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The Policy of the Prosecutor's Authority in Termination of Prosecutions based on Restorative Justice in Criminal Justice System In Indonesia

Laksamana Bagas Dewandaru[*], Jawade Hafidz[**] and Lathifah Hanim[***]

[*] Banggai State Prosecutor Officer in Bunta, E-mail: bgsdewandaru@gmail.com
[**] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang

Abstract.
This study aims to determine the policy of the prosecutor's authority in terminating prosecution based on restorative justice in the criminal justice system, namely based on the principle of opportunity, namely the Prosecutor's Office is the only State Institution controlling cases or has the authority to continue or not file cases to the Court based on the provisions of the Act. This authority is implied in the form of the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The approach method used is normative juridical. Specifications are descriptive analytical. The type of data is secondary data, divided into legal materials derived from law and legal science. The method of data collection through literature study and interviews with the data analysis method is qualitative analysis. The Prosecutor's Law is included in attribution, namely the granting of government authority by lawmakers to government organs. In Islamic criminal theory, the authority to stop prosecution based on restorative justice is included as special prevention and according to the history of Islamic development, it is included in the rehabilitation of the criminal. In the research conducted by the researcher, it was found that there were obstacles in stopping prosecution based on restorative justice at the Banggai District Prosecutor's Office, namely based on the decree of the Banggai District Attorney Number B-748/P.2.11/Eoh.2/11/2021, namely the distance traveled by the parties involved. The case with the Banggai District Prosecutor's Office is quite far away, with the condition of the road infrastructure being unfavorable. The crime committed is domestic violence which makes it difficult for peaceful efforts to be carried out, so that the time allotted is very limited. If drawn from the theory of law enforcement, these obstacles are included in the legal culture and legal substance.
Keywords: Authority; Criminal; Justice; Policy; Prosecutor.

1. Introduction

The Prosecutor's Office as an institution that carries out the prosecution function has a strategic role in the criminal justice system. The number of criminal cases that lead to imprisonment shows that the Indonesian criminal justice system has failed to realize substantive justice. Misinterpretation has led to polemic cases in the community, such as the plate theft case that happened to Rasminah, the case of cocoa theft worth IDR 2,500,000 which happened to Grandma Minah, and the case of the theft of rubber latex by Sarmin, the case of cutting down teak trees by Saulina Sitorus and several other similar cases should not be prosecuted and entered the Court.[1]To achieve the goals of the state, the government and its

[1]Flora, Henny Saida 2018, "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia", *University Of Bengkulu Law Jurnal* Vol. 3, No.2 (2018), url : https://ejournal.unib.ac.id/index.php/ubelaj/article/view/6899 .

apparatus must use the rules of the game that are based on truth, honesty, and justice. Herein lies the importance of law for a society or country.[2]

Minor criminal cases in Indonesia often end in imprisonment. The process of getting justice is long and ends in court decisions that are inkraht (decisions with permanent legal force) certainly increase the number of prisoners. Data from the Directorate General of Corrections shows an upward trend from year to year, and not vice versa. In February 2021, there are still 252,898 people serving sentences in prisons with a capacity for 135,704 people or in other words, 86% of overcapacity is still happening.[3] This makes the Penitentiary as a place to carry out criminal sanctions less feasible, therefore a way is needed so that the settlement of criminal acts in Indonesia is not only through a trial mechanism that can increase the number of prisoners.[4]

The Prosecutor's Office in 2020 stipulated the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice with the principle of opportunity owned by the Prosecutor's Office. This regulation is based on consideration of the settlement of criminal cases that prioritize restorative justice which emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented to retaliation is a legal necessity of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system.

Problem solving with restorative justice has become a culture of Indonesian society in customary law. In customary law, it is often found that there are peace efforts between the two parties who are in dispute or in conflict, mediated by traditional leaders or community leaders. Since the issuance of Prosecutor's Regulation No. 15 of 2020 until May 2022, 907 cases have been terminated by the Attorney General's Office of the Republic of Indonesia through restorative justice.[5] In less than a year many cases have been stopped by the Prosecutor's Office, this shows that there are at least 907 people who are not prisoners, this has a good impact on reducing the problem of overcapacity in the Correctional Institution and realizing the principle of fast, simple, and low cost.

This study aims to determine the application of the prosecutor's policy authority in terminating prosecutions based on restorative justice in the criminal justice system and the constraints that occur in the prosecutor's authority policy in terminating prosecutions based on restorative justice in the current criminal justice system.

