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An Analysis of the Prosecutor's Authority to Terminate Prosecution Based on Restorative Justice with the Prosecutor's Authority as a Public Prosecutor

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Abstract. This study aims to analyze the Prosecutor's authority in terminating the prosecution of criminal cases based on restorative justice and the impact of the issuance of Circular Letter No 01/E/Ejp/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice. The method used is normative juridical with a statutory approach and legal concepts. Primary legal materials include Laws and attorney general regulations, while secondary legal materials comprise legal literature, journals, and related papers. Data analysis was done descriptively and qualitatively. This research found that prosecutors have maximum authority as *dominus litis* in the criminal justice system in Indonesia, which includes prosecution, submission of cases to court, and termination of prosecution based on restorative justice. Articles 139 and 140 § 2 of KUHAP regulate the Prosecutor's authority to ensure the achievement of legal objectives such as justice, certainty, and legal benefits. Prosecutors ensure that the prosecution process achieves legal objectives. Prosecutors must discontinue prosecution based on restorative justice when they cannot achieve legal objectives by submitting cases to court. Humane and conscience-based handling of criminal cases is required, with strict consideration in applying restorative justice according to specified criteria.

Keywords: Prosecutor's Authority; Termination of Prosecution; Restorative Justice; Legislation; Criminal Justice System.

INTRODUCTION

Article 1 § 3 of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a state based on Law," furthermore in the explanation of the 1945 Constitution, it is said that "Indonesia is based on the rule of Law (*rechtstaat*) not merely on power (*machstaat*), therefore the state must not carry out its activities based on mere power, but must be based on the Law.

A rule-of-law state optimally enforces the Law, upholds human rights, and guarantees equal status for its citizens within the legal and governmental framework. The government is obligated to enforce the Law and govern without exception. Consequently, Law enforcement becomes a critical parameter in the success of a rule-of-law state author [1]. The concept of the rule of Law in Indonesia embraces the principles of legal certainty in a *rechtsstaa*t, as well as the principles of justice in the rule of Law and the spiritual values of religious Law. Written Law, along with all its procedures, must be placed within the framework of upholding justice. The 1945 Constitution, in principle, regulates in a balanced manner both the concept of a *rechtsstaat* and the rule of Law, ensuring legal certainty and upholding substantial justice. Moreover, the 1945 Constitution also emphasizes the principle of benefit, which requires that every enforcement of the Law must be beneficial and not cause harm to society, the nation, and the state author [2].

According to Von Savigny, he states that Law grows and develops in the life of society, and it will constantly evolve when a society becomes. Law is similar to language; both gradually devel-

op from the characteristics of a society. Law and language develop when a society grows, and both perish when a society loses its individuality [3].

Based on this, it is essential to have legal regulations that reflect the values of justice, utility, and legal certainty in harmony with the development of societal life. As stated by Satjipto Raharjo, discussing Law means discussing human relationships. Discussing justice is inherently involved when talking about human relationships. We cannot merely address Law in its formal structural form; we must also view it as an expression of society's ideals of justice [4].

Every community group invariably encounters issues arising from the discrepancies between the ideal and the actual, the standard and the practical, and what ought to be done versus what is done. This situation implies that the group faces the challenge of ensuring order to maintain its existence [5]. In societal life, individuals cannot escape various interactions with one another. Such circumstances inevitably lead to conflicts, ultimately leading to criminal acts authors [6].

The occurrence of criminal acts within society results in legal consequences that anyone who violates criminal Law provisions as regulated in the Criminal Code (KUHP) or other criminal Law provisions outside the Criminal Code will subject to criminal justice proceedings based on formal criminal Law provisions as regulated in the Criminal Procedure Code (KUHAP) starting from the investigation stage by investigators, prosecution by public prosecutors, and trial by judges which will lead to the imposition of criminal sanctions or punishment by the violated criminal Law provisions as an actualization of Law enforcement efforts.

