

RENEWAL OF ATTORNEY GENERAL REGULATION NUMBER 15 OF 2020 CONCERNING TERMINATION OF PROSECUTION BASED ON RESTORATIVE JUSTICE IN CORRUPTION CASES THAT PRIORITIZE SAVING STATE LOSSES

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ABSTRACT

The current handling of corruption cases emphasizes punishing the perpetrators and recovering state financial losses caused by corruption. Since 2010, the Attorney General's Office has issued internal regulations for resolving corruption cases through a restorative justice approach. These internal regulations allow for the resolution of corruption cases in a non-punitive manner that prioritizes the saving of state losses. The problems were addressed: (1) what is the possibility of resolving corruption cases prioritizing saving state losses through the renewal of Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice? (2) What is the influence and obstacle if Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is applied to Corruption Cases? The type of research used in this thesis was normative legal research. The research results show that: (1) Theoretically and juridically, the concept of restorative justice in corruption cases could be implemented to realize one of the objectives of punishment, which provided a deterrent effect and maximized the return/safety of state losses oriented toward the national economy and were in line with the ultimum remidium principle which could streamline the implementation of the principles of simple, fast and low-cost justice. (2) The factor that influenced and obstructed when Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice was applied to Corruption Cases was that the process of termination of prosecution based on restorative justice in Attorney General Regulation No. 15 of 2020 did not specifically explain the termination of prosecution in corruption cases.

Keywords: Law Reform, Corruption, Restorative Justice, State Losses

INTRODUCTION

Background

The mode of corruption crimes in Indonesia shows a widespread and increasingly sophisticated scale. The impact of corrupt behavior undermines the morality of norms and judicial practices. The eradication of corruption, an extraordinary crime, certainly requires extraordinary measures and special attention.

The optimization of efforts to eradicate corruption is aimed at the aspect of punishment for the perpetrators and to what extent state financial losses can be recovered. According to Pardede, concerning state losses:

The consequences of corruption are detrimental to state finances or the state economy. The loss must already be charged to the convict after the court decision has obtained permanent legal force, and the convict must accept the consequences to pay for the country's financial losses. This demonstrates that the law's framers desired asset recovery due to corruption, considering that the money corrupted should be used for public interests.

According to Muhammad Djafar Saidi and Eka Merdekawati Djafar :

When state losses arise within the framework of state financial management, they must absolutely be returned to the state. The return of state financial losses may be carried out outside of court by the state financial manager who incurred state financial losses when performing state financial management. The return of state financial losses outside of court is not a form of amicable settlement but rather a juridical settlement as defined by state financial law.

As reported by Indonesia

Corruption Watch in 2022, there were:

579 corruption cases have been prosecuted in Indonesia, an increase of 8.63% compared to the previous year of 533 cases. Of these, the Attorney General's Office handled 405 cases with 909 people named as suspects, and the potential state financial losses incurred amounted to IDR 39,207,812,602,078 (IDR 39.2 Trillion). Meanwhile, the Police handled 138 corruption cases with 337 suspects. The possible state losses investigated by the Bhayangkara Corps amounted to IDR 1,327,532,895,638 (IDR 1.327 Trillion). Meanwhile, the cases investigated by the KPK were 36 corruption cases with 150 suspects and state losses of IDR 2,212,202,327,333 (IDR 2.212 Trillion).

Puteri Hikmawati agrees that:

The current handling of corruption cases is no longer oriented towards state losses and the imposition of corporal punishment on the perpetrators alone. Still, it is more oriented towards the return of state assets. The amount of state financial losses caused by corruption is not comparable to the amount of state financial returns due to corruption. The country's financial losses must be returned by any means justified by law to be pursued as optimally as possible.

The rise of corruption has resulted in a significant budget spent handling and solving cases. In addition, corruption crimes with relatively small losses also occur a lot in state financial management. There are many corruption cases where the cost of solving the case is greater than the state losses caused. This has encouraged the Attorney General's Office to issue internal regulations to optimize the handling of corruption cases that are maximally oriented towards saving state losses with the issuance of the Letter of the Deputy Attorney General for Special Crimes of the Republic of Indonesia Number: B-005/A/Fd.1/01/2009 dated January 22, 2009, regarding Accelerating the Process of Handling Corruption Cases throughout Indonesia and the Letter of

the Deputy Attorney General for Special Crimes Number: B-1017/F/Fd.1/01/2009 dated May 20, 2009, regarding the Implementation of the Optimization Program for Handling Corruption Cases, which basically explains the indicators of success in handling corruption cases seen from the number of completion achievements and the number of state losses saved.

