

The Implementation of the Authority to Stop Prosecution by the Prosecutor's Office Realizing Restorative Justice

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Abstract: *The purpose of this study is to examine and analyze the mechanism for stopping prosecution by the Prosecutor's Office in order to achieve restorative justice. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. In carrying out the case handling process, the Public Prosecutor has the authority to stop a criminal case. Authority based on the dominus litis principle, made the Attorney General's Office in 2020 stipulate the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation is based on the consideration of settling criminal cases that prioritizes restorative justice which emphasizes restoration to its original state and balance of protection and interests of victims and perpetrators of crimes that are not oriented towards retaliation. Prosecutors as public prosecutors who have the duty to transfer cases to court in accordance with the prosecution's authority recognize the principle of discretion in demanding where the prosecutor can prosecute or the prosecutor can not prosecute. The role of the Public Prosecutor is no longer limited to delegating cases to court but can act as a mediator between the litigants. If the litigants have found an agreement and have fulfilled the requirements in the Attorney General's Regulation Number 15 of 2020, the Public Prosecutor can terminate the prosecution and release the defendant from prison confinement.*

Keywords: *Justice; Prosecution; Restorative; Termination.*

1. Introduction

The Unitary State of the Republic of Indonesia is one of the large countries that prioritizes the provisions of applicable law. The rules of positive law that apply in Indonesia are clearly an important component in building a safe, peaceful and

peaceful life.¹One of the areas of law in order to maintain order and security for Indonesian citizens is criminal law.²Renewal of criminal law which is an attempt to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlies social policy, criminal policy and law enforcement policy in Indonesia.

In the development of criminal law, the term restorative justice is known. This development is due to the fact that the restorative system that has been implemented so far has not been able to fully fulfill the sense of justice for society. the state, so that the concept of retributive justice does not provide a place for the protection of victims. Bearing in mind that victims of criminal acts can not only experience material losses, but it is very possible to experience immaterial losses.

Law enforcers are faced with cases such as the decision of the Purwokerto District Court case on behalf of the Defendant Granny Minah who was proven to have committed theft of cocoa, the decision of the Palu District Court against the theft of flip-flops by a child with the initials AAL, the decision of the District Court of Kediri against the theft of watermelon by Basar and Kholil. This case makes law enforcers feel a dilemma between upholding legal certainty or prioritizing justice and expediency.³Law enforcers who want to prioritize justice, such as stopping a case where the victim and suspect have reconciled and the loss is not large, does not necessarily mean that law enforcers such as prosecutors can stop just like that, because there are no rules that allow prosecutors in the regions to stop cases despite a sense of justice. should be prioritized in this case.

With the authority possessed by the prosecutor to prosecute or not prosecute a criminal case to court, then in the prosecution tradition it is known as the policy principle of prosecution which is divided into 2 (two), namely the prosecutor's authority to prosecute and the prosecutor's authority not to prosecute.⁴In this case the purpose of the writing research is to examine and analyze the mechanism for stopping prosecution by the Prosecutor's Office in order to achieve restorative justice.

¹Nur Dwi Edie W and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN. Blora), Jurnal Daulat Hukum: Volume 3 Issue 1, (2020), p .147

²Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, Journal of Daulat Hukum: Volume 3 Issue 1, (2020), p.185

³Hanafi Arief, et al, Application of Restorative Justice Principles in the Criminal Justice System in Indonesia, Al'Adl Journal, Volume X Number 2, (2018), p.13.

⁴Bambang Waluyo, 2020, Settlement of Criminal Cases, Implementation of Restorative and Transformative Justice, Cet. 1, Sinar Graphic, Jakarta, p. 22.

2. Research Methods

To conduct an assessment in this writing the authors use the normative juridical method. Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this writing, secondary data collection methods were used which were obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Results and Discussion

3.1. Restorative Justice in the Criminal Justice System in Indonesia

Among the Indonesian people, there are currently many crimes that end up in the courts, where people tend to use the courts as an effort to resolve a case which, conceptually and theoretically, they think will create justice, but in reality this is actually not easy to do. achieved because of its nature which tends to be a win-lose solution.⁵

Satjipto Rahardjo stated that settling cases through the justice system which resulted in a court verdict was a slow track in law enforcement. This is because law enforcement goes a long way, also through various levels, starting from the police, prosecutors, district courts, high courts and even up to the Supreme Court. In the end it has an impact on the accumulation of cases that are not small in number in court.⁶

In addition, the imposition of a sentence, no matter how mild, is essentially a revocation of basic human rights. Therefore the use of punishment as a means of criminal politics must be based on reasons that can be justified philosophically, juridically and sociologically.⁷

Doctrinally and juridically, law enforcers are not given clear and firm space in using alternative models in the settlement of criminal cases that allow for a balance of protection for all parties. For this reason, in the context of implementing an alternative model in criminal justice, the intelligence of law enforcers is needed in translating the objectives of the law so that the law (statute) will become

⁵Kristian & Christine Tanuwijaya, Settlement of Criminal Cases Using the Concept of Restorative Justice in the Integrated Criminal Justice System in Indonesia, *Journal of Mimbar Justitia*, Vol. 1 No. 02, (2015), p. 595

⁶Henny Saida Flora, Restorative Justice as an Alternative in Settlement of Crimes and Its Influence on the Criminal Justice System in Indonesia, *UBELAJ*, Vol. 3 No. 2, (2018), p. 144.

