

Manifestation of Restorative Justice by the Police in the Process of Investigating Minor Crimes

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Abstract: *The purpose of this research is to know and analyze the police scheme in implementing restorative justice in the investigation of minor crimes. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. The public generally considers that it is very unfair if the perpetrators of minor crimes such as minor theft must be given a prison sentence, because it is not comparable to the value of the stolen goods. Minor crimes should be resolved quickly and simply but still reflect legal certainty and justice. So that legal settlement also requires utility value, and the challenges and challenges that exist today meet the objectives of the law to achieve fair and beneficial legal certainty, to carry out a possible criminal investigation process. Restorative justice as one of the efforts that can be used as a solution in resolving criminal cases. In the Police environment, the application of restorative justice both inside and outside the investigation process in resolving criminal cases is seen/understood to be carried out based on the discretionary authority of the police as regulated in Law Number 2 of 2002 concerning the Indonesian National Police (POLRI Law).*

Keywords: *Analyzing; Criminal; Investigation.*

1. Introduction

In the Police environment, the implementation of restorative justice both inside and outside the investigation process in resolving criminal cases is seen/understood to be carried out based on the police's discretionary authority as regulated in Law Number 2 of 2002 concerning the Indonesian National Police (POLRI Law). Based on the provisions of Article 18 of the Indonesian National Police Law, police officers have discretionary authority. The provisions of Article 18 emphasize that in the public interest, officials of the Indonesian National Police

in carrying out their duties and authorities can act according to their own judgment.¹

In relation to the implementation of restorative justice in resolving various criminal acts within the Police, the Police have issued various police regulations, such as the Chief of Police Regulation (Perkap) Number 3 of 2015 concerning Community Policing, Perkap Number 6 of 2019 concerning Criminal Investigation, and the Chief of Police Circular Letter Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, which is strengthened by the Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The presence of Police Regulation Number 8 of 2021 strengthens the position of Circular Letter Number: SE/8/VII/2018 and Circular Letter Number: SE/2/II/2021, where the Circular Letter is only a guideline or technical instruction (*juknis*) which is binding internally, not externally. In addition, the existence of Police Regulation Number 8 of 2021 shows a shift in the paradigm of punishment from the conventional model to restorative justice as a modern framework of thinking that is useful for responding to a criminal act for law enforcement officers, especially investigators.²

As time progresses, crimes in society also progress. As we all know, currently the law historically moves faster and sharper when it affects the smaller and challenges the greater interests. However, if a case that involves or is suspected of being the perpetrator is a big person and power, then the law seems paralyzed and blunt. Such a thing will certainly cause a negative effect that is not balanced with the atmosphere and life that has good values so that accountability is needed from the perpetrator who created the imbalance. In community life, this imbalance can arise due to criminal acts committed by the suspect including minor crimes. Many cases of minor crimes (*Tipiring*) are regulated in the Criminal Code (hereinafter referred to as the Criminal Code).

Regarding minor criminal cases regulated in the Criminal Code, such as minor theft (Article 364 of the Criminal Code), minor embezzlement (Article 373 of the Criminal Code), minor fraud (Article 379 of the Criminal Code), minor fraud by sellers (Article 384 of the Criminal Code), minor vandalism (Article 407 paragraph 1 of the Criminal Code) and minor receiving (Article 482 of the Criminal Code) which are often not applied by law enforcement officers so as not to reflect a sense of justice for the perpetrators of the crime. As with the crime of theft with a small value of goods that are tried in court, it has received quite a lot of attention from various groups in society.

Handling of minor criminal cases is a consequence of the application of the principle of legality, which has given criminal law its own unique characteristics,

¹Rahman Amin et al., (2020), Implementation of Restorative Justice in Resolving Serious Traffic Accident Cases at the Central Jakarta Metro Police Resort, *Krtha Bhayangkara*, 14 (1), p 3

²Eva Achjani Zulfa, (2011), Shifting the Paradigm of Criminal Procedure, *Lubuk Agung, Bandung*, p 65

namely those related to sanctions, so that criminal law has a harsh and cruel nature.³The positivistic nature of the handling of these cases still leaves problems that occur in society. The core of the causes of the problems/conflicts that arise are never completely resolved. The positivistic nature of the handling of these cases also results in all cases ending up in court. The criminal penalty of revocation of liberty (imprisonment/confinement) is one type of popular criminal sanction. The application of this prison sanction ultimately causes correctional institutions (prisons) to become over capacity.

In connection with this topic, to research it further and include it in legal research with the purpose of the research is knowing and analyzing the Police scheme in implementing restorative justice in the investigation of minor crimes.

2. Research Methods

The normative legal research method uses an approach by studying legislation, theories and concepts related to the problems to be studied. Determining the sample is a process of selecting a representative part of the entire population. This study does not use samples as research materials but uses literature studies as data sources. The use of secondary data as raw data is used as well as the addition of expert opinions as additional data so that it is processed as a research result.

