

The Urgency of Implementing Restorative Justice as the Absolute Authority of the Ri Prosecutor's Office in the Criminal Justice System in Indonesia

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Abstract. *In the development of criminal law, the term restorative justice is known. This development is because the retributive system that has been applied so far has not been able to fully fulfill the sense of justice for the community. Criminal law according to retributive justice is an orientation of justice aimed at violators and solely because of violations of the law, violations of criminal law are violations of state rights so that the victim of the crime is the state, so that the concept of retributive justice does not provide a place for protection for victims. Given that victims of criminal acts can not only experience material losses but are very likely to experience immaterial losses. The definition of restorative justice is an effort to provide a restoration of relationships and redemption of mistakes that the perpetrator of the crime (his family) wants to do to the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems arising from the occurrence of the criminal act can be resolved properly by reaching an agreement and agreement between the parties. This research is a type of Normative Research, with the specifications of Descriptive Analytical Research, using research methods obtained by researchers indirectly through intermediary media and using library techniques, in analyzing the formulation of the problem using the Law Enforcement Theory, Authority Theory and Progressive Legal Theory. Restorative Justice is currently not only the concern of the Attorney General's Office, but also several agencies in the Criminal Justice System in Indonesia, such as the Supreme Court and the Indonesian National Police.*

Keywords: *Criminal; Justice; Restorative; System.*

1. Introduction

The Indonesian legal system is a combination of several legal systems, namely a combination of religious law, customary law, and European state law, especially the Netherlands as a nation that once colonized Indonesia. The Netherlands was in Indonesia for about 3.5 centuries. So it is not surprising that many of their civilizations were inherited including the Continental European legal system.

The continental European legal system is a legal system whose basis or legal reference prioritizes written legal sources that developed in mainland European countries which are often referred to as "civil law". And the main principle that is the basis of the continental European legal system is that the law obtains binding force, because it is manifested in regulations in the form of laws and is systematically arranged in certain codifications or compilations. This basic principle is adopted to bind that the main value which is the goal of law is "legal certainty". And legal certainty can only be realized if human legal actions in social life are regulated by written regulations, such as the legal codification in Indonesia, namely the Criminal Code, the Code Civil Law, etc.

And if we talk about Criminal Law, seen in general, based on codification as the main source or main source of criminal law, criminal law is part of public law that contains provisions such as general rules of criminal law, prohibitions on acts, certain conditions and what legal efforts can be made. And in general, it functions to regulate and organize community life in order to create and maintain public order. But today, in Indonesia there is a lot of dissatisfaction and frustration with formal criminal law which has triggered a number of thoughts to make alternative efforts in answering problems related to handling criminal acts. Problems surrounding the development of the current criminal justice system show that this system is considered no longer able to provide protection for human rights which have ongoing effects such as for example because too many people who commit crimes end up being detained or imprisoned, making the Correctional Institution no longer able to accommodate these convicts (Over Capacity).

In the development of criminal law, the term justice is known restorative. This development is because the retributive system that has been implemented so far has not been able to fully fulfill the sense of justice for the community. Criminal law according to retributive justice is an orientation of justice aimed at violators and solely because of their violation of the law, violation of criminal law is a violation of the rights of the state so that the victim of the crime is the state, so that the concept of retributive justice does not provide a place for protection for victims. Given that victims of criminal acts can not only experience material losses but it is very possible to experience immaterial losses. The definition of restorative justice is an effort to provide a restoration of relationships and redemption of mistakes that the perpetrator of the crime (his family) wants to do

to the victim of the crime (his family) (peace efforts) outside the court with the intention and purpose that legal problems arising from the occurrence of the crime can be resolved properly by reaching an agreement and agreement between the parties.² It is hoped that with the implementation of restorative justice, namely this justice is a process where all parties involved in a particular crime together solve the problem of how to deal with its consequences in the future.

