

The Termination of Middle Criminal Prosecutions based on Restorative Justice

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Abstract.

The purpose of this study was to find out and analyze how the form and policy of stopping the prosecution of minor crimes through a restorative justice approach and the obstacles faced in implementing the policy of stopping the prosecution of minor crimes through a restorative justice approach. This study used an empirical legal method by relying on primary data sources. Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is a breakthrough made by the prosecutor's office to answer legal problems that exist in society, so that punishments that have been considered by the public no longer provide a sense of justice are lost and public trust in the prosecutor's office as part of the public prosecutor's office. Based on the results of the study, it was concluded that of the 80 cases whose prosecution was terminated based on restorative justice referred to above, one of them was carried out by the Demak District Attorney. Although in the implementation of diversion there are obstacles in the form of peace efforts carried out by the Public Prosecutor from the Demak District Prosecutor's Office, the Suspects and Victims have not received a response, but after involving community leaders as mandated in this Perja, peace can be carried out so that a policy is taken to stop the prosecution of the case outside court (before the case is transferred to the Court).

Keywords: Cessation; Child; Justice; Policy; Prosecution; Restorative.

1. Introduction

Criminal law regulates actions that are prohibited, threatened, sanctioned or punished.¹ The benchmark for determining the success of the criminal system is not seen from the large number of prisoners and convicts who inhabit detention centers and correctional institutions².

The current criminal system no longer creates a deterrent effect for perpetrators of criminal acts, overcapacity in detention centers and prisons, and weak supervision has an impact on the number of criminal acts that occur in prisons and prisons. Weak supervision, disproportionate to the large number of inmates. Prisons are the right place to rehabilitate criminals, in fact it has shifted its function as an academy of crime, a place where inmates are more "honed" in their ability to commit crimes³.

¹Sudaryono and Natangsa Surbakti, (2005), *Buku Pegangan Kuliah Hukum Pidana*, Surakarta Fakultas Hukum Universitas Muhammadiyah Surakarta, p. 111

² Binov Handitya, Redesign The Relevance Of Justice In Debtor Protection Related To Parate Executions Performed By Separate Creditors In Liability Agreements, *Jurnal Akta*, Volume 8 No. 4, December 2021;

³ Azhary, Muhammad Tahir, (1992). *Negara Hukum: Suatu Studi Tentang Prinsip Prinsipnya dilihat dari Segi Hukum Islam Implementasinya pada Periode Negara Madinah dan Masa Kini*, Ed. I, Jakarta: Bulan Bintang

Sentencing often makes people feel afraid, especially for people who commit crimes, even though the criminal acts committed by a person or several people are not commensurate with their actions. Every crime that is processed by the judicial component (police, prosecutors and judges) is often on the grounds that there is sufficient evidence without considering whether the legal process of the person has fulfilled the true sense of justice or approached the true sense of justice⁴.

With the conviction of the perpetrator, the interests and losses of the victim may not necessarily be fulfilled. We can see this in several cases, such as⁵:

- The case that was experienced by Mawar Saron Jakarta, the case referred to about two junior high school students who were accused of stealing. The two parties, namely the two students and the victim of the theft, have actually reconciled, but the police institution wrapped in the attributes of law enforcement prefers to continue the case until it reaches the court⁶.
- The case of Deli, a junior high school student who was accused of stealing vouchers and had to undergo a formal criminal process before going to court.
- The case of Minah's grandmother who was accused of stealing two cocoa beans so that she had to sit on the chair during the trial.
- The case of Rasmiah's grandmother who was accused of stealing her employer's oxtail soup and plate which later had to end up at the court.
- The case of Samirin's grandfather in Simalungun who stole rubber latex belonging to PT. Bridgestone weighing 1.9 kilograms at a price of IDR 17,000, - (seventeen thousand rupiah) which was later charged with the Plantation Law.
- The case of theft of flip-flops that happened to AAL, who was found guilty and sentenced, was returned to his parents⁷.

The above or similar cases, according to the public's view, should not be investigated, prosecuted, and brought to court. It is said so because the judge's decisions in these cases and other similar cases are widely criticized by the public, because they are considered not to fulfill a sense of justice⁸.

