

## A Normative Analysis of The Asahan District's Legal Discovery in Terminating Prosecution Based on Restorative Justice in Cases of Theft and Grabbing

Clara Hotmaida Siregar<sup>1</sup>, Abdul Rahman Maulana Siregar<sup>2\*</sup>, Erlina Damanik<sup>3</sup>, Sakramen Sembiring<sup>4</sup>

<sup>1</sup> Magister Ilmu Hukum, Universitas Pembangunan Panca Budi, clara.regar@yahoo.co.id

<sup>2</sup> Magister Ilmu Hukum, Universitas Pembangunan Panca Budi, abdulrahmanms@dosen.pancabudi.ac.id

<sup>3</sup> Magister Ilmu Hukum, Universitas Pembangunan Panca Budi, erlinadamanik09@gmail.com

<sup>4</sup> Magister Ilmu Hukum, Universitas Pembangunan Panca Budi, sembiringsakramen@gmail.com

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Correspondent: Abdul Rahman Maulana Siregar  
[abdulrahmanms@dosen.pancabudi.ac.id](mailto:abdulrahmanms@dosen.pancabudi.ac.id)

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### ABSTRACT

**Background:** The application of restorative justice in the criminal justice system demonstrates a paradigm shift in law enforcement from a repressive approach to one oriented toward restoration and justice. In this paper, the Asahan District Attorney's Office has a role through its authority to terminate prosecutions based on restorative justice, particularly in cases of theft and receiving stolen goods. However, the practice of terminating prosecutions does not always have detailed normative regulations in legislation, thus requiring legal discovery by prosecutors.

**Objectives:** This study aims to normatively analyze the concept of legal discovery carried out by the District Attorney's Office in terminating prosecutions based on restorative justice, particularly in cases of theft and receiving stolen goods.

**Methods:** The research method used is normative legal research with a statutory, conceptual, and case-based approach. The legal materials analyzed include legislation, legal doctrine, and cases.

**Results:** The research findings indicate that legal discovery by prosecutors is a form of legal interpretation and construction aimed at bridging the principle of legality with the demands of justice that exist in society. Termination of prosecution based on restorative justice in cases of theft and receiving stolen goods can be normatively justified as long as it is carried out selectively, proportionally, and transparently.

**Conclusions:** This study concludes that legal discovery by the District Attorney's Office plays a role in strengthening restorative justice, but still requires regulations to ensure legal certainty and uniform application in law enforcement practice.

## INTRODUCTION

Criminal law enforcement is fundamentally aimed at creating order, legal certainty, and justice for society. However, in practice, the application of criminal law, which places too much emphasis on a repressive approach, often creates new problems, particularly in cases of minor crimes such as theft and receiving stolen goods with small losses. The punitive approach in these cases is often considered disproportionate and does not reflect a sense of justice for all parties. Along with the development of the modern criminal law paradigm, there is a growing awareness that criminal law functions not solely as a means of

retribution but also as a means of conflict resolution and social restoration. In this regard, restorative justice emerges as an alternative approach that emphasizes restoration of the original state, involvement of victims, perpetrators, and the community, and a more humane resolution of cases.<sup>1</sup>

As a law enforcement institution, the Prosecutor's Office plays a crucial role in the criminal justice system, particularly at the prosecution stage. The prosecutor's authority extends beyond the mechanical transfer of cases to the courts, but also encompasses discretionary authority in determining whether a case should be

<sup>1</sup> Yuswanto, *Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia*, Jurnal Hukum dan Pembangunan, Vol. 49 No. 2, 2019, hlm. 276.

continued or discontinued. In the application of restorative justice, this authority provides a crucial opportunity for prosecutors to conduct justice-oriented legal research.

Termination of prosecution based on restorative justice demonstrates a paradigm shift from formalistic law enforcement to an approach more responsive to the values of social justice. In practice, termination of prosecution is not explicitly regulated in detail in the Criminal Code, thus requiring prosecutors to be creative and innovative in interpreting and applying existing legal norms. This situation makes legal research key to the practice of restorative justice by the Prosecutor's Office.

