

Juridical Analysis of Prosecution Termination Based on the Regulation of the Republic Indonesia Prosecutor Regulation Number 15/2020 concerning on Termination of Prosecution Based on Restorative Justice

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Abstract

This research is motivated by the concept of implementing a conventional criminal justice system that is oriented towards the nature of retaliation against the perpetrator. The formulation of this research is regarding the regulation of termination of prosecution according to the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15/2020 concerning on Termination of Prosecution Based on Restorative Justice, the role of the prosecutor's office in upholding restorative justice based on Prosecutor's Regulation No. 15/2020 concerning on Termination of Prosecution Based on Restorative Justice. This research uses normative juridical research with a statutory, case study, and conceptual approach. The regulation on termination of prosecution according to the Regulation of the Prosecutor's Office of Republic of Indonesia No. 15/2020 concerning on the Termination of Prosecution Based on Restorative Justice provides conditions for criminal acts that can be applied to cessation of prosecution for the sake of restorative justice. The Prosecutor's Role in Enforcing Restorative Justice Based on Prosecutor's Regulation No 15/2020 concerning on Termination of Prosecution Based on Restorative Justice, the Prosecutor's Office in addition to having a prosecution role in criminal cases also has a role as a preventive tool to prevent the accumulation of cases in court through the termination of prosecution based on restorative justice. The prosecutor has a role to reconcile the victims and perpetrators, here the prosecutor is active in conducting penal mediation to the victims and perpetrators with the intention that the perpetrators and victims get a win-win solution and a mutual agreement and therefore they can return to their original state (recovery) not retaliation.

Keywords: Termination of Prosecution, restorative justice, prosecutor

Introduction

The theory of restorative justice is one of the theories in law to close the gaps in the settlement of conventional criminal cases whose approach is repressive. The theory of restorative justice emerged in 1970 which gave an influence on the development of modern criminal law. The conventional criminal justice system is not suitable to be applied which tends to a retributive approach (retaliation). Therefore, the theory of restorative justice appears to provide changes in criminal law enforcement based on recovery. An English criminologist Tony F. Marsahall in his writings "Restorative Justice an Overview" said that restorative justice is a process in which the parties with an interest in a particular violation meet together to solve problems together how to resolve the consequences of these violations for the sake of the future (Marlina, 2009).

In conventional criminal justice process, for example, if a criminal act occurs, then law enforcement prosecutors, judges will proceed to formal legal channels which will later be forwarded to sentencing the perpetrators of criminal acts. In the criminal justice process, the suspect is to pursue confession of the suspect's statement, extortion, extortion and bribery. Often victims' constitutional rights are ignored in the criminal justice process, such as victims not getting their case progress, lighter demands and more likely to be repressive. The rights or rights of defendants are more popularly regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code and other related laws, even in the 1945 Constitution. When examined further, the Criminal Procedure Code tends to provide the rights of the suspect or defendant. The possibility of this right is due to the fact that the victim of a crime/crime has been represented by the State (investigators and public prosecutors) (Kaimudin, 2015). Criminal law enforcement is often found in practice there are deviations that are not in accordance with the 1945 Constitution.

The formal criminal process, which does not provide legal certainty and is more oriented towards repressive means in crime prevention, is certainly not in accordance with the development of people's lives. Thus, the concept of restorative justice offers victims and perpetrators to meet directly to resolve cases (Gal & Moyal, 2011).

According to Bagir Manan, the obstacle in carrying out the reconciliation between victims and perpetrators often stems from the very formalistic attitude of law enforcement by saying that we submit to legal procedures that run even though the parties have reconciled, this is not removed because the reconciliation process (Mareta, 2018). Bagir Manan still warns that restorative justice is a "restorative justice" because the concept of restorative justice is a way of resolving criminal acts

outside the judicial process (out of criminal judicial procedure) or at least not fully participating in criminal justice procedures (Wiryo, 2016).

To apply the principle of restorative justice in law enforcement, the principle of restorative justice must be made in laws and regulations or regulations in law enforcement agencies. Such as the police, prosecutors, courts therefore the process of applying the principles of restorative justice can be carried out (Hartono, 2015).

One of the law enforcement organs in Indonesia that regulates restorative justice in criminal cases is the Prosecutor's Office of the Republic of Indonesia. The Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice serves as a guide for prosecutors to enforce law and justice based on restorative justice. Article 1 point 1 Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Restorative Justice is the settlement of a criminal case by involving the perpetrator, the victim, the perpetrator's family/Victim, and other related parties to jointly seek a just settlement by emphasizing restoration to the original state and not retribution.

