

Law Reform in the Juvenile Criminal Justice System in Indonesia



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ABSTRACT: The true law is always in the process of becoming (*law making*), this also happens in the juvenile justice system in Indonesia, which is always in the process of becoming. This is what makes it important to reform the juvenile justice system. This study aims to examine and discuss the renewal of the juvenile justice system in Indonesia so that it is in line with the changing times and the demands of the times. So that the juvenile criminal justice system in Indonesia truly creates happiness for every community in Indonesia, especially for children who are in conflict with the law in Indonesia.

KEYWORDS: Law Renewal; System; Juvenile Justice.

INTRODUCTION

Since the promulgation of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, more than 700 general criminal cases have been resolved by the prosecutor's office through termination of prosecution based on restorative justice. This number is indeed not proportional to the number of criminal cases that exist, because the process of stopping prosecution based on *Restorative Justice* is carried out very selectively by the Attorney General's Office by conducting case titles led directly by the Deputy Attorney General for General Crimes . However , the settlement of cases through *Restorative Justice* has received a very positive response from the community, as evidenced by the many requests for the settlement of cases to be carried out through a process of stopping prosecution based on restorative justice.

Within the juvenile justice system is the entire process of resolving cases of children facing the law starting from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for children, survival and child development. , proportionate, deprivation of liberty and punishment as a last resort and avoidance of reprisals (vide article 1 number 1 and article 2 of the Republic of Indonesia Law number 11 of 2012 concerning the Juvenile Criminal justice system. The juvenile justice system states that a child is a child who is in conflict with the law (12 years old but not yet 18 years old), a child who is a victim (a child who is not yet 18 years old) and a child who is a witness in a crime (a child who is not yet 18 years old).

Besides that, regarding sanctions against children in Law No. 11 of 2012, which is determined based on the difference in the age of the child in the event that a crime committed by a child aged 12 years or 12 years and under is only subject to action. Against children aged 12 to 18 years old cases of criminal acts of children are still submitted to the juvenile court or a criminal sentence may be imposed. Whereas legal action in the form of arrest, detention or imprisonment should be used as a last resort and carried out in the shortest amount of time. The difference in treatment is based on growth and physical, mental and social development of children. In Article 21 paragraphs (1) and (2) of Law No. 11 of 2012 it is determined that Children under the age of 12 commit criminal acts, so investigators, social counselors and other professional workers take action ; Returning to parents, guardians, or foster parents , Participating in educational, coaching and mentoring programs in government agencies. The actions referred to in paragraph (1) shall be submitted to the court to be determined within a maximum period of 3 days. Therefore, diversion efforts are really appropriate for children who are caught up in legal problems, especially criminal punishment, so that their rights as children are not taken away due to the criminal process and do not have a negative effect on the child. Handling the problem of children dealing with legal problems does not only focus on their rights. More than that, it is necessary to apply restorative justice.¹

Settlement of cases through the mechanism of diversion or termination of prosecution based on restorative justice has opened up hope for the community to obtain justice that can restore peace and harmony in society which has been torn apart due to criminal acts, because the settlement of cases which have been carried out through the court hearing mechanism has apparently not provided any results. benefits to the community and has not touched the sense of community justice. The process of law enforcement through

¹ R Pradityo, Restorative Justice in the juvenile justice system, Journal of Law and Justice 5 (3), 447-465, 2016.

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the mechanism of court hearings conducted by law enforcement officials so far, only assesses justice based on the feelings of law enforcers alone and almost never considers the sense of justice that grows and develops in society, let alone considering the wishes and expectations of the community for the implementation of law enforcement. .

In the process of law enforcement, it is often the case that charges filed by the prosecutor or a decision handed down by the court against a child defendant are considered fair by the victim, but for the child defendant it is felt to be too heavy, or even vice versa, the child defendant accepts the decision handed down because it is felt fair while the victim rejected the decision because it felt too low. The public is only involved in the law enforcement process if their statement is needed to be a witness to the criminal incident that occurred, and even then with strict requirements (seeing for yourself, hearing for yourself and knowing events that occurred), so that the community including community leaders who were not directly involved in the criminal events that occurred, only became spectators outside the law enforcement process. Whereas the Criminal Charges submitted by the Prosecutor on the basis of "For Justice" and court decisions based on "For the sake of Justice Based on Belief in the One and Only God" turned out to be unable to fulfill the sense of justice in society, because they were considered not to have restored peace and harmony which had been torn apart as a result of criminal acts, so that when the Prosecutor's Office settles cases through "cessation of prosecution based on restorative justice" there is an update in the juvenile justice system, which involves not only child perpetrators and victims, but also the families of perpetrators and victims as well as local community leaders, people's expectations for justice are very high . That the main principle of implementing the concept of diversion is a persuasive approach or non-penal approach and gives someone the opportunity to correct mistakes. ²What is the role of the Public Prosecutor in settling cases outside the courtroom against children as perpetrators of crimes?

