International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 10, Issue 2
February, 2023
Pages: 24-34

Termination of Prosecution Based on Restorative Justice from the Perspective of the Dominus Litis Principle

Mohd. Din[1]; Asmadi Syam[2]; Ihdi Karim Makinara[3]

[1] Fakultas Hukum Universitas Syiah Kuala, Indonesia

[2] Kejaksaan Negeri Banda AcehK, Indonesia

[3] UIN Arraniry Banda Aceh, Indonesia

http://dx.doi.org/10.18415/ijmmu.v10i2.4364

Abstract

"Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice is considered one of the efforts for ideal law enforcement in achieving legal objectives, and has expanded the object of termination of prosecution as stipulated in "Article 140 (2) of the Criminal Procedure Code. In terms of the hierarchy of legislation, this regulation is still in question. The question that could be raised here is about the position of the authority to terminate the prosecution from the perspective of the prosecutor's position as the controller of the case which is called dominos litis. This study aims to determine "the position of the authority to terminate prosecutions based on Restorative Justice from the perspective of the principle of dominos litis. The research method used is normative juridical research. The results showed that Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice" is a form of law enforcement and justice policy within the scope of restorative justice which is part of the prosecutor's authority based on "Article 32 and Article 35 of Law Number 16 of 2004 concerning the Prosecutor's Office." In the framework of law enforcement, realizing justice, based on the law that lives in society as the mandate of the constitution. Therefore, this regulation is an answer to the demands of law enforcement developments that not only emphasize legal certainty, but must also be able to touch the sense of justice and legal expediency in society The position of the authority to terminate prosecutions based on restorative justice is the discretionary prosecution and the concretization of the principle of dominus litis. "

Keywords: *Restorative Justice; Authority; Termination of Prosecution*

Background

Indonesia's criminal justice system places the prosecutor's office as a prosecution agency that plays an important role in controlling every criminal case *(dominus litis).* As an agency that has authority in law enforcement and justice, then in criminal cases the attorney general's office has the authority to determine whether or not a case is transferred to the court for prosecution. Based on this authority, the prosecutor has been granted the breadth by law to terminate the prosecution of a case, but the termination

of the prosecution must be in accordance with the provisions of the applicable laws and regulations.

There are 2 (two) principles that apply in the prosecution of criminal cases, namely the principle of legality and the principle of opportunity. The two principles contradict each other, the principle of *legality* requires the prosecution of all cases to trial, without exception, while the *principle of opportunity* gives the prosecutor the opportunity not to prosecute in court. [1]

Based on "Article 140 paragraph (2) of the Criminal Procedure Code (KUHAP), the public prosecutor may decide to stop the prosecution because he does not have sufficient evidence, if the case is transferred to the court, it is strongly suspected that the defendant will be free and a case/event is not a criminal offense. Which if devolved to the court, the defendant will be released from all legal claims. "A case that is terminated as per the provisions of Article 140 Paragraph (2) of the Criminal Procedure Code is a termination of the case in the interest of law. "[2]

Based on "Articles 76, 77 and 78 of the Criminal Code (KUHP)" the Prosecutor also has the authority to close cases for the sake of law or *set a side* such as *Nebis in idem*, that is, no person should be prosecuted and punished twice for the same offense or criminal act, the suspect/defendant dies and expires or (expires). Because the burden and responsibility of the prosecutor as the public prosecutor is very decisive in law enforcement and justice, especially against the control of criminal cases, therefore the prosecutor as the public prosecutor is required to always be wise and prudent in determining whether a case cannot be transferred to the court. The public prosecutor is required to always put conscience first, as stated by the Attorney General of the Republic of Indonesia as the highest leader of the Prosecutor's Institution, he emphasized "That he does not want his subordinates to carry out perfunctory law enforcement by not seeing a sense of justice in society, because in fact the sense of justice is not in the Criminal Code, but is in the conscience."[3]

