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Regulations Reconstruction of the Public Prosecutor Authority in Termination of Prosecution through Restorative Justice

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ABSTRACT

The termination of the prosecution carried out by the Prosecutor is based on restorative justice. Restorative comes from the word restoration, which means return or restoration to its original state. Termination of investigations and prosecutions is part of the criminal process by the Police and Prosecutors; in criminal law, there are indications of cases being terminated in the form of insufficient evidence; there is also an opportunity for the Attorney General's authority, namely "to stop the case" in contrast to "not prosecuting a case". RI Prosecutor's Regulation No. 15 of 2020 also contains limitations on the implementation of restorative justice so that it is not only interpreted as a peace agreement because if so, the ongoing process will also actually be trapped in merely carrying out procedural functions so that truth (especially material truth) and justice cannot be achieved. This legal research uses a sociological, legal research approach, and this type of research is descriptive analysis in nature. Juridically, this legal research will refer to the authority of the Attorney General's Office of the Republic of Indonesia in the field of Termination of Prosecution Based on the Value of Restorative Justice. This research is conducted to analyse problems by combining legal materials with field conditions. Termination of Prosecution is based on Article 140, paragraph (2) of the Criminal Procedure Code. Where the termination of the prosecution by the Public Prosecutor is insufficient evidence, or the actions of the suspect are not a crime, or the case is closed by law. Weaknesses in the construction of the Attorney General's authority regulation in terminating the current decision are weaknesses in substance. The authority to set aside cases in the public interest is the application of the opportunity principle, which only belongs to the Attorney General as stipulated in Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, this is different from the Termination of Prosecution. The structure of closing cases for the sake of law is not explained further in the Criminal Procedure Code, so what can be done is to interpret it systematically, namely by looking at the provisions in the

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Criminal Code. And culture, in the case of a crime that is classified as mild, many still end up in court and end up receiving prison sentences.

Keywords: *Termination, Prosecution, Restorative Justice, Crime.*

I. INTRODUCTION

The Unitary State of the Republic of Indonesia, as a modern legal state, has the aim of creating justice, legal certainty, and prosperity for the people. In the concept of a modern legal state or social law state, the state is obliged to realise welfare for all people, both social and economic welfare. In the first paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia it is stated that: "...In fact, independence is the right of all nations and because of that, colonialism on earth must be abolished, because it is not in accordance with humanity and human rights. justice". In the second paragraph there are the words "...delivering the people of Indonesia to the front gate of the independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous". In the third paragraph it is acknowledged that there is "...free national life...", then in the fourth paragraph the words "...advancing public welfare, educating the nation's life, participating in carrying out world order based on independence" are found, eternal peace, and social justice, by realizing social justice for all Indonesian people. All this forms the basis that Indonesia is a modern legal state because it provides recognition and protection of human rights in the political, social, economic, and educational fields [1].

Apart from that, the articles contained in the 1945 Constitution of the Republic of Indonesia also regulate the rights of citizens, which include equal status in law and government; the rights to work and a decent life for humanity; freedom of association and assembly, expression of thoughts orally and in writing; freedom to embrace their own religion and worship according to their religion and belief; every citizen has the right to receive education; the poor and neglected children are cared for by the state, the economy is structured as a joint effort based on the principle of kinship ; and the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. As a rule of law country, which is based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "Indonesia is a state based on law", then all actions of state administrators and society must be based on law, and as a rule of law, Indonesia must strive to protect the human rights of its citizens. No one can ignore or even take away the rights of citizens, including even the state [2].

Law enforcement is currently impressed, how to put perpetrators of criminal acts into prison, so that all perpetrators of criminal acts are collected in correctional institutions, the consequence

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is that prisons are full of convicts, even correctional institutions are currently over capacity and are a major problem in the prison environment in Indonesia. This happens because all cases, both big and small cases or heavy and light cases, are all resolved through a judicial mechanism that ends in imprisonment, of course other alternatives need to be considered, such as a restorative justice concept in Indonesia this concept has been used in juvenile justice for example, in handling child cases by using diversion and restorative concepts justice [3].

restorative justice is restoration while the second goal is compensation. With this concept it can be interpreted that the process of law enforcement or handling of criminal acts through a restorative approach is a process of solving criminal acts that aims to restore conditions which include compensation for victims through certain methods agreed upon by the parties involved. The criminal justice system, which always leads to prison sentences, is faced with a dilemma by law enforcement officials, one of which is the prosecutor. Prosecutors who handle cases in the prosecution stage cannot stop the prosecution if the reasons given are not in accordance with the written legal requirements. Cases that have successfully passed the prosecution stage will proceed to the decision stage by the court judge. Imprisonment is a form of decision by the state against the accused, the purpose of which is to provide a deterrent effect [4].