RESULTS AND DISCUSSION

Law Enforcement Purposes based on Gustav Radbruch 's opinion that a rule of law can be called a law if it has 3 values (objectives) of law, namely ; existence of legal certainty (*rechtmatigheid*), legal justice (*gerechtigheid*) and legal benefits (*doelmatigheid*). The three values contained in the law are goals that must be achieved in the law enforcement process carried out by law enforcers, if the three legal values cannot be achieved, then the purpose of establishing the rule of law is a mere necessity.

The implementation of law enforcement that has been carried out so far has almost certainly provided legal certainty for justice seekers. This can be seen from the existence of court decisions that have obtained permanent legal force (*inkracht van gewijsde*) carried out by the Prosecutor against the perpetrators of criminal acts (defendants). The implementation of court decisions that have obtained permanent legal force has actually provided certainty that anyone who is guilty will be prosecuted for punishment by the Prosecutor and if the charges are proven they will definitely be declared guilty by the court and the perpetrator (defendant) will receive punishment for the actions he has committed.

Based on the mechanism implemented so far, the value of legal certainty (*rechtmatigheid*) can be ensured that it has been achieved in the law enforcement process that is being carried out, because every perpetrator of a criminal act, whether a complaint offense or not, will definitely be processed legally, and if proven, he will certainly be sentenced by the court. , however, law enforcement cannot be declared successful if the other two values have not been achieved.

Legal justice is a value that is highly coveted, both by justice seekers (the parties to the conflict) and by society in general. Every time a legal process is carried out by law enforcers, the public always looks forward to the ending of the legal process and hopes for justice to be upheld by law enforcers, both prosecutors and judges.

Almost all demands that will be submitted by the prosecutor or court decisions that will be handed down by the court in a case, especially cases that attract attention, are awaited by the public with very high hopes that justice will finally be upheld. However, when the demands were read out or the verdict was handed down, there was still disappointment from both the parties to the conflict (victims or perpetrators), including their families, as well as the community, because the demands put forward or the decisions handed down were felt to lack a sense of justice. Lack of touch on the sense of justice in the community in the process of law enforcement by law enforcement officials can occur because during the law enforcement process takes place, the community is not actively involved in the resolution, so that law enforcement by some people is considered to be of no benefit.

The benefits of the law will be felt if law enforcement carried out by law enforcement officials succeeds in restoring peace in a society that has been torn apart by criminal acts. Without peace, the harmony in society will not be restored. Peace and harmony in society are values contained in the culture of the Indonesian nation which must be preserved, so that if these values are torn apart, the law must be able to restore them to their original state, so that what is one of the objectives of law, namely providing benefits (*doelmatigheid*) to society can be realized. . Whether or not the values that are the goal of law in law enforcement are achieved, namely the creation of legal certainty (*rechtmatigheid*), the realization of legal justice (*gerechtigheid*) and the existence of legal benefits (*doelmatigheid*) from law enforcement carried out by law enforcers, is very dependent on the legal system that is

² Randy Pradityo, "Straight line Diversion as a non-Penal Approach," *Journal of Rechts Vinding Online* (Jakarta, 2016). p.1.

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implemented. in Indonesia. It is from this basic value that Restorative Justice as an implementation of the basic values that exist in Indonesian society has a strong foundation of values.³

Lawrence Meir Friedman emphasized that the success of law enforcement in achieving legal objectives is highly dependent on the local legal system which consists of legal substance, law enforcement apparatus (legal structure) and legal culture. Legal norms that apply in Indonesia are implemented in the form of positive law in the form of laws and regulations that bind all Indonesian citizens and people who are in the State of Indonesia, including foreign nationals living in Indonesia. In accordance with the principle of legality, all laws and regulations, including the Criminal Code, are binding and must be obeyed since they were promulgated by the State.