In this regard, the Attorney General's Office has issued Prosecutorial Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice. Under this rule, prosecutors may not proceed to court proceedings. Since his birth, this perja has been widely studied, including Andri Kristanto, who sees the perja from his own restorative side that prosecutors can stop this prosecution for the sake of the law. [4] Hari Wibowo said that the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice represents the demands for community justice. [5]Asmadi The termination of prosecutions based on restorative justice has broken through the *legal* system of the Criminal Procedure Code, but has had a positive impact on the implementation of the principle of simple, speedy, and low-cost justice. [6] There is also a highlight about the success of Restorative Justice that "Since the issuance of the prosecutor's regulation on the termination of prosecutions based on restorative justice until December 31, 2020, 222 cases have been stopped by prosecution for the sake of law based on the principle of restorative justice". [7]

From some of these writings, there is no analysis of Restorative Justice from the view of the prosecutor's authority as the controller of cases (*dominus litis*) so that in this study it will be seen the

[1] Arin Karniasari, 'A Theoretical, Historical, Juridical and Practical Review of the Attorney General's Authority to Set Aside Cases in the Public Interest' (University of Indonesia, 2012).

[2]Yeni Handayani, 'Attorney General and Waiver of Cases in the Public Interest', *Journal of Rechtvinding*, 2016, 1–7.

[3] https://nasional.kompas.com/read/2021/09/02/09285871/jaksa-agung-minta-jaksa-tidak-asal-asalan-lakukan-penuntutan)

[4] Andri Kristanto ." Review of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice". LEXRenaissance NO. 1 VOL. 7. JANUARY 2022:180-193

[5] Hari Wibowo "Restorative Justice Approach In Stopping Prosecutions Based On Restorative Justice". Journal of Progressive Law, Vol. 9, No. 2, October 2021

[6] Asmadi Syam and Mohd Din, 'Juridical Implication and Binding Authority of Dropping Charge Based on Restorative Justice', 8.1 (2022), 185–90.

[7] Agus Sahbani, 'Prosecutor's Office Stops 222 Cases Through Restorative Justice'.

authority to stop prosecution by prosecutors as controllers of criminal cases which are demands for law enforcement developments, so what will be studied is how The position of the prosecutor's authority to terminate prosecutions based on the "Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice which is viewed from the perspective of *the dominus litis* principle.

Research Methods

The method that will be used in analyzing this problem is the normative juridical method that examines the provisions of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice from legal principles. The data used are secondary data by means of literature research, the legal materials used consist of primary legal materials, secondary legal materials and tertiary legal materials. Furthermore, the data that has been obtained is analyzed by providing views, concepts, then providing conclusions that answer the problems raised. "

Discussion

The state and government must have *legitimacy*, that is, the authority that is the granting of laws. The principle of *legality* is the authority in the form of the ability to carry out certain legal actions or what is called "*Het vermogen tot verrichten van bepaalde rechtshandelingen"*. [8]

According to P. Nicolai, authority is the ability to carry out certain legal actions. The right contains the freedom to carry out or not carry out certain actions, on the contrary, the obligation contains the necessity to carry out or not carry out certain actions. [9] In the legal system, a state that adheres to *the principle of legality*, all actions of law enforcement officials must be based on established laws.

Huisman states "The organ of government cannot assume if it has its own governmental authority. Authority is only a grant of law. Lawmakers can give government authority not only to government organs, but can also be given to employees such as tax inspectors, environmental inspectors, etc. or to certain special legal entities, such as election boards, special courts for land cases, and private legal entities."[10]

With regard to the authority of prosecution, then in the criminal justice system, the law has given it to the public prosecutor. The law in question is "Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The Criminal Procedure Code has regulated from the stage of investigation to the execution of criminal cases, including one of them regarding the authority of the prosecutor as a public prosecutor, carrying out the determination of judges and court decisions.

The prosecutor's office is the only government agency that exercises state power in the field of prosecution. In Article 24 Paragraph (1) of the 1945 Constitution, it is explained "Other bodies whose functions are related to judicial power are regulated in law", so that the duties and authorities of the prosecutor's office are the functions of other bodies related to judicial power. As a prosecution agency, the Criminal Procedure Code puts the prosecutor's office in its position to prosecute every criminal case that occurs. Prosecution is an attempt by the public prosecutor to transfer a criminal case to a competent court based on its competence, as provided by the law with a request to be examined and decided by a judge at the trial court.

