

## Reflections on the Dismissal of Theft Charges Through Prosecutor's Restorative Justice House in Lampung

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### ABSTRACT

The existence of restorative justice certainly brings a new paradigm in the settlement of criminal cases by seeking to resolve cases solely outside of court. The implementation of restorative justice-based prosecution termination can be applied to theft, which has the highest number of cases in Indonesia. This is because the Covid-19 pandemic created a moral crisis that led to a drastic increase in theft crimes in Indonesia, disrupting economic stability. Recently, restorative justice houses have been established in each jurisdiction of the prosecutor's office to optimize the resolution of legal problems by filtering cases that go to court, disseminating law to local residents, and involving local traditional leaders to develop local wisdom and emphasize consensus deliberation. The research approach used a normative juridical method, referencing laws and regulations sourced from primary data and literature studies on criminal law in Indonesia, which were then processed to draw specific conclusions. The study's results show that humanist restorative justice houses are an alternative for solving theft cases. The embodiment of restorative justice in a hybrid way within the prosecutor's office will establish it as a humane law enforcement agency in Lampung province.

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## 1. Introduction

The advent of restorative justice introduces a novel paradigm to the resolution of criminal cases, commencing with considerations pertaining to law enforcement. Previously, law enforcement adhered only to the view of legalism, which referred solely to laws and regulations, but now has transformed into a more complex view.<sup>1</sup> The criminal law paradigm's

<sup>1</sup> Muhaimin Muhaimin, 'Restorative Justice in the Settlement of Minor Crimes', *De Jure Journal of Legal Research*, 19.2 (2019), <http://dx.doi.org/10.30641/dejure.2019.V19.185-206>.

manifestation seeks to restore a situation through the role of a humanist prosecutor.<sup>2</sup> The existence of these provisions is a new breakthrough for prosecutors authorized to terminate charges, as it allows them to avoid the complicated processes of the trial stage directly.<sup>3</sup> On one hand, it can create a win-win solution for both the victims and perpetrators of criminal acts, emphasizing compensation for victims, and enabling forgiveness of criminal acts by both victims and the community.<sup>4</sup>

The restorative justice house is solely a manifestation of Prosecutor's Regulation Number 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice, which optimizes the termination of charges prioritizing restorative justice as long as the case meets the conditions that can be resolved out of court.<sup>5</sup> The prosecutor, based on their authority, will terminate the charges before both parties agree. In cases of theft, it is easier to determine the amount of compensation compared to other cases, enabling restoration of the original situation.<sup>6</sup>

However, it is important to ensure that the implementation of restorative justice does not resemble a peace agreement.<sup>7</sup> Although the aim is to resolve a case outside of court, it is still essential to adhere to the procedural functions that contain material truth and justice, which cannot be compromised during law enforcement.<sup>9</sup>

In this case, the economic aspect is a determinant of community welfare.<sup>10</sup> The decrease in economic stability can lead to a moral crisis with a drastic increase in theft crimes in Indonesia.<sup>11</sup> Brigadier General Awi Setiyono, the Head of the Public Information Bureau of the National Police Public Relations Division, explained that there was an increase of 522 cases at the beginning of the new normal era in July 2022, from 5,035 cases to 5,557 cases per week. In this number of cases, there were five types of crimes that had the highest number of cases, one of which was theft of two-wheeled motorized vehicles (223 cases) and theft with violence (119

<sup>2</sup> Amal Abuanzeh, 'The Rationale for Detention in the Jordanian Code of Criminal Procedure: A Comparative Study with French Law', *Heliyon*, 8.10 (2022), <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11164>.

<sup>3</sup> M Hazrati and R J Heffron, 'Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels', *Energy Research & Social Science*, 78 (2021), <https://doi.org/https://doi.org/10.1016/j.erss.2021.102115>.

<sup>4</sup> Henry Summerson, 'Hanging Matters: Petty Theft, Sentence of Death, and a Lost Statute of Edward I', *Law and History Review*, 40.1 (2022), <https://doi.org/10.1017/S0738248021000572>.

<sup>5</sup> Insun Park, Tae Choo, and Chongmin Na, 'Burnout in the DA's Office: Correlates and Coping Strategies among Male and Female Prosecutors', *International Journal of Law, Crime and Justice*, 69 (2022), <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2022.100533>.

<sup>6</sup> Shira Leiterdorf-Shkedy and Tali Gal, 'The Sensitive Prosecutor: Emotional Experiences of Prosecutors in Managing Criminal Proceedings', *International Journal of Law and Psychiatry*, 63 (2019), 8–17 <https://doi.org/https://doi.org/10.1016/j.ijlp.2018.07.008>.

<sup>7</sup> Moamen Gouda, 'Stealing More Is Better? An Economic Analysis of Islamic Law of Theft', *European Journal of Law and Economics*, 42.1 (2016), <https://doi.org/10.1007/s10657-015-9499-7>.

