

## Restorative justice approach in resolution of criminal cases of blasphemy committed by health care workers in bathing covid-19 body at djasemen regional general hospital, Pematangsiantar

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### ABSTRACT

During the COVID-19 pandemic, the concept of *restorative justice* emerged as a potentially ideal approach for law enforcement and conflict mitigation. One notable case occurred at Djasamen Saragih Regional General Hospital in Pematangsiantar, involving the washing of the body of a woman confirmed to have COVID-19 by four male healthcare workers. In response to this case, the Pematangsiantar District Attorney's Office decided to discontinue the prosecution by issuing a Decree on Termination of Prosecution (*Surat Ketetapan Penghentian Penuntutan / SKP2*) Number D-505/L.12/Eku/02/2021. This decision can be regarded as appropriate and proportionate under the circumstances. The Head of the Pematangsiantar District Attorney's Office, Agustinus, stated that the four healthcare workers were not proven to have violated Article 156a in conjunction with Article 55 of the Indonesian Criminal Code concerning blasphemy.

**Keyword:** restorative justice; criminal acts of blasphemy; health workers; djasemen saragih regional general hospital Pematangsiantar

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### 1. INTRODUCTION

According to Law Number 36 of 2014 concerning Health Workers, a health worker is any person who devotes themselves to the health sector and possesses knowledge and/or skills acquired through education in the health field, which for certain professions requires specific authority to carry out health services. Health workers play a crucial role in improving the quality of health services for the community so as to increase public awareness, willingness, and ability to live a healthy life. Ultimately, this contributes to achieving the highest possible level of public health as an investment in the development of socially and economically productive human resources and as an essential component of general welfare.

Coronavirus Disease 2019 (*COVID-19*) has been declared a global pandemic by the World Health Organization (WHO). In Indonesia, it has been designated as a public health emergency and categorized as a non-natural national disaster. The *COVID-19* pandemic has exerted extraordinary pressure on various sectors, including both health and non-health sectors, resulting in significant social, legal, and institutional challenges.

In response, the government established specific protocols for the management and burial of bodies of confirmed or suspected *COVID-19* patients through the Decree of the Minister of Health Number HK.01.07/Menkes/4834/2021. Under these regulations, the handling of bodies—whether from within or outside hospital facilities—must be carried out by the hospital's designated handling team and no longer involves the patient's family. In situations involving a surge in deaths due to *COVID-19*, body handling may be conducted at community health centers (*Puskesmas*) or other facilities designated by local governments, under the supervision of health office-appointed teams.

In Indonesian law, religion is accorded a position of the highest respect. This is reflected in *Pancasila*, where religious life is enshrined in the First Principle, namely Belief in the One and Only God. Such respect for religion and freedom of belief is further guaranteed by the 1945 Constitution of the Republic of Indonesia and reinforced through various statutory regulations.

Blasphemy refers to acts that insult or demean religion, which is understood as a system of beliefs governing the relationship between humans and God, among humans themselves, and between humans and their environment. In Indonesia, blasphemy is regulated under Articles 156 and 156a of the Criminal Code (KUHP), which criminalize acts of religious insult or hostility (Ticoalu, 2015).

Criminal law may be understood as a body of legal norms that impose sanctions in the form of punishment on acts that meet certain criteria. According to Prodjodikoro (1999), criminal law contains two principal elements: (1) the formulation of prohibited acts and the conditions under which punishment may be imposed, thereby informing both the public and law enforcement authorities of conduct subject to criminal liability; and (2) the determination of legal consequences for such prohibited acts, aimed at protecting society from harmful conduct.

Criminal justice is often described as *ultimum remedium*, or a last resort. However, this principle does not necessarily apply rigidly to criminal prosecution (Hamzah, 2008). Criminal prosecution does not always culminate in punishment; rather, it may also serve as a mechanism for resolving criminal violations through alternative means. Out-of-court settlements, whether conditional or unconditional, may effectively resolve criminal disputes without formal adjudication.

In contemporary criminal law enforcement, the concept of *restorative justice* has gained increasing attention. *Restorative justice* refers to an approach that emphasizes the restoration of relationships and the remediation of harm caused by criminal acts, involving dialogue and reconciliation between perpetrators, victims, their families, and relevant community stakeholders. The goal is to resolve legal disputes through consensus and mutual agreement outside formal court proceedings.

*Restorative justice* prioritizes non-punitive conflict resolution by seeking to restore conditions to their original state through compensation, apology, or other forms of reparation, rather than emphasizing retributive punishment. This approach underscores peace, balance, and social harmony as fundamental objectives of justice.

