

# The Prosecutor's Authority In Criminal Law Enforcement With A Restorative Justice Approach

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## Abstract

*This study aims to identify and describe the authority of the Prosecutor's Office in enforcing criminal law with a restorative justice approach. This study uses a normative juridical approach with descriptive analysis. The results of this study are the authority of the Prosecutor's Office in enforcing criminal law with a restorative justice approach based on the principle of opportunity, which is regulated in Law Number 16 of 2004 Article 35 letter c of Law Number 16 of 2004, Elucidation of Article 77 of the Criminal Procedure Code, and Law No. Number 11 of 2012. The principle of opportunity needs to be given to all prosecutors, in order to be able to settle criminal cases that according to the community do not need to be resolved to court. With the authority of opportunity, each Prosecutor can explore and find the values of justice that grow and develop in social life. Currently, the application of restorative justice by the Prosecutor's Office has been regulated in the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020,*

*Keywords: Restorative Justice, Prosecutor's Office, Authority, Law Enforcement, Criminal*

## 1. Introduction

The Unitary State of the Republic of Indonesia is a state of law, so as a state of law, the Unitary State of the Republic of Indonesia must make efforts to overcome crimes or criminal acts that occur in society. This is as stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that: "The State of Indonesia is a state of law".

Indonesia as a country that upholds the law and human dignity in relation to the law and the government must enforce the law without exception. In the 5th Pancasila principle which reads: "Social justice for all Indonesian people", it can be explained that in such cases, one of them relates to the law which is the right of the Indonesian people to justice in truth.<sup>1</sup>

According to Aristotle, the rule of law is a state that stands above the law which guarantees justice for its citizens. Justice according to Aristotle is divided into distributive justice and justice commutative. According to him, good law is law that

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<sup>1</sup>Lailatul Nur Hasanah and Sri Endah Wahyuningish, December 2019, The Application of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State Court of Pati), Journal of Law Daulat, Vol. 2 No. 4, Faculty of Law, Sultan Agung Islamic University, Semarang, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/8353/3910>, hlm. 610.

originates from a sense of justice in the community and those who govern in the state are fair thoughts while the rulers are only holders of law and balance.<sup>2</sup>

In a state of law, law has a strategic and dominant position in the life of society, nation and state. Law is a whole rather than norms that bind and regulate the relationship between humans in society. Law deals with rights and obligations.<sup>3</sup> Law enforcement is one of the parameters in the success of the rule of law.<sup>4</sup>

The law serves as a guide for everyone to behave, considering that society is a game with pre-made rules and in turn allows clarity as to what can be expected from each action taken by each person.<sup>5</sup>

The law regulates what actions or actions should not be carried out along with the sanctions if they are violated. The law is coercive, with these sanctions, so that in acting, the public will be more careful, whether their actions are detrimental to other parties or not, as is the case with criminal acts that have clearly been prohibited by law, in this case criminal law.

Crime (crime) is rampant and exists on all fronts. It often occurs in the family, group, community, government apparatus, nation or state environment and even has an international dimension (transnational crime). As long as there is life, it is certain that a crime/criminal act will occur and because of that, a criminal case will also occur.

Everyone who has violated and disobeyed the law, deserves punishment to provide a deterrent effect, so as not to repeat the act, because obeying the law is an obligation for the creation of security and order.<sup>6</sup> For perpetrators of criminal acts or criminal acts, their actions are accounted for based on the applicable criminal law. The essence of criminal law is the imposition of suffering or misery or other unpleasant consequences.<sup>7</sup>

Society wants law as a means of law enforcement, no longer a tool for the interests of the authorities or political interests. It must be admitted that there are many factors outside the law that are involved coloring in a practice that is sometimes seen by some as being so transparent and visible, thus injuring the law itself. Basically the law can be used to protect the public.

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<sup>2</sup> Nomensen Sinamo, 2014, Indonesian Constitutional Law, Third Printing, Revised Edition, Permata Aksara, Jakarta, p. 36.

<sup>3</sup> Marwan Effendy, 2010, Eradication of Corruption and Good Governance, First Printing, Timpani Publishing, Jakarta, p. 1.

