

The Restorative Justice in the Handling of Criminal Acts by the Prosecutor's Office as the Application of the *Dominus Litis* Principle

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Abstract. *This study aims to find out and examine the application of justice restorative in the handling of criminal acts by the prosecutor's office as the application of the principle of Dominus Litis. This study uses a normative juridical approach that is analytical descriptive. The data used is secondary data obtained through library research, which is then analyzed qualitatively. Based on the research it was concluded that restorative justice in the handling of criminal acts by the Prosecutor's Office as an application of the Dominus Litis principle, the Prosecutor has the authority to determine whether a case can be prosecuted to court or not. With the authority possessed by the Prosecutor to prosecute or not prosecute criminal cases to court. The prosecutor's authority not to prosecute criminal cases is based on the principle of opportunity or also known as the principle of discretionary prosecution.*

Keywords: Prosecutor; Dominus Litis; Restorative; Justice.

1. Introduction

Crime or criminal act is a human act that violates or is contrary to what is determined in the rule of law, strictly speaking, is an act that violates the prohibitions stipulated in the rule of law, and does not comply with or against the orders stipulated in the rule of law in force in the community in which the person concerned resides.¹

¹Santoso, Aris Prio Agus. Sukendar and Aryono. (2022). Criminology, A Basic Introduction. Yogyakarta: Pustaka Baru Press, p. 50.

A violation of criminal law in the form of a crime is understood as a conflict between individuals that causes harm to the victim, society and the offender himself, and among the three groups, the interests of the victim of a crime are the main part, because the main crime is violating the victim's rights.²

In an effort to overcome and deal with criminal acts that have become a social disease, legal remedies are used including criminal law, and in the framework of enforcing the criminal law, the human factor. Law enforcement is an indicator of a rule of law.³Consistent law enforcement will provide a sense of security, justice and certainty.⁴Law enforcement is carried out by institutions that are authorized to carry out this task, such as the Police, Prosecutors, Judges and government officials.

Law enforcement through the criminal justice system is considered successful in carrying out its main task of tackling criminal acts, if most of the reports or complaints from the public who are victims can be resolved by bringing the perpetrators to court and being found guilty and receiving (criminal) punishment. However, in many cases it turns out that the community often wants that in certain cases, the prosecution does not need to be carried out by the Attorney because they perceive that the prosecution is unfair. For example minor cases, such as the theft of cocoa by Grandma Minah, and other minor cases.

In the settlement of minor cases, the community is dissatisfied and questions the prosecution efforts made by the Attorney against the perpetrators of criminal acts. That the prosecution of such cases actually creates injustice and unrest, and can shake the sense of peace in social life. The benefits derived from the prosecution of these small cases are not balanced with the losses suffered by individuals and society, therefore, the idea emerged that such cases could be settled out of court (out of court settlement).⁵

The notion that the settlement of criminal cases can only be carried out through court institutions and the theory of retributive punishment has caused many

²Purba, Jonlar. (2017). Law Enforcement Against Mild Motive Crimes With Restorative Justice. First Print. Jakarta: Jala Gem Script, p. 61.

³Syahri, Alvi. (September 2020). Law Enforcement against Policies Who Breached the Code of Conduct, in the Daulat Hukum Journal, Vol. 3 No. 3, url: <http://jurnal.unissula.ac.id/index.php/RH/article/download/11238/4399>.

⁴Praptiwi, Anggrin Gayuh and Hanim, Lathifah. (September 2019). Effectiveness And Role Of The Food Duty Unit Of Police Region Of Central Java In Law Enforcement In The Field Of Food In The Regional Law Of POLDA Central Java, in Daulat Hukum Journal, Vol. 2 No. 3. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5669>.

⁵Waluyo, Bambang. (2017). Design of Attorney's Function in Restorative Justice. First Edition. Second printing. Depok: Raja Grafindo Persada, p. 8.

problems and negative impacts. For this reason, a change in approach is needed, namely through the settlement of criminal cases outside the court with the principles of restorative justice.

The Prosecutor's Office as a law enforcement apparatus, with the authority it has and as a case authority (*Dominus Litis*) can apply a restorative justice approach in handling criminal acts that occur in society, bearing in mind that the existence of the Prosecutor's Office occupies a central position and has a strategic function in the criminal justice process of law enforcement.

The purpose of this study is to find out and examine restorative justice in the handling of criminal acts by the Attorney General's Office as the application of the principle of *Dominus Litis*.

