Legal Certainty of Stopping the Prosecution of Criminal Cases By The Prosecutor's Office in a Restorative Justice Approach

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Abstract
Restorative justice is in principle limited only to actors who have just committed crimes and are not recidivists, and only to certain types of minor crimes. The purpose of the research in this preparation is to analyze the termination of the prosecution of criminal problems by the prosecutor's office through a restorative justice approach and a form of legal certainty for the termination of criminal problems by the prosecutor's office through the Restorative Justice approach. This research uses a normative juridical approach. The type of legal material used is primary, secondary and tertiary legal material analysis used is using qualitative analysis. Based on the results of research, it is proven that the prosecution of criminal problems can be tried with a restorative justice approach to criminal acts that are tried only to be threatened with a fine or threatened with imprisonment for no more than 5 years, criminal acts are tried with the value of fact objects or the value of losses caused by criminal acts of not more than IDR 2.5 million. The form of legal certainty with the existence of restorative justice is the involvement of victims and actors directly in solving criminal problems. The restorative justice approach in this regard prioritizes efforts to link the participation of victims and actors to share legal certainty for victims.

I. Introduction

The concept of a restorative justice approach is one of the approaches that focuses more on justice because justice is a part, especially in law enforcement. This concept is one of the current concepts in criminal law enforcement, the most important thing in the prosecution process because so far many cases are thought to be resolved with a restorative justice approach but are not carried out properly (Prayitno, 2012).

Restorative justice is shown so that the parties can carry out a familial approach that falls into the type of cases. A criminal case is the last alternative that must be taken if the parties do not have a convention. Restraotive justice is the best hope for the perpetrators or victims if the case can be resolved and find the consent of the victim, the complainant, the family, let alone the residents. This is the best ability in criminal law enforcement in order to realize justice for all parties (Prayitno, 2012).

Responding to the case, the Attorney General of the Republic of Indonesia, S. T Burhanuddin, who has the task and authority to streamline the law enforcement process within the Indonesian Prosecutor's Office, produced a very progressive legal policy by issuing The Indonesian Prosecutor's Regulation No. 15 of 2020 concerning The Termination of Prosecutions Sourced from Restorative Justice. This policy is crucially driven by the Prosecutor's Office considering that the prosecutor's office has a strategic
position and position in the law enforcement process within the framework of an integrated criminal justice system as the master of process/ dominus litis which is one of the purposes of screening a criminal problem and ensuring whether or not a criminal matter is continued to the judiciary by thinking about 3(3) the value of the legal objectives uttered by Gustav Radbruch expediency, justice and legal certainty (Indonesian Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice, 2020). Evaluation is done by comparing the data in the field with the standard so that a picture that shows the actual situation compared to the standard is obtained. This evaluation model also allows researchers to be able to give consideration without having to make decisions. (Aini, S. et al. 2019)

Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

In producing restorative justice in resolving criminal matters, this policy of stopping prosecutions opens up a legal space for the law for the complainant and the victim to jointly formulate a settlement of the case in order to carry out recovery to its original condition before the criminal law prosecution effort was tried. With this policy, restorative justice can also be realized in solving criminal problems where the criminal law takes a position as ultimum remedium (drug / final solution). But it needs to be observed that the policy of stopping prosecutions based on restorative justice will be applied carefully according to the provisions and terms and principles that have been regulated in it (Achjani Zulfa, 2009).

With the termination of prosecutions stemming from this restorative justice, there are 3 (3) mechanisms for stopping prosecutions in addition to the termination of prosecutions for the sake of law and the waiver of problems for the sake of universal urgency. It needs to be noted in how the legal consequences that explore after the termination of the prosecution stem from restorative justice being carried out, whether something when there is a possibility that the prosecution can be resumed if there are certain conditions such as the termination of the prosecution for the sake of law or whether it cannot be continued again some kind of consequence on the seponering. This matter must be clarified, if looking under the termination of the prosecution based on restorative justice this refers to the value that lives in the citizens and not the cause of legal technical matters until the consequences must be equated with the seponering is that it cannot be resumed with any provisions or conditions (permanently closed) so that the justice to be achieved is accompanied by the existence of legal certainty downstream (Azman, 2012).