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[2]Hafidz, Jawade "Malfungsi HAN dan Upaya Melakukan Rekonstruksi Sistem Hukum Yang Ada Menuju Hukum Yang Melayani", *Jurnal Hukum* Vol. 28, No.2 (2012), url : https://media.neliti.com/media/publications/12293.

[3]Direktorat Jendral Pemasyarakatan, "Data Jumlah Narapidana di Indonesia", accessed from https://smslap.ditjenpas.go.id.

[4]Marlina, Rika "Pembagian Kekuasaan Dalam Penyelenggaraan Pemerintahan Di Indonesia", *Jurnal Daulat Hukum* Vol.1, No.1 (2018), url : http://jurnal.unissula.ac.id/index.php/RH/article/view/2631/1980.

[5]Anita Permata Dewi, "Kejagung Hentikan Penuntutan 907 Perkara Untuk Keadilan Restoratif", accessed from antaranews.com.

2. Research Methods

The approach method used is normative juridical. Specifications are descriptive analytical. The type of data is secondary data, divided into legal materials derived from law and legal science. The method of data collection through literature study and interviews with the data analysis method is qualitative analysis.

3. Results and Discussion

3.1. Application of Prosecutors' Policy Authority in Terminating Prosecution Based on Restorative Justice in the Criminal Justice System

The enforcement of criminal law is carried out through a system called the criminal justice system. The criminal justice system is a term that indicates a working mechanism in crime prevention using a basic system approach.[6]According to Remington and Ohlin, the notion of the system itself implies an interaction process that is prepared rationally and in an efficient manner to provide certain results with all its limitations.[7]

The Prosecutor's Office as one of the components in the prosecution stage, is one of the law enforcement institutions whose position is in the sphere of executive power (government) as a State Attorney. The function of the Prosecutor's Office includes preventive and repressive functions in the criminal field as well as state attorneys in civil and state administration. The preventive function is in the form of increasing public legal awareness, securing law enforcement policies, securing the circulation of printed matter, monitoring the flow of beliefs, preventing and abusing and/or desecrating religion, research and development of law and criminal statistics. Whereas in its repressive function, the Prosecutor's Office conducts prosecutions in criminal cases, carries out judges' decisions and court decisions to do supervising the implementation of parole/release, completing certain case files from Police Investigators or from Civil Servant Investigators, hereinafter abbreviated as PPNS.

The Public Prosecutor may stop the prosecution, with the following reasons: termination of prosecution for technical reasons and termination of prosecution for policy reasons. Discontinuation of prosecution for technical reasons, due to circumstances that caused the Public Prosecutor to make a decision not to prosecute, namely:

- If there is not enough evidence;
- If the incident is not a criminal act;
- When the case is closed for the sake of law.

Termination of prosecution for policy reasons, where the prosecutor is allowed to put aside the case even though there is sufficient evidence to be

[6]Waskito, Achmad Budi, "Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi", *Jurnal Daulat Hukum* Vol.1, No.1 (2018), url : http://jurnal.unissula.ac.id/index.php/RH/article/view/2648.

[7]Praptini, "Constitution and Constitualism Of Indonesia" *Jurnal Daulat Hukum* Vol. 2, No. 1 (2019), url : http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897.

transferred to the court for public interest or individual interests and is based on unwritten law (opportunity principle). Based on article 77 of the Criminal Procedure Code, the Attorney General has the authority to set aside a case, where the action for setting aside a case consists of:[8]

- Set aside the case on the principle of opportunity, for the following reasons:
  - In the interest of the state (*staatsbelang*);
  - In the interest of society (*maatschapelijk striped*);
  - For personal interests (*particular stripes*).
- Disclaimer of cases on the basis of a criminal law assessment, in connection with:
  - The loss of the right to sue caused by nebis in idem; the death of the defendant; overdue (expired); amnesty/abolition;
  - Revocation of complaint;
  - Not enough reason to sue.
- Disclaimer of cases on the basis of legal interests, as stated in the Circular Letter of the Attorney General of the Republic of Indonesia Number SE-001/JA/4/1995 dated 27 April 1995 concerning Guidelines for Criminal Prosecutions, including instructions for terminating conditional criminal charges, if:
  - The defendant has paid the compensation suffered by the victim;
  - Defendant is not old enough; or
  - The defendant is a student/student.

