Termination of Prosecutions Based On Restorative Justice in The Settlement of Criminal Cases In The Area of The High Prosecutors Of Lampung

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Abstract
The Attorney General's Office of the Republic of Indonesia has issued a breakthrough in efforts to resolve cases through the termination of prosecution based on restorative justice. The Prosecutor's Office of the Republic of Indonesia, a law enforcement officer referred to as a case controller based on the dominus litis principle has a significant role in determining the success of applying restorative justice in Indonesia. Therefore, this article examines and analyzes the implementation and inhibiting factors for stopping prosecutions based on restorative justice in settlement of criminal cases in the Lampung High Court area. The research method in writing this paper uses a normative juridical and empirical juridical approach, with 6 (six) sources from academics and the Public Prosecutor in the Lampung High Prosecutor's Office. The data is then processed and analyzed cumulatively. Based on the research results, the Lampung High Court has adopted the termination of restorative justice-based prosecutions in three (three) District Attorney's Offices. Meanwhile, the obstacle to stopping restorative justice-based prosecutions in the Lampung High Court area is dominated by overlapping arrangements for implementing restorative justice between law enforcement agencies, namely the Prosecutor's office and the
A. Introduction

The Indonesian Prosecutor's Office has a strategic position in exercising supremacy in the field of prosecution in an integrated criminal justice system regulated under the Criminal Procedure Code. The Attorney General of the Republic of Indonesia has issued the latest breakthrough in efforts to resolve cases, namely through the termination of prosecution through Restorative Justice. With the issuance of the Attorney General's Regulation (Perja) No. 15 of 2020 concerning Termination of Cases Based on Restorative Justice (from now on referred to as Perja No. 15 of 2020). With this Perja, it is hoped that the law enforcement process in Indonesia can be simplified by prioritizing the principles of quick, simple, and low-cost justice and that prosecutions are carried out based on conscience, including prosecutions with a restorative justice approach carried out in accordance with the provisions of the legislation.

Restorative justice is a concept that puts forward collaborative procedures between criminals, victims, and the community. Crime-damaged neighborhoods can be restored to their original state or almost to their original state. Restorative justice is not a new concept among indigenous Indonesians. Indonesia has many traditional settlements for problem-solving in its civilization, mainly when criminal acts occur, which follow restorative justice to seek "healing." Customary settlement in Indonesia has the same goal: to restore harmony in people's lives disturbed by disputes.

Perja Number 15 of 2020 is intended to answer the community's expectations by balancing the protection and interests of victims of crimes committed outside the criminal justice system. So far, the perpetrator has not been able to restore his relationship with the victim, which can be seen as a flaw in the existing legal system. There are a number of cases that have attracted the attention of the public and disturbed the sense of justice of the Indonesian people, such as the case of grandmother Minah, who was accused of stealing three cocoa pods at the Rumpun Sari Antan plantation. In this case, the defendant was sentenced to one month and 15 days with a probationary period of 3 months. The case of grandmother Minah disturbs the sense of justice of many parties because, with only three cocoa beans, an old grandmother still has to undergo a lengthy legal process. Another similar case is the case of Samirin's 68-year-old grandfather who was sentenced to two months guilty of stealing rubber latex worth Rp. 17,000,- in the plantation of PT. Bri d gemstone is located in Simalungun Regency, North Sumatra.

The achievement of the ideals of justice in society must measure the extent to which law enforcement officers successfully enforce the law. In Indonesia, the criminal justice system often measures law enforcement performance only by the achievement of bringing suspects to

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court and then being punished. With the implementation of Restorative Justice in Indonesia, it is hoped that it can provide a sense of justice in society based on conscience. The Prosecutor's Office of the Republic of Indonesia is a law enforcement officer based on the dominus litis principle, which emphasizes who has the right to prosecute other than the 'absolute' and 'monopoly' public Prosecutor, this also shows that the Prosecutor's Office has a major role in determining the success of the implementation of restorative justice in Indonesia. Whether or not a case is tried can be determined by the Prosecutor, the Prosecutor's job is to balance legal certainty and a sense of justice.