<sup>4</sup> Sri Endah Wahyuningsih and Rismato, January-April 2015, Policy on Criminal Law Enforcement Against Money Laundering Handling in the Context of Reforming Criminal Law in Indonesia, Journal of Legal Reform, Vol. II No. 1, Faculty of Law, Sultan Agung Islamic University, Semarang, url : <http://jurnal.unissula.ac.id/index.php/PH/article/view/1414/1087>, hlm. 46-47.

<sup>5</sup> Edi Setiadi and Rena Yulia, 2010, Economic Criminal Law, First Printing, First Edition, Graha Ilmu, Yogyakarta, p. 1.

<sup>6</sup> Jawade Hafidz Arsyad and Dian Karisma, 2018, Centralization of the Government Procurement Bureaucracy, First Printing, Sinar Graphic, Jakarta, p. 23.

<sup>7</sup> Sri Endah Wahyuningsih, 2013, Principles of Criminal Individualization in Islamic Criminal Law and Indonesian Criminal Law Reform, Second Printing, Publishing Agency Diponegoro University, Semarang, p. 80.

Law enforcement aims to form a law-abiding society that is not solely driven by fear, or because of obtaining a benefit, but as a form of social responsibility. The community is responsible for encouraging the development of a law-abiding society, by participating in law enforcement to realize peace, tranquility, order and common prosperity.<sup>8</sup>

This phenomenon must be responded positively by every law enforcement apparatus to continuously seek to improve it by improving its performance, so that the goal of consistent and consequent law enforcement is oriented to the basic values of legal ideals in the form of legal certainty, justice and legal benefits can be realized.<sup>9</sup>

Law enforcement and justice in a fair or just legal process are enforcement guaranteed by the 1945 Constitution of the Republic of Indonesia which provides protection and benefits for every citizen in the context of upholding the supremacy of the constitution as the basic law of the state.<sup>10</sup>

The enforcement of criminal law using the criminal justice system is considered successful in carrying out its main task of tackling crime, if most of the reports and complaints of the public who are victims of crime can be resolved by submitting the perpetrators of crimes to court and found guilty and sentenced (criminal).<sup>11</sup>

There is no denying that the criminal justice system is considered successful if law enforcement is able to bring the perpetrators of crimes to justice for punishment. However, in many cases it turns out that the public often wants that in certain cases the prosecution does not need to be carried out by the Prosecutor's Office because they view that the prosecution is not commensurate (unfair), compared to the violation of the law committed. As in the case of Granny Minah, in which the Purwokerto District Court found Granny Minah guilty. Minah's grandmother had to face court for the theft which was not worth much.

The public was dissatisfied and questioned the prosecution's efforts against the perpetrators of criminal acts. That the prosecution of such cases creates injustice and unrest and can shake the sense of peace in social life. Therefore, the idea emerged that such cases could be settled out of court (out of court settlement).<sup>12</sup>

The existence of the Prosecutor's Office occupies a central position and has a strategic function in the law enforcement process. In the judicial system, it is the Prosecutor who determines whether a person should be examined by the court or not. It is the

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<sup>8</sup>Bagir Manan, 2009, *Enforcing the Law is a Search*, First Issue, Association of Indonesian Advocates, Jakarta, p. 65.

<sup>9</sup>Marwan Effendy, 2012, *Discretion, Legal Discovery, Corporate & Tax Amnesty in Law Enforcement*, First Printing, Reference, Jakarta, p. 2.

<sup>10</sup>Abdul Latif, 2014, *Administrative Law in the Practice of Corruption*, First Printing, First Edition, Kencana Prenada Media, Jakarta, p. 162 and 163.

<sup>11</sup>Bambang Waluyo, 2017, *Design of the Prosecutor's Function in Restorative Justice*, First Edition, Second Printing, Raja Grafindo Persada, Depok, p. 6.

<sup>12</sup>*Ibid.*, p. 8.

prosecutor who determines whether a person will be sentenced or not by the quality of the indictment and the charges he makes.<sup>13</sup>

The legality of prosecution by the Prosecutor's Office has resulted in many criminal acts being sentenced to criminal penalties. The end of the criminal imposition is that the convict becomes a prisoner in the Correctional Institution. As a result, the State Detention Center (RUTAN) and Correctional Institution (LAPAS) are full, which creates complex problems so that the purpose of correctional facilities and their benefits cannot be felt by the community.<sup>14</sup>

The application of restorative justice by the Prosecutor's Office in resolving conflicts in society will provide more benefits than solving problems through legal channels, where there is a lack of involvement of victims and the community to jointly resolve cases or conflicts that are currently occurring.

