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Comparison of Criminal Law in the Settlement of Criminal Cases Outside the Court Based on English, Netherlands, and Indonesian Laws

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ABSTRACT: Comparative criminal law is an attempt to compare various legal systems, whether between nations, states or religions. The aim is to find differences and similarities between the systems, by providing research-based explanations of how the law functions and how juridical problems are solved in practice. In addition, non-legal factors that may have an influence will also be examined. A deeper understanding of this can only be gained through the study of legal history, so the science of comparative law requires the analysis of legal history. The benefits of comparative law include a better understanding of legal codification at national, regional and international levels. In addition, it helps in the harmonization of laws between international conventions and national laws. Comparative law is also important for determining general principles of law, especially for judges in international courts. These principles are essential for establishi ng general principles of law which are an important source of international law. The object of legal comparison in this research is the legal system or policy in countries that have more than one legal system, in this case, Indonesia, England and the Netherlands, which is carried out by comparing laws relating to the settlement of criminal cases outside the court.

KEYWORDS: Comparative, Law, Criminal

I. INTRODUCTION

Justice in law is often discussed in the context of the adage “the law is blunt upwards, but sharp downwards”. This phenomenon is not only seen in the disparity in criminal sanctions, where perpetrators of minor crimes can be sentenced to very heavy penalties, while perpetrators of more serious crimes receive light sentences. However, this injustice is also seen in the process of solving the case itself. Requiring minor crimes to be resolved through the same mechanism as serious crimes is a form of irony in the administration of justice. In response to this irony, a number of countries have developed various out-of-court settlement mechanisms to deal with minor cases.

The urgency of developing out-of-court settlement mechanisms also arises from the fact that criminal justice systems in many countries are generally only able to deal with a small proportion of the total criminal offenses that occur (UN Office on Drugs and Crime, 2007). If a country attempted to investigate, prosecute, try and convict all offenders, each stage of the justice system would be unable to process the full range of crimes. In this context, police and public prosecutors are required to make discretionary decisions in determining which cases to pursue or discontinue. They need to decide the extent to which criminal sanctions will be imposed, whether through judicial sanctions or extrajudicial sanctions.

As a systematic solution to the irony of justice, it is necessary to develop a settlement mechanism for minor offenses in the Indonesian criminal law system. This must be done by regulating prosecutorial discretion by the prosecutor or public prosecutor. Therefore, the legal issue that will be analyzed in this paper is how the rationalization of the regulation of criminal case settlement mechanisms outside the trial applied in the Netherlands and the United Kingdom. The results of this analysis are expected to provide a new vision and policy direction for the development of minor criminal case settlement mechanisms in the Indonesian legal system.

Against this background, this research was conducted to understand the importance of implementing solutions to the problems identified. To avoid confusion in the discussion, the author limits the problem with the formulation, namely How is the legal comparison of out-of-court criminal case settlement in terms of Dutch, English and Indonesian law.

II. METHOD

This research uses the type of Normative Legal Research. Normative Legal Research is a process where the process aims to find legal rules, legal principles, and legal doctrines to answer the legal issues being studied. The research approach aims to assist researchers in obtaining information from various aspects regarding the legal issues being studied.

Therefore, the author adopts three approaches in this research. First, the statutory approach, which examines all regulations relevant to the legal issues being analyzed. This approach is also known as the legislation and regulation approach. Second, the conceptual approach, in which the author studies aspects of the law, legal doctrines, as well as various concepts of Good Corporate Governance taken from various literatures. Third, the philosophical approach, which focuses on identifying issues from a more in-depth and speculative point of view. This approach contributes to fundamental research, which aims to deepen understanding of the social implications and impact of the application of a law on a particular society or group of people.

In this research, the author uses three types of legal material sources. First, primary legal materials, which are authoritative and include legislation, official records in lawmaking. Second, secondary legal materials, which include various publications on law that are not official documents, such as law books, scientific journals, articles in the mass media, and online sources related to legal issues. Finally, tertiary legal materials, which serve to explain and support primary and secondary legal materials. These three types of legal materials complement each other and are needed to provide a strong foundation for the analysis conducted.

III. LITERATURE REVIEW

A. Comparative Theory of Law

Soeroso argues that law is a social phenomenon that is inseparable from the culture of a nation. Each nation has a unique and different culture, which in turn produces a distinctive legal system. Thus, a country's legal system will be different from the legal systems of other countries (Soeroso, 2007).