In connection with the optimization of saving state losses, the Attorney General's Office of the Republic of Indonesia has implemented the settlement of corruption cases with a restorative justice approach since 2010 for relatively small losses. This is stated in the Circular Letter of the Deputy Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 dated May 18, 2010, concerning Priorities and Achievements in the Handling of Corruption Cases, which in point 1 states:

The handling of corruption cases is prioritized on the disclosure of cases that are big fish (large scale, seen from the perpetrators and / or the value of state financial losses) and still going on (corruption crimes committed continuously or continuously) in line with the explanation of the Attorney General during the working

meeting with Commission III of the House of Representatives on May 5, 2010, and the direction of the President of the Republic of Indonesia at the opening of the Coordination Meeting of MAHKUMJAPOL at the State Palace on May 4, 2010 so that in law enforcement promote a sense of public justice, especially for people who with their awareness have returned state financial losses (Restorative Justice), primarily related to corruption cases with relatively small state financial losses, it should be considered not to be followed up, unless it is still going on.

Observing the internal regulations above, the Attorney General's Office of the Republic of Indonesia has begun to introduce the settlement of corruption cases without going through the criminal justice system using a restorative justice approach. However, this policy has raised pros and cons. It cannot be denied that the perpetrators of extraordinary corruption crimes deserve to be sentenced to punishment. Still, the return of financial losses without the imposition of punishment with the aim of expediency is also beneficial to the state in resolving corruption cases.

Oleh karena itu, peneliti merasa perlu untuk dilakukan suatu penelitian yang mengkaji masalah

penghentian perkara perkara tindak pidana korupsi berdasarkan keadilan restoratif di Indonesia dan Peneliti tertarik untuk mengangkat judul “Pembaharuan Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif Dalam Perkara Tindak Pidana Korupsi Yang Mengedepankan Penyelamatan Kerugian Negara”

Based on the description above, restorative justice is the settlement of criminal cases by prioritizing/emphasizing restoration to its original state, it should also be applied in the settlement of corruption cases as a law reform to support the effectiveness of restoring state financial losses. Therefore, the researcher feels it is necessary to conduct a study examining the termination of corruption cases based on restorative justice in Indonesia. The researcher is interested in conducting research titled "Renewal of Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in Corruption Cases that Prioritize Saving State Losses".

1. Problem Identification

The problems discussed in this research were:

- a. What is the possibility of resolving corruption cases prioritizing saving state losses through the renewal of Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice?
- b. What are the influences and obstacles if Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is applied to Corruption Cases?

A. RESEARCH METHODOLOGY

1. Research Design

This research method used Normative Legal research. Normative legal research or library research examines document studies using secondary data such as laws and regulations, court decisions, and legal theories. It can be in the form of scholars' opinions. This normative type of research uses qualitative analysis by explaining existing data with words or statements, not numbers.

2. Research Approach

The approach used in this research was the statute approach. Peter Mahmud Marzuki, in his book entitled

Legal Research, explains that the statute approach is carried out by examining all laws and regulations related to the legal issues being addressed.

3. Source of Legal Materials

Normative legal research is library research, namely research on secondary data. Secondary data in the field of law, according to Ronny Hanitijo Soemitro, can be divided into :

a. Primary Legal Materials.¹

It is legal material that is authoritative, meaning that it has authority.² The primary legal materials related to this researcher's research included :

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Law No. 24 of 1960 on the Investigation, Prosecution, and Examination of Corruption.
- 3) Law No. 31 of 1999 on the Eradication of the Crime of Corruption.
- 4) Law No. 20 of 2001 on the Amendment to Law No. 31

¹ Suratman, H. Philips Dillah, *Metode Penelitian Hukum dilengkapi Tata Cara & Contoh Karya Ilmiah Bidang Hukum*, Alfabeta, Bandung, 2012, hlm. 66-67

² Peter Mahmud Marzuki, *op.Cit.*, hlm. 141

- of 1999 on the Corruption Eradication.
- 5) Law of the Republic of Indonesia No. 16 of 2004 on the Attorney of the Republic of Indonesia.
 - 6) Law No. 17 of 2003 on State Finance
 - 7) Law No. 1 of 2004 on State Treasury
 - 8) Law No. 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering
 - 9) Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.
 - 10) Government Regulation of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Criminal Code.
 - 11) Regulation of the Attorney General of the Republic of Indonesia Number: PERJA-039/A/JA/10/2010 dated

October 29, 2010, concerning Administrative and Technical Management of Special Crimes Cases.

