

Legality of Discretionary Prosecution Principle in Terminating Prosecution Based on Restorative Justice

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Abstract

The purpose of this article is to examine the fulfillment of the legality principles of criminal procedural law in implementing the termination of prosecution based on restorative justice in accordance with Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This article was written using normative legal research methods with a legislative approach, especially those related to prosecutorial authority. The legal materials used for analysis are primary legal materials and secondary legal materials. The technique for collecting legal materials uses library research. This authority to terminate prosecution meets the principle of legality because apart from Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it can also be found in the systematic interpretation of Article 139 in conjunction with Article 140 paragraph (2) letter a of the Criminal Procedure Code (with broad meaning), Article 14 letter g of the Criminal Procedure Code (with complete interpretation) and Article 34A of Law Number 16 of 2004 concerning the Prosecutor's Officer. This article can provide an understanding of the mechanism for terminating prosecution which is based on the Attorney General's Regulation which meets the legality principles of criminal procedural law, even though it is not explicitly stated in the law.

Keywords: legality discretion, legality, termination of prosecution.

Introduction

The principle of legality of criminal procedural law, which is often known as the *adage nullum iudicium sine lege*, is one of the most fundamental principles for the operation of criminal procedural law. This principle can be found in Article 3 of Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as the Criminal Procedure Code). The formulation is as follows: "criminal law enforcement (including justice) is carried out in accordance with the methods regulated in statutory regulations." (Moeliono, 2015). The importance of the principle of legality in this article is that it is based on a main objective, namely to prevent arbitrariness by the authorities (including criminal law enforcement officials). Criminal law enforcers who essentially work in the name of the public interest (maintaining and restoring public order that is disturbed due to criminal acts) are equipped with such broad authority (coercive measures) to support the implementation of their duties and authority in implementing the provisions of criminal law.

The Prosecutor's Office of the Republic of Indonesia as a criminal law enforcement agency has the authority to exercise state power in the field of prosecution. The public prosecutor, in carrying out his authority in the field of prosecution, acts for and on behalf of the state and is responsible based on the hierarchical structure in the prosecutor's office structure. The exercise of the authority of the public prosecutor in carrying out prosecutions must pay attention to the rights of an accused (Yulia, 2016). The prosecutor represents the presence of the state to provide protection to the victim, but on the other hand the prosecutor must act objectively in proving the mistake committed by the perpetrator.

Apart from having the authority to carry out prosecutions, the public prosecutor also has the authority to stop the prosecution. This authority is related to the opportunity rights possessed by prosecutors in the field of prosecution as a balance against the principle of legality. Based on the provisions of Article 14 letter h of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), the public prosecutor has the authority to close cases by law. Apart from that, cases can be set aside in the public interest (Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office) which is the right of the Attorney General. Based on these provisions, it is clear that the prosecution system implemented in Indonesia is still based on the mandatory prosecution principle. The implementation of prosecutions by public prosecutors must be based on coordination within the institution. Meanwhile, the authority not to prosecute prerogatively belongs only to the Attorney General.

The dynamics that develop in criminal law enforcement practices show a number of small cases that should not be prosecuted and examined before a court. Some of them include AAL who stole sandals, Grandma Minah who was accused of stealing cocoa, Minasih who stole kapok, and other similar cases. The public prosecutor's lack of authority not to prosecute causes these cases to be brought before the court by the public prosecutor. The implication is that the judge issues a

decision, and because the alleged act is proven, the perpetrator of the minor crime is forced to be subject to criminal sanctions.

Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is expected to be a solution for handling small cases that are not suitable to proceed to trial. The criteria for a case being said to be unfit to proceed to trial can be seen from the fact that the case costs that must be borne by the state are not commensurate with the losses suffered by the victim as a result of the criminal act that occurred (Wibowo, 2021). Another criterion that can also be a parameter is if there is a desire from the victim to take other measures (outside of formal justice). If this kind of case continues, it will give rise to new problems, namely if it results in the imposition of a prison sentence, it will increase over-capacity in correctional institutions (Ali, 2023).

