



Some of The Legal Implications Procedure Regulation no. 15 of 2020 Concerning Stopping Prosecution Based on Restorative Justice

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Abstract

The Attorney General Regulation Number 15 Year 2020 Regarding the Cessation of Prosecution Based on Restorative Justice (PERJA 15/2020) stipulates that a criminal case can be terminated if it fulfills certain conditions, including the settlement agreement between the victim and offender has been achieved. Principally, this regulation reflects and implements the process or mechanism of the restorative justice principles, whereby such criminal case finally will be settled through the out of court settlement. PERJA 15/2020 has some implications, among other things, to the code of criminal procedure (KUHAP), the public prosecutor's new role and responsibility acting as the facilitator for the victim and offender, as well as, the efficiency in the process and settlement of a criminal case. The current code of criminal procedure does not stipulate any provision relating to the restorative justice. Therefore, the legal ground for the public prosecutor to terminate the criminal case under PERJA 15/2020 can be found by extending the interpretation and meaning of the public prosecutor's right and authority given under KUHAP, that is, for ceasing the prosecution process and terminating a case due to legal interest reason. In this case, the out of court settlement under the restorative justice has been included in the meaning of legal interest. Due to the additional role and responsibility given to the public prosecutor under PERJA 15/2020, it is required to improve of public prosecutor's skill and knowledge as the facilitator with respect to the restorative justice process and implementation. Ideally, PERJA 15/2020 would be useful not only the efficiency of criminal case proceeding, but also the victim and offender. By recognizing the restorative justice, it is urgently required to reform the laws relating to the criminal justice system comprehensively.

Keywords: Perja 15/2020. KUHAP, Criminal Justice

1. Introduction

Violates or is contrary to the norms or values that live in society. Crime is seen as something that is disturbing, detrimental, unsettling, frightening and various other

negative views. Likewise, various stigma or negative views can arise, so that they must be excluded or excluded from social interactions.

Crimes were committed by the perpetrator for various reasons or motives that had the background or triggered the crime. However, it often happens that crimes or crimes committed by the perpetrator are included in crimes whose economic value is not too large, and are carried out solely to survive due to poverty and the powerlessness of the perpetrator. For example, the case of a mother of 3 (three) children had to deal with the police for allegedly stealing oil palm fruit bunches worth Rp 76,500 belonging to PTPN V in Rokan Hulu Regency, Riau.¹

In addition, it can also be seen that the Purwokerto District Court's decision on 19 November 2009 sentenced Mbok Minah to 1 month 15 days with a probation period of 3 months, because the defendant was guilty of violating Article 362 of the Criminal Code concerning theft. This case caused a stir because of the legal irony that occurred when an elderly person who did not have access and did not understand the law was tried for three cacao cacao worth IDR 30,000.²

Apart from that, it is also worth considering what was stated by Sunarta that for decades the prosecutor has to bring small cases to court, cases that do not cost much, or witness old ladies or gentlemen enter the courtroom which may have to be supported. Not to mention when the victim, whose interests were represented, did not want to extend the case and wanted to make peace, but the prosecutor was forced to continue the case, because there was no juridical reason that could be used to stop the case. He also stated that the current justice approach has shifted, where this can be seen from how the public criticized when the prosecutor brought Minah's grandmother's case to court for stealing three cocoa beans, or the Rasminah case. a household assistant who stole 6 (six) plates or Samirin's grandfather in Simalungun, who stole 1.9 kilograms of rubber sap belonging to PT Bridgestone for IDR 17,000 which was later charged with the Plantation Law. So many of these cases have gone viral, because for the public, the law is no longer useful for processing defendants.³

By looking at the examples of cases above, the public's view of the perpetrators of crime may turn into compassion or compassion if the perpetrator is sentenced / criminal, and even raises various defenses against the perpetrators of crimes with consideration of a sense of justice and humanity. This arises by looking at various factors or conditions of the perpetrators themselves, such as poverty, the need to

¹ Lihat [Tribunnews.com](https://www.tribunnews.com/nasional/2020/06/05/ibu-3-anak-diadili-karena-curi-sawit-rp-76500-politikus-ppp-pakai-pendekatan-keadilan-restoratif), "Ibu 3 Anak Diadili Karena Curi Sawit Rp 76.500, Politikus PPP: Pakai Pendekatan Keadilan Restoratif", tanggal 5 Juni 2020, <https://www.tribunnews.com/nasional/2020/06/05/ibu-3-anak-diadili-karena-curi-sawit-rp-76500-politikus-ppp-pakai-pendekatan-keadilan-restoratif>, diakses tanggal 20 September 2020.

² Lihat Liputan 6, *Mbok Minah dan Catatan Hitam Peradilan di Hari Kehakiman*, tanggal 1 Maret 2019, <https://www.liputan6.com/news/read/3901107/mbok-minah-dan-catatan-hitam-peradilan-di-hari-kehakiman>, diakses tanggal 21 September 2020.

³ Sunarta, Jaksa Agung Muda Tindak Pidana Umum, sebagai *keynote speech* dalam Bimtek Virtual Penghentian Penuntutan Berdasarkan Keadilan Restoratif, Media Indonesia, *Peraturan Kejaksaan 15/2020 Jawaban Suara Keadilan Masyarakat*, 6 Agustus 2020, <https://mediaindonesia.com/read/detail/334518-peraturan-kejaksaan-152020-jawaban-suara-keadilan-masyarakat>, diakses tanggal 11 November 2020.

⁴ C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989, hal.40.

⁵ Mochtar Kusumaatmadja & Arief Sidharta, *Pengantar Ilmu Hukum Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, Alumni, Bandung, 2009, hal. 52-53.

⁶ Romli Atmasmita, *Sistem Peradilan Pidana Kontemporer*, Kencana Prenada Media Group, Jakarta, 2010, hal. 69.

survive, vulnerability, powerlessness, lack of access to information, and so on. In the dynamic development of society, it is possible to change or shift the values and legal awareness of the people who live in the community itself, including in relation to criminal law. In certain circumstances.