Punishment is the embodiment of criminal Law in a concrete form, making it the culmination of the entire process of holding someone accountable for their actions; this reflects the absolute theory, which states that Law must exist as a consequence of committing a crime; thus, the guilty person must be punished [7]. It has become a widely held belief in society that resolving criminal cases through the judicial system is the most dominant option compared to resolving cases outside of court; this leads to criminal cases at the investigation, prosecution, and judicial levels. Additionally, another impact of resolving criminal cases through trials is the occurrence of overcapacity in correctional facilities due to the increasing number of convicts each year.

In response, the Republic of Indonesia's Prosecutor's Office issued the Republic of Indonesia Prosecutor's Regulation No 15 of 2020 on the Termination of Prosecution Based on Restorative Justice (Perja Termination of Prosecution) on July 22, 2020. This Regulation grounds itself on the consideration that resolving criminal cases through restorative justice, which emphasizes restoring the situation to its original state rather than seeking revenge, is a legal necessity for society. Prosecutors must develop this mechanism to implement their authority and reform the criminal justice system.

Restorative justice, also called restorative justice, is a commonly used term for resolving criminal cases that focuses on restoring or recovering victims and communities rather than punishing offenders. It involves resolving cases by engaging all stakeholders to discuss and agree on restoring the suffering caused by the crime [8]. Criminal procedures and justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on resolving criminal cases that is fairer and more balanced for victims and perpetrators authors [9].

Constitutionally, the Prosecutor's Office is one of the institutions that execute judicial power as regulated in Article 24 § 1 of the 1945 Constitution, which is an independent power to carry out justice to uphold the Law and justice. Based on this fundamental principle, to strengthen the position of the Prosecutor's Office, the Republic of Indonesia Prosecutor's Office Law No 16 of 2004, as amended by Law No 11 of 2021 regarding Amendments to Law No 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office (Prosecutor's Office Law) was enacted.

The Public Prosecutor's Office, as regulated in Article 1 No 1 of the Prosecutor's Office Law, carries out functions related to judicial power and is positioned as a government institution that exercises state power in prosecution and other authorities based on the Law. Prosecution, as stipulated in Article 1 No 3 of the Prosecutor's Office Law and Article 1 No 7 of the Criminal Procedure Code, refers to the public Prosecutor's action to transfer cases to the competent district court in the manner and according to the procedures stipulated in criminal procedural Law, requesting that they be examined and judged by the judge in a court session.

As such, the Prosecutor as the Public Prosecutor also has the authority to terminate criminal

prosecution as regulated in Article 140 § 2 letter a of the Criminal Procedure Code, which stipulates that if the Public Prosecutor decides to terminate the trial due to insufficient evidence or the incident is not a criminal act or the case is closed by Law, the Public Prosecutor shall document it in a determination letter.

By examining the substance of these provisions, one can understand that the cessation of prosecution from a legal standpoint can only be applied when it meets the qualifications within three scopes: first, there is insufficient evidence; second, the act does not constitute a criminal offence; and third, the case is closed by Law. The cessation of prosecution, as formulated in the Prosecutorial Discretion on Termination of Prosecution (Perja Penghentian Penuntutan), is oriented towards the principle of restorative justice, carried out by the public Prosecutor under the conditions outlined in Article 4 of the Perja Penghentian Penuntutan, which stipulates:

1. The cessation of prosecution based on restorative justice is conducted with due regard to the following:

a) The interests of the victim and other protected legal interests;

b) Avoidance of negative stigma;

c) Avoidance of retaliation;

d) Community response and harmony, and

e) Propriety, decency, and public order.

2. The cessation of prosecution based on restorative justice, as referred to in § 1, is carried out by considering:

a) The subject, object, category, and threat of the criminal offence;

b) The background of the occurrence/commission of the criminal offence;

c) The degree of culpability;

d) The loss or consequences resulting from the criminal offence;

e) The cost and benefit of handling the case;

f) The restoration to the original state; and

g) The existence of reconciliation between the victim and the suspect.

