
**JURIDICAL ANALYSIS OF REGULATION NO. 15 OF 2020 CONCERNING THE
TERMINATION OF PROSECUTION IN CRIMINAL OFFENSES IN THE
PERSPECTIVE OF THE CRIMINAL JUSTICE SYSTEM IN INDONESIA**

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ABSTRACT

The purpose of this study is to analyze: first, the study of Attorney General Regulation No. 15 of 2020 concerning the termination of prosecution based on restorative justice in the perspective of the criminal justice system in Indonesia. Second, the mechanism for terminating prosecution based on restorative justice based on Attorney General Regulation No. 15 of 2020 has fulfilled the requirements and objectives. This legal research uses a normative juridical approach method. The results of the study concluded that there is a contradiction between the position of Perja No. 15 of 2020 and the justice system in Indonesia. First, it shows that the findings in article 2 of Perja no 15 of 2020 "termination of prosecution based on restorative justice is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort; and fast, simple, and low cost", Second, the mechanism for implementing restorative justice in embezzlement criminal cases consists of a) peace efforts. namely the peace process is carried out voluntarily, by deliberation for consensus, without pressure, coercion, and intimidation b) in the peace process, there are two possible mechanisms, namely rejection or success. The implementation of the peace agreement is divided into two ways, namely: 1) done by returning compensation 2) done by doing something.

INTRODUCTION

The stages of the criminal justice system consist of investigation, prosecution, trial and prosecution. These stages or procedures include the police, prosecutor's office, court, and correctional institutions. One part of the criminal justice procedure is prosecution which is the authority of the prosecutor's office in law enforcement to run properly. However, in the practice of criminal justice and developments, the Attorney General's Office has made a regulation on the termination of prosecution contained in the Indonesian Attorney General's Regulation No. 15 of 2020 concerning Termination of Prosecution based on restorative justice (known as Perja No. 15 of 2020).

Based on current legislation in Indonesia, in principle, criminal cases cannot be resolved outside the court, although in certain cases, it is possible to resolve criminal cases outside the court. The existence of the Indonesian Attorney General's Regulation No. 15 of 2020 is an

alternative to the criminal system in Indonesia in resolving criminal acts at the prosecution stage.

This research discusses Regulation No. 15/2020 on the termination of prosecution in the criminal justice system in Indonesia. In accordance with Article 2 of Regulation No. 15 of 2020 "the termination of prosecution based on restorative justice is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort; and fast, simple, and low cost. Meanwhile, in the Criminal Procedure Code, the termination of prosecution for the benefit of the law occurs if it meets the requirements in accordance with Article 140 Paragraph 2A, namely "In the event that the public prosecutor decides to stop the prosecution because there is insufficient evidence or the event turns out not to be a criminal offense or the case is closed for the sake of law, the public prosecutor shall state this in a decree." Based on the foundation used in regulation no 15 of 2020 concerning restorative justice, it can be found that there is an out-of-court settlement, because cases that have passed the prosecution stage should be in accordance with the existing criminal justice system.

This is a contradiction between the two systems of crime resolution between the Perja and the Criminal Procedure Law. As adopted by the Criminal Procedure Code, the basis is legal certainty, while the Civil Procedure Code contains restorative justice.

On the other hand, the termination of prosecution based on restorative justice in the case of embezzlement as an out-of-court settlement effort that takes into account the interests of victims and other legal interests. This is based on considerations, namely: first, the cost and benefit of handling the case; second, recovery back to its original state; third, the existence of peace between the victim and the perpetrator.

The existence of appropriate criminal sanctions from the legal consequences caused by the perpetrator and accompanied by evidence that the perpetrator committed the crime. This demand is the same as Andi Hamzah's statement in the book Criminal Procedure Law explaining that in various kinds of mistakes where the wrongdoer causes harm to others, he must pay compensation " (Hamzah, 2017).

In contrast to conventional justice, the termination of prosecution with Restorative justice is justice that prioritizes peace between the perpetrator, the victim, and the community itself. This concept is also referred to as the Just Peace Principle because the approach to crime in this case is the restoration of damage caused by crime (it is an attempt to recovery justice) by bringing together the three components. Of course, the restorative concept contains noble conservation values (Wulandari, 2018).