The developments and changes that occur in society can include developments and changes in the mindset, point of view and the will or desire of the community itself, which of course cannot be separated from the influence of the development and interaction of individuals or members of society. To ensure the continuity of balance in relations between members of society, it is necessary to establish legal rules based on the will and conviction of each member of the community. In order to ensure that these legal regulations can continue and be accepted by all members of society, the existing legal regulations must be in accordance with and must not conflict with the principles of justice of the community.⁴

Justice is something that is difficult to define but can be felt and is an element that cannot but should not exist and cannot be separated from law as a ranking of principles and rules that guarantee order (certainty) and order in society.⁵In a broader perspective, the problem of the "sense of justice" of this society when it is related to laws and regulations and the friction that arises in society as a result of the implementation of law enforcement, it seems that it does not (have to) always be returned to the mentality of law enforcers - as commonly expressed by society. - but there is also the possibility that the value (justice) contained in the prevailing laws and regulations is far from adequate, even contrary to the opinion and sense of "fairness" of our society. The tensions in our society so far as a result of the implementation of the applicable law at the same time reflect a state of loss of guidance and direction for the purpose of legal life, in other words, legal life in Indonesia is on the surface.⁶

One of the developments in the criminal justice system can be seen in the issuance of the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Cessation of Prosecution Based on Restorative Justice on 22 July 2020, State Gazette of the Republic of Indonesia of 2020 No. 811 (hereinafter referred to as "PERJA 15/2020"). In one of the considerations of PERJA 15/2020 it is stated that the settlement of criminal cases by prioritizing restorative justice which emphasizes restoration to its original state and balance of protection, as well as the interests of victims and perpetrators of criminal acts who are not oriented towards retaliation is a legal need for the community and a mechanism that must be built in the implementation of the authority to prosecute and reform the criminal justice system. In addition, PERJA 15/2020 states that a termination of prosecution based on restorative justice is carried out on the basis of justice, public interest, proportionality, crime as a last resort, and the principles of speed, simplicity and low cost. These principles certainly have consequences and must be reflected in the implementation or enforcement of law based on restorative justice. Besides that, the implementation of PERJA 15/2020 must also be in line with the principles or

principles that apply and are reflected in the provisions of other positive criminal law regulations. These principles certainly have consequences and must be reflected in the implementation or enforcement of law based on restorative justice. Besides that, the implementation of PERJA 15/2020 must also be in line with the principles or principles that apply and are reflected in the provisions of other positive criminal law regulations. These principles certainly have consequences and must be reflected in the implementation or enforcement of law based on restorative justice. Besides that, the implementation of PERJA 15/2020 must also be in line with the principles or principles that apply and are reflected in the provisions of other positive criminal law regulations.

One of the interesting things about this regulation is the emphasis on case settlement which no longer relies on the power and authority of the state in judging through the courts with all the processes, but switches or shifts to the victims and the perpetrators themselves, namely their ability to achieve peace and restore the situation as a condition for solving a criminal case without going through a court process. PERJA 15/2020 as a new development in positive criminal law certainly has various implications, where in this paper it is limited to the problem of how the regulation is related to positive criminal procedural law (KUHAP), the role and authority of the public prosecutor as a facilitator of the peace process between victims and suspects.

2. Approach Method

Qualitative research methods are used to collect data in order to get answers to the main problems, so that the data obtained from this research can be scientifically justified and do not deviate from the subject matter.

As for discussing problems in research as stated by the author above, the authors collect the data needed or used as material through several approaches,

The approach method that I use is a normative juridical approach, which is a study that seeks to identify the laws that exist in society with the intention of knowing other symptoms. As well as studying, viewing and examining several theoretical matters concerning legal principles, conceptions, views, legal doctrines, legal regulations and legal systems relating to the problem of this research. The normative juridical approach to the problem is intended to obtain a clear understanding of the subject matter of the symptoms and objects being studied which are theoretical based on related literature and literature. The author will describe a complete description of the problems that occur.

3. Result and Discussion

3.1 Definition of Restorative Justice

In some literatures the term restorative justice is often translated as restorative justice, restorative justice or some call it the term "reparative justice" or "reparative justice".⁷ In a book published by the United Nations Office on Drugs and Crime

⁷ Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana Prenada Media Group, Jakarta, 2010, p. 69..

(UNODC), it is argued that restorative justice is a way of responding to criminal behavior by balancing the needs of society, victims and offenders (restorative justice is a way of responding to criminal behavior by balancing the needs of the community, the victims and the offenders).⁸ Restorative justice is a developing concept that has given rise to different interpretations in various countries, where there is not always a perfect consensus. In addition, because of the difficulty in translating concepts appropriately into different languages, various terms are often used to describe the restorative justice movement, among others, "communitarian justice", "making amends", "positive justice", "relational justice", "reparative justice", "community justice" and "restorative justice".⁹

John Braithwaite and Heather Strang argue that in the literature, restorative justice is understood in two different ways. The first is a process conception, the other is a values conception, in which process conception has been the dominant one to date. In view of the conception of the process, restorative justice is a process that brings together all stakeholders affected by the harm that has been caused (for example, the offender, his family, the victim and his family, the affected community, state institutions such as the police). These stakeholders meet to discuss how those who have been affected by the harm and reach agreement on what should be done to correct the wrongs suffered. Meanwhile, from the viewpoint of the conception of values are values that distinguish restorative justice from traditional justice in the form of punishment from the state. Restorative justice is more about restoration than hurt. In this case there is rejection of the concept of retaliation for wounds caused by crimes by injuring through punishment, along with the value of proportionality - a penalty that is proportional to the wrong done. The idea is that the value of healing is a key factor because the important dynamic being developed is to restore what gives birth to recovery. In this case there is rejection of the concept of retaliation for wounds caused by crimes by injuring through punishment, along with the value of proportionality - a penalty that is proportional to the wrong done. The idea is that the value of healing is a key factor because the important dynamic being developed is to restore what gives birth to recovery. In this case there is rejection of the concept of retaliation for wounds caused by crimes by injuring through punishment, along with the value of proportionality - a penalty that is proportional to the wrong done. The idea is that the value of healing is a key factor because the important dynamic being developed is to restore what gives birth to recovery.¹⁰

There are several definitions or definitions regarding restorative justice, among others, Tony Marshall who argues that "Restorative justice is a process where all parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future" (a restorative approach is a process in which all parties with an interest in a particular crime are involved to jointly find solutions and at the same time find solutions in dealing with events after the occurrence of the crime and how to deal with its

⁸ United Nations Office On Drugs And Crime, Handbook on Restorative Justice Programs, Criminal Justice Handbook Series, United Nations, New York, 2006, p. 6.