According to Prof. Satjipto Rahardjo in his Progressive Law theory Law is a law formed for the benefit of the man himself and not the other man formed by law. Laws in the field of Criminal Law in Indonesia can be grouped into Material Criminal Law (namely the Criminal Code and Criminal Law Laws outside the Criminal Code) and Formal Criminal Law (KUHAP and several special laws, including the Law on the Juvenile Criminal Justice System). The Criminal Code/KUHP is a rule of law that is very flexible, not rigid and adapts to the level of guilt of the perpetrators of criminal acts, because the KUHP only provides limits on the threat of the highest criminal sanctions/penalties for a similar crime committed. The level of flexibility of a law is very necessary considering that the law was formed by humans for the benefit of humans, because by only being given the threat of the highest sanction, prosecutors and judges can freely apply criminal sanctions according to the level of error. and the severity of the criminal act. So that normatively, the Criminal Code meets the standards of a good legal system.

From a formal criminal law standpoint, the Criminal Procedure Code as procedural law that regulates law enforcement processes carried out by law enforcers, pays close attention to the human rights of perpetrators of criminal acts, which can be seen from the many rules given to law enforcers in carrying out their activities, so that normatively the Criminal Procedure Code can be stated highly uphold human rights, especially the perpetrators of criminal acts. However, the Criminal Procedure Code also contains several weaknesses, including the absence of rules for the protection of the rights of victims of criminal acts. One of the most prominent weaknesses of the Criminal Procedure Code is the existence of a disconnected system in law enforcement, namely the examination of witness and expert evidence is only carried out at the stage of investigation and examination before the court. Meanwhile, the Prosecutor as the official who owns the case (*dominus litis*) who has the authority to determine whether or not a case is appropriate to be brought to trial, has never met with witnesses and experts before making a decision, so this is very contrary to the principle of equality and the principle of essential justice.

Based on the Criminal Procedure Code, investigators before determining someone to be a suspect must meet and directly examine witnesses, experts and people suspected of committing a crime. Likewise with judges, before taking a stand and adopting a policy of declaring someone guilty, the judge must examine the witnesses, experts and the accused himself directly. However, the same thing does not apply to the Prosecutor, because the Prosecutor has never met directly with witnesses and experts or other evidence, before determining whether a person is an adult or a child defendant .⁴As a form of anticipation to avoid the negative impact of the criminal justice process on children, an action or policy can be carried out in dealing with or resolving problems regarding children without going through the criminal process.

Children are legal subjects and state assets, as part of the younger generation, children play a very strategic role as the next generation of a nation. It is this strategic role that the international community is aware of in prioritizing a convention which essentially emphasizes the position of children as beings who must receive protection for their rights. The⁵judicial process has a detrimental psychological impact on children. They will experience pressure and stigmatization while undergoing the judicial process, so based on this, all activities carried out within the framework of juvenile justice, whether by the police, prosecutors, judges or other officials, must be based on a principle, namely for the welfare of the child and the interests of the child .

Regarding the age limit for convicting children in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 point 3, 4, 5 basically stipulates that a child is a child who has not reached the age of 18 years. However, specifically the age of children who can be filed or processed through the criminal justice system are people who have reached 12 years of age but are not yet 18 years old.⁶ In Article 330 of the Indonesian Civil Code (*Burgelijk Wetboek*), the definition of an immature person is someone who has not reached the age of twenty-one years and has not been married before. Then in Law No. 1 of 1974 concerning Marriage it is regulated that the child referred to in the Marriage Law is a person who has not reached the age of 18 years (Articles 47, 48, 50) .⁷

³ DS Dewi and Fatahillah A. Gratitude, *Penal Mediation: Application of Restorative Justice in Indonesian juvenile courts* (Bandung: Indi Publishing, 2011) Pg. 9.

⁴ Marlina, *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice*, Ctk. second, Refika Aditama, Bandung 2012, p. 11

⁵ Ruben Achmad, efforts to deal with children in conflict with the law in the city of Palembang, in the *Simbur Journal* Light year number 27 X, January 2005, P. 24.

⁶ Widodo, 2013, *Prisonization of Delinquent Children: Phenomena and Countermeasures*, Yogyakarta: Aswaja Pressindo, p. 2

⁷Ibid

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Based on the explanation of the juridical provisions regarding the age limit for children above, it can be understood that the meaning of children in Indonesia varies quite a bit, both from the minimum and maximum age limits. However, the majority provisions stipulate that a child is someone who is not yet 18 years old. There is a minimum age limit for people who can be referred to as children who are counted from birth, or after reaching a certain age (for example 12 years), or there are even those who determine the existence of a child counted from when he was in his mother's womb. The diversity of these provisions indicates the specificity of determining the age of the child in order to protect the legal interests of the child .

