



Legal Certainty Aspects in Regulation of the Attorney General Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice

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ABSTRACT

There have been many sharp criticisms regarding law enforcement by law enforcement officials where small cases that could be resolved through peaceful efforts ended up in court. In 2020, the Attorney General issued Prosecutor Regulation Number 15 of 2020 concerning termination of prosecution. It is necessary to pay attention to the legal certainty aspect of the regulation when it is implemented. This study aims to analyze the aspect of legal certainty in the Prosecutor's Regulation Number 15 of 2020 concerning termination of prosecution based on restorative justice. Study this law uses a normative juridical approach Statutory Approach, the "statuta approach", and Conceptual Approach, the "conceptual approach". The results of the study concluded that the aspect of legal certainty lies in the guidelines that have been made by determining and limiting the requirements and implementation of termination of prosecution based on restorative justice. Service Regulation Number 15 of 2020 was made to support law enforcement with legal certainty, where restorative justice is given a clear, firm and comprehensive legal basis.

ABSTRAK

Banyak kritik tajam perihal penegakan hukum oleh aparat penegak hukum dimana kasus-kasus kecil yang sebenarnya dapat diselesaikan dengan upaya perdamaian, namun berujung di meja hijau. Pada tahun 2020, Jaksa Agung menerbitkan Peraturan Jaksa Nomor 15 Tahun 2020 tentang penghentian penuntutan. Perlu menjadi perhatian, aspek kepastian hukum dari aturan tersebut saat diterapkan. Tujuan penelitian ini untuk menganalisis aspek kepastian hukum dalam Peraturan Jaksa Nomor 15 Tahun 2020 tentang penghentian penuntutan berdasarkan keadilan restoratif. Penelitian hukum ini menggunakan metode yuridis normatif. Pendekatan Perundang-Undangan "*statuta approach*" dan Pendekatan Konseptual "*conceptual approach*". Hasil penelitian menunjukkan bahwa aspek kepastian hukum terletak pada pedoman yang telah dibuat dengan menentukan dan membatasi perihal persyaratan maupun implementasi penghentian penuntutan berdasarkan keadilan restoratif. Peraturan kejaksaan Nomor 15 Tahun 2020 sejatinya dibuat untuk mendukung penegakkan hukum yang mempunyai kepastian hukum, dimana keadilan restoratif diberikan dasar hukum yang jelas dan tegas serta komperhensif.

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I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a constitutional state following the state principles of the 1945 Constitution. In a constitutional state, there are clear laws and regulations to regulate the life of its people to obtain legal certainty. Law is a norm that invites people to achieve certain ideals and circumstances without ignoring the natural world and is therefore classified into cultural norms. (Muhtar et al., 2022)

Various cases have sprung up in line with the demands for change, known as reformation. It can be seen that at various levels of society, from top to bottom, legal deviations have occurred. The development of civil society (civil society) is a way of life for a society that adheres to legal values (Anshar & Setiyono, 2020). The law is not a goal but a means or tool to achieve goals that are non-judicial and develop due to stimuli from outside the law. It is the factors outside the law that make the law dynamic (Primary, 2016).

The existence of laws that can regulate social life, of course, will provide a sense of justice for the community itself. Talking about justice in the development of justice also transforms in a newer direction according to legal developments in the eyes of society. To achieve justice that is truly felt by the community, of course, requires an important role. Law enforcement officials, one of which is the Public Prosecutor/Prosecutor.

In achieving justice, the Public Prosecutor, following Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, clearly regulates the duties and responsibilities of the Public Prosecutor in carrying out the function of law enforcement in Indonesia. It is explicitly stated that within the Attorney General's Office, the Attorney General has the right to set aside cases based on the public interest. The Attorney General may think there will be more losses if he sues both for the people and the state, so the case is set aside according to the opportunity principle.

If further investigated, the granting of authority to waive criminal cases to prosecutors is in accordance with the principles of criminal procedural law regulated in Law Number 4 of 2004 concerning Judicial Powers, where one of the principles regulates that trials must be carried out quickly, simply, at low cost and free of charge. , honesty and impartiality must be applied consistently at all levels of justice. Suppose we pay attention to these principles one by one, with the exclusion of criminal cases by the prosecutor. In that case, it is enough for the judicial process to be completed at the Attorney General's Office so that the trial process does not take a long and lengthy time. Simple and low-cost trials can automatically materialize if the judicial settlement process is completed quickly. (Bombing et al., 2016). The administration of this case is large in number and is usually made in several copies. Of course, this requires a lot of money, so the low-cost principle that you want to achieve will be very difficult to realize (Saputra et al., 2014).