The Prosecutor's Office is a law enforcement agency that has a central position in realizing the justice of citizens. Therefore, law enforcement and its processes must be able to realize legal certainty. Looking at the reality that exists, making this problem very interesting to study. How can the laws and regulations in Indonesia be able to share a forum for law enforcement to realize justice in the citizens. The purpose of this study is to analyze and recognize the termination of the prosecution of criminal problems by the prosecutor's office through a restorative justice approach and to recognize and analyze the legal certainty of the termination of criminal problems by the prosecutor's office through the Restorative Justice approach.

The results of the research are expected to be useful for the development of legal science, especially criminal law in terms of legal clarity in stopping the prosecution of crime problems by the prosecutor's office. In addition, it is able to provide input for parties
who want insight into legal clarity regarding the termination of the prosecution of crime problems by the prosecutor's office through a restorative equality approach. And as a preliminary, more in-depth study material for other research that will do a legal briefing on the legal expeditization of crimes by prosecutors.

Sharing input for the parties or the community in interpreting the legal clarity of the termination of the prosecution of crimes by the prosecutor's office. Not only that, with this research, it is hoped that it can add insight and can provide legal clarity on the termination of prosecution of crime problems by the prosecutor's office through a restorative equality approach.

II. Research Method

Normative juridical legal research begins with carrying out a search for legal materials at the bottom to make legal provisions (Sah Decesion Making) to cases, concrete legal cases in other parts of legal research is also an objective activity to share reflections and research figures on legal decisions that have been made intertwined or want to be intertwined. In this study, normative research can be used as the next approach (Peter Mahmud Marzuki, 2011): Statute Approach, Abstract Approach, Problem Approach (Case Approach), Origin Approach (Historical Approach) and Metaphysical Approach (Philosophical Approach).

The basis of legal material used in this research is the basis of legal material consisting of: Subject matter, Inferior Law Material and Tertiary Legal Material. In conclusion, normative legal research in this preparation of all legal materials is analyzed in a qualitative way (Sungguno, 2011).

III. Result and Discussion

3.1 Termination of Prosecution of Criminal Cases by the Prosecutor's Office Through a Restorative Justice Approach

The cessation of prosecution of crime problems by the Prosecutor's Office in the criminal justice system so far that has attracted considerable attention is the incrimination of victims in handling crime problems. The crime justice system that has been running so far has not given independence to victims and actors so that they can jointly rely on handling crime problems. This case then ended in the dissatisfaction of the victim as well as the dissatisfaction with the work of the criminal justice system. A restorative equality approach that actually advances the participation of victims and actors in a direct way appears as a reaction to the case (Crime, 2006). This approach is expected so that the parties can coordinate whether the problems that are felt can be resolved in a direct way or continued until the fixed step.

The restorative equality approach is a current paradigm in responding to the formation of crimes. In the perspective of a restorative equality approach, a crime is understood as a clash or a clash that disrupts the bonds of people and citizens, not just as a violation of the law where as a consequence the perpetrator wants to be close to the country). In other words, the victims of the formation of crimes are not the land, but the people. Therefore, mistakes result in a role in fixing the destruction of bonds due to the formation of a crime (Strang, 2001).

The parties who are thought to be affected by the crime are directly victims, families and actors, as a result of which the latest equality can be granted if the parties are given
space to participate in an active way in the way of handling the problem in the chart of finding the best solution that prioritizes healing, peace and one-on-one forgiveness. The result of the application of this restorative equality approach is that equality is no longer focused on the case of conviction (conviction) of the cause of healing the loss that arises as a result of a crime to be a much more meaningful one (Ritzer, 2004).