In criminal law, there are reasons for criminal abolition (strafuitsluitingsgrond; grounds of impunity), namely reasons that allow people to commit acts that fulfill the formulation of an offense, a crime. Mvt from the Criminal Code (Netherlands) in his explanation regarding the reasons for the abolition of this sentence, stated what the so-called "reasons that a person cannot be held responsible for or reasons that a person cannot be convicted of". MvT mentioned 2 (two) reasons:⁸ The reason for someone's irresponsibility lies within that person (inwending), and the reason for someone's irresponsibility lies outside that person (uitweding) . It can be concluded that children who commit criminal acts should not be punished, because from these actions the child understands what the consequences are and understands what actions he has committed. ⁹Diversion is a solution to transfer the process of criminal acts committed by children to processes outside of criminal justice. In order for the diversion process to run smoothly, it is necessary for the cooperation of law enforcement officials with the perpetrators and victims to make peace, usually this happens at the investigative level where the reported party and the complainant carry out a mediation, namely peace. If a settlement occurs, the police work together with the Bapas to carry out further data collection on the parties, whether the diversion application is appropriate or not, if deemed appropriate the police submit a diversion application to the judge at the District Court to consider it. Efforts to heal and eliminate trauma that occurred in a relatively long period of time, namely waiting for the victim to be willing to make peace and intend to participate in the restorative justice program that will be carried out. Actors invited to participate must voluntarily .¹⁰ This is done solely to protect the rights and obligations of children where if the criminal justice process continues, there are fears that their rights and obligations will be taken away or lost.

Whereas law enforcement is carried out by Law Enforcement Officials today, it focuses more on formal legality, which focuses on punishing perpetrators of criminal acts that violate the provisions of the law, without considering other aspects and values. The process of law enforcement is essentially an elaboration of the universally applicable principle of legality, which is regulated in the Criminal Code (KUHP) in the provisions of Article 1 paragraph (1) which reads "No act can be punished, unless it is based on the force of the provisions of the law. -pre-existing criminal law" (nullum delictum nulla poena sine praevia lege poenale). The principle of legality in law enforcement is associated with the purpose of law, namely the existence of legal certainty, which has been interpreted with certainty that anyone who is guilty of committing an act that violates the provisions of the law must be sentenced to death. Aristotle argues that the purpose of law solely wants justice, so that the law that is formed is determined by ethical awareness of what is declared fair and what is declared unfair. As In its implementation, rules are formed containing orders and prohibitions that must be obeyed by the community. To be able to guarantee the compliance of the community with the rule of law, it is necessary to have legal certainty upheld by Law Enforcement Officials on behalf of the State, to guarantee peace and order in society. ¹¹The imposition of sanctions by law and the implementation of sanctions by law enforcement officials so far have only been aimed at human behavior, without considering it and paying attention to a person's inner attitude, so that a person is subject to criminal sanctions, especially deprivation of liberty, solely seen from the outward actions committed, and almost never considers the background of the actions committed. The background of the perpetrator in carrying out the prohibited act, (which in law enforcement practice is referred to as motive), is used by law enforcement officials only to strengthen evidence against the perpetrator's guilt. ¹²Law enforcers never consider the motive for the occurrence of a crime as a consideration for providing justice or deciding on a fair settlement in a criminal case.

Giving prison sentences as retaliation for crimes committed by perpetrators is considered unable to restore peace in customary law communities, even in certain cases imprisonment makes peace even further because resentment arises in the hearts of the perpetrators or the families of the perpetrators who consider the punishment received to be too severe , or revenge in the hearts of the victim or the victim's family who thought the sentence handed down was too light. Meanwhile, through the peace process between the conflicting parties, as evidenced by an apology from the perpetrator and the perpetrator's family to the victim and the victim's family, as well as an apology from the victim and the victim's family to the perpetrator and the perpetrator's family,

⁸Sudaryono & Natangsa Surbakti, 2005, Criminal Law, Surakarta: Muhamadiyah University Surakarta, p. 4

⁹ M. Nasir Djamil, Children are not to be Punished: Discussion of the Law on the Juvenile Criminal Justice System (UU-SPPA), Ctk.

Second, SInar Graphic, Jakarta, 2013, page 53

¹⁰Mark S. Umbreit and Robert B. Coates. (1992). Victim Offender Mediation an Analysis of Program in Four States of The US. US: Center for restorative justice and Mediation. p. 3.

¹¹ Maleha Soemarsono, 'Indonesian rule of law in terms of state objective theory', *Journal of Law and Development* , 37.2 (2017), 300–322.

¹² Eddy OS Hiariej, *Theory and Law of Proof* (Jakarta: Erlangga Publisher, 2012).

