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Restorative Justice Implementation System Prosecutor in Criminal Proceedings

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Abstract: *The purpose of this research is to know and analyzing the implementation of the concept of restorative justice by prosecutors in criminal cases. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. The accumulation of the caseload in the courts, the prisons that are becoming full, and the little people who often fall into the error of lust, commit crimes, which they sometimes do not realize, then have to languish in prison cells for months. Because our material and formal criminal law is still oriented towards retribution for the criminal act alone and has not shifted to the act and perpetrator of the crime, let alone the paradigm of the interests of the victim. The Attorney General feels that it is time for the Public Prosecutor to capture the voice of justice in society and implement the termination of prosecution of cases that are not worthy of being brought to court. The concept of Restorative Justice comes with a paradigm that is always contrasted with retributive justice or a judicial model that is solely aimed at avenging or punishing perpetrators of criminal acts.*

Keywords: *Implementation; Material; Punishing.*

1. Introduction

In the concept of criminal acts and criminal procedural law procedures as regulated in the Criminal Code (hereinafter referred to as the Criminal Code) and Law No. 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as the Criminal Procedure Code), a criminal act is considered a violation of the interests of the state; and the state then forms parties to enforce it, namely the public prosecutor has the authority to prosecute a crime. The orientation is aimed at punishing the perpetrator while the rights of the victim are neglected. In the concept of criminal procedural law regulated by the Criminal Procedure Code, for example, the victim of a crime is only positioned as a witness whose position is to help the public prosecutor to prove his charges.

The outcome of this situation also depends on the concept of punishment applied. The most frequently used punishment is imprisonment (penal), which ultimately creates a situation of high dependence on the use of imprisonment instruments without any consideration of the interests of the victim. This, in the end, causes the problem of overcrowding or excess residents in State Detention Centers (hereinafter referred to as Rutan) and Correctional Institutions (hereinafter referred to as Lapas). The trend of imprisonment shows a number that tends to increase every year and the existing form of punishment is not in line with the importance of providing recovery for victims.

The theory and practice of Restorative Justice are considered to have emerged and been formed deeply as an effort to provide a response to the needs of victims. Although rooted in noble values that have been alive for a long time, the term 'restorative justice' was only introduced in several writings by Albert Eglash in the 1950s and was only widely used in 1977.[1]

The existence of the Indonesian Attorney General's Office, as a law enforcement institution, has a central position and strategic role in a state of law because it functions as a filter between the investigation process and the examination process in court (dominus litis principle), so that its existence in the life of society must be able to carry out the task of law enforcement. And be able to carry out reforms in various areas of life, especially in the field of law enforcement to realize the identity of the Indonesian Attorney General's Office which is more professional and more dynamic in order to face the development of society in addition to being able to provide justice for the community.

In 2020, the prosecutor's office wants to actualize Restorative Justice by perfecting the tendencies of criminal cases, through PERJA (Prosecutor's Regulation) Number 15 of 2020, where the public prosecutor adds guidelines and provisions that have been regulated and determined in the concept of justice. Restorative Justice as stated in Article 4 of PERJA No. 15 of 2020 states that restorative justice is formed with various objectives. These objectives, if achieved, will have benefits that impact society, as well as victims and perpetrators.

The accumulation of the caseload in the courts, the prisons that are becoming full, and the little people who often fall into the error of lust, commit crimes, which they sometimes do not realize, then have to languish in prison cells for months. Because our criminal procedure law does not recognize penal mediation. Because our material and formal criminal law is still oriented towards retaliation for the criminal act only and has not shifted to the act and perpetrator of the crime, let alone the paradigm of the interests of the victim. The Attorney General feels that it is time for the Public Prosecutor to capture the voice of justice in society and implement the termination of prosecution of cases that are not worthy of being brought to court.

Based on the explanation above, to research further and include it in legal research, byThe purpose of the research isknowing and analyzing the implementation of the concept of restorative justice by prosecutors in criminal cases.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Restorative Justice

[1]Shadd Maruna, (2014), The Role of Wounded Healing in Restorative Justice: An Appreciation of Albert Eglash, Restorative Justice: An International Journal, 2, p 9.

