

## **Restorative Justice in the Criminal Justice System, especially in the Attorney General's Office of the Republic of Indonesia**



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**ABSTRACT:** Attorney General's Office of the Republic of Indonesia applying the settlement of criminal cases through restorative justice at the prosecution stage at the Attorney General's Office of the Republic of Indonesia, this study will analyze and discuss the role of the Attorney General's Office of the Republic of Indonesia in carrying out restorative justice. The analysis was carried out qualitatively and the discussion of the problem formulation used literature study. Restorative justice at the prosecution level can reduce the number of cases that need to be tried and achieve more justice as desired by victims, perpetrators and society. This policy is based on the Attorney General's Regulation of the Republic of Indonesia Number 5 of 2020 concerning Termination of Restorative Justice-Based Prosecution.

**KEYWORD:** Restorative Justice, Attorney General's Office of the Republic of Indonesia.

### **A. PRELIMINARY**

In resolving every criminal case law enforcement officials are required to use the principle of legality based on statutory regulations, laws must be implemented to support legal certainty. The process is often not able to create the desired sense of justice. Satjipto Rahardjo is of the opinion that settling cases through litigation as a form of law enforcement leads to a slow track which causes a buildup of cases due to the lengthy process in the Criminal Justice System.<sup>1</sup>

The principle of settling cases outside the court in Indonesia is well known in the juvenile justice system, but in other countries the regulation is more extensive.

As a government agency that exercises state power in the field of prosecution, the Attorney General of the Republic of Indonesia must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, decency and decency, and must explore human values, law and justice in society.<sup>2</sup>

Restorative Justice emphasizes restoration of the initial state and compatibility of protection for the needs of victims and perpetrators of criminal acts that do not aim at retaliation, which is a legal requirement of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system.<sup>3</sup>

In the process, restorative justice is submitted to the parties and is not a process that must be carried out because it is voluntary. The essence of restorative justice is to realize a settlement between the perpetrators, victims and the community based on the process of recovering damage as a result of a crime. Because of the many benefits offered in the settlement of criminal cases based on restorative justice, it will be explained further related to the prosecution of criminal cases which are resolved using restorative justice as a form of renewal in the development of criminal law in Indonesia.

### **B. RESTORATIVE JUSTICE AT THE PROSECUTION STAGE**

Efforts to overcome crime or criminal policy are essentially part of defense and efforts to achieve public welfare so that crime prevention is a shared responsibility between the community and the government.

Adjustment of legal objectives is necessary to arrive at the objectives of the law itself, namely justice and order. Modern legal changes which are increasingly technological in nature cannot be used to solve various problems in society because they place more emphasis on rational structures, procedures and formal formats. Rationality develops in such a way that it reaches a rational level above everything (rationality above else). Law enforcers only prioritize the value of legal certainty without considering the

<sup>1</sup> Flora, H. S. (2018). Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana dan Pengaruhnya Dalam Sistem Peradilan Pidana di Indonesia. *University of Bengkulu Law Journal (UBELAJ)*, 3(2), hal. 144.

<sup>2</sup> Peraturan Kejaksaan Republik Indonesia Nomor 5 Tahun 2020 tentang Penghentian Penuntutan Berbasis Restorative Justice, hal. 1

<sup>3</sup> ibid

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value of expediency or justice. Law enforcement cannot just apply the rules, but also pay attention to the values and ideals that the law wants to embody, which are not easy to read in the regulations.

In law enforcement it is important to pay attention to the values that underlie the nation as a core philosophy which is the local wisdom of the Indonesian Nation. These values are the essence of the civilization of the Indonesian nation that has existed for thousands of years which must be used as a measure of the basic values of development and legal reform in Indonesia.

Attorney General of the Republic of Indonesia ST. Burhauddin said that justice is not in books but in conscience. In realizing this justice, the Attorney General's Office of the Republic of Indonesia established the Attorney General's Regulation of the Republic of Indonesia concerning Termination of Prosecution Based on Restorative Justice as a form of embodiment of a more humane law enforcement. In its approach, the Attorney General of the Republic of Indonesia as a case controlling institution. Restorative justice is the goal of justice to be achieved by means of restoration to its original state, harmony of protection, the interests of victims and perpetrators of crimes that are not oriented towards retaliation. This change of view is a reform of criminal law policy which leads to a change in the purpose of punishment which is no longer retaliatory, but eliminates stigmatization or labeling as a perpetrator of a crime and frees the guilt of the perpetrator.<sup>4</sup>

That it is known that the Criminal Code that is currently in force does not contain the objectives and guidelines for punishment, the nature of the crime, the nature of the crime against the law, the issue of causality, the problem of criminal error or liability, besides that the Criminal Code also does not regulate the principle of no criminal responsibility without being against the law, the principle of complete absence materially against the law or known as the *afwezigheids van alle materiele wederrechtelijkheid* principle.<sup>5</sup>

This process of restorative justice is a way out of the prosecution process, which so far has not provided reparation, especially for victims of criminal acts, while still providing sanctions for perpetrators of criminal acts. The essence of the process of resolving criminal cases should be contained in conflict resolution compared to imprisonment. At this time, restorative justice at the prosecution stage becomes an alternative dispute resolution outside the litigation channel by involving the role of the prosecutor to stop criminal cases that meet predetermined conditions.

The Attorney General's Office of the Republic of Indonesia Number 15 of 2020 in his considerations, namely the Attorney General's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, decency and decency, and must explore human values, law and justice that live in society. Settlement of criminal cases by prioritizing restorative justice prioritizing restoration to its original state and harmony in the protection and interests of victims and perpetrators of crimes that are not oriented towards retaliation is a legal requirement of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system .