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witnessed and approved by the traditional elders, sense of peace is restored, the parties no longer hold grudges so that society returns to harmony.

Law Enforcement Paradigm Currently, there has been a shift in the paradigm of criminal law enforcement throughout the world, from the aim of law enforcement to guarantee legal certainty and realizing retributive justice and/or distributive justice, shifting to realizing restorative justice. justice), which prioritizes restoration to its original state. In retributive and distributive justice there is an exclusive interest for law enforcers to punish perpetrators of criminal acts, either with the aim of providing a deterrent effect or as recompense for actions committed that have harmed victims. Law enforcement with a retributive and distributive justice approach legalizes the use of force (forced measures) by law enforcers against perpetrators of criminal acts, whether it begins with arrest, detention, or searches and confiscation of proceeds of crime or assets related to crime.¹³

In the process of law enforcement on the basis of retributive justice, the interest of the victim in obtaining compensation for the loss suffered is not a concern of law enforcers. Law enforcers only focus on proving the guilt of perpetrators and punishing child perpetrators. The same thing also happens in the process of law enforcement on the basis of distributive justice, which prioritizes punishment to make the perpetrators suffer because the victims also suffer for the actions of the perpetrators. Based on the principle of progressive law Prof. Satjipto Rahardjo, which states that law is made for the benefit of humans and not humans formed by law, then the principle of law enforcement which prioritizes punishment of perpetrators for mistakes made needs to be adjusted.¹⁴ Adjustments to this shift are ideally carried out by amending the criminal procedural law which regulates the law enforcement process carried out and the criminal law by adding the types of punishment that can be imposed on criminal offenders, namely the obligation to recover victims' losses, in accordance with the principles of restorative justice. The change in the paradigm of law enforcement in Indonesia first occurred in criminal justice against children, with the promulgation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which explicitly emphasizes the importance of implementing restorative justice in criminal cases involving children.

Settlement of Cases outside the Court Based on Prof. Satjipto's expanded progressive legal principles, the enforcement of justice which prioritizes retaliation against perpetrators of criminal acts by imposing penalties, especially deprivation of independence of perpetrators without regard to the recovery of victims' losses, is no longer suitable for human needs in this case victims of crimes. For this reason, it is necessary to make legal breakthroughs by law enforcers so that they can provide more justice to victims of crime.¹⁵

The legal breakthrough that must be carried out is to optimize the recovery of losses for victims of criminal acts, even though the law, especially the Criminal Code does not provide for such sanctions. KUHAP (Law No. 8 of 1981) Article 98, indeed gives the right to victims of criminal acts to file a lawsuit for compensation to the perpetrators of criminal acts who commit acts that harm the victim, even the Criminal Procedure Code gives the right to the victim to submit a request for a combination of claims for compensation. in the ongoing criminal proceedings in court.

However, the claim for damages is carried out on the initiative of the victim of a crime, and it is rare for victims of a crime to file a claim for damages during the criminal trial process, due to the ignorance of the victim and the lack of law enforcers (investigators, public prosecutors and judges) explaining their rights to victims of crime. Recovery of victims' losses through the compensation claim mechanism, in practice is not easy and simple. There are many procedural efforts that must be taken by the victim, between the victim's knowledge of the assets owned by the perpetrator of the crime to ensure the success of the lawsuit, and the possibility of the lawsuit being granted by the judge at the last stage, considering that the decision on the case can be filed for appeals and cassation and even the possibility of a review return.

Another problem that arises if the claim for compensation is granted is the cost of executing the compensation award that must be borne by the victim, as well as the certainty of the successful implementation of the compensation award. Recovery of victims' losses through the mechanism of civil cases in accordance with the provisions of Article 98 of the Criminal Procedure Code is apparently not as simple as the article says, however, this provision is a form of acknowledgment of the Criminal Procedure Code that victims who are harmed as a result of the actions of the perpetrators of criminal acts has the right to obtain recovery in the form of payment of compensation from the offender. Recovery for victims of criminal acts based on the civil mechanism adopted by the Criminal Procedure Code is in the form of payment of compensation fines. With the payment of compensation, the victim can recover his own losses. Meanwhile, the mechanism for recovering victims' losses based on Indonesian legal culture is not only in the form of payment of compensation, but can also be in the form of restoration to its original state by the perpetrators of criminal acts, including if their actions result in damage to the victim's property, the perpetrator is punished to repair the damage besides an apology must be filed by the offender.

