

Implementation of The Republic of Indonesia's Attorney General's Office Regulation Number 15 Of 2020 Concerning Termination of Prosecution Based on Restorative Justice

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Abstract. *The purpose of this research is to find out and analyze the process of implementing the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. This study uses a normative legal approach. Normative legal research is research conducted by researching literature (secondary data) or library law research. The study in this research is more descriptive analysis in nature. The sources and types of data in this study are secondary data obtained from literature studies. Data were analyzed qualitatively. Based on the results of that research the termination process here has fulfilled the Requirements for the Principle of Restorative Justice, namely that the Public Prosecutor offers peace efforts to the Victim and the Suspect. The Public Prosecutor summons the Victim legally and properly by stating the reasons for the summons. In the event that it is deemed necessary, peace efforts may involve the families of the victims/suspects, community leaders or representatives, and other related parties. Obstacles in the Implementation of Restorative Justice in the PDM-29/PRBAL/Eoh.2/6/2022 Case at the Purbalingga District Attorney's Office, there are many administrative requirements that must be prepared and coordination carried out in stages where the Public Prosecutor is required to be able to quickly complete in a short time.*

Keywords: Application; Effectiveness; Justice; Restorative.

1. Introduction

The State of Indonesia is a state of law, according to the formulation regulated in the 1945 Constitution of the Republic of Indonesia where legal events in Indonesia are currently developing very rapidly and this development has led to imbalances in the settlement of criminal cases.

The rule of law requires that the law must always be upheld, respected and obeyed by anyone without exception. This aims to create security, order, prosperity in the life of society, nation and state. The concept of a rule of law cannot be separated from the concept of its own pillar, namely the sovereignty of the people which later gave birth to the notion of democracy. Therefore, a rule of law and democracy cannot be separated.¹

Human life cannot be separated from criminal acts, crimes or criminal acts (strafbaat feit). In order for the existence of law is very necessary. Indeed, the law is the foundation, basis, morals, in guarding the achievement of life goals that are aspired together for the emergence of social order. Of course the law also functions to prevent, reduce, and eradicate criminal acts.²

The law works by showing its function, namely making norms, both those that provide designations and those that determine the relationship between one person and another; dispute resolution; and ensure the continuity of community life, if there are changes. This means that law positions itself as a means of social control and social engineering.³

The law must have certainty, for that the law must be a written regulation. It is very important to understand that the law cannot drain the law, because even though the rule of law is formulated through the texts in the law, the formulation of the text cannot fully accommodate the content and intent of the rule of law.⁴

The Criminal Justice System in Indonesia consists of pre-trial, adjudication and post-adjudication. Handling a pre-judgment criminal case, starting with an investigation to determine a suspect with sufficient initial evidence then the next step is for the investigator to hand over the suspect and evidence, after going through the research process the case file is declared complete by the Public

¹Sri Kusriyah, 2022, The Principles of the Welfare Law State in an Islamic Perspective, Journal of Daulat Hukum, Volume 5 Issue 4, Unissula, p. 288, <http://jurnal.unissula.ac.id/index.php/RH/article/view/26590/7687>

²Bambang Waluyo, 2020, Settlement of Criminal Cases for the Application of Restorative and Transformative Justice, Sinar Graphic, Jakarta, p. 1.

³Satjipto Rahardjo, 1983, Law and Social Change, Alumni, Bandung; p. 126–128.

⁴Strong Puji Prayitno, 2011, Introduction to Law (Art of Law and Legal Discovery in the Context of National Law), Kanwa Publisher, Yogyakarta, p. 2.

Prosecutor, and if the Public Prosecutor assesses the actions of the suspect fulfill criminal elements, the suspect's case file is transferred by the Public Prosecutor to the local District Court.

