

## **Completion of The Criminal Case outside Court by the Prosecutor's Office in realizing The Goal of Law Enforcement**



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**ABSTRACT:** One of the state apparatuses that are given the task and authority to carry out law enforcement is the Prosecutor. In carrying out its duties and functions, the prosecutor is organized in an Institution called the Prosecutor's Office of the Republic of Indonesia or can be called the Prosecutor's Office. The main task of the Prosecutor's Office carried out by the Prosecutor is to prosecute criminal cases. In carrying out the task of prosecution, the Prosecutor is authorized to determine whether or not a case can be brought to court and what article will be charged. The authority of the Prosecutor in resolving criminal cases outside the court that makes the author more tendentious to conduct research. The problem with this research is 1). How are the obstacles to solving criminal cases outside the court by the Prosecutor's Office? 2). Is the settlement of cases outside the Court conducted by the Prosecutor's Office in accordance with the values of justice? By using the type of normative juridical research it is known that: The Authority of the Prosecutor in the settlement of criminal cases outside the Court can realize the goal of law enforcement, namely justice, legal certainty and usefulness for the community. The settlement of criminal cases outside the court can also realize the ideals of a fast, simple and cheap judiciary and optimize the participation of the community in law enforcement.

**KEYWORDS:** Prosecutor's Office; Settlement of Criminal Cases Out of Court; Restorativ Justice

### **I. INTRODUCTION**

Justice enforcement is an important effort in building a dignified community civilization, law enforcement is required to be able to be a mouthpiece of justice enforcement in society, but not always justice can be obtained in a court institution by law enforcement because positive law does not always create a sense of justice, and a sense of justice does not necessarily guarantee the creation of legal certainty. The settlement of criminal cases outside the Court at this time began to be widely applied by law enforcement agencies in Indonesia, especially in the handling of criminal cases committed by perpetrators in meeting the needs of the perpetrator's life.

Crime at this time not only occurs because of the intention of the perpetrator to benefit himself, but economic factors are currently the main reason for the perpetrators of crime in acting. Economic hardship, high cost of living and lack of jobs further increase crime rates. The current covid-19 pandemic situation has resulted in many people losing their livelihoods, where economic difficulties occur not only in Indonesia but around the world. Difficulty obtaining income followed by an increase in the price of basic goods resulted in many crimes committed by the community just to meet the needs of his life and his family. With these circumstances, at this time the tendency of crime with small losses occurs a lot and is a social problem at this time.

According to Barda Nawawi Arief, crime is a social problem that is not only faced by a certain society or a certain country, but is a problem faced by the entire world community. At this time the community still argues that the Institution of Justice is the last resort to get justice in law enforcement, so many people have very high hopes for the institution of the court. While the process of handling a crime can not only be done through the judiciary, but can also be solved by social institutions in the community. Barda Nawawi Arief, Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara, (Semarang: CV Ananta: 1994)

Efforts to combat crime are essentially very closely related to crime prevention policies or criminal politics. Criminal politics is a policy or rational effort to tackle crime. According to Barda Nawawi Arief, that broadly speaking, crime prevention efforts can be divided into 2 (two), namely through the "penal" (criminal law) and through the "non penal" (outside the criminal path). Barda Nawawi Arief, Upaya Non-Petal dalam Kebijakan Penanggulangan Kejahatan (Semarang: Bahan Seminar Kriminologi VI di Semarang tanggal 16-18 September, 1981) Then *Sudarto* agreed that the distinction of the penal and non-penal pathways is a rough distinction, because in essence repressive actions (enforcement) is a "preventive" action in the broadest sense. On the contrary, preventive measures are efforts to combat crime in the broadest sense. *Sudarto*, Kapita Selekta Hukum Pidana (Bandung: Alumni, 1981)

That penal efforts are carried out through a criminal justice process that is run with *the criminal justice system*. In simple terms, the criminal justice process can be interpreted as a mechanism for the work of law enforcement officers, including the

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police, prosecutors, courts, and correctional institutions in investigating alleged criminal acts, looking for evidence, finding the culprit, and bringing it to justice to get a punishment that is appropriate for his actions. This can be interpreted that the implementation of criminal justice is the process or work of criminal event law starting from the process of investigation and investigation, arrest and detention, prosecution and examination in court hearings to get a decision. Topo Santoso, Polisi dan Jaksa: Keterpaduan atau Pergulatan (Depok: Pusat Studi Peradilan Pidana, 2000)

