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Juridical Analysis of the Implementation of Restorative Justice at the Prosecution Stage for Crimes of Theft Under Two Million Rupiah in the Legal System in Indonesia

Mhd. Yadi Harahap1,
[1,]North Sumatra State Islamic University
E-mail:mhdyadiharahap@uinsu.ac.id

Abstract

Indonesia continues to strive so that the laws implemented or implemented by the community must be sourced from the values that live and develop in society. If legal entities in Indonesia are implemented, the community will not feel objections or be unfamiliar with the legal model. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retaliation. Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that one of the Attorney General's powers is to set aside cases in the public interest. The Prosecutor's Office feels that there are many irregularities in the criminal law system that has been in force, therefore in this case what is meant by "public interest" is the interest of the nation and state and/or the interest of the wider community. This research was carried out using a research method in the form of a Normative Juridical method. Data collection was carried out by means of literature study. The research specifications used are descriptive qualitative. This research aims to find out how restorative justice is carried out for perpetrators of minor crimes in the form of theft at the prosecutor level and how restorative justice is implemented for perpetrators of minor crimes in the form of theft at the Pangkalpinang District Prosecutor's Office, case study Cessation of Prosecution through the Pangkalpinang Kajari Termination of Prosecution Decree Number 01/L. 9.10.3/Eoh.2/01/2022 dated January 13, 2022.

Keywords: Theft; Termination of Prosecution; Restorative Justice

INTRODUCTION

In Article 1 point 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is determined that the Prosecutor is a functional official who is authorized by this law to act as a public prosecutor and implement court decisions that have obtained legal force and other authority based on law. invite. The Prosecutor's Office of the Republic of Indonesia as a state government institution that exercises state power in the field of prosecution must be free from the influence of the power of any party, that is, it is carried out independently regardless of the influence of government power and the influence of other powers. The Prosecutor's Office as a law enforcement agency is required to play a greater role in upholding the supremacy of law, protecting public interests, upholding human rights and eradicating Corruption, Collusion and Nepotism (KKN).

In Article 1 point 6 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) it is stated that:

a. A prosecutor is an official authorized by this law to act as a public prosecutor and implement court decisions that have permanent legal force.
b. The public prosecutor is the prosecutor who is authorized by this law to carry out prosecutions and carry out the judge's decisions.

The provisions above provide an understanding that the public prosecutor must be a prosecutor. And the task of the Public Prosecutor is to carry out prosecutions and carry out the judge's decisions. As also stated in Article 13 of the Criminal Procedure Code, the public prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and carry out the judge's decisions. In general, after the enactment of the Criminal Procedure Code, the duties of the Prosecutor are:

1. As public prosecutor;
2. Executor of court decisions that have permanent legal force (executor).

In his duties as a public prosecutor, the Prosecutor has the following duties:
1. Carrying out prosecution.
2. Carry out the judge's decision.

These two tasks are carried out by the public prosecutor in the ongoing criminal trial process. The duties of the Prosecutor as a public prosecutor are regulated in Article 13 of the Criminal Procedure Code and emphasized in Article 137 of the Criminal Procedure Code. The public prosecutor has the authority to prosecute anyone accused of committing a criminal offense within their jurisdiction by transferring the case to a court that has the authority to try it.

However, on the other hand, after the issuance of Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perja Termination of Prosecution) based on the consideration that resolving criminal cases by prioritizing restorative justice which emphasizes restoration to the original state which is not oriented towards retribution is a the legal needs of society and a mechanism that must be built in the exercise of prosecutorial authority and reform of the criminal justice system. (Moh. Mahfud MD, 2010)

This Attorney General's regulation is an effort to reform the law in the criminal justice system in Indonesia, meaning that law is understood as values that dynamically live and develop, law is understood not only as a collection of written regulations, but more than that, there is the idea that law is related to the cornerstones of human life are developing, therefore, seeing the direction of human civilization which is increasingly advanced and developing, the idea and ideas emerge that not all criminal cases have to end behind bars in an effort to create justice. (Ronny Hanitijo Soemitro, 1985)