<sup>8</sup> Virginia Garcia, Hari Sutra Disemadi, and Barda Nawawi Arief, 'The Enforcement of Restorative Justice in Indonesia Criminal Law', *Legality: Jurnal Ilmiah Hukum*, 28.1 (2020). <https://doi.org/10.22219/ljih.v28i1.10680>

<sup>9</sup> Fatmire Krasniqi, 'The Criminal Offense of Aggravated Theft under Hammurabi's Code, Law of the Twelve Tables, Albanian Customary Law and Criminal Code of Kosovo', *Journal of History Culture and Art Research*, 8.1 (2019), <https://doi.org/10.7596/taksad.v8i1.1873>.

<sup>10</sup> Rizaldy Anggriawan and others, 'Passenger Name Record Data Protection under European Union and United States Agreement: Security over Privacy?', *Hasanuddin Law Review*, 8.2 (2022), 95 <https://doi.org/10.20956/halrev.v8i2.2844>.

<sup>11</sup> Alessandro Melcarne, Benjamin Monnery, and François-Charles Wolff, 'Prosecutors, Judges and Sentencing Disparities: Evidence from Traffic Offenses in France', *International Review of Law and Economics*, 71 (2022), <https://doi.org/https://doi.org/10.1016/j.irle.2022.106077>.

cases).<sup>12</sup> The high number of theft crimes at this time will lead to excess capacity in prisons, especially since theft is not always a serious crime such as ordinary theft based on Article 362 of the Criminal Code (KUHP) which carries a sentence of five years imprisonment and a fine of IDR 900,00 (nine hundred rupiah).<sup>13</sup>

The rise in theft crimes during the Covid-19 pandemic, combined with the establishment of restorative justice houses, could offer a peaceful resolution for both parties involved.<sup>14</sup> By avoiding the complexities of the trial process, parties can settle their disputes amicably, while also helping to reduce the number of inmates in prisons.<sup>15</sup> Restorative justice houses are a crucial instrument in achieving justice within the community, especially for cases of ordinary theft that can be resolved through restorative justice practices. This approach is in line with the Prosecutor's Regulations Number 15 of 2020, which prioritizes humanistic law enforcement in the prosecutor's office, and facilitates the termination of prosecution based on restorative justice.<sup>16</sup>

The purpose of this study is to analyze the importance of restorative justice houses in optimizing the termination of prosecution by the prosecutor's office based on its application in several cases, especially referring to procedures that make it easy for both parties to find an agreement oriented towards restoring the state of all in the form of material or immaterial compensation to the victim, as well as keeping the perpetrator away from retaliation through the imposition of punishment.

The novelty of this research is to specifically analyze the application of termination of prosecution through the prosecutor's office based on restorative justice specifically in Lampung, in legal substance there is a lot of other literature that says it is effective and complex in dealing with problems, but it needs to be examined how this concept can be implemented by law enforcement officials and optimized properly specifically for perpetrators of minor crimes and a maximum loss of IDR 2,500,000,00 (two million five hundred thousand rupiah).

## 2. Research Method

The legislative approach is based on primary data, primary data is obtained from research results in the form of analysis of laws and regulations related to Prosecutor's Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice, research information from several regions in Lampung and legal facts related to legal issues to be discussed with the object of research, which includes literature studies that draw from books,

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<sup>12</sup> Jose Manuel Sánchez Patrón, 'The Criminal Prosecution of Illegal Fishing and the Jurisdiction of Spanish Courts', *Marine Policy*, 143 (2022), <https://doi.org/https://doi.org/10.1016/j.marpol.2022.105209>.

<sup>13</sup> Randikha Prabu Raharja Sasmita, Sigid Suseno, and Patris Yusrian Jaya, 'The Concept of Reasons for Eliminating Corporate Crime in Criminal Law in Indonesia', *Heliyon*, 9.11 (2023), <https://doi.org/https://doi.org/10.1016/j.heliyon.2023.e21602>.

<sup>14</sup> Satria Unggul Wicaksana Prakasa and others, 'Responsibility of States About Pandemic COVID-19: International Law Review', *Jurnal Hukum Novelty*, 13.2 (2022), 158 <https://doi.org/10.26555/novelty.v13i2.a21964>.

<sup>15</sup> Mark T Berg and Ethan M Rogers, 'The Mobilization of Criminal Law', *Annual Review of Law and Social Science*, 13 (2017), <https://doi.org/10.1146/annurev-lawsocsci-110615-084510>.