Over the course of more than half a century of the nation's journey, it turns out that the practice of law enforcement is still based on the philosophy of retributive and encroachment, so it only focuses on quantitative aspects as output, namely on how many cases are handled and the number of perpetrators imprisoned by law enforcement officials. The criminal justice system is considered successful, if law enforcement officials are able to bring criminals to justice for punishment. Bambang Waluyo, *Penyelesaian Perkara Pidana Penerapan Keadilan Restoratif dan Transformatif* (Jakarta: Sinar Grafika, 2020) The success of the criminal justice system punishing criminals will have a calm impact on society, on the contrary, its failure can shake public confidence in the implementation of the system and can encourage perpetrators of crimes more courageous to do their deeds. The ultimate goal of the criminal justice system is the realization of an orderly, peaceful, peaceful, just, and prosperous society. Andi Hamzah, *Pengantar Hukum Acara Pidana* (Jakarta: Ghalia Indonesia, 1985)

The Indonesian Prosecutor's Office adheres to the principle of oportunitas which initially this principle applies on the basis of the unwritten law of Dutch law and has been practiced by prosecutors in Indonesia in the form of stopping prosecution of cases, even if the evidence and witnesses are sufficient. In scientific language it is called "termination of prosecution for *policy* reasons" and in everyday language it is called dismissing cases. Furthermore, *R.M. Surachman* argued, to prevent negative things, such as the commercialization of positions and collusion, the principle of oportunitas, since 1961 was only given to the Attorney General of The Republic of Indonesia. Therefore, if the Prosecutor wishes to set aside a case for which the evidence and witnesses are sufficient, he must request that the case be set aside by the Attorney General. *R.M. Surachman, Understanding the Discretion of Prosecutors in Various Countries, in Law Mosaic I: 30 elected languages*, (Jakarta: PUSLITBANG Attorney General of Indonesia, 1996).

Onestate apparatus that is given the task and authority to carry out law enforcement is the Prosecutor. In carrying out its duties and functions, the prosecutor is organized in an Institution called the Prosecutor's Office of the Republic of Indonesia or can be called the Prosecutor's Office. The main task of the Prosecutor's Office carried out by the Prosecutor is to prosecute criminal cases. In carrying out the task of prosecution, the Prosecutor is authorized to determine whether or not a case can be brought to court and what article will be charged. Bambang Waluyo, *Design of the Prosecutor's function on Restorative Justice* (Jakarta: Raja Grafindo Persada, 2016)

The principle of demanding wisdom related to the discretion of the Prosecutor as a state apparatus. In carrying out their duties and authorities, law enforcement officials such as police, prosecutors, judges and lapas, in addition to paying attention to *the policies* outlined by their leaders and the provisions of applicable laws and regulations, in certain situations they also have freedom or discretion (*discretion*). Therefore, there appears the term police discretion, prosecutor's discretion, judge's discretion, and the discretion of the association. Discretion based on Law Number 30 of 2014 on Administrative Government is a decision and / or action set and / or taken by government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, not regulated, incomplete or unclear, and / or government stagnation. Bambang Waluyo, *Desain fungsi Kejaksaan pada Restorative Justice* (Jakarta: Raja Grafindo Persada, 2016)

Based on Law Number 16 of 2014 concerning the Prosecutor's Office mentioned that only the Attorney General has the right to avoid cases based on the public interest with the consideration that there will be more losses if there is still prosecution for the community and the state. In 2020 after the authority to override cases is only granted to the Attorney General, prosecutors in Indonesia now have the authority to stop investigations and prosecution of cases as stipulated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice, so that it can be used as a basis by prosecutors in Indonesia to resolve cases outside the court in the face of small cases, small losses, the perpetrator is very old, and so on. In connection with the issuance of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice mentioned above, the reference and main foundation is the achievement of law enforcement objectives, namely justice, legal certainty, and benefit for the community. In its realization in addition to these references also the principles of restorative justice or restorative justice are also carried out. For this reason, the settlement of criminal cases outside the court by the Prosecutor's Office of existence and function needs to be optimized for its implementation.

## II. PROBLEM FORMULATION

1. How constraints completion criminal case outside court by the prosecutor's office?
2. Whether completion of the criminal case outside court already conformity with the values of justice?

### III. PURPOSE OF WRITTING

1. To determine and assess completion obstacle criminal cases outside court by the prosecutor's office.
2. To determine and assess the suitability of the settlement case outside court by the prosecutor's office with the values of justice.

