

Legal certainty regarding the determination of evidence in cases that have been stopped because Restorative Justice

¹Erwin Susilo, ²Dharma Setiawan Negara

¹Mahkamah Agung Republik Indonesia

²Universitas Sunan Giri Surabaya

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ABSTRACT

Restorative Justice, which focuses on restoring relationships between perpetrators and victims, offering alternative solutions in resolving criminal cases. However, even though *Restorative Justice* has been regulated through PERPOL No. 8 of 2021 and PERJA no. 15 of 2020, this regulation does not involve the role of the court in determining the status of evidence. In fact, court involvement is necessary to ensure judicial control as a mechanism for protecting human rights and preventing absolute power in law enforcement agencies, especially the executive. The absence of court involvement in determining the status of evidence has the potential to create legal uncertainty and is contrary to principle *check and balance*. To overcome the regulatory vacuum, this research proposes the integration of a judicial control model through the involvement of the Chairman of the District Court (KPN) in the process of determining the status of goods as proof of the concept of integrating judicial control over *Restorative Justice* which was successful at the investigation/investigation stage at the police and prosecution at the prosecutor's office, by involving the courts to ensure control and protection of the suspect's constitutional rights.

Keywords: *Restorative Justice, Evidence, District Court, Prosecutor, Police,*

INTRODUCTION

There are various methods that can be used to resolve a criminal case, which can be through litigation or non-litigation. The means of litigation is the resolution of cases through a series of formal criminal justice systems, while non-litigation allows the resolution of cases without involving components of the criminal justice system, such as peace efforts in villages. Currently, the approach that is increasingly being promoted is resolving criminal cases based on Restorative Justice or *Restorative Justice* (Hereinafter referred to as RJ). Ian D. Marder simply defines RJ as a mechanism for dealing with crime by involving the perpetrator, victim, and perhaps also their family in repairing the damage that has occurred. This RJ allows all parties involved to actively participate in the problem solving process, not just a dialogue between the victim and the perpetrator.¹

RJ was introduced to look for new ways to deal with problems and criminal acts, with a focus on personal responsibility, not just conventional punishment.² RJ is to restore balance between the parties involved (victims, perpetrators and community groups) after a criminal act occurs with a joint decision-making process. The focus is on healing, not condemnation. RJ encourages constructive responses to repair damage and rebuild relationships.³ Basically, RJ is a case resolution method that involves decisions from all related parties. Now, formal provisions regarding RJ have been established for various legal institutions in Indonesia, including: "Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice (PERPOL No. 8 of 2021), Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of

¹ Ian D. Marder, "Mapping restorative justice and restorative practices in criminal justice in the Republic of Ireland," *International Journal of Law, Crime and Justice* 70 (2022): 1–11, <https://doi.org/10.1016/j.ijlcj.2022.100544>. hlm. 2.

² Thalia González, "The Legalization of Restorative Justice: A Fifty-State Empirical Analysis," *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3521589>. hlm. 1028.

³ *Ibid.* hlm. 1035.

Prosecution Based on Restorative Justice (PERJA No. 15 of 2020), and Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 "Concerning Guidelines for Trying Criminal Cases Based on Restorative Justice (PEMA No. 1 of 2024)." This research only discusses the implications of the success of RJ by the police and prosecutors, especially regarding evidence. If RJ is successful in the police and prosecutor's office, the status of the evidence must be determined. For the police, this is regulated in Article 18 paragraph (1) letter a PERPOL No. 8 of 2021, while for prosecutors it is regulated in Article 12 paragraph (7) PERJA No. 15 of 2020.

In order for an object to become evidence, the object must have a written confiscation decree by the Chairman of the District Court (KPN). This is because confiscation is essentially an action that "deprives us of human rights," especially the right to ownership of objects which are protected by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). Therefore, to legalize the confiscation action, it is necessary to have a confiscation decree from the Chairman of the District Court (KPN).⁴ In PERPOL No. 8 of 2021 and PERJA no. 15 of 2020, determining the status of evidence does not involve the court, while to legalize the evidence requires a "determination of confiscation" by the KPN.

