



Implementation of the Regulation of the Prosecutor of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecutions Based on Restorative Justice in the Jurisdiction of the High Prosecutors of West Sumatra

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Abstract

For decades, the Prosecutor's Office has experienced a dilemma in the process of law enforcement and the justice system in Indonesia. Starting from small cases that must be brought to court, cases with small losses and the wishes of the victim who wants to make peace but is shackled by the applicable regulations. The issuance of the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as Perja RJ) is seen as one of the answers to the voice of justice in the community for the inefficiency of law enforcement which will only bring misery to the community. With the existence of Perja RJ, the Public Prosecutor (JPU) has the right to stop prosecuting suspects in certain cases. The problem approach method used in this study is a sociological juridical approach, namely research by examining applicable legal norms and in relation to the facts found in the study, namely: (1) How is the Application of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office against cases Number: R – 655 /L.3/Eoh.2/09/2020 and Number: R – 675 /L.3/Eoh/10/2020; and (2) What are the obstacles faced by the Public Prosecutor in the Application of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office. Based on the research, it can be concluded that: (1) The application of Perja RJ in the Legal Area of the West Sumatra High Prosecutor's Office in the efforts of restorative justice carried out by the Public Prosecutor as described in the case above is in accordance with the spirit of the establishment of Perja RJ and the purpose of the Law to achieve maximum benefit. in society; (2) Obstacles faced by the Public Prosecutor in the Legal Territory of the West Sumatra High Prosecutor's Office in the Implementation of Perja RJ, namely: differences in perspective on the objective and subjective conditions for the termination of prosecution or restorative justice and the need for closer coordination before making peace efforts by Public Prosecutor.

Keywords: *Prosecutor's Office; Termination of Prosecution; Restorative Justice*

Introduction

Indonesia is known as a State of Law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, in which there are various aspects of regulations that are coercive and have strict sanctions. The rule of law itself has the meaning of guaranteeing justice for all citizens. Law is an inseparable part of the life of human society so that in society there is always a legal system, there is

society and there are legal norms (*ubi societas ibi ius*). Cicero meant that the legal system should refer to respect and protection for the nobility of human dignity.¹ The law seeks to maintain and regulate the balance between selfish individual interests or desires with common interests so that there is no conflict.²

The operation of the judiciary in the criminal justice process is based on Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The criminal justice process based on the Criminal Procedure Code is very focused on the perpetrators of criminal acts, both regarding their position from the time the suspect becomes a convict and their rights as a suspect or suspect are highly protected by the Criminal Procedure Code, so it can be said that the criminal justice process according to the Criminal Procedure Code is Offender minded / Offender Oriented Criminal Justice Process, namely a policy whose point of protection is the perpetrator of the crime (offender oriented) not restorative justice which focuses on the policy of protecting the victim of a crime (victim oriented).³ In addition, most of the Indonesian Criminal Justice System always end up in prison. Whereas prisons are not the best solution in solving crime problems, especially crimes where the damage caused to victims and the community can be restored so that conditions that have been damaged can be returned to their original state.

In recent developments an alternative has emerged, namely by implementing the concept of restorative justice. The concept of restorative justice is a popular alternative in various parts of the world for dealing with unlawful acts (against the law in the formal sense) because it offers a comprehensive and effective solution.⁴ The United Nations defines restorative justice as *a way of responding to criminal behavior by balancing the needs of the community, the victims and the offenders*,⁵ whose free translation is a solution to a crime by realigning harmonization between the community, victims and perpetrators.

In the concept of resolving criminal cases with the concept of restorative justice which is implemented by resolving cases through peaceful means, it is considered to have several advantages. These advantages, for example, can prevent someone from entering a correctional institution, avoid stigmatization of convicts, save state costs, recover losses to victims and the community, maintain community relations, achieve sentencing goals (deterrent and prevention effects) and so on.

In addition, the principle of restorative justice cannot be interpreted as a method of peaceful cessation of cases, but is broader in fulfilling the sense of justice of all parties involved in criminal cases through efforts involving victims, perpetrators and the local community, while the settlement of cases is one of them in the form of the peace agreement and the revocation of the right to demand from the victim, it is necessary to ask for a judge's determination through the Public Prosecutor to abort the authority to demand from the victim, and the public prosecutor.⁶

Restorative justice is a new legal philosophy which is a combination of existing criminal theory, oriented towards resolving cases that focus on the perpetrators, victims and the community. Restorative justice contains the value of classical punishment theory which focuses on efforts to recover victims contained in the theory of retributive punishment, deterrence, rehabilitation, resocialization. In addition to focusing on the recovery of perpetrators of restorative justice, it also pays attention to the interests of victims and the community.

Restorative justice is not a new concept in Indonesia because the concept of customary law in Indonesia as a forum for customary justice institutions also has a concept that can be described as the root

¹ Shidarta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berpikir*, Jakarta: PT. Refika Aditama, 2006, p.127.

² *Ibid*, hlm.121.

³ Sunarso, Siswanto, *Viktinologi dalam sistem Peradilan Pidana*, Jakarta : Sinar Grafika, 2014, hlm .5

⁴ Glery Lazuardi, *Pendekatan Keadilan restoratif Dalam Tindak Pelaku Penyebaran Hoaks*, Jurnal Kertha Semaya, Vol. 8 Nomor 9 Tahun 2020, hlm.1303.

