

# **Implementation Of The Indonesian Attorney General's Regulation Number 15 Of 2020 On The Termination Of Prosecution Of Criminal Acts Of Domestic Violence (Study at the Pasuruan District Attorney's Office)**

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## ***ABSTRACT***

The Prosecutor's Office of the Republic of Indonesia, in its authority as a representative of the state, must create a sense of justice in society when resolving a case, apart from using repressive methods, the public prosecutor also uses preventive methods. Based on the positive impact of efforts to resolve cases in a prophylactic manner, the Republic of Indonesia Prosecutor's Office issued Regulation of the Republic of Indonesia Prosecutor's Office Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Although the method of resolving cases using Restorative Justice has several obstacles. The Pasuruan Regency District Prosecutor's Office as part of the Republic of Indonesia Prosecutor's Office implemented the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 in the case of the crime of Domestic Violence committed by the suspect HENDRA PRASASI Bin M. ALI YUNUS. This research discusses three main issues, namely: First, what are the impacts arising from the implementation of the termination of prosecution based on the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 carried out by the Public Prosecutor in Domestic Violence Cases at the District Prosecutor's Office. Pasuruan? Second, what obstacles are experienced by the public prosecutor in implementing the termination of prosecution based on the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 in domestic violence crime cases at the District Prosecutor's Office? Pasuruan? Third, how can the public prosecutor terminate the prosecution in a domestic violence crime case committed by the suspect HENDRA PRASASI Bin M. ALI YUNUS which occurred at the District Prosecutor's Office? Pasuruan Based on Republic of Indonesia Prosecutor's Regulation Number 15 of 2020? The method used in this research is empirical juridical with a statutory, case, and conceptual approach. The analytical method used is descriptive qualitative.

**Keywords:** Presecutor's Office, Domestic Violence, Restorative justice

## **INTRODUCTION**

Domestic violence generally involves perpetrators and victims among family members in the household, while the forms of violence are usually physical violence and verbal violence (threats of violence). Strata, social status, education level, and ethnicity do not limit perpetrators and victims of domestic violence. The Indonesian government's concern for the rampant cases of domestic violence is the passing of Law No. 23 of 2004, which specifically regulates the

elimination of domestic violence which clearly and explicitly regulates sanctions for perpetrators of domestic violence.<sup>1</sup>

However, it cannot be said to provide satisfactory results because evil behavior in general can arise due to various problems such as economic, social, political problems, and many other things. This does not only happen in Indonesia but in almost all countries in the world so cases of domestic violence have become a global problem that often overrides Human Rights (HAM). Domestic violence is defined as various forms of the use of violence or threats of violence (physical, psychological, emotional, sexual, neglect) carried out to control a spouse, child, or family member / other person, who lives or is in a household scope. The various forms of violence appear in the pattern of power relations within the Household, between members of the Household that are not balanced (asymmetrical).<sup>2</sup>

The pattern of relationships in the household is built on trust, so when domestic violence occurs, two things happen at once, namely abuse of power and abuse of trust. This form of violence does not occur alone but occurs in a continuing relationship, which creates dependence and vulnerability on the part of the victim. Concretely, domestic violence refers to forms of violence such as rape or other sexual violence against wives or children and even domestic servants by employers. Other forms, such as beatings or torture (both physical and psychological/verbal), and in various forms committed by a person against a child or wife/husband or spouse of a domestic helper. With the birth of a law that specifically regulates acts of violence that occur within the scope of the household, namely Law No. 23 of 2004 concerning the Elimination of Domestic Violence.<sup>3</sup>

First, the case of domestic violence committed by the artist Muhammad Rizky better known as Rizky Billar to his wife Lesty Andryani or Lesty Kejora which resulted in bruises, so that the South Jakarta Metro Police after the determination of detention after he became a suspect in a case of Domestic Violence (KDRT).<sup>4</sup> However, after mediation by the police as an

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<sup>1</sup> Pemerintah RI, “Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga,” (2004).

<sup>2</sup> Ridwan Mansyur, *Mediasi Penal Terhadap Perkara KDRT* (Jakarta: Yayasan Gema Yustisia Indonesia., 2010).

<sup>3</sup> Chrisbiantoro Chrisbiantoro and Hudi Yusuf, “Domestic Violence Based on Law No. 23 of 2004 Concerning the Elimination of Domestic Violence,” *Journal of Social Research* 2, no. 9 (2023): 2934–41, <https://doi.org/10.55324/josr.v2i9.1343>.

