

Law Enforcement in Resolving Criminal Cases Through the Restorative Justice Approach (Case Study of the Semarang City District Attorney's Office Branch at Semarang Port)

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Abstract. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (*Perja Penghentian Jaksa*) which is implemented on the basis of fair case resolution by emphasizing restoration to the original state and not retaliation. This regulation emphasizes the need to prioritize conscience in resolving cases. The purpose of this study is to determine and analyze the law enforcement process in resolving criminal cases through the Restorative Justice approach at the Semarang City District Attorney's Office branch in Semarang Port, as well as obstacles and solutions to law enforcement in resolving criminal cases through the Restorative Justice approach at the Semarang City District Attorney's Office branch in Semarang Port. The research method in this study uses an empirical juridical approach with a descriptive research type. The type and source of data uses qualitative data types and the data sources use primary data and secondary data, the data collection method for primary data is carried out by field studies while secondary data is obtained from literature studies, the analysis of this study uses qualitative descriptive analysis. The results of the study indicate that the law enforcement process in resolving criminal acts through a restorative justice approach at the Semarang City District Attorney's Office in Semarang Port by terminating prosecution begins with a certain legal event that occurs in a certain community environment and at a certain time. If in the legal event there is a strong suspicion that a crime has occurred. Termination of prosecution based on restorative justice is carried out within 14 (fourteen) days after receiving the transfer of responsibility for the suspect and evidence from the investigator which consists of several stages as regulated in the Termination of Prosecution Regulation. The most dominant obstacles and solutions to law enforcement in resolving criminal cases through a restorative justice approach are the short time in handling cases which have been regulated in the Termination of Prosecution Regulation and the low understanding of forgiving each other between victims and suspects which can hinder the peace process.

Keywords: *Presecution; Regulation; Study.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) stipulates that "the state of Indonesia is a state based on law", furthermore in the explanation of the UUD 1945 it is stated that "the state of Indonesia is based on law (Rechtsstaat) not on power mere (machstaat), therefore the state may not carry out its activities based on power alone, but must be based on law.

Von Savigny, stated that this law grows and develops in the life of society, and will always develop when a society develops. Law is similar to language, both develop gradually from the characteristics of a society. Law and language develop when a society and both are destroyed when a society loses its individuality.

Based on this, there is a need for legal regulations that reflect this. Mark justice, the benefits and legal certainty that are in line with the development of the community's life itself. This is as stated by Satjipto Raharjo, that discussing law is discussing relations between humans. Discussing relations between humans is discussing justice. We cannot discuss law only to the point of its form as a formal building. We also need to see it as an expression of the ideals of social justice.

Every community group always has problems as a result of the difference between the ideal and the actual, between the standard and the practical, between what should or is expected to be done and what is in reality. This situation means that the group is faced with with the problem of ensuring order when the group is faced with the problem of ensuring order when the group wants to maintain its existence.

According to Van Hamel, the meaning of criminal law according to positive law is a special suffering, which has been imposed by the competent authority on behalf of the State as the person responsible for the general legal order for a violator. In this case, it is solely because the person has violated a legal regulation that must be enforced by the State.

The occurrence of criminal acts in the community environment has legal consequences that anyone who violates the provisions of material criminal law as regulated in the Criminal Code (KUHP) or provisions of criminal law outside the Criminal Code will be faced with a criminal justice process based on the provisions of formal criminal law as regulated in the Criminal Procedure Code (KUHAP) starting from the investigation stage by investigators, prosecution by public prosecutors and trials by judges which will culminate in the imposition of criminal sanctions or punishment in accordance with the provisions of the criminal law that has been violated as an actualization of law enforcement

efforts.

Criminal acts are the basic part of a mistake made against someone in committing a crime. So for there to be a mistake, the relationship between the circumstances and the act that causes blame must be intentional or negligent. It is said that intentional (*dolus*) and negligence (*culpa*) are forms of mistakes, while the term for the definition of mistake (*schuld*) that can cause a crime is because someone has committed an act that

is against the law so that for his actions he must be responsible for all forms of criminal acts that he has committed so that he can be tried and if it is proven that a criminal act has been committed by a person then he can be sentenced to criminal punishment in accordance with the Article that regulates it.

Criminalization is the embodiment of criminal law in concrete form, so that criminalization is the peak of all overprocess accountable for the actions committed by a person. This is a reflection of the absolute theory which states that law is something that must exist as a consequence of committing a crime so that the guilty person must be punished. This situation has certainly become a widespread paradigm in society that the settlement of criminal cases through the courts is the most dominant option compared to the settlement of cases through extrajudicial channels, so that in fact it will have an impact on the accumulation of criminal cases both at the investigation, prosecution and trial levels. In addition, another impact arising from the settlement of criminal cases through trials is the occurrence of overcapacity in correctional institutions caused by the increase in the number of convicts each year.

In response to this, the Attorney General's Office of the Republic of Indonesia on July 22, 2020 issued Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (*Peja Penghentian Penutan*) based on the consideration that the resolution of criminal cases by prioritizing restorative justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are oriented towards revenge are a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and the renewal of the criminal justice system.

Restorative Justice *Justice* is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state and not retaliation.

Termination prosecution based on restorative justice is carried out to fulfill the sense of justice of the community by balancing legal certainty (*rechtmatigheid*) and benefit (*doelmatigheid*) in the implementation of the authority to prosecute based on law and conscience. To respond to the dynamics of legal developments and the legal needs of the community in question, the Attorney General has

stipulated Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice which has been effectively implemented and responded to positively by the community.

In its implementation, the regulations in question are also supported by leadership policies which are complementary in nature and are carried out. Evaluation For its improvement. This is solely done for optimization so that the termination of prosecution based on restorative justice is in line with the legal objectives for justice, certainty, and benefits considered by the Public Prosecutor proportionally and with full responsibility.

The Prosecutor's Office in carrying out its functions related to judicial power as regulated in Article 1 number 1 of the Prosecutor's Office Law is positioned as a government institution that exercises state power in the field of prosecution and other authorities based on the Law. What is meant by

with prosecution as regulated in Article 1 number 3 of the Prosecutor's Office Law in conjunction with Article 1 number 7 of the Criminal Procedure Code is an action by the public prosecutor to refer a case to the competent district court in the case and according to the method regulated in criminal procedure law with a request that it be examined and decided by a judge in a court hearing.

With this, the Prosecutor as public prosecutor also has the authority to stop the prosecution of criminal cases as regulated in Article 140 Paragraph (2) letter a of the Criminal Procedure Code which stipulates that in the event the Public Prosecutor decides to stop the prosecution because there is insufficient evidence or the incident turns out not to be a criminal act or the case is closed by law, the Public Prosecutor shall state this in a decision letter.

Termination prosecutionbased on restorative justice, this can be done by fulfilling 3 (three) cumulative principle requirements as regulated in Article 5 paragraph (1), namely:

- a. The suspect committed a crime for the first time;
- b. Criminal acts are only punishable by a fine or imprisonment of no more than 5 (five) years; and
- c. The value of the evidence or loss is not more than IDR 2,500,000.00 (two million five hundred thousand rupiah).

Restoration includes restoring the relationship between the victim and the perpetrator. This restoration of the relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey the losses suffered and the perpetrator is given the opportunity to atone for them, through compensation mechanisms, peace, social work, or other agreements. Efforts to resolve problems outside the courts carried out by the perpetrator of the crime (his family) and the victim of the crime (his family)later it is expected to be the basis for consideration in the process of examining perpetrators of criminal acts in court in imposing criminal sanctions by judges/panel of judges.

Justice is a consideration in the criminal law implementation system and is included in the new Criminal Code Regulations (KUHP), especially for criminal complaints (Klacht delict) so that it focuses on the conditions for creating justice and balance in legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without having to always use criminal sanctions (prison sentences) in the final resolution. Because the deterrent effect as the ultimate goal of criminal punishment (prison sentences) for perpetrators of criminal acts is now no longer achieving its target as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment alone but also through the application of Restorative Justice.