The regulation contains the prosecutor's authority as a facilitator and the authority to stop prosecution based on restorative justice as an alternative in resolving criminal acts. Through restorative justice, victims and perpetrators are expected to reach a peaceful agreement to prioritize a win win solution and so that the victim's losses can be replaced and the victim forgives the perpetrator.

Criminal cases that have been resolved by the Cirebon City District Attorney's Office based on restorative justice include cases of embezzlement that occurred to victims and perpetrators of criminal acts that are still related to family ties. As such, it is possible that restorative justice can occur in its resolution by the prosecutor's office. This effort is contained in the letter of the head of the West Java High Prosecutor's Office no. The case has then been

discontinued by making a peace agreement after the victim's rights and obligations are fulfilled and unconditional peace is implemented.

Based on the description above, it can be seen that the research on Analysis through restorative justice in handling embezzlement crimes. Aims to formulate what should be done by the prosecution in handling restorative crimes.

METHOD RESEARCH

This research uses normative juridical methods, namely by examining using secondary data from library materials, secondary legal materials obtained from the Cirebon city district attorney's office with embezzlement cases resolved by Restorative Justice and combining with literature. Based on the data obtained, this research is qualitative, where the data is not in the form of numbers but focuses on several case presentations, selecting cases based on theoretical productivity and generalization in the theoretical sense in how many cases.

RESULTS AND DISCUSSION

Mechanism of Perja No.15 Thn 2020 termination of prosecution based on Restorative Justice in the perspective of KUHAP

Based on Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Law) explains that the Prosecutor's Office is a government agency that exercises state power in the field of prosecution and other authorities based on statutory provisions. In carrying out its duties and functions, the Prosecutor's Office is required to be able to realize legal certainty, legal order, justice and truth (Fahik et al., 2022).

In this case the prosecutor's office has full authority in the field of prosecution based on Article 2 of Regulation No.15 of 2020 "termination of prosecution based on restorative justice is carried out based on justice, public interest, proportionality, punishment as a last resort; and fast, simple, and low cost" that the prosecutor's office seeks peace through Restorative justice guided by Regulation No.15 of 2020 which focuses on restoring the victim's condition, one example of a case that can be applied restorative justice regarding embezzlement contained in Supreme Court Regulation No.2 of 2012 concerning the adjustment of minor criminal offense limits and the amount of fines in the Criminal Code. and must meet the conditions that must be met which are contained in Article 5 paragraph (1) of Regulation No.15 of 2020 Criminal cases can be closed by law and stopped prosecution based on Restorative Justice in the event that the conditions are met "the suspect is a first time criminal offender, the threat of punishment is under 5 years, and the value of the loss is not more than Rp.2,500,000.00"

In the mechanism of termination of prosecution based on restorative justice for embezzlement criminal cases, there are several stages Stage I: The public prosecutor as a facilitator explains the purpose of the meeting in the context of peace carried out by the prosecutor's office, and explains what the consequences are if the parties do not agree to peace. After that the parties were asked for their opinion whether they agreed or not to carry out a restorative approach from the results found in the prosecutor's office, the suspect and victim were willing to carry out Phase II peace: After that, the facilitating prosecutor gave the suspect the opportunity to apologize verbally and was willing to return the goods that had been embezzled to the victim, after the victim forgave the suspect witnessed by the facilitating

prosecutor and the families of both parties and traditional leaders. After that, the peace agreement is contained in the Minutes of the Peace Agreement and Peace Report. Phase III: The peace agreement has been completed as evidenced by the parties and the facilitating prosecutor and signed on the minutes of the implementation of the peace agreement Phase IV: After an agreement has been reached, the Public Prosecutor then makes a report on the successful implementation of the Peace Agreement. Stage V: The peace agreement through the restorative justice approach has been implemented in accordance with applicable regulations and continued with the issuance of a deed of peace by the Prosecutor's Office which is equipped with administrative completeness and documentation of the implementation of peace activities.

One of the considerations for the establishment of Restorative Justice is the development of the concept of punishment that is not oriented towards retaliation is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the criminal justice system (Edi et al., 2023).