The constitution of each country is not the same, because its formation reflects the condition of society in various aspects of life, including political, economic, social and cultural. However, in general, the main substance of each constitution is similar, emphasizing the importance of protecting human rights for the people of the country (Mertokusumo, 2015).

Comparative law between countries not only focuses on the differences and similarities in their legal systems, but also aims to provide insights that can help develop better laws in the future. The focus of comparative law studies is on systems or areas of law in countries that have more than one legal system (Mertokusumo, 2015).

Hendri C Black, as stated by Soerjono Soekanto, defines comparative law as "*the study of the principles of legal science through the comparison of various legal systems*". According to him, there is a tendency to make comparative law a method, considering that the comparison itself is carried out with a "*comparative method*". The same thing is also stated by Ole Lando in Soekanto's work, where comparative law is seen as a discipline that also functions as a method in its research (Soekanto, 2001).

In comparative law studies, there are two commonly used approaches, namely macro and micro comparisons. Macro comparison involves analyzing legal issues in general, for example by comparing legal systems in one country with legal systems in other countries. Meanwhile, micro-comparisons focus more on specific legal issues between two countries. According to Geoffrey Samuel (Samuel, 2014), there is no clear boundary between these two approaches.

The known law to compare is called the "*comparatum*", while the law to be compared to the "*comparatum*" is called the "*comparandum*". After these two types of law are recognized, the next step is to determine the aspects to be compared, such as agreements, marriages, and others, which are referred to as "*tertium comparatum*" (Mertokusumo, 2015).

The application of comparative law has an important purpose, which is to broaden the understanding of similarities and differences in various fields and legal systems. It also helps in understanding the foundations of existing legal systems. With this understanding, the process of unification, legal certainty, and legal simplification can be done more easily. The results of comparative law are very useful for the application of law in society, especially in recognizing areas of law that can be unified and parts that require legal regulation between different systems (Soekanto, 2001).

B. Theory of Out-of-Court Dispute Resolution / Penal Mediation

Out-of-court settlement of criminal cases is known as penal mediation. Penal mediation is often referred to by various other names, such as "*mediation in criminal cases*" or "*mediation in penal matters*". " In Dutch, the term is known as *strafbemiddeling*; while in German, it is called "*Der Außergerichtliche Tatausgleich*" (ATA for short), and in French, the term used is "*de mediation pénale*". Given that penal mediation focuses on meetings between offenders and victims, this term is also familiar as "*Victim- Offender Mediation*" (VOM), *Täter-Opfer-Ausgleich* (TOA), or *Offendervictim Arrangement* (OVA) (Arief, 2015).

Penal mediation is one form of alternative dispute resolution outside the court, commonly known as *Alternative Dispute Resolution* (ADR) or *Appropriate Dispute Resolution*. Although ADR is more commonly applied in civil cases, there are several situations where the settlement of criminal cases can also be carried out outside the court, in accordance with the current legislation

in Indonesia (*positive law*). In principle, out-of-court settlement of criminal cases is not allowed, but under certain circumstances, such settlement may be possible (Arief, 2015).

Although out-of-court dispute resolution is generally more common in the civil context, practice shows that criminal cases are often settled out of court as well. This occurs through various discretionary options from law enforcement officials, especially the police, or through deliberation mechanisms, peace, or forgiveness institutions that exist in the community, such as family deliberations, village deliberations, and customary deliberations, among others. However, it is important to note that the practice of settling criminal cases outside of court often has no formal legal basis. As a result, although there is an informal peaceful settlement, such as through customary law mechanisms, the case is still processed in court in accordance with applicable legal provisions (Arief, 2015).

The development of theoretical discourse and the development of criminal law reform in various countries, there is a strong tendency to use criminal/penal mediation as an alternative to problem solving in the field of criminal law. According to Detlev Frehsee, the increasing use of restitution in criminal proceedings shows that the difference between criminal and civil law is not so great and the difference becomes dysfunctional. (Frehsee, 2017)

IV. DISCUSSION COMPARISON OF NETHERLANDS, ENGLISH, AND INDONESIAN CRIMINAL LAW Netherlands

The Netherlands, as a country that adheres to the *European Civil Law* tradition and uses an inquisitorial prosecution system, views the criminal justice process as a legal step that must be taken to achieve truth in a rational and impartial manner (Luna & Wade, 2010). In this context, the legal system is considered a rational instrument that applies scientific methods to produce truth and justice. Thus, law can be understood as a science, as it is the result of rational decisions that are able to present the truth and provide justice through logic and balanced analysis (Luna & Wade, 2010).