The purpose of this research is to find out and describe the authority of the Prosecutor's Office in enforcing criminal law with a restorative justice approach.

## 2. Research methods

The type of research used in this research is normative juridical. The normative juridical approach is legal research carried out by examining library materials or secondary data as basic materials, by conducting a search on regulations and literature related to the problem under study,<sup>15</sup> in this case is the problem regarding the authority of the Prosecutor's Office in enforcing criminal law with a restorative justice approach. This research is descriptive analysis, because the researcher wishes to describe or explain the subject and object of research, which then analyzes and finally draws conclusions from the results of the research.<sup>16</sup> The data used in this research is secondary data. Secondary data is data obtained from library materials through library research, and this data is also obtained from agencies/institutions related to the purpose of this research.<sup>17</sup> According to the data that has been obtained during the research by reading library books, then it is analyzed. The analysis used in this research is qualitative data analysis.

## 3. Discussion

Law enforcement is a series of processes to describe values, ideas, ideals that are quite abstract which are the goals of law. The purpose of law or legal ideals contains: moral values, such as justice and truth. These values must be able to be realized in real

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<sup>13</sup>Muhamad Jusuf, 2014, Prosecutors' Law, The Prosecutor's Existence as a State Lawyer in Civil and State Administrative Cases, First Printing, Laksbang Justitia, Surabaya, p. 11.

<sup>14</sup>Bambang Waluyo, op.cit., p. 12.

<sup>15</sup>Soerjono Soekanto and Sri Mamudji, 2001, Normative Legal Research (A Brief Overview), Rajawali Pers, Jakarta, p. 13-14.

<sup>16</sup>Mukti Fajar ND and Yulianto Achmad, 2010, Dualism of Normative and Empirical Legal Research, Student Library, Yogyakarta, p. 183.

<sup>17</sup>Soeratno and Lincoln Arsyad, 2003, Research Methodology for Economics and Business, UPP AMP YKPN, Yogyakarta, p. 173.

reality.<sup>18</sup> Law enforcement is at the same time an indicator of the rule of law.<sup>19</sup> Consistent law enforcement will provide a sense of security, justice and certainty.<sup>20</sup> Law enforcers are required to carry out their duties in accordance with the mandate of the laws and regulations that lead to decisions with substance in the form of justice for the parties.<sup>21</sup>

Accountability for law enforcement at the criminal level can be asked to the police/prosecutors as private officials up to the ranks below them who carry out investigations, investigations, and prosecutions of a case in a reckless and unprofessional manner.<sup>22</sup>

In the field of law enforcement, in essence there are two tasks of the Prosecutor's Office, namely repressive law enforcement and preventive law enforcement. In repressive law enforcement, the Attorney General's Office carry out its main function, namely in the field of prosecution. In accordance with the dominus litis principle, the determination and control of the prosecution policy is only in one hand, namely the Prosecutor's Office.<sup>23</sup>

The position of the Prosecutor's Office in the Indonesian constitutional system is regulated in Article 2 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely: law".

Prosecutors are public prosecutors in criminal cases who represent the state and society. On the other hand, the Prosecutor's Office is the main party in representing the state in court and carrying out its obligations to implement legal regulations.<sup>24</sup>

The position and role of the Prosecutor's Office of the Republic of Indonesia as a state institution that exercises state power through law enforcement, especially in the field of prosecution, is expected to play a greater role in uphold the rule of law, protect the

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<sup>18</sup>Satjipto Rahardjo, 2009, *Law Enforcement, A Sociological Review*, First Issue, Genta Publishing, Yogyakarta, p. vii.

<sup>19</sup>Alvi Syahri, September 2020, *Law Enforcement against Policies Who Breached the Code of Conduct*, *Jurnal Daulat Hukum*, Vol. 3 No. 3, Faculty of Law, Sultan Agung Islamic University, Semarang, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/11238/4399>, hlm. 313.

<sup>20</sup>Anggrin Gayuh Praptiwi and Lathifah Hanim, September 2019, *Effectiveness And Role Of The Food Duty Unit Of Police Region Of Central Java In Law Enforcement In The Field Of Food In The Regional Law Of POLDA Central Java*, *Jurnal Daulat Hukum*, Vol. 2 No. 3, Faculty of Law, Sultan Agung Islamic University, Semarang, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/5669/3416>, hlm. 387.