The community pays serious attention to law enforcement, especially the judicial process. As a result, society, especially victims of crime, always pays attention to the justice system in their country, as is also the case in Indonesia. Judiciary is not only related to trials, court decisions, justice and legal certainty, but more broadly includes efforts to overcome crime.⁵

Gustav Radbruch who argues that the law in its objectives needs to be oriented towards three things, namely legal certainty, justice and usability (*doelmatigheid*).⁶ According to Radbruch, legal certainty is the main guide to law, namely, so that the law becomes positive, in the sense that it applies with certainty. The law must be obeyed, thus the law is truly positive.⁷ The more the law fulfills the requirement of "proper regulation", which eliminates as much uncertainty as possible, the more precise and sharp the rule of law is, the more pressing is the need for justice. That is the meaning of *summum ius, summa iniuria*, or more often heard with the phrase the highest justice is the highest injustice.⁸

Law, especially criminal law, is designed to maintain order, as well as to protect public and private interests. The community determines that some very important interests need to be maintained by a formal control system. Therefore, the law must legally give the power of the state to enforce it. Law is a formal system of social control, which may be applied when other forms of social control are ineffective.⁹ One of the functions of criminal law is to limit and announce prohibited acts. These are referred to as rules of conduct, which have previously been established and addressed to members of the public as actions that must be avoided under the threat of criminal sanctions. In addition, the law maintains a fixed state while flexibly controlling change.¹⁰

Based on the explanation of the background above, the problems found in this study are as follows: Implementation of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning termination of prosecution based on restorative justice.

⁵Bambang Waluyo, Op.Cit, and page number. 78.

⁶O. Notohamidjojo, 2011, *Basic Problems of Legal Philosophy*, Griya Media, Salatiga, p. 33.

⁷*Ibid.*, p. 33-34.

⁸LJ van Apeldoorn, *Introduction to Law*, Cet. 32, Pradnya Paramita, Jakarta, p. 13.

⁹ Muhaimin, 2019, "Restorative Justice in the Settlement of Minor Offenses" in the *De Jure Legal Research Journal* Volume 19 (2), Published Center for Legal Research and Development Agency for Research and Development of Law and Human Rights, Jakarta, p. 190.

¹⁰*Ibid.*

The purpose of this research is to know and analyze Implementation of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice.

2. Research Methods

This study uses a normative legal approach. Normative legal research is research conducted by researching literature (secondary data) or library law research.¹¹ The type of the study in this research is more descriptive analysis in nature.¹² The sources and types of data in this study are secondary data obtained from literature studies. Data were analyzed qualitatively.

3. Result and Discussion

3.1. Implementation of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice

Criminal Justice System is a criminal justice system in the framework of law enforcement. This system is a term that denotes a working mechanism in crime prevention using a basic systems approach. Understanding the system itself is interpreted as an implication of an interaction process that is prepared rationally and maintains efficiency for certain results with all its limitations. Crime develops according to the development of society.¹³

The criminal justice system includes the stages of investigation, prosecution, examination in court and implementation of decisions. By looking at these stages, the components of the criminal justice system include the police, prosecutors, courts and correctional institutions.

The Attorney General can rule out a particular case by using the principle of opportunity.¹⁴ Regulations of The Attorney General's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which provides provisions for the application of restorative justice to general crimes in a limited manner, namely, minor crimes while still referring to the terms and conditions that have been regulated. Restorative justice is considered in accordance with the spirit of the nation and the foundation of the state, which prioritizes the values of balance, harmony, harmonization, peace, tranquility,

¹¹Ediwarman. 2009. Monograph on Legal Research Methods, 2nd edition, Medan, p. 24

¹²Bambang Waluyo, 1996, Legal Research in Practice, Sinar Graphic, Jakarta, p.8

¹³ M. Arief Amrullah, 2018, Development of Corporate Crime: Impacts and Problems of Law Enforcement, Prenamedia Group, Jakarta

¹⁴Syukri Akub and Sutiawati, 2018, Restorative Justice: Restorative Justice, Litera, Yogyakarta

equality, brotherhood and kinship, and upholds deliberation and consensus. It is believed that if the application of restorative justice is carried out properly and correctly, then the purpose of the law will provide a sense of justice.