2. Research Methods

The type of research used in writing this legal journal is normative juridical, which is descriptive analytical. The data used in this research is secondary data. According to the data that has been obtained, it is then analyzed using qualitative data analysis.

3. Result and Discussion

A criminal act is an act or action that is threatened by law, contrary to law and carried out by a person who is capable of being responsible.⁶ Basically, crime is a humanitarian problem as well as a social problem. According to Benedict S. Alper that criminal acts are "the oldest problem".⁷ Crime is a very old social problem, as old as human existence in the world. When someone commits a crime, it means that they have committed an act that does not heed the rule of law, and is also considered to have castrated a sense of justice or created anxiety in society.⁸

Against this oldest humanitarian and social problem, many efforts have been made to overcome it in various ways. One of the efforts to prevent and control criminal acts is to use criminal law with sanctions in the form of punishment. According to Herbert L. Packer, that efforts to control anti-social acts by imposing

⁶Bahri, Zulfikar Hanafi. (2018). Consideration of Semarang District Court Judge's Decision in Case Dropped Because of the Crime of Defense of Emergency. in the Sovereign Law Journal Vol. 1 No. 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3322/2453>.

⁷Prakoso, Abintoro. (2017). Criminology and Criminal Law; Definition, Flow, Theory and Development, Second Print, Yogyakarta: LaksBang Pressindo, p. 175.

⁸Nasir, Muhammad. (2019). Corporations Between Sanctions and Environmental Crimes in Aceh, First Edition, Yogyakarta: Deepublish, p. 27.

a penalty on someone who is guilty of violating criminal regulations is a "social problem that has an important legal dimension".⁹

Law as a reality in society because it regulates the behavior of people's lives and is made by authorized institutions. Laws are made through a certain process and are decisions of authorized officials and contain the fabric of values that exist in people's lives.¹⁰ Law functions to create and maintain order and peace in people's lives, therefore there is the *adage ubi societas ibi ius* (where there is society, there is law).¹¹ Basically, all human beings agree that in life they must comply with the law because it will provide peace, order and a sense of security. When laws are not obeyed there will be chaos and disorder.¹²

The existence of law always goes hand in hand with the existence of society, or conversely if there is no society there cannot be law, and if there is a society without law, what will happen is an uncontrolled wild society, because all the wrong actions of the people are not prevented and there's no penalty. Every human interaction can cause friction that leads to disputes and hostility. To resolve friction so that it does not escalate into hostilities, the role of law is urgently needed. The function of the law itself is to regulate society, and if the function of the law is achieved, prosperity will be realized.¹³

The purpose of law enforcement itself is inseparable from the re-creation of social disharmony in society which was lost as a result of an act. If the solution to the problem already has the best solution, then there is no need for law enforcement whose implementation worsens people's lives. Law enforcement like this is not written down in positive law, but is an improvisation of the human conscience in upholding justice¹⁴ and law enforcement is one of the parameters in the success of a rule of law.¹⁵

⁹Ibid., p. 176.

¹⁰Wibowo, Kurniawan Tri and Utaminingrum, Erri Gunrahti Yuni. (2022). Implementation of Restorative Justice in the Criminal Justice System in Indonesia. Jakarta: Papas Sinar Sinanti, p. 1.

¹¹Purba, Jonlar., op. cit., p. 4.

¹²Hafiz, Jawade. (2021). Cyberbullying, Social Media Ethics, and Its Legal Arrangements. in the Information Horizon Journal, Vol. 1 No. 1. url: <https://itbsemarang.ac.id/sijies/index.php/jci/article/view/147/110>.

¹³Shah, Mudakir Iskandar. (2017). Law and Social Studies. First Print. Jakarta: Tatanusa, p. 2.

¹⁴Sulistyowati. (2020). Alternative Justice Value-Based Criminal Law Enforcement. First Print. Yogyakarta: Deepublish, p. 124-125.

¹⁵Wahyuningsih, Sri Endah and Rismato. (January-April 2015). Criminal Law Enforcement Policy Against Money Laundering Countermeasures in the Context of Reforming Criminal Law in Indonesia. in the Journal of Legal Reform, Vol. II No. 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4136/2887>.

As a rule of law, the Indonesian state has an obligation to protect the entire Indonesian nation. This is a duty that must be carried out by the government, whose obligations are the basic rights of citizens without exception.¹⁶ It is also stated in the 5th principle of the Pancasila Precepts, which reads: "Social justice for all Indonesian people", it can be explained that one of them relates to the law which is the right of the Indonesian people to justice in truth.¹⁷ Based on this, law enforcement in Indonesia is based on justice and truth as the ideals and goals of the Indonesian nation.

