



The Authorities of the Public Criminal Action with the Principle of Restorative Justice Based on the Principle of Dominus Litis

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ABSTRACT

This study aims to determine the authority of the prosecutor's office in solving general crimes with the principle of restorative justice based on the principle of dominus litis. This type of research is normative legal research with a statutory law approach (*law approach*), contextual approach (*contextual approach*). The technique of collecting legal materials used in this study is a documentary study with analysis of legal materials, namely qualitative analysis. The results of this study are the authority of the prosecutor's office in resolving general crimes with the principle of *restorative justice* based on the principle it adheres to, namely the principle of *dominus litis* , which is also supported by the principle of *deponering* , where in the principle of *deponering* the public prosecutor has the authority to exclude cases in the public interest as stated in the Article 35 letter c of the Attorney General's Law of the Republic of Indonesia of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

Keywords: Restorative Justice, Dominus Litis, Common Crimes.

INTRODUCTION

A. Background

Indonesian law in its development is interpreted as written rules that seem rigid. Lawyers and law enforcers are hypnotized by practical laws, meaning that people who break the law mean they break the law and must be given (criminal) sanctions. Thinking like this makes us trapped in a written regulation (law) and forget that there are other sources of law that apply in Indonesia that even existed before the existence of hegemonic law, namely laws. Law should be a tool that provides and realizes the ideals of the law itself, namely justice in various fields of life both in personal life, society, nation and state.

In the development of law enforcement, especially criminal law, known as restorative justice. This development is due to the fact that the restorative system that has been implemented so far has not been able to fully fulfill the sense of justice for the community. Criminal law according to retributive justice is the orientation of justice aimed at violators and solely because of violations of the law, violations of criminal law are violations of state rights so that victims of crime are the state, so the concept of retributive justice does not provide a place for protection for victims.

The development of modern law applying restorative justice at the beginning of the implementation of a settlement program outside of traditional justice carried out by the community called perpetrator-victim mediation which began in the 1970s in Canada. This program was initially implemented as an alternative measure in punishing child criminals, where prior to the execution of the sentence the perpetrator and the victim were allowed to meet to compile legal discussions which became one of the many considerations of the Judge. With the hope of implementing restorative justice, all parties involved in a particular crime jointly solve problems and deal with the consequences arising from these problems.

According to Waluyo, restorative justice is a strategy that seeks to resolve criminal cases peacefully by involving parties who have an interest in resolving these criminal cases. This peaceful settlement can occur if the perpetrator realizes his mistake and is voluntarily willing to provide compensation to the victim.

The application of restorative justice in the settlement of criminal cases in Indonesia has been carried out by law enforcement agencies, namely the Attorney General's Office, the Police and the Supreme Court. The implementation of restorative justice is carried out by the Attorney General's Office of the Republic of Indonesia by issuing the Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Of the three institutions, the Prosecutor's Office has an important role in the law enforcement process, the Prosecutor's Office has a central position and a strategic position in a rule of law because it functions as a filter between the investigative process and the judicial review process (principle of dominus litis), so that its existence in people's lives must be able to carry out the task of law enforcement.

The principle of *dominus litis* states that no other body has the right to carry out the prosecution service other than the public prosecutor which is absolute and monopoly, because the public prosecutor is the only institution that owns and monopolizes the prosecution and settlement of criminal cases, even though a judge cannot request that criminal cases filed it, the judge in the settlement of the case is only passive and waiting for demands from the general prosecution.

Regarding the application of the restorative justice approach, the prosecutor's office as the controller of the case is given the authority to terminate the prosecution of general crimes with predetermined conditions. This authority is based on Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. With a restorative justice approach, it is hoped that peace will be achieved between victims and perpetrators of crimes by focusing on recovery from the defeats experienced by victims of crimes.

Based on the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it explains that restorative justice involves perpetrators, victims, and society in the process of resolving criminal cases. Article 4 Attorney General Regulation Number 15 of 2020, the authority of the Public Prosecutor in terminating prosecutions based on Restorative Justice is carried out by taking into account:

interests and other protected legal interests;

- b avoiding negative stigma;
- c avoidance of retaliation;
- d response and community harmony; And
- e propriety, decency, and public laundering.

