

Implementation of the Restorative Justice Concept with the Scope of the Police Handling Criminal Cases

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Abstract. *The purpose of this research is to know and analyzing the police mechanism in using the concept of restorative justice in handling criminal cases. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. Within the framework of the Pancasila Legal State Concept, the restorative justice concept approach has only been implicitly recognized in the constitution and has only been partially regulated in several criminal law regulations, including the Child Criminal Justice System Law, the Special Autonomy Law for Papua Province, which has recognized the existence of a "consensus" method in enforcing criminal law, as well as institutional regulations such as the Police through the Circular of the Chief of Police Number SE / 8 / VII / 2018 concerning the Implementation of Restorative Justice. Criminal cases that can be handled with a restorative justice approach in the police if the investigation commencement order (SPDP) has not been submitted to the prosecutor's office. Not all cases can be resolved in that way, but they must also meet formal requirements, namely that there must still be an agreement between both parties and the fulfillment of the victim's rights and the perpetrator's responsibilities.*

Keywords: *Analysis; Consensus; Regulations.*

1. Introduction

In the maintenance, enforcement, and development of criminal law in Indonesia, it refers to the implementation of formal law regulated in Law Number 8 of 1981 concerning Criminal Procedure Law. So law enforcement in its concrete form is in the form of imposing sanctions or criminal penalties. In terms of law enforcement, according to Sauer there are three basic concepts in criminal law, namely the nature of the error, against the law, and criminal.¹ Law enforcement must also be based on the regulations it makes. In making these regulations, there is one theory, namely the Theory of Utilitarianism with its figure Jeremy Bentham, which in essence states that all regulations made must have benefits or utility for the wider community.²

¹Dwidja Priyatno. (2007). Criminalization for Children in the Draft Criminal Code Concept (within the Restorative Justice Framework). Child Rights Advocacy Institute (LAHA), VIII (III). p 9.

²Arief, Hanafi, and Ningrum Ambarsari. (2018). Application of the Restorative Justice Principle in the Criminal Justice System in Indonesia. Al-Adl: Journal of Law, 10 (2), p 176.

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Law enforcement is one of the manifestations of legal protection provided by the state to every citizen, not only implemented consistently and in accordance with legal provisions, but also must pay attention to the sense of justice and also the paradigm shift that occurs in society. The law enforcement approach must be reviewed from various aspects and across fields, one of which is through transformation or change in the mindset or way of thinking of society. This mindset change is carried out by orienting the purpose of punishment from being retributive (revenge) to being more corrective, rehabilitative and finally restorative or restorative justice.³

In Indonesia, the paradigm offered by restorative justice in practice is not something completely new. The practice of resolving disputes outside the criminal justice process has in fact been implemented by society as a reflection of the deliberation and consensus institution which is part of the philosophy of the Indonesian nation. Reality shows that the resolution of a conflict in Indonesian society, although it is a violation of criminal law, does not always end in court. Minor cases such as juvenile delinquency, minor theft, minor abuse, negligence, defamation, and/or unpleasant acts can also be resolved through this deliberation institution with or without involving law enforcement, and not a few of the crimes that occur, law enforcement officers, especially the Police, choose not to prolong the case process and invite the victim and perpetrator to resolve it through deliberation and amicably so that in the end the case investigation process is not continued or stopped, even though this peace mechanism is not known in the criminal justice process in Indonesia.⁴

The function of the Police is one of the functions of the state government in the field of law enforcement, protection and community service, community guidance in order to ensure order and uphold the law and maintain public peace. Based on the above functions, the police institution is basically one of the government institutions that has an important role in a state of law.