Justice is basically the implementation of law, in the sense of demanding concrete rights or disputes or violations, the function carried out by an institution by making binding decisions and aiming to prevent vigilantism (*eigenrichting*).¹⁸

In law enforcement efforts, law enforcers are required to carry out their duties in accordance with the mandate of statutory regulations that lead to decisions with substance in the form of justice for the parties.¹⁹ The function of law enforcement is expected to be able to prevent people (committing criminal acts).²⁰

Law enforcement is an effort to uphold real legal norms as a code of behavior relating to the traffic of law in the life of society, nation and state, which is expected to encourage creativity and an active role in building state society,

¹⁶Su'aidi, Farhan Munirus and Cholil, Abdullah Arief. (December 2019). Law Protection on Wife Whose The Claims Fall Due To Husband Refuse His Recompensation On Implementing Of Divorce Pledge. in the Sovereign Law Journal, Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8367/3897>.

¹⁷Hasanah, Lailatul Nur and Wahyuningsih, Sri Endah. (December 2019). The Application of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati). in the Sovereign Law Journal, Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8353/3910>.

¹⁸Rusydan, Wilmar Ibni. Ma'ruf, Umar. and Bawono, Bambang Tri. (2019). Judicial Activism In Criminal Case To Ensure The Human Rights Upholding (Study In State Court Of Semarang). in the Sovereign Law Journal Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8347/3868>.

¹⁹Setiyadi, Iwan and Kusriyah, Sri. (June 2019). Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter). in the Sovereign Law Journal, Vol. 2 No. 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5424/3345>.

²⁰Gita, Dany Andhika Karya. Purnawan, Amin and Djauhari. (March 2018). Police Authority in Handling Mining Crimes (Illegal Mining) According to Law Number 4 of 2009 (Studies in the Indonesian National Police). in the Sovereign Law Journal, Vol. 1.No. 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2561/1918>.

especially in guaranteeing the freedom of human rights because are natural basic rights, inherent in humans and the universe.²¹

Bambang Poernomo stated that law enforcement in modern society is not only interpreted in a narrow sense, but also in a broad sense, as in Indonesia law enforcement is associated with the human element and its social environment.²²

The restorative justice approach can be a way of solving conflict problems between parties and restoring peace in society because retributive or rehabilitative approaches to crime in recent years have been deemed no longer satisfactory.²³

Philosophically, the implementation of the paradigm of restorative justice in the penal system is in accordance with the values that live and develop in Indonesian society inherited from the ancestors of the Indonesian nation, as reflected in the values of Pancasila and shown in the characteristics of customary law in every nation. area in Indonesia.

According to Hazairin, as stated by Soerjono Soekanto, people's lives in almost all parts of Indonesia have communal characteristics, in which gotong-royong, mutual help, feeling and shame have a big role. With such characteristics, the people in Indonesia are trying to create harmony in their social system and social life. For this reason, efforts to resolve disputes that occur in social life are always sought to maintain peace. This is also in line with what was stated by Hazairin, that cases in the field of law are resolved primarily with the aim of maintaining peace.²⁴

As the main figure or central figure in the administration of criminal justice, and plays an important role in the decision-making process. Prosecutors have an important role in implementing restorative justice. Prosecutors have wide prosecution discretion (discretion), or in other words that Prosecutors have the power to prosecute or not prosecute for a criminal case.

²¹Tasmo and Suharto, Rahmat Bowo. (2019). The Legal Consequence Of The Judge Decision In The Case Of Children Criminal Justice Which Do Not Based On Society Research From Society Supervisor (Studies on Settlement Case of Children Crime In State Court of Cirebon). in the Sovereign Law Journal Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8362/3900>.

²²Hamza, Muhammad Dani. (2018). Law Enforcement in Traffic Accident Crime Cases Causing the Loss of People's Lives. in the Sovereign Law Journal Vol. 1.No. 1, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2563/1920>.

²³Ali, Mahrus. 2022. Victimology. First Edition. Second printing. Depok: Raja Grafindo Persada, p. 48.

²⁴Waluyo, Bambang. (2017). Law Enforcement in Indonesia. Second printing. Jakarta: Sinar Graphics, p. 125-126.

Prosecutors in the criminal justice system, determine whether someone should be examined by the court or not. The prosecutor also determines whether someone will be sentenced or not through the indictment and the demands made.

