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Restorative Justice Approach to Enforcement in Environmental Crimes

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Abstract

The aim of this study is that to determine the characteristics of environmental crimes with corporate actors as contained in Law Number 32 of 2009 concerning the Environmental Protection and Management; besides, to determine the possibility of applying a restorative justice approach in enforcing environmental crimes with corporate actors. This study was doctrinal or normative legal research. The characteristic of the study was descriptive by using a qualitative approach. Furthermore, the data sources used were secondary data in the form of laws, books, journals, theses or dissertations. Data collection techniques used library research. Moreover, the data analysis technique was normative qualitative analysis consisted of the inventory, identification, classification, and systematization stages. The restorative justice approach in enforcing environmental crimes committed by corporations aims to restore the environment and the welfare of victims. The process taken begins with mediation with the characteristics of restorative justice together with the criminal justice system. The mediation process chosen was a deterred prosecution agreement. The implementation of a restorative justice approach in environmental crimes with corporate actors will shorten the justice system and law enforcement since it can stop at the prosecutor's level based on the quasi-deponeering principle and it reduces the accumulation of cases in court. For this approach to work, it requires revision of the Criminal Procedure Code and preparation for a settlement by using the deterred prosecution agreement method; especially, at the negotiation level.

Keywords: *Restorative Justice; Criminal Act; Living Environment; Corporation; Deterred Prosecution Agreement (DPA)*

Introduction

The 1945 Constitution of the Republic of Indonesia has mandated that the community has the right to obtain good and healthy environment. It is regulated in Article 28H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, this effort is getting far from perfect due to environmental pollution or destruction. The perpetrators of environmental pollution or destruction are not only people, but also corporations which in Law Number 32 of 2009 concerning Environmental Protection and Management are called business entities. Furthermore, it should be emphasized that environmental crimes committed by business entities/corporations have very great influence, both in

quality and quantity. Corporations can also commit criminal acts, in this case environmental crimes. Based on research which had been conducted by Azam Hawari et al, there are 8 corporations which have been tried for environmental crimes, whether there has been a final decision or not (Azam Hawari, et al, 2019: 76-79).

Settlement of environmental crimes in the PPLH Law can occur through litigation and non-litigation, in this case mediation. However, a non-litigation settlement is not possible for environmental crime cases. Moreover, the settlement of environmental disputes outside the court based on the formulation of Article 85 Paragraph (1) of the PPLH Law is actually very much in favor of victims of pollution since they will receive compensation and environmental restoration. Restoring the damaged environment and the life of the victim is actually more important than retributive or retaliatory methods. This retributive method is very profitable for corporations since there is often a disparity between the compensation determined by the court and the actual compensation suffered by the community. One example is Decision Number 1/Pid-Sus-LH/2016/PN. Rta who tried violations of Article 99 Paragraph (1) of the PPLH Law by PT Platindo Agro Subur (PT PAS) which in its verdict stated that the defendant PT. Plantindo Agro Subur (PT. PAS) in the amount of IDR 1,500,000,000.00 (one billion five hundred million rupiah). When compared to the amount of the maximum fine, the fine imposed by the judge is only half of the nominal maximum fine. This amount is still far from the amount to realize justice in society.

Based on the calculation of losses due to land burning in the plantation area of the defendant PT Plantindo Agro Subur (PT PAS) Tapin Regency by Prof. Dr. Bambang Hero Saharjo, M.Agr and Dr. Basuki Wasis, M.Si on December 1st 2015, to restore a land area of 139.6 ha by adding compost and functioning the lost ecological factors as well as compensating for losses damaged by burning in the amount of IDR 101,734,817,700.00. Therefore, researcher encourages the realization of justice for victims and the environment through a restorative justice approach. In addition, on the ethical side this restorative justice refers to efforts to repair a number of compensation or other compensation in an effort to harm arising from a crime, while on the juridical side it means giving a role to all parties involved in the case in order to discuss settlement issues aimed to repair the damage to the crime which occurred (Zulfa, 2009: 44-45).

