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## Stopping Investigation and Prosecution to Realize Restorative Justice

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### ABSTRACT

This study aims to analyze the effectiveness of penal mediation efforts in achieving restorative justice and to analyze penal mediation efforts in stopping the investigation and prosecution of criminal cases. The type of research used is normative legal research, relying on and using library data, namely secondary data in the field of law. The technique of obtaining legal materials is by means of library research by collecting legal materials by reading, quoting, recording and understanding various legal literature and laws. The results of the study show that 1) the function and role of the state through penal mediation will reduce the burden on the state in punishing and imprisoning criminals because amicable and compromise solutions can be reached for the creation of restorative justice. 2) Termination of Prosecution because there has been a settlement of cases outside the court as stipulated in PERJA No. 15 of 2020 Article 3 paragraph (2) is the scope of settlement of criminal cases by mediation as an effort to realize restorative justice which is pursued with material and formal requirements.

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## 1. INTRODUCTION

Restorative justice has received much attention and study from legal experts in Indonesia as part of criminal law reform. KUHP (The Criminal Procedure Code) regulates a number of principles and provisions relating to Human Rights (HAM), including the rights of suspects and/or defendants. Those rights are human rights which according to Andi Hamzah, the rights granted by the Criminal Procedure Code to suspects/defendants are not lawbreakers, but as human beings who have rights and obligations (Hamzah, 2010).

The purpose of criminal procedural law is to seek the truth, it is only an intermediate goal. The ultimate goal of criminal law is actually to achieve order, tranquility, peace, justice and prosperity in society (Hamzah, 2006). Justice in the trajectory of history has become a topic of hot and actual debate among experts and philosophers since the ancient Greek era.

As a consequence, various kinds of justice concepts are known, such as restorative justice, which have been getting more attention in Indonesia lately. Restorative justice is a concept of though responds to development criminal justice system by focusing on public order and victims who feel marginalized by the working mechanism of the system (Hatta, 2016). The implementation of restorative justice through a penal mediation approach is a form of diversion from the settlement of criminal cases through litigation to the settlement of criminal cases through non-litigation.

The position of investigators and public prosecutors based on the Criminal Procedure Code is for the sake of and to uphold the interests of public law. While settlements outside the court through penal mediation resulted in a shift from the scope of public law to the sphere of private law while reducing the role of the state because investigators and public prosecutors are personifications of the state.

Restorative justice is not focused on retaliating for the perpetrators of criminal acts, but instead seeks a fair solution by emphasizing restoration to its original state. Then, the conditions that must be met to apply restorative justice when carrying out the functions of criminal investigation, investigation or investigation, namely there is an agreement between the parties to make peace, not repetition of criminal acts, the rights of victims have been fulfilled, and the application of this restorative justice received no rejection from society.

## 2. METHODS

The research method used in this study is a normative method by relying on and using library data, namely secondary data in the field of law. The character of this research is descriptive-analytical, because with the aim of this research it is hoped that a complete, systematic and factual picture will be obtained related to existing legal data.

Secondary data serves as a complement or support for primary data. Secondary data is data that includes, among other things, official documents, books, even research results that are reports in nature, in this case legal documents.

### 3. RESULTS AND DISCUSSION

#### 3.1. Penal Mediation To Achieve Restorative Justice

Justice is the starting point for discussions about restorative justice, which in its historical trajectory has been the subject of endless debate by philosophers and experts, until now. The ancient greek philosopher Aristotle distinguished justice from "distributive justice" and "collective or remedial justice" (Friedman, 1990). According to Thomas Aquinas, justice is divided into four types, namely: *Lex Aeterna*, *Lex Naturalis*, *Lex Divina*, and *Lex Humane* (Raharjo, 2006).

In its development, it is known as social justice, contributive justice, retributive justice and so on, which at this time restorative justice has become the subject of extensive study among academics, legal practitioners and even law enforcement officials.