The public considers that law enforcement officers, especially prosecutors, should not take the case to court because it can still be resolved through patterns settlement agreed upon by both parties. This is interesting to discuss considering that the nature of criminal law is "*ultimum remedium*", meaning it is a last resort that is taken when there is no other effort to resolve the case. However, in its development, criminal law is actually used as the first attempt in solving a problem

⁴ Didi Sukardi, The Legal Responsibility Of Debtor To Payment Curators In Bankruptcy Situation, *Jurnal Pembaharuan Hukum*, Volume 8, Number 2, August 2021;

⁵ Chazawi, Adami, (2011). *Pelajaran Hukum Pidana Bagian I*, Jakarta: Rajawali Pers

⁶ Doni Budiono, Analisis Pengaturan Hukum Acara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, *JHAPER*: Vol. 4, No. 2, July – December 2018;

⁷ Dunn, William N., (1994). *Public Policy Analysis: An Introduction (New Jersey: Prentice Hal, inc.)* – Translated by ISIPOL Yogyakarta: Gajah Mada University Press: 2003

⁸ Gregorius Yoga Panji Asmara, Protection Relevance of the Execution of Separatic Creditors Based on Pancasila Justice, *Jurnal Akta*, Volume 8 No. 1, March 2021;

between one person and another. This shift in the function of criminal law shows that society has left the legal culture little by little⁹.

Thus it can be seen that the phenomenon that occurs shows that in Indonesian law it is often found that the justice expected through formal channels does not necessarily reflect a sense of justice, is expensive, prolonged, tiring and does not even solve problems, and what is even worse is that it is full of with the practice of corruption, collusion and nepotism (KKN). From these things, it turns out that many cases that occur in the community basically do not deserve to be forwarded to court or even to undergo sentencing.

Dissatisfaction with the current punishment mechanism (one of which is because it is felt that it does not fulfill the sense of justice and the goal to be achieved from punishment itself, namely to prevent and overcome criminal acts), has triggered a number of thoughts to carry out various alternative efforts in answering the problems that arise relating to the handling of criminal acts that occurred¹⁰.

The criminal justice system can be understood as an attempt to understand and answer the question of what is the task of criminal law in today's society and not just how criminal law is in law and how judges apply it. For this reason, in its development, the regulation of criminal law is no longer in accordance with the development and advancement of technology that exists and lives in Indonesian society, so it is necessary to make efforts to update the criminal law¹¹.

Criminal law reform is basically an attempt to review and reform (reorient and reform) the law in accordance with the general socio-political, socio-political, socio-philosophical, and cultural values of the Indonesian people. Therefore, the exploration of the values that exist in the Indonesian nation in an effort to reform the Indonesian criminal law must be carried out in order to cover the socio-political, socio-philosophical, and socio-cultural values of the Indonesian people¹².

- **Renewal of Substance of Criminal Law**

The renewal of the substance of criminal law includes material, formal criminal law, and criminal law enforcement. This substantial system reform starts from material criminal law, formal law, and its implementation which contains living values in society, including the renewal of the Criminal Code (legal sector/positive law).

- **Reform of Criminal Law Structure**

The reform of the criminal law structure includes the institutional, administrative and management systems of law enforcement institutions in

⁹ I Ketut Gde Swara Siddhi Yatna, Ni Putu Purwanti, Perbandingan Hukum Negara Indonesia Dengan Hukum Negara Belanda Dalam Penyelesaian Perkara Sisa Hutang Debitor Pailit, *ACTA COMITAS*, Vol 5 No 2 August 2020;

¹⁰ Dye, R. Thomas. Horn Meter, *Under Standing Public Police*, Pentice Hall, Inc, E

¹¹ Izzy Al Kautsar, Danang Wahyu Muhammad, Urgensi Pembaharuan Asas-Asas Hukum Pada Undang-Undang No 37 Tahun 2004 Berdasarkan Teori Keadilan Distributif, *Jurnal Panorama Hukum*, Vol. 5 No. 2 December 2020;

¹² Irianto, C, Penerapan Asas Kelangsungan Usaha Dalam Penyelesaian Perkara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU), *Jurnal Hukum dan Peradilan*, Vol 4 No 3 2015;

relation to coordination among law enforcers both nationally, regionally and internationally¹³.