⁵ *Handbook on Restorative Justice programme*, New York: United Nations, 2006, hlm.6

⁶ Angka 2 huruf f, Surat Edaran Kepala Kepolisian Negara Republik Indonesia Nomor SE/8/VII/2018 Tahun 2018 tentang Penerapan Keadilan Restoratif (Keadilan restoratif) dalam Penyelesaian Perkara Pidana

of restorative justice. After Indonesia's independence, the concept of restorative justice or what is often translated as restorative justice is a model approach that has emerged since the 1960s in efforts to resolve criminal cases.⁷ Communities and victims who feel marginalized by the mechanisms that work in the current criminal justice system.

For decades, the Prosecutor's Office has experienced a dilemma in the process of law enforcement and the justice system in Indonesia. Starting from small cases that must be brought to court, cases with small losses and the wishes of the victim who wants to make peace but is shackled by the applicable regulations. The issuance of the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as Perja RJ) is seen as one of the answers to the voice of justice in the community for the inefficiency of law enforcement which will only bring misery to the community. With the 17 articles in Perja RJ, the Public Prosecutor (JPU) has the right to stop prosecuting suspects in certain cases.

Restorative justice referred to in Perja RJ is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just solution by emphasizing restoration to its original state, and not retaliation and various other problems such as the accumulation of the caseload in court and the dilemma of over capacity in court. An example of the implementation of Perja RJ can be seen in the case of the Gunung Kidul District Attorney, where there was a case of persecution that was indicted under Article 351 Paragraph (2) of the Criminal Code, Subsidiary Article 351 Paragraph (1) of the Criminal Code, restorative efforts were carried out because of the indictment in Article 351 Paragraph (2) The Criminal Code carries a prison sentence of 5 (five) years, while Article 351 Paragraph (1) of the Criminal Code carries a prison sentence of 2 (two) years and 8 (eight) months. The suspect and the victim agreed to carry out restorative justice witnessed by the Public Prosecutor at the Gunung Kidul District Attorney and the witnesses.⁸

According to Gustav Radbruch, of the 3 (three) purposes of law (namely certainty, justice, and benefit) justice must occupy the first and foremost position than certainty and benefit.⁹ Anyone who is guilty must go through the legal settlement process as stipulated in the provisions of the legislation. The principle of equality before the law, explains that everyone has the same position before the law. According to the proponents of the value of justice, the law has been moving faster and sharper when legal cases are related to small people and question the interests of big people, including those in power. However, if a case relates or the alleged perpetrators are big and powerful people, then the law seems lame and blunt. The law cannot touch on the grounds that there is not enough evidence, or there is no violation.

In achieving the ultimate goal of sentencing does not lie in the large number of prisoners or convicts who inhabit detention centers and correctional institutions, but the expected final goal is to realize legal certainty, legal order, justice, and truth based on law and heed religious norms, decency, and decency. and must explore the values of humanity, law, and justice that live in society. This means that the Prosecutor's Office must pay attention to the interests of victims and other protected legal interests, as well as reduce small losses due to small cases that are not worthy of being brought to court.¹⁰

The Prosecutor's Regulation gives the Public Prosecutor the right to stop prosecuting suspects in certain cases in order to achieve justice and benefit as described above, in accordance with Article 3 of Perja RJ stating that the Public Prosecutor has the authority to close cases for legal purposes. Article 4 states that the termination of prosecution is carried out in the interests of the victim and other protected

⁷ Eva Achjani Zulfa, *Keadilan Restoratif*, Depok: Badan Penerbit FHUI, 2009, hlm.2

⁸ Surat perintah Kejaksaan Negeri Gunung Kidul Nomor 704/M.4.13/Eoh/Eoh/08/2020 tentang Pelaksanaan Upaya Perdamaian Berdasarkan Keadilan Restoratif

⁹ Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Yogyakarta: Kanisius, 1982, hlm 288

¹⁰ Konsideran Peraturan Kejaksaan Nomor 15 Tahun 2020

legal interests. This is to avoid negative stigma, avoid retaliation, response and community harmony, as well as decency and public order. In Article 5 of Perja RJ, it is clear that criminal acts can be stopped by law and terminated for prosecution based on restorative justice.

Judging from the application of Perja RJ in the Legal Area of the West Sumatra High Prosecutor's Office, at least the author will describe 2 (two) Restorative Justice Determination Letters Number: R - 655/ L.3/ Eoh.2/ 09/ 2020 dated 24 September 2020 and Number : R-675 /L.3 /Eoh /10/2020 dated October 14, 2020. In this case, regarding the application for case Number: R-655/L.3/Eoh.2/09/2020, the High Court granted restorative justice efforts conducted by the Public Prosecutor at the Agam District Prosecutor's Branch is reviewed. As for the application for case Number: 675/L.3/Eoh/10/2020, the West Sumatra High Prosecutor's Office after conducting research and reviewing the application for restorative justice, stated that it could not approve the application.

The West Sumatra High Prosecutor's Office granted the application for case Number: 655/L.3/Eoh.2/09/2020 with the following considerations:

- a) The suspect has committed a crime for the first time;
- b) Criminal acts are only punishable by a fine or punishable by imprisonment of not more than 5 (five) years;
- c) There has been a peace agreement between the victim and the suspect;
- d) There has been a recovery in the condition of everything that was done by the suspect; and
- e) The community responds positively.

Regarding the application for restorative justice with case number: R-675/L.3/Eoh/10/2020, according to the West Sumatra High Prosecutor's Office, Restorative Justice efforts cannot be carried out with the following considerations, namely:

- a) That the termination of prosecution based on restorative justice in principle is carried out for criminal acts with a criminal penalty of not more than 5 (five) years;
- b) That the criminal threat reported by the victim exceeds 5 (five) years, namely 5 (five) years and 6 months.

