



Termination of Prosecution as a Manifestation of Restorative Justice in the Criminal Justice System in Indonesia

Ilhamd Wahyudi; Nikmah Rosidah; Elwi Danil

Doctor of Law, Faculty of Law University of Lampung, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v12i7.6969>

Abstract

The purpose of this study is to examine and analyze the termination of prosecution carried out by prosecutors against perpetrators and victims of criminal acts who have agreed to make peace as a manifestation of restorative justice. In fact, currently the termination of prosecution has limitations that are locked with minimal sanction provisions, so that the termination of prosecution is not implemented optimally each year. In principle, the termination of prosecution can be carried out by the Prosecutor's Office through the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, but in the Regulation there are limits to sanctions, namely the threat of a sentence of less than 5 years and a fine of 2.5 million and even though they already have a peace letter if these provisions are not met, the termination of prosecution cannot be implemented. In implementing these provisions both in the Criminal Procedure Code, related laws and the Regulation, an approach can be taken that provides a solution, namely through the Safeguard System approach to better protect the rights of victims and perpetrators of criminal acts based on the intention of the parties to make peace in assisting law enforcement in Indonesia. The Safeguard System is an effort to improve restorative justice which was originally only limited by the provisions of threats under 5 years and losses under 2.5 million, however, through this approach, even if the threat is above the provisions but peace has been reached, the case can be stopped.

Keywords: *Termination of Prosecution; Restorative Justice; Criminal Justice System*

Introduction

The concept of Restorative Justice has a simple basis of thought. So far, in order to realize justice, it must be based on appropriate retribution from the victim to the perpetrator, namely by imposing prison sentences on the perpetrators; however, all of these concepts have been changed by providing moral and material support to the victim and requiring the perpetrator to be responsible, with the help of family and society if necessary. Restorative justice itself contains a definition of a form of settlement carried out by prioritizing justice involving the perpetrator, victim, family and other parties who are victims and involved in a crime and together seeking solutions to the resolution of the crime and the most important ultimate goal is to restore it to its original state (Ulang Mangun, 2016). In order to realize the concept of restorative justice for victims and perpetrators, law enforcers are required to think and act progressively,

namely not applying regulations textually but needing to break through the rules (*contra legem*) because in the end the purpose of the law is not only linked to text in order to achieve a justice that is aspired to by society (Rizki, 2018).

The existing condition of cases that are considered to have losses that are not too large and can be resolved through non-penal, currently gets quite a lot of public attention. In fact, the public generally considers that it is very unfair if "small" cases are threatened with criminal penalties because they are not comparable to the value of the goods. If we compare it with perpetrators of serious crimes, for example corruptors, of course this causes a reaction that makes the public angry. Therefore, cases with small losses in the value of goods should not have to go to court.

Public prosecutors in the case of the prosecutor's office are tasked and authorized to make the law enforcement process effective as provided by the Law by considering the principles of fast, simple, and low-cost justice, as well as determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience. In that context, prosecution uses a restorative justice approach which is implemented in accordance with the provisions of laws and regulations. Settlement of criminal cases by prioritizing restorative justice which emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts, which is not oriented towards revenge, is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and renewal of the criminal justice system (Septa, 2014).

In response to the development of criminal case resolution, currently the Attorney General's Office of the Republic of Indonesia has issued regulations regarding Guidelines for Termination of Prosecution, namely the Regulation of the Attorney General of the Republic of Indonesia (Perja) Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. With this regulation, the Attorney General's Office can stop prosecution of certain cases according to the requirements, and with important notes where the suspect and victim agree to make peace or there has been peace or there has been restoration of the victim's rights. Some of the requirements stated in the Perja are that the suspect has committed a crime for the first time, the crime is only threatened with a fine or is threatened with imprisonment of no more than 5 years, the crime is committed with the value of the evidence or the value of the loss caused by the crime of no more than IDR 2,500,000 (two million five hundred thousand rupiah). As a guideline in implementing Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Deputy Attorney General for General Crimes has issued a letter regarding technical instructions for implementing Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice with letter Number: 4301/E/EJP/9/2020.