Regulationsn The Attorney General's Office of the Republic of Indonesia Number 15 of 2020 is also one of the long-awaited justice warriors who have often been victims of the rigidity of enforcing the criminal law norms 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 Perma was issued in response to several provisions in the Criminal Code related to limiting losses and penalties, which are considered no longer relevant to development from the current conditions. The Perma is also intended to avoid a backlog of cases at the Supreme Court and avoid the application of general criminal articles in cases of minor crimes, the perpetrators do not need to be detained and cannot be appealed.¹⁵

OnThe tradition of prosecution doctrine is known as the dominus litis principle. According to RM Surachman, in several countries such as Japan, the Netherlands and France, the prosecution authority is the monopoly of the prosecutor. It is said in Latin is dominus litis or ruler of cases. This means that in criminal proceedings, it is the prosecutor who has the authority whether a case can be prosecuted to court or not.¹⁶

There is the authority of the Prosecutor to prosecute or not prosecute criminal cases to court, so in the tradition of prosecution, the principle of discretion is known, which is divided into 2 (two) namely the Prosecutor's authority to prosecute and the Prosecutor's authority not to prosecute.¹⁷In the prosecution of criminal cases, there are two principles that apply and are in opposite positions, namely the principle of legality which requires prosecution of all cases to court and the principle of opportunity which gives authority to the public prosecutor not to prosecute criminal cases in court.

¹⁵Rizky Adiyanzah Wicaksono and Sri Kusriyah, 2018, Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children, Journal of Daulat Hukum Volume 1 Issue 4, p. 946, <https://jurnal.unissula.ac.id/index.php/RH/article/view/4136/2887>

¹⁶Ibid p. 22.

¹⁷Bambang Waluyo, Op.Cit, p. 22.

Handling process case in its implementation, the Public Prosecutor has the authority to stop a criminal case as stipulated in the Criminal Procedure Code in particular Article 140 Paragraph (2) Letter (a) namely "In the event that the public prosecutor decides to stop the prosecution because there is not enough if the evidence or event turns out to be not a crime or the case is closed for the sake of law, the public prosecutor will state this in a decision letter."¹⁸

In connection with the above, Andi Hamzah said that the settlement of cases outside the court is known, the Netherlands; *afdoening buiten proces*, English, transaction out of judiciary, this is similar to restorative justice but restorative justice is civil in nature, peace between the two parties of the victim and the perpetrator with compensation including serious cases. In Arab countries even to the point of murder. The draft Criminal Procedure Code also regulates the settlement of cases outside the court.¹⁹

The Public Prosecutor can carry out a Termination of Prosecution based on Restorative Justice must comply with the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 Article 5 Paragraph (1), namely:

1. The suspect is a first time offender;
2. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; And
3. The crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime of not more than IDR 2,500,000.- (two million five hundred thousand rupiah).

On general criminal cases as long as they meet the requirements as stated in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the public prosecutor can resolve cases based on restorative justice. As for the "restorative process" is any process in which victims of crime and perpetrators of crime, and where necessary, members of the community affected by crime, actively participate together, to decide the problems arising from the crime, and usually with the assistance by a facilitator²⁰.

The concept of Restorative Justice has emerged more than twenty years ago as an alternative settlement of criminal cases. The United Nations (UN) defines Restorative Justice as a process where all parties related to certain crimes sit

¹⁸The Criminal Procedure Code

¹⁹Bambang Waluyo, Op.Cit, p.82.

²⁰*Ibid.*, p. 18.

together to solve problems and think about how to overcome the consequences in the future.²¹

restorative justice or mediation of settlements outside the court or in the absence of a legal process, a form of means to uphold the law that upholds justice for those who are in litigation.²² The ultimate goal of this restorative justice concept is to eliminate stigma and return criminals to normal human beings, perpetrators of crimes can realize their mistakes, so they don't repeat their actions, do not create a sense of revenge because the perpetrators have been forgiven by the victims, victims quickly get compensation, empower the community in overcoming crimes and, reintegration of criminals in society.²³

Implementation of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the form of a sentencing concept, but as a sentencing concept it is not only limited to criminal law provisions (formal and material). What is emphasized by the term integrated justice, namely justice for perpetrators, justice for victims and justice for society. The characteristics of restorative justice are the Just Peace Principles or justice based on peace between perpetrators, victims and society. This principle is based on the premise that peace and justice are basically inseparable. Peace without justice is oppression, justice without peace is a new form of persecution or pressure.