One expert who pays a lot of attention to restorative justice, is Howard Zehr, in his book entitled "The Little Book of Restorative Justice", and "Changing Lenses a New Focus for Crime and Justice", explaining the perspective of restorative justice as crime is a violation of people and relationship. He creates an obligation to make something right. Justice in it involves victims, perpetrators, and society in an effort to find solutions that lead to improvement, reconciliation and reassurance (Ali, 2021).

Restorative justice is a form of justice that is centered on the needs of victims, perpetrators of crimes and society (Tridiatno, 2016). The main concern for victims of crime is an important area of victimology, so restorative justice is basically postmodern thinking in responding to victims of crime which is the scientific area of victimology, must rely on local truth or local wisdom (Mustofa, 2018).

For the first time, laws and regulations in Indonesia regulate and formulate what is meant by restorative justice, namely Undang-undang No.1/ 2021 (Law No. 1 of 2021) concerning the Juvenile Criminal Justice System, which in article 1 Number 6 defines that "Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair solution with the pressure of restoration to its original state and not retaliation."

The phrase "not retaliation" is because the purpose of punishment in criminal law, among others, is based on the Absolute/Absolute theory (Vergeldings theory/revenge) against perpetrators of crimes for their evil deeds. In this sense, restorative justice contains diversion or diversion, namely the settlement of criminal cases is diverted outside the criminal court through a penal mediation mechanism. According to Adam Prima Mahendra, one of the ideas that can be said to be the "soul" of penal mediation is restorative justice (Mahendra, 2020). Penal mediation is also a concept of dispute resolution that is known and developed in civil law and has been regulated by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as an alternative form of dispute resolution and in the process has reduced the role and function of the state, including enforcement officers' law. Reducing state functions through informal and semi-informal means.

At the Tenth United Nations Congress of the Prevention of Crime and the Treatment of offenders, in Vienna on 10-17 August 2000 Letter E on The Alternative of Restorative Justice" point 30 stated "Restorative Justice and other forms of informal or

semi-informal dispute resolution reflect the current trends of individualism and reduction of state functions." The reduced function and role of the state through penal mediation to realize restorative justice will also reduce the burden on the state in punishing and imprisoning perpetrators of crimes because a settlement can be reached by deliberation and compromise.

### **3.2. Termination of Investigation and Prosecution Based on Restorative Justice**

Investigation is an investigator's action specified in the Criminal Procedure Code, which if an event is reasonably suspected to be a crime it turns out:

- a. There is not enough evidence; or
- b. The incident is not a criminal act; or
- c. The investigation was terminated by law.

So, the investigator based on his authority as referred to in Article 109 paragraph (2) of the Criminal Procedure Code stops the investigation. Then inform the public prosecutor about this along with the reasons and all the results of the examination that has been carried out. In addition to the public prosecutor, the investigator also notifies the suspect or his family (Afiah, 1986).

Termination of the investigation is basically contrary to the objectives of the investigation, because the urgency of the investigation is to seek and find an event as a crime and find the suspect. The investigation is formulated in article 1 point 2 of the Criminal Procedure Code and article 1 point 13 of Law No. 2 of 2002 concerning the Indonesian National Police.

The provisions under the Law refer back to the notion of investigation both in the Criminal Procedure Code and Law No. 2 of 2002, including in the case of the investigator himself which in PERMA No. 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Courts, is mentioned in Article 1 Number 1 that "Investigators are Investigators according to statutory regulations."

Different from PERMA No.4 of 2020 is the Republic of Indonesia National Police Regulation No.8 of 2021 concerning Handling of Crimes Based on Restorative Justice, which provides an understanding The investigation in Article 1 Number 4. The Indonesian National Police Regulation is a provision for handling criminal acts based on restorative justice, which is pursued with material and formal requirements. Article 5 regulates material requirements, which include:

- a. Does not cause anxiety and/or rejection from the community;
- b. Does not impact social conflict;
- c. Does not have the potential to divide the nation;
- d. Not radicalism and separatism;
- e. Not a repeat offender based on a court decision; And
- f. Not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.