Criminal Justice The system is a criminal justice system in the context of law enforcement. This system is a term that indicates a working mechanism in overcoming crime using a system approach. The definition of the system itself is interpreted as an implication of an interaction process that is prepared rationally and maintains efficiency for certain results with all its limitations. Crime develops in accordance with the development of society. The criminal justice system includes the stages of investigation, prosecution, examination in court and implementation of decisions. By looking at these stages, the components in the criminal justice system include the Police, Prosecutor's Office, Courts and Correctional Institutions. As one of the sub-systems of criminal justice, the Prosecutor's Office is required to always ensure that law enforcement runs according to the system. In practice and its development, the Attorney General's Office issued the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter abbreviated as Perja Number 15 of 2020). The existence of Perja No. 15 of 2020 gives the Prosecutor the authority to terminate prosecution based on restorative justice as a breakthrough in resolving criminal acts. In addition, this direction provides space for the development of criminal case resolution through the concept of restorative justice. Restorative justice is one of the alternative forms

dispute resolution outside the court, or known as Alternative Dispute Resolution (ADR). ADR is generally used in civil cases, not for criminal cases. Based on the laws in force in Indonesia today, in principle criminal cases cannot be resolved outside the court, although in certain cases, it is possible to resolve criminal cases outside the court.

The birth of the idea of the Republic of Indonesia Prosecutor's Office Regulation regarding Restorative Justice cannot be separated from the case that reflects the application of the legal process to the case of grandmother Minah and grandfather Samirin who had to languish behind bars as convicts. The case of grandmother Minah who was charged with stealing three cocoa pods was then sentenced to 1 month and 15 days with a probationary period of three months. Another similar case is the case of grandfather Samirin who was found guilty of 2 months and 4 days for stealing sap because it was worth around Rp17 thousand.

In the case of grandmother Minah and grandfather Sarimin, law enforcement should use their conscience more in carrying out legal process efforts for these cases. An application of the law that prioritizes balanced considerations so that not all criminal acts end in prison. For this reason, a law enforcement mechanism is needed that is based on restorative justice for the community. Thus, officers can prioritize recovery processes for victims or perpetrators. This is the basis for the Attorney General's Office to issue Perja Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Restorative justice is the resolution of criminal cases 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 as stated in Article 1 of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Restorative justice is seen as a concept of thought that responds to the development of the criminal justice system by emphasizing public order and victims who feel marginalized by the current working mechanism of the criminal justice system. A balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retaliation is 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 in Indonesia. For this reason, the birth of Perja Number 15 of 2020 provides a new breath in the resolution of criminal cases that is more just. In addition, the duties and authorities of the Attorney General of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty,

legal order, justice and truth based on law and respecting religious norms, politeness and morality, and must explore the values of humanity, law and justice that exist in society.

Restorative Justice is currently not only the concern of the Attorney General's Office, but also several agencies in the Criminal Justice System in Indonesia, such as the Supreme Court and the Indonesian National Police. This can be seen from the issuance of the Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Memorandum of Understanding with the Chief Justice of the Indonesian Supreme Court, the Minister of Law and Human Rights of the Indonesian Republic, the Attorney General of the Indonesian Republic, the Chief of the Indonesian National Police Number 131/KMA/SKB/X/2012 concerning the Implementation of the Application of Adjustments to the Limits of Minor Criminal Acts, the Amount of Fines, Fast Examination Procedures, and the Implementation of Restorative Justice. and Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative

Justice. This clearly provides special attention to the implementation of handling every criminal case that prioritizes restorative justice.

2. Research Methods

In this research, the author uses normative legal research or library methods, namely a method that examines problems by collecting and analyzing materials -legal materials related to the problem. The normative approach refers to legal norms contained in laws and regulations as well as legal norms that exist in society. In addition, by looking at the synchronization of a rule with other rules in a hierarchical manner. The nature of the research used by the author in the Thesis Proposal This is descriptive, namely writing that describes what the author has obtained from searching for and collecting legal materials related to the problem that is the object of research.

3. Results and Discussion

3.1. Implementation of Restorative Justice in the Criminal Justice System in Indonesia

In the development of law, specifically related to restorative justice regulations in resolving criminal cases, several internal regulations are known that provide references for law enforcers in implementing restorative justice contained in the rules of members of the Criminal Justice System in Indonesia, including Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Regulation of the Republic of Indonesia National Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, and Decree of the Director General of the General Court of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment which is a regulation for enforcing restorative justice within the framework of implementing criminal justice.