---

[8] Ridwan HR, *State Administrative Law* (Jakarta: Rajawali Pers, 2013).
[9] HR.
[10] HR.

The duties and authorities of the prosecution in the field of prosecution are mandated and spelled out in the Criminal Procedure Code. The existence of the Prosecutor's Office as a government agency that exercises state power in the field of prosecution and other authorities under the law, lawmakers have given authority to prosecutors to prosecute criminal cases in advance of the trial and as executors carry out court decisions. In addition, the prosecutor's office is also given the authority to uphold justice and formulate law enforcement policies, in this frame of authority that later gets the opportunity to formulate discretion to realize justice.

In carrying out the function of prosecution authority, on the one hand as the party who receives the case file from the investigation, on the other hand the file received will be delegated to the judge to be prosecuted and examined at trial. So that the position of the prosecutor is a [11] link between the investigation process and the trial, therefore the position of the prosecutor is very strategic and as a determinant of whether a case can be brought to trial. The role of the prosecutor as a public prosecutor is often referred to as *dominus litis*.

"The *principle of dominus litis* owned by the prosecutor's office explains that no other institution/body has the right to prosecute other than the prosecutor's office which is absolute and monopoly to prosecute and settle criminal cases, even judges do not have the right to request that criminal cases that occur be filed against him, the nature of the judge is only passive and awaits prosecution from the public prosecutor". [12] In US Legal "*Dominus litis and legal definition"* explains that *dominus litis* is a party who owns a case or a party who has the right to determine in a case or a party who has a real interest in the case. [13] Apart from being a dominus *litis,* the prosecutor is also the only party authorized to carry out the court's decision *(executive ambtenaar).*[14]

Termination of prosecution is one of the powers granted by law to the prosecutor's office as the controller of cases under Article 140 paragraph (2) of the Criminal Procedure Code, the termination of prosecution is carried out if "A case that does not have sufficient evidence, if the case is transferred to the court, it is strongly suspected that the defendant will be free, and a case / event is not a criminal act, which if transferred to the court, the defendant will be released from all legal claims".

The authority to terminate prosecutions granted by law to prosecutors as public prosecutors is *limitative*. The authority to terminate prosecution in accordance with Article 140 Paragraph (2) of the Criminal Procedure Code will usually be rarely carried out and up to that stage, due to the nature of the Criminal Procedure Code which adheres to the principle of *functional differential*, the Criminal Procedure Code only recognizes *pre-prosecution*, namely the prosecutor examines the investigation case file if there is a lack of providing instructions to the investigator for the improvement of the investigation, in terms of providing clues to the shortcomings of the investigation results.

Adapun terms *limit f* termination of prosecution and termination of investigation for the sake of law the condition is the same because it does not have sufficient evidence and an event is not a criminal offense. When the prosecutor examines the case file, it turns out that a case does not meet the elements that are suspected or is not a criminal act, the prosecutor will return the case file to the investigator, and automatically the investigation will be automatically stopped by issuing a warrant to stop the investigation under Article 109 paragraph (2) of the Criminal Procedure Code and will rarely reach the stage of prosecution let alone termination of prosecution.

---

[11] M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code (Second Edition) Series: Investigation and Prosecution (* Jakarta: Sinar Grafika, 2000).
[12] Hari Sasongko, *Prosecution and Techniques for Making Indictments* (Surabaya: Dharma Surya Berlian, 1996).
[13] US Legal, 'Dominus Litis Law and Legal Definition'.
[14] Marwan Efendi, *Attorney General of the Republic of Indonesia, Its Position, and Functions* (Jakarta: PT Gramedia Pustaka Utama, 2005).