<sup>4</sup> “Kronologi Kasus KDRT Rizky Billar Ke Lesti Kejora Hingga Resmi Ditahan,” CNN Indonesia, 2022, <https://www.cnnindonesia.com/hiburan/20221013170917-234-860223/kronologi-kasus-kdrt-rizky-billar-ke-lesti-kejora-hingga-resmi-ditahan>.

initial step in handling the domestic violence case, an agreement was reached that Lesti forgave her husband's behavior and withdrew the police report she had made for the greatest reason for the sake of her child, Muhammad Leslar Al-Fatih Billar. The mother of one admitted that she forgave her husband's actions because of her child. Lesti feels that her child is still too young and needs a father figure. Based on the revocation of the report and Lesti as the victim having forgiven her husband's behavior, the police then stopped the prosecution in a restorative justice manner for the case that made Rizky a suspect and was detained, so that Rizky could get out of the case that ensnared him.<sup>5</sup>

Second, a domestic violence case occurred in Depok between Putri Balqis and her husband Bani Bayumi.<sup>6</sup> Starting from an argument that occurred on February 26, 2023, between the two parties, then Balqis was sprinkled with chili powder so that there was a struggle, while the husband suffered injuries to his genitals, based on a doctor's report that the left pouch of Bani's genitals, due to blunt force, caused the size to change to a large size with a size of 13 cm x 7 cm. The case was handled by the Depok Metro Police and both Balqis and her husband were named suspects after investigating two reports from the couple. In this case, Bani Bayumi had proposed to stop the prosecution process through restorative justice, but the termination of prosecution could not be carried out because the two parties could not reach an agreement, so the legal process of the domestic violence case continued. However, there are interesting facts about the failure of the restorative justice termination process in the viral case due to Balqis's younger sister Sahara Hanum posting several photos of her sister on social media with bruises on her face and near her knees. The photos are photos of Balqis around 2014 or 2016, at that time Balqis experienced a similar case, but mediation occurred and the case could be terminated because Balqis received peace from her husband. In the application of restorative justice termination of prosecution can be carried out by the Prosecutor's Office as an authorized agency in the process of prosecuting criminal cases, therefore based on the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on restorative justice, provides a space for a peace agreement to occur before the submission of cases in domestic violence cases to the Court. The Pasuruan District Prosecutor's Office is one of the district prosecutors with a large jurisdiction, which is divided

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<sup>5</sup> “Kronologi Kasus KDRT Rizky Billar Ke Lesti Kejora Hingga Resmi Ditahan.”

<sup>6</sup> TVOnesnews, “Ini Deretan Fakta Yang Terungkap Dalam Kasus KDRT Putri Balqis Di Depok,” TVOnesnews, 2023, <https://www.tvonenews.com/berita/nasional/125449-ini-deretan-fakta-yang-terungkap-dalam-kasus-kdrt-putri-balqis-di-depok>.

into 24 sub-districts, with several diverse regional areas including industrial areas, agricultural areas, and tourist destination areas due to the many natural resources ranging from beaches, seas to mountains, besides that Pasuruan district also has ethnic and cultural diversity, so that the cases handled by the Pasuruan district prosecutor's office are very diverse, such as cases of Domestic Violence (KDRT) both committed by husbands against wives and by wives against their husbands.

Third, domestic violence cases that occur in the jurisdiction of the Pasuruan District Attorney's Office are first carried out through a mediation process. This is because the negative impact caused by domestic violence cases is very much. The impact is not only on the husband and wife who are litigating but can also have an impact on the children and the extended families of both parties. So for several considerations, the public prosecutor, apart from being a representative of the state in punishing the defendant, also has the authority as a facilitator in resolving cases with restorative justice, based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. In a domestic violence case that occurred in the jurisdiction of the Pasuruan district attorney's office with the suspect Hendra Prasasi Bin M. Ali. The initial process of termination of prosecution based on restorative justice can be carried out. because of the peace agreement between the victim and the suspect. Then after a gradual process from the start of the agreement between the victim and the suspect at the Pasuruan district attorney's office, until the case was exposed between the relevant leaders, it was found that the domestic violence case involving Hendra and his wife Masruroh could be carried out in the process of stopping prosecution by restorative justice with the issuance of a letter from the Head of the East Java High Prosecutor's Office number: R-3016/M.5/Eoh.1/05/2023 dated May 09, 2023.<sup>7</sup>

Based on what has been described above, the author argues that domestic violence cases carried out by the restorative justice process must ultimately have a positive impact on both the victim and the perpetrator, as stated in the regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice. Therefore, based on the problems and cases of domestic violence carried out by the process of terminating prosecution by restorative justice described above, it is necessary to know the impact, obstacles, and reasons for the implementation of restorative justice on

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<sup>7</sup> Pemerintah RI, "Peraturan Jaksa Agung Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif;" (2020).

domestic violence cases in the jurisdiction of the Pasuruan district attorney's office, therefore the authors are interested in conducting research with the title; **“Implementation Of The Indonesian Attorney General’s Regulation Number 15 Of 2020 On The Termination Of Prosecution Of Criminal Acts Of Domestic Violence. (Study at The Pasuruan District Attorney’s Office)”**.