<sup>16</sup> Ermes Antonucci, 'The Evolution of the Principle of Mandatory Prosecution in Italy. A Problematic Case of Gradual Institutional Change', *International Journal of Law, Crime and Justice*, 66 (2021), <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2021.100481>.

journals, and other relevant sources.<sup>17</sup> To analyze the problem, the author employs a descriptive analysis approach using the deductive method, which involves drawing a specific statement from a general discussion. The research relies on secondary data, including various sources such as research literature, books, journals, and legal materials.<sup>18</sup>

### 3. Result and Discussion

#### 3.1. Law Enforcement of the Crime of Theft by the Prosecutor's Office

The restorative justice paradigm arises from the limitations of retributive laws, which focus on punishing the offender rather than addressing the root cause of the problem.<sup>19</sup> Retributive justice tends to view criminal behavior as a violation of the law itself and places the state as the primary victim of the crime, without adequately considering the harm done to individual victims.<sup>20</sup>

The protection of both perpetrators and victims is often neglected in the criminal justice system. Victims of criminal acts suffer not only material losses but also intangible ones, which are often overlooked.<sup>21</sup> Similarly, not all types of crimes committed necessarily result in imprisonment, as there are alternative solutions, such as reconciling the victims and perpetrators of criminal acts.<sup>22</sup>

The goal of Restorative Justice is to restore the original situation by repairing relationships and making amends for the harm caused by the perpetrators of criminal acts outside the court system.<sup>23</sup> <sup>24</sup> This approach aims to reach an amicable agreement that addresses the problems resulting from the criminal act.<sup>25</sup>

The embodiment of restorative justice presents a meeting point between the perpetrators of crime and victims of crime, which is referred to as the power to participate in the case and to

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<sup>17</sup> Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia-Social and Behavioral Sciences*, 219 (2016), <https://doi.org/10.1016/j.sbspro.2016.05.006>.

<sup>18</sup> Philip Langbroek and others, 'Methodology of Legal Research: Challenges and Opportunities', *Utrecht L. Rev.*, 13 (2017), <https://doi.org/10.18352/ulr.411>.

<sup>19</sup> Mimi E Kim, 'Transformative Justice and Restorative Justice: Gender-Based Violence and Alternative Visions of Justice in the United States', *International Review of Victimology*, 27.2 (2021), <https://doi.org/10.1177/0269758020970414>.

<sup>20</sup> Shannon M Sliva, 'Finally "Changing Lenses"? State-Level Determinants of Restorative Justice Laws', *The Prison Journal*, 98.5 (2018), <https://doi.org/10.1177/0032885518793948>.

<sup>21</sup> Essoujaa mohammed, Esghir Mustapha, and Azhari Mourad, 'Using Machine Learning to Predict Public', *Procedia Computer Science*, 220 (2023), 998-1002 <https://doi.org/https://doi.org/10.1016/j.procs.2023.03.138>.

<sup>22</sup> Daye Gang and others, 'A Call for Evaluation of Restorative Justice Programs', *Trauma, Violence, & Abuse*, 22.1 (2021), <https://doi.org/10.1177/1524838019833003>.

<sup>23</sup> John Braithwaite, 'Redeeming the 'F'Word in Restorative Justice', *Oxford Journal of Law and Religion*, 5.1 (2016), <https://doi.org/10.1093/ojlr/rwv049>.

<sup>24</sup> Arsyad Aldyan and Abhishek Negi, 'The Model of Law Enforcement Based on Pancasila Justice', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 178-90 <https://doi.org/10.53955/jhcls.v2i3.51>

<sup>25</sup> Heather Strang and Lawrence Sherman, 'The Morality of Evidence: The Second Annual Lecture for Restorative Justice: An International Journal', *Restorative Justice*, 3.1 (2015), <https://doi.org/10.1080/20504721.2015.1049869>.

make decisions, where efforts to resolve crimes are not only carried out by the government but prioritize human rights and the interests of the victims of the crimes of the perpetrators.<sup>26</sup>

Efforts to resolve crimes through peaceful channels between perpetrators of crime and victims of crime, as well as the families of both parties and society, is a paradigm shift, which was previously seen as only in the form of "the paradigm of blame and punishment" to become a new paradigm.<sup>27</sup>

The effective implementation of a new paradigm in inclusive and progressive law enforcement requires the optimization of restorative justice houses as a forum for resolving criminal cases.<sup>28,29</sup> In this piece of writing, the author will specifically discuss minor crimes, particularly theft, in various areas.<sup>30</sup> The prioritization of restorative justice in addressing minor crimes, especially theft, is based on applicable laws and regulations, including Prosecutor's Regulation Number 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice.<sup>31</sup>

Based on restorative justice and supporting literature, the author believes that implementing restorative justice can facilitate the resolution of theft cases.<sup>32</sup> This is because restorative justice prioritizes a sense of kinship and involves mediation between perpetrators and victims, as well as their families, to reach a consensus on compensation or return of stolen goods/assets.<sup>33</sup>

The perpetrator of a crime is obligated to provide compensation to the victim for any damage or loss inflicted on them and their family.<sup>34</sup> This compensation can take the form of returning stolen goods or assets, or providing monetary compensation.<sup>35</sup> Damage or loss that arises, initially carried out by restoration through a meeting of perpetrators of crime and victims of

<sup>26</sup> David R Karp and Olivia Frank, 'Anxiously Awaiting the Future of Restorative Justice in the United States', *Victims & Offenders*, 11.1 (2016), <https://doi.org/10.1080/15564886.2015.1107796>.