The application of the principle of opportunity (the principle that gives authority to the public prosecutor not to prosecute someone who violates criminal law regulations by setting aside cases that have clear evidence for the public interest) of the Attorney General is, of course, clearly regulated in Article 35 letter C of the Law. Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia. This is different from the termination of prosecution owned by the Prosecutor or Public Prosecutor, the termination of prosecution regulated in Article 140 paragraph (2) of the Criminal Procedure Code, which confirms that (1) If the Public Prosecutor decides to stop the prosecution because there is insufficient evidence or the event is not a crime, or the case is closed for the sake of law, the Public Prosecutor shall state this in a decision letter; (2) The contents of the decree shall be notified to the suspect, and if he is detained, he must be released immediately; (3) Derivatives of the said decree must be submitted to the suspect or his family or legal counsel, officials at the state detention centre, investigators and judges; and (4) If later it turns out that there is a new reason, the public prosecutor can prosecute the suspect.

Since 2012, the criminal justice system in Indonesia has introduced the concept of Restorative Justice, namely in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.(Soejoeti & Susanti, 2020). In the development of law enforcement in Indonesia, the concept of restorative justice has been expanded, not only limited to criminal cases involving underage perpetrators, within the Republic of Indonesia Police Agency through PERKAP No. 6 of 2019 applies the concept of restorative justice, namely stopping cases in the investigation or investigation process as long as the SPDP (notification letter on the start of the investigation) has not been sent to the Prosecutor/Public Prosecutor. On July 16, 2020, the Attorney General issued the Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the Prosecutor's Regulation was expanded to no longer apply to juvenile criminal cases or in the process of investigation and investigation at the Police, the Prosecutor's Regulation applies the concept of justice restorative At Prosecution Stage.

The Attorney General's Regulation regulates the manner and conditions for a case to be closed based on restorative justice, as Article 5 of the Prosecutor's Regulation No. 15 of 2020 explains the conditions for a case to be terminated, namely (1) The suspect is the first time committing a crime;(2) Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; (3) The crime is committed with the value of the evidence or the value of the losses incurred due to the crime of no more than Rp. 2,500,000 (two million five hundred thousand rupiahs).

The next requirements as stated in point 6 are (1) return goods obtained from criminal acts to victims; (2) compensate the victim's losses; (3) reimbursing costs incurred as a result of a criminal act; and/or repairing the damage caused as a result of a crime.

Besides that, a condition for restorative justice is that there has been a peace agreement between the victim and the suspect, and the community has responded positively(Darman & Mangku, 2021). The concept of restorative justice is positive for the development of punishment in Indonesia as a filter for cases that enter the realm of court. Still, on the other hand, this contradicts the principle of legal certainty for victims as an essential factor in settlement of criminal cases in the perspective of restorative justice tends to reject to be reconciled, not to mention the understanding of law enforcement officers who are still oriented towards the crime control model to the point that sectoral egos between law enforcement agencies become obstacles or hinder the application of the concept of restorative justice(Asshiddiqie, 2022).

Several studies have been conducted regarding the legal certainty of restorative settlement of cases. Research by(Karmilia, 2022) shows that the main problem for imposing or implementing a restorative justice approach or concept in a legal system, in general, and in a criminal justice system, in particular, lies in the settlement mechanism offered by the approach or concept of restorative justice which is different from the settlement mechanism offered by the existing criminal justice system so that it is still difficult to accept. This is due to the mechanism offered by the Penal Approach or Mediation for the Settlement of Out of Court Cases.

Research (Kristanto, 2022) hows that the Attorney General's Regulation No. 15 of 2020 has fulfilled the goal of protecting human rights. However, it is necessary to anticipate the risk of being arbitrary in the mediation process because there is an unequal bargaining position between the perpetrator and the victim and the risk of worse accusations against the perpetrator (exacerbating judgement). Apart from that, another problem is the phrase positive response from the community, which is not fully explained in the Prosecutor's Regulation. This conflict occurs related to aspects of the deterrent effect given to law enforcement of criminal acts, and this is important because apart from the agreement between the victim and the suspect, one of the conditions is a positive response from the community.

The important question is whether the positive response from the community is an absolute requirement or only a supporting condition and if the case can be resolved with restorative justice.

Still, the community responds negatively, can the case not fulfil the requirements? This article will discuss aspects of legal certainty in the Prosecutor's Regulation because the conditional approach involving community responses is one of the important points of the restorative justice case approach.