Law No 11 of 2012 concerning the Juvenile Justice System previously accommodated the cessation of prosecution based on restorative justice, which is not fundamentally new. However, the principle of restorative justice therein could only be applied to children as perpetrators of criminal acts, while restorative justice, as affirmed in the Prosecutorial Discretion on Termination of Prosecution, applies to adults as perpetrators of criminal acts. Another noteworthy aspect of the Prosecutorial Discretion on Termination of Prosecution is that it is issued and accommodated through the internal regulations of Law enforcement agencies, in this case, the Attorney General's Office of the Republic of Indonesia, rather than being accommodated through legislation.

Furthermore, to optimize the implementation of Attorney General Regulation No 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and to accommodate the idea of balance encompassing the monodualistic balance between public/societal interests and individual/personal interests, the balance between victim protection/interests and the idea of criminal individualization, the balance between objective (act/manifestation) and subjective (mental/personal attitude) elements, the balance between formal and material criteria, and the balance between legal certainty, flexibility, and justice, the Attorney General's Office has issued Circular Letter No 01/E/Ejp/02/2022 regarding the Implementation of Termination of Prosecution Based on Restorative Justice as a reference for the implementation of prosecution termination based on restorative justice, which also used in carrying out prosecution termination.

The issuance of the Circular Letter on Prosecution Termination can be seen as a legal breakthrough; however, its implementation also presents numerous challenges, necessitating a comprehensive review of the Prosecutor's authority to terminate prosecution concerning the Circular Letter on Prosecution Termination. This review is essential to understand and analyze all associated issues comprehensively.

MATERIALS AND METHODS

The methodology plays a crucial role in conducting scientific research, particularly in Law, where scholars characterize their work by the method they employ. This study adopts a juridical-normative research approach, a scientific procedure to ascertain truth based on legal scholarly reasoning from a normative perspective authors [10]. Normative legal research involves analyzing legal regulations based on legal dogmatics, legal theory, and legal philosophy [11]. This type of research encompasses [12]:

1. Research on legal principles;

2. Research on legal systematics;

3. Research on vertical and horizontal synchronizations;

4. Comparative Law, and;

5. Legal history.

The research was normative legal research, utilizing a statutory approach to examine all legal regulations and regulations (criminal Law policies). Additionally, the study relied on a literature review to obtain secondary data in the field of Law. This normative legal research approach was chosen, assuming that the analysis of issues in this study is based on legal material, concepts, and theories used to identify problems related to the Prosecutor's Authority in Terminating Criminal Prosecution Based on Restorative Justice.

The study employed a statutory approach and a conceptual legal analysis approach. The statutory approach entailed examining legal provisions such as Law No 11 of 2021 on the Amendment to Law No 16 of 2004 concerning the Attorney General of the Republic of Indonesia and reviewing Circular Letter No 01/E/Ejp/02/2022 regarding the Implementation of Termination of Prosecution Based on Restorative Justice. Meanwhile, the conceptual legal analysis approach involves analyzing opinions, statements, and comments within legal content from various experts, scholars, and legal professionals, both domestic and international, to identify legal ideas, legal concepts, and legal principles relevant to the issues at hand. Understanding the perspectives and doctrines of these scholars served as a foundation for researchers to construct legal arguments for addressing the problems encountered.

The legal sources in this research consisted of primary and secondary legal materials. Primary legal materials included legislation such as the Criminal Code, the Criminal Procedure Code, Law No 11 of 2021 concerning the Attorney General of the Republic of Indonesia, Attorney General Regulation No 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Circular Letter No 01/E/Ejp/02/2022 regarding the Implementation of Termination of Prosecution Based on Restorative Justice. Secondary legal materials included Restorative Justice data from the South Kalimantan High Prosecutor's Office, legal literature books, dissertations, theses, research reports, legal journals, articles, and papers.

