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Legal Analysis of Criminal Case Resolution Using a Benefit-Based Restorative Justice Approach

Rasman Susandi[1)] & Andri Winjaya Laksana[2)]
[1)] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: Officerasman0929@gmail.com
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andri.w@unissula.ac.id

Abstract. *This study aims to analyze the role of the Indonesian Attorney General's Office in resolving criminal cases through the Restorative Justice approach, identify various weaknesses in its implementation, and provide a legal analysis based on the principle of expediency regarding the application of this approach. The method used is normative legal research with a statutory, conceptual, and case study approach. The results of the study indicate that the Attorney General's Office has significant authority through Attorney General Regulation Number 15 of 2020 to stop prosecution for the sake of restorative justice, especially in cases of minor crimes and cases that meet the elements of reconciliation. However, its implementation still faces obstacles such as the lack of a legal umbrella at the level of law, the potential for subjectivity in assessments, and limited public education. The legal analysis shows that the Restorative Justice approach is in line with the principle of expediency because it provides greater benefits for victims, perpetrators, and the community. This study recommends the establishment of a legal umbrella at the level of law and increasing the capacity of law enforcement officials in implementing restorative justice.*

Keywords: *Benefit; Criminal; Justice; Prosecutor's; Restorative.*

1. Introduction

Indonesia is constitutionally affirmed as a state of law through Article 1 paragraph (3) of the 1945 Constitution.[1]As a nation based on the rule of law, law enforcement must reflect the protection of citizens' rights and uphold the values of justice, expediency, and legal certainty. However, criminal justice practices in Indonesia have long been dominated by a retributive approach focused on retribution.[2]This

[1]Satjipto Rahardjo, Dissecting Progressive Law, Jakarta: Kompas, 2006.
[2]Septa Chandra, "Legal Politics of Adopting Restorative Justice in Criminal Law Reform", Fiat Justisia, Vol. 8 No. 2, 2014.

situation has encouraged the emergence of alternative case resolution methods such as Restorative Justice, which was then accommodated through Attorney General Regulation Number 15 of 2020.[3]

The mechanism for resolving criminal cases through the Criminal Justice System is considered unable to resolve the problem, the justice expected through formal channels does not necessarily reflect a sense of justice, because it is expensive, lengthy, tiring and does not resolve the problem and what is worse is that it is full of corrupt practices, collusion and nepotism.[4]Both quantitatively and qualitatively, it turns out that the number of crimes committed is increasing and the perpetrators of criminal acts are not deterred, as evidenced by the large number of recidivists and the increasing number of crimes.

In criminal law enforcement practice, we often hear the term "restorative justice," or "restorative justice," which in Indonesian is translated as restorative justice. This restorative justice approach focuses on the direct participation of perpetrators, victims, and the community in the resolution of criminal cases.[5]Restorative justice or Restorative Justice contains the meaning of restoring relationships and atonement for mistakes that the perpetrator of a crime (his family) wants to do to the victim of the crime (his family) as an effort to make peace outside the court with the aim and objective that legal problems that arise as a result of the crime can be resolved well by reaching an agreement and consensus between the parties.[6]

In Indonesia, the concept of restorative justice was first researched by Achjani Zulfa as a Lecturer at the Faculty of Law, University of Indonesia through a Dissertation entitled "Restorative Justice in Indonesia: A Study of the Possibility of a Restorative Justice Approach in Criminal Law Enforcement Practices" in 2009. Then in 2012, through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, restorative justice entered for the first time in the criminal justice system through mandatory diversion efforts at the investigation, prosecution, and trial stages.[7]

The Prosecutor's Office is one of the bodies that functions to exercise judicial power as regulated in Article 24 Paragraph (1) of the 1945 Constitution, namely an independent power to carry out justice to uphold law and justice. Based on this,

[3]Attorney General Regulation Number 15 of 2020.
[4]R. Budi Wicaksono, Community Policing and Restorative Justice as New Paradigms in Conflict Resolution, Thesis, Faculty of Social and Political Sciences, Department of Criminology, Postgraduate Program, University of Indonesia. Depok, 2008, p. 47
[5]Juhari, Restorative Justice in Criminal Law Reform in Indonesia, Jurnal Spektrum Hukum, Vol. 14/No. 1/April 2017, p. 98
[6]Hanafi Arief, Ningrum Ambarsari, Application of Restorative Justice Principles in the Criminal Justice System in Indonesia, Faculty of Law, Islamic University of Kalimantan Mab, Al'adl Journal, Vol.X/ No.2/July 2018, p. 174
[7]https://www.liputan6.com/news/read/4968808/kejaksaan-agung-selesaikan-1070-kara-lewat-restorative-justice-hingga-mei-2022. accessed October 7, 2025.

to strengthen the position of the Prosecutor's Office, Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia was enacted as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Office Law).