The Indonesian National Police responded to the development of the legal needs of the community in accordance with the justice of all parties and accepted the authority according to the thoughts of the Head of the Criminal Investigation Agency (Kabareskrim). Indonesian National Police. STR/583/VIII/2012 dated August 8, 2012 Regarding the Use of Restorative Justice, a telegram for investigators used as the basis for resolving criminal cases using Restorative Justice.⁵

In line with the times and the development of the era, which then emerged the SE KAPOLRI Number 08/VII/2018 on Friday, July 27, 2018 concerning the Implementation of Restorative Justice in a Settlement of Criminal Acts. "The next development on Thursday, August 19, 2021, the Chief of Police General of Police Listyo Sigit Prabowo ratified PERPOL (Republic of Indonesia State Police Regulation) Number 08 of 2021 concerning Handling of Criminal Acts

³Ira Alia Maerani & Siti Rodhiyah Dwi Istinah. (2022). The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values). *Journal of Legal Sovereignty* 5 (4), December, p 305

⁴Edwin Apriyanto. (2016), Implementation of Restorative Justice as a Form of Police Discretion in Resolving Fraud Cases at Semarang Police Headquarters, *Jurnal Spektrum Hukum*, 13 (1), April, p 58

⁵Lawalata, Jesylia Hillary, Juanrico Alfaromona Sumarezs Titahelu, and Julianus Edwin Latupeirissa. (2022). Restorative Justice Approach in Resolving Narcotics Crime Cases at the Investigation Stage. *TATOHI: Journal of Legal Studies*, 2 (1), p 93.

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based on Restorative Justice, stated in the State Gazette of the Republic of Indonesia 2021 Number 947. Restorative Justice according to Article 1 Number 3 of Police Regulation Number 8 of 2021 is the handling of crimes by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to work together to find a fair solution and through peace in emphasizing the restoration of the original state.⁶

The description above has attracted the author's attention to study, understand, and research more deeply regarding the Police's efforts in implementing the concept of restorative justice within the scope of its authority, namely in the criminal case investigation process. In connection with this theme, to research further and pour it into legal research with research purposes knowing and analyzing the police mechanism in using the concept of restorative justice in handling criminal cases.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Overview of Restorative Justice

Restorative Justice or often translated as restoration justice, is a model of approach that emerged in the 1960s in an effort to resolve criminal cases. Different from the approach used in the conventional criminal justice system, this approach emphasizes the direct participation of the perpetrator, victim and community in the process of resolving criminal cases.

A British criminologist, Tony F. Marshall in his writing "Restorative Justice an Overview" said: "Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future" (restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future).⁷

Meanwhile, Marlina stated in her book that the concept of restorative justice is a process of resolving legal violations that occur by bringing the victim and the perpetrator (suspect) together to sit in a meeting to be able to talk.⁸ As Marlina's opinion, it can be understood that resolving a criminal case through restorative justice is basically a resolution carried out jointly between the perpetrator and the victim in a forum.

3.2. Police Mechanism in Using the Restorative Justice Concept in Handling Criminal Cases

⁶Zainab Ompu Jainah, and Suhery. (2022), Analysis of Handling Narcotics Crimes Through Restorative Justice based on Perpol No. 8 of 2021 (Study at SatResNarkoba Polres Metro). Journal of Education and Counseling, 4 (4). p 1049

⁷Marian Liebmann, (2007), Restorative Justice, How it Works, London and Philadelphia: Jessica Kingsley Publishers, p 26

⁸Marlina, (2009), Juvenile Criminal Justice in Indonesia, Development of the Concept of Diversion and Restorative Justice, First Edition, Bandung: Refika Aditama, p 180.

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The Regulation of the Republic of Indonesia National Police or often referred to as the Regulation of the Chief of Police or Perkap Number 08 of 2021 concerning Handling of Criminal Acts based on Restorative Justice is a step by the Police in realizing the resolution of criminal acts by prioritizing Restorative Justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal necessity in society.

Based on Article 1 paragraph (3) of the Chief of Police Regulation Number 08 of 2021, Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just resolution through peace by emphasizing restoration to the original state.

The restorative justice approach can fulfill the principle of fast, simple, and low-cost trials. With this concept, the interests to be protected are public rights, so that the position of the State with its law enforcement tools becomes dominant. The most important function of law besides legal certainty and benefits is justice. Both parties who make peace through mediation or restorative justice, show that both parties in conflict have found justice that can be directly felt so that it can cure social conflict in society.