<sup>27</sup> Carolyn Hoyle and Fernanda Fonseca Rosenblatt, 'Looking Back to the Future: Threats to the Success of Restorative Justice in the United Kingdom', *Victims & Offenders*, 11.1 (2016), <https://doi.org/10.1080/15564886.2015.1095830>.

<sup>28</sup> Anom Wahyu Asmorojati and others, 'The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights', *BESTUUR*, 10.1 (2022), 43 <https://doi.org/10.20961/bestuur.v10i1.60179>

<sup>29</sup> Emmanuel Ariananto Waluyo Adi, 'Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code', *Lex Scientia Law Review*, 5.1 (2021) <https://doi.org/10.15294/lesrev.v5i1.46704>

<sup>30</sup> Leana A Bouffard and others, 'Still in the Shadows: The Unresponsiveness of Stalking Prosecution Rates to Increased Legislative Attention', *Journal of Criminal Justice*, 73 (2021), <https://doi.org/https://doi.org/10.1016/j.jcrimjus.2021.101794>.

<sup>31</sup> Xifen Lin and Cheng Chen, 'Organizational Governance and Prosecutorial Attitudes: Regulating Chinese Prosecutors through the Performance Evaluation Mechanism', *International Journal of Law, Crime and Justice*, 62 (2020), <https://doi.org/https://doi.org/10.1016/j.ijlcj.2020.100413>.

<sup>32</sup> Ian D Marder, 'Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland', *International Journal of Law, Crime and Justice*, 70 (2022), <https://doi.org/10.1016/j.ijlcj.2022.100544>.

<sup>33</sup> Rian Prayudi Saputra, "Development of Criminal Acts of Theft in Indonesia," *Journal of Heroes* 2, no. 2 (2019), <https://doi.org/10.31004/jp.v2i2.573>.

<sup>34</sup> Meredith Rossner and Jasmine Bruce, 'Community Participation in Restorative Justice: Rituals, Reintegration, and Quasi-Professionalization', *Victims & Offenders*, 11.1 (2016), <https://doi.org/10.1080/15564886.2015.1125980>.

<sup>35</sup> Gail Super, 'Volatile Sovereignty: Governing Crime Through the Community in Khayelitsha', *Law & Society Review*, 50.2 (2016), <https://doi.org/10.1111/lasr.12198>.

crime (a meeting place for people) peacefully, in order to find a solution to rebuild relations between the two parties concerned.<sup>36</sup>

After the enactment of Prosecutor's Regulation Number 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice, the Attorney General's Office has stopped the prosecution of 1,070 general crime cases through a restorative justice approach per May 2022, in this piece of writing, the author will focus specifically on minor crimes, particularly theft, in several regions.<sup>37</sup>

The implementation of restorative justice in law enforcement in Indonesia is facilitated by Regulation Number 15 of 2020 from the Prosecutor's Regulation of the Republic of Indonesia.<sup>38</sup> <sup>39</sup>This regulation, which applies to law enforcement agencies across the country, emphasizes the involvement of the perpetrator, victim, family, and other parties in resolving a case. The primary focus is on restoring all conditions and avoiding retaliation.<sup>40</sup>

The consequences of the pandemic, such as the implementation of Large-Scale Social Restrictions (LSSR), as well as the urgent economic needs of the community, have led to an increase in theft as a means for people to obtain money easily.<sup>41</sup> Between 2020 and 2022, there have been several theft cases that exemplify efforts to achieve restorative justice in the termination of claims. These cases include:

Table. 1 Number of Pre-Post Covid-19 Theft Cases

No.	Number of Theft Cases Before and After Covid-19	Number of Cases
1.	Common theft	1.508
2.	Motor vehicle theft	303
3.	Theft with violence	119
4.	Theft with aggravation	827
Total		2757

Based on the number of cases mentioned above, the restorative justice has been successful in fulfilling the rights and obligations of the parties involved. This is because theft is sometimes motivated by urgent financial needs, and when the victim forgives the perpetrator and they

<sup>36</sup> Christa M Miller, 'A Survey of Prosecutors and Investigators Using Digital Evidence: A Starting Point', *Forensic Science International: Synergy*, 6 (2023), <https://doi.org/https://doi.org/10.1016/j.fsisyn.2022.100296>.

<sup>37</sup> Neeraj Chatlani and others, 'Teen as Research-Apprentice: A Restorative Justice Approach for Centering Adolescents as the Authority of Their Own Online Safety', *International Journal of Child-Computer Interaction*, 35 (2023), <https://doi.org/https://doi.org/10.1016/j.ijcci.2022.100549>.