The causality of the independence of judicial power with the administration of government as a function of "control of judicial power" (*legal control*) towards government administrators, where the control function is carried out through the authority of the judiciary to assess the legality of the apparatus' actions.⁵ Rules that ignore the role of the courts have implications for the absence of judicial control over law enforcement. In addition, this arrangement has the potential to damage the order of the criminal justice system which requires a "functional relationship between complementary components."⁶

Based on the explanation above, there is a legal gap in the form of the absence of a role for the court in determining the status of evidence, while the legality of evidence requires a Chairman of the District Court (KPN) Determination. Therefore, it is necessary to conduct research on this problem. The issues raised have never been researched before, based on a literature review:

1. Lilik Mulyadi, *Indonesian Criminal Justice from a Restorative Justice Perspective*, Jakarta: Kencana, 2017;
2. Ukkap Marolop Aruan, *Procedures for Confiscating Evidence of Criminal Acts According to the Criminal Procedure Code*, <https://www.neliti.com/id/publications/3135/tata-cara-penyitaan-barang-bukti-tindak-pidana-menurut-kuhap>;
3. Muhammad Ibnu Fajar Rahim, DKK., *Confiscation of Criminal Evidence at the Trial Examination Level*, <https://www.neliti.com/id/publications/521588/penyitaan-barang-bukti-tindak-pidana-pada-tingkat-pemeriksaan-persidangan>;
4. Heri Tahir, DK, *The Position of Evidence Regarding the Court's Decision in Resolving the Criminal Case of Murder at the Barru District Court*, <https://ojs.unm.ac.id/supremasi/article/view/10011>;

Regarding the literature review, no one has specifically discussed court control, especially regarding the status of evidence as a result of RJ's success in the police or prosecutor's office. This research aims to answer three problems: *First*, the fact of solving criminal cases with the RJ approach; *second*, a case resolution mechanism using an RJ approach in the police and prosecutor's office; And *third*, the implications of the court's lack of role in determining the status of evidence as a result of successful RJ, as well as the appropriate resolution of obstacles. The aim of this research is to understand and explain the nature of RJ in the context of criminal justice, analyze the mechanism for implementing RJ in the police and prosecutor's office, and analyze the impact of the absence of the role of the court on determining the status of evidence from the perspective of the criminal justice system and identify appropriate solutions. The novelty offered in this research is "the successful integration of judicial control of RJ in the police or prosecutor's office."

RESEARCH METHODS

This research uses doctrinal legal research methods based on literature review.⁷ To answer the problems raised, this research examines relevant legislation, uses a historical approach to discover the nature of RJ, a comparative approach to understand the conception of RJ in other countries, and a conceptual approach to formulate the novelty of this research.

⁴ Erwin Susilo dan Muhammad Rafi, "Implikasi Hukum dari Barang Bukti yang Tidak Dihadirkan: Analisis Konstruktif dan Perspektif Inovatif," *KRTHA BHAYANGKARA* 18, no. 2 (2024): 448-464., <https://doi.org/https://doi.org/10.31599/krtha.v18i2.2719>. hlm. 454.

⁵ Edi Setiadi, "Hubungan Ideal Komisi Yudisial dan Mahkamah Agung," *Jurnal Wawasan Yuridika* 5, no. 2 (2021), <https://doi.org/10.25072/jwy.v5i2.459>. hlm. 173.

⁶ Eddy Daulatta Sembiring dan Erwin Susilo, *Perkembangan Sistem Peradilan Pidana (Mengurai Dalam Konteks Global dan Analisis Konsep Indonesia)* (Bandung: Citra Aditya Bakti, 2024). hlm. 1.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media, Jakarta, 2008, hlm. 93.

