

Law Enforcement in Criminal Cases Based on Restorative Justice by the Prosecutor's Office

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ABSTRACT

The lack of law enforcement is trapped in legal certainty and procedural justice only in carrying out law enforcement powers, ignoring substantial justice, which is the basic goal of the law itself. The purpose of this research is to find out how law enforcement in criminal cases is based on restorative justice by the prosecutor's office. This research method uses the type of normative legal research defined as a research method on statutory rules. The nature of this research is descriptive because it describes systematically positive laws and principles or theories related to restorative justice. The results of this study show that the enforcement of criminal acts based on Restorative Justice by the prosecutor's office is carried out based on the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The public prosecutor can terminate the prosecution in the public interest.

INTRODUCTION

Indonesia is a country that has a foundation and legal basis. In accordance with what is contained in the 1945 Constitution of the Republic of Indonesia (Eddyono, 2018), what is called law is a collection of regulations that regulate behavior that people should do and what people should not do to maintain peace and prosperity in social life. Justice is not created by law itself; but must be maintained to achieve legal justice (Taekema, 2021). Every member of society must participate in law enforcement; it cannot be done by one group or person.

Along with the progress of the times, the development of legal events in Indonesia has also become increasingly rapid. This causes inequality in the settlement of a legal event, especially legal cases, which is increasing rapidly. To overcome existing legal problems, law enforcers must develop a strategy to resolve criminal cases, especially minor cases. Restorative justice is a preferred solution when boredom occurs as a result of a formal legal perspective dominated by positivism schools of thought and cannot optimally guarantee a sense of justice in society because it resolves legal certainty in the midst of the development of criminal law (Saxon, 2018). To realize justice with restoration in the future, restorative justice offers a criminal settlement that promotes harmony between the victim and the perpetrator.

In the process of settling cases through legal channels, it is often considered not fulfilling justice. The public's perception of the arbitrariness of law enforcement officers in handling and punishing criminal offenders (Mulyati & Zurnetti, 2022). Of course this also has an impact on the principle of justice which prioritizes procedural justice by ignoring fundamental justice. Public dissatisfaction with such a trial is not only about enforcement and administration, but also about the end result which is considered to only sentence the perpetrators without repairing the damage that has occurred. This has become the impetus for the development of the concept of Restorative Justice, a change in approach in dealing with criminal matters that emphasizes upholding justice and balancing the rights of victims and perpetrators.

The Attorney General's Office often carries out prosecutions in accordance with the Criminal Procedure Code and the Prosecutor's Law of the Republic of Indonesia Number 16 of 2004 as a law enforcement agency that has responsibility regarding judicial power and prosecution in criminal cases. As stated in the Prosecutor's Regulation of the Republic of Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Restoration of Justice, public prosecutors can stop prosecutions based on restorative justice in certain circumstances to reconstruct the situation as before, before the "loss" caused by someone's actions (Suud, 2020). From the description above, the author has an interest in analyzing the preparation of a journal entitled "Law Enforcement in Criminal Cases Based on Restorative Justice by the Prosecutor's Office" because there is still a lack of law enforcement that is entangled in legal certainty and justice that is systematic and according to procedures only when carrying out law enforcement powers, ignoring substantial justice, which is the main goal of the law itself (Yana et al., 2021).

THEORETICAL REVIEW

Restorative Justice by the Attorney

The Attorney General of the Republic of Indonesia said that a good law should ideally provide something more than just legal procedures. In addition to being competent and fair, the law must also be able to recognize the public's wishes as reflected in the law that lives in society and is oriented towards achieving the values of justice, legal certainty and legal benefits. For this reason, responsive law is needed as an answer to the people's desire for law enforcement based on laws that live in society.

To respond to various problems and challenges of the times as well as criticism of the criminal law enforcement process, a number of experts have started to formulate a concept that we know as restorative justice. Restorative justice is an approach to solving criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not just retaliation against the perpetrators of crimes.