- Renewal of Criminal Law Culture

This reform of criminal law culture emphasizes changes in culture, morality and behavior (law-abiding behavior and awareness of obeying the law), as well as legal education and legal knowledge that accompanies the implementation of the law.

Thus, law enforcement in Indonesia should prioritize the principle of "restorative justice". The emergence of the concept of restorative justice is due to dissatisfaction and frustration in many parts of the world against formal criminal law and sentencing which in fact often cannot answer the problems in the criminal justice system, which is considered no longer able to provide justice, protection of human rights, the absence of transparency in the handling of criminal cases as well as the public interest which is often ignored or increasingly not felt.

The concept of restorative justice is a popular alternative in various parts of the world for unlawful acts because it offers a comprehensive and effective solution. Restorative justice aims to empower victims, perpetrators, families and communities to correct an act against the law with awareness and conviction as a basis for improving community life.

In Indonesia itself, the concept of restorative justice has actually been practiced by various traditional/tribal groups, such as: Batak customs, Papuan customs, Balinese customs, Toraja customs, Minangkabau customs and other ethnic groups. If a criminal act occurs by someone, then the dispute resolution is resolved in the customary community internally, by seeking peace without involving state officials. Although general criminal acts handled by the community themselves are contrary to positive law, it is proven that this mechanism has succeeded in maintaining harmony in the midst of people's lives.

According to Susan Sharpe, the application of restorative justice contains five basic principles, namely:

- Full participation and consensus that actively involves perpetrators and victims to get a comprehensive solution. This process can also involve people who feel that their security and order are disturbed by the perpetrators.
- Searching for solutions to restore and recover injuries/damages due to criminal acts committed by the perpetrators.
- Complete responsibility for the perpetrator that the perpetrator shows remorse and admits his guilt.
- Reuniting perpetrators as members of the community who were cut off due to criminal acts.
- Empowering the community to prevent the recurrence of crimes.

In the criminal law system, punishment is not the only end goal to achieve the goals of criminal law enforcement. There are many ways that can be taken to achieve the goals of criminal law in order to create order and justice, such as by resolving restorative justice, especially for cases that are classified as minor, one example is the issuance of Prosecutor's Regulation No. 15 of 2020 concerning

¹³ John C. McCoid, Discharge: The Most Important Development in Bankruptcy History, *American Bankruptcy Law Journal*, Vol 70, No. 2 (1996);

Termination of Prosecution based on Justice. Restorative. The policy taken to terminate prosecution under this Perja is a breakthrough or step taken with the aim of providing legal certainty and justice that the community has been waiting for.

Based on the description above, the author is interested in conducting research regarding restorative justice and its application, as in the title of this thesis, "Policy to Terminate Prosecution of Minor Crimes Based on a Restorative Justice Approach with a case study at the Demak District Attorney.

2. Research Methods

This study used an empirical legal method by relying on primary data sources obtained in the field directly through interviews with the Public Prosecutor, Suspects, Victims, Families of Suspects/Victims, or Community/Indigenous Leaders, especially regarding cases of minor crimes whose prosecutions are terminated. While secondary data (supporting data) consists of primary legal materials (KUHP, KUHP, Act No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia, Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice), secondary legal materials (books literature, legal research articles, legal journals, legal papers, minutes of legal seminars, and others related to the problems in this research) and tertiary legal materials (legal dictionaries, encyclopedias, bibliography that serves as a reference source). Furthermore, the collected materials were comprehensive.

3. Results and Discussion

3.1. The Termination of Middle Criminal Prosecutions

The Demak District Prosecutor's Office is a line of the Indonesian Attorney General's Office with a task area in Demak Regency, having an office at Jalan Sultan Fatah No. 55, Kauman, Bintoro, Demak District, Demak Regency, Central Java¹⁴.

Article 3 of Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states: "The implementation of state power as referred to in Article 2 is carried out by the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office in this study is the Demak State Prosecutor's Office as the "place of research" carried out by Author.

The Demak State Prosecutor's Office has the task of carrying out the duties and authorities as well as the functions of the Prosecutor's Office in the jurisdiction of the Demak State Prosecutor's Office in accordance with statutory regulations and policies established by the Attorney General.