The Public Prosecutor in the Termination of Prosecution based on Restorative Justice is also carried out by considering:

subject, object, category, and threat of crime;

- b. the background of the incident where the crime was committed;
- c level of disgrace;
- d loss or consequences arising from a criminal act;
- e costs and benefits of handling handling;
- f recovery back to its original state; And
- g there is peace between the victim and the suspect.

Based on data from 2020 to May 2022, the Attorney General's Office terminated 1,070 cases using a restorative justice approach and until now the collection continues to increase. using a retributive approach.

Based on the explanation above, the author wants to examine related to the settlement of criminal acts with a restorative justice approach with the title The Prosecutor's Authority in Settlement of General Crimes with the Principle of Restorative Justice Based on the *Dominus Litis* Principle.

B. Formulation of the problem

To direct and focus the discussion in the next section, it is necessary to solve the problems that will be answered and described in this paper. The formulation of the problem is how is the authority of the prosecutor's office in solving general crimes with the principle of *restorative justice* based on the principle of *dominus litis* ?

C. Literature review

1. Dominus litis principle

the existence of the principle of *dominus litis* in prosecution can be seen in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which is increasingly clear and emphatic that in a limitative manner it regulates the existence of prosecution authority which resides in the prosecutor's office which is absolute in nature, so that it is stated that the principle of *dominus litis* exists in the implementation of duties and investigations of criminal acts by public prosecutors.

The principle of *Dominus Litis* has been universally recognized and reflected in Article 2 of Law Number 16 of 2004 concerning the Attorney General of the Republic as amended by Law Number 11 of 2021, which explains that the Prosecutor's Office is a government institution that exercises state power in the field of filing and authority others based on the law, which is carried out independently.

General Explanation of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, including explaining that this Law was enacted for the reform of the Attorney General's Office, so that its position and position as a government institution is more stable and can carry out State power in the field of prosecution, which is free from the influence of any party. The duties of the Public Prosecutor as a public prosecutor are also regulated in Article 14 and reaffirmed in Article 137 of the Criminal Procedure Code. The public prosecutor who defeats prosecutes anyone who commits a crime in his jurisdiction by delegating the case to the court that tries him.

The principle of *dominus litis* which is absolute and independent makes prosecution as the main task and become an inseparable part, so that this principle will strengthen and strengthen the Prosecutor as a public prosecutor in carrying out prosecutions of criminal cases that occur, and only the Prosecutor can decide proportionally and professionally to resolve non-criminal cases that have occurred.

2. Restoration of Justice

. Restorative justice is an approach to justice based on the philosophy and values of responsibility, instilled, trust, hope, healing and "including", which focuses on reparation for losses caused by crime, in addition to encouraging perpetrators to be responsible for their actions, through giving parties who directly report incidents of crime, namely victims, perpetrators and the community, by identifying and paying attention to their needs after the crime has occurred, and seeking solutions in the form of healing, repair and reintegration as well as preventing further losses.

Restorative justice is a theory of justice that emphasizes repairing the damage caused by crime. The good thing is, it is done through a collaborative process that includes all interested parties. Marian Liebmann also explained that restorative justice is a legal system that has the goal of restoring the welfare of victims, perpetrators and communities damaged by crime and to prevent further violations or criminal acts.

According to Waluyo, restorative justice is an approach that seeks to settle criminal cases peacefully by empowering parties who have an interest in resolving these criminal cases. This peaceful settlement can occur if the perpetrator realizes his mistake and is voluntarily willing to provide compensation to the victim.

Bagir Manan stated that the substance of "restorative justice" contains principles, which include:

1. Building joint participation between perpetrators, victims, and community groups in resolving an event or crime.
2. Placing perpetrators, victims and the community as "stakeholders" who work together and immediately try to find a solution that is considered fair for all parties (win-win solution)".