Judging from the considerations of the West Sumatra High Prosecutor's Office, the West Sumatra High Prosecutor's Office is based on the maximum criminal threats that are threatened against the actions of the perpetrators. However, it would be interesting if the criminal threats threatened against the perpetrators were criminal threats with subsidiary or alternative charges, in which case, one of the charges threatened a sentence of under 5 (five) years. However, from the point of view of the Public Prosecutor at the West Sumatra High Court, efforts for restorative justice are carried out by taking into account the principles and philosophical background of the application of restorative justice as described in Article 4 of Perja RJ above. Based on the description above, the author is interested in analyzing "Application of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office".

There are several theories that the author uses in writing this article, namely: Benefit Theory (Utilitarianism), Restorative Justice Theory, and Law Enforcement Theory. Utilitarianism was first developed by Jeremi Bentham (1748-1831). Jeremy Bentham as its discoverer points much of his work to

severe criticisms of all conceptions of natural law. ¹¹Bentham is not satisfied with the vagueness and impermanence of theories of natural law, where Utilitarianism presents one of the periodic movements from the abstract to the concrete, from the idealistic to the materialistic, from the a priori to the experiential. "The movement of this school is expressions / demands with the characteristics of the nineteenth century".¹² According to this school, the purpose of law is to provide as much benefit and happiness as possible to citizens, which is based on a social philosophy which states that every citizen desires happiness, and the law is one of its tools.¹³

Tony Marshall provides a more explicit definition of restorative justice as "a process that involves all parties who have an interest in a particular violation problem to come together to resolve collectively how to respond and resolve the consequences of the violation and its implications for the future."¹⁴ Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is a step by the Attorney General of the Republic of Indonesia in responding to the legal needs of the community regarding the restoration of the original situation and the balance of protection and interests of victims and non-criminal perpetrators which cannot be achieved by using the conventional criminal justice system because the state is too much involved. interfering as if representing the interests of the victim, while the will of the victim is not so and the perpetrator does not get the opportunity to improve his relationship with the victim and his orientation is only to the formality of criminal investigations, the right of the state to punish (*ius puniendi*) and the way of viewing crime as a conflict between the state and the perpetrator and victim of the crime. The criminal will suffer various physical problems or economic losses suffered as a result of the crime even though the actual crime has been completed. There are a number of consequences that the victim continues to bear even after the criminal act has been processed.

Law enforcement is an attempt to enforce legal norms and at the same time the values behind these norms.¹⁵ Ideal law enforcement must be accompanied by an awareness that law enforcement is a sub-system of a social institution, so that environmental influences are quite significant such as the influence of political, economic, social, cultural, defense and security developments, science and technology, education and so on.¹⁶ In addition, law enforcement functions to actualize legal rules so that they are in accordance with what the law aspires to, namely realizing human attitudes or behavior in accordance with the frame work that has been determined by law or law. So that the core and meaning of law enforcement according to Soerjono Soekanto is to harmonize the relationship of values that are described in the rules/views of values that are solid and embodied and attitudes of action as a series of value elaboration at the final stage, to create (as social engineering) , maintain and maintain (as social control) peaceful social life can be realized.¹⁷

Based on the information and literature search, the research entitled "Application of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office", there were no scientific papers that had overall similarities with the title to be studied. However, it is possible that the same research has been conducted, both at state universities and at private universities. However, there are differences, especially the problems that have been formulated, the discussion and the theoretical framework used.

¹¹ Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)*, Jakarta: PT.Toko Gunung Agung,2002,hlm 267.

¹² Friedman, *Teori dan Filsafat Hukum; Idealisme Filosofis dan Problema Keadilan*, diterjemahkan dari buku aslinya *Legal Theory* oleh Muhamad Arifin, Disunting oleh Achmad Nasir Budiman dan Suleman Saqib, Jakarta: Rajawali, 1990, hlm 111.

¹³ Darji Darmodihardjo dalam Hyronimus Rhiti, *Filsafat Hukum; Edisi lengkap (Dari Klasik sampai Postmoderenisme)*, Yogyakarta : Universitas Atma Jaya Yogyakarta, 2011, hlm.159

¹⁴ Herlina, *Keadilan restoratif Sebuah Konsep Dalam Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana*, BP Univ. Sumatera Utara, Medan, 2014, hlm 37-38.

¹⁵ Muladi dan Barda Nawawi Arief, *Teori dan Kebijakan Pidana*, Bandung: Alumni, 2010, hlm .6.

¹⁶ *Ibid.*, hlm.70.

¹⁷ Soerjono Soekanto, 2010, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: Rajawali Pers, hlm .5.

The formulation of the problem in this writing, namely: (1) How is the application of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office for the case Number: R – 655 /L.3/Eoh.2 /09/2020 and Number: R – 675 /L.3/Eoh/10/2020 ; and (2) What are the obstacles faced by the Public Prosecutor in the Application of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office.