Many cases with a small percentage of losses due to criminal acts tend to continue to be processed and often the defendant is sentenced to prison. This has become a pro and con for the community. The community considers that cases with small losses do not need to proceed to court. It is also reasoned that the smaller cases decided by the judge, the more people who are imprisoned will also increase. Limited prison capacity with an excessive number of inmates will become a serious problem, namely over capacity of prisoners in correctional institutions. With the occurrence of over capacity in correctional institutions, the costs incurred by the state for convicts will also be even greater. This will become a problem that the state will never find a way out of.

The solution provided by the Attorney General's Office to answer public unrest regarding this problem is to stop the prosecution. The termination of the prosecution carried out by the Prosecutor is based on restorative justice. Restorative comes from the word restoration which means return or restoration to its original state. Many words are used to define restorative justice such as communitarian justice (communitarian justice), positive justice (positive justice), relational justice (relational justice), reparative justice (reparative justice), and community justice (community justice). Restorative justice is an effort to resolve criminal cases involving the perpetrator, the victim, the perpetrator's family or the victim's family, and the community to jointly seek a solution whose main objective is to restore the rights of the victim who has been

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harmed. Therefore, Prosecutor's Regulation No. 15 of 2020 concerning termination of prosecution based on restorative justice. Prosecutor's Regulation No. 15 of 2020, states that the Prosecutor has the authority to stop charges against a suspect for certain cases if there is an amicable agreement between the victim and the suspect. Restorative Policy Justice Through Attorney General Regulation (Perja) No. 15 of 2020 which was promulgated on July 22, 2021, is expected to be able to complete minor criminal cases (Tipiring) without going to court. Since the issuance of the Perja, 300 cases have been stopped by prosecutors throughout the country. The issuance of this Perja is to restore conditions to their original condition before the "damage" caused by the behavior of a person (the suspect). The conditions for terminating prosecution based on Restorative Justice are contained in Article 5 which reads:

(1) Cases of criminal acts can be closed by law and the prosecution can be terminated based on Restorative Justice if the following conditions are met:

a. The suspect is a first time offender;

b. Criminal acts are punishable by fines or threatened with imprisonment of not more than 5 (five) years; And

c. The crime is committed with the value of the evidence, or the value of the losses incurred because of the crime of not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah).

(2) For criminal acts related to property, in the event that there are criteria or circumstances that are casuistic in nature according to the opinion of the Public Prosecutor with the approval of the Head of the District Attorney's Office or the Head of the District Attorney's Office, the prosecution based on Restorative Justice can be stopped by taking into account the conditions referred to in paragraph (1) letter a is accompanied by one letter b or letter c.

(3) For criminal acts committed against persons, bodies, lives, and independence of persons the provisions referred to in paragraph (1) letter c may be waived.

(4) In the event that a crime is committed due to negligence, the provisions in paragraph (1) letter b and letter c may be waived.

(5) The provisions referred to in paragraph (3) and paragraph (4) do not apply if there are causal criteria/circumstances in which according to the consideration of the Public Prosecutor with the approval of the Head of the District Attorney's Office or the Head of the District Attorney's Office, the prosecution cannot be stopped based on Restorative Justice.

(6) In addition to fulfilling the terms and conditions referred to in paragraph (1), paragraph

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(2), paragraph (3), and paragraph (4), termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

a. there has been a restoration to its original state which was carried out by the Suspect by means of:

1) return goods obtained from criminal acts to victims.

2) compensate the victim's losses.

3) reimbursing costs incurred because of a criminal act; and/or

4) repairing damage caused by a crime.

b. there has been a peace agreement between the victim and the suspect; and c. society responds positively.

(7) In the event that the Victim and the Suspect agree, the condition for restoration to its original state as referred to in paragraph (6) letter a may be waived.

(8) Termination of prosecution based on Restorative Justice is excluded for cases:

a. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order, and decency.

b. criminal acts that are punishable by minimum criminal penalties.

c. narcotic crime.

d. environmental crime; And

e. criminal acts committed by corporations.

