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Based on a perspective of restorative justice, law enforcement

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Abstract
The development of transitional justice values as a reaction to retributive justice values that have been adopted by the criminal justice system is still conventional. This shows that there has been a shift in thinking on the values of justice in line with the situation and development of the era and that it is therefore more fair and humane. There has been a shift in perspective in applying the law from retributive justice to restorative justice. The practice of implementing restorative justice has become a legal necessity in society globally. In order to implement restorative justice, it is important to look at the aspect of authority in the legal system as a whole. This research aims to examine how the termination of prosecution based on restorative justice, as in Peraturan Jaksa Agung Number 15 of 2020 concerning the termination of prosecution in restorative justice, can build a balance of legal objectives, namely legal certainty, justice, and legal benefits. This research is normative, using a statute approach. The results showed that in a conceptual approach related to the termination of prosecution based on restorative justice, as in Peraturan Jaksa Agung Number 15 of 2020 concerning restorative termination of prosecution, it can build a balance of legal objectives, namely legal certainty, namely criminal law as an ultimum remedium, justice, the achievement of an agreement between the victim and the perpetrator, and legal expediency, namely providing benefits to the perpetrator and victim.

Keywords: Restorative justice, law enforcement

Introduction

The state is committed to the principle that every citizen must be treated well and fairly in the same position in the law, also in the sense of whether he is a suspect or victim of a criminal offense. Humanity as a joint value of the Pancasila state philosophy animates the entire existence of law in Indonesia, starting from the 1945 Constitution of the Republic of Indonesia.

This raises a classic problem: the criminal justice system as the basis for resolving criminal cases does not recognize the existence of victims of crime as seekers of justice. A victim of crime will suffer again as a result of the legal system itself because victims of crime cannot be actively involved as in civil law and cannot directly submit criminal cases to the court themselves but must go through the designated agencies (police and prosecutors) [1].

Meanwhile, the interests of victims of criminal acts have been represented by state instruments, namely the police and prosecutors as investigators and public prosecutors, but the relationship between victims of criminal acts on the one hand and the police and prosecutors on the other hand is symbolic, while the relationship between the defendant and his legal counsel in principle is purely in the legal relationship between service users and service providers regulated in civil law.

The police and prosecutors act to carry out the duties of the state as representatives of victims of criminal acts and/or the community, while the legal counsel acts on the direct authorization of the defendant, who acts on behalf of the defendant himself [2].

The existing protection in the Criminal Procedure Code protects the human rights of the perpetrators of criminal acts more than the human rights and interests of victims of criminal acts. For this reason, it can be stated that the provisions that protect or pay attention to the interests of victims are only regarding pretrial and combined compensation claims; in other words, the system adopted by the Criminal Procedure Code is retributive justice.

Criticizing the enactment of conventional criminal law norms (KUHP) has, at the very least, given birth to a very deep sense of concern, which is substantively, structurally, and culturally very behind the development of the dynamics of an increasingly globalized society.

According to the theory of retributivism, punishment should be given to the perpetrator solely on the basis that the perpetrator has been proven to have committed a crime or has acted wrongfully in an unlawful act. Therefore, the punishment imposed on the offender is not accidental or without consideration. On the contrary, every punishment expresses that the criminal is responsible for the article of law that he has violated. In fact, the law itself reflects "moral sentiments". Therefore, every crime committed not only violates the law but also morality [3]. Hegel clearly rejects retribution in the sense of revenge on the grounds that the content of retribution is true, but its form is only a new evil, an act of subjective will.

According to Satjipto Rahardjo, retributive justice can also be referred to as vindicativa justice, namely justice that demands a balance between achievement and counter-achievement, namely justice that provides for the imposition of punishment in accordance with the crime or offense committed.[4] Similarly, the criticism raised by utilitarianism, where the concept of utilitarian justice is justice regardless of the interests of individuals or certain groups (monodualistic), is different from the modern flow that calls itself the abolitionist movement, which is heavily influenced by critical criminology.

The criticism raised by the Abolitionism movement is not only limited to the need for a balance of treatment as a consequence of punishment (responsibility and future obligations of the perpetrator), but is more focused on concrete solutions to criminal cases to eliminate or avoid the retributive nature of the penal nature and replace it with a reparative nature.

The concept of justice proposed by the abolitionist movement is the concept of restorative justice to replace the concept used by the current criminal justice system, namely the concept of retributive justice. The concept of restorative justice is oriented towards a model of resistance replaced by a model of dialogue and negotiation in the settlement related to the occurrence of a criminal offense.