⁹ *Ibid.*

¹⁰ John Braithwaite and Heather Strang, *Introduction: Restorative Justice and Civil Society*, in Heather Strang and John Braithwaite (Ed), *Restorative Justice and Civil Society*, Cambridge University Press, Cambridge, 2001, pp. 1-2.

implications in the future).¹¹In addition, The Restorative Justice Consortium defines “Restorative justice works to resolve conflicts and repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and give them an opportunity to make reparation. It offers those who have suffered harm, the opportunity to have their harm or loss acknowledged and amends made.¹²(Free translation: restorative justice works to resolve conflicts and remedy losses. It encourages the parties causing the harm to acknowledge the impact of what they have done and provides opportunities for recovery. This offers the sufferer the opportunity to gain recognition for the loss. or their loss and correcting their mistakes). Meanwhile, Daniel W. Van Ness and Karen Heetderks Strong stated “Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders ”.¹³ (Restorative justice is a theory of justice that emphasizes repairing losses caused or incurred by criminal behavior. This is best resolved through a collaborative process involving all stakeholders).

According to Howard Zehr and Ali Gohar, restorative justice is built or arranged on the basis of 3 (three) elements or pillars, namely:¹⁴

- a. *Harms and related needs (of victims, first of all, but also of communities and offenders)* (related losses and needs (primarily from victims, but also communities and offenders));
- b. *Obligations* that have the mission from (and given rise to) this harm (offenders' but also communities);
- c. *Engagement* of those who have a legitimate interest or stake in the offense and its resolution (victims, offenders, community members) (involvement of parties who have a legitimate interest or interest in the violation and its resolution (victims, offenders, community members)).

Furthermore, Howard Zehr and Ali Gohar argue that restorative justice at a minimum requires us to:¹⁵

- a. *address victims' harms and needs* (confirms the loss and needs of the victim),
- b. *hold offenders accountable to put right those harms* (creates the violator's responsibility to fix the loss), and
- c. *involve victims, offenders and communities in this process* (and involving victims, offenders and the community).

Article 1 number 1 PERJA 15/2020 defines restorative justice as “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 ”. Essentially, the formulation in the provisions of PERJA 15/2020 includes the notions and principles of restorative justice.

Based on the various definitions above, it can be seen that in the development of the criminal justice system there is a strong desire to make changes to the criminal system which no longer emphasizes solely on the element of punishment for the

¹¹ H. Edi Setiadi and Kristian, loc cit.

¹² Marian Liebmann, Restorative Justice: How it Works, Jessica Kingsley Publishers, London, 2007, p. 25.

¹³ Daniel W. Van Ness and Karen Heetderks Strong, Restoring Justice: An Introduction to Restorative Justice, LexisNexis, New Jersey, 2010, p. 43.

¹⁴ Howard Zehr and Ali Gohar, The Little Book of Restorative Justice, Good Books, Pennsylvania, 2003, p. 23.

¹⁵ *Ibid.*

perpetrator of a criminal act that is retaliatory in nature, but tends to restore the situation and the interests of the victim accordingly. with the principle of restorative justice. Settlement of criminal cases based on restorative justice requires the active involvement of victims, perpetrators and their families, as well as other related parties.

3.2 Case Settlement Requirements

Article 3 PERJA 15/2020 stipulates the authority of the public prosecutor to close cases for legal purposes, and case closings are carried out in terms of: a. the defendant passed away; b. expiration of the criminal prosecution; c. there has been a court decision that has permanent legal force against a person for the same case (nebis in idem); d. the complaint for the crime of complaint is withdrawn or withdrawn; or e. there has been settlement of the case out of court (afdoening issuer process).

In connection with the above, we can see that Article 14 letter h of the Criminal Procedure Code has also determined that one of the powers of the public prosecutor is to close cases for legal purposes. Article 137 of the Criminal Procedure Code also stipulates that the public prosecutor has the authority to prosecute anyone who is accused of committing a crime in his jurisdiction by 'delegating the case to a court that has the authority to judge. However, according to Article 140 paragraph (2) a. KUHAP, the public prosecutor can decide to stop the prosecution because there is insufficient evidence or the incident does not turn out to be a criminal act or the case is closed by law.

Settlement of criminal cases based on restorative justice is a process of settling criminal cases out of court or there is no need for trial proceedings against perpetrators of criminal acts. As stated in Article 3 paragraph (3) PERJA 15/2020, the settlement of cases outside the court can be done with two alternatives, namely:

- a. for certain criminal acts, the maximum criminal fine is paid voluntarily in accordance with the provisions of statutory regulations; or
- b. there has been a recovery back to the original state using a restorative justice approach.

As a legal consequence of settling cases out of court using the restorative justice approach, prosecution will be terminated, and the process is filed in stages to the Head of the High Prosecutor's Office (Article 3 paragraph (4) and (5) PERJA 15/2020).

Not all criminal cases can be resolved on the basis of restorative justice, and there are certain limitations and conditions that must be met. PERJA 15/2020 has established conditions that must be met first, along with rules or procedures that must be met so that the settlement of criminal cases outside of court can be formally accounted for.

First of all, there are several things that must be considered and considered in terminating prosecution based on restorative justice as stipulated in Article 4 PERJA 15/2020, namely:

- a. Termination of prosecution based on restorative justice is carried out by taking into account:
 - 1) protected interests of victims and other legal interests;
 - 2) avoidance of negative stigma;

- 3) avoidance of retaliation;
 - 4) community response and harmony; and
 - 5) propriety, decency, and public order.
- b. Cessation of prosecution based on restorative justice is carried out by considering:
- 1) subject, object, category, and threat of crime;
 - 2) the background of the occurrence / occurrence of a criminal act;
 - 3) negligence level;
 - 4) loss or consequence arising from a criminal act;
 - 5) *cost and benefit* case handling;
 - 6) recovery back to its original state; and
 - 7) there is peace between victims and suspects.

Furthermore, PERJA 15/2020 contains provisions regarding the requirements that must be met in restorative justice related to the types of crimes and their exceptions, as well as the terms of reconciliation between victims and suspects for restoration of conditions as specified in Article 5 PERJA 15/2020 that:

- a. Criminal cases can be closed by law and prosecution is terminated based on restorative justice if the following conditions are met:
 - 1) the suspect is committing a criminal act for the first time;
 - 2) a criminal act is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and
 - 3) a criminal act is committed with the value of the evidence or loss incurred as a result of the criminal act not more than Rp. 2,500,000.00 (two million and five hundred thousand rupiah).
- b. For criminal offenses related to property, in the event that there are criteria or circumstances that are casuistic in nature which according to the consideration of the Public Prosecutor with the approval of the Head of the District Prosecutor's Branch or the Head of the Public Prosecutor's Office, prosecution based on restorative justice can be terminated while still observing the requirements as referred to in paragraph (1) letter a accompanied by either letter b or letter c.
- c. For criminal acts committed against a person, body, life and liberty of a person, the provisions referred to in paragraph (1) letter c may be exempted.
- d. In the event that the criminal act is committed due to negligence, the provisions in paragraph (1) letter b and letter c can be excluded.
- e. The provisions as referred to in paragraph (3) and paragraph (4) do not apply in the event that there are criteria / circumstances that are casuistic in nature which according to the consideration of the Public Prosecutor with the approval of the Head of the District Attorney's Branch or the Head of the District Attorney, the prosecution cannot be stopped based on restorative justice.
- f. In addition to meeting the requirements and conditions as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4), the termination of prosecution based on restorative justice shall be carried out by fulfilling the following requirements:
 - 1) there has been recovery back to its original state by the suspect by:
 - a) return items obtained from a criminal act to the victim;

