

The Implementation of Restorative Justice to Mistreatment Crime In the North Gorontalo District Attorney's

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Abstract

The purpose of this research is to explain how the implementation and the obstacles to the implementation of Restorative Justice to mistreatment crime in North Gorontalo State Attorney. This research became interesting because the District Attorney's Office handled only 3-4 cases with the Restorative Justice mechanism caused by the social aspect. The urgency of this research is the potential of Restorative Justice to reduce the overcapacity of correctional institutions and reduce the rate of recidivism, which is a crucial problem in Indonesia. The research method used in this research is empirical juridical, where the author directly conducts interviews and observations. This research is unique because it deeply explores the perceptions of the parties involved in the implementation of Restorative Justice, an area that is still rarely researched. Based on the research obtained the results first, the application has been carried out by the guidelines. Second, the obstacles found were not achieved the element of peace and agreement which was influenced by the views of the parties. The obstacles found were the possibility of overcapacity in correctional institutions and the development of criminal acts while in correctional institutions. So it can be concluded that the application of Restorative Justice implementation needs the awareness of the parties and its application, so the impact can help reduce overcapacity and recidivism in the future.

Keywords: *Mistreatment; North Gorontalo; Restorative Justice*

1. INTRODUCTION

The Criminal Code and Criminal Code Procedure are the instruments that form the basis of law enforcement in Indonesia. So that the implementation of the Criminal Code and the Criminal Code cannot be separate.¹ Generic crime is a term for independent crimes such as theft, assault, murder, and other crimes that have been regulated and positive as criminal offenses in the criminal law.² Besides that Criminal law is a law that regulates acts that are categorized as criminal acts and regulates norms that contain obligations and prohibitions.³ The law itself is obligatory⁴ which is applied from the scope of the district to the state, for example, a region or province must have law enforcement institutions. The North Gorontalo State Attorney's Office is located in Kwandang District, Molingkapoto to be exact, and is structurally led by the Head of the State Attorney's Office with 4 Section Heads. Which is one of the section heads in the criminal field, in one year, resolves the following cases:

¹ Muhammad Alwan Fillah, "Politik Hukum Dalam Pembaruan Kitab Undang-Undang Hukum Pidana (KUHP) Di Indonesia," *Varia Hukum* 5, no. 1 (2023): 52–64, <https://doi.org/10.15575/vh.v5i1.23230>.

² Bapasjaksel, "Tindak Pidana Umum," 2024, November, <https://bapasjaksel.kemenkumham.go.id/glosarium/tindak-pidana-umum/>.

³ Faisal Hadi Pramono and Laras Astuti, "Penerapan Keadilan Restoratif Pada Tindak Pidana Ringan Di Kejaksaan Negeri Yogyakarta," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 4, no. 2 (2023): 84–98, <https://doi.org/10.18196/ijclc.v4i2.19806>.

⁴ Christiani Widowati, "Hukum Sebagai Norma Sosial Memiliki Sifat Mewajibkan," *ADIL: Jurnal Hukum* 4, no. 1 (2015): 150–67, <https://doi.org/10.33476/ajl.v4i1.31>.

Tabel 1. Number of cases in North Gorontalo District Attorney's Office 2022-2024.

No.	Case Handling Stage	2022	2023	2024
1.	Receipt of SPDP (Letter Commencement of Investigation)	82	85	79
2.	Submission of Phase I Files (Pratut)	61	58	48
3.	P-21 (complete case file)	37	45	42
4.	Phase II (Prosecution)	39	47	40
5.	Submitted to District Court	32	47	36
6.	Number of Judgments	26	42	33
7.	Number of Judgments executed	26	42	33

Source: North Gorontalo District Attorney's.

Referring to the table, there are dozens of criminal acts that occur, including mistreatment handled with Restorative Justice mechanisms is still very small compared to the total number of cases, so further research is needed. Then referring to data from the Central Statistics Agency in the last 3 years, namely 2022-2024 there is an increase in the population from 128,563 residents in 2022, 130,722 inhabitants in 2023, and 132,784 inhabitants in 2024.⁵ This increase in population is in line with the increase in the number of crimes of mistreatment that occur.

This number is dominated by the crime of mistreatment which contains the element of intent, which is defines advertising mistreatment that causes pain or injury to another person, but an act that causes pain or injury to another person will not be considered mistreatment if the action is taken to improve bodily safety.⁶ However, in this case, the act is intended to cause pain or injury to another person and cannot be said to be an act of mistreatment if the act is carried out with the aim of maintaining the safety of the body.⁷ Although basically the mistreatment is light or can be resolved through mediation or Restorative Justice, the community chooses to go to court. Basically, this can change the perception of the community towards traditional crimes so that the settlement can prioritize recovery in accordance with the basic concept of Restorative Justice which is currently very relevant to be applied in society.