<sup>38</sup> Chunghyeon Seo and Nathan E Krus, 'The Impact of School's Security and Restorative Justice Measures on School Violence', *Children and Youth Services Review*, 132 (2022), <https://doi.org/https://doi.org/10.1016/j.childyouth.2021.106305>.

<sup>39</sup> Muhammad Ruhly Kesuma Dinata and others, 'Good Governance and Local Wisdom in Law Enforcement', *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2022, 227-42 <https://doi.org/10.24090/volkgeist.v5i2.6740>

<sup>40</sup> Arie Chandra, Hamza Baharuddin, and Hardianto Djanggih, 'Implementation of the Prosecutor's Office Function in Implementing Diversion for Children in Conflict with the Law', *Journal of Lex Generalis (JLG)*, 1.1 (2020), <https://doi.org/10.52103/jlg.v1i1.75>.

<sup>41</sup> Barbara Alice Richardson, 'Interventionism in the Family: Does Adoption Law in England and Wales Advocate the 'Theft' of Children?', *Kent Law Review*, 2 (2015), <https://doi.org/10.22024/UniKent/03/kslr.229>.

promise not to repeat the crime, restorative justice can be a viable solution. Restorative justice is not oriented towards retaliatory actions or retributive justice in the form of revenge or imprisonment, but rather focuses on conviction and forgiveness as measures of justice in resolving claims. Settlement of criminal cases through a restorative justice mechanism, emphasizing restoration to its original condition and balancing.

The protection and interests of both parties are taken into account in restorative justice, guided by principles of justice, proportionality, and subsidiarity. The aim is for the community to amicably resolve problems outside the justice system.<sup>42</sup> It is important to note that certain conditions must be met in order to pursue restorative justice, except in cases involving drugs or fatalities, where restorative justice is not applicable.<sup>43</sup> There is a principle of proportionality that is best known in public law specifically to limit the power of organs against citizen's human rights, including how the prosecutor's office previously only processed prosecutions, but now based on restorative justice the prosecutor's office is optimized by promoting humanist law enforcement.

Restorative justice is now used to terminate prosecutions, optimizing inclusive and progressive law enforcement that focuses on victim recovery and reducing prison overcapacity, which is a major issue in Indonesian prisons.<sup>44</sup> It is particularly effective in resolving theft cases, where the nominal loss is typically no more than IDR 2,500,000.00 (two million five hundred thousand rupiah).<sup>45</sup> At present, the Attorney General of the Republic of Indonesia, Dr. St. Burhanuddin, S.H., M.M. has implemented a restorative justice program at several District Attorneys' Offices. This program aims to provide solutions to legal problems that commonly arise within communities and to facilitate coordination in settling cases outside of court through reconciliation.<sup>46</sup>

### 3.2. Implementation of the Restorative Justice House in the Prosecutor's Office of Lampung Province

The restorative justice house is a strategic effort to provide peace in cases of misdemeanors.<sup>47</sup> This means that such cases do not need to be brought to court, as long as they can be resolved

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<sup>42</sup> David S Abrams, 'COVID and Crime: An Early Empirical Look', *Journal of Public Economics*, 194 (2021), <https://doi.org/10.1016/j.jpubeco.2020.104344>.

<sup>43</sup> Giuseppe Maglione, 'Imaging Victims, Offenders and Communities. An Investigation into the Representations of the Crime Stakeholders within Restorative Justice and Their Cultural Context', *International Journal of Law, Crime and Justice*, 50 (2017), 22-33 <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2017.02.004>.

<sup>44</sup> Sukardi Sukardi and Hadi Rahmat Purnama, 'Restorative Justice Principles in Law Enforcement and Democracy in Indonesia', *Journal of Indonesian Legal Studies*, 7.1 (2022), 155-90 <https://doi.org/10.15294/jils.v7i1.53057>

<sup>45</sup> Rudi Iskandar, "The Attorney's Authority in Settlement of Corruption Crimes Based on a Restorative Principle Approach," *Matrix: Social Journal and Science* 3, no. 1 (2021), <https://doi.org/10.36418/matriks.v3i1.76>.

<sup>46</sup> Jahyun Chun, 'Enforced Reconciliation without Justice: The Absence of Procedural, Retributive, and Restorative Justice in the "Comfort Women" Agreement of 2015', *Asian Journal of Social Science*, 49.2 (2021), 84-92 <https://doi.org/https://doi.org/10.1016/j.ajss.2020.09.001>.