Based on this matter, the Prosecutor's Office of the Republic of Indonesia produced Perja No. 15 of 2020 concerning the Termination of Prosecution sourced from the Restorative Equality. For this regulation, the Ordinary Plaintiff Provision (JPU) has the legal power to end the prosecution of a crime problem that is again running if it is thought that the matter is included in the type of Perja and can be approved by the two good parties, the suspect or the victim. This work is thought to be very fitting to be issued because so far there are many cases that should be resolved directly through the prosecution step without having to continue with the Tetapan. This matter can also help the parties so that they can be mediated in a direct way on the perceived problems so that this matter can be resolved at the level of prosecution and not cause the Agency to over-carry socialization.

Article 6 reports that: "The resubmitment of the provisions for termination of prosecution is based on restorative equality being used as an estimate of the Plaintiff Ordinary to ensure that or not the file of the matter can be transferred to the Legal Tribunal". This is intended if to practice restorative equality in handling problems, it can not only be applied to all problems of crime problems, but must be observed from the provisions that have been stated in Article 5 of the Prosecutor's Regulation of the Republic of Indonesia No. 15 of 2020 concerning the Termination of Prosecution. Speech can have the meaning of whether it can be or not. Therefore, Beskal as an Ordinary Plaintiff must first look at whether the matter can be resolved by handling the problem based on restorative equality or not (PAF, 1997).

There is also a way that must be carried out in handling the problem of restorative justice, which initially involves victims from the field of summons. The prosecutor's office carried out legal summonses to the victims as well as the parties who participated. Technically after the execution of Step II or the submission of the accused and the object of fact by the Police Interrogator to the Prosecutor's Office. The Interrogators and Beskal coordinate first in an intensive manner. With the submission of the accused and the objects of fact, the Provision appointed by the Chief State Prosecutor who acted as the Ordinary Plaintiff on the matter of the crime at the time of the crime through Step II was the granting of the defendant and the object of fact by the Interrogator to the Plaintiff. The interrogator requested a duration before the arrest era was up, the duration of the arrest was 20 days at the Interrogator level. However, interrogators can apply for the duration of the extension or accumulation of the inmate era to the Prosecutor's Office for 40 days. So the Interrogator can carry out an arrest for 60 days. In this case, it is shown that the interrogator's responsibility in the enforcement of the crime issue has ended and subsequently it is the responsibility of the Plaintiff Ordinary for the next legal method.

Plaintiffs are usually obliged to recognize the issue of the crime first whether it meets the conditions, as provided for in Article 5. If for the Plaintiff the matter of the crime is not fulfilled the provisions until it is continued the manner of the trial of the crime which is also appropriate. However, if for ordinary plaintiffs, the problem of crimes has fulfilled the provisions in the Prosecutor's Regulation of the Republic of Indonesia No. 15 of 2020, as a result, it can be carried out to stop prosecution until the Plaintiff Ordinary submits the peace effort to the Head of the State Prosecutor's Office.
If the Chief Prosecutor confirms that the matter has fulfilled the provisions, it is also said in the Prosecutor's Regulation No. 15 of 2020 and can be tried for peace efforts as an early step in the way the termination of prosecutions comes from restorative equality, until the Head of the State Prosecutor's Office produces a Message order for the Implementation of Peace Efforts. In this message it contains the under-law, the estimation and also the appropriation of the message is, to make peace efforts to the issue of the crimes already filed by the Plaintiff Ordinary by carrying out the peace which is attended by the parties, the parties to the matter of the crime with Beskal as the Plaintiff ordinary who functions as the provider.

After the Chief State Prosecutor agreed with the peace efforts to the message of the crime issue filed by the Plaintiff Ordinary, until the issuance of the Peace Effort Order Message. With the issuance of the Order of the Attempted Settlement, until the Plaintiff Ordinary was able to carry out the peace efforts on the matter. For the need for peace efforts as a step towards the implementation of efforts to stop the prosecution of ordinary plaintiffs carrying out summonses to the litigants also listed parties, who are linked to some kind of religious figures or citizen figures in a legal way and appropriately say the alibi of summons. Thereafter the Plaintiff Ordinary issued a Message of Call for Peace Efforts to the parties adjourned to carry out the peace efforts in a legal manner also to lead to the Ordinary Plaintiff's Provisions responsible for the handling of the crime matter to carry out the peace efforts.