This shows that there is no effectiveness in handling, supervision that should be a place to foster prisoners to be better and after release, they will be accepted back into society. However, in reality, after release, it creates an excess capacity in Correctional/Prisoner Institutions and develops their criminal acts. For example, in a very serious case of mistreatment, namely the case in Decision Number 102/Pid.B/2024/PN on behalf of Radi Suleman alias Radi, which is still on trial. Meanwhile, the case of mistreatment with Application Number: B674/P.5.15/EOH.2/05/2022 which may potentially result in physical injury (disability) has actually been agreed upon and can be resolved with Restorative Justice.

⁵ BPS Provinsi Gorontalo, Kumlah Penduduk (Jiwa), 2022-2024 dalam <https://gorontalo.bps.go.id/id/statistics-table/2/NDYjMg==/jumlah-penduduk.html>, diakses pada 26 Januari 2025

⁶ Tirtaamidjaja, *Pokok-Pokok Hukum Pidana* (Jakarta: Frasco, 1995).Tirtaamidjaja.

⁷ Marpaung Leden, *Tindak Pidana Terhadap Nyawa Dan Tubuh (Pemberantasan Dan Prevensinya)*, 3 (jakarta: Sinar Grafika, 2005).

In the research Rahmawati and Faozi⁸ focuses on the application of Restorative Justice at the Semarang District Attorney's Office, but does not discuss the impact of Restorative Justice on victims and perpetrators. The Research of Parasdika, Najemi, and Wahyudi which examined the Application of Restorative Justice in Crimes of mistreatment, and the obstacles faced at the Prosecutor's Level.⁹ This research discusses the application of Restorative Justice at the Prosecutor's Office in general but does not provide specific examples of Restorative Justice mechanisms.

The Research of Pohan, Ablisar, Marlina, and Ekaputra on the Settlement of Crimes with a Restorative Justice Approach by the General Prosecutor's Office of the Medan District Prosecutor's Office) discusses the Legal Regulation of Criminal Settlement with a Restorative Justice Approach by the Public Prosecutor's Office and its Obstacles.¹⁰ This research discusses the application of Restorative Justice in the Medan District Attorney's Office but does not explain the challenges and impacts in detail. The difference between the author's research and the previous research is that in this study, the author on this research focuses on the implementation of RJ in the North Gorontalo District Attorney's Office with an in-depth analysis of the challenges and impacts on perpetrators, victims, and society.

2. METODE

The type of research used in this research is empirical research. In this study, the authors used a qualitative approach method. This method emphasizes more on the observation of phenomena and examines more to the substance of the meaning of these phenomena. This research uses two kinds of approaches, namely normative juridical approaches and empirical juridical approaches, which are carried out by studying library materials in the form of literature and legislation related to the problems to be discussed. Furthermore, analyzing information and conducting research in the field to find out more about the issues discussed. Data collection techniques in empirical legal research usually use 3 techniques, which can be done separately or combined. Where the techniques include questionnaires or questionnaires and observation.¹¹ However, in this research, the author focuses on data collection techniques through interviews with the Head of the General Crime Section of the North Gorontalo District Attorney's Office.

⁸Safik Faozi Lilis Rahmawati, "Penerapan Restorative Justice Terhadap Pelaku Tindak PidanaPenganiayaan Ringan Di Kejaksaan Negeri Semarang," *Unes Law Review* 6, no. 1 (2023), <https://doi.org/10.31933/unesrev.v6i1.876>.

⁹ Aulia Parasdika, Andi Najemi, and Dheny Wahyudhi, "Penerapan Keadilan Restoratif Terhadap Tindak Pidana Penganiayaan," *PAMPAS: Journal Of Criminal* 3 (2022): 69–84, <https://doi.org/10.22437/pampas.v3i1.17788>.

¹⁰ Husein Pohan et al., "Penyelesaian Tindak Pidana Dengan Pendekatan Restorative Justice Yang Dilakukan Oleh Kejaksaan," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 1 (2023): 52–62, <https://doi.org/10.56128/jkih.v3i1.41>.

¹¹ Yulianto Achmad Mukti Fajar, *Dualisme Penelitian Hukum Empiris & Normatif* (Yogyakarta: Pustaka Pelajar, 2010).

3. RESULTS AND DISCUSSION

3.1 The application of Restorative Justice principles to the crime of mistreatment at the North Gorontalo District Attorney's Office.

The Restorative Justice mechanism itself emerged not only because it existed but was driven by the dissatisfaction felt by the Indonesian people. The parties in this case need to be brought together to be involved in how the problem can be resolved. The victim in this case can voice his wishes and the perpetrator can also be given the opportunity to make amends. This mechanism has not been found directly in the current justice system in Indonesia, which may be able to provide a forum for parties to voice their thoughts on the conflict that is being experienced. As a result, the conventional criminal justice system in various countries around the world still causes dissatisfaction and disappointment in the community.¹² This is one of the reasons for the implementation of Restorative Justice in Indonesia, for example in the North Gorontalo Prosecutor's Office.