The implementation of *restorative justice* must adhere to applicable legal norms and avoid partiality. It must ensure equality before the law, fairness in compensation, and balanced consideration of the rights and obligations of all parties. Importantly, perpetrators are given the opportunity to actively participate in repairing the harm caused.

In Indonesia, *restorative justice* is viewed as an alternative mechanism that transforms the formalistic, sanction-oriented criminal justice system into a dialogical and mediation-based process involving offenders, victims, their families, and other stakeholders. This approach aims to achieve fair and proportional outcomes while restoring social relations (Wulandari, 2020). Conceptually, this aligns with Indonesia's philosophical foundation, which emphasizes deliberation, consensus, and familial values (*musyawarah dan kekeluargaan*) as central to legal problem-solving (Wahjono, 1989).

During the *COVID-19* pandemic, *restorative justice* emerged as a particularly relevant approach to law enforcement and crisis mitigation. One notable case occurred at Djasamen Saragih Regional General Hospital in Pematang Siantar, involving the washing of the body of a female patient confirmed to have *COVID-19* by four male healthcare workers.

The incident began when a patient named Zakia passed away at the hospital on Sunday, September 20, 2020, after undergoing isolation for two days due to suspected *COVID-19*. Following her death, the washing and preparation of the body were conducted by four male healthcare workers in the hospital morgue. Differences in gender and religious background between the deceased and the healthcare workers led to public controversy. Subsequently, investigators from the Pematang Siantar Police named the four healthcare workers as suspects and charged them under Article 156a in conjunction with Article 55 paragraph (1) of the Criminal Code concerning blasphemy (Widhiyanti, 2021).

In relation to this case, the Pematang Siantar District Attorney's Office decided to discontinue the prosecution by issuing a Decree on Termination of Prosecution (*Surat Ketetapan Penghentian Penuntutan / SKP2*) Number D-505/L.12/Eku/02/2021. This decision was legally appropriate. The Head of the Pematang Siantar District Attorney's Office, Agustinus, stated that the four healthcare workers were not proven to have violated Article 156a in conjunction with Article 55 of the Criminal Code concerning blasphemy.

Based on the foregoing discussion, comprehensive research is necessary to examine and formulate appropriate legal approaches for resolving blasphemy-related criminal cases involving healthcare workers, particularly in the context of handling *COVID-19* bodies in hospital settings. Such research is essential to balance legal certainty, public health imperatives, religious sensitivities, and the principles of restorative justice.

## 2. LITERATURE REVIEW

*Restorative justice* is one of the approaches that prioritizes conflict resolution outside the court by emphasizing the restoration of conditions to their original state through the improvement of circumstances or compensation for losses. This approach seeks to avoid litigation or formal court proceedings. The fundamental principle of *restorative justice* lies in non-punitive conflict resolution, which does not emphasize criminal sanctions or punishment for the offender. Instead, it prioritizes peace and replaces formal punishment with agreements reached by the conflicting parties in order to restore social harmony and return the situation to its original condition.

The crime of blasphemy refers to acts that insult or demean religion, which is understood as a system of beliefs and teachings that regulate the relationship between humans and God, among humans themselves, and between humans and the environment or other living beings.

A health worker is any individual who dedicates themselves to the health sector and possesses knowledge and/or skills obtained through education in the health field, which, for certain professions, requires specific authority to carry out health services.

Djasamen Saragih Regional General Hospital in Pematangsiantar is a government-owned hospital located in Pematangsiantar City. It is classified as a Class B teaching hospital and serves as an educational health service center. The hospital provides inpatient and outpatient services, specialist polyclinics, as well as supporting facilities such as radiology, laboratory services, and integrated heart and stroke care units.

## 3. RESEARCH METHOD

This research is a legal study employing a statutory approach. The data used consist of secondary data obtained from library research in the form of laws and regulations, books, and other relevant literature related to the research problem. All collected secondary data were systematically classified and analyzed using qualitative methods to address the identified issues. The results of the analysis are then presented descriptively and analytically.

## 4. RESULTS AND DISCUSSION

### A. *Blasphemy Crime Against Male Health Workers Who Bathed the Body of a Female Patient Confirmed to Have COVID-19*

Law serves as an instrument to protect individual rights and to create order within society (Effendi, 2011). Indonesian law is largely inherited from the Dutch colonial legal system, as Indonesia has not yet fully developed an entirely independent national legal framework. Although law possesses a coercive nature and is supported by strict sanctions, violations still frequently occur. This situation is further complicated by Indonesia's geographical condition as an archipelagic state separated by vast oceans, as well as its social diversity consisting of various cultures, ethnicities, religions, races, and tribes.