Restorative justice basically emphasizes the responsibility of the perpetrator for the harm that arises from his actions towards the victim and society. This is a form of defamation and demands behavioral improvement from the perpetrator through restoration or reintegration into society, so that it is hoped that the perpetrator will be aware of the mistakes he has made.

The primary focus shifts from the perpetrator to the victim, where the goal is not merely to punish and humiliate someone (pillorying) or prosecute, but rather an attempt to obtain the truth, which is ultimately useful to help restore the disharmonious relationship between the perpetrator, victim, and society, all three of whom are basically victims of crime.

On July 21, 2020, the Attorney General formed an internal policy, namely the Peraturan Jaksa Agung Republik Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, in which the Prosecutor has the authority to stop the prosecution process against suspects in certain criminal cases. Restorative justice is an approach to resolving criminal offenses outside of court. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace and emphasize that the victim's losses are replaced and the victim forgives the perpetrator of the crime, which refers to the principles of fast, simple, and low-cost justice.

This regulation has accommodated settlement through an out-of-court process, namely the peace process between the victim and the perpetrator. The peace process is carried out by the parties voluntarily, with deliberation for consensus, without pressure, coercion, or intimidation.

Based on the description, the problems that will be researched are: can the termination of prosecution based on restorative justice build legal objectives, which are legal certainty, justice, and legal utility?

Research Methods

The type of research performed takes a normative-juridical. This study uses a doctrinal approach or also referred to as the normative legal approach. Existing data are linked to each other through library research [5], reviewed and interpreted also analysed to conclude. Normative research methods are research that refers to legal norms contained in legislation and court decisions. Resources are obtained from literature or secondary data, which consists of primary legal and secondary legal materials. Primary legal materials include basic norms and rules, such as the 1945 Constitution, Peraturan Jaksa Agung No. 15 of 2020. Those legal materials may include constitutional interpretation literature, research results, legal expert opinions and scientific articles related to interpretation in the court's decision. The data obtained will be analysed by qualitative descriptive methods.

Results and Discussion

Scope of Termination of Prosecution Under the Criminal Procedure Code

Indonesia is a legal, normative constitutional state. The primary official viewpoint in national legal politics that offers direction so that the law can play an active role or become central in social life is the establishment of Indonesia as a state of law [6].

According to the rule of law as it relates to the creation of social agreements, the state's authority and legitimacy are built on a contract wherein all power relations are governed by rules that have been agreed upon by both parties.[7] The rule of law does not only mean a state that enforces the law; a perfect state of law is a state whose laws are fair, thus ensuring justice in society [8]. A pattern of respecting and protecting human rights; A democratic state institutional mechanism; An ordered legal system; and A free judicial power are the minimum prerequisites for a state to be referred to as a state of law [9].

The Indonesian state and government were formed as a state based on law in order to advance the general welfare, educate the populace, and safeguard the integrity of Indonesia and its people.

A just and successful society as well as equitable material and spiritual conditions are the goals of efforts to advance public welfare that classify Indonesia as a modern state of law (moderne rechstaat) or patterned welfare state (welvaarstaat) [10].

Immanuel Kant and Friedrich Nietzsche's "staatsonthouding" philosophy, which calls for the division of the state from society and is applied or exercised in the kind of formal (limited)**.** legal state, is what gave rise to this feature of the welfare state. In such a state of law, the government's responsibilities are significantly reduced to the creation and enforcement of laws, or, to put it another way, to ensuring state security or acting as a night watchman (nachtwakerstaat).

In response to these circumstances, the state of law in the material sense, often known as the modern legal state or the welfare state, was born. In a modern legal state, the role of the government is very broad; specifically, it is responsible for ensuring social justice (social gerechtigheid) for all citizens, in addition to enforcing the law. This implies that in a modern legal state, the state's obligations become more intricate and comprehensive in nature, affecting every aspect of citizens' life.

In reality, the effort to realize the promises of the law through procedures that must be fulfilled in accordance with the legality of the modern legal system is not an easy thing. Modern law demands many structural and administrative requirements. This means that only with a certain level of readiness can modern law be implemented properly.

Law enforcement as a process does not merely mean the implementation of legislation. Law enforcement is not a definite action, namely applying the law to an event, which can be likened to drawing a straight line between two points. Law enforcement is not a logical process alone but contains choices and possibilities because it is full of human involvement with all its complexities.

