

Restorative Justice Policy by the Prosecutor's Office as an Effectiveness of Criminal Case Resolution

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Abstract: *The purpose of this study is to examine and analyze the function of restorative justice in the Prosecutor's Office in resolving criminal cases. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice shows the existence of the Prosecutor's Office in handling criminal cases by prioritizing a sense of justice. This step can change the paradigm of society towards public prosecutors as law enforcement officers in resolving criminal cases to be more humane and not arrogant by prioritizing a sense of justice for all parties and restoring them to their original state. The Prosecutor's Office as the controller of the case process (Dominus Litis), has a central position in law enforcement, because only the Prosecutor's Office institution can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code. In this case, the policy of the Prosecutor's regulations regarding restorative justice can realize legal effectiveness for the conditions of criminalization in Indonesia.*

Keywords: *Criminalization; Justice; Prosecutor's*

1. Introduction

The obligation to guarantee justice for every citizen is an ideal for every country in the world, including Indonesia. To support the realization of this, judicial institutions were formed which aim to be a means for the community to seek and obtain justice.¹ Basically, the resolution of a case in order to obtain justice for the community is carried out through a trial mechanism in court (litigation) and outside the court (non-litigation).² Specifically in criminal cases which constitute public law, namely the entire legal rules which contain regulations containing obligations which may not be carried out, and/or prohibitions accompanied by

¹Waloyo Zulfikar and Ipah Ema Jumiati, (2017), Formulation of Policy for Establishing a Special Industrial Relations Court in Bekasi Regency, Journal of Public Administration, 8 (2), p 126.

²Susana Andi Meyrina, (2017), Protection of Human Rights for Poor Communities through the Implementation of the Principles of Simple, Fast and Low-Cost Justice, Jurnal HAM, 8 (1), p 27

threats or sanctions in the form of criminal penalties for anyone who violates or carries out the prohibition, this is always carried out through a court hearing mechanism.

The criminal justice system in any country plays a vital role in upholding law and order, ensuring justice for victims, and facilitating the rehabilitation of offenders. In recent years, there has been increasing awareness that conventional punitive approaches to criminal justice are not always the most effective method for addressing criminal behavior. In response, restorative justice has emerged as an alternative framework that prioritizes repairing the harm caused by crime through communication, reconciliation, and community engagement. Restorative justice differs from conventional punishment in that it aims to address the needs of the offender, the victim, and the community as a whole with the ultimate goal of promoting healing, restitution, and reintegration.³

Restorative justice is an effort to restore relationships and atone for mistakes desired by the perpetrators of criminal acts and victims of criminal acts, together with their families, outside the courtroom. The goal is to resolve legal problems arising from criminal acts by reaching agreement and consensus among all parties involved. Currently, the criminal justice system in Indonesia generally adopts retributive justice.⁴

In addition, the Criminal Code still maintains a retributive justice orientation, which emphasizes punitive action as a response to criminal acts rather than prioritizing recovery and rehabilitation. Recently, various efforts have been made to integrate the principles of restorative justice into the legal framework in Indonesia. For example, Attorney General Regulation Number 15 of 2020 regulates the Termination of Prosecution Based on Restorative Justice. This regulation aims to create legal certainty and protect victims of crime through restorative justice initiatives.

In prosecuting, prosecutors act for and on behalf of the state, so prosecutors must be able to accommodate all the interests of the community, the state, and victims of crime in order to achieve a sense of justice in society. In the case of prosecuting a criminal case, the Attorney General who is tasked and authorized to make the law enforcement process provided by law effective by considering the principles of fast, simple, and low-cost justice, and determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience, including prosecutions using a restorative justice approach implemented in accordance with the provisions of laws and regulations with these considerations, a Prosecutor's Regulation was born concerning the Termination of Prosecution Based on Restorative Justice.

³Lukas Permadi Orlando Beremanda, (2023). Termination of Prosecution Based on Restorative Justice at the Jambi District Attorney's Office, *PAMPAS: Journal of Criminal Law*

⁴Hanafi Arief and Ningrum Ambarsari, (2018), Application of the Restorative Justice Principle in the Criminal Justice System in Indonesia, *Al-Adl: Jurnal Hukum*, 10 (2), p 173

The Prosecutor's Office as the controller of the case process (*Dominus Litis*), has a central position in law enforcement, because only the Prosecutor's Office institution can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code. In this case, the Prosecutor's regulatory policy regarding restorative justice can realize legal effectiveness for the conditions of criminalization in Indonesia.