In accordance with Article 1 number 1 of the Prosecutor's Office Law. The Prosecutor's Office is a government institution that exercises state power in the field of prosecution and other authorities according to law. What is meant by prosecution as regulated in Article 1 number 3 of the Prosecutor's Office Law Jo. Article 1 number 7 of the Criminal Procedure Code is the action of the public prosecutor to transfer a case to the competent district court in the case and according to the method regulated in criminal procedure law with a request to be examined and decided by a judge in a court hearing. The prosecutor as a public prosecutor also has the authority to stop the prosecution of a criminal case as regulated in Article 140 Paragraph (2) letter a of the Criminal Procedure Code which stipulates that 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 crime or the case is closed by law, the Public Prosecutor shall state this in a decree. Termination of prosecution based on restorative justice can be done by fulfilling 3 (three) cumulative principle requirements as regulated in Article 5 paragraph (1), which states that:

a. the suspect is committing 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 (two million five hundred thousand rupiah).

Restoration involves restoring the relationship between the victim and the perpetrator. This restoration can be based on a mutual agreement between the victim and the perpetrator. The victim can explain the losses they have suffered, and the perpetrator is given the opportunity to make amends through compensation, reconciliation, community service, or other agreements.

Efforts to resolve problems outside the court carried out by the perpetrator of the crime (his family) and the victim of the crime (his family) are expected to be the basis for consideration in the process of examining the perpetrator of the crime in court in the imposition of criminal sanctions by the judge/panel of judges. Justice is a consideration in the criminal law implementation system and is included in Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), especially for criminal offenses of complaints (Klacht delict) in order to emphasize the conditions for creating justice and balance in legal treatment for perpetrators of crimes and victims of crimes 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 punishment (prison sentences) for perpetrators of criminal acts is currently 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.[8]

2. Research Methods

This research uses a normative legal approach, namely research that relies on the review of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution, the Criminal Code, the Criminal Procedure Code, and other statutory regulations. Invitations related to Restorative Justice. Secondary legal materials consist of textbooks, scientific journals, and criminal law doctrine. A normative legal approach was used to assess the appropriateness of norms regarding prosecutorial authority and the implementation of restorative justice. Furthermore, descriptive analysis was used to explain relevant legal facts.

3. Results and Discussion

3.1. The Role of the Indonesian Prosecutor's Office in Resolving Criminal Cases Through Restorative Justice

The criminal justice system encompasses the stages of investigation, prosecution, court hearings, and the implementation of decisions. Based on these stages, the components of the criminal justice system include the police, the prosecutor's office, the courts, and correctional institutions. As a subsystem of the criminal justice system, the Prosecutor's Office is required to ensure that law enforcement runs according to the system. In practice and its development, the Attorney General's Office issued Indonesian Attorney General's Regulation Number 15 of 2020 concerning the 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, becoming 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 an alternative form of dispute resolution outside the courts, also known as Alternative Dispute Resolution (ADR). ADR is generally used in civil cases, not for criminal cases. Based on the laws currently in force in Indonesia, in principle criminal cases cannot be

[8]Anis Nurwanti, Gunarto and Sri Endah Wahyuningsih, Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Committed by Children at the Rembang Police. Khaira Ummah Law Journal/Vol.12/No.4/2017.

resolved outside the court, although in certain cases, it is possible to resolve criminal cases outside the court.[9]

In the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the termination of prosecution is carried out based on justice, public interest, proportionality, criminal as a last resort and fast, simple and low cost. In the regulation it is explained that the one who has the authority to prosecute a case in the interest of law is the Public Prosecutor, where the closure of a case in the interest of law is carried out in the following cases: the defendant dies, the criminal prosecution has expired, there has been a court decision that has obtained permanent legal force against a person for the same case (nebis in idem), the complaint for a criminal complaint is withdrawn or withdrawn; or there has been a settlement of the case out of court (afdoening buiten process).[10]

When deciding to discontinue prosecution of a case under his/her jurisdiction, the Public Prosecutor must be certain that the case should be discontinued and must provide appropriate reasons. Discontinuation of a case occurs during the pre-prosecution stage, which is the stage between the investigation and pre-prosecution stages. There are several stages in Indonesian criminal procedure law when a criminal case occurs, which are divided into 5 (five) stages, namely:

a. The investigation stage by investigators (Article 1 paragraph (5) of the Criminal Procedure Code) and the investigation (opsporing) is carried out by investigators (Article 1 paragraph (2) of the Criminal Procedure Code);

b. The pre-prosecution stage (Article 14 letter b) and prosecution (vervolging) are carried out by the Public Prosecutor (Article 1 paragraph (7) of the Criminal Procedure Code);

c. The examination stage in court or adjudication (rechspraak) is carried out by the judge (Article 1 paragraph (9) of the Criminal Procedure Code);

d. The stage of implementing the judge's decision (execution) is carried out by the prosecutor (Article 1 paragraph (11) of the Criminal Procedure Code);

e. The supervision stage of the implementation of the sentence is carried out by the Judge.