This understanding is then corroborated by the statement of Miriam Liebman who then defines Restorative Justice as follows: "Restorative Justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school discipline system) that emphasizes restoring the victim and community rather than punishing the offender" which means that restorative justice has become a term that has been commonly used in the approach to punishment, namely as a punishment system such as a school discipline system, in this case emphasizing the concept that puts the victim and the environment back to its original state rather than punishing the offender.¹³ This is then referred to as the concept of restorative justice, which states that a justice based on peace where the settlement of criminal acts does not recognize justice based on revenge or punishment of the perpetrator. Where citizen/community participation is also in this case a facilitator for solving the problems of victims and perpetrators. Where the conditions of the parties involved in the conflict are not involved in resolving the conflict,¹⁴ then change to prioritize where the victim is not only a victim but a party that should also be prioritized for its losses. This is in accordance with the theory conveyed by Liebman that Restorative Justice focuses on recovery for victims. Where recovery is the main basis for the successful application of Restorative Justice.

However, the Gorontalo District Prosecutor's Office by carrying out the mechanism as stipulated in the Criminal Code regarding mistreatment offenses in the form of prison sentences does not provide a deterrent effect, and criminal acts of mistreatment still often occur. From 2023 to 2024, there are 7 reports of criminal acts of mistreatment handled by the North Gorontalo District

¹² Wahid Eriyantouw, *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana* (Jakarta: Universitas Trisaksi, 2009).

¹³ Wawan Aolawi and Dani Durahman, "Pelaksanaan Restorative Justice Perkara Kekerasan Dalam Rumah Tangga Dalam Tahap Penyidikan," *Wacana Paramarta Jurnal Ilmu Hukum* 21, no. 1 (2022): 1–10, <https://doi.org/10.32816/paramarta.v21i1.169>.

¹⁴ Ahmad Farhan, "Penerapan Restorative Justice Dalam Tindak Pidana Pencurian Pada Tahap Pemeriksaan Di Persidangan (Studi Kasus Putusan Nomor 28/Pid.B/2022/Pn.LBB)" 14, no. 1 (2023): 38–51.

Attorney's Office, but this does not rule out the possibility that there are a number of cases in a dark number because the victim is under intimidation or threat from the perpetrator. This is as attached to the following table:

Tabel 2. Number of cases that implemented the Restorative Justice in North Gorontalo District Attorney's Office 2022-2024

No.	Application Number	Year	Terms of Peace
1	Number B-595/P.5.15/Eoh.2/04/2023 April 3, 2023	2023	Without Conditions
2	Number B-675/P.5.15/Eoh.2/04/2023 April 13, 2023	2023	Without Conditions
3	Number B/P.5.15/Eoh.2/04/2023 December 2024	2023	Three articles in the peace agreement
4	Number : R-23/P.5.15/Eoh.2/02/2024 dated February 26, 2024	2024	Three articles in the peace agreement
5	Number : R-24/P.5.15/Eoh.2/02/2024 March 6, 2024	2024	Two articles in the peace agreement
6	Number : R-22/P.5.15/Eoh.2/02/2024 February 26, 2024	2024	Three articles in the peace agreement
7	Number : R-63 /P.5.15/Eoh.2/07/2024 July 18, 2024	2024	Three articles in the peace agreement

Source: North Gorontalo District Attorney's.

The various cases that occurred were dominated by mistreatment motives around provoked emotions, the effects of drunkenness, and self-esteem. This condition shows that the culture of the community in North Gorontalo is physical violence so it is one of the problems that needs to be solved. Data from local correctional institutions also found a surge in inmates so overcapacity arose which caused criminal settlement as a *premium remedium* that was no longer effective and required other solutions.

This application is a form of development of the criminal justice system that prioritizes the involvement between the perpetrator and the settlement of the case. This shows that one of the mechanisms known in conventional criminal procedure law can now be replaced with a restorative justice mechanism which in resolving a criminal offense provides an opportunity for the parties involved, namely the perpetrator, victim, and family. Where it the same with the Restorative Justice purpose that emphasizes recovery for victims and is the implementation of speedy trial principles that emphasize effectiveness, efficiency, and affordability on the aspects of effectiveness, efficiency, and affordable costs.¹⁵ The existence of perpetrators and victims is not only limited to witnesses presented by law enforcement officials but also parties who are expected to have an opinion. This perspective will then create a renewal in the settlement of the case that imposing punishment on the perpetrator of a crime that is legally guilty does not guarantee the fulfillment of the interests of the victim and provide a proper deterrent effect. So it

¹⁵ Iklimah Dinda Indiyani Adiesta, "Penerapan Restorative Justice Sebagai Inovasi Penyelesaian Kasus Tindak Pidana Ringan," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 2, no. 2 (2021): 143, <https://doi.org/10.19184/ij.v2i2.25842>.

can be concluded that the concept of deliberation between the perpetrator and the victim is very important to be applied in restorative justice to achieve this, the perpetrator and the victim will choose a form of case settlement that will better meet their interests of both and this then shows that restorative justice really tries to emphasize the responsibility or return of the perpetrator for his actions that cause disturbance or cause harm to others.¹⁶

Then in its development, this system has been in accordance with the objectives of the criminal justice system itself, which is in accordance with what Madjono formulated, namely in an effort to prevent the public from becoming victims of crime. This then aims to solve crimes, so that the community is satisfied with the justice that is upheld and the guilty get the appropriate punishment. This effort is intended so that the perpetrator does not re-offend. Then underlying the existence of the system also developed three basic principles to form Restorative Justice which is where be a restoration to those who have been injured, the offender has an opportunity to be involved in the restoration if they desire, and public order and the community aim to preserve a just peace for both parties, in this case, the victim and the perpetrator. The court system's role is to preserve the public order and the communities role is to preserve a just peace. Then, the crime that can often be resolved with Restorative Justice is the crime of mistreatment.