Termination of prosecution by the public prosecutor certainly has challenges in its implementation, such as authority and so on. Termination of prosecution as a manifestation of restorative justice means that so far the practice of termination of prosecution based on Perja 15 of 2020 has been limited by the provisions of the threat of sanctions under 5 years and a fine of 2.5 million rupiah. This makes termination of prosecution very difficult to do, so there should be a new policy that can be implemented by considering the rights of the perpetrators and victims of the crime. If the perpetrator and victim already have the intention to reconcile and have a peace letter that has been agreed upon, the criminal provisions will continue, meaning that retaliation in criminal law no longer considers the rights of the perpetrator and victim to reconcile with each other as if the law was only carried out to imprison someone. Thus, in strengthening the current termination of prosecution, an approach model can be carried out through the intention of the parties to make peace in assisting law enforcement in Indonesia. The Safeguard System is an effort to improve restorative justice which was originally only limited by the provisions of the threat of under 5 years and a fine of 2.5 million, but through this approach even though

the threat is above the existing provisions as long as there is a peace letter, the case can be dismissed, without having to continue to the trial stage or even be given a prison sentence and a fine.

Method

In this research process, the researcher uses normative legal research and is strengthened with empirical data merely as a support. Normative legal research is based on documents, laws and regulations, judges' decisions, and so on related to the research problem. In addition, this research is strengthened with empirical data, although it does not eliminate the character of normative research. Thus, this qualitative approach attempts to describe the object of research based on facts and data and events, trying to connect events or objects of research and present them descriptively while analyzing them based on previously developed concepts so as to make it easier for researchers to solve problems. This research will discuss and thoroughly examine the discretion to stop prosecution in the criminal justice system carried out by the public prosecutor in this case the Prosecutor's Office.

Results and Discussion

Implementation of Termination of Prosecution by the Public Prosecutor as a Manifestation of the Concept of Restorative Justice in the Criminal Justice System in Indonesia

The stages of the prosecution process are that first the National Police investigators conduct an investigation into a criminal act, this is regulated in Article 109 paragraph (1) of the Criminal Procedure Code, so the investigator is obliged to notify the public prosecutor in the form of a Notification Letter of Commencement of Investigation (SPDP) and this SPDP is made by the Head of the Prosecutor's Office, both the High Prosecutor's Office and the District Prosecutor's Office based on KEP-518/A/J.A/11/2001, a case administration P (16) or Letter of Order for Appointment of a Public Prosecutor is made to follow the development of the investigation of the criminal case or also known as the Pre-Prosecution stage.

If the SPDP has been followed up with case files by the investigator, then based on Article 138 paragraph (1) the public prosecutor is given time to study and examine within 7 (seven) days, the public prosecutor is obliged to prepare case administration, namely a Notification Letter of incomplete investigation results (P-18) which must be followed by a letter of instructions that must be fulfilled by the investigator for the completeness of the case files (P-19). This is in line with Article 138 paragraph (2) of the Criminal Procedure Code. However, if the case file sent by the investigator to the public prosecutor within 7 (seven) days is declared complete, the public prosecutor can make an administrative case Notification Letter of the results of the criminal case investigation are complete (P-21) which is then followed up with the submission of the suspect and evidence to the public prosecutor in accordance with Article 139 of the Criminal Procedure Code "after the public prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether the case file meets the requirements to be transferred to the court or not. After the submission of the suspect and evidence by the investigator to the Public Prosecutor, this is what is called the Prosecution stage where the public prosecutor is given time to prepare the case to be transferred to the Court (Muladi, 2011).

Based on the above, it can be seen that the prosecution process carried out by the Public Prosecutor is a step that has a long process. This is done so that the implementation of the process and stages carried out are not missed and have strong evidence. Furthermore, Wirjono Prodjodikoro provides a definition of prosecution, but the difference is that the Criminal Procedure Code does not explicitly mention "defendant", while Wirjono Prodjodikoro explicitly states in his book Andi Sofyan and Abdul Asis "Criminal Procedure Law", more completely, namely "Prosecuting a defendant before a criminal judge is to submit a defendant's case with his case files to the judge with a request that the judge examine and then decide the criminal case against the defendant (Wirjono, 2012). The authority to carry out the

prosecution as per Article 137 of the Criminal Procedure Code, that "The public prosecutor has the authority to prosecute anyone charged with committing a crime within his jurisdiction by referring the case to a court that has the authority to try (Hanafi, 2018).

Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, not retaliation as stated in Article 1 of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Restorative justice is seen as a concept of thought that responds to the development of the criminal justice system by emphasizing public order and victims who feel marginalized by the current working mechanism of the criminal justice system.

In implementing restorative justice, there must be a number of stages that must be carried out, one of which is through negotiations between the two parties in question. This can provide conclusions regarding peace efforts. In addition, a number of other conditions must also be carried out in addition to the agreement to make peace, namely if the criminal threat is under 5 years and the losses arising from the case are under Rp. 2,500,000. then, the restorative justice process can be continued and fulfilled in this case, until finally the case can be completed before entering the Court.

Article 5 paragraph (1) also states that criminal cases can be closed or prosecution stopped based on Restorative Justice if several conditions are met, namely the suspect has only committed a crime for the first time, the crime is only threatened with a fine or is threatened with imprisonment of no more than 5 (five) years; and the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding IDR 2,500,000 (two million five hundred thousand rupiah).

The implementation of termination of prosecution using restorative justice has so far been the main priority in resolving termination of prosecution carried out by the Attorney General's Office. This can be seen from the data found by the author, that the Attorney General's Office has terminated 302 cases based on restorative justice. 222 cases in 2020 and 80 cases from January to August 2021 consisting of 73 cases of people and property, and 7 cases related to state security and public order and other general crimes.

Restorative justice is seen as one of the effective steps in resolving criminal cases by prioritizing restorative justice and also relying on restoring the original state. The balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge, is a legal need of society and a mechanism that must be built in the implementation of the authority of prosecution and the renewal of the criminal justice system in Indonesia (Rufinus, 2013).

Thus, the birth of Perja Number 15 of 2020 provides a new breath in the resolution of criminal cases that are more just. In addition, the duties and authorities of the Attorney General's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice, and truth based on law and respect religious norms, politeness, and morality, and must explore the values of humanity, law and justice that live in society. Thus, currently the resolution of cases using restorative justice has become an inseparable part of the criminal justice system.

The implementation of the termination of prosecution by the Public Prosecutor is in principle based on the provisions of Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the implementation of the termination of prosecution is based on the provisions that the perpetrator is not a repeat offender, meaning not a recidivist, the threat of punishment is below 5 years, the maximum fine given is IDR 2,500,000; so that the provisions of the Perja must be a requirement in the application of termination of prosecution. If the terms and conditions are not

implemented, all cases with a threat of more than 5 years will also be requested as restorative justice and need to be considered.

The Urgency of Restorative Justice for Termination of Prosecution in Realizing a Safeguard System