In his book "The Process of Handling Criminal Cases", Leden Marpaung stated about the essence of the Prosecutor's Office: "The Prosecutor's Office is a Government tool that acts as a Public Prosecutor in a criminal case against the violator of criminal law. As such, the Public Prosecutor's Office is risking the interests of the public considering whether the public interest requires that the punishable act be prosecuted or not. It is also the same for him in the Criminal Procedure Code, only the prosecution of punishable acts is submitted.[9]

Article 14 following Article 137 Jo. Article 84 paragraph (1) of Act No. 8 of 1981 concerning the Criminal Procedure Code provides clarity regarding the authority of the Prosecutor as a Public Prosecutor, among which the main things are, first, to make a letter of accusation; second, to carry out an accusation; third, closing the case for the sake of law; fourth, taking other actions within the scope of duties and responsibilities as a Public Prosecutor according to the provisions of the Constitution.[10]

In Article 35 letter c of Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated that: "The Attorney General has the duty and authority to override cases in the public interest". According to his explanation, "Putting aside the case is the implementation of the principle of opportunity that can only be carried out by the Attorney General after taking into

[8]Mujahid, Kusriyah, Sri "Implementation Restorative Justice in Criminal Cases At Investigation Level" *Law Development Journal* Vol. 2, No.2 (2020), url : http://jurnal.unissula.ac.id/index.php/ldj/article/view/11516/4556.
[9]Marpaung, Leden. (1995). *Proses Penanganan Pidana Bagian Kedua,* Sinar Grafika, Jakarta, p. 172.
[10]Kuffal, H.M.A. (2005). *Penerapan KUHAP dalam Praktik Hukum.* UMM Press, Malang, p. 216.

account the suggestions and opinions of state power agencies that have relations with the matter". The decision of the Constitutional Court Number 29/PUU-XIV/2016 dated 11 January 2017, has provided an assessment and consideration of the Elucidation of Article 35 letter c of Act No. 16/2004 which essentially becomes "the Attorney General in issuing *deponering*s is obliged to pay attention to suggestions and opinions from state power agencies that have a relationship with the matter".[11]

Elucidation of Article 35 letter c of Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, states that: "What is meant by "public interest" is the interest of the nation and state and/or the interests of the wider community". In basing his considerations and assessments, the Attorney General will also look at it in terms of the interests of the wider community, especially in terms of the Indonesian philosophy of life, namely Pancasila. It is as the basis of the state that prioritizes basic attitudes to realize harmony, harmony and balance in social relations between personal humans and other humans to achieve or obtain their interests.

It is clear that the prosecution policy in the public interest is entrusted and accountable to the Attorney General as the highest Public Prosecutor (opportunity principle), and the existence of the opportunity principle is what is needed in law enforcement to ensure stability in a rule of law. According to the principle of opportunity, the public prosecutor is not obliged to prosecute someone who commits a criminal act if according to his considerations, if the person who commits the crime is prosecuted it will harm the public interest.[12]Not being prosecuted for a person who commits a crime in the public interest, known as *deponering* (putting a case aside), whose authority lies with the Attorney General based on Article 35 letter c of the Republic of Indonesia Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. In addition to setting aside cases in the public interest (*deponering*), the Prosecutor's Office is also authorized to stop prosecutions based on Article 144 paragraph (1) of Act No. 8 of 1981 concerning the Criminal Procedure Code which is embodied in the form of a Termination of Prosecution Decision Letter (SKP2). The Termination of Prosecution Decision Letter (SKP2) is issued when the Prosecutor/Public Prosecutor is of the opinion that the case file after the investigation is not sufficient evidence to prove that the suspect has committed a criminal act.[13]

Regarding the settlement of criminal cases which always lead to imprisonment, the solution that has recently emerged relating to the authority of the Public Prosecutor to stop prosecution based on the concept of restorative justice, namely Perja Number 15 of 2020, needs to be given appreciation because this concept involves the perpetrator, the victim. , and the community in the

[11]See the Elucidation of Article 77 of Act No. 8 of 1981 concerning the Criminal Procedure Code.
[12]Simbolon, Timbul Mangarotua, "Kebijakan Hukum Pidana Terhadap Tindak Pidana Penghinaan Atau Pencemaran Nama Baik Melalui Internet di Indonesia sebagai Cybercrime" *Jurnal Daulat Hukum* Vol. 1, No.1 (2018), url: http://jurnal.unissula.ac.id/index.php/RH/article/view/2560/1917.
[13]Napitupulu, Tumpal, "Penerapan Asas Opportunitas Berhubungan dengan Tugas dan Wwewenang Kejaksaan Dalam Sistem Peradilan Pidana", *Tanjungpura Law Journal* Vol.2, No.1 (2018), url : https://jurnal.untan.ac.id/index.php/tlj/article/view/32679.