As a consequence of the inquisitorial prosecution system it adopts, the position of the public prosecutor in the Netherlands is very strong and dominant at every stage of the criminal process (Crijns, 2011). The public prosecutor has the authority to give directions to the police regarding the steps to be taken during the investigation. In addition, the public prosecutor also has the right to decide whether or not a case will proceed to court (Crijns, 2011).

Under the discretionary power of prosecution, there are a number of principles that serve as a foundation. One such principle is the principle of expediency, which gives public prosecutors the authority not to proceed with the prosecution of cases classified as minor offenses. In this context, continuing the judicial process may undermine the public interest (Luna & Wade, 2010). In addition to the expediency principle, there is also the opportuniteit principle, which stipulates that public prosecutors are not obliged to bring every case to court; they can resolve the case at their discretion or choose to discontinue the prosecution (Crijns, 2011).

In the Netherlands, discretionary prosecutorial authority is governed by both material criminal law through the *Wetboek van Strafrecht* (WvS) and formal criminal law through the Wetboek van Strafvordering (WvS). The public prosecutor has the ability to discontinue prosecution without certain conditions (onvoorwaardelijk spot, Article 167 paragraph (2) Sv. and Article 242 paragraph (2) WvS.) or with certain conditions (voorwaardelijk spot.): Article 167 paragraph (2) Sv. , Article 257 a-h SvS). In contrast, discontinuation of prosecution with special conditions is commonly known as a transaction (Articles 74-74c Sr.). Interestingly, more than 30% of criminal cases in the Netherlands are resolved through this transaction mechanism (Kempen, 2009).

In the Netherlands there are a number of alternative methods of prosecution that can be used by the universal prosecution, but the three most commonly used are non-prosecution, transaction, and penal order, which are discussed below:

1. Non-prosecution

Non-Prosecution means that the public prosecutor has the authority to decide not to proceed with prosecution in a particular case. This may be the case if the prosecution process is not expected to result in a conviction of the suspect, either due to lack of supporting evidence or other technical reasons, such as termination of the prosecution on procedural grounds (Tak, 2006). In addition, the public prosecutor may also consider the principle of expediency, as stated in Article 167 Sv, which states that “the public prosecutor shall decide to continue the prosecution if it is deemed necessary based on the results of the investigation. Prosecution may be discontinued in the public interest” (Tak, 2006).

To ensure uniformity in the use of prosecutorial discretion, the Broad of Prosecutors-General has published national prosecutorial guidelines. All public prosecutors in the Netherlands are required to follow these guidelines, except in certain circumstances relating to specific cases. Under the guidelines, a public prosecutor may discontinue the prosecution of a case in the public interest, subject to various relevant considerations (Tak, 2003):

a. It may be believed that other measures that are not criminal sanctions are sufficient to apply or would be more efficient (e.g. disciplinary, administrative or other civil sanctions).
b. The prosecution of the crime is deemed to be disproportionate, unfair, or inefficient to the crime (e.g. the crime does not pose a danger and it is not feasible to impose criminal sanctions against it).

c. The prosecution of the crime is deemed inappropriate, unfair or inefficient in view of the circumstances of the perpetrator (e.g. age and health of the perpetrator, prospects for rehabilitation, first-time offender).
d. The prosecution may be contrary to the interests of the country, (e.g. with regard to security, peace and discipline, or when the implementation of new legislation is introduced).
e. The prosecution may be contrary to the interests of the victim (e.g. if compensation has been paid)..

While the termination of prosecution for technical reasons can be conveyed, among others (Tak, 2003):
a. Errors in the registration of suspects by the Police.
b. Lack of evidence for prosecution.
c. The existence of a prohibition on prosecution.
d. The court does not have the legal competence to hear this case.
e. The act is not classified as a criminal offense in the law.
f. The perpetrator is not criminally responsible due to the existence of justification or excuse.

2. Transaction

The history of the Wet tot vereenvoudiging van de rechtspleging in lichte stafzaken (Act to Simplify the Organization of Legal Tribunals for Minor Criminal Cases) dates back to July 5, 1921, stated in Stb. 883. During this time, the Dutch government faced an increase in the number of cases coming before the courts. In response, Article 74 Sr. (Article 82 KUHP) on transactions was enacted, which allowed suspects to be released from prosecution by paying the maximum fine (Remmelink, 2003).

