

Analysis of the Realization of Justice in the Discretion to Terminate Prosecution

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Abstract

Restorative justice is not just an orientation towards the goals of punishment, but has become the basic direction of criminal law enforcement in Indonesia. Settlement of criminal cases that do not have to go through formal justice process is the main jargon of restorative justice. Selecting cases that are appropriate or not to be submitted to court can be carried out by the public prosecutor with the authority to stop the prosecution. This article will analyze the discretion that the public prosecutor has to stop cases that are not suitable to be submitted to trial or through formal channels. This article was written using normative legal research methods with a conceptual approach. The results of this research are that restorative justice through discretion to terminate prosecution is a step to achieve justice in the case of public prosecutors facing cases that can be resolved using non-formal channels. Public prosecutors can facilitate alternative efforts for peace between perpetrators, victims and their families by becoming facilitators.

Keywords: Termination Of Prosecution, Restorative Justice, Justice



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INTRODUCTION

Settlement of criminal cases by prioritizing the punishment of the perpetrator has begun to be abandoned. Settlement of cases based on retributive justice is considered out of date and no longer in line with current developments (Jannah & Setyawan, 2023). Only focusing on the perpetrator only aims to avenge the evil deeds committed by the perpetrator of the crime, but does not pay attention to the aspect of the victim (Kristiyadi & Setyawan, 2022). So what is no less important is the demand for compensation from the perpetrator that is given to the victim. Because the negative impact of punishment often occurs and crime is not the best solution to crime in this era. Efforts to achieve restorative justice can be achieved through penal mediation efforts (Rhiti & Setyawan, 2023). Bringing together perpetrators, victims and their families to find the best solution to criminal cases is a more effective option in resolving criminal cases. The beneficial aspects of crime can be obtained by both parties, including perpetrators, victims and their families (Patria & Kurniawan, 2022). The meeting of mutual benefits for case resolution options is an advantage and positive side of this restorative justice.

To build conditions for what restorative justice actually looks like, it requires broad and deep thinking about what justice is, where it lies justice, as well as how to build justice itself in accordance with the concept ontology, epistemology, and axiology in philosophy. Justice is built by correct thinking, carried out fairly, honestly and responsibly for everything action taken (Halim & Patria Setyawan, 2024). A sense of justice is upheld and the law must be enforced based on written law to enforce it in accordance with the rules the reality that exists in society for the sake of security and peace.

In a process the reform movement shows that the law must be enforced for the sake of realizing the supremacy of law in order to increase efforts seek truth and justice. Justice functions as a way of giving protection of human interests. So that human interests can be protected, Justice must also be prioritized by prioritizing policies or rule formulation which is professional and fulfills a sense of fairness in the eyes of society. In law enforcement which is based on justice also requires having law enforcement resources a good perspective on justice and a clean conscience within determine policies in law enforcement. The principle of restorative justice is to bring victims and individuals together hurt them, along with their families and others affected, to discuss what happened and the steps needed to repair the damage caused by this action, where the meeting was moderated by facilitators are trained and confidential (Setyawan & Wisnubroto, n.d.). Restorative justice is a form of justice that focuses on the needs of victims, perpetrators of crimes, and society. In contrast to retributive justice which emphasizes punishment perpetrators of crimes, restorative justice emphasizes the restoration of victims, perpetrators of crimes, and society.

Restorative justice delivers alternatives to overcome crime, by trying to offer them to society under the pretext of isolating or isolating the person who committed the crime which is no longer considered effective in reducing crime rates. Decisions in implementing restorative justice can basically be made by every law enforcer, including the public prosecutor (Kristanto, 2022). In the judicial process, the prosecutor plays a role in making decisions will initiate criminal prosecution against anyone suspected of having committed the act criminal. After filing the charges, the prosecutor submitted articles in his indictment to be tried and request the court to find the defendant guilty, where this is the result of arguments held in front the judge. Some claims were dropped, dismissed, or terminated liberation. Prosecution that ends in criminal conviction and sentencing agency, usually involving the detention of the accused. Purpose of punishment or physical detention, among other things, has a deterrent effect on the alleged defendant dangerous (Mulya et al., 2022). However, what is happening nowadays, the concept of punishment by imprisonment still does not have a deterrent effect on perpetrators of criminal acts are proven by the high and still high levels of crime pvercapacity is seen in several detention centers and correctional institutions in Indonesia.