1) Implementation of Restorative Justice in the Regulation of the Chief of the Republic of Indonesia National Police Number 8 of 2021 concerning Amendments to the Regulation of the Chief of the Republic of Indonesia National Police Number 1 of 2019 concerning the System, Management and Operational Success Standards of the Republic of Indonesia National Police.

a. Philosophical Basis

The Republic of Indonesia National Police (Polri) as part of the Integrated Criminal Justice System has a role which is very important in enforcing criminal law. In Law No. 2 of 2002 concerning the Indonesian National Police, Article 2 states that the function of the police is to carry out one of the functions of the state government in the task of protecting, protecting and serving the

community and enforcing the law. Article 14 paragraph (1) letter g of Law No. 2 of 2002 mandates that the Police have the authority to conduct investigations into criminal acts that are preceded by investigative actions by investigators. Law enforcement that is carried out must of course be law enforcement that is in accordance with statutory regulations (KUHAP), also referring to the priority program of the Chief of Police which carries the concept of Transformation towards a Predictive, Responsible and Transparent Police with Justice.

In its explanation, Predictive is interpreted as Predictive policing which prioritizes the ability of the Police to predict situations and conditions that become issues and problems as well as potential disturbances to public order and security. Responsibility is interpreted as a sense of responsibility that is manifested in the utterance of attitudes, behavior and responsiveness in carrying out tasks, which as a whole are aimed at guaranteeing the interests and hopes of the community in creating security and order. While transparency with justice is interpreted as the realization of principles, ways of thinking and systems that are open, accountable, humanistic and easy to monitor.

The transformation towards a Precision Police covers 4 areas, 16 priority programs, 51 activities and 117 action plans. In the operational field, one of the priority programs of the Chief of Police is the Law Enforcement Performance Improvement Program. In this case, one of the concerns of the Chief of Police is the existence of a law enforcement process that fulfills the sense of justice of the community. This can be realized by prioritizing progressive law in resolving cases through restorative justice which not only looks at the aspect of legal certainty, but also at the benefits and justice. This understanding is in accordance with what was put forward by Gustav Radbruch.

Gustav Radbruch calls justice, utility and legal certainty as three basic ideas of law or three purposes of law, and can also be equated with the principles of law. A verdict or court decision must be in accordance with the law because the judge must judge based on the law. The decision must also contain justice, be objective and impartial. Therefore, the ideal decision is a decision that contains justice, utility and legal certainty proportionally.

Among the three principles, the one that is often the main focus is the issue of justice. Friedman stated that, "in terms of law, justice will be judged as how law treats people and how it distributes its benefits and costs", and in this connection Friedman also stated that, "every function of law, general or specific, is allocative", (every function of law, whether general or specific, is an allocation).

Furthermore, Prof. Tjip stated that the law cannot ignore and close itself to the fundamental changes that occur in the world of science. In reality, the social system that continues to experience changes will certainly greatly affect the

journey of the world of science. Thus, if you do not want to see the law faltering in following reality, you should understand the law as part of a complete unity in the development of the scientific revolution. Considering the background above, the author is interested in raising the problem that will be sought for a solution, so that in the future law enforcement carried out by the Police is able to realize Justice. Benefits and Legal Certainty for the Community. The problem that the author will raise is how the implementation of restorative justice by investigators in realizing justice, benefits and legal certainty for the community and what problems arise with the implementation of restorative justice in resolving criminal cases.

b. Legal basis

Regarding the authority of the National Police Investigator in the investigation and inquiry of the crime, in order to provide guidelines for the application of restorative justice in handling criminal cases within the National Police, the Chief of Police has issued a Circular Letter of the Chief of Police Number: SE/8/VII/2018 dated July 27, 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, which serves as a guideline for Investigators in resolving cases through restorative justice at the investigation and inquiry level. This Circular Letter contains provisions on material and formal requirements, as well as the mechanism for the application of restorative justice in the process of investigating and investigating criminal acts by National Police Investigators. To strengthen the legal basis for the application of restorative justice in the investigation process, the Chief of Police has issued Regulation Chief of Police Number 6 of 2019 concerning Criminal Investigation. In addition, the Police have issued Regulation of the Republic of Indonesia Police Number 1 of 2021 concerning Community Policing, which gives Polmas Officers the task of resolving criminal cases through restorative justice. In its development, the Police have issued Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, where in the consideration section, the Police need to realize the resolution of criminal acts by prioritizing restorative justice that emphasizes restoration to the original state, and a balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards criminalization of criminal acts which are a legal need of society.