The technique for collecting primary legal materials involved examining legislation, starting with constitutional norms statutes, and implementing regulations such as government regulations or internal regulations such as Attorney General Regulations, discussing the analysis of the Prosecutor's Authority in Terminating Criminal Prosecution Based on Restorative Justice. The secondary legal materials collection included books, Law theses and dissertations, and legal journals related to the Prosecutor's Authority in Terminating Criminal Prosecution Based on Restorative Justice. Third-level legal materials are gathered through internet searches and empirical data on issues related to the Prosecutor's power to close criminal prosecutions based on restorative justice.

We analyzed the data obtained from literature searches descriptively and qualitatively. The descriptive qualitative method entailed comprehensively describing the main issues by examining primary, secondary, and tertiary legal materials. We interconnected all acquired data and adapted it to the core issues under study, producing a coherent whole.

RESULTS AND DISCUSSION

Authority (*kewenangan)* derives from the root word "*wewenang*," defined as the ability to authorize, have rights, and have the power to carry out something. Authority is formal power originating from legislative authority (Law) or executive administrative power. Authority typically consists of various powers, such as power over certain groups of people or power over a specific area of governance [13].

Legally, the understanding of authority is the ability granted by statutory regulations to produce legal consequences. Meanwhile, according to H.D. Stoud, authority can be described as "*bevoegheid wet kan worden omscrevenals het geheel van bestuurechttelijke bevoegheden door publiekrechtelijke rechtssubjecten in het bestuurechttelijke rechtsverkeer*," meaning authority can be explained as the entirety of rules concerning the acquisition and utilization of government authority by public Law subjects in public Law [14].

Author [15] describes authority (*bevogdheid*) as legal power (*rechtsmacht*). Thus, in public Law, authority is related to power.

According to the author [16], it is necessary to distinguish between such concepts as powers and competence. Authority (*authority gezag)* formalizes power over specific groups of people or particular areas of governance. Meanwhile, competence (*Competence, bevogdheid*) only recognizes specific regions. Thus, authority signifies a collection of competencies (*Rechsbevoegdheden*). Therefore, competence is the ability granted by statutory regulations to engage in legal relations [17].

The Law empowers the Public Prosecutor to conduct prosecutions and execute judicial decisions. According to Article 14 of the Indonesian Criminal Procedure Code (KUHAP), the authority of the Public Prosecutor is as follows:

a) Receiving and examining the investigation files from the investigator or assistant investigator;

b) Conducting pre-prosecution if there are deficiencies in the investigation by considering the provisions of Article 110 § 3-4 by guiding the perfection of the investigation by the investigator;

c) Extending detention, conducting detention or continued detention, and/or changing the detainee's status after the investigator transfers the case;

d) Issuing an indictment;

e) Referring the case to court;

f) Delivering notices to the defendant regarding the provisions of the day and time of the trial accompanied by a summons, both to the defendant and to witnesses, to appear at the scheduled trial;

g) Conducting prosecution;

h) Closing cases for legal interests;

i) Taking other actions within the scope of duties and responsibilities as a public prosecutor according to this Law;

j) Executing judicial decisions.

The Public Prosecutor is the authority to determine whether an investigation has been completed for referral to the District Court, as stipulated in Article 139 of the Indonesian Criminal Procedure Code (KUHAP). It is clearly outlined in the KUHAP that the Prosecutor holds the position of the prosecuting entity in carrying out prosecutions. In executing the duties and functions of prosecution:

a) Upon receiving the case files from the investigator.

b) When transferring the case files received to the judge for prosecution and examination in court sessions.

