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Procedure policy of the republic Indonesia concerning the termination of prosecutions as an effort to settlement of criminal crimes

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Abstract
Settling criminal cases by prioritizing restorative justice which emphasizes restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not discussion-oriented, is a legal requirement of society and a mechanism that must be built in the exercise of prosecution authority and system reform The issue of not directly involving victims and perpetrators (in this case being resolved by individuals) in the settlement of criminal cases on the basis of the state's premise through the tools of its power to take over the process of solving cases to prevent the occurrence of "vigilantism" turns out to be on the dissatisfaction of victims and perpetrators with the criminal justice system. This idea is now confronted with the reality of the community's need for a criminal case settlement mechanism which is considered to be more accommodating to the participation and aspirations of victims n and actors. The restorative justice approach, in this case emphasizes the involvement of victims and perpetrators directly, is then present as a response to this problem. The basic issues that arise in terms of this restorative justice approach to be applied are as follows: 1) The law does not clearly regulate the legal power of the peace agreement between the perpetrator and the victim and the authority of each subsystem both inside and outside the criminal justice system for apply a restorative justice approach in the event of a criminal act. 2) The unclear qualifications of criminal acts that can be resolved using a restorative justice approach.

Keywords: termination of prosecution, restorative justice, criminal cases

Introduction

The Unitary State of the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The rule of law is a translation of Rechtsstaat or the rule of law, according to Philipus M. Hadjon that according to the theory of the rule of law (*leer van de rechts souvereinteit*), In principle, the state is not based on power (*machtsstaat*), but must be based on law (*rechtsstaat* atau *the rule of law*). [1]

Among the characteristics of a rule of law, one of the main things of a rule of law is equality before the law and the supremacy of law. Article 27 paragraph (1) of the 1945 Constitution states that "All citizens have the same position in law and government and are obliged to uphold the law and government without exception". With the equal position before the law and the government, every citizen who is proven to have violated the applicable law will receive sanctions according to his / her actions.

The Attorney General's Office is one of the law enforcement institutions whose position is in the environment of executive power (government), as State Lawyer. The function of the prosecutor includes a preventive function and a repressive function in the field of crime as well as a state lawyer in civil and state administration. The preventive function is in the form of increasing public legal awareness, safeguarding law enforcement policies, securing the circulation of printed goods, monitoring belief, preventing and abusing and / or blasphemy, research and development of law and criminal statistics. In its repressive function, the prosecutor's office carries out prosecution in criminal cases, carries out judges' orders and court decisions, supervises the implementation of conditional release, completes certain case files originating from Police investigators or PNS Investigators (PPNS).

The Attorney General's Office as one of the law enforcement agencies is required to play a greater role in upholding the rule of law, protecting public interests, upholding human rights, and eradicating corruption, collusion and nepositm, in carrying out its functions, duties, and powers. The Attorney General's Office 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 heed religious norms, decency and morality and must explore the values of humanity, law and justice that live in society. Therefore, the role of the prosecutor as one of the spearheads in law enforcement is expected to uphold the values of justice that live in society [2].

Law No. 16 of 2004 concerning the Republic of Indonesia Attorney General's Office as a structural basis and binding tool for the existence of the current prosecutor's office, provides a global formula regarding its duties and powers. As stipulated in Article 30, there are at least 7 (seven) aspects of duties and authorities. In his book “Criminal Case Handling Processes”, Leden Marpaung states the essence of the prosecutor's office: “The prosecutor is an instrument of the Government which acts as a public prosecutor in a criminal case against a criminal offender. As such he is risking the interests of society. He is the one who considers whether or not the public interest requires that a punishable act be prosecuted or not. It is to him that the prosecution of punishable acts is solely assigned” [3].

Likewise in the Criminal Procedure Code (KUHAP), Article 14 and Article 137 Jo. Article 84 paragraph (1) of the

Criminal Procedure Code provides clarity regarding the authority of a public prosecutor, including the main one, first to make a letter of accusation, second, to carry out the prosecution (to carry out accusation), third to close the case for legal purposes, fourth to take other actions within the scope of duties and responsibilities as public prosecutor according to the provisions of the Constitution [4].