process of resolving the criminal case. The considerations in Perja No. 15 of 2020 concerning the termination of prosecution based on restorative justice, namely:

- That the Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice, and truth based on law and respect religious norms, decency, and morality, and must explore human, legal and moral justice values that lives in society;
- That the settlement of criminal cases by prioritizing restorative justice which emphasizes recovery back to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented to retaliation is a legal necessity for society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system;
- That the Attorney General has the duty and authority to streamline the law enforcement process provided for by the law by taking into account the principles of fast, simple, and low-cost justice, as well as establishing and formulating case handling policies for the success of prosecutions carried out independently for justice based on law and conscience, including prosecutions using a restorative justice approach carried out in accordance with the provisions of laws and regulations.

Termination of prosecution based on restorative justice is part of the prosecutor's duty in the criminal field. The principle of opportunity, which makes the prosecutor's office the only government agency that has the power to delegate or not delegate case files to court. Progressive law is one of the theories underlying the termination of prosecution based on restorative justice, namely to obtain maximum legal goals.

According to Satjipto Rahardjo, the term Progressive Law is that which depends on the human ability to reason and understand and human conscience to make legal interpretations that prioritize the moral value of justice in society. In addition, another idea is that the law must be pro-people, pro-justice, aims at welfare and happiness, is based on a good life, is responsive, supports the formation of a constitutional state with a conscience, is carried out with spiritual intelligence and is liberating.

Restorative justice which is interpreted in the termination of prosecution is an advancement in the field of law which is as included in progressive law. Not only emphasizing peace efforts but more than that, namely creating justice, both for victims, suspects, the community and law enforcers. So that the existence of restorative justice can bring a legal paradigm for people to use their conscience more, not selfishly to use the law as a means of revenge.[14]

There are several stages in the implementation of the termination of prosecution based on restorative justice at the Banggai District Attorney, namely as follows:[15]

- The police have carried out an investigation and continued to the investigation

[14]Interview with Jefri Tolokende, SH, MH, Head of the General Crime Section of the Banggai District Attorney, June 20, 2022.
[15]Ibid.

stage with the issuance of an investigative order issued by an authorized official after the police received a report or became aware of a criminal incident. The Investigation warrant indicates that the Investigator has started an Investigation and immediately notifies the Public Prosecutor. After the investigator has completed the investigation, the investigator must submit the investigation file to the public prosecutor until the file is declared complete by the public prosecutor (P21).

- If the file is declared complete, the investigator will hand over the responsibility for the suspect and evidence to the public prosecutor for prosecution. At this stage the Public Prosecutor as *dominus litis* has the authority to delegate or not the case file to the Court for prosecution.
- At the Prosecution stage, the Public Prosecutor will analyze whether the criminal case received from the Investigator is included in the category of criminal case that can be terminated based on restorative justice. As per these conditions, among others:[16]
  - The suspect has committed a crime for the first time;
  - Criminal acts are only threatened with a fine or are threatened with imprisonment of not more than 5 (five) years;
  - A criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than IDR 2,500,000,000.00 (two million five hundred thousand rupiah).
- If the criminal case is included in the category of criminal case that can be terminated based on restorative justice, the Public Prosecutor shall carry out reconciliation efforts based on PERJA Number 15 of 2020 and Letter of JAM Pidum Number B-4301/E/EJP/9/2020 regarding instructions for implementing regulations. The Attorney General's Office of the Republic of Indonesia Number 15 of 2020, which contains:
  - The Public Prosecutor must also be able to ensure that the implementation of the Termination of Prosecution Based on Restorative Justice must be based on a peace agreement that is carried out fairly, proportionally, freely and voluntarily.
  - The Public Prosecutor has to determine the settlement of the case with a restorative justice approach since the pre-prosecution stage by referring to the Minutes of Opinion (Results of Case File Research (P-24)).
  - The Public Prosecutor coordinates and optimizes the presence of investigators in the implementation of peace efforts and processes.
- Peace efforts are offered by the Public Prosecutor to victims and suspects. The peace was carried out without pressure, coercion, and intimidation. For the purpose of peace efforts, the Public Prosecutor shall summon the Victim legally and appropriately by stating the reason for the summons. If it is deemed necessary, peace efforts may involve the families of the victims/suspects, community leaders or representatives, and other related parties. The Public Prosecutor shall inform the aims and objectives as well as the rights and obligations of the victim and suspect in the peace effort, including the right to

