Juridical Analysis of the Application of Restorative Justice at the Prosecution Stage of Petty Theft Crime

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Abstract

Indonesia continues to strive to ensure that the law implemented for its citizens is rooted in the values that live and develop within society. If applied, this legal entity will make the community feel comfortable and familiar with its legal model. Restorative justice is a resolution for criminal cases that involves the offender, the victim, the families of both parties, and other related parties to collectively seek a fair solution, emphasizing restoration to the original state rather than retribution. Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 regarding the Attorney General of the Republic of Indonesia states that one of the authorities of the Attorney General is to dismiss cases in the interest of the public. The Attorney General has found many inconsistencies in the existing criminal justice system; therefore, in this context, "public interest" refers to the interests of the nation and state and/or the interests of the broader community. This research was conducted using a normative juridical research method, with data collection carried out through literature studies. The research specification used is descriptive qualitative. This study aims to examine how restorative justice applies to minor criminal offenders, such as theft, at the prosecutorial level, and how restorative justice is implemented for minor criminal offenders in theft cases at the Pangkalpinang District Attorney's Office, particularly in the case of the termination of prosecution through the Decree of Termination of Prosecution by the Pangkalpinang District Attorney No. 01/L.9.10.3/Eoh.2/01/2022 dated January 13, 2022.

I. INTRODUCTION

In Article 1, paragraph 1 of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, it is stipulated that the Prosecutor is a functional official authorized by this law to act as a public prosecutor and executor of court decisions that have acquired legal force, as well as other authorities based on the law. The Attorney General's Office of the Republic of Indonesia, as a state institution implementing state power in the field of prosecution, must be free from the influence of any power, meaning it is carried out independently, detached from governmental and other power influences. As one of the law enforcement agencies, the Attorney General's Office is required to play a more active role in upholding the rule of law, protecting the public interest, enforcing human rights, and combating Corruption, Collusion, and Nepotism (KKN) (Annisa, 2021).

In Article 1, paragraph 6 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), it is stated that: a. The Prosecutor is an official authorized by this law to act as a public prosecutor and to execute court decisions that have acquired permanent legal force. b. The public prosecutor is a Prosecutor who is given the authority by this law to conduct prosecutions and implement the judge's rulings.

The provisions above imply that the public prosecutor must be a Prosecutor. The tasks of the Public Prosecutor include conducting prosecutions and implementing judicial rulings. As also mentioned in Article 13 of KUHAP, the public prosecutor is a Prosecutor authorized by this law to conduct prosecutions and implement judge's rulings. Broadly speaking, after the enactment of KUHAP, the tasks of the Prosecutor are:

1. As a public prosecutor;
2. Executor of court decisions that have legal force (executor).

In their capacity as a public prosecutor, the Prosecutor has the following duties:

1. To conduct prosecutions.
2. To implement the judge's rulings.

These two tasks are performed by the public prosecutor during the ongoing criminal trial process. The duties of the Prosecutor as a public

prosecutor are regulated in Article 13 of KUHAP and reaffirmed in Article 137 of KUHAP. The public prosecutor has the authority to prosecute anyone accused of committing a crime within their jurisdiction by transferring the case to the court authorized to adjudicate it (Lanongbuka, 2020).

However, following the issuance of the Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice (Perja Penghentian Penuntutan), it is based on the consideration that resolving criminal cases by prioritizing restorative justice, which emphasizes restoring the situation to its original state without focusing on retaliation, is a legal necessity for society and a mechanism that must be established in the execution of prosecutorial authority and the reform of the criminal justice system (Parasdika et al., 2022).

This Attorney General Regulation represents one of the legal reforms in the penal system in Indonesia, meaning that the law is understood as dynamic values that live and develop, and law is perceived not merely as a heap of written regulations but rather as something related to the pillars of human life that evolve. Therefore, observing the trajectory of advancing human civilization, the idea and notion arise that not all criminal issues must end behind bars in an effort to create justice (Purba, 2024).