In carrying out law enforcement duties, prosecutors generally act for and on behalf of the state. This is as stated in Article 8 paragraph (2) of Law no. 16 of 2004 concerning the Republic of Indonesia Attorney General's Office. Apart from that, as a law enforcement tool, it is not only based on the power and authority in accordance with the applicable provisions, but also obliged to serve the legal needs of individuals and the interests of the community / state as a harmonious and balanced unit. The prosecutor's office must have the courage to take firm steps against every violator of the law and protect everyone from the actions of breaking the law. The position of the prosecutor in criminal justice is decisive because it is a bridge that connects the investigation stage with the examination stage at court proceedings. Based on the prevailing legal doctrine, the principle is that the public prosecutor has a monopoly in prosecution, meaning that every person can only be tried if there is a criminal charge from the public prosecutor, namely the public prosecutor's office because only the public prosecutor has the authority to bring a suspect as a criminal offender before the court [5].

The prosecutor according to article 1 number 1 Law no. 16 of 2004 are functional officials authorized by law to act as public prosecutors and executor of court decisions who have obtained permanent legal force and other powers based on law. As stated by Andi Hamzah, "In Indonesia, the public prosecutor is also called the prosecutor and the prosecutor's authority is held by the public prosecutor as a monopoly, meaning that no other body can do that. The judge cannot ask that an offense be brought against him. So the judge is just waiting for the prosecution from the public prosecutor" [6]. It is also found in the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter abbreviated as KUHAP), article 6 letter a of the KUHAP, that prosecutors are officials who are authorized by this law to act as public prosecutors and carry out court decisions that have obtained permanent legal force. In the provisions of Article 18 paragraph (1) of Law no. 16/2004 states that the Attorney General is the chief and highest person in charge of the prosecutor's office who leads, controls the implementation of duties and powers of the prosecutor's office. Furthermore, according to the provisions of article 35 of Law no. 16 of 2004, the Attorney General has the following duties and authorities:

1. To determine and control policies for law enforcement and justice within the scope of duties and powers of the prosecutor's office;
2. To make effective the law enforcement process provided by law;
3. Setting aside cases in the public interest;
4. File a cassation in the interest of law to the Supreme Court in criminal, civil and state administrative cases;
5. Can submit legal technical considerations to the Supreme Court in cassation examination of criminal cases;
6. Prevent or prevent certain persons from entering or leaving the territory of the Unitary State of the Republic of Indonesia because of their involvement in criminal cases in accordance with the laws and regulations.

The termination of prosecution by the public prosecutor is based on the sound of Article 140 paragraph (2) of the Criminal Procedure Code. From the provisions of the article, it is broadly divided:

1. Reasons for termination of prosecution;
2. Procedures for terminating prosecution.

As stated in Article 140 paragraph (2) letter a of the Criminal Procedure Code, the reasons for terminating the prosecution are:

1. because there is insufficient evidence;
2. the incident did not prove to be a criminal act;
3. The case is closed by law.

To clarify the purpose of terminating prosecution, first of all we return to the definition of prosecution as referred to in Article 1 point 7 of the Criminal Procedure Code, which reads: "Prosecution is an act of a public prosecutor to delegate a criminal case to a competent district court in matters and according to methods regulated by law. -this law with a request to be examined and decided by a judge in a court session. "So according to this definition, prosecution occurs when a case has been transferred to the court, so that the limitation has been that the prosecution has occurred or not is the transfer of a case to the district court.