In the implementation of the prosecution of the case study that the author took, namely the case of embezzlement in office which is suspected of Article 374 of the Criminal Code concerning Embezzlement in office which can be punished with a maximum of 5 years or a maximum fine of IDR 500 million based on Article 488 of Law 1/2023

The issuance of the Regulation on Termination of Prosecution can basically be considered as a legal breakthrough, because the essence of the termination of prosecution requires peace between the victim and the perpetrator of the crime. This is certainly in contrast to the provisions on the elimination of the authority to prosecute as regulated in Articles 76 of the Criminal Code to 85 of the Criminal Code. In connection with this, a comprehensive study must be carried out regarding the implementation of Restorative Justice by the prosecutor's office in handling criminal cases in order to find out and

analyzing all the problems that arise in it, for the matter in question, the author feels the need to conduct research which is written in the form of a thesis with the title "LEGAL ENFORCEMENT IN THE SETTLEMENT OF CRIMINAL CASES THROUGH THE RESTORATIVE JUSTICE APPROACH AT THE SEMARANG CITY DISTRICT PROSECUTOR'S OFFICE BRANCH AT SEMARANG PORT"

2. Research Method

Type of Research

The research approach used in this study uses an empirical legal approach method by examining the law based on facts. which is obtained objectively in the field, in the form of data, information and opinions based on legal identification and legal effectiveness, which is obtained through interviews with competent academics related to the problems raised by the author in this research.²⁵

Research Type

This research is descriptive in nature because it describes or illustrates a function that exists within the object or an idea that is the idea of research into the implementation of Restorative Justice by the prosecutor's office in criminal cases.²⁶

Descriptive legal research is an expository research that aims to obtain a complete picture (description) of a particular situation and at a particular time or regarding existing legal phenomena, or certain legal research that occurs in society.

Approach Method

The problem-solving approach method is a process of solving or resolving problems through predetermined stages, so as to achieve the research objectives. The problem-solving approach used in empirical legal research is to use secondary data as the initial data, which is then continued with primary data in the field or on the community regarding the effectiveness of a regulation. This research is a research to find the relationship (correlation) between various symptoms or variables as a data collection tool consisting of document studies or library materials and interviews (questionnaires).²⁷ Types and Sources of Data

The type of data in this study is Qualitative data, while the data sources used in this study include primary data and secondary data, namely:

a. Primary Data

Primary data is data obtained directly from the results of studies and research in the field which are of course related to the main topic of the research. The author will

review and research sources data obtained from the results of respondent interviews, in this case carried out to find out how the implementation of the settlement is carried out case by using Restorative Justice at the Semarang City District Attorney's Office Branch at Semarang Port.

b. Secondary Data

Secondary data is data obtained from the results of library research by conducting library studies, namely conducting document studies, archives and literature by studying theoretical matters, concepts, views, doctrines and legal principles related to the subject of writing, as well as binding legal knowledge consisting of legal materials including: Primary legal materials.

Primary legal materials are binding legal materials in the form of laws and regulations. In this study, the following legal materials were used:

- The 1945 Constitution of the Republic of Indonesia.
- Law Number 8 of 1981 concerning the Criminal Procedure Code.
- Law Number 16 of 2003/2004 concerning the Attorney General's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia.
- Prosecutor's Regulation No. 15 of 2020 concerning the termination of prosecution based on restorative justice.
- Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Secondary legal materials are materials that are related to primary legal materials and can

help analyze and understand primary legal materials including literature and references.²⁸

Tertiary raw materials are legal materials that provide guidance or explanations for primary legal materials and secondary legal materials, including dictionaries and encyclopedias.²⁹

Data Collection Methods / Techniques

a. Primary Data

The primary data collection method was obtained by means of interviews with victims, perpetrators, public prosecutors and community leaders involved in the case handling process.

b. Secondary Data

The secondary data collection method is obtained by means of literature study, namely by collecting books, literature, journals and reading and analyzing them.

Data Analysis Methods

Data analysis was carried out using qualitative analysis, namely interpreting data obtained from research results in the form of sentences arranged systematically.

, so that a conclusion can be drawn by referring to the inductive way of thinking, namely a way of thinking in drawing general conclusions based on specific facts in order to answer the problems that have been raised.

2. Results and Discussion

The definition of a criminal act according to the term is the most common translation for the term "strafbaar feit" in Dutch, although officially there is no official translation of strafbaar feit. The purpose and objective of the term criminal act, criminal act, or legal event and so on is to divert the language from the foreign term strafbaar feit, but it is not clear whether in addition to diverting the language of the term strafbaar feit, it is intended to divert its meaning and understanding, also because most legal experts have not clearly and in detail explained the meaning of the term, or simply diverted its language, this is the main point of difference of opinion, besides that, in the midst of society, the term crime is also known which indicates the understanding of an act that violates norms by getting a reaction from society through a judge's decision so that sentenced to criminal charges.

Criminal acts are a basic part of a mistake made against someone in committing a crime. So for there to be a mistake, the relationship between the circumstances and his actions that cause blame must be intentional or negligent. It is said that intention (dolus) and negligence (culpa) are forms of mistakes while the term of the definition of mistake (schuld) that can cause a crime is because someone has committed an act that is against the law so that for his actions he

must be responsible for all forms of criminal acts that he has committed to be tried and if it has been proven true that a criminal act has occurred that has been committed by someone then he can be sentenced to criminal punishment in accordance with the articles that regulate it.

According to E. Mezger: The Criminal Act is the totality of the conditions for the existence of a criminal offense.

According to Van Hamel⁵ the meaning of criminal law according to positive law is a special suffering, which has been imposed by the competent authority on behalf of the State as the person responsible for the general legal order for a violator. In this case, it is solely because the person has violated a legal regulation that must be enforced by the State.

According to Simons⁶, punishment is a form of suffering which is linked by criminal law to a violation of a norm, which has been imposed by a judge on a guilty person.

Restorative Justice

Restorative Justice is the process of resolving legal violations that occur with the victim and perpetrators (suspects) sit together in a meeting to talk together. In the meeting, the mediator gives the perpetrators the opportunity to provide a clear description of the actions they have taken. In this mediator, the perpetrators explain the actions they have taken and the reasons why the actions were taken by the perpetrators. The victim has an obligation to listen carefully to the perpetrator's explanation.

Restorative Justice offers the best solution in resolving criminal cases, namely by prioritizing the core problem of a crime. An important solution to note is to repair the damage caused by the crime.

Restorative justice is often interpreted as the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, not retaliation. Justice produced by the Stage holder (perpetrator, victim, community) autonomously, to resolve criminal cases, by emphasizing efforts to restore the original state and not retaliation. RJ contains elements dialog (deliberation), restorative (healing, repair, recovery), conflict resolution (conflict oplosing), equal standing (the balanced approach), forgiveness, responsibility, moral learning, community participation and concern, win-win solution nature. RJ contains justice that is autonomous, authentic, substantive and non-procedural in nature.

History and Origins of the Restorative Justice Movement. Its existence may be as old as criminal law itself. Marc Levin "Restoretive Justice in Texas: Past, Present, and Future" states that the approach that was once considered obsolete, old-fashioned and traditional is now seen as an approach that progressive. In 1974 in Ontario there was a restorative justice movement with the presence of the

“Victim Offender Reconciliation Program” (VORP), which was then followed by the birth of experimental restorative justice programs both in North America and the United States such as VORP in Indiana and in England in 1978.

The term Restorative Justice itself was created by a psychologist Albert Eglash in 1977, in his writings on reparation. Restorative justice is very concerned with efforts to rebuild relationships after a crime has occurred, not just repairing the relationship between the perpetrator and the community. (Muladi: The "Restorative Justice" Approach in the Criminal Justice System and Its Implementation in the SPPA).

Restorative Justice As Peacefully Resolved Restorative justice is basically a peaceful process (peacefully resolved) that is not hostile/resistive (adversarial system). In its implementation, it involves those who act as perpetrators of criminal acts and parties who are collectively identified as having suffered losses (victims), and at the same time have needs and obligations, with the intention of restoring them as much as possible and treating them as well as possible.