The prosecutor's legal decision to discontinue prosecution is inextricably linked to the principle of legality, the foundation of criminal law. While prosecutors are required to adhere to written law, they are also confronted with the demands of justice inherent in society. This tension between legal certainty and justice is what drives the need for normative studies to understand how prosecutors construct legal arguments for discontinuing prosecution based on restorative justice.

In cases of theft and bribery, the application of restorative justice becomes increasingly relevant due to the characteristics of these crimes, which often involve perpetrators from vulnerable groups, rehabilitated social relationships, and compensable losses. If these cases are still processed through the criminal justice system, the goal of punishment could potentially be lost and create new injustices for both the perpetrator and the victim.

However, the practice of terminating prosecutions based on restorative justice is not without its challenges. One major challenge is the lack of statutory regulation, which opens up room for differing interpretations and potential for inconsistent implementation at the District Attorney's Office. Therefore, legal research by prosecutors is crucial in ensuring that terminations remain within the law and are not misused.

A normative study of legal research by the District Attorney's Office, particularly the Asahan District Attorney's Office, as explored in this study, is crucial to assess whether the practice of terminating prosecutions based on restorative justice aligns with the principles of criminal law, legal certainty, and the principle of justice. This study is also necessary to identify the legal basis,

interpretative methods, and legal constructions used by prosecutors in making these decisions.

As in the case of theft and receiving stolen goods that occurred at the Asahan District Prosecutor's Office on September 7, 2025, involving the perpetrator, Suhendri, and the victim, Sahrul. In this case, restorative justice was implemented at the Asahan District Prosecutor's Office, as outlined in the Peace Agreement signed by the parties on November 11, 2025.

The rationale and necessity for implementing restorative justice include the perpetrator's guilt and remorse, followed by an agreement to reach a settlement between the perpetrator and the victim. Therefore, grounds for expungement of criminal penalties can generally be divided into two types: justification, which relates to the act, and forgiveness, which relates to the individual's or the perpetrator's mental state.<sup>2</sup>

This case demonstrates the parties' rationale for resolving the dispute through deliberation or non-litigation as a means or alternative to reaching consensus or deliberation, which is considered effective and efficient, resulting in a win-win solution for all parties. Whereas litigation or court resolution involves both winners and losers, resulting in unsatisfactory decisions for the losing party.<sup>3</sup>

Based on this case and its description, this research is expected to provide theoretical contributions to the development of criminal law and practical contributions to the Prosecutor's Office in implementing restorative justice.

### Problem Formulation

1. What are the normative provisions for restorative justice in theft and bribery cases?
2. What is the legal discovery concept implemented by the Asahan District Prosecutor's Office in terminating prosecution based on restorative justice?

### METHOD

This research is a normative legal study that positions law as a norm or rule applicable in society. Normative legal research was chosen because the focus of the study is directed at analyzing legal norms, legal principles, and legal

<sup>2</sup> Muhammad Arif Sahlepi, *Memahami Dasar-dasar Ilmu Hukum Pidana Secara Sistematis dan Praktis*, Perpustakaan Nasional: Katalog Dalam Terbitan (KDT), Juli 2022, hal. 308.

<sup>3</sup> Abdul Rahman Maulana Siregar, Rahul Ardian Fikri, Mhd. Azhali Siregar, *A Dispute Settlement Procedure Outside Court in*

*Nagori Silau, Paribuan, Simalungun District*, International Journal in Management and Social Science, Volume 11 Issue 04, April 2023.

doctrines related to the legal discovery by the Asahan District Attorney's Office in terminating prosecutions based on restorative justice. This research does not focus on field data collection, but rather on an in-depth study of legal materials and relevant legal cases.<sup>4</sup>

This research is descriptive-analytical in nature, systematically describing the normative arrangements and practices of legal discovery by prosecutors, while analyzing their compliance with the principle of legality, the purpose of punishment, and the principles of restorative justice. With its analytical nature, this research not only explains applicable norms but also provides a critical assessment of the legal constructions used.

The approaches used in this research include a statutory approach, a conceptual approach, and a case approach.<sup>5</sup> The statutory approach is used to examine the legal provisions governing the authority of the Prosecutor's Office, termination of prosecution, and restorative justice in the criminal justice system.