The literal meaning of the word termination of prosecution is that a case has been transferred to a district court, then the process is terminated and the case is withdrawn on the grounds:

1. There is insufficient evidence;
2. The incident did not prove to be a criminal act.

However, these two reasons can also be used to prevent the prosecution from suing as stipulated in Article 46 paragraph (1) letter b of the Criminal Procedure Code. This means that the case has not yet been submitted to court. Does it mean that a case is closed by law? The case is closed by law (Article 140 paragraph (2) letter a KUHAP) has another formulation which has the same purpose, namely in Article 14 letter h of the Criminal Procedure Code concerning the authority of the public prosecutor to close the case for the sake of law. A case which is closed for the sake of law or closes a case for the sake of law is carried out by the public prosecutor before committing the prosecution [7]. The act of closing a case for the sake of law, among others, can be carried out by the public prosecutor, if regarding a criminal act it turns out that there are grounds that nullify the prosecution or it turns out that there is a vervolution of the lawsuit, because with such bases it becomes impossible for the public prosecutor to be able to do so. a prosecution of a person who the investigator has suspected of committing a certain criminal act. In a criminal act, there are grounds that nullify criminal or not, whether a criminal act has been committed by the perpetrator based on a schuld element or not, whether the action is against the law or not, whether a suspect can be seen as *toerekeningsvatbaar* or no, and whether the actions of a perpetrator can be seen as *toerekenbaar* or not, then after that person has been investigated or prosecuted, only the judge is authorized to decide.

Furthermore, in relation to the issue of terminating

prosecution by the prosecutor, the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Cessation of Prosecution based on Restorative Justice has been issued. The basic considerations for the issuance of the regulation are:

1. The Attorney General's Office of the Republic of Indonesia as a government agency exercising state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and heed religious norms, decency and morality, and must explore human, legal and legal values. and justice that lives in society;
2. Settlement of criminal cases by prioritizing restorative justice that emphasizes restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not discussion-oriented, is a legal requirement of the community and a mechanism that must be built in the exercise of prosecution and renewal authority. criminal justice system;
3. The Attorney General has the duty and authority to streamline the law enforcement process provided by law by taking into account the principles of fast, simple and low cost trial, as well as determining and formulating case handling policies for successful prosecution carried out independently for justice based on law and conscience, including prosecution using a restorative justice approach which is carried out in accordance with the provisions of laws and regulations.

Furthermore, as an example of a case and implementation of the RI Prosecutor's Regulation, then the Gunungkidul District Prosecutor's prosecution was terminated through the Order of the Head of the Gunungkidul District Prosecutor's Office Number: PRINT-704 / M.4.13 / Eoh.2 / 08/2020 concerning Implementation of Efforts Peace Based on Restorative Justice, dated August 13, 2020. The chronology of the criminal acts committed by the suspect is that he is a suspect KASEMI Binti KASEMO SEMITO, on Friday, June 5 2020 at around 12.00 WIB, at Dsn. Karangpilang Kidul RT. 03/014 Ds. Rejosari Kec. Semin Kab. Gunungkidul, has committed torture which resulted in serious injuries to the victim witness MASIYEM Binti KASEMO SEMITO. This action was carried out by the suspect by: going to the house of the witness MASIYEM and slapping the witness MASIYEM 1 (one) time using the suspect's right hand and hitting the witness's left cheek, after which the suspect and the witness MASIYEM pushed each other's shoulders using both hands which resulted in the suspect and the witness MASIYEM both fell to the ground. When witness MASIYEM fell, witness MASIYEM felt that the suspect was pulling witness MASIYEM's hair from behind and hitting witness MASIYEM's right shoulder from behind, so that the witness MASIYEM swung his right elbow towards the back which resulted in the suspect and witness MASIYEM falling. After successfully running away from the suspect, witness MASIYEM then contacted witness JIMIN and went to Cawas Hospital. As a result of the suspect's actions, witness MASIYEM suffered wounds as was the visum et repertum from the Cawas Islamic General Hospital Number: 323 / RM.01 / VII / 2020 which was made and signed by dr. Wisnu Wahyu Nugroho with the results of the examination: it was found that the wound was caused by a blunt object in the form of a bruise on the right hand. A fracture of the right hasta was obtained, as a result of this it caused an obstacle in carrying out a temporary livelihood job on June 5, 2020, the patient seeking treatment at the Cawas Islamic Hospital had not yet recovered, forced to go home, on June 11, 2020, surgery on a broken hand.