Contemporary criminal law is shifting towards the paradigm that the purpose of penalization is not solely for retaliation (Surbakti & Zulyadi, 2019). Restorative justice is a term generally used for approaches to resolving criminal cases that emphasize the restoration of victims and the community rather than punishing the offender. Restorative justice serves as a process for resolving cases involving all stakeholders involved in the crime that has occurred, discussing what should be done to restore the suffering caused by that crime. The mechanisms of the criminal justice process, which focused on penalization, have been transformed into a process of dialogue and mediation to reach an agreement on the resolution of criminal cases that is fairer and more balanced for both victims and perpetrators (Srijadi, 2023).

Examining the substance of the provisions, it can be understood that the termination of prosecution legally can only be applied under three conditions: first, there is insufficient evidence; second, it does not constitute a crime; and third, the case is closed by law. The termination of prosecution outlined in Perja Penghentian Penuntutan is oriented towards the principles of restorative justice, carried out by the public prosecutor under the conditions regulated in Article 4 of the Termination of Prosecution Regulation, which states:

1. Termination of prosecution based on restorative justice is conducted with consideration of: a. The interests of the victim and other legal interests that are protected; b. Avoiding negative stigma; c. Avoiding retaliation; d. Community response and harmony; and e. Appropriateness, morality, and public order.
2. The termination of prosecution based on restorative justice as referred to in paragraph (1) is conducted with consideration of: a. The subject, object, category, and threat of the crime; b. The background of the occurrence of the crime; c. The level of culpability; d. The loss or consequences arising from the crime; e. The cost and benefit of handling the case.

The termination of prosecution based on restorative justice is not a new concept; it was previously accommodated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, the principle of restorative justice as intended there applies only to children as perpetrators of crimes, whereas the restorative justice emphasized in Perja Penghentian Penuntutan applies to adults as perpetrators of crimes. Another interesting aspect of this Perja Penghentian Penuntutan is that it was issued and accommodated through internal regulations of law enforcement agencies, namely the Attorney General's Office, rather than through legislative statutes.

The issuance of Perja Penghentian Penuntutan can be assessed as a legal breakthrough, as the essence of the intended termination of prosecution requires a peace agreement between the victim and the perpetrator of the crime. This stands in stark contrast to the provisions concerning the loss of the authority to prosecute as stipulated in Articles 76 through 85 of the Criminal Code (KUHP). In connection with this, the authority of the Prosecutor to terminate prosecution based on Perja Penghentian Penuntutan needs to be comprehensively studied to identify and analyze all the problems that arise within it.

In theft cases that are adjudicated in court, the most scrutinized cases are those where the reasons, values, and penalties no longer reflect just and beneficial law. In fact, the law should provide a just and beneficial effect for all parties. For example, a highlighted case is that of a theft involving three cocoa fruits committed by an elderly woman in Ajibarang, Central Java. This theft case not only attracted attention but also sparked counter-reactions from the public, raising concerns that the law is no longer just and beneficial. The elderly woman stole items whose monetary value is not comparable to the losses she incurred by attending the trial, ultimately becoming a sufferer during the trial process (Purba, 2024).

The public perceives that the law ceases to be just and beneficial when such minor theft cases are resolved through public institutions, namely the court. The court, with its ruling, judges and decides the accused based on the applicable laws. However, such a minor theft case could have been adjudicated without entering the court system. The disparity between the value of the loss incurred when a minor theft case enters the court is significant. The losses are both material and formal, including the costs of the case, time, and effort, leading to a punishment that does not reflect just and beneficial law.

In any case, termination of prosecution based on restorative justice may be possible, especially in theft cases. Case closure can be achieved in the interest of law, for instance, if there has been a resolution outside of court. This is commonly referred to as afdoening buiten process. This process can be conducted under the conditions: first, for specific non-criminal offenses, maximum fines are voluntarily paid according to statutory provisions; and second, there has been restoration to the original state using a restorative justice approach. If the second condition occurs, the prosecutor may terminate the prosecution.