In work regulation Number 15/2020, it is also regulated regarding the termination of prosecution in criminal cases. The philosophy of stopping prosecution is also regulated in the Criminal Code and the Criminal Procedure Code. In the law, it is determined that the right to prosecute only belongs to the public prosecutor, namely the prosecutor who is authorized by the Criminal Procedure Code Number 8/1981. Article 1 point 7 of the Criminal Procedure Code states.

However, it is different from the termination of prosecution between Prosecutor Regulation Number 15/2020 and the termination of prosecution in the Criminal Code and Criminal Procedure Code. In prosecutor's regulations No. 15/2020, the termination of prosecution is not based on aspects of people, evidence, legal interests but on the severity of the case or not. Therefore, the restorative justice approach is more oriented towards the recovery of victims of criminal acts and is not a means of repression in the conventional criminal justice system.

Research Methodology

This type of research uses normative juridical research, normative legal research is doctrinal research or what is called library research or document study. It is called normative or doctrinal legal research because this research is conducted or aimed only at written regulations or other legal materials. It is said to be library

research or document study because this research is mostly carried out on secondary data in the library (Suratman & Dillah, 2015).

The normative legal research approach in this study uses 3 (three) research approaches, namely the statutory approach, the conceptual approach and the case study approach (Marzuki, 2017).

Result and Discussion

The Arrangements for Termination of Prosecution According to the Regulation of Prosecutor's Office of Republic Indonesia Number 15/2020 concerning on Termination of Prosecution Based on Restorative Justice

Restorative justice is a new concept in the development of legal science because this theory emerged in 1970. Basically, the concept of restorative justice is prioritizing the meeting between interested parties in crime and afterward. Restorative justice or so-called restorative justice developed by UNICEF which is based on international legal instruments for children who have legal problems. One of the instruments is The Beijing Rules. This concept focuses on justice which can restore children and avoid negative stigma since the child gets punished. Modern criminal law has abandoned the purpose of punishment which is oriented to retaliation (retributive) but modern criminal law aims to restore punishment. International legal instruments such as The Beijing Rules which regulate restorative justice have been ratified into several laws and regulations in Indonesia. For law enforcers in Indonesia such as the Police, Prosecutors, Judges and legal advisers, it becomes a guide for them to apply the principles of restorative justice. At the sub-level of the Indonesian criminal justice system, starting with the police, prosecutors, and courts, there are already guidelines for every law enforcement agency to implement restorative justice. The criminal justice sub-system at the prosecutor's office to implement restorative justice is regulated in prosecutor's regulations Number 15/2020 concerning on Termination of Prosecution Based on Restorative Justice.

Article 1 clause 1 Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing recovery. return to its original state and not revenge.

Because the task of the public prosecutor is to prosecute. So first we know the definition of prosecution based on Article 1 point 7 of the Criminal Procedure Code "Prosecution is the action of the public prosecutor to delegate a criminal case to the

competent district court in terms of and according to the method regulated in this law with a request to be examined by a judge at the trial court". Meanwhile, according to Article 1 number 4 of Prosecutor Regulation Number 15/2020, public prosecutors are prosecutors who are authorized by law to carry out prosecutions and carry out judges' decisions.

Article 4

(1) Termination of prosecution based on restorative justice is carried out due to the following regard below:

- a. Victim's interest and other protected legal interests;
- b. To avoid negative stigma
- c. Community response and harmony; and
- d. Obedience, decency, and public order.

(2) Termination of prosecution based on restorative justice as referred to in paragraph (1) is carried out considering several actions below:

- a. Subjects, objects, categories, and threats of criminal acts;
- b. The background of crime;
- c. Disgrace rate;
- d. Losses or consequences arising from criminal acts;
- e. Cost and benefit;
- f. Recovery; and
- g. There is reconciliation between the victim and the suspect

Article 5

(1) Criminal cases can be closed for the sake of law and the prosecution dismissed based on Restorative Justice if the following conditions are met:

- a. The first time they have committed a crime;
- b. Criminal acts are only punishable by a fine of not more than 5 (five) years in prison; and
- c. A criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than 2,500,000.00 (two million five hundred thousand rupiah).

(2) For criminal acts related to property, in the event that there are criteria or casuistic errors which according to the considerations of the public prosecutor with the approval of the head of the branch of the district attorney's office or the head of the district attorney's office, the prosecution based on restorative justice is carried out with due regard to the conditions as referred to in paragraph (1) letter a. accompanied by either the letter b or the letter c

(3) For criminal acts committed against persons, bodies, lives and independence of persons, the provisions as referred to in letter c may be excluded.

