

## **An Implementation of Restorative Justice in Handling Cases of the Beatings Crime**

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### *Abstract.*

*The purpose of this research is to find out and analyze the implementation of restorative justice in handling cases of beatings. To find out and analyze the obstacles that arise in the implementation of restorative justice in handling cases of criminal acts of beatings and their solutions. The method used was a juridical empirical legal approach and the specifications in this study were descriptive analytical. The sources and types of data in this study were secondary data obtained from library studies. The data were analyzed qualitatively. Based on the results of the research that the Implementation of Restorative Justice in Handling Cases of the Crime of Beating is repairing social damage caused by perpetrators, developing remedies for victims and the community, and returning perpetrators to society. This effort requires the cooperation of all parties and law enforcement officials. Obstacles that arise: Lack of community or environmental participation in finding a solution to a case so that they immediately report it to the police; The case handled by the police has been sent SPDP (Notice of Commencement of Investigation) to the District Attorney. The existence of a third party interest in resolving a case at the investigation level, Efforts to overcome Emerging Constraints: Entering cases that have been resolved by the community into the media with twisted words or asking the police leadership (Kapolda, Kapolres) either through the media as well as letters or communication tools.*

*Keywords: Criminal; Justice; Investigation; Restorative.*

### **1. Introduction**

One of the main elements of a rule of law is equality before the law. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions".<sup>1</sup> With equality before the law and the government, every citizen who is proven to have violated the applicable law will receive sanctions according to the actions taken. It can be said that the law does not look at officials, civilians or military. If they violate the law, they will be punished according to their actions. However, the law provides a specific view in terms of applying the law to children. There are special approaches that are carried out solely for the benefit and welfare of the child himself.<sup>2</sup>

Comparing the presidential government system in Indonesia in the civil law legal system with the United States (US) presidential system in the common law legal system, it can be understood the development of the characteristics of each country's constitutional system. Following the development of the founding fathers' thoughts on the basis of the state, they stated that the formation of the Republic of Indonesia was based on the life style of the Indonesian people, namely the family system and would use a government system that was in accordance with the style

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<sup>1</sup>The Constitution of the Republic of Indonesia 1945

<sup>2</sup>M. Nasir Djamil, (2013), *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta, p. 4

of the people. However, with the reforms in 1998, the affirmation of the presidential system of government was agreed on the agenda of the MPR session which discussed the amendments to the 1945 Constitution. In the implementation of the presidential system in Indonesia, which grew in the civil law system, there was also the influence of common law. This is evidenced by the adoption of parliamentary principles. There are efforts to purify the presidential system, but it becomes necessary to improve, especially in the political infrastructure and the arrangement of several laws (UU) in the political field. Meanwhile, the United States presidential system of government has been integrated in its constitutional practice, because the United States is the birthplace of the presidential system and is an ideal example because it meets almost all the criteria in the presidential system of government. There are several advantages and disadvantages in each presidential government system between Indonesia and the United States. This is due to several influences that support the effectiveness of the implementation of the system, including the underlying legal system, the party system.<sup>3</sup>

The Indonesian criminal justice system is entering a new phase in its development. One form of reform that exists in Indonesian criminal law is the regulation of criminal law in the perspective and achievement of justice for the improvement and restoration of conditions after events and criminal justice processes known as restorative justice, which is different from retributive (emphasizing justice in retaliation) and restitutive justice (emphasizing fairness on compensation).<sup>4</sup>

Carrying out law enforcement duties, Investigators of the Indonesian National Police have duties, functions, and authorities in the field of investigating criminal acts in accordance with laws and regulations, which are carried out professionally, transparently and accountable for every criminal case in order to realize the rule of law that reflects legal certainty, sense of justice and expediency.<sup>5</sup>

*Criminal Justice System* or the Law Enforcement System as one of the sub-systems of state administration in the context of criminal law enforcement. The Criminal Justice System is a sub-system of interrelated criminal justice including the police, prosecutors, courts, and correctional institutions with the aim of tackling crime.<sup>6</sup> Tackling is defined as controlling crime so that it is within the limits of tolerance.<sup>7</sup>

The implementation of criminal justice is a process from the time the investigation is carried out until the court decision has the status of *res judicata*

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<sup>3</sup>Dwi Istinah, Siti Rodhiyah, 2015, *Perbandingan Sistem Pemerintahan Dalam Sistem Common Law dengan Sistem Civil Law (Studi Sistem Pemerintahan Presidensiil Indonesia Dengan Sistem Pemerintahan Presidensiil Amerika Serikat)*, Vol 31, No 1, Jurnal Hukum Unissula

<sup>4</sup><http://pn-tual.go.id/id/berita/artikel-hukum/konsep-restorative-justice.html>, accessed on 30 March 2020

<sup>5</sup>Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigations.