## **METHOD**

The research method that researchers use is empirical law research. Empirical juridical research is a type of sociological legal research and can be referred to as field research, which examines the provisions of the law that apply and that have occurred in community life to know and find the facts and data needed.<sup>8</sup> The analysis method used is descriptive qualitative analysis by producing descriptive information and then describing the facts and cases that have existed in the research systematically.<sup>9</sup>

## **RESULTS AND DISCUSSION**

### **A. Impact Analysis of the Implementation of Termination of Prosecution based on the Regulation of the Public Prosecutor of the Republic of Indonesia Number 15 of 2020 carried out by the Public Prosecutor in the case of Domestic Violence at the Pasuruan Regency District Prosecutor's Office.**

In line with the regulation of the Prosecutor's Office of the Republic of Indonesia, Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the criminal justice function as mentioned is often referred to as a secondary function. This means that criminal law must be applied carefully and comprehensively from various points of view. In addition to heavy criminal sanctions, the implementation of criminal law can also cause punishment or stigmatization which is usually negative and prolonged.<sup>10</sup>

In general, it can be said that the purpose of criminal law is to save society and individuals from the bad things that happen when someone commits a crime. The purpose of criminal law is not only to protect society but also to restore harmony and balance to individuals.

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<sup>8</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, ed. Setiyono Wahyudi, 4th ed. (Malang: Bayumedia Publishing, 2004).

<sup>9</sup> dkk. Rifa'i, Iman Jalaludin., Purwoto, Ady. Marina Ramdhani., *Metodologi Penelitian Hukum*, ed. Anik. Ifitah (Banten: PT. Sada Kurnia Pustaka, 2023).

<sup>10</sup> M. Abdul Kholiq, *Buku Pedoman Kuliah Hukum Pidana, Fakultas Hukum Universitas Islam Indonesia* (Yogyakarta, 2002), hlm. 24

The focus on individual protection reflects individualistic Western thinking that is incompatible with the nature of the individual, while the emphasis on the interests of society ignores the interests of the individual.<sup>11</sup> Therefore, the implementation of the regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, must have a positive impact on the settlement of criminal cases. This is because the concept of a case resolution approach through Restorative Justice has long been practiced by Indonesian indigenous peoples, such as in Papua, Bali, Toraja, Minangkabau, and other traditional communities that still strongly hold their culture.

**B. Analysis of Obstacles to the Implementation of Termination of Prosecution based on Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 carried out by the Public Prosecutor in the case of Domestic Violence at the Pasuruan Regency District Prosecutor's Office.**

Based on the results of the research conducted, the obstacles experienced by the public prosecutor in peace efforts, in case settlement by means outside the court.<sup>12</sup> As a facilitator, the public prosecutor is required to be able to explain to the victim the impact that will occur if the domestic violence case is terminated based on restorative justice. In addition, the public prosecutor must also explain the rights of victim-witnesses, based on Article 10 of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, victims are entitled to:<sup>13</sup>

1. Protection from family, police, prosecutors, courts, advocates, social organizations, or other parties either temporarily or based on the stipulation of a protection order from the court;
2. Health services by medical needs;
3. Special handling related to victim confidentiality;
4. Assistance by social workers and legal aid at every level of the examination process by statutory provisions; and
5. Spiritual guidance services.

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<sup>11</sup> Mahrus Ali, *Op. Cit.*, hlm. 13

<sup>12</sup> Barda nawawi arief, 2002, *Kebijakan Hukum Pidana, Sitra Aditya*, Bandung, hlm. 40.

<sup>13</sup> Lihat Pasal 10, Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.

After the explanation of the victim's rights by the public prosecutor. Then the public prosecutor submits the decision regarding whether or not reconciliation can be implemented to the victim witness. In addition to the process of peace efforts by explaining the rights of victims, article 39 of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence. In the handling of domestic violence cases for the benefit of victim recovery, victims can obtain services from:

1. Health workers;
2. Social worker;
3. Volunteer companion; and/or
4. Spiritual counselor.

**C. Analysis of Termination of Prosecution in the Crime of Domestic Violence on behalf of the suspect HENDRA PRASASI Bin M. ALI YUNUS at the Pasuruan Regency District Attorney's Office based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020.**

Based on Article 5 of the regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Termination of prosecution based on restorative justice must meet several requirements. In addition, the implementation of this regulation is based on several things that must be considered and considered. This is clearly stated in Article 4 of the regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 which contains, among others:<sup>14</sup>

1. Discontinuation of prosecution based on Restorative Justice shall be conducted with due regard to:
  - a. The interests of the Victim and other protected legal interests;
  - b. Avoidance of negative stigma;
  - c. Avoidance of retaliation;
  - d. Community response and harmony; and
  - e. Decency, decency, and public order.
2. Termination of prosecution based on Restorative Justice as referred to in paragraph (1) shall be conducted by considering the:
  - a. Subject, object, category, and threat of criminal offense;

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<sup>14</sup> Lihat Pasal 4 Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020.