The formulation of legal policies within the KUHAP elucidates the duties and authorities of the Prosecutor in prosecuting in their capacity as the Public Prosecutor. The task of prosecution is essentially an absolute monopoly of the Public Prosecutor, commonly referred to as the principle of "*dominus litis*" "*dominus litis*" originates from Latin, where "*dominus*" means owner and "*litis*" refers to a case or Lawsuit. Black's Law Dictionary defines "*dominus litis*" as: "The party who makes the decisions in a Lawsuit, usually as distinguished from the attorney." Hence, the judge cannot request that a case be brought before them (passively), as the judge merely awaits the referral of cases from the Public Prosecutor [18]; this signifies that the Prosecutor's Office is the sole institution tasked with the state's prosecutorial duties, with prosecutorial policy control vested solely in the hands of the Attorney General.

The integrated criminal justice system lies within the Public Prosecutor. Compared with other countries' legal systems, the principle of "*dominus litis*" inherent in the Public Prosecutor includes a. Ownership of the case, b. Control over the case, and c. Responsibility for case resolution.

However, within the legal system in Indonesia, this principle undergoes a reduction in meaning and, even worse, sometimes experiences a decrease in practice as well. The Indonesian Criminal Procedure Code (KUHAP) has limitations on interpreting and elaborating *dominus litis*, but the legal basis is present. However, there is uncertainty in its interpretation; for example, in Article 139 of the KUHAP, when the Public Prosecutor has received or re-received the complete results of the investigation, they must promptly determine whether the case file meets the requirements for referral to trial.

There has been an inaccurate interpretation regarding the determination of whether the case file meets the requirements for referral to court as if the determination of referral is identical to formal and material requirements, this means that if the substantive and formal requirements are met, the case file is submitted to the court. This interpretation is incorrect because referring a case is not only to fulfil formal and material requirements but also to assess whether the legal objectives can be achieved by referring the case to court; this is part of the duties of the Public

Prosecutor as the holder of the *dominus litis* principle, who is responsible for achieving these legal objectives.

If the current orientation of prosecution implementation focuses solely on procedural justice, then it implies that all cases must refer to court for legal certainty. However, suppose the orientation of prosecution implementation by referring cases to trial is no longer based solely on procedural justice but on substantial justice, as in line with progressive legal thinking. In that case, the legal objectives become more critical than merely fulfilling procedures. Therefore, not all cases must be referred to court [19].

Therefore, the Prosecutor must determine whether the legal objectives are being achieved by bringing the case to trial. If the legal objectives have not been achieved by bringing the case to trial, the Prosecutor must have the courage not to get the case to trial and to discontinue the prosecution.

In connection with the legal objective, which is to ensure the continuity of balance in the relationship among members of society, there are three legal objectives: certainty, utility, and justice authors [20]. These three work synergistically to create an ideal legal system. Law is just if it is inevitable and beneficial. Law is specific if it is just and proper. Law is helpful if it has a certainty author [21].

Legal certainty is one of the aims of forming Law to ensure its proper implementation. In the Indonesian context, this is emphasized in the constitution. Article 28D § 1 of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the Law. The state's protection of legal certainty gives rise to a beneficial law.

The utility of Law also needs to be considered because everyone expects benefits from Law enforcement. Law enforcement should not cause unrest in society. Thus far, we have only focused on the aim of certainty, as if the legal objective has been achieved, whereas two other objectives have not been achieved, namely utility and justice. Ideal Law enforcement must realize all three legal objectives, and the Public Prosecutor must determine whether these objectives are achieved [22].

This is why the principle of *dominus litis* is inherent in the Public Prosecutor; they decide whether to refer a case to court and if not, they can terminate the prosecution. The *dominus litis* principle functionalizes regulating the authority to terminate prosecution held by the Prosecutor's office, as stipulated in Article 140 § 2 of the Indonesian Criminal Procedure Code (KUHAP). This article regulates three components of the reasons for terminating prosecution, namely:

a) Insufficient evidence;