"The term authority to close cases is actually not only limited as regulated by Article 140 Paragraph (2) of the Criminal Procedure Code, the law also gives authority to the prosecutor's office as well as to eliminate cases in the public interest. this authority is the authority of the attorney general based on Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The authority of the attorney general to waive cases in the public interest is final and binding, because that authority is freedom of discretion (*beleidsvrijheid*) in dealing with situations and conditions at a given time. The authority as described is not subject to legal remedies for reasons of legal certainty. [15] The reason for closing the case based on the principle of *opportunity* and Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia is because of policy reasons, not due to technical reasons as stipulated in the Criminal Procedure Code.[16]

Basically, the *principle of opportunity* has given the public prosecutor the choice to prosecute or exclude a case, but since the issuance of Law Number 15 of 1961 concerning the Prosecutor's Office of the Republic of Indonesia, this authority has become the authority of the Attorney General only. This is done with the aim of minimizing abuse of authority and is only devoted to certain existing cases" in relation to the public interest, with certain restrictions. [17] But it must be affirmed that "the termination of the prosecution by the filing of the case is a different matter. If the termination of the prosecution is based on technical/legal reasons and for the sake of the establishment of the law, while on the waiver of the case, it is in the public interest that the law is sacrificed. [18] Since the transition of the application based on the principle of *opportunity* was taken over by the attorney general, the public prosecutor in Indonesia only has the authority to stop prosecution because it is technical /insufficient evidence, and not a criminal offense. [19] However, with the development of the times and the demands of fair law enforcement, the progressive law enforcement style has become one of the enforcement procedures to achieve the subtantive justice that is envisioned.

According to Satjipto Raharjo "Thinking progressively means daring to step out of the understanding of legal absolutism, after which the law is seated in a relative position. In this situation, the law must be placed in the totality of human problems. Leading to a Progressive way of punishing is something of a willingness and willingness to break away from the notion of *legal- positivism*. The inspiration for self-liberation is closely related to the psychological aspect found in law enforcement, namely courage. This aspect of courage expands the way of punishment, namely not only prioritizing the regulatory aspect (*rule*), but also the attitude aspect (*behavior*)". [20] For Satjipto Rahardjo, the power of *progressive* law neither dismisses nor rejects the presence of positive law in the legal field, but is always uneasy asking "What can I do with this law to give justice to the people". Briefly, it can be said that in the progressive legal paradigm, the law is not only a prisoner of the system and laws, but justice and happiness of the people are above the law.[21]

The concept of a criminal justice system is basically the same as the concept of a law enforcement system, because the judicial process is part of the law enforcement process, because "Judicial power" is synonymous with "Law enforcement authority". [22] Law enforcement is "to rationally

[15] Arin Karniasari.

[16] Ferdi Saputra et al, 'The Authority of the Prosecutor in Stopping the Prosecution of Criminal Cases If Linked to the Principle of Opportunity and Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic', *USU Law Journal*, Vol.II-No. (2014).

[17] Ani Triwati, 'Attorney General and Waiver of Cases in the Public Interest', *Journal of Ius Constituendum*, 6.April (2021), 32–54.

[18] Romel Legoh, 'Termination of Prosecution in the Interest of Law', *Lex et Societatis , Vol. II/No. 8/Sep-Nov/2014, II.8* (2014), 55–64.

[19] Darmono, *Seponering Criminal Case Submission in Law Enforcement* (Jakarta: Solusi Publising, 2013).

[20] Faisal, *Menorobos Legal Positivism* (Yogyakarta: Rangkang Education, 2010).

[21] Satjipto Rahardjo, *Dissecting The Law of Progression* (Jakarta: Buku Kompas, 2008).

[22] Barda Nawawi Arief, *Judicial System Reform (Law Enforcement System) in Indonesia* (Semarang: Diponegoro University Publishing Agency, 2012).

tackle crime, the fulfillment of justice and expediency. To overcome crime, criminals can be given various means in the form of criminal and non-criminal legal means, both of which can also be integrated with each other. If criminal means are used to overcome crime, it means that criminal law politics will be applied, namely at a certain time and circumstance and for the future an option is held as an effort to achieve the results of criminal legislation in accordance with that period. [23] The prosecution of criminal cases with a *repressive* approach is not able to completely solve criminal cases, especially among perpetrators, victims and their environment. This happens because every decision taken in the settlement of criminal cases does not involve the perpetrator and the victim. In fact, those involved in criminal cases must be given the same contribution to justice. [24]"