The implementation of restorative justice in the practice of enforcing environmental crimes is still an exception. It is contained in Article 5 Paragraph (8) of the Attorney General's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The spirit of the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is an offer. It means that the ongoing process of handling cases by using a restorative approach is initiated by the public prosecutor's offer to the defendant to be willing to cooperate in resolving the criminal case. If there is an offer, it means that the public prosecutor has begun to use his power to stop the prosecution. The process in the form of an offer indicates that there is collaboration between the prosecutor and the defendant in resolving criminal cases. One of its methods is the deferred prosecution agreement (DPA).

This study used a normative research type research method or what is commonly known as doctrinal research with a statute approach and a case approach (Muzaki, 2014: 55-56). Both types of this approach are conducted by examining all laws and regulations which are related to the problems (legal issues) that are being faced. In addition, data collection techniques in this research method were library studies that were the collection and identification of legal materials obtained through references, scientific essays, official documents, papers, journals, mass media, the internet and other legal materials that had links with those studied by the researcher.

Restorative Justice Approach in Enforcement of Environmental Crimes

1. Position of Restorative Justice in the Criminal Justice System

The position of restorative justice in the criminal justice system lies within it. If it is still in it, criminal settlement using restorative justice cannot stop the process of convicting a crime. Therefore, it means that restorative justice is a consideration for judges in order to determine the appropriate punishment for the perpetrators of crimes. However, there is an opinion which states that restorative justice is located outside the criminal justice system and together with the criminal justice system. For clarity, see the following table.

The Position of Restorative Justice		
Part of SPP	Outside SPP	Together with SPP
- The perpetrator realizes his mistake (consequentialist flow) - Restorative justice can be an option in the form of criminal punishment - Parties entitled to impose criminal sanctions are institutions within the criminal justice system	-Restorative justice is something that is different from retributive and distributive approaches - In a restorative approach, suffering is only a side effect - The process of achieving restorative justice can take place without the interference of law enforcers. Victims and perpetrators of crimes can be facilitated by the community itself.	-The restorative justice approach is a variation of the existing traditional criminal settlement model - Law enforcers should provide equal access to victims and perpetrators of crimes at every stage of settlement of criminal cases. - The sentence imposed should still involve the perpetrator and the victim

2. Mediation Procedures as a Restorative Justice Approach in the Criminal Justice System

Article 84 of Law Number 32 of 2009 concerning Environmental Protection and Management which states that settlement of environmental disputes can be reached through court or out of court. This article requires that the settlements of disputes are conducted voluntarily by the parties to the dispute. The objectives of resolving environmental disputes outside the court include reaching an agreement regarding the form and amount of compensation and remedial measures due to pollution and/or damage. However, Article 85 Paragraph (2) of Law Number 32 of 2009 concerning the Protection and Management of the Environment states that the settlement of disputes outside the court does not apply to environmental crimes as stipulated in this Law. However, this Article does not cover one hundred percent the opportunity for a restorative justice approach. The argument stated by the author is as follows.

First, Law Number 32 of 2009 concerning the Protection and Management of the Environment is an environmental law which is already oriented towards protecting victims by stipulating corrective sanctions due to criminal acts as additional crimes. Second, although in the formulation of an environmental crime the penalty for which is also in the form of fines, it should be noted that these fines are not used for the repair/recovery of an environment damaged by crime, but they are included in non-tax state revenue which applies to the prosecutor's office, whose manager is Minister of Finance. Third, the time to handle environmental criminal cases in court is very long. The long time in this court, if it is related to the time of inquiry and investigation, the time of the prosecution, up to the time of

implementing the judge's decision, means that the settlement of environmental crimes can take years. This condition is also supported that the incidence of environmental crimes should be scientifically proven. It costs a lot of money; especially, if the perpetrators are corporations. In order cut the time and cost of resolving environmental crimes committed by corporations, the author used the mediation model.