<sup>47</sup> Lynne M Vieraitis and others, 'A Little Information Goes a Long Way: Expertise and Identity Theft', *Aggression and Violent Behavior*, 20 (2015), <https://doi.org/10.1016/j.avb.2014.12.008>.

outside of the legal system. As a result, local prosecutors are pushing for the application of restorative justice.<sup>48</sup>

Based on a statement from the Head of the South Kalimantan High Prosecutor's Office, Mukri, it was reported that the restorative justice house facilitates coordination in resolving minor crimes outside of the justice system. The aim is to optimize the expansion of restorative justice houses not only at the District Attorney's Office, but also in every district and city.<sup>49</sup>

Nanang Sigit Yuliyanto, the Head of the Lampung High Prosecutor's Office, and Dewi Handajani, the Regent of Tanggamus, both believe that restorative justice houses serve as facilities for resolving legal issues through deliberation, in accordance with applicable legal procedures.<sup>50</sup>

The establishment of restorative justice houses by the Attorney General of the Republic of Indonesia, as a platform for resolving criminal cases and terminating prosecutions, aims to optimize inclusive and progressive law enforcement.<sup>51</sup> The focus is on recovering victims, reducing prison overcrowding - a major problem in Indonesia - and addressing theft, which is easier to resolve as the nominal loss does not exceed IDR 2,500,000.00 (two million five hundred thousand rupiah).

According to the Prosecutor's Regulation Number 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice, restorative justice is applied in several regions by prioritizing the settlement of criminal cases outside of court while taking into account the principles of justice, proportionality, and subsidiarity. These regions include:<sup>52</sup>

#### 1. Bandar Lampung District Attorney

The victim reported a theft where the perpetrator had stolen three avocados worth IDR 20,000.00 (twenty thousand rupiah). After mediation and settlement with the family, a Peace Report was made on October 5, 2020. As a result, the Head of the Lampung High Prosecutor's Office agreed to terminate the prosecution. The perpetrator was suspected of violating Article 363 Paragraph (1) number 4 of the Criminal Code.<sup>53</sup>

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<sup>48</sup> Olivia Marcucci, 'Why Restorative Justice Works in Schools: An Investigation into the Interactional Dynamics of Restorative Circles', *Learning, Culture and Social Interaction*, 31 (2021), <https://doi.org/https://doi.org/10.1016/j.lcsi.2021.100561>.

<sup>49</sup> Ramadhar Singh and others, 'Punishing an "Unfair" Leader: People as Pragmatic Politicians with in-Group but Fair-but-Biased Prosecutors with out-Group', *IIMB Management Review*, 30.1 (2018), 77-90 <https://doi.org/https://doi.org/10.1016/j.iimb.2018.01.002>.

<sup>50</sup> Hans Henseler and Sophie van Loenhout, 'Educating Judges, Prosecutors and Lawyers in the Use of Digital Forensic Experts', *Digital Investigation*, 24 (2018), 576-82 <https://doi.org/https://doi.org/10.1016/j.diin.2018.01.010>.

<sup>51</sup> Ariefulloh Ariefulloh and others, 'Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.1 (2023), 19-36 <https://doi.org/10.18326/ijtihad.v23i1.19-36>

<sup>52</sup> Sahat Benny Risman Girsang and others, 'The Application of Restorative Justice in the Case Process of Criminal Damage in Relation to the Attorney General's Regulation on Termination of Prosecution Based on Restorative Justice (Study at the Pematangsiantar District Attorney's Office)', *Nommensen Journal Of Legal Opinion*, 2.1 (2021), <https://doi.org/10.51622/njlo.v2i01.347>.

<sup>53</sup> Keisha April and others, 'Conceptualizing Juvenile Justice Reform: Integrating the Public Health, Social Ecological, and Restorative Justice Models', *Children and Youth Services Review*, 148 (2023), <https://doi.org/https://doi.org/10.1016/j.childyouth.2023.106887>.



## 2. South Lampung District Attorney

In the case of theft of 30 kilograms of rubber,<sup>54</sup> the victim, Nusantara Plantations Limited Company (PTPN) VII Bergen, suffered a loss of IDR 525,000.00 (five hundred twenty-five thousand rupiah) in the theft case, where the defendant worked as a driver.<sup>55</sup> The prosecutor believed that the small amount of the loss and the perpetrator's reason for committing the crime was due to financial difficulties, as the perpetrator had a wife and three young children to support. The mediation resulted in peace, leading the Lampung Selatan District Attorney to decide not to continue with the prosecution through the Letter of Termination Prosecution (SKP2), based on restorative justice. The perpetrator in this case was suspected of committing embezzlement under Article 374 of the Criminal Code, which carries a penalty of up to 5 years in prison.<sup>56</sup>

With the inauguration of the restorative justice house, it is hoped that it can provide a means to optimize the concept of restorative justice without having to resort to court proceedings, but rather through mediation and settlement based on the principles of justice, the principles of proportionality and subsidiarity are being implemented through the establishment of a restorative justice house.<sup>57</sup> This aims to optimize inclusive law enforcement, focus on victim recovery, and reduce the problem of prison overcapacity which has plagued prisons in Indonesia. In addition, theft cases are easier to resolve through the restorative justice house because it is easier to calculate the nominal loss, which is limited to crimes not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).<sup>58</sup>

Expanding the establishment of restorative justice houses and alternative forms of legal problem-solving within the community can be a significant step towards inclusive and progressive law enforcement. Prioritizing peace through consensus-building in this way upholds the values of justice. So that the realization of restorative justice in the prosecutor's environment will be more optimal and, in the future, when faced with an increase in theft cases it can be resolved through restorative justice houses.