Then, on May 1, 1983, the transaction power was expanded through the Wet vermogenssancties (Dutch Act on Sanctions against the Property of Convicted Persons). With this change, prosecutors were authorized to offer conditions in exchange for the discontinuation of prosecution, not only for minor offenses, but also for some crimes, except for those punishable by more than six years imprisonment (Remmelink, 2003).

Transactions can be understood as a form of prosecutorial discretion, where the suspect voluntarily pays a sum of money to the state treasury or fulfills one or more conditions proposed by the public prosecutor, with the aim of avoiding further criminal prosecution as well as a judicial process that is open to the public (Tak, 2006).

Article 74(1) of the Criminal Code stipulates that the prosecutor is obliged to offer a transaction settlement before the trial starts, especially for cases that meet certain criteria, so that they can be resolved through the transaction mechanism or afdoening buiten proces. Furthermore, Article 74 paragraph (2) describes the provisions that can be proposed by the prosecutor in the transaction offer. In addition, Article 74(3) establishes an obligation for the prosecutor to provide information to interested parties, such as victims, regarding the fulfillment of the terms of the transaction within a predetermined period of time.

Furthermore, Article 74a underlines the suspect's right to remove the prosecutor's authority to prosecute through the payment of a fine and the fulfillment of other stipulated conditions. Meanwhile, Article 74b stipulates that if within three months after the transaction convention is received by the suspect there is no agreement, the legal panel may decide to reopen the case and continue the prosecution process, for example on the complaint of the victim. However, it should be noted that this mechanism only applies to criminal cases. Finally, Article 74c authorizes the police or other investigators to conduct transactions with certain limitations.

The consent given by the defendant to the offer of a transaction from the public prosecutor can be considered as a form of informed consent. This is because the defendant has fully understood the consequences of his choice, be it accepting or rejecting the offer. In addition, the defendant is in a position of freedom to make a decision, without any coercion or pressure from the public prosecutor. Thus, criticism of the transaction mechanism based on the presumption of innocence becomes less strong and irrelevant. (Albrecht, 2001)

3. Penal Order Under the amendments to the Dutch Criminal Procedure Code, Chapter IV A on “prosecution through penal orders” set out in Article 257 a-h Sv. came into force in 2008. In addition, Article 12 Sv. has also been amended to give the aggrieved party the opportunity to lodge an objection with the court of appeal and request that the prosecution matter be reopened in court (Bran ts-Langeraar, 2007).

With these changes, the termination of prosecution under certain conditions as well as the transaction mechanism were abolished. The focus is no longer on reaching an “agreement”; the public prosecutor is now required to issue one or more “penal orders” or afdoening door strafbeschikking, reflecting the criminal offense committed as well as the proposed fine payment plan.

Before doing so, the public prosecutor must “establish the guilt” of the defendant, although the defendant's admission of guilt is not a determining factor. If the fine imposed exceeds €2,000 or community service is imposed, the public prosecutor is obliged to inform the defendant of this in order to hear his response (Brants-Langeraar, 2007).

An order issued by the public prosecutor has the same legal status as a verdict from the court (Kempen, 2009). The public prosecutor is entitled to apply for the following orders: community service (taakstraf) with a maximum limit of 180 hours, fines (boete), exile from the community (onttrekking aan het verkeer), payment to the state for the victim, as well as revocation of driving

license (ontzegging van de rijbevoegdheid). However, the public prosecutor is not authorized to order imprisonment, as stipulated in Article 257a Sv. (Kempen, 2009).

The defendant has the right to object to the criminal order proposed by the public prosecutor by filing an objection with the district judicial panel. The judicial panel will explore the matter thoroughly. However, if the defendant does not file an objection within two weeks, the order can be executed immediately (Brants-Langeraar, 2007). With the right for the defendant to accept or reject the criminal order from the public prosecutor, it is confirmed that the defendant's right to an independent and impartial trial, as stipulated in Article 6 paragraph (1) of the European Convention of Human Rights (ECHR), has been fulfilled (Jacobs & Kampen, 2014).

This criminal order mechanism can be issued for similar crimes that can be resolved through a transaction mechanism. The conditions and penalties set in this practice can also be adjusted to the conditions proposed in the transaction mechanism (Jacobs & Kampen, 2014). Currently, the public prosecutor has a new option to deal with the accused, namely by confiscating the accused's driving license (SIM) for a maximum of six months, as well as issuing a criminal order in the form of a fine of up to €225 (Article 257b Sv.) (Jacobs & Kampen, 2014). In the discussion in Parliament regarding the draft amendment to Article 257 Sv., the Dutch Minister of Justice stated that instead of implementing a plea bargaining mechanism, it would be more appropriate to introduce a system that gives the public prosecutor the authority to impose a fine in the form of a criminal order (Jacobs & Kampen, 2014).