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Restorative justice consists of two words in English, namely, "restorative" which means to restore, heal, or strengthen and "justice" which means justice.[2]The definition of restorative justice in the context of language is justice related to recovery or improvement. The terminology "restorative justice" was first introduced by a psychologist Albert Eglash in 1958.[3], then widely used in 1977 in his writings which classified three types of criminal justice systems: retributive, distributive, and restorative.[4]There are various terms used to describe the restorative justice approach. These include reparative justice, positive justice, community justice, relational justice, communitarian justice, and so on.[5]

C. Barton in his book entitled "Empowerment and Retribution in Criminal Justice", states that "empowerment" is the keyword in using this approach, and even empowerment is the most important organ of restorative justice (the heart of the restorative ideology).[6]Therefore, this empowerment determines the success of restorative justice. Empowerment is a real or genuine opportunity to actively participate for the parties, especially the victims, to be heard, to convey their views (point of view) and to express their needs.

3.2. Implementation of the Restorative Justice Concept by Prosecutors in Criminal Cases

Law has a central role in regulating national life. Indonesia is a country of law where the Indonesian legal system is binding and forces its citizens to obey.[7]As a country of law, Indonesia has a concrete and complex system of unity in creating a peaceful and calm situation by regulating relations between people in their lives in society.[8]

Criminal law enforcement that focuses on retaliation has gradually changed. Criminal law is no longer used as retaliation against people who violate the law. Criminal law is used as a tool to combat crime itself. Efforts to combat crime or criminal policies are a rational effort by society to combat crime.[9]

Settlement of criminal cases by prioritizing restorative justice that emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge is a legal need of society and a mechanism that must be built in the implementation of prosecution authority and renewal of the criminal justice system. The Attorney General is tasked and authorized to make the law enforcement process provided by the Law effective by paying attention to the principles of fast, simple, and low-cost justice, as well as determining and formulating case handling policies for the

[2]M Echols John and Shadily Hassan, (2005). An English Indonesian Dictionary, Jakarta, Gramedia, Jakarta: Gramedia Pustaka Utama.
[3]Joe Hudson, Burt Galaway, and Eds, (1977), Restitution in Criminal Justice, Lexington: MA; DC Health, p 92
[4]Shadd Maruna, (2014), Op.Cit., 2 (1), p 10
[5]Yvon Dandurand and Curt Taylor Griffiths, (2006), Handbook on Restorative Justice Programs, New York: United Nations, p 6.
[6]Charles Barton, (1999), Empowerment and Retribution in Criminal Justice, Professional Ethics, A Multidisciplinary Journal, 7.3 (4), p 111
[7]Tiara Yahya Deramayati and Satria Unggul Wicaksana, (2021), Trial In Absentia in Corruption Crimes and the Defendant's Right to Defense from a Human Rights Perspective, Journal of Legal Communication (JKH), 7 (2), p 570
[8]Levina Yustitianingtyas, (2015), Society and International Law (Legal Review of Social Changes in International Society), Perspective, 20 (2), p 90
[9]Ruben Achmad, (2017), The Nature of the Existence of Criminal Sanctions and Punishment in the Criminal Law System. Legality: Journal of Law, 5 (2), p 84

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success of prosecutions carried out independently for justice based on law and conscience, including prosecution using a restorative justice approach implemented in accordance with the provisions of laws and regulations.[10]

In line with this, the Attorney General of the Republic of Indonesia ST. Burhauddin said that justice is not in books but in the conscience. In realizing this justice, the Prosecutor's Office makes discretion in the form of the Attorney General's Regulation on Termination of Prosecution Based on Restorative Justice as a form of realizing a more humanistic law enforcement. In its approach, the Prosecutor's Office is an institution that controls cases. Restorative justice is the goal of justice that is to be achieved by restoring the original state, balancing protection, the interests of victims and perpetrators of criminal acts that are not oriented towards revenge.[11]The change in perspective is a reform of criminal law policy that leads to a change in the purpose of punishment which is no longer retaliation, but eliminates stigmatization or labeling as a criminal and frees the perpetrator from guilt. If in the past punishment was considered a moral criticism of despicable acts, now it must be a moral criticism to reform the behavior of convicts in the future. In the past, crime was a conflict that had to be resolved between the state and the perpetrator, without regard to the victim, now crime is seen as a conflict that must be resolved between the perpetrator and the victim, so that social harmony can be restored (the purpose of punishment in the Criminal Code Bill).