The next step is to establish a peace agreement with the parties to the issue of the crime, until the Plaintiff Ordinary makes an Information of Activities which has established a peace agreement accompanied by the parties which is after that also signed by the parties to the adjoining as well as the Ordinary Plaintiff who is responsible for the handling of the matter. Not only that, the Plaintiff Ordinary also made a Note of The Opinion of Termination of Prosecution Sourced in Restorative Equality which contains the opinion of the plaintiff ordinarily adjoined on the grounds that the filing of the attempt at peace and carrying out the termination of the prosecution was based on restorative equality to the matter of the crime.

Furthermore, the latest termination of the prosecution can be tried if it obtains the consent of the Chief Prosecutor's Office in order to deal with the problem by the method of stopping the prosecution sourced to restorative equality, there must always be the highest level of information, in this case it is to the High Prosecutor's Office but if the Chief Prosecutor has a different opinion or with other words does not justify the termination of the prosecution sourced to the equality restorative on the issue of the crime, until the Plaintiff Ordinary returns to forward the next legal means as well as provided for in the Law Book of Criminal Activities.

3.2 Legal Certainty Against the Termination of Criminal Cases by The Prosecutor's Office Through a Restorative Justice Approach

Handling the problem of crime by advancing restorative equality that emphasizes recuperation in the initial conditions and balancing the protection and needs of victims and criminal acts that do not lead to pay is something that citizens’ legal desires and a method that must be formed in the application of prosecution authority and renewal of the criminal justice system (Hatta, 2016).

Beskal Agung has the obligation and authority to end the prosecution for the law with a restorative equality approach intended to increase the usefulness of the way of strengthening the law from legislation by thinking about the basis of scholarship, dexterity, economic pay, and being able to formulate and decide wisdom to overcome problems so
that the proposed insistence is successful by impartiality for equality to come from the inner mind and the law, it is stated that the filing of the insistence with the passage of restorative equality must match the legal determination. Sourced from the above estimates, it is thought that it is necessary to inaugurate the Supreme Provision Regulation No. 15 of 2020.

In a normative way, for Article 1 value 1 perja 15 of 2020, which means Restorative Equality is: "Handling the problem of crime by relating the actor, victim, family of the actor or victim, as well as other parties who are linked together to find a balanced treatment by emphasizing recuperation in the initial condition, and not pay".

Perja No. 15 of 2020 concerning the Termination of Prosecutions Sourced from the Restorative Equality is a legal product of the Indonesian Prosecutor's Office that has been awaited by residents, which is already the record of the Supreme Provision of the Republic of Indonesia is the Father of ST. Burhanudin so that each provision demands a person with an inner mind, because the inner mind is not found in the novel but is found in the mind of the provisions, although the method is not regulated in the Indonesian judicial system regulated in the Criminal Procedure Code, therefore with the existence of PERJA No. 15 of 2020 the provisions in Indonesia no longer need to hesitate to close small problems that are included in the criteria contained in PERJA No. 15 of 2020 because by doing minus litis the prosecution authority is the area of the plaintiff ordinary.

The manner of peace and the venting of the role is carried out for a very long duration of 14 (4 sympathies) days from the handover of responsibility for the accused and the objects of fact (step 2). The method of peace is tried at the Prosecutor's office but if there is a situation or conditions that do not allow it caused by an alibi of geographical, health, or security situations. Not only that, the way of peace can be carried out in the office of the ruler or other places that have been approved by the issuance of an order message from the Chief Agent of the State Prosecutor's Office or the Head of the State Prosecutor's Office.

It is evident that the form of legal clarity with the involvement of the parties in strengthening the crime law in this matter is linked to a restorative justice approach. Surely this case will be better if it is stated in the most important law in the Criminal Procedure Code. With the involvement of the parties, the victim, the defendant and the family is the best method of strengthening the law of crime. The prosecutor's office has an important position in the legal application of the most important crimes of authority in prosecution (Atasasmita, 2020).