DISCUSSION

1. The essence of resolving criminal cases using a restorative justice approach

RJ is a theory of justice that developed from practical experience, and is influenced by traditional and customary ways of responding to criminal acts. Its modern form began in the 1970s in Canada with mediation programs between victims and perpetrators (*victim offender mediation*).⁸ Regarding the origins of RJ, it is still a matter of debate, many people think that RJ started from an experiment in Kitchener, Canada, in 1974, where the perpetrator and victim agreed on compensation as a settlement for a criminal act. However, elements of RJ have long existed in the practices of indigenous peoples throughout the world. In the United States, RJ replaced traditional punishment approaches by focusing on improving the relationship between the offender and the victim, often through dialogue and involving the surrounding community.⁹

The RJ approach is based on the idea of reforming the way crime is handled, although RJ is rooted in the practices of tribal or indigenous communities in resolving disputes and responding to violations, such as the practices of Maori communities in New Zealand, Inuit, and indigenous communities on the north coast of North America. One of the founders of the first university RJ program in the late 1990s was *University of Colorado* in Boulder. The main principle of RJ involves a paradigm shift in viewing criminal acts. In RJ, the viewpoint paradigm does not see criminal acts as "violations of state law, but as violations of people, relationships and society."¹⁰ This RJ rejects the old view of dealing with criminal acts, namely the retributive justice approach, which focuses on punishment in retaliation for damage or loss caused by the perpetrator, with the aim of "retaliating." In contrast, RJ views criminal acts as damage to relationships between individuals and aims to repair or restore these relationships.¹¹

According to Howard Zehr, RJ is "a process that involves all parties involved or affected by a criminal act. In this process, they jointly identify and address losses, needs and obligations to restore the situation as best as possible." In identifying through the RJ approach, Zehr covers three things, namely loss/damage, how to repair/recover it, and the party who is responsible for repairing/recovering it.¹² RJ is an approach that involves all parties affected by criminal acts—be they victims, perpetrators, or community groups—to work together to find a just solution to restore the situation. In this process, victims and perpetrators are given the opportunity to talk, understand the impact of the criminal act that occurred, and work together to repair the damage/loss. The goal is to restore damaged relationships, help victims and perpetrators move on without the burden of the past, and improve relationships in society. This process emphasizes the responsibility of actors and joint efforts to create better peace and justice.¹³ In the RJ approach, when the perpetrator admits his mistake and shows regret, and through dialogue that strengthens shared values, the relationship between the victim and the perpetrator can be restored.¹⁴ With this RJ, the resolution of the case is actually beneficial for both the perpetrator and the victim.¹⁵

In RJ, criminal acts are seen not only as violations of state law, but also as damage to social relations that requires restoration.¹⁶ The essence of RJ is to restore social balance through dialogue and healing, not just punishment. This approach brings a new paradigm to the criminal justice system, placing justice as a process of recovering losses and improving relations between all parties affected by criminal acts.

Based on the explanation above, the RJ paradigm emerged as a reaction to traditional punishment methods which focused more on revenge. In the conventional system, criminal acts are seen as violations of state law, which means that the perpetrator is dealing directly with the state. However, RJ reformed this view by emphasizing that criminal acts actually

⁸ Daniel Van Ness, Allison Morris, dan Gabrielle Maxwell, "Introducing Restorative Justice," in *Restorative Justice for Juveniles Conferencing, Mediation and Circles*, ed. oleh Allison Morris dan Gabrielle Maxwell (Oregon: Hart Publishing, 2001). hlm. 4.

⁹ Rita Kohli, Elizabeth Montañó, dan Damany Fisher, "History Matters: Challenging an A-Historical Approach to Restorative Justice in Teacher Education," *Theory into Practice* 58, no. 4 (2019), <https://doi.org/10.1080/00405841.2019.1626613>. hlm. 3.

¹⁰ Andrea Goldblum, "Restorative Justice From Theory To Practice," in *Reframing Campus Conflict: Student Conduct Practice through the Lens of Inclusive Excellence, Second Edition*, 2023, <https://doi.org/10.4324/9781003446736-12>. hlm. 141-142.

