_7)

<sup>20</sup> Lego Karjoko and others, 'The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 16.2 (2021), 362–92 <https://doi.org/10.19105/al-ihkam.v16i2.5314>

<sup>21</sup> Iqbal Risha Ahmadi and Suteki Suteki, 'Restorative Justice as a Basis for Stopping Prosecution by Prosecutors in a Human Rights Perspective', *Melayunesia Law*, 5.1, 99–112 <https://doi.org/10.30652/ml.v5i1.7806>

Prosecution based on Restorative Justice with the following provisions: (1) monitoring and evaluation is conducted periodically according to the implementation of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice; and (2) the result of monitoring and evaluation is arranged in the form of hard work and reported to the leader. The sustainable organization of education and training aims to improve the comprehension of law enforcers, particularly attorney as the Public Prosecutor and government-based service provider, on the concept of criminal case settlement. The implementation of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution based on Restorative Justice is the most important element to the achievement of justice aspect. For that reason, this education and training should emphasize the level of concept and mechanism to implement the regulation optimally.<sup>22</sup>

Legal education should create a law-conscious society. Legal consciousness is defined as understanding the presence of law that regulates the people behavior. However, in practice the legal consciousness is instead defined as the achievement of law-obeying society rather than the law-understanding society. Legal consciousness is actually to understand the presence of law that also protects their right as the citizen. Therefore, legal education program should also emphasize the people's consciousness of their rights as citizens in the future. In this context, socialization is expected to make the public understand the concept of justice in the criminal case settlement.<sup>23</sup>

Strategic measures to address the factual problem in the implementation of the Office of Attorney General Regulation are: (1) explaining the casuistic context in Article 5; (2) integrating the basic provisions of the Office of Attorney General Regulation into the Draft of the Amendment to the Law Number 16 of 2004 about the Office of Attorney General of Republic of Indonesia; (3) establishing monitoring and evaluation mechanism related to the implementation of the Office of Attorney General Regulation; (4) organizing Education and Training for Case Management with Approach to Law Enforcer and Government-Based Service Provider; and (5) changing legal socialization paradigm and practice. The office of Attorney is considered as dominus litis with central position in law enforcement because it is only the Office of Attorney that holds the power to decide whether a case can be forwarded to the court based on the legitimate evidence as specified in the code of criminal procedure. The dominus litis authority is confirmed by the Attorney General Regulation based on Restorative Justice expectedly more effective.

<sup>22</sup> Lois Presser and Patricia Van Voorhis, 'Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs', *Crime and Delinquency*, 48.1 (2002), 162-88 <https://doi.org/10.1177/001128702048001007>

<sup>23</sup> Ridhollah Agung Erinsyah and Elwi Danil, 'Reform of Criminal Law through Restorative Justice in Returning State Losses from Corporation as the Perpetrator of Corruption', *International Journal of Multicultural and Multireligious Understanding*, 6.6 (2019), 497-508.

#### 4. Conclusion

The existence of Restorative Justice in prosecution stage in Indonesian Criminal Justice System is governed in the Office of Attorney General Regulation Number 15 of 2020 about the Termination of Prosecution. This regulation drafting departs from the people's legal need for the restoration to original condition and the balanced protection and interest of crime victims and perpetrators that the conventional criminal justice system cannot fulfill. Using legal system theory approach, it can be found several challenges in the implementation of the Office of Attorney General of Republic of Indonesia's Regulation. In the Attorney's jurisdiction: (1) unavailable explanation about casuistic context in Article 5 clauses (3) and (4) of the Office of Attorney General of Republic of Indonesia's Regulation Number 15 of 2020 about the Termination of Prosecution leads to multi-interpretation; (2) unavailable monitoring and evaluation mechanism to prevent the deviation in the implementation of the Office of Attorney General of Republic of Indonesia's Regulation; and (3) poor understanding on the concept among victim, perpetrator, law enforcer, and those related.

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