However, the termination of prosecution based on restorative justice is contradictory in Indonesia's judicial system which is different based on restorative justice as stated in Article 2 of Regulation No. 15 of 2020 "termination of prosecution based on restorative justice is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort; and fast, simple, and low cost" while in KUHAP the termination of prosecution for the benefit of the law occurs if it meets the conditions according to Article 140 Paragraph 2A, namely "In the event that the public prosecutor decides to stop the prosecution because there is insufficient evidence or the event turns out not to be a criminal offense or the case is closed by law, the public prosecutor shall state this in a decree".

Based on the provisions in the Criminal Procedure Code that the termination of prosecution carried out by the prosecutor's office does not have any reason for termination of prosecution based on restorative justice in this case, the legal norms in Perja No.15 of 2020 still require a review, especially in the substance of the law, in order to cause synchronization and legal alignment to realize legal certainty in the application of restorative justice as an alternative to criminal law.

Legal standing of Perja No.15/2020 in the perspective of Indonesian judiciary

In normative law enforcement in Indonesia, it will not be able to escape Law No.8 of 1981 regarding Criminal Procedure Law as a legal product in the Indonesian judicial system.. Which prioritizes the principle of legal certainty which is accompanied by other laws and other regulations The method of settlement in law is divided into two steps that can be taken,

The first is the existence of a settlement using litigation steps and the second path that can be taken is using a non-litigation process, generally in Indonesia today it is commonplace in solving criminal cases that settlement through the litigation process (using the judicial system) is always prioritized. Through litigation or judicial channels, the main objective is to have a deterrent effect for the perpetrators of criminal acts, which here has a way of imposing penalties in the form of confinement or imprisonment (Syauqi, 2023).

The emergence of the regulation in the Indonesian judicial system provides a new alternative in resolving cases through restorative justice which prioritizes justice and recovery for victims of criminal acts. As stipulated in Regulation No.15 of 2020, restorative justice prioritizes the principle of justice and also involves community participation, and does not

merely fulfill legal provisions or merely impose punishment. In this case the victim is also involved in the process, while the perpetrator of the crime is also encouraged to take responsibility for his actions, namely by correcting the mistakes that have caused the crime (Arief & Ambarsari, 2018) The implementation of restorative justice itself looks at Perja No. 15 of 2020 itself is only a prosecutor's regulation. Indonesia itself in the judicial system adheres to the principle of *lex specialis lex generalis* in which special regulations accompany general regulations. In terms of structure, the Prosecutor's Regulation is still under the Criminal Procedure Code. So there is a need for changes in this Prosecutor's Regulation.

CONCLUSION

Judging from the identification, the mechanism for implementing restorative justice in regulation no. 15 of 2020 concerning termination of prosecution based on restorative justice is a criminal case settlement that is carried out without going through the criminal justice system in Indonesia, but is carried out by third parties as well as perpetrators and victims in a deliberate manner to achieve a win win solution. The settlement of embezzlement cases through restorative justice has actually been fulfilled.

Article 3 of regulation no. 15 of 2020 states that the public prosecutor has the authority to stop the case in the interests of the law. for this case in the interests of the law, among others, the defendant died, the expiration of the prosecution case, and there was a court decision that had permanent legal force against the perpetrator of the crime. meanwhile in article 4 states that the termination of prosecution is carried out in the interests of the perpetrator and victim, avoidance of negative stigma, revenge, harmony in society, and decency in law.

There are weaknesses in regulation no. 15 of 2020 regarding legal certainty, stated in article 5 paragraph 5 states that as referred to in paragraph (3) and paragraph (4) do not apply in cases that are casuistic in nature which according to the consideration of the Public Prosecutor with the approval of the Head of the State Prosecutor's Branch or the Head of the State Prosecutor's Office cannot be discontinued. For this reason, it is still not specific what kind of cases can or cannot be stopped prosecution based on restorative justice. There is no information on the parameters of how the public prosecutor decides whether a case is a casuistic case or not, so that article 5 paragraph 5 becomes a gap and problem for many interpretations in the application of criminal offenses in paragraphs 3 and 4.