Criminal offenses are generally defined as acts against the body or physique of a person that are regulated in the Criminal Code, then simply called "mistreatment" or it can be understood According to Wirjono Prodjodikoro that criminal offense means an act for which the perpetrator may be subject to criminal punishment¹⁷. In terms of the word mistreatment, it means has a "made-up" meaning or in the sense of adjectives derived from the root word meaning "aniaya" which then gets the prefix "pe" and the suffix "an". Furthermore, mistreatment itself comes from a noun which has the meaning of the word "mistreatment" which in this case is intended to indicate a subject or intended to the perpetrator of mistreatment. This is reinforced by the understanding of M. H. Tirtaamidjaja who gives the meaning of "mistreatment" by "persecuting", namely causing injury. Where the mistreatment often occurs due to the uncontrollable nature of human beings either due to inadequate education or the bad influence of the surrounding environment.¹⁸ So it can be concluded that to call someone a persecutor, the person must have intentionally committed the act of causing pain to another person or injury to the body of another person, where the person definitely committed the act for the purpose of harming the health of another person.

Prof. Moeljatno uses the term "criminal act" for reasons such as the term event does not indicate a person's handling or *gedraging*, but also the possibility of animals or natural forces, the term act which can be interpreted as a step, and in the form of behavior or behavior, and the term act

¹⁶ H. Siswanto Sunarso, *Viktimologi Dalam Sistem Peradilan Pidana* (Jakarta: Sinar Grafika, 2014).

¹⁷ Laka Dodo Laia Fariaman Laia, "Penerapan Hukum Dalam Pemidanaan Pelaku Tindak Pidana Trafficking," *Jurnal Panah Keadilan* 2, no. 2 (2023): 38–49, <https://doi.org/10.31862/9785426311961>.

¹⁸ Fertina Lase, "Penerapan Putusan Pemidanaan Pada Tindak Pidana Penganiayaan Mengakibatkan Luka Berat (Studi Putusan Nomor 200.Pid.B/2022/Pn.Sgl)," *Jurnal Panah Hukum* 2, no. 2 (2023): 40–48, <https://doi.org/10.57094/jph.v2i2.989>.

which is often used in everyday conversation, such as indecent acts, evil acts, and others, which indicate that someone does something undesirable. Then Indonesian criminal law also defines the element of mistreatment, including the following intention, an act, and the consequence of the act (Intended) that contains pain in the body and wound on the body.¹⁹ Such crimes are often encountered in North Gorontalo, which is driven by the fact that North Gorontalo is the youngest district with very little human resource development, so people still have a low understanding and are still heavily influenced by regional customs.

The imposition of Restorative Justice in the North Gorontalo District Attorney's Office was applied to the crime of mistreatment with Application Number: B674/P.5.15/EOH.2/05/2022 on 2022 where physical violence was committed by Mr. Arifin Mooduto to the victim on behalf of Elan Imran Child at the house of Deme II Village Chief Yusuf M. Thalib in Deme II Village, East Sumalata Subdistrict, North Gorontalo Regency. The assault started when the victim and perpetrator were initially mediated to clarify the allegations made by the victim on the behavior of the perpetrator's wife who was having an affair. However, during the clarification, the perpetrator became angry when the victim answered questions from the Village Head. The perpetrator slapped the victim with his right open hand once on her left cheek and then on her left ear, causing the child to feel pain and cry while holding her cheek. Based on the perpetrator's statement, the perpetrator was emotional because the victim's child was considered to be shouting in public or many people where the place was the residence of the employees of the tower site workers and was very emotional when the perpetrator heard the victim's words "The suspect's wife Adelia Latif had an affair with the Village Head" at the time of the incident to be clarified or mediated.