3.2. Mechanism for Implementing Restorative Justice in Regulation of the Chief of the Republic of Indonesia National Police Number 8 of 2021.

The provisions on restorative justice are regulated in Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Article 1 number 3 states that restorative justice is resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace with an emphasis on restoring the

situation to its original state.

Then according to Article 2 of the Police Regulation Number 8 of 2021, that the handling of criminal acts based on restorative justice is carried out in the implementation of the Criminal Investigation function carried out by the Community Development and Samapta Polri function holders in accordance with their duties and authorities in minor criminal cases; investigation and inquiry activities carried out by Polri Investigators through the termination of investigations and inquiries.

The general requirements for handling criminal acts based on restorative justice are regulated in Articles 3 to 6 of Police Regulation Number 8 of 2021, as follows:

1) The material requirements are:

- a. Does not cause unrest and/or rejection from the community;
- b. Does not result in social conflict;
- c. Does not have the potential to divide the nation;
- d. Not radical or separatist;
- e. Not a repeat offender based on a court decision; and
- f. Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.

2) The formal requirements are:

- a. Peace from both parties except for drug crimes which is proven by a peace agreement letter and signed by the parties;
- b. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes, can be in the form of:
 - a) Returning goods;
 - b) Compensate for losses;
 - c) Replace cost Which arising from the consequences of a criminal act; and
 - d) Compensate for damages caused by criminal acts.

Furthermore, special requirements for handling criminal acts based on restorative justice for criminal acts involving information and electronic transactions, narcotics and traffic are regulated in Articles 7 to 10 of Police Regulation Number 8 of 2014.

3.3. Implementation of Restorative Justice in the Republic of Indonesia

Attorney General's Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice

a. Philosophical Basis

The Attorney General's Office of the Republic of Indonesia as a government institution in the structure of the power of law enforcement and justice agencies is authorized to exercise state power in the field of prosecution. In carrying out prosecution, the prosecutor acts for and on behalf of the state and is responsible according to the hierarchical channels. In carrying out prosecution, the prosecutor must have valid evidence, for the sake of justice and truth based on the Almighty God Esa. As the executor of his role, in carrying out his duties and authorities, the prosecutor acts based on the law and respects religious and moral norms, and is obliged to explore the values of humanity, law, and justice that exist in society. The prosecutor's office as the authorized party in the prosecution stage, is expected in making an indictment to provide a deterrent effect on the perpetrator with the punishment charged by the Public Prosecutor while still fulfilling the perpetrator's rights.

In Perja No. 15/2020, it contains the authority of the Prosecutor to stop prosecution based on restorative justice as a breakthrough in resolving criminal acts. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing a win-win solution, and emphasizing that the victim's losses are replaced and the victim forgives the perpetrator of the crime.

This RJ policy is a form of manifestation of prosecutorial discretion, this is because the prosecutor is the owner of the *dominus litis* principle, as stated in the article 139 KUHAP where the prosecutor must balance the applicable rules (*rechtmatigheid*) with interpretations based on the purpose or principle of benefit (*doelmatigheid*) when a case is continued or examined by the court. This means that a case is submitted to the court not solely based on violations of applicable legal rules, but must also be considered for its benefit to the community. Based on this, Attorney General ST Burhanuddin views this RJ as being in accordance with the authority held by a prosecutor and does not conflict with statutory provisions.

More specifically, there are regulations in the JAM Pidum Letter Number B4301/E/EJP/9/2020 concerning Implementation Instructions for the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice regarding:

First, the Public Prosecutor must also be able to ensure that the implementation of Termination of Prosecution Based on Restorative Justice must be based on a peace agreement that is carried out fairly, proportionally, freely and voluntarily.

Second, the public prosecutor must determine the resolution of the case using a restorative justice approach from the pre-prosecution stage by referring to the Minutes of the Opinion on the Results of the Case File Research (P-24).