The practice that has been followed by public prosecutors in Indonesia since the Dutch era is different, namely adhering to the principle of opportunity which depends on the actual situation to be taken and reviewed one by one. In practice, there are times when someone has committed a crime, but the real situation is such that if someone is prosecuted before a judge, the interests of the state will be greatly harmed.

In simple terms, deponering can be understood as the attorney general's authority not to prosecute a case for policy reasons. The case was not transferred to court but "set aside". Deponering is the attorney's privilege to set aside cases for reasons of greater public interest that will be protected. This right is regulated in Article 35 letter b of Law Number 16 of 2004 concerning the Prosecutor's Office which reads, "The Attorney General has the duty and authority to set aside cases in the public interest". In this case it can be done if it has received

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the legislature, executive and judiciary, whereas in the Criminal Procedure Code article 46 paragraph 1 letter which reads: "The case is set aside in the public interest or the case is closed for the sake of law, unless the object was obtained from an act of crime or used to commit a crime". and contained in the Elucidation of Article 77 of the Criminal Procedure Code reads: "What is meant by termination of prosecution does not include the exclusion of cases in the public interest which is the authority of the Attorney General" [5].

Termination of investigations and prosecutions is part of the criminal process by the Police and Prosecutors, in criminal law there are indications of cases being terminated in the form of insufficient evidence, there is also an opportunity for the Attorney General's authority, namely "to stop the case" in contrast to "not prosecuting a case". The doctrine of not demanding cases lies in (1) not demanding cases; (2) reasons of public interest; (3) The authority of the Prosecutor/Attorney General is not the Police. Deviations from the principle of the rule of law will impact on the protection of human rights, as a very basic part of human beings, which requires that protection be comprehensive without discrimination in the sense that there are no differences in ethnicity, religion, race, social class, and class. The authority not to prosecute criminal cases was known in the period before Indonesia's independence based on the principle of " zero". prosequi" as the Attorney General's prerogative before the case is forwarded to court, as C. Hamton said, so that in the process of criminal cases there are several possibilities not to forward criminal cases to court [6].

In other matters, RI Attorney Regulation No. 15 of 2020 also contains limitations on the implementation of restorative justice so that it is not only interpreted as a peace agreement because if so, but the ongoing process will also actually be trapped in merely carrying out procedural functions so that truth (especially material truth) and justice cannot be achieved. This regulation is also considered as a legal substance formulated to eliminate rigid positivistic views by prioritizing progressive laws labeled restorative justice. justice). Meanwhile, restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. Based on the description above, it is very important to conduct more in-depth research regarding regulations in stopping prosecution based on restorative justice based on the value of justice as the embodiment of the rule of law and the welfare state of Indonesia. the authority of the prosecutor's office in Termination of Prosecution Based on Benefit Value-Based Restorative Justice Values [7].

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(A) Research Objectives

1. To find and describe the regulation of the prosecutor's authority in stopping prosecution through restorative justice currently.
2. To find and examine weaknesses in the regulation of the prosecutor's authority in stopping prosecution based on the current value of restorative justice.
3. To put forward and find the Reconstruction of the Attorney General's authority Regulations in Termination of Prosecution Based on Benefit-Based Restorative Justice Values.

(B) Research Methods

This type of research is descriptive analysis in nature because the researcher wishes to describe or describe the subject and object of the research, which then analyzes and finally draws conclusions from the results of the research. It is said to be descriptive because from this research it is expected to obtain a clear, detailed, and systematic picture, while it is said to be analytical because the data obtained from literature research and case data will be analyzed to solve problems in accordance with applicable legal provisions.

This legal research uses a sociological legal research approach. Sociological juridical research, namely legal research using legal principles and principles in reviewing, viewing, and analyzing problems, in research, in addition to reviewing the implementation of law in practice.

Juridically, this legal research will refer to the authority of the Attorney General's Office of the Republic of Indonesia in the field of Termination of Prosecution Based on the Value of Restorative Justice. This research is conducted to analyze problems by combining legal materials with field conditions, in which the results of the analysis can be used as a reference in the implementation The regulation of the attorney's authority in Termination of Prosecution Based on the Value of Restorative Justice, of course, also by looking at the applicable rules. By using the statute approach approaches and cases approach, it will be possible to present answers to the problems raised in this study. Statutes approach is an approach that refers to laws and regulations, while case approach is an approach that is based on cases that have occurred.