<sup>6</sup>Mardjono Reksodipuro, (1993), *Sistem Peradilan Pidana Indonesia : Melihat Kepada Kejahatan Dan Penegakan Hukum Dalam Batas- Batas Toleransi*, Fakultas Hukum Indonesia, Jakarta, p. 1

<sup>7</sup>Lilik Mulyadi, (2007), *Kompilasi Hukum Pidana Dalam Prespektif Teoritik dan Praktik Peradilan*, Mandar Maju, Bandung, p.5.

(legally binding; *inkracht van gewijsde*) or already has permanent legal force.<sup>8</sup> In handling criminal acts, the Indonesian criminal justice system currently uses a retributive justice system that is oriented towards revenge and places greater emphasis on legal certainty. If the handling of criminal acts (extra ordinary crimes, ordinary crimes, and light motives) is not distinguished, especially criminal acts whose losses are possible to be recovered, of course it can sacrifice a sense of justice and social reaction to the victim. The victim here is not only the injured party from the crime, but also the suspect as a victim of the criminal justice system that is not in accordance with the nature of the criminal objective, namely justice for both parties. In its application there has also been a buildup of cases, high costs, and even overcapacity in correctional institutions.

The research objective of this study was to identify and analyze the implementation of restorative justice in handling cases of beatings. To find out and analyze the obstacles that arise in the implementation of restorative justice in handling cases of criminal acts of beatings and their solutions.

## **2. Research Methods**

This research method used an empirical juridical approach. The research specification used in this thesis was analytical descriptive, which describes the applicable laws and regulations related to legal theories. This research included primary data and secondary data research. The sources and types of data in this study were secondary data obtained from library studies. The data were analyzed qualitatively.

## **3. Result and Discussion**

### **3.1. Implementation of Restorative Justice in Handling Cases of the Crime of Beating**

With regard to law enforcement without offending the human side who carries out its enforcement, it is a sterile discussion. If discussing law enforcement only holding on to the requirements as stated in the legal provisions, you will only get an empty stereotypical picture. Discussing law enforcement becomes meaningful when it is linked to concrete implementation by humans.<sup>9</sup>

The purpose of law enforcement is based on certain benefits, not merely imposing retaliation for what has been done or not done by the perpetrator of the offense, nor is it merely imposing retaliation solely for giving rewards to people who have made the offense, but for purposes that contain benefits.<sup>10</sup>

Law enforcement in a state of law such as Indonesia is important to be able to create justice in society in accordance with Indonesia's national development goals. The court is the right institution for law enforcement because the court is a judicial

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<sup>8</sup>Anas Yusuf, (2016), *Implementasi Restorative Justice Dalam Penegakan Hukum Oleh Polri Demi Mewujudkan Keadilan Substantif*, Penerbit Universitas Tri Sakti, Jakarta, p. 3.

<sup>9</sup> Satjipto Rahardjo, (2009), *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Publishing, Semarang, p. 26.

<sup>10</sup>Syaiful Bakhri, (2009), *Pidana Denda Dan Korupsi*, Total Media, Yogyakarta, p. 129.

body which is the foundation of hope for seeking justice and is the best way to resolve all cases in a state of law.<sup>11</sup>

The development of crime as described above, the law occupies an important position to overcome the problem of this crime. Legal instruments are needed to resolve conflicts or crimes that exist in society. One of the efforts to prevent and control crime is to use criminal law with criminal sanctions.<sup>12</sup>

In Indonesia, the law is seen as the commander of the law against perpetrators of criminal acts. One of the criminal acts is beating. The crime of beatings lately has happened a lot because of actions from one person to another outside the normal limits. The crime that often occurs is beatings which are regulated in the criminal law, namely Article 170 of the Criminal Code. Usually the crime of beating is carried out by more than one perpetrator and it is planned to use tools such as blocks, wood or other sharp weapons.<sup>13</sup>

Violence committed by a person either jointly or alone against people or goods is increasing and disturbing the community and law enforcement officials. The Criminal Code Book II Chapter V regulates crimes against public order contained in Articles 153-181. In Article 170 paragraph (1) of the Criminal Code, it is stated that: "Whoever in public, together commits violence against people or goods ..." can be seen in the article has elements that provide limits to be able to ensnare someone who commit violent crimes.

