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### **Data Integration Model As Mandatory Of The Population Administration Law In Supporting The Implementation Of Case Settlement With A Restorative Justice Approach By The Prosecutor Of The Republic Of Indonesia**

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#### **Abstract**

This study aims to find a data integration model in supporting the process of resolving cases with restorative justice. Each law enforcer, both the police and the prosecutor's office, has its own rules for enforcing restorative justice. Settlement of cases based on restorative justice in its implementation requires a leading sector in this case the Prosecutor's Office as Dominus Litis (case controller), this is in accordance with the establishment of a restorative justice house carried out by the Prosecutor's Office in accordance with the Circular Letter of the Junior Attorney General for General Crimes No: B-913 /E/Ejp/03/2022 dated March 25, 2022. The house of restorative justice is a step so that each law enforcer does not issue regulations related to the settlement of cases based on a restorative justice approach. The settlement of cases with restorative justice has the main condition that the suspect or defendant has committed a crime for the first time. So far, law enforcers know that the suspect/defendant committed a criminal act, which for the first time only based the confession of the suspect/defendant who was not sworn in. This study uses a normative method which results in the conclusion that the integration model can be carried out using an application, chip/barcode on the Electronic Identity Card (E-KTP) so that a person's criminal record is recorded in the e-KTP. The mandate of the law on population administration Number 24 of 2013 in particular Article 8 Paragraph (1) letter a, namely that all important events must be recorded including criminal acts in this case included in important events so that they should be recorded in the Population Identification Number (NIK) e. -ID CARD. The recording of a person's criminal data in an e-KTP provides legal certainty to support the implementation of restorative justice by the Indonesian Attorney General's Office as a case controller.

**Keywords:** Data Integration, Prosecutor's Restorative Justice, E-KTP.

#### **A. INTRODUCTION**

The concept of restorative justice was echoed again by the General Court of Justice, after the Attorney General of the Republic of Indonesia issued Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, namely by stipulating the Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/ 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts Environment. The police are also following up on related policies by issuing the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. Although the three agencies both regulate the process of resolving cases through penal mediation with the concept of restorative justice, the requirements for the implementation of restorative justice are slightly different. Article 5 Paragraph (1) letter a of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice requires the element "The suspect has committed a crime for the first time", Decree of

the Director General of Badilum Number 1691/DJU/SK/PS.00/12/ 2020 concerning Guidelines for the Implementation of Restorative Justice in General Courts in the Minor Crimes Chamber, precisely in the provisions of Number 1 letter j, it is stated that restorative justice does not apply to repeat offenders in accordance with the provisions of the legislation. Meanwhile, Article 5 letter e of the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice as a material requirement states that the handling of criminal acts based on restorative justice is not intended for the repetition of criminal acts based on court decisions.

MvT divides the definition of criminal acts into two categories, namely *rechts delichten* (acts that are against the law even though it has not been stipulated in the law) and *wets delichten* (acts that are against the law after the act is prohibited by law).

The requirement is not a repetition of the Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice and Regulation of the Indonesian Police Chief Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice refers to *wets delichten*. Meanwhile, the provisions in the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice may refer to the meanings of *rechts delichten* and *wets delichten*.

The law is enforced to obtain legal certainty, when there is a difference in the provisions of the terms, there must be a legal umbrella that accommodates the continuation of the legislation, and if the three agencies resolve the case individually then the clause is not a repetition or the first time committing a crime can be neglected because of the absence of a unified, centralized and accommodated system.

Based on the problems above, the authors found a data integration model as mandated by the Population Administration Law in supporting the implementation of case resolution with a restorative justice approach by the Attorney General's Office of the Republic of Indonesia.

## **B. RESEARCH METHOD**

The type of research used is a prescriptive normative legal research using a case approach and a statute approach. The technique of collecting legal materials used is document study or literature study. While the technique of analysis of legal materials in this study is the analysis with a deductive method / syllogistic deduction. Types and sources of legal materials using primary legal materials consisting of the Prosecutor's Law, the Prosecutor's Regulation on Termination of Prosecution Based on Restorative Justice, the Population Administration Law, the Minister of Home Affairs Regulation on Procedures for Changing Population Data Elements in Electronic Identity Cards, and Secondary legal materials include textbooks written by legal experts, legal journals, and other sources that have correlation to support research.