As it is known that the Attorney General's Office is a government institution in the field of law which has the duty and function to exercise state power, specifically in the area of prosecution. The Prosecutor's Office is the executor of political decisions which formally describes an institution that is only a mouthpiece for laws that specifically carry out the function of prosecution. The Prosecutor's Office is the Public Prosecutor in handling criminal cases representing the state and society. On the other hand, they also have to carry out their obligations to implement legal regulations.

At the Attorney General's Office, every case assigned to a Prosecutor carries a very heavy burden, both psychological, organizational and juridical. The prosecutor must win every case he handles, this correlates with the punishment and reward that will be obtained, victory is a measure of the success or failure of the prosecutor's career.

Problems in resolving criminal cases within the framework of law enforcement arise when small cases are prosecuted and fill the courtroom, so that a lot of time is not effectively wasted, the costs of handling cases that should be light become bloated, the burden of handling cases piles up, and when the accused is detained the cost of the prison system continues to swell, while the capacity of the detention/correctional rooms is no longer able to accommodate them and the families of the perpetrators who are detained do not get a living.

Responding to this problem, the Attorney General of the Republic of Indonesia, ST Burhanuddin, who has the duty and authority to streamline the law enforcement process within the Attorney General's Office of the Republic of Indonesia, issued a very progressive legal policy by issuing Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Handling criminal cases with a restorative justice approach offers different perspectives and approaches in understanding and handling a criminal case. Criminal acts are still seen as unlawful acts that can be detrimental to victims and society in general. Based on the perspective of justice, the handling of these cases includes the involvement of victims, the community, and perpetrators of criminal acts as an effort to improve, reach agreements, and guarantees for these improvement efforts.

During this time, the handling of criminal acts must follow a process or bureaucracy that is very long, time-consuming and even complicated. The restorative justice approach can be a solution in handling criminal acts more effectively and efficiently. In the criminal procedural law in Indonesia (KUHP) itself, it is known that several models of mechanisms for settling criminal cases through ordinary courts or brief trials, however, these mechanisms have not answered the needs of the community.

It is known that at the Attorney General's Office, the tradition and doctrine of prosecution is known as the principle of *Dominus Litis*. Prosecutor's authority is the monopoly of the Prosecutor, in fact it is said that the Prosecutor is *Dominus Litis* or the master of the case. This means that in criminal proceedings, it is the prosecutor who has the authority whether a case can be prosecuted in court or not.

With the authority possessed by the Prosecutor to prosecute or not prosecute criminal cases to court, then in the prosecution tradition there is known as the principle of discretion in prosecuting which is divided into 2 (two), namely the Prosecutor's authority to prosecute and the Prosecutor's authority not to prosecute. The prosecutor's authority not to prosecute criminal cases is based on the principle of opportunity or also known as the discretionary principle of prosecution.²⁵

The principle of opportunity is a principle that gives authority to the Public Prosecutor not to oblige to prosecute a person or corporation that has committed a crime if according to the public prosecutor, prosecution will be more detrimental.²⁶

According to AL Melai, the public prosecutor's work in eliminating prosecution based on the opportunity principle is *rechtsvinding* (legal discovery), which must be considered carefully because the law requires justice and legal equality. In addition, the law also aims to guarantee benefit and peace (*ius suum cuique tribuere*). In relation to this, Van Apeldoorn argues that the purpose of law is *een vreedzame ordening yen de samenleving*, or in short it can be said that law wants *vrede* (peace).²⁷

This policy is crucially driven by the Attorney General's Office, considering that the Prosecutor's Office (Prosecutor) has a strategic position and role in the law

²⁵Waluyo, Bambang. *Function Design...*, op. cit., p. 64.

²⁶Alfitra. (2018). *Elimination of the Right to Prosecute & Carry Out a Criminal Case*. Revised Edition. Third Printing. Jakarta: Achieving Hope for Success, p. 89.

²⁷Waluyo, Bambang. *Function Design...*, op. cit., p. 67.

enforcement process within the framework of an integrated criminal justice system as a master of process/*Dominus Litis*, one of whose functions is to screen a criminal case and determine whether it is necessary whether or not a criminal case is forwarded to trial by considering the 3 (three) values of legal objectives referred to by Gustav Radbruch, namely legal certainty, expediency and justice.

The prosecutor is a *Dominus Litis* or a master of the procedure, so it is said that the prosecutor is the main screener for cases received from any investigator. In fact, universally, this authority or the power to prosecute rests with the Prosecutor.²⁸

The Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 provides for and takes into account the basis of equal and balances between perpetrators, victims, society and the state, so that restorative justice becomes the Attorney's policy. For decades the Attorney General's Office has experienced a dilemma in the process of law enforcement and the judicial system in Indonesia. Starting from small cases that must be brought to court, cases with small losses to the wishes of victims who want to make peace, but are shackled by applicable regulations.