As seen in the spirit behind the issuance of the Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, it outlines the conditions for cases and offenders for prosecution termination based on restorative justice. One condition regarding the offender is that the suspect is a first-time offender. Then, the conditions concerning the crime involve two aspects. First, the crime committed is punishable only by a fine or carries a prison sentence of no more than five years. Second, the crime is committed with the evidence value or the loss incurred from the crime not exceeding 2.5 million rupiah.

The essence of Attorney General Regulation Number 15 of 2020 is the existence of a peace agreement between the victim and the defendant, where the Prosecutor should apply this restorative justice approach to prioritize peaceful resolution, especially for relatively minor cases and those of humanitarian aspects, as has always been instructed by the Attorney General of the Republic of Indonesia, whereby prosecutors must prioritize "Conscience" in every case handling.

II. RESEARCH METHODS

Research can be interpreted as a way of seeking truth through scientific methods, while the scientific method is a procedure for obtaining knowledge called science. The nature of research has the function of discovering, developing or testing the truth of knowledge, and in an effort to study, study or investigate a problem, to obtain theoretical knowledge that can enrich the repertoire of science and / or be used to solve the problems at hand, The method used in this research is normative-empirical juridical In accordance with the type of research that is normative empirical juridical, the data sources used are primary data and secondary data.

III. RESULTS AND DISCUSSION

A. Regulation of the Attorney General Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice.

The definition of restorative justice is an effort to restore relationships and make amends by the perpetrator of a crime (or their family) to the victim of the crime (or their family) (a peace effort) outside the court, with the aim of resolving the legal issues arising from the criminal act satisfactorily through mutual agreement and consensus among the parties involved. It is expected that the implementation of restorative justice, which is a process where all parties involved in a specific criminal act work together to solve the problems resulting from it in the future (Karmilia, 2022).

In other instances, the application of restorative justice in resolving traffic accident cases is part of fulfilling human rights. The application of restorative justice as part of fulfilling human rights in resolving criminal cases is based on several policies: first, criticism of the criminal justice system that does not provide opportunities, especially for victims (a criminal justice system that disempowers individuals);

second, eliminating conflicts, especially between perpetrators and victims and the community (taking away the conflict from them); third, the fact that feelings of helplessness experienced as a result of criminal acts must be addressed to achieve restoration (in order to achieve reparation) (Kristanto, 2022).

The Attorney General Regulation No. 15/2020 contains the authority of the prosecutor to terminate prosecution based on restorative justice, which is a breakthrough in the resolution of criminal offenses. Restorative justice is an approach in resolving criminal offenses that is currently being advocated in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing a win-win solution, focusing on compensating the victim's losses, and having the victim forgive the perpetrator of the crime (Kristanto, 2022).

Currently, all law enforcement institutions in Indonesia, including the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights of the Republic of Indonesia, have adopted the principles of restorative justice as one way to resolve criminal cases. In 2012, these four institutions made a joint agreement, namely a Memorandum of Understanding among the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police, numbered 131/KMS/SKB/X/2012, No. M-HH-07.HM.03.02 of 2012, No. KEP-06/E/EJP/10/2012, and No. B/39/X/2012 dated October 17, 2012, regarding the Implementation of Adjustments to the Definition of Minor Crimes and Fines, Quick Examination Procedures, and the Application of Restorative Justice (MOMONGAN, 2024).

Furthermore, the Attorney General Regulation No. 15 of 2020 also contains restrictions on the implementation of restorative justice so that it is not only interpreted as a mere peace agreement, because if so, the ongoing process will get stuck in merely performing functions procedurally, which means that the truth (especially substantive truth) and justice cannot be achieved. This regulation is also considered a legal substance formulated to eliminate rigid positivist thinking by emphasizing a progressive law marked by restorative justice. Restorative justice is the resolution of criminal cases involving perpetrators, victims, their families, and other related parties to collectively seek a fair resolution emphasizing restoration to the original state rather than retaliation (Sahputra, 2022).