Furthermore, this research then examined that to implement restorative justice at the District Attorney in Lampung, especially in other areas besides the capital city, the application of restorative justice is still underestimated by the public, and the application of Prosecutor's Regulation Number 15 of 2020 with Police Regulations Republic of Indonesia Number 8 of 2021 there is still overlap between the two institutions which have their regulations regarding the implementation of restorative justice. These problems were then analyzed and studied regarding the implementation and inhibiting factors for the termination of prosecution based on restorative justice in settlement of criminal cases within the Lampung High Court. The research method in writing this thesis uses a normative juridical and empirical juridical approach, with 6 (six) sources from academics and the High Court at the Lampung High Court. The data is then processed and analyzed cumulatively. Based on the research results, the Lampung High Court has adopted a restorative justice-based termination of prosecution in three (three) District Attorneys' Offices.

Based on the novelty of the results of this research, there is a need for harmonization between Perja Number 15 of 2020 and the Regulation of the Indonesian National Police Number 8 of 2021, namely that in its implementation, the Prosecutor's office can directly involve the police in implementing restorative justice. This is so that legal regulations regarding restorative justice, which aim to enforce laws that are humane, simple, and low cost, can be realized and produce justice for the people.

Based on the description of the background above, this article will examine two problems: first, how is the implementation of the termination of prosecution based on restorative justice in settlement of criminal cases in the Lampung High Prosecutor's Office? Second, what are the inhibiting factors for stopping prosecutions based on restorative justice in settlement of criminal cases in the Lampung High Prosecutor's Office? To achieve the research objectives in answering these problems, a normative juridical and empirical juridical approach is used, with 6 (six) sources from the Public Prosecutor and Academics in the Lampung High Prosecutor's Office, the data is then processed and analyzed cumulatively.

B. Discussion
1. Implementation of Termination of Prosecution Based on Restorative Justice in settlement of Criminal Cases in the Lampung High Prosecutor's Territory

Restorative justice is a philosophy in criminal justice that views crime as a crime against society, not a crime against the state. As a result, criminals are obliged to improve the condition of the community as victims. This approach focuses on the pain caused by crime. It explains the interaction of victims with society in relation to criminal offenses committed by the state. The restorative justice paradigm facilitates appropriate discussions, both directly and indirectly, between victims and perpetrators of crimes through mediation.

Restorative justice views crime as loss/damage and justice as a means to repair it and elevate the role of crime victims, perpetrators of crime, and society as the three main

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determining aspects of criminal justice. In this situation, the goals of the criminal justice system are short-term resocialization, medium-term crime prevention, and long-term public welfare and safety. Restorative justice at the prosecution stage is regulated in Perja No. 15 of 2020. Restorative justice must be prioritized in the settlement of criminal cases as part of applying prosecution authority. The use of restorative justice at the prosecution stage is not directed at revenge, resulting in quick, easy, and inexpensive justice.

The Prosecutor's Regulation concerning the termination of prosecution based on restorative justice is a form of the Prosecutor's response to the existence of criminal cases whose settlement is deemed unnecessary until they reach the stage of the trial in court. With the Perja No. 15 of 2020, the Prosecutor may terminate the prosecution of a case that is deemed not to meet humanity and is contrary to conscience. When faced with the evolution of social, economic, and cultural relations in a heterogeneous society, as well as various interests and demands, many criminal cases are indeed “inappropriate” to be brought to trial. This is partly due to the fact that the monetary value of the damage is too small or is a non-essential issue, so it is necessary to find a way of settling other than through the courts. Restorative justice is more than just making judgments about who wins and who loses in the criminal justice system. The restorative justice process aims to provide space for discourse among all parties affected by the crime. There is a procedure that includes all parties affected by a crime to work together to resolve it to address the consequences of the crime and its future consequences.