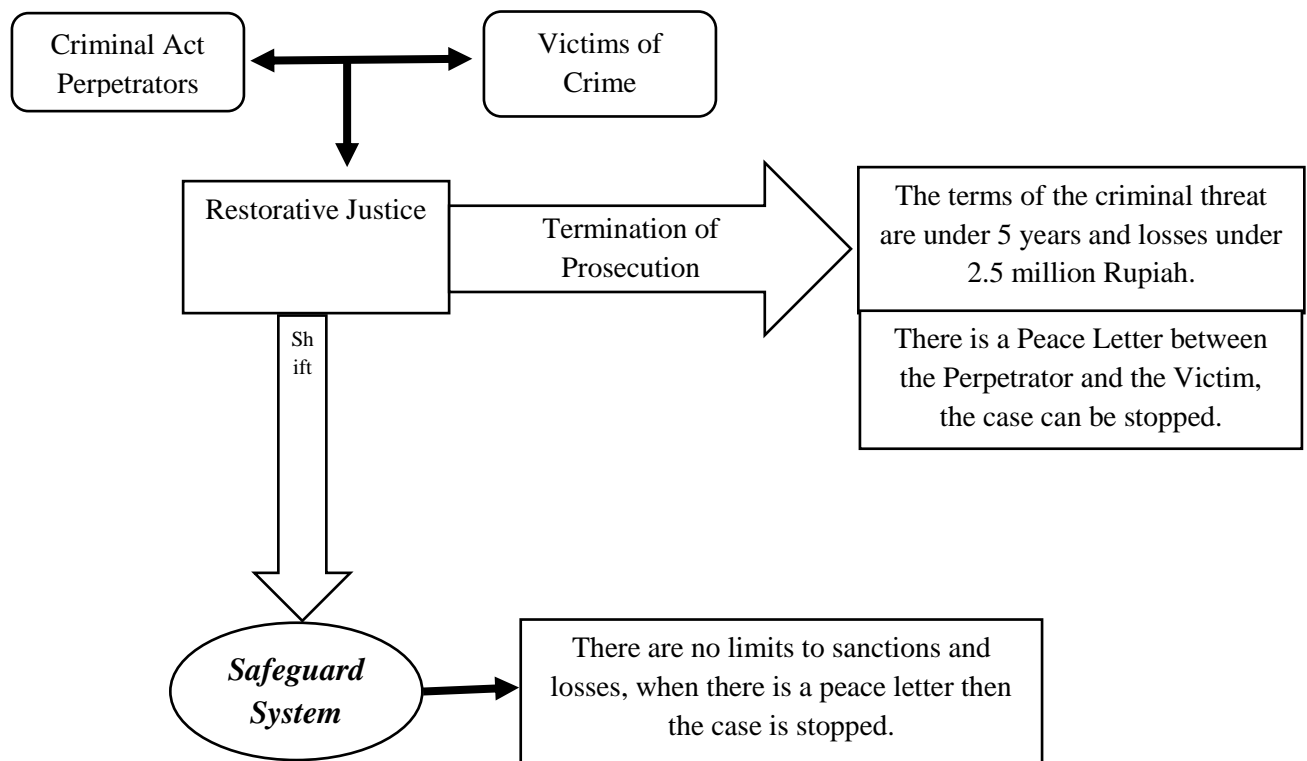
Restorative justice in the termination of prosecution is a very urgent instrument in realizing a comprehensive safeguard system. It not only protects the rights of victims, prevents re-criminalization, and improves the efficiency of justice, but also strengthens social cohesion and realizes substantive justice. With proper implementation, this approach can transform the criminal justice system towards a more humane, effective, and just direction (Sudarto, 1983). Restorative justice, which prioritizes the restoration of losses and social harmony rather than mere punishment, has a very high urgency in the context of termination of prosecution in order to realize an effective safeguard system. The conventional criminal justice process often focuses on labeling perpetrators and imposing sanctions. This can cause severe stigmatization, make it difficult for perpetrators to return to society, and even encourage them to commit crimes again.

By stopping prosecution through a restorative approach, the focus shifts to accountability for the perpetrator for their actions, victim recovery, and reconciliation. This reduces the risk of stigmatization and opens the way for the perpetrator to reintegrate into society in a positive way, thus acting as a safeguard against reoffending. Restorative justice puts the victim at the center of attention. Through victim-offender mediation or restorative conferences, victims have the opportunity to voice the impact of the crime, make claims for restitution, and actively participate in the problem-solving process. This ensures a more holistic recovery for victims (physical, emotional, financial), which is an important safeguard for their rights.

The heavy caseload in the courts can lead to slow, expensive and inefficient justice processes. Many minor or less serious cases can overwhelm judicial resources. Restorative Justice Solutions: Discontinuing prosecutions with a restorative approach, especially for minor crimes, can reduce the caseload in the courts. This frees up resources to deal with more serious cases, thereby increasing the efficiency and effectiveness of the justice system as a whole, which is a safeguard for the sustainability of a healthy justice system.

The adversarial criminal justice system tends to divide society, with perpetrators on one side and victims and the state on the other. Restorative justice encourages dialogue, community participation, and conflict resolution at the community level. This strengthens social cohesion and creates a sense of shared responsibility for maintaining order. By involving the community in problem solving, restorative justice acts as a safeguard that strengthens the social safety net (Rena, 2009). Criminal law is often the first choice in resolving problems, when in fact it should be the last resort (*ultimum remedium*). The cessation of prosecution with restorative justice ensures that criminal law is only used when other methods are ineffective. This promotes a more proportionate and humane approach to law enforcement, which is a safeguard against over-criminalization and over-penalization (Rick, 2003).