[16]Indonesia, Attorney General's Office, Prosecutor's Regulation on Termination of Prosecution Based on Restorative Justice, Perja No. 15 of 2020, Article 5 paragraph (1).

refuse the peace effort. If the peace effort is accepted by the victim and suspect, then it will be continued with peace.

- In the peace process, the public prosecutor acts as a facilitator. The public prosecutor as a facilitator must not have a professional or personal relationship with the victim or suspect. The reconciliation process and fulfillment of obligations, namely compensation or reinstatement, are carried out by the suspect 14 days after the handover of responsibility for evidence and suspect from the investigator to the public prosecutor (phase two). The peace agreement between the victim and the suspect is made in writing before the public prosecutor. The agreement contains:
  - Agree to make peace and fulfill certain obligations;
  - The agreement was signed by the victim, suspect, and 2 witnesses known to the public prosecutor.
- After the reconciliation efforts are received by the Victim and the Suspect, the Public Prosecutor shall make a report on the reconciliation efforts received to the Head of the District Attorney's Office or the Branch of the Head of the District Attorney's Office to be forwarded to the Head of the High Prosecutor's Office. In certain cases that receive special attention from the leadership and the community, the report is also submitted to the Attorney General in stages. In the event that the reconciliation effort is rejected by the Victim and/or the Suspect, the Public Prosecutor:
  - Pouring out the non-achievement of peace efforts in the minutes;
  - Make a memorandum of opinion that the case is transferred to the court by stating the reasons; and
  - Submit case files to court.

The goal of restorative justice is the restoration of all circumstances and peace. So that punishment is not a means of retaliation that is often used by the community but as a last resort if peace does not find a middle point.[17]According to Andi Hamzah and A. Simanglipu, throughout the course of history, criminal objectives can be collected in four parts, namely:

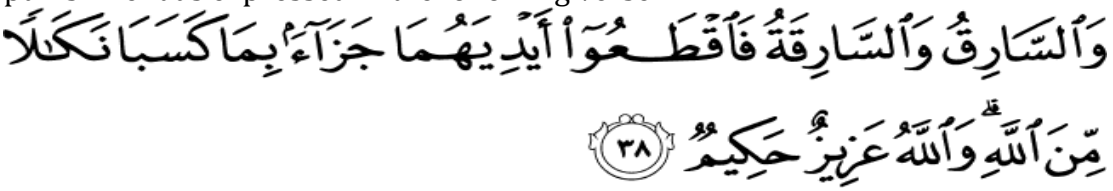
- Revenge (revenge)
  A person who has caused harm and calamity to another person, according to this reason is obliged to suffer as it is inflicted on another person.
- Removal of Sins (expiation)
  This concept comes from religious thoughts that come from God.
- Deterrence (determination).
  This fact is also often referred to as evidence of the effectiveness of *hadd* punishment guided by the Qur'an and the Prophet's hadith. Against this deterrence theory, we can understand why some of the punishments prescribed in Islamic criminal law, such as the punishment for adultery, for example, must be carried out in public. The general purpose of deterrence to the public, namely to be afraid to do the same thing, is of course the rational reason behind this decision.

[17]Riyanto, Tiar Adi, "Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Di Indonesia", *Jurnal Lex Renaissance* Vol.6, No.3 (2021), url : https://journal.uii.ac.id/Lex-Renaissance/article/view/20461.