The perpetrator's actions are based on Visum et Repertum letter No. 440 / Pkm-Smlt / 519 / XI/ 2021 dated November 09, 2021, made and signed by the Sumalata Health Center Doctor, Dr. Guntur Yuda Kusuma with the results of the examination, the victim was conscious with good general condition, a bruise was found on the left ear, and the victim was given medication and adequate care. Related to the application of restorative justice can be viewed from several aspects, among others:

Active role of the parties to peace (there is a consensus to resolve by Restorative Justice mechanism). The element of consensus is one of the absolute elements that must be present in restorative justice. Consensus is also defined as where both parties agree to choose to finish or not be tried. Then the consensus element itself has the meaning of an agreement to make peace or a mutual agreement. Where the achievement of an understanding of Restorative Justice is a value and characteristic of the philosophy of the Indonesian nation stated in Pancasila, namely solving problems with consensus. Then the essence of consensus deliberation can be done in a

¹⁹ Tommy F Sumakul and Veibe V Sumilat, "Tinjauan Yuridis Tindak Pidana Penganiayaan Yang Mengakibatkan Kematian Menurut Pasal 351 Ayat (3) Kitab Undang-Undang Hukum Pidana," *Lex Crimen* 10, no. 9 (2021): 57–65, <https://doi.org/10.35791>.

way, among others through mediation, payment of compensation, or other methods agreed between the victim/family of the victim and the perpetrator. Other parties can also participate in this matter, for example, the family or other community leaders. If there is no agreement between the victim/victim's family and the perpetrator, then the settlement is processed through the existing court mechanism (litigation).

When associated with Application Number: B674/P.5.15/EOH.2/05/2022 on 2022 Both parties agreed to unconditional peace. Where the considerations of the victim and the perpetrator in this case are that the victim in his actions is also guilty while the perpetrator also feels that the actions or responses he gave cannot be justified. So basically it is possible to provide conditions but in this case, both parties feel equally guilty. Meanwhile, another example of compensation in the Restorative Justice mechanism can be seen in the case application: R22/P.5.15/Eoh.2/02/2024 dated February 26, 2024, with the implementation of the expose on March 6, 2024, where the parties gave each other conditions in the settlement by including articles, namely as follows, Article 1: Suspect liability, the suspect will not repeat the act of committing a criminal offense by the alleged article in the case file; Article 2: Procedure for Implementation of Obligations The suspect was directly supervised by his wife and community leaders where the suspect resides; Article 3: Obligations of the Victim, the victim forgave the suspect and did not object to this case not proceeding to trial. Based on the above article, it can be understood that the wishes of the victim can be stated in an agreement that binds the perpetrator. This is indeed very mandatory because the main purpose of restorative justice itself is to restore the loss so that the terms of peace agreed by the parties are a form of accommodation to the wishes of the victim.

The role of the prosecutor in mistreatment cases resolved with Restorative Justice is very significant, where the prosecutor becomes a facilitator for both parties. The prosecutor becomes a bridge in providing a peace forum for victims and perpetrators. Then the prosecutor through a decree of termination of prosecution stated that the termination of prosecution where the letter contained the following provisions, Resolved a case based on restorative justice with the name of the suspect (name of the perpetrator) alias (nickname) in the crime of maltreatment Article 351 Paragraph (1) of the Penal Code; This letter may be revoked if in the future there are new reasons obtained by the investigator/public prosecutor or there is a pre-trial decision/pre-trial decision that has received a final decision from the Court of Appeal that declares the settlement of cases based on restorative justice invalid; A copy of the decree is sent to the suspect, his family, the investigator, and the judge. So in this case the prosecutor has the right to revoke the letter of termination of prosecution for both reasons. Then the understanding is conveyed by the prosecutor to the parties so that the parties heed the agreement equally active in resolving problems peacefully through Restorative Justice.²⁰

In terms of administration for Restorative Justice in the Gorontalo District Attorney's Office refers to the Decree of the Attorney General of 2022 concerning the Administration of General

²⁰“Interview With the Head of General Crime” (Gorontalo Utara, 2024).

Criminal Cases where there are 16 administrative forms that must be input. The SOP forms include:

RJ. 1: Order to Facilitate the Peace Process; RJ. 2: Summons for Victim/Suspect/Parent or Guardian of Victim or Member of the Public; RJ. 3: Notice of Out-of-Court Settlement of Cases Based on Restorative Justice; RJ.7: Memorandum of Opinion on Successful Peace Efforts; RJ. 8: Memorandum of Opinion on Successful Settlement Process; RJ. 10: Report of Successful Peace Efforts; RJ. 16: Peace Accord; RJ. 18: Minutes of the Peace Process; RJ. 25: Successful Peace Process Report; RJ. 27: Minutes of Implementation of Peace; RJ. 31: Peace Implementation Report Executed; RJ. 33: Request for Approval to Settle Cases Based on Restorative Justice; RJ. 34: Consent to Settlement of Cases Based on Restorative Justice; RJ. 35: Determination Letter for Case Settlement Based on Restorative Justice; RJ. 36: Notice of Restorative Justice Case Resolution to Investigator; RJ. 37: Notice of Restorative Justice Case Settlement to the Court.

