

Criminal Law Updates on the Implementation of Restorative Justice Carried Out by Prosecutor's Institutions in Indonesia

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Abstract. *The existence of regulations related to restorative justice in each law enforcement agency has caused confusion regarding the implementation of restorative justice in Indonesia. Criminal law reform related to restorative justice is needed to resolve this confusion. The Prosecutor's Office as a prosecution institution in Indonesia has the right to play a role as a controller in the implementation of restorative justice considering that the Prosecutor's Office is dominus litis, namely as a case controller. This study aims to determine and analyze the renewal of criminal law related to restorative justice in the Prosecutor's Office based on the principle of dominus litis reviewed from the implementation of restorative justice by other law enforcement officers. The approach method used in this study is normative juridical. The results of the study show that (1) the Prosecutor's Office has issued the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 and the Attorney General's Guidelines 18 of 2021 as a form of implementing restorative justice in the law enforcement process, especially prosecution. (2) Restorative justice regulation updates are needed as a follow-up to Article 132 paragraph (1) letter g of the New Criminal Code as a form of uniformity in the implementation of restorative justice for law enforcement officers. The position of prosecutors in these regulations needs to be given more attention considering the dominus litis nature. Because the Criminal Procedure Code does not explicitly regulate the principle of dominus litis, it is also necessary to update the Criminal Procedure Code to strengthen the position of the Prosecutor's Office as the holder of the dominus litis principle.*

Keywords: *Criminal; Dominus; Restorative.*

1. Introduction

Restorative Justice is a method of resolving cases in the criminal justice system that prioritizes the involvement of the parties, namely the perpetrators of

violations, victims and the community as a whole. With the involvement of the parties in the restorative justice process, it will make it easier to find solutions to resolve cases that can restore conditions to their original state before the violation occurred.¹ Basically, criminal cases cannot be resolved through the restorative justice process, but in reality criminal cases are often resolved through a mediation process initiated by law enforcement. The existence of restorative justice has proven that punishment is not the only end goal in realizing criminal law enforcement.

The criminal justice system, or in foreign languages known as the Criminal Justice System, is a working mechanism that aims to combat crime using a systems approach.² The criminal justice system includes the stages of investigation, prosecution, examination in court and implementation of the verdict. In the prosecution stage of a case, the party entitled to carry it out is the Prosecutor's Office. Based on Law No. 16 of 2004 concerning the Prosecutor's Office, the Prosecutor's Office has freedom and authority in the field of prosecution. In carrying out its authority, the Prosecutor's Office uses two principles, namely the principle of legality and the principle of opportunity. The principle of legality is the principle of prosecuting all cases in court without exception, while the principle of opportunity is the principle that gives the public prosecutor the opportunity not to prosecute cases in court. In addition to these two principles, the Prosecutor's Office also has the principle of *dominus litis*, which means that the Prosecutor's Office as the controller of the case process or *dominus litis* has a central position in law enforcement. The principle of *dominus litis* is functionalized in the regulation of the authority to stop prosecution held by the Prosecutor's Office.³

In practice and its development, the Attorney General's Office issued Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Guidelines of the Attorney General Number 18 of 2021 concerning Settlement of Handling of Narcotics Abuse Criminal Cases through rehabilitation with a Restorative Justice Approach as a follow-up to the principle of prosecutor opportunity. Based on these two regulations, the Public Prosecutor (JPU) has the right to stop prosecution of a defendant in a certain criminal case on condition that the parties have agreed to reconcile.⁴ However, currently, regulations related to restorative justice are not only issued by the prosecutor's office, but also by other

¹Albert Aries, "Settlement of Minor Theft Cases and Restorative Justice", *Varia Peradilan Magazine*, No. 247, (2006), p. 3.

²Romli Atmasasmita, 1996, *Criminal Justice System: Perspectives of existentialism and abolitionism*, Putra Abardin, Bandung, p. 16

³Tiar Adi Riyanto, "Functionalization of the *Dominus Litis* Principle in Criminal Law Enforcement in Indonesia", *Lex Renaissan* No.3 Volume 6, July, 2021, pp. 481-492.