II. CONSTRUCTION OF ATTORNEY'S AUTHORITY REGULATIONS IN TERMINATION OF CURRENT PROSECUTION

Explanation of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated explicitly that within the Attorney General's Office, it is the Attorney General who has the right to stop the prosecution of a case. The Attorney General may think

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that there will be more losses if he sues both for the community and for the state, so the case is terminated. As the responsibility of the Attorney General for this opportunity right, the Attorney General is accountable to the President based on Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedure of the Attorney General's Office of the Republic of Indonesia [8].

Law Number 16 of 2004. In Article 1 of the law the basic meanings or authentic interpretations are given as follows:

1. Prosecutors are officials authorized by this law to act as public prosecutors and to carry out court decisions that have obtained permanent legal force.
2. The public prosecutor is the prosecutor who is authorized by this law to prosecute and carry out the judge's decision.
3. Prosecution is the action of the public prosecutor to transfer a case to the competent district court in matters and according to the method regulated in the criminal procedure law with a request to be examined and decided by a trial judge.

Furthermore, in Article 8 paragraphs (2), (3) and (4) it states:

(2). In carrying out their powers, prosecutors act for and on behalf of the state and are responsible according to hierarchical channels.

(3). For the sake of justice and truth based on Belief in the One and Only God, the prosecutor conducts prosecutions with conviction based on valid evidence.

(4). In carrying out their duties and authorities, prosecutors always act based on the law by observing religious norms, decency, decency, and are obliged to explore and uphold human values that live in society and always maintain the honor and dignity of their profession.

The criminal justice system includes the stages of investigation, prosecution, examination in court and implementation of decisions. By looking at these stages, the components in the criminal justice system include the police, prosecutors, courts, and correctional institutions. As one of the criminal justice sub-systems, the Attorney General's Office is required to always ensure that law enforcement goes according to the system. In practice and development, the Attorney General's Office issued RI Attorney Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter abbreviated as Perja Number 15 of 2020). There is Perja No. 15 of 2020 gives the prosecutor's authority to stop prosecution based on restorative justice as a breakthrough in solving criminal acts. In addition, this direction provides space for the development of criminal case settlement through the

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concept of restorative justice. Restorative justice is an alternative form of dispute resolution outside the court or known as Alternative Dispute Resolution (ADR). ADR is generally used in civil cases, not for criminal cases. Based on the current laws in force in Indonesia, in principle criminal cases cannot be resolved outside the court, although in certain cases it is possible to settle criminal cases outside the court [9].

The Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 is also one of the long-awaited justice fighters who have often been victims of the rigidity of enforcing the criminal law norms that apply in Indonesia. This is often related to the implementation of punishment which only refers to the principle of legality, even though it often ignores the purpose and function of law. For this reason, the implementation of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice provides space for the settlement of every criminal case through restorative justice. by considering the requirements and mechanisms as stipulated.

In the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, termination of prosecution is carried out based on justice, public interest, proportionality, punishment as a last resort and fast, simple, and low cost. In this regulation it is explained that the one who has the authority to prosecute a case in the interest of law is the Public Prosecutor, where the closing of a case in the interest of law is carried out in the following cases: the defendant dies, the criminal prosecution has expired, there has been a court decision that has permanent legal force against a person for the same case (nebis in idem), the complaint for the crime of complaint is withdrawn or withdrawn; or there has been a settlement of cases outside the court (afdoening buiten process) [10].

The following are several types of prosecution processes in various countries: In England, during the 17th century the prosecution process was influenced by the thinking at that time that crime was not a crime committed by an individual against the state but was a private matter between the perpetrator of the crime and the victim of the crime. Thus, everyone can file charges, so that traditionally prosecution is considered a private matter and filing criminal proceedings depends on the citizen concerned, as well as the submission of eyewitnesses, the handling of cases starting from the prosecution from the beginning to the trial led by a judge.

The issuance of the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which authorizes the Prosecutor to stop prosecutions based on restorative justice is a breakthrough in solving criminal acts. Restorative justice (restorative justice) is an approach to resolving criminal acts which is

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currently being voiced again in various countries. Through a restorative justice approach, victims and perpetrators of crimes are expected to achieve peace by prioritizing win-win solution and emphasize that the victim's losses are replaced, and the victim forgives the perpetrators of the crime [11].