Restorative as an Effort to Establish Dialogue Facilities Restorative justice does not merely apply decisions about who wins and who loses in a criminal justice system that is hostile/resistance (adversarial system), the restorative justice process seeks a dialogue facility between all parties affected by the crime including victims, perpetrators, their supporters, and society as a whole. This involves a process where all parties at risk in a particular crime work together to collectively resolve how to deal with the aftermath of the crime and its implications in future (Marshall, 2002).

Restorative justice in the national seminar presentation that Braithwaite (2002) stated that restorative justice is more related to healing or recovery efforts than suffering, moral learning, community participation and community concern, mutually respectful dialogue, forgiveness, responsibility, apology, and compensation. Thus dismissing the view that Restorative Justice pampers perpetrators of criminal acts.

Restorative justice contains the philosophy and values of responsibility, openness, trust, hope, healing, preventing injustice, gratitude, forgiveness, forgetting past events and "inclusiveness", which focuses on reparation for losses due to crime, encouraging perpetrators to be responsible for their actions, by providing opportunities for parties directly affected by the crime, namely victims, perpetrators and the community, by identifying and paying attention to their needs after the crime occurs, and seeking a solution to the problem in the form of healing, reparation, reconciliation and reintegration and preventing further losses.

The implementation of Restorative Justice in Criminal Law Enforcement is carried out through Out of Court Settlement, the results are ratified (recognized) by the APH/Determination of the Head of the District Court (Diversion in the SPPA Law) the legal basis for the RJ Law is carried out in Court Settlement by the APH: The

results of restorative justice receive "legal recognition" ending the legal process, in the form of termination of investigation or no prosecution (reason for the elimination of the authority to prosecute). Perpol 8 of 2021, No. Perja No. 15 of 2020

1. The results of the restorative justice assessment are used as considerations or policies in making decisions.
2. Refund of state financial losses (TP Corruption) (seen as one of the values of restorative justice), "discourse", for maximum losses of Rp. 50,000,000,- no prosecution is carried out.
3. In terms of the Application of the RJ Concept at the Pre-Adjudication stage, it is more appropriate to be the authority of the Prosecutor's Office, related to the function of the Prosecutor as Case Controller (Dominus Litis).

The concept and theory of punishment continues to develop, starting from traditional justice theories such as retributive justice to modern justice theories such as Restorative Justice. It is not easy to provide a definition of restorative justice, because there are many variations of models and forms that develop in its application. Therefore, many terminologies are used to describe the concept of Restorative Justice, such as communitarian justice, positive justice, relational justice, reparative justice and community justice "

Interest in the Restorative Justice approach since the United Nations five-yearly Congress "Congress on Crime Prevention and the Treatment of Offenders in 1990 and 1995, Non-Governmental Organizations from several countries sponsored a number of meeting sessions to specifically discuss Restorative Justice. Furthermore, in 2000 the UN produced, Basic Principles on the Use of Restorative Justice Programmers in Criminal Matters which contains a number of basic principles of the use of the Restorative Justice approach as a development of the criminal justice system by emphasizing the need for community involvement and victims who feel marginalized by the mechanisms that work in the criminal justice system.

Restorative Justice as an effort to find a peaceful resolution of conflict outside the court is still difficult to implement. In Indonesia there are many customary laws which can be Restorative Justice, but its existence is not recognized by the state or is not codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the conflicting parties. The emergence of the idea *Restorative Justice* as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. The reason is, the parties involved in the conflict are not involved in resolving the conflict. The victim remains a victim, the perpetrator who is imprisoned also raises new problems for the family and so on.

The prominent characteristic of Restorative Justice is where crime is placed as a symptom of social action and not just a violation of criminal law. Crime is seen more as an act that harms others and damages social relations. Different from

criminal law which has drawn crime as a state problem. Only the state has the right to punish, although in fact the indigenous community can also impose sanctions. The implementation must prioritize justice, which is emphasized by the term integrated justice, namely justice for the perpetrator, justice for the victim and justice for the community. In the implementation of Restorative Justice, there needs to be a format for follow-up steps after mediation, so that the victim remains protected and their interests are served. The practice of mediation is not only carried out for criminal acts of theft, embezzlement and destruction of goods, but is extended to other criminal acts committed by children. The implementation of Mediation requires openness between the Perpetrator, Victim and Law Enforcer, so that the parties really benefit from this mediation. Education is needed for law enforcers about mediation and its implementation.

Attorney General of the Republic of Indonesia

The prosecutor's office is an institution law enforcement in Indonesia. The position of the prosecutor's office in the state system in Indonesia has undergone many changes both institutionally and in its regulations in laws and regulations. Since ancient times, a system like the one in the Prosecutor's Office has existed since the Majapahit era. It is said that during the Majapahit era there were several positions called Dhyaksa, Adhyaksa and Dharmadhyaksa. Gajah Mada's duties in law enforcement were not only as Adhyaksa but also as the implementer of all the king's regulations and reporting difficult cases to the court. Gajah Mada's duties when compared to the present day are very similar to the duties of the Prosecutor today. Gajah Mada's duties at that time could be concluded as a state apparatus or representative of the king in terms of reporting cases to the court, so it can be concluded that the position of the Prosecutor's Office since ancient times was as a state apparatus and its accountability to the head of state who at that time was King Hayam Wuruk.⁹

The Attorney General's Office is a state body that existed before our independence, as well as its regulations. So basically the Attorney General's Office of the Republic of Indonesia is continuing what has been regulated in the Indische Staatsregeling, which in its position places the Attorney General's Office side by side with the Supreme Court. The provisions in the Indische Staatsregeling, which regulate the position of the Attorney General's Office, are basically the same as the provisions in the Constitution of the Netherlands.¹⁰

The appointment of the Prosecutor's Office as a government institution with authority in the field of prosecution has sufficiently explained that the task of enforcing the law through prosecution is the task of a government institution. The existence of the Prosecutor's Office as a law enforcer has been known in Indonesia long before colonial times. Although it has experienced.

"Despite the change of name and government, the function and duties of the prosecutor's office remain the same, namely prosecuting criminal cases and

acting as plaintiff or defendant in civil cases."

as investigators, the Prosecutor's Office as public prosecutor, the Court as the party that judges and the Correctional Institution which functions to reintegrate the convicts into society, who work together, integrated in an effort to achieve a common goal, namely to combat crime.

The Indonesian criminal justice system adopts the concept that criminal cases are disputes between individuals and society (the public) and will be resolved by the state as a representative of the public. The dispute itself is related to several substances of articles that have been regulated and are threatened with punishment in material criminal law, which are currently determined in the Criminal Code and outside the Criminal Code. In organizing the criminal justice system, Indonesia has Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). It is emphasized in Article 2 of the Criminal Procedure Code that the Criminal Procedure Code applies to implementing judicial procedures in the general court environment.

The criminal justice system outlined in the Criminal Procedure Code is an "integrated criminal justice system" System integrated This is placed on the basis of the principle of "functional differentiation" between law enforcement officers in accordance with the "stage of the authority process" given by law to each. "Law enforcement is a serious problem for the Indonesian nation and involves all the strength of the nation and is an obligation for the components of the nation, especially state apparatus who are indeed assigned and directed directly to it For example, Judges, Police and Prosecutors have law enforcement functions with different characteristics but lead to the creation of fair, orderly and beneficial laws for all humans. For example, the task of the Police as regulators and implementers of law enforcement in society, Judges as fair law makers, and the Prosecutor's Office as a state prosecution institution for lawbreakers submitted by the Police.

Position of the Prosecutor in the judiciary criminal asdetermined Article 1 number 2 of the Prosecutor's Office Law in conjunction with Article 1 number 6 letter a of the Criminal Procedure Code is a functional official who is authorized by law to act to obtain permanent legal force and other authorities based on the law. The Prosecutor is the main figure in the implementation of criminal justice, because he plays an important role in the decision-making process, even though the Police are better trained in collecting evidence at the scene of the crime and even though the Police have a better composition of human resources and equipment, they still depend on the Prosecutor and they still need advice and direction from the Prosecutor."