Restorative Justice is the settlement of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just solution through peace by emphasizing re-election to its original state.<sup>14</sup>

The handling of criminal acts based on Restorative justice must meet general and specific requirements. General requirements apply to the activities of carrying out the Criminal Investigation function, investigation, or investigation, while special requirements only apply to criminal acts based on Restorative justice in investigation or investigation activities.

Another area of concern is where the victim or the complainant wants the goods or losses suffered by the violator to be returned or reported to have occurred to make the victim or the complainant think the case is over. It is different from the process or stages in the investigation where the police do not remove the compensation for the crime. Therefore, the application of Restorative justice in the investigation process is very necessary in accelerating the resolution of problems / disputes and the most important thing is achieving justice for the plaintiffs / disputes.<sup>15</sup>

There are three basic principles that make up restorative justice, namely:

- Remedy for those who have suffered losses due to crime;

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<sup>11</sup> Ibid, p. 56

<sup>12</sup>Muladi and Barda Nawawi, (1998), *Teori-teori dan Kebijakan Pidana*, Alumni, Bandung, p. 148

<sup>13</sup>Leden Marpaung, (1992), *Proses Penanganan Perkara Pidana*, Sinar Grafika, Jakarta, p. 21.

<sup>14</sup>Article 1 letter 3 Police Regulation No.8/2021

<sup>15</sup>Ragil Tri Wibowo and Akhmad Khisni, 2018, *Restorative Justice in Application for Crime Investigation on Property*, Jurnal Daulat Hukum Volume 1 No. 2 ISSN: 2614-560X [10.30659/jdh.1.2.565 - 570](https://doi.org/10.30659/jdh.1.2.565-570)

- Perpetrators have the opportunity to be involved in the restoration of the state; and
- Courts act to maintain public order and society acts to keep peace fair.

From these three basic principles, it is known that restorative justice will provide feedback for perpetrators, victims and people involved in it. The restorative justice also allows imprisonment if the sanctions are the demands of the victims and it is true that they consider that by carrying out these sanctions the perpetrators are considered to be accountable for their actions.<sup>16</sup>

The process of investigation by investigators against the crime of beating is carried out by the presence of reports or complaints from members of the public about the occurrence of a criminal act in the form of a criminal act of beating. Furthermore, by the investigator, it is made in the registration of the police report and after it is equipped with a task order by the leadership, the investigator who is ordered to investigate the report or complaint against the crime of beatings shall identify the report. Identification of the report is carried out to find out whether or not the crime of beatings occurred, by taking the First action at the scene of the case, taking fingerprints and other identities, seeking information and evidence.<sup>17</sup>

Furthermore, after collecting the existing evidence as well as witnesses, the investigator can arrest someone suspected of being the perpetrator and proceed to court so that the perpetrator can be punished according to the act he did.

The Implementation of Restorative Justice in Handling Cases of the Crime of Beating is repairing social damage caused by perpetrators, developing remedies for victims and the community, and returning perpetrators to society. This effort requires the cooperation of all parties and law enforcement officials.

### **3.2. The Constraints which Arise in Implementation of Restorative Justice in Handling Cases of Beating Crime and Solutions**

The National Police Legal System is a law enforcement agency, particularly in the field of criminal law. The police act as the foremost law enforcers who directly come into contact with the community as regulated in the Criminal Procedure Code in terms of Investigation and Investigation. The criminal justice process begins with the stages of investigation and investigation which then leads to the prosecution stage, this is carried out by the public prosecutor. The Criminal Procedure Code contains the authority of the public prosecutor to receive and examine investigative case files from investigators or assistant investigators. After receiving and examining the case file, the prosecutor is obliged to hold a pre-prosecution if there are deficiencies in the investigation by the investigator.<sup>18</sup>

Law as an institution that is most attached to human life, which always associates with others or the science of law, is managed by the faculty of law or other educational institutions that agree. In studying law, it cannot be separated from other sciences because it will always be related to human behavior in society

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<sup>16</sup>Yudi Hendaro and Umar Ma'ruf, 2018, *Diversion In Children Criminal Justice System Through Restorative Justice*, Jurnal Daulat Hukum Volume 1 Issue 2, ISSN: 2614-560X

<sup>17</sup> Hanafiah, A. (2000). "Buku Pedoman Pelaksanaan Tugas Polri dilapangan", Kalemdiklat, Jakarta

<sup>18</sup>Mubarak, R. & Trisna, W. (2012), *Buku ajar hukum kejahatan anak*", Medan Area University Pres, Medan.