<sup>21</sup>Iwan Setiyadi and Sri Kusriyah, June 2019, *Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter)*, *Jurnal Daulat Hukum*, Vol. 2 No. 2, Faculty of Law, Sultan Agung Islamic University, Semarang, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/5424/3345>, p. 204.

<sup>22</sup>Anis Mashdurohatun, 2016, *Developing the Social Function of Indonesian Copyright (A Study on Book Copyrights)*, First Printing, First Edition, UNS Press, Surakarta, p. 109.

<sup>23</sup>Marwan Effendy, 2005, *RI Attorney General's Office, Position and Functions from a Legal Perspective*, Gramedia Pustaka Utama, Jakarta, p. 179.

<sup>24</sup>Azhary, 1995, *Indonesian State of Law, Normative Juridical Analysis of its Elements*, University of Indonesia Press, Jakarta, p. 20.

public interest, and uphold human rights,<sup>25</sup> however, the law enforcement that people want is still far from expectations, and even violates human rights.

In a country that upholds the rule of law, where no one is immune to the law (nobody is impune), the community is required to support and fight for strict enforcement of a fair legal process in the criminal justice system without compromising the value of morals and human rights.

The public's expectations for law enforcement have recently been increasing, given that Indonesia is a state of law. then actions that are against the law must be handled properly by law enforcement officers without taking a long time, so that the injured party will get legal certainty, benefit, and true justice. However, the thought that the settlement of criminal cases that can only be carried out through court institutions and the theory of retributive punishment, turns out to have many problems and negative impacts. For this reason, it is necessary to change the approach, namely through the settlement of criminal cases outside the court with the principle of restorative justice.

The origin of this restorative justice is from the flow or community protection movement, which emerged after World War II. The modern flow that developed into what is known as the flow or movement of community protection (social defense). A well-known figure in this social defense movement is Filippo Gramatica, who in 1945 founded the Study Center of Social Defense in Genoa.<sup>26</sup>

So far, in the criminal justice system in force in Indonesia, where in the Criminal Procedure Code (KUHAP) only the rights of the suspect and the rights of the accused are considered, while the rights of victims of criminal acts are not mentioned, because so far the victims represented by the Public Prosecutor who is a representative of the state, but does not show his side with the rights of the victim. Unlike the case with restorative justice, the interests of the victims are also considered.

According to restorative justice, crime is not always defined as an attack on the state, but rather an offense by one person against another. This does not mean taking back the authority of revenge from the state to the victims of crime. Restorative justice rests on the human relationship between victims and offenders, and focuses on the impact that crime has on all parties, not only on victims, but also on society and the offenders themselves. In sentencing that is based on a restorative justice perspective, there are four elements that play a role, namely victims of crime, society, state, and offenders.<sup>27</sup>

Wright explains that the concept of restorative justice is basically simple. The measure of justice is no longer based on retribution from the victim to the perpetrator (either physically, psychologically, or punishment), but the painful act is healed by providing

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<sup>25</sup>Muhammad Jusuf, op.cit., hlm. 12.

<sup>26</sup>Teguh Prasetyo and Abdul Halim Barkatullah, 2005, Politics of Criminal Law, Review of Criminalization and Decriminalization Policies, Second Printing, Student Library, Yogyakarta, p. 81.

<sup>27</sup>Ibid., p. 123 and 124.

support to the victim and requiring the perpetrator to take responsibility with the help of the family and community when needed.<sup>28</sup>

A restorative justice approach in the settlement of criminal cases outside the court is needed in order to overcome the various weaknesses of the conventional criminal justice system. The application of restorative justice by the Prosecutor's Office can be carried out by overriding the prosecution of criminal cases and resolved by mechanisms outside the court. The basis of the Prosecutor in resolving cases out of court or overriding prosecution is to use the principle of opportunity.