The presence of Attorney General Regulation No. 15/2020, which gives prosecutors the authority to terminate prosecution based on restorative justice, is a breakthrough in the resolution of criminal offenses. Restorative justice is an approach in resolving criminal offenses that is currently being voiced in various countries. Through the restorative justice approach, victims and perpetrators of criminal acts are expected to reach a peaceful agreement by emphasizing a win-win solution and focusing on compensating the victim's losses and having the victim forgive the perpetrator of the crime. Normatively, the criminal justice system aims for law enforcement. This system is operational in accordance with the legal provisions to address criminality to produce legal certainty. The implementation of social defense can be facilitated by the criminal justice system to achieve better social welfare. The social aspect based on expediency should be considered by the criminal justice system (Kristanto, 2022).

The aim of this criminal justice system is to reduce recidivism and crime in the short term. In the long term, the purpose of the criminal justice system is to create better social welfare in the future. If these goals cannot be realized, it indicates an injustice in the judicial system that has been implemented.

The fundamental idea of alternative resolutions in criminal cases is linked to the nature of criminal law itself. Van Bamelem argues that criminal law is an ultimum remedium, meaning there should be restrictions, indicating that if other parts of the law do not sufficiently affirm the norms recognized by the law, only then should criminal law be applied. The threat of punishment is an ultimum remedium (last resort) (Pompe, 1981). This means that the threat of punishment will be eliminated, but the benefits and drawbacks of such threats must always be considered, and care must be taken to ensure that the remedy does not become worse than the disease.

In combating crime, the role of law enforcement officials is crucial. They often appear too rigid, which is understandable as bureaucrats strictly adhere to regulations. The police, as one of the law enforcement components, play a significant role as the first gateway to the successful resolution of cases. The police are an institution within the subsystem of the criminal justice system that holds the first and foremost

position. According to Muladi, the model suitable for Indonesia's criminal justice system is one that refers to daad-dader strafrecht (Triadi, 2020).

To address the issues surrounding criminal case resolutions that always end in prison sentences, the recently emerged solution concerning the authority of public prosecutors to terminate prosecution based on the concept of restorative justice as set forth in Attorney General Regulation No. 15 of 2020 deserves appreciation because this concept involves the perpetrator, the victim, and the community in the process of resolving the criminal case. The considerations in Attorney General Regulation No. 15 of 2020 regarding the termination of prosecution based on restorative justice include:

a. That the Attorney General of the Republic of Indonesia, as a government institution exercising state power in the field of prosecution, must be able to realize legal certainty, legal order, justice, and truth based on law while respecting religious norms, propriety, and decency, and must uphold human values, law, and justice that live within society;
b. That resolving criminal cases by emphasizing restorative justice, which focuses on restoring the original state and balancing the protection and interests of both the victims and the perpetrators without orienting to retaliation, is a legal necessity of society and a mechanism that must be built in implementing prosecutorial authority and reforming the criminal justice system;
c. That the Attorney General has the duty and authority to effectuate the law enforcement processes mandated by law while considering the principles of swift, simple, and low-cost justice, and to establish and formulate policies for handling cases to ensure successful prosecution carried out independently for justice based on law and conscience, including prosecution using the restorative justice approach in accordance with legal regulations.

Article 4

1. The termination of prosecution based on restorative justice shall be carried out with regard to: a. the interests of the victims and other legal interests that are protected; b. avoidance of negative stigma; c. avoidance of retaliation; d. the response and harmony of the community; and e. propriety, decency, and public order.
2. The termination of prosecution based on restorative justice as referred to in paragraph (1) shall be considered based on: subjects, objects, categories, and the threat of the criminal act; a. the background of the occurrence of the criminal act; b. the level of culpability; c. the losses or consequences caused by the criminal act; d. the cost and benefit of handling the case; e. the restoration to the original state; and f. the existence of peace between the victim and the suspect.