¹⁴ Maria Gabrielle Janice Angelie Siregar, Eksekusi Jaminan Dalam Kepailitan Pada Kreditor Separatis Ketika Ditangani Oleh Kurator, *Jurist-Diction Law Journal*, Volume 1 No. 2, November 2018;

Based on Article 30 of Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, regarding the duties and authorities of the Prosecutor's Office, namely:

- In the criminal field, the prosecutor's office has the following duties and authorities:
 - to prosecute;
 - carry out judges' decisions and court decisions that have permanent legal force;
 - to supervise the implementation of conditional criminal decisions, supervision criminal decisions, and parole decisions;
 - conduct investigations into certain criminal acts based on the law;
 - to complete certain case files and for that purpose they can carry out additional examinations before they are delegated to the court, whose implementation is coordinated with investigators.
- In the field of civil and state administration, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government.
- In the field of public order and peace, the public prosecutor's office also organizes the following activities:
 - increasing public legal awareness;
 - safeguarding law enforcement policies;
 - supervision of the circulation of printed goods;
 - supervising the flow of beliefs that can harm society and the state;
 - prevention of abuse and/or blasphemy of religion;
 - research and development of law and criminal statistics.

Meanwhile, in the Criminal Procedure Code of the Criminal Procedure Code, Article 14 of the Criminal Procedure Code states that the authority of the Public Prosecutor is:

- receive and examine investigation case files from investigators or assistant investigators;
- conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of completing the investigation from the investigator;
- granting an extension of detention, carrying out detention, or further detention and or changing the status of the detainee after the case has been delegated by the investigator;
- make an indictment;
- transfer the case to court
- deliver notification to the defendant regarding the stipulations on the day and time the case will be heard, accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined;
- carry out prosecutions;
- closing the case for the sake of law;
- take other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;

- carry out the judge's decision.

Other powers of the Prosecutor's Office other than those mentioned above, the authority based on Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, in terms of closing cases for legal purposes.

Considerations for the issuance of Prosecutor's Regulation Number 15 of 2020, 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 values, law, and justice 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 of 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 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 which are carried out independently for justice based on law and conscience, including prosecution using a restorative justice approach carried out in accordance with statutory provisions;
- that based on the considerations as referred to in letter a, letter b, and letter c, it is necessary to stipulate a Prosecutor's Regulation concerning Termination of Prosecution Based on Restorative Justice.

Article 3 of the Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, states:

- The Public Prosecutor has the authority to close cases in the interest of law.
- The closing of the case for the sake of law is carried out in the event that:
 - the defendant dies;
 - expiration of criminal prosecution;
 - there has been a court decision that has permanent legal force against a person on the same case (*nebis in idem*);
 - a complaint for a criminal offense is withdrawn or withdrawn; or
 - there has been a settlement of cases out of court (*afdoening buiten proces*).

This Perja was issued, the Attorney General's Office has terminated 302 cases. The details are 222 cases in 2020 and 80 cases in January - August 2021 consisting of: 73 cases of people and property and 7 cases related to state security and public order, as well as other general crimes.

Of the 80 cases whose prosecution was terminated based on restorative justice referred to above, one of them was carried out by the Demak District Attorney (related to the body, life, and independence of people)¹⁵.

The termination of prosecution based on Restorative justice carried out at the Demak District Prosecutor's Office is based on the provisions of the Prosecutor's Office Regulation No. 15 of 2020, as follows¹⁶:

Article 5

- Criminal Cases may be closed for the sake of law and the prosecution terminated on the basis of Restorative justice if the following conditions are met:
 - The suspect has committed a crime for the first time;
 - Criminal acts are only punishable by a fine or punishable by imprisonment of not more than 5 years; And
 - The crime is committed with the value of the evidence or the value of the loss caused by the crime of not more than IDR 2,500,000.
- For criminal acts committed against persons, bodies, lives, and independence of persons, the provisions referred to in paragraph 1 letter c may be excluded.
- The provisions as referred to in paragraphs 3 and 4 do not apply in the case of casuistic criteria/conditions which, according to public considerations with the approval of the Head of the District Attorney's Office or the Head of the District Attorney's Office, cannot be stopped from prosecution based on Restorative justice.
- In addition to fulfilling the terms and conditions as referred to in paragraph 1, paragraph 2, paragraph 3, and paragraph 4, termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:
 - There has been a recovery back to its original state carried out by the suspect by:
 - ❖ Returning the goods obtained from the crime to the victim;
 - ❖ Compensate for the victim's loss;
 - ❖ Reimbursement of costs arising from criminal acts; and/or
 - ❖ Repair the damage caused by the consequences of a criminal act.
 - There has been a peace agreement between the victim and the suspect; and
 - The community responded positively.
- In the event that the victim and suspect agree, the condition for the recovery to return to its original condition as referred to in paragraph 6 letter a may be excluded

Article 6

The fulfillment of the conditions for termination of prosecution based on restorative justice is used as a consideration for the public prosecutor to determine whether or not the case file can be transferred to the Court.

¹⁵ Rahardjo, Satjipto, (2009). *"Saatnya Mengubah Siasat dari Supremasi Hukum ke Mobilisasi Hukum"*, Kompas, Senin 26 Juli 2004,p dalam Mahmud Kusuma, *Menyelami Semangat Hukum Progresif, Terapi Paradigma Bagi Lemahnya Hukum Indonesia*, Antony Lib, Yogyakarta

¹⁶ Musa, (2020). *Peradilan Restoratif Suatu Pemikiran Alternatif System Peradilan Anak Di Indonesia*, WWW. Peradilanrestorative.Com, accessed on 3 December.

Article 7

The public prosecutor offers peace efforts to victims and suspects.

Article 8

(2) In the event that it is deemed necessary to make peace efforts, it may involve the families of the victims/suspects, community leaders or representatives and related parties,

3.2. Internal Constraints and Efforts to Overcome

Obstacles are also usually referred to as obstacles, while some of the obstacles in the Policy for Terminating the Prosecution of Minor Crimes Based on Restorative Justice at the Demak District Attorney from the results of interviews with the Public Prosecutor from the Demak District Attorney are in the form of¹⁷:

- there is no peace between the Perpetrator and the Victim when the case (suspect and evidence) is handed over from the Demak Resort Police to the Demak District Prosecutor's Office;
- peace efforts initiated by the Public Prosecutor against the Perpetrators and Victims did not receive a response from both of them because they were still influenced by emotions, so that the peace process took a long time or was unsuccessful;
- Peace efforts carried out by the Public Prosecutor often get a negative response from the victim, it is alleged that the Public Prosecutor has collaborated with the Suspect, even though the purpose and objectives of the reconciliation have been explained to restore relations between the Perpetrator and the Victim by way of peace, considering that the Perpetrator is the victim's biological mother and in order to provide a fair settlement of the case.

For the Public Prosecutor in overcoming the obstacles that arise, among others, are¹⁸:

- waiting for the victim's psychological state to be no longer in an emotional state;
- provide an opportunity for reconciliation between the perpetrator and the victim by involving the perpetrator's family and the victim's family or community leaders/customary leaders, which in peace there is an agreement regarding compensation (recovery) if needed;
- the results of the reconciliation and/or recovery are reported to the superiors in stages (Kajari, Kajati, Attorney General) to be taken into consideration in determining whether or not the prosecution can be terminated based on restorative justice.

4. Conclusion

¹⁷ Sukardi, (2016). *"Eksistensi Konsep Restorative Justice Dalam Sistem Hukum Pidana Di Indonesia"*, Jakarta: Legal Pluralism

¹⁸ Marlina, (2009). *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi Dan Restorative Justice*, Refika aditama, Bandung, p. 105.

Termination of Prosecution Based on Restorative Justice is a breakthrough made by the prosecutor's office to answer legal problems that exist in society, so that punishment which has been considered by the public no longer gives a sense of justice is lost and public trust in the prosecutor's office is part of the public prosecutor's office of the judicial component can grow back. The termination of prosecution is carried out in order to restore the relationship between the victim and the perpetrator to its original state, so that this regulation authorizes the Public Prosecutor to seek peace, even through the families of the victims/perpetrators and community leaders.

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