In the JAM Pidum letter, the Public Prosecutor must pay attention to the development of the case from the beginning to determine a faster attitude and the Public Prosecutor must also be able to ensure that the peace process is carried out without pressure from any party. In the Restorative Justice Report of the Republic of Indonesia Attorney General's Office in October 2020, as of January 26, 2021, 26 (twenty-six) high prosecutors, with 222 (two hundred and twenty-two) cases were stopped based on restorative justice. This achievement shows that forgiveness is still a noble value in society:

- a) *The most frequently resolved crime is assault;*
- b) *Followed by traffic crimes.*

The above facts show that the Public Prosecutor can exercise his authority as Dominus Litis in handling cases, whether the case is resolved or not must be referred to trial or the prosecution can be stopped based on restorative justice.

3.4. Implementation of Restorative Justice in the Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

The Supreme Court (MA) has issued guidelines for the implementation of restorative justice in handling and resolving criminal cases in general courts throughout Indonesia for victim recovery efforts. This is stated in the Decree (SK) of the Director General of the General Courts (Dirjen Badilum) MA Number: 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice. This SK consists of five pages with 15 attachments signed by the Director General of Badilum Prim Haryadi in Jakarta on December 22, 2020. This SK was implemented by considering two things. First, to encourage the optimization of the implementation of MA Regulations, MA Circulars, and Decisions of the Chief Justice of the MA which regulate the implementation of restorative justice in court, it is necessary to prepare guidelines on restorative justice. Second.

Restorative justice in narcotics cases can be applied if the requirements are met, namely when caught red-handed by investigators from the National Police and/or investigators from the National Narcotics Agency (BNN), evidence of 1 day's use is found in the form of:

- 1) Maximum crystal methamphetamine 1 gram.
- 2) Maximum 8 ecstasy pills.

- 3) Heroin maximum 1.8 grams.
- 4) Maximum cocaine 1.8 grams.
- 5) Maximum marijuana 5 grams.
- 6) Coca leaves maximum 5 grams.
- 7) Mescaline maximum 5 grams.
- 8) The maximum psilocybin group is 3 grams.
- 9) LSD group maximum 2 grams.
- 10) PCP group maximum 3 grams.
- 11) Fentanyl group maximum 1 gram.
- 12) Methadone group maximum 0.5 grams.
- 13) The maximum morphine group is 1.8 grams.
- 14) The pethidine group is a maximum of 0.96 grams.
- 15) The maximum codeine group is 72 grams.
- 16) Bufferorphine group maximum 32 grams.

Then, the Clerk ensures that the Prosecutor has attached the assessment results from the Integrated Assessment Team to each transfer of case files charged in accordance with Article 103 paragraph (1) and Article 127 of Law No. 35 of 2009 concerning Narcotics. If the case files at the time of transfer are not accompanied by assessment results, the judge during the trial can order the Prosecutor to attach the assessment results from the Integrated Assessment Team.

Settlement of minor criminal cases through restorative justice can be done with the provision that peace has been started between the perpetrator, victim, family of the perpetrator/victim, and related community leaders who are in the case with or without compensation. After opening the trial, the judge reads the indictment and asks for the opinions of the defendant and victim. The judge then makes peace efforts. If the peace process is achieved, the parties make a peace agreement, signed by the defendant, victim, related parties and the peace agreement is included in the judge's decision considerations.

In the event that the peace agreement fails, the sole judge continues the examination process. During the trial, the judge continues to seek peace and prioritizes restorative justice in his/her decision. Restorative justice does not apply to repeat offenders in accordance with the provisions of the laws and

regulations. The handling of minor criminal cases is carried out through a quick examination procedure, one of the cases in which restorative justice can be used is related to minor theft which often receives public attention because it is considered that its treatment is no longer proportional between the type of crime and the consequences that must be accepted, there is an imbalance in creating justice for objects of goods that have less economic value. In terms of adjusting the value of the object of the goods, the Supreme Court issued Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 on February 27, 2012 which regulates the limits and fines for minor crimes in criminal law (KUHP).