The prosecutor is one of the key law enforcement officers tasked with prosecuting criminal cases. In practice, the prosecutor determines whether a case can be brought to court based on the article and the indictment, or whether to terminate the charge as a form of restorative justice.<sup>59</sup> Restorative justice is a form of implementation based on the principles of justice. It

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<sup>54</sup>Tinneke Van Camp and Jo-Anne Wemmers, 'Victims' Reflections on the Protective and Proactive Approaches to the Offer of Restorative Justice: The Importance of Information', *Canadian Journal of Criminology and Criminal Justice*, 58.3 (2016), <https://doi.org/10.3138/cjccj.2015.E03>.

<sup>55</sup>Alana Saulnier and Diane Sivasubramaniam, 'Effects of Victim Presence and Coercion in Restorative Justice: An Experimental Paradigm', *Law and Human Behavior*, 39.4 (2015), <https://psycnet.apa.org/doi/10.1037/lhb0000130>.

<sup>56</sup>Andri Winjaya Laksana, 'Restorative Justice in the Settlement of Cases of Children Against the Law in the Juvenile Justice System', *Jurnal Pembaharuan Hukum*, 4.1 (2017), <https://doi.org/10.26532/jph.v4i1.1644>.

<sup>57</sup>Yordan Gunawan, Arif Budiman, and others, 'Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War', *Jurnal Hukum*, 39.1 (2023), 1 <https://doi.org/10.26532/jh.v39i1.24685>.

<sup>58</sup>Amal Abuaneh, 'The Rationale for Detention in the Jordanian Code of Criminal Procedure: A Comparative Study with French Law', *Heliyon*, 8.10 (2022), <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11164>.

<sup>59</sup>Insun Park, Tae Choo, and Chongmin Na, 'Burnout in the DA's Office: Correlates and Coping Strategies among Male and Female Prosecutors', *International Journal of Law, Crime and Justice*, 69 (2022), <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2022.100533>.

aims to achieve the objective of closing a case by focusing on returning a situation to its original state. Based on this objective, the prosecutor may decide to terminate the prosecution.<sup>60</sup>

The restorative justice house is an essential tool for achieving justice in society, particularly for resolving ordinary theft cases through restorative justice methods. The restorative justice represents the embodiment of Prosecutor's Regulations Number 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice. Its implementation prioritizes humane law enforcement in the district prosecutor's office.<sup>61</sup>

When it comes to implementing restorative justice-based termination of charges, there are limitations to the criminal acts that qualify, one of which is minor crimes such as theft.<sup>62</sup> Crime is essentially a deviant behavior that involves taking other people's property, causing unrest in the community.<sup>63</sup> Therefore, it is essential to resolve it without disregarding the rights of the perpetrators. This is particularly important since the current increase in theft is motivated by rising unemployment and unstable economic conditions following the Covid-19 Pandemic.<sup>64</sup>

The outcome of the mediation, which brings together the two parties, will determine whether to continue with the case in court or stop it based on the agreement reached.<sup>65</sup> Hence, there is a need for a hybrid restorative justice concept that recognizes that not all cases resolved using it end in peace agreements. Achieving justice is not always peace-oriented and may involve imprisonment. If we examine the theft cases classified as minor crimes under Prosecutor's Regulations Number 15 of 2020, we find that they are ordinary theft cases where the threat of criminal sanctions has already been fulfilled. As stated in Article 362 of the Criminal Code (KUHP):

*"Any person who takes property, wholly or partially belonging to another, with intent to unlawfully possess it, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of IDR 900,00 (nine hundred rupiah)."*

As more clearly stated in Article 5 Paragraph (1) of Prosecutor's Regulation Number 15 of 2020 on Discontinuation of Prosecution Based on restorative justice, it reads:

"A criminal case may be closed by law and discontinued prosecution based on restorative justice in the event that the following conditions are met:

- a. The suspect is a first time offender;
- b. The criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and

<sup>60</sup> Alessandro Melcarne, Benjamin Monnery, and François-Charles Wolff, 'Prosecutors, Judges and Sentencing Disparities: Evidence from Traffic Offenses in France', *International Review of Law and Economics*, 71 (2022), <https://doi.org/https://doi.org/10.1016/j.irle.2022.106077>.

<sup>61</sup> Ahmad Faizal Azhar, 'Application of Restorative Justice Concept in Indonesian Criminal Justice System', *Jurnal Kajian Hukum Islam*, 4.2 (2019), <http://dx.doi.org/10.24235/mahkamah.v4i2.4936>.