⁴Ribut Hari Wibowo, "Restorative Justice Approach in Termination of Prosecution Based on Restorative Justice," *Progressive Law Journal*, No. 2, October (2021), p. 147.

law enforcement agencies such as the Indonesian National Police, which has issued the Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The partial nature of restorative justice policies by each law enforcer does not rule out the possibility of causing confusion which will later become a problem in the implementation of Restorative Justice. Therefore, the renewal of criminal law related to restorative justice is needed to answer this problem. The Prosecutor's Office has the right to be a controller in the implementation of restorative justice because it is reviewed from a *dominus litis* nature, namely as a case controller, where the Prosecutor's Office is the determinant of the progress of a case. Based on the explanation in the background, the author is interested in writing an article related to the renewal of criminal law related to restorative justice which provides space for the Prosecutor's Office to be able to act as a case controller.

This research has differences with previous research⁵ namely discussing the politics of restorative justice law in the Indonesian criminal justice system. The journal describes the concept of restorative justice in Indonesia, compares the restorative justice policies at the investigation, prosecution and examination levels in court to determine the weaknesses of each policy and explains the value of restorative justice in the Criminal Code Bill. Previous research still discusses the renewal of criminal law which is still broad and has not discussed the provision of space for the Prosecutor's Office as a case controller in resolving cases through restorative justice in accordance with the principle of *dominus litis*.

This study aims to determine and analyze the renewal of criminal law related to restorative justice in the Prosecutor's Office based on the principle of *dominus litis* reviewed from the implementation of restorative justice by other law enforcement officers.

2. Research Methods

The approach used in this study is the statute approach and the conceptual approach. In helping the author write the article, the author applies a normative legal approach system using secondary data types including primary legal materials, secondary legal materials and tertiary legal materials. From all the data that has been obtained, the author conducts data analysis using qualitative analysis methods, namely strengthening the analysis by looking at the quality of the data obtained. The results of the analysis will be in the form of findings that cannot be produced using statistical procedures.

3. Research Results and Discussion

3.1. Legal Policy related to Restorative Justice in the Attorney General's Office of the Republic of Indonesia

⁵Muhammad Fatahillah Akbar, "Reform of Restorative Justice in the Indonesian Criminal Justice System", *Journal of Legal Issues*, Volume 51, Number 2, April (2022)

So far, law has only been understood as a rigid regulation and has placed too much emphasis on the legal system aspect without paying attention to the connection between legal science and the problems that must be resolved.⁶With the existence of rigid laws, it is necessary to design laws that are in accordance with the characteristics of society by exploring values that society believes to be noble values.⁷The values that exist in the Indonesian nation can be used as a basis for development and legal reform in Indonesia.⁸

In the theory of law enforcement, it is stated that there are several factors that influence law enforcement, namely law enforcement factors including the Prosecutor's Office. In Law Number 8 of 1981 concerning Criminal Procedure Law and Law 11 of 2021 concerning Amendments to Law 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the authority of the Prosecutor's Office in the prosecution stage is outlined, including a very dominant authority, namely the holder of the *dominus litis* principle. The *dominus litis* principle is a principle that gives authority to the Prosecutor's Office as the controller of the case process which determines whether or not a person can be found guilty and the case can be submitted to the Court based on a minimum of two valid pieces of evidence according to law.

In law enforcement, sometimes the sense of justice is sidelined so that the prosecution that is carried out has caused a sense of disappointment in society. The case of Grandma Minah which occurred in 2009 is one of the cases that is a hard slap for law enforcers including the Prosecutor's Office. The Attorney General of the Republic of Indonesia, ST Burhanuddin has given instructions that the Prosecutor in carrying out prosecution must see the sense of justice in society. Following up on this instruction, the Attorney General of the Republic of Indonesia as the highest leader of the Prosecutor's Office of the Republic of Indonesia made a discretion by issuing the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The policy related to restorative justice issued by the Prosecutor's Office is very important considering the strategic position and role in the law enforcement process in the integrated criminal justice system as *dominus litis*, namely the authority to sort out a criminal case and determine whether a case will be continued or not to trial by considering 3 (three) values of legal objectives, namely benefit, justice, and certainty. the policy of terminating prosecution based on restorative justice is a legal breakthrough

⁶Henry Arianto, "Responsive Law and Law Enforcement in Indonesia", *Lex Jurnal* Vol. 7 No. 2, (2010), p. 115.