- b) compensate the victim's loss;
 - c) reimburse the costs incurred as a result of a criminal act; and / or
 - d) repair the damage caused by a criminal act;
- 2) there has been a peace agreement between the victim and the suspect; and
- 3) society responds positively.
- g. In the event that the victim and the suspect agree, the conditions for restoration to their original state as referred to in paragraph (6) letter a may be exempted.
- h. Cessation of prosecution based on restorative justice is exempted for cases:
- 1) 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 morals;
 - 2) criminal acts punishable by a minimum criminal threat;
 - 3) narcotics crime;
 - 4) environmental crime; and
 - 5) a criminal act committed by a corporation.

In connection with the above, one of the important things that needs to be considered is the requirement for peace between the victim and the perpetrator / suspect. In order to fulfill the requirements for peace between victims and suspects, PERJA 15/2020 regulates mechanisms or procedures that must be carried out in achieving peace and also the consequences if such peace is not achieved.

In accordance with Article 7 PERJA 15/2020, as the first stage a peace effort will be carried out in which: (1) the public prosecutor offers peace efforts to victims and suspects; (2) peace efforts are carried out without pressure, coercion and intimidation; and (3) peace efforts are made at the prosecution stage, namely at the time of handing over responsibility for the suspect and evidence.

Furthermore, according to Article 8 PERJA 15/2020 in the framework of the peace effort, steps were taken, including the public prosecutor calling the victim legally and properly by stating the reasons for the summons, where in the event that a peace effort was deemed necessary, it could involve the families of the victims / suspects, figures. or representatives of the community, and other related parties, and the public prosecutor informing the aims and objectives as well as the rights and obligations of victims and suspects in peace efforts, including the right to refuse peace efforts. In the event that the peace effort is accepted by the victim and the suspect, the peace process will proceed.

Referring to the sentence "in the event that peace efforts are deemed necessary, it can be .." in Article 8 paragraph (2) PERJA 15/2020, this shows that the public prosecutor has the right to determine whether it is deemed necessary to involve the family of the victim / suspect, community leaders or representatives, and other related parties. In this case, it does not explain what criteria are used to determine whether or not the family of the victim / suspect should be involved, community leaders or representatives, and other parties.

Matters relating to the peace process based on restorative justice are regulated in Article 9 to Article 14 PERJA 15/2020. The peace process is carried out with the following provisions:

- a. Terms or conditions of the peace process

- 1) The peace process is carried out voluntarily, by deliberation to reach a consensus, without pressure, coercion, and intimidation;
- 2) In the peace process, the public prosecutor acts as a facilitator;
- 3) The public prosecutor has no interest or relationship with the case, the victim or the suspect, either personally or professionally, directly or indirectly.;
- 4) The peace process is carried out in the Prosecutor's office unless there are conditions or circumstances that are not possible due to reasons of security, health, or geographical conditions, the peace process can be carried out at the government office or other agreed place.;
- 5) The process of conciliation and fulfillment of obligations shall be carried out within a period of 14 (fourteen) days after the transfer of responsibility for the suspect and evidence.

The peace process requires a supportive or conducive condition in which all parties can carry out a process of dialogue and deliberation in a "comfortable" and safe manner so that the aims and objectives of restorative justice can be achieved as well as possible. The position of the public prosecutor as a neutral facilitator also plays an important role in achieving the success of the peace process. One of the requirements as a neutral facilitator is that the public prosecutor does not have any conflict of interest. PERJA 15/2020 also regulates the location where the peace process is determined at the Prosecutor's office, but there is flexibility in case of certain circumstances so the peace process can be carried out elsewhere. Arrangements for the peace process and fulfillment of obligations are carried out within a maximum period of 14 (fourteen) days from the transfer of responsibility for the suspect and evidence is useful to provide certainty about the duration of the peace process, besides that of course it is based on considerations and procedures from the Prosecutor's side regarding the prosecution of a case. Perhaps for the victim or suspect, including other related parties, this time period is not sufficient to prepare and participate in the peace process. However, they must remain bound by the terms of the duration of the peace process. Perhaps for the victim or suspect, including other related parties, this time period is not sufficient to prepare and participate in the peace process. However, they must remain bound by the terms of the duration of the peace process. Perhaps for the victim or suspect, including other related parties, this time period is not sufficient to prepare and participate in the peace process. However, they must remain bound by the terms of the duration of the peace process.

b. Form of agreement (Article 10 paragraph (1) to (5) PERJA 15/2020)

The victim and the suspect make a written conciliation agreement in front of the public prosecutor which is signed by the victim, the suspect, and 2 (two) witnesses with the knowledge of the public prosecutor. A peace agreement is essentially a written agreement between the victim and the suspect, thus, as is customary in an agreement, it will of course be listed and formulated regarding the rights, obligations and responsibilities that must be borne by each party making the agreement. PERJA 15/2020 stipulates 2 possibilities in a peace agreement, namely in the form of agreeing to make peace accompanied by the fulfillment of certain obligations, or without the fulfillment of certain

obligations. In a peace agreement it is not always required that the suspect must fulfill certain obligations, such as payment or compensation to the victim. This may happen, for example, when the victim truly feels compassion and forgives the perpetrator because it takes into account the age or economic condition of the suspect.

c. Conditions when peace is not achieved

Article 10 paragraph (6) PERJA 15/2020 determines that in the event that the peace agreement is not successful or the fulfillment of obligations is not carried out according to the peace agreement, the public prosecutor will pouring out an agreement is not reachedn peace in the minutes, and make a note of opinion that the case is submitted to the court stating the reasons, and submit the case file to the court.

3.3 PERJA 15/2020 relationship with KUHAP

PERJA 15/2020 is a regulation that is closely related to criminal procedural law (KUHAP) because its content mainly concerns legal proceedings against perpetrators of criminal acts or suspects who are under the authority of the public prosecutor. In addition, it also regulates how actions should be taken against the suspect and the consequences of closing the case for the sake of law in the context of restorative justice.