The proposed penal order mechanism could simplify the legal process: the legal chamber would not be burdened, and the punishment would be more real. In addition, it would also allow to address cases of suspects who have followed the transaction mechanism but have not paid (around 25%). Although the substance of the fine is, officially, this convention is subject to civil law, and non-compliance with the transaction convention would be addressed through a prosecution process or a complicated civil law mechanism (Jacobs & Kampen, 2014). With this new system, the application of the fine becomes part of the prosecution process, and the fine itself is considered a criminal sanction, meaning that the public prosecutor can enforce it directly (Jacobs & Kampen, 2014). The penal order mechanism has a number of shortcomings that have been widely criticized by experts. One of the main problems is the lack of room for negotiation before the order is issued, which puts the accused in a difficult position. They must choose between accepting the order or going through a potentially long and challenging trial process. If the accused accepts a criminal order, it can be interpreted as an admission of guilt, while if they choose to sue, they must face the risk of shame and negative stigma that often accompanies the criminal justice process. Therefore, this penal order mechanism is contrary to the principle of the presumption of innocence.

In addition, giving prosecutors the authority to issue criminal orders creates a structure similar to the criminal justice system of the past, where one institution controlled the prosecution, "*trial*" and execution of sentences. This situation results in minimal external supervision from the judicial institution when the criminal order is executed. In this condition, the burden of responsibility of the prosecutor to act honestly, transparently and impartially becomes heavier.

Based on the explanation of the policy of regulating the discretion of prosecutorial authority in the Netherlands, there is consistency in the objectives of the inquisitorial prosecution system, namely to create truth and provide justice with a rational, logical approach and balanced analysis. The result of this approach is a guarantee of the appropriateness of the prosecution and the sentence imposed on the perpetrator and his crime, not just optimizing the number of sentences. Amidst the reality that shows the increasing burden of handling cases and limitations in the criminal justice system, both in terms of human resources and state budget, the regulation of discretionary prosecutorial authority in the Netherlands provides an opportunity for public prosecutors to make rational decisions and balanced analysis. They can choose between various options for prosecution procedures, such as non-prosecution, transactions, or penal orders, which are in line with the principle of appropriateness for both the perpetrator and the crime.

Meanwhile, in Indonesia, the situation is very different. Prosecution policies and regulations in this country are still rigid and focus more on the number of cases handled and the average sentencing. This has actually had an impact on the increasingly hea vy burden borne by the criminal justice system.

Based on changes in criminal policy in the Netherlands, including the implementation of non-prosecution, transaction provisions in Article 74 Sr. , as well as the law on sanctions against assets (*wet vermogensancties*), and updates to the Wet Book van Strafvordering which gave birth to Article 257 a-h Sv, it is clear that the aim of regulating the settlement of criminal cases outside the court is to realize justice by simplifying the criminal justice process. The principle of reasonableness requires that prosecutors consider the public interest in deciding whether to prosecute, and choose a mechanism that is appropriate to the level of culpability of the perpetrator. The application of the principle of reasonableness aims to simplify the criminal justice system and make it more effective. This simplification is very necessary considering the increasing number and complexity of cases that must be processed in court. Thus, the courts will not be burdened by minor cases, there will still be real and proportionate sanctions for mistakes in minor cases, and law enforcement resources can be more focused on handling more serious cases. **England**

Unlike the Netherlands, which adopts an inquisitorial prosecution system, England and Wales implement an adversarial prosecution system that is part of the common law tradition. In this system, the principle of reasonableness and the principle of opportunity are upheld, so that the application of prosecutorial discretion is not only in the hands of the public prosecutor or senior officials, but remains within a standard legal framework. In addition, the decision to continue or discontinue prosecution is not the exclusive responsibility of the public prosecutor. Many decisions not to continue prosecution are taken by the police, which makes monitoring of these decisions complicated. The police have the authority to take no further action, give an informal warning, or record a warning without having to report it to the CPS (*Crown Prosecution Service*) (Kyprianou, n.d.).

The consistency of prosecutorial discretion in the English legal system can be seen in the history of prosecution in the country. Initially, England did not have a special institution tasked with carrying out prosecutions; prosecutions could be carried out by individuals or private parties. This raises problems related to efficiency and difficulties in proving guilt and imposing sanctions on violators. Often, this condition encourages judges to take an active role like public prosecutors, which can be contrary to the principle of judicial impartiality (Summers, 2007).