⁷Ali Imron, *Dissertation: Contribution of Islamic Law to the Development of National Law (Study of the Concept of Taklif and Mas`Uliyyat in Legal Legislation)*. Diponegoro University. Semarang, 2008

⁸Nur Rochaeti, "Prospects of Restorative Justice Based on Pancasila as a Non-Penal Means in Handling Child Delinquency in the Future", *Legal Issues*, Vol.42, No.4, 2013, p.498

from the Prosecutor's Office of the Republic of Indonesia so that the Prosecutor no longer prosecutes unnecessary cases. By implementing restorative justice, it is hoped that it will be able to provide answers to important issues such as criticism of the criminal justice system which does not provide opportunities for the parties, especially victims, eliminating conflicts between perpetrators of violations, victims and the community, where feelings of helplessness as a result of committing a crime must be addressed in order to achieve the recovery process.⁹The implementation of the concept of restorative justice is in line with the constitutional basis of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, especially Article 28 D paragraph (1) and Article 28 H paragraph (2). In these articles it is explained that every Indonesian citizen has the right to justice and equality before the law. This explanation is certainly in line with the concept of restorative justice echoed by the Attorney General's Office of the Republic of Indonesia where this concept carries the goal of justice to be achieved by means of restoring the original state before the crime occurred, a balance of protection, and the interests of both parties, both victims and perpetrators of the crime without being oriented towards revenge and in line with the values that exist in Indonesian society, namely prioritizing the values of kinship, family, tolerance, mutual cooperation and prioritizing common interests.¹⁰

Restorative Justice as regulated in the Attorney General's Regulation Number 15 of 2020, it is stated that there are factors that need to be considered and considered before the Prosecutor stops the prosecution. The factors that need to be considered are:

- a. The interests of victims 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.

Meanwhile, the factors that the Public Prosecutor needs to consider in stopping the prosecution are:

- a. Subject, object, category and threat of criminal acts;
- b. Background to the occurrence or commission of the crime;
- c. Level of reprehensibility;
- d. Losses or consequences resulting from a criminal act;

⁹Hari Wibisono Condro and Achmad Sulchan, Investigation Process of Traffic Accident Offenders of Minors at the Police Resort Kebumen, *Jurnal Daulat Hukum*, Vol.2 No.3, September, (2019), p. 406

¹⁰Henny Saida Flora, "Restorative Justice as an Alternative in Resolving Criminal Acts and Its Influence on the Criminal Justice System in Indonesia", *University of Bengkulu Law Journal*, Vol. 3, (2018), p. 146

- e. Expenses and profits for handling cases;
- f. Restoration back to its original state; And
- g. There is peace between both parties, namely between the victim and the perpetrator of the crime.

The policy of termination of prosecution as regulated in PERJA No. 15 of 2020 is not solely obtained by every perpetrator of a crime. There are terms and conditions as explained in Article 5 paragraph (1) of PERJA No. 15 of 2020 which will later be carefully implemented by the Public Prosecutor. These terms and conditions are:

- a. The suspect has committed a crime for the first time;
- b. Criminal acts committed by the perpetrator are only threatened with a fine or are threatened with 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 IDR 2,500,000.00 (two million five hundred thousand rupiah).

