

The Urgency of the Public Prosecutor's Office to Implement a Restorative Justice Approach

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Abstract. *The purpose of this study is to examine and analyze the urgency of the Attorney General's Office to apply a restorative justice approach. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. The success of the criminal justice system in punishing criminals will have a peaceful impact on society, on the other hand, its failure can shake public confidence in the implementation of the system and can encourage criminals to be more courageous in their actions. Theoretically, criminal cases can be closed by law and the prosecution can be terminated based on restorative justice. The Attorney General's Office issued Prosecutor Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice. It turns out that overcrowded correctional institutions do not deter prisoners and victims do not get any recovery from the perpetrators. In addition to not being beneficial to the victim, imprisonment has a destructive impact on convicts, namely there is a tendency that people who have served prison terms find it more difficult to adjust to society and at the same time have a vulnerability to repeat crimes. Peace efforts offered by the public prosecutor to both parties, namely the suspect and the victim. The public prosecutor acts as a facilitator in that there is no element of partiality between the two parties.*

Keywords: Attorney; Justice; Restorative.

1. Introduction

The prosecutor has an important role in the trial and it is the prosecutor who is authorized by law to carry out prosecutions as a public prosecutor who acts on behalf of the State in carrying out his duties and powers. The Attorney General's Office of the Republic of Indonesia is a state institution headed by an Attorney General who is elected and responsible to the President as head of state and head of government. This command system emphasizes the existence of a hierarchical element in the prosecutor's office with the aim of facilitating the carrying out of their duties and functions. In addition to the structural positions that exist within

the prosecutor's office, there are also agencies where the prosecutor's office works which are scattered throughout the provinces and various districts/cities to cover any legal issues that exist among the public.¹

The existence of the Indonesian Attorney General's Office, as a law enforcement institution, has a central position and a strategic role in a rule of law country because it functions as a filter between the investigative process and the examination process at trial (principle of *dominus litis*), so that its existence in public life must be able to carry out enforcement duties. law.²As well as being able to carry out reforms in various fields of life, especially in the field of law enforcement to realize the identity of the Attorney General's Office of the Republic of Indonesia which is more professional and more dynamic in order to deal with societal development while being able to provide justice for the community.³

In its development, several studies regarding the effectiveness of punishment argue that imprisonment is not the right choice because criminal law was created to make people aware, obedient, obedient, so that humans do not violate the law a second time. In addition, criminal law can recover losses incurred as a result of the perpetrator's actions. The law does not lock people up in jail which may not necessarily restore the situation to normal. Therefore, imprisonment is not always the right punishment. Appropriate law is law whose application does not cause conflict and does not make people afraid of the law. Order in society is not because of the punishment, but because there are norms and values that the law wants to protect.

Imprisonment does not produce the expected output, namely that if someone has served a sentence, he will become a better person. This phenomenon is called the criminal cycle, namely prisons are unable to make convicts become good citizens, in some cases, they even become more skilled in committing crimes.⁴Prison should be aimed at deterring perpetrators from actions and as a deterrent for someone to commit prohibited acts. Prisonization of inmates is difficult to avoid, especially if supervision by officers is not carried out optimally.⁵

Accumulation of caseloads in court, prisons that are full, and small people who often fall into erroneous desires, commit crimes, which they are sometimes not aware of, then have to languish in detention cells for months. Because our criminal

¹Septian Nanang Pangestu, and Lathifah Hanim. The Role of Prosecution Related to Prosecutor's Demand in Enforcing the Criminal Action of Narcotics. *Journal of Sovereign Law* Volume 4 Issue 1, (2021)

²Marwan Effendy. 2012. Description in Law Enforcement of Corruption Crimes. Brawijaya University Malang, p. 2-3.

³Ruslan Renggong. 2016. Criminal Procedure Code: Understanding Human Rights Protection in the Detention Process in Indonesia. Makassar: Prenadamedia Group, p.213

⁴Pajar Hatma Indra Jaya. Prison Effectiveness in Solving Social Problems, *Hisbah*, Vol. 9 No.1, (2012).