The Attorney General has the authority to stop ongoing prosecutions, usually initiated by individuals or private parties, if the prosecution is considered contrary to the public interest and does not have strong significance (Krauss, 2012). This authority is a procedural tool that cannot be tested by a legal panel, based on the theory of separation of prosecutorial powers. This shows that the executive has control over law enforcement, especially in the context of the increasing burden on the criminal justice system, so that public prosecutors need to prioritize prosecutions among various cases (Tak, 2006).

Therefore, the prosecution system in England is worth noting. Unlike the prosecution system in other Western European countries, the CPS has a weaker position compared to the police, especially in the use of prosecutorial discretion to settle cases out of court. Although this system is rooted in the common law tradition, prosecution in England and Wales provides wide scope for the use of discretion to stop a case on the grounds of public interest.

Discretion in the prosecutorial power is regulated through the out-of-court criminal settlement mechanism, which involves warnings and discontinuance actions. This mechanism allows the Public Prosecutor in England to stop a case considering the public interest. However, research shows that the Public Prosecutor is often ineffective in exercising this discretion. According to Mc.Conville, Sanders, and Leng (Kyprianou, n.d.), the CPS rarely stops prosecutions on the basis of public interest. Although currently the CPS's discontinuation of prosecutions is increasing, this is often only applied to cases that are considered insignificant and based on cost considerations.

This is because police control of information and case construction can make it difficult for the Public Prosecutor to identify cases that are worthy of a caution only (Kyprianou, n.d.). Many factors that should be taken into consideration when issuing a caution or other alternatives to prosecution are often omitted from the case file, or the information is not provided by the police due to a lack of relevant questions during the investigation (Mc.Conville et al, 1996).

Under Section 23 of the Criminal Justice Act 2003, the conditions and criteria for exercising discretion in prosecution have been modified:

1. Law enforcers (prosecutors and police) have factual evidence that the perpetrator has committed a crime.
2. There is a public prosecutor's belief that there is sufficient evidence to charge the suspect for committing a crime and a conditional warning has been given to the suspect in advance regarding the crime he has committed.
3. The perpetrator has admitted to the police or prosecutor that he has committed a crime.
4. Law enforcers (police and prosecutors) have previously explained the effect of the conditional warning to the perpetrator and warned the perpetrator about the consequences of failing to fulfill all the requirements attached to the warning, namely that it can lead to prosecution for his crime.
5. The perpetrator signs a warning document containing:

a. Details of the crime.
b. Acknowledgement by the perpetrator that he has committed the crime.
c. The perpetrator agrees to be given the conditional warning, and
d. Details of the conditions attached to the warning.

These conditions are designed to ensure that the perpetrator is proven guilty and will certainly be punished if a prosecution is carried out, because the warning message given is actually a form of admission of guilt that can be recorded by the court. This warning mechanism is used by the police to resolve almost 30% of all reported cases. (Tak, 2006)

In the UK, to regulate the use of alternative out-of-court settlements, the UK Government published the Code for Crown Prosecutors in 2000, which is based on Section 10 of the *Prosecution of Offences Act* (POA) 1985. The Code for Crown Prosecutors sets out two conditions that must be met before a prosecution can be carried out. First, there must be an evidential test indicating that there is a realistic prospect of believing that the charges can be proven. Second, a prosecution may only be carried out if there is a public interest test.

In this public interest test provision, several factors need to be considered, including the level of culpability of the perpetrator (*such as the role in the crime and the presence of planning*), the danger conditions for the victim, and the impact on society. In addition, the public prosecutor must evaluate whether prosecution is an appropriate response to the crime, ensuring that the action taken is in line with the principles of effective law enforcement.

Another criterion that allows the application of out-of-court settlement mechanisms comes from the Crime and Disorder Act of 1998. In this case, the police have the authority to stop the legal process related to criminal acts by issuing a "*caution*" Message for adult perpetrators. Meanwhile, for young perpetrators, they can receive a "*reprimands and warnings*" Message.