The mediation model chosen in relation to restorative justice is in in line with the criminal justice system. Therefore, this mediation procedure will be tested in the pre-trial and adjudication stages. The pre-trial stage is conducted in the police and prosecutorial institutions. The restorative justice approach in the process of investigation and investigation at the police level should pay attention; for example, Article 76 Paragraph (1) of the Criminal Code which stated that a person may not be prosecuted twice because of an act that an Indonesian judge has tried against him with a final decision (nebis in idem) or Article 7 Paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which stated that diversion is mandatory at the level of investigation, prosecution and examination of children in district courts. Moreover, chief of Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice stated that crimes which can be resolved by using a restorative justice approach are information and electronic crimes, drugs, and traffic. The restorative justice approach in the prosecution process at the judiciary still overrides environmental crimes and corporate crimes. Based on the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in Article 5 Paragraph (1) it stated that criminal cases which can be closed by law and prosecuted based on restorative justice should meet the following requirements:

a. The suspect is the first time committing a crime;
b. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; And
c. The crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah).

No need to explain in detail, in Article 5 Paragraph (8) Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice already explains that the termination of prosecution of cases based on restorative justice is excluded for cases:

1. Crimes against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and decency;
2. Criminal acts that are punishable by a minimum penalty;
3. Narcotics crime;
4. Environmental crime; And
5. Criminal acts committed by corporations.

Based on this article, it is clear that environmental crimes committed by corporations do not receive restorative justice. Thus, at the prosecution level, mediation as a solution with a restorative approach is difficult to implement. So that what about the adjudication phase? It is the phase of examination in court. The aim of resolving restorative justice in the adjudication phase is that to reestablish the court institution as a proper place for justice seekers. It is because to date the court institution has only been a formal institution conducting a mere procedural function.

Guidelines for the Implementation of Restorative Justice in the General Court Environment as stipulated in the Decree of the Director General of the General Courts Agency Number: 1691/DJU/SK/PS.00/12/2020, one of the objectives of which is to fulfill the principles of a fast, simple and costly trial light with equal justice. Furthermore, the guideline provides a limitation which criminal acts that can be resolved in the adjudication process by using a restorative justice approach are minor criminal cases with criminal penalties as stipulated in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code with a loss value of not more than IDR 2 .500,000.00; cases of criminal acts

committed by children; cases of women in conflict with the law; and narcotics cases (addicts, abusers, victims of abuse, narcotics dependence, and narcotics for one day use). Therefore, based on the explanation above, it can be seen that environmental crimes with corporate actors have not been included in criminal cases whose settlement is through restorative justice. In addition, formal mediation procedures in the settlement of criminal cases with a restorative justice approach cannot be conducted. It requires some kind of legal breakthrough so that environmental crimes with corporate actors can be resolved by using a restorative justice approach.

3. Reconstruction of Mediation Procedures as Settlement of Environmental Crime Cases with Corporate Actors through a Restorative Justice Approach

This mediation procedure is proposed as forms of settlement of environmental criminal cases with corporate actors since environmental criminal cases take a long time to complete until there is a judge's decision which has permanent force and if it is allowed to continue the environmental restoration aspects will be neglected. The restoration aspect is not only restoration of the environment due to pollution or damage, but also restoration of the relationship between the perpetrator (corporation) and the victim by providing compensation. In addition, the restoration of the good name of the corporation since it has become a destroyer or polluter of the environment. In addition, mediation can be a way out of the lengthy settlement of environmental criminal cases and the accumulation of cases at the Supreme Court (Muladi, 1997: 13-14).

This mediation procedure for corporations has several advantages. First, environmental cases involving corporations can take place behind closed doors or without the public knowing about it. Second, environmental cases are complex and there is a lot of scientific evidence so that not all judges are good at it. The inability to apply a restorative justice approach in the police is that environmental crimes often lead to social conflicts, while in the adjudication or court process one of the reasons is the lack of knowledge of judges in resolving environmental cases. The judiciary is almost the same as the police. Environmental crimes are not included in the category which can be resolved by a restorative justice approach. However, the position of the prosecutor as a public prosecutor is monopolistic which means that no other institution has the authority to prosecute. This authority is often called dominus litis (dominus: owner, litis: case). This authority results in the position of the judge being passive in the criminal procedure process and waiting for demands from the public prosecutor.

