

The Position of the Prosecutor's Office in the Restorative Justice Process on the Effectiveness of Indonesian Criminal Law

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Abstract: *The purpose of this research is to determine and analyze the impact of the position of the Prosecutor's Office in implementing restorative justice on the effectiveness of Indonesian criminal law. The approach method used in this writing is normative juridical. This writing specification is analytical descriptive. The Attorney General's Office issued prosecutor's regulation number 15 of 2020 concerning stopping prosecutions based on restorative justice. Another background to this regulation is that the Prosecutor's Regulations which were stipulated on 21 July 2020 gave the Public Prosecutor (JPU) the right to stop prosecuting cases against defendants in certain cases, if the parties involved have agreed to make peace. Because for society, the law is no longer useful for processing defendants. Caseloads piling up in courts, prisons becoming full. The issuance of this regulation regarding the termination of prosecution is to be implemented based on justice, public interest, proportionality, punishment as a last resort, using the principles of simplicity, speed and low costs. In the future, the prosecutor's office will also terminate the prosecution of criminal cases using the principles of restorative justice*

Keywords: *Effectiveness; Justice; Prosecutor; Restorative.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution, which contains the meaning of all actions and behavioral patterns of citizens which must also be in sync with the norms regulated by the state.¹

¹Supriyono, Criminology Study of Crime of Fencing the Stolen Goods, Jurnal Daulat Hukum, Volume 3 Number 1, (2020), p.186

The concept of a state based on law leads to the goal of creating a democratic life, protecting human rights, and achieving just welfare.²It is the law that determines which actions may or may not be done. According to Utrecht, law is a collection of regulations (commands and prohibitions) that regulate order in a society and must be obeyed by society.³In the fourth paragraph of the opening of the 1945 Constitution, the goal of the Indonesian state is to protect all Indonesian people, advance public welfare, educate the nation's life and participate in implementing world order. In order to realize these goals, there needs to be an effort that is carried out continuously and sustainably while still paying attention to every aspect that influences. This effort is called development.⁴

In human life, it is inseparable from criminal acts, crimes or criminal acts (*strafbaat feit*). For that, the existence of law is very necessary. Indeed, law is the foundation, basis, moral, in overseeing the achievement of the goals of life that are aspired to together for the sake of the emergence of social order. Of course, the law also functions to prevent, reduce, and eradicate criminal acts.⁵

The current criminal justice system is not interested in thinking about how to restore the impact of crime experienced and suffered by its victims. It is a disgrace to a nation if every day thousands of citizens become victims of a crime and their basic rights are violated and neglected, while they are busy thinking about legal, constitutional, and basic rights protection for people who violate criminal law, even though this is also necessary.⁶

Theoretically, a criminal case can be closed by law and its prosecution can be stopped based on restorative justice if several conditions are met, namely first, the suspect has committed a crime for the first time, second, the crime is only threatened with a fine or is threatened with imprisonment of no more than 5 years, and third, the crime is committed with the value of the evidence or losses caused by the crime not exceeding Rp. 2,500,000.,00. In practice, criminal cases that should be resolved restoratively are still being examined in court while the case can be stopped or resolved at the investigation stage in the police or at the prosecution stage in the prosecutor's office. As a result, the burden on the courts increases and increases the burden on the prisons that accommodate inmates.

²Masyhadi Irfani and Ira Alia Maerani, *Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency*, *Jurnal Daulat Hukum*, Volume 2 Issue 1, (2019), p.76

³Sri Praptini, Sri Kusriyah and Aryani Witasari, *Constitution and Constitutionalism of Indonesia*, *Journal of Legal Sovereignty*, Volume 2 Issue 1, (2019), p.8

⁴Abdul Kholiq Nur and Gunarto, *Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value*, *Journal of Daulat Hukum* Volume 4 Issue 1, (2021), p.82

⁵Bambang Waluyo, (2020), *Settlement of Criminal Cases Using the Application of Restorative and Transformative Justice*, Jakarta, Sinar Grafika, p.1.

⁶Mudzakkirr *The Position of Victims of Crime in the Indonesian Criminal Justice System Based on the Criminal Code and the Draft Criminal Code*, *Journal of Legal Studies*, Vol. 14, No. 1, (2011), p. 30.