[9]Made Wahyu Chandra Satriana and Ni Made Liana Dewi, Criminal Justice System: A Restorative Justice Perspective, Udayana University Press, Denpasar, 2021, p. 13
[10]Ahmad Jamaludin, "Termination of Prosecution by Prosecutors Based on Restorative Justice at the Cimahi Prosecutor's Office," Journal of Legal Enhancement, Vol. 5, No. 1, April 2022, pp. 1-18

These stages are a process that is interrelated between one stage and the next stage which is carried out by the subject of the implementation of Criminal Procedure Law.

The issuance of Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which grants prosecutors the authority to terminate prosecution based on restorative justice, is a breakthrough in resolving criminal offenses. Restorative justice is an approach to resolving criminal offenses that is currently being widely advocated in various countries. Through a restorative justice approach, victims and perpetrators of criminal offenses are expected to achieve peace by prioritizing win-win solutions, and emphasizing that the victim's losses are compensated and the victim forgives the perpetrator of the crime.

Settlement of cases outside the court can be carried out with the provision that for certain criminal acts, the maximum fine is paid voluntarily in accordance with the provisions of the legislation or there has been a restoration of the original situation using the Restorative Justice approach. Settlement of cases outside the court using the restorative justice approach stops the prosecution. The termination of prosecution based on restorative justice is carried out by the public prosecutor responsibly and submitted hierarchically to the Head of the High Prosecutor's Office.

Termination of prosecution based on restorative justice is carried out by taking into account the interests of the victim and other protected legal interests, avoidance of negative stigma, avoidance of retaliation, response and harmony of society and propriety, morality, and public order. Criminal cases can be closed by law and prosecution stopped based on restorative justice if the conditions are met that the suspect has committed a crime for the first time, the crime is only threatened with a fine or is threatened with imprisonment of no more than 5 (five) years and the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp2,500,000 (two million five hundred thousand rupiah). Restorative justice does not apply to crimes committed against people, bodies, lives, and freedom of people.

Termination of prosecution based on Restorative Justice is carried out by fulfilling the requirements in accordance with Article 5 number (6) of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely:

a. there has been a restoration to the original state carried out by the Suspect in the following ways:

1) return goods obtained from criminal acts to victims;

2) compensate the victim for losses;

3) replace costs incurred as a result of criminal acts; and/or

4) repairing damage caused by criminal acts;

b. There has been a peace agreement between the victim and the suspect; and the community has responded positively.

3.2. Weaknesses of the Role of the Republic of Indonesia Prosecutor's Office in Resolving Criminal Cases Through a Restorative Justice Approach.

In the context of the Prosecutor's Office's authority in the process of enforcing the law in resolving criminal cases through the Restorative Justice approach, based on the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice and also in the provisions of Article 30 letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, there are weaknesses when viewed from the theory of the legal system, including:

1) Weaknesses of Legal Substance

The position of the Prosecutor's Office in criminal justice is crucial because it is the bridge that connects the investigation stage with the examination stage in court. Based on the prevailing legal doctrine, a principle is that the Public Prosecutor has a monopoly on prosecution, meaning that every person can only be tried if there is a criminal charge from the Public Prosecutor, namely the prosecutor's office because only the Public Prosecutor has the authority to bring a person suspected of committing a crime before a court.

Article 2 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, reads:

a. The Attorney General's Office of the Republic of Indonesia, hereinafter referred to as the Attorney General's Office in this Law, is a government institution that exercises state power in the field of prosecution and other authorities based on the Law.

b. The state power as referred to in paragraph (1) is exercised independently.

c. The Prosecutor's Office as referred to in paragraph (1) is one and inseparable.

Furthermore, according to Article 14 of the Criminal Procedure Code, the public prosecutor has the following authority:

a. Receive and examine investigator case files from investigators or assistant investigators;

b. Conducting pre-prosecution if there are deficiencies in the investigation by paying attention to the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in order to perfect the investigation by the investigator;

c. Granting an extension of detention, carrying out detention or further detention and/or changing the status of the detainee after the case has been transferred by the investigator;

d. Making an indictment;

e. Submitting the case to court;

f. Submitting notification to the defendant regarding the provisions and time of the trial of the case, accompanied by a summons, both to the defendant and to witnesses to come to the trial that has been determined;

g. Conducting Prosecution;

h. Closing the case for legal purposes;

i. Carry out other actions within the scope of duties and responsibilities;

j. Carrying out the judge's decision.