The Attorney General of the Republic of Indonesia explained that since the beginning of the development of the implementation of the criminal justice system, both in Indonesia and globally (Yanto et al., 2020), the punishment of the perpetrators of criminal acts is still retributive in nature which focuses on punishing the perpetrators of criminal acts. This punishment orientation aims to take revenge and fulfill the demands of public anger due to the perpetrator's actions

However, over time, an alternative paradigm shift has been offered to replace retaliation-based justice, namely the idea that emphasizes the importance of solutions to improve the situation, reconcile the parties and restore harmony to society but still holds the perpetrators accountable, which we know as restorative justice.

The Attorney General of the Republic of Indonesia said that in general there are 5 (five) principles of restorative justice, namely:

1. The principle that emphasizes the dangers and consequences caused by criminal acts, both to victims, society, and to the perpetrators;
2. The principle that emphasizes protection of the place from which the action occurred, such as the perpetrator's family, and the surrounding community;
3. Principles that emphasize inclusive collaborative processes;
4. The principle of involving certain parties in certain cases, such as perpetrators, victims, families and communities that are considered legally able to be involved; and
5. The principle of correcting mistakes.

These principles must always be applied as an effort to develop national law, so that the noble goals of the law itself can be realized, namely justice, certainty, and legal benefits.

Law Enforcement

Law enforcement is the process of implementing and implementing the law to maintain social order, protect individual and collective rights, and punish violations of the law (Geovani et al., 2021). Theoretically, law enforcement involves several important concepts and principles that form the basis of its operations. Here are some theoretical concepts in law enforcement:

1. **Law and Justice:** Law enforcement is based on the principle that every individual must be subject to the same laws, regardless of social, economic, or political status. The concept of justice underlies law enforcement to ensure that every action is punished or sanctioned according to decency and proportionality.
2. **Rule of Law (State of Law):** This principle emphasizes that law must be the highest authority in society, even the government and its officials must obey the law. The rule of law guarantees that law enforcement is carried out consistently and not arbitrarily.
3. **Proportionality:** Law enforcement must ensure that sanctions are appropriate to the severity of the offence. This concept avoids too heavy or too light treatment of offenders.
4. **Openness and Transparency:** Law enforcement processes must be transparent so that the public can understand how decisions are made and actions are implemented. Transparency helps prevent abuse of power and corruption.
5. **Police and Law Enforcement:** Law enforcement often involves law enforcement officials such as police, prosecutors and judges. They must act according to the principles of integrity, neutrality and professionalism.
6. **Protection of Human Rights:** Law enforcement must protect human rights and avoid abuse of power that can threaten individual rights.
7. **Preventive and Repressive:** Law enforcement can be preventive (preventing violations before they occur) or repressive (taking action on violations that have already occurred). A balance between these approaches is important to create a safe and fair environment.
8. **Community Participation:** Communities also play a role in law enforcement by reporting violations, becoming witnesses, and supporting the legal process. Collaboration between the community and law enforcement officials strengthens the effectiveness of law enforcement.
9. **Efficient Justice System:** An efficient and independent justice system is essential to ensure that the legal process is speedy, fair and accurate.
10. **Deterrence (Deterrence Effect):** Law enforcement also has the aim of providing a deterrent effect to potential violators. The existence of certain expected consequences reduces the incentive to break the law.

All these concepts work together to form a theoretical framework for law enforcement in society. However, in practice, law enforcement is often complex

and can be faced with challenges such as corruption, politicization, and varying interpretations of the law (Tusikov, 2012).

METHODOLOGY

This research includes the type of normative legal research, namely the research method with statutory regulations reviewed on the statutory hierarchy (vertical), or the alignment of statutory relations (horizontal). The nature of the research is descriptive because it systematically describes positive law and principles or theories related to restorative justice (Efendi & Ibrahim, 2018). Normative legal research is a type of legal research that focuses on the analysis and interpretation of existing legal norms, whether in the form of laws, regulations, court decisions, or other legal documents. The main objective of normative legal research is to understand how these norms are applied, identify relevant aspects, and provide an analysis of the legal implications that may arise from these norms. Whereas, normative legal research requires a deep understanding of the law being studied, as well as the ability to apply legal concepts in critical analysis (Christiani, 2016).