This principle causes the public prosecutor to decide whether a case can be delegated to a competent court. Therefore, based on this principle a public prosecutor can stop the prosecution. Reasons for stopping prosecution can be technical as contained in Article 140 Paragraph (2) of the Criminal Procedure Code namely if there is insufficient evidence, if the incident does not constitute criminal law, and if the case is closed for the sake of law. The reason for stopping the prosecution can also be policy. The act of not prosecuting for reasons of this policy arises since the Public Prosecutor does not only see the crime itself apart from its connection with the causes and effects of crime in society and only matches it with a criminal law regulation. However, the Public Prosecutor tried to put the incident in its true proportions and then thought of the best way to resolve it according to what was authorized by law (Andi Hamzah, 2006: 12).

Prosecutors by using the principle of opportunity can also see the relationship between environmental crimes and their causes and consequences in society. Prosecutors can see that the act of imposing fines actually goes into state revenue, not to restore damaged environmental conditions, instead to provide compensation to victims. It is very unfair since victims of environmental crimes where the perpetrators are corporations do not receive compensation or the environment is not restored so that people cannot enjoy a good living environment as mandated by Article 28H of the 1945 Constitution of the Republic of Indonesia. The exclusion of cases of environmental crimes with corporate actors will be based policies in the public interest. It should be noted that the Attorney General only has the authority to

set aside (deponeering) cases based on this reason as a form of implementing the opportunity principle. The public prosecutor has the authority to set aside cases on technical grounds or for the sake of law. However, after the issuance of this Restorative Justice Perja, the Attorney General has delegated some of his deponeering authority to the public prosecutor in the form of quasi deponeering (ST. Burhanuddin, 2021: 75-78). Therefore, based on the explanation above, there are still two reasons for stopping the prosecution that is technical reasons with the addition that cases have been settled by using a restorative justice approach and policy reasons for the public interest. actors (corporations). Thus, the reconstruction of the mediation procedure can be conducted by starting the stages of ending the prosecution using a restorative justice approach.

a. Initiating prosecution terminations with a restorative justice approach

This Restorative Justice Attorney Regulations has objectives, among others, that the Attorney General's Office of the Republic of Indonesia as a government institution which exercises state power in the field of prosecution should be able to realize legal certainty, legal order, justice and truth based on law and heed religious norms and decency. It should explore the values of humanity, law and justice which live in society and 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 which are not oriented towards retaliation is a legal requirement of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system. Furthermore, termination of prosecution based on restorative justice can only be conducted on adult offenders who have not yet targeted corporate actors who have become subjects of environmental crimes. Since it has not accommodated corporate actors and environmental crimes as contained in Attorney Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the process of ending prosecution in cases of environmental crimes where the perpetrators are corporations can be a reform in the criminal justice system. Based on Article 4 Paragraph (1) Attorney Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, termination of prosecution based on restorative justice is conducted by taking into account: a. the interests of victims and other protected legal interests; b. avoidance of negative stigma; c. avoidance of retaliation; d. community response and harmony; and e. propriety, decency and public order.