Restorative justice is a concept of thought that responds to the development of the criminal justice system with an emphasis on the needs of the community and victims who feel excluded by the mechanisms of the criminal justice system that exist today. In fact, based on Article 28 H Paragraph (2) of the 1945 Constitution, it is explained that justice is the right of everyone to get equal access and benefits, so that the application of the concept of restorative justice is closely related to the fulfillment of the rights of constitutionalism of citizens. [25]The principle of restorative justice, is for the perpetrator of a criminal offense to be held accountable for what he has done, not for the punishment imposed. And most importantly the victim gets justice. So that the situation can recover.[26]

Prior to the issuance of the "Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice" the concept of restorative justice was first known in "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System" And the public prosecutor has the authority to stop prosecution for child cases in conflict with the law that have reached the outcome of a *diversion* agreement based on *the Afdoening Buiten Process*.

Hans Kelsen in the hierarchical theory of Legislation, says "That the legal system is like a tiered step, as well as the rule of law. The relationship of one norm to another is a super-relationship and subordination in a spatial context". [27] *Superior* is called the norm that determines the making while the *inferior* is the norm made based on higher norms that are used as the basis for the validity of the entire legal system that forms the unity.

According to P.J.P quoted by Bagir Manan about *wet in materiele zin* explained the meaning of legislation in a material sense as "Legislation is a written rule of law, because it is in the form of a written decision. *(geschreven recht,written law*) and Legislation are made by officials or offices (bodies, organs) who have the authority to make them and apply or be binding generally (*algemeen)"*.[28]

Based on "Article 8 Paragraph 2 of Law Number 12 of 2011 concerning the establishment of laws and regulations" "Laws and regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by higher laws and regulations or formed based on authority".

The termination of prosecution regulated by "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System" is clearly the authority granted and regulated by law, as well as the authority to

[23] Barda Nawawi Arief, *Criminal Law Policy* (Bandung: PT. Citra Aditya, 2002).

[24]Mansyur Kertayasa, *Restorative Justice and his prospects in legislation policy*, papers presented at the National Seminar, The Role of Judges in Improving Professionalism. Towards a Strong Research, IKAHI was held in the framework of the 59th anniversary of IKAHI, April 25, 2012, 2012.

[25] Johnlar Purba, *Law Enforcement Against Lightly Motivated Crimes with Restorative Justice* (Jakarta: Jala Permata Aksara, 2017).

[26] Yusi Amdani, 'The Concept of Restorative Justice in the System', *Al-Is*, XIII.1 (2016), 61–76.

[27] Jimly Ashiddiqi and M. Ali Safaat, *Theory Hans KelsenAbout Cet Law I* (Jakarta: Secretariat General & Registrar of the Constitutional Court of the Republic of Indonesia, 2006).

[28] Mahendra Kurniawan, *Participatory PERDA Academic Naska Guidelines* (Yogyakarta: Kreasi Total Media, 2007).

stop prosecution in accordance with Article 140 paragraph (2) of the Criminal Procedure Code. However, the existence of the "Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice" regulates its contents is a deviation that was not previously regulated in the Criminal Procedure Code.

Based on "Article 3 paragraph (2) of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice is explained:

1. The closing of the case in the interest of law is carried out in the event that:

    1. the defendant died;
    2. expiration of criminal prosecutions;
    3. there has been a court ruling that has acquired permanent legal force against a person on the same case (nebis in idem);
    4. complaints for criminal complaints are dismissed or withdrawn; or
    5. there has been an out-of-court settlement of the case *(Afdoening buiten process).*

Article 5 highlights that:

1. Criminal cases may be closed for the sake of law and terminated on the basis of Restorative Justice in the event that the following conditions are met:"