Research Methods

The problem approach method used in this study is a sociological juridical approach, namely research by examining applicable legal norms and relating to the facts found in the study. If law, as an empirical social, is studied as an independent variable that gives rise to influence and consequences on various aspects of social life, the study is a socio-legal research.¹⁸ The nature of the research used in this research is descriptive analytical research. Analytical descriptive research is research that describes thoroughly, systematically and logically, on the object of research in this case regarding the determination of marriage dispensation, as well as explaining the facts that occur in the field in terms of applicable laws and regulations. In legal research in general, data is distinguished between primary data and secondary data. Primary data is data obtained directly from the community, while secondary data is data obtained from library materials.¹⁹

Primary data is data that has not been processed and obtained directly from sources collected in the field.²⁰ In this case, the authors obtained primary data through interviews with the Public Prosecutor in the jurisdiction of the West Sumatra High Prosecutor's Office. Interview is a method of collecting data by communicating between one person and another to obtain clear and accurate information. In order to collect complete and accurate data, semi-structured interview techniques are used, namely free interviews but still focus on the problem under study. Interviews were conducted with several parties, namely the Public Prosecutor in the Legal Area of the West Sumatra High Prosecutor's Office, namely in this case the Prosecutor at the West Sumatra High Prosecutor's Office, who researched and reviewed requests for restorative justice, the Public Prosecutor at the Agam District Prosecutor's Branch in Maninjau and the Pariaman District Attorney. who made efforts to implement the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Secondary data, namely library materials that include official documents which can be in the form of laws and regulations, books, scientific works, articles and documents related to research materials.

Results and Discussion

1. Application of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office for cases Number: R-655/L.3/Eoh.2/09/2020 and Number: R-675/L.3/Eoh/10/2020.

The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of Prosecution. Therefore, the Prosecutor's Office must be able to realize legal certainty, legal order, justice and truth based on the law and heed religious norms, decency, and morality, and must explore human values, law and justice that live in society.

¹⁸ Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2004, hlm.133.

¹⁹ *Ibid.*

²⁰ Sumadi Suryabrata, *Metodologi Penelitian*, Jakarta: RajaGrafindo Persada, 1983, hlm.85.

The settlement of criminal cases by prioritizing restorative justice which emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal necessity for society and a mechanism that must be built in the implementation of the authority for prosecution and reform of the Criminal Justice System. .

The Attorney General has the duty and authority to stop prosecution for the sake of law with a restorative justice approach aimed at increasing the effectiveness of the law enforcement process from legislation by taking into account the principles of simplicity, speed, low cost, and being able to formulate and determine policies to handle cases so that the claims filed are successful. impartially for the sake of justice based on conscience and law, including filing a claim through restorative justice must be in accordance with applicable regulations. Based on the above considerations, it is deemed necessary to stipulate the Attorney General's Regulation Number 15 of 2020.

Normatively, according to Article 1 number 1 Perja 15 of 2020, what is meant by Restorative Justice is:

"The settlement of criminal cases by involving the Perpetrators, Victims, the families of the Perpetrators/Victims, and other related parties to jointly seek a just settlement by emphasizing the restoration to its original state, and not retaliation."

Restorative Justice is a popular alternative in many parts of the world because it offers a comprehensive and effective solution. Restorative justice aims to empower victims, perpetrators, families and communities to correct an act against the law, using awareness and conviction as a basis for improving community life and explaining that the concept of restorative justice is basically simple. In Indonesia, what is meant by Restorative Justice is a fair settlement involving perpetrators, victims, their families and other parties involved in a criminal act jointly seeking a solution to the crime and its implications by emphasizing the restoration to its original state as regulated. in a Joint Decree between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia and the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia.

Restorative Justice is a concept of punishment, but as a concept of punishment it is not only limited to the provisions of criminal law (formal and material). Restorative justice must also be observed from the perspective of criminology and the correctional system. Based on the facts, the existing criminal system has not fully guaranteed integrated justice, namely justice for perpetrators, justice for victims, and justice for the community. This is what pushes forward the concept of "restorative justice".

As explained earlier, the concept of restorative justice is a concept that emphasizes restoration of all circumstances and a balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards revenge. This concept becomes a legal need in society, so that it becomes a necessity to be built and implemented according to the role of law enforcement in accordance with the purpose of restorative justice.

In carrying out its role in prosecuting a crime, the Prosecutor'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 justice that lives in society, make a legal breakthrough through issuance Perja RJ. Perja RJ as described above regulates the termination of prosecution which can be taken by the Public Prosecutor based on restorative justice based on:

- a. Justice;
- b. Public interest;

- c. Proportionality;
- d. Criminal as a last resort; and
- e. Fast, simple, and low cost.

Based on the foregoing, the Public Prosecutor has the authority to close cases for the sake of law. The closure is carried out in the event of:

- a. The suspect dies;
- b. Expiration of criminal prosecution;
- c. There has been a Court decision that has permanent legal force against a person on the same case (*nebis in idem*);
- d. Complaints for criminal offenses are withdrawn or withdrawn; or there has been a settlement of cases outside the Court (*afdoening buiten process*).

In the application of Perja RJ in the jurisdiction of the West Sumatra High Prosecutor's Office, the author will describe 2 (two) Restorative Justice Determination Letters Number: R-655/L.3/Eoh.2/09/2020 dated September 24, 2020 and Number: R-675 /L.3/Eoh/10/2020 dated October 14, 2020. In this case, the application for case Number: R-655 /L.3/Eoh.2/09/2020, the High Prosecutor's Office granted restorative justice efforts carried out by the Prosecutor Public Prosecutor at the Agam District Attorney's Branch in Maninjau. As for the application for case Number: 675/L.3/Eoh/10/2020, the West Sumatra High Prosecutor's Office, after conducting research and reviewing the application for restorative justice, stated that it could not approve the request.