In the prosecution of criminal cases, two principles are recognized: the principle of legality and the principle of opportunity. These two principles are in conflict: on the one hand, the principle of legality requires that all cases be prosecuted in court, without exception. On the other hand, the principle of opportunity allows the Public Prosecutor to forgo prosecution of criminal cases in court.[11]

The authority to set aside a case for the sake of public interest is an application of the principle of opportunity which is only held by the Attorney General as regulated in Article 35 letter c of Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office, this is different from the Termination of Prosecution. The authority to stop prosecution is held by the Public Prosecutor. Regarding the termination of prosecution, it is regulated in Article 140 paragraph (2) of the Criminal Procedure Code, which confirms that the public prosecutor "can stop prosecution" of a case.

The termination of prosecution of a case as referred to in Article 140 paragraph (2) of the Criminal Procedure Code above means that the results of the criminal investigation examination submitted by the investigator are not submitted by the public prosecutor to the court. However, this is not intended to set aside the criminal case for the sake of the public interest.

[11]Arin Karniasari, Theoretical, Historical, Legal and Practical Review of the Attorney General's Authority to Set Aside Cases for the Public Interest, Thesis, Faculty of Law, 2012

Case closed by law Article 140 paragraph (2), letter a of the Criminal Procedure Code has another formulation which has the same meaning, namely in Article 14 letter h of the Criminal Procedure Code regarding the authority of the public prosecutor to close a case in the interests of law. A case that is closed by law or closing a case in the interests of law is carried out by the public prosecutor before carrying out the prosecution.[12]The act of closing a case by law can be carried out by the public prosecutor, among others, if regarding a criminal act it turns out that there are grounds that exclude prosecution or it turns out that there are vervolgingsuitsluitings gronden, because with the existence of such grounds it becomes impossible for the public prosecutor to be able to carry out a prosecution against a person who has been suspected by investigators of committing a certain crime. In a criminal act there are grounds that exclude punishment or not, whether a criminal act has been committed by the perpetrator based on a schuld element or not, whether an act is unlawful or not, whether a suspect can be seen as toerekeningsvatbaar or not, and whether a perpetrator's actions can be seen as toerekenbaar or not, then after a person has been investigated or charged, only the judge has the authority to decide.

The procedure for terminating prosecution is regulated in Article 140 paragraph (2) letters b, c and d of the Criminal Procedure Code and the termination of prosecution is stated in a decree. The following procedures must then be followed:

a. The contents of the decision letter must be notified to the suspect and if detained, he must be released;

b. copies of the decision letter must be submitted to the suspect or legal advisor, state detention center officials, investigators and judges;

c. If it later turns out that there are new reasons, the public prosecutor can prosecute the suspect.[13]

According to Appendix 1 of the Criminal Procedure Code (TPP-KUHAP), a copy of the decision letter must also be sent to the reporting witness or victim to prevent them from potentially filing a pretrial motion. In the author's opinion, this provision is inappropriate, considering that filing a pretrial motion is a right, provided it meets the requirements of Article 80 of the Criminal Procedure Code.

The principle of opportunity is stated in Article 35 letter c of Law No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia. This provision does not actually explain the meaning of the principle of opportunity, it only states that: The Attorney General has the duty and authority to set aside cases for the sake of

[12]PAF Lamintang, KUHAP with a legal discussion according to Jurisprudence and Criminal Law Science, Sinar Baru, Bandung, 1984, p. 106
[13]Explanation of Article 140 paragraph (2) letters b, c and d. Criminal Procedure Code, regarding the procedure for terminating prosecution

public interest. What is meant by public interest is explained in the implementation guideline for the Criminal Procedure Code, which means public interest as follows: thus, the criteria for the sake of public interest in applying the principle of opportunity in our country is based on the interests of the state and society and not on the interests of society.

Meanwhile, in the explanation of Article 35 letter c of Law No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia, namely: "What is meant by public interest is the interest of the nation and state and/or the interest of the wider community. Setting aside a case as referred to in this provision is an implementation of the opportunity principle which can only be carried out by the Attorney General, after considering the suggestions and opinions of state authorities that have a relationship with the problem."

2) Weaknesses of Legal Structure

Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, as the structural foundation and binding instrument for the current existence of the prosecutor's office, provides a global formulation regarding its duties and authorities. Article 30 contains at least 7 (seven) aspects of duties and authorities. In his book "Criminal Case Handling Process," Leden Marpaung explains the essence of the prosecutor's office: "The prosecutor's office is a government agency that acts as a public prosecutor in a criminal case against a criminal law violator. As such, it risks the interests of the community. It is he who considers whether the public interest requires that a punishable act be prosecuted or not. It is to him alone that the prosecution of punishable acts is entrusted."[14]

Likewise in the Criminal Procedure Code (KUHAP), Article 14 and Article 137 in conjunction with Article 84 paragraph (1) of the KUHAP provide clarity regarding the authority of the public prosecutor, including the main ones, firstly, to prepare an indictment (letter of accusation), secondly, to carry out the prosecution (to carry out the accusation), thirdly to close the case in the interests of law, fourthly to carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of the Constitution.