In the Criminal Procedure Code there is no concept and regulation regarding restorative justice that is realized through the settlement of criminal cases outside the court. Although restorative justice is a reality of legal needs in the settlement of criminal acts, the concept of restorative justice must consider or have a legal basis in relation to the provisions of the Criminal Procedure Code.

As previously mentioned, according to Article 3 paragraph (2) letter e. PERJA 15/2020 the public prosecutor has the authority to close the case for the sake of law, among other things in the case that there is already a settlement of the case outside the court (afdoening issuer process). These provisions are based on or related to the meaning and authority of the public prosecutor to close a case for the sake of law as stated in:

- a. Article 14 letter h of the Criminal Procedure Code, namely the public prosecutor has the authority to close cases for legal purposes; and
- b. Article 140 paragraph (2) a. KUHAP, namely the public prosecutor can decide to stop the prosecution because there is not enough evidence or the incident does not turn out to be a criminal act or the case is closed by law.

With regard to the sentence "for the sake of law" as stated in the Criminal Procedure Code, there is no agreement from legal experts and it is the duty of the legal experts to formulate or interpret its meaning. According to Bagir Manan, there is no theory that explains the meaning for the sake of law, but he explained that the meaning of the formula is actually for the sake of legal objectives, namely, public order or a sense of justice where if the case is forced it is feared that the objective of the law will not be achieved.¹⁶

¹⁶ Berita Hukumonline.com, Menafsirkan Rumusan 'Demi Kepentingan Hukum' Dalam KUHAP, tanggal 8 Desember 2009, <https://www.hukumonline.com/berita/baca/lt4b1dea37d8cd8/menafsirkan-rumusan-demi-kepentingan-hukum-dalam-kuhap/>, diakses tanggal 12 November 2020..

According to Yahya Harahap, one of the reasons for terminating the prosecution was that the case was closed by law or set aside. Cessation of prosecution on the basis of a closed case by law is a criminal act in which the defendant has been released from the charge or indictment by law and the case itself by law must be closed or the examination is terminated at all levels of examination. Legal reasons that cause the case to be closed for the sake of law can be based, among others, because the suspect / defendant has died, *ne bis in idem* and has expired.¹⁷

When viewed in criminal law, there is a settlement out of court (*afkoop*) as regulated in Article 82 of the Criminal Code which gives the possibility that a certain criminal case can be resolved in a certain way without having to try the perpetrator and impose a sentence on him. Indeed, not all cases can be resolved out of court. One of the cases that can be resolved outside the court is if the criminal offense is punishable by a fine. If the perpetrator has paid the maximum fine, then the state's authority to prosecute the perpetrator is removed. This institution is called *afkoop* or redemption of criminal charges, which only exists in the case of a criminal offense, in particular those only punishable by fines.¹⁸

Based on Moeljatno's opinion, it can be concluded that usually the principle of legality contains 3 (three) meanings, namely that criminal acts must be stated in the rule of law first, analogy cannot be used, and criminal law rules are not retroactive.¹⁹ By quoting Rusli Muhammad, that as one of the principles that is the basis for the mechanism or operation of the criminal justice system, the legality principle is the principle that underlies the operation of the criminal justice system and as a guarantee that the criminal justice system will not work without a written legal basis.²⁰

PERJA 15/2020 has added or developed a new interpretation in terms of settlement of cases outside the court (*afdoening buiten process*) other than those specified in Article 82 of the Criminal Code (*afkoop*), namely by stipulating that the settlement of cases outside the court can be carried out by restoring the original situation. using a restorative justice approach (Article 3 paragraph (3) PERJA 15/2020). With the inclusion of conditions for restoring the original state based on restorative justice, PERJA 15/2020 has expanded the definition of case settlement outside the court, which is also one of the reasons for closing cases "for the sake of law". It is said so because of other reasons that have existed in the closing of the case "for the sake of law", such as the death of the defendant, the expiration of the prosecution,

As previously stated, PERJA 15/2020 is also closely related to and closely related to the authority of the public prosecutor to terminate cases and close cases for legal purposes. It should also be noted that the Attorney General's Office as the controller of the case process or *dominus litis* has a central position in law enforcement, because only the Attorney General's office can determine whether a

¹⁷ Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta, 2002, hal. 437-438.

¹⁸ Komisi Pemberantasan Korupsi, *Buku Informasi, Hukum dan Sistem peradilan Pidana*, hal. 19.

¹⁹ Moeljatno, *Asas-Asas Hukum Pidana*, Bina Aksara, Jakarta, 1983, hal. 25.

²⁰ Ian Soemardi dan Arief Dwi Atmoko, *Tinjauan Putusan Hakim Tentang Pelaksanaan Eksekusi Terhadap No. 1099/Pid.B/2017/PN.SBY*, *Jurnal Elektronik Hukum Bisnis*, Universitas Narotama Surabaya, Volume 4 Nomor 2, Oktober 2020, hal. 450.

case can be submitted to court or not based on valid evidence as according to the criminal procedure law.²¹

With regard to authority, Philipus M. Hadjon explained that the character of authority can be differentiated into bound authority and discretionary authority. Bound authority is the authority of a government official or agency which must be implemented or cannot do anything other than what is stated in the contents of the regulation. The contents of this authority have been determined in detail, when, and under what circumstances the authority can be used. Meanwhile, discretionary authority (*beleidsvrijheid*, discretionary power, *freies ermesen*) is the authority given along with the freedom of officials to regulate more concretely and in detail, while statutory regulations only provide basic matters.²²

The authority to issue SP3 or SKPP is a bound authority where this authority is an obligation that must be carried out by the investigator or public prosecutor if he finds the conditions referred to in Article 109 paragraph (2) (the investigator stops the investigation because there is insufficient evidence or the incident is not. constitutes a criminal act or the investigation is terminated by law), or Article 140 paragraph (2) of the Criminal Procedure Code. The provisions of Article 140 paragraph (1) of the Criminal Procedure Code should not be interpreted as discretionary authority because (1) the public prosecutor is not free in exercising not exercising prosecutorial authority because it has been made in detail and concretely in the provisions of Article 140 paragraph (2) of the Criminal Procedure Code;²³

In relation to the authority of the public prosecutor, it is also appropriate to state the principle of functional differentiation in the Criminal Procedure Code. What is meant by functional differentiation is an explanation and affirmation of the division of duties and powers of each institutionally between the ranks of law enforcement officials.²⁴ It can also be said that the principle of functional differentiation is the principle in which every law enforcement apparatus in the criminal justice system has its own separate duties and functions.²⁵ What matters which are the scope of duties and authorities of the public prosecutor in the criminal procedure law have been listed, among others, in Article 14 of the Criminal Procedure Code, including carrying out prosecutions, or closing cases for legal purposes in accordance with applicable regulations.