In Article 5 of PERJA No. 15 of 2020, additional provisions are also stipulated for criminal acts related to property, criminal acts against people, bodies, lives and freedom of people and criminal acts due to negligence. Article 5 paragraph (2) explains that the termination of prosecution based on restorative justice for criminal acts related to property is carried out by considering the requirements as stated in Article 5 paragraph (1) letter a accompanied by one of the letters b or letter c. Additional provisions on criminal acts against people, bodies, lives and freedom of people are regulated in Article 5 paragraph (3) of PERJA No. 15 of 2020. This article explains that for criminal acts against people, bodies, lives and freedom of people, the requirements for termination of prosecution based on restorative justice in paragraph (1) letter c can be excluded. Meanwhile, additional provisions on criminal acts of negligence are stipulated in Article 5 paragraph (4) of PERJA No. 15 of 2020 which explains that for criminal acts of negligence, the requirements in Article 5 paragraph (1) letters b and c can be excluded. So that the application of the requirement to stop prosecution based on restorative justice in this case is alternative or not all requirements must be met.

Termination of prosecution based on restorative justice carried out by the Public Prosecutor must be submitted in stages to the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch for approval. The approval will then be forwarded to the Head of the High Prosecutor's Office and will be exposed to the Attorney General for General Crimes to later be given approval to terminate the prosecution. PERJA No. 15 of 2020 states that not all cases can be terminated by prosecution. Article 8 of PERJA No. 15 of 2020 outlines criminal acts that are excluded from being resolved through restorative justice, namely:

- a. 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;
- b. criminal acts that are threatened with a minimum criminal penalty;
- c. narcotics crimes;
- d. environmental crimes; and
- e. criminal acts committed by corporations

In realizing restorative justice, there are two types of methods for terminating prosecution that can be taken based on PERJA No. 15 of 2020, namely peace efforts and peace processes. The active role of the prosecutor is needed in offering peace efforts to the Victim and Suspect. Peace efforts must be carried out without pressure, coercion and intimidation. Peace efforts begin with the summons of the victim by the public prosecutor followed by notification of the reasons for the summons. The victim's or suspect's family, community leaders or representatives, and other related parties are involved in peace efforts. The case will be terminated if the offer of peace efforts is accepted, if rejected then the case will be referred to the court. In the peace process, the Public Prosecutor acts as an impartial facilitator between the two parties, namely the victim and the suspect, for a period of 14 (fourteen) days from the transfer of responsibility for the suspect and evidence (stage two). The peace process must be carried out at the prosecutor's office, but if there are conditions or circumstances that do not allow it due to security, health or geographical factors, then 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. The peace process is carried out with the aim of resolving the case peacefully without any follow-up in court.

In addition to issuing PERJA No. 15 of 2020 as a form of the seriousness of the Attorney General's Office of the Republic of Indonesia in implementing the concept of restorative justice in the law enforcement process, in 2021 the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach have been issued as an implementation of the Prosecutor's Dominus Litis Principle. The guidelines were issued based on the background that the current criminal justice system tends to be punitive, namely giving punishment to someone. This has resulted in the number of correctional institution residents exceeding capacity (overcrowding), where most of the residents are drug crime convicts. Therefore, a policy is needed, especially in handling drug abuse criminal cases.

Attorney General's Guidelines Number 18 of 2020 are a reorientation of law enforcement policies in the implementation of Law Number 35 of 2009 concerning Narcotics, especially in the implementation of the prosecutor's duties and authorities through the optimization of rehabilitation institutions.

Rehabilitation as a method in resolving narcotics crime cases certainly cannot be separated from restorative justice because rehabilitation is carried out by prioritizing restorative justice, benefits and considering the principles of fast, simple and low-cost justice, implementing the principle of criminal law as a last resort and recovery of the perpetrator. Based on Attorney General's Guidelines Number 18 of 2020, rehabilitation consisting of medical rehabilitation and social rehabilitation can be applied to suspects who are suspected of violating Article 127 paragraph (1) of the Narcotics Law where the case has not been referred to court. The classification of suspects who can be given rehabilitation is divided into 3 (three) categories, namely drug abusers, victims of drug abuse, and drug addicts. These three categories are also regulated in the Attorney General's Guidelines No. 18 of 2021 regarding the requirements that must be met for the case to be resolved through rehabilitation.