<sup>62</sup> Renee Waskovich White, Julia Kaye Knauff, and Karan S Kverno, 'Empowering Law Enforcement Officers to Engage Effectively with Individuals in Crisis', *Archives of Psychiatric Nursing*, 47 (2023), 1-5 <https://doi.org/https://doi.org/10.1016/j.apnu.2023.08.005>.

<sup>63</sup> Yordan Gunawan, Muhamad Haris Aulawi, and others, 'Command Responsibility of Autonomous Weapons under International Humanitarian Law', *Cogent Social Sciences*, 8.1 (2022), 2139906 <https://doi.org/10.1080/23311886.2022.2139906>.

<sup>64</sup> Moa Lidén, Ingemar Thiblin, and Itiel E Dror, 'The Role of Alternative Hypotheses in Reducing Bias in Forensic Medical Experts' Decision Making', *Science & Justice*, 63.5 (2023), 581-87 <https://doi.org/https://doi.org/10.1016/j.scijus.2023.07.005>.

<sup>65</sup> Anton Iu Konovalov, 'Online Restorative Mediation Practices', *Journal of Siberian Federal University. Humanities & Social Sciences*, 13.9 (2020), <http://dx.doi.org/10.17516/1997-1370-0659> .

- c. The criminal offense is committed with the value of evidence, or the value of losses incurred as a result of the criminal offense is not more than IDR 2,500,000.00 (two million five hundred thousand rupiah).<sup>66</sup>

In this scenario, the public prosecutor acts as a facilitator for managing cases under Article 9 of Regulation Number 15 of 2020. Their duty is to propose an initial offer to both parties. During the mediation process, the public prosecutor guides the parties towards a peaceful resolution. If a peace agreement is reached, a termination process is offered and the public prosecutor supervises the agreement's outcome.<sup>67</sup> Finally, the case will either be dismissed or continued to court as a result of the mediation.<sup>68</sup>

Regarding the implementation of the termination of charges based on restorative justice, there is a limitation on criminal acts, namely minor crimes, one of which is the crime of theft.<sup>69</sup> Essentially, this crime involves deviant behavior where individuals take the property of others, causing unrest in the community. It must be resolved without violating the rights of the perpetrator.<sup>70</sup> The current increase in theft is motivated by rising unemployment rates and unstable national economic conditions.<sup>71</sup>

#### 4. Conclusion

The expansion of restorative justice houses in the Prosecutor's Office in Lampung province is a realization of efforts to optimize alternative forms of resolving legal problems in the community. This inclusive and progressive legal breakthrough prioritizes peace through *mufakat* deliberation, while adhering to the values of justice. This will ensure that restorative justice in the prosecutor's environment is optimized, as seen by the success in the Bandar Lampung and South Lampung areas, which can be effectively resolved through the use of restorative justice houses. The discontinuation of prosecution through restorative justice houses in Lampung is actually more optimal, especially in cases of petty theft. Because theft cases often involve relatively clear compensation amounts, making it easier to achieve restorative justice and restore the original situation. By resolving theft cases through restorative justice outside the court system, we can reduce the number of people in prison and prioritize the rights of both the perpetrators and victims more effectively.

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<sup>66</sup> David S Lapsey, Bradley A Campbell, and Ivan Benitez, 'Focal Concerns Theory and Case Advancement in Sexual Assault Cases: A Systematic Review and Meta-Analysis', *Journal of Criminal Justice*, 86 (2023), <https://doi.org/https://doi.org/10.1016/j.jcrimjus.2023.102032>.

<sup>67</sup> Rachel E Lovell and others, 'Using Machine Learning to Assess Rape Reports: "Signaling" Words about Victims' Credibility That Predict Investigative and Prosecutorial Outcomes', *Journal of Criminal Justice*, 88 (2023), <https://doi.org/https://doi.org/10.1016/j.jcrimjus.2023.102107>.

<sup>68</sup> Lilik Prihatini, 'Perspectives on Penal Mediation and its Application in Criminal Cases', *Pakuan Law Review*, 1.1 (2015), <https://doi.org/10.33751/palar.v1i1.922>.

<sup>69</sup> Nadja Capus and Melody Bozinova, 'Impression Management in Corporate Corruption Settlements: The Storied Self of the Prosecutorial Authority', *International Journal of Law, Crime and Justice*, 73 (2023), <https://doi.org/https://doi.org/10.1016/j.ijlcrj.2023.100578>.

<sup>70</sup> Miguel Acosta-Henao, 'Law Enforcement and the Size of the Informal Sector', *Economic Modelling*, 126 (2023), <https://doi.org/https://doi.org/10.1016/j.econmod.2023.106400>.

<sup>71</sup> Ruby Long and others, 'Community Engagement via Restorative Justice to Build Equity-Oriented Crisis Standards of Care', *Journal of the National Medical Association*, 114.4 (2022), 377-89 <https://doi.org/https://doi.org/10.1016/j.jnma.2022.02.010>.

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