Indonesia adheres to the principle enshrined in the First Principle of Pancasila, namely *Belief in the One and Only God*. This principle reflects Indonesia's position as a religious nation, although it is not a state that adheres to a single religion. Religion is able to grow and develop in Indonesia because it is legally protected, and religious adherents are guaranteed the right to practice and develop their faith according to their beliefs. However, this diversity also gives rise to various legal and social issues, one of which is the crime of blasphemy. Indonesian society is particularly sensitive to religious matters, and actions perceived as insulting religious beliefs or deviating from established religious teachings often lead to social unrest and insecurity among interfaith communities.

Within Indonesian law, religion is accorded a highly respected position. This respect is reflected in Pancasila and further guaranteed by the 1945 Constitution as well as other statutory regulations. Consequently, acts that are perceived as undermining religious values are often met with strong legal and social responses.

Van Hamel, as cited in *Principles of Criminal Law* by Andi Hamzah, distinguishes three meanings of the term *feit* (act) (Muntaha, 2022). First, *feit* may refer to the occurrence of a criminal act (*delict*), a definition that is considered too broad because a single incident may involve multiple criminal acts. Second, *feit* may refer to the act charged, which is considered too narrow, as it may limit prosecution when new facts emerge. Third, *feit* may refer to the material act itself, which is detached from the element of fault and legal consequences.

Crime is a form of deviant behavior that exists in every society and will continue to exist as long as human beings live together. Criminal acts are inherently unlawful and detrimental to social order, as they

contradict values and norms that are considered just and beneficial to society (Sururiyah, 2023). Criminal law, therefore, is expected to function as a mechanism for resolving such violations and restoring social order.

The punishment of criminal offenders is governed by the principle of *no punishment without fault*. Although this principle is not explicitly codified as a general provision, it is implicitly applied within the Indonesian Criminal Code (KUHP). For instance, Article 44 of the KUHP exempts individuals who are unable to bear responsibility from criminal liability, while Article 48 excludes criminal punishment for acts committed under coercion (Asmadi, 2023).

Blasphemy constitutes an act that insults or demeans religion, which is understood as a system of beliefs and norms governing the relationship between humans and God, humans and fellow humans, and humans and their environment (Asfinawati, 2018). In Indonesia, blasphemy is regulated under Articles 156 and 156a of the Criminal Code, which criminalize hostile, abusive, or defamatory actions against recognized religions.

Blasphemy offenses may include insulting or degrading religious teachings, figures, symbols, rituals, or places of worship, as well as expressing or practicing religious interpretations that are deemed inconsistent with established doctrines. Beyond blasphemy, Indonesian criminal law also recognizes religious offenses that disturb harmony among religious communities, reflecting the broader concern for maintaining social cohesion in a pluralistic society (Christianto, 2024).

During the COVID-19 pandemic, a controversial case emerged involving the washing of the body of a female patient confirmed to have COVID-19 by four male health workers at Djasamen Saragih Regional General Hospital in Pematangsiantar City. The case began when a patient named Zakia passed away on Sunday, September 20, 2020, after being isolated for two days due to suspected COVID-19 infection. Following her death, the embalming and washing of the body were conducted by four male health workers in the hospital's morgue.

Differences in gender and religious background between the deceased and the health workers led to public controversy. As a result, investigators from the Pematangsiantar Police named the four health workers as suspects and charged them under Article 156a in conjunction with Article 55 paragraph (1) of the Criminal Code, relating to the crime of blasphemy.

#### ***B. The Pematang Siantar District Attorney's Office Decision to Terminate Prosecution by Issuing a Letter of Termination of Prosecution (SKP2) (Case Number: D-505/L.:12/Eku:/02/2021)***

In conventional criminal proceedings, reconciliation between the perpetrator and the victim, including forgiveness granted by the victim, generally does not affect the authority of law enforcement agencies to continue the criminal process. Such cases typically proceed to court and may ultimately result in a criminal conviction. The formal criminal justice process, which is often lengthy and rigid, does not necessarily provide certainty or satisfaction for either the victim or the perpetrator. More importantly, it does not automatically restore the social relationship between the parties involved.