The Public Prosecutor has a policy principle of demanding (discretionary prosecution) in the sense that in principle, the Public Prosecutor has the right to sue on a mandatory basis based on the authority of the law (mandatory prosecution) unless there are contraindications (conditions or factors that serve as reasons to prevent prosecution), or within other words "must be suing, not prosecuting is an exception." In general, criminal prosecution must be carried out in the public interest. Even if the evidence is sufficient, the public interest must be protected, which does not necessarily require that every criminal case be processed. Other factors must be studied, such as the modification of judicial behavior in the rules, law enforcement behavior, and law enforcement techniques to be more efficient in maximizing the welfare and justice of the community. This is because there are times when the profits derived from prosecution are not commensurate with the costs that must be borne by the state and other losses that the victim still suffers.

The termination of prosecution based on Restorative Justice is carried out with due regard to the response and harmony of the community. And still pay attention to decency, decency, and public order. A good response from the community is one of the conditions for the implementation of the termination of prosecution based on restorative justice, meaning that the

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13 Results of an interview with Triyadi Andani. (Functional Prosecutor at the South Lampung District Attorney) on Tuesday, February 15, 2022
14 The results of the interview with Rivaldo Valini (Head of General Crime Section at the South Lampung District Attorney) on Wednesday, January 19, 2022
15 Results of an interview with Maroni (Academic at the Faculty of Law, University of Lampung on Monday, March 21, 2022
17 Results of an interview with Agung Rahmat Wibowo (Head of Sub-division for Prosecution, Execution and Examination of General Crimes at the Tulang Bawang District Attorney) on Tuesday, 22 March 2022
19 Results of an interview with Maroni (Academic at the Faculty of Law, University of Lampung, Monday, March 21, 2022

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termination of prosecution must still pay attention to the public interest. Prosecution of criminal cases is terminated based on restorative justice if the following conditions are met:

a. This is the first crime committed;
b. The penalty is not more than five years; and
c. The value of the evidence or the value of the loss incurred is not more than Rp. 2,500,000.

The Public Prosecutor uses this standard to assess whether or not the case file can be forwarded to the court. This is a form of dominus litis, which is the authority of the public Prosecutor as the owner of the case. The Prosecutor's Office is the only institution authorized to control prosecution policies. The judge cannot request that the offense be submitted to him, but the judge is only waiting for the prosecution from the Public Prosecutor.20

Since the issuance of the Indonesian Prosecutor's Office Regulation Number 15 of 2020, on July 22, 2020, to January 2022, the Prosecutor's office has terminated cases based on restorative justice in as many as 478 cases.21 For example, the termination of prosecution based on restorative justice at the Tulang Bawang District Prosecutor's Office has been applied to the Cipto case, which is suspected of being Article 374 of the Criminal Code with a 5-year sentence for embezzling half a sack of frozen rubber latex in Block 3 Division 8B of the rubber plantation area of PT. SIL in Mesuji District. As a result of his actions PT. SIL suffered material losses of less than Rp. 500,000,-. The perpetrator admitted that he was forced to commit the crime to meet the school needs of his 2 children, who are still in school and to treat his son, who suffers from intestinal disorders. On January 12, 2022, the Tulang Bawang District Attorney facilitated a peace effort that brought together Cipto and representatives of PT. SIL. As a result of his actions PT. SIL suffered material losses of less than Rp. 500,000,-. The perpetrator admitted that he was forced to commit the crime to meet the school needs of his 2 children, who are still in school and to treat his son, who suffers from intestinal disorders. On January 12, 2022, the Tulang Bawang District Attorney facilitated a peace effort that brought together Cipto and representatives of PT. SIL. The agreement's result, SIL is willing to make peace on the condition that Cipto cannot return to work as a rubber sap worker at PT. SIL. On January 26, 2022, a request for termination of prosecution was carried out based on restorative justice and was approved by the Deputy Attorney General for General Crimes. On January 28, 2022, the termination of the prosecution against Cipto was carried out.22