The findings regarding the mechanism for stopping prosecution based on restorative justice in regulation no. 15 of 2020 have fulfilled the objectives of protecting human rights. The data shows that the implementation mechanism for the crime of embezzlement consists of several stages contained in article 9 paragraph 1, namely 1). Peace is made voluntarily by deliberation for consensus, without intimidation, pressure, and coercion. The process is regulated in article 10 of regulation no 15 of 2020, there are several possibilities in its implementation, namely success or rejection. The implementation process mechanism has different procedures as stated in articles 11 and 12 3). The implementation of peace is divided into 2 things, namely, a). the payment of compensation to the victim by the perpetrator of the crime, or b) done by doing something.

REFERENCES

- Arief, H., & Ambarsari, N. (2018). Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *Al-Adl: Jurnal Hukum*, 10(2), 173–190.
- Edi, N., Pieris, J., & Simanjuntak, N. (2023). Analisa Hukum Penerapan Restorative Justice Dalam Upaya Mereformasi Sistem Peradilan Umum Di Indonesia. *Jurnal Cahaya Mandalika Issn 2721-4796 (Online)*, 4(3), 1092–1099.
- Fahik, A. D. A., Dewi, A. A. S. L., & Widyantara, I. M. M. (2022). Implementasi Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 (Studi Kasus Di Kejaksaan Negeri Jembrana). *Jurnal Konstruksi Hukum*, 3(2), 240–245.
- Hamzah, A. (2017). *Hukum Pidana Indonesia*. Sinar Grafika.
- Syauqi, I. D. (2023). Implementasi Restorative Justice Terhadap Tindak Pidana Penganiayaan Di Kejaksaan Negeri Batu. *Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance*, 3(2), 2035–2046.
- Wulandari, C. (2018). Penyelesaian Perkara Pidana Melalui Mediasi Penal: Access To Justice Di Tingkat Kepolisian. *Humani (Hukum Dan Masyarakat Madani)*, 8(1), 90–104.
- Darwin, D., Dahlan, D., & Suhaimi, S. (2019). Analisis Yuridis Putusan Praperadilan Dalam Perspektif Sistem Peradilan Pidana. *Jurnal Mercatoria*, 12(1), 68-79.
- Melati, A. F. A., Syawaludin, S., & Utoyo, M. (2023). Analisis Yuridis Restorative Justice Dalam Kepastian Hukum Terhadap Anak Pelaku Tindak Pidana. *Lex Stricta: Jurnal Ilmu Hukum*, 2(2), 95-104.
- Santoso, A. F. (2021). Tinjauan Yuridis Terhadap Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif Terhadap Tindak Pidana Pencurian Ringan.
- Maisyarah, M. (2024). Analisis Yuridis Tentang Penghentian Penuntutan Melalui Restorative Justice Berdasarkan Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif (Doctoral Dissertation, Universitas Islam Kalimantan Mab).
- Waskito, A. B. (2018). Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi. *Jurnal Daulat Hukum*, 1(1), 287-304.
- Melati, A. F. A., Syawaludin, S., & Utoyo, M. (2023). Analisis Yuridis Restorative Justice Dalam Kepastian Hukum Terhadap Anak Pelaku Tindak Pidana. *Lex Stricta: Jurnal Ilmu Hukum*, 2(2), 95-104.
- Risal, M. C. (2023). Analisis Kritis Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana. *Jurnal Al Tasyri'iyah*, 55-70.
- Saputra, F., Kalo, S., Mulyadi, M., & Hamdan, M. (2014). Analisis Yuridis Penerbitan Surat Perintah Penghentian Penuntutan Oleh Kejaksaan Dikaitkan Dengan Asas Oportunitas Dan Undang-Undang No 16 Tahun 2004 Tentang Kejaksaan Ri. *Usu Law Journal*, 2(1), 105-123.
- Fadillah, M. H., Nurkhotijah, S., Fadlan, F., & Prasetyasari, C. (2023). Analisis Yuridis Penerapan Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif (Studi Penelitian Pada Kejaksaan Negeri Karimun). *Jerumi: Journal Of Education Religion Humanities And Multidiciplinary*, 1(2), 465-475.

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