Restorative justice at least aims to repair or restore criminal acts committed by perpetrators with actions that are detrimental to victims and their environment which involve them directly (reintegration and rehabilitation) in solving problems which will then lead to the goal of the crime itself. According to Barda Nawawi Arief, the purpose of sentencing itself is based on "public protection" and "protection/guidance of individual perpetrators of criminal acts".

D. Research methods

This research uses a type of normative legal research, namely by conducting research on the principles, norms, rules of legislation or doctrine. The approaches used in this research are statutory law (*statute approach*) and contextual approaches (*contextual approach*), with the sources of legal materials used in this research namely primary legal materials, secondary legal materials and tertiary legal materials. The legal material collection technique used in this research is a documentary study. While the analysis of legal materials used in this research is qualitative analysis.

RESEARCH RESULTS AND DISCUSSION

The Prosecutor's Office is a government agency that has special authority to handle prosecutions. As for what is meant by self-prosecution as referred to in Article 1 point 4 of Law Number 11 of 2021 is the action of the Public Prosecutor to transfer the case to the District Court which is regulated in matters and according to the manner stipulated in the criminal law procedure with a lawsuit to be examined and decided by a judge at court hearings.

The public prosecutor himself is a prosecutor who is authorized by law to carry out prosecutions and carry out judge decisions and other enforcement based on laws. From this understanding it can be seen that the public prosecutor and the prosecutor are different terms, where the term public prosecutor is a term that relates to a function, while the prosecutor is a term related to a position.

The authority to stop prosecution can be carried out by the Public Prosecutor if there are reasons. This is contained in Article 140 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code, which states that the public prosecutor can stop prosecution in a criminal case. The content of the Article a quo is that in the event that the Public Prosecutor decides to stop the prosecution because there is insufficient evidence or the incident turns out to be not a crime or the case is closed by law, the Public Prosecutor sets this matter out in a stipulation.

In its development, the termination of prosecutions carried out by court institutions is also based on restorative justice (restorative justice). In restorative justice, criminal sanctions given to perpetrators do not eliminate the suffering experienced by victims so that in practice other alternatives or other approaches are needed to improve the criminal justice system by carrying out or using non-litigation settlements with a restorative justice approach.

Restorative justice is an approach to justice based on the philosophy and values of responsibility, instilled, trust, hope, healing and "including", which focuses on reparation for losses caused by crime, in addition to encouraging perpetrators to be responsible for their actions, through giving parties who directly report incidents of crime, namely victims, perpetrators and the community, by identifying and paying attention to their needs after the crime has occurred, and seeking solutions in the form of healing, repair and reintegration as well as preventing further losses.

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Restorative justice at least aims to repair or restore criminal acts committed by perpetrators with actions that benefit victims and their environment that involve them directly (reintegration and rehabilitation) in solving problems which then leads to the goals of the crime itself. According to Barda Nawawi Arief, the purpose of punishment itself is based on "public protection" and "protection/guidance of individual perpetrators of criminal acts".

Restorative justice has the main objective of repairing victims' losses, acknowledging perpetrators of losses due to criminal acts committed, conciliation or reconciliation between victims, perpetrators and society, reintegrating perpetrators, and through peaceful conflict resolution (peacefully resolved) community security can be managed.

Restorative Justice practices and programs are aimed at committing crimes by:

1. Blocking and taking steps to repair losses (identifying and taking steps to repair losses/damage).
2. Involve all stakeholders, and (involve all interested parties) and
3. Changing the traditional relationship between society and its government in responding to crime (changing something that has been traditional about the relationship between society and government in responding to crime).

This change in thinking paradigm needs to be supported by national legislative policies and an understanding of scientific developments in the world of justice. Prosecutor's office, restorative program at the prosecution level, was sentenced under Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. The article authorizes prosecutors to set aside matters in the public interest.

Based on Article 35 letter a of Law Number 16 of 2004, the prosecutor's office in carrying out and controlling law enforcement and justice policies within the scope of its duties and authorities, the prosecutor's office can develop law enforcement and justice policies within the restorative scope as part of its authority. Restorative justice is the solution to the investigation and prosecution process which so far has not provided any improvement, especially for the perpetrators of criminal acts while still providing sanctions for the perpetrators of criminal acts.