Against the application for Restorative Justice with Case Number: R-655 /L.3/Eoh.2/09/2020 which is a request for restorative justice against defamation cases as regulated in Article 310 paragraph (1) of the Criminal Code, where the criminal threat is criminal imprisonment for a maximum of 9 (nine) months. In this case, according to the Public Prosecutor at the Agam District Prosecutor's Branch in Maninjau who is in charge of carrying out the Prosecution, he is of the view that the case in question can be terminated through a restorative justice approach because the requirements for implementing peace efforts have been in accordance with Perja RJ.

As for the application for restorative justice with Case Number: R - 675/L.3/Eoh/10/2020 which is a request for restorative justice for the beating case as regulated in Article 170 Paragraph (1) of the Criminal Code. The criminal threat for violation of this article is a maximum of 5 (five) years and 6 (six) months. In this case, according to the Public Prosecutor at the Pariaman District Attorney ²¹ In charge of prosecuting a suspect, the case may be terminated through a restorative justice approach because the following conditions are met: (a) the suspect has committed a crime for the first time and (b) fulfills the framework of restorative justice, among others: by taking into account/considering the circumstances the suspect who is willing to pay for the treatment of the victim due to his actions against the victim so that peace efforts can be carried out.

Restorative Justice Determination Letter Number: R-675/L.3/Eoh/10/2020 dated October 14, 2020 A.n. The suspect Suyarman begins with the case of the following position: On Thursday, October 8, 2020, the suspect Suryaman committed the crime of beating Article 170 Paragraph (1) of the Criminal Code on Friday, February 28, 2020 at around 23.00 WIB, when the suspect was with witness Risky. Ilham Pgl.Risky who returned from Pariaman by motorbike. Arriving near his house, the suspect was

²¹ Wawancara dengan Yeni Fajria, Jaksa Penuntut Umum pada Kejaksaan Negeri Pariaman tanggal 13 Juli 2021 sekira Pukul 10.00 Wib

about to buy mosquito repellent at a shop with the address at Limpato Korong Pinjauan Nagari Pi Lubang Kec. Sungai Limau Kab. Padang Pariaman and on the roadside near the shop, sat witness Muhammad Hidayat Pgl.Dayat together with Witness Supriadi Pgl.Sup and Witness Emil Salim Pgl.Emil who then witness Dayat shouted at the suspect and Witness Rizki who were on a motorbike. At that time, the motorbike driven by Witness Rizki immediately turned around to where Witness Dayat, Witness Sup and Witness Emil were sitting. Arriving near Witness Dayat, the motorbike was immediately stoned by Witness Dayat so that the suspect immediately got off his motorbike and cut Witness Dayat and the suspect leaned Witness Dayat against a brown tree that was around the place. At that time, witness Rizki got off his motorbike and immediately kicked witness Dayat from the front towards witness Dayat's stomach. After that, witness Sup and witness Emil broke up until witness Dayat managed to run away, after that, witness Dayat ran to the houses of residents in the vicinity of the location. Then the suspect and witness Rizki again chased and beat witness Dayat with the suspect's right hand on the back of the left side of the head. Then the suspect was separated by local residents, then witness Dayat ran to his house and when he arrived at his house the suspect chased back witness Dayat and beat witness Dayat 1 (one) time. Then Witness Dayat's parents kicked the suspect and Witness Rizki out of the house and the suspect immediately left the house of Witness Dayat along with Witness Rizki so that the suspect's actions were threatened with Article 170 Paragraph (1) of the Criminal Code.

The case referred to above can be attempted to be terminated on the basis of restorative justice, because the following conditions are met, namely: (a) the suspect has committed a crime for the first time; and (b) fulfill the framework of restorative justice, among others: by taking into account/considering the condition of the suspect who is willing to pay for treatment for the consequences arising from his actions against the victim so that peace efforts can be carried out.²² According to the provisions, it can be seen that the crime committed by the suspect, namely Article 170 paragraph (1) of the Criminal Code is punishable by a sentence of more than 5 (five) years, namely a maximum sentence of 5 (five) years and 6 (six) months in prison. Even though the criminal threat is more than 5 (five) years, the Public Prosecutor continues to make peace efforts against the victim, the effort has been successfully implemented so that between the victim, the perpetrator and the victim's family and the perpetrator's family agree on the peace.

Based on the considerations and the Public Prosecutor as described above, the Public Prosecutor made peace efforts to the victim on October 8, 2020 at the Pariaman District Attorney. Based on that meeting, a peace process was carried out for 14 (fourteen) days from the date of receipt and investigation of suspects and evidence (phase II) at the Pariaman District Attorney, from October 8, 2020 to October 22, 2020.

Efforts to reconcile the case of suspect Suyarman were agreed with several clauses:

- 1) the suspect is obliged to pay the medical expenses of the victim caused by the suspect's actions in the amount of Rp. 6,000,000, - (six million rupiah);
- 2) the fees are handed over by the suspect or the suspect's family directly to the victim or victim's family;
- 3) the delivery of medical expenses to the victim is carried out by the suspect/the suspect's family no later than 2 (two) weeks after this reconciliation is made;
- 4) after the suspect submits the medical expenses to the victim, there will be peace between the suspect and the victim and the victim will not carry out any prosecution related to this case to the suspect.