In order to uphold the supremacy of law through the judicial process, currently there is an idea that the law enforcement process carried out by law enforcement officers is able to realize restorative justice, which is expected to better answer the demands for justice desired by the community. One of them is implemented in a regulation of the Prosecutor's Office, namely the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice issued by the Attorney General as the highest Head of Prosecution in the Republic of Indonesia.

Termination of prosecution based on Restorative Justice is regulated in Article 4 of PERJA No. 15 of 2020 which is carried out by taking into account:

a. the interests of the Victim and other protected legal interests;
b. avoidance of negative stigma;
c. avoidance of retaliation;
d. community response and harmony; and
e. propriety, morality and public order.

In addition, in terminating the prosecution, the Public Prosecutor considers (a) the subject, object, category, and threat of the crime; (b) the background to the occurrence/commission of the crime; (c) the level of blameworthiness; (d) the losses or consequences arising from the crime; (e) the cost and benefit of handling the case; (f) restoration to the original state; and (g) the existence of peace between the Victim and the Suspect.

[10]Dessy Kusuma Dewi, (2021), The Authority of the Prosecutor to Stop Prosecution for the Sake of Justice, Dictum: Journal of Legal Studies, 9 (1), May, p 6
[11]Gita Santika, (2021), The Role of the Prosecutor's Office in Realizing Restorative Justice as an Effort to Combat Crime, Progresif: Jurnal Hukum, XVI (1), June, p 88

The conditions that must be met by a suspect who is entitled to receive termination of prosecution based on restorative justice as explained in Article 5 of PERJA No. 15 of 2015 are:

a. The suspect committed a crime for the first time;

b. Criminal acts are only punishable by a fine or are punishable by imprisonment of no more than 5 (five) years; and

c. The crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah).

There are 2 (two) types of methods for terminating prosecution, including peace efforts and peace processes. First, peace efforts offered by the public prosecutor to both parties, namely the suspect and the victim. The flow of peace efforts begins with the summons of the victim by the public prosecutor followed by informing the reason for the summons. Continued by involving the victim's/suspect's family, community leaders/representatives, and other related parties. During the process, if the offer is accepted, the case is dismissed, if rejected, the case will be referred to the court. Second, the peace process. The public prosecutor acts as a facilitator who has no element of bias between the two parties between the victim and the suspect with a period of 14 (fourteen) days from the handover of responsibility that must be fulfilled by the suspect and is carried out at the prosecutor's office. This activity is carried out in order to resolve the case peacefully and not be followed up in court.

The use of out-of-court settlements does feel odd in the enforcement of criminal law based on the principles of ius punale and ius puniendi. The principle of ius punale gives the state the right to implement the provisions of criminal law, both material and formal, through state apparatus.[12]Meanwhile, the principle of ius puniendi gives the state the right to impose a criminal penalty on someone who has been proven guilty by the court and to execute or implement the court's decision. Referring to these two principles, the idea was born that the criminal case resolution system can only be carried out through the court.

This concept ultimately causes problems that have an impact on the judicial institution, in the form of a backlog of cases and the performance of Judges and Prosecutors is questionable, because all cases from light to heavy must be prosecuted by the Prosecutor and examined by the Judge. Such facts seem to indicate that the Indonesian Prosecutor's Office adheres to the principle of the obligation to prosecute all criminal cases (mandatory prosecution), then the prosecution of criminal cases carried out by the Prosecutor is sometimes considered by the public to be inappropriate because the losses suffered by the victim are too small or the perpetrator himself is considered sociologically by the public not worthy of being processed in Court.