    1. The suspect "committed a felony for the first time;
    2. Criminal acts are only threatened with a fine or threatened with imprisonment of not more than 5 (five) years; and
    3. Criminal acts are carried out with the value of evidence or the value of losses incurred as a result of criminal acts not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).
    4. For criminal acts related to property, in the event that there are criteria or circumstances of a cassowary nature that according to the consideration of the Public Prosecutor with the approval of the Head of the District Attorney's Branch or the Chief District Attorney may be stopped prosecution based on Restorative Justice carried out while taking into account the conditions referred to in paragraph (1) letter a accompanied by one of the letters b or letter c
    5. For criminal offences committed against persons, bodies, lives, and liberty of persons the provisions referred to in paragraph (1) point c may be excluded.
    6. In the event that a criminal offence is committed by negligence, the provisions in paragraph (1) of letter b and letter c may be excluded. "

The concept of termination of prosecution regulated in the "Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice" is basically the same as the concept offered by "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System" which is a form of expansion because there has been a settlement of cases outside the criminal justice *(afdoening buiten process)* . It is also a form of state recognition of the laws that live and apply in society, and as a form of answer to the prosecutor's office as one of the law enforcement agencies that are in line with the demands of law enforcement that are fair and useful. "

In "countries where claimants generally have *discretionary* functions, the issuance of laws and regulations should be able to provide guidelines for the improvement of fairness and consistency of approaches in the decision-making of the prosecution process, including institutions and the elimination of prosecutions. [29] Under the provisions of state national law, prosecutors are required to give careful

[29] The Eighth United Nations, *Guidelines On The Role Of Prosecutor Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 Bab Fungsi Diskresi*, 1990.

consideration in determining the abolition of prosecutions, stopping hearings on a case because it is conditional or unconditional, and even transferring criminal cases from the criminal justice system to non-formal justice with consideration of the rights of suspects and victims. "The state should fully explore the possibility of adopting a criminal case settlement scheme outside of formal justice to ease the excessive burden on the courts, as well as to avoid stigmatizing detention, pretrial charges and sentences as well as the possible adverse effects of imprisonment in order to achieve the objectives. [30]"

The background of the efforts of "penal mediation in the criminal justice system, based on thoughts that link the ideas of *pragmatism* and the renewal of criminal law *(penal reform)*. Penal *reform* thinking, among others, consists of the concepts of victim protection, harmonization, restorative justice, as well as overcoming the rigidity of formalities in the criminal justice system that is currently in force. The search for alternatives *to imprisonment/alternative to custody* with the aim of avoiding the negative effects of the criminal justice system and the current penal system. Furthermore, the reason for *pragmatism* is to reduce the stagnation or accumulation of cases *(the problems of court case overload)* as well as the simplification of the judicial process. [31]"

In the implementation of the termination of prosecution based on restorative justice, it prioritizes a family settlement, with the fulfillment of its customary obligations. So that the issuance of "Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice" is considered as a form of policy and recognition of the mechanism for resolving cases based on customary law in Indonesia, as stipulated in Article 18B Paragraph (2) of the 1945 Constitution "The State recognizes and respects the unity of customary law and its traditional rights as long as it is alive and in accordance with the development of society and the principle of the unitary state of the Republic of Indonesia"

Based on "Article 35 letter a of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia," the duties and authorities of the prosecutor general in this case the attorney general is "To establish and control law enforcement and justice policies within the scope of his duties and authorities". The prosecutor's office in this case the attorney general can formulate law enforcement and justice policies within the scope of restorative justice as part of his authority.

Law enforcement policy based on restorative justice is another authority of the Prosecutor's Office institution based on the law in accordance with the provisions of Article 32 "Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia," namely "....The prosecutor's office can be assigned other duties and authorities based on the law", what is meant by other duties and authorities under the law is to carry out the authority to stop prosecution of children's cases which is in conflict with the law for which *a diversion* agreement has been reached as stipulated in the juvenile criminal justice system law under the *afdoening buiten process*.