Justice According to Islamic Criminal Law

Islamic criminal law is referred to in fiqh as jinayah or jarimah. Jinayah in legal terms is often referred to as a crime or criminal act. Jinayah is a verbal noun form (mashdar) from the word jana. etymologically ana means sinful or wrongful acts,

while jinayah is interpreted as sinful or wrongful acts.

As for the term Jinayah which also comes from Arabic from the word -**أَوْجَحُ** -**أَوْجَحُ** which means committing a sin, that is the etymological meaning of the word jinayah. While terminologically jinayah is defined with all action Which forbidden and contain to life or to property **وَأَمَّا مَا يُلَاقِيهِمْ مِنَ الْعَذَابِ فَأُولَٰئِكَ يُطِيعُونَ وَأُولَٰئِكَ هُمُ الْمُتْلَقُونَ** And He is the Most High other than the soul, and must be sentenced to qishash or pay a fine. So jinayah fiqh are all legal provisions regarding criminal acts or criminal acts carried out by mukalaf people as a result of understanding the detailed legal arguments from the Koran and hadith. Etymologically, the word jinayah has many different meanings, as stated by Abd al Qodir Awdah that jinayah is an action that is prohibited by the Sharia, whether the action concerns the soul, property, or anything else. Basically, the meaning of the term jinayah refers to the results of a person's actions. **لَوْ أَنَّ انْ يَشْرِكُ بِاللَّهِ شَيْئًا لَآتَىٰ كَرْهًا وَبِغْضٍ وَبَأْسٍ كَافٍ وَبِغْضٍ وَإِنْ سَأَلْتَهُ لَيَكْفُرْ ۚ أَنْ يُوَافِقَهُ إِنْ شَاءَ اللَّهُ ۚ إِنَّهُ يُكْفِرُ بِمَا كَانُوا يَكْفُرُونَ**

nah "Indeed, Allah commands (you) to act fairly and do good in giving to your relatives, and Allah forbids evil deeds, evil and enmity. He teaches you so that you can take lessons" (QS. An Nahl: 90)

b) The principle of legal certainty.

This means that no act is free from the clutches of the law if it has been determined by the Qur'an, the Hadith and the decision of the qadhi (judge).

Usually this definition applies to the actions of fuqoha, the word jinayah means acts that are prohibited by the syara', however, in general the fuqoha use the term only for acts that are prohibited according to the syara'. In general, the fuqoha use the term with certain acts such as acts that threaten souls, beatings, murders, and others.

Fuqoha limits the term jinayah to acts that are threatened with hudud and qishash punishments, excluding acts that are threatened with ta'zir. Another term that is equivalent to the term Jinayah is jarimah, namely the prohibitions of sharia that are threatened by Allah with had or ta'zir punishments. In other words, Jinayah or jarimah is a criminal act in Islamic teachings, namely forms of evil acts related to the human soul or body parts (murder and injury).¹⁶ The principles of Islamic criminal law are divided into 3 (three), namely:

a) Principle of Justice

This means that a Muslim must uphold justice as fairly as possible without discrimination and in proportion. **يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقْوَاهُ وَلَا تَلْوُا لَهُ عِصْمَتَهُ ۚ إِنَّ اللَّهَ قَدِيرٌ عَٰلِمٌ بِذُنُوبِكُمْ** And He is the Most High

And He is the Most High **يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقْوَاهُ وَلَا تَلْوُا لَهُ عِصْمَتَهُ ۚ إِنَّ اللَّهَ قَدِيرٌ عَٰلِمٌ بِذُنُوبِكُمْ** Yes, yes, **صَبْرًا**

And the Lord is **وَاللَّهُ يَشَاءُ لِيُخْرِجَكُمْ مِنْهَا بِإِذْنِهِ ۚ وَاللَّهُ سَمِيعٌ عَلِيمٌ** And He is the One **وَاللَّهُ يَشَاءُ لِيُخْرِجَكُمْ مِنْهَا بِإِذْنِهِ ۚ وَاللَّهُ سَمِيعٌ عَلِيمٌ** And I will be with you **وَاللَّهُ يَشَاءُ لِيُخْرِجَكُمْ مِنْهَا بِإِذْنِهِ ۚ وَاللَّهُ سَمِيعٌ عَلِيمٌ** "Whoever acts according to guidance (Allah), so the Lord indeed he did it for his own (safety); and Whoever goes astray then indeed he goes astray to his own (harm). And a sinner cannot bear the sins of others, and

We will not punish him until We send a messenger" (QS. Al Israa: 15) 18c) Principle of Benefit. This means that the benefits of sentencing for the perpetrator, victim, family and society in general include providing a deterrent effect and eliminating revenge.

مصاص ف ان وو كى كى و ثيه

ان ي ناوكتة كه ز ر آ رها ان ا ا ع ث م

O Allah مت ت ر ل وان ك ت خف ر د س ت ر ح سا ر ر و ر ه ت ن ر داء ا ف ر ك يasmine ف و ا ان ر خ ه ش ر ا ت ا ن ا ع ت ر ر ن ه ر ي ر ا ر و ك ف ف كى ن ر وى ر ن ك

ه ه ك ز ا ب ا ر ا ا ك ت ذ ي ت ر ك ذ ر

you who believe, qishaash is And the Lord is the Lord And He is the One prescribed for you regarding those who are killed; freeman with freeman, slave with slave, and woman with woman. So whoever receives forgiveness from his brother, let (the one who forgives) follow it in a good way, and let (the one who is forgiven) pay (diat) to the one who forgives in a good way (too). This is a relief from your Lord and a mercy. Whoever exceeds the limit after that, he will have a very painful punishment (QS. Al Baqoroh: 178)

Completion Case

Case resolution is a process of action or a way of handling, managing and handling a case carried out by the authorities so that the case being faced can be controlled and resolved.

Matter can be interpreted as a problem or problems that require resolution.

Criminal act

According to Wirjono Prodjodikoro in the book Principles of Criminal Law in Indonesia, he provides an understanding that criminal acts are violations of norms in three other areas of law, namely Civil Law, Constitutional Law, and Government Administrative Law, which are responded to by lawmakers with criminal law, so the characteristics that exist in a criminal act are the nature of violating the law, because there is no criminal act without the nature of violating the law.

According to E. Mezger: The Criminal Act is the totality of the conditions for the existence of a criminal offense (Criminal Act is the totality of the conditions for the existence of a criminal offense)

According to Van Hamel, the meaning of criminal law according to positive law is a special suffering, which has been imposed by the competent authority on behalf of the State as the person responsible for the general legal order for a violator. In this case, it is solely because the person has violated a legal regulation that must be enforced by the State.

General criminal acts contain criminal law regulations that apply to everyone, for example the Criminal Code, Traffic Law (UULL) and others.

Criminal acts are the basic part of a mistake made against someone in committing a crime. So for there to be a mistake, the relationship between the circumstances and the actions that cause blame must be intentional or negligent. It is said that intention (*dolus*) and negligence (*culpa*) are forms of mistakes while the term of the definition of mistake (*schuld*) which can cause an act to occur

Criminal is because a person has committed an act that is against the law so that for his actions he must be responsible for all forms of criminal acts that he has committed so that he can be tried and if it is proven that a criminal act has been committed by a person then he can be sentenced to criminal punishment in accordance with the Article that regulates it.

Restorative Justice

Restorative Justice is a response to perpetrators of crimes to restore losses and facilitate peace between the parties.

Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not revenge.

Prosecutor's Office

The Prosecutor's Office is a government institution that exercises state power in the field of prosecution carried out for justice, benefit and legal certainty while still respecting the values and principles of law in laws and regulations. As a government institution that carries out the task of prosecution, the prosecution carried out by the Prosecutor's Office needs to be directed in order to follow the re-orientation of criminal law reform, considering the level of blameworthiness, the perpetrator's mental attitude, the protected legal interests, the losses or consequences caused, and paying attention to the sense of justice of the community including local wisdom.