Warnings for adult perpetrators are given by the police when there are sufficient facts to support the prosecution, where the perpetrator admits his guilt and agrees to the established procedure. In addition, the perpetrator must also be an individual who is mature enough or is in a certain condition, such as having physical or mental health problems. **Indonesian**

Indonesia, as a country that was colonized by the Netherlands, inherited many aspects of the Dutch legal system. As a result of the principle of concordance, the legal system in force in Indonesia today is largely a legacy of Dutch law, including its prosecution system. Like the Netherlands, the Indonesian legal system is categorized as a civil law tradition and adopts an inquisitorial prosecution system. As a result, the Indonesian legal system adheres to the philosophy of mandatory prosecution which is often known as the principle of legality. In this context, the discretion in the authority to prosecute in Indonesia, which is based on the principle of legality, is an exception to this general principle. Therefore, the decision not to continue prosecution is carried out with very tight control, when compared to countries that follow the common law tradition such as the United States, England, and Wales.

The regulation regarding the authority of prosecution in Indonesia is regulated in Article 1 number 6 letter a of Law Number 8 of 1981 concerning *Criminal Procedure Code* (KUHAP), which states that a prosecutor is an official who is given the authority by this law to act as a public prosecutor and to implement court decisions that have permanent legal force. Furthermore, Article 1 number 6 letter b of the Criminal Procedure Code explains that a Public Prosecutor is a prosecutor who is given the authority to carry out prosecution and implement the judge's decision. An important note is that the norm in Article 1 number 6 letter b of the Criminal Procedure Code is identical to the provisions contained in Article 13 of the Criminal Procedure Code, indicating duplication in the regulation.

Article 14 of the Criminal Procedure Code emphasizes the role of the public prosecutor in points g and h, which provide the authority to prosecute and close cases in the interests of the law. In addition, Article 140 paragraph (2) letter a states that if the public prosecutor decides to stop the prosecution because there is insufficient evidence, or if the incident is not a criminal act, then the decision must be recorded in a decision letter.

Meanwhile, discretion in the authority of prosecution is regulated in Article 35 letter c of Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office (*Law on the Prosecutor's Office of the Republic of Indonesia*), which gives the Attorney General the authority to stop a case based on public interest (*principle of opportunity*). From all the provisions of prosecution contained in the Criminal Procedure Code and other laws, it can be concluded that currently the prosecutor or public prosecutor does not have the discretion to stop or ignore cases that are classified as minor.

In 2021, the Attorney General's Office of the Republic of Indonesia issued Attorney Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. As previously discussed regarding the settlement of minor crimes without going through the punishment process, the Attorney General's Office of the Republic of Indonesia refers to this regulation considering that there is no law that specifically regulates the settlement of cases outside the court with a Restorative Justice approach. Therefore, a criminal case can be legally closed and its prosecution terminated based on the principle of Restorative Justice if it meets certain requirements:

a. The suspect has committed a crime for the first time;
b. The crime is only punishable by a fine or imprisonment of no more than 5 (five) years; and
c. The crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp2,500,000.00 (two million five hundred thousand rupiah).

III. CONCLUSIONS

In Indonesia, the implementation of the rigid principle of legality is reflected in the authority of the public prosecutor, who can only carry out the function of preparing cases for trial in court. As a result, the input and output processes in the criminal justice system are identical, where every case must be brought to trial, unless there is a lack of evidence or if the case must be closed according to law, such as in a state of expiration, ne bis in idem, or if the defendant has died. This is regulated in Article 14 letter h and Article 140 paragraph (2) letter a of the Criminal Procedure Code.

Discretion in prosecution as stated in Article 35 letter c of the Indonesian Attorney General's Law, which states that "*The Attorney General has the duty and authority to set aside cases in the public interest*" is only a negative application of the opportunity principle. It can be seen that although Article 35 letter c gives the Attorney General the authority to set aside cases, this is strictly regulated

and can only be done on the grounds of public interest. In addition, the consideration of subsociality has not been adopted in criminal law in Indonesia.

The negative application of the opportunity principle is also seen in Article 82 of the Criminal Code, which regulates the transaction mechanism. In this case, the authority to prosecute violations that are only threatened with a fine can be removed if the offender voluntarily pays the maximum fine and costs incurred after the prosecution begins. This procedure is regulated by an appointed official according to general guidelines and within a specified time period. If in addition to a fine there is also confiscation, the goods subject to the confiscation must be handed over or the appropriate price must be paid based on the assessment of the relevant official.

The mechanism for out-of-court settlement in Indonesia is currently regulated through institutional regulations, namely the Prosecutor's Office Regulation Number 15 of 2020. In this context, there are certain requirements that must be met in order to pursue out-of-court settlement in criminal cases. One of them, according to the regulation, is that the crime involved must be included in the category of minor crimes with a penalty of less than five years in prison.