The conceptual approach is used to analyze the concepts of legal discovery, restorative justice, and prosecutorial discretion based on doctrine and the opinions of legal experts. Meanwhile, the case approach is used to examine the application of restorative justice by the Asahan District Attorney's Office in theft and receiving cases as material for normative reflection on emerging practices.<sup>6</sup>

## RESULTS AND DISCUSSION

### A. Normative Regulations on Restorative Justice in Theft and Receiving Cases

From a social science perspective, crime is defined as a social phenomenon arising from structural injustice or a manifestation of diverse human behavior, a reaction to the socioeconomic conditions of an individual or social group. Regardless of their origin, people in economically disadvantaged circumstances and desperate for necessities, coupled with a lack of faith, tend to think short-sightedly. They might even justify any means necessary to meet their needs.<sup>7</sup>

In criminal law, criminalization is a component of criminal policy. Criminal policy, defined as the state's efforts to combat crime, is essentially an integral part of community protection efforts aimed at achieving social well-being.<sup>8</sup>

The Indonesian Criminal Law System has entered a new phase in its development, one form of renewal in Indonesian criminal law is the regulation of criminal law in the perspective and achievement of justice towards the improvement and restoration of conditions after an event and criminal justice process known as restorative justice which is different from retributive justice (emphasizing justice on retribution) and retributive justice (emphasizing justice on compensation).<sup>9</sup>

The form of the Criminal Code Bill represents a material reform of criminal law, this reform is an effort to realize the ideals of law, so it can be said that the Criminal Code Bill is a manifestation of the Indonesian personality. The orientation of legal reform is not only to improve the law, but to replace it with a better law, so that the Criminal Code Bill does not only make changes deemed necessary to free itself from the legal paradigm of colonial heritage. Legal reform can be used as a basis for determining the direction of national character formation, the form of legal reform is a real condition towards an ideal condition, so that the Criminal Code Bill is a method for carrying out social and cultural transformation of society in a planned manner. The principle of restorative justice accommodated in the Criminal Code Bill can be seen in the provisions of several articles including Article 2, Article 12, Article 54 and Article 55.<sup>10</sup>

The normative provisions regarding restorative justice in the criminal justice system have shown significant development in recent years. Restorative justice is no longer understood simply as an alternative discourse for resolving criminal cases, but has gained normative legitimacy through various regulations and law enforcement policies. In cases of theft and receiving stolen goods, restorative justice is positioned as an approach that emphasizes reparation for victims' losses and improvement of social relationships, rather than solely punishing the perpetrator.

<sup>4</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2017, hlm. 35.

<sup>5</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 2018, hlm. 51.

<sup>6</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2012, hlm. 302.

<sup>7</sup> Rahmayanti, *Kajian Kriminologi Terhadap Anak (Pelaku Tindak Pidana Pencurian Sepeda Motor dengan Kekerasan*, Jurnal Hukum, Politik dan Ilmu Sosial (JHPIS), Vol. 2, No. 3, September 2023, hal. 292.

<sup>8</sup> Ismaidar dan Syahrudin, *Kajian Hukum Dalam Penerapan Undang-undang Tentang Pencucian Uang Dalam*

*Rangka Pemberantasan Tindak Pidana Korupsi di Indonesia*, Jurnal Hukum Responsif FH UNPAB, hal. 1-16.

<sup>9</sup> Nugraha Manuella Meliala, Ismaidar, Muhammad Arif Sahlepi, *Penerapan Restorative Justice oleh Pengadilan Negeri Medan untuk Mewujudkan Kepastian Hukum dalam Penyelesaian Tindak Pidana*, Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP), Vol. 3, No. 4, Maret 2024.

<sup>10</sup> Gilang Gemilang, Ismaidar, *Politik Hukum Restorative Justice Dalam Pembaharuan Hukum Pidana di Indonesia*, INNOVATIVE: Journal Of Social Science Research, Volume 4, Nomor 1, Tahun 2024, Page 7370-7382.

