

## The Essence of Discontinuing Prosecution by the Prosecutor's Office to Achieve Restorative Justice

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**Abstract:** *The aim of this research is to determine and analyze the nature of terminating prosecution by the Prosecutor's Office to achieve restorative justice. The approach method used in this writing is normative juridical. This writing specification is analytical descriptive. A balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retaliation is a legal need for society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system in Indonesia. For this reason, the issuance of Attorney General Regulation Number 15 of 2020 has given a new breath in resolving criminal cases more fairly. Authority based on the dominus litis principle, led the Prosecutor's Office in 2020 to stipulate Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation is based on considerations for resolving criminal cases that prioritize restorative justice which emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards retribution is a legal necessity.*

**Keywords:** *Justice; Prosecution; Restorative.*

### 1. Introduction

The Republic of Indonesia is a country based on law, this is emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The Republic of Indonesia is a country based on law", as a country based on law, it highly upholds the applicable law as a tool to regulate national and state life.<sup>1</sup> Thus, law enforcement occupies a very central position, by placing

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<sup>1</sup> Adhe Ismail Ananda, Constitutionalism Concept in Implementation of Indonesian State Administration, Journal of Sovereign Law, Volume 4 Issue 2, June (2021), p.124

the law in its function as a regulatory tool for the lives of society with society and society with the government.<sup>2</sup>

The Unitary State of the Republic of Indonesia is one of the big countries that highly prioritizes the applicable legal provisions. The positive legal rules that apply in Indonesia are clearly an important component in building a safe, peaceful and peaceful life.<sup>3</sup>One of the areas of law in order to maintain order and security for Indonesian citizens is criminal law.<sup>4</sup>Criminal law reform is an effort to orient and reform criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie social policy, criminal policy and law enforcement policy in Indonesia.<sup>5</sup>

One of the components driving the criminal justice system is the Attorney General's Office of the Republic of Indonesia or commonly referred to as the prosecutor's office. The provision that the prosecutor's office is part of the criminal justice system is regulated in Article 24 of the 1945 Constitution (UUD) in conjunction with Article 38 of Law Number 48 of 2009 concerning Judicial Power. In the implementation of the case handling process, the Public Prosecutor has the authority to stop a criminal case as regulated in the Criminal Procedure Code, specifically Article 140 Paragraph (2) Letter (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 states this in a decision letter". The termination of the prosecution by the Public Prosecutor based on Article 140 Paragraph (2) of the Criminal Procedure Code is because firstly the case does not have sufficient evidence, secondly the incident is not a criminal act and thirdly the case is closed by law.

The Attorney General has the duty and authority to make the law enforcement process as provided by the Law effective by taking into account the principles of fast, simple and low-cost justice, as well as determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience, including prosecutions using a restorative justice approach implemented in accordance with statutory provisions. The author's research objective is to find out and analyze the essence of Termination of prosecution by the Prosecutor's Office to achieve restorative justice.

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<sup>2</sup>Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia, *Jurnal Daulat Hukum* Volume 1 Issue 4 December (2018), p. 895

<sup>3</sup>Nur Dwi Edie W and Gunarto, Analysis of Judicial Policy in Deciding Criminal Acts Based on Alternative Indictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Bloro), *Journal of Legal Sovereignty: Volume 3 Issue 1, March (2020)*, p.148

<sup>4</sup>Saviera Chntyara, 2018, The Role of Visum Et Repertum at the Investigation Stage in Revealing Criminal Acts of Assault, Faculty of Law, UMS, Surakarta, p.2.

<sup>5</sup>Barda Nawawi Arief, 2010, *Anthology of Criminal Law Policy*, Jakarta: Kencana, p.29.

## 2. Research Methods

To conduct a study in this writing, the author uses a normative legal approach method or written legal approach (legislation/statute approach).<sup>6</sup>The writing specifications used the analytical descriptive approach method. The data used for this writing is secondary data. The main data collection method used in literature studies is secondary data obtained from literature books, laws and regulations, and opinions of legal experts. The data obtained is then analyzed using qualitative analysis.

## 3. Results and Discussion

### 3.1. Termination of Prosecution

Prosecution is a decision made by the public prosecutor to submit the case files to the District Court against the defendant in order to obtain a judge's decision. In the Criminal Procedure Code, the term prosecution is known as explained in Article 1 number 7 which reads as follows:

"Prosecution is an action by the public prosecutor to refer a criminal case to the competent District Court in the case and according to the method regulated in this law with a request that it be examined and decided by a judge in a court hearing."

According to Atang Ranoemi hardja, prosecution can be interpreted as the submission of case files to the District Court by the Public Prosecutor so that the case files can be submitted to the Court hearing.<sup>7</sup>The legal policy of the Attorney General's Office in the form of Attorney General's Regulations to implement a new criminal policy innovation as a form of state through authorized bodies to determine the desired regulations and used to express the values and norms contained in society in order to achieve the desired goal, namely restorative justice.