Article 5

1. Criminal cases may be closed by law and prosecution terminated based on restorative justice if the following conditions are met: a. the suspect has committed a criminal act for the first time; b. the criminal act is punishable only by a fine or punishable by imprisonment of no more than 5 (five) years; and c. the criminal act is committed with the value of evidence or the value of losses caused by the criminal act not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah).
2. For criminal acts related to property, if there are specific criteria or circumstances that according to the considerations of the public prosecutor with the approval of the Head of the District Attorney's Office or the Head of the District Attorney's Office, prosecution may be terminated based on restorative justice while still observing the requirements referred to in paragraph (1) letter a accompanied by either letter b or letter c.

B. Termination of Prosecution of Criminal Acts of Theft under Two Million Rupiah Based on Restorative Justice.

The Supreme Court (MA) has issued Supreme Court Regulation (Perma) No. 2 of 2012 concerning the Settlement of the Limitation of Minor Criminal Offenses (Tipiring) and the

Amount of Fines in the Criminal Code. In essence, this Perma is intended to resolve the interpretation of the value of money in Tipiring in the Criminal Code. In Perma Number 2 of 2012, not only does it provide leniency to supreme court judges in working, but it also makes theft under 2.5 million not subject to detention.

In Perma Number 2 of 2012 Article 1, it is explained that the words "two hundred and fifty rupiah" in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code are read as Rp. 2,500,000.00 or two million five hundred thousand rupiah. Then, in Article 2 paragraph (2) and paragraph (3) it is explained, if the value of the goods or money is not more than Rp. 2.5 million, the Chief Justice will immediately appoint a Single Judge to examine, try and decide the case with the Quick Examination Procedure regulated in Articles 205-210 of the Criminal Procedure Code and the Chief Justice does not determine detention or extension of detention.

Regarding fines, Article 3 states that each maximum amount of fines threatened in the Criminal Code except for Article 303 paragraph 1 and paragraph 2, 303 bis paragraph 1 and 2, is multiplied to 1,000 (one thousand) times.

This regulation provides convenience to defendants involved in minor criminal cases, they do not need to wait for a protracted trial to the cassation stage as happened in the case of Grandma Rasminah, the theft of plates that went to cassation. "So there is no need to be in a commotion about the case of a child who stole sandals and a grandmother who stole plates until it drags on, but it can be finished in one day.

The large number of theft cases with small value items now being tried in court has received quite a lot of public attention. The public generally considers that it is very unfair if these cases are threatened with a sentence of 5 (five) years as stipulated in Article 362 of the Criminal Code because it is not comparable to the value of the stolen goods. If we compare it with perpetrators of serious crimes such as corruptors, of course this causes a reaction that makes the public angry. A breakthrough was made with the issuance of Supreme Court Regulation Number 2 of 2012 where the nominal value in the Criminal Code for theft was multiplied by 10,000, - so that it must be read as Rp. 2,500,000, - One of the criminal acts of theft is theft of goods which often occurs in supermarkets. Loss of goods in supermarkets can be caused by several factors, namely theft by employees (internal theft/employee theft), distributor errors, theft by consumers (shoplifting), system failure or administrative errors.

Of the four factors causing losses, the one that needs to be considered in writing this proposal is shoplifting (Theft by Consumers) because it can cause huge losses for supermarket entrepreneurs. Supermarkets are one of the characteristics of modern life that is fast and practical. The main characteristic of a supermarket is self-service. In this supermarket, various human needs are provided, from food to communication tools are available there. Because this main characteristic of supermarkets is what makes the crime of theft in supermarkets rampant or developing.