⁷Usman H, Analysis of the Development of Criminal Law Theory, *Jambi Journal of Law*, Vol. 2, No. 1, (2011). p. 67.

meaningful.⁸ However, along with existing developments, the Chief of Police Circular Letter Number SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases appeared.

The circular letter regulates how to apply the concept of restorative justice in the settlement of criminal cases at the investigative level or police investigation. Within the police institution, the implementation of restorative justice by the police is carried out on the basis of discretionary authority. Furthermore, the prosecutor as a public prosecutor who has the duty to transfer cases to court in accordance with the authority of the prosecution recognizes the principle of discretion in demanding where the prosecutor can prosecute or the prosecutor can not prosecute.⁹ The Attorney General's Office issued Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The role of the Public Prosecutor is no longer limited to delegating cases to court but can act as a mediator between the litigants.

3.2. Mechanism for Termination of Prosecution by the Prosecutor's Office to Achieve Restorative Justice

The Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 is one of the long awaited justice fighters who have often been victims of the rigidity of applying the norms of criminal law that apply in Indonesia. This is often related to the implementation of punishment which only refers to the principle of legality, even though it often ignores the purpose and function of law. For this reason, the implementation of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice provides space for the settlement of every criminal case through restorative justice. by taking into account the requirements and mechanisms as stipulated.

The implementation of termination of prosecution through conciliation between the suspect and the victim does not necessarily have to be contrary to the basic values and meaning of a criminal law itself. Even if, for example, regarding the meaning of criminal law conveyed by Pompe, criminal law is a whole regulation of a general nature whose contents are prohibitions and requirements for violations.

The conditions for a criminal act to be closed by law and the prosecution to be terminated based on restorative justice are regulated in Article 5 of the Attorney

⁸Sudaryono, M. Iksan, & Kuswardani, Alternative Settlement Models in Criminal Justice (Special Study of Criminal Case Settlement Models by Police Agencies), Journal of Humanities Research, Vol. 13 No. 1, (2012), p. 66

⁹Agus Raharjo, Mediation as a Basis for Settlement of Criminal Cases, Mimbar Hukum, Vol. 20, No.1, February (2008), p.273

General's Regulation Number 15 of 2020. The conditions for this condition are that a suspect is only committing a crime for the first time; the threat of the crime is in the form of a fine or imprisonment of not more than five years and the loss incurred as a result of the crime is not more than IDR 2,500,000.

The regulation also regulates peace efforts in the settlement of criminal cases through Articles 7 to 14. Mediation measures are very possible to be applied in the settlement of criminal cases. This is because the principle of mediation emphasizes the achievement of justice for all parties involved.

Prosecutor's Regulation Number 15 of 2020 was born based on the idea that a case settlement mechanism is needed outside the justice system based on a restorative justice approach. The basic concept of restorative justice is a mechanism for settling criminal cases that prioritizes the creation of justice and balance between the parties involved. The application of a restorative justice mechanism is a breath of fresh air for a solution to the problem of the accumulation of cases in court. Thus, restorative justice is an alternative method in the context of resolving criminal cases that refers to the perspectives of victims, perpetrators and society. The core point that is used to evaluate the success of implementing restorative justice is at the empowerment stage.¹⁰

In its application, restorative justice involves the community, victims and perpetrators of crime. The purpose of this involvement is to achieve justice for all parties. However, currently, restorative justice is only limited to certain criminal acts as stipulated in the Perja. So far, the implementation of the termination of prosecution based on restorative justice has been carried out in the period from 2020 to 2021.

Regarding the reconciliation mechanism between the suspect and the victim, the provisions of Article 10 paragraph (1) to (6) of the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020 state:

- 1) In the event that the peace process is reached, the Victim and the Suspect make a peace agreement in writing before the Public Prosecutor.
- 2) The peace agreement referred to in paragraph (1) is in the form of: a. agreeing to make peace accompanied by the fulfillment of certain obligations; or. agree to make peace without fulfilling certain obligations.
- 3) The peace agreement referred to in paragraph (1) is signed by the victim, suspect and 2 (two) witnesses with the knowledge of the public prosecutor.