Efforts to reconcile the suspect were carried out by the Public Prosecutor as a facilitator and witnessed by 2 (two) witnesses, namely community leaders. Looking at the peace efforts made by the

²² Wawancara dengan Yeni Fajria, Jaksa Penuntut Umum pada Cabang Kejaksaan Negeri Agama di Maninjau tanggal 14 Juli 2021, Pukul 10.00 Wib

Public Prosecutor to reach an agreement. However, the restorative justice efforts carried out by the Public Prosecutor through the termination of prosecution based on peace efforts made by the victim, perpetrator, victim's family and perpetrator were not approved by the West Sumatra High Prosecutor's Office. The considerations of the West Sumatra High Prosecutor's Office for disapproval are as follows:

- 1) that the termination of prosecution based on restorative justice is principally for cases whose criminal penalties are not more than 5 (five) years;
- 2) that the suspect Suyarman has committed the crime of beating his brother, Risky Ilham Pgl. Risky to witness Muhammad Hidayat Pgl. Dayat so that the suspect's actions violate Article 170 paragraph (1) of the Criminal Code which is punishable by imprisonment of more than 5 (five) years, namely a maximum imprisonment of 5 (five) years and 6 (six) months;
- 3) towards the achievement of peace between Suspect Suyarman and victim witness Muhammad Hidayat Pgl. Dayat should be used as one of the mitigating considerations by the Public Prosecutor in filing criminal charges.

Judging from the Letter of Denial of Termination of Prosecution issued by the Public Prosecutor as described above along with the considerations of the West Sumatra High Prosecutor's Office for the suspect's actions, the refusal or disapproval of the said act refers to the formal provisions of the criminal threat that is threatened to the perpetrator.

The suspect is charged alternatively or subsidiarily, in which the suspect is threatened with Article 351 paragraph (1) of the Criminal Code with a sentence of less than 5 (five) years and Article 170 paragraph (1) with a sentence of more than 5 (five) years. Meanwhile, the other suspect who was a child was carried out with a series of restorative justice efforts against children as regulated in Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System in which the Supreme Court's regulations have expanded the interpretation of the provisions in Law Number 11 Year 2012 concerning the Juvenile Criminal Justice System which states that Diversion as a restorative justice measure can only be carried out for imprisonment for under 7 (seven) years. Based on Article 3 of the Supreme Court Regulation, it can also be carried out for criminal acts committed by children who are threatened with a sentence of more than 7 (seven) years or more if the indictment is in the form of Subsidiary, Alternative, Cumulative or Combination. So that the form of indictment which is threatened with a criminal sentence of more than 7 (seven) years in the indictment can be diverted by the Supreme Court.

Based on this, in the opinion of the Public Prosecutor, it is known that the Public Prosecutor has a view that looks at the benefits and objectives of the said restorative justice efforts. So, if it is related to Article 4 with Article 5 of the requirements for restorative justice, the Public Prosecutor is of the opinion that the consideration of terminating the prosecution under Article 4 is a material consideration that must be considered by the Public Prosecutor while the requirements in Article 5 are formalities. Therefore, in the view of the Public Prosecutor at the Pariaman District Attorney's Office, it is legally possible to do so.

In the author's opinion, by referring to the spirit of diversion as part of restorative justice efforts in the Supreme Court's regulations regarding Diversion and Perja RJ, there should be an alignment that needs to be carried out by the two institutions. Do you really pay attention to the formal threat of a criminal or do you really want to focus on the material of a criminal act in question.

The author views that through the construction of Articles 4 and 5 of Perja RJ, essentially the Public Prosecutor must pay attention and consider various things before deciding on an effort to stop prosecution compared to the requirements for stopping prosecution. So, referring to this matter, according to the author, it must still be possible to stop prosecutions for criminal threats of more than 5 (five) years

which are at least equal to the maximum threat of diversion, but with material considerations and a logical legal ratio size to file them.

Referring to the legal construction of Perja RJ, it can be seen and reflected in several articles, namely Article 2 which regulates the purpose of stopping prosecution, Article 3 which regulates what are the indicators for the termination of Prosecution, and Article 4 concerning considerations for carrying out prosecutions so that it is possible an effort to stop prosecution of criminal acts such as Article 170 paragraph (1) of the Criminal Code which is threatened with imprisonment for a maximum of 5 (five) years and 6 (six) months with consideration of the material facts of the said act. For this reason, for the sake of perfecting the Perja RJ, in the future it must be considered as an effort to implement restorative justice that is getting better and more constructive in the future.

According to the Prosecutor at the West Sumatra High Prosecutor,²³ If it is indeed possible for material facts to occur and it is deemed necessary to put an end to the prosecution, it is necessary to look at the indictment plan of the Public Prosecutor to assess whether Article 170 paragraph (1) really best fulfills the elements of a criminal act or the actions committed by the perpetrator only fulfill Article 351 paragraph (1). (1) in the form of persecution which is punishable by 2 (two) years and 8 (eight) months in prison. So that it can be seen that in an effort to stop prosecution through restorative justice, the Public Prosecutor has a role in the successful termination of prosecution approved by the West Sumatra High Prosecutor's Office. Besides that, what is interesting from the discussion of this case is that the suspect was charged with Article 170 paragraph (1) in which the elements were beating or jointly carrying out abuse and it was known that the suspect's younger brother was still in the category of children as regulated in Law Number 11 Year 2012 concerning the Criminal Justice System, based on information from the Public Prosecutor, diversion efforts were carried out which are also part of restorative justice. So that the suspect finally had to be charged and the prosecution continued. In the end, the effort to make a peace agreement between the Suspect and the Victim becomes a reason that relieves and reduces the criminal imposition of the Suspect, so that the Suspect is only sentenced to imprisonment for 1 (one) month. Meanwhile, the reconciliation efforts carried out by the suspect, where the suspect had paid Rp. 6,000,000 (six million rupiah) in cash as money for the victim's treatment, were not returned because it was a reason to reduce the suspect's crime and was also used as the basis for the diversion process of the suspect's younger brother.