Normatively, the Criminal Procedure Code (KUHP) does not explicitly regulate the concept of restorative justice as a basis for discontinuing prosecution. However, scope for the application of restorative justice can be found through the general principles of criminal law and criminal procedure, particularly the principle of opportunity and the purpose of punishment. These principles open up the possibility for law enforcement to prioritize justice in certain cases, including theft and receiving stolen goods, which are characterized by minor offenses.

The strengthening of restorative justice regulations is increasingly evident through the internal policies of law enforcement agencies, particularly the Prosecutor's Office. This policy serves as the legal basis for prosecutors to terminate prosecutions in the interests of justice and legal expediency. In this context, restorative justice is understood as a legally valid legal instrument, even though it is not specifically regulated by law, as long as its implementation remains within the principles of legality.

The normative regulation of restorative justice within the Prosecutor's Office's authority is legally based through Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation serves as an important normative instrument that provides legal legitimacy for prosecutors to terminate prosecutions by prioritizing the restoration of social harmony and social stability. In cases of theft and receiving bribes, the regulation stipulates the objective and subjective requirements that must be met for a case to be resolved through restorative justice mechanisms.

Normatively, PERJA Number 15 of 2020 stipulates that the termination of prosecution based on restorative justice can only be applied to certain crimes, including crimes with a maximum sentence of five years, relatively minor losses, and reconciliation between the victim and perpetrator. This provision demonstrates that the application of restorative justice in cases of theft and receiving stolen goods is not arbitrary, but rather limited to maintain legal certainty and prevent abuse of authority.

In cases of theft, restorative justice can be normatively applied if the act causes relatively minor losses, does not cause widespread unrest, and the perpetrator is willing to take responsibility and reimburse the victim for the losses. These norms reflect a shift in orientation from the interests of the state to the interests of the victims and the community. Thus, the termination of prosecution is not interpreted as ignoring the law, but rather as a form of just law enforcement.

Meanwhile, in cases of receiving stolen goods, the application of restorative justice requires greater caution. This is because receiving stolen goods is often viewed as a subsequent crime related to the predicate crime. However, under certain circumstances, such as receiving stolen goods without substantial commercial motives or by perpetrators with socio-economic limitations, a restorative approach may still be considered. Restorative justice norms, in this case, require a thorough analysis of the perpetrator's role and level of culpability. Restorative justice must also consider the victim's role as the primary subject in the case resolution process. In cases of theft and receiving stolen goods, the victim has a direct interest in restitution of losses and recognition of their suffering. Therefore, the victim's consent and active involvement in the restorative process are normative requirements that cannot be ignored in discontinuing prosecution.

The existence of PERJA demonstrates a form of institutional legal discovery, where the Prosecutor's Office, through its regulatory authority, formulates operational norms to fill gaps or incomplete provisions in the law. In practice, prosecutors not only apply written norms but also construct the law by dynamically interpreting the principle of legality to align with the goals of restorative justice. This strengthens PERJA's position as the normative basis for terminating prosecutions.

In cases of receiving stolen goods, PERJA Number 15 of 2020 provides a precautionary principle compared to cases of theft. This is reflected in the assessment of the perpetrator's role, motive, and connection to the predicate offense. Normatively, PERJA requires prosecutors to conduct in-depth assessments to ensure that restorative justice does not protect perpetrators who played a role in the crime. Thus, the implementation of restorative justice remains within the public interest and the community's sense of justice.

With the enactment of Regulation (PERJA) Number 15 of 2020, the normative regulation of restorative justice in theft and receiving cases has become more systematic and measurable. PERJA serves not only as a technical guideline but also as a legal basis for prosecutors in conducting responsible legal research. Therefore, PERJA strengthens the position of the District Attorney's Office in terminating prosecutions based on restorative justice while maintaining a balance between legal certainty, expediency, and justice.

B. The Concept of Legal Research Conducted by the Asahan District Attorney's Office in

## Terminating Prosecutions Based on Restorative Justice

The concept of legal research (*rechtsvinding*) essentially arises from the need to fill gaps, ambiguities, or incompleteness in written legal norms when faced with concrete events. In the legal system, legal research is carried out not only by judges but also by other law enforcement officials with discretionary authority, including prosecutors. In terminating prosecutions based on restorative justice, prosecutors are required to interpret and construct legal norms to align with the goals of justice.