The Attorney General's regulations have been implemented in several cases, however the implementation of these provisions has fundamental problems related to the concept of legality. The authority to terminate prosecution is part of the criminal procedural law which is bound by the principle of strict legality (*la scripta, la stricta, la certa*) which, when referring to the Criminal Procedure Code, must be regulated by law (Muammar, et al, 2021). Meanwhile, the authority to terminate a prosecution based on Restorative Justice – which is not part of the authority to close cases for legal purposes (Article 14 h of the Criminal Procedure Code or the authority to set aside cases for the sake of public interest (Article 35c of the Prosecutor's Law) – is only regulated by regulations at the level of the Prosecutor's Regulations.

The Attorney General's Office is of the opinion that the legal umbrella for the Perja regarding terminating prosecution based on restorative justice is Article 139 of the Criminal Procedure Code (Danial, Muhadar et al, 2022). However, if it is linked to Article 140 paragraph (2) letter a of the Criminal Procedure Code, it appears that the use of Article 139 of the Criminal Code as a legal umbrella for Perja Number 15 of 2020 is inappropriate according to Article 140 paragraph (2) letter a of the Criminal Procedure Code, the prosecution can be stopped for the reasons: there is not enough evidence, the incident to be prosecuted turns out not to be a criminal act, or the case is closed by law (which is generally interpreted because *ne bis in idem*, the suspect has died or expired) so that there is no reason to stop prosecution for cases resolved based on restorative justice. Certainly, it has implications for the failure to fulfill the principle of legality of criminal procedural law, which determines that every action taken by law enforcement officials must be based on the provisions of the law.

Based on these problems, the aim of writing this article is to find the legal basis for the authority of the public prosecutor to terminate a prosecution based on restorative justice, in accordance with the requirements specified in the law.

Research Method

The problems discussed in this article are analyzed using normative legal research methods. The approach used in this research is a statutory approach. The legal materials used in writing this article are primary legal materials and secondary legal materials which are relevant to the problem being studied, namely related to the legality of terminating prosecution based on restorative justice. The technique for collecting legal materials used is library research. Analyze legal materials using deductive analysis, starting from the major premise to the minor premise to reach a conclusion. The major premise is the statutory regulations relating to the authority of prosecution by the public prosecutor, and the minor premise is related to the legality of terminating the prosecution based on restorative justice.

Results and Discussion

Restorative justice is a form of approach related to efforts to resolve criminal conflicts as an answer to problems with the criminal justice system which is deemed unable to accommodate the aspirations of the parties involved in the case (Akbar, 2022). Restorative justice is different from the criminal justice system because it prioritizes the principles of mediation and reconciliation as a mechanism for resolving a criminal case (Flora, 2018).

After a crime occurs, restorative justice seeks to rebuild existing relationships, not limited to the relationship between the perpetrator and society. In concept, restorative justice does not use principles regarding who wins and loses in the criminal justice system. However, restorative justice tries to find a middle ground for communication between all parties involved in a crime to reach a resolution for handling criminal acts collectively. In practice, restorative justice is believed to provide better guarantees of justice for all parties, including society (Muladi, 2019).

As public law, criminal law has the characteristic of regulating the relationship that exists between the state and individuals. One form of this relationship is taking over the rights and obligations of victims as a whole in the criminal justice system through the Police and Prosecutor's Office (Tongat, 2008). The dominant role of the state through its tools of power has had implications for the lack of space for victims and perpetrators to convey their aspirations which may differ from the wishes of law enforcement officials in their indictment (Meliala, 2015).

Tony F. Marshall formulated the concept of restorative justice as a process where all parties who have an interest in a particular violation come together to resolve conflicts that occur collectively regarding handling the consequences of the violation and its implications for the future (Cormier, 2006). With this conception, restorative justice is actually a process of resolving criminal cases with the principle of providing space for all parties involved to jointly make decisions related to resolving the consequences of violations and their implications in the future (Tongat, 2013).