In closing, it can be concluded that from the analysis of the policy of developing out-of-court criminal case resolution mechanisms in the Netherlands and England, it can be seen that the purpose of this regulation is to realize justice through the simplification of the criminal justice system and the application of the principle of reasonableness. However, the conditions in the Indonesian criminal justice system show low efficiency and incompatibility with the principles of speed, simplicity, and low cost. Facing this problem, the simplification of the criminal justice system and the application of the principle of reasonableness are important solutions. This includes the requirement for the Public Prosecutor to consider the public interest (public interest test) when deciding to use an out-of-court settlement mechanism, so that law enforcement resources can be more focused on handling more serious cases.

SUGGESTIONS

Based on the conclusion above, it can be recommended that the principle of appropriateness needs to be immediately accepted in the criminal justice system in Indonesia by adopting the subsociality theory as stated in Article 9a Sr. and adopting a mechanism for resolving corruption cases outside the trial in the form of transactions with a composition model, accompanied by modifications to the addition of basic ideas for adaptation to the Indonesian legal system in the future.

REFERENCES BOOK AND JOURNAL ARTICLE

1) Albrecht, H. J. (2001). A Comparative Study of European Criminal Justice Systems. South African Law Commission.
2) Barda Nawawi Arief. (2015). Mediasi Penal: Penyelesaian Perkara Pidana di Luar Pengadilan. http:// http://bardanawawi.wordpress.com. Diakses 5 Januari 2024.
3) Brants-Langeraar, C. H. (2007). Consensual Criminal Procedures : Plea and Confession Bargaining and Abbreviated Procedures to Simplify Criminal Procedure. Electronic Journal of Comparative Law (EJCL), 11(1), 21. www.ejcl.org
4) Crijns, J. H. (2011). Witness Agreements in Dutch Criminal Law. Seminar Internasional Dan Focus Group Discussion Tentang The Protection of Whistleblowers as Justice Collaborators, 2.
5) Detlev Frehsee (Professor of Criminology and Criminal Law, University of Bielefeld, Germany). (2017). "Restitution and Offender-Victim Arrangement in German Criminal Law: Development and Theoretical Implications".
6) Geoffrey Samuel, An Introduction to Comparative Law Theory and Method, Oregon: Hart Publising, 2014
7) Jacobs, P., & Kampen, P. van. (2014). `Dutch `ZSM Settlements` in the Face of Procedural Justice: The Sooner the Better`. Utrecht Law Review, 10(4), 75.
8) Kempen, P. H. van. (2009). The Protection of Human Rights in Criminal Law Procedure in The Netherlands. Electronic Journal of Comparative Law, 13(2), 12. http://www.ejcl.org
9) Krauss, R. (2012). The Theory of Prosecutorial Discretion in Federal Law: Origin and Developments. Seton Hall Circuit Review, 6(1), 2.
10) Kyprianou, D. (n.d.). Comparative Anaysis of Prosecution Systems (Part II): The Role of Prosecution Services in Investigation and Prosecution Principles and Policies. www.law.gov.cy
11) Luna, E., & Wade, M. (2010). Prosecutors as Judges. Washington and Lee Law Review, 67 (4), 1429.
12) McConville, M., Sanders, A., & Leng, R. (1996). Prosecution in Common Law Jurisdictions. Aldershot.
13) Remmelink, J. (2003). Hukum Pidana, Komentar Atas Pasal-pasal Terpenting dari Kitab Undang- Undang Hukum Pidana Belanda dan Padananya dalam Kitab Undang-Undang Hukum, translated Tristam Pascal Moeljono Pidana Indonesia. PT Gramedia Pustaka Utama.
14) Summers, S. J. (2007). Fair Trials, The European Criminal Procedural Tradition and The European Court of Human Rights. Hart Publishing.

15) Tak, P. J. P. (2003). The Dutch Criminal Justice System: Organization and Operation (2nd Editio). Boom Juridische.
16) Tak, P. J. P. (2006). Methods of Diversion Used by the Prosecution Service in the Netherlands and Other Western European Countries. 135th International Senior Seminar Visiting Experts` Papers, Hosted by the United Nations Asia and Far East Institute (UNAFEI) for the Prevention of Crimes and the Treatment of Offender, 54.
17) UN Office on Drugs and Crime. (2007). Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment. UN Publication.
18) Soerjono Soekanto. (2001). Pengantar Penelitian Hukum. Jakarta: UI Press
19) Soeroso. (2007). Perbandingan Hukum Perdata, Jakarta: Sinar Grafika