¹¹ Meredith Rossner dan Helen Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins," *Annual Review of Criminology*, 2024, <https://doi.org/10.1146/annurev-criminol-030421-040921>. hlm. 358-359

¹² Andra Goldblum, *Op.Cit.*, hlm. 142.

¹³ Daniel Van Ness, Allison Morris, dan Gabrielle Maxwell, *Op.Cit.* hlm. 5-6.

¹⁴ Marilyn Armour dan Mark S. Umbreit, *Violence, Restorative Justice and Forgiveness Dyadic Forgiveness and Energy Shifts in Restorative Justice Dialogue* (London and Philadelphia: Jessica Kingsley Publishers, 2018). hlm. 23.

¹⁵ Meredith Rossner, "Restorative justice, anger, and the transformative energy of forgiveness," *The International Journal of Restorative Justice* 2, no. 3 (2019), <https://doi.org/10.5553/ijrj.000005>. hlm. 384.

¹⁶ Howard Zehr, *The Little Book of Restorative Justice*, New York: Good Books, 2002. Hlm. 25

harm victims or other groups. Therefore, the ideal resolution involves the perpetrator, victim and other related parties in a mutually beneficial process. With this approach, justice is not just about punishment, but about repairing the damage caused and repairing relationships between all parties involved. The success of RJ lies in its ability to "restore" order damaged by criminal acts, providing benefits to all parties involved.

2. Case Resolution Mechanism using a Restorative Justice Approach in the Police and Prosecutor

The restorative justice approach is an effort to resolve criminal cases outside of court that focuses on restoring relationships between victims, perpetrators and the community. This approach aims to create justice that is more humane compared to the conventional justice system which is retributive in nature.

Investigators assess whether a case can be resolved through RJ based on the following criteria:

- a. This is a light crime with a maximum penalty of 5 years;
- b. Does not cause a major impact on society;
- c. The perpetrator expressed regret and a willingness to repair the harm.

Investigators facilitate meetings between perpetrators, victims and related parties to find solutions. This process involves family, community leaders, or other relevant parties. If all parties agree, they sign an agreement document which includes returning losses to the victim, an apology from the perpetrator to the victim, other agreed actions. After an agreement is reached, the investigator issues a Decree on Termination of Investigation (SP3). The status of evidence related to the case is also determined as regulated in Article 18 of PERPOL No. 8 of 2021.

Based on Article 18 paragraph (1) of PERPOL Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, it regulates "In the event that coercive measures are taken, in carrying out the termination of an Investigation or Investigation based on Restorative Justice, the investigator or investigators immediately:

- a. return the confiscated goods/objects to those most entitled to them, after a decree to terminate the investigation or inquiry is issued, if there is confiscation of goods/objects related to a criminal act;
- b. destroy confiscated goods/objects in the form of narcotics or other dangerous goods after a decree to terminate the investigation or investigation has been issued; and/or
- c. release the perpetrator/suspect after a decree to terminate the investigation or inquiry is issued, if the perpetrator/suspect is arrested/detained."

With the procedure, the investigator makes an official report on the determination of evidence, only supervised by the investigator's superior to ensure transparency and without involving the court to determine the status of the evidence.

Likewise at the prosecution stage at the prosecutor's office. Prosecutors assess cases that meet RJ requirements based on the following criteria:

- a. The maximum criminal threat is 5 years;
- b. The damage caused has been repaired by the perpetrator;
- c. The victim and perpetrator agreed to resolve the case through RJ.

Prosecutors facilitate mediation between victims, perpetrators and related parties. Community leaders, family or other parties can be involved. The agreement must include recovery of the victim's losses, accountability measures from the perpetrator, an agreement document signed by all parties. The prosecutor issued a Decree on Cessation of Prosecution based on restorative justice. The status of evidence must also be decided as regulated in Article 12 PERJA No. 15 of 2020.