3.1. Law enforcement process in resolving criminal cases through the Restorative Justice approach at the Semarang City District Attorney's Office Branch at Semarang Port

The concept of the Restorative Justice approach is an approach that places more emphasis on conditions for creating justice and balance.

or perpetrators of criminal acts and their victims. The mechanism of criminal procedure and justice that focuses on punishment is changed to a process of dialogue and mediation to create an agreement on a fairer and more balanced settlement of criminal cases for victims and perpetrators.

One of the legal consequences of Indonesia being established as a country of law is the obligation of every law enforcement officer to carry out the process of resolving criminal cases that occur in society by referring to the provisions of positive law. Within the scope of the criminal justice system, the Criminal Procedure Code is a positive legal regulation that regulates the mechanisms and

authorities of each law enforcement officer in carrying out their functions related to the implementation of criminal justice starting from the stages of investigation, inquiry, prosecution, trial and implementation of the verdict, this is as regulated in article 2 of the Criminal Procedure Code which determines that the Criminal Procedure Code applies to implementing judicial procedures in the general court environment.

Indonesia adopts an integrated criminal justice system based on the principle of functional differentiation, so that every law enforcement officer carries out law enforcement in accordance with the mechanism of the authority process given to each law enforcement officer based on what is regulated in the law. The law enforcement officers included in this system consist of the police, prosecutors, courts and correctional institutions, which are implemented through a series of tiered processes starting from investigation, inquiry, prosecution, trial examination and correctional.

Restorative justice itself has the meaning of restorative justice, what is actually being restored? In the conventional criminal justice process, there is restitution or compensation for victims, while restoration has a broader meaning. Restoration includes restoring the relationship between the victim and the perpetrator. This restoration of the relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey the losses they have suffered and the perpetrator is given the opportunity to atone for them, through compensation mechanisms, peace, social work, or other agreements. Why is this important? Because the conventional criminal process does not provide space for the parties involved, in this case the victim and the perpetrator to actively participate in resolving their problems. Every indication of a crime, without taking into account the escalation of the act, will continue to be rolled out into the realm of law enforcement which is only the jurisdiction of law enforcers. Active participation from the community seems to be no longer important, everything only leads to a criminal decision or punishment without looking at the essence.

In the conventional criminal procedure process, for example, if there has been peace between the perpetrator and the victim, and the victim has forgiven the perpetrator, then this will not be able to influence the authority of law enforcement to continue the case to the criminal realm which will eventually lead to the criminal punishment of the perpetrator. The formal criminal process which takes a long time and does not provide certainty for the perpetrator or the victim certainly does not immediately fulfill or restore the relationship between the victim and the perpetrator, the concept of Restorative Justice offers a recovery process that involves the perpetrator and the victim directly in resolving the problem. The conventional criminal process only makes the victim a witness in the trial level which does not greatly influence the criminal decision, the task of prosecution is still given to the Prosecutor who only receives the investigation files to be further processed into the basis for the charges.

iminalization, without knowing and understanding the real conditions of the problem, and the perpetrator is in the dock ready to accept the punishment that will be imposed on him.

Procedures for Peace in the Prosecutor's Office

1. Peace Efforts

- a. Public Prosecutor Offers Peace Efforts to Victims and Suspects.
- b. Peace efforts are carried out without pressure, coercion and intimidation.
- c. Peace efforts are made at the prosecution stage, namely when responsibility for the suspect and evidence is handed over (stage two).

2. Processpeace

- a. Done in a way voluntary, Deliberation by consensus, without pressure, coercion and intimidation.
- b. In the Peace process, the Public Prosecutor acts as a facilitator.
- c. The Public Prosecutor has no interest in the case, victim, or suspect, either personally or professionally, directly or indirectly.
- d. The peace process is carried out at the prosecutor's office unless there are conditions that make it impossible for security or health reasons and can be carried out at a government office or other place agreed upon with a letter of order from the branch of the district attorney's office or the Head of the District Attorney's Office.
- e. The peace process and fulfillment of obligations is carried out 14 days after the handover of responsibility for the suspect and evidence.

Stages of the case termination process based on restorative justice

1. Based on the Public Prosecutor's report that the peace deliberations have reached an agreement. The Head of the District Attorney's Office or Kajari submitted a request for a case title to Jampidum through the Head of the High Prosecutor's Office with in 1 (one) day from the agreement peace by using the fastest means.
2. The application is submitted by attaching the minutes of the peace deliberation, peace agreement and note of the Public Prosecutor's opinion
3. The case title will be carried out no later than 2 (two) days after the application is received by Jampidum via electronic media.
4. The application is submitted by attaching the minutes of the peace deliberation, peace agreement and note of the Public Prosecutor's opinion
5. The case title was carried out by the Public Prosecutor along with the Head of the District Attorney's Office/Head of the District Attorney's Office and the Head of the High Prosecutor's Office in front of the Public Prosecutor's Office.
6. The case title is carried out by presenting a brief chronology of the case, peace efforts, the peace process and the peace agreement facilitated by the Public

Prosecutor.

7. After Jampidum agrees, the Public Prosecutor summons the parties to implement the peace agreement.
8. Based on the report, the Public Prosecutor issued a Letter of Decision to Terminate Prosecution.

Based on this, it can be understood that a crime is an act committed by a person in violation of the provisions of criminal law as regulated in the Criminal Code or outside the Criminal Code. The concept of resolving criminal cases used in the criminal justice system in Indonesia is carried out by the state through law enforcement officers from the Police institution which is carried out by Investigations and Investigators, the Prosecutor's Office institution which is carried out by the Public Prosecutor and the Court institution which is carried out by the Judge.

In the minutes of the implementation of the peace on Monday, October 9, 2023 based on the Head of the Order

he Semarang City District Attorney's Office Branch has implemented a peace settlement in a case with the suspect named SUSILO SURYO SEKTYO

WIBOWO alias YOYOK Bin (late) EDY PURNOMO with the victim, namely AKHMAD NUKHAN Bin ARIMAN. In the peace process attended by the victim's companion, the suspect's companion, Religious Figures / community leaders. In the peace agreement has been implemented with evidence / documents / witness statements:

- A. Delivery AKHMADNUKHAN Bin ARIMAN (Reporter/Victim), among others:
 - 1) Appreciate the honest attitude of the suspect who has admitted his actions
 - 2) Have forgiven all the actions committed by the suspect and resolved this case amicably.
 - 3) Understanding the intent and purpose and stages of implementing this peace
 - 4) Accepting the return of embezzled money as one of the conditions of peace
- B. The statement of SUSILO SURYO SEKTYO WIBOWO alias YOYOK Bin (the late) EDY PURNOMO (Suspect), among others:
 - 1) Admit guilt to all criminal acts committed
 - 2) Regret all actions and apologize to the victim
 - 3) Begging Forresolve problems amicably
 - 4) Agreeing to return the money that has been embezzled at a value nominal Which hasagreed.Willing to follow all provisions that have been jointly determined in this peace process.
- C. Community Leader of Dadapsari Village in North Semarang District, Mrs. PUJI

WINARNI, SH, said:

- 1) Support process peace between Suspects and Victims
- 2) So that this problem can be resolved in a way family because the victim and suspect have a very close working relationship so it is hoped that the ties of friendship between the two can be maintained
- 3) Both the Suspect and the Victim must comply with all provisions that have been jointly determined in this peace process.

Long before Aquinas, Aristotle had formulated what is called justice. He distinguished between two types of justice, namely corrective justice and distributive justice. The first type of justice has the same meaning as commutative justice or is also called justice with rectifier justice. Unlike distributive justice which requires distribution of rewards, corrective justice is different. This justice is based on transaction (sunallagamata) whether voluntary or not. This justice occurs in the field of civil law in exchange agreements.