In concept, restorative justice is a peaceful process that involves all parties involved in the occurrence of a criminal act collectively with the aim of trying to recover and treat it well. Braithwaite is of the view that restorative justice tends to be correlated with healing or restoration efforts, community involvement, joint dialogue, responsibility, apology, moral learning and compensation for losses rather than suffering (Braithwaite, 2017).

Criminal law enforcement practices carried out by law enforcement institutions (Police, Attorney General's Office, Supreme Court, and the Ministry of Law and Human Rights) have led to the resolution of criminal cases based on restorative justice. These criminal law enforcement institutions, which are often known as "Catur Wangsa" Law Enforcement, have prepared a Memorandum of Joint Agreement between the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General and the Chief of 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 Criminal Act Limits Light and Amount of Fines, Fast Examination Procedures and Implementation of Restorative Justice (Kristanto, 2022).

After drafting the Joint Memorandum of Agreement, the Supreme Court, the Attorney General's Office and the Republic of Indonesia Police also made regulations for each institution as guidelines for resolving cases with restorative justice. These rules include:

1. Circular Letter from the Chief of the National Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in Resolving Criminal Cases;
2. Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation;
3. Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and
4. Decree of the Director General of the General Judicial Body of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.
5. Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

The various regulations that have emerged as mentioned above show that discretion in the law enforcement system is very necessary, among other things as a door to overcoming the rigidity of positive law which is an obstacle in realizing justice and a justice system that is fast, simple and low cost. When compared to the State Police institution, which has long been given discretionary authority in the inquiry and investigation process, in the Prosecutor's Office the discretionary

authority given at the prosecution stage can be said to be very limited. Thus, the presence of Prosecutor's Regulation Number 15 of 2020 is a means of realizing prosecutorial discretion in resolving criminal cases fairly for victims of criminal acts, non-criminal perpetrators and the community.

The Attorney General's Termination Regulations have given the Public Prosecutor the discretion not to prosecute cases handed over to him by investigators. Discretion has a huge impact on society (Tampubolon, et al, 2023). Therefore, it is necessary to have regulations to limit discretionary authority so that it is not misused arbitrarily. In the criminal case prosecution system, based on the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which is hereinafter referred to as the Termination of Prosecution Regulation, has clearly emphasized that the realization of restorative justice in the process of terminating prosecution must involve the perpetrator, victim and the community. to resolve a criminal case. The restorative justice approach promoted by the Attorney General's Regulations on Termination of Prosecution focuses on peace efforts originating from an agreement between the perpetrator and the victim who then determines the procedural law to put the peace agreement into an agreement that has binding legal force.

The Attorney General's Regulation on Termination of Prosecution has provided regulations regarding limitations in implementing the realization of restorative justice in the realm of prosecution, which is not only limited to emphasizing restorative justice in the peace agreement process between the parties (perpetrator, victim, and their family/interested parties) (Mahendra, 2020). Termination of prosecution based on this Attorney General's Regulation must prioritize the values of justice.

The basic idea of the Attorney General's Regulations regarding Prosecution Termination is to bridge the resolution of criminal cases that are not suitable to proceed to the court trial process (I Wayan Didik, 2021). One of the criminal cases that is often used as an example of a case that is not worthy of being examined and decided by the court is the case of Grandmother Minah. Grandma Minah is one of the many people who have to undergo a formal judicial process which culminates in a judge's decision in the form of a sentence in a minor case.

This case started when Grandma Minah was caught taking 3 (three) cocoa beans belonging to PT. Sari Antan Cluster. Even though Grandma Minah had returned 3 (three) cocoa beans immediately when they were discovered by the plantation foreman, Grandma Minah still had to undergo a series of examination processes until the judge's decision was handed down (Jadidah, 2022). The Purwokerto District Court imposed criminal sanctions in the form of imprisonment for 1 (one) month and 15 (fifteen) days with a probation period of 3 (three) months.