Based on Article 12 paragraph (7) PERJA No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice regulates that after terminating a prosecution based on restorative justice, the status of the evidence must be decided by the public prosecutor. This evidence can:

1. Returned to the victim or other entitled parties;
2. Destroyed, if the evidence is illegal;
3. Submitted to the country, if relevant.

The decision to terminate the prosecution is reported to the leadership of the prosecutor's office and announced to the public to ensure transparency. The public prosecutor makes a determination letter regarding the status of the evidence. Determination of the status of evidence is part of the report on termination of prosecution based on RJ.

Evidence is an important element in any criminal process. The success of RJ which leads to the resolution of criminal cases without trial requires clarity on the status of evidence so that injustice and legal uncertainty do not occur because determining the status of evidence in accordance with regulations guarantees the rights of parties in dispute, whether victims, perpetrators or third parties.

This eliminates the Court's involvement in controlling executive power. Even though there has been a division of power between the Executive and the Judicial to create this *check and balance*. Determining the status of evidence both in the Police in the Investigation/Investigation process and in the Prosecutor's Office in the Prosecution process indicates

absolute power where cases are examined and decided on their own without any control from the Court. Without adequate supervision, RJ can be used to protect perpetrators from certain criminal acts. Remembering the adage *absolute power corrupts absolutely*, This harms justice and is contrary to the Article 38 paragraph (1) of Indonesian Criminal Procedure Code. The regulatory vacuum regarding court involvement in determining the status of evidence creates the potential for legal uncertainty. Therefore, integration steps are needed between the RJ mechanism and the courts to create a more accountable system.

3. Status of Evidence Due to the Successful Implementation of Restorative Justice in the Police or Prosecutor's Office

Within a country, judicial control protects the legal rights and interests of individuals from acts of state power and monitors the legality of actions carried out in the name of that state.¹⁷ Having judicial control helps to ensure the criminal justice system produces good policies and avoids bad outcomes.¹⁸ Judicial institutions in the criminal justice system supervise the practices carried out by law enforcement officials and ensure that all actions taken do not violate the law.¹⁹ This judicial control is part of the implementation of the independence of judicial power, where through this approach the court can make fair decisions without being influenced by other interests and can monitor other powers to prevent abuse of power.²⁰ The absence of judicial control can open up opportunities for authorities to misuse evidence, such as selling or using the items without clear legal responsibility.

Article 39 paragraph (1) states that items that can be confiscated are: "a. goods belonging to the suspect or defendant which are suspected to have been obtained from a criminal act or are the proceeds of a criminal act; b. goods used directly to commit criminal acts or preparation thereof; c. items used to obstruct investigations; d. goods made specifically for criminal acts; e. other items related to criminal acts." In order for the confiscation carried out by investigators (Article 7 paragraph (1) letter d KUHAP) to be valid, it must obtain a Chairman of the District Court (KPN) permit (Article 38 paragraph (1) KUHAP) or "in very necessary and urgent circumstances," it must obtain KPN approval (Article 38 paragraph (2) KUHAP). Confiscation permission means that before the confiscation is carried out, there has been a confiscation determination from the KPN. Meanwhile, confiscation approval means that after the confiscation is carried out, there will be a confiscation determination from the KPN. Determination by the KPN provides strong legality regarding the status of evidence.

The determination of confiscation is an important form of constitutional protection to ensure that a person's property is not arbitrarily confiscated by investigators. This protection is part of human rights guaranteed by the constitution and law. According to Article 28G of the 1945 Republic of Indonesia Constitution, "every person has the right to protection of himself, his family, honor, dignity and property under his control". This guarantee is also confirmed in Article 29 paragraph (1) of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (UU No. 39 of 1999), which states that "everyone has the right to personal protection, family, honor and dignity. , and his rights." In this context, KPN's involvement in the confiscation process functions as a form of judicial control. This judicial control ensures that confiscation actions are carried out using appropriate procedures and do not violate the law. Determination of confiscation by KPN before it is carried out is a preventive step to prevent illegal confiscation, while approval after confiscation guarantees that the action remains within the correct legal corridor. With this mechanism, individual constitutional rights remain protected, as well as ensuring that the legal process runs transparently and can be accounted for. Not all criminal cases involve evidence, but when evidence is present in a case, it is important to determine its status at the end of the resolution process. This also applies when a case ends with RJ at the police or prosecutor level.