Based on Article 2 of the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice it is carried out based on the principles of justice, public interest, proportionality, punishment as a last resort, and the principles of fast, simple and low cost. The public prosecutor demands the closing of the case for the sake of law, one of which is because there has been a settlement of the case out of court. This is regulated in Article 3 paragraph 2 letter e Attorney General Regulation Number 15 of 2020.

In the Attorney General's Regulation in Article 3 paragraph (3) there are provisions if you want to settle a case out of court for certain crimes with a maximum fine that has been voluntarily paid or there has been restoration of the original situation through restorative justice.

The conditions for revocation or termination of criminal acts based on Attorney General Regulation Number 15 of 2020 are:

1. The suspect is the first time he has committed a crime
2. The crime is only punishable by a fine or punishable by imprisonment for not more than five years, and
3. The crime was committed with a value of evidence or a loss of not more than Rp. 2.5 Million.

The authority to apply restorative justice by the prosecutor's office is also based on the dominus litis principle upheld by the prosecutor's office. The principle of dominus litis states that no other body has the right to carry out the prosecution service other than the public prosecutor which is absolute and monopoly, because the public prosecutor is the only institution that owns and monopolizes the prosecution and settlement of criminal cases, even though a judge cannot ask for a criminal case filed, the judge in the settlement of the case is only passive and waiting for demands from the general prosecution.

the existence of the dominus litis principle in prosecution can be seen in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which is increasingly clear and emphatic that in a limitative manner it regulates the existence of prosecution authority that resides in the prosecutor's office which is absolute in nature, so that it is stated that the principle of dominus litis exists in the implementation of duties and investigations of criminal acts by public prosecutors.

The principle of Dominus Litis has been universally recognized and reflected in Article 2 of Law Number 16 of 2004 concerning the Attorney General of the Republic as amended by Law Number 11 of 2021, which explains that the Prosecutor's Office is a government institution that exercises state power in the field of filing and authority others based on the law, which is carried out independently.

General Explanation of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, including explaining that this Law was enacted for the reform of the Attorney General's Office, so that its position and position as a government institution is more stable and can carry out State power in the field of prosecution, which is free from the influence of any party. In another sense, the Prosecutor's Office, in carrying out executions, frees and is free from the influence of government power and other powers in an effort to realize

legal certainty, defend law, justice and truth by heeding religious norms, decency and decency, and is obliged to explore values humanity, law and justice that live in society.

The principle of dominus litis which is absolute and independent makes prosecution the main task and becomes an integral part, so that this principle will strengthen and strengthen the prosecutor as a public prosecutor in carrying out the prosecution of criminal cases that have occurred, and only the prosecutor can determine proportionally and professionally to resolve some of the criminal cases that occurred.

The principle of dominus litis which is owned by the public prosecutor is also supported by the principle of deponering, wherein the principle of deponering the public prosecutor is given the authority to set aside cases in the public interest as stated in Article 35 letter c of the 2004 Prosecutor's Office of the Republic of Indonesia.

The prosecutor's authority over the application of restorative justice as described above, according to the author, is an implementation of the principle of dominus litis owned by the prosecutor's office. Prosecutors who have the authority to try to assess and determine a case file to be submitted to court is a very strategic role in the implementation of restorative justice.

The principle of dominus litis which gives full authority to the prosecutor's office in prosecuting and settling criminal cases, gives authority to the prosecutor's office to select and sort out a criminal case that is judged to be able to be brought to court or which can be resolved outside of a lawsuit with the principle of restorative justice.

CONCLUSIONS AND RECOMMENDATIONS

The authority of the prosecutor's office in solving general crimes with a restorative justice approach is based on the principle of dominus litis which allows the public prosecutor to set aside cases in the public interest. The implementation of this authority must be carried out in accordance with the provisions of the applicable laws and regulations in order to achieve the goal of implementing restorative justice itself.

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