The importance of the safeguard system in supporting the restorative justice approach is very much needed, considering that currently if there is a criminal case or criminal cases that already have a peace letter, the case will continue because it has fulfilled the elements of a criminal act. Furthermore, the existing provisions in the Perja have limitations on the provisions in implementing the termination of prosecution. In principle, the urgency of restorative justice in realizing the safeguard system can be seen in the following chart:



Source: Author's Dissertation (Ilhamd Wahyudi)

Based on the chart, it can be seen that currently restorative justice in principle does not side with the rights of victims and perpetrators of criminal acts, because it still refers to the theory of punishment, that everyone who fulfills the elements of committing a crime must be punished and given imprisonment and fines. However, the restorative justice that currently exists has not considered the good intentions of the perpetrator and victim to reconcile. Therefore, restorative justice must be renewed, especially in realizing the safeguard system approach.

The urgency of restorative justice in the termination of prosecution to realize a protection system (Safeguard System) restorative justice has a crucial urgency in the context of termination of prosecution because it inherently functions as a main pillar in building and strengthening an effective protection system (safeguard system) in law enforcement. This is an approach that goes beyond mere retribution, moving towards recovery and prevention of negative impacts that are often caused by the conventional criminal justice system as follows (Van Ness, 2013):

- a) Preventing Stigmatization and Recriminalization: Cessation of prosecution through restorative justice is the first and most important safeguard against stigmatization of offenders, especially children and minor offenders. Rather than labeling them as “criminals,” this approach focuses on accountability and restoration, drastically reducing the risk of them re-offending (recriminalization). This means the system protects individuals from damaging social impacts and helps them reintegrate positively.
- b) Comprehensive Victim Recovery: Restorative justice puts victims at the forefront, ensuring that their needs for reparation (physical, emotional, financial) are met. This is a powerful safeguard for victims’ rights, which are often marginalized in the traditional criminal justice process. Victims have a voice, are heard, and are part of the solution.

- c) **Efficiency and Effectiveness of the Justice System:** By diverting certain cases from the courts, restorative justice acts as a safeguard that reduces the workload of the courts, allowing resources to be focused on more serious crimes. This makes the justice system more efficient and responsive, preventing a backlog that can undermine public confidence.
- d) **Strengthening Social Cohesion and Community Participation:** Restorative processes involve communities in resolving conflicts, rebuilding broken relationships. This is a safeguard that strengthens the social safety net and increases community ownership of justice and order.
- e) **Realization of Substantive Justice:** More than just fulfilling legal procedures, restorative justice seeks deeper and more meaningful justice for all parties. This is a safeguard against the vacuum of justice that only focuses on punishment, ensuring that the solutions reached are truly felt to be fair and restorative.

Safeguard system is a safety net built to ensure that human activities run responsibly and minimize negative impacts, for the sake of sustainability and welfare. In law and restorative justice, the safeguard system aims to protect individual rights in the judicial process, prevent abuse of power, and ensure justice. Examples: The right to legal aid, the principle of the presumption of innocence, or the complaint handling mechanism and the right to agreement. This means that in the event of an agreement to reconcile, other criminal provisions are not allowed to continue (Marsall, 1980).

Safeguard system is designed to handle criminal acts through a restorative approach, where restoration programs are used as the main means to handle criminal problems, so that there will be a transition from the criminal justice system to the restorative justice system. In this system, not everything is resolved through a restorative approach, for certain cases it will still be resolved through the criminal justice system. This system is similar to the Unified System but is more moderate and not radical, because the role of the state is still recognized with the existence of a resolution through the criminal justice system for certain cases.

In the legal context, a "safeguard system" is a set of legal mechanisms, principles, rules, and procedures designed to protect the fundamental rights of individuals, ensure justice, prevent abuse of power, and maintain the integrity of the legal system. The goal is to create a safety net to prevent violations of rights, arbitrariness, or injustice in the application of the law. The main functions of the Safeguard System in law are as follows:

- a) **Protecting Human Rights:** This is a core function. The safeguard system ensures that the fundamental rights of citizens, such as the right to justice, the right not to be tortured, the right to freedom of speech, the right to privacy, etc., are respected and protected by the state and every individual.
- b) **Preventing Abuse of Power:** The law grants power to state officials (police, prosecutors, judges). The safeguard system functions as a balance, limiting discretion (freedom of action) and ensuring that this power is not misused to oppress or harm individuals.
- c) **Ensuring a Fair Legal Process (Due Process of Law):** This system ensures that every individual who comes into conflict with the law, whether as a victim, witness, or perpetrator, will be treated fairly, transparently, and in accordance with established procedures.
- d) **Realizing Substantive Justice:** In addition to procedural justice, the safeguard system also seeks to achieve deeper justice, namely the restoration of victims' losses, rehabilitation of perpetrators, and restoration of social harmony.