Even though it has not included environmental crimes where the perpetrators are corporations in the restorative justice scheme, the writer will analyze the things which should be considered in prosecution termination based on restorative justice. Almost all of these things are fulfilled to terminate the prosecution of environmental crimes where the perpetrators are corporations based on restorative justice. First, the interests of victims of environmental pollution/destruction and perpetrators will be equally protected since it is in accordance with the principles of restorative justice, namely that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparations. The victim is given the opportunity to express his demands openly to the perpetrator, then the perpetrator is responsible for conducting recovery/repair. Second, corporations will avoid negative stigma since they are perpetrators of environmental crimes. Corporate crimes; especially, related to environmental crimes, can cause large victims. However, if retributive punishment is conducted, it is feared that it will cause more negative impacts. With a restorative approach, the negative impact can be reduced; for example, the corporation does not need to be closed, but it can still take place by conducting the obligation to restore the environment and compensate for the losses suffered by the community. Third, avoidance of retaliation. Corporations that commit environmental crimes will avoid retaliation; for example, being bankrupt and then it is closed. However, before pursuing the use of criminal law, other settlements can be conducted, including administrative law and civil law. Fourth, the most important goal of restorative justice is that to restore the peace which had faded between victims, perpetrators, and society. Justice that is based on peace between perpetrators, victims and society is the moral ethics of restorative justice. In environmental crimes, conflicts between victims, perpetrators, and society inevitably occur; for example, the case of pollution by B-3 waste in which DDT was also found. DDT in the form of residue enters through the food chain of squid that live in the deep sea, penguins that

live in the Antarctic sea, and in human fat tissue (Trihardiningrum in Haris Widi Asmoro, 2023: 16). Fifth, environmental restoration and compensation for victims in accordance with justice in society, as well as the restoration of harmony in society, between victims and perpetrators is the realization of propriety, decency and public order.

Based on Article 4 Paragraph (2) of Attorney Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, termination of prosecution based on restorative justice is conducted by considering the subject, object, category, and threat of crime; namely a. background of the occurrence or commission of the crime; b. level of disgrace; c. losses or consequences arising from criminal acts; d. costs and benefits of case handling; e. restoration back to its original state; and f. reconciliation between the victim and the suspect. If you pay attention to the above, environmental crimes committed by corporations are conducted with a background of getting as much profit as possible. Moreover, corporations definitely do not want to have to build a standard waste water disposal installation. Many corporations should have chosen to build sewage channels directly into the river since it is cheaper. It is a very disgraceful act since it will harm society. Other things; such as, losses or consequences arising from criminal acts; costs and benefits of case handling; restoration back to its original state; and the existence of peace between the victim and the suspect can be included in a peace agreement or material in mediation.

b. Initiating the mediation process

The goal of mediation within the framework of a restorative justice approach is to create justice that is fast, easy, low-cost, and recovery-oriented. It has not been achieved in enforcing environmental law with corporate actors who are retributive or retaliatory. The mediation process in relation to the termination of prosecution by the prosecutor can be called as Deferred Prosecution Agreement (DPA) or an agreement to terminate prosecution. The simple definition of DPA is that the Prosecutor has the authority to prosecute, but it agrees not to prosecute under certain conditions and criteria. The concept of a postponement of prosecution agreement in criminal cases is commonly used in a number of countries adhering to the common law legal system (Santiawan, 2021: 1044). This DPA can break the deadlock due to legislation which does not allow the mediation process at the pre-trial level. This DPA is actually a negotiation process between the public prosecutor and the defendant (in this case the corporation). The purpose of implementing this negotiation is to divert the prosecution process in the judicial process to the recovery process, both administratively and civilly (Sprenger, 2011: 1).

c. Deferred Prosecution Agreement (DPA) as a form of criminal settlement where the perpetrators are corporations with a restorative justice approach

The DPA process was chosen since it is expected to be able to fulfill the principles of a fast, simple and low-cost trial. Seen from the principle of speed, DPA can meet the requirements because the DPA process is not too long; for xample, in the United Kingdom and the United States, as countries that introduced DPA, basically DPA includes three stages that are negotiation, agreement, and enforcement (Febby Mutiara Nelson, 2020: 292). Before the corporation goes through the DPA process, the corporation must and the most important thing is to make an acknowledgment of the violation. Furthermore, the confession process would pave the way for other obligations; such as, paying fines and compensation; appoint an independent auditor to oversee the company's activities for a certain period of time; dismiss certain employees; and implementing fulfillment programs (Ibid, 2020: 279). This confession process is an offer from the prosecutor or public prosecutor who terminates the prosecution. This offer implies that the investigation, prosecution, and even trial of corporations will take a long time, be complex, and cost a lot. This offer indirectly benefits the corporation since the corporation continues to operate as usual, the corporation can avoid closing, and the corporation still has a good name if it cooperates later.