- 12) Regulation of the Attorney General of the Republic of Indonesia Number: PER-013/A/JA/06/2014 dated June 13, 2014, on Asset Recovery.
- 13) Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
- 14) Criminal Code (KUHP)
- 15) Criminal Procedure Code (KUHAP)

b. Secondary Legal Materials

Secondary Legal Materials are closely related to primary legal materials and can help analyze and understand primary legal materials.³ Secondary legal materials are mainly law books, including Undergraduate theses, theses, legal dissertations, and legal journals.⁴

³ Suratman, H. Philips Dillah, *loc.cit.*

⁴ Peter Mahmud Marzuki, *op.cit.*, hlm. 155.

c. Tertiary legal materials

Tertiary legal materials provide information about primary legal materials and secondary legal materials.⁵ Among them are legal dictionaries, Indonesian dictionaries, and English dictionaries.

4. Legal Materials Collection Procedure

The researcher used the procedure for collecting legal materials through library research sourced from laws and regulations, law books, official documents, publications, and research results.

5. Legal Material Processing

Legal materials were processed by processing primary, secondary, and tertiary legal materials, which were then inventoried by adjusting the substance to facilitate the analysis of legal materials. Then, the legal materials were analyzed based on the principles and theories of law and legislation relating to the subject matter under study.

6. Analysis of Legal Materials

The research results obtained from primary, secondary, and tertiary legal materials were all compiled and

analyzed. A normative juridical analysis essentially emphasizes the deductive method as the main guide, which is based on investigating general principles used to explain specific events (particular) or general theoretical explanations of concrete facts⁶ and inductive methods as supporting data. In conducting research analysis, the researcher used normative analysis, especially using library materials as a source of research data.

C. RESEARCH RESULTS AND DISCUSSION

1. The Possibility of Resolving Corruption Cases that Prioritizes Saving State Losses through the Renewal of Attorney General Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Cases that can be stopped from prosecution through restorative justice, referring to the provisions of Article 5 paragraph (1) of Attorney General Regulation Number 15 of 2020, are if the criminal conditions are fulfilled only threatened with a fine or threatened with imprisonment of not more than 5 (five) years and the crime

⁵ Suratman, H. Philips Dillah, *loc.cit.*

⁶ Sjachran Basah, *Ilmu Negara*, PT Citra Aditya Bakti, Bandung, 1997. Hlm. 71.

is committed with the value of evidence or the value of losses incurred as a result of the crime not exceeding IDR 2,500,000, (two million five hundred thousand rupiah). The provisions of Article 5 paragraph (1) restrict the types of criminal acts that can be stopped from prosecution through restorative justice, including the type of criminal acts of corruption. Ideally, Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice can be applied to corruption cases in Indonesia. It is because, the facts that occur are related to the optimization of saving state losses, the Attorney General's Office of the Republic of Indonesia has implemented the settlement of corruption cases with a restorative justice approach since 2010 for relatively small losses. This is stated in the Circular Letter of the Deputy Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 dated May 18, 2010, concerning Priorities and Achievements in the Handling of Corruption Cases where point 1 states that:

The handling of corruption cases is prioritized on the disclosure of cases that are big fish (large scale, seen from the perpetrators and/or the value of

state financial losses) and still going on (corruption crimes committed continuously or ongoing) in line with the explanation of the Attorney General during the working meeting with Commission III of the House of Representatives on May 5, 2010, and the direction of the President of the Republic of Indonesia at the opening of the Coordination Meeting of MAHKUMJAPOL at the State Palace on May 4, 2010, so that in law enforcement prioritize a sense of public justice, especially for people who with their awareness have returned state financial losses (Restorative Justice), primarily related to corruption cases with relatively small state financial losses, it should be considered not to be followed up, unless it is still going on.

The process of case termination based on the Circular Letter of the Deputy Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 dated May 18, 2010, above, was carried out to recover state losses arising from the process of examining the case at the investigation stage. Regarding norms/rules, the investigation results found sufficient preliminary evidence to be upgraded to the following process: investigation and even prosecution. Still, the fact that the case was terminated with a restorative justice approach to save case costs and

the benefits of state losses can be recovered without spending much money on the case handling process.

The possibility of resolving corruption crimes using the concept of restorative justice, according to Maman Budiman, can be seen from two aspects, namely:

Aspects of the purpose of punishment and aspects of expediency. The Criminal Aspect certainly deviates from the purpose of punishment because, indeed, corruption actors will not have a sense of deterrence, while if viewed from the expediency aspect, of course, it can be understood because it turns out that to process corruption actors in the procurement of goods and services, the prosecutor's office can spend a budget of more than IDR. 50,000,000 (fifty million) because it turns out that the time needed can exceed 6 (six) months in one corruption case handled. By looking at this, of course, the effectiveness of the principle of restorative justice can be seen in the plan, so it is possible that the principle of *ultimum remidium* can be enforced because not all criminal cases must be resolved in court, including cases of corruption.⁷

The application of the concept of restorative justice in the settlement of corruption cases is carried out to realize one of the objectives of punishment, namely, to provide a deterrent effect. In addition, it maximizes the return of state financial losses resulting from corruption, which is oriented towards restoring the national economy and is in line with the *ultimum remidium* principle, which can streamline the implementation of the principles of simple, fast, and low-cost justice, which will ultimately realize a certain justice and provide benefits and legal certainty for the perpetrators, society and the state. Therefore, in order not to raise doubts about the way of thinking of law enforcers, especially the Attorney General's Office, which has internally implemented a restorative justice approach in resolving corruption cases with relatively small losses, the Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice should be amended, so that it becomes relevant when applied in corruption cases.