Friedman (1990: 10-11) stated that Aristotle's formulation of justice is one of his greatest contributions to the philosophy of law. In addition, he also distinguishes between justice according to law and justice according to

nature, and the distinction between abstract justice and propriety. Abstract justice is more or less the same as justice according to law, because its basis is from what has been determined by law. The law must be equal and requires a lot of violence in its application to individuals. Propriety reduces and tests this violence, by considering individual matters.

Restorative justice is considered a new way of thinking/paradigm in viewing a crime committed by someone, so law enforcement officers, especially the police, should be the initiators and facilitators in handling children in conflict with the law by appealing to all parties involving the perpetrators, victims, their parents, the local community, or the school to sit together in a meeting to talk together in the settlement process using the Restorative Justice approach.

Release the accused therefore and all legal charges. That such a decision can be interpreted as a decision that mixes between a decision of acquittal and a decision of release from all legal charges because on the one hand it states that the accused has not been proven legally and convincingly guilty of committing a crime as referred to in the Public Prosecutor's Indictment, while on the other hand it also states that the accused's actions do not constitute a crime.

Termination of investigation or termination of prosecution can be carried out if based on the evidence and physical evidence it is shown that the incident is not a criminal act, whereas at the trial level, if it is revealed that the act charged against the defendant is proven, but the act is not a criminal act, then the court will decide to acquit him of all legal charges.

The verdict of acquittal from all legal charges essentially shows the "failure to achieve" the goal of handling criminal cases, namely the Defendant has been processed legally, but his actions are declared not to be a crime. This creates a bad image of law enforcement and disturbs the sense of justice that grows and develops in society.

Termination prosecution based on restorative justice is carried out to fulfill the sense of justice of the community by balancing legal certainty (*rechtmatigheid*) and benefit (*doelmatigheid*) in the implementation of the authority to prosecute based on law and conscience. To respond to the dynamics of legal developments and the legal needs of the community in question, the Attorney General has stipulated Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice which has been effectively implemented and responded to positively by the community.

In its implementation, The regulation in question is also supported by a leadership policy that is complementary in nature and is evaluated for its improvement. This is solely done for optimization so that the termination of prosecution is based on justice.

restorative in line with the legal objectives for justice, certainty and benefit which are considered by the Public Prosecutor proportionally and with full responsibility.

Viewed from the aspect of Islamic law, the position of the Termination of Prosecution Regulation can be categorized in the form of sharia law which contains issues of state, namely *fiqh siyasah*. Terminologically, *siyasah* is a legal regulation created to maintain order and welfare and regulate conditions, in this case the position of *fiqh siyasah* includes discussing who the source of power is, who the implementer of power is, what is the basis of power and how the power exercises the power given to him and to whom the implementer of power is accountable for his power.

Styasah fiqh is the science of Islamic state administration which specifically discusses the ins and outs of regulating the interests of humanity in general and the state in particular in the form of establishing laws, regulations and policies by power holders that are based on or in line with Islamic teachings in order to realize the benefit of humans and prevent them from various disadvantages that arise in the life of society, nation and state that it carries out."

Restorative justice is an extension of the theory of justice with a different approach. In the concept of crime, it is seen as a social disease that must be cured, not as an act that violates the law. Restorative justice is a theory that places the position of the victim or his family as having the right to treat the perpetrator of the crime the same as treating the victim. Restorative justice also places a higher value on direct involvement by the parties. The victim is able to restore an element of control, while the perpetrator is encouraged to take direct responsibility as a step to correct the mistakes caused by the crime and in order

Based on these provisions, it can be seen that the Prosecutor as the public prosecutor has absolute authority to implement the termination of prosecution on the basis of restorative justice. This is if correlated with the theory of authority as stated by Prajudi Atmosudirdjo who divides three sources of authority, namely attribution, delegation and mandate, 34 then it can be analyzed that the authority of the Public Prosecutor in terminating prosecution on the basis of restorative justice is a form of attribution authority, namely authority that comes from positive law or regulations.

legislation, in this case Perja Termination Prosecution as stipulated by the Attorney General of the Republic of Indonesia on July 21, 2020 and promulgated by the Director General of RegulationsmLegislation Ministry of Law and Human Rights of the Republic of Indonesia on July 22, 2020 and stated in the 2020 State Gazette Number 811.

The attachment of attribution authority to the Public Prosecutor which originates from the Regulation on Termination of Prosecution has formally placed the Public Prosecutor as the main actor in the success of the process of terminating prosecution, considering that in this case his position is to act as a facilitator so that the victim, perpetrator and the victim/perpetrator's family can carry out peace efforts. Related to the use of this authority, it should be carried out with full responsibility and aimed at creating legal justice, legal certainty and legal benefits for victims, perpetrators, and the community, this is in line with the following verse of the Qur'an:

1. The principle of legal justice.

Qur'an Surah An-Nissa verse 135:

وَأَنَا رَبُّكُمْ فَاتَّقُوا اللَّهَ ۚ وَالَّذِينَ هُمْ عَنْ ذُنُوبِهِمْ أَنُفُسُكُمْ أَوْلَىٰ لَهُمْ ۚ وَإِذَا حُكِمَ عَلَىٰكُمْ فَبِعَلَلِكُمْ فَأُولَٰئِكَ أَوْلَىٰ بِكُمْ إِن كُمْ عَالِمُونَ ۚ
 And I am the Lord of you, and those to whom your souls are more dear than yourselves, if you are aware.

فَاعْلَمُوا أَنِّي أَنَا رَبُّكُمْ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۚ
 Yes, I am your Lord, so fear Allah. Indeed, Allah is severe in punishment.

And Allah is the Most Merciful. *وَأَنَا رَبُّكُمْ فَاتَّقُوا اللَّهَ ۚ وَالَّذِينَ هُمْ عَنْ ذُنُوبِهِمْ أَنُفُسُكُمْ أَوْلَىٰ لَهُمْ ۚ وَإِذَا حُكِمَ عَلَىٰكُمْ فَبِعَلَلِكُمْ فَأُولَٰئِكَ أَوْلَىٰ بِكُمْ إِن كُمْ عَالِمُونَ ۚ فَاعْلَمُوا أَنِّي أَنَا رَبُّكُمْ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۚ*

It means :

O believers, be true upholders of justice, witnesses for Allah, even against yourselves or your parents and relatives. If he

rich or poor, Allah knows best what is in their best interests. So do not follow your desires, wanting to deviate from the truth, and if you distort (your words) or refuse to be witnesses, then surely Allah is All-Knower of what you do.

2. The Principle of Benefit of the Law of the Qur'an, Surah An-Nisa Verse 58:

وَأَنَا رَبُّكُمْ فَاتَّقُوا اللَّهَ ۚ وَالَّذِينَ هُمْ عَنْ ذُنُوبِهِمْ أَنُفُسُكُمْ أَوْلَىٰ لَهُمْ ۚ وَإِذَا حُكِمَ عَلَىٰكُمْ فَبِعَلَلِكُمْ فَأُولَٰئِكَ أَوْلَىٰ بِكُمْ إِن كُمْ عَالِمُونَ ۚ
 And I am the Lord of you, and those to whom your souls are more dear than yourselves, if you are aware.

And Allah إن رباً لعلَّ عدل ت ح لك . اس بي ن ح ك همم بصي برا .
س مي عا كان آليل إن رب ته عي عظمكم رع ما

It means :

Indeed Allah ordered you to convey the mandate to those who are entitled to receive it and (commanded you) when establishing laws between people, so that you determine them fairly. Indeed, Allah will give you the best teaching. Indeed, Allah is all-hearing and seeing.