In this context, the concept of *restorative justice* offers an alternative approach that emphasizes recovery and resolution by directly involving both the perpetrator and the victim. Conventional criminal proceedings tend to position the victim merely as a witness during the trial, with limited influence on the outcome of the case. The prosecution process remains largely in the hands of the public prosecutor, who relies primarily on investigation files as the basis for criminal charges, often without fully understanding the broader social and situational context of the case. Meanwhile, the perpetrator is placed in the position of an accused individual awaiting punishment, rather than being encouraged to take responsibility through restorative measures.

The authority to discontinue criminal prosecution is a manifestation of the *principle of opportunity*, which is institutionally vested in the Attorney General. In practice, at the investigation stage, law enforcement officers—particularly the police—are constrained by formal criminal procedural rules. Police discretion does not extend to determining whether a case should be terminated based on considerations of social harmony or restorative outcomes; rather, their authority is limited to assessing whether sufficient evidence exists to indicate the occurrence of a criminal act. Once such evidence is found, the case must proceed. For this reason, the ongoing reform of the Criminal Procedure Code (RUU KUHAP) is expected to promote a more humane and responsive approach to criminal case handling, prioritizing restorative justice over rigid legal formalism.

The juridical basis for the application of restorative justice by the Prosecutor's Office is found in Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia and Attorney General's Regulation (PERJA) Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Under PERJA Number 15 of 2020, restorative justice may be applied to criminal cases punishable by

a maximum imprisonment of five years or a fine, including offenses such as ordinary theft, embezzlement, fraud, receiving stolen goods, and certain traffic-related crimes. Nevertheless, despite the existence of this regulation, its hierarchical position within the legal system remains limited, and its effectiveness in fully accommodating the rights of victims, perpetrators, and related parties continues to be debated.

Article 2 of Attorney General's Regulation Number 15 of 2020 stipulates that the application of restorative justice must be based on the principles of justice, public interest, proportionality, criminal punishment as a last resort (*ultimum remedium*), and the principles of speed, simplicity, and low cost. Furthermore, Article 3 paragraph (2) letter e of the regulation explicitly grants the Public Prosecutor the authority to terminate prosecution on legal grounds, including cases that have been resolved outside the court (*afdoening buiten process*).

During the COVID-19 pandemic, restorative justice emerged as a particularly relevant and ideal solution for law enforcement and crisis mitigation. The incorporation of restorative justice into positive law during this period demonstrates the adaptability of legal policy to urgent social conditions and community needs. The extraordinary circumstances of the pandemic required the government and law enforcement institutions to adopt more progressive and context-sensitive legal approaches that reflect societal realities.

In relation to the case involving the washing of the body of a female patient confirmed to have COVID-19 by four male health workers at Djasamen Saragih Regional General Hospital in Pematangsiantar, the police initially named the four health workers as suspects and charged them under Article 156 letter a in conjunction with Article 55 paragraph (1) of the Criminal Code concerning blasphemy. Subsequently, the Pematangsiantar District Attorney's Office issued a Decision to Terminate Prosecution by way of a Letter of Termination of Prosecution (SKP2) under Case Number D-505/L:12/Eku:/02/2021. The Head of the Pematangsiantar District Attorney's Office, Agustinus, stated that the four health workers were not proven to have violated Article 156A in conjunction with Article 55 of the Criminal Code concerning blasphemy.

#### **C. The Implementation of Restorative Justice in the Settlement of Criminal Cases of Blasphemy Committed by Health Workers in Bathing the Bodies of COVID-19 Victims**

In criminal law enforcement practice, the term *restorative justice* is increasingly encountered as an alternative approach to conventional punitive mechanisms. Restorative justice refers to a process of restoring relationships and redeeming mistakes in which the perpetrator of a crime, together with their family, seeks reconciliation with the victim and the victim's family through peace efforts conducted outside the court system. The primary objective of this approach is to resolve legal problems arising from criminal acts by achieving agreement and consensus between the parties involved.

Restorative justice may be understood as a method that prioritizes conflict resolution outside the court by emphasizing the restoration of conditions to their original state, either through repairing harm or compensating losses, while avoiding litigation. The fundamental principle of restorative justice lies in its non-punitive orientation, which does not emphasize criminal sanctions or punishment for the offender, but instead prioritizes peace, dialogue, and mutual agreement as substitutes for formal penal measures. Through this process, the social balance disrupted by the criminal act is expected to be restored.

From the perspective of conflict resolution, a key element of restorative justice is the prioritization of reconciliation over retaliation. Empirically, the application of restorative justice has proven to be more effective in cases involving juvenile delinquency and other minor offenses. Moreover, this concept has been specifically promoted as a mechanism to reduce prison overcrowding, which has become a serious structural problem within the Indonesian correctional system (Rambey, 2023).