Looking closely at this case, Grandma Minah has been legally and convincingly proven to have committed theft. The normative provisions for the elements of Article 362 of the Criminal Code have been fulfilled in Grandma Minah's actions, so that procedurally the imposition of a decision in the form of

imprisonment against Grandma Minah has fulfilled legal certainty in the application of material criminal law provisions. Grandma Minah's actions took 3 (three) cocoa beans belonging to Rumpun Sari Antam limited liability company meets the formulation of the elements of the crime of theft and according to the principle of legality of criminal law, when someone commits an act that has been regulated according to the criminal law, they must be prosecuted. In this case, the public prosecutor cannot stop the prosecution by using his authority based on Article 14 letter c of the Criminal Procedure Code (closing the case for the sake of the law) even though in the interests of justice based on conscience and the public's response, Minah's grandmother's case is not worthy of being prosecuted in court. Likewise, even though there is still an opportunity to set aside the case in the public interest based on Article 35 letter c of the Prosecutor's Law, it is not easy to define "public interest" in this case, besides the legal procedure is not easy.

From the perspective of legal certainty, the failure to apply the law in an event in which there is a violation of the law is a form of legal deviation. The urgency of achieving legal certainty in law enforcement is to create legal order in society, which is one of the functions of law. Looking from the other side, society needs the benefits of the law enforcement process carried out by law enforcement officers. The conflict that often occurs is that the characteristics of law are that it applies generally, has binding power, and generalizes (Zondrafia, et al, 2022).

A concrete illustration of these legal characteristics is that theft is an act that is prohibited according to criminal law, so every person who commits theft, regardless of who the person is, must be subject to criminal sanctions. This is different when viewed from the perspective of justice, especially a sense of justice for society. The theft committed by Grandma Minah is actually not worthy of criminal sanctions when viewed from the perspective of the losses suffered by the victim and Grandma Minah has apologized and returned the cocoa she took.

The justice expected by society from a law enforcement process has a subjective, individualistic and non-generalizing character (Moho, 2019). Based on this, it can be understood that the law enforcement process must be oriented towards justice, benefit and legal certainty in a balanced way to be said to be a good law enforcement process.

The presence of the Termination of Prosecution Regulation is an effort to answer problems related to the process of achieving justice for society in enforcing criminal law. The Termination of Prosecution Regulation is an operational regulation made by the Attorney General's Office which actually has a progressive legal nuance with the label of restorative justice. Progressive law with its jargon "law for humans" is the spirit of stopping prosecutions based on restorative justice.

The Attorney General's Regulations regarding Termination of Prosecution have set limits on the interests that need to be taken into account when a public prosecutor discontinues prosecution. Article 4 of the Attorney General's Regulation states that matters that must be taken into account when exercising the authority to terminate a prosecution based on restorative justice include: the interests of the

victim, and the interests of other parties that must be protected; avoid the negative stigma of punishment; avoid retaliation; response from society towards the realization of harmony and propriety, decency and the public interest. This provision is a breakthrough that embodies the jargon of "law for humans" which can be seen from the exclusion of formal criminal law provisions relating to punishable acts. The interests as stated in Article 4 are reasons for exceptions that can eliminate the formal justice process and re-orient the handling of criminal cases to reflect restorative justice. So that the criminal justice process is not only rigidly positivistic, but also takes into account aspects of justice and benefit.

Restorative justice is actually also a punishment goal included in contemporary theory. According to Lavafe, the aim of punishment is rehabilitation/restoration (Hanum, 2021). Rehabilitation/recovery as the goal of punishment is interpreted as recovery in a better direction after a crime has occurred, both for the perpetrator of the crime and for the victim of the crime.

Furthermore, with regard to the legality of terminating prosecution as regulated in the Attorney General's Regulations, there are 2 (two) main principles that underlie the authority to prosecute possessed by public prosecutors, namely the principle of legality and the principle of opportunity. The implementation of these two principles is based on the discretionary freedom that the public prosecutor has to prosecute or not prosecute a case. The basis for using the public prosecutor's discretion to prosecute or not prosecute is based on the availability of evidence in a case which is used as a basis for the public prosecutor to make a decision (Mulya, et al, 2022).