Regarding the termination of prosecution, it is regulated in Article 140 paragraph (2) of the Criminal Procedure Code which states that the public prosecutor "can stop the prosecution" of a case. In other words, the results of the criminal investigation examination submitted by the investigator are not submitted by the public prosecutor to the court. However, this is not intended to set aside the case or deponering the criminal case. Therefore, a clear distinction is made between the legal action of stopping the prosecution and the setting aside of the case (deponering) as referred to in Article 35 letter c of Law No. 16 of 2004 concerning

[14]Leden Marpaung, Criminal Handling Process Part Two, Sinar Grafika, Jakarta, 1995, p. 172

the Republic of Indonesia Prosecutor's Office and the Explanation of Article 77 of the Criminal Procedure Code. As explained in the Explanation of Article 77 of the Criminal Procedure Code, it states that: "what is meant by termination of prosecution does not include the setting aside of a case for the public interest which is the authority of the Attorney General."

The implementation of the termination of prosecution for reasons not based on public interest, but solely based on legal reasons and interests themselves, includes:

a. The case in question lacks sufficient evidence, so if the case were brought to trial, it is strongly suspected that the defendant would be acquitted by the judge, on the grounds that the alleged wrongdoing has not been proven. To avoid such an acquittal, it would be wiser for the public prosecutor to discontinue the prosecution.

b. The defendant's charges do not constitute a felony or violation. After the public prosecutor has studied the case files from the investigative examination and concluded that the investigator's allegations against the defendant do not constitute a felony or violation, it is best for the public prosecutor to discontinue the prosecution. After all, if the charges presented to the court do not constitute a felony or violation, the judge will essentially release the defendant from all legal charges (ontstag van rechtvervolging).

c. The third reason for terminating a prosecution is the case being closed by law or set aside. Termination of prosecution based on the case being closed by law is a criminal offense in which the defendant has been acquitted of charges or charges by law and the case itself must be closed or the examination of the case stopped at all levels of examination.

The closure of a case for the sake of law as referred to in Article 14 letter h of the Criminal Procedure Code is then used as one of the reasons to stop prosecution in Article 140 paragraph (2) letter a of the Criminal Procedure Code. In fact, the consequences of the case status between the termination of prosecution and the closure of a case for the sake of law are clearly different as explained previously. The closure of a case for the sake of law is not explained further in the Criminal Procedure Code, so what can be done is to interpret it systematically, namely by looking at the provisions in the Criminal Code.

In the Criminal Code, it is regulated in Chapter VIII of the Criminal Code regarding the Elimination of the Right to Sue and Loss of the Right to Execute Criminal Procedure which consists of ten articles starting from Article 76 to Article 85. Based on a systematic interpretation of Chapter VIII of the Criminal Code, the reason for closing a case for legal reasons refers to the reasons as stated in the articles of the

Criminal Code. The loss of the right to sue cannot be pursued legally so that it is final if the case is closed for legal reasons.

Thus, can the termination of prosecution by the public prosecutor, one of the reasons for which is the closing of the case in the interests of law as regulated in Article 14 letter h in conjunction with Article 140 paragraph (2) letter a of the Criminal Procedure Code, be considered as an implementation of the opportunity principle.

The principle of legality referred to in criminal procedural law as a basic principle in the prosecution system has a very different meaning from the principle of legality in criminal law as the basis for the application of criminal law.[15]. The principle of legality in criminal law as referred to in Article 1 paragraph (1) of the Criminal Code which states, "Geen feit is strafbaar dan uit kracht van eene daaraan voorafgegane wettelijke strafbepaling", which means that no act can be punished, except based on criminal provisions according to laws that existed before the act itself.[16]

Opportunity can be defined as the public prosecutor's choice to prosecute or not prosecute, with or without justification. Not prosecuting means not referring the case to court and, of course, not requesting a decision from a court judge. Not referring the case to court can also mean terminating the prosecution, including closing the case for legal reasons and, of course, waiving the case by the Attorney General. Therefore, the Criminal Procedure Code (KUHAP) also adheres to the principle of opportunity within the prosecution system implemented by public prosecutors. Therefore, Indonesia adheres to two principles simultaneously: the principle of legality and the principle of opportunity.

3) Weaknesses of Legal Culture

Article 2 paragraph 1 of Law Number 16 of 2004 concerning the Prosecutor's Office states that the Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities based on the law. Regarding the position of the Prosecutor's Office as a law enforcer whose main focus is not on the judiciary but also enters the executive realm, this condition can cause the main task of the Prosecutor's Office, namely carrying out prosecutions, to be suspected of not being independent.