- b. The background of the criminal offense;
- c. The level of gravity;
- d. The loss or consequence caused by the criminal offense;
- e. Cost and benefit of handling the case;
- f. Restoration to the original state; and
- g. The existence of peace between the Victim and the Suspect.

When met at the Pasuruan District Attorney's Office, the public prosecutor explained the chronology of the domestic violence case of Hendra Prasasi Bin M. Ali Yunus.

## **CONCLUSION**

Based on the results of the analysis that has been carried out, this study concludes that the positive impact is not only from the suspect's side by not carrying out the criminalization process, but from the side of the victim and society at large. This is characterized by making cases that have been terminated as a deterrent effect on the suspect, to prevent all forms of domestic violence from occurring in the future, protect victims of domestic violence, take action against perpetrators of domestic violence, and maintain the integrity of a harmonious and prosperous household.

The obstacles that occur are caused by two important factors, namely the existence of a peace agreement and the regulation on the implementation of the regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020. This is caused by a lack of understanding about the settlement of cases based on the regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020, both from the victim and the suspect. Therefore, the public prosecutor as a facilitator is required to be quick and responsive in explaining to victims and suspects the impact of case settlement based on the regulation of the Republic of Indonesia Prosecutor's Office Number 15 of 2020, to create a peace agreement between the victim and the suspect. So that the implementation of the regulation of the Public Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 does not exceed the grace period by Article 9 paragraph (5) of the regulation of the Public Prosecutor's Office of the Republic of Indonesia Number 15 of 2020, namely the peace process and fulfillment of obligations carried out within a maximum of 14 (fourteen) days from the submission of responsibility for the suspect and evidence (stage two).

Implementation of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in a case of domestic violence that occurred in the jurisdiction of the Pasuruan District Attorney's



Office with the suspect HENDRA PRASASI Bin M. ALI YUNUS to his wife Masruroh. With the suspicion of violating Article 44 paragraph (1) of Law No. 23 of 2004. Can be carried out based on the confidence of the public prosecutor and the fulfillment of the attention, considerations, and requirements contained in articles 4 and 5 of the regulation of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In addition, the implementation of the prosecutor's regulation has a positive impact not only on the suspect Hendra Prasasi Bin M. Ali Yunus by not carrying out the criminalization process but also has a positive impact on the victim Masruroh. This can be seen when the implementation of the regulation of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 has an impact on achieving the noble goals of implementing Law No. 23 of 2004 concerning the Elimination of Domestic Violence. So that the criminal case of domestic violence with the suspect HENDRA PRASASI Bin M. ALI YUNUS can be exposed to the case with the relevant leaders. So based on the letter of termination of prosecution in restorative justice by the Chief Prosecutor of East Java number: R-3016/M.5/Eoh.1/05/2023 dated May 09, 2023. Based on the above explanation, the following suggestions can be drawn:

To prevent negative impacts on the implementation of the regulation of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in cases of domestic violence (KDRT). Public prosecutors must be more selective and careful in making policies to implement the regulations of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in a criminal case, to ensure a sense of justice in society.

Obstacles to the implementation of the Regulation of the Public Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in cases of criminal acts of domestic violence (KDRT). If the public prosecutor believes that in a criminal case of domestic violence, the implementation of the Regulation of the Public Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 can be carried out. Then the public prosecutor at stage I, namely at the time of submission of the case file by the investigator to the public prosecutor, can call the victim and suspect whether the victim and suspect can make a peace agreement or not. So at the stage of handing over the suspect and evidence, the public prosecutor is at ease because there has been an agreement at stage 1.

Supposedly if the handling of a criminal case of domestic violence (KDRT) in the Pasuruan district jurisdiction committed by the suspect HENDRA PRASASI Bin M. ALI YUNUS can be carried out the implementation of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The implementation of the effort to terminate the prosecution must be carried out quickly and carefully. To avoid the prolonged negative impact of punishment on the suspect, without overriding the objectives of the regulations or laws violated by the criminal offense.

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