Along with the development of the modern state, modern law as a type of law evolved and took shape. In the entire

world, not a single nation does not see itself as a modern state. Almost every nation in the world now identifies with the contemporary state, which uses modern law as its toolkit.

The Republic of Indonesia is regarded as a modern state, with modern law as its defining characteristic and a legal system designed to satisfy the demands and progress of an ever-more advanced and complex society. Due to the complexity of contemporary society, regulatory norms must exist and be pertinent to its requirements.

The main rule that must be present and upheld in a modern legal state is the protection of citizens' human rights. All individuals are equal before the law, which is a legal premise, is how this is put into practice. The 1945 Constitution's Article 27 lays out the idea of equality before the law's solid legal foundation.

The reality shows that efforts to realize the promises of the law through procedures that must be fulfilled in accordance with the legality of the modern legal system are not easy. Modern law demands many structural and administrative requirements.

The criminal justice system is the mechanism utilized in a legal state to deal with numerous criminal issues that arise in daily life.

Because the prosecutor's office is still the only institution with authority in the field of prosecution (dominis litis principle), the prosecutor's office has some degree of influence over how the law actually operates in Indonesia, particularly in the criminal justice system, which still prioritizes procedural justice over substantive justice. The Attorney General, who holds the position of highest public prosecutor, has the power to decide whether or not a matter can be brought to trial.

The success of Indonesia's criminal justice system depends in part on the Attorney General and the strategic function. Of course, there are repercussions to the Attorney General's Office's extremely strategic posture should law enforcement be deemed ineffectual. Failure will bring criticism, mistrust, derision, profanity, slander, claims of irregularities, and everything else that suggests that criminal law enforcement, which is thought to lack the public's ambitions, is weak.

Dominis Litis Principle

The Attorney General's Office of the Republic of Indonesia is a government body that controls the case-processing procedure as well as other authorities based on the law (dominus litis).

According to the Criminal Procedure Law, the Public Prosecutor is the sole entity that has the authority to decide whether a criminal case can be presented to a court based on reliable evidence. This position is crucial to the law enforcement process. It is demonstrable that the public prosecutor is the Dominus Litis in the prosecution of criminal cases, from the investigation phase through the trial, as well as in the preparation for and conduct of legal proceedings.

The philosophy of dominus litis is that the legal considerations serve as the basis for decision-making and the reality of social dynamics, which aids in resolving the dispute [11].

In KUHAP, the duties and authority of the prosecutor as a public prosecutor play an important role in every stage of the criminal justice system. This can be proven normatively in the KUHAP which will be described as follows:

Article 109 of KUHAP:

1. In the event that the investigator has begun to investigate an event that constitutes a criminal offense, the investigator shall notify the public prosecutor of this.
2. In the event that the investigator stops the investigation because there is insufficient evidence or the event is not a criminal offense, or the investigation is stopped for the sake of law, the investigator shall notify the public prosecutor, the suspect or his family".

The public prosecutor was informed of the start of the investigation through the delivery of a Notice of Commencement of Investigation (SPDP) and the conclusion of the investigation through the provision of an Order to Terminate Investigation (SP3). This demonstrates that Dominus Litis is the public prosecutor and is the case's controller or owner.

This can also be seen in the KUHAP, which will be described as follows: Article 110, KUHAP:

1. In the event that the investigator has completed the investigation, the investigator shall immediately submit the case file to the public prosecutor.
2. In the event that the public prosecutor is of the opinion that the results of the investigation are still incomplete, the public prosecutor shall immediately return the case file to the investigator along with instructions for completion.
3. In the event that the public prosecutor returns the results of the investigation to be completed, the investigator shall immediately conduct additional investigations in accordance with the instructions from the public prosecutor.
4. The investigation shall be deemed to have been completed if, within fourteen days, the public prosecutor does not return the results of the investigation or if, before the expiration of the time limit, there has been a notification to that effect from the public prosecutor to the investigator.

As Dominus Litis, the prosecutor is the officer with the authority to decide whether a case merits prosecution or should be dropped. The Dominus Litis principle in question is located in the Criminal Procedure Code's rule of the prosecutor's office's right to halt an investigation, which will be explained as follows: In accordance with KUHAP's Article 140, Paragraph 2:

"In the event that the public prosecutor decides to discontinue the prosecution because there is insufficient evidence, 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."