⁷ Maman Budiman, 2022, *Op. Cit.*, Hlm. 1052

2. The Factor that Influences and Obstructs when Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is Applied to Corruption Cases

When talking about criminal policy, the absence of special provisions in the Agreement regarding the handling of corruption cases hindered the application of restorative justice in handling corruption cases. Article 3 Paragraph (3) letter a of Regulation of the Attorney General Number 15 of 2020 states that out-of-court settlement can be carried out for certain crimes, and the maximum fine is paid voluntarily. The provisions in Article 3 Paragraph (3) letter a of the Attorney General Regulation Number 15 of 2020, if applied to corruption crimes, are irrelevant because the findings of state losses are certainly more significant, and the process of returning state losses to perpetrators of corruption crimes is not in the form of fines paid voluntarily. However, the return of state losses is based on the calculation of state losses by authorized institutions such as BPK, BPKP, and Inspectorate. In the example of a case at the Purwokerto District Attorney's Office, state losses

have been returned in line with the amount of the calculation of state losses. In order for the application of restorative justice in handling corruption cases to be implemented, the provisions regarding fines paid voluntarily should be changed to adjust the calculation of state loss findings.

Article 3 Paragraph (3) letter a of Regulation of the Attorney General Number 15 of 2020 states that out-of-court case settlement can be carried out for certain crimes. It is irrelevant if applied to corruption cases because the findings of state losses are certainly more significant, and the process of returning state losses to perpetrators of corruption is not in the form of fines paid voluntarily.

The conditions for termination of prosecution based on restorative justice according to Article 5 Paragraph 1 of Regulation of the Attorney General Number 15 of 2020 are that the suspect is a first-time offender, the crime is only punishable by a fine or punishable by imprisonment of not more than 5 years, and the value of the loss is not more than IDR 2,500,000 (two million five hundred rupiahs). Signaling is only applied to criminal offenses

classified as minor with a loss value not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah), while the Law on the Eradication of Corruption does not regulate the minimum and maximum value of state losses.

In addition, the requirement for restoration to its original state carried out by the suspect as described in Article 5 Paragraph (6) of Attorney General Regulation No. 15 of 2020 can be excluded if there is an agreement between the victim and the perpetrator according to Article 5 Paragraph (7). This makes it challenging to apply in corruption crimes because the return of state finances or the state economy does not erase the punishment of the perpetrators of corruption crimes, as explained in Article 4 of the Corruption Eradication Law.

In Chapter IV of the Peace Procedure, according to Regulation of the Attorney General No. 15 of 2020, the repair of damaged conditions or the consequences of criminal acts is not absolutely necessary, provided that there is peace and mutual forgiveness and the victim can accept the consequences arising from the criminal act. Meanwhile, based on Article 18 of the Corruption

Eradication Law, the recovery of state financial losses in corruption cases is absolutely necessary, so the economic capacity of the alleged perpetrator can be an obstacle to the recovery of state financial losses.

D. CONCLUSIONS AND SUGGESTIONS

1. Conclusions

- a. Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice does not clearly mention the termination of prosecution in corruption crimes. However, to optimize the saving of state losses, the Attorney General's Office of the Republic of Indonesia has implemented the settlement of corruption cases with a restorative justice approach since 2010 for relatively small losses. Following the Circular Letter of the Deputy Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 dated May 18, 2010, concerning Priorities and Achievements in Handling Corruption Cases Therefore, in order not to cause doubts in the thinking of law enforcers, especially the Attorney

General's Office, which has internally applied a restorative justice approach in the settlement of corruption cases with relatively small losses, Regulation of the Attorney General Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is amended, so that it becomes relevant if applied in corruption cases.

- b. Things that influence and obstruct when Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is applied to corruption cases are the absence of regulations regarding formal procedures or mechanisms.

2. Suggestions

- a. It is better to add provisions regarding the termination of corruption cases in Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice so that the termination of corruption cases with relatively small losses can be carried out.
- b. It is expected that there will be laws and regulations regulating restorative justice as an alternative

to solving corruption cases with relatively small losses, considering the significant benefits of solving corruption crimes through restorative justice in the context of recovering state losses (asset recovery), which is beneficial for the country's economic development.

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