If we look closely, PERJA 15/2020 is a regulation that contains provisions that provide guidelines and rules regarding the limitation of the authority of public prosecutors in the context of terminating cases or closing cases for legal purposes, particularly in relation to restorative justice. The guidelines and restrictions in PERJA 15/2020 are reflected in the following provisions:

- a. things that must be considered and considered by the public prosecutor (Article 4 PERJA 15/2020);

²¹ Komisi Pemberantasan Korupsi, *op cit*, hal. 35.

²² Muhammad Yusni, *Keadilan Dan Pemberantasan Tindak Pidana Korupsi Perspektif Kejaksaan*, Airlangga University Press, Surabaya, 2019, hal. 118.

²³ *Ibid*, p. 119.

²⁴ Andi Sofyan, *Hukum Acara Pidana Suatu Pengantar*, Rangkang Education, Yogyakarta, 2013, hal.20..

²⁵ Tata Wijayanta dan Hery Firmansyah, *Perbedaan Pendapat dalam Putusan Pengadilan*, Medpress Digital, Yogyakarta, 2013, hal. 39.

- b. requirements that must be met in the context of closing a case, such as the perpetrator, the type of criminal act, the perpetrator, exceptions and other conditions such as recovery by the suspect (Article 5 PERJA 15/2020);
- c. duties and obligations of the public prosecutor in the peace efforts and process (Articles 7 to 13 PERJA 15/2020); and
- d. the obligations of the public prosecutor in the event of detention (Article 15 PERJA 15/2020).

Thus, PERJA 15/2020 can be interpreted as an implementing regulation of the criminal procedure law (KUHAP). In other words, PERJA 15/2020 is an implementing regulation that further describes the duties and authorities of the public prosecutor as stated in the Criminal Procedure Code in relation to the implementation of restorative justice.

3.4 Role of Public Prosecutors as Facilitators

In most jurisdictions, prosecutors play a key role in the implementation of restorative justice programs and, in the absence of other laws or guidelines, they exercise the policy of determining which cases are suitable for specific restorative processes. A recent study of the restorative process in a number of countries with common law systems and civil law systems found that in general public prosecutors are “gatekeepers” (selectors / controllers) in restorative programs.²⁶

As stipulated in PERJA 15/2020 the public prosecutor acts as an initiator and facilitator in peace efforts and processes. First of all, the public prosecutor is tasked with offering peace efforts to victims and suspects, which are carried out without pressure, coercion and intimidation (Article 7 paragraphs (1) and (2) PERJA 15/2020). For the purposes of peace efforts, the public prosecutor shall legally and properly summon the victim by stating the reasons for the summons. If it is deemed necessary, peace efforts can involve the families of victims / suspects, community figures or representatives, and other related parties. The public prosecutor informs the aims and objectives as well as the rights and obligations of victims and suspects in peace efforts, including the right to reject peace efforts (Article 8 paragraph (1), (2) and (3) PERJA 15/2020). Whereas Article 9 paragraph (2) and (3) PERJA 15/2020 stipulates that in the peace process the public prosecutor acts as a facilitator, in which the public prosecutor has no interest or connection with the case, the victim or the suspect, either personally or professionally, directly. or indirectly. This requirement is of course to ensure that the public prosecutor is truly a neutral facilitator and does not create a conflict of interest in carrying out his duties.

The role of the public prosecutor as a facilitator in the peace process between victims and suspects plays an important role, it can even influence or condition, assist or encourage success in reaching the peace agreement as one of the conditions for solving cases based on restorative justice.

There are various conditions and duties that the facilitator should have in the context of restorative justice. When viewed Article 18 of the United Nations Basic Principles on the Use of Restorative Justice Programs in Criminal Matters (adopted by the United Nations Economic and Social Council No. 2012/12 dated July 24, 2002, hereinafter referred to as "UN Basic Principles") states that: "Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the

²⁶ United Nations Office On Drugs And Crime, op cit, p. 63.

parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves "(free translation: Facilitators must carry out their duties impartially, respecting the dignity of the parties.

Apart from that, with regard to the facilitator, Daniel W. Van Ness and Karen Heetderks Strong stated several things, namely:²⁷

- a. In mediation, the facilitator is responsible for approaching victims and perpetrators, helping to prepare them for meetings, and then directing the actual meetings.
- b. In stakeholder meetings, the facilitator helps to guide interactions as needed, ideally following any process that builds communication between victim and perpetrator and allows parties to develop their own plans together.
- c. The facilitator will take corrective action if the process creates physical or emotional harm to anyone.
- d. The facilitator does not decide what will happen, as a judge or arbitrator does. They also do not become advocates for victims or offenders in achieving their goals for the reconciliation process. They do not force the perpetrator to show remorse or the victim to say words of forgiveness.
- e. The facilitator serves to organize and facilitate communication in meeting arrangements to create a safe environment where the parties can make their own decisions. This means that facilitators must remain alert to new potential dangers to victims, both through the process and because victims are not ready for a meeting. Victims needing recovery - especially when the crime is serious or violent - is an important consideration in deciding when or whether a case should be brought to a meeting.

If we look at the provisions of Article 16 PERJA 15/2020, it is stated that to optimize the implementation of PERJA 15/2020 technical guidance and training education are held. In this case it should be interpreted that the technical guidance and training education will of course also include increasing the knowledge and skills of public prosecutors as facilitators, along with their function and role in the application of restorative justice. This is at least based on several key considerations, namely:

- a. Settlement of cases based on restorative justice requires changing patterns or perspectives, different approaches and actions compared to handling criminal cases in general. Public prosecutors are accustomed to carrying out prosecution patterns in accordance with criminal procedural law with the aim of making the court sentence or criminalize the suspect, while restorative justice emphasizes the settlement of cases outside the court by means of deliberation to reach a peace agreement.
- b. In establishing restorative justice processes it is very important that prosecutors are involved in various discussions from the start, providing training and information to prosecutors so that they can understand the principles of restorative justice and the possible benefits in dealing with both adolescents and adults.²⁸

²⁷ Daniel W. Van Ness and Karen Heetderks Strong, op cit, p. 77.

²⁸ United Nations Office On Drugs And Crime, loc cit.