Based on the background above, the author is interested in conducting research on the influence of prosecutors' policies in using the concept of restorative justice to achieve effectiveness in handling a criminal case presented with. The aim of the research is to review and analyze the function of restorative justice of the Prosecutor's Office in resolving criminal cases.

2. Research Methods

To conduct a study in this writing, the author uses a normative legal method, namely a type of approach using the provisions of legislation in force in a country or a doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those related to the problems discussed. The approach to the problem will then be sharpened with a conceptual approach (Conceptual Approach), namely an approach carried out using concepts understood from the **thoughts of experts or specialists in the field related to the problems discussed.**

3. Results and Discussion

3.1. Restorative Justice Philosophy

The history of Restorative Justice is as follows: In many countries, dissatisfaction and frustration with the formal justice system or an interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder. Many of these alternatives provide the parties involved, and often the surrounding community, with the opportunity to participate in resolving the conflict and dealing with its consequences. Restorative justice programs are based on the belief that the parties to the conflict should be actively involved in resolving and reducing negative consequences. Restorative Justice is also based, in some cases, on a desire to return to local decision-making and community. The approach is also seen as a means to encourage peaceful expression of conflict, to promote tolerance and inclusiveness, to build respect for diversity and to implement responsible community practices.⁵

Restorative justice arises because of dissatisfaction with the existing criminal justice system, which cannot involve the conflicting parties, but only between the state and the perpetrator. Victims and local communities are not involved in resolving the conflict, in contrast to the restorative justice system where victims and communities are involved as parties to resolve the conflict. Restorative Justice

⁵Kuat Puji Prayitno, (2012), *Application of the Restorative Justice Concept in Indonesian Justice*, Genta Publishing, Yogyakarta, p 8

is a reaction to the retributive theory that is oriented towards retribution and the neo-classical theory that is oriented towards the equality of criminal sanctions and action sanctions. In retributive theory, criminal sanctions are based on the idea of "why is there a criminal penalty". In this case, criminal sanctions emphasize more on the element of retribution (retribution) which is actually reactive to an act. It is a suffering that is deliberately imposed on an offender.

As stated by JE Jonkers, criminal sanctions are focused on the punishment applied to the crime committed. While action sanctions are based on the idea of "what is the purpose of the punishment". If in the retributive theory, criminal sanctions are directed at the actions of a person through the imposition of suffering (so that the person concerned becomes deterred), then action sanctions will be directed at efforts to provide advice and assistance so that he changes.

The purpose of the action sanctions is more educational and oriented towards protecting society.⁶ *Restorative Justice* is a justice system that emphasizes reparation for losses caused or related to criminal acts. Restorative Justice is carried out through a cooperative process involving all parties (stakeholders).

3.2. Function of Prosecutor's Restorative Justice in Resolving Criminal Cases

The Prosecutor's Office as one of the law enforcement agencies authorized to prosecute also functions as a filter and case controller (*dominus litis*) because only the prosecutor's office can determine whether a case can be submitted to the Court or not based on valid evidence. So that the existence of the Prosecutor's Office plays an important role in the justice system in Indonesia. As the owner of the title *dominus litis* (*procureur die de pcesvoering vaststelt*), the Prosecutor's Office is also the only agency that has the authority to implement criminal court decisions or is referred to as executive *ambenaar*.⁷

The form of legal facilitation from the Prosecutor's Office for the concept of restorative justice, the Attorney General implements a restorative justice approach in resolving cases through Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In addition to the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, there are also Prosecutor's Guidelines Number 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases and Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's *Dominus Litis* Principle. These three regulations serve as a reference for the prosecutor's office and its prosecutors to resolve criminal cases with a restorative justice approach.

⁶Andi Hamzah, (1986), *The Indonesian Criminal and Penal System, from Retribution to Reform*, Jakarta: Pradnya Paramita, p 53.

⁷Novi Mardihana Sari & I Nyoman Budiana. (2020), *Limitations of the Authority of Public Prosecutors in Corruption Crimes*. *Kertha Semaya Journal*, 8 (9), p 1326.

Law enforcement carried out by the Prosecutor's Office by prioritizing the restorative justice approach has a characteristic that is the development of the restorative justice concept. Through this restorative justice approach, the Prosecutor's Office seeks to balance between recovery for victims and improving the behavior of perpetrators in order to realize justice.

Legally, the efforts of the Prosecutor's Office are guided by the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, only currently cases resolved through the restorative justice approach are still limited to small cases. The Public Prosecutor in Terminating Prosecution based on Restorative Justice is carried out by considering:

- a. subjects, objects, categories and threats of criminal acts;
- b. background to the occurrence of the crime;
- c. level of depravity;
- d. losses or consequences arising from criminal acts;
- e. cost and benefit case handling;
- f. restoration back to its original state; And
- g. there is peace between the victim and the suspect.