Today's criminal law has moved towards the paradigm that the purpose of punishment is not solely for revenge. (Satjipto Rahardjo, 2012) Restorative justice is a term generally used for an approach to resolving criminal cases (criminal justice) which emphasizes restoration or recovery of victims and communities rather than punishing perpetrators. Restorative justice is a case resolution process that involves all stakeholders dealing with crimes that have occurred by discussing to reach an agreement on what should be done to restore (Nikmah Rosidah, 2011) the suffering caused by the crime. Criminal procedures and justice mechanisms that focus on punishment are transformed into a dialogue and mediation process to create an agreement on resolving criminal cases that is fairer and more balanced for the victim and perpetrator. (Anis Nurwianti, 2017)

Observing the substance of these provisions, it can be understood that judicial termination of prosecution can only be implemented if it meets the qualifications in 3 (three) scopes, namely first, there is not enough evidence, second, it is not a criminal act and third, the case is closed by law. The cessation of prosecution as formulated in the Termination of Prosecution Regulation is oriented towards the principles of restorative justice which is implemented by the public prosecutor with the conditions as regulated in Article 4 of the Termination of Prosecution Regulation, which determines:

1. Termination of prosecution based on restorative justice is carried out by taking into account:
   a. The interests of victims and other protected legal interests;
   b. Avoidance of negative stigma;
   c. Avoidance of retaliation;
   d. Community response and harmony; and
   e. Decency, decency and public order.

2. Termination of prosecution based on restorative justice as intended in paragraph (1) is carried out by considering:
   a. Subject, object, category and threat of criminal acts;
   b. Background to the occurrence/competition of the criminal act;
   c. Degree of blameworthiness; d. Losses or consequences arising from criminal acts;
   e. Cost and benefits of handling cases;

Termination of prosecution on the basis of restorative justice is basically not something new, this has previously been accommodated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, however, the principle of restorative justice can only be applied to children as perpetrators of criminal acts. Meanwhile, restorative justice as stated in the Termination of Prosecution Regulation applies to adults as perpetrators of criminal acts. Another interesting thing about this Termination of Prosecution Perja is that it was issued and accommodated through the internal regulations of law enforcement agencies, in this case the Republic of Indonesia Prosecutor's Office, rather than being accommodated through law. The issuance of the Prosecution Cessation Perja can basically be seen as a legal breakthrough, because the essence of termination The intended prosecution requires peace between the victim and the perpetrator of the crime.

This is of course inversely proportional to the provisions for eliminating the authority to prosecute criminal charges as regulated in Articles 76 of the Criminal Code to 85 of the Criminal Code. In connection with this, regarding the prosecutor's authority to stop prosecution on the basis of the Termination of Prosecution Regulation, a comprehensive study needs to be carried out in order to find out and analyze all the problems that arise therein.

In cases of theft where the case is entered and tried in court and which is the most in the spotlight are cases of theft where the reason, value and punishment no longer reflect a just and beneficial law. Even though the law should have a fair and beneficial effect on all parties. For example, a case highlighted by the public was the theft of 3 (three) cocoa pods which were stolen by an old grandmother in Ajibarang, Central Java. This theft case not only became a highlight but also caused a counter reaction from society and suggested that the law was no longer fair and even useless. The grandmother stole goods which, if exchanged for a nominal price, meant that the price of the cocoa fruit was not commensurate with the grandmother's loss in attending the trial and even became sick during the trial process. (Septiayu Restu Wulandari, 2018)

The public considers that the law is no longer fair and useful when petty theft cases are resolved through public institutions, namely the courts. The court with its decision judges and decides the suspect based on the applicable law. Cases of petty theft can actually be tried without having to go to court. The value mismatch in terms of the losses achieved if the case of petty theft goes to court is not small. Losses in a material and formal sense. Losses in court costs, energy and time, up to sentences that do not reflect fair and beneficial laws.