Then on January 27, 2022, the suspect and evidence were handed over to the South Lampung District Attorney on behalf of the suspect, Susanti Binti Ruswito, in the case of Persecution (Article 351 paragraph (1) 1 of the Criminal Code against the victim on behalf of Resdiana Binti Gunawan, which of the perpetrators and the victim still has a family relationship. Efforts to stop the prosecution have been carried out through peace efforts by bringing together the victim and the suspect so that a peace agreement is reached and has been reported to the Head of the Lampung High Prosecutor's Office exposure has been made before Jampidum on February 4, 2022.23

The application of cessation of prosecution based on restorative justice at the Metro District Attorney has never been implemented. Still, in the jurisdiction of the Lampung High Prosecutor's Office several times, the termination of prosecution based on restorative justice has been implemented, one of which is the North Lampung District Prosecutor's Office, where efforts have been made to terminate prosecutions based on restorative justice on March 3. February 2022 on behalf of the suspect Diki Setiawan bin Slamet who is suspected of violating Article 351 paragraph (1) of the Criminal Code. Because this is the first time he has committed a crime, this supports the termination of prosecution based on restorative justice, the threat of punishment does not exceed five years, the suspect is a male student, the suspect has reimbursed

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21 Justice Magazine Issue 74, January 2022. Pg. 10
22 Results of an interview with Agung Rahmat Wibowo (Head of Sub-division for Prosecution, Execution and Examination of General Crimes at the Tulang Bawang District Attorney) on Tuesday, 22 March 2022
23 Results of an interview with Rivaldo Valini (Head of General Crime Section at the South Lampung District Attorney) on Tuesday, February 15, 2022
the victim for medical expenses, the suspect has admitted mistakes and apologize to the victim and peace has been reached between the victim and the suspect.\textsuperscript{24}

The termination of prosecution based on restorative justice at the Way Kanan District Attorney has never been implemented, but on March 24, 2022, the Head of the Lampung High Prosecutor's Office, Mr. Nanang Sigit Yulianto, inaugurated the house of Restorative Justice Lamban Adem in Pekon Dadirejo, Wonosobo District, Tanggamus Regency, which is expected with the existence of Lamban Adem. Support facilities in solving problems in the community so that they can be resolved through deliberation and consensus and can facilitate legal problems in the community.\textsuperscript{25}

Based on the Guidelines for the Implementation of Restorative Justice in General Courts, the Decree of the Director General of BPU No. 1691/DJU.SK/PS.00/12/2020 regulates restorative justice in cases of minor crimes, in cases of children, in cases of crimes committed by women who deal with the law, and in narcotics cases. Fair restorative justice is certainly impartial, it is not one-sided, and it only sides with the truth based on applicable laws. In addition, how do law enforcers consider equal compensation rights and every aspect of life.\textsuperscript{26}

2. Factors Inhibiting the Termination of Prosecution Based on Restorative Justice in Settlement of Criminal Cases in the Lampung High Prosecutor's Territory

The Prosecutor's effort to resolve criminal cases with a restorative justice approach is a very useful mechanism. Therefore, it is possible to be used in the Indonesian criminal justice system.\textsuperscript{27} The settlement of criminal cases through the restorative justice method is strongly influenced by aspects that affect law enforcement actions.

First, in terms of the statutory aspect or legal substance, there is an overlap between Perja Number 15 of 2020 and the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, including:

a. There are limits on criminal threats in Perja, namely acts punishable by imprisonment not exceeding 5 (five) years, while in Perkapolri there are no rules regarding criminal limits;

b. There is a limit on the loss incurred not more than Rp. 2,500,000.00 (two million five hundred thousand rupiahs), while in the Perkapolri, there is no limit on losses; and

c. According to Perja, restorative justice cannot be used for drug crimes, environmental crimes, or corporate crimes. On the other hand, according to Perkapolri, restorative justice cannot be used for criminal acts of terrorism, crimes against state security, crimes of corruption, or crimes against life.