The principle of legality in criminal procedural law has explicitly determined that law enforcement officers in making decisions to carry out legal action must pay attention to the provisions contained in the law (Wangol, 2016). The Attorney General's Regulation regarding Termination of Prosecution is a legal rule whose position is based on the hierarchy of statutory regulations below the law. According to legislative science, rules at a higher level can provide legitimacy to the rules that are below it. In this regard, the position of the Termination of Prosecution Regulation which is under the Criminal Procedure Code has binding legal force as well as the norms of authority to terminate a prosecution by the public prosecutor (Yuliani, 2017).

However, it still needs to be looked at again regarding the legality of the Termination of Prosecution Regulation to be used as a legal basis for cessation of prosecution with consideration of the realization of restorative justice. The Termination of Prosecution Act which is under the law must be in accordance with the law in the norms for discontinuing prosecution. Conformity between the law and the Termination of Prosecution Act (in this case the Criminal Procedure Code and the Prosecutor's Law) is very necessary to fulfill the principle of *lex superior derogate legi priori*.

The Criminal Procedure Code as the main rule of criminal procedural law does not normatively limit the provisions regarding termination of prosecution

based on restorative justice. Based on this, it is necessary to investigate the articles in the Criminal Procedure Code which can be used as a legal basis that can cover the termination of prosecution based on restorative justice. Interpretation of the formulations of articles governing the termination of prosecution is necessary in order to find the appropriate article relating to the implementation of termination of prosecution based on restorative justice.

The Attorney General's Office of the Republic of Indonesia uses Article 139 of the Criminal Procedure Code as the legal basis for the Attorney General's Regulations regarding Termination of Prosecution Based on Restorative Justice. Article 139 of the Criminal Procedure Code essentially regulates that the public prosecutor can determine whether or not case files received from investigators can be transferred to court. In other words, Article 139 of the Criminal Procedure Code has given the public prosecutor the authority to prosecute or not prosecute cases that are delegated to him by investigators. The public prosecutor's authority to prosecute or not prosecute must be based on statutory provisions.

If studied with a positivistic approach, Article 139 of the Criminal Procedure Code cannot necessarily be used as a legal umbrella for terminating prosecution based on restorative justice. Article 139 of the Criminal Procedure Code is also an inseparable unit from Article 140 of the Criminal Procedure Code, where Article 140 paragraph (2) letter a of the Criminal Procedure Code has set a limitation that the public prosecutor may stop prosecuting or not prosecute a case if there is insufficient evidence or an event that occurred. is not included in a criminal act or the case is closed by law (which is narrowly related to the rules regarding the abolition of the authority to prosecute criminal offenses as regulated in Articles 76 - 85 of the Criminal Code. Such termination of prosecution is often known as the closure of cases by law.

However, with juridical studies that are based on complete (progressive) legal reasoning, the word "for the sake of the law" in Article 140 paragraph (2) letter a of the Criminal Procedure Code must be interpreted more than just "for the sake of the law" because in essence the law is not limited to the law. law but also includes all forms of legal rules, including even unwritten law. Thus, the Prosecutor's Regulations are also part of the law, so that the phrase "the case is closed by law" should be interpreted as meaning that the case must be closed because it has been resolved by law which regulates the termination of prosecutions based on restorative justice, namely the Attorney General's Regulations regarding Termination

This progressive legal interpretation can also be applied to the authority of the public prosecutor based on the provisions of Article 14 letter g of the Criminal Procedure Code, namely "carrying out prosecutions". If this authority to prosecute is interpreted using the a *contrario argumentum*, it can be found that the authority to carry out this prosecution also includes the authority of the public prosecutor to prosecute or not prosecute a criminal case. Based on this interpretation, it can be

seen that the public prosecutor has the discretion to prosecute or not prosecute cases assigned to him.

Systematically, the interpretation that the public prosecutor can prosecute or not prosecute can be traced to the consideration considering letter b of the Prosecutor's Law which states that the Prosecutor's Office of the Republic of Indonesia is one of the bodies whose functions are closely related to judicial power according to the 1945 Constitution. Meanwhile, according to the Consideration of letter a of Law Number 48 of 2009 concerning Judicial Power has stated that the administration of justice aims to uphold law and justice. Based on a systematic interpretation of the sounding of statutory regulations, it is clear that the public prosecutor also has a significant role as a supporter of the implementation of justice by judicial power which is oriented towards law enforcement and justice.