The principle of "*dominus litis* attached to a public prosecutor requires that a public prosecutor always be wise and meticulous and thoughtful in determining whether or not a criminal case can go to court. This principle automatically places the prosecutor as the public prosecutor as the controller of the case, that is, whether or not a case resulting from the investigation from the investigator is delegated to the court is absolutely the authority of the public prosecutor. Similarly, the public prosecutor can also stop the prosecution on the grounds that there is not sufficient evidence, or because it is not a criminal event, and can also close the case for the sake of the law. [32] In another sense, the prosecutor's office, in carrying out its duties, must be independent from the intervention of government power and the power of other parties in its efforts to realize the certainty of law, public order, justice and truth by heeding religious

[30] The Eighth United Nations.
[31] Sahuri Lasmadi, 'Penal Mediation in the Indonesian Criminal Justice System', *Innovative: Journal of Legal Sciences (JIMIH)*, 2011.
[32] Reda Manthovani, 'Application of the Dominis Litis Principle in the KPK Law', *Online Law*, 2019.

norms, decency, and decency, and is obliged to explore the values of humanity, law and justice that live in society.[33]

Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice is a concretization of the prosecutor's authority in "order to uphold justice and formulate law enforcement and justice policies. Because of the demands of the times that require law enforcement that prioritizes the principle of justice in society. The concept offered in the prosecutor's regulations is nothing but the concept of closing cases for the sake of the law. "

Article 139 of the Criminal Procedure Code states "After the public prosecutor receives or receives back the results of a complete investigation from the investigator, he immediately, determines whether the case file meets the requirements to be able or not to be transferred to the court". The provisions of the article actually hold the implied meaning of the authority of the prosecutor as the controller of the case, determining whether it can be filed in court. In carrying out his duties, the prosecutor determines whether a case meets the requirements to be faced with trial, meaning that the prosecutor has *discretionary* authority to determine the policy of handling a case with various considerations for philosophical, juridical and sociological reasons. Policy considerations based on restorative justice are also attached to this authority, thus it is clear that "Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecutions Based on Restorative Justice" as a form of affirmation of the authority of prosecutors that has been inherent and regulated in the Criminal Procedure Code and Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia in order to realize justice in society, and realizing law enforcement that brings the greatest benefit to a society.

Affirmation authority of the Prosecutor's Office of the Republic of Indonesia to conduct *penal mediation*, confiscate executions for the payment of fines and substitute criminals and *restitution* has been standardized in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. " Furthermore, what is interesting about the provisions of the new law is that there is discretion for the prosecution to act at its discretion, as the provisions of Article 34 A "For the discretion of law enforcement, the prosecutor and/or the public prosecutor in carrying out his duties and authorities may act in his judgment with due regard to the provisions of the laws and regulations and the code of ethics". Hence, the authority of the prosecutor to apply *discretion* to cases that are eligible to be dismissed has a juridical position because it has been regulated by that authority in the prosecutorial law.

Based on the description above, "the prosecutor's regulation on the termination of prosecution based on restorative justice is a form of fulfillment of the constitutionalism rights of citizens and a form of state recognition of the law that lives in society (customary law) as mandated by the constitution and is an elaboration of Article 139 of the Criminal Procedure Code, Article 32 and Article 35 letter a of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office The Republic of Indonesia, which confirms that the prosecutor's office is the controller of handling criminal cases. " Therefore, this regulation is also an answer to the demands of law enforcement developments that not only emphasize legal certainty, but must also be able to touch the sense of justice and legal expediency in society.

Conclusion

Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is a form of law enforcement and justice policy as part of the

[33] Master.

prosecutor's authority in accordance with Articles 32 and 35 of Law Number 16 of 2004 concerning the Prosecutor's Office in order to realize justice, based on living and applicable laws in society, and the existence of the authority to stop prosecutions based on restorative justice is a concretization from the principle of *dominus litis* kejaksaaan under Article 139 of the Criminal Procedure Code as a government agency that exercises state power in the field of prosecution and is the *discretion* of prosecution that belongs to the prosecutor. " However, to further strengthen the concretization of this principle requires a place of regulation in the Act, not at the level of the Attorney General's Regulations.

References

Amdani, Yusi, ‘Konsep Restorative Justice Dalam Sistem’, *Al-Adalah*, XIII.1 (2016), 61–76.