Whereas the settlement of criminal cases carried out by the prosecutor's office by prioritizing restorative justice emphasizing restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation is a legal requirement of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system. Termination of prosecution based on restorative justice is carried out based on justice, public interest, proportionality, punishment as a last resort; and fast, simple, and low cost. The public prosecutor has the authority to close cases for the sake of law. The closing of a case for the sake of law is carried out if the defendant dies, the criminal prosecution has expired, there has been a court decision that has permanent legal force against someone for the same case (nebis in idem), the complaint for a criminal complaint has been revoked or withdrawn or there has been a settlement cases outside the court (afdoening buiten process).

Settlement of cases outside the court can be carried out with provisions for certain crimes, the maximum penalty fines are paid voluntarily in accordance with statutory provisions or there has been restoration of the original state using the Restorative Justice approach. Settlement of cases out of court using a restorative justice approach stops prosecution. Termination of prosecution based on restorative justice is carried out by the public prosecutor in a responsible manner and submitted in stages to the Head of the High Prosecutor's Office. Restorative justice is carried out by considering the interests of the victim and other protected legal interests, avoidance of negative stigma, avoidance of reprisals, response and social harmony and decency, decency, and public order. Criminal cases can be closed for the sake of law and prosecuted based on restorative justice can be terminated if the conditions for the suspect are fulfilled for the first time committing a crime, the crime is only punishable by a fine or punishable by imprisonment for not more than 5 (five) years and the crime is committed by the value of evidence or the value of losses incurred as a result of a crime is no more than Rp. 2,500,000.00 (two million five hundred thousand rupiah). Restorative justice does not apply to crimes committed against persons, bodies, lives, and freedoms of persons [12].

Restorative Justice is carried out by fulfilling the requirements according to article 5 point (6) of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely:

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a. there has been a restoration to its original state which was carried out by the Suspect by means of:

1) return goods obtained from criminal acts to victims;

2) compensate the victim's loss;

3) reimbursing costs incurred as a result of a criminal act; and/or

4) repairing damage caused by a crime;

b. there has been a peace agreement between the victim and the suspect; And

c. society responds positively.

III. WEAKNESSES IN THE CONSTRUCTION OF ATTORNEY'S AUTHORITY REGULATIONS IN TERMINATION OF THE CURRENT DECISION

Weaknesses in legal substance; The authority to set aside cases in the public interest is the application of the opportunity principle which only belongs to the Attorney General as stipulated in Article 35 letter c of Law Number 16 of 2004 concerning the Indonesian Attorney General's Office, this is different from Termination of Prosecution. The authority to stop the prosecution belongs to the Public Prosecutor. Regarding the termination of prosecution, it is regulated in Article 140 paragraph (2) of the Criminal Procedure Code, which emphasizes that the public prosecutor "can stop the prosecution" of a case. The full details of Article 140 paragraph (2) of the Criminal Procedure Code are as follows:

Article 140 paragraph (2):

a. If the public prosecutor decides to stop the prosecution because there is insufficient evidence or the event turns out to be not a crime or the case is closed for the sake of law, the public prosecutor sets this matter out in a decision letter.

b. The contents of the decree are notified to the suspect and if he is detained, he must be released immediately.

c. Derivatives of the decree must be submitted to the suspect or his family or legal counsel, officials at the state detention center, investigators, and judges.

d. If later it turns out that there is a new reason, the public prosecutor can prosecute the suspect.

The termination of the prosecution of a case referred to in Article 140 paragraph (2) of the Criminal Procedure Code above means that the results of the examination of a criminal act submitted by the investigator are not transferred by the public prosecutor to the trial court. But

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this is not intended to rule out criminal cases in the public interest.

Cases closed for the sake of law Article 140 paragraph (2), letter a KUHAP has another formulation that has the same purpose, namely Article 14 letter h KUHAP concerning the authority of the public prosecutor to close cases for the sake of law. A case closed for the sake of law or closing a case for the sake of law is carried out by the public prosecutor before carrying out the prosecution. This act of closing a case for the sake of law, among other things, can be carried out by the public prosecutor, if regarding a crime it turns out that there are grounds which negate prosecution or it turns out that vervolgingsuitsluitingsgronden exists , because with the existence of such grounds it becomes impossible for the public prosecutor to be able to commit a prosecution of a person who is suspected by investigators of having committed a particular crime. In a crime, there are grounds that negate the crime or not, whether a crime has been committed by the perpetrator based on an element of schuld or not, whether an action is against the law or not, whether a suspect can be seen as a toerkeningsvatbaar or no, and whether the actions of an actor can be seen as toerekenbaar or not, then after that person has been investigated or prosecuted, only the judge has the authority to decide [7].