(behavioral sciences) and social sciences (social sciences). This ability must and will be obtained gradually if it is always realized that the law is always related to society.<sup>19</sup>

The concept of a restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and the victims themselves.<sup>20</sup> Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator.<sup>21</sup> The victim can convey about the loss suffered and the perpetrator is given the opportunity to make amends, through compensation mechanisms, peace, social work, or other agreements.<sup>22</sup> Efforts to resolve problems outside the court carried out by perpetrators of criminal acts (his family) and victims of criminal acts (his family) are later expected to be the basis for consideration in the process of examining criminals in court in imposing criminal sanctions by judges/assessments of judges. Justice is a consideration in the criminal law implementation system and is included in the new Criminal Law Legislation (KUHP), especially for complaint criminal offenses (Klacht delict) so that it focuses on the conditions for creating justice and balancing legal treatment for perpetrators of criminal acts and victims of criminal acts can be achieved properly, without having to always use criminal sanctions (imprisonment) in the final settlement. Due to the deterrent effect as the ultimate goal of sentencing (imprisonment) the perpetrators of criminal acts are no longer achieving their targets as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment but also through the application of restorative justice.<sup>23</sup>

The ultimate goal of this restorative justice concept is to eliminate stigma and return criminals to normal human beings, criminals can realize their mistakes, so they don't repeat their actions, do not cause revenge because the perpetrator has been forgiven by the victim, victims get compensation quickly, empower the community in overcoming crime and, reintegration of criminals into society.<sup>24</sup>

This case is stopped at the investigation level or is not delegated to the public prosecutor by the police. The police have the authority to stop investigations as

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<sup>19</sup>Sukarmi, (2013), *Psikologi Umum*, Unissula Press, Semarang, p.8

<sup>20</sup>Kristin Reimer. 2011, *An Exploration Of The Implementation Of Restorative Justice In An Ontario Public School*. *Canadian Journal of Educational Administration and Policy*, Issue #119, March 11, by CJEAP and the author(s), p. 4

<sup>21</sup>UNODC, (2006), *Handbook on Restorative Justice Programmes. Criminal Justice Handbook Series*, Vienna: UN New York, 2006, p. 5

<sup>22</sup>Kristin Reimer, Op.cit, p. 6

<sup>23</sup>Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, 2017, *Implementasi Restoratif / Restorative Justice Dalam Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Polres Rembang* *Jurnal Hukum Khaira Ummah* Vol. 12. No. 4

<sup>24</sup>Ibnu Suka, Gunarto, Umar Ma'ruf, 2018, *Peran Dan Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan Dan Kemanfaatan Masyarakat*, *Jurnal Hukum Khaira Ummah* Vol. 13. No. 1

regulated in the Criminal Procedure Code for three reasons, namely: 1) The case being handled is not a criminal act; 2) Not enough evidence; 3) Terminated by law.

The obstacles that arise in the implementation of restorative justice in handling cases of the crime of beatings are: Lack of participation from the community or the environment in finding a solution to a case so that they immediately report it to the police; The case handled by the police has been sent SPDP (Notification of the Commencement of Investigation) to the Public Prosecutor's Office. The existence of a third party interest in the settlement of a case at the investigation level.

Efforts to overcome the obstacles that arise in the implementation of restorative justice in handling cases of the crime of beatings are: Entering cases that have been resolved by the community into the media with twisted words or asking the police leadership (*Kapolda, Kapolres*) both through the media and letters or communication tools. A case that is reported by the public or a public complaint report must be completely resolved by the Police or the case must be transferred to the Prosecutor's Office.

#### 4. Conclusion

The Implementation of Restorative Justice in Handling Cases of the Crime of Beating is repairing social damage caused by perpetrators, developing remedies for victims and the community, and returning perpetrators to society. This effort requires the cooperation of all parties and law enforcement officials. Constraints that arise: Lack of participation from the community or the environment in finding a solution to a case so that they immediately report it to the police; The case handled by the police has been sent SPDP (Notification of the Commencement of Investigation) to the Public Prosecutor's Office. The existence of a third party interest in the settlement of a case at the investigation level. Efforts to overcome the obstacles that arise: Entering cases that have been resolved by the community into the media with twisted words or asking the police leadership (*Kapolda, Kapolres*) either through the media or letters or other means of communication. A case that is reported by the public or a public complaint report must be completely resolved by the Police or the case must be transferred to the Prosecutor's Office.

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