⁵I Wayan Putu Sucana Aryana. The Effectiveness of Prison in Fostering Convicts, *Journal of Law*, Vol.11 No. 21, (2015).

procedural law does not recognize penal mediation. Because our material and formal criminal law is still oriented towards retaliation for criminal acts and has not yet shifted to the actions and perpetrators of criminal acts, 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 a suspension of prosecution of cases that do not deserve to be brought to court. However, based on Article 7 of the Republic of Indonesia Prosecutor's Office Regulation number 15 of 2020. The public prosecutor offers peace efforts and the suspect. The author's research objective is to examine and analyze the urgency of the Attorney General's Office to apply a restorative justice approach.

2. Research Methods

To conduct an assessment in this writing the author uses a normative juridical method, with an emphasis on literature studies.⁶The specifications in this study are descriptive analysis. Secondary research materials originating from laws and regulations relating to the writing carried out. The data collection used in this writing is document study which is a data collection tool that is carried out through written data using "content analysis".

3. Results and Discussion

3.1. Theory of Utilitarianism

The theory initiated by Bentham explains that law has a goal, which is to provide benefits to many people. Fair or not, the good and bad of the law can be felt from how much the law can provide benefits to humans. In this case, benefits can also be understood as happiness. The point of achieving the goal of law here is when the law has given the greatest possible happiness to as many people as possible. Utilitarianism is a legal school that places benefit as the main goal of law. The benefit referred to in this flow is happiness (happiness). This theory views whether a law is good or bad or fair depends on whether the law gives happiness to humans or not. Based on the theory of utilitarianism, a Restorative Justice approach that has been strengthened by the law that regulates it will provide benefits if implemented properly. Rules of law that are applied properly will bring about and realize the goals of the law properly too.⁷

This flow movement is the expressions/demands with the characteristics of the nineteenth century. According to this school, the purpose of law is to provide as much benefit and happiness as possible to citizens based on a social philosophy which reveals that every citizen desires happiness, and law is one of the tools.⁸ Utilitarianism is a school that puts benefit as the main goal of law. The measure of

⁶Rony Hanitijo Soemitro. 1990, Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta, p. 34

⁷Lilik Rasyidi and Ira Thania Rasyidi. 2004. Fundamentals of Philosophy and Legal Theory, Bandung: PT. Citra Aditya Bhakti, p. 64

⁸Darji Darmodihardjo in Hyronimus Rheti. 2011. Philosophy of Law; Complete edition (From Classical to Postmodernism), Yogyakarta : Atma Jaya University Yogyakarta, p.159

legal expediency is the maximum happiness for people. "Judgment of good or bad, fair or not the law depends on whether the law is able to give happiness to humans or not.

3.2. The Urgency of the Public Prosecutor's Office to Implement a Restorative Justice Approach

The working of the authority of the Police and the Attorney General's Office as the main gate for starting law enforcement procedures. It can be said that the dominance of these two institutions will greatly determine the law enforcement process that has been running so far, there is even an opinion that the procedures that have been running so far divide the enforcement function into two separate systems.⁹, namely the investigation (criminal investigation) and prosecution (prosecution) as the most important part of law enforcement is designed to be carried out by separate subsystems. Investigation is the main function of the Police sub-system, while prosecution is fully the function of the Public Prosecutor's sub-system.

Act No. 11 of 2021 concerning Amendments to Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia explains that the prosecutor's office has independence and independence in carrying out each of its duties, especially in terms of prosecution. When viewed from an institutional perspective, the prosecutor's office is an institution that is under executive or governmental power, but from another perspective it also carries out its duties as a judicial institution.