In any case it is possible to terminate the prosecution for the sake of restorative justice, especially in cases of theft. Case closure can be done for legal purposes, among other things, if there has been a settlement outside of court. This is commonly referred to as afdoening buiten process. This process can be carried out with the following provisions: first, for certain criminal offenses, the maximum criminal fine is paid voluntarily in accordance with the provisions of statutory regulations; and second, there has been a restoration of the original situation using a restorative justice approach. If the second situation occurs, the prosecutor will stop the prosecution.

As seen in the spirit of the Republic of Indonesia Attorney General Regulation no. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice states the conditions for cases and perpetrators so that prosecution can be stopped based on restorative justice. The condition regarding the person or perpetrator is that the suspect has committed a crime for the first time. Then, there are two conditions regarding criminal acts. First, the criminal offense committed is only punishable by a fine or punishable by imprisonment for no more than five years. Second, criminal acts are committed with the value of evidence or the value of losses incurred as a result of the criminal act not exceeding 2.5 million rupiah.

What should be at the core of Attorney General Regulation Number 15 of 2020 is the existence of a peace agreement between the victim and the defendant, where the Prosecutor should be able to implement the implementation of restorative justice with the aim that case handling can prioritize peace, especially for relative cases. light and with a humanitarian aspect, as always instructed by the Attorney General of the Republic of Indonesia where the Prosecutor must prioritize "Conscience" in every case handling.

METHOD

Research can be interpreted as a way of seeking truth through the scientific method, while the scientific method is a procedure for obtaining knowledge called science.7 The essence of research has the function of finding, developing or testing the truth of knowledge,8 and in an effort to study, study or investigate a problem, to obtain theoretical knowledge that can enrich the body of knowledge and/or be used to solve the problems being faced. The method used in this research is normative-empirical juridical in nature. In accordance with

the type of research that is normative-empirical juridical, the data sources used are primary data and secondary data.

Primary data is data obtained directly from the first source related to the problems that will be discussed by conducting structured interviews both with the parties involved in the case and with informants from the Pematang Siantar District Prosecutor's Office in terms of implementing Restorative Justice in criminal acts of vandalism. Secondary data is data obtained by conducting library research on the research materials used which include primary legal materials, such as cases, secondary legal materials and tertiary legal materials.

Furthermore, the primary data and secondary data obtained were analyzed qualitatively by collecting primary data and secondary data which consisted of primary legal materials, secondary legal materials and tertiary legal materials. Based on the data obtained and then compared with the results of the research carried out, it will be used as a basis for drawing conclusions

RESULTS AND DISCUSSION

1. Provisions of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The definition of restorative justice or restorative justice is an effort to provide a restoration of relationships and redemption of mistakes that the perpetrator of a crime (his family) wishes to carry out against the victim of the crime (his family) (peace efforts) outside of court with the aim and purpose of solving legal problems. arising from the occurrence of the criminal act can be resolved properly by reaching agreement and agreement between the parties. 1 It is hoped that with the implementation of restorative justice, namely this justice is a process where all parties involved in a particular criminal act jointly solve the problem of how to deal with the consequences. in the future. (Hanafi Arief, et al, 2018)

In other cases, the application of restorative justice to resolve criminal cases of traffic accidents is part of fulfilling human rights. The application of restorative justice as part of fulfilling human rights in resolving criminal cases is based on several policies, namely: first, criticism of the criminal justice system which does not provide opportunities, especially for victims (criminal justice system that disempowers individuals); second, eliminating conflict, especially between perpetrators, victims and the community (taking away the conflict from them); third, the fact that feelings of helplessness experienced as a result of criminal acts must be overcome in order to achieve repair. (Ivo Aertsen, et, al,, 2011)

In Perja no. 15/2020 contains the authority of prosecutors to stop prosecutions based on restorative justice which is a breakthrough in resolving criminal acts. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through a restorative justice approach, it is hoped that victims and perpetrators of criminal acts can achieve peace by prioritizing win-win solutions, and emphasizing that victims' losses are replaced and victims forgive the perpetrators of criminal acts. (Wulandari, C, 2018)

Currently, the practice of all law enforcement institutions in Indonesia, including the Supreme Court, the Attorney General's Office, the Police of the Republic of Indonesia, and the Ministry of Law and Human Rights of the Republic of Indonesia have adopted the principle of restorative justice as a way to resolve criminal cases. In 2012 these four institutions made a joint agreement, namely a Memorandum of Understanding with the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia Number 131/KMS/SKB/X/2012, Number M-HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning Implementation of Adjustments to Limits for Light Crimes and Amounts of Fines, Events Rapid Examination and Implementation of Restorative Justice.