When carrying out their duties, prosecutors must be free and not bound by the intervention of government or other powers in order to achieve legal objectives such as justice, legal certainty and benefits therein by diverting religious norms,

[15]Tolib Effendi, Basics of Criminal Procedure Law: Developments and Updates in Indonesia, Setara Press, Malang, 2014, p. 125
[16]PAF Lamintang, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung, 1997, p. 123.

politeness, morality and must seek and find values that live in society.[17]The role of the prosecutor as a public prosecutor must not be interfered with by any power in order to achieve the objectives of law enforcement and can be guided to carry out duties based on applicable regulations in order to realize the supremacy of law, protect public interests, uphold human rights and eradicate corruption, collusion and nepotism.[18]The prosecutor's position in criminal justice is crucial for the defendant's fate, as the public prosecutor serves as the bridge between the investigation and the trial. This is based on legal doctrine, which states that the public prosecutor has a monopoly on prosecution. This means that a person can only be tried if a criminal charge is first filed by the public prosecutor. Therefore, the prosecutor's office, as the public prosecutor, has the authority to prosecute the defendant in court.[19]

As a component of the criminal justice system, the prosecutor's office is required to maintain its independence from interference from any party, including the executive branch. However, it appears that the prosecutor's office will find it difficult to be free from executive interference because structurally, the prosecutor's office is under the executive branch's authority. However, the Attorney General, as the head of the prosecutor's office, is structurally subject to his superior, the President, who holds the highest executive power. As a result of the prosecutor's position, the state's continued interference in the prosecutor's office has raised public doubts about its independence. The prosecutor's position within the executive branch and also within the judicial branch in law enforcement does not sufficiently strengthen the prosecutor's independence in enforcing the law, particularly in the area of prosecution. Many concerns arise that if individuals from the executive branch commit crimes, the prosecutors who carry out the prosecution will not be given absolute authority in carrying out their duties.[20]This will affect the legal culture of the prosecutors themselves who are not free, bound and vulnerable to abuse of their duties such as the buying and selling of case demands, buying and selling cases, stopping investigations with the excuse of money and the emergence of judicial mafia within it. Based on the above, to guarantee the independence of prosecutors in the judicial field in the criminal justice system which is required to be free and without interference from any party, it is necessary to reform or reorganize or restructure the prosecutor's

[17]Ansori, “Law Enforcement Reform: A Progressive Legal Perspective”. Jurnal Juridical, 4 (2). 2018, p. 21
[18]Arrsa, "Reconstruction of Legal Politics for Corruption Eradication Through a Strategy to Strengthen Independent Investigators and Public Prosecutors at the Corruption Eradication Commission." Jurnal Rechts Vinding: Media for National Legal Development, 3 (3), 2014, p. 10
[19]Ghonu. “Independence of the Prosecutor's Office in the Criminal Justice System in Indonesia.” Justitia Et Pax, 31 (2), 2015, p. 3
[20]Jainah. “Building a Legal Culture for Law Enforcement Communities in Eradicating Narcotics Crimes.” Progressive Justice, 2 (2) 2011, p. 5

institution in the legal culture so that it can continue to maintain the independence of prosecutors in carrying out their duties.

Regarding legal culture, Friedman states that legal culture is an element of social attitudes and values that exist in the cultural sector, including habits, opinions, ways of doing things, and ways of thinking. According to him, legal culture can be said to be the embodiment of human attitudes towards the law, trust in the legal system, values, thoughts, and regardless of expectations. In other words, legal culture is the result of social thought and social forces that determine how the law is used, avoided, and abused by humans. Without legal culture, the legal system is considered powerless, like a dead fish thrown into a basket. Lawrence M. Friedman distinguishes legal culture into integral legal culture, which relates to the legal culture of lawyers and judges, and external legal culture, which is the legal culture of society in general.[21]Legal culture in the context of law enforcement focuses on the philosophical values of law, the values that exist within society and its social awareness/behavior, as well as legal education. Referring to the meaning of legal culture for law enforcement, the restructuring/reconstruction that must be reorganized includes legal ideas, concepts, or concepts that are carried out through reorganization together with legal substance and legal structure.