In addition to dialogue, the authority of the prosecutor must be a criminal justice system that is very meaningful in practicing restorative equality, both the prosecutor's office, the jury or the police are law enforcement institutions that have an important position so that the parties can resolve legal cases through the non-penal route instead of the penal route so that equality can be tried properly (Atasasmita, 2020).

In the matter of how the peace was successful, the Victim and the Defendant made a peace agreement by being recorded before the Plaintiff Ordinary, in the form of getting along with the crust accompanied by the venting of the special role or getting along with the crust without being accompanied by the venting of the special role. The Peace Treaty was signed by the Victim, the Defendant, and 2 (two) witnesses known to the Plaintiff. In the matter of the peace agreement accompanied by the venting of the role, the plaintiff used to make information on the activities of the peace agreement as well as a record of opinions after the venting of the role was tried. On the contrary, in the matter of peace treaties without the interlude of roles, Plaintiff Ordinary makes information on peace treaty activities as well as opinion notes (Rm, 2004).
If between the victim and the executing party have carried out the way of peace but if there is no speech of getting along in peace or the non-performance of the role of the record of the peace agreement until the Plaintiff is in power to make: a. containing the failure of the way of peace on the information of the activity; b. make a record of an opinion reporting that the matter proceeds to a joint legal tribunal of the cause; and c. delegate the archives of the matter to the legal tribunal.

At the time of the peace agreement so too the above was not successful resulting from the disproportionateness of the application for venting of roles, harassment, nobility, ethnicity, religion, ethnicity), affection, danger or threat, exclusive treatment of the Defendant in good faith was to be thought of by the Plaintiff ordinary when he filed an insistence. The non-implementation of the venting of the role due to economic aspects or other alibis accompanied by the good faith of the Defendant is also to be considered. There is also an Estimation as well as being interpreted in the form of: a. a short check of the giving of the problem; b. situations that facilitate the insistence of the crimes filed; and or c. the insistence of a crime filed with the stipulated provisions is in accordance with the legal determination by observing the Principle of Urgency of Crimes in the Matter of Ordinary Crimes (Rm, 2004).

The restorative equality approach emerged as a reaction to these cases by trying to link victims who felt eliminated with the methods that served in the crime justice system that existed today. Not only that, the restorative equality approach is also a current framework of assumptions that law enforcement can use in responding to the formation of crimes. Some of the issues that must be observed in the operation of the restorative equality approach in fighting for the participation of victims and actors in a direct way are applications of this approach must be tried in a sincere way based on the free consent of the parties and can be tried in every step in the way of criminal justice.

With options for practicing a restorative equality approach that must be tried in a sincere way, peace is actually an entry point for this approach to be implemented. There is always a possibility that the parties who participated in a clash or clash in the matter of the formation of a crime sorted out to carry out peace and did not continue the legal means of the matter. Peace can be tried by the parties by linking well the subsystems that exist within or outside the criminal justice system.

IV. Conclusion

Prosecution of crime problems can be tried with a restorative equality approach at the prosecution level, proving that the handling of crime problems with restorative justice is one of the efforts to deal with crime problems that are expected to reduce the hoarding of problems at the legal assembly level. Not only is the method of settlement more lightning than through the litigation route, handling the problem through restorative justice is thought to be able to create a commonality of nouns as well as coveted by the parties (actors, victims and residents) who in this matter are more focused on the needs of victims of Perja No. 5 of 2020 regarding the Termination of Prosecution Berplatform Restorative Justice.

Legal clarity with the existence of restorative equality is the involvement of victims and performers in a direct way (in this case resolved by individual persons) in the handling of crime problems under the view of the country through the tools of its power to cit a change in the way of handling problems to avoid the formation of actions” playing the jury itself” in fact ends in the dissatisfaction of victims and actors to the justice system of crimes. This view is currently faced with the reality of residents’ desire for methods of
dealing with crime problems that are thought to be more accommodating to the participation and expectations of victims and actors. The restorative equality approach in this regard advances efforts to relate the participation of victims and actors in a direct way after which it arises as a reaction to the case.

References

Indonesian Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, (2020).