¹³ I Gusti Ayu Agung Ari Krisnawati Ni Ketut Winda Puspita, 'The Power of Proof of a Photocopy of Written Evidence', *Kertha Wicara*, 7.2 (2016), 1–5.

¹⁴ Satjipto Rahardjo, *Progressive Law (A Synthesis of Indonesian Law)* (Yogyakarta: Genta Publishing, 2009).

¹⁵ Muh. Afdal Yanuar, 'Progressive Legal Thinking For Legal Protection And Welfare Of Indigenous Peoples', *Journal of the Constitution*, 18.1 (2021), 41–67.

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Restoration to its original state has a much broader meaning than simply payment of compensation by the perpetrator to the victim. Because the meaning of recovery to its original state is not only seen from the recovery of material losses that can be measured financially, but also includes the restoration of a sense of peace in the hearts of the victims and the community which cannot be measured financially or compensated for material losses. Thus, recovery to its original state will not be possible through the mechanism of a civil lawsuit to the court, even if the lawsuit is combined with the process of examining the criminal case, because the essence of compensation is to recover the victim's financial losses, while the essence of recovery to its original state is to return the situation and post-criminal conditions to situations and conditions as if a crime had never occurred.¹⁶

In the civil lawsuit mechanism, reconciliation is not the main goal of the trial process, the main goal of the civil trial process even if it is combined with the criminal trial process is the payment of compensation (financially).¹⁷ While the main goal of restoration to its original state is peace which can create a sense of peace without any grudges from both parties, both the victim or the victim's family or the perpetrator or the perpetrator's family, so that peace and harmony in society are restored, all of which is only possible realized if the case is resolved out of court based on restorative justice. Peace through this restorative justice approach is essential peace which is the main goal in customary law (*adat*) according to the cultural values of the Indonesian people which prioritize peace, harmony and cosmic balance. The implementation of law enforcement through settling cases outside the trial (*afdoening buiten process*) has been implicitly regulated in the Criminal Procedure Code, specifically in the provision 29 Article 139 of the Criminal Procedure Code which gives authority to the public prosecutor to determine whether a complete investigation result meets the requirements or not to be delegated to the court. An investigation is declared complete if the results of the investigation have fulfilled the formal and material completeness of the case.¹⁸

The results of the investigation fulfill the formal requirements if there are no deficiencies in the administration of the case or the entire administration of the case, including warrants, minutes and other administrative documents, have been made in accordance with the applicable provisions, both in terms of content and formality.¹⁹ Meanwhile, material completeness means that all elements of the article alleged against the perpetrator have been proven by the testimony of witnesses, experts or other evidence by investigators as outlined in the case file. Thus, the consideration of the public prosecutor to delegate or not to transfer the case to court has a different meaning from the authority to stop the investigation as referred to in Article 7 paragraph (1) letter i of the Criminal Procedure Code or to terminate the prosecution based on the provisions of Article 140 paragraph 2a of the Criminal Procedure Code, namely that the case is not enough evidence, not a crime or closed for the sake of law. The authority of the prosecutor to determine whether or not to transfer the case to the court as referred to in Article 139 of the Criminal Procedure Code must be read in parallel with the provisions of Article 14 letters h and i of the Criminal Procedure Code, namely the prosecutor's authority to close the case for the sake of law. The prosecutor as the public prosecutor has the authority to close a case for the sake of law with reasons including: the defendant has died; expiry of prosecution; there has been a court decision that has permanent legal force over the case (*nebis in idem*) or because there has been a settlement of the case outside the court (*afdoening buiten process*).²⁰

Settlement of cases out of court (*afdoening buiten process*) can be carried out by prosecutors, among others, through the mechanism of paying fines for certain cases such as tipping cases, cases of tax crimes and customs crimes, or through a recovery mechanism in its original state such as in juvenile offenses (*diversion*) and general criminal offenses that are light in nature. The essence of closing a case for the sake of law is not because the case lacks sufficient evidence or is not a criminal case so that the perpetrator cannot be prosecuted or cannot be sentenced, but the perpetrator has been proven guilty of committing a crime and the perpetrator can be prosecuted and sentenced to deprivation of liberty, but the sentence cannot or does not need to be carried out, because it has expired (*expired*), or has already been carried out (*nebis in idem*), or the perpetrator has been punished to restore it to its original state.