- (4) In the event that a criminal act is committed due to negligence, the provisions in paragraph (1) letters b and c may be excluded.
- (5) The provisions as referred to paragraphs (3) and (4) do not apply in the event that there are criteria/conditions of a casuistic nature which according to the consideration of the Public Prosecutor with the approval of the head of the District Attorney's Branch or the Head of the District Attorney's Office cannot be dismissed from prosecution based on restorative justice.
- (6) Beside to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), termination of prosecution based on restorative justice is carried out by fulfilling the following requirements:
- (7) Based on what have been agreed by the victim and the suspect, the condition for recovery back to its original condition as referred to in paragraph (6) letter a may be excluded
- (8) Termination of prosecution based on restorative justice is excluded for the case
 - a. Crimes against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and morality.
 - b. Criminal act with minimum punishment;
 - c. Narcotics Criminal act;
 - d. Environmental Criminal act;
 - e. Corporation Criminal act

If it analyzed by Prosecutor Regulation Number 15/2020 concerning Termination of Prosecution Based on Restorative Justice, the conditions for the approach to problem solving through restorative justice are very limited by the provisions and crimes committed. Not all criminal acts can be applied to restorative justice, there are conditions that must be met.

Termination of prosecution should consider the avoidance of negative stigma. Negative stigma if analyzed using labeling theory in criminology will have a stamp or label effect on the current behavior. Schrag as an observer of labeling theory explains that the assumptions in labeling theory are (Adang, 2016):

- a. There is no single act that happens by itself to be criminal.
- b. A person becomes a criminal not because he violates the law but because it is determined by the authorities
- c. The act of arrest is the beginning of the process of stigma, label or stamp.
- d. The existence of a stigma or label will cause public attention to the person who is labeled. This causes the surrounding community to pay attention to it or avoid it.

Therefore, the presence of restorative justice in the development of criminal law tries to avoid negative stigma due to criminal acts (*strafbar feit*) committed.

Besides, the application of restorative justice must avoid a retaliatory system of punishment. The theory of retribution that emerged in the 18th century which was embraced by Kant, Hegel, Stahl, Leo Polak, who considered that criminal law was practical, did not fix crime.

The Role of Prosecutor's Office According to Regulation Number 15/2020 concerning on the Termination of Prosecution Based on Restorative Justice

According to the Criminal Procedure Code, the prosecutor who is in charge of prosecuting in court has a different role in Regulation Number 15/2020 which applies the process to criminal cases (penal). It is because the legal norms in Regulation Number 15/2020 which apply restorative justice

- (1) The public prosecutor offers the efforts of reconciliation to victims and suspects
- (2) Reconciliation efforts as referred to in paragraph (1) shall be carried out without pressure, coercion and intimidation
- (3) The Efforts to make reconciliation as referred to in paragraph (2) are carried out at the prosecution stage or during the handing over responsibility for the suspect and evidence (stage two) it consists of:
 - (1) The reconciliation process is carried out voluntarily, with deliberation for consensus, without pressure, coercion and intimidation
 - (2) In the reconciliation process, the public prosecutor acts as a facilitator
 - (3) The public prosecutor as referred to in paragraph (2) do not have or are related to the case, victim or suspect, either personally or professionally, directly or indirectly.
 - (4) The reconciliation process is carried out at the prosecutor's office unless there are conditions or circumstances that make it impossible for reasons of security, health or geographical conditions, the reconciliation process can be carried out at the government office or other places agreed upon with the element of an order from the head of the district attorney's office.
 - (5) The reconciliation process and fulfillment of obligations are carried out within a maximum of 14 (fourteen) days from the handing over of responsibility for the suspect and the evidence.

If it analyzed from the Article 7 of Prosecutor regulation Number 15/2020, the role of prosecutor as a mediator in criminal cases that can be applied based on restorative justice. The prosecutor acts as a facilitator to conduct deliberations with the victims, perpetrators and other parties involved. The prosecutor in carrying out the reconciliation process may not side with one or the other. When observed further, the role of the prosecutor in Prosecutor Regulation Number 15/2020 the prosecutor is a preventive effort to optimize between the perpetrator and the victim not to enter the court process (formal process). The difference is in the Criminal Procedure Code, the

prosecutor as a legal profession that demands (to account for the perpetrator) for his actions before the panel of judges (court). Then the reconciliation process at the prosecutor's office is carried out since the submission of juridical responsibilities by investigators.