It can be said that the issuance of the Attorney General's restorative justice policy, especially PERJA Number 15 of 2020, is a further regulation in the Criminal Procedure Code regarding the authority to terminate prosecution by the public prosecutor.¹¹ Where in Article 140 paragraph (2) letter a of the Criminal Procedure Code regulates three reasons for stopping a prosecution, namely the case is closed by law, the act is not a criminal act and there is insufficient evidence. Further explanation regarding the case being closed by law if the case is *Ne bis In Idem* (Article 76 of the Criminal Code), the defendant dies (Article 77 of the Criminal Code), expires (Articles 78-79 of the Criminal Code), the complaint in the criminal complaint is withdrawn or withdrawn (Article 75 of the Criminal Code), and the settlement of the case outside the court has been carried out. The scope of the settlement of cases outside the court is the waiver of the case / deponering, diversion and payment of the maximum fine in the offense of violation. PERJA Number 15 of 2020 has expanded the scope of the settlement of cases outside the court as a reason for stopping the prosecution in the interests of the law.

3.2. Criminal Law Updates Regarding the Implementation *Restorative Justice* the Prosecutor's Office Based on the Principle of *Dominus Litis* Reviewed from the Implementation of Restorative Justice by Other Law Enforcement Officials

The implementation of restorative justice in the law enforcement process in Indonesia currently has problems because each law enforcement officer makes policies related to the implementation of restorative justice in Indonesia. This problem has an impact on the partial implementation of restorative justice and the lack of uniformity. Law enforcement officers who have issued policies related to restorative justice are the Indonesian National Police by issuing Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Criminal Acts Based on

¹¹Echwan Iriyanto and Rian Dawansa, "Termination of Prosecution Based on Restorative Justice", UNISSULA Law Journal, Volume 39 Number 1, March, (2023), p. 21

Restorative Justice and the Indonesian Prosecutor's Office by issuing Regulation of the Prosecutor's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The existence of various regulations that are still partial has given rise to various practices of implementing restorative justice based on the policies of each law enforcement officer. Another problem that may occur is confusion about criminal acts that can be subject to restorative justice.

Police Chief Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice actually have similarities and differences. The similarity of the two regulations is that the settlement of cases is carried out outside the court. However, not all criminal acts can be handled through restorative justice. The two regulations are not uniform in determining what criminal acts can be subject to restorative justice and the restorative justice requirements that must be met.

In the Regulation of the Chief of Police Number 8 of 2021 concerning Termination of Prosecution Based on Restorative Justice, restorative justice is applied to all cases except for Terrorism Crimes, Crimes against state security, Corruption Crimes and Crimes against people's lives. Meanwhile, the Regulation of the Attorney General Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice applies restorative justice to Criminal Acts with the threat of a fine or a prison sentence of no more than 5 (five) years and is carried out with the value of the evidence or the value of the loss caused by the crime of no more than IDR 2,500,000.00 (Two million five hundred thousand rupiah). These requirements apply alternatively to criminal acts related to property, crimes against people, bodies, lives and freedom and criminal acts due to negligence. In cases of criminal acts against state security, the dignity of the president and vice president, friendly countries, heads of friendly states and their deputies, public order and morality, crimes that are threatened with a minimum penalty, narcotics crimes, environmental crimes, and crimes committed by corporations, prosecution cannot be terminated based on Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Article 3 of the Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that Handling of Criminal Acts based on restorative justice must meet general and/or special requirements. General requirements apply in handling criminal acts in the implementation of criminal investigation, investigation and inquiry functions. While special requirements only apply to handling cases in investigations and inquiries. Special requirements are additional requirements for Information and Electronic Transactions, Narcotics and Traffic Crimes

Article 5 of the Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice outlines the material requirements including:

- a. Does not cause unrest and/or rejection from the community;
- b. Does not result in social conflict;
- c. Does not have the potential to divide the nation;
- d. Not radical or separatist;
- e. Not a repeat of a criminal act based on a court decision; and
- f. Not a Criminal Act of Terrorism, a Criminal Act against state security, a Criminal Act of Corruption and a Criminal Act against human life.

Meanwhile, formal requirements include peace from both parties except for drug crimes and fulfillment of the rights of victims and the responsibilities of perpetrators except for drug crimes.