In other cases, RI Prosecutor's Regulation no. 15 of 2020 also contains restrictions on the implementation of restorative justice so that it is not only interpreted as merely a peace agreement because if that is the case the ongoing process will actually be trapped in carrying out its procedural functions only so that truth (especially material truth) and justice cannot be achieved. This regulation is also considered as legal substance, formulated to eliminate rigid positivistic understanding by prioritizing progressive law labeled restorative justice. Restorative justice is the resolution of criminal cases involving the perpetrator, victim, family of the

perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition and not retaliation. (Sarwirini, 2021)

The existence of Regulation No. 15/2020 which gives prosecutors the authority to stop prosecutions based on restorative justice is a breakthrough in resolving criminal acts. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries. Through a restorative justice approach, it is hoped that victims and perpetrators of criminal acts can achieve peace by prioritizing win-win solutions, and emphasizing that victims' losses are replaced and victims forgive the perpetrators of criminal acts. Normatively, the criminal justice system is aimed at law enforcement. This system is an operational tax system based on statutory provisions in order to overcome crime to produce legal certainty. The implementation of social defense can be facilitated by the criminal justice system in order to realize better social welfare. Social aspects based on expediency should be taken into account by the criminal justice system. (Andi Hamzah, 2008)

The purpose of this criminal justice system is to reduce recidivism and crime in the short term. Meanwhile, in the long term, the criminal justice system is intended to create better social welfare in the future. If this goal cannot be realized then there is an impropriety in the justice system that has been implemented.

The basic idea of having alternative solutions in criminal cases is linked
with the nature of criminal law itself. Van Bammelem is of the opinion that criminal law is an ultimum remedium and should have limitations, meaning that if other parts of the law do not sufficiently emphasize the norms recognized by law, then criminal law can be applied. Criminal threats are an ultimum remedium, (last resort). This means that the threat of punishment will be eliminated, but you must always consider the pros and cons of the criminal threat, and you must take care that the medicine given is not worse than the disease.

In efforts to combat crime, the role of law enforcement officers is very important. Often they appear too rigid, this is understandable because bureaucrats are very strict about following the rules. The police as an element of law enforcement play a very important role as the first gateway to the successful resolution of cases. The police is an institution in the subsystem of the criminal justice system that has the first and main position. 16 According to Muladi, the appropriate model for the Indonesian criminal justice system is one that refers to the daad-dader strafrecht which he calls. (Harkristuti Harkrisnowo, 2003)

To answer problems related to the resolution of criminal cases which always result in imprisonment, a solution that has recently emerged relates to the authority of the public prosecutor to stop prosecutions based on the concept of restorative justice, namely Perja No. 15 of 2020, needs to be given appreciation because this concept involves perpetrators, victims and the community in the process of resolving criminal cases. The considerations in Perja No. 15 of 2020 concerning termination of prosecution based on resortative justice, namely:

a. that the Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must be able to realize legal certainty, legal order, justice and truth based on law and heed religious norms, decency and decency, and is obliged to explore human, legal and ethical values. justice that lives in society;
b. that resolving criminal cases by prioritizing restorative justice which emphasizes restoration to the original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards retribution is a legal need of society and a mechanism that must be built in the implementation of prosecutorial authority and reform of the justice system criminal;
c. that the Attorney General has the duty and authority to make the law enforcement process provided by the Law more effective by paying attention to the principles of fast, simple and low-cost justice, as well as establishing and formulating case handling policies for successful prosecutions which are carried out independently for the sake of justice based on law and conscience, including prosecution using a restorative justice approach carried out in accordance with statutory provisions.