The settlement process through restorative justice is offered in the form of mediation with the public prosecutor who becomes the facilitator or mediator between the parties. Regarding terms, conditions and their implementation will be further elaborated in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Restorative Justice is defined as a form of settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to seek solutions by prioritizing improving conditions and not being retaliatory (Article 1 point 1 of the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020)

Based on Article 2 (Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, 2020) it is carried out based on the principles of fairness, public interest, proportionality, punishment as a last resort, and the principles of fast, simple and low cost. The Public Prosecutor has the authority to close cases for the sake of law, one of which is because there has been a settlement of cases outside the court/*afdoening buiten* process, this is regulated in Article 3 paragraph (2) letter e of the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020.

In the Prosecutor's Regulation of the Republic of Indonesia in Article 3 paragraph (3) there are provisions if you want to settle a case out of court for certain crimes with a maximum fine paid voluntarily or there has been an improvement in the original situation through restorative justice. Settlement of cases outside the court using the restorative justice approach as above legally stops the prosecution. Termination of prosecution must be carried out by the Public Prosecutor in a responsible manner and submitted in stages to the Head of the High Prosecutor's Office as stipulated in Article 3 Paragraph (4) and Paragraph (5). The examples of cases that have been carried out by restorative justice efforts after the issuance of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 are as follows:

<sup>4</sup> <https://www.hukumonline.com/berita/a/jaksa-agung-sampaikan-konsep-keadilan-restoratif-dengan-hati-nurani-lt613b8351dd5f9/>

<sup>5</sup> Barda Nawawie Arief, 2017, *Tujuan dan Panduan Pemidanaan*, Pustaka Magister, Semarang, hlm. 6.

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1. The Indramayu District Attorney's Office (Kejari) in West Java made Restorative Justice efforts for the first time in a case of physical violence committed by a younger sibling against his older sibling. The restorative activity took place at the Indramayu Prosecutors Hall, on Friday 21 May 2021.

Head of the Indramayu District Prosecutor's Office Denny Achmad stated that the start of the beating case occurred on April 3, 2021, around 03.00 WIB, when the suspect W (26 years), a young man from Eretan Kulon Village, was returning home. When that happened, there was an argument with his biological sister, Casmirah (30 years), that pushed each other, and in the end the suspect W became angry, then hit the head of the victim, who incidentally was his older brother, until he bled.

"As a result of his actions, the suspect was arrested by the police. Currently, the case has been transferred to the Indramayu Prosecutor's Office. Based on this, the Public Prosecutor (JPU) is of the opinion that an approach based on restorative justice has been taken on this case," said Denny, according to Denny, restorative justice has been implemented today. This is based on the leadership's instructions as mandated in the Attorney General's Regulation of the Republic of Indonesia No. 15 of 2020 namely, a settlement of criminal cases involving perpetrators, victims and other related parties to jointly seek a fair solution and emphasize restoration to its original state.

2. The Depok District Attorney's Office decided to stop the prosecution of the two defendants in the cat theft case with the initials SJ (20) and MA (19). This was done on the basis of restorative justice, the Head of the Intelligence Section of the Depok Attorney General's Office, Andi Rio Rahmat Rahmatu, said that efforts to reconcile in a restorative justice manner had been carried out between the defendant and the victim, witnessed by their respective families. "The exposure was carried out virtually via video conferencing in the Hall of the Depok Prosecutor's Office by the Head of the Depok District Attorney and the Prosecutors," said Andi in his official statement, Wednesday (27/10/2021). Restorative justice or restorative justice is the settlement of criminal acts with an approach that focuses more on creating justice and harmony between perpetrators and victims. The Public Prosecutor (JPU) Tiazara Lenggogeni handed over the letter to terminate the prosecution directly to the Cinere Police to remove the defendant from the detention room. Furthermore, Andi said that this restorative justice has been mandated in the RI Prosecutor's Office Regulation Number 15 of 2020, which aims to create harmonization of justice in society. "The perpetrator and the victim have agreed to make peace so that the prosecutor will carry out restorative justice and the suspect is the first time he has committed a crime," he explained. "Even though the prosecution has been stopped, we are still monitoring the perpetrators so they don't repeat their actions," he added.

### C. CONCLUSION

The scope of crime prevention policies is very broad and can be implemented through preventive and repressive measures. Efforts to deal with crime can be carried out in several ways, including counseling and legal information (preventive), prevention without the application of punishment and with criminal proceedings or through the application of criminal law (repressive).<sup>6</sup>

The Attorney General's Office of the Republic of Indonesia as a government agency that exercises state power in the field of prosecution is also the controller of the case process (principle of *dominus litis*) which determines whether or not a person can be declared a defendant and brought to court based on valid evidence according to law. This is realized in order to achieve legal certainty, legal order, justice, and truth based on legal norms that live in society.

Restorative Justice regulated in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 is a guide for Public Prosecutors in carrying out restorative justice with due regard to fairness, public interest, proportionality, punishment as a last resort, and fast, simple, and low cost.

Restorative justice carried out at the prosecution stage proves that this restorative justice is one of the efforts to settle criminal cases which is expected to reduce the number of cases that need to be tried and realize more justice as desired by victims, perpetrators and society, in which case restorative justice is more focused on the interests of the victim. Republic of Indonesia Prosecutor's Regulation Number 5 of 2020 concerning Termination of Restorative Justice-Based Prosecution is the answer for perpetrators, victims and the public who want a settlement process through mediation without having to go through the criminal justice process.

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<sup>6</sup> Waluyo, Bambang, Desain fungsi kejaksaan pada restorative justice, Depok: Rajawali Pers, 2017. Hal. 4

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