b) The act is not a criminal offense because a person with a mental illness committed it (Article 44 of the Indonesian Criminal Code), out of necessity (Article 48 of the Indonesian Criminal Code), in self-defense (Article 49 of the Indonesian Criminal Code), in compliance with the Law (Article 50 of the Indonesian Criminal Code), or under Lawful orders (Article 51 of the Indonesian Criminal Code). The suspect/defendant has died, the case has expired (Article 78 of the Indonesian Criminal Code), there are justifying or exculpatory reasons;

c) Case Closed by Law, due to the application of the ne bis in idem principle (Article 76 of the Indonesian Criminal Code), the payment of the highest fine (Atdoening buitenprocess) (Article 82 of the Indonesian Criminal Code), withdrawal of the complaint by the complainant (Article 75 and Article 284 § 4 of the Indonesian Criminal Code) based on P-26. Prosecutors can terminate prosecution before pre-trial (Article 80 of the Indonesian Criminal Procedure Code) and prosecute again if new evidence is found (novum).

As a government institution tasked with exercising state authority in prosecution, the Attorney General's Office of the Republic of Indonesia must realize legal certainty, legal order, justice, and truth based on the Law while adhering to religious, moral, and ethical norms. It must explore the values of humanity, Law, and justice within society (Article 35C of the Attorney General Law). The public interest encompasses the national, state, and/or broader community's interests. Thus, criminal acts still exist but are set aside. This provision implements the principle of opportunity, which can only be exercised by the Attorney General, guided by the principles of prudence. The public cannot file a pre-trial motion, but they can file a judicial review with the Chief Justice of the Supreme Court regarding the dismissal of a case by the Attorney General. If the case dismissal is valid, prosecutors cannot pursue further prosecution.

Article 37 of Law No 11 of 2021 regarding Amendments to Law No 16 of 2004 concerning

the Attorney General's Office states that the Attorney General is responsible for prosecution conducted independently in pursuit of justice based on the Law and conscience. The explanation of this article clarifies that, as a manifestation of restorative justice, prosecutors weigh between legal certainty (rechtmatigheids) and its benefits (doelmatigheids) when carrying out prosecution.

Resolving criminal cases by emphasizing restorative justice, which focuses on restoring the situation to its original state and balancing the protection and interests of both victims and perpetrators without being oriented towards retaliation, is a legal necessity in society and a mechanism established in the exercise of prosecutorial authority and the reform of the criminal justice system.

Aligned with this, the Attorney General is tasked and empowered to effectively enforce the legal process provided by the Law, to consider the principles of swift, simple, and cost-effective justice, and to establish and formulate case handling policies for the successful prosecution conducted independently in pursuit of justice based on the Law and conscience, including prosecution using a restorative justice approach as stipulated by statutory regulations.

The termination of prosecution based on restorative justice is carried out to fulfil the sense of justice in society by balancing legal certainty (rechtmatigheid) and benefits (doelmatigheid) in exercising prosecutorial authority based on the Law and conscience. In response to the dynamics of legal development and societal, legal needs, the Attorney General has issued Regulation No 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, which society has effectively implemented and positively responded to.

Regulation No 15 of 2020 by the Attorney General's Office grants prosecutors the authority to terminate prosecution based on restorative justice and represents a breakthrough in resolving criminal offences. The Regulation clearly outlines how restorative justice involves perpetrators, victims, and the community in the resolution process of criminal cases. It emphasizes the peace agreement between the perpetrator and the victim and how procedural Law recognizes the existence of a peace agreement as a legally binding agreement. Legal certainty regarding justice in handling a case is of utmost importance.

The termination of prosecution based on restorative justice under Regulation No 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, Article 2, is implemented based on the following:

a) Justice;

b) Public Interest;

c) Proportionality;

d) Criminality as a last resort, and

e) Swiftness, simplicity, and cost-effectiveness.

The termination of prosecution based on restorative justice is carried out to fulfil the sense of justice in society by balancing legal certainty (rechtmatigheid) and utility (doelmatigheid) in exercising prosecutorial authority based on the Law and conscience. Moreover, the termination of prosecution based on Restorative Justice under Attorney General Regulation No 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, Article 4 conduct with consideration to:

a) The interests of the victim and other protected legal interests;

b) Avoidance of negative stigma;

c) Avoidance of retaliation;

d) response and harmony of the society, and;

e) Appropriateness, morality, and public order.