The Supreme Court Regulation or PERMA stipulates that Article 364 of the Criminal Code (minor theft); Article 373 of the Criminal Code (minor embezzlement); Article 379 of the Criminal Code (minor fraud); and Article 384 of the Criminal Code (profit and fraud); Article 407 of the Criminal Code (minor damage); and Article 482 of the Criminal Code (minor receiving); with a value of less than Rp. 2,500,000,- (two million five hundred thousand rupiah). Therefore, the Chief Justice immediately appoints and determines a single judge to process, examine, try and decide the case with a speedy examination procedure in accordance with the provisions in the criminal procedure law starting from Article 205 to Article 210 of the Criminal Procedure Code.

The Chief Justice shall immediately appoint a single judge (1x24 hours) to examine, try and decide the case using the express examination procedure as regulated in Article 205–210 KUHP. After opening the trial the judge read the indictment and ask for the opinions of the accused and the victim. The judge then makes peace efforts. If the peace process is achieved, the parties make agreement peace, signed by the defendant, victims, parties related And agreement peace is included in the judge's decision considerations. Settlement of minor criminal cases through restorative justice can be carried out with the provision that peace has begun between the perpetrator, victim, perpetrator/victim's family, and related community leaders who are in the case with or without compensation.

In child cases, case handling refers to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System; PP No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age; Perma No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Juvenile criminal justice system must prioritize the restorative justice approach. Every diversion determination (settlement of cases outside the court) is a form of restorative justice. In the event that diversion is unsuccessful or does not meet the diversion requirements, the judge attempts a decision with a restorative justice approach as regulated in Article 71-82 of Law No. 11 of 2012.

After the reading of the indictment, the judge proactively encourages the child/parent/legal advisor and victim as well as related parties (Community Counselor of the Correctional Center/PK Bapas, Social Worker/Social Worker, Community Representative) to work towards peace. If the peace process is achieved, the parties make a peace agreement. It is then signed by the child and/or his/her family, the victim and related parties and the peace agreement is included in the consideration of the judge's decision for the best interests of the child. If the judge imposes a punishment in the form of action, the judge must firmly and clearly designate a place or institution by coordinating with PK Bapas, Social Worker, and the Regional Technical Implementation Unit for the Protection of Women and Children, hereinafter abbreviated as UPTD PPA (formerly P2TP2A).

Article 139 of the Criminal Procedure Code essentially states:

"After the public prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether the case file meets the requirements to be submitted to the court or not."

The next article also explains, namely Article 140 paragraph (2) :

a. "In the event that 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."

The article explains the principle of *dominus litis*, namely that the prosecutor does not have to forward a case to trial, because the prosecutor is considered an implementation to realize the objectives of the law, namely certainty, justice and benefit. The prosecutor who is constitutionally mandated to realize the objectives of the law realizes the objectives of the law to realize legal certainty, legal justice and legal benefit.

In carrying out its functions, duties, and authorities, the prosecutor's office as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and apply religious norms, politeness, and morality, and must explore humanitarian values, law, and provide a sense of justice for the community. The prosecutor's office must also be able to be fully involved in the process of building in realizing a just and prosperous society based on Pancasila, and

obliged to participate in maintaining and upholding the authority of the government and state and protecting the interests of the community. This termination has implications for the disappearance of the crime or is considered not to have been committed. Termination of prosecution can be

carried out on the grounds of setting aside the case for the public interest, in accordance with Article 35 Paragraph (1) Letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. The public interest in question is the interest of the nation and state and the interest of the wider community. Thus, the crime still exists but is set aside. This provision is an application of the opportunity principle that can only be carried out by the Attorney General by adhering to the precautionary principle. The public cannot file a pre-trial motion, but can file a judicial review to the Chief Justice of the Attorney General's waiver of the case. If the waiver of the case is declared valid, then prosecution can no longer be carried out.