The Attorney General's Office issued prosecutor's regulation number 15 of 2020 concerning the termination of prosecution based on restorative justice, another background to the regulation is the Prosecutor's Regulation stipulated on July 21, 2020, which gives the Public Prosecutor (JPU) the right to terminate prosecution of cases against defendants in certain cases, if the parties involved have agreed to make peace. Because "For the community, the law is no longer useful for processing defendants. The accumulation of caseloads in court, prisons that are full, and small people who often fall into the error of lust, commit crimes, which they sometimes do not realize, then have to languish in prison cells for months. Because our criminal procedure law does not recognize penal mediation. Because our material and formal criminal law is still oriented towards retaliation for criminal acts only and has not shifted to the actions and perpetrators of criminal acts, let alone the paradigm of the interests of the victim. The Attorney General feels that it is time for the Public Prosecutor to capture the voice of justice in the community and implement the termination of prosecution of cases that are not worthy of being brought to court. However, based on Article 7 of the Indonesian Attorney General's Regulation Number 15 of 2020. The public prosecutor offers peace efforts and suspects.

The aim of the author's research is to find out, and analyze the position of the Prosecutor's Office in implementing restorative justice towards the effectiveness of Indonesian criminal law.

2. Research Methods

To conduct a study in this writing, the author uses a normative legal method. The writing specifications used a descriptive analytical approach method. The data used for this writing is secondary data. To obtain data in this writing, a secondary data collection method is used which is obtained from literature books, laws and regulations, and opinions of legal experts. The data that has been obtained is then analyzed using qualitative analysis.

3. Results and Discussion

3.1. The Utility of Restorative Justice Implementation in the Criminal Justice Process

The position of restorative justice in the criminal justice system is divided into two, namely: outside the criminal justice system and within the criminal justice system.⁷The reality shows that most people still rely on state law and existing legal procedures. In addition, policy makers also still believe in and depend on the existing criminal justice system. In this case, both the legislative and executive view that the use of the restorative justice approach is only an alternative model for resolving criminal cases offered in a legal system that is different from the applicable state law.

⁷Eva Achjani Zulfa. (2009), Restorative Justice, FH UI Publishing Agency, Jakarta, p.17

The position of restorative justice in Indonesia is strictly regulated in gambling in various laws and regulations, for example the 1945 Constitution of the Republic of Indonesia; Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 as amended by Law Number 5 of 2004 as last amended by Law Number 3 of 2009 concerning the Supreme Court. Thus, considering that the Supreme Court (MA) is a state institution that exercises judicial power and as the peak of the judiciary, it is only fitting that the Supreme Court (MA) adopts or adheres to and applies the approach or concept of restorative justice.

In addition, the Law on Judicial Power, namely Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, specifically in Article 5, firmly states that judges are required to explore the values that live in society (the living law or local wisdom). Thus, in essence, judges must or are required to apply the approach or concept of restorative justice in resolving cases because the approach or concept of restorative justice is in accordance with the soul of the Indonesian nation, namely Pancasila, in accordance with the values of customary law and also in accordance with religious values.

It should also be stated that the concept of restorative justice cannot only be applied to the Supreme Court (MA). In the criminal justice process in general and the criminal justice process in Indonesia in particular, there are several stages or processes that must be passed by justice seekers both at the level of investigation, inquiry, prosecution, examination in court until the stage of the judge's decision. Even at the stage where justice seekers make legal efforts (both ordinary legal efforts and extraordinary legal efforts). Thus, the author considers that it is appropriate to adopt and apply the concept of restorative justice at various levels or judicial processes as stated above.

Restorative justice does not merely apply the decision of winning and losing in the criminal justice system which is hostile/resistance (adversarial system). The restorative justice process seeks a dialogue facility between all parties affected by the crime, including victims, perpetrators, their supporters, and society as a whole. A process occurs that involves all parties affected by a particular crime to work together to resolve it collectively in order to overcome the occurrence of crime and its implications in the future.

The process of dialogue between the perpetrator and the victim is the basis and the most important part of the implementation of restorative justice. Through dialogue, the victim can express what they feel, express the hope that their rights and desires will be fulfilled from a criminal case resolution. The perpetrator is also expected to be able to correct themselves, realize and regret their mistakes and accept responsibility as a consequence of the criminal act committed with awareness. This dialogue allows the community to participate in realizing the results of the agreement and monitoring its implementation. Restorative justice is basically also known as case resolution through mediation.

Criminal cases that can be resolved outside of court through restorative justice or mediation are as follows:

- 1) Violations of criminal law fall into the category of complaint offences, both absolute and relative complaints.
- 2) Violation of criminal law carries a fine as a criminal threat and the violator has paid the fine.
- 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 (ultimate/last sanction in law enforcement).
- 5) The violation of criminal law is included in the minor/all minor category and law enforcement officers use their authority to exercise discretion.
- 6) Ordinary criminal law violations that are stopped and not processed in court (deponir) by the Attorney General in accordance with his legal authority.
- 7) These criminal law violations fall into the category of customary criminal law violations which are resolved through customary institutions.
- 8) Violations of criminal health laws caused by negligence of medical personnel.