The entire administration will then be administered in stages, namely where peace efforts/restorative justice to the victim and suspect are submitted to the Head of the local District Prosecutor's Office which will then be forwarded to the Head of the High Prosecutor's Office in accordance with the mechanism regulated in Article 3 Paragraph 5 of PERJA No. 15 concerning Termination of Prosecution Based on Restorative Justice. The guidelines for the implementation of this matter are guided by Circular Letter of the Attorney General for General Crimes Number: 01/E/Ejp/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice in point 4 (four) regarding the mechanism for submitting a request for a case title to the Deputy Attorney General for General Crimes (JAMPIDUM) through the Chief Prosecutor using electronic means (video conference). The case title is attended by the Public Prosecutor and the leaders of the District Attorney's Office and the High Prosecutor's Office in the presence of the Deputy Attorney General for General Crimes (JAMPIDUM) which will result in the approval of the termination of prosecution based on restorative justice with considerations based on the case chronology, peace efforts, peace process, and peace agreement facilitated by the North Gorontalo District Attorney's Office.

3.2 Obstacles and Challenges in the Implementation of Restorative Justice for Mistreatment Crime in North Gorontalo Prosecutor's Office

The emergence of Restorative Justice also in Indonesian law is a form of criticism of the application of the justice system in Indonesia, which until now still refers to the provision of punishment. This condition is then considered less effective in resolving social conflicts in society. This is because it does not involve the directly affected parties (victims). Where this method is intended to empower victims, perpetrators, families, and communities to repair an illegal act by using awareness and conviction as a basis for improving social life, it explains that

the concept of Restorative Justice is basically simple.²¹ In addition, the basic principle of Restorative Justice is the participation of both victims and perpetrators. Citizen participation is also in this case a facilitator for solving the problems of victims and perpetrators. So that in this context it is expected to create guarantees for victims or for perpetrators so that they no longer disturb the existing harmony in society.²²

Restorative Justice arrangements are intended as a form of real recovery and reconciliation efforts to find a better solution for the perpetrator, solving through this approach is different from the conventional criminal justice system. The purpose of Restorative Justice is to find an agreement between the two parties in resolving the problem and to find a point regarding the true meaning in relation to the form of justice and balance for the perpetrators and victims themselves. Restorative Justice is one of the alternatives to case settlement that emphasizes restoration back to its original state and it is hoped that after the case, the perpetrator can be accepted by the community without being labeled ugly. Whether with the agreement of losses that need to be returned, the agreement expected by the victim, or the psychological aspects of the victim and the perpetrator have achieved the expected legal objectives.

The requirements for Restorative Justice in Indonesia are regulated in accordance with the Attorney General Regulation No. 15 of 2020, namely in article 5; Minor offenses or victims' loss is not more than IDR 2,500,000.00; Criminal offenses are complaints; The maximum penalty is 5 (five) years imprisonment in one of the charges; Criminal offenses with juvenile offenders for which diversion was unsuccessful; or Traffic offenses that are crimes.

These requirements become guidelines or references for law enforcers, especially for the North Gorontalo District Attorney's Office in handling cases that can be carried out Restorative Justice. The imposition of Restorative Justice is one of them applied to the crime of mistreatment with Application Number: B674/P.5.15/EOH.2/05/2022 on 2022 where physical violence was committed by Mr. Arifin Mooduto to the victim on behalf of Elan Imran Child which took place at the house of Deme II Village Chief Yusuf M. Thalib in Deme II Village, East Sumalata Sub-District, North Gorontalo Regency. The assault started when the victim and the perpetrator were initially mediated to clarify the allegations made by the victim on the behavior of the perpetrator's wife who was having an affair. During the clarification, the perpetrator became angry when the victim answered questions from the Village Head. The perpetrator slapped the victim with his right open hand once on her left cheek and then on her left ear, causing the child to feel pain and cry while holding her cheek. Based on the perpetrator's statement, the perpetrator was emotional because the victim's child was considered to be shouting in public or many people where the place was the residence of the employees of the tower site workers and was very

²¹ Siti Muflichah Dessi Perdani Yuris Puspita Sari, Handri Wirastuti Sawitri, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Soedirman Law Review*, 2015, 6, <https://doi.org/10.20884/1.slr.2022.4.2.185>.

²²Apong Herlina, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2004).

emotional when the perpetrator heard the victim's words "The suspect's wife Adelia Latif had an affair with the Village Head" at the time of the incident to be clarified or mediated.

Then based on Certificate No: 440/RSUD-HAH/784/I/2022 dated January 18, 2022, signed by the Examining Doctor at the ENT Clinic of the Regional General Hospital dr. Hasri Ainun Habibie, namely dr. Haerul Saleh, Sp.THT-KL in essence in the letter after an examination on December 22, 2021, at the ENT Clinic of RSUD dr. Hasri Ainun Habibie for the actions of the perpetrator causing:

Table 3. Result in Visum et repertum of Adelia Latif (Victim)

Indicator	Note
Ananesis	History of bumping the left ear \pm 1 month ago, no watery ear, no ear pain, no buzzing, no dizziness, no hearing loss.
Physical examination	Ear There is a perforated eardrum on the left ear, the right ear looks normal.
Nose	Within Normal Limits, and Throat: Within Normal Limits.
Simple hearing check	Right ear: Nerve-type hearing loss and Left ear: Bone-type hearing loss
Impressions	Non-suppurative chronic otitis media and right to left hearing loss

Source: Case Files Number : B674/P.5.15/EOH.2/05/2022

Based on the description above, although some aspects are normal, there is a decrease in hearing function, it can be said that the impact of the perpetrator's actions has a specific impact on the physical condition of the victim. In this case, of course, it causes long-term disability and with the consideration that the victim is still a child, the act of mistreatment committed by the perpetrator cannot be considered ordinary. However, with the agreement of Restorative Justice between the two parties, the criminal offense can be resolved in a family manner by taking into account the achievement of mutual agreement and the return of losses.

