

Restorative Justice Gaining Support in AGO's New Regulation



The Attorney General's Office ("AGO") recently enacted the Attorney General's Regulation No. 15 of 2020 on the Discontinuation of Prosecution based on Restorative Justice. Before this, the Indonesian National Police has already adopted the concept of restorative justice through the Criminal Investigation Regulation (Chief of Police Regulation No. 6 of 2019). But its application was limited to only the investigation stage.

Now, the new AGO regulation takes the concept further by also allowing a prosecution to be dismissed based on restorative justice. Together with the Criminal Investigation Regulation, it essentially turns restorative justice into a path to avoid a criminal conviction, placing it as the last resort.

New Definition and Considerations

Despite being regulated in the Criminal Investigation Regulation, this regulation prescribes a slightly different definition of restorative justice. Here, restorative justice means the settlement of criminal cases that involves cooperation between the perpetrator, victim, family of the perpetrator/victim, and other related parties to seek a fair settlement by emphasising restoration to the original state, and not as a form of retaliation.

A prosecution can be dismissed based on restorative justice by considering:

1. the subject, object, category and penalty of the offence;
2. the background of the offence or perpetration of the offence;
3. the severity of the offence;

4. the consequences or losses arising from the offence;
5. the cost and benefit of continuing the prosecution of the offence ;
6. restoration to the original state; and
7. the settlement between the victim and the suspect.

Conditions for Restorative Justice

Under the AGO regulation, a prosecution can be legally dismissed based on restorative justice if all these conditions are met:

1. the suspect is a first time offender;
2. the offence is only subject to a fine or imprisonment of a maximum of five years;
3. the evidence used to prove the offence or loss caused by the offence is less than IDR 2.5 million;
4. the suspect has restored the loss to the original state by returning the goods to the victim, compensating the victim's loss, reimbursing costs arising from the offence, and/or repairing any damage caused by the offence;
5. the victim and suspect have signed a settlement agreement; and
6. the public responds positively to the application of restorative justice in the case.

Invoking Restorative Justice

To dismiss a prosecution based on restorative justice, the parties need to reach an amicable settlement. This process will be triggered by the AGO by offering a settlement to the victim and the suspect. Here, the AGO may involve the victim and suspect's respective families, any public figure, or any other relevant party as necessary. Once the parties agree, the settlement process will begin, and the AGO will act as a facilitator. This process must be concluded within 14 days as of the date when the evidence is delivered to the AGO.

Upon a successful conclusion to the settlement process, the victim and suspect must sign a settlement agreement. Then, the Chief of the AGO at the city/district level will submit a request to dismiss the prosecution to the Chief of the AGO at the provincial level, and the subsequent approval will mark the end of the case. If the suspect is currently detained, he will be released upon the issuance of the prosecution dismissal decree by the AGO.

Progressive but Narrow?

Through this regulation, the AGO takes a progressive approach by setting aside normative provisions, which emphasise conviction and retaliation and highlights amicable settlement and remediation of criminal acts. Indeed, the enactment of the regulation is a positive step towards reforming the criminal justice system in Indonesia by providing a more favoured outcome for victims of crime, fostering an amicable settlement, and decreasing the number of criminal cases that are brought before the court.

However, despite the public's high hope for a more liberal recourse to restorative justice, the scope of the regulation is quite narrow in terms of the types of cases that qualify for restorative justice, as well as the subject. Restorative justice cannot apply to offences against the state security, public order and ethics; insults against the head of state, other countries, heads of state of other countries and their representatives; offenses that may result in nominal penalty; drug offences; environmental crimes; and offences committed by corporations.

The regulation also does not accommodate offences that result in no loss or victim, such as the failure to obtain licenses that are subject to criminal sanctions. Another drawback is that like the Criminal Investigation Regulation, restorative justice under the AGO regulation will only be triggered if the law enforcing authority, in this case, the AGO, takes the initiative to offer a settlement to the suspect and victim. Both the suspect and victim cannot voluntarily apply to the AGO for restorative justice.

Contacts



Chandra M. Hamzah
Partner and Co-Founder

D +62 21 2555 9999
F +62 21 2555 7899
chandra.hamzah@ahp.id



Eri Hertiawan
Partner

D +62 21 2555 7883
F +62 21 2555 7899
eri.hertiawan@ahp.id



Yogi Sudrajat Marsono
Partner

D +62 21 2555 7812
F +62 21 2555 7899
yogi.marsono@ahp.id

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

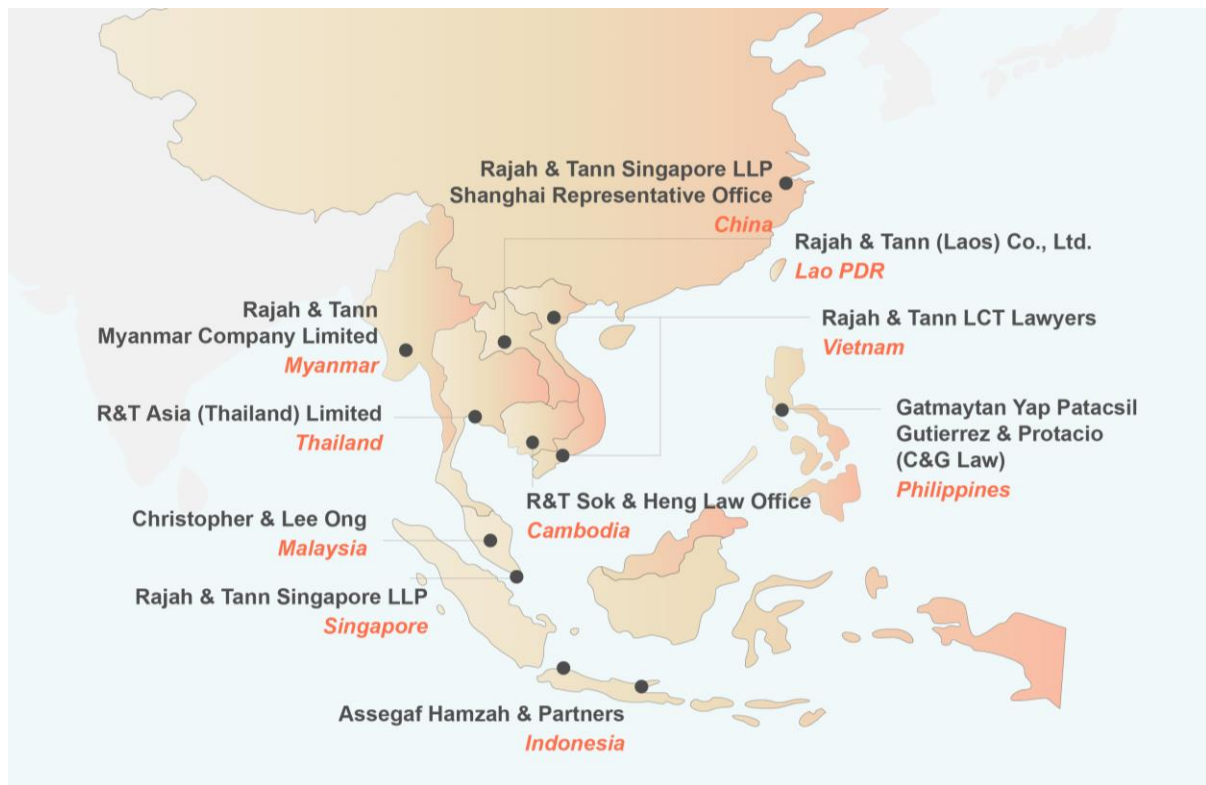
Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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