Another fundamental difference is found in the Regulation of the Chief of Police Number 8 of 2021 concerning Termination of Prosecution Based on Restorative Justice and the Regulation of the Attorney General Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely the application of restorative justice in the investigation stage begins with the submission of a written application letter submitted by the applicant made by the perpetrator, victim, perpetrator's family, victim's family or other parties. Meanwhile, in the application of restorative justice in the prosecution stage, the public prosecutor actively offers peace to both parties, both the perpetrator and the victim, without any pressure, coercion, or intimidation. The application of restorative justice in the Police and the Prosecutor's Office appears to stand alone and does not reflect an integrated criminal justice system where integration or cooperation is needed to realize the success of a system. Investigators in the restorative justice process after issuing SP3 only provide a notification letter to the public prosecutor. Meanwhile, the Prosecutor in the restorative justice process after issuing SKP2, the investigator is only given a copy of SKP2. In the restorative justice process, both the police and the prosecutor's office should involve each other, where the public prosecutor is the party involved in the peace process between the victim and the perpetrator in restorative justice at the investigation level and vice versa, the investigator is involved as a party who witnesses the peace between the perpetrator and the victim in the restorative justice process at the prosecution level.

With the shortcomings in the implementation of restorative justice in the law enforcement process in Indonesia, it has consequences that in the future, case resolution through the restorative justice mechanism must be integrated between investigators and public prosecutors. Article 132 paragraph (1) letter g of Law Number 1 of 2023 concerning the Criminal Code (KUHP) states:

"The authority to prosecute is declared null and void if:

- a. there is a court decision that has obtained permanent legal force against each person for the same case;
- b. the suspect or defendant dies;
- c. expired;
- d. the maximum criminal fine must be paid voluntarily for criminal acts which are only threatened with a category II fine;
- e. the maximum category IV fine is paid voluntarily for criminal acts of imprisonment of a maximum of 1 (one) year or a maximum category III fine;
- f. withdrawal of complaints for criminal complaints;
- h. there has been a settlement outside the judicial process as regulated in the Law; or
- i. granting amnesty or abolition

There is an explanation in Article 132 paragraph (1) of Law Number 1 of 2023 that "in this provision, what is meant by prosecution is the judicial process that begins with the investigation". So it can be said that the investigation process is an inseparable part of the prosecution.

In Law Number 1 of 2023, there is a regulatory basis that can be used as a basis regarding the limitations of what criminal acts cannot be resolved based on restorative justice. Article 70 paragraph (2) of Law Number 1 of 2023 states that:

- (2) The provisions referred to in paragraph (1) do not apply to:
- a. Criminal acts punishable by imprisonment of 5 (five) years or more;
 - b. Criminal acts punishable by a special minimum sentence;
 - c. Certain criminal acts that are very dangerous or detrimental to society; or
 - d. Criminal acts that harm the country's finances or economy.

The existence of Law Number 1 of 2023 has acknowledged the existence of case resolution outside the judicial process as stated in Article 132 paragraph (1) letter g. Furthermore, the implementation of restorative justice will reform the criminal justice system which prioritizes punishment to be in harmony between the interests of victim recovery and the accountability of perpetrators of criminal acts.

Based on the explanation above, policy makers must act proactively to be able to initiate the realization of a regulation that regulates the settlement of cases outside the judicial process as a follow-up to Article 132 paragraph (1) letter g of Law Number 1 of 2023 concerning the Criminal Code. That the legal substance related to the application of restorative justice must indeed be accommodated in such a way that it can be used as a strong foundation in resolving criminal cases. Restorative justice as part of the settlement of criminal cases must be given a place in the regulations accompanied by its legal basis or theory. With the existence of regulations related to restorative justice, the purpose of the law will be realized, namely legal certainty because it has indirectly provided clear and

transparent legal rules regarding restorative justice in the law enforcement process.