Furthermore, if we look at another case that was tried, namely in Decision Number 102/Pid.B/2024/PN Lbo Criminal Case Number: 1257/PAN.PM.W20-U2/HK2.1/11/2024 on behalf of Radi Suleman alias Radi where the criminal act began with a feeling of displeasure because he was mocked by the victim. The case started because the defendant was mocked by the victim, where the victim said the phrase "If you want to go to school, don't just take dirty absences" which means "If you want to go to school, don't just take frequent absences" and said "if it's still early in the morning, rinse your mouth first, *busu mulu ba atango wale*" which means "if it's still early in the morning, rinse your mouth first, don't talk too much." Of course, this angered the defendant and then the defendant approached the victim and immediately pushed the victim from the front using both hands on the victim's shoulders and the victim was pushed approximately 2 meters and fell to a sitting position. Then based on the results of the *Visum Et*

Repertum examination from RSUD dr. Zainal Umar Sidiki Number: 445/RSUD-ZUS GORUT/1265.a/IX/2023 dated September 10, 2023, made and signed by dr. Andre Christian Cundawan as the examining doctor at RSUD dr. Zainal Umar Sidiki, stated that he had examined Wirna Langgango, with the following examination results the victim arrived fully conscious, the general condition appeared mildly ill, vital signs within the limits of the norm, and the victim was found, a clear bruise in the lower abdomen center, size two by two centimeters, no blood, indistinct border and Swelling of the right wrist, size two by two by one centimeter, indistinct border.

Then based on the testimony, the victim's condition was normal, however, the bruising was still normal and there were no defects found on the victim. For the actions committed by the defendant Radi Sulaiman who was charged with Article 351(1) of the Penal Code, he was sentenced to 4 months imprisonment. Based on the description above where the two cases have different points of view considering their different impacts, but in the case of Arifin Mooduto, Restorative Justice was possible, while in the case of Radi Sulaeman an agreement for Restorative Justice was not reached. It can be concluded that the application of Restorative Justice is inseparable from the existence of obstacles and obstacles, among others:

Obstacles appear on implementation internally by the society is because the human resources (HR) and the typology of the society are determinants of the progress of a region. Especially in North Gorontalo Regency, which as a newly independent regency still does not have maximum human resources. This can be seen based on data from the Human Development Index (HDI) of North Gorontalo Regency which is ranked the lowest in the Gorontalo Province. This condition requires the active role of all stakeholders to improve human resources in North Gorontalo Regency. BPS data shows that the HDI of regencies/cities in Gorontalo, where North Gorontalo Regency in 2021 is ranked sixth or bottom. In 2022 and 2023 North Gorontalo Regency remained in the same position.²³ When looking at these conditions, it has a huge impact on people's understanding of the law. Where people still understand the law as an instrument that imprisons someone or only understand it as a form of punishment for someone. This is the main factor why Restorative justice cannot be implemented optimally, especially at the prosecution stage.

The Restorative Justice mechanism is basically a family method that is resolved through mediation facilitated by the North Gorontalo District Attorney's Office. So legally Restorative Justice is not understood as a method which is then understood as RJ, but for the community in North Gorontalo, the Restorative Justice method is better understood as a family method. The kinship referred to in this case by the community is understood as a form of deliberation to obtain a conclusion or resolution in a peaceful or favorable manner for all parties. The understanding of Restorative Justice then sometimes becomes one of the obstacles where the

²³ Kontras.Id, "Tingkatkan SDM Di Gorontalo Utara, Aktivis: Semua Pihak Harus Berperan Aktif," June 4, 2024, <https://kontras.id/2024/06/04/tingkatkan-sdm-di-gorontalo-utara-aktivis-semua-pihak-harus-berperan-aktif/>.

community sometimes understands it as a form of peace, which in this method there is enough legal guarantee to deter the perpetrator. The deterrent effect is reflected in the existence of a prosecution determination letter that includes a provision where other reasons are found by the investigator / public prosecutor which indirectly confirms that legal effects are still possible if the offender is not behaving well.

So that some people or the community do not understand the existence of the Restorative Justice method as a way of peace by prioritizing the wishes of the parties, then often the community of Nirth Goorntalo understands it immediately as a way of peace so that the ego of some people considers it inappropriate because it will affect their self-esteem. So the understanding of Restorative Justice in simple terms can still be understood as a method that benefits the perpetrator because he feels forgiven, in other words, the substance, benefits, and objectives of Restorative Justice are not well understood by the community.