Settlement of criminal cases using a restorative justice approach or concept. This focuses more on direct participation from both the perpetrator and the victim and the community in the process of resolving cases. Besides that, the concept of restorative justice emphasizes the values of balance, harmony, harmonization, peace, tranquility, equality, brotherhood and kinship in society rather than punishment or imprisonment. Efforts to resolve the case. In this way, it not only solves the problems that arise but goes deeper from that the concept of resolving cases using a restorative justice approach felt to provide a greater sense of justice in society.

RESEARCH METHODS

This writing uses normative legal research methods. The approach used in this legal research is a conceptual approach, namely related to the concept of restorative justice in criminal justice in Indonesia. The legal materials used in this writing are primary legal materials and secondary legal materials. This legal material was collected through literature study and analyzed through deductive analysis techniques using syllogism.

RESEARCH RESULTS AND DISCUSSION

Renewing legal culture for the Prosecutor's Office can make the Prosecutor's institution as a progressive institution. Satjipto Rahardjo explained that progressivism starting from the

humanitarian view which states that humans are essentially human is kind, has the qualities of compassion and care for others (Patria & Kurniawan, 2022). This progressive nature is an important element of character formation for Law Enforcement Officials so that later in enforcing the law not only fixated on the legal context only but instead looks at the moral element humanity that exists in law enforcers such as in the Prosecutor's Office. The presence of law Progressive law enforcement in Indonesia cannot only rely on certainty law but can see the actualization of law in society. When The ideology of law enforcers only relies on legal certainty, so it will be difficult justice is found because legal certainty is closely related to the desire to maintain the status quo. So as a Law Enforcement Officer you must views the law dynamically but still relies on statutory regulations invitation, as well as making law enforcement humane and acceptable use conscience in punishing perpetrators of criminal acts.

Discussion

The discussion contains the results of research and scientific discussion. The discussion contains an explanation of regulations and facts. Analysis according to the problem approach chosen by the author. In addition, the comparison must also be explained with the results of other researchers who have almost the same topic. Research results and findings must be able to answer the research problem formulation in the introduction section. Use factual and relevant references. Articles must produce novelty or novelty both from a theoretical and a practical point of view. The discussion contains at least: (1) (what/how elements) has the data presented been processed (not raw data), set forth in the form of tables or figures (choose one), and given easy-to-understand information? Write down the findings or findings, but don't discuss the discussion here; (2). (the why element) in the discussion section, there is a link between the results obtained and the basic concepts and/or hypotheses. In some fields of science, we even have to discuss molecular aspects at the level of study. The discussions made must be supported by real and clear facts; and (3) (what else element) whether there is conformity or conflict with the results of other people's research.

Restorative justice is considered an effort in cultural renewal law. Restorative justice is not only aimed at perpetrators of criminal acts (daders). but instead rehabilitates the conflict with justice and the law that is violated by perpetrator of the crime. Restorative justice tends to focus on the deep the process of criminal responsibility directly by the perpetrator of a criminal act to victims and society, if the perpetrators and victims and society whose rights are violated their right to feel that justice has been achieved through joint deliberative efforts then punishment can be avoided (Macawalang et al., 2021). This shows that the perpetrator is not the object The mainstay of the restorative justice approach is a sense of justice and restoration the conflict itself is the main object. Renewing the enforcement paradigm the law in looking at this case is what makes the application of restorative justice as a prima donna in achieving justice in social life.

Law enforcement reform in Indonesia must grow, develop and comes from the basic values and socio-philosophical, socio-political and socio-cultural values that live in Indonesian society. Renewal of legal culture in essence included in the field of legal policy which is part of and closely related with law enforcement policies, criminal policies and social policies. So from in principle, law enforcement reform is part of the policy (rational effort) to renew the substance and culture of law in order to be more making law enforcement effective, tackling crime in the context of protection society, as well as addressing social and humanitarian problems in order achieve national goals, namely social protection and social welfare (Danardana & Setyawan, 2022).