To overcome such crimes and criminal acts, a comprehensive policy of action and anticipation is needed. Criminal acts and crimes that are increasingly complex and complicated with wide-ranging impacts, today require law enforcement by authorized officers to apply legal sanctions and appropriate prevention policies, in accordance with applicable laws, the impact of which is expected to reduce to a minimum the extent of criminal acts and violations of the law.

According to Article 362 of the Criminal Code (KUHP), anyone who takes something, which in whole or in part belongs to another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of nine hundred rupiah.

Furthermore, regarding the crime of petty theft, the Criminal Code regulates it in Article 364, which fully outlines that the acts described in Article 362 and Article 363 point 4, as well as the acts described in Article 363 point 5, if not committed in a house or closed yard where there is a house, if the value of the stolen goods is not more than twenty five rupiah, are threatened as petty theft with a maximum imprisonment of three months or a maximum fine of two hundred and fifty rupiah.

In legal practice in the field, the provisions of Article 364 of the Criminal Code are rarely used by law enforcers. This phenomenon occurs for several reasons, including because the value of the loss due to minor crimes and the fines that can be imposed are very small. The provisions regarding the price of stolen goods of no more than twenty-five rupiah, and a maximum fine of two hundred and fifty rupiah, of course, are very inappropriate with the current rupiah value. Therefore, law enforcers use Article 362 of the Criminal Code

more to ensnare perpetrators of theft, even though the theft they commit is classified as minor. The application of Article 362 of the Criminal Code for perpetrators of light theft, then also raises problems. The main problem is the application of the Article, then does not reflect the spirit of achieving justice as one of the essence or basic goals of law enforcement, because the value of the stolen goods is not balanced with the length of the sentence imposed on the perpetrator.

In addition, from the perspective of resolving criminal cases, the imposition of Article 362 of the Criminal Code on perpetrators of minor theft will increase the burden on law enforcement, slow down the performance of resolving criminal cases, and cause overcapacity in the State Detention Center (RUTAN). Related to this legal phenomenon, the Supreme Court initiated the issuance of Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code. Based on this regulation, the Supreme Court determines the limits of minor criminal offenses and fines that can be imposed on perpetrators of minor criminal offenses.

Regarding the fines that can be imposed, it is regulated in Article 1 which outlines that "The words "two hundred and fifty rupiah" in Articles 354, 373, 379, 384, 407 and Article 482 of the Criminal Code are read as Rp. 2,500,000.00 (two million five hundred thousand rupiah)". Article 2 of Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 stipulates that:

Article 1: In accepting the transfer of the case of Theft, Fraud, Embezzlement, and Receiving from the Public Prosecutor, the Chief Justice must pay attention to the value of the goods or money that are the object of the case and pay attention to Article 1 above. Article 2: If the value of the goods or money is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah), the Chief Justice will immediately appoint a Single Judge to examine, try and decide the case with the Quick Examination Procedure regulated in Articles 205-210 of the Criminal Procedure Code. Article 3: If the defendant was previously detained, the Chief Justice does not determine the detention or extension of detention.

If we examine the provisions of the articles in the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012, Perma Number 02 of 2012 only regulates the adjustment of the limits of the value of losses and compensation for minor crimes, one example of which is minor theft, and does not immediately apply Restorative Justice. Minor theft is still subject to legal proceedings at the investigation, prosecution and trial levels, only the perpetrator may not be detained and the process in court with a single judge. This means that the settlement actions taken by Chandra Supermarket management are not in accordance with the Regulation of the Supreme Court Number 02 of 2012

Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation.

Theft is one of the crimes that occur in society. With the reason of low economic factors and having to meet their living needs, the perpetrators take the easiest and fastest way, namely committing theft by taking goods from other people that are not their right. In Indonesian positive law, theft has been explained in Chapter XXII of the Criminal Code (Andani et al., 2021). The article explains several levels and their punishments:

1. Common theft

Ordinary theft is regulated in Article 362 of the Criminal Code which states that "anyone who takes something, which in whole or in part belongs to another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of nine hundred rupiah."