The implementation of the application of restorative justice at the Attorney General's Office is a means of filtering that has been carried out by the Police. This means that it is unlikely that a case will go to the Attorney General's office if restorative justice has been carried out properly and correctly, because this will result in the closing of a case. The Prosecutor's Office in this case based on Prosecutor's Regulation Number 15 of 2020 only applies three conditions, namely the suspect is the first time to commit a crime, the crime is only punishable by a fine or is punishable by imprisonment for no more than five years, and the crime is committed by the value of evidence or the value of the loss is not more than IDR 2.5 million. However, the Prosecutor's Office will also provide special discretion with consideration of humanitarian reasons,²⁹

The implementation of restorative justice requires the creativity of the Attorney General's Office (Public Prosecutor) to develop restorative programs, so as to minimize settlement of cases in court. In this context, the Attorney General's Office is required to utilize or develop problem-oriented strategies or approaches. This is not an easy problem because it has to shift the paradigm of the Attorney General's Office, which so far has been seen as a "case processor"

²⁸Surachman, RM and Maringka, Jan S. (2015). The Role of Prosecutors in the Criminal Justice System in the Asia Pacific Region. First Print. Jakarta: Sinar Graphics, p. 15.

²⁹Purba, Jonlar., op. cit., p. 71.

to become "problem solvers" (case settlement), involving the community (community involvement).³⁰

The Prosecutor's Office 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 decency, and must explore human values, law and justice in society.

Prosecutors should not incarnate as "robots", but work professionally, with full consideration and wisdom while moving along the corridor of objectivity. To prosecute people who are suspected of being guilty, the Prosecutor exercises his absolute rights, namely the right to prosecute or not prosecute suspects, but by adhering to the principle of the presumption of innocence or the principle of *presumptio innocentiae* and the principle *in dubio pro reo*, so that the Prosecutor is able to prevent someone from sentenced for a crime he never committed.³¹

Settlement of criminal cases by prioritizing restorative justice emphasizing restoration to its original state and balancing the protection and interests of victims and perpetrators of crimes that are not oriented towards retaliation is a legal necessity of society and a mechanism that must be built in the implementation of prosecution authority and system renewal.

The restorative perspective looks at crime or crime, even though the crime is committed and violates criminal law, the more important aspect is not the act of violation but the process of loss or victimization to victims of crime, society and actually also violates the interests of the perpetrators of the crime itself.

In restorative justice, the victim is able to restore self-confidence and dispel fear, while the perpetrator is encouraged to take responsibility as a step in correcting the wrongs caused by the crime and in building a system of social values.³²

Restorative justice provides an understanding that the existence of a violation of the law does not require the perpetrator to be punished absolutely based on the applicable provisions. However, after the violation of the law, the interests of both victims and perpetrators find the best way out by emphasizing restoration to its original state.

³⁰Ibid.

³¹Surachman, RM and Maringka, Jan S., op. cit., p. 15-16.

³²Wicaksono, Rizky Adiyanzah and Kusriyah, Sri. (December 2018). Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children. In the Sovereign Law Journal Vol. 1 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4136/2887>.

Even though there is a legal umbrella for the Attorney General's Office to implement restorative justice, namely the Prosecutor's Office Regulation Number 15 of 2020, there are still obstacles in its application, one of which is the inherent cultural paradox of society which considers that every criminal act must be repaid with imprisonment/ punishment. In addition, there is also no culture of forgiving behavior towards perpetrators of criminal acts by victims and it is associated with the suffering experienced by victims due to criminal acts committed by perpetrators, and there are no sanctions for law enforcement officials who do not apply restorative justice. Even though there are such obstacles, the implementation of restorative justice by the Prosecutor's Office must continue to strive to maintain a balance of position between the perpetrator and the victim, so that justice is realized.

4. Conclusion

Restorative justice in the handling of criminal acts by the Prosecutor's Office as the application of the principle of *Dominus Litis*, then the prosecutor has the authority to determine whether a case can be prosecuted to court or not. With the authority possessed by the Prosecutor to prosecute or not prosecute criminal cases to court. The prosecutor's authority not to prosecute criminal cases is based on the principle of opportunity or also known as the principle of discretionary prosecution. The Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 has provided and considered the basis of equal and balances between perpetrators, victims, society and the state, so that restorative justice becomes the Attorney's policy.

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