

Termination of Prosecution Based on Restorative Justice in Indonesia it is Associated with the Renewal Criminal Law

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ABSTRACT

Criminal acts arise from various aspects of human activity, including the political, social and economic spheres. The success of law enforcement is traditionally measured by the ability to bring criminals to justice and impose appropriate penalties. However, in certain minor cases, such as theft, embezzlement, and fraud with minimal losses, the public questions the need for prosecution, as they believe that prosecution does not match the seriousness of the offense. The purpose of this study is to analyze the implications and effectiveness of prosecution discontinuation based on restorative justice in the Indonesian legal framework. Using a qualitative research approach, this study examines the regulatory structure and practical application of restorative justice in Indonesia. Data was collected through document analysis and interviews with legal practitioners to explore alignment of regulations with legal principles and community expectations. The research findings show that, although restorative justice offers a viable avenue to achieve peace between offenders and victims, its implementation in Indonesia is still limited, as it is not yet embedded in the broader criminal law system. Currently, peace agreements between the parties are only considered as a mitigating factor in the sentencing process. This research suggests that stronger legal legitimacy for restorative justice, such as the inclusion of restorative justice into the Draft Criminal Procedure Code is essential to adapt to the evolving legal culture and public expectations. The implications of this research highlight the need for comprehensive criminal law reform to ensure justice that aligns with societal values and contemporary legal standards.

Keywords: Termination Of Prosecution, Restorative Justice, Criminal Law Reform.

INTRODUCTION

Crimes that occur in society are something that must be anticipated and addressed. The consequences of this crime are very detrimental to society, this problem has become a focus of public attention everywhere in the world (Danil 2021). Efforts to overcome crime are a shared responsibility of all components of the nation, both government and society. Law enforcement officers are considered to have the deepest duties and responsibilities in tackling crime and enforcing the law (Burhanudin 2018). Every time a crime occurs, the law must be enforced so society is satisfied that justice has been done and the guilty have been punished.

In general, criminal law functions to regulate and organize people's lives so that public order can be created and maintained (Hasibuan et al. 2021). Human life is fulfilled by various interests and needs, one need and another are not only different but sometimes conflict with each other. To fulfill their needs and interests, humans behave and act so that their actions do

not harm the interests and rights of other people, the law provides guidelines in the form of certain limitations so that humans do not freely act and act to achieve and fulfill their interests. This function is found in every type of law, including criminal law (Purwoleksono 2014). Therefore, this function is called the general function of criminal law. Specifically, as part of public law, criminal law has the function of protecting legal interests from offensive actions.

Legal interests (*rechtsbeelang*) are all the interests required in various aspects of human life, whether as individuals, members of society, or members of a country, which must be guarded and maintained so that they are not violated by human actions (Islam 2015). All of this is aimed at implementing and ensuring order in all areas of life. Three legal interests must be protected, namely:

1. Legal protection of individuals (*individualee beelangeen*), for example, legal protection of the right to life (*life*), legal protection of the body, legal interest of property rights, legal interest of self-esteem and good name, legal interest of morals, and so on.
2. Maintaining the legal interests of society (*social of maatschappelijke beelangeen*), for example, maintaining legal interests regarding security and public order, traffic order on roads, and so on.
3. Safeguarding the legal interests of the country (*Staats beelangeen*), for example protecting the legal interests of the security and safety of the country, protecting the legal interests of friendly countries, protecting the legal interests of the dignity of the head of the country and his representatives and so on.

In the practice of law enforcement in the criminal justice system, the starting point is still based on the retributive theory (retaliation and deterrence) so that it only focuses on quantitative aspects as output, namely on how many cases are handled and the number of perpetrators who are imprisoned by law enforcement officials, the implementation of punishment like this will cause several problems in practice (Ariyanti 2019).

The law enforcement paradigm that focuses more heavily on the enforcement aspect in many cases turns out to give rise to public dissatisfaction and various substantial problems because it often does not pay attention to the benefits as an impact (outcomes) of law enforcement. This criminal justice paradigm is in line with the opinion of Jamees Fitzjamees Steepheen who states that "punishment for criminal offenders is justified because of feelings of hatred and the desire for revenge which are important elements in human character that must be fulfilled (Dermawan et al. 2015). Crime prevention policies have a very broad scope and can be implemented through preventive efforts. "In this way, crime prevention efforts can be carried out through several methods, such as legal counseling and information (preventive), prevention without criminal use as well as criminal proceedings, or through the application of criminal law (preemptive) (Takanjanji 2020).