Juridical responsibility is the process of transferring case files together with the perpetrators after conducting an investigation and then transferring them to the public prosecutor. The existence of a pre-prosecution institution is absolute because there is no criminal case that reaches the court without going through a pre-prosecution process because in the event that an investigator has investigated an event which is a criminal act, the investigator is obliged to notify the public prosecutor of the investigation (Widodo & Efendi, 2013).

The dynamics of the Indonesian criminal procedural law system can change according to the needs of the community. The prosecutor as a mediator must have the ability to reconcile the litigants to reach an agreement. The settlement of criminal cases by prioritizing restorative justice is very necessary because the approach applied is restoration back to its original state, not retaliation. By going through the reconciliation process carried out by the prosecutor at the prosecutor's office, the perpetrator and victim are given balanced legal protection. Criminal law is not only meant that the perpetrator commits a criminal act that is carried out according to the formulation of the element of the offense in the criminal law regulation and then must be accounted for without seeing the value of justice which tends to see the side of legal certainty. This has changed because such an approach is oriented to the misery of punishment, but is limited to certain crimes that can be applied to stop prosecution based on restorative justice.

Then the reconciliation process is further regulated in Article 10 and Article 11 of Prosecutor regulation Number 15/2020 as following below:

Article 10

- (1) During the reconciliation process, the victim and the suspect make a written reconciliation agreement before the public prosecutor.
- (2) The reconciliation agreement as referred in paragraph (1) is in form of:
 - a. agreed to make reconciliation with the fulfillment of certain obligations; or
 - b. agreed to make reconciliation without fulfilling certain obligations.
- (3) The Reconciliation agreement as referred in paragraph (1) signed by the victim, suspect and two witnesses by the knowledge of public prosecutor.
- (4) During the reconciliation agreement is accompanied by the fulfillment of the obligations as referred to in paragraph (2) letter a, the public prosecutor shall make an official report on the reconciliation agreement and a memorandum of opinion after the fulfillment of obligations has been carried out.

(5) During the reconciliation agreement, it is not accompanied by the fulfillment of the obligations as referred in paragraph (2b), the public prosecutor should make an official report on the reconciliation agreement and memorandum of opinion.

(6) During the reconciliation agreement is not successful or the fulfillment of obligations is not carried out in accordance with the reconciliation agreement, the public prosecutor

Article 11

(1) During the reconciliation agreement which is not successful as referred in Article 10 paragraph (6) due to disproportionate requests for fulfillment of obligations, threats or intimidation, sentiments of discriminatory treatment or harassment based on ethnicity, religion, race, nationality, or certain groups against a suspect in good faith, the suspect may be considered by the public prosecutor in carrying out the prosecution

(2) The considerations as referred to in paragraph (1) also apply in the event that the fulfillment of obligations is not carried out in accordance with the reconciliation agreement as referred to in Article 10 paragraph (6) due to economic factors or other reasons accompanied by good faith from the suspect.

(3) The considerations as referred to in paragraph (1) and paragraph (2) are in the form of:

- a. Delegation of cases with a brief examination;
- b. Mitigating circumstances in filing criminal charges; and
- c. Filing a criminal complaint with conditions

Based on the article above, it can be explained that the reconciliation process if an agreement is reached between the perpetrator and the victim, then the result of the agreement must be made in writing before the Public Prosecutor. For example, providing compensation to the victim, restoring certain circumstances. A reconciliation agreement can be in the form of not being accompanied by the fulfillment of obligations, for example in a reconciliation agreement it only contains a clause to make reconciliation without any obligation to do anything. The results of the agreement to make reconciliation are made in a report by the public prosecutor and signed by the victims, perpetrators, and 2 (two) witnesses.

Prosecutor regulation Number 15/2020 provides protection to victims and perpetrators so that they are not resolved through litigation with certain conditions. This is a development of modern criminal law so that there is no accumulation of criminal cases in court with repressive means. The non-litigation settlement process applied to Prosecutor Regulation Number 15/2020, the prosecutor as a mediator in criminal cases has similarities with the settlement process in civil procedural law.

The civil procedural law settlement process also applies mediation as an effort to reconcile the litigating parties before the case examination process. Based on Regulation of the Supreme Court Number 1/2016 concerning on Mediation in Court, every civil case before examining the subject matter, should take mediation efforts.

Furthermore, the reconciliation process, if there is an agreement between the perpetrator and the victim, then an official report has been made by the public prosecutor, which is explained in Article 12 and Article 13 of Perja No. 15 of 2020 as follows:

Article 12

(1) During the process of reconciliation agreement is reached, the public prosecutor reports to the head of the state prosecutor's office by attaching the minutes of the reconciliation agreement and a memorandum of opinion.