That the Decision of the Director General of the Supreme Court General Court regulates the application of restorative justice in handling cases of minor crimes, women in conflict with the law, children, and narcotics in district courts. This Decree Attachment defines restorative justice, the settlement of criminal cases involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, while in Perma Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, the settlement of criminal cases in the District Court is guided by Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. In this provision, it is stated that cases of minor crimes or losses to the victim are worth no more than IDR 2,500,000.00 (two million five hundred thousand rupiah) or no more than the local provincial minimum wage, criminal acts are complaint offenses, criminal acts with a maximum sentence of 5 (five) years in prison in one of the charges, including criminal acts of *jinayat* according to *qanun*, criminal acts with perpetrators of children whose diversion is unsuccessful, traffic crimes in the form of crimes. (Article 6 Paragraph (1) Perma). However, according to the author, in addition to the diversion regulated in the Child Criminal Justice System Law, the material or other contents in the decision of the Director General of the Supreme Court General Court are less relevant to be applied to the Criminal Justice System (CJS) or Criminal Justice System in Indonesia, because the author believes that it would be better if restorative justice could be carried out before entering the realm of justice, in addition to the rules or regulations that exist in members of the Criminal Justice System in Indonesia regarding the application of Restorative Justice, there are quite significant differences between the regulations of each member of the CJS (Police, Prosecutor's Office and Supreme Court) which will harm the principle of legal certainty because later the output or results of the application of restorative justice will have quite significant differences. In addition, the Criminal Procedure Code or Law No. 08 of 1981 concerning Criminal Procedure Law also does not regulate the authority of Judges in conducting penal mediation or Restorative Justice, so the author is of the opinion that the Decree of the

Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691 / DJU / SK / PS.00 / 12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice and Perma Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice contradicts the laws and regulations above it in this case the Criminal Procedure Code or Law No. 08 of 1981 concerning Criminal Procedure Law.

That although internal regulations governing guidelines for handling criminal acts based on restorative justice include, among others, Attorney General Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Regulation of the Republic of Indonesia National Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, and Decree of the Director General of the General Court of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Court Environment, provide convenience in resolving criminal cases without focusing on criminal punishment, the three regulations have not been regulated clearly and in detail, and do not require coordination and supervision carried out across law enforcement agencies in implementing the restorative justice approach in handling criminal acts. The three regulations above seem to stand alone so that in terms of regulations in the context of implementing their authority, they do not seem to provide horizontal control obligations that allow other law enforcement agencies to monitor the handling of criminal acts carried out by law enforcement agencies that handle alleged criminal acts that occur. On the other hand, in the absence of restorative justice regulations in regulations at the level of laws, especially criminal procedure laws resulting in the implementation of restorative justice regulated in the internal regulations of law enforcement agencies varying at each stage based on the authority held by each law enforcement agency.

The need for regulations that have standards that can be used as guidelines for the Criminal Justice System in Indonesia in implementing authority in resolving cases with a restorative justice approach in the form of laws. These regulations need to be made in improving the Criminal Procedure Code, which regulates the types of criminal acts, procedures, supervision, and legal products produced so that handling criminal acts based on restorative justice can provide solutions as well as benefits, legal certainty and a sense of justice for the community, considering that Law No. 1 of 2023 concerning the Criminal Code (NEW KUHP) has regulated the material on the settlement of criminal cases outside the judicial process regulated in the law, it's just that there are no implementing regulations or laws regarding the implementation of the settlement of criminal cases outside the judicial process. Standardization of regulations related to the settlement of criminal cases based on restorative justice also requires improvements to the system, especially the integration of information that can

be accessed by all law enforcement agencies, so that horizontal control between law enforcement agencies in handling cases and resolving criminal cases based on restorative justice is possible.

In this case, the appropriate institution to be the umbrella for the application of Restorative Justice in handling or resolving criminal cases is only the Republic of Indonesia Attorney General's Office, because...as explained in the formulation of the second problem of this study, only the prosecutor's office, based on the principle of *Dominus Litis*, has the authority to use the Restorative Justice approach in resolving criminal cases without violating the laws and regulations above it. This is based on the Principle of *Dominus Litis* which emphasizes that no other body has the right to prosecute other than the Public Prosecutor, and this right is absolute and monopolistic. The Public Prosecutor is the only institution that monopolizes the prosecution and resolution of criminal cases. Judges cannot request that criminal cases be submitted to them because the role of judges in resolving cases is passive and only awaits demands from the public prosecutor. This principle automatically places the public prosecutor as the Case Controller. In other words, the ability to continue or stop prosecution of a criminal case resulting from an investigation (by investigators) is entirely the authority of the public prosecutor. The public prosecutor can also stop prosecution on the grounds of insufficient evidence, the incident is not a crime, or the case is closed by law. *Dominus litis*, which means 'prosecutor' or case manager, shows that in the criminal justice process, the prosecutor has authority to decide whether a case can be submitted to court or not. In addition, there is a philosophical framework that is taken into consideration when determining the choice of case resolution with a restorative justice approach as regulated in Perja number 15 of 2020, namely in Article 4 Paragraph (2), namely:

- a) *Subject, object, classification, and threat of punishment,*
- b) *The motive for a crime,*
- c) *Level of damage,*
- d) *Losses or impacts arising from criminal acts,*
- e) *Case handling costs,*
- f) *Repair of damage caused by criminal acts.*

The consideration requirements contained in the article can be a filter for a public prosecutor to determine whether the case needs to be resolved or not with the restorative justice termination process at the prosecution level to guarantee the substantive justice value of the legal objectives. In addition, there are also principle requirements that must be considered in Article 5, namely:

- a) *The suspect is not a repeat offender,*

b) The threat of criminal action is a fine or is threatened with imprisonment of no more than 5 (five) years,

c) The value of the evidence or the value of the losses incurred as a result of the crime is not more than IDR 2,500,000.00 (two million five hundred thousand rupiah).

However, the above principle requirements can be excluded if: First, for criminal acts related to property, in the event that there are criteria or casuistic circumstances that according to the consideration of the Public Prosecutor with the approval of the Head of the District Attorney's Office Branch or the Head of the District Attorney's Office can be stopped from prosecution based on Restorative Justice carried out by still considering that the perpetrator is still a first-time perpetrator of a crime accompanied by one of the conditions only the criminal threat is a fine/imprisonment of no more than 5 years or BB/loss of no more than IDR 2.5 million. Second, For crimes committed against people, bodies, lives, and freedom of people, the provisions related to the requirement of BB/loss of no more than IDR 2.5 million can be excluded. Third, In the case of a crime committed due to negligence, the provisions of the criminal threat of a fine/imprisonment of no more than 5 years or BB/loss of no more than IDR 2.5 million can be excluded.

The descriptions contained in the terms of this principle are in line with the objectives of restorative justice which are indeed focused on handling minor cases and not serious crime cases. Other requirements that must be met are also regulated in Article 5 paragraph 6, namely:

a) There were improvements to the original conditions carried out by the Suspect in the following ways:

- 1) Return of goods obtained from criminal acts to victims;*
- 2) There is compensation for victims;*
- 3) There is reimbursement of costs from the impact of a criminal act; and/or*
- 4) Has repaired the damage caused by the impact of the crime.*

b) There is a peace agreement between the victim and the suspect.

In Article 9 Paragraph (5) the above conditions are made if the peace process is achieved accompanied by the fulfillment of certain obligations, which are:

must be implemented before 14 (fourteen) days from the time the process is carried outpeace in order to achieve legal certainty.

In the JAM Pidum letter, the Public Prosecutor must pay attention to the development of the case from the beginning to determine a faster attitude and

the Public Prosecutor must also be able to ensure that the peace process is carried out without pressure from any party. In the Restorative Justice Report of the Republic of Indonesia Attorney General's Office in October 2020, as of January 26, 2021, 26 (twenty-six) high prosecutors, with 222 (two hundred and twenty-two) cases were stopped based on restorative justice. This achievement shows that forgiveness is still a noble value in society:

- a) *The most frequently resolved crime is assault;*
- b) *Followed by traffic crimes.*

The above facts show that the Public Prosecutor can exercise his/her Authority as Dominus Litis in handling cases, whether the settlement of the case must be delegated to the trial or the prosecution can be stopped based on restorative justice. Therefore, according to the Author, the Ideal Concept of Absolute Authority in the Implementation of Restorative Justice in the Criminal Justice System in Indonesia is in the institution of the Attorney General's Office of the Republic of Indonesia.

4. Conclusion

That in relation to the regulation of Restorative Justice in resolving criminal cases, there are several internal regulations that provide references for law enforcers in implementing Restorative Justice contained in the rules of members of the Criminal Justice System in Indonesia, including Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice, Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, and Decree of the Director General of the General Court of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the implementation of Restorative Justice in the General Court environment and Perma Number 1 of 2024 concerning Guidelines for Trying Criminal Cases Based on Restorative Justice which is a regulation for enforcing Restorative Justice within the framework of implementing criminal justice at each stage.

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