2. Petty theft

Minor theft is regulated in Article 364 of the Criminal Code which states "acts described in Article 362 and Article 363 point 4, as well as acts described in Article 363 point 5, if not committed in a house or closed yard in his house, if the value of the stolen goods is not more than two hundred and fifty rupiah, are threatened as minor theft with a maximum imprisonment of three months or a maximum fine of nine hundred rupiah".

Based on criminal statistics data published by the Central Statistics Agency, the number of crimes according to the type of crime, in 2020 theft crimes throughout Indonesia were 23,984 cases and aggravated theft were 25,686 cases. Then based on Public SDP data from the Directorate General of Corrections in 2020 there were 33,822 convicts and 1,200 prisoners occupying prisons and detention centers

throughout Indonesia. Overcapacity that occurs in Correctional Institutions (Lapas) and Detention Centers (Rutan) is a serious problem that is of concern to the Government (Purba, 2024).

Based on Public SDP data from the Directorate General of Corrections as of January 1, 2022, the number of prisoners and inmates throughout Indonesia was 193,037 from a total capacity of prisons and detention centers throughout Indonesia of only 135,561. There is an excess of occupancy of around 142% with the condition of the amount of over capacity in each region being different. Based on Public SDP data from the Directorate General of Corrections as of January 1, 2022, the DKI Jakarta Regional Office experienced an over capacity of up to 299%. Over capacity conditions are the cause of various problems in prisons and detention centers, including impacts on the health conditions and poor psychological atmosphere of inmates and prisoners, easy conflicts between prison / detention center residents, and coaching is not running well and optimally due to limited facilities and infrastructure.

Overcapacity conditions in prisons / detention centers are also often the cause of riots and cases of escape of inmates and prisoners because of less than optimal supervision due to the imbalance in the number of prison guards / correctional officers with prison / detention center residents. In addition, overcapacity conditions in prisons and detention centers are often misused by certain officers through the practice of renting rooms (Purba, 2024).

In the criminal justice system in Indonesia according to Law Number 8 of 1981 concerning Criminal Procedure Law, law enforcement is carried out by the Police, the prosecutor's office and the courts. In addition, legal experts also mention that Correctional Officers are one of the law enforcers. All Law Enforcement Officers as part of the criminal justice system are expected to work together to form an integrated criminal justice administration. The definition of prosecution is regulated in Article 1 number 7 of the Criminal Procedure Code and in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely the action of the public prosecutor to transfer a criminal case to the competent District Court in the case and according to the method regulated in this law with a request that it be examined and decided by the Judge in a Court hearing.

The Public Prosecutor is a prosecutor who is authorized by law to prosecute and implement the judge's decision. The Joint Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of Police regarding the implementation of the application of adjustments to the limits of minor crimes and the amount of fines, speedy examination procedures, and the application of restorative justice states that in order to implement the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code against perpetrators of minor crimes, in implementing criminal sanctions it is mandatory to consider the sense of justice of the community.

In the joint memorandum of understanding, it is stated that restorative justice is the resolution of minor criminal cases carried out by investigators at the investigation stage or judges from the start of the trial by involving the perpetrator, victim, the perpetrator's/victim's family, and relevant community leaders to jointly seek a just resolution by emphasizing restoration to the original state.

The Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of Police regarding the implementation of the application of adjustments to the limits of minor crimes and the amount of fines, speedy examination procedures, and the application of restorative justice is intended as a guideline in applying the limits of minor crimes and the amount of fines for perpetrators by considering the sense of justice of the community, as well as implementing Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code to all Law Enforcement Officers.