## **B. RESEARCH RESULTS AND DISCUSSION**

### **Research result**

#### **a. Criminal act**

In the Criminal Code there are two types of crimes, namely crimes and violations. The division of these two types is based on principal differences, crimes are referred to as *rechtsdelichten* (contradictory acts that are not specified in the law). Crime can also be interpreted as a disgraceful act that violates the norms in society. Meanwhile, violations are *wetsdelichten*, namely acts against the law, only to be known after a *wet* determines so. Eddy O.S. Hiariej (2014, 102) further argues that in other words the difference between *mala in se* and *mala prohibita* by legal experts is divided into felonies and misdemeanors. Likewise in the Dutch vocabulary which distinguishes the qualifications of criminal acts into *misdriff* and *overtreding*. In this context, *misdriff* is more directed to *rechtsdelichten* (*mala in se*), while *overtreding* is more directed to *wetsdelichten* (*mala prohibita*)

### a. Restorative Justice

Angkasa (2020, 214) argues that restorative justice has a close relationship with victimology as a science that studies victims in all aspects. Restorative justice is a model of settlement and value for victimization that highly respects the victim as a party experiencing loss and/or suffering as a result of victimization. There are three principles of restorative justice, namely:

1. Crime or victimization causes harm and to achieve justice one must focus on repairing the harm caused.
2. The people who are most affected by the crime must be able to participate in its resolution.
3. There is a government responsibility by maintaining order in society to build peace.

As stated by Muladi, in restorative justice, the dignity of the victim is taken into account. Perpetrators must be held accountable and reintegrated into their communities. Perpetrators and victims are in a balanced position and need each other, therefore they must be reconciled (Eriyantouw, 2009; 2). Settlement of cases with restorative justice must meet the requirements as stated in Article 5 Paragraph (1) of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice:

- a) The suspect has committed a crime for the first time;
- b) Criminal acts are only threatened with a fine or are threatened with imprisonment of not more than 5 (five) years; and
- c) The crime is committed with the value of the evidence or the value of the loss caused as a result of the crime of not more than Rp. 2.500.000, - (two million five hundred thousand rupiah).
- d) For criminal acts related to property, in the event that there are criteria or cases of a casuistic nature which according to the public prosecutor's consideration with the approval of the Head of the District Attorney's Branch or the Head of the District Attorney's Office, the prosecution can be terminated based on restorative justice, with due regard to the conditions as referred to in paragraph (1 ) letter a is accompanied by either letter b or letter c.

### b. Population Administration

Population administration is a series of structuring and controlling activities in the issuance of population documents and data through population registration, civil registration, management of population administration information and the utilization of the results for public services. In the Law of the Republic of Indonesia number 24 of 2013 Article (1) it is stated that population administration is a series of structuring and controlling activities in the issuance of population documents and data through population registration, civil registration, management of population administration information and the utilization of the results for public services and sector development. other.

Civil Registration is the recording of Important Events experienced by a person in the Civil Registration register at the Implementing Agency. Based on the provisions of Article 8 Paragraph (1) letter a, the Implementing Agency carries out Population Administration affairs with the obligation to register Population Events and record Important Events, including data elements that are a person's disgrace.

### Discussion

The concept of restorative justice is actually an embodiment of the practice of penal mediation based on Pancasila. Restorative justice is a concept of resolving cases outside the court which emphasizes efforts to restore to its original state, the level of the original meaning of restorative justice has no clear and significant boundaries. In fact, restorative justice is regulated in the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Regulation of the Indonesian Police Chief Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00 /12/2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts Environment. Not only that, the meaning of the first time or repetition of a crime in the three agencies is different, namely there is no clear boundary between *rechts delichten*, namely *Rechtsdelicten* is an act that is contrary to justice, regardless of whether the act is threatened with a criminal offense in a law

or not and *Wets delichten*, namely *Wetsdelicten*, is an act which the public has only just realized as a criminal act, because of the Law which states that the act is an offense.

Settlement of cases based on restorative justice is not recorded centrally and is not clearly accommodated. Article 16 Paragraph (2) letter g of the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, states that cases that have been successfully resolved with restorative justice will be recorded in the electronic system of Investigation management. Meanwhile, the settlement of cases based on restorative justice at the Prosecutor's Office is only recorded in the case register at the prosecution stage and in the register for termination of prosecution and dismissal of cases in the public interest (Article 12 Point 9 of the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice). The recording is internal and cannot be known by the public. Thus, each law enforcement agency may not know whether it is true that the suspect has committed a crime for the first time and not as a repetition or not.

Law enforcers can find out whether a suspect has or has not committed a crime only based on the confession of the suspect/defendant and based on the minutes of the examination of the suspect. Article 152 of the Criminal Procedure Code gives the suspect/defendant the right to provide information freely to investigators and judges, and Article 175 of the Criminal Procedure Code gives the defendant the right to refuse or not to answer questions put to him. If the suspect or defendant does not provide true information, then the suspect or defendant is considered to have committed a crime for the first time. This is because there is no data integration between agencies, law enforcement does not have a record of a suspect committing a crime in a certain place or area.

For example, at the Banyumas District Prosecutor's Office in case Number B-1330/M.3.39/Eoh.2/09/2020, the Public Prosecutor resolved the case of suspect Irin based on restorative justice. Whereas the suspect Irin had previously carried out an attempted theft whose case was resolved amicably by the local village head. The absence of data showing suspect Irin committed a criminal act made law enforcers in this case the Banyumas District Attorney failed to pass the case of suspect Irin with restorative justice.