Based on the above background, the purpose of this study is to analyze the effectiveness of the criminal law's function in protecting various legal interests in society, particularly in terms of the restrictions and responsibilities of individuals, society, and the state. In addition, this research also aims to evaluate the effect of the application of retributive-based punishment

in the criminal justice system and its role in meeting public expectations for justice and crime prevention in the future. This research will also examine alternative crime prevention policies and methods, emphasizing preventive and preemptive strategies that do not rely solely on punitive measures. Thus, the benefits of this research are to provide insights for policymakers and law enforcement officials to improve crime prevention strategies that are aligned with society's needs for justice and security, as well as contribute to the development of a more balanced criminal justice paradigm, combining retributive and preventive approaches to increase public satisfaction with law enforcement. The results of this study are expected to provide a basic framework for further research on effective crime prevention models and their application in diverse social and legal contexts.

RESEARCH METHOD

This research uses normative legal research methods. By using library materials or secondary data. According to Soetandyo Wignjosoebroto, normative legal research is specifically for researching law as a positive norm, as it is written in books or what is more accurately referred to as research (Nurhayati et al. 2021). Doctrinal research starts from normative postulates called positive legal norms.

Primary legal materials in this research are laws, decrees on the termination of prosecution, and books related to restorative justice in resolving criminal cases, and secondary legal materials in this research are interviews with the Prosecutor's Office of the Republic of Indonesia, tertiary legal materials in this research are journals, legal dictionaries, and electronic media. Techniques for collecting data and legal materials using field research and library research techniques. The theory used in analyzing the problem in this research uses Gustav Radbuch's theory of legal objectives which states that it is necessary to use the priority principle of the three basic values which are the objectives of the law. This is because in reality, resolving criminal cases through restorative justice has two different sides because legal justice often clashes with legal benefits and legal certainty and vice versa.

RESULT AND DISCUSSION

The termination of criminal cases has been regulated based on Law Number 8 of 1981 concerning the Criminal Procedure Code since criminal cases are in the process of investigation, inquiry, and prosecution (Nomor 8AD). Termination of cases at the inquiry and investigation level is regulated in Article 109 paragraphs 2 and 3 of the Criminal Procedure Code, paragraph 2 states "If the investigator stops the investigation because there is not enough evidence or the incident turns out not to be a criminal act or the investigation is stopped by law, then the investigator informs the public prosecutor, the suspect and his family." whereas in paragraph 3 "if the termination referred to in paragraph (2) is carried out by an investigator as intended in Article 6 paragraph (1) letter b, notification regarding this matter is immediately given to the investigator and public prosecutor."

Termination of an investigation is the investigator's authority to stop an investigation that has been started (Supit 2024). The reason for granting this authority is to apply the principles of fast, precise, and low-cost justice and to uphold legal certainty in social life. If the investigator concludes that based on the results of the investigation there is not enough evidence, it will result in a protracted investigation examining the suspect. So the investigator concludes that he officially declares the termination of the investigation to achieve legal certainty for the investigator, especially the suspect, as well as so that the investigator can avoid demands for compensation from the suspect or a pre-trial petition.

There was a development in criminal law, namely a change in the paradigm of punishment from retributive justice to restorative justice, retributive justice, namely imprisonment, is retaliation against the perpetrator and the orientation of punishment is only aimed at the perpetrator in the form of rehabilitation while serving the prison sentence or after serving the sentence, then there was a change in restorative justice, namely the orientation The punishment is in the form of restoring relations between the perpetrator, the victim and the community, which pays more attention to the interests of the victim in the form of compensation and recovery for the victim after the crime (Capera 2021).

The development of criminal law occurs because of the demands of societal development because imprisonment does not produce much of the expected output, namely that if someone has undergone a sentence, he will become a better person. This phenomenon is called the criminal cycle, namely that prison cannot make prisoners into good citizens, in some cases the perpetrators even become more skilled at committing crimes. Criminal law is said to be working according to the aims and functions of the law if imprisonment will make a person better after leaving prison (Capera 2021).

Termination of inquiries and investigations other than those determined by the Criminal Procedure Code, is also regulated based on the Indonesian Republic of Indonesia's National Security Regulations No. 8 of 2021 dated 19 August 2021 concerning the handling of criminal acts based on restorative justice (Ahzar 2022). This regulation gives investigators the authority to stop criminal cases with the conditions specified in Police regulations.