Then the obstacle based on the law enforcement aspect is that in the forum facilitated by the prosecutor as a law enforcer in North Gorontalo, no consensus was reached. It is generally understood as an agreement or understanding, then according to the language of mutual agreement or unanimity. So it is clear that the context of consensus is a form of understanding between two parties. The Restorative Justice mechanism actually emphasizes the activeness of the parties for the desire to reconcile, meaning that there is willingness from all parties to resolve problems outside the trial. Then what became an obstacle in the North Gorontalo District Attorney's Office, for example, what happened in Decision Number 102/Pid.B/2024/PN Lbo Criminal Case Number: 1257/PAN.PM.W20-U2/HK2.1/11/2024 on behalf of Radi Suleman alias Radi where the criminal act began with a sense of disrespect for being teased by the victim. When looking at the effects of actions and motives, it should be resolved through kinship, but because no agreement was found, it must be tried.

So it can be concluded that agreements and consensus in the context of Restorative Justice do not necessarily just agree but contain elements of conditions. Where the conditions in this case are intended to ensure that all parties do not feel disadvantaged. In the North Gorontalo District Attorney's Office, it is often the case that the community decides to continue the trial because they do not want peace or the expected conditions are not appropriate. So in this case, the agreement must emerge and be initiated directly by the parties, the prosecutor becomes a facilitator who in this case maximizes that the desire for peace can be achieved by ensuring that all agreed rights and obligations must be fulfilled.

In addition to the obstacles, there are Challenges to implementing Restorative Justice, which is in general, the purpose of punishment is to educate or correct people who commit crimes in order to become people of good character so that they are beneficial to society.²⁴ The sanction of punishment is usually through the Penitentiary or Correctional Institution where the defendants

²⁴ Wirjono Prodjodikoro, *Tindak Tindak Pidana Tertentu Di Indonesia* (Jakarta: PT. Fresco, 1980).

are fostered and serve their sentence. where even the conditions of prisons are currently over capacity²⁵, thus becoming a major problem in the prison environment in Indonesia, so its intended to provide a deterrent effect its not really conducted. Then the connection with Restorative Justice where criminal offenses that are not possible in Restorative Justice and the form of action is a minor crime makes overcapacity in correctional institutions. This overcapacity should be resolved by the RJ method, because minor crimes that occur in the North Gorontalo District Attorney's Office, for example in Criminal Case Number: 1257/PAN.PM.W20-U2/HK2.1/11/2024 on behalf of Radi Suleman alias Radi, can be carried out Restorative Justice Mechanism. Because with many trials it will make the Correctional Institution full, where it is feared that with the overcapacity, coaching activities are not maximized, only in the nature of carrying out sanctions that do not get the essence of learning or deterrent effects. So that the obstacle to the application of Restorative Justice that does not work or cannot be implemented is the existence of overcapacity in correctional institutions.

The effect of the punishment carried out in the case of decision 177/Pid.B/2019/PN Lbo which should have been resolved through Restorative Justice led to the repetition of criminal acts, namely in the case of mistreatment (recidivist) in case Number: BP/01/V/RES.1.6/2024/RESKRIM. Whereas the defendant Mastin Biki reoffended and was a second-time offender, the defendant was sent to prison. This repeated criminal act is what is feared to occur where the deterrent effect expected by the punishment does not work properly, it is possible for the perpetrator/defendant to learn more criminal acts than he did before. This is what strengthens that Restorative Justice should be applied by prioritizing an understanding of the effects of repeating acts as a recidivist and the legal consequences. So that the bad effect of the perpetrator's action to develop his criminal act does not occur in the North Gorontalo District Attorney's Office.

4. CONCLUSION

The implementation of Restorative Justice for mistreatment crimes at the North Gorontalo Prosecutor's Office has referred to the guidelines in Regulation of the Attorney General Number 15 of 2020 which in principle prioritizes the element of agreement between the two parties and the element of peace. In addition, administration related to the Restorative Justice requirements filed at the Prosecutor's Office has also been carried out in accordance with the guidelines and in stages, from the High Prosecutor's Office to the Attorney General's Office. This proves that the guarantee of efforts to restore victim losses is really considered. The Gorontalo District Attorney's Office has maximized its role as a facilitator and law enforcer where it provides an understanding that if the perpetrator repeats the act and deliberately violates the contents of the agreement, Restorative Justice can be revoked. Obstacles to the application of Restorative Justice

²⁵ Endi Arofa, "Penghentian Penuntutan Dalam Perkara Pidana Berdasarkan Restorative Justice," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum & Keadilan* Vol 7, no. 2 (2020): 319–338, <https://doi.org/10.32493/SKD.v7i2.y2020.9216>.

in North Gorontalo include the absence of peaceful elements between the two parties, the failure to reach an agreement to return compensation to the victim, and the influence of the society typology on North Gorontalo and the high egoism of each party. Another challenge, if the application of Restorative Justice is not implemented, is the overcapacity in correctional institutions and the development of criminal acts by recidivist perpetrators due to influence while in correctional institutions.

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