Gustav Radbruch (Notohamidjojo, 2011; 33) suggests that the law in its purpose needs to be oriented to three things, 1). Legal certainty, 2).Justice, 3). Usefulness (*doelmatigheid*). Radbruch said that legal certainty is the main guide to the law with the aim of making the law positive, in the sense that it applies with certainty. The law must be obeyed, thus the law is truly positive.

The Public Prosecutor as a facilitator who resolves cases with restorative justice does not know the truth about the fact that the suspect/defendant has ever committed a criminal act, Article 8 Paragraph (1) letter a in conjunction with Article 58 Paragraph (1) letter ee The Law on Population Administration mandates all important events should be recorded, but so far this has not been done. This means that the goal of law as stated by Gustav Radbruch has not been achieved, namely the existence of legal certainty. According to Aristotle, law aims to achieve justice, and Gustav Radbruch in this case agrees that justice can be realized with legal certainty. Therefore, to achieve the legal objectives as reflected in Article 1 Paragraph (3) of the 1945 Constitution of the State of Indonesia as a State of Law, a data integration model is needed as mandated by the population administration law which is intended to support the implementation of case resolution with a restorative justice approach by the Attorney General of the Republic of Indonesia. . With the data integration model, it can minimize suspects/defendants who have committed crimes that are no longer resolved with restorative justice, so justice can be achieved because there is no case resolution with restorative justice more than once against the same suspect. The Indonesian Prosecutor's Office as the controller of the case (*Dominus Litits*), one of the steps to make the settlement of cases with restorative justice more integrated, the Indonesian Attorney General issued a Circular Letter of the Deputy Attorney General for General Crimes No: B-913 /E/Ejp/03/2022 dated March 25 2022 concerning the establishment of a restorative justice house, so that case settlement with a restorative justice approach is more integrated

The data integration model can be carried out by reporting important events as stipulated in Article 8 Paragraph (1) letter a, "The Implementing Agency carries out Population Administration affairs with the obligation to register Population Events and record Important Events, and Article 58 Paragraph (1) letter ee, "Data individual includes: other data elements that constitute a person's disgrace. Thus, NIK as a single identity number can contain information on whether or not the owner of an ID card has been in conflict with the law. By entering a person's criminal data into the E-KTP, it also helps the police to issue a more valid police record certificate (SKCK), and there is no need for an applicant's acknowledgment of having or never committed a crime, because everything has been recorded in the e-ID. ID CARD.

The implementation of this data integration can be carried out by the Attorney General's Office, either the District Attorney's Office, the High Prosecutor's Office or the Indonesian Attorney General's Office in coordination with the Police, Social Institutions, and other related agencies. In addition, it is necessary to have a special application that summarizes or records the actions of the suspect/defendant which includes name, place of birth, nationality, gender, type of crime/type of violation and threats, and type of case settlement. This application is centralized, can be registered and can be seen by various parties who need it, meaning that there is transparency or openness to facilitate information on whether or not there is a crime against legal subjects.

The Attorney General's Office in this case strongly supports the settlement of cases with restorative justice, Attorney General ST Burhanuddin has established the Restorative Justice House or known as the RJ House. The spread of RJ's house in Indonesia supports a more transparent and certainly more comprehensive data integration system so that the Indonesian Attorney General's Office is the leading sector. Not only that, RJ's house can accommodate guidance and supervision that so far have not been in the settlement of cases based on restorative justice.

## CONCLUSION

The data integration model is indispensable in resolving cases with a restorative justice approach by the Attorney General's Office of the Republic of Indonesia in order to achieve legal certainty in ensuring that a suspect commits a crime for the first time even if it is the first time a case has been settled with restorative justice, in accordance with the mandate of the population administration law for all events. Important things must be recorded including criminal acts in this case recorded in the NIK e-KTP, in its implementation it is necessary to have a leading sector in this case the Prosecutor's Office as Dominus Litis so that it can support the establishment of a restorative justice house according to the Circular of the Deputy Attorney General for General Crimes No: B - 913 /E/Ejp/03/2022 dated March 25, 2022.

## REFERENCES

- Angkasa, 2020, *Viktimologi*, Raja Grafindo Persada, Jakarta, 2020.
- Bambang Waluyo, *Penyelesaian Perkara Pidana, Penerapan Keadilan Restoratif dan Transformatif*, Sinar Grafika, Jakarta (cetakan pertama), 2020.
- Dini Widiya A. Analisis Yuridis tentang Penerbitan Surat Keterangan Catatan Kepolisian terhadap mantan Narapidana berdasarkan Peraturan Kapolri Nomor 18 Tahun 2014. Thesis. Universitas Islam Kalimantan MAB, 2020.
- Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, 2014.
- Eriyantouw Wahid, *Keadilan Restoratif dan Peradilan Konvensional Dalam Hukum Pidana*, Universitas Trisakti, Jakarta, 2009.
- O. Notohamidjojo, *Soal-Soal pokok Filsafat Hukum*. Griya Media. Salatiga, 2011.