Based on the description in the example case above, according to Article 140 paragraph (2) of the Criminal Procedure Code, the case is not sufficient reason to stop the prosecution, but based on the Prosecutor's Regulation Number 15 of 2020 the case can be resolved peacefully based on restorative justice. This is what needs to be done further study and research regarding the application of the Prosecutor's Regulation in connection with the provisions on terminating prosecution according to the Criminal Procedure Code. Based on the description in the background of the problem above, the problems in this study can be formulated as follows: How is the application of the policy of terminating prosecution based on restorative justice as an effort to resolve criminal cases?

Recearch Methods

In this study the authors used a normative juridical approach. It is called a research with a juridical approach because in this research it will be carried out with literature study and documentation study based on the existing juridical basis in the statutory system and legal norms. [8] Adapun pendekatan yang digunakan dalam penelitian ini adalah. *First*, is legislation because what will be examined are various legal rules that become the focus as well as the central theme of a study. *The second* method used by the author in the preparation of this legal research is the case approach. This approach is taken to study cases that occur and their solutions by looking at legal norms (legal considerations), so that they become input for explaining certain legal systems. In this study, the application of legal norms and rules will be studied in legal practice. *Third*, what is used by the author is a conceptual rule approach that will bring up objects of interest from the point of view of practical knowledge so that they can determine their meaning precisely and can be used in the thought process by idenfying existing principles, views and doctrines to then emerge. new ideas [9].

Discussion

1. The Criminal Justice System

Criminal justice system can briefly be interpreted as a system in society to tackle crime so that it falls within the limits of community tolerance. This picture is only one of the objectives of the universal criminal justice system so that the scope of the duties of the criminal justice system can indeed be said to be broad, covering: [10]

a. prevent people from becoming victims of crime;
b. resolve crimes that have occurred so that people are satisfied that justice has been served and the perpetrators of crimes have been convicted; and
c. Trying so that those who have committed the crime do not repeat their actions again.

As a system, the criminal justice system has administrative components, including the Police, Attorney General's Office, Courts and Correctional Institutions, all of which will be interrelated and it is hoped that there will be an integrated cooperation. If there is a weakness in one of these

component work systems, it will affect other components in such an integrated system. The Criminal Justice System can be seen from various perspectives, including police, prosecutors, judges, suspects / defendants and victims of crime. Among these perspectives, the perspective of crime victims will bring brightness as well as complement from other perspectives that are used as references in the current administration of criminal justice. The judicial system must protect all people and justice (substantially) is aimed at people whose rights are violated and those suspected of violating the criminal law must be treated fairly (fair trial) or procedural justice [11].

So far, criminal justice has prioritized the protection of the interests of crime makers (offender centered), motivated by the view that the criminal justice system is organized to try suspects and not to serve the interests of crime victims. Violating public interest (public law) is a reaction to crime becoming a state monopoly as a representative of the public or society. This view dominates the practice of criminal justice, as a result of which people whose rights are violated and suffer the consequences of crimes are ignored by the criminal justice system.

Neglecting the interests of victims of crime is not in accordance with the principles of governance of the Indonesian rule of law, in which the state is obliged to protect all parties, both the interests of members of the public who are suspected of violating the law, let alone members of the community who are victims of a crime. The fate of the victims of this crime is likened to experiencing a natural disaster and the criminal justice system does not care about the fate of people who suffer from natural disasters [12].

According to Herbert L. Packer, the criminal justice system recognizes several models for carrying out the judicial process in achieving the goals of the criminal justice system. Packer emphasized that there will be more than one normative model, but no more than two models. The two models are the two process model and the crime control model. According to Samuel Walker, the division of models of the criminal justice system according to Packer is a classic division in the justice system and is the result of a conflict of thinking between punishment or trehabilitation. Meanwhile, John Griffith introduced another model in the criminal justice system, namely the family model. This model is a reaction to the adversary model, which is considered unfavorable. The kinship model places the perpetrator of a criminal act not as an enemy of society, but is seen as a family member who must be scolded in order to control his personal control, but should not be rejected or alienated, all based on a spirit of love [13].