According to PERPOL no. 8 of 2021, if a case ends with RJ, the status of evidence is determined as follows: "(a) evidence is returned to the rightful party (Article 18 paragraph (1) letter a); or (b) destroyed if the goods are narcotics or other dangerous goods (Article 18 paragraph (1) letter b)." On the other hand, PERJA no. 15 of 2020 does not regulate this in detail. According to Article 12 paragraph (7), when a case is stopped based on RJ, the status of the evidence must also be determined. Paragraph (8) states that the status determination must be "carried out in accordance with the provisions of statutory regulations." Based on Article 46 paragraph (2) of the Criminal Procedure Code, the status of evidence can be determined to be "returned to the rightful party, confiscated for the state, destroyed or damaged so that it can no longer be used, or used as evidence in another case".

¹⁷ Blerton Sinani dan Dane Taleski, "An overview of the judicial control of state executive power," *Zbornik radova Pravnog fakulteta u Splitu* 56, no. 4 (2019), <https://doi.org/10.31141/zrpf.2019.56.134.1013>. hlm. 1024.

¹⁸ Daniel Epps, "Checks and Balances in the Criminal Law," *Vanderbilt Law Review* 74, no. 1 (2021). hlm. 84.

¹⁹ Larry J. Siegel dan John L. Worrall, *Introduction to Criminal Justice* (Boston: Cengage Learning, 2016). hlm. 9.

²⁰ Dennis Hoffman, *Criminal Justice* (Foster City: IDG Books Worldwide, Inc, 2000). hlm. 133.

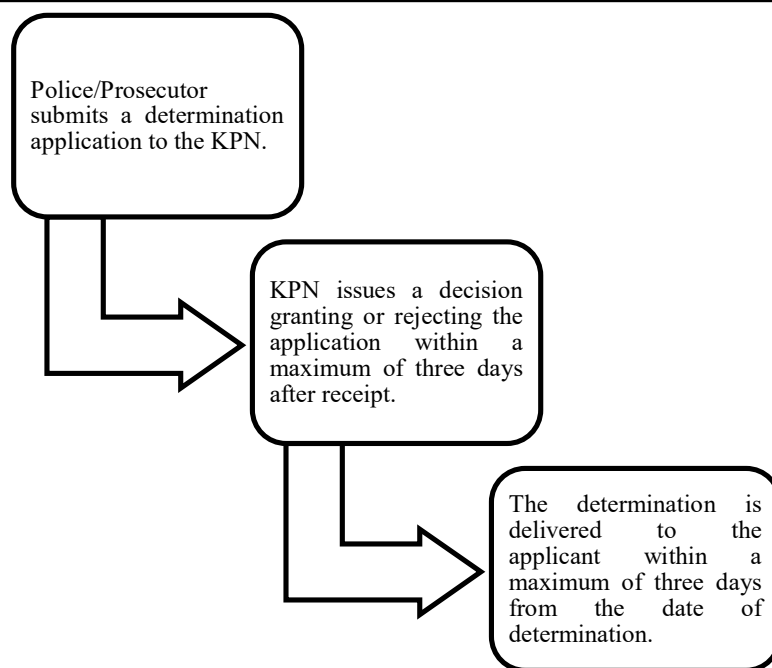
Settlement of cases through RJ is very beneficial for perpetrators, victims and other related parties. This process restores the relationship between the parties that was previously damaged by the perpetrator, and that is actually a fair resolution. However, there are shortcomings in the current regulations, especially regarding the status of confiscation determination after the RJ process. This absence leaves uncertainty and has the potential to cause problems, both for the parties entitled to the evidence and for the legal process as a whole. Therefore, it is important to establish more detailed and clear rules regarding the status of confiscation decisions in cases resolved through RJ, so that there is no administrative backlog in the criminal justice system.