In the restorative justice legislation, the position of the Prosecutor as the controller of the case needs to be given more attention. The position of the Public Prosecutor is actually the center of gravity in the integrated criminal justice system in the context of the law enforcement process. This is because the Prosecutor's Office adheres to the principle of *dominus litis* which explains that the Public Prosecutor has an obligation to ensure the achievement of legal objectives, namely justice, certainty and usefulness by transferring criminal cases to the court.¹²The *Dominus Litis* principle held by the Prosecutor is the authority to determine whether a case can be brought to court in the criminal justice system. As in Article 140 paragraph (2) of the Criminal Procedure Code, the *dominus litis* principle regulates the authority of the prosecutor to stop prosecution for three reasons, namely insufficient evidence, the incident is not a criminal act, and the case is closed by law. Therefore, in the future renewal of restorative justice regulations, the Prosecutor's Office should have a central position in determining the provision of restorative justice both at the investigation and prosecution levels. However, in the Criminal Procedure Code, the *dominus litis* principle is not regulated. So the meaning of the *dominus litis* principle has been reduced. Article 139 of the Criminal Procedure Code has provided limitations on the meaning of *dominus litis*. This results in the position of the Public Prosecutor not having the power to progressively follow the development of the investigation because based on the Criminal Procedure Code, the Public Prosecutor only examines case files formally and does not know the flow of the investigation from the beginning including the process of preparing case files and obtaining evidence.

That in any case, investigation and prosecution should not be separated explicitly. The prosecutor in this case must follow the course of the first process, namely the investigation, so that he knows about the handling of the case process from the beginning and functions to control the ongoing investigation process. Based on the explanation above, it can be assumed that the Criminal Procedure Code does not pay more attention to the authority of the Prosecutor's Office as *dominus litis* in a case. In the HIR regulations, the position and function of the prosecutor's office as *dominus litis* are actually very clear. When the HIR was still in effect, an investigation process was an inseparable part of the prosecution. This authority places the Prosecutor as the public prosecutor as the coordinator of the investigation and can also conduct the investigation himself.

Based on the explanation, the Prosecutor's Office has a position as a key institution (key figure) in the entire series of criminal law enforcement processes

¹²Marjudin Djafar, Tofik Yanuar Chandra, and Hedwig Adiinto Mau, "The Authority of the Public Prosecutor as *Dominus Litis* in Terminating Prosecution Based on Restorative Justice," SALAM: Jurnal Sosial dan Budaya Syar-i 9, no. 4, 2022, p. 1076.

from beginning to end. With the revocation of the HIR and its replacement with the Criminal Procedure Code, the Prosecutor's authority to play a role in the investigation process has been indirectly delegitimized by the Criminal Procedure Code. So since the ratification of the Criminal Procedure Code, the Prosecutor's Office is no longer the *dominus litis* of a case. To answer these problems, of course, it is necessary to reform the Criminal Procedure Code which regulates differently regarding the position of the Prosecutor's Office as a public prosecutor in the integrated criminal justice system. So that there is strong legal legitimacy related to the principle of *dominus litis* owned by the Prosecutor's Office.

4. Conclusion

Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Guidelines of the Attorney General Number 18 of 2021 concerning Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach is a policy issued by the Attorney General of the Republic of Indonesia as a form of realization of more humanistic law enforcement. This policy holds a very important position in the law enforcement process considering that the Attorney General of the Republic of Indonesia is the *dominus litis* in the integrated criminal justice system. As an answer to the problem of the uneven implementation of restorative justice by law enforcement officers, policy makers are required to renew the laws and regulations governing the settlement of cases outside the judicial process as a follow-up to Article 132 paragraph (1) letter g of Law Number 1 of 2023 concerning the Criminal Code which has generally regulated the settlement of cases outside the judicial process. In the restorative justice legislation, the position of the Prosecutor as the controller of the case needs to be given more attention considering the position of the Public Prosecutor who adheres to the principle of *dominus litis*, namely the authority to determine whether a case can be brought to court in the criminal justice system. So in addition to the need for regulatory updates on restorative justice, it is also necessary to update the Criminal Procedure Code to strengthen the position of the Prosecutor's Office as the holder of the principle of *dominus litis*.

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