2. Application of the Policy to Stop Prosecutions based on Restorative Justice as an Effort to Settle Criminal Cases

In connection with the issue of terminating prosecution by prosecutors, the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Cessation of Prosecutions based on Restorative Justice has been issued. The basis for the consideration of the issuance of the regulation is:

a. 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 heed religious norms, decency and morality, and must explore human values, law and justice. who live in society;
b. Settlement of criminal cases by prioritizing restorative justice that emphasizes restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not discussion-oriented, is a legal requirement of society and a mechanism that must be built in the exercise of prosecution authority and reform of the judicial system criminal;
c. The Attorney General has the duty and authority to streamline the law enforcement process provided by law by taking into account the principles of fast, simple and low cost trial, as well as establishing and formulating case handling policies for successful prosecutions carried out independently for justice based on law and conscience including prosecution with using a restorative justice approach which is implemented in accordance with the provisions of the legislation.

According to the provisions of Article 2 of the Prosecutor's Office Regulation Number 15 of 2020, it is determined that the termination of prosecution based on restorative justice is carried out on the basis:

a. justice;
b. public interest;
c. proportionality;
d. criminal as a last resort; and
e. Fast, simple, and low cost.

The requirements for termination of prosecution are regulated in Article 14 of the Attorney General's Office Regulation Number 15 of 2020, which stipulates that:

a. Cessation of prosecution based on Restorative Justice is carried out with due regard:
1. The interests of the Victims and other protected legal interests;
2. Avoidance of negative stigma;
3. Avoidance of retaliation;
4. Community response and harmony; and
5. Propriety, decency and public order.
b. The termination of prosecution based on Restorative Justice as referred to in paragraph (1) shall be carried out with due consideration:
1. subject, object, category, and threat of criminal act;
2. the background of the occurrence of the criminal act;
3. level of negligence;
4. losses or consequences resulting from a criminal act;
5. costs and benefits of case handling;
6. recovery back to its original state; and
7. There is peace between the victim and the suspect.

The characteristics of criminal law as public law, which can be seen from the domination of the role of the state through its power tools in the criminal justice system, has implications for the non-recognition of the existence of victims and perpetrators as determining parties in the settlement of a criminal case. In the criminal justice system, the fulfillment of a victim's sense of justice is highly dependent on the empathy of the public prosecutor. The testimony of the victim's witness which is one of the pieces of evidence is requested to support or in other words provide justification for the charges and demands of the

prosecutor. In addition, the punishment of the perpetrator is also limited by the types of sanctions that are expressly determined by the laws and regulations which actually do not offer any benefit to the victim because the criminal sanctions are intended as a means of giving suffering to the perpetrator.

Apart from the victim, the perpetrator turns out to be in a situation that is not quite favorable because basically, the criminal justice system is more focused on proving the perpetrator's guilt, not restoring the condition it was in before the crime occurred. The form of accountability of the perpetrators (criminal sanctions) imposed is also very limited by law so that the perpetrator cannot realize other forms of accountability that are not regulated in law. In principle, several laws that regulate provisions regarding the provision of restitution and compensation for victims can be instruments supporting the application of a restorative justice approach. However, the application of this restorative justice approach is still very limited in nature because the space for victims and perpetrators to determine the form of accountability they want has not yet been found.

The issue of the aspirations of victims who are not well represented in the criminal justice system and the settlement of criminal cases which are deemed not to provide benefits that can be felt directly by both victims and perpetrators are a number of problems in the criminal justice system. The restorative justice approach is present as a response to these various problems by trying to involve victims who feel left out by the mechanisms that work in the current criminal justice system. In addition, the restorative justice approach also constitutes a new frame of mind that law enforcers can use in responding to criminal acts. Several things that must then be considered regarding the operationalization of the restorative justice approach in seeking direct victim and perpetrator participation are that the application of this approach must be done voluntarily based on the free consent of the parties and can be done at any stage in the criminal justice process.

Regarding the choice to apply a restorative justice approach that must be done voluntarily, peace actually becomes the entry point for the application of this approach. There is always the possibility that the parties involved in a conflict or dispute in the event of a criminal act choose to make peace and do not continue the legal process of the case. Peace can be carried out by the parties by involving both the subsystems contained within and outside the criminal justice system.