### IV. METHODOLOGY

The research method that will be used in this research is the method of normative law, law is conceptualized as what is written in the laws and regulations or the law is conceptualized as a norm that is a benchmark for human behavior that is considered appropriate. Normative legal research, among others, examines the emptiness of norms, the blurring of norms and the contradictions of norms. Amiruddin and H. Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2008) Peter Mahmud Marzuki explained that normative legal research is a prescriptive legal research where the object of legal science is coherence between legal norms with legal principles, between the rule of law and legal norms, and between the behavior of individuals with legal norms. Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2008) This research examines the principles and norms in the setting on the Settlement of Criminal Cases Outside the Court by the Prosecutor's Office.

Assessment in the writing of this research includes normative legal research using several approaches, among others: *the statute approach*, the conceptual *approach* as well as the *case approach* and the comparative *approach*. *A statute approach* is an approach that uses legislation and regulation that will provide an overview of the consistency and conformity between legislation and other laws or between laws and constitutions or between regulations and laws and understand the content of the philosophy behind the law so that it can conclude about the clash of philosophies between laws and regulations. and the problems that are faced. The concept and comparison approach is used because there is a contradiction of norms in the arrangement on the Settlement of Criminal Cases Outside the Court by the Prosecutor's Office. I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif: dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2016)

Legal materials used in normative legal research through two types of legal material sources, namely primary legal materials and secondary legal materials. Primary legal material is legal material that has binding power. Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2011) The primary legal materials used include: The Constitution of the Republic of Indonesia year 1945, Law Number 16 of 2004 concerning the Prosecutor's Office, Law Number 8 of 1981 on Criminal Procedure Law, Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Legal journals that explain the settlement of criminal cases outside the court by the Prosecutor's Office, legal papers or the views of legal experts contained in the mass media, dictionaries and encyclopedias of law and the Internet.

The technique of collecting legal materials used in normative legal research is done through library study activities and document studies. The library in question consists of legislation, court decisions (jurisprudence), and books of legal papers. Abdulkadir Muhamad, *Hukum dan Penelitian Hukum* (Bandung: PT. Citra Aditya Bakti, 2004) These three types of libraries are usually collected in public libraries and libraries specialized in the field of law. Furthermore, the data that has been collected will be analyzed. Salim Hs and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi* (Jakarta: PT Raja Grafindo Persada: 2013) Analysis is defined as the process of organizing and sorting data into patterns, categories, and basic description units so that themes can be found and can be formulated working hypotheses as suggested by the data. Information obtained from primary legal materials and secondary legal materials is further analyzed through measures of description, construction, evaluation, argumentation of interpretation and systematization by collecting legal materials, both in the form of primary legal materials and secondary legal materials. Further classified and structured systematically, analyzed evaluatively, the stage of argumentation in a systematic form.

### V. RESULT

#### 1. Completion Obstacle Criminal Case Outside Court By The Prosecutor's Office

In the application of criminal case settlement outside the Court, the Prosecutor in this case the Public Prosecutor has some authority to resolve cases outside the Court. Some of the authorities owned by the Public Prosecutor include Diversion and Restorative Justice, but its application still has some obstacles in its implementation. The obstacles experienced by the Public Prosecutor in applying the authority to resolve criminal cases outside the court in a Diversion and Restorative Justice at this time because in the application of such authority requires the active participation of victims of criminal acts in the deliberation of the settlement of criminal cases in a diversion or restorative justice.

In The Prosecutor's Regulation Number 15 of 2020 clearly stipulated one of the conditions for restorative justice in Article 5 Paragraph (6) point b is "*there has been a peace agreement between victims and suspects*", where the peace process between perpetrators and victims is very important in the settlement of criminal cases outside the court restorative justice and diversion.

In the Prosecutor's Regulation Number 15 of 2020 Article 8 Paragraph (7) and Article 10 Paragraph (6) regulated regarding peace is not successful or the fulfillment of obligations not implemented in accordance with the peace agreement then the Public Prosecutor still submits the case file to the court. The role of the victim in pardoning the perpetrator / suspect in deliberation

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becomes the main key in the settlement of criminal cases outside the court by the Public Prosecutor because the Public Prosecutor in the peace deliberation is only a Facilitator so that all decisions in the peace process between the perpetrator and the victim must be carried out by the Public Prosecutor.