The District Attorney's legal discovery in terminating prosecution stems from the fact that positive criminal law does not yet comprehensively regulate restorative justice mechanisms. The Criminal Code and the Criminal Procedure Code are still oriented towards a retributive and formalist paradigm. This situation places prosecutors in a strategic position to conduct legal discovery by exploring the values of justice that exist in society without ignoring the principle of legality.

In practice, prosecutors' legal discovery is carried out through a process of legal interpretation of existing norms. This interpretation is not merely textual but also systematic and teleological. Prosecutors interpret the provisions of criminal procedure law and their authority comprehensively, taking into account the objectives of punishment, the interests of the victim, and the social impact of prosecution. Thus, termination of prosecution based on restorative justice is the result of a legal construction oriented towards benefit and justice.<sup>11</sup>

The District Attorney's Office's legal discovery is also closely related to the use of prosecutorial discretion. This discretion is not unlimited freedom, but rather an authority that must be legally and ethically accounted for. In restorative justice, discretion is used to assess the suitability of a case for dismissal, taking into account the nature of the crime, the level of culpability of the perpetrator, and the possibility of restoring the relationship between the perpetrator and the victim.

This concept of legal discovery reflects a paradigm shift from rigid law enforcement to responsive law enforcement. Prosecutors are no longer positioned as mechanical enforcers of the law, but rather as active actors constructing legal meaning within specific social circumstances. In cases of theft and receiving money, legal discovery allows prosecutors to avoid disproportionate punishment.

As in the theft and receiving case that occurred at the Asahan District Prosecutor's Office on September 7, 2025, involving the perpetrator, Suhendri, and the victim, Sahrul. In this case, restorative justice was carried out at the Asahan District Prosecutor's Office, as stated in the Peace Agreement signed by the parties on November 11, 2025.

In this case, in connection with the criminal act of receiving stolen goods, which is suspected of violating Article 480, point 1 of the Criminal Code, the perpetrator in this case purchased a motorcycle belonging to the victim from witness Rizky Inanda for Rp. 5,000,000. In the Peace Agreement, the perpetrator stated that he would not demand the motorcycle purchase money from witness Rizky Inanda in the future, in order to continue the case for restorative justice at the Asahan District Prosecutor's Office. Meanwhile, the victim in this case regarding the crime of receiving money carried out by the perpetrator in the Peace Letter stated that he would not sue in the future to continue this case in the trial process and the parties had agreed on November 11, 2025 and had sincerely forgiven the suspect's actions.

Based on the settlement of the case, the defendant voluntarily gave Rp 5,000,000 to witness Rizky Inanda, which was used for the treatment of his child with a physical disability in his leg.

In this theft and receiving case, there is a connection between the theft perpetrator and the recipient, where the proceeds were used for humanitarian purposes, namely the treatment of the child of the perpetrator who suffers from a physical disability in his leg. The recipient voluntarily gave the money to Rizky Inanda, both as a witness and as a perpetrator of the theft, without coercion, as a form of moral and social responsibility for his involvement in the case. This fact is a crucial element in assessing the character and motives of the parties' actions.

From a criminal law perspective, the act of receiving money still normatively meets the elements of a crime. However, in restorative justice, the focus of the assessment is not solely on fulfilling the elements of the crime, but rather on efforts to restore the consequences of the criminal act and restore the relationship between the parties. A sincere statement from the recipient of the stolen goods shows good faith and a willingness to take responsibility for their actions, which is an important prerequisite in the implementation of restorative justice.

The settlement agreement reached between

<sup>11</sup> Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan*, Kompas, Jakarta, 2009, hlm. 54.

the receiver of stolen goods, the theft perpetrator, and the victim demonstrates that the criminal conflict that arose was resolved through a non-litigation mechanism oriented toward peace. The victim consciously and voluntarily forgave the receiver's actions, indicating that the victim's psychological and social needs, as the injured party, have been met. This forgiveness is not only a personal gesture but also an indicator that the goal of restitution has been achieved.