- c. The factor of community participation or involvement has a major influence in the process or application of restorative justice. Therefore, the understanding of the character, culture, habits and customs that apply in the society in which restorative justice will be carried out, of course, differs from one region to another. Understanding the condition of the community will be very useful for the public prosecutor in carrying out his role as a facilitator and in anticipating the implementation of peace efforts and processes.
- b. An understanding of local culture and society is also contained in Article 19 of the UN Basic Principles which states that: Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties (free translation: Facilitation must have an understanding culture and local communities and, where necessary, receive initial training before undertaking facilitation tasks).

3.5 Benefits of PERJA 15/2020

a. Efficiency in the criminal justice process

With the termination of prosecution or closing of cases based on restorative justice and settlement of cases outside the court, the public prosecutor can make efficiency and savings, both in terms of human resources, time and costs when compared to cases being forwarded to court until a court decision is passed. This efficiency can be utilized for a greater interest and focused on larger matters and is detrimental to public order and the state. This efficiency does not only apply to the Attorney General's office, but can also apply to courts (such as avoiding the accumulation of cases at all levels of the judiciary, judges can concentrate more on important cases and so on), and also correctional institutions (such as reducing the number of prisoners, fulfilling prison facilities and facilities, and so on). Thus, the implementation of PERJA 15/2020 is certainly influential and related to the implementation of the principles of criminal justice that is fast, simple and low cost.

As stated by Sunarta that the accumulation of the burden of cases in the court, the prison becomes full and it is difficult for small people who eat their daily meals, so they often fall into lust, commit criminal acts, which they are sometimes not even aware of, then have to languish in in a cell for months. They will lose their jobs, let alone the opportunity to feed the children and wives they left at home. Until the case is decided, there will be a lot of losses, which when analyzed economically, the losses incurred, compared to the advantages in law enforcement, are very inefficient. While emphasizing that for law enforcement, inefficiency will only lead to community misery.²⁹

In addition, Indriyanto Seno Adji stated that the publication of PERJA 15/2020 should be appreciated. This is the attorney's attitude which represents justice for the small community and at the same time answers various other problems such as the accumulation of case burdens in court and the dilemma of over capacity in court.³⁰

²⁹ Sunarta, loc cit.

³⁰ JawaPos.com, Pakar Hukum Dukung Terbitnya Peraturan Kejaksaan Nomor 15/2020, tanggal 11 November 2020, <https://www.jawapos.com/nasional/19/08/2020/pakar-hukum-dukung-terbitnya-peraturan-kejaksaan-nomor-15-2020/>, diakses tanggal 12 November 2020.

In fact, the application of restorative justice has also been accepted by the court, as seen in the Supreme Court Decision No.1600K / Pid / 2009 dated 24 November 2009. In this case the defendant has been charged based on the first indictment of Article 378 jo 64 paragraph (1) of the Criminal Code (fraud continued), or second, Article 372 in conjunction with 64 paragraph (1) of the Criminal Code (continued embezzlement). However, the witness to complain, who is the defendant's father-in-law, through a letter requesting revocation and has been read out before the Panel of Judges at the District Court has firmly withdrawn all lawsuits against the defendant. The reason for the revocation was because the defendant had 2 (two) young children who of course really needed the love of a mother, the reporting witness had forgiven all the actions of the defendant, and gave up all money losses and did not sue any more. It turned out that at the cassation level, the Supreme Court agreed with the District Court's decision and granted the request to withdraw the complaint submitted by the witness witness, and stated that the prosecution of the case against the defendant was unacceptable. One of the considerations is that the teaching of restorative justice teaches that conflicts called crimes must be seen not merely as violations of the state with the public interest but conflict also represents the disruption, perhaps even the disconnection between two or more individuals in social relations and the judge must be able to facilitate satisfactory conflict resolution for the disputing parties. The Supreme Court agreed with the District Court's decision and granted the request to withdraw the complaint submitted by the witness witnesses, and stated that the prosecution of the case against the defendant was unacceptable. One of the considerations is that the teaching of restorative justice teaches that conflicts called crimes must be seen not merely as violations of the state with the public interest but conflict also represents the disruption, perhaps even the disconnection between two or more individuals in social relations and the judge must be able to facilitate satisfactory conflict resolution for the disputing parties. The Supreme Court agreed with the District Court's decision and granted the request to withdraw the complaint submitted by the witness witness, and stated that the prosecution of the case against the defendant was unacceptable. One of the considerations is that the teaching of restorative justice teaches that conflicts called crimes must be seen not merely as violations of the state with the public interest but conflict also represents the disruption, perhaps even the disconnection between two or more individuals in social relations and the judge must be able to facilitate satisfactory conflict resolution for the disputing parties.

b. Victim

According to Article 1 number 2 PERJA 15/2020 a victim is a person who has suffered physical, mental and / or economic loss as a result of a criminal act. By resolving criminal cases through restorative justice, it is actually the party that needs to receive important attention is the victim of the crime himself.

According to Mark Yantzi, people who have been deliberately hurt by others often feel that their safety and security are shaken. They often wonder how the wider community will respond to their feelings. These feelings make victims of crime feel alienated and restless. In various ways these crimes must be handled.

Victims need to play an active role in seeing the handling process until it's finished. Victims feel a faster recovery if they believe that the process is leading to a satisfactory end. Victims also need the recognition of others for the crimes they have experienced. The criminal justice system tends to deal with the impact of crime on victims in a superficial way and is less sensitive, if not completely insensitive. In a variety of ways, victims are often encouraged to move on.³¹

The benefits of PERJA 15/2020 for victims include:

- 1) recognition of the importance of legal status and protection for victims.

Victims have a very important and central position in solving cases based on restorative justice. This can be seen in Article 4 paragraph (1) letter a. PERJA 15/2020 that the interests of victims and other legal interests that are protected are things that must be considered in terminating prosecution.

- 2) victims are given the opportunity to actively participate in solving criminal cases.

In order to achieve case settlement based on restorative justice, it is required that there is peace between the victim and the suspect (Article 4 paragraph (1) letter g; Article 5 paragraph (6) letter b PERJA 15/2020). In this case the agreement certainly requires an agreement between two parties, where the victim is one of the determining parties in the peace, including to accept or reject the peace (Article 8 paragraph (4) and (7) PERJA 15/2020). This can be interpreted that the victim has a key role in being willing to agree to peace or not, and also expresses his desire or will in a peace agreement as a condition for recovery (especially considering the impact of suffering, both material and immaterial, experienced by the victim).

Settlement of criminal cases by involving victims directly is expected to provide a sense of inner satisfaction and justice for victims, although this is a subjective factor, depending on the individual. In this case the victim can express his wishes or what he wants in an effort to recover the situation.

- 3) acknowledgment of will the rights and obligations of the victim.