¹⁰C Barton, Empowerment and Retribution This is Criminal Justice". In H. Strang, J. Braitwaite (Eds), Restorative Justice: Philosophy to Practice. Journal Temida. Aldershot: Ashgate/Dartmouth, (2011). p. 55

- 4) In the event that the peace agreement is accompanied by the fulfillment of the obligations referred to in paragraph (2) letter a, the Public Prosecutor makes the minutes of the peace agreement and a memorandum of opinion after the fulfillment of the obligations is carried out.
- 5) In the case of a peace agreement without the fulfillment of the obligations referred to in paragraph (2) letter b, the Public Prosecutor makes the minutes of the peace agreement and a memorandum of opinion.
- 6) In the event that the peace agreement is not successful or the fulfillment of obligations is not carried out according to the peace agreement, the Public Prosecutor:
 - a. record the failure to reach a peace agreement in the minutes;
 - b. make a memorandum of opinion that the case is transferred to the court by stating the reasons; And
 - c. submit case files to court.

If an agreement is reached regarding reconciliation between the suspect and the victim, the provisions of Article 12 paragraph (1) to (10) of the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020 stated:

- 1) In the event that a peace agreement is reached, the Public Prosecutor reports to the Head of the District Attorney's Office or the Head of the District Attorney's Office by attaching the minutes of the peace agreement and a memorandum of opinion.
- 2) Based on the Public Prosecutor's report as referred to in paragraph (1), the Head of the District Attorney's Office or the Head of the District Attorney's Office requests approval for the termination of prosecution based on Restorative Justice from the Head of the High Court.
- 3) The request for approval as referred to in paragraph (2) shall be submitted no later than 1 (one) day after the settlement agreement is reached.
- 4) The Head of the High Prosecutor's Office determines whether to approve or reject the termination of prosecution based on Restorative Justice in writing with consideration within a maximum period of 3 (three) days after the request is received.
- 5) In certain cases that receive special attention from the leadership, the Head of the High Prosecutor's Office requests approval from the Attorney General while still paying attention to the time referred to in paragraph (3).
- 6) In the event that the Head of the High Prosecutor's Office approves the termination of prosecution based on Restorative Justice, the Head of the District Attorney's Office or the Head of the District Prosecutor's Office as the Public Prosecutor shall issue a Decision Letter on Termination of Prosecution within a maximum period of 2 (two) days after the approval is received.

- 7) The Decision Letter on Termination of Prosecution as referred to in paragraph (5) contains reasons for discontinuing prosecution based on Restorative Justice as well as determining the status of evidence in the criminal case in question.
- 8) Determination of the status of evidence as referred to in paragraph (6) is carried out in accordance with the provisions of the legislation.
- 9) The Decree on Termination of Prosecution as referred to in paragraph (6) is recorded in the Register of Prosecution Stage Cases and the Register of Termination of Prosecution and Case Waiver in the Public Interest.
- 10) In the event that the Head of the High Prosecutor's Office refuses to terminate the prosecution based on Restorative Justice, the Public Prosecutor shall transfer the case files to the court.¹¹

The entire provisions of this article are part of the mechanism for implementing the termination of prosecution through reconciliation between the suspect and the victim. If in practice all of these provisions are not fulfilled, then efforts to stop the prosecution cannot be carried out and the case is re-examined at the court level until a verdict is rendered by the panel of judges handling the case. Afdoening buiten process is the closing of a criminal case for the sake of law which can be carried out if there has been an attempt to settle it outside the court. The implementation of the afdoening buiten process is carried out with the provision that certain types of criminal acts with a maximum penalty of fines have been paid voluntarily in accordance with the provisions; Then,¹²

If the second situation has occurred, the prosecutor has the authority to stop the prosecution. The accumulation of cases in court also affects the increase in the burden on the state budget. Therefore, to reduce the burden on the state budget, restorative justice can be carried out for minor criminal cases.

4. Conclusion

Every settlement of a case must involve the victim by communicating for further summons. Furthermore, the Prosecutor's Office made an official summons to the victim and the parties involved. Investigators and Prosecutors also coordinated intensively beforehand. Then, the Prosecutor appointed by the Head of the District Attorney who acts as the Public Prosecutor in a criminal case when the criminal case goes through the stages of delegating the suspect and evidence by the Investigator to the Public Prosecutor. The investigator asked for time before the

¹¹Mirdad Apriadi Danial, Muhadar, Ratnawati, Implementation Of Prosecutor Regulation Number 15 Year 2020 About Termination Of Prosecution Based On Restorative Justice, Pro Hukum Journal: Volume 11 Number 1, (2022), p.35

¹²Ribut Hari Wibowo, Restorative Justice Approach in Termination of Prosecution Based on Restorative Justice, Journal of Progressive Law, Vol. 9, No. 2, (2021), p.154

detention period expired, the length of detention time was 20 days at the investigator level. However, investigators may request an extension or additional detention period from the Attorney General's Office for 40 days. So investigators can detain as much as 60 days. The mechanism or procedure for conciliation in stopping prosecution based on restorative justice is contained in the provisions of Article 7 to Article 14 of the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020. These provisions have regulated the initial to final stages of ending prosecution through reconciliation between the suspect and the victim. The entire provisions of this article are part of the mechanism for implementing the termination of prosecution through reconciliation between the suspect and the victim. If in practice all of these provisions are not fulfilled, then efforts to stop the prosecution cannot be carried out and the case is re-examined at the court level until a verdict is rendered by the panel of judges handling the case.

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