Included in minor crimes are crimes regulated in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code which are subject to a maximum imprisonment of 3 (three) months or a fine of 10,000 (ten thousand) times the fine. In the Supreme Court Regulation (Perma) Number 2 of 2012 Article 1 states that the words "two hundred and fifty rupiah" in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code are read as Rp. 2,500,000 (two million five hundred thousand rupiah). The purpose of the Joint Memorandum of Understanding of the Chief

Justice, Minister of Law and Human Rights, Attorney General, Chief of Police regarding the implementation of the application of adjustments to the limits of minor crimes and the amount of fines, speedy examination procedures, and the application of restorative justice are:

a. fulfilling the sense of justice for the community in resolving minor criminal acts
b. as a guideline for Law Enforcement Officers in resolving minor criminal cases
c. make it easier for judges to decide on minor criminal cases
d. n excess capacity in prisons and detention centers to realize justice in the dimension of human rights, as well as
e. agree on the implementation instructions and technical instructions for the application of adjustments to the limits of Minor Crimes and the amount of fines

The principle of dominus litis associated with prosecution is the principle that grants monopoly authority to the prosecution body, so that no other body can carry out prosecution. Monopoly authority results in the public prosecutor having the authority to take any action related to prosecution, including terminating prosecution.13 Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia states that one of the authorities of the Attorney General is to set aside cases in the public interest.

In this case, what is meant by "public interest" is the interest of the nation and state and/or the interest of the wider community. Prosecutor's Regulation (Perja) Number 15 of 2020 regulates the Termination of Prosecution Based on Restorative Justice as a form of public prosecutor to offer peace efforts to victims and suspects. This Perja gives the Prosecutor the authority to stop prosecution based on restorative justice. This is a breakthrough in resolving criminal acts. It is stated in the Perja that restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator's/victim's family, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retaliation. Perja Number 15 of 2020 regulates the settlement of cases outside the court by restoring the original state using a restorative justice approach carried out by stopping prosecution.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Prosecutor's Regulation (Perja) Number 15 of 2020 regulates the Termination of Prosecution Based on Restorative Justice. The Perja regulates the settlement of cases outside the court by restoring the original state using a restorative justice approach carried out by terminating the prosecution. A criminal case can be closed by law and its prosecution terminated based on restorative justice if the following conditions are met: the suspect has committed a crime for the first time, the crime is only punishable by a fine or is punishable by imprisonment of no more than 5 (five) years, the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding IDR 2,500,000 (two million five hundred thousand rupiah), there has been a peace agreement between the Victim and the Suspect, and the community responds positively.

Implementation of Restorative Justice Termination of prosecution of perpetrators of minor crimes in the form of theft at the Pangkalpinang District Attorney's Office is an implementation of the principle of dominus litis, and is in accordance with the mechanism for implementing restorative justice implemented at the prosecutor's office level based on Perja Number 15 of 2020 which states that if the requirements are met, a criminal case can be closed by law and its prosecution can be stopped based on restorative justice, including: the suspect is committing a crime for the first time, the crime is committed with the value of the evidence or the value of the losses incurred not exceeding IDR 2,500,000 (two million five hundred thousand rupiah), and there has been an agreement between the suspect and the victim.

B. Suggestion

In light of Prosecutor's Regulation Number 15 of 2020, which facilitates the termination of prosecution based on restorative justice, it is essential to encourage the effective implementation of this approach in addressing minor crimes, such as theft. The criteria established—specifically that the suspect is a first-time offender, the crime carries a penalty of no more than five years of imprisonment, and the value of the loss does not exceed IDR 2,500,000—provide a clear framework for prosecutorial discretion.

To enhance the application of restorative justice principles, it is recommended that the

Pangkalpinang District Attorney's Office prioritize community engagement and awareness programs that inform the public about restorative justice options. Building a positive community response is crucial for successful outcomes in such cases. Additionally, ongoing training for prosecutors and legal practitioners in restorative justice practices will ensure a consistent and fair approach to case resolution. Ultimately, fostering collaboration between victims, suspects, and the community will contribute to a more just and harmonious society while reducing the burden on the judicial system.

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