The principle of opportunity is regulated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Article 35 letter c of Law Number 16 of 2004 states that: "The Attorney General has the duty and authority to override cases in the public interest". This provision clearly shows that setting aside cases in the public interest is the authority of the Attorney General, because the article explicitly mentions the Attorney General.<sup>29</sup>

Provisions regarding the waiver of cases in the public interest can also be found in the Elucidation of Article 77 of the Criminal Procedure Code (KUHP), which states that: "What is meant by termination of prosecution does not include setting aside cases for the public interest which are under the authority of the Attorney General". This provision clearly recognizes the existence of an institution for stopping prosecution through setting aside cases in the public interest, although in the Criminal Procedure Code itself there are no provisions governing the mechanism for stopping cases by the Attorney General in the public interest. However, the elucidation of Article 77 of the Criminal Procedure Code also explicitly mentions setting aside cases as the authority of the Attorney General.

Referring to the provisions of Article 35 letter c of Law Number 16 of 2004 and the Elucidation of Article 77 of the Criminal Procedure Code, the authority to set aside cases or the principle of opportunity is only the authority of the Attorney General. Thus, if the Prosecutor wants to set aside a case in the public interest, then the person concerned must submit it to the Attorney General through the hierarchical level applicable at the Prosecutor's Office. Of course, this is very difficult for the Prosecutors and takes a long time. For this reason, it is natural that so far, regional prosecutors have rarely submitted requests to set aside cases to the Attorney General. They prefer to solve it through formal channels by delegating the case to the court.<sup>30</sup>

In addition, in the Elucidation of Article 35 letter c of Law Number 16 of 2004, the definition of "in the public interest" is narrowed down to the interests of the nation and state and/or the interests of the wider community. In the international world, the definition of "in the public interest" is interpreted broadly, including: punishment is seen

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<sup>28</sup>DS. Dewi and Fatahillah A. Syukur, 2011, *Penal Mediation: Application of Restorative Justice in the Indonesian Juvenile Court*, Indie Publishing, Depok, p. 4.

<sup>29</sup>Bambang Waluyo, *op.cit.*, p. 206.

<sup>30</sup>*Ibid.*, p. 207.

as less effective; punishment is considered unfair; minors; elderly; and there are other more effective sanctions such as compensation; administrative, civil and other sanctions. This of course makes it more difficult for regional prosecutors if they want to file a waiver of the case because the case is small or there has been peace between the litigants. Moreover, in the Elucidation of Article 35 letter c of Law Number 16 of 2004, it is also emphasized that in setting aside criminal cases, the Attorney General must also pay attention to suggestions and opinions from state power agencies that are related to the matter. With the existing arrangements so far, it is very difficult for the Prosecutor to resolve criminal cases outside the court by implementing the principles of restorative justice. Because the authority of the opportunity is currently only the authority of the Attorney General.<sup>31</sup>

The principle of opportunity needs to be given to all prosecutors, in order to be able to resolve criminal cases that according to the community do not need to be resolved to court. By having the authority of opportunity, each Prosecutor can explore and find the values of justice that grow and develop in social life. Because of opportunity is a means for the Prosecutor in making *rechtsvinding* legal discoveries. This legal discovery by the Prosecutor needs to be considered carefully so that it can really provide benefits, especially for the realization of justice and legal equality for justice seekers.<sup>32</sup>

The discovery of law in the implementation of law enforcement duties, in essence, can not only be done by judges but also by other law enforcers, including prosecutors. This is in line with Sudikno's opinion Mertokusumo who stated that legal discovery is the process of law formation by judges or other legal officers who are given the task of implementing the law on concrete legal events.<sup>33</sup> Another legal officer phrase indicates that apart from being able to be done by judges, legal discoveries can also be made by other legal apparatus, such as prosecutors and police.

The prosecutor's efforts to make legal discoveries in the implementation of their duties and authorities are also in line with the provisions of Article 8 paragraph (4) of Law Number 16 of 2004, which states that in carrying out their duties and authorities, the prosecutor always acts according to the law by observing the norms religion, decency, decency, and must explore and uphold human values that live in society, and always maintain honor and dignity of the profession. These provisions are basically identical to the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which is the basis for judges to make legal discoveries.

In addition to these provisions, the juridical basis is the basis for the prosecutor's authority in implementing the principles of restorative justice explicitly stated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 7 paragraph (1) of Law Number 11 of 2012, requires that the settlement of juvenile criminal cases at all levels, including at the level of prosecution carried out by the prosecutor as the public

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<sup>31</sup>Ibid., p. 207-208.

<sup>32</sup>Ibid.