The use of the proceeds of theft for the treatment of a child with a physical disability is a humanitarian factor in the analysis of this case. While this factor does not eliminate the unlawful nature of the act, it can substantively serve as a basis for assessing the proportionality of law enforcement. Within the framework of restorative justice, this situation strengthens the argument that formal punishment is not always the most effective means of achieving justice and legal benefits.

From the perspective of receiving bribes, the perpetrator's willingness to forfeit the money given without demanding repayment demonstrates an acknowledgement of guilt and a desire to improve the situation. This attitude reflects the internalization of restorative justice values, where the perpetrator not only avoids criminal sanctions but actively contributes to conflict resolution and redresses the impact of the crime. This demonstrates that the perpetrator's accountability does not always have to be realized in the form of punishment.

In the public interest, resolving the case through this agreement does not create social unrest or a sense of injustice in the community. Instead, a peaceful resolution strengthens humanitarian values, social solidarity, and a sense of justice within the community. Therefore, the discontinuation of prosecution in this case can be seen as a law enforcement policy that aligns with the objectives of criminal law.

A normative analysis of this case indicates that the main elements of restorative justice have been met: an admission of guilt, restoration of the relationship between the perpetrator and victim, a voluntary agreement, and the absence of objections from the injured party. With these elements met, resolving the case through restorative justice mechanisms has strong normative and moral legitimacy.

In this case, restorative justice is a resolution process carried out outside the criminal justice system, involving the victim, the perpetrator, the victim's family, the perpetrator, the community, and other parties with a stake in the crime to reach

an agreement and resolution. Restorative justice is a just resolution involving the perpetrator, the victim, their family, and other non-criminal parties, working together to resolve the crime and its consequences, prioritizing restoration over retribution.<sup>12</sup>

In these theft and bribery cases, the prosecutor's legal research is generally directed at restitution of the victim's losses and the perpetrator's admission of guilt. The prosecutor builds a legal argument that the goal of punishment can be achieved without going through the judicial process.

The concept of legal research by the Prosecutor's Office in terminating prosecution based on restorative justice is an interpretive and constructive process aimed at achieving justice. This legal research does not conflict with the principle of legality but rather enriches the application of criminal law, making it more responsive, proportional, and restorative.

## CONCLUSION

The normative regulation of restorative justice in cases of theft and receiving stolen goods demonstrates the development of a criminal law enforcement paradigm that is increasingly oriented towards justice and the restoration of social relations. Although provisions regarding restorative justice are not explicitly regulated in the Criminal Code or the Criminal Procedure Code, its normative legitimacy can be found through the principles of criminal law, the objectives of punishment, and law enforcement policies. In the cases of theft and receiving stolen goods discussed here, restorative justice is normatively justifiable as long as its application takes into account the interests of the victim, the proportionality of the act, and does not disrupt the public interest. The existence of the Republic of Indonesia Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice strengthens the legal basis for its application in law enforcement practice.

The concept of legal discovery implemented by the Asahan District Attorney's Office in halting prosecutions based on restorative justice is an interpretive and constructive process of existing legal norms. This legal discovery is carried out to bridge the limitations of normative regulations with the demands of justice that exist in society. Prosecutors not only act as formal implementers of laws, but also as legal actors who actively interpret and construct the meaning of the law to achieve

<sup>12</sup> Rahul Adrian Fikri, Abdul Rahman Maulana Siregar dan Fitri Rafianti, *Restorative Justice Efforts to Provide a Sense of Justice for Children*, International Journal in Management and

justice. Legal discovery by the Attorney General's Office is realized through the responsible use of prosecutorial discretion, taking into account the nature and impact of the crime, the level of culpability of the perpetrator, the condition of the victim, and the possibility of social restoration. In cases of theft and receiving, legal discovery allows prosecutors to avoid disproportionate punishment and replace it with a more humane and restorative resolution mechanism. This process demonstrates that legal discovery does not conflict with the principle of legality, but rather enriches the application of criminal law to be more responsive to the values of justice.

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