The sentence of 1 (one) month in prison by the Panel of Judges at the Pariaman District Court proves how the Judge's decision finally became the settlement of the case to overcome the obstacles to the application of the termination of the prosecution. The suspect is sentenced to 1 (one) month in accordance with the demands of the Public Prosecutor which is granted by the Judge. In this case, the sentence imposed is no longer carried out by the Defendant because it has been reduced by the length of detention during the examination process at the investigative level.

This reality shows the need for synchronization regarding the limits of criminal threats that should be seen as a condition for stopping prosecution or diversion in the context of restorative justice, because in the end the law shows the highest justice in the form of injustice. The author can say so, because the amount of criminal threat that becomes the threshold or limit of a criminal threat to be categorized as a minor, moderate or serious crime and within the scope of criminal law where the act was committed must have a clear limit. These things must be an objective basis that can be measured in determining the implementation of this restorative justice effort.

2. Obstacles faced by the Public Prosecutor in the Application of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice in the Legal Area of the West Sumatra High Prosecutor's Office

²³ Wawancara dengan Pengki Sumardi, Jaksa pada Kejaksaan Tinggi Sumatera Barat tanggal 16 Juli 2021 Pukul 10.00 Wib

The obstacles faced by the Public Prosecutor as a Law Enforcer in implementing Perja RJ can be seen from the point of view of Law Enforcement Theory. Law Enforcement Theory is an attempt to enforce legal norms and at the same time the values behind these norms. The ideal law enforcement must be accompanied by an awareness that law enforcement is a sub-system of a social institution, so that environmental influences are quite significant such as the influence of political, economic, social, cultural, defense and security developments, science and technology, education and so on.

Referring to the Law Enforcement Theory presented by Soerjono Soekanto above, law enforcement is influenced by 5 (five) factors, namely:

1. The legal factor itself;

Judging from the considerations of Perja RJ as the basis for stopping the prosecution by the Public Prosecutor, it can be seen that in an effort to enforce the law that is better, fairer and more beneficial and guarantees a legal certainty, the Prosecutor's Office of the Republic of Indonesia issued the Perja RJ in question. In its application, according to the author, Perja RJ has greatly provided benefits in the enforcement of criminal law, as seen in the first case, where a person who was threatened with Article 310 of the Criminal Code regarding defamation which was threatened with a maximum of 9 months imprisonment could be resolved through restorative justice efforts. According to the author, this is very beneficial for both the victim and the perpetrator and upholds justice. This is based on the fact that in terms of the examination process and possible detention of the accused if according to the Public Prosecutor the defendant meets the subjective requirements for detention such as fear of committing a crime, eliminating evidence, and committing other criminal acts, then the process of punishing the perpetrators has been avoided by this process. -process as regulated in Perja RJ.

In addition, the Public Prosecutor may sue with a maximum penalty and the judge's consideration may greatly reduce the criminal threat of the Defendant. Meanwhile, legally in society, there are still dilemmas and stamps in society that may not be resolved and cannot be touched by ordinary law enforcement processes. This means that the punishment imposed does not necessarily restore balance in society and does not necessarily provide benefits for as many people as possible. So that through the termination of prosecution as a result of reaching a peace agreement between parties in restorative justice, the balance of society as in the first case can be restored.

On the other hand, of course, the legal construction in Perja RJ still has its own challenges and dilemmas. This proves that there is no perfect human law and perfection does not belong to humans. Through such legal construction, for example in the second case, where the brothers visited by the victim committed acts of beating as threatened with Article 170 paragraph (1) with a maximum penalty of 5 (five) years and 6 (six) months, the application of a different law was applied. The suspect Suyarman became a victim of positivism and legal differences, and his younger brother was successful in carrying out restorative justice through Diversion. Meanwhile, the older brother due to age and formal requirements in Perja RJ must be sentenced to 1 (one) month imprisonment as described previously. However, in principle, until the final decision by the Judge and the Public Prosecutor, it is very leaning towards expediency. In addition, of course, RJ's refusal and approval will cause problems or at least problems in the community, if the agreement made in the end cannot immediately make the suspect freed, while goods or services have been handed over as a condition for peace efforts.

2. Law Enforcement Factors;

Judging from the factor of law enforcement and related to the implementation of Perja RJ, it is indeed necessary to have some kind of understanding on the considerations for conducting RJ. In addition, in terms of law enforcement factors, in the author's opinion, before the public prosecutor considers making peace efforts and reaching an agreement, the case plan for which restorative justice will be carried out must be coordinated with the High Prosecutor's Office, as Perja RJ's philosophy is that the

termination of prosecution must be carried out responsibly. which responsibility, in this case, is not a question of how the Public Prosecutor's personality is or the work area where the locus delicti occurs, but must be viewed as a consideration of the Prosecutor's Institution at large. This is in line with Law No. 2 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which states that the Prosecutor is the Attorney General, which shows the unity and responsibility of the prosecutor's duties including the Public Prosecutor.

3. Factors of facilities or facilities that support law enforcement;

In the author's opinion, because the implementation of Perja RJ is based on the peace efforts carried out by the Public Prosecutor, in the event that it is deemed necessary that an act be carried out for a restorative justice process, the infrastructure/hard facilities are not needed, however, Soft is still necessary in implementing this Perja RJ, such as training, improving the quality of Public Prosecutors through supporting facilities so that good law enforcement can be carried out.