Article 4

1. Termination of prosecution based on Restorative Justice is carried out by taking into account:
   a. interest Victim And interest law other Whichprotected;
   b. avoidance of negative stigma;
   c. avoidance of retaliation;

d. community response and harmony; And
e. propriety, decency and public order

2. Termination of prosecution based on Restorative Justice as intended in paragraph (1) is carried out by considering: subject, object, category and threat of criminal act;
   a. the background to which the criminal act was committed;
   b. degree of blameworthiness;
   c. losses or consequences arising from criminal acts
   d. costs and benefits of handling cases;
   e. restoration back to its original state; And
   f. there is peace between the victim and the suspect.

Article 5

1. Criminal cases can be closed by law and prosecution terminated based on Restorative Justice if the following conditions are met:

a. the suspect has committed a crime for the first time;
b. criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years; And
c. criminal acts are committed with the value of the evidence or the value of losses incurred as a result of the criminal act not exceeding IDR 2,500,000.OO (two million five hundred thousand rupiah)

2. For criminal acts related to property, if there are criteria or circumstances that are casuistic in nature according to consideration
3. The Public Prosecutor, with the approval of the Head of the District Prosecutor's Office Branch or the Head of the District Prosecutor's Office, can terminate the prosecution based on Restorative Justice while still observing the conditions as intended in paragraph (1) letter a accompanied by one of letter b or letter c.

2. Termination of Prosecution for Crimes of Theft under Two Million Rupiah Based on Restorative Justice.

The Supreme Court (MA) has issued Supreme Court Regulation (Perma) No 2 of 2012 concerning Settlement of Limits for Minor Crimes (Tipiring) and the Amount of Fines in the Criminal Code. In essence, this Perma is intended to complete the interpretation of the value of money in Tipiring in the Criminal Code. In Perma Number 2 of 2012, it not only provides relief to Supreme Court judges in their work, but also makes it impossible to arrest thefts under 2.5 million.

In Perma Number 2 of 2012 Article 1, it is explained that the words "two hundred and fifty rupiah" in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code are read as Rp. 2,500,000.00 or two million five hundred thousand rupiah . Then, in Article 2 paragraph (2) and paragraph (3) it is explained that if the value of the goods or money is not more than IDR 2.5 million, the Chief Justice will immediately appoint a single judge to examine, try and decide the case using a quick examination procedure. regulated in Articles 205-210 of the Criminal Procedure Code and the Chief Justice does not determine detention or extension of detention.

Regarding fines, Article 3 states that each maximum amount of fines threatened in the Criminal Code except Article 303 paragraph 1 and paragraph 2, 303 bis paragraphs 1 and 2, is multiplied to 1,000 (one thousand) times.

This regulation makes it easier for defendants involved in tipiring cases not to have to wait for a protracted trial to reach the cassation stage, as happened in the case of Grandmother Rasminah, the theft of plates which resulted in an appeal. "So there's no need to worry about the case of a child stealing sandals and a grandmother stealing a plate until it drags on, but it can be finished in one day.

The large number of cases of theft involving small values of goods now being tried in court have received quite a lot of attention from the public. The public generally considers that it is very unfair if these cases are threatened with a sentence of 5 (five) years as regulated in Article 362 of the Criminal Code because it is not commensurate with the value of the goods stolen. If we compare it with perpetrators of serious crimes, for example corruptors, of course this causes a reaction that makes society angry.

A breakthrough was made with the issuance of Supreme Court Regulation Number 2 of 2012 where the nominal value in the Criminal Code for theft was multiplied by 10,000, - so that it had to be read as Rp. 2,500,000,- One of the criminal acts of theft is theft of goods which often occurs in supermarkets. Loss of goods in supermarkets can be caused by several factors, namely theft by employees (internal theft/employee theft), distributor error, theft by consumers (shoplifting), system failure or administrative error.