The existence of overlapping regulations between the two law enforcement agencies can create legal uncertainty in society and, of course, can cause disparities in the application of the law at each stage of law enforcement which can lead to injustice felt by the community. In addition, with the opportunity authority only with the Attorney General, if the Prosecutor decides not to prosecute a criminal case, in such circumstances, the suspect must apply to the Attorney General. Applications for termination of prosecution based on restorative justice must go through an extended mechanism, namely by submitting the request through the Head of the local District Attorney's Office, then submitted to the Head of the High Prosecutor's Office and after that it is only submitted to the Deputy Attorney General for General Crimes and the Attorney General. Of course, such a system will hinder the realization of the efficiency and

\textsuperscript{24}The results of the interview with Triyadi Andani. (Functional Prosecutor at the Metro District Attorney) on Wednesday, January 19, 2022

\textsuperscript{25}Results of an interview with Acmad Rismadani Kurniawan, SH (Head of Sub-division for Prosecution and Execution of Special Crimes at the Way Kanan State Attorney's Office on Tuesday, March 29, 2022


\textsuperscript{27}Bambang Waluyo, Design of the Prosecutor's Function in Restorative Justice, (Depok: PT. Raja Grafindo Persada, 2016,) p. 246.
effectiveness of law enforcement activities because it requires a relatively long and time-consuming process.

The obstacle that still often occurs in applying restorative justice is the absence of a legal basis (formal or material) used as a guideline by law enforcement officials, causing differences in perceptions, regulations and technicalities at the level of restorative justice implementation. It is realized that the current application of restorative justice will conflict with the principles of legality and legal certainty (rechtzakerheid). So every law enforcer must be careful in implementing it and prioritize recovery. In addition, this Perja still creates legal uncertainty and gives rise to multiple interpretations. Regarding the parameters for the Public Prosecutor to determine the presence or absence of a criminal case, it is not regulated in this Perja.

Second, in terms of law enforcement aspects, the obstacle that still often occurs in applying restorative justice, in general, is the existence of different understandings of restorative justice among law enforcers, giving rise to differences of opinion in its handling. In addition, from the side of the apparatus and law enforcement institutions (legal structure). In law enforcement practice in Indonesia, law enforcement institutions are still fragmented and will be categorized in their respective functions. The KUHAP adheres to the principles of specialization, differentiation, and compartmentalization so that there is a sharp division between the duties, authorities, functions, and responsibilities of each law enforcer.

The existence of a reporting mechanism for stopping prosecution based on restorative justice to the head of the Prosecutor's office is a form of internal control carried out to prevent the occurrence of case games in the application of restorative justice. But on the other hand, it also hinders the implementation of restorative justice in which the reporting process and waiting for leadership approval will take the time it will slow down the restorative justice process. The complicated and time-consuming bureaucracy of case-control can distort the resolution of cases based on restorative justice.

Third, viewed from the aspect of facilities and facilities, the application of Restorative Justice in stopping prosecution has not been effective because there has been no special training for the application of Restorative Justice so sometimes different understandings arise from one Prosecutor to another. In implementing a policy, it should begin with the preparation of qualified human resources so that they can support the realization of the objectives of the policy. Prosecutors should also prepare their human resources, especially prosecutors so that they can improve their knowledge, skills, and attitudes so that they can carry out their duties in a professional manner to support the application of termination of prosecution based on restorative justice.

Fourth, judging from the aspect of society in general, they still lack confidence in prosecutors who apply restorative justice and even accuse the termination of the case due to unscrupulous prosecutors playing cases. To overcome the distrust of the community, it is better to give space for the community to submit their objections as outlined in the criminal procedural law and facilitated by law enforcement so as not to injure the sense of justice of the community and create legal certainty in society.