Payment of fines or restoration to its original state by the perpetrators of criminal acts, is essentially a punishment carried out by the perpetrators and is a form of settlement of cases justified by law, so that the perpetrators for the sake of justice and truth based on Belief in One Almighty are certainly not appropriate if sentenced to deprivation of liberty. Termination of Prosecution Based on Restorative Justice That one of the main duties of the Prosecutor as State Law Enforcement as stipulated in the Prosecutor's Law Number 16 of 2004 in conjunction with Number 11 of 2021 is to maintain public order and tranquility. The task of maintaining public order and peace is of course inseparable from the position of the prosecutor as law and justice enforcer.

¹⁶ Nur Rochaeti Novi Novitasari, 'The Law Enforcement Process Against Crime of Narcotics Abuse by Children', *Journal of Indonesian Legal Development*, 3.1 (2021), 96–108 <<https://doi.org/10.14710/jphi.v3i1.96-108>>.

¹⁷ Achmad Ratomi, 'The Concept of Diversion Implementation Procedures at the Investigative Stage in Settlement of Crimes Committed by Children', *Jurnal Arena Hukum*, 6.3 (2013), 394–407.

¹⁸ Nur Hidayati, 'Children's Criminal Justice with a Restorative Justice Approach and the Best Interests of the Child', *Ragam*, 13.4 (2013), 144–51.

¹⁹ Lilik Purwastuti Yudaningsih, 'Handling Child Cases Through Restorative Justice', *Journal of Law*, 13.1 (2014), 67–79.

²⁰ Sri Rahayu, 'Diversion as an Alternative to Settlement of Criminal Cases by Children in the Perspective of the Juvenile Criminal Justice System', *Journal of Legal Studies*, 6.1 (2015), 127–42.

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Law enforcement can be said to be successful if justice can be realized, and one form of justice is the creation of public order and tranquility, which can be seen from conditions of peace and harmony in society. ²¹The law is not successful if law enforcement cannot create order and peace in society. A society that is rowdy, riotous and there is no peace is a reflection of failure in law enforcement, and this can result in a decrease in the public's sense of trust in law enforcers. In carrying out the task of maintaining public order and peace, law enforcement carried out by the prosecutor must be aimed at providing justice that creates peace in the hearts of victims, perpetrators and society. ²²Law enforcement that has been carried out so far which aims to provide legal certainty by punishing perpetrators of criminal acts is considered to be less able to meet the demands of social justice. ²³Punishment of perpetrators in the form of deprivation of liberty as recompense for their actions which harmed the victim is deemed unable to recover the losses suffered by the victim, so a legal breakthrough should have been made that prioritizes populist justice rather than certainty in punishing the perpetrators. Responding to the paradigm shift in law enforcement that requires the law to act more fairly to the grassroots .

Implementation of law enforcement is not only to ensure legal certainty, but is prioritized to provide essential justice. True justice is justice that can restore peace and harmony in society. True justice cannot only be realized based on the consideration of the prosecutor as the public prosecutor as has been implemented so far. The demands put forward by the prosecutor and/or the decisions handed down by the judges are essentially justice for law enforcers because these charges and decisions are determined unilaterally by law enforcers without involving victims, perpetrators and the community. Imposing sanctions on perpetrators of criminal acts that are committed without involving victims and the community and even the perpetrators themselves, will not be able to achieve true justice, because the justice upheld by law enforcers is not necessarily the same as the justice that society expects. ²⁴The main focus of true justice is the restoration of peace and harmony in society, while the imposition of crimes, especially the deprivation of independence of the perpetrators, focuses more on punishment for the mistakes made by the perpetrators of criminal acts, and cannot restore peace, because the victims' losses cannot be recovered and the victims' suffering is not treated properly. the imposition of a penalty of deprivation of liberty against the offender. As law enforcers and in accordance with the principle of *dominus litis*, in the framework of carrying out the duties of law enforcement and justice, prosecutors must prioritize restoration to the original state before the crime occurred, compared to imposing crimes of deprivation of liberty which cannot restore conditions to their original conditions.²⁵

The enforcement of the Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, the focus of resolving cases by prosecutors is no longer focused on imposing criminal sanctions in the form of deprivation of liberty, but rather prioritizing restoration to its original state. Demands for deprivation of liberty against perpetrators of certain crimes (which are mild in nature) are only carried out as a last instrument (*ultimum remedium*) and are no longer the main alternative (*primum remedium*) in law enforcement carried out by prosecutors.²⁶ For cases that are mild in nature, settlement of cases outside the courtroom is the main alternative that must be chosen by the prosecutor through a mechanism for stopping prosecution based on restorative justice, with the aim that peace and harmony in society can be restored. Termination of prosecution based on restorative justice is not an elimination of the guilt of the perpetrators of criminal acts nor is it an abolition of criminal sanctions against perpetrators, but in essence is an alternative to imposing sanctions on perpetrators in the form of punishment to restore them to their original state as before the crime occurred, namely a peaceful situation. and harmony, without any resentment. Implementation of termination of prosecution based on restorative justice with diversion against child offenders based on the principle of justice; public interest; proportionality; crime as a last resort; as well as the principle of fast, simple and low cost.²⁷