Weaknesses in the Legal Structure; Regarding the termination of prosecution, it is regulated in Article 140 paragraph (2) of the Criminal Procedure Code which emphasizes that the public prosecutor "can stop the prosecution" of a case. In a sense, the results of criminal investigation investigations submitted by investigators are not delegated by the public prosecutor to the trial court. However, this is not intended to set aside cases or deponing criminal cases. Therefore, there is a clear distinction between legal action to terminate prosecution and deponering referred to in Article 35 letter c of Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and Explanation of Article 77 of the Criminal Procedure Code. As explained in the Elucidation of Article 77 of the Criminal Procedure Code, it states that: "what is meant by termination of prosecution does not include the exclusion of cases in the public interest which are the authority of the Attorney General" [13].

The reason for stopping the prosecution is not based on the public interest, but solely based on the reasons and interests of the law itself.

a. The case in question does not have sufficient evidence so that if the case is submitted to a trial court, it is strongly suspected that the defendant will be acquitted by the judge, on the grounds that the guilt of the charge has not been proven. To avoid such acquittal decisions, it is wiser for the public prosecutor to stop the prosecution.

b. What the defendant is accused of is not a criminal act or violation. After the public

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prosecutor has studied the case files resulting from the investigation and concluded that what the investigators suspected of the defendant was not a crime or violation, the public prosecutor had better stop the prosecution. Because after all, the indictment which is not a criminal act or violation submitted to the trial court is basically the judge will release the defendant from all lawsuits (ontstag). vans rechtvervolging).

c. The third reason for stopping the prosecution is based on the case being closed for the sake of law or set aside. Termination of prosecution based on a case being closed by law is a crime in which the defendant by law itself has been acquitted of charges or charges and the case itself by law must be closed or its examination stopped at all levels of examination.

The closing of cases for the sake of law as referred to in Article 14 letter h of the Criminal Procedure Code is then used as one of the reasons to stop the prosecution in Article 140 paragraph (2) letter a of the Criminal Procedure Code. In fact, the consequence of the status of the case between the termination of the prosecution and closing the case for the sake of law, is clearly different as previously described. The closing of cases for the sake of law is not explained further in the Criminal Procedure Code, so what can be done is to interpret it systematically, namely by looking at the provisions in the Criminal Code [14].

Weaknesses of Legal Culture; During this nation for more than half a century, current law enforcement practices are still based on retributive and explanatory philosophies, so that they only focus on output in terms of quantity, namely how many cases are processed against perpetrators who can be imprisoned by law enforcement officials. The criminal justice system is considered successful if law enforcement officials can bring criminals to court to receive punishment. In the case of a crime that is classified as minor, many still end up in court and eventually receive prison sentences. One form of law enforcement that is carried out without case selection, namely crimes that are classified as mild, has received a social reaction from the wider community. The continued social sense of justice for the ways of solving minor crimes that do not provide space for non- formalistic settlement methods, as well as the positivistic views that have been confirmed by law enforcement officials in law enforcement practices and place procedures as the basis for legality to uphold justice, is even more important of justice itself.

Friedman said, legal culture is an element of social attitudes and values that exist in the culture section, habits, opinions, ways of doing work and ways of thinking. According to him, it can be said that legal culture is the embodiment of human attitudes to law, belief in the legal system,

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values, thoughts, and regardless of expectations. In other words, it explains that legal culture is the result of social thoughts and social forces that determine how law is used, avoided, and misused by humans. In the absence of a legal culture, the legal system is seen as powerless as a dead fish thrown in a basket. Lawrence M. Friedman distinguishes legal culture as divided into integral legal culture relating to the legal culture of lawyers and judged's and external legal culture, namely the legal culture of society in general. Legal culture in the context of law enforcement has a focus on its philosophical values from law, values that live in society and awareness/attitudes of social behavior, as well as legal science education. By referring to the meaning of legal culture for law enforcers, the restructuring/reconstruction that must be rearranged includes ideas, ideas or legal concepts that are carried out by reorganizing together with legal substance and legal structure [15].