3.3. A Legal Analysis of the Role of the Republic of Indonesia's Prosecutor's Office in Resolving Criminal Cases Using a Benefit-Based Restorative Justice Approach

The Attorney General's Office of the Republic of Indonesia, as a government institution within the legal and justice enforcement agencies, is authorized to exercise state power in the field of prosecution. In prosecuting, prosecutors act for and on behalf of the state and are accountable according to hierarchical channels. In prosecuting, prosecutors must possess valid evidence, for the sake of justice and truth based on the One Almighty God. As executors of their role, in carrying out their duties and authorities, prosecutors act based on the law and respect religious and moral norms, and are obliged to explore the values of humanity, law, and justice that exist in society. The Attorney General's Office, as the authorized party in the prosecution stage, is expected to provide a deterrent effect on the perpetrator in making indictments with the punishment charged by the Public Prosecutor while still fulfilling the perpetrator's rights.[22]

The authority of prosecutors in Regulation No. 15/2020 states that terminating prosecution based on restorative justice can be a breakthrough in resolving criminal offenses. Restorative justice is an approach to resolving criminal offenses that is currently being widely advocated in various countries. Through a restorative justice approach, victims and perpetrators of criminal acts are expected to achieve

[21]Teubner, Dilemmas of law in the welfare state (Vol. 3). Walter de Gruyter. 2011, p. 5
[22]Ishaq, Basics of Legal Science, Sinar Grafika, Jakarta, 2009, p. 9

peace by prioritizing win-win solutions, emphasizing the compensation of the victim's losses and the victim's forgiveness of the perpetrator.

In the development of prosecution terminations carried out by the prosecutor's office, restorative justice must also be based on restorative justice. In restorative justice, the criminal sanctions imposed on the perpetrator do not eliminate the suffering experienced by the victim. Therefore, in practice, other alternatives or approaches are needed to improve the criminal justice system, such as implementing or utilizing non-litigation solutions with a restorative justice approach.

The advantage of using "out-of-court settlements" in resolving criminal cases is that the choice of settlement is generally left to the perpetrator and victim. Another significant advantage is the low cost. As a substitute for sanctions, the perpetrator can offer compensation negotiated with the victim. Thus, justice is the result of a mutual agreement between the parties, namely the victim and the perpetrator, rather than based on the prosecutor's calculations and the judge's decision. Several reasons for resolving criminal cases outside the criminal courts are worth noting, as follows:

1) These violations of criminal law fall into the category of complaint offenses, both absolute complaints and relative complaints.

2) Violations of criminal law are subject to a fine as a criminal threat and the offender has paid the fine (Article 80 of the Criminal Code).

3) Violations of criminal law fall into the category of “violations”, not “crimes”, which are only punishable by fines.

4) Violations of criminal law include criminal acts in the field of administrative law which places criminal sanctions as the ultimum remedium.

5) The violation of criminal law falls into the minor/all minor category and law enforcement officers use their authority to exercise discretion.

6) Ordinary criminal law violations that are stopped or not processed in court (deponir) by the Attorney General in accordance with his legal authority.

The implementation of Restorative Justice as a reason for resolving minor criminal cases in the future is in line with the policy of the 2008 Criminal Code concept regarding the lapse or elimination of the authority to prosecute criminal acts, as stated in Article 145 letters d, e, and f which stipulate that the authority to prosecute is lost if: (d). Settlement outside the process. (e). The maximum fine is paid voluntarily for criminal acts committed only threatened with a maximum fine of category II. (f). The maximum fine is paid voluntarily for criminal acts threatened with a maximum imprisonment of 1 (one) year or a maximum fine of category III.

One example of Termination of Prosecution Based on Restorative Justice from the Central Java High Prosecutor's Office Number: B 047/M.3/Eoh.2/01/2022, dated January 5, 2022 for a request from the Brebes District Prosecutor's Office on behalf of the suspect M. Yusup Bin Wijer (23 years old), Number: B-1670/M.3.30/Eoh.2/12/2021, dated December 30, 2021, with a brief chronology: That on Sunday, December 12, 2021 at approximately 02.00 WIB in the backyard of the house belonging to witness Tasori Bin Kasan, Jatimakmur Village, Songgom District, Kab. Brebes when the suspect M. Yusup Bin Wijer rode a black Yamaha Vixion motorcycle with the number plate T-2313-GO with the aim of taking chickens belonging to residents when he arrived at Jatimakmur Village the suspect parked his motorcycle at a cemetery, then the suspect walked towards the back yard of the house belonging to the victim witness Tasori Bin Kasan, the suspect saw a chicken coop behind the house of witness Tasori Bin Kasan then the suspect entered the yard through a gap in the bamboo fence, after being in the yard, the suspect M. Yusup Bin Wijer immediately approached the chicken coop and opened the door of the chicken coop, then the suspect squatted/creeped, then the suspect with both hands took 1 (one) female chicken with black feathers put into a plastic sack, then the suspect took another 1 (one) rooster with red feathers combined with black using his right hand then put into a plastic bag, not long after the witness Dede Ritaranu came with a flashlight because he was suspicious of the noise behind the house and the witness saw the suspect holding a plastic sack containing 1 (one) female chicken and 1 (one) rooster, then the suspect M. Yusup Bin Wijer along with the evidence was successfully secured by residents and taken to the Songgom Police to be held accountable for his actions. The value of 1 (one) female chicken and 1 (one) rooster is estimated at IDR 1,000,000 (one million rupiah).