II. RESEARCH METHODS

This writing uses a normative juridical research method, namely a research method that is carried out by examining only library materials or research objects focused on legal norms, both contained in laws and regulations, customs or others.(Ali, 2021). The research approach used includes; Statutory Approach, "statuta approach," and Conceptual Approach, "conceptual approach". Normative research must certainly use a statutory approach because various legal regulations will be examined, which are the focus of the research.(Suhaimi, 2018). This step starts by researching the existence of legal norms regarding food security and then looking at social facts in the field. Furthermore, it is analyzed whether there is a gap between the rule of law and the social facts. The types of legal materials used in this study consist of (1) Primary legal materials, which are the main materials in conducting normative research consisting of laws and regulations relating to the formation of regional apparatus and food. (2) Secondary legal materials are references related to the topic raised, consisting of books and other scientific writings. (3) Tertiary legal materials support legal materials in the form of dictionaries and other sources (print and electronic media). Legal materials are collected by taking an inventory of all regulations (primary materials) related to regional apparatus, including related references (secondary legal materials). Furthermore, the legal material is analyzed deductively by drawing conclusions from general matters to specific matters.

III. RESULTS AND DISCUSSIONS

One of the big challenges that continues to overshadow the development of law enforcement in Indonesia is efforts to place the right law enforcers in realizing legal certainty, justice and benefits, as well as placing the position of their interactions with society and the state (reciprocity). Law enforcement officials have the task of being one of the determinants of a case decision from the parties to the dispute, so in the decision-making process, law enforcers must be independent and free from the influence of any party. Law enforcers, in making decisions, are only bound by relevant events or facts and legal principles that become or are used as a juridical basis(Wantu, 2013).

According to Fence M. Wantu, "law without the value of legal certainty will lose meaning because it can no longer be used as a guideline for behavior for everyone"(Mantili, 2019). Furthermore, Fence M. Wantu added that(Prayogo, 2016):

"A regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multiple interpretations) and is logical so that it becomes a system of norms with other norms that do not clash or give rise to norm conflicts. Norm conflicts arising from rule uncertainty can take the form of norm contention, norm reduction or norm distortion.

Departing from Fence M Wantu's opinion, it can be said that the value of certainty is one of the important elements and guidelines in law enforcement. Therefore the value of legal certainty must be based on clear and comprehensive legal provisions so that in its application, it does not lead to multiple interpretations or lead legal uncertainty.

Legal certainty in Fence M. Wantu's description in principle emphasizes that to achieve legal certainty, "guidelines" are needed so that later in decision-making and law enforcement, what law enforcers want to achieve has already set the rules of the game. In this case, restorative justice has

legal certainty with the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

Restorative justice is the principle of returning the situation/order to its original state (restoration) as it was before the crime occurred. The application of restorative justice emphasizes the return of material and immaterial losses felt by victims due to criminal acts committed by perpetrators. This is the intent and purpose of issuing Prosecutor Regulation Number 15 of 2020, as understood in the preamble to Prosecutor Regulation Number 15 of 2020. Restorative justice must always be prioritized to resolve cases. Crime by prioritizing it so that it can recover to its initial conditions. Protection, balance, and the interests of perpetrators and victims are not oriented towards retaliation because they are something that is needed by society.

In addition to these considerations, the termination of prosecution for the sake of law with a restorative justice approach aims to increase the effectiveness of the law enforcement process of legislation by taking into account the principles of simplicity, speed, low cost, and being able to formulate and establish policies to handle cases so that the charges filed succeed impartially. for the sake of justice based on conscience and law, including filing demands through restorative justice must be following the applicable provisions.

The peace process is carried out by the parties through deliberations for consensus without intimidation, coercion, pressure, and voluntarily. During the peace process, the role of the Public Prosecutor is as a facilitator, meaning that he has no interest/related to the suspect, victim, or case, either personally, professionally, directly or not. The reconciliation process and the fulfilment of obligations are carried out within a maximum period of 14 (fourteen) days from the transfer of responsibility for the suspect and evidence.

If the victim and the perpetrator have carried out a peace process but if there is no agreement on peace or the obligations according to the peace agreement note are not implemented, the Public Prosecutor has the right to: a. include the failure of the peace process in the minutes; b. draw up a memorandum of opinion stating that the case is proceeding to court along with the reasons and submit case files to court.

Suppose the peace agreement, as mentioned above, is unsuccessful due to disproportionate requests to fulfil obligations. In that case, harassment (class, nationality, race, religion, ethnicity), sentiment, threats/intimidation, and discriminatory treatment of suspects who have good faith will be considered by the Public Prosecutor when filing a claim. Failure to fulfil obligations due to economic factors or other reasons coupled with the good faith of the suspect will also be considered.