IV. RECONSTRUCTION OF THE ATTORNEY GENERAL'S REGULATORY AUTHORITY IN TERMINATION OF PROSECUTION BASED ON BENEFIT-BASED RESTORATIVE JUSTICE VALUES

Article 140 paragraph (2) letter a state that if the public prosecutor decides to stop the prosecution because there is insufficient evidence, or the event turns out to be not a crime or the case is closed by law. The public prosecutor stated this in the Decision Letter. The authority to decide whether a case will be forwarded to the court or removed from the criminal justice system is the role of the public prosecutor. A rigid view of law is one that sees a fixed and certain law, if it is divided it must be repaired. The principle of legality guarantees that every individual who violates the law, if there is sufficient evidence, must be brought before the court. Meanwhile, a more flexible view of the law argues that the law provides principles as a guide that regulate behavior but cannot anticipate every event and its variations in a particular situation. Such an approach requires discretion to determine the right decision to apply the law.

Based on the principle of legality, then in criminal procedural law (such as Article 152 paragraph (2) of the German Criminal Procedure Code) the public prosecutor must prosecute all criminal acts if the evidence is sufficient, and if they do not carry out a prosecution then it is also a crime. The role of the public prosecutor is limited to conducting an examination of the fulfillment of evidence to prosecute the defendant. Other considerations, such as the public interest, which is considered in the opportunity principle, cannot be accepted as a factor that should be considered by the public prosecutor in deciding. The public interest can only be used by the judge when deciding. Adoption of legality is usually related to the European Continental tradition in which law enforcers, at least theoretically, reject the discretion and power given to

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the legislature. In these systems (such as Germany, Italy, and Spain), the Criminal Code (penal their code) is the foundation of law enforcement's juridical authority: judges and public prosecutors do not have the authority to modify or abolish parts of their Criminal Code, even if this is necessary [16].

extra -legal considerations in making decisions on prosecuting or not prosecuting is based on the consideration that in society there are interests and values that must be recognized and respected and in realizing this the public prosecutor must be in the best position to carry out profit and loss analysis.

It can be said that by adopting the opportunity principle, three advantages will be obtained as follows:

a. Prevent negative effects from the rigid application of the legality principle, which in certain situations can lead to injustice. As is currently happening in Indonesia, all minor cases must be tried in the criminal justice system, giving rise to the irony of justice, the burden on the Supreme Court is getting heavier and further damaging the purpose of punishment.

b. By establishing the principle of opportunity, it can increase the individualization of criminal justice. This is in accordance with the daderstrafrecht concept so that criminal sanctions become appropriate functions and targets and can reduce the effects of stigmatization that may be experienced by perpetrators.

c. By applying the principle of opportunity, it can prevent delays and accumulation of cases in court and detainees in Correctional Institutions, which can undermine all objectives of protecting the rights and interests of convicts.

Furthermore, it is necessary to carry out a reconstruction by adding to Article 140 paragraph (2) of the Criminal Procedure Code, in the event that the public prosecutor decides to stop the prosecution based on the restorative concept justice, which is an effort to divert from the criminal justice process outside the formal process to be resolved by deliberation.

restorative justice concept is to reduce the number of prisoners in prison; eliminate the stigma/stamp and return the perpetrators of crimes to normal human beings; criminals can realize their mistakes, so they don't repeat their actions and reduce the workload of the police, prosecutors and prisons ; saving state finances does not lead to harmonisation, the perpetrators have been forgiven by the victim, the victim quickly gets compensation; empower the community in overcoming crime and; reintegration of criminals in society.

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The term "settlement out of court" is generally known as a policy carried out by law enforcement officials who have the authority to do the following things: as a determinant of the outcome of a case of dispute, conflict, dispute, or violation, but also has the authority to exercise discretion/ waiver a criminal case committed by a certain party, followed by a request to the perpetrator/violator to accommodate the victim's loss. A popular general term is carrying out "peace" in cases of violations of criminal law. The advantage of using “out-of-court settlement” in solving criminal cases is that the choice of settlement is generally left to the perpetrator and the victim. Another advantage that is also very prominent is the low cost. As a form of compensation for sanctions, the offender can offer compensation that is negotiated/agreed upon with the victim. Thus, justice becomes the fruit of a mutual agreement between the parties themselves, namely the victim and the perpetrator, not based on the prosecutor's calculations and the judge's decision [17].