The suspect is suspected of violating Article 363 Paragraph (1) 3 of the Criminal Code. Criminal Threat: Maximum imprisonment of 7 (seven) years: For 2 (two) chickens belonging to the victim to be returned to the victim (no loss yet); The suspect had experienced persecution/beating by the masses and the motorbike used by the suspect and which became evidence had also been burned; The suspect had committed a crime for the first time/had never been convicted; Peace was made: December 29, 2021.

In connection with the letter from the Head of the Brebes District Attorney's Office Number: B-1670/M,3.30/Eoh.2/12/2021 dated December 30, 2021, regarding the Request for Termination of Prosecution with the name of the Suspect M. Yusup Bin Wijer (Alm), we hereby respectfully convey the following:

1) That the case involving the suspect M. Yusup Bin Wijer (deceased) is suspected of violating Article 363 paragraph (1) 3 of the Criminal Code with a maximum prison sentence of 7 (five) years.

2) Based on Article 5 paragraph (1) letters a, b, c and paragraph (6) letters a, b, c of the Republic of Indonesia Regulation No. 15 of 2020 concerning Termination of

Prosecution Based on Restorative Justice, this criminal case can be closed by law and prosecution can be stopped based on Restorative Justice because the following conditions are met:

a. The suspect committed 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 years;

c. The crime is committed with the value of the evidence or the value of the loss incurred as a result of the crime not exceeding IDR 2,500,000 (two million five hundred thousand rupiah);

d. There has been a restoration to the original condition carried out by the suspect by returning the goods obtained from the crime / compensating the victim for losses;

e. There has been a peace agreement between the victim and the suspect;

f. The public responded positively.

3) Based on Article 5 paragraph (2) of the Republic of Indonesia Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is stated that "for criminal acts related to property, in the event of there being criteria or circumstances of a casuistic nature which according to the consideration of the Public Prosecutor with the approval of the Head of the District Attorney's Office, prosecution can be terminated based on Restorative Justice, this is done while still paying attention to the conditions as referred to in paragraph (1) letter a accompanied by one of letter b or letter c'.

4) The losses incurred were 2 (two) chickens worth approximately IDR 1,000,000 (one million rupiah).

5) That the Suspect and the Victim have agreed to make unconditional peace as stated in the Peace Report on December 29, 2021, which was attended by the Suspect, Victim and local community leaders.

So far, the focus of law enforcement has been more on legal certainty, but has forgotten the other objectives of law, namely justice and benefit.[23]Law enforcement that neglects the values of utility results in the lack of instillation of legal values in society. The weakness of legal culture and legal awareness in society today is due to the absence of the value of legal utility in law enforcement. The public does not feel the purpose of the presence of the law because the values of utility are not reflected in judges' decisions or in the implementation of laws and

[23]Muhaimin, Restorative Justice in the Settlement of Minor Crimes, De Jure Legal Research Journal, Vol. 19 No. 2 June 2019, pp. 185-207

regulations. In the case of M. Yusup Bin Wijer, for the sake of legal interests and benefits, it is appropriate not to proceed to court. The value of legal benefits if the case is stopped is to provide benefits for the future of M. Yusup Bin Wijer who is still relatively young, and the losses incurred are approximately Rp1,000,000 (one million rupiah), and have been returned to the victim. Many cases that should not be forwarded to court by adhering to the principle of legal benefits.

4. Conclusion

The role of the Prosecutor's Office in resolving criminal cases by implementing Restorative Justice in accordance with applicable norms or laws, namely the prevailing norms in society are the principles of family. The authority of the Prosecutor's Office to resolve certain criminal cases with a Restorative Justice approach is based on Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Authority of the Public Prosecutor in Termination of Prosecution is based on Article 140 paragraph (2) of the Criminal Procedure Code. Where the termination of prosecution by the Public Prosecutor is insufficient evidence or the suspect's actions do not constitute a crime or the case is closed by law. The Public Prosecutor receives case files from investigators which after being examined and examined are found to be incomplete, especially in matters related to the prosecution process, then the Public Prosecutor returns the case files to the investigator to be immediately completed and additional investigations carried out in the form of instructions from the Public Prosecutor to be fulfilled by the Investigator within 14 (fourteen) days from the time the files are received by the Investigator. If new circumstances are discovered in a case that prevent the case from being submitted or transferred to court, the prosecution will be stopped. The enactment of Perja No. 15 of 2020, which grants prosecutors the authority to stop prosecution based on restorative justice, is a breakthrough in resolving criminal cases. The role of the Prosecutor's Office in resolving criminal cases through the application of restorative justice is in accordance with applicable norms or laws, namely the prevailing norm in society, namely the principle of family.

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