In this regard, restorative justice in the prosecutor's regulation number 15 of 2020 is not impossible to cause ambiguity. This is based on the fact that restorative justice emphasises the construction of solutions for perpetrators of criminal acts. Therefore this makes it possible for victims to feel they do not get legal certainty in settlement of criminal cases.

In this case, the theory of legal certainty in Gustav Radbruch's thought does not avoid conflicts or collisions between the values of justice and certainty and benefits.(Huda, 2020). o further research in this theoretical study leads the author to realize Gustav's concept through standard and casuistic priorities. This is because the realization of Gustav Radbruch's concept of the three basic legal values , which include aspects of justice, benefit and legal certainty, of course, has the potential to cause tension between each aspect.(Muslih, 2017).

There are times when justice conflicts with benefits or other times justice conflict with legal certainty. It is also possible that there is tension between benefits and justice. To anticipate this condition, Gustav Radbruch provides a way out through 2 (two) teachings, standard priority and casuistic. Because of standard priorities, the law provides a benchmark in deciding a case, where the priority is justice, the second is benefits, and the third is legal certainty(Huda, 2020).

Standard priority teachings are relatively wiser than extreme teachings, such as ethical and legal schools, which only focus on justice. Utilitarian schools, which only focus on the use of law and legalistic dogmatic schools (legal positivism), which only focus on legal certainty. (Laili & Santoso, 2021). Whereas in casuistic priorities, which cause the increasing complexity of interests in everyday life, the standard priority teachings are felt to no longer fulfil the common ideals. Casuistic priority teachings that allow the three fundamental values above to take turns according to the context of the problem can become the dominant element so that each fundamental legal matter can alternately become the dominant element in some instances.

The Criminal Law itself regulates (Tomalili, 2019): a. Determine which actions may not be performed, which are prohibited, accompanied by threats or sanctions in certain forms of punishment for anyone who violates the prohibition; c. Determine when and in what cases those who have violated the restrictions may be imposed or punished under threat; d. Determine how the imposition of crime can be done if someone is suspected of violating the prohibition.

From this opinion, criminal law regulates prohibited actions accompanied by criminal threats and determines criminal responsibility. As a formal criminal law, criminal law regulates how law enforcement procedures carry out their duties in enforcing material criminal law. Law enforcers, ranging from the police to the courts, carry out their duties to enforce criminal law based on the values of life in society so that justice with dignity will be achieved. However, in its development, legal certainty in criminal law is no longer seen as imposing a crime but as resolving criminal problems with the agreement of the suspect and the victim.

Legal certainty should be aimed at protecting the interests of each individual so that they know what actions are permissible and vice versa, which actions are prohibited so that they are protected from arbitrary actions. These individuals are called justice seekers who need certainty, but the real certainty is not aimed at form or formality alone but at the desire to provide justice. As said Sudikno that (Sutrisno et al., 2020):

"It is not the application of the law text as it is that provides legal certainty, but the will to give justice seekers what they demand based on decency, therefore we may say that the former pseudo certainty, which was based on texts that were always few, was replaced by certainty at a higher level, certainty that is generated by seeking propriety"

In this regard, legal certainty must be seen in statutory provisions because only then can legal provisions be verified. As for what is outside the law cannot be entered as law. If you look at the Prosecutor's Regulation No. 15 of 2020, it has provided legal certainty because it helps formulate the arguments and norms of the prosecutor's restorative justice mechanism at the prosecutor's level.

In its development, the Indonesian people have long recognised the legal certainty of restorative justice by conducting deliberations and mediation. Legal certainty in the law that lives in many communities is scattered. It is not (always) formulated in writing by the principles of formal legality, even though this has been formally confirmed in the Attorney General's Regulation number 15 of 2020.

Based on this, it can be stated that the basic principle of law is to provide legal certainty that fulfils a sense of justice to every citizen equally and without exception. Legal products must not be open to multiple interpretations by law enforcers, including prosecutors and judges, based on their wishes and desires. Therefore, service regulation Number 15 of 2020 is meant to have a linkage and progressive construction between legal certainty and justice through restorative justice. A clear and firm, and comprehensive legal basis is given to support law enforcement that has legal certainty.

IV. CONCLUSION

Prosecutor's Regulation Number 15 of 2020 stipulates that criminal cases can be closed by law and prosecution based on restorative justice can be stopped only for perpetrators who have recently committed them and are not recidivists and only for certain types of minor crimes. The aspect of legal certainty lies in the guidelines that have been made and determined and are limited in terms of requirements and implementation. Service regulation Number 15 of 2020 was made to support law enforcement with legal certainty, where restorative justice is given a clear, firm and comprehensive legal basis in the future.

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