This offer is not just an offer, but requires something. Before being offered a settlement through DPA, the corporation should first admit to the crime committed. After an acknowledgment has been

made, the public prosecutor can submit the conditions as described above. In addition, the confession process should also be accompanied by an acknowledgment of facts, an agreement to cooperate, a specified time for implementing the agreement, and the perpetrator having the intention to make compensation payments, both in the form of money or non-money (Article 4 Paragraph (2) of Perja Number 15 of 2020). After an acknowledgment, the following steps can be taken by the public prosecutor as a way of resolving environmental crimes using a restorative justice approach.

1) Negotiation

Negotiations in DPA practice in England contain statements of facts, have an expiration date, and involve courts (Ibid, 2020: 293). Meanwhile, in Indonesia, the parties to negotiate are the prosecutor and the corporation/representing them. The party representing the corporation has been determined in Article 15 of Supreme Court regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations stating that in the event that the Corporation is filed as a suspect or defendant in the same case as the Management, the Management representing the Corporation is the Manager who is the suspect or the accused (Paragraph 1) and other Administrators who are not suspects or accused may represent the Corporation in the case referred to in paragraph (1) (Paragraph 2). Thus, the management is the representative of the corporation in negotiations, although the corporation can appoint a legal representative.

This negotiation stage basically contains opportunities/offers by notifying all the consequences for each decision-making of the parties. The negotiation stage is not coercive for the corporation to accept the attorney's offer. If the corporation accepts and then agrees to the prosecutor's offer, as a result the prosecutor may not proceed with it to court. This offer from the prosecutor can be a way for corporate actors to admit their guilt. The process of acknowledging mistakes in negotiations is of course also accompanied by an expiration date so that it does not take too long in order to resolve the criminal cases which are wrapped around it and there are conditions which should be met by the perpetrator corporation. These conditions include, among others, the corporation must be open about the criminal cases it is conducting; this openness should also be accompanied by cooperation between the prosecutor, the corporation/representing, and the victim/representing; Prosecutors must also assess that criminal cases committed by this corporation have occurred repeatedly or for the first time, and that the corporation has good faith in making improvements. The prosecutor's assessment of criminal cases conducted by this corporation is its function as a dominus litis. If a corporation has repeatedly committed criminal acts, of course, ethically, prosecutors may not offer a negotiation process to settle criminal cases.

2) Agreement

The agreement process in question is the process of agreeing to the conditions offered by the prosecutor to corporate actors/representatives. The agreement process is not only between prosecutors and corporate actors, but also it should involve the courts since it is given the opportunity to check whether the conditions offered by the prosecutor have met a sense of justice; especially, the fulfillment of restoration measures for the damaged environment and compensation for the victims. If the court states that the terms and conditions reflect justice for the victim, the DPA process can continue. The Restorative Justice Attorney Regulations actually contains agreement procedures under another name peace process. However, this peace process does not involve courts. The peace process in the Restorative Justice Act is conducted by prosecutors, perpetrators, and victims. However, the prosecutor does not immediately let the peace process taking place between the perpetrator and the victim. The prosecutor in this Restorative Justice Act performs the function of a facilitator so that he should be neutral or impartial; besides, it is able to maintain harmony and equality between perpetrators and victims during the peace process (ST. Burhanuddin, 2021: 88). The prosecutor as a dominus litis has to function. If there is no settlement, the next step is the conventional court process. The main difference between the agreement process in the DPA practiced in the UK and the conciliation process in the Restorative Justice Act is the involvement of the courts. The DPA agreement process practiced in England involves the court to make fair, rational and proportionate statements, even if it is conducted privately (Febby Nelson Mutiara, 2020: 295).