Meanwhile, the formal requirements are regulated in Article 6 paragraph (1) of the Indonesian National Police Regulation, which includes:

- a. Peace from both parties, except for drug crimes; And

- b. Fulfilling the rights of victims and responsibilities of perpetrators, except for drug crimes.

The handling of criminal cases according to the Indonesian National Police Regulations is realized in the form of peace as evidenced by a peace agreement signed by the parties.

PERJA No.15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, regulates in Chapter II concerning Closure of Cases in the Interest of Law, in article 3 paragraph (2) that Closure of cases for the sake of law is carried out in the event that:

- a. The accused died;
- b. Expiration of criminal prosecution;
- c. There has been a court decision that has permanent legal force against a person for the same case (nebis in idem);
- d. Complaints for criminal acts of complaint are withdrawn or withdrawn; or
- e. There has been a settlement of cases outside the court (afdoening buiten process).

In accordance with his duties and authority to prosecute, the Public Prosecutor stops the prosecution, is a step in which his case is examined and decided by a judge at a trial court as defined by Prosecution in Law No. 16 of 2004 jo. Law No. 11 of 2011 concerning the Attorney General of the Republic of Indonesia.

Termination of Prosecution because there has been a settlement of cases outside the court as stipulated in PERJA No. 15 of 2020 Article 3 paragraph (2), is the scope of settlement of criminal cases through penal mediation. The importance of investigation in penal mediation, because the investigation stage is the gateway for criminal cases to enter the realm of the criminal justice system (Suyono & Firdiyanto, 2020).

Termination of investigations regulated in PERJA and Police Regulations, Republic of Indonesia, are provisions of a low type and hierarchy under the Law related to Investigation and Prosecution Discretion which according to Marwan Effendy is Discretion in the form of a policy taken by an official, Institution or institution in outside the inherent policy, so that sometimes it is not regulated in laws and regulations (Effendy, 2012).

#### **4. CONCLUSION**

Investigation as an investigative action to "find and collect evidence" and "find the suspect", and Prosecution by the Public Prosecutor to "transfer cases to court" are a series or initial process that has the potential to become a suspect and convict. The criminal procedural law with the duties, functions and powers of investigation and prosecution requires that the process or stages be carried out. However, the new dynamics in law to realize restorative justice through penal mediation, allows investigative and prosecution actions to be stopped by law.

Penal mediation with the settlement of cases outside the court is basically a form of strengthening civil society, while investigative and prosecution actions are actions carried out by law enforcers on behalf of the state. Investigators and public prosecutors are the personification of the state with its single and large power and authority.

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**REFERENCES**

- Afiah, R. N. (1986). *Praperadilan dan ruang lingkungannya*. Akademika Pressindo.
- Ali, M. (2021). *Viktimologi*. RajaGrafindo Persada.
- Effendy, M. (2012). *Diskresi, penemuan hukum, korporasi & tax amnesty dalam penegakan hukum*. Jakarta: Referensi.
- Friedman, W. (1990). *Teori dan Filsafat Hukum. Susunan I. Telaah Kritis Atas Teori Hukum*. Jakarta: PT RajaGrafindo Persada.
- Hamzah, A. (2006). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar grafika.
- Hamzah, A. (2010). *Perlindungan hak-hak asasi manusia dalam hukum acara pidana: perbandingan dengan beberapa negara*. Penerbit Universitas Trisakti.
- Hatta, M. (2016). *Kapita selekta pembaharuan hukum pidana dan sistem pemidanaan*. Liberty.
- Mahendra, A. P. (2020). *Mediasi Penal Pada Tahap Penyidikan Berlandaskan Keadilan Restoratif*. UNIVERSITAS AIRLANGGA.
- Mustofa, M. (2018). Viktimologi Posmodern. *Jurnal Kriminologi Indonesia*, 13(2).
- Raharjo, S. (2006). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Suyono, Y. U., & Firdiyanto, D. (2020). *MEDIASI PENAL. Alternatif Penyelesaian Perkara dalam Hukum Pidana*. LaksBang Justitia.
- Tridiatno, Y. A. (2016). *Keadilan restoratif*. Yogyakarta: Cahaya Atma Pustaka.