As a judiciary institution, the judiciary carries out its duties, functions and powers independently, this institution cannot be intervened by government powers. This means that the state through its law guarantees prosecutors in carrying out their profession regardless of improper influence, interference or interference.¹⁰The position of the Prosecutor's Office in criminal justice is quite important because it is a bridge that connects the investigation stage with the examination stage in court hearings. Based on the prevailing legal doctrine that the public prosecutor has a monopoly on prosecution, meaning that every person can only be tried if there is a criminal charge from the public prosecutor, namely the prosecutor's office because only the public prosecutor has the authority to submit suspect status to the perpetrator of a crime before the trial court.¹¹

In relation to the criminal justice system, the Prosecutor's Office as a law enforcement agency authorized to prosecute also functions as a filter and case

⁹Gita Santika, The Role of the Prosecutor's Office in Realizing Restorative Justice as an Effort to Overcome Crime, *PROGRESSIVE: Journal of Law*, Vol.XVI No.1 (2021).

¹⁰Ardito Yudho Pratomo, Umar Ma'ruf, and Aryani Witasari. Implementation of Criminal Action Prosecution Online in Realizing the Principle of Fast Prosecution, Simple & Low Cost. *Journal of Sovereign Law* Volume 4 Issue 2, (2021).

¹¹Yudi Kristiana, 2006. Independence of the Prosecutor's Office in Corruption Investigations, PT Citra Aditya Bakti, Bandung, p.52

controller (*dominus litis*) because only the prosecutor's institution can determine whether a case can be brought to court or not based on valid evidence. . So that the existence of the Prosecutor's Office plays an important role in the justice system in Indonesia. As the owner of the title *dominus litis* (*procureur die de procesvoering vaststelt*), the Attorney General's Office is also the only agency that has the authority to implement criminal court decisions or is known as the executive *ambenaar*.

In order to uphold the rule of law through the judicial process, the idea is currently emerging that the law enforcement process carried out by law enforcement officials is able to realize restorative justice, which is expected to better answer the demands of justice desired by the community. One of them is implemented in a regulation of the prosecutor's office, namely the Attorney General's Regulation 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.¹²

It is hoped that the application of the principle of *ultimum remidium* in handling criminal cases will be increasingly put forward by taking into account the provisions and types of criminal acts that have been prosecuted based on restorative justice, specifically within the scope of duties and authorities of the prosecutor's institution so as to realize a simple, fast, concise trial. and low/low cost. Criminal law enforcement that focuses on retaliation is gradually changing. Criminal law is no longer used as retaliation against people who violate the law. Criminal law is used as a tool to overcome the crime itself. Efforts in overcoming crime or criminal policy are a rational effort from society in overcoming crime.¹³

The reality in Indonesia is that crimes such as theft, fraud, collection, embezzlement, etc. still use the approach of retaliation against perpetrators who are considered to have damaged order. Perpetrators who are caught are examined by investigators and undergo trial and most likely the settlement process or the resulting output is that the person will go to prison or be released. In this regard, the correctional database system for 5 August 2018 shows that the number of detainees and inmates in all Correctional Institutions (*Lapas*) and Detention Centers (*Rutan*) in Indonesia is 250,444 people. This figure is already excessive considering that ideal prisons and detention centers only accommodate as many as 124,696 people.¹⁴

¹²Mahendra, Adam Prima, Penal Mediation at the Investigation Stage Based on Restorative Justice, *Journal of Jurist-Diction*, Vol.3 No.4, (2020).

¹³Ruben Achmad, The Essence of the Existence of Criminal Sanctions and Punishment in the Criminal Law System. *Legality: Journal of Law*, Vol. 5 No. 2, (2017).

¹⁴Angela Claudia Scolastika Manurung, Dewa Gede Sudika Mangku, Made Sugi Hartono, Implementation of the Principles of Restorative Justice in Cases of Damage Crime (Case Study No. PDM532/BLL/08/2020), *e-Journal of the Yustisia Community*, Volume 4 Number 2 (2021).