Eva Achjani Zulfa in her dissertation entitled "Restorative Justice in Indonesia (A Study on the Possibility of Application of a Restorative Justice Approach in Criminal Law Enforcement)" states that theoretically there are 3 (three) models that place the relationship between restorative justice and the criminal justice system, namely: [14]

a. As part of the criminal justice system, two-way resolution, the criminal justice system and the restorative justice approach go hand in hand, the judge makes the peace that has been agreed by the victim and the perpetrator as a basis for mitigating or abolishing the crime.
b. Outside the criminal justice system through institutions or other institutions outside the peace system as the basis for eliminating prosecution the judge makes a decision not to continue prosecuting criminal cases that lead to peace.
c. Outside the criminal justice system by continuing to involve law enforcers expanding discretion or opportunity the police and prosecutors transfer the legal process for a criminal case outside the criminal justice system (diversion) to be handled by other institutions or institutions outside the system the peace is recorded in the police administration or the prosecutor's office.

What needs to be noted is that in implementing this restorative justice approach, other institutions or institutions outside the system play an important role. Other institutions or institutions outside the system referred to in this case include the community represented by village government apparatus and customary courts. The role of the community and customary institutions is important because it is this subsystem outside the criminal justice system that will ultimately try to reconcile the perpetrator and the victim. The subsystem in the criminal justice system (police and prosecutors) is only limited to diversion. If peace is achieved, this will be listed as the reason for terminating the investigation or prosecution. Meanwhile, the judge will also only help register the peace as a basis so that the legal process is automatically terminated in the case.

Speaking in the context of implementing a restorative justice approach, there are subsystems that will be involved in it, both subsystems that are inside and outside the criminal justice system. The fundamental problem that then arises is that the law does not regulate the legal power of the peace agreement between the perpetrator and the victim and the authority of each of these subsystems to apply a restorative justice approach in the event of a criminal act (including recording peace as a reason for terminating the legal process for cases. such). This paper will only specifically discuss the fundamental weaknesses in the law that does not clearly regulate the subsystem authorities in the criminal justice system (police, prosecutors and judges) to apply a restorative justice approach.

a. Police Authority

If traced, the problems that arise in the application of the restorative justice approach at the pre-adjudication stage, which in this case involves the police subsystem, actually stem from the inadequate definition provided by law regarding what is meant by termination of investigation and discretion. The definition of termination of investigation and discretion is very important because in principle the two institutions are instruments supporting the application of the restorative justice approach, in which case, if linked to the previous section of this paper, the police must have good authority to divert cases outside the criminal justice system to be handled by the subsystem others outside the criminal justice system through a diversion mechanism or acting as a mediator to reconcile the perpetrator and the victim through the penal mediation mechanism. Both diversion and penal mediation are closely related to discretionary powers and termination of investigations by the police.

1. Reasons for Termination of Investigation

The provisions of Article 109 paragraph 2 of the Criminal Procedure Code (KUHAP) state things that can be used as an excuse to stop an investigation are that there is insufficient evidence, the incident is not a criminal act or the investigation is terminated by law. The reasons for

terminating an investigation by law are in principle in line with the reasons for termination of prosecution which are regulated limitatively in the Criminal Code (KUHP), namely ne bis in idem (Article 76 of the Criminal Code), the defendant dies (Article 77 of the Criminal Code), the expiration of criminal prosecution. (Article 78 of the Criminal Code), the absence of a complaint in the complaint offense (Article 72 of the Criminal Code) and affdoening business processes, namely the cancellation of the right to prosecute due to the payment of the maximum fine voluntary for violations (Article 82 of the Criminal Code).

2. Police Discretion

The provisions of Article 18 paragraph 1 of Law No. 2 of 2002 concerning the Police which regulates discretion is translated as the authority exercised when an officer of the Indonesian National Police who is on duty alone in the midst of the community must be able to make decisions based on his own judgment in the event of disturbance to public order and and security or if it is expected to arise. a danger to public order and safety, where in such circumstances it is impossible for him to ask his superior for instructions or direction. [15]

When referring to the two definitions, practically the police do not have a solid basis if they want to stop an investigation of a case either on the basis of discretion or the authority to stop the investigation. The room for penal diversion and mediation is also not regulated by law. Thus it is not wrong if most members of the police view that every case they handle must continue the process to the prosecution stage except in cases that are regulated according to law.

b. Prosecutor's Authority

Similar problems are also encountered in the definition regarding the institution to stop prosecution and the opportunity of prosecutors given by law.