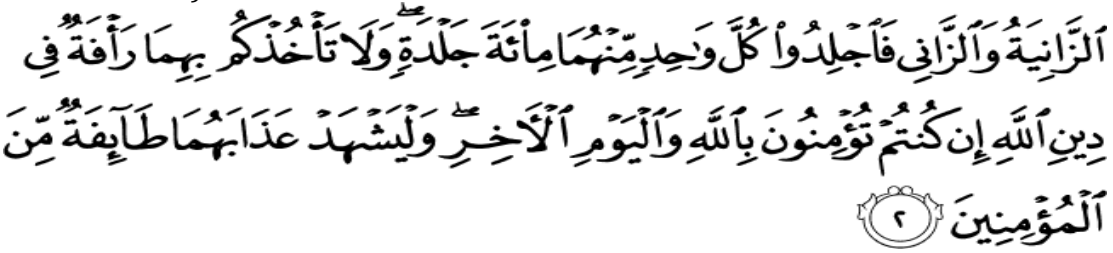
- Improving the perpetrators of the crime (rehabilitation of the criminal).
  This punishment is applied as an attempt to change the attitude and behavior of Allah's finger for His servants and as a reflection of Allah's desire for *ihsan* to His servants. Therefore, it is appropriate for people who punish others for their mistakes should intend to do *ihsan* and give mercy to them.

Abdul Qadir Awdah, a criminal law expert from Egypt, said that the principle of punishment in Islam can be summed up in two main principles, namely completing all criminal acts by ignoring the convict's personality and improving the attitude of the convict as well as eradicating all forms of crime. Eradicating all forms of criminal acts aims to maintain the stability of society, while for the individual convicts it aims to improve their attitudes and behavior. Therefore, according to him, the punishment for all forms of criminal acts that occur must be in accordance with the benefit and tranquility of the people who want it.[18]

The purpose of Islamic criminal law implicitly stipulates the purpose of punishment as expressed in the following verse:



"The man who steals and the woman who steals, cut off their hands as a recompense for what they did and as a punishment from Allah. And Allah is Mighty, Wise.". (Surat al-Maidah: 38).[19]



"The woman who commits adultery and the man who commits adultery, then lash each one of them a hundred lashes, and do not be merciful to both of them prevent you from (practicing) Allah's religion, if you believe in Allah and the hereafter, and let (the execution of) their punishment is witnessed by a group of believers" (Surat an-Nur: 2).[20]

From the paragraph above, it substantially shows that there is an element of retaliation that is desired for violators of the law and must be carried out in public. From the description above, it can be concluded that the purpose of punishment in Islam is as follows:[21]

- Punishment as retaliation, meaning that every act that violates the law must be subject to sanctions in accordance with the provisions of the text. The long-term

[18]Munajat, Makhrus. (2007), *Dekonstruksi Hukum Pidana Islam*, Logung Pustaka, Sleman, p. 49.
[19] www.theonlyquran.comaccessed on 17 June 2022.
[20]Ibid.
[21]Makhrus Munajat, Op.cit, p. 289-290.

aspect of this is the provision of protection to the wider community (Social defence). *Qisas* law example.

- Sentencing as a collective prevention or general prevention means that punishment can provide lessons for others not to commit similar crimes. Example: people who commit adultery must be flogged in public so that other people see and are not expected to commit adultery.
- The punishment referred to as special prevention means that a person who commits a crime after the sanction is applied will repent and not repeat the crime again, in this aspect it contains the value of treatment.

Because the purpose of punishment is prevention, the amount of punishment must be such that it is sufficient to realize that goal, it should not be less or more than the required limit, and thus there is a principle of justice in imposing punishment. If this is the case, then the punishment can be different, especially the *ta'zir* punishment, according to the action. In addition to preventing Islamic law, it is also aimed at paying attention to the maker himself, even giving lessons and trying the best for the finger maker. In addition to the self-maker, the imposition of a crime also aims to form a good society.[22]

The policy of the Prosecutor's Authority in the Criminal Justice System is in the form of termination of prosecution based on restorative justice based on the theory of the purpose of punishment according to Islam. It contains treatment value. At the termination of prosecution based on restorative justice, emphasizing the return to its original state and a statement not to repeat the crime.

According to the history of the development of Islam, it is included in the rehabilitation of the criminal. This punishment is applied as an attempt to change the attitude and behavior of Allah's finger for His servants and as a reflection of Allah's desire for *ihsan* to His servants. Therefore, it is appropriate for people who punish others for their mistakes should intend to do *ihsan* and give mercy to them. In some cases, many victims gave conditions to the perpetrators to improve their morals and behavior by conducting religious studies. So that he not only regrets what he has done, but the defendant can become a better human being both morally and spiritually.

3.2. Constraints Occur in the Policy on the Authority of the Prosecutor in Terminating Prosecution Based on Restorative Justice in the Current Criminal Justice System

In this case, the public prosecutor exercises his authority well based on the Attorney General's Regulation No. 15 of 2020. Paying attention to the crime determined by the investigator and then analyzing the criminal act, whether or not peace efforts can be made based on restorative justice.