3. Results and Discussion

3.1. Restorative Justice

According to Howard Zehr, viewed through a restorative justice lens, "crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance."⁴

According to Kevin I. Minor and JT Morrison, Restorative Justice may be defined as a response to criminal behavior that seeks to restore the losses suffered by crime victims and facilitate peace and tranquility among opposing parties.⁵

3.2. Minor Crimes

The definition of a Minor Crime will be very difficult to find in the Criminal Code. A definition of a Minor Crime that is quite understandable can be found in the Criminal Procedure Code as a formal criminal law provision of the Criminal Code. Article 205 paragraph (1) of the Criminal Procedure Code which regulates the provisions for the examination of fast procedures states that:

"Those examined according to the Minor Crimes examination procedure are cases that are threatened with imprisonment or detention for a maximum of three

³MA Zaidan, (2015). Towards Criminal Law Reform. Jakarta: Sinar Grafika, p 10

⁴Howard Zehr. (1990), Changing lenses: A New Focus for Crime and Justice, Waterloo: Herald Press, p 181.

⁵Kevin Minor and JT Morrison. (1996), A Theoretical Study and Critique of Restorative Justice, in Burt Galaway and Joe Hudson, eds., Restorative Justice: International Perspectives, (Monsey, New York: Ceimical Justice-Press and Kugler Publications, p 117

months and/or a fine of up to seven thousand five hundred rupiah and minor insults except those specified in Paragraph 2 of this Section."

From the text of the Article, it can be concluded regarding the definition of Minor Crimes, namely a case that is threatened with imprisonment or confinement for a maximum of three months and or a fine of up to seven thousand five hundred rupiah. Minor Insult cases, even though they are threatened with a heavier sentence than three months, namely a sentence of four months, are considered to be included in the category of Minor Crimes, this is because their nature is seen from their relatively mild nature.

The interesting thing about Minor Crimes is that it includes minor insults which are located in Book II of the Criminal Code on crimes. Minor insults in doctrine are one of the groups of crimes called minor crimes (*lichte misdrijven*) contained in Book II of the Criminal Code.

Judging from the systematics of the Criminal Code, criminal acts only consist of crimes (*misdrijven*) and violations (*overtredingen*). However, by studying the articles in the Criminal Code, it turns out that in Book II on crimes there are also a number of criminal acts that can be grouped as minor crimes (*lichte misdrijven*). These minor crimes are not placed in a separate chapter but are spread across various chapters in Book II of the Criminal Code. The articles that constitute minor crimes are as follows: Article 302 paragraph (1) concerning Minor animal abuse; Article 352 paragraph (1) concerning Minor abuse; Article 364 concerning Minor theft; Article 373 concerning Minor embezzlement; Article 379 concerning Minor fraud; Article 384 concerning fraud in sales; Article 407 paragraph (1) concerning destruction of goods; Article 482 concerning Minor receiving; and Article 315 concerning Minor insults.⁶

3.3. Police Scheme in Implementing Restorative Justice in Minor Criminal Investigations

In law enforcement efforts that can be implemented against the Police institution is in cases of minor crimes where one way to realize restorative justice in minor crimes is through alternative dispute resolution (ADR) which includes penal mediation issued by the Chief of Police. This is stated in the Letter of the Chief of Police Number Pol B / 3022 / XII / 2009 / SDEOPS concerning Handling cases through Alternative Dispute Resolution (ADR), Regulation of the Chief of Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties and Circular Letter of the Chief of Police Number: SE / 8 / VII / 2018

⁶Alvian Solar, (2012), The Nature and Procedures for Examining Minor Crimes, *Lex Crimen*, I (1), January March, p 55

concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases.⁷

In the Regulation of the Chief of Police Number 7 of 2008, in Article 14 letter f it is stipulated that problem solving will be more effective in neutralizing problems other than the judicial or litigation path by implementing the concept of ADR, for example, such as peace at the police level. Where one type of ADR through peace efforts in question is penal mediation. In the Letter of the Chief of Police Number Pol: B / 3022 / XII / 2009 / SDEOPS, this is an effort to follow up on ADR in Article 14 letter f of the previous Regulation of the Chief of Police. This Letter of the Chief of Police further orders the Police apparatus so that cases attempted through ADR are cases that are included in minor crimes. Until finally, the Police issued a Circular Letter of the Chief of Police No. SE / 8 / VII / 2018. In the Circular Letter of the Chief of Police, the core of the settlement is where both parties, both the victim and the perpetrator, agree to resolve minor crimes by implementing peace and the perpetrator is willing to be responsible for the losses caused to the victim voluntarily and a letter of termination of investigation or investigation into the case itself will be issued because restorative justice has been signed by the Police.⁸