Regarding the general requirements for handling criminal acts based on restorative justice, the Police implement this concept in the criminal case investigation stage referring to Articles 3 to 6 of Police Regulation Number 8 of 2021 that:

1. The material requirements are:
 - a. Does not cause unrest and/or rejection from the community;
 - b. Does not result in social conflict;
 - c. Does not have the potential to divide the nation;
 - d. Not radical or separatist;
 - e. Not a repeat offender based on a court decision; and
 - f. Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.
2. The formal requirements are:
 - a. Peace from both parties except for drug crimes which is proven by a peace agreement letter and signed by the parties;
 - b. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes, can be in the form of:
 - 1) Returning goods;
 - 2) Compensate for losses;
 - 3) Reimburse costs incurred as a result of criminal acts; and
 - 4) Compensate for damages caused by criminal acts.

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Furthermore, the specific requirements for handling criminal acts based on restorative justice for criminal acts of information and electronic transactions, narcotics and traffic are regulated in Articles 7 to 10 of Police Regulation Number 8 of 2021, as follows:⁹

1. Information and electronic transaction crimes:
 - a. Perpetrators of information and electronic transaction crimes who distribute illegal content;
 - b. The perpetrator is willing to delete the content that has been uploaded;
 - c. The perpetrator conveyed an apology via a video uploaded on social media accompanied by a request to delete the content that had been spread; and
 - d. The perpetrator is willing to cooperate with the National Police Investigators to conduct further investigations.
2. Drug crimes:
 - a. Drug addicts and victims of drug abuse who apply for rehabilitation;
 - b. At the time of being caught red-handed, evidence of narcotics used for 1 (one) day was found, categorized as narcotics and psychotropics in accordance with the provisions of laws and regulations; and no evidence of narcotics crimes was found, but the urine test results showed positive for narcotics;
 - c. Not involved in drug crime networks, distributors and/or lords;
 - d. An assessment has been carried out by the integrated assessment team; and e. The perpetrator is willing to cooperate with the Police Investigators to conduct further investigations.
3. Traffic crimes:
 - a. Traffic accidents caused by driving a motor vehicle in a dangerous manner and under dangerous conditions resulting in material losses and/or minor injuries; or
 - b. Traffic accidents on the road due to negligence resulting in human casualties and/or property losses.

It is quite common to find victims who do not report the crime to the police or after being reported then want to withdraw the report. In responding to problems like this, the police respond with different attitudes, some insist on normative or legal rules, and some are not too rigid and try to see the case from a broader spectrum or aspect such as the principle of benefit, the impacts caused to various parties if processed in a limited or non-limitative manner and other considerations.

The process of implementing Restorative Justice in the cases that have been described is the implementation of investigations and inquiries carried out according to the first stage procedure, namely the peace process carried out through mediation between the two parties where the victim can express their feelings of discomfort and complaints felt as a result of the crime committed by the perpetrator. By expressing the victim's complaints, it will provide space for the perpetrator to atone for his mistakes. For minor crimes, the restoration of the

⁹Rahman Amin, Gatot Efrianto, Octo Iskandar, Audy Pramudya Tama. (2023), Legal Counseling on Police Regulation Number 8 of 2021 Concerning Handling of Criminal Acts Based on Restorative Justice. *Abdi Bhara Journal of Community Service*, 2 (1), June, p 32

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victim's rights is sometimes with compensation. Usually only compensation is given according to the wishes of the victim.

In conducting mediation, witnesses must be present, which may be represented by traditional leaders in the village or community leaders. After conducting mediation, the perpetrator or victim submits a written application letter addressed to the police. The application letter is accompanied by documents, namely a statement of peace between the perpetrator and the victim, then evidence that the victim's rights have been restored. The peace in question is that previously the parties, namely the perpetrator and the victim, had made a peace agreement through mediation attended by the victim's family and the perpetrator's family and also witnesses.

After the completeness of the documents is declared complete, the investigator then asks for clarification from the parties which is then stated in the minutes. If the completeness of the documents and the results of the clarification are met, the investigator will submit a request for approval to carry out a case conference. A case conference is an activity of delivering an explanation of the investigation or inquiry process by the investigator to the participants of the conference and continued with a group discussion to get responses or input and corrections in order to produce recommendations to determine the follow-up to the investigation and inquiry process.