In practice, although the termination of prosecution based on restorative justice can be carried out peacefully, there are obstacles in its implementation, namely:[23]

- The distance between the litigants and the Banggai District Attorney's office is quite far, which is 38 km with the road conditions being not good enough. The

[22]Ahmad Hanafi, Op.Cit, p. 256-257.
[23]Interview with Jefri Tolokende, Op.cit.

long distance made it difficult for the parties to visit the Banggai District Attorney's office.

- The crime committed was domestic violence which made it difficult for peaceful efforts to be carried out, so that peace efforts were realized on the 14th day since the phase 2 file was in accordance with the provisions of the Attorney General's Decree. In this case, it is very different from the 2 cases where efforts to stop prosecutions based on restorative justice have taken no more than 10 days.

Law enforcement has a close relationship with the community in every activity. Constraints to the structure of society, in the form of obstacles to law enforcement that cause it cannot be carried out carefully. The provision of social facilities that do not support is one of the obstacles in the implementation of law enforcement.[24]The success or failure of law enforcement based on the theory of Lawrence M. Freidman depends on three elements of the legal system, namely:

- Legal culture
  Legal culture is in the form of opinions, habits, ways of acting and ways of thinking, both from the community and from law enforcement officials. For the legal system to run, it is not enough just to have the apparatus and substance.
- Legal substance
  The legal substance is in the form of all legal norms, legal principles and the rule of law, written or unwritten, including court decisions.
- Legal structure
  The legal structure is in the form of institutions related to law enforcement, and law enforcement officers. This includes the courts and their judges, the offices of lawyers and their lawyers, the police and their police officers, and the public prosecutor's office and prosecutors.

Associated with the case used by the researcher, based on the theory of law enforcement from Lawrence M. Freidman, it depends on three elements of the legal system, namely:

- Legal culture; The community, in this case the victim, in the peace effort is still classified as difficult because they still want to take revenge for the violent crime committed by their husband as a deterrent effect. The understanding to resolve the problem by making punishment the best option continues to be carried out by the Prosecutor's Office in this case the public prosecutor to make peace efforts even though the key to peace remains with the victim. Community leaders, in this case community representatives, responded favorably to efforts to stop prosecutions based on restorative justice.
- Legal Substance; The regulation regarding the termination of prosecution based on restorative justice contained in the Attorney General's Regulation Number 15 of 2020 based on an interview with the Head of the General Criminal Section of the Banggai District Attorney's Office for 14 days in certain cases is not sufficient considering the large number of criminal cases that enter each District Attorney's Office, the location is not the same. Geographically, the distance and

[24]Rahardjo, Satjipto. (2009), *Penegakan Hukum: Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, p. 31.

access that is passed at each District Attorney is not the same and the culture of the community is different in different places.

- Legal structure; The public prosecutor as a law enforcer who has an important role in seeking peace on the parties has made maximum efforts with the existing infrastructure, existing capabilities, although there has been no special education and training for the termination of prosecution based on restorative justice.

4. Conclusion

The policy of the Prosecutor's authority in terminating prosecution is based on restorative justice in the criminal justice system, namely based on the principle of opportunity, namely that the Prosecutor's Office is the only State Institution controlling cases or has the authority to continue or not file cases to the Court based on the provisions of the Act. This authority is implied in the form of the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. According to the Islamic criminal theory, the authority to stop prosecution based on restorative justice is included as special prevention and according to the history of Islamic development, it is included in the rehabilitation of the criminal. The obstacle in terminating prosecutions based on restorative justice at the Banggai District Prosecutor's Office is based on the decree of the Banggai District Attorney Number B-748/P.2.11/Eoh.2/11/2021, namely that the distance between the parties in the case and the Banggai District Attorney's office is quite far which is 38 km with the road conditions taken are not good enough. The long distance made it difficult for the parties to visit the Banggai District Attorney's office. The crime committed was domestic violence which made it difficult for peaceful efforts to be carried out, so that peace efforts were realized on the 14th day since the stage 2 file was in accordance with the provisions of the Attorney General's Decree. In this case, it is very different from the 2 cases where efforts to stop prosecutions based on restorative justice have taken no more than 10 days. If drawn from the theory of law enforcement, these obstacles are included in the legal culture and legal substance.

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