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28Prim Haryadi, (Director General of the General Judiciary Agency) in the National Webinar "Implementation of Restorative Justice in Indonesia: Constraints and Solutions" on February 4, 2022 organized by the Faculty of Law, University of Mataram.
30H. Prim Haryadi., *Ibid*
33Results of an interview with Reza Andika (Functional Prosecutor at the Central Lampung District Attorney) on Monday, January 17, 2022.
34The results of the interview with Triyadi Andani. (Functional Prosecutor at the Metro District Attorney) on Wednesday, January 19, 2022.
Fifth, in terms of cultural aspects, differences in the interpretation of the meaning of justice by the parties, including victims, families of victims, perpetrators of crimes and their families, law enforcement officers, and the community, can also hinder the settlement of criminal cases through restorative justice. In implementing restorative justice, a change in mindset must be made, starting from the community and law enforcement. People think that the success of law enforcement is seen from how many cases can be revealed, but in modern criminal law, the success of law enforcement is seen from how to prevent people from committing crimes. The success of law enforcement is seen in the level of crime reduction in society.

The community's mindset towards the settlement of criminal acts that must be changed is that punishment with imprisonment is not the only way. Still, there is a solution that provides more benefits and justice for perpetrators, victims, and the community, namely by prioritizing restorative justice. In addition, changes in the mindset of law enforcement officers must also begin by providing education and training and providing direction from the leadership through implementation instructions and technical instructions so that they can better understand the purpose of implementing restorative justice.

To change the mindset of the community, cooperation between law enforcement agencies and legal academics in Indonesia is needed. The educational process carried out by academics is very influential, academics play an active role in preparing prospective law enforcement officers in the future who will continue the baton of law in Indonesia. Law enforcement officials must also play an active role in going directly to the community and educating the public, that the purpose of punishment is to re-socialize criminals, this must be supported by acceptance from the community that perpetrators of criminal acts must be given the opportunity to become better human beings in the community. Public.

Based on the description above, it can be analyzed that the factors that hinder the implementation of the Attorney General's Regulation no. 15 of 2020 in the settlement of criminal cases in the Lampung High Court area which consists of statutory factors, law enforcement, facilities, and facilities, the community, and cultural factors. The most dominant actor is, in addition to the lack of regulations governing Restorative Justice, namely community participation, especially the victims, and the legal culture that still prioritizes the criminal law, which requires the settlement of criminal acts by way of punishment.

Based on Police Regulation No. 08 of 2021 concerning Handling of Crimes Based on Restorative Justice, and Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Guidelines for the Implementation of Restorative Justice in General Courts SK Director General of BPU No. 1691/DJU/SK/PS.00 /12/2020 has their perception of how the application of restorative justice is applied to each agency that has issued the regulation. The existence of the Prosecutor's Office in the application of restorative justice as a public prosecutor in its implementation in the judiciary and law enforcement has not run smoothly as it should. Coordination between the police and the Prosecutor's office also does not run smoothly, and only bureaucratic or institutional arrogance will affect the prosecution process.

35Bambang Waluyo, Ibid
C. Conclusion

Termination of prosecution based on restorative justice at the Lampung High Court has been carried out by 3 (three) District Attorneys. The public's view of restorative justice carried out by law enforcers needs to be strengthened by objective and fair implementation and legal certainty. Meanwhile, the obstacles faced by the termination of prosecution based on restorative justice within the Lampung High Court consisted of statutory factors, law enforcement, facilities and infrastructure, community factors, and cultural factors. The most dominant factor is the overlapping regulations for implementing restorative justice, which creates legal uncertainty and creates gaps in the application of the law, lack of community participation, especially among victims, and a legal culture that still prioritizes the settlement of criminal cases through legal channels, namely through a retributive justice process by imposing prison sentences.

Based on the novelty of the results of this research, there is a need for harmonization between Perja Number 15 of 2020 and the Regulation of the Indonesian National Police Number 8 of 2021, namely that in its implementation, the Prosecutor's office can directly involve the police in implementing restorative justice. This is so that legal regulations regarding restorative justice, which aim to enforce laws that are humane, simple, and low cost, can be realized and produce justice for the people.

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