The principle of justice means that the purpose of stopping prosecution is not to reduce the burden on prisons that are already overloaded, but is aimed at realizing justice that touches society more, in accordance with the objectives of law enforcement carried out by the prosecutor's office, namely "For the sake of justice and truth based on almighty God." One." The principle of public interest means that the termination of prosecution is carried out by the prosecutor's office not only for the benefit of the perpetrators of criminal acts, but also for the benefit of the victim, the perpetrator's family and the victim's family, as well as the surrounding community, who wish to restore peace and harmony in society without any resentment between the parties.²⁸

²¹ Novi Edyanto, 'Restorative Justice to Resolve Cases of Children in Conflict with the Law', *Journal of Police Science* , 11.3 (2017), 31–52.

²² Anggun Lestari Suryamizon, 'Preventive Legal Protection Against Violence of Women and Children in the Perspective of Human Rights Law', *Marwah: Journal of Women, Religion and Gender* , 16.2 (2017), 112–26.

²³ Rr. Putri A. Priamsari, 'Seeking Justice for Children Through Diversion', *Journal of Law Reform* , 14.2 (2018), 220–35.

²⁴ Lusy KFR Gerungan Gerungan, 'Protection of Women and Children During War in International Humanitarian Law', *UNSRAT Journal of Law* , 21.3 (2013), 76–85.

²⁵ Sarbaini Harpani Matnuh M. Ramadhani, 'The Role of the Social Service in Handling Street Children in the City of Banjarmasin', *Journal of Citizenship Education* , 6.11 (2016), 947–54.

²⁶ Beby Suryani Fithri, 'Ultimum Remedium Principle Against Children In Conflict With The Law In The Context Of Child Protection', *Mercatoria Journal* , 2.1 (2017), 13–28 <<https://doi.org/10.31289/mercatoria.v10i1.733>>.

²⁷ Lidya Suryani Widayati, 'Ultimum Remedium in the Environmental Sector', *Ius Quia Iustum Law Journal* , 22.1 (2015), 1–24.

²⁸ Pan Mohamad Faiz, 'John Rawls' Theory of Justice', *Journal of the Constitution* , 6.1 (2019), 135–49.

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The principle of proportionality requires that not all criminal acts can be stopped based on restorative justice. Termination is only carried out for certain criminal acts that deserve to be stopped for the sake of a sense of justice, while serious crimes such as murder, rape and other extraordinary crimes cannot be stopped when the prosecution has fulfilled the elements of evidence. The principle of Criminal As a Last resort is that the imposition of penalties for deprivation of liberty is carried out if an alternative settlement of cases to restore peace and harmony in society through a process of peace and restoration to its original condition cannot be realized. As for the Quick, Simple and Low Cost Principle, this means that resolving cases through a restorative justice approach will be able to speed up the recovery process, without requiring a relatively long and high-cost trial process.

CONCLUSION

Termination of prosecution based on restorative justice is carried out in the context of providing protection for the interests of victims and other legal interests, because not all cases that are processed through court trials have a positive effect on child offenders. In some cases, the trial process that convicts the perpetrators has tarnished the reputation of the victim. Another consideration that must be considered in the implementation of the termination of prosecution based on restorative justice is to avoid negative stigma and retaliation against perpetrators of criminal acts, in order to obtain a positive response from the community and to restore harmony in society according to community values. - Justice through the court trial mechanism for certain cases only becomes justice for law enforcement, if the losses suffered by the victim cannot be recovered, because through the trial process, justice is manifested in the form of punishment for the perpetrators of criminal acts, without paying attention to and taking into account the recovery of victims' losses, especially recovery for return state. Meanwhile, through the mechanism for stopping prosecution based on restorative justice, settlement of cases is aimed at restoring the situation to its original state, not aimed at punishing the perpetrators alone. Recovery back to its original state began with an apology from the perpetrator (and the perpetrator's family) to the victim (and the victim's family) witnessed by local community leaders, both religious and traditional leaders. On the basis of this apology, the prosecutor initiated deliberation between the perpetrator and the victim, including his family, witnessed by community leaders. If an agreement is reached in the deliberation, this is stated in the minutes of peace which are signed by the parties involved in the peace process.

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