Of the four factors that cause losses, the one that needs to be paid attention to when writing this proposal is shoplifting (theft by consumers) because it can cause huge losses for supermarket entrepreneurs. Supermarkets are one of the characteristics of fast-paced and practical modern life. The main characteristic of supermarkets is self-serve. This supermarket provides various kinds of human needs, from food ingredients to communication tools, which are available there. Because this main characteristic of supermarkets is what causes the rise or development of criminal acts of theft in supermarkets.

To tackle such crimes and criminal acts requires a comprehensive policy of action and anticipation. Criminal acts and offenses are becoming increasingly complex and complicated with far-reaching impacts, nowadays requiring law enforcement by authorized officers to implement legal sanctions and appropriate deterrence policies, in accordance with applicable law, the impact of which is expected to reduce to a minimum the criminal acts and violations of the law. .

According to Article 362 of the Criminal Code (KUHP), anyone who takes something, which wholly or partly belongs to another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum imprisonment of five years or a maximum fine. a lot of nine hundred rupiah.

Furthermore, regarding the crime of petty theft, the Criminal Code regulates it in Article 364, which in full outlines that the acts described in Article 362 and Article 363 point 4, as well as the acts described in Article 363 point 5, are not committed in a house or closed yard. whose house is in possession, if the price of the goods stolen does not exceed twenty-five rupiah, they will be punished for petty theft with a maximum imprisonment of three months or a maximum fine of two hundred and fifty rupiah.

In legal practice in the field, the provisions of Article 364 of the Criminal Code are rarely used by law enforcers. This phenomenon occurs for several reasons, including because the size of the losses resulting from minor crimes and the fines that can be imposed are very small. The provisions regarding the price of stolen goods not exceeding twenty-five rupiah, and a maximum fine of two hundred and fifty rupiah, are of course completely inconsistent with the current value of the rupiah. Therefore, law enforcers use Article 362 of the Criminal Code more often to ensnare perpetrators of criminal acts of theft, even though the theft they commit is relatively minor.

The application of Article 362 of the Criminal Code for perpetrators of relatively light theft also causes problems. The main problem is that the application of this article does not reflect the spirit of achieving justice as one of the essence or fundamental objectives of law enforcement, because the value of the stolen goods is not commensurate with the length of the sentence imposed on the perpetrator.

Apart from that, in terms of resolving criminal cases, the imposition of Article 362 of the Criminal Code on perpetrators of petty theft will increase the burden on law enforcement, slow down the performance of resolving criminal cases, and cause overcapacity at the State Detention Center (RUTAN). Regarding this legal phenomenon, the Supreme Court initiated the issuance of Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012 concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code. Based on this regulation, the Supreme Court determined the limits of minor crimes and the fines that can be imposed on perpetrators of minor crimes. Regarding the fines that can be imposed, it is regulated in Article 1 which outlines that "The words "two hundred and fifty rupiah" in Articles 354, 373, 379, 384, 407 and Article 482 of the Criminal Code are read as Rp. 2,500,000.00 (two million five hundred thousand rupiah)". Article 2 of the Republic of Indonesia Supreme Court Regulation Number 02 of 2012 determines that:

Paragraph 1: In accepting the delegation of cases of Theft, Fraud, Embezzlement, Detention from the Public Prosecutor, the Chief Justice is obliged to pay attention to the value of the goods or money that is the object of the case and pay attention to Article 1 above. Paragraph 2: If the value of the goods or money is not more than IDR 2,500,000.00 (two million five hundred thousand rupiah) the Chairman of the Court immediately appoints a Single Judge to examine, try and decide the case using a Quick Examination Procedure as regulated in Article 205- 210 Criminal Procedure Code. Paragraph 3: If the defendant has previously been detained, the Chief Justice shall not determine detention or extension of detention.