The victim has the right to determine whether a peace agreement is in the form of: agreeing to make peace accompanied by the fulfillment of certain obligations, or without the fulfillment of certain obligations. This gives a strong position to the victim in which the victim has the right to determine the desired terms or conditions, including restitution which is compensation for the perpetrator, which is included as the suspect's obligation in the peace agreement, taking into account the losses suffered by the victim. The willingness of the perpetrator to carry out the agreed obligations can be interpreted as, among other things, an acknowledgment of the perpetrator's guilt towards the victim. Meanwhile, the victim is also obliged to comply with the things that have been agreed upon with the perpetrator / suspect.

c. Suspect

Article 1 point 4 PERJA 15/2020 defines a suspect as someone who because of his actions or circumstances, based on preliminary evidence, is reasonably suspected

³¹ Mark Yantzi, *Kekerasan Seksual dan Pemulihan: Pemulihan Bagi Korban, Pelaku, dan Masyarakat*, diterjemahkan oleh: Timur Citra Sari dan Mareike Bangun, Gunung Mulia, Jakarta, 2009, hal. 64-65.

of being the perpetrator of a criminal act. Based on PERJA 15/2020, suspects are also involved in resolving cases and are responsible for events or actions that have been committed against the victim.

Conflict resolution through mediation between the victim and the perpetrator has created a creative attitude, namely asking the perpetrator to be personally accountable for his actions; suppressing humanity of evil acts (crimes); provide opportunities for perpetrators to account for their actions by confronting victims and making agreements; promote active involvement of the community and victims in the judicial process; and enhancing the quality of justice that is felt by both victims and perpetrators.³²

There are several benefits of PERJA 15/2020 for the suspect, including:

1) legal protection for the suspect

Legal protection for suspects as a consequence of achieving a peace agreement includes terminating prosecution and closing cases for the sake of law against the perpetrators / suspects. Article 12 paragraph (6) PERJA 15/2020 stipulates that if the Head of the High Prosecutor's Office approves the termination of prosecution based on Restorative Justice, the Branch Head of the District Prosecutor's Office or the Head of the State Prosecutor as the Public Prosecutor issues a Decree on the Termination of Prosecution within 2 (two) days of receipt of approval. . In the event that the suspect is detained, the public prosecutor immediately releases the suspect after the Decree on the Termination of Prosecution is issued (Article 15 paragraph (2) PERJA 15/2020).

Based on Article 11 PERJA 15/2020, legal protection is also given to suspects in the event that the peace agreement does not work due to requests for disproportionate fulfillment of obligations, threats or intimidation, sentiment, discriminatory treatment or harassment based on ethnicity, religion, race, nationality, or certain groups. against a suspect who has good intentions, where this can be used as a consideration for the public prosecutor in carrying out the prosecution. Likewise, if the fulfillment of obligations is not carried out according to the peace agreement due to economic factors or other reasons accompanied by good faith from the suspect. Consideration can be in the form of delegation of cases with a brief examination procedure; mitigating circumstances in filing criminal charges; and / or filing criminal charges with conditions.

2) provide the opportunity for the suspect to be directly responsible for his actions against the victim.

The peace agreement between the victim and the suspect has a legal consequence that the suspect must comply with and fulfill all of his obligations as stated in the peace agreement. These obligations, among others, can be in the form of restitution or compensation for the victim in accordance with the peace agreement. This obligation in the context of recovery reflects the legal responsibility of the suspect directly to the victim for his actions or mistakes.

3) the suspect is spared from court proceedings and criminal charges.

³² Suyanto, Pengantar Hukum Pidana, Penerbit Deepublish, Yogyakarta, 2018, hal. 176.

The most important benefit of PERJA 15/2020 for suspects is that with the termination of prosecution, suspects do not need to undergo court proceedings and avoid prosecution and punishment. Based on restorative justice, suspects can avoid the possibility of being declared a convict, where imprisonment in prisons can have a negative effect on prisoners, both while in prison and the stigma from society after leaving prison as a former convict.

4. Conclusion

In the Criminal Procedure Code, there are no provisions that explicitly state convictions based on restorative justice. PERJA 15/2020 is based on or should be interpreted as the application of Article 14 letter h of the Criminal Procedure Code that the public prosecutor has the authority to close cases for legal purposes, and Article 140 paragraph (2) a. KUHP, namely the public prosecutor can decide to stop the prosecution because of the law. PERJA 15/2020 has developed a new interpretation in terms of the settlement of cases out of court (afdoening buiten proces) other than those stipulated in Article 82 of the Criminal Code (out of court settlement (afkoop)), namely that the settlement of cases outside the court can also be done with restoration. The original situation was based on a restorative justice approach (including the existence of a peace agreement between the victim and the suspect).

PERJA 15/2020 is a regulation related to the implementation of criminal procedural law which functions as a guideline and rules that determine the limitation of authority for public prosecutors in the context of terminating cases or closing cases for legal purposes, particularly in relation to restorative justice.

The role of public prosecutors as facilitators is very important in reaching a peace agreement between victims and suspects. Thus, as a consequence, the public prosecutor must have the knowledge and skills as a facilitator.

The benefits of PERJA 15/2020 include:

- a. Efficiency and savings, both in terms of human resources, time and cost when compared to cases being forwarded to the court until a court decision is passed, both the Attorney General's Office, the Court and the Correctional Institution, so that it is useful in supporting the creation of the principle of fast, simple and low cost criminal justice. .
- b. There is recognition of the importance of legal status and protection for victims, providing opportunities for victims to be directly involved in the settlement of criminal cases and recognition of the rights and obligations of victims.
- c. The existence of legal protection for suspects, providing opportunities for suspects to be responsible for their actions / mistakes, and avoiding the suspect from the court process and being declared a convicted person.

Regulations regarding restorative justice need to be immediately formed in the form of laws, which are more appropriately included in the revision of the Criminal Procedure Code. Restorative justice arrangements in the form of laws are very important to fill the legal vacuum and as part of a comprehensive reform of the criminal justice system. The elaboration and formation of implementing regulations

by various law enforcement institutions regarding restorative justice must have and refer to a legal basis that is clearly and firmly stated in the law.

Restorative justice involves elements of society, where elements of society can provide a positive response / response which is a supportive factor, or vice versa can be a "pressure" factor in solving criminal cases because of the influence of views or values that live in the community on crimes and perpetrators. crime. Therefore, it is necessary to provide adequate information, knowledge and understanding, including the consequences and responsibilities that may arise on the community regarding cases that are resolved based on restorative justice. This can be done, for example, through legal counseling, holding meetings with officials or community leaders both who live in rural and urban areas.

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