Settlement of criminal cases by prioritizing restorative justice that emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge is a legal need of society and a mechanism that must be built in the implementation of prosecution authority and renewal of the criminal justice system. Based on the description of the matters as above, it can be understood that in principle criminal cases can be closed by law and their prosecution stopped based on Restorative Justice limited only to perpetrators who have only committed and are not

[12]Eva Achjani Zulfa, (2010), Loss of the Right to Sue: Basis for Elimination, Mitigation and Aggravation of Criminal Sentences, Ghalia Indonesia, Jakarta, p 37.

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recidivists, and only against certain types of minor crimes.[13]This is because it does not apply to the types of cases as stated in Article 5 paragraph (8) of Perja Number 15 of 2020, including:

1) criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their representatives, public order and morality;

2) criminal acts that are subject to a minimum penalty;

3) narcotics crimes;

4) environmental crimes; and crimes committed by corporations.

So from the description above, there are 3 (three) parties who play an important role in realizing restorative justice, namely the perpetrator, the victim, the family of the perpetrator/victim and other related parties or in this case the public prosecutor who has an important influence in implementing restorative justice.

The implementation of restorative justice emphasizes the return of material and immaterial losses felt by victims due to criminal acts committed by the perpetrator. This is the intent and purpose of the issuance of Perja Number 15 of 2020. As can be understood in the considerations of Perja Number 15 of 2020, the settlement of criminal cases by prioritizing restorative justice emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge is a legal need of society. In addition to these considerations, the termination of prosecution by law with a restorative justice approach aims to make the law enforcement process provided by the Law more effective by considering the principles of fast, simple, and low-cost justice, as well as determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience, including prosecution using a restorative justice approach implemented in accordance with the provisions of laws and regulations.[14]

The peace process is carried out at the Prosecutor's Office unless there are conditions or circumstances that do not allow for security, health, or geographical reasons, the peace process can be carried out at a government office or other place agreed upon with a letter of instruction from the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office. In the event that the peace process is achieved, the Victim and the Suspect make a written peace agreement before the Public Prosecutor, in the form of agreeing to make peace accompanied by the fulfillment of certain obligations or agreeing to make peace without being accompanied by the fulfillment of certain obligations.

In principle, the implementation of RJ programs is a complement and not a substitute for the existing criminal justice system. As regulated in The United Nations Basic Principles on the Use of Restorative Justice Programs in Criminal Matters, the implementation of these restorative programs can generally be implemented at every stage of the criminal justice system. The implementation of RJ programs at every stage of the criminal justice system means that the implementation of RJ programs can be carried out at the investigation/inquiry

[13]Dessy Kusuma Dewi, (2021), Op.Cit, 9 (1), May, p 9
[14]Sariranastiti. (2021), Implementation of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice (Study at the Gunungkidul District Attorney's Office). Malang: Brawijaya University

level (pre-charge), prosecution level (post-charge but before trial), court level (both at the trial stage and at the sentencing stage), and execution stage (including alternative punishments other than imprisonment).[15]

In other words, the implementation of restorative justice programs can not only be carried out outside the criminal justice system (such as diversion mechanisms), but can also be carried out in each stage of the criminal justice system. In this case, the role of the Prosecutor's Office as the controller of the case process (Dominus Litis), has a central position in law enforcement, because only the Prosecutor's Office institution can determine whether a case can be submitted to the Court or not, providing a major and influential contribution in facilitating the concept of restorative justice to be practiced in the Indonesian criminal justice system.

4. Conclusion

In order to uphold the supremacy of law through the judicial process, currently there is an idea that the law enforcement process carried out by law enforcement officers is able to realize restorative justice, which is expected to better answer the demands for justice desired by the community. One of them is implemented in a regulation of the Attorney General's Office, namely the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice issued by the Attorney General as the highest Head of Prosecution in the Republic of Indonesia. In terminating prosecution, the Public Prosecutor considers (a) the subject, object, category, and threat of the crime; (b) the background to the occurrence/commitment of the crime; (c) the level of reprehensibility; (d) losses or consequences arising from the crime; (e) the cost and benefit of handling the case; (f) restoration to its original state; and (g) the existence of peace between the Victim and the Suspect.

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