The data above shows that prison sentences cause prisons to be overcrowded but do not deter prisoners and victims do not get any recovery from the perpetrators. Apart from not being beneficial to victims, imprisonment has a destructive impact on convicts, namely there is a tendency that people who have served prison terms find it more difficult to adjust to society and at the same time have a vulnerability to repeat crimes.¹⁵

Attorney General Regulation 15 of 2020 concerning Termination of Prosecution based on Restorative justice is a legal product of the Attorney General's Office of the Republic of Indonesia that has been eagerly awaited by the public, which has been conveyed by the Junior Attorney General for General Crimes (JAMPIDUM) in the socialization conveying to prosecutors in Indonesia based on mandate from the Attorney General of the Republic of Indonesia that every prosecutor prosecutes someone with a conscience, because conscience is not in law but is in the hearts of prosecutors, even though this mechanism is not regulated in the Criminal Procedure Code, therefore with the Attorney General Regulation Number 15 of 2020, the Prosecutors in Indonesia no longer need to hesitate to close small cases because dominantly the authority of prosecution is the domain of the public prosecutor.¹⁶

In conventional criminal procedural law, reconciliation between the perpetrator and the victim cannot affect the authority of law enforcement not to forward the case to the criminal realm which results in the conviction of the criminal. The formal criminal process which takes time and does not provide certainty for perpetrators and victims does not fulfill or restore the relationship between victims and perpetrators. Victims are only limited to being witnesses at the trial level and cannot greatly influence sentencing decisions, because the prosecutor's task is only to receive investigative files to be processed to become the basis for criminal charges without knowing and understanding the real conditions of the problem. The concept of restorative justice offers to restore the relationship between the perpetrator and the victim directly in solving problems.

The meaning of criminal acts in restorative justice is basically the same as in the view of criminal law in general, namely attacks on individuals and society as well as social relations. However, in the restorative justice approach, the main victim of a crime is not the state, as in the existing criminal justice system. Therefore, crime creates an obligation to repair damaged relationships due to the occurrence of a crime. Meanwhile justice¹⁷ interpreted as a process of finding solutions to

¹⁵ Erasmus AT Napitupulu. et al, 2019. Sentences Without Imprisonment: Arrangements, Implementation, and Projections of Alternatives to Non-Imprison Sentences in Indonesia, ICJR, Jakarta, p. iii.

¹⁶Andri Kristanto, Review of Attorney General Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice, *Lex Renaissance*, Vol. 7 No. 1, (2022).

¹⁷Mia Kusuma Fitriana. The Role of Legal Politics in Forming Legislation in Indonesia as a Means of Realizing the State's Goals (Laws And Regulations In Indonesia As The Means Of Realizing The Country'S Goal). *Journal of Indonesian Legislation*, Vol. 12, No.2, (2018).

problems that occur in a criminal case where the involvement of victims, communities and perpetrators is important in efforts to repair, reconcile and guarantee the continuity of these repair efforts. Based on the theory of utilitarianism, a Restorative Justice approach that has been strengthened by the law that regulates it will provide benefits if implemented properly. Rules of law that are applied properly will bring about and realize the goals of the law properly too.

4. Conclusion

In realizing this justice, the Attorney General's Office makes discretion in the form of the Attorney General's Regulation concerning Termination of Prosecution Based on Restorative Justice as a form of embodiment of a more humane law enforcement. In its approach, the Attorney General's Office is a case controlling institution. The reality in Indonesia is that crimes such as theft, fraud, collection, embezzlement, etc. still use the approach of retaliation against perpetrators who are considered to have damaged order. Perpetrators who are caught are examined by investigators and undergo trial and most likely the settlement process or the resulting output is that the person will go to prison or be released. the number of detainees and inmates in all Correctional Institutions (Lapas) and Detention Centers (Rutan) in Indonesia is 250,444 people. This figure is already excessive considering that ideal prisons and detention centers only accommodate as many as 124,696 people. The data above shows that prison sentences cause prisons to be overcrowded but do not deter prisoners and victims do not get any recovery from the perpetrators. Apart from not being beneficial to victims, imprisonment has a destructive impact on convicts, namely there is a tendency that people who have served prison terms find it more difficult to adjust to society and at the same time have a vulnerability to repeat crimes.

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