1. Reasons for termination of prosecution

The provisions of Article 140 paragraph 2 of the Criminal Procedure Code state that things that can be used as an excuse to stop prosecution are that there is insufficient evidence, the incident is not a criminal act or the case is closed by law. The case is closed for the sake of the law as a reason for terminating prosecution in principle based on the reasons ne bis in idem (Article 76 of the Criminal Code), the defendant's death (Article 77 of the Criminal Code), the expiration of the criminal prosecution (Article 78 of the Criminal Code), the absence of a complaint in the offense of complaint (Article 72 KUHP) and affdoening business processes (Article 82 KUHP).

2. Prosecutor's Opportunity

Meanwhile, related to the opportunity principle, the provisions of Article 32 letter c of Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia states that the authority to put aside cases in the public interest (to call cases) is only owned by the Attorney General and not owned by any Public Prosecutor who is handling criminal cases. As a consequence, the Public Prosecutor who handles a case does not have the authority to dismiss (call) the case because they must first report it to their superiors to seek approval from the Attorney General.

Referring to one of the alternative mechanisms for implementing a restorative justice approach through diversion by prosecutors, the current law regulating the authority of prosecutors to stop prosecution or to call a case does not seem to support the application of such diversion.

Given the mainstream thinking of law enforcement officers who are patterned with the conventional line of thinking of the criminal justice system, These various problems have implications for the problem of not being able to stop an investigation or prosecution of a criminal case because indeed the requirements set by law in a limitative manner to terminate an investigation or prosecution of a case are not fulfilled. As a result, the application of the restorative justice approach through either the diversion mechanism or the penal mediation is also hampered because the case in question must continue to be investigated in accordance with the provisions of the law.

c. Judge's authority

Meanwhile, the space for judges to apply this restorative justice approach is implicitly stated in the provisions of Article 5 paragraph 1 of Law Number 48 of 2009 concerning Basic Provisions of Judicial Power which in essence states that judges are obliged to explore the sense of justice that lives in Public. The sense of justice that lives in this society then becomes relevant when it is associated with criminal acts that lead to peace between the perpetrator and the victim which is accepted by the parties as what for them is fair. However, the possibility of implementing a restorative justice approach by the judge has not been supported by a legal basis which explicitly states that the judge has the authority to make the peace agreed upon by the victim and the perpetrator as a basis for mitigating or eliminating crimes or making a decision not to continue prosecution for criminal cases that have ended with peace.

In addition to involving subsystems in the criminal justice system, the application of this restorative justice approach also involves subsystems outside the criminal justice system, whether the community, customary courts or other institutions, in which case their authority must also be strictly regulated by law so that the peace agreement between the perpetrator and the victim that is facilitated by the subsystem outside the criminal justice system does not question its legality or legal strength.

Conclusion

The issue of not involving the direct participation of victims and perpetrators (in this case resolved by individuals) in the settlement of criminal cases on the basis of the state's premise through its power tools to take over the process of settlement of cases to prevent the occurrence of "vigilantism" actually leads to victim dissatisfaction and perpetrators of the criminal justice system. This thinking is now confronted with the reality of the community's need for a criminal case resolution mechanism which is considered to be more accommodating to the participation and aspirations of victims and perpetrators. The restorative justice approach, in this case emphasizes the involvement of victims and perpetrators directly, is then present as a response to this problem. The basic issues that arise in terms of this restorative justice approach to be applied are as follows: a. The law does not clearly regulate the legal strength of the peace agreement between the perpetrator and the victim and the authority of each subsystem both inside and outside the criminal justice system to apply a restorative justice

approach in the event of a criminal act, b. The unclear qualifications of criminal acts that can be resolved using a restorative justice approach.

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