The type of data to answer the problems raised in this research is secondary data obtained from written legal materials. The data collection technique in this research is a literature study, namely studying or analyzing information about law originating from various sources. In this data collection method comes from statutory regulations, books on law, scientific journals and so on regarding restorative justice and criminal acts of threats based on positive law (Benuf & Azhar, 2020).

RESULTS AND DISCUSSION

The Attorney's Authority in Handling Criminal Cases Based on Restorative Justice

The development of criminal law recognizes Restorative Justice. Restorative justice is practiced by intentionally including disputing parties and third parties as mediators to find a win-win solution instead of going through the criminal justice system (Obaydhillah & Gunarto, 2021). In Indonesia, law enforcement using restorative justice has also begun to be used in various judicial institutions, one of which is the prosecutor's office (Awaliah Nasution et al., 2022). In criminal matters, the Attorney General acts as a public prosecutor, representing the state and society. It also acts as the principal representative of the state at court, carrying out its responsibility to uphold the law. Article 137 of the Criminal Procedure Code stipulates the Attorney's authority in prosecuting cases.

The public prosecutor can also stop the prosecution under certain circumstances, both certain circumstances (stopping the prosecution) and general circumstances (setting aside the case). Then, in accordance with RI Attorney Regulation No. 15 of 2020, the Public Prosecutor can stop his prosecution of a crime based on restorative justice. This is Article 3 paragraph 1 which reads: "The Public Prosecutor has the authority to close cases in the interest of law"

The prosecutor's authority not to prosecute criminal cases in the public interest stems from the principle of opportunity. The principle of opportunity is a legal principle that recommends authority to the public prosecutor to whether or not to file a lawsuit in the public interest (Lev, 2000), whether or not there are conditions or not, a person or corporation that has committed an offense. So that with the authority mentioned above, certain cases can be resolved by criminal cases with restorative justice on the basis of Attorney Regulation No. 15 of 2020, which is expected to create legal certainty in society, especially the perpetrators are also victims, if peace between the parties, can be a thing that eliminates the right of the public prosecutor to prosecute.

Restorative Justice is an approach in the criminal justice system that emphasizes recovery of losses due to criminal acts and reconciliation between perpetrators, victims and society (Subekti et al., 2021). In this context, the Attorney General's Office has certain roles and authorities related to the application of the principles of restorative justice. The following are some of the Attorney General's powers in Restorative Justice, namely:

1. Mediation and restorative meetings: Prosecutors can facilitate mediation or restorative meetings between perpetrators and victims. In mediation, they aim to help both parties communicate, understand the impact of the crime, and reach an agreement on restorative measures that recover the loss. The Attorney General's Office can act as a mediator or cooperate with an independent mediator.
2. Assessment of Cases: Prosecutors have the authority to judge cases suitable for a restorative justice approach. They must consider factors such as the nature of the crime, the personality of the perpetrator, and the victim's desire to participate in the restorative process.
3. Providing Information: Prosecutors can provide information to perpetrators and victims about the restorative process, their rights, and the possible benefits of participating in the process.
4. Coordinating the Restorative Process: The Prosecutor's Office can play a role in coordinating the entire restorative process, from case identification, mediation, to implementation of agreed restorative measures.
5. Monitoring the Implementation of the Agreement: Once a restorative agreement is reached between the perpetrator and the victim, the Prosecutor's Office can monitor the implementation of the agreement to ensure that the restorative actions are carried out as agreed.
6. Termination of Prosecution Agreement: In some cases, the Prosecution Service may consider terminating prosecution or reducing criminal charges if the perpetrator and victim have reached an adequate restorative agreement.
7. Involve the Community: Prosecutors can also involve the community in the restorative process. The community can provide views on the implications of criminal acts on the environment and suggestions regarding appropriate restorative measures.

8. Providing Legal Guidance: The Prosecutor's Office can provide legal guidance to perpetrators and victims regarding the legal implications of the restorative agreements reached.

It is important to remember that the role of the Prosecutor in Restorative Justice may vary based on jurisdiction and legal practice in a country or region (Díaz Gude & Navarro Papic, 2020). The main objective of the Attorney's role in a restorative justice approach is to facilitate the process of reconciliation, rehabilitation and recovery (London, 2003), in line with the principles of law and justice.