3) Enforcement

The enforcement process occurs if all the terms and conditions in the negotiation and agreement process are met by the corporation through a court order, which results in the cancellation of the prosecutor's charges. However, if in the middle of the process there is non-compliance by the corporation, the prosecutor can ask for the judge's consideration to reassess the court decision process to proceed to the litigation process (Michael Bisgrove and Mark Weeks, 2014: 428-429). In practice, this enforcement stage involves independent auditors in order to check whether the corporation is complying or not in implementing the DPA. Independent auditors can come from former law enforcers and officials who are trusted by all parties in the DPA (Azam Hawari et al, 2019: 84). In order to ensure a peace agreement there are things which should be considered by the prosecutor as the facilitator. There are at least three things that the prosecutor should pay attention to (ST. Burhanuddin, 2021: 98).

The first is evidence/documents/witness statements. The prosecutor must summon the parties in order to ensure that all conditions in the negotiation and agreement process have been fulfilled and ask for documentary evidence/witness statements stating that all conditions have been implemented. Second, the perpetrator's efforts are that to implement the agreement. It is often found that the perpetrator has tried hard to conduct the agreement, but not everything has been completely fulfilled. Furthermore, prosecutors are still able to optimally provide restorative justice; especially, when economic reasons or factors cause the perpetrators to be unable to fulfill their obligations so that the enforcement process cannot proceed properly. Thus, the prosecutor, by adhering to restorative justice, may have the initiative in order to ask the victim whether imperfect fulfillment of obligations is acceptable or not. Third is evidence that the agreement has been implemented. This evidence can be proof/receipt of the implementation of the peace agreement from the perpetrator to the victim. For clarity, table below will be presented a comparison between the implementation of the DPA in England and the writer's version of the reconstruction.

Comparison between the UK DPA Implementation and the author's Reconstructed Version		
Step	UK DPA Implementation	Author's Reconstructed Version
Negotiation	- Contains statements of facts - Has an expiration date, and involves the courts	- The parties involved are prosecutors and corporations/representatives - Prosecutors act as dominus litis by offering a negotiation process to resolve crimes
Agreement	- The prosecutor asks the court to assess whether the agreement in the DPA reflected fairness, rationality and proportionateness	- The parties involved are the prosecutor, the court, and the corporation/representative - The court is involved because it was given the opportunity to check whether the conditions offered by the prosecutor met a sense of justice
Enforcement	- Parties involve prosecutors and courts - Corporations which do not comply can be forced by the prosecutor to comply - If they still do not comply, the prosecutor can ask for a reassessment from the court	- Enforcement occurs after the agreement is in negotiation and the agreement is determined by the court - The prosecutor should pay attention to the evidence, the perpetrator's efforts in implementing the agreement, and evidence which the implementation of the agreement has occurred

4. Matters needing attention in the Deterred Prosecution Agreement (DPA) as a Form of Restorative Justice

a. Legal substance

Legal substance consists of statutory regulations and provisions regarding the authority of these institutions to act according to the norms in the law. Legal substances related to the deterred prosecution agreement (DPA) concept are the Criminal Procedure Code, the Criminal Code, the Environmental Protection and Management Law, the Attorney General's Office Regulation, the General Judiciary Law, and the Police Law. An example of this legal substance is Law Number 32 of 2009 concerning Environmental Protection and Management which regulates the law enforcement process which consists of administrative, civil and criminal law. If linking DPA with the aim of restoring the environment and lives of victims, for law enforcement administratively Article 78 applies which states that the administrative sanctions as referred to in Article 76 do not relieve those in charge of a business and/or activity from responsibility for recovery and criminal punishment. Therefore, it means that even though corporations which commit environmental crimes have received administrative sanctions, they also receive criminal sanctions and responsibility for recovery.