The implementation of restorative justice must remain aligned with applicable legal norms and must not be applied in a biased or discriminatory manner. It should ensure proportionality, balance, and equal rights, particularly in relation to compensation and accountability. Within this framework, perpetrators are provided with the opportunity to actively participate in restoring the situation, while victims are given space to express their losses and expectations.

In contrast, conventional criminal proceedings tend to limit the role of victims to that of witnesses during the trial stage, with minimal influence over sentencing decisions. The authority to prosecute remains exclusively with the Public Prosecutor, who primarily relies on investigation files as the basis for criminal charges, often without fully understanding the broader social and situational context of the offense. Meanwhile, the perpetrator is positioned solely as a defendant awaiting punishment. The authority to discontinue prosecution is a manifestation of the *principle of opportunity*, which institutionally belongs only to the Attorney General.

In Indonesia, the Prosecutor's Office formalized the application of restorative justice through Attorney General's Regulation (PERJA) Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Article 2 of PERJA Number 15 of 2020 stipulates that restorative justice must be applied based on the principles of justice, public interest, proportionality, criminal punishment as a last resort (*ultimum remedium*), as well as the principles of speed, simplicity, and low cost. Furthermore, Article 3 paragraph (2) letter e of the same regulation explicitly grants the Public Prosecutor the authority to close a case in the interest of law where a settlement has been reached outside the court (*afdoening buiten process*).

During the COVID-19 pandemic, restorative justice emerged as a particularly relevant and ideal solution in the context of law enforcement and crisis mitigation. The incorporation of restorative justice into positive law during this period demonstrates the adaptability of legal policy to urgent social conditions and community needs. Under extraordinary circumstances such as a public health emergency, legal policies are expected to be more progressive and responsive to legal realities faced by society.

In the case involving the washing of the body of a woman confirmed to have COVID-19 by four male health workers at Djasamen Saragih Regional General Hospital in Pematangsiantar, police investigators initially named the four health workers as suspects and charged them under Article 156 letter a in conjunction with Article 55 paragraph (1) of the Criminal Code concerning blasphemy. Subsequently, the Pematangsiantar District Attorney's Office issued a Decree to Terminate Prosecution by issuing a Letter of Termination of Prosecution (SKP2) under Case Number D-505/L.:12/Eku:/02/2021. The Head of the Pematangsiantar District Attorney's Office, Agustinus, stated that the four health workers were not proven to have violated Article 156A in conjunction with Article 55 of the Criminal Code concerning blasphemy.

The primary objective of restorative justice is the realization of substantive justice through the active involvement of all parties, including perpetrators, victims, and the community. Victims are expected to receive appropriate forms of redress or compensation based on mutual agreement, while perpetrators are required to take responsibility for their actions and acknowledge their mistakes (Zaidan, 2015). In the context of resolving alleged blasphemy cases involving health workers during the COVID-19 pandemic, the elimination of criminal penalties under restorative justice principles reflects the philosophical foundation of Pancasila, which emphasizes deliberation, humanity, and social harmony as core values of Indonesian law.

## 5. CONCLUSION

The Attorney General's Office has issued a policy on restorative justice through Attorney General Regulation (PERJA) Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Based on Article 2 of PERJA Number 15 of 2020, the implementation of restorative justice is guided by the principles of justice, public interest, proportionality, criminal punishment as a last resort (*ultimum remedium*), as well as the principles of speed, simplicity, and low cost. Furthermore, Article 3 paragraph (2) letter e of Attorney General Regulation (PERJA) Number 15 of 2020 stipulates that the Public Prosecutor has the authority to close a case in the interest of law, one of which is due to the settlement of the case outside the court (*afdoening buiten process*).

The primary objective of restorative justice is to achieve substantive justice through a fair resolution process. This approach requires the active involvement of all parties, including perpetrators, victims, and the community. Victims are expected to receive appropriate compensation mutually agreed upon with the perpetrators to address their losses and alleviate the suffering they have experienced. At the same time, restorative justice requires perpetrators to take full responsibility for their actions, thereby encouraging awareness, accountability, and acknowledgment of wrongdoing.

The elimination of criminal penalties under restorative justice principles in Indonesia, particularly in resolving cases of alleged blasphemy committed by healthcare workers while washing the bodies of COVID-19 victims, is grounded in Pancasila. As the ideological foundation of the Indonesian legal system, Pancasila reflects the nation's values of humanity, deliberation, and social harmony, affirming that law originates from the soul and cultural identity of the Indonesian people.

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