If we examine the provisions of the articles in the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2012, Perma Number 02 of 2012 only regulates adjustments to the limits on the value of losses and compensation for minor crimes, one example of which is minor theft, and does not necessarily

apply Restorative Justice. Minor theft is still subject to legal proceedings both at the investigation, prosecution and court levels, only the perpetrator may not be detained and the process will be carried out in court with a single judge. This means that the settlement action taken by Chandra Supermarket management is not in accordance with Supreme Court regulations Number 02 of 2012

Restorative justice is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original condition, and not retaliation.

Theft is one of the crimes that occurs in society. Due to low economic factors and having to meet his living needs, the perpetrator took the easiest and fastest way, namely committing theft by taking things from other people that were not rightfully theirs. In Indonesian positive law, theft is explained in Chapter XXII of the Criminal Code. The article explains several levels and their penalties: (Marlina, 2012)

1. Regular theft

Ordinary theft is regulated in Article 362 of the Criminal Code which states "anyone who takes something, which wholly or partly belongs to another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiah".

2. Petty theft

Light theft is regulated in Article 364 of the Criminal Code which reads "the acts described in article 362 and article 363 point 4, as well as the acts described in article 363 point 5, if they are not committed in a house or closed yard in the house, if the price of the item stolen not more than two hundred and fifty rupiah, is punishable for petty theft by a maximum imprisonment of three months or a maximum fine of nine hundred rupiah."

Based on criminal statistics data published by the Central Statistics Agency, the number of crimes according to the type of crime, in 2020, criminal acts of theft throughout Indonesia were 23,984 cases and aggravated theft was 25,686 cases. Then, based on Public SDP data from the Directorate General of Corrections, in 2020 there were 33,822 convicts and 1,200 detainees living in prisons and detention centers throughout Indonesia. The overcapacity that occurs in correctional institutions (Lapas) and detention centers (Rutan) is a serious problem that is of concern to the Government. (Hadi Soepono, 2010)

Based on Public SDP data from the Directorate General of Corrections as of January 1 2022, the number of prisoners and convicts throughout Indonesia was 193,037 out of the total capacity of prisons and detention centers throughout Indonesia of only 135,561. there is an excess occupancy of around 142% with the condition of the amount of over capacity being different for each region. Based on Public SDP data from the Directorate General of Corrections as of January 1 2022, the DKI Jakarta Regional Office experienced overcapacity of up to 299%. Conditions of overcapacity are the cause of various problems in prisons and detention centers, including having an impact on the poor health condition and psychological atmosphere of inmates and detainees, conflicts easily occurring between correctional/detention center inmates, coaching not running well and optimally due to limited facilities and infrastructure. There is.

Conditions of overcapacity in prisons/detention centers also often cause riots and cases of escape of inmates and detainees because supervision is not optimal as a result of the imbalance in the number of prison guards/correctional officers with prison/detention inmates. Apart from that, overcapacity conditions in prisons and detention centers are often abused by unscrupulous officers through the practice of renting rooms.

In the criminal justice system in Indonesia according to Law Number 8 of 1981 concerning Criminal Procedure Law, law enforcement is carried out by the police, prosecutors and courts. Apart from that, legal experts also say that correctional officers are law enforcers. All Law Enforcement Officials as part of the criminal justice system are expected to work together to form an integrated criminal justice administration. The meaning of prosecution is regulated in Article 1 number 7 of the Criminal Procedure Code as well as in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely the action of the public prosecutor to delegate criminal cases to the competent District Court in terms and according to the method regulated by law. – this law with a request that it be examined and decided by a judge at a court hearing.

What is meant by Public Prosecutor is a Prosecutor who is authorized by law to carry out prosecutions and carry out the Judge's decisions. The Memorandum of Agreement with the Chief Justice, Minister of Law and Human Rights, Attorney General, and Chief of Police regarding the implementation of adjustments to the limits of minor criminal offenses and the amount of fines, speedy examination procedures, as well as the application of restorative justice, states that to implement the Regulations of the Supreme Court of the Republic of Indonesia Number 02 of 2012 concerning Adjustments to Limits for Minor Crimes and the Amount of Fines

in the Criminal Code for perpetrators of minor crimes, in applying criminal sanctions it is mandatory to consider the community's sense of justice.