(2) Based on the public prosecutor's report as referred to in paragraph (1), the head of the district attorney's office or the head of the district attorney's office asks the head of the high prosecutor's office to approve the termination of prosecution based on restorative justice.

(3) The making of the agreement as referred to in paragraph (2) is submitted no later than 1 (one) day after the reconciliation agreement is reached.

(4) The head of the high prosecutor's office determines the attitude of agreeing or rejecting the termination of the prosecution based on restorative justice in writing accompanied by considerations within a maximum of 3 (three) days after the request is received.

(5) In certain cases that receive special attention from loans, the head of the high prosecutor's office asks the Attorney General for approval by taking into account the time as referred to in paragraph (3).

(6) In the event that the Head of the High Prosecutor's Office approves the termination of prosecution based on restorative justice, the head of the District Prosecutor's Office or the head of the district attorney's office as the public prosecutor issues a letter of termination of prosecution within a maximum period of 2 (two) days after the approval is received.

(7) The decree on termination of prosecution as referred to in paragraph (5) contains the reasons for the termination of prosecution based on restorative justice as well as stipulating the status of the evidence in the said criminal case.

(8) The determination of the status of the evidence as referred to in paragraph (6) is carried out in accordance with the provisions of the legislation.

(9) The ruling letter as referred to in paragraph (6) is recorded in the register of the prosecution stage and the registration of the termination of the prosecution and dismissal of the case in the public interest.

(10) In the event that the head of the high prosecutor's office refuses to terminate the prosecution based on restorative justice, the public prosecutor delegates the court case file.

Article 13

(1) If there is pressure, coercion, intimidation on the part of the victim, suspect, and/or other party, the public prosecutor should stop the reconciliation process.

(2) Termination of the reconciliation effort or reconciliation process as referred to in paragraph (1) shall be carried out by the public prosecutor by:

- a. to state that the reconciliation effort or reconciliation process has not been achieved in the official report;
- b. makes a memorandum of opinion that the case is transferred to the court by stating the reasons;
- c. submits case files to court.

Based on articles 12 and 13 of Prosecutor Regulation Number 15/2020. If analyzed according to the author's opinion, after the perpetrator and victim have made a reconciliation agreement and the minutes of reconciliation are signed by the parties and the public prosecutor. Then the public prosecutor makes a report to the head of the district attorney's office to ask for approval to terminate the prosecution based on restorative justice. The approval for termination of prosecution is made after a day an agreement has been reached.

The case of family theft is included in Article 367 paragraph (2) of the Criminal Code as a complaint offense in which the public prosecutor has the authority to stop prosecution for legal purposes if the criminal offense in the form of a complaint offense is revoked or withdrawn (Article 3 paragraph (2) Perja Number 15 of 2020). In the case above, the prosecutor's office initially implemented a restorative justice process so that the victim and suspect, who was a husband and wife, reconciled and the wife as the victim withdrew their complaint and the suspect had compensated the wife for material losses. For this reason, by law, the case should be closed with Perja No. 15 of 2020 which states that the termination of prosecution based on restorative justice is carried out by taking into account the avoidance of retaliation and the response and harmony of the community. Therefore, Kajari Manokwari's consideration of stopping a quo case should be justified.

Conclusion

Based on the results of the research and discussion described above, the following conclusions can be drawn such as:

The regulation on termination of prosecution according to the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice provides conditions for criminal acts that can be applied to cessation of prosecution for the sake of restorative justice. Restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. In Prosecutor Regulation Number 15/2020, it provides provisions that criminal acts that can be applied through restorative justice are criminal cases that can be closed for the sake of law and dismissed based on Restorative Justice if the following conditions are met:

- a. This is the first time the suspect has committed a crime;
- b. Criminal acts are only punishable by a fine of not more than 5 (five) years in prison; and
- c. Criminal act is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

The Prosecutor's Role in Enforcing Restorative Justice Based on Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Prosecutor's Office in addition to having a prosecution role in criminal cases also has a role as a preventive tool to prevent the accumulation of cases in court through the termination of prosecution based on restorative justice. Prosecutors have a role to reconcile the victims and perpetrators, here the prosecutor is active in conducting penal mediation to the victims and perpetrators with the intention that the perpetrator and victim get a win-win solution (a win-win solution) and a mutual agreement so that they can return to their original state (recovery) not retaliation.

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