The provision makes it clear that the prosecutor has the authority to decide to drop the case because they are the public prosecutor.

Law Enforcement in the Perspective of Restorative Justice

Law enforcement in reality cannot be separated from the existence of the law itself. Law itself in reality cannot be understood properly, if it only sees law as something that is isolated from political and social processes, which is actually an inseparable part of these processes.

Questioning the law enforcement process seems absurd if it only tries to separate or isolate it from the social forces that

exist in society. In short, questioning the law enforcement process should not be seen as something that stands alone but is always covered by various factors that accompany it when the law is applied to concrete cases in society.

The factors that will be questioned here are intended as background factors or factors that are very influential when discretion is implemented in concrete cases by an individual police officer in the process of law enforcement. (law enforcement, rechtstoepassing).

Law enforcement, in terms of terms, is defined as "the act of enforcing something such as a law; implementation of the law; implementation of mandates or orders."[12]

Questioning law enforcement can actually be discussed in two broad categories, namely: (1) law enforcement can be seen solely from regulations, namely as a continuation of the logical process that follows the presence of a regulation; and (2) law enforcement can be seen by involving humans in it [13].

The issue of criminal law enforcement in the context of the criminal justice system's capacity to tackle crime has a functional dimension. On the one hand, it functions as a means for society to restrain and control crime at a certain level. (Crime containment system). On the other hand, the criminal justice system also functions for secondary prevention, namely trying to reduce criminality among those who have committed crimes and those who intend to commit crimes through the process of detection, punishment, and execution of punishment.

Crime prevention efforts through the penal route focus more on the repressive nature (suppression, eradication, or destruction) after the crime occurs, while the non-penal route focuses more on the preventive nature (prevention, deterrence, or control) before the crime occurs.

The imposition of punishment against the perpetrators of this crime has various objectives, ranging from the purpose of providing retaliation and protecting the community to rehabilitative and socialization objectives. However, all of these goals can never be achieved optimally because each goal has various weaknesses that are very prominent and have received sharp criticism compared to the results that have been achieved with the purpose of punishment.

In the workings of the criminal justice system, perpetrators of crime are never included, so in turn, they cannot participate in determining the final purpose of the punishment they have received. Even victims of crime never benefit from the final outcome of the criminal justice system.The victim's suffering or loss is represented to the public prosecutor, so that in essence, the representation is seen as "stealing an opportunity" from the conflict between the parties, first the state and, on the other hand, the alleged perpetrator of the crime.

The efforts made by humans to tackle crime with the establishment of the Criminal Justice System are not without flaws, especially with imprisonment at the heart of the process. However, it does not mean that its existence is no longer needed; what needs to be done is to make improvements and/or need tolerance limits in its implementation, especially related to the imposition of imprisonment as an ultimum remedium, so that in serious cases, theoretically, the consideration of punishment is actually important, namely for the purpose of moral and deterrent effects.

The existence of punishment with all its limitations is still very necessary, although in its operationalization the principle of caution is needed, considering that even the slightest mistake will contain the risk of a violation of human rights. Therefore, the enforcement of criminal law with penal means, especially imprisonment, life imprisonment, and the death penalty, as their heart is repressive in nature, is not considered the only hope to be able to solve or overcome crime completely.

Therefore, related to its use and application, there are limits of tolerance, especially towards the imposition of imprisonment in the process of criminal law enforcement. This also implies that criminal law enforcement, as a process, is essentially the application of restorative justice.

Conclusion

Discontinuation of prosecution based on restorative justice can build a balance of legal objectives, namely legal certainty, namely criminal law as an ultimum remedium, justice to reach an agreement between the victim and the perpetrator, and legal expediency, namely providing benefits to the perpetrator and victim.

In Perja No. 15/2020 legitimizes prosecutors' efforts to terminate prosecutions based on restorative justice. Prosecutors who are dominus litis (case controllers) should be given the authority to settle criminal cases out of court based on restorative justice.

The suggestions given in this study are the need for reconstruction of the prosecutorial bureaucracy using a progressive legal approach, carried out with the spirit of liberation of: first, the type, way of thinking, principles, and theories that have been used by the prosecutorial bureaucracy so that the process of law enforcement through a restorative justice approach always pays attention to aspects of transparency and accountability, so that the settlement of cases outside the court with a restorative justice approach is one of the things that can stop prosecution.

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