There are 2 (two) types of methods for terminating prosecution, including peace efforts and peace processes. First, peace efforts offered by the public prosecutor to both parties, namely the suspect and the victim. The flow of peace efforts begins with the public prosecutor summoning the victim followed by informing the reason for the summons. Continued by involving the victim/suspect's family, community leaders/representatives, and other related parties. During the process, if the offer is accepted, the case is dismissed, if rejected, the case will be referred to court. Second, the peace process. The public prosecutor acts as a facilitator who has no element of bias between the two parties between the victim and the suspect with a period of 14 (fourteen) days from the handover of responsibility that must be fulfilled by the suspect and is carried out at the

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<sup>6</sup>Soemitro. 1998. *Legal Research Methodology and Jurimetrics*, Jakarta, Ghalia Indonesia, p. 24

<sup>7</sup>Djoko Prakoso, 1984, *Duties and Role of Prosecutors in Development*, Jakarta: Ghalia Indonesia, p 26

prosecutor's office. This activity is carried out in order to resolve the case peacefully and not be followed up in court.

### **3.2. The Nature of Termination of Prosecution by the Prosecutor's Office to Achieve Restorative Justice**

The Public Prosecutor can be likened to a monopoly, meaning that the public prosecutor is the only prosecutor so that no other body can intervene, and the judge cannot request that the crime be submitted to him because the judge only has the power to decide based on the results of the prosecution by the public prosecutor.

Based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja No. 15 of 2020, it clearly states how restorative justice seeks to involve the perpetrator, victim, and community in the process of resolving the criminal case. In the implementation of the restorative justice approach based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, it can be seen that the regulation emphasizes the peace agreement between the perpetrator and the victim and how the procedural law then recognizes the existence of the peace agreement as an agreement that has legal force. As a concrete infestation of a paradigm of punishment not for revenge but as recovery, the Attorney General's Office took a strategic step by issuing the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which was promulgated on the Adhyaksa Bhakti Day (HBA) July 22, 2020.<sup>8</sup>

In other matters, the Indonesian Attorney General's Regulation No. 15 of 2020 also contains restrictions on the implementation of restorative justice so that it is not only interpreted as a peace agreement because if so, the ongoing process will actually be trapped in merely carrying out procedural functions so that truth (especially material truth) and justice cannot be achieved.<sup>9</sup>

This regulation is also considered as a legal substance formulated to eliminate the rigid positivistic understanding by prioritizing progressive law labeled restorative justice. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state and not retaliation.

The conditions that must be met by a suspect who is entitled to receive termination of prosecution based on restorative justice as explained in Article 5 of PERJA No. 15 of 2015 are:

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<sup>8</sup>Andri Kristanto, Study of Attorney General Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice, *Lex Renaissance*, Vol. 7 No. 1 January (2022), p.186

<sup>9</sup>Mahendra, Adam Prima, Penal Mediation at the Investigation Stage Based on Restorative Justice, *Jurnal Juri-Diction*, Vol.3 No.4, (2020), p. 1161.

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

The existence of Perja No. 15/2020 which gives the Prosecutor the authority to stop prosecution based on restorative justice is 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. Normatively, the criminal justice system is intended for law enforcement. This system is an operational tax on statutory provisions in order to overcome crime to produce legal certainty. The implementation of social defense can be facilitated by the criminal justice system in order to realize better social welfare. Social aspects based on benefits (expediency) should be considered by the criminal justice system. This criminal justice system is intended to reduce recidivism and crime in the short term. Meanwhile, in the long term, the criminal justice system is intended to create better social welfare in the future. If this goal cannot be achieved, then there is an unfairness in the justice system that has been implemented.

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

Regarding the meaning of criminal law conveyed by Pompe, criminal law is a whole set of general regulations whose contents are prohibitions and obligations, against violations. This view is intended that the state or legal community is threatened with special suffering in the form of criminal punishment, the imposition of criminal penalties, the regulations also regulate provisions that provide the basis for the imposition and application of criminal penalties, but researchers still believe that the purpose and function of the implementation of the law, namely justice, benefits and legal certainty must also be achieved in the process of enforcing applicable law.