By considering:

a) The subject, object, category, and threat of the criminal act;

b) The background of the occurrence/perpetration of the criminal act;

c) The degree of culpability;

d) The losses or consequences caused by the criminal act;

e) The cost and benefit of handling the case;

f) Restoration to the original state, and

g) The existence of reconciliation between the victim and the suspect.

Article 5 § 8 of Attorney General Regulation No 15 of 2020 stipulates that the termination of prosecution based on restorative justice excludes certain types of criminal acts, namely:

1. Criminal acts against state security, the dignity of the President and Vice President, friendly states, heads of friendly states, their deputies, public order, and morality.

2. Criminal acts punishable by a minimum criminal penalty.

3. Narcotics offenses.
4. Environmental crimes.
5. Criminal acts committed by corporations.

In its implementation, the Regulation is also supported by leadership policies that complement and are evaluated for improvement; this is solely done for optimization so that the termination of prosecution based on restorative justice is in line with the legal goals of justice, certainty, and utility considered by the Public Prosecutor proportionally and responsibly.

To optimize the implementation of Regulation of the Attorney General No 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and to accommodate the idea of balance that includes the balance of monodualistic interests between public/societal interests and individual interests, the balance between victim protection/interests and criminal individualization, the balance between objective (act/external) and subjective (internal/personal attitude) factors, the balance between formal and material criteria, and the balance between legal certainty, flexibility, and justice, it is necessary to establish a Circular Letter on the Implementation of Termination of Prosecution Based on Restorative Justice.

Article 139 of the Criminal Procedure Code reads: After the public Prosecutor receives or receives back the complete results of the investigation from the investigator, he immediately determines whether the case file meets the requirements to be submitted to the court. Article 140 § 2 letter a of KUHAP reads If the public Prosecutor decides to stop the prosecution because there is insufficient evidence or the event turns out not to be a criminal offence, or the case is closed for the sake of Law, the public Prosecutor states this in a decree.

From the formulation of Articles 139 and 140 § 2 of the Criminal Procedure Code, the Public Prosecutor has the right to determine whether a case will be submitted to the court or not, including stopping prosecution in the interests of the Law; the clause of the article gives maximum authority to the Public Prosecutor (*dominus litis*) to determine the control of the case submitted from the investigator because after all the public Prosecutor must prove the criminal offence committed by the defendant. This authority then becomes the basis for regulations on restorative justice during prosecution.

CONCLUSIONS

The Criminal Procedure Code (KUHAP) explains the duties and authorities of prosecutors in carrying out prosecution as Public Prosecutors. As *dominus litis*, the Public Prosecutor is responsible for determining whether or not the legal goal with a focus on substantial justice, namely justice, certainty, and legal benefits, is achieved by transferring a case to court. Articles 139 and 140 § 2 of the KUHAP grant the Public Prosecutor the right to decide whether a case will be brought to court, including stopping prosecution for legal interests. Therefore, these clauses provide maximum authority to the Public Prosecutor *(dominus litis*) to control cases transferred from investigators because the Public Prosecutor must prove the criminal acts committed by the defendant. If it turns out that when the Public Prosecutor transfers the case to court, the legal goal is not achieved. The Public Prosecutor should be brave enough not to transfer the case to court and stop the prosecution based on restorative justice.

For all Law Enforcement Officials to handle criminal cases in a Humanistic and Conscientious manner, it is necessary to carefully consider the potential conflict of norms regarding the Prosecutor's authority in terminating prosecution based on Restorative Justice and the Prosecutor's authority as a public prosecutor. There is a need for specific boundaries to be set regarding the alternative fulfilment requirements in implementing Restorative Justice in criminal cases.

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