Criminal cases that can be handled with a restorative justice approach in the police if the investigation commencement order (SPDP) has not been submitted to the prosecutor's office. Not all cases can be resolved in this way, but must also meet formal requirements, namely that there must still be an agreement between both parties and the fulfillment of the victim's rights and the perpetrator's responsibilities. In addition, since the issuance of Police Regulation Number 8 of 2021, at least many criminal cases have been resolved without having to go to court. It is stated in the Police Regulation that investigators must facilitate mediation between the victim and the perpetrator and the parties involved in the case who want to reconcile. All cases are prioritized using a restorative justice approach, except for cases that have the potential to divide, have SARA nuances, radicalism, and separatism.

The implementation of restorative justice by the Police is to realize justice because the members have been equipped with knowledge about the nature of how someone who becomes a victim in a criminal case so that the spirit to implement restorative justice is realized to restore the victim's rights first. In the scope of the Police's work, it is often implemented with a peace process between the reporter and the reported. After the peace process is successfully carried out, the reporter then submits a letter of withdrawal of the complaint. Then on the basis of the peace and withdrawal of the complaint report, the Rembang Police investigator will follow up by conducting a case title to stop the investigation of the case.

Based on the explanation above, the researcher also concluded that the concept or approach of restorative justice must be implemented in an integrated manner. This is important considering that if one of the components does not apply the concept or approach of restorative justice, then a restorative decision cannot be implemented. For example, the Police and the Prosecutor's Office have adopted the concept of restorative justice but the judge still adheres to a legalistic mindset, in cases like this the judge will issue a very normative decision so that correctional institutions cannot apply the concept of restorative

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justice.¹⁰Therefore, the approach or concept of restorative justice must be implemented in an integrated manner between one component and another. On the other hand, if one component does not implement the approach or concept of restorative justice, then the approach or concept of restorative justice itself will not be realized properly.

Indonesian laws and regulations tend to use imprisonment as a criminal threat. It can even be said that almost all criminal acts are threatened with imprisonment, because so far the measure of the success of criminalization is when law enforcement officers succeed in imposing imprisonment. In fact, imprisonment has a negative impact not only on those affected, but also on society. For those affected, the suffering is not only experienced by themselves, but also by their families and people whose lives depend on the convict. For society, the loss is apparent from the frequent occurrence of recidivism as a result of the imposition of imprisonment.¹¹

To reduce these negative impacts, and to reach the very dynamic social changes in society, the development of the law enforcement system in Indonesia must ultimately follow the changes in mindset and legal culture that exist today. The law must provide a space of tolerance that allows members of society and law enforcers to move more freely following the dynamics of society. So that there is a discourse on resolving cases outside the judicial process. One alternative is to apply restorative justice in resolving criminal cases. The application of restorative justice can begin from the investigation and inquiry process where members of the Police have the freedom to act or discretion in the public interest in accordance with their considerations or policies and/or laws.¹²

4. Conclusion

The implementation of restorative justice within the Police has been regulated through the Indonesian Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Where Handling of criminal acts based on restorative justice itself must meet general requirements which include material and formal requirements, as well as special requirements. Material requirements that must be met, for example, the case does not cause unrest and there is no rejection from the community, does not have an impact on social conflict, does not have the potential to divide the nation, is not radical and separatist, is not a repeat perpetrator of a criminal act based on a court decision, is not a criminal act of corruption, a criminal act against state security, and a criminal act against people's lives.

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¹⁰Eva Achjani Zulfa, (2010), *Restorative Justice and Revitalization of Customary Institutions in Indonesia*, Indonesian Journal of Criminology, 6 (II), August, p 191

¹¹Puteri Hikmawati, (2016), *Supervisory Penalty as a Substitute for Conditional Penalty Towards Restorative Justice*, Journal of State Law, 7 (1), June, p 86

¹²Kahardani, et al. (2023), *Application of Restorative Justice in the Settlement of Criminal Cases by the Indonesian National Police*, Journal of Master of Law: Law and Humanity, 1 (1), p 76

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