When the police and prosecutor's office successfully resolve a case through RJ, the juridical responsibility for the evidence lies with them. The authority to determine the status of evidence, such as return, destruction or confiscation for the state, is also within their authority. However, it is important to remember that the role of the courts should not be as an obstacle to the exercise of these powers, but rather as a judicial control mechanism that ensures that no violations of the law occur in the process. The court functions to ensure that all actions taken regarding evidence comply with applicable law. Even though the police and prosecutors have the authority to determine the status of evidence, the role of the courts is very important in supervising and controlling so that these decisions do not violate legal rights or established procedures. Since there is already a "foreclosure determination," it is very important to clearly define the status of the foreclosure determination so that it does not float. With effective judicial control, the legal process can run smoothly, maintain the integrity of the legal system, and ensure the protection of the rights of all parties involved.

To overcome the regulatory vacuum in PERPOL No. 8 of 2021 and PERJA no. 15 of 2020, the proposed conceptualization is to integrate the case resolution model through diversion. Article 1 number 7 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU No. 11 of 2012) defines that "diversion is the transfer of the resolution of children's cases from the criminal justice process to a process outside of criminal justice." From this understanding, it can be understood that the essence of diversion and RJ is basically the same, even though diversion only applies to children. The process regarding diversion is explained thoroughly in this research, but will describe the role of the court in diversion that has been successfully carried out by the police or prosecutor's office. Article 29 paragraph (3) Law no. 11 of 2012 stipulates that if the diversion process is successfully carried out by the police, the diversion minutes and diversion agreement are submitted to the KPN for a "determination." Likewise, if diversion is successfully carried out by the prosecutor's office in accordance with Article 42 paragraph (3) of Law no. 11 of 2012. According to Article 20 paragraph (1) of the Republic of Indonesia Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old (PP No. 65 of 2015), the KPN issues this determination no later than 3 (three) days after receipt. Paragraph (2) stipulates that the determination must be sent no later than 3 (three) days from the date of the determination, and the contents of the determination also determine the status of "evidence." Provisions of Law no. 11 of 2012 and PP no. 65 of 2015 can be an approach to improving regulations. Here is a demonstration of the concept:

Figure 1

Conceptualization of the Determination of Confiscation Status by the Chairman of the District Court on the Success of RJ by the Police or Prosecutor



Source: Researcher Documentation.

Based on Figure 1: The process begins when the police or prosecutor submits a request to the KPN to obtain a special determination regarding the status of evidence. KPN then has a maximum of three days after receiving the application to decide whether to grant or reject the application. If the application is accepted, KPN will determine the status of the evidence according to the applicant's request. The determination must then be conveyed to the applicant within a maximum of three days from the date of determination. This process ensures that decisions regarding evidence are made efficiently and in a timely manner, providing legal certainty for all parties involved.

CONCLUSION

There is no role for the Court in determining evidence, even though evidence is an important element in criminal processes involving the protection of human rights (HAM). Abandonment of judicial control has the potential to create legal uncertainty and strengthen the absolute power of law enforcement agencies, which is contrary to principle *check and balance* and Article 38 paragraph (1) of Indonesia Criminal Procedure code. The success of RJ in the police or prosecutor's office requires determining the status of evidence which involves the court as a judicial control mechanism. This is important to ensure legal certainty, protect individual constitutional rights, and maintain the integrity of the criminal justice system in Indonesia. There is a need for an integrated concept of judicial control through court involvement in determining the status of post-RJ evidence. In this way, the legal process can be more transparent and accountable, maintaining justice for all parties involved.

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