Termination of criminal cases in the prosecution process based on restorative justice.

Termination of a criminal case at the level of investigation and inquiry based on the provisions of the Criminal Procedure Code and restorative justice, if it is not successfully carried out by the investigator, then the investigator sends the case file that has been declared complete by the public prosecutor, both formal and material requirements and hands over responsibility for the suspect and evidence to the public prosecutor (Siburian 2024). At this prosecution stage the public prosecutor before submitting the case to the District Court, can also terminate the criminal case as stipulated in Article 140 paragraph 2 letter a of the Criminal Procedure Code, namely "if the public prosecutor decides to terminate the prosecution because there is insufficient evidence or the incident turns out not to be a crime or the case is closed by law, the public prosecutor states this in a decision letter"

In the field of prosecution, prosecutors are given the authority to realize a sense of justice for the public so that prosecutor given authority controller cases (*Dominus Litis*) based on the provisions of Article 140 paragraph 2 of the Criminal Procedure Code This means that the prosecutor is given the authority to determine whether a case can be submitted to the court. court or No, as well as can to put aside matter for the sake of interest general (*deponering*) Article 35 letter c of Law Number 16 of 2004 as amended by Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, an example of a criminal case that was deponered by Attorney General HM Prasetyo was on Thursday, March 3, 2016, he took steps to set aside or deponer the case of former leaders of the Corruption Eradication Commission Abraham Samad and Bambang Widjojanto in the interests of the spirit of eradicating corruption in Indonesia.

At the prosecution stage, a criminal case may be terminated for prosecution, other than that which has been regulated in the Criminal Procedure Code, namely based on Regulation Prosecutor's Office Republic Indonesia Number 15 Year 2020 about Termination of Prosecution Based on Restorative Justice (Kristanto 2022). Article 1 paragraph 1 provides an understanding of Restorative Justice which is a settlement case act criminal involving the perpetrator, victim, family perpetrators/victims, and other related parties to jointly seek a solution. fair with an emphasis on recovery return on condition originally, And No revenge.

Termination of prosecution based on restorative justice must fulfill the conditions as stipulated in Article 5 paragraph 1 "Criminal cases can be closed for the sake of law and the prosecution is stopped based on Restorative Justice if the conditions are met condition as following:

- a. suspect new First time do act criminal;
- b. criminal acts are only punishable by a fine or imprisonment of No more than 5 (five) years;
And
- c. criminal acts are committed based on the value of the evidence or the value of the losses incurred the result of a criminal act is not more than Rp. 2,500,000.00-, (two million five hundred thousand rupiah). rupiah).

Article 5 paragraph 6 in addition to fulfilling the terms and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), termination of prosecution based on Restorative Justice done with fulfill condition:

- a. has There is recovery return on condition back to Which done by Suspect with method:
 - 1) return goods obtained from act criminal to the Victim;
 - 2) replace loss Victim;
 - 3) replace cost caused by from consequence of criminal act; And/ or
 - 4) repair damage caused by consequence act criminal;
- b. has there been an agreement peace between the victims And Suspect; And
- c. public respond positively.

The termination of prosecution based on restorative justice is based on the consideration that 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 morality, and must explore the values of humanity, law, and justice that exist in society (Dawansa et al. 2023). The resolution of criminal cases by prioritizing restorative justice that emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge is a legal need of society and a mechanism that must be built in the implementation of prosecution authority and criminal law reform. The Attorney General is tasked and authorized to make the law enforcement process provided by the Law effective by paying attention to the principles of fast, simple, and low-cost justice, as well as determining and formulating case-handling policies for the success of prosecutions that are carried out independently for the sake of justice based on law and conscience, including prosecution using a restorative justice approach that is carried out by statutory provisions.

Restorative justice is offered as an approach that is thought to be able to meet demands. The return of authority to resolve criminal cases outside the Criminal Justice System as a representative country to the public through an approach to justice restorative, victim And society is a component that must exist and be decisive, so the main question is related to this research is whether the restorative justice approach used in resolving criminal cases, it is included in one of the theories of punishment or not only new treasures that enrich the existing theory of punishment (Abdullah et al. 2014). From the reality and practice of law enforcement, if the existing forms of classical punishment theory are focused on the efforts to recover the perpetrator, then restorative has given its focus attention to recovery victims.