Public prosecutors as law enforcement officers are obliged to participate in realizing just law enforcement. The Termination of Prosecution Regulation is a regulation that has the legality to make this happen. The authority of the public prosecutor to stop prosecution based on restorative justice is an effort to uphold justice. The fact is that not all criminal cases that meet the requirements determined by law to be transferred to court are cases that are worthy of being transferred to court and to bring about justice for the entire community.

Apart from the Criminal Procedure Code, the duties and authority of the Prosecutor in the field of Prosecution are also regulated in the Prosecutor's Law. The Prosecutor's Law currently in effect is Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as the Law Attorney). Different from what is regulated in the Criminal Procedure Code, termination of prosecution is carried out by setting aside the case in the public interest (deponering). According to Article 35 letter c of the Attorney General's Law, the official who has the authority to prosecute a criminal case is the Attorney General. The public interests referred to in this article are interests relating to the nation and state or the interests of the wider community (Sihombing, et al, 2022). This provision is a manifestation of the principle of opportunity owned by the Attorney General (Hiariej, 2020).

Even though in the process of resolving cases based on restorative justice at the prosecution stage, apart from the perpetrator and the victim or his family, the community must also be involved, but resolving cases is based more on the interests of the victim. This is different from resolving cases in the public interest which focuses more on the interests of society and the state. Therefore, the authority to set aside cases in the public interest rests with the Attorney General (even though there is an opinion that based on the principle "the prosecutor's office is one and inseparable", the Attorney General's authority can be delegated to the public prosecutor to act on behalf of the Attorney General). Meanwhile, terminating a prosecution based on restorative justice is the authority of the public prosecutor

(even though its implementation is supervised and controlled by the Attorney General in stages, especially regarding certain cases that receive special attention. Based on these differences, the provisions of Article 35 letter c of the Prosecutor's Law are not suitable if used as an umbrella for Attorney General Regulation Number 15 of 2020.

In fact, Law Number 16 of 2004 concerning the Prosecutor's Office has provided a prosecutor's discretion through the authority to set aside cases in the public interest, but it is still limited and must go through very strict procedures. In line with the spirit of shifting the prosecution system towards the discretionary prosecution principle, the prosecutor's discretionary authority has been expanded through Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004. The current Prosecutor's Law contains Article 34A which reads: "For the benefit of law enforcement, Prosecutors and/or Public Prosecutors in carrying out their duties and authority can act according to their judgment by taking into account the provisions of laws and regulations and codes of ethics." In its explanation, Article 34A of the Prosecutor's Law is linked to the principle of discretion of the public prosecutor as regulated in Article 139 of the Criminal Procedure Code. Furthermore, the explanation of Article 34A of the Prosecutor's Law emphasizes that the regulation of the authority of the public prosecutor to act according to his own judgment is carried out without ignoring the principles of law enforcement objectives which include achieving legal certainty, a sense of justice and its benefits in accordance with the principles of restorative justice and diversion.

The phrase "acting according to his judgment" is the basis for the public prosecutor to stop the prosecution if the case delegated to him has been completed by implementing diversion based on restorative justice. Meanwhile, the phrase "pay attention to statutory regulations" includes Prosecutor's Regulation Number 15 of 2020 which is recognized in the hierarchy of statutory regulations in Indonesia.

Conclusion

The prosecution system in Indonesia has shifted from the mandatory prosecution principle to the discretionary prosecution principle with the development of regulations that increasingly expand the prosecutor's discretionary authority. The prosecutorial discretionary authority based on Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice as a hierarchical regulation under the law, has met the basic principles of legality of criminal procedural law. The provisions in the law that can be used as a legal basis for Perja Number 15 of 2020 are: Article 139 in conjunction with Article 140 paragraph (2) letter a KUHAP (with broad meaning), Article 14 letter g KUHAP (with complete interpretation) and Article 34A Invite the Prosecutor's Officer.***

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