Law enforcement of Criminal Cases Based on Restorative Justice by the Prosecutor's Office

Restorative Justice is an approach that focuses on recovering the damage done by the victim and restoring the relationship between the victim and the perpetrator (Anfara et al., 2013), with this approach it is hoped that the parties can reach an agreement on peace for the sake of harmony in life in the future (Irawan, 2022). Prosecutors as part of the mandate of the law are given the task of enforcing the law. When deciding whether a case can go to court and what charges to make. Even the prosecutor's office has the authority to stop investigations based on the principle of opportunity or the principle of prosecution. This idea became the basis for the prosecutor's office to use Restorative Justice in settling criminal cases outside the court. According to Article 2 of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Faried et al., 2022), it regulates the principles of stopping prosecution based on restorative justice.

Article 5 *Perja* (Prosecutor's Regulations) No.15 of 2020 clearly provides an explanation of the main elements that must be fulfilled as an indicator or condition so that a case can be resolved using Restorative Justice:

1. The suspect is the first time committing a crime;
2. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; And
3. The crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime of no more than IDR 2,500,000.00 (two million five hundred thousand rupiah).

Law enforcement by the prosecutor's office has basic guidelines for *Perja* No. 15 of 2020 carried out with several considerations set out in article 4, then article 3 explains the reasons for closing cases and provisions in cases that can be resolved using Restorative Justice. Then chapter IV regulates the procedures for peace which will be facilitated by the prosecutor's office, family and community leaders.

In law enforcement based on Restorative Justice by the prosecutor's office, the relevant parties can settle cases in a win-win solution (Djanggih et al., 2023). If in the settlement of cases peace can be made based on Restorative Justice then this can encourage the perpetrator to directly repair the damage for what he has done by being voluntarily responsible for what has been agreed by both parties.

In addition, the victim, in this case, also benefits if the peace agreement can be fulfilled, namely the demands put forward by the victim to repair the damage caused by the crime will be fulfilled voluntarily by the perpetrator. So, as to create a state of harmony in social life.

One example of the application of Restorative Justice is the criminal act of threatening (Walgrave, 2019). In this case efforts have been made to terminate the prosecution based on restorative justice. By fulfilling the requirements according to what is in the law, so that by presenting the victims, perpetrators, victims' families and community leaders then the public prosecutor as a facilitator in the end a peace agreement can be reached. So, that the termination of prosecution in this case can be carried out.

Based on the description above, settlement of cases based on Restorative Justice as stipulated in the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice has described law enforcement as something that must be carried out by the prosecutor's office. Law enforcement has been carried out on the basis of the applicable laws (Hutabarat et al., 2022). This shows that the prosecutor's office prioritizes substantial-oriented justice enforcement, namely laws that develop and exist in society, rather than having to prioritize procedural justice.

This part allows you to elaborate on your results findings academically. You must not put numbers related to your statistical tests here; instead, you have to explain that numbers here. You have to compile your discussion with academic supports to your study and a good explanation according to the specific area you are investigating.

CONCLUSIONS AND RECOMMENDATIONS

Restorative Justice is the latest idea as an effort to enforce law, especially criminal law. The existence of Restorative Justice is considered to be able to provide justice for the community for minor cases. The prosecutor's office has the authority to carry out prosecutions for law enforcement, but can stop prosecutions based on Restorative Justice. This authority is whether or not the crime case can be carried out Steps to stop prosecution based on Restorative Justice. In this case the prosecutor's office is guided by the Law on Termination of Prosecution Based on Restorative Justice.

Law enforcement by the prosecutor's office for criminal acts based on Restorative Justice has been regulated in the Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In the application of termination of prosecution, it is carried out by closing cases in the public interest through termination of prosecution. In practice, as was done at the Karanganyar Prosecutor's Office in the case of the criminal act of threatening Number: B-352/M.3.33/Eoh.2/02/2022 which has succeeded in conciliation based on Restorative Justice, this proves that the prosecutor's office does not only prioritize justice procedural but also substantial justice.

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