The basic characteristics of the philosophy of punishment that underlies restorative justice which is different from existing theories. If the theories There is see criminalization as an action Which forced (mainly by court institutions) and the perpetrator carries it out as a forced act, then the element of volunteerism makes restorative justice a view of punishment that different.

Justice Restorative is A draft thinking That responds development of criminal justice with an emphasis on the need for community and victim involvement who feel marginalized by the mechanisms that operate in the criminal justice system at this time. On the other hand, restorative justice is also a framework for thinking Which is new and can used in responding to a criminal act by law enforcement.

It is not easy to define this restorative justice approach, considering the amount of variation in models and forms developed in its implementation. Therefore Lots of terminologies are used To describe flow justice restorative These include " communitarian justice", positive justice, relational justice, reparative justice, community justice (community justice), and communitarian justice ". The terminology used for mentioning "communitarian justice" comes from the communitarian theory that developed in Europe moment This. Individualistic understanding which during this time was sticky with the world west, gradually abandoned in line with the awareness of the role of society in the development of life a person.

These views place restorative justice in a position that carries out a consultative institution as an effort that can be made to find a way best on a breakdown problem That arises consequence the occurrence of an act criminal.

The Attorney General's Office of the Republic of Indonesia, based on data from the Deputy Attorney General for General Crimes since the issuance of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecution based on restorative justice dated July 21, 2020, has terminated criminal cases based on restorative justice totaling 5,600 (five thousand six hundred) cases as of August 24, 2024. Examples of criminal cases that have been terminated based on restorative justice in the prosecution process:

1. Jambi District Attorney's Office.

Name of the defendant: Sandi Bin Ismail, 21 years old, male, Indonesian, address Jl. Sriwijaya Rt.9 Number 80, Beliuang Village, Kota Baru District, Jambi, Muslim religion, private sector job, high school.

The article charged is Article 480 paragraph 1 of the Criminal Code (case of receiving a motorbike worth Rp. 2,500,000).

2. East Tanjung Jabung District Attorney's Office.

Name of the defendant: Zulhamdan Sitorus, 34 years old, male, Indonesian, address RT. 08 Rantau Karya Village, East Tanjung Jabung Regency, Muslim, Farmer, high school student.

The article charged in Article 372 of the Criminal Code (case of embezzlement of palm oil worth Rp. 2,000,000).

Public opinion that some criminal cases do not need to be brought to trial and sentenced such as the case of Grandma Minah stealing papaya, and theft of sandals in a mosque with a very small value of not more than Rp. 2,500,000, - (two million five hundred thousand rupiah) can be stopped from prosecution based on restorative justice. So the public considers that the law is blunt upwards but sharp downwards, changing into the law being sharp upwards and humanist downwards.

Based on realizing legal certainty, legal order, justice, and truth based on law and respecting religious norms, politeness, and morality, it is mandatory to explore the values of humanity, law, and justice that live in society, by prioritizing restorative justice emphasizing the restoration of the original state and the balance of protection and interests of victims and perpetrators, not oriented towards revenge and the legal needs of society, the implementation of prosecutorial authority is built in the implementation of the renewal of the criminal justice system, then the Prosecutor's Office guidelines are stipulated regarding the termination of prosecution based on restorative justice.

Draft Restorative Justice in Draft Criminal Procedure Code.

Termination of criminal prosecution regulated by the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice is to answer the demands of the community regarding justice needed by the community, based on the theory of the purpose of law from Gustav Radbruch, namely justice,

benefit and legal certainty (Santoso 2021). However, the law enforcement policy by terminating criminal cases based on peace between the perpetrator and the victim and the community is a form of termination of cases that is not recognized in the criminal law applicable in Indonesia, in the practice of law enforcement, peace between the perpetrator and the victim is only used as a consideration to reduce criminal charges, not to stop prosecution. Termination of criminal cases has been regulated in the Criminal Code in the form of the elimination of criminal penalties which are divided into two, namely those stated in the Law and those outside the Law in the form of jurisprudence and doctrine and those stated in the Law are divided again into general provisions and special provisions. General details contained in the law:

- 1) Article 44 of the Criminal Code: "Anyone who cannot be held responsible because his soul is disabled in growth or disturbed by illness, shall not be punished."
- 2) Article 48 of the Criminal Code: "Anyone who commits an act due to the influence of coercive power shall not be punished."
- 3) Article 49 paragraph 1 of the Criminal Code: "Due to forced defense, not punished."
- 4) Article 49 paragraph 2 of the Criminal Code: "Forced defense that exceeds the limits is not punishable."
- 5) Article 50 of the Criminal Code: "Anyone who commits an act to implement the provisions of the law shall not be punished."
- 6) Article 51 paragraph 1 of the Criminal Code: "Anyone who carries out an act in an official capacity given by an authorized official shall not be punished."