The focus of restorative justice is on crime as a loss/damage, and justice is an effort to repair the damage with a vision to elevate the role of crime victims, perpetrators and society as three very important determinant dimensions in the criminal justice system for the welfare and security of society. In this case the objectives of the criminal justice system are short-term resocialization, medium-term crime prevention and long-term community welfare and security.⁸

3.2. The Impact of the Position of the Prosecutor's Office in Implementing Restorative Justice on the Effectiveness of Indonesian Criminal Law

The Attorney General's Law provides legitimacy to the institution of the Indonesian Attorney General's Office as a government institution that exercises state power in the field of prosecution. In this regard, all aspects of the prosecution of criminal cases carried out are the full responsibility of the Attorney General, so that the position of the Attorney General as the head of the Attorney General's Office can fully formulate and control the direction and policies for handling criminal cases for the success of the prosecution, one of which is to create efficiency in efforts to enforce criminal law, namely by issuing the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Perja Penghentian Penutan).

⁸Muladi, (2019). Implementation of the “Restorative Justice” Approach in the Juvenile Justice System, Semarang.

Based on the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja No. 15 of 2020, it clearly contains 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 No. 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, 2020.⁹

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.¹⁰This 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.

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 summons of the victim by the public prosecutor followed by informing the reason for the summons. Continued by involving the victim's/suspect's family, community leaders/representatives, and other related parties. During the process, if the offer is accepted, the case is dismissed, if rejected, the case will be referred to court. Second, the peace process. The public prosecutor acts as a facilitator who has no element of bias between the two parties between the victim and the suspect with a period of 14 (fourteen) days from the handover of responsibility that must be fulfilled by the suspect and

⁹Andri 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,

¹⁰Mahendra, Adam Prima, Penal Mediation at the Investigation Stage Based on Restorative Justice, *Jurnal Jurist-Diction*, Vol.3 No.4, (2020). p. 1161.

is carried out at the prosecutor's office. This activity is carried out in order to resolve the case peacefully and not be followed up in court.¹¹

The legitimacy granted by the Prosecutor's Office Law and the Criminal Procedure Code to the Prosecutor both in his capacity as a functional official and as a Public Prosecutor has legally placed the Prosecutor as a law enforcement officer who carries out the function of enforcing the law on the occurrence of a crime in society. Thus, everything related to the duties and functions carried out by the Prosecutor in the scope of law enforcement, especially in the scope of termination of prosecution based on restorative justice as regulated in Article 30C letter d of the Prosecutor's Office Law and as stated in paragraph 5 (five) of the General Explanation of the Prosecutor's Office Law can certainly be interpreted as a formal legal action based on attribution authority, namely authority derived from statutory regulations.

In line with this, the position of the Regulation on Termination of Prosecution as an internal regulation of the Prosecutor's Office issued by the Attorney General of the Republic of Indonesia based on the provisions as regulated in Article 35 Paragraph (1) letter a of the Prosecutor's Office Law which contains guidelines for technical provisions in relation to the process and/or mechanism for terminating prosecution based on restorative justice for Prosecutors, then in the case of a Prosecutor terminating prosecution based on restorative justice, it must be assessed as part of the implementation of attribution authority.

Criminal law enforcement that focuses on retaliation has gradually changed. Criminal law is no longer used as retaliation against people who violate the law. Criminal law is used as a tool to combat crime itself. Efforts to combat crime or criminal policies are a rational effort by society to combat crime.¹²

The provisions for termination of prosecution in the Criminal Procedure Code still use conventional justice where the judicial process still uses the same process and approach so that the principles of simple, fast and low-cost justice are still difficult to implement. Therefore, the Attorney General issued an Attorney General Regulation concerning the termination of prosecution based on Restorative Justice which is regulated in the Attorney General Regulation (PERJA) Number 15 of 2020. The issuance of this regulation concerning the termination of prosecution is to be implemented based on justice, public interest, proportionality, criminal as a last resort, using the principles of simplicity, speed and low cost. In its development, the prosecutor's office will also terminate prosecution of criminal cases using the principle of restorative justice.

¹¹Gita Santika, The Role of the Prosecutor's Office in Realizing Restorative Justice as an Effort to Combat Crime, *PROGRESIF: Journal of Law*, Vol.XVI No.1 June (2021), p.89

¹²Ruben Achmad, The Nature of the Existence of Criminal Sanctions and Punishment in the Criminal Law System. *Legality: Journal of Law*, Vol. 5 No. 2, (2017), p. 84.

4. Conclusion

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. 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. While 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.

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