- e) Increasing Accountability: With the safeguard system, law enforcement officers and state institutions can be held accountable if they violate procedures or abuse their authority.
- f) Strengthening Public Trust: When the public sees that the legal system has strong protection, trust in legal institutions will increase, which is important for social stability.

This shows that the Safeguard System in law has an important role in maintaining public trust that the law is not only about retaliation in the form of imprisonment but also about realizing peace.

Conclusion

Based on the description above, it can be concluded that the implementation of the termination of prosecution by public prosecutors in Indonesia, especially through the restorative justice approach, is a progressive step in realizing a more humane and just criminal justice system. This marks a paradigm shift from retributive to restorative, with a primary focus on restoring conditions, relationships, and losses caused by criminal acts. This implementation is a real manifestation of the concept of restorative justice through regulatory aspects that regulate the termination of prosecution based on restorative justice for certain criminal acts (generally minor and for which there has been peace and compensation for the victim). Furthermore, the urgency of restorative justice in the termination of prosecution is not only about alternative dispute resolution, but also about building a strong foundation for a safeguard system that is able to prevent harm, restore losses, and promote social justice as a whole in the criminal justice system in Indonesia. This is an essential step forward towards more humane, effective, and sustainable law enforcement.

References

- Hanafi Arief, et al., "Implementation of Restorative Justice Principles in the Criminal Justice System in Indonesia", *Al'Adl Journal*, Volume X Number 2, July 2018, p. 1.
- Marsall B Clinard and Peter C. Yeager, *Corporate Crime*, New York: The Free Press, A Division of Macmillan Publishing Co.Inc, 1980: 22-23.
- Muladi, *Theoretical and Conceptual Identification of Corporate Criminal Liability and Criminal Policies to Overcome It*, Semarang, Corporate Crime Lecture Materials, Master of Law, Faculty of Law, Semarang University.
- Pangestika Rizki Utami, the diversion process is all parties involved in a particular crime together to overcome the problem and create an obligation to make things better by involving victims, children, the community and related parties to find the best solution for children without any element of retaliation. In the *Volksgeit Journal*, Vol. 1 No. 1 June 2018, pp. 95-106.
- Rena Yulia. "The Position of Victims in the Criminal Justice System (A Study of the Position of Victims in the Criminal Procedure Code and the Law on Witness and Victim Protection" in the *Yustisia Journal*. Surakarta, 2009 Faculty of Law, Sebelas Maret University 2010. *Victimology of Legal Protection for Victims of Crime*, pp. 164-190.
- Rick Sarre, *Restorative Justice: A Paradigm of Possibility*, in Martin D. Schwartz and Suzanne E. Hatty, eds, *Controversies in Critical Criminology*, 2003, pp. 97-103.
- Rufinus Hotmaulana Hutahuruk, *Overcoming Corporate Crime Through a Restorative Approach, a Legal Breakthrough*, Sinar Grafika, 2013, p. 195.

- Septa Chandra, (2014). Legal Politics of Adopting Restorative Justice in Criminal Law Reform, *Fiat Justisia Journal of Legal Studies*, Vol. 8 (No. 2), pp. 255-277.
- Sudarto, *Criminal Law and Community Development*, Bandung, Alumni, 1983, p. 35.
- Ulang Mangun Sosiawan et al., Perspective of restorative justice as a form of protection for children in conflict with the law, *DE JURE Legal Research Journal*, ISSN 1410-5632 Vol. 16 No. 4, December 2016: 425-438.
- Van Ness, legal Issues, <http://www.restorativejustice.org>, in Rufinus Hotmaulana Hutaeruk, *Handling Corporate Crime Through a Restorative Approach, a Legal Breakthrough*, Jakarta, Sinar Grafika, 2013, p. 141-146.
- Wirjono Prodjodikoro, Legal Protection for Victims of Crime in Indonesia, in his book Andi Sofyan and Abdul Asis, *on Victims' Rights in Court*, Jakarta: Sinar Grafika, 2012, p. 25.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).