The conditions that must be met by a suspect who is entitled to receive termination of prosecution based on restorative justice as explained in Article 5 of Perja No. 15 of 2020 are:

- a. the suspect is committing a crime for the first time;
- b. criminal acts are only punishable by a fine or are punishable by 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).

There are 2 (two) types of methods for terminating prosecution, including peace efforts and peace processes. First, peace efforts offered by the public prosecutor to both parties, namely the suspect and the victim. The flow of peace efforts begins with the public prosecutor summoning the victim followed by informing the reason for the summons. Continued by involving the victim's/suspect's family, community leaders/representatives, and other related parties. During the process, if the offer is accepted, the case is dismissed, if rejected, the case will be referred to court. Second, the peace process. The public prosecutor acts as a facilitator who has no element of bias between the two parties between the victim and the suspect with a period of 14 (fourteen) days from the handover of responsibility that must be fulfilled by the suspect and is carried out at the prosecutor's office. This activity is carried out in order to resolve the case peacefully and not be followed up in court.

In the Prosecutor's Regulation 15/2020, termination of prosecution based on restorative justice is part of the authority of the public prosecutor to close a case in the public interest, more specifically on the grounds that there has been a settlement of the case outside the court (afdoening buiten proces). This policy is crucial considering that the prosecutor's office (Prosecutor) has a strategic position and role in the law enforcement process within the framework of the integrated criminal justice system as the master of process/dominus litis, one of whose functions is to filter a criminal case and determine whether or not a criminal case needs to be continued to trial by considering the legal objectives.⁸Therefore, the implementation of restorative justice should provide restoration and dialogue built on mutual respect between parties.

The explanation of what is meant by the public prosecutor as a facilitator is regulated in Article 9 of Perja No. 15 of 2020 which explains that the facilitator has several tasks, namely:

- a. to make peace efforts which are an offer of a process to terminate the claim based on the implementation of restorative justice;
- b. Be a guide in the peace process between the victim and the accused;
- c. Making peace agreements, supervising peace, supervising the implementation of peace;
- d. Stop/continue the case in accordance with the results of the peace process and implementation of peace.

The expansion of the requirements for implementing restorative justice is (1) if the crime is related to property, then the requirements for the threat of punishment are expanded, then the requirements for the value of the crime/loss are limited; (2) if the crime is related to people, bodies, lives or freedom, then the requirements for the value of the crime/loss can be expanded; (3) if the crime is related to negligence, then the requirements for the threat of punishment and the value of the crime/loss can be expanded.

In addition to the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, there are also Prosecutor's Guidelines Number 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases and Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle. In addition, in handling corruption cases, there are Guidelines Number 1 of 2019 concerning Criminal Prosecutions in Corruption Cases. Guidelines Number 1 of 2019 are basically guidelines for the application of criminal penalties for perpetrators of corruption, which contain restorative justice.

⁸Andri Kristanto, (2022), Study of Attorney General Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice, *Lex Renaissance*, 7 (1), January, p 189

The presence of the new Prosecutor's Law accompanied by the Prosecutor's Regulation on Termination of Prosecution becomes the legal basis for prosecutors as *Dominus Litis* (case controllers) to be given the authority to resolve problems outside the court through penal mediation, the aim of which is to create dignified justice for all parties. This can be achieved by upholding the principles of humanity, democracy, openness, flexibility, woven into a humanistic law enforcement framework based on restorative justice.

In terms of implications with the theory of legal effectiveness, according to Soerjono Soekanto, the measure of effectiveness in the first element is:

- 1) The existing regulations regarding certain areas of life are quite systematic.
- 2) The existing regulations regarding certain areas of life are quite synchronized, hierarchically and horizontally there is no conflict.
- 3) Qualitatively and quantitatively, the regulations governing certain areas of life are sufficient.
- 4) The issuance of certain regulations is in accordance with existing legal requirements.

The second element that determines the effectiveness or otherwise of written law performance is law enforcement officers. In this connection, a reliable apparatus is required so that the apparatus can carry out its duties well. Reliability in this connection includes professional skills and having a good mentality.

4. Conclusion

Legal facilitation from the Prosecutor's Office for the concept of restorative justice, the Attorney General implements a restorative justice approach in resolving cases through Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In addition to the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, there are also Prosecutor's Office Guidelines Number 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases and Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's *Dominus Litis* Principle.

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