4. Community factors, namely the environment in which the Law applies or is applied.

In the author's opinion, society has a crucial factor in the implementation of Perja RJ, because essentially restorative justice because what will be returned is the legal balance in society or restoring the legal feeling of the community that has been shaken so that it can return to a point that is close to its original state or normal state which becomes a condition. ideal before the crime.

In the application of the two cases above, it can be seen that in principle it can be concluded that in the implementation of Perja RJ, the community took part, and in that condition, the community could agree to the application of restorative justice, although in the case of Suspect Suyarman, the prosecution could not be suspended in the context of restorative justice.

5. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

Likewise, community factors, culture or culture. The law of the community and its social life also greatly influences the implementation of Perja RJ as stated in point 4 above. In addition, law enforcement functions to actualize the rules of law so that they are in accordance with what is aspired by the law itself, namely realizing human attitudes or behavior in accordance with the frame work that has been determined by law or law. So that the core and meaning of law enforcement according to Soerjono Soekanto is to harmonize the relationship of values that are described in the rules/views of values that are solid and embodied and attitudes of action as a series of value elaboration at the final stage, to create (as social engineering)), maintain and maintain (as social control) peaceful social life can be realized.²⁴

Based on the analysis of the implementation of Perja RJ as described above, we can identify the obstacles to the implementation of Perja RJ in restorative justice efforts as follows: (1) Differences in point of view referring to legal positivism and the material aspects that underlie an act; (2) Approval and rejection of the High Prosecutor's Office as the party that determines the approval of the termination of the Prosecution carried out by the Public Prosecutor at the District Prosecutor's Office; and (3) Formulation of the Plan of Indictment and/or Prosecution is the key to being able to terminate the Prosecution.

Conclusion

Based on the description that has been explained previously, it can be concluded, namely:

1. The application of Perja RJ in the Legal Area of the West Sumatra High Prosecutor's Office in the efforts of restorative justice carried out by the Public Prosecutor as described in the case above is in

²⁴ Soerjono Soekanto, *Op. Cit.*, hlm.5.

accordance with the spirit of the establishment of Perja RJ and the purpose of the Law to achieve maximum benefit in society. Thus, the restorative justice efforts carried out provide benefits in the enforcement of criminal law that are not only oriented to revenge.

2. Obstacles faced by the Public Prosecutor in the Legal Territory of the West Sumatra High Prosecutor's Office in the Implementation of Perja RJ, namely: differences in perspective on the objective and subjective requirements for efforts to stop prosecution or restorative justice and the need for closer coordination before making peace efforts by the Prosecutor Public Prosecutor. However, in the context of enforcing the Perja Perja Law, RJ has contributed to supporting a better, just and beneficial law enforcement carried out by the Public Prosecutor.

Suggestion

Based on the results of the research that has been described in the previous chapter, through this research it is recommended:

1. The Attorney General of the Republic of Indonesia needs to make technical guidelines for the implementation of Perja RJ which is more comprehensive by taking into account several case studies that occurred in the application of Perja RJ, so that the Public Prosecutor is active in the application of RJ so that he can continue to support efforts to stop prosecution through restorative justice in accordance with the provisions and needs Community law.

2. It is necessary to carry out socialization and understanding regarding the implementation of Perja RJ in the future within the Prosecutor's Office, especially closer coordination before the Public Prosecutor makes peace efforts and Perja RJ needs to be revised especially regarding the requirements for stopping prosecution in line with the considerations for terminating prosecution that have been regulated in Perja RJ.

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References

Books

Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)*, Jakarta: PT. Toko Gunung Agung, 2002.

Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2004.

Darji Darmodihardjo dalam Hyronimus Rhiti, *Filsafat Hukum; Edisi lengkap (Dari Klasik sampai Postmoderenisme)*, Jogjakarta : Universitas Atma Jaya Yogyakarta, 2011.

Eva Achjani Zulfa, *Keadilan Restoratif*, Depok : Badan Penerbit FHUI, 2009.

Friedman, *Teori dan Filsafat Hukum; Idealisme Filosofis dan Problema Keadilan*, diterjemahkan dari buku aslinya *Legal Theory* oleh Muhamad Arifin, Disunting oleh Achmad Nasir Budiman dan Suleman Saqib, Jakarta : Rajawali, 1990.

Handbook on Restorative Justice programme, New York : United Nations, 2006.

Herlina, Keadilan restoratif *Sebuah Konsep Dalam Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana*, Medan : BP Univ. Sumatera Utara, 2014.

Muladi dan Barda Nawawi Arief, *Teori dan Kebijakan Pidana*, Bandung: Alumni, 2010.

Shidarta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berpikir*, Jakarta: PT. Refika Aditama, 2006.

Soerjono Soekanto, 2010, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: Rajawali Pers
Sumadi Suryabrata, *Metodologi Penelitian*, Jakarta: Raja Grafindo Persada, 1983.

Sunarso, Siswanto, *Viktimologi dalam Sistem Peradilan Pidana*, Jakarta : Sinar Grafika, 2014.

Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Yogyakarta: Kanisius, 1982.

Journal

Glery Lazuardi, *Pendekatan Keadilan restoratif Dalam Tindak Pelaku Penyebaran Hoaks*, Jurnal Kertha Semaya, Vol. 8 Nomor 9 Tahun 2020.

Laws and regulations

Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

Surat Edaran Kepala Kepolisian Negara Republik Indonesia Nomor: SE/8/VII/2018 Tahun 2018 tentang Penerapan Keadilan Restoratif dalam Penyelesaian Perkara Pidana.

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