<sup>33</sup>Ahmad Rifai, 2011, *Legal Inventions by Judges in a Progressive Legal Perspective*, Sinar Graphic, Jakarta, p. 26.



prosecutor, be pursued through diversion. In the diversion process, it is obligatory to pay attention to the welfare and responsibilities of child offenders, to avoid negative stigma, to maintain decency and public order.<sup>34</sup>

Etymologically, the word diversion has an equivalent meaning with the same word "divert", in English which means: "the act of changing the direction that somebody or something is following, or what something is used for". change the course of something or change the purpose of someone, or change the use that is usually used).<sup>35</sup>

The main principle of implementing the concept of diversion, namely persuasive actions or approaches and providing opportunities for actors to change. Officers must demonstrate the importance of obeying the law by means of a persuasive approach and avoid arrest by using violence and coercion to carry out diversion. The use of violence will lead to the nature of coercion as a result of law enforcement.<sup>36</sup>

The application of the principles of restorative justice by the Prosecutor's Office through the waiver of prosecution also has a strong philosophical foundation. In many countries the prosecutor is also given the authority as a quasi-judicial officer. As a quasi-judge, the Prosecutor carries out the function of protect the innocent, consider the rights of suspects and prevent prosecution on the basis of revenge.<sup>37</sup>

In many countries, the Prosecutor is the main or central figure in the administration of criminal justice, because the Prosecutor plays an important role in the decision-making process. Even in countries where the Prosecutor does not carry out his own investigation, the Prosecutor retains broad prosecution discretion. Prosecutors have the power to determine whether to sue or not to prosecute almost all criminal cases, either with or without conditions. Therefore, it is not wrong if someone later gives the Prosecutor the nickname "the boss of the litigation process" (master of the procedure) as long as the case has not been brought to court.<sup>38</sup>

With his position as a quasi-judicial officer or half-judge (semi-judge), it is not surprising that the prosecutor is given the authority to stop prosecuting both for technical reasons and for reasons in the public interest (opportunity principle). That is why the Prosecutor may withdraw the indictment or terminate the case process with or without conditions. The form of discretionary prosecution may be in the form of termination of prosecution, trial prosecution, waiver of cases, transactions, and even sentencing with or without

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<sup>34</sup>Rendy Surya Aditama, Umar Ma'ruf, and Munsharif Abdul Chalim, March 2018, Criminal Law Policy Against Children as Psychotropic Crime Perpetrators in the Magelang Resort Police, *Jurnal Daulat Hukum*, Vol. 1. No. 1, Faculty of Law, Sultan Agung Islamic University, Semarang, p. 120.

<sup>35</sup>Dahlan Sinaga, 2017, *Law Enforcement With a Diversion Approach (Theory of Dignified Justice Perspective)*, First Edition, Nusa Media, Yogyakarta, p. 25.

<sup>36</sup>Marlina, 2012, *Child Criminal Justice in Indonesia, Development of the Concept of Diversion and Restorative Justice*, Second Printing, Refika Aditama, Bandung, p. 22.

<sup>37</sup>Bambang Waluyo, *op.cit.*, p. 213.

<sup>38</sup>*Ibid.*, p. 213-214.

court approval.<sup>39</sup> Through this institution of case termination based on the principle of opportunity, the Prosecutor can apply the principles of restorative justice.

When viewed from the side of restorative justice, the need to apply a restorative justice approach in carrying out the duties and functions of the Prosecutor, can be seen from the philosophical values contained in the restorative justice paradigm itself. In the paradigm of restorative justice, there are at least 3 (three) philosophical values, namely:<sup>40</sup>

1. Recovery of victims' losses and forgiveness of perpetrators;
2. Rebuilding a harmonious relationship between the victim and his community on the one hand, with the perpetrator and his community on the other so that there will be no more grudges in the future; and
3. Dispute resolution is fast, simple and low cost and benefits the parties, be it perpetrators, victims, and the community (win-win solution).

These values are essentially in line with the values of justice that grow and develop in people's lives in almost all regions of Indonesia.

The application of restorative justice by the Prosecutor's Office through the settlement of cases outside the court, has a strong philosophical foundation both from the Prosecutor's side as the official who makes decisions and from the side of the restorative justice mechanism itself. Therefore, basically the law is not only aimed at realizing legal certainty, justice and benefit alone, but also guarantees the realization of peace.