3.2. The Process of Termination of Prosecution in Cases of Theft Has Fulfilled the Requirements for the Principles of Restorative Justice

A law enforcer in carrying out legal procedures for sanctioning children who are in conflict with the law or in this special situation, must use a special paradigm. This really needs to be done because the sanctions given must be able to provide educational value, and the nature of the sanctions must be in accordance with the meaning of philosophy. Therefore, these sanctions must provide the best way out of existing problems, and in the best interest of the child, which is in accordance with the *ultimum remedium* principle.²⁴

²¹Agency for Research and Development of Law and Human Rights, 2016, Application of Restorative Justice in Child Crime, Jakarta, Tree of Light, p.2.

²²Ragil Tri Wibowo and Akhmad Khisni, 2018, Restorative Justice in Application for Crime Investigation on Property, Journal of Daulat Hukum Volume 1 No. 2 Unissula

²³Ibnu Suka, Gunarto, Umar Ma'ruf, 2018, The Role and Responsibilities of the National Police as Law Enforcement in Implementing Restorative Justice for Justice and Community Benefits, Khaira Ummah Law Journal Vol. 13. No. 1

²⁴Rendy Surya Aditama, Umar Ma'ruf, Munsharif Abdul Chalim, 2018, Criminal Law Policy Against Children as Perpetrators of Psychotropic Crimes at the Magelang Resort Police, Journal of Daulat Hukum Vol. 1.No. 1, <https://jurnal.unissula.ac.id/index.php/RH/article/view/2625/1974>

In its implementation, restorative justice is carried out through the district attorney's office in each district/city area with several stages that must be followed. First, 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 Stage II, namely the transfer of suspects and evidence by the Investigator to the Public Prosecutor. The investigator asked for time before the 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.

Law 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.

The Process of Termination of Prosecution in Cases of Theft Has Fulfilled the Requirements The principle of Restorative Justice must prioritize a peace agreement between the two parties by taking into account three main elements. That the purpose of restorative justice is not focused on retaliating for the perpetrators of criminal acts, but rather seeking a fair solution by emphasizing restoration to its original state. Then, the conditions that must be met to apply restorative justice when carrying out the functions of criminal investigation, investigation, or investigation, namely there is an agreement between the parties to make peace, not repetition of criminal acts, the rights of victims have been fulfilled, and the application of restorative justice This is not met with rejection from society.

3.3. Obstacles and Solutions to the Application of Restorative Justice in Cases of Theft

The most substantial obstacles in the application of restorative justice in theft cases lie in the absence of a normative rule governing its application and the victim's unwillingness to be reconciled. The solution is to restore the victim's condition to how it was before the perpetrator committed the crime. This recovery can be carried out by the perpetrator by working for 2 (two) days with a duration of 4-5 hours at the victim's house.

4. Conclusion

Based on the results of the research and discussion, it can be concluded as follows: Implementation of the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the form of a sentencing concept, but as a sentencing concept it is not only limited to criminal law provisions (formal and material). What is emphasized by the term integrated justice, namely justice for perpetrators, justice for victims and justice for society. The Process of Termination of Prosecution in Cases of Theft Has Fulfilled the Requirements The principle of Restorative Justice must prioritize a peace agreement between the two parties by taking into account three main elements. The most substantial obstacles in the application of restorative justice in theft cases lie in the absence of a normative rule governing its application and the victim's unwillingness to be reconciled. The solution is to restore the victim's condition to how it was before the perpetrator committed the crime.

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