

Investigation of Criminal Acts of Theft Based on Restorative Justice

Andi Dwisantosa¹⁾ & Umar Ma'ruf²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: andi.dwisant2@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: UmarMa'ruf.std@unissula.ac.id

Abstract: *This study aims to determine and analyze the investigation of the crime of theft based on restorative justice in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police, the reasons for the investigation based on restorative justice, as well as the obstacles and solutions. This study uses a sociological legal approach method with the research specification being descriptive analytical. The data used are primary data and secondary data, while the data collection methods include literature studies and documentary studies. The data analysis method uses qualitative analysis. The theories used are restorative justice theory, law enforcement theory and progressive legal theory. Investigation of the crime of theft based on restorative justice in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police has been carried out in accordance with the Criminal Procedure Code and Police Regulation Number 8 of 2021. The reason for the investigation of the crime of theft based on restorative justice is because restorative justice can provide a more humane, fair, and solution-oriented alternative compared to the retributive approach. Obstacles in the investigation of the crime of theft based on restorative justice are the limitations of the law, the victim does not want restorative justice, there is no peace agreement, passive law enforcement officers, and lack of support from some of the community.*

Keywords: *Investigation; Justice; Restorative.*

1. Introduction

The Republic of Indonesia is a country of law, this is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945). Thus, all forms of decisions, actions of state apparatus, all attitudes, behavior and actions including those carried out by citizens must have legal legitimacy.¹As a country based on law, Indonesia must make efforts to combat crimes or criminal acts that occur in society.²Indonesia must also uphold the law and human dignity in relation to law and government, and is obliged to enforce the law

¹Muhammad Adiel Aristo and Umar Ma'ruf, Criminal Law Police Against Actor of Criminal Performance Persecution, Jurnal Daulat Hukum, Volume 3 Number 1, 2020, p. 139.

²Alfi Nur Fata and Umar Ma'ruf, The Prosecutor's Authority In Criminal Law Enforcement With A Restorative Justice Approach, Khaira Ummah Law Journal, Vol 16, No 3, 2021, p. 1

Master of Law, UNISSULA

without exception based on the 5th principle of Pancasila, namely social justice for all Indonesian people.³

Law lives and develops according to the values of its society because it is rooted, motivating, and based on society. To maintain order, law is made by humans, legal institutions are formed, both in substance, institutions, and culture, which are a way to achieve shared prosperity.⁴In fact, the pattern of people's lives is influenced by developments in people's lives which sometimes give rise to differences in prosperity, thus causing the emergence of various forms of crime.⁵

Soerjono Soekanto stated that crime is a social phenomenon that always exists in society throughout the world. Because crime cannot be eliminated unless its intensity and quality are reduced, human efforts to eliminate it will never be complete.⁶One type of crime that is still rampant in society is the crime of theft. In positive law, the crime of theft is regulated in the crime of theft is regulated in Articles 262 to 367 of the Criminal Code.⁷Theft in its principal form is regulated in Article 362 of the Criminal Code which states that anyone who takes something that is wholly or partly owned by another person with the intention of owning it unlawfully, is threatened with theft with a maximum imprisonment of five years or a maximum fine of sixty rupiah. While in Articles 363 and 365 of the Criminal Code it is theft in a certain way or under certain circumstances with a criminal penalty of more than 5 years in prison. As for minor theft in the Criminal Code is regulated in Article 364 which states that the acts described in Article 362 and Article 363 point 4, as well as the acts described in Article 363 point 5, if not committed in a house or closed yard where there is a house, if the value of the stolen goods is not more than twenty-five rupiah, is subject to, for minor theft, a maximum imprisonment of three months or a maximum fine of sixty rupiah.

Law enforcement through litigation by giving imprisonment or prison sentences is expected to provide a deterrent effect for perpetrators of criminal acts. However, the litigation approach when causing many problems such as the accumulation of cases, overloaded correctional institutions, and the rights of victims are not considered. Restorative justice is a settlement of criminal cases that 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.⁸ This is because in criminal acts of theft, the victim is the party who always suffers a loss.⁹

³Lailatul Nur Hasanah and Sri Endah Wahyuningish, The Application of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State Court of Pati), *Journal of Law Daulat*, Volume 2 No. 4, December 2019, p. 610

⁴Pujijono, 2007, *Collection of Criminal Law Writings*, Mandar Maju, Bandung, p. 66

⁵Heri Sumiarso, 2016, *Law Enforcement Process Against Perpetrators of Violent Theft at Semarang Police*, Thesis, Unissula, Semarang, p.1.