It is necessary to state several reasons for the settlement of criminal cases outside the criminal court as follows:

a. Violations of criminal law are included in the category of complaint offenses, both absolute complaints and relative complaints.

b. Violation of the criminal law has a fine as a criminal threat and the violator has paid the fine (Article 80 of the Criminal Code).

c. Violation of the criminal law is included in the category of "violation", not "crime", which is only punishable by a fine.

d. Violations of criminal law include criminal acts in the field of administrative law which place criminal sanctions as an ultimum remedies.

e. Violation of the criminal law is included in the light category and law enforcement officers use their authority to exercise discretion.

f. Violations of ordinary criminal law that are stopped or not processed in court (deponir) by the Attorney General in accordance with the legal authority they have.

Restorative effect justice as the reason for settling minor criminal cases in the future is in line with the 2008 Criminal Code concept policy regarding the abolition or abolition of the authority to prosecute criminal acts, as stated in Article 145 letters d, e, and f which stipulates that the prosecution authority is void if: (d). Out-of-process settlement. (e). The maximum criminal fines are paid voluntarily for criminal acts that are committed only subject to a maximum fine of category II. (f). Maximum fines are paid voluntarily for criminal acts that are punishable by

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a maximum imprisonment of 1 (one) year or a maximum fine of category III. Meanwhile, as a reason for removing the authority to carry out a sentence for an offender who has been sentenced by a judge in the form of a prison sentence, the penal mediation in the execution stage is in line with Article 57 of the Criminal Code Bill on changes or adjustments to punishment, which can be in the form of revocation or termination of the remaining sentence or action and change of type. criminal or other actions.

V. CONCLUSION

1. The current construction of the Attorney General's authority regulation in Termination of Prosecution, The Authority of the Public Prosecutor in Termination of Prosecution, is based on Article 140 paragraph (2) of the Criminal Procedure Code. Where the termination of the prosecution by the Public Prosecutor is insufficient evidence, or the actions of the suspect are not a crime, or the case is closed by law. The Public Prosecutor receives the case dossier from the investigator who, after being examined and examined, turns out to be incomplete, especially in matters relating to the prosecution process; the Public Prosecutor returns the case dossier to the investigator to immediately complete it and carry out additional investigations in the form of instructions from the Public Prosecutor to fulfil by the Investigator within 14 (fourteen) days from the time the file is received by the Investigator. If new matters are found in the case, which makes it impossible for the case to be submitted or delegated to the court, the prosecution shall be terminated. Birth of Perja No. 15 of 2020 gives the prosecutor's authority to stop prosecution based on restorative justice as a breakthrough in solving criminal acts.

2. Weaknesses in the regulation of the prosecutor's authority in terminating the current decision, namely a weakness in substance, the case is closed for the sake of law Article 140 paragraph (2), letter an of the Criminal Procedure Code has another formulation that has the same purpose, namely in Article 14 letter h of the Criminal Procedure Code concerning the authority of the public prosecutor to close cases In the interest of law, the possibility will be closed for the public prosecutor to be able to prosecute a person who is suspected by investigators of having committed a particular crime. The role of the prosecutor as a public prosecutor must not be mixed up with any power so that he can achieve goals in law enforcement and can be led to carry out his duties based on applicable regulations so that the supremacy of law is realised, protecting the public interest, and upholding human rights. To guarantee the independence of prosecutors in the judicial field in the criminal justice system, which is required to be free and without interference from any party, it is necessary to renew or reorganise or restructure the prosecutor's institution in a legal culture so that it can maintain the

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independence of prosecutors in carrying out their duties.

3. Reconstruction of the Prosecutor's Regulatory Authority in Termination of Prosecution Based on Benefit-Based Restorative Justice Values, the reconstruction is carried out by adding to Article 140 paragraph (2) of the Criminal Procedure Code in the event that the public prosecutor decides to stop prosecution based on a restorative concept justice, which is an effort to divert from the criminal justice process outside the formal process to be resolved by deliberation.

Advice

1. The approach or concept of restorative justice needs to be made up of a legal umbrella with a higher degree, such as a law set forth in the Criminal Code. Likewise, with penal mediation, a high degree of legal umbrella is given as soon as possible by making a law or being included in the new draft KUHAP regarding penal mediation.

2. Law enforcers must understand stopping prosecution with a restorative concept of justice and its terms and mechanisms in criminal cases to be more selective and careful in imposing criminal articles on criminal offenders. So the purpose of punishment is certainty, benefit and justice felt by perpetrators of minor crimes, and victims get recovery of losses as well as restorative purposes. Justice is achieved.

3. For the community to prioritise the resolution of a crime that is classified as mild using a restorative approach justice because basically this restorative solution provides more justice and benefits for victims and perpetrators.

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