### **2. Completion of The Criminal Case Outside Court Associated With The Values of Justice**

Settlement of criminal cases outside the court or referred to as Alternative Dispute Resolution (ADR) or alternative dispute resolution. If you pay attention to its history, alternative efforts to resolve criminal cases outside the court have been long in place before Indonesia became independent, since the time of Dutch colonial rule. This criminal settlement process is known as *afdoening buiten process* (settlement of cases outside the court). In the Criminal Code (Criminal Code) settlement outside the court is regulated as Article 82 of the Criminal Code called *Afkoop*, which states, that the authority to prosecute violations threatened with criminal fines only becomes removed, if voluntarily paid the maximum fines and costs that have been incurred when the prosecution has begun.

Resolving criminal cases out of court through a restorative justice approach, the perpetrator can discuss the appropriate punishment for himself along with the victim and the other parties. With the discussion and dialogue between the perpetrator, victim, community and mediator is expected to realize the perpetrator for the mistakes he made, so that the concerned are willing to carry out the 'punishment' that has been mutually agreed. By carrying out a voluntary 'punishment' by the perpetrator, the perpetrator will get forgiveness on the part of the victim, so as to reduce or even eliminate feelings of guilt in the perpetrator. Forgiveness and elimination of these feelings of guilt are needed by the perpetrator, in order to return to live his life normally in the midst of society. Bambang Waluyo, *Desain fungsi Kejaksaan pada Restorative Justice* (Jakarta: Raja Grafindo Persada, 2016)

The implementation of criminal settlement outside the court is considered to have fulfilled a sense of justice for the victim, the perpetrator and the community, because the process of recovering the loss and suffering of the victim of the crime, the settlement of criminal cases outside the court restoratively also provides an opportunity for the victim to convey his claims and interests to the perpetrator. In the criminal justice system the victim can only act as a witness in a judicial process and the victim cannot convey his or her demands to the perpetrator so that criminal justice does not necessarily satisfy the sense of justice for the victim.

With the form of settlement of criminal cases outside the court, for victims, perpetrators and the public can interact directly and participate in finding a form of settlement to the case by mutual agreement, this solution is more fulfilling the sense of justice for victims, perpetrators and the community, because the parties play a direct role in the settlement of the case. This means that resolving in this way can bring benefit and peace to the community of perpetrators and the community of victims. Expediency and peace are essentially also the objectives of a law enforcement process, in addition to justice and legal certainty.

Restorative justice conducted at the level of prosecution describes the form of settlement of criminal cases in a restorative justice manner to be one of the efforts to solve criminal cases that can reduce the buildup of cases at the court level and the full institution of community. The process of settlement through restorative justice is also faster and more efficient than through the justice system, settlement of cases through restorative justice is considered more realizing substantive justice as desired by the parties (perpetrators, victims and the community) who in this case focus more on the interests of victims. Restorative justice focuses on the recovery of the parties' situation as before a criminal offence occurs.

## **CONCLUSIONS**

Prosecutors have been given the authority to stop criminal cases outside the courts in the history and development of the legal system. Criminal cases settled outside the court are stopped by the Prosecutor's Office, have different legal consequences, namely having permanent legal force, if there are no parties who submit pre-trial and have permanent legal force and no legal efforts for the parties. The benefits of granting authority to the Prosecutor's Office for the settlement of cases outside the court, among others to realize the purpose of law enforcement, namely justice, legal certainty and benefit for the community; to create the ideals of justice, that is, fast, simple, and cheap; effectiveness and efficiency of handling cases; optimizing the participation of the community in law enforcement; reduce the overcapacity of Correctional Institutions and RUTAN; The prosecutor as *dominus litis* (controller) of the case is appropriately given the authority to stop the case in accordance with the provisions and practices of the judiciary; Create justice in accordance with the growing sense of justice in society. The model of settlement of criminal cases outside the court by the Prosecutor's Office is the termination of criminal cases for technical reasons including the termination of investigations and the termination of prosecutions. In addition, the termination of cases outside of technical reasons includes the principle of *oportunitas*, *afdoening buiten process* (*afkoop*), diversion and restorative justice. Where for the next there are some suggestions that researchers give, namely:

1. The existence and function of the Prosecutor's Office in the settlement of criminal cases outside the court needs to be maintained, optimized, and developed;
2. As a result of the law of termination of criminal cases on technical grounds related to pre-trial need to be maintained as a means of supervision (control) of the Prosecutor's Office;

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3. The Prosecutor's Office needs to continue to improve its professionalism and integrity so that all published decisions and regulations reflect justice and expediency for the community.
4. It is necessary to immediately revise and improve the Kuhap, Criminal Code, and other legislation that regulates the forms and substances related to the authority of the Prosecutor's Office which contains the principles of oportunitas, diversion and restorative justice.

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