In the Chief of Police Regulation Number 6 of 2019 concerning Criminal Investigation, it is also reaffirmed in Article 1 point 1 that the Indonesian National Police has an essential role in maintaining public security and order, enforcing the law and providing protection, care, and services to the community. Thus, in this case it can be observed that the role of the Police in society is very important, both as a protector for the community, maintaining security and order, realizing legal certainty, and presenting a sense of justice for the community in order to create a harmonious social order between one another. Then, in Article 1 point 27 of the Chief of Police Regulation Number 6 of 2019 concerning Criminal Investigation, it is re-explained regarding restorative justice that the resolution of criminal cases through restorative justice is a resolution that involves perpetrators of criminal acts, victims and related parties, with the main goal being to realize justice for all parties.

Meanwhile, regarding the investigation process and mechanism by applying the principle of restorative justice in the Indonesian National Police, it is also regulated and described in the Chief of Police Regulation Number 6 of 2019 concerning Criminal Investigation and the Chief of Police Circular Number 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. Regarding the investigation process with the principle of restorative justice, it is stated in Article 12 of the Chief of Police Regulation Number 6 of 2019 that a

⁷AA Ngurah Bagus Krishna Wirajaya, et al. (2022), Minor Criminal Offenses Through Restorative Justice as a Form of Criminal Law Reform Efforts, *Journal of Legal Construction*, 3 (3), September, p 548

⁸PH Sihotang, (2020), Settlement of Minor Criminal Offenses According to the Chief of Police Regulation in Realizing Restorative Justice (Study at the Deli Serdang Police). *Iuris Studia: Journal of Legal Studies*, 1 (6), p 111

criminal act whose resolution is through the principle of restorative justice must meet several material requirements, including:

- 1) Criminal acts that occur in society do not cause prolonged conflict.
- 2) There is a statement from the parties involved to waive the right to sue before the law.
- 3) The crime committed by the perpetrator is not a serious crime or is a minor crime.
- 4) Criminal acts that can be resolved through the principle of restorative justice are criminal acts that are still under investigation (a series of actions to search for and discover events that are suspected to be criminal acts to determine whether or not an investigation can be carried out at the next stage).
- 5) Criminal acts that will be resolved through the principle of restorative justice are criminal acts for which a Notice of Commencement of Investigation (SPDP) has not been sent to the Public Prosecutor during the process.⁹

The formal requirements for resolving criminal acts through the application of the principle of restorative justice are also explained in Article 12 of the Chief of Police Regulation Number 6 of 2019 that:

- 1) There is a Letter of Request for Peace from both parties, namely the reporter and the reported party.
- 2) The existence of a Peace Letter and Settlement of Disputes between the disputing parties.
- 3) The existence of Additional Examination Minutes of the parties involved in the case after the criminal case has been resolved through the principle of restorative justice.
- 4) There is a recommendation from a special case title that approves the resolution of criminal cases through restorative justice.
- 5) The perpetrator of the crime truly carries out all forms of responsibility for the crime that has been committed voluntarily.
- 6) Criminal acts that can be resolved through restorative justice are criminal acts that do not result in human casualties.¹⁰

Meanwhile, regarding the complete mechanism for implementing restorative justice in resolving criminal cases, it is contained in the SE Kapolri Number 8 of 2018. The mechanisms for implementing restorative justice include:

⁹Didik Hariyanto, (2023), *The Application Of Restorative Justice In Criminal Case Settlement At The Investigation Level At The Police Satrescriton Of The Banyuwangi City Police Resort, Janaloka*, 02 (01), p 122

¹⁰Ibid

- 1) After receiving a peace request from both parties (the complainant and the accused) signed on a stamp, the police will ensure that the formal requirements for resolving the criminal case through restorative justice have been met.
- 2) If the formal requirements have been met, the peace request will be submitted to the investigator's superior (Kabareskrim or Kapolres or Kapolda) to obtain approval.
- 3) After the peace request has been approved by the investigator's superior (Kabareskrim or Kapolres or Kapolda) a time will be set for the signing of the peace statement, and all parties involved will be involved.
- 4) A special case title was held with the reporter, the reported party, and representatives of community leaders appointed by the investigator.
- 5) Issuance of a Letter of Order to Terminate Investigation or Prosecution and a Letter of Decision to Terminate Investigation or Prosecution on the grounds of resolving criminal cases through restorative justice.
- 6) Then, there is a recording in the new register book B-19 as a settlement of criminal cases through restorative justice.