Sociologically, the implementation of restorative justice by the Prosecutor's Office also has a strong foundation, along with the number of criminal cases with a small loss value that the Prosecutors propose to court. However, according to the public's view, the filing of the prosecution was deemed not in accordance with the values of justice that grew and developed in the community, such as in the case of the theft of three cocoa beans with the defendant Granny Minah and other cases. The prosecution of these cases is considered by the community to be inappropriate. The community wants such cases not to be resolved in court.

The application of the principles of restorative justice by the Prosecutor through the settlement of cases out of court, brings positive legal implications for victims of crime. Settlement of cases outside the court provides an opportunity for victims to convey their demands and interests to the perpetrators. Thus the victim can ask the perpetrator to pay compensation as desired, which is then approved by the perpetrator. If an agreement has been reached, of course it can give satisfaction to the victim, so that the victim will voluntarily be willing to give forgiveness to the perpetrators of the crime. In addition, the payment of compensation given by the perpetrator to the victim can also be used as capital for the victim in rebuilding his life.<sup>41</sup>

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<sup>39</sup>RM. Surahman and Andi Hamzah, 1996, *Prosecutors in Various Countries, Their Roles and Positions*, Sinar Graphic, Jakarta, p. 6-7.

<sup>40</sup>Bambang Waluyo, *loc.cit.*, p. 214.

<sup>41</sup>*Ibid.*, p. 221-222.

Thus, the settlement of cases outside the court through a restorative justice approach carried out by the Prosecutor's Office will end in a win-win solution, not a lost-lost solution, or a win-lost solution. With a victory for all parties, especially for the perpetrators and victims of crimes, this is the highest achievement of justice from a dispute resolution process. Realization the highest justice is the main foundation for reconciliation efforts, restoring balance and bringing a sense of peace and peace within the perpetrators, victims, and society.

In addition, the application of restorative justice by the Prosecutor's Office, apart from being able to contribute to solving problems related to overcapacity in prisons/detention centers, can also contribute to saving the state budget, and can also improve the quality of coaching. prisoners, so that in the end it can improve and improve public perception of prisons.

Efforts to settle criminal cases out of court by the Prosecutor through a restorative justice approach are essentially a mechanism or legal system that has many advantages so that it is appropriate to apply it in the criminal justice system in Indonesia.

Provisions that allow the prosecutor to act as a mediator and initiate peace between the perpetrator and the victim with a restorative justice approach, are expected to provide certainty for the community, especially the perpetrator and victim, that there is peace between the parties, this can eliminate the right of the public prosecutor to commit crimes.prosecution. With this certainty, it is hoped that it can encourage perpetrators to consciously and voluntarily carry out punishments as mutually agreed in the peace forum. If this is done, the victim will also get benefits and advantages, namely that his demands are fulfilled voluntarily by the perpetrator. This is expected to create peace and tranquility in social life.

Based on this, the application of restorative justice inThe enforcement of criminal law by the Prosecutor's Office has been regulated in the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, in which the application of restorative justice is carried out by closing cases in the public interest, as regulated in Article 3 of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 , with the condition that the prosecution is terminated as stipulated in Article 4 and Article 5 of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020.

Thus, the application of restorative justice by the Prosecutor's Office can realize legal certainty, legal order, justice, and truth based on the law and respect religious norms, decency, and morality, and must explore the values of humanity, law, and justice that live in society by emphasizing restoration to its original state and the balance of protection and the interests of the victim.

#### **4. Closing**

The authority of the Prosecutor's Office in enforcing criminal law with a restorative justice approach is based on the principle of opportunity, which is regulated in Law Number 16 of 2004 Article 35 letter c of Law Number 16 of 2004, Elucidation of Article

77 of the Criminal Procedure Code, and Law Number 11 of 2012. The principle of opportunity needs to be given to all prosecutors, in order to be able to resolve criminal cases that according to the community do not need to be resolved to court. With the authority of opportunity, each Prosecutor can explore and find the values of justice that grow and develop in social life. Currently, the application of restorative justice by the Prosecutor's Office has been regulated in the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020,

There is a need for socialization for the community related to the application of restorative justice, and the need for cooperation between law enforcers in implementing a restorative justice approach in criminal law enforcement.

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