Specific details in related Articles such as Article 310 paragraph 3, Articles 166, 164, 165, and 221 paragraph 2 of the Criminal Code. The basis for eliminating criminal acts outside the law is divided into general and specific: The general ones are for example "no crime without fault", and "not against the law in a material way". The specific ones concern certain authorities in carrying out certain professions such as doctors, boxers, etc. The reasons for eliminating criminal acts outside the unwritten law are divided into "justification basis (no against the law) this is from the external aspect of the maker or objective factors while the basis for forgiveness (no fault) is from the aspect of the maker or subjective factors.

In the life of society, the form of termination of prosecution based on restorative justice has been accepted by the majority of society, and even received appreciation, even though in fact if viewed from the applicable legal principles, this is contrary to the provisions on the principle of *lex superior derogate legi inferiori*, which determines that lower provisions cannot conflict with higher legal provisions, but because of the need for the development of this law, restorative justice can be accepted in society.

The legal principle that states that lower laws and regulations may not conflict with higher ones is the principle of *lex superior derogate legi inferiori*, this principle applies if there is a conflict between higher and lower laws and regulations, then the higher one must take precedence. This principle only applies to two regulations that are not hierarchically equal and conflict with each other. However, there is an exception if the substance of higher laws and

regulations regulates matters that are determined to be the authority of lower regulations, the non-conflict between lower and higher regulations has been regulated in Article 7 Paragraph 1 of Law Number 12 of 2011 concerning the formation of laws and regulations, which divides the types of hierarchical laws and regulations in order from their highest level, namely the 1945 Constitution of the Republic of Indonesia; Decree of the People's Consultative Assembly; Law/Government Regulation instead of Law; Government Regulation; Presidential Regulation; Provincial Regulation; Regional Regulation of Regency/City, so the legal force of the legislation according to the hierarchy according to its order. While Circulars or internal Regulations of the Ministry/institution are not regulations stipulated in the hierarchy of Legislation, so that the Regulation of the Attorney General of the Republic of Indonesia, may not conflict with the Criminal Code and the Criminal Procedure Code.

Regarding the lack of similarities regarding the requirements for terminating an investigation based on restorative justice in the Police with terminating a prosecution based on restorative justice in the Prosecutor's Office, for example in the Police there is no limit to the losses suffered by the victim, while in the Prosecutor's Office, the limit is IDR 2,500,000 (two million five hundred thousand rupiahs) which can be terminated based on restorative justice, then in the Police there is no limit to the threat of imprisonment for criminal acts, while in the Prosecutor's Office, the limit to the threat of imprisonment is 5 years.

Likewise, if restorative justice is not expressly regulated in the provisions of the law, it can occur in the future if there is a party who is not satisfied with the termination of the prosecution, potentially filing a pretrial motion and the perpetrator feels that it is very easy to resolve his case, because he has compensated the victim for his losses, so that there is the potential for the perpetrator to commit another crime and make the perpetrator a recidivist.

To answer or at least minimize the potential and for stronger certainty, it is hoped that the termination of prosecution based on restorative justice will be included in higher provisions, namely in the form of a Law and included in the Draft Criminal Procedure Code as the desired law, not in the form of internal institutional regulations.

CONCLUSION

The conclusion of this research shows that there has been a paradigm shift in the application of punishment, from retributive justice that focuses on retaliation against the perpetrator of the crime, towards restorative justice that prioritizes the restoration of relations between the perpetrator, victim and society. This shift reflects the aspirations of the community who consider that not all criminal offenses should be prosecuted, especially if the applicable law is not balanced with the crime committed. In accordance with Gustav Radbruch's legal theory that emphasizes the importance of justice, certainty, and expediency, the Attorney General's Office, through a restorative justice approach, issued Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation aims to change the public's view of

the law to be more humane, by facilitating conflict resolution that prioritizes human aspects without reducing the strictness of certain crimes.

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