The implementation of restorative justice by the Police adheres to the rules that have been explained. In the current practice of criminal law enforcement, especially in the Police, in order to accommodate the mechanism for implementing restorative justice, under the leadership of the Chief of Police Listyo Sigit Prabowo, Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice was born. The handling based on Restorative Justice is exempted for disturbing crimes, acts of terrorism, state security, corruption, repeat crimes and crimes against people's lives. The presence of Perpol No. 8 of 2021 concerning Restorative Justice provides space for members of the Police in the Criminal Investigation Unit to resolve cases faster and provide normative guidelines in acting to resolve criminal cases using the restorative justice method. In terms of handling cases as determined by Perpol No. 8 of 2021, it can be seen that when there is a complaint report related to a crime, that is when restorative justice is attempted. However, in its implementation, restorative justice is carried out in all initial stages of criminal proceedings, from investigation to investigation.

The implementation of restorative justice in handling criminal acts in order to realize fair law enforcement implemented based on Police Regulation Number 8 of 2021 is highly dependent on the disputing parties, and what must be prioritized is the resolution of all parties involved by prioritizing the agreement of the parties (perpetrators, victims and their respective families) by involving a third party. The success of the implementation of Police Regulation Number 8 of 2021 is highly dependent on the mastery, understanding, and interpretation or correct interpretation of the Polri members regarding the basic concepts of restorative justice.

The lack of understanding of Polri members, especially those in charge of the investigation function or those carrying out the function of community development in implementing restorative justice based on the basic concepts of real restorative justice, and/or distinguishing restorative justice from various forms of dispute resolution or other cases or with the paradigm of retributive justice, will have a major impact on the implementation of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. In this regard, it is necessary to have a common perception, understanding, and meaning of restorative justice itself from all elements of law enforcement, and supervisors of law enforcement so as not to deviate from the initial objectives of restorative justice, and to eliminate the subjectivity of law enforcement officers so as not to increase the subjectivity or bias of law enforcers, especially investigators as implementers at the procedural level which will ultimately cause unrest or turmoil in society and give rise to new problems.

Police discretion can indirectly be used in the application of the mediation process in handling cases between the two parties, namely the perpetrator and the victim of a criminal act to resolve legal problems properly and to achieve justice and benefits which are part of the purpose of the law. So in this case the police can become heroes for their nation, by making the right choice in carrying out their duties and authorities as a police profession.

The discretionary authority held by the Police as a state institution as a public official in law enforcement is no longer foreign, but when an investigator handles a criminal case process, sometimes a Police Investigator is faced with problems that are considered light, less effective and efficient for investigation until it is transferred (P21) to the Public Prosecutor of the Prosecutor's Office, and then to the Court stage to be decided by the Judge. Given this, the benefit of this Police discretion is to make the implementation of policies based on professionalism in working from the Police who are required to work optimally in providing service, guidance and protection to the wider community in general and enforcing the law in particular from the Police more effective and efficient.¹¹

Through Police Regulation Number 8 of 2021, the National Police are encouraged not to hesitate in making decisions regarding the resolution of criminal cases in accordance with the criteria set out in the regulation by prioritizing the restorative justice approach. The main purpose of implementing this approach is as a solution to reduce the density of Correctional Institutions in several areas. What is currently happening is that most Correctional Institutions are filled with cases that are actually minor, such as theft, which should not need to go to court.

For this reason, the restorative justice approach is present in the midst of the investigation and inquiry process with the hope that case resolution through restorative justice can overcome the overcrowding of correctional institutions

¹¹H. Arief & N. Ambarsari, (2018). Application of Restorative Justice Principles in the Criminal Justice System in Indonesia. *Al-'Adl*, 10 (2), p 182

while still paying attention to justice for both parties in a balanced manner in accordance with Police Regulation Number 8 of 2021. The application of the Restorative Justice Principle in the Investigation Process can be applied to all types of criminal acts in the articles in the new Criminal Code as long as they meet the requirements stipulated in Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice by emphasizing restoration to the original state and balance of protection and interests of victims which is a legal need of society.¹²

4. Conclusion

The investigation process and mechanism by applying the principle of restorative justice in the Indonesian National Police is also regulated and described in the Chief of Police Regulation Number 6 of 2019 and the Chief of Police Circular Number 8 of 2018. Regarding the investigation process with the principle of restorative justice, it is stated in Article 12 of the Chief of Police Regulation Number 6 of 2019 that a crime that is resolved through the principle of restorative justice must meet several material requirements, including (1) The crime that occurs in society does not cause prolonged conflict. (2) There is a statement from the parties involved to waive the right to sue before the law. (3) The crime committed by the perpetrator is not a serious crime or is a minor crime. (4) Crimes that can be resolved through the principle of restorative justice are crimes that are still under investigation (a series of actions to search for and find events that are suspected of being a crime to determine whether or not an investigation can be carried out at the next stage). (5) Criminal acts that will be resolved through the principle of restorative justice are criminal acts for which a Notice of Commencement of Investigation (SPDP) has not been sent to the Public Prosecutor during the process.

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