In the joint memorandum of agreement, it is stated that restorative justice is the resolution of minor criminal cases carried out by investigators at the investigation stage or by judges from the start of the trial by involving the perpetrator, victim, family of the perpetrator/victim, and relevant community figures together. seek a fair solution by emphasizing restoration to its original state.

The Joint Memorandum of Agreement between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of Police regarding the implementation of adjustments to the limits for minor criminal offenses and the amount of fines, speedy examination procedures, as well as the application of restorative justice is intended as a guideline in implementing the limits for criminal acts light and the amount of the fine for the perpetrator taking into account the community's sense of justice, as well as implementing Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code to all Law Enforcement Officials.

Included in light crimes are crimes regulated in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code which are punishable by imprisonment for a maximum of 3 (three) months or a fine of I0,000 (ten thousand) times the amount. fine. In Supreme Court Regulation (Perma) Number 2 of 2012 Article 1 states that the words "two hundred and fifty rupiah" in articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code are read as Rp. 2,500,000 (two million five hundred thousand rupiah). The objectives of the Memorandum of Agreement with the Chief Justice, Minister of Law and Human Rights, Attorney General, and Chief of Police regarding the implementation of adjustments to the limits of minor criminal offenses and the amount of fines, speedy examination procedures, as well as the implementation of restorative justice are:

a. fulfill a sense of justice for the community in resolving minor crimes
b. as a guide for Law Enforcement Officials in resolving minor criminal cases
c. makes it easier for judges to decide on minor criminal cases
d. excess capacity in prisons and detention centers to realize justice with a human rights dimension, as well
e. agree on implementation instructions and technical instructions for implementing adjustments to the limits for light crimes and the amount of fines

The dominus litis principle associated with prosecution is the principle that gives monopoly authority to the prosecution body, so that no other body can carry out prosecutions. Monopoly authority results in the public prosecutor having the authority to take any action related to prosecution, including terminating the prosecution. 13 Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that one of the Attorney General's powers is to set aside cases in the public interest.

In this case, what is meant by "public interest" is the interest of the nation and state and/or the interest of the wider community. Prosecutor's Regulation (Perja) Number 15 of 2020 regulates the Termination of Prosecution Based on Restorative Justice, which is a form of public prosecutors to offer peace efforts to victims and suspects. This regulation gives the prosecutor the authority to stop prosecutions based on restorative justice. This is a breakthrough in solving criminal acts. It is stated in the Perja that restorative justice is the resolution 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 back to the original state, and not retaliation. Perja Number 15 of 2020 regulates the settlement of cases outside of court by restoring the original situation using a restorative justice approach carried out by stopping the prosecution.

CONCLUSION

Prosecutor's Regulation (Perja) Number 15 of 2020 regulates the Termination of Prosecution Based on Restorative Justice. This regulation regulates the settlement of cases outside of court by restoring the original situation using a restorative justice approach carried out by stopping the prosecution. Criminal cases can be closed by law and prosecution terminated based on restorative justice if conditions are met, among others: the suspect has committed a crime for the first time, the crime is only punishable by a fine or is punishable by imprisonment for no more than 5 (five) years, the crime carried out with the value of the evidence or the value of losses incurred as a result of the criminal act not exceeding IDR 2,500,000 (two million five hundred

thousand rupiah), there has been a peace agreement between the Victim and the Suspect, and the community has responded positively.

Implementation of Restorative Justice The cessation of prosecution of perpetrators of minor crimes in the form of theft at the Pangkalpinang District Prosecutor's Office is an implementation of the dominus litis principle, and is in accordance with the mechanism for implementing restorative justice implemented at the prosecutor's level based on Perja Number 15 of 2020 which states that if the conditions are met , criminal cases can be closed by law and the prosecution terminated based on restorative justice, including: the suspect has committed a crime for the first time, the crime was committed with the value of the evidence or the value of the losses incurred not exceeding IDR 2,500,000 (two million five hundred thousand rupiah), and there was an agreement between the suspect and the victim.

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