Law enforcement institutions have two inherent elements, namely institutions or organs and perpetrators of law enforcement institutions or apparatus. The influence of law enforcement institutions is limited to the system that exists in the institution considering that the institution is interpreted as being in a stationary condition with a fixed pattern or structure, then only operating or moving with the inclusion of perpetrators or apparatus into the legal institution.³⁵ According to Satjipto Raharjo as quoted by Kadri Husin, to understand law enforcement institutions as an organization, it can be detailed into the following elements: (1) people, (2) techniques, (3)

information, (4) structure, and (5) objectives. The objective of every organization is to achieve the desired targets with productivity qualifications and satisfaction or a combination of both depending on the activities carried out by the organization concerned, in this case law enforcement officers carry out law enforcement when dealing with crime.³⁶

System justice criminal must be an integrated unit of efforts to combat crimes that actually occur in public. If We only use a portion of the statistical measures crime, so the success of the criminal justice system will rated based on amount crimes that reach law enforcement agencies. Many can be resolved police, Then submitted by prosecutor's office to court and in the trial in court was found guilty and sentenced. Actually what is known and resolved through the system justice criminal only is just the tip of the iceberg. There is much more that is unseen, unreported (and perhaps unknown, for example in matter "a crime where the victim cannot determined" or "crimes without victims") and because That cannot be resolved. This situation cannot be blamed entirely on the criminal justice system. Because task This system is especially to finish cases that reached him. Based on this description, then it can be analyzed that the position of the Prosecutor as an apparatus within an organ or law enforcement agency, namely the Indonesian Attorney General's Office, which has legitimacy as a government agency that carries out state power in the field of prosecution constitutionally has duties, functions and authorities consisting of 2 (two) things, namely first, the Prosecutor is a functional official who is authorized by the Prosecutor's Office Law and the Criminal Procedure Code to act as a public prosecutor and implementer of court decisions that have obtained permanent legal force. Second, the Prosecutor in acting as a public prosecutor is authorized by the

Prosecutor's Office Law and the Criminal Procedure Code to carry out prosecution and implement the Judge's determination.

The legitimacy granted by the Prosecutor's Office Law and the Criminal Procedure Code to the Prosecutor both in his capacity as a functional official and as a Public Prosecutor has legally placed the Prosecutor as a law enforcement officer who carries out the function of enforcing the law on the occurrence of a crime in society. Thus, everything related to the duties and functions carried out by the Prosecutor within the scope of law enforcement can certainly be interpreted as a formal legal action based on attribution authority, namely authority derived from statutory regulations.

In line with this, the position of the Regulation on Termination of Prosecution as a statutory regulation issued by the Attorney General of the Republic of Indonesia and binding on the Prosecutor as Public Prosecutor in carrying out the function of prosecution, where this function also includes the authority to terminate prosecution, then in the case of handling criminal cases, facts and circumstances are obtained which fulfilling the requirements as stipulated in the Regulation on Termination of Prosecution, if the case can be terminated based on restorative justice, then the action taken by the Public Prosecutor must be assessed as a legitimate and based action as part of the implementation of the authority of attribution.

The purpose of punishment stipulated in Islamic law is the realization of the purpose of Islamic law itself, namely as retribution for evil deeds, prevention of bad things that may occur both generally and specifically and protection of the rights of victims. 38 In relation to this, then by referring to the letter of Al-Baqarah verse 178 above, it emphasizes the obligation to implement qisas in the case of murder as well as the equivalent obligation in retribution. Qisas has the status of the original law, namely it has been enforced since the beginning, while diyat is the second law and forgiving is the most commendable thing from the punishment. At the same time, the Qur'an recommends making peace in resolving murder cases. This has a noble purpose stated in the letter of Al-Baqarah verse 179 which emphasizes the basic purpose of implementing the law of qisas, namely to maintain human survival.

The legal provisions of qisas can be considered as a form of giving guarantee on the survival of human life safely while providing prevention so that other people do not commit a crime because there are appropriate sanctions that can be applied. Observing. as law is conceptualized as a law that provides an alternative with a process of forgiveness, peace and reconciliation efforts between the perpetrator and the victim, so it can be understood that this is in line with the main idea of stopping prosecution based on restorative justice.

The position of the Public Prosecutor in the process of terminating prosecution based on restorative justice, especially in terms of acting as a facilitator who attempts to reconcile the Victim and the Suspect by involving the victim's family,

the suspect's family, community leaders and other related parties, means that the peace process in the context of terminating prosecution based on restorative justice cannot be realized.

Based on the explanation of Islamic law above, it is also explained in positive law that regulates Restorative Justice. That in the Restorative Justice regulation it is known that there are limitations in the implementation of the termination of prosecution on the basis of restorative justice so that not all criminal cases that have been transferred by investigators to public prosecutors can be terminated on the basis of restorative justice, considering that in this case there are formal provisions that require the fulfillment of certain things so that the termination of prosecution of criminal cases by the public prosecutor can be realized. The principles regulated

Considering the provisions of Article

1 number 1 of the Regulation on Termination of Prosecution which provides a definition of restorative justice as the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family and other related parties to work together. equally seeking a fair resolution by emphasizing restoration to the original state and not retaliation, then it can be understood that the most essential thing in this effort is the creation of a criminal case resolution by the Public Prosecutor by means of restoration to the original state and not retaliation. Furthermore, if correlated with the provisions of Article 5 paragraph (6) of the Prosecution Termination Regulation, it has provided a concrete picture of what is meant by restoration to the original state carried out by the Suspect, including returning goods obtained from the crime to the victim, compensating the victim's losses, replacing costs arising from the consequences of the crime and/or repairing damage caused by the consequences of the crime.

Based on provision Therefore, textually it can be understood that a criminal act committed by a suspect can be rated has countable if the suspect has made a restoration to the original condition that has been done, so the suspect does not need to receive criminal sanctions in accordance with the provisions of Article 10 of the Criminal Procedure Code in the form of principal penalties consisting of the death penalty, imprisonment, imprisonment, fines, closure penalties and additional penalties consisting of revocation of certain rights, confiscation of certain goods, announcement of the judge's decision. The non-implementation of criminal witnesses against the suspect legally must be followed up with the termination of the prosecution on the basis of restorative justice by the Public Prosecutor, so that these efforts can be realized optimally, then The Termination of Prosecution Regulation requires the creation of a peace agreement between the Victim and the Suspect. Given the importance of peace in the process of terminating prosecution based on restorative justice, in this regard the Termination of Prosecution Regulation regulates it specifically in a separate chapter, namely Chapter IV on Peace Efforts which are described in Articles 7 to

14.

3.2. Barriers and solutions to law enforcement in settlement cas ccriminal law through the Restorative Justice approach at the Semarang City District Attorney's Office Branch at Semarang Port.

Existence law Already should be assessed not only to create order, but also to be able to provide a sense of justice for society on generally. Justice Of course, law cannot be created by itself, but must be applied by law enforcement officers in an actual manner so that it is in accordance with what has been determined or formulated in rule law intended. The role of law enforcement officers in the criminal law enforcement process which has been This in progress in a way continuous at least based on the aim of preventing the occurrence of act criminal with enforcing applicable legal norms, providing guidance to convicts in institution correctional Forfreeing the person from guilt for the actions he/she has committed, resolving conflicts arising from criminal acts and restoring balance and a sense of peace

in society.

Restorative Justice can be developed and revived with the values of equality, unity, deliberation and consensus in deciding a punishment for children in conflict with the law. The basis of this Law is the explicit regulation regarding Restorative Justice and Diversion which is intended to avoid or keep someone away from the judicial process. Efforts to combat crime by using penal (criminal law) means are actually not the main means because they contain various weaknesses and limitations, in this case Barda Nawawi Arif identified as follows:

- a. Viewed dogmatically/ideally, criminal sanctions are the sharpest/harsheshtype of sanctions, therefore they are also often referred to as *Ultimum Remidum*;
- b. Viewed from a functional/pragmatic perspective, its operationalization and application require more varied supporting facilities, including: various organic laws, implementing institutions/apparatus and requires higher costs;
- c. Criminal law sanctions are a remedy that contains contradictory/paradoxical characteristics Andcontains negative elements and side effects;
- d. Use law criminal inreduce crime onlyis courier am symptoms (treat/cure symptoms), So law criminal only is a "symptomatic treatment" not a "causative treatment" because the cause crime Which thus the complex is beyond the reach of criminal law
- e. The effectiveness of criminal law still depends on many factors and is therefore still often questioned.