Law Number 32 of 2009 concerning Environmental Protection and Management actually already has instruments relating to the DPA itself. This DPA process was conducted before entering the court, which means that it was conducted at the discretion of the prosecutor through a postponement of prosecution agreement. The initial stage of the DPA process is negotiation. The parties who will negotiate are prosecutors, corporations can be represented by their attorneys, the community of victims, and parties who will calculate the amount of compensation and restoration of the environment and the standard of living of the victims themselves. Furthermore, the party who counts according to Law Number 32 of 2009 concerning Environmental Protection and Management is an environmental auditor. During this negotiation process, prosecutors and auditors can offer environmental funding instruments and incentives and/or disincentives to perpetrators and victims. To corporate actors, in addition to offering compensation which has been calculated by the auditor, prosecutors can propose environmental funding instruments (Article 43 Paragraph (2) of the PPLH Law) which include guarantee funds for environmental restoration, funds for pollution and/or damage management and environmental restoration as well as trust funds/assistance for conservation. Meanwhile, in the incentives and/or disincentives section, the prosecutor can suggest the application of environmental taxes. The prosecutor's offer should also be accompanied by a deadline.

b. Legal structure

The legal structure means discussing legal apparatus; such as, judges, prosecutors and police. The deterred prosecution agreement involves the prosecutor because of the discretion of the prosecutor, corporate actors are willing to negotiate with the prosecutor to uncover the crimes committed. However, based on the explanation above, the DPA mechanism which will be implemented in Indonesia also involves the courts. The main task of the judge in the implementation of DPA is judicial supervision. It is based on the reasons, first the judge has the task of examining the agreement on the postponement of prosecution made by the prosecutor and the corporation/its representative. This examination is aimed at whether the agreements concluded between prosecutors and corporations violate decency, law, and the public interest. Second, the judge will try the DPA process that failed so that the agreement is canceled and the prosecutor will prosecute the corporation that committed the crime. The party involved in the enforcement process is the prosecutor. Judges here are not allowed to intervene. According to the author, new judges may intervene if the implementation of the things agreed upon in the negotiation does not take place as it should or there is a default and the implementation of the negotiation result is contrary to decency, law, and public order so that it is detrimental to the people who become victims.

c. Legal Culture

In ancient times, people always resolved cases by deliberation, not directly handing over the problem to law enforcers, in this case, the police. Nowadays such a culture has been eroded even though according to Satjipto Rahardjo, the Indonesian people have an attitude of shame and are willing to apologize. If it is related to the implementation of the deterred prosecution agreement, an attitude of shame and a desire to apologize should be shown by the perpetrator in negotiating with the prosecutor. If these two attitudes are not shown by the perpetrators, the prosecutor can of course put these two things into consideration for the judge whether the DPA process can continue or stop. If in negotiations, the corporation does not show shame and apologies, it means that the corporation has no desire to pursue a restorative justice process which actually benefits the corporation itself. These advantages include that the restorative justice process does not take place openly and the good name of the corporation is not tarnished.

Conclusion

The restorative justice approach in enforcing environmental crimes committed by corporations aims to restore the environment and the welfare of victims. The process taken begins with mediation with the characteristics of restorative justice along with the criminal justice system. The mediation process chosen is the deterred prosecution agreement. This step started with the prosecutor's offer to use his quasi-deponering to the corporation to negotiate, before that the corporation had to confess to the crime it had committed. The next stage is the agreement and enforcement stage. These two stages require the role of the court in them. If the corporation does not conduct the results of the negotiations because it does not have good faith or the quality of its implementation is not good, the judge will decide whether this DPA is continued or not in a rational and fair manner. Moreover, the government and the DPA should immediately discuss the possibility of implementing a deterred prosecution agreement in the legal structure; for example, adapting it by revising the Criminal Procedure Code. One of them is by revising the arrangements for handling ordinary, fast and brief cases so that they are more in line with the implementation of the DPA later. In addition, prosecutors should immediately prepare a DPA settlement mechanism; especially, at the negotiation stage. It is because during the negotiation stage, the parties involved are prosecutors and corporations. It allows for elements of corruption; for example, bribery of prosecutors to side with corporations.

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