Apart from that, legal reform is also part of the effort reviewing and reevaluating the basics of thought or main ideas underlies policies/regulations regarding crime and enforcement policies the laws that have been followed so far. If the value orientation/view of law enforcement what is aspired to is the same as the value orientation of old law enforcement is the legacy of the colonial nation, meaning it is not a legal reform. With thus, legal reform must be formulated with an appropriate approach policy-oriented, as well as a values-oriented approach considered new to law enforcement. The definition of restorative justice according to Perja no. 15 of 2020, namely Restorative Justice is the resolution of criminal cases involving the perpetrator, victim, the family of the perpetrator/victim, and other related parties to work together to search fair settlement by emphasizing restoration to the original state, and not revenge. Restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel marginalized with mechanisms who work in the current criminal justice system (Wibowo, 2021).

In answering problems related to case resolution a crime that always results in imprisonment, so the newest way out at this time it is related to the Public Prosecutor's authority to stop prosecution based on the concept of Restorative Justice, namely the Republic of Indonesia Prosecutor's Regulations Indonesia No. 15 of 2020, it is deemed necessary to give appreciation. This matter because if seen in this concept it is an enforcement effort justice is carried out by involving perpetrators, victims and the community in the process settlement of the criminal case. This is what is taken into consideration in the Republic of Indonesia Prosecutor's Regulations Indonesia No. 15 of 2020 concerning Termination of Prosecution Based on Justice Resorative, namely resolving criminal cases by prioritizing justice restorative which emphasizes restoration to the original state and balance protection and interests of victims and perpetrators of non-oriented criminal acts Retaliation is a legal requirement of society and a mechanism which must be built in the exercise of prosecutorial and reform authority criminal justice system. The Prosecutor's Office of the Republic of Indonesia as a government institution those who exercise state power in the field of prosecution must be able to realize this legal certainty, legal order, justice and truth based on law and pay attention to religious norms, politeness and decency, and are obliged to explore the values human values, law and justice that live in society (Danial et al., 2022).

In Article 4 paragraph (1) of the Republic of Indonesia Prosecutor's Regulation Number 15 of the Year 2020 states that the termination of prosecution is based on Restorative Justice carried out by paying attention to: a. Victim's interests and other legal interests protected; b. avoidance of negative stigma; c. avoidance of retaliation; d, response and social harmony; and e. propriety, decency and public order. So article 5 paragraph (1) states that criminal cases can be closed by law and prosecution is terminated based on Restorative Justice if the conditions are met as follows: a. the suspect has committed a crime for the first time; b. criminal act only be threatened with a fine or punishable with imprisonment not more than 5 (five) years; and c. criminal acts are committed with the value of evidence or value losses incurred as a result of criminal acts do not exceed Rp. 2,500,000.00,- (two million and five hundred thousand rupiahs). In an effort to uphold justice, the application of restorative justice in handling criminal cases is expected to be able to reduce the costs of handling cases usually imposed on the state in resolving a conflict or case through retributive justice or trial. Restorative justice in addition to solving problems or cases based on deliberation and consensus can also be resolved the problem of the high number of prisoners piling up in correctional institutions due to the high intensity of cases resolved through trial. With there is a termination of prosecution based on

restorative justice which is of course based based on certain considerations and policies and conditions, the criminal case will be resolved can reduce the high number of prisoners sent to correctional institutions and does not impose costs on the state in resolving criminal cases.

CONCLUSION

Termination of prosecution based on restorative justice is not just a regulation that gives prosecutors the authority not to carry out prosecutions. Furthermore, this regulation aims to shift the prosecution system in Indonesia, which was previously mandatory according to statutory provisions, namely the Criminal Procedure Code and the Prosecutor's Law, now adding discretion for prosecutors in not prosecuting a case. The prosecutor's freedom to provide considerations for not prosecuting is based on the prosecutor's conscience that a case is not appropriate to be brought before trial. Another consideration is also when the parties have resolved the case in good faith through deliberation and consensus facilitated by the prosecutor. A sense of justice in society here can be realized by accommodating the interests of both parties, namely the suspect and his family, as well as the victim and his family. Apart from that, the community is also a witness to the restorative justice process and is proof that the process does not harm the community's sense of justice.

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