Next, an interview with the Functional Prosecutor who handles Restorative cases at the Semarang City District Attorney's Office Branch at Semarang Port, Dewi Rahmaningsih Nugroho, SH., MH, stated that the obstacles faced were the

Suspects on Behalf of Susilo Suryo Sektyo Wibowo alias Yoyok Bin (late) Edy Purnomo and the Victim Akhmad Nukhan Bin Ariman were hampered by time and were reluctant to meet if they wanted to mediate. Due to differences

The amount of money embezzled between the victim and the suspect. Where the victim reported that the money embezzled by the suspect was greater than the suspect's confession.

However, mediation is still being attempted by the Functional Prosecutor who is handling this case in terms of mediation by collecting existing evidence and statements from the victim and other witnesses so that a mutual agreement is reached.

In an interview with the Head of General Crimes Section Kuku Nugroho, SH, that the settlement of criminal cases at the prosecution level by the Public Prosecutor through the use of the authority to stop prosecution based on restorative justice by referring to normative provisions in the form of the Termination of Prosecution Regulation which prioritizes restorative justice by emphasizing the restoration of the original state and the fulfillment of the balance between the protection of the interests of the victim and the perpetrator so that the settlement of the case is not oriented towards revenge where it is a legal regulation issued on the results of the renewal of the criminal justice system in order to accommodate the legal needs of the community related to the settlement of criminal cases.

After examining the substance of the Perja on Termination of Prosecution, it can be analyzed that the application of restorative justice in the provisions is intended as a settlement of a criminal case that does not end with a decision on who the losing party is and who the winning party is because the process of terminating the prosecution carried out is not based on aspects of material evidence related to the criminal incident committed by the Suspect. The process carried out prioritizes open dialogue between the Victim, the Suspect and his family and also involves community leaders and other parties who are considered to be able to provide positive input.

in connection with the dialogue process with the aim of jointly trying to resolve the criminal issues that arise without ignoring the aspect of responsibility for the victim's losses that must be borne by the suspect as a result of his criminal acts, so that what must be fulfilled in terminating the prosecution based on restorative justice is the restoration to the original state, the existence of an agreement. peace and a positive response from the community.

As explained in the previous discussion, it is known that termination of prosecution based on restorative justice is a process that can be taken by the Public Prosecutor after receiving the delegation of responsibility from the investigator for the Suspect, evidence and case files. The existence of a procedural mechanism that must be taken and the existence of several requirements that must be met have shown that not all criminal cases being

handled by the Public Prosecutor can immediately have their prosecution process terminated, but there are indicators that determine the success of termination of prosecution based on restorative justice. This is reinforced by research data obtained by the author, that throughout 2023 the Semarang City District Attorney's Office Branch at Semarang Port has attempted to terminate prosecution based on restorative justice for 3 (three) criminal cases that are considered to meet the qualifications as regulated in the Termination of Prosecution Regulation, and for the 3 (three) cases, the termination of prosecution was successful, one of which was the Case of Embezzlement in Office Dewi Rahmaningsih Nugroho SH.,MH as the prosecutor in charge explained that the benchmark for success or obstacles that occur in the prosecution process based on restorative justice is very much influenced by the matters regulated in the Regulation on Termination of Prosecution. In other words, when facts or circumstances are found that allow for the termination of prosecution, the Public Prosecutor is obliged to make every effort to follow the process that has been regulated in the Regulation on Termination of Prosecution so that the case can be immediately terminated. Conversely, when the facts and circumstances that occur do not meet the qualifications for termination of prosecution, the Public Prosecutor must immediately refer the case to the Court.

In line with this opinion, Kukuh Nugroho, SH also explained that the Regulation on Termination of Prosecution is a normative provision that is the legal basis for termination of prosecution based on restorative justice, so that the obstacles that arise in the process are influenced by whether or not the facts related to the criminal act committed by the Suspect are in accordance with the provisions of the Regulation on Termination of Prosecution itself. This is if we look closely at the process of termination of prosecution carried out by the Public Prosecutor at the Semarang City District Attorney's Office Branch at Semarang Port throughout 2023, there were 2 (two) criminal cases that could not be terminated based on restorative justice, namely first, a fraud case because the Suspect is a recidivist and the value of the loss incurred exceeds IDR 2,500,000 (two million five hundred thousand rupiah). Second, cases of criminal assault, because the criminal act committed is threatened with a maximum imprisonment of 5 (five) years and there is no peace agreement with the Victim or his family.

That the termination of the prosecution is based on justice restorative is a case resolution mechanism that places more emphasis on the win-win solution aspect, so that the efforts taken must involve the suspect and victim and their families and can even involve other parties who are considered have an interest in resolving the case. In this regard, the obstacle that often occurs is the unwillingness of the parties to undergo a win-win solution process through peace facilitated by the Public Prosecutor, because even though the requirements stipulated in the Termination of Prosecution Regulation are considered to meet the qualifications for termination of prosecution based on restorative justice, if it is not supported by peace between the Suspect and the Victim, the Public

Prosecutor is obliged to refer the criminal case to the court to prosecute the Suspect.

In terms of procedurally, the process of terminating prosecution based on restorative justice basically does not have any complex obstacles considering that in the process there are clear rules regarding the mechanism and certain conditions that can be taken in this case, it is only hampered by time. And for the solution taken when handling the case, namely asking for assistance from the police. so that the Public Prosecutor only needs to carry out in accordance with the Provisions stipulated in the Termination of Prosecution Regulation. However, with the regulation that the termination of prosecution cannot be separated from the element of peace and the fulfillment of the contents of the peace between the Suspect and the Victim which can only be implemented within a period of 14 (fourteen) days from the receipt of the transfer of responsibility and investigators for the Suspect, evidence and case files, the process is technically considered very short, considering that in the process of reaching an agreement between the Suspect and the Victim, of course, it cannot be done in a hurry. This is what sometimes becomes an obstacle for the Public Prosecutor. Another factor is the low awareness of the culture of forgiveness by the victim towards the suspect which has an impact on the inability to implement the peace process. The victim's willingness to forgive the suspect followed up with peace efforts is an important requirement.

The process of terminating prosecution based on restorative justice can be assessed as an application of the rule of law, because this is part of the implementation of the criminal justice system carried out by the Public Prosecutor based on legal regulations in the form of the Termination of Prosecution Regulation, so that this is part of the criminal law enforcement process. Although the ratification and enactment of the Perja on Termination of Prosecution is based on the basis

sociologically, the resolution of criminal cases by prioritizing restorative justice is a need in society, however, in its implementation, this does not mean that there are no inhibiting factors that result in the failure to realize the termination of prosecution based on restorative justice by the Public Prosecutor.

4. Conclusion

The law enforcement process in resolving criminal cases through the Restorative Justice approach at the Semarang City District Attorney's Office Branch at Semarang Port, namely by terminating prosecution based on restorative justice, is carried out to fulfill the public's sense of justice by balancing legal certainty (*rechtmatigheid*) and benefit (*doelmatigheid*) in the implementation of prosecution authority based on law and conscience. To respond to the dynamics of legal developments and the legal needs of the community in question, the Attorney General has stipulated Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which has

been effectively implemented and responded to positively by the community. Restorative Justice in Criminal Law Enforcement is carried out through Out of Court Settlement, the results are ratified (acknowledged) by law enforcement officers/Determination of the Head of the District Court (Diversion in the Criminal Justice System Law) the legal basis of the Restorative Justice Law is carried out in Court Settlement by Law enforcement officers: Restorative results receive "legal recognition" ending the legal process, in the form of termination of investigation or no prosecution (reason for the elimination of the authority to prosecute). That the termination of prosecution based on restorative justice is a case resolution mechanism that emphasizes the win-win solution aspect, so that the efforts taken must involve the Suspect and Victim along with their families and can even involve other parties who are considered to have an interest in resolving the case. Regarding this matter, the obstacle that often occurs is the unwillingness of these parties to undergo a win-win solution process through peace facilities facilitated by the Public Prosecutor, because even though the requirements stipulated in the Termination of Prosecution Regulation are considered to meet the qualifications for termination of prosecution based on restorative justice.

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