Arief, Barda Nawawi, *Kebijakan Hukum Pidana* (Bandung: PT. Citra Aditya, 2002).

———, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) Di Indonesia* (Semarang: Badan Penerbit Universitas Diponegoro, 2012).

Arin Karniasari, ‘Tinjauan Teoritis, Historis, Yuridis Dan Praktis Terhadap Wewenang Jaksa Agung Dalam Mengesampingkan Perkara Demi Kepentingan Umum’ (Universitas Indonesia, 2012).

Darmono, *Penyampingan Perkara Pidana Seponering Dalam Penegakan Hukum* (Jakarta: Solusi Publising, 2013).

Efendi, Marwan, *Kejaksaan RI, Posisi, Dan Fungsinya* (Jakarta: PT Gramedia Pustaka Utama, 2005).

Faisal, *Menorobos Positivisme Hukum* (Yogyakarta: Rangkang Education, 2010).

Ferdi Saputra Et al, ‘Kewenangan Jaksa Dalam Penghentian Penuntutan Perkara Pidana Jika Dikaitkan Dengan Asas Oportunitas Dan Undang-Undang No. 16 Tahun 2004 Tentang Kejaksaan Republik’, *USU Law Journal*, Vol.II-No. (2014).

Handayani, Yeni, ‘Jaksa Agung Dan Pengesampingan Perkara Demi Kepentingan Umum’, *Jurnal Rechtvinding*, (2016), 1–7.

Harahap, M. Yahya, *Pembahasan Permasalahan Dan Penerapan KUHAP (Edisi Kedua) Seri : Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2000).

HR, Ridwan, *Hukum Administrasi Negara* (Jakarta: Rajawali Pers, 2013).

Kertayasa, Mansyur, *Restorative Justice Dan Prospeknya Dalam Kebijakan Legislasi*, Makalah Disampaikan Pada Seminar Nasional, Peran Hakim Dalam Meningkatkan Profesionalisme. Menuju Penelitian Yang Agung, Diselenggarakan IKAHI Dalam Rangka Ulang Tahun IKAHI Ke-59, 25 April 2012, 2012.

Kurniawan, Mahendra, *Pedoman Naska Akademik PERDA Partisipatif* (Yogyakarta: Kreasi Total Media, 2007).

Lasmadi, Sahuri, ‘Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia’, *Inovatif: Jurnal Ilmu Hukum (JIMIH)*, 2011.

Legoh, Romel, ‘Penghentian Penuntutan Demi Kepentingan Hukum’, *Lex et Societatis , Vol. II/No. 8/Sep-Nov/2014*, II.8 (2014), 55–64.

Manthovani, Reda, ‘Penerapan Asas Dominis Litis Dalam UU KPK’, *Hukum Online*, (2019).

Purba, Johnlar, *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan Dengan Restorative Justice* (Jakarta: Jala Permata Aksara, 2017).

Rahardjo, Satjipto, *Membedah HukumProgresif* (Jakarta: Buku Kompas, 2008).

Safaat, Jimly Ashiddiqi dan M. Ali, *Theory Hans KelsenTentang Hukum Cet I* (Jakarta: Sekretariat Jendreral & Kepaniteraan Makamah Konstitusi RI, 2006).

Sahbani, Agus, 'Kejaksaan Hentikan 222 Perkara Lewat Keadilan Restoratif'.

Sasongko, Hari, *Penuntutan Dan Tehnik Membuat Surat Dakwaan* (Surabaya: Dharma Surya Berlian, 1996).

Syam, Asmadi, and Mohd Din, 'Juridical Implication and Binding Authority of Dropping Charge Based on Restorative Justice', 8.1 (2022), 185–90.

The Eighth United Nations, *Guidelines On The Role Of Prosecutor Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 Bab Fungsi Diskresi*, (1990).

Triwati, Ani, 'Jaksa Agung Dan Pengesampingan Perkara Demi Kepentingan Umum', *Jurnal Ius Constituendum*, 6.April (2021), 32–54.

US Legal, 'Dominus Litis Law and Legal Definition'.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (http://creativecommons.org/licenses/by/4.0/).