If according to the Public Prosecutor, the criminal case has met the requirements in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 so that the termination of prosecution can be implemented, the Public Prosecutor submits the peace effort to the Head of the District Attorney's Office. If the Head of the Prosecutor's Office agrees that the case has met the requirements as stated in the Prosecutor's Regulation Number 15 of 2020 and peace efforts can be made as an initial stage of the process of terminating prosecution based on restorative justice, the Head of the District Attorney's Office issues a Peace Effort Implementation Order. This letter contains the legal basis, considerations and also the purpose of the letter, namely, to implement peace efforts for criminal cases that have been submitted by the Public Prosecutor by making peace attended by the parties involved in the criminal case with the Prosecutor as the Public Prosecutor acting as a facilitator.<sup>10</sup>

After the Head of the District Attorney's Office agrees with the peace efforts regarding the criminal case letter submitted by the Public Prosecutor, a Peace Effort Order is issued. With the issuance of the Peace Effort Order, the Public Prosecutor can make peace efforts in the case. For the purposes of peace efforts as a stage in implementing efforts to stop prosecution, the Public Prosecutor summons the parties to the case, including related parties such as religious figures or community leaders legally and properly stating the reasons for the summons. Then the Public Prosecutor issues a Peace Effort Summons Letter to the related parties to make peace efforts legally and to appear before the Public Prosecutor who is responsible for resolving the criminal case in order to make peace efforts.

The next stage if there has been a peace agreement between the parties in the criminal case, then the Public Prosecutor makes a Minutes explaining that there has been a peace agreement between the parties which is then also signed by the related parties and also the Public Prosecutor who is responsible for resolving the case. In addition, the Public Prosecutor also makes a Memorandum of Opinion on Termination of Prosecution Based on Restorative Justice which contains the opinion of the public prosecutor regarding the reasons for submitting a peace effort and terminating prosecution based on restorative justice for the criminal case.

After obtaining approval from the Head of the High Prosecutor's Office, the Head of the District Prosecutor's Office can then issue a Letter of Determination to Terminate Prosecution for a criminal case that has been attempted for peace, a peace agreement has been reached and also received approval from the Head of the High Prosecutor's Office. This Letter of Determination to Terminate Prosecution contains considerations, case positions, reasons for stopping

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<sup>10</sup>Angela Claudia Scolastika Manurung, Dewa Gede Sudika Mangku, Made Sugi Hartono, Implementation of the Principle of Restorative Justice in Criminal Cases of Vandalism (Case Study No. PDM532/BLL/08/2020), e-Journal of Yustisia Community, Volume 4 Number 2 August (2021). p.549

prosecution of the criminal case. With the issuance of the Letter of Determination to Terminate Prosecution, the prosecution of the criminal case is stopped and closed.

The implementation of the termination of prosecution through the reconciliation of the suspect and victim does not necessarily have to be contrary to the basic values and meaning of criminal law itself. Even though, for example, regarding the meaning of criminal law conveyed by Pompe, criminal law is a whole set of general regulations whose contents are prohibitions and obligations, against violations. This view is intended that the state or legal community is threatened with special suffering in the form of punishment, the imposition of criminal penalties, these regulations also regulate provisions that provide the basis for the imposition and application of criminal penalties, but researchers still believe that the purpose and function of the implementation of the law are<sup>11</sup>justice, benefit and legal certainty must also be achieved in the applicable law enforcement process.

The Prosecutor's Office is also authorized to make the law enforcement process effective as provided by law by considering the principles of fast, simple, and low-cost justice, as well as determining and formulating case handling policies for the success of prosecutions carried out independently for the sake of justice based on law and conscience. The factual basis for the issuance of Prosecutor's Regulation Number 15 of 2020 is:

- 1) Viral cases ranging from the flip-flops case, to the theft of 1 (one) carton of baby milk, indicate that society currently wants legal reform;
- 2) The courts are more cost efficient if maximum justice (benefit) is achieved, if the case or conflict between the victim and the accused is resolved in the process before the transfer (outside the court), compared to after the transfer;
- 3) This concept contains the teaching that judicial behavior needs to be changed so that both its regulations (legal), the behavior of law enforcers (attitudinal) and law enforcement strategies (strategic) can achieve maximization of public welfare and justice (Pareto improvement).<sup>12</sup>

In the context of prosecution reform in the Prosecutor's Office, the Attorney General promised to revolutionize and reformulate the law enforcement policy in the Prosecutor's Office. The Attorney General as the controller of prosecution has the authority to issue the intended policy, to implement the principles of a proper and appropriate prosecution policy (beginselen van een behoorlijk vervolgingsbeleid - decently prosecution or indictment policy) which is closer to the interpretation of the law in theory and practice.

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<sup>11</sup>KP Prayitno, Restorative Justice for the Courts in Indonesia (Philosophical Juridical Perspective in Law Enforcement in Concreto). Journal of Legal Dynamics, Volume 12 Number 3, (2012), p.414

<sup>12</sup> Fadil Zumhana, 2021, Termination of Prosecution Based on Restorative Justice, Deputy Attorney General for General Crimes, p. 12

#### 4. Conclusion

Problems related to the resolution of criminal cases that always end in imprisonment, then the solution that has recently emerged related to the authority of the public prosecutor to stop prosecution based on the concept of restorative justice, namely the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja No. 15 of 2020, needs to be appreciated because this concept involves the perpetrator, victim, and community in the process of resolving the criminal case.

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