⁶Soerjono Soekanto, 1992, *Crime in Society*, Prisma, Jakarta, p. 5

⁷Guruh Bagus Eddy Suryana, The Implementation of Restorative Justice in Handling the Crime of Theft, *Ratio Legis Journal*, Volume 1 No. 4, December 2022, p. 703.

⁸Anita Indah Setyaningrum and Umar Ma'ruf, Diversion as a Form of Settlement of Child Criminal Cases Through a Restorative Justice Approach by Central Java Police Investigators, *Khaira Ummah Law Journal*, Vol. 12. No. 4 December 2017, p. 976

⁹Rully Trie Prasetyo, Umar Ma'ruf, Anis Mashdurohatun, Corporate Crimes in the Perspective of Criminal Law Formulation Policy, *Khaira Ummah Law Journal*, Vol. 12. No. 4 December 2017. p.730.

In response to these conditions, at the investigation level, the Indonesian National Police has issued the Republic of Indonesia National Police Regulation (Perpol) Number 8 of 2021 concerning Handling of Criminal Offenses Based on Restorative Justice. The crime of theft is still rampant in Indonesia, this is according to data collected by the National Crime Information Center (Pusiknas) of the Indonesian National Police, which noted that in 2024 until mid-July there were 51,312 cases of theft, both aggravated theft and ordinary theft.¹⁰ As for the theft cases in the jurisdiction of the Banyumas Police that occurred in 2023, there were 168 cases, and 162 cases have been resolved, with details of 156 P21 cases and 6 cases resolved based on restorative justice.

In practice, resolving criminal acts of theft based on restorative justice is not easy to implement. This is because it is constrained by the unfulfilled formal and material requirements for resolving cases based on restorative justice. This study aims to determine and analyze the investigation of criminal acts of theft based on restorative justice in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police, the reasons for the investigation of criminal acts of theft based on restorative justice, and obstacles in the investigation of criminal acts of theft based on restorative justice and their solutions.

2. Research methods

This research uses a sociological legal approach method, namely research that focuses on normative legal science, and observes how reactions and interactions occur between these normative systems in society.¹¹ The research specification is descriptive analytical. The type of data used is primary data and secondary data with data collection methods are field studies and literature studies. The data analysis method uses qualitative analysis.

3. Results and Discussion

3.1. Investigation of Criminal Acts of Theft Based on Restorative Justice in Case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police

Based on data obtained from the Banyumas Police Criminal Investigation Unit, the resolution of criminal acts of theft based on restorative justice at the investigation stage can be seen in the following table:

Data Table of Restorative Justice-Based Theft Crime Settlement at Banyumas Police Department 2022 to 2024

No	Year	Number of cases		Completion	
		Incident	Completed	P21	RJ
1	2022	135	134	123	11
2	2023	168	162	156	6
3	2024 to June	52	36	31	5

¹⁰Ajeng Dwita Ayuningtyas, Theft is the Most Massive Crime in Indonesia, <https://goodstats.id/article>, accessed August 10, 2024.

¹¹Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Pustaka Pelajara, Yogyakarta, p. 47.

Master of Law, UNISSULA

Source: Criminal Investigation Unit of Banyumas Police, 2024

In the crime of theft in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police based on the results of an interview with Aiptu Wisnu Eko Prasetyo, the case above was not continued to the trial process, but was resolved based on restorative justice. The settlement of the case based on restorative justice was due to a request for peace from the perpetrator and the victim for the settlement of the case based on restorative justice.¹²

In addition to fulfilling material requirements, the settlement of criminal acts of theft must also fulfill formal requirements as regulated in Article 6 paragraph (1) of Police Regulation Number 8 of 2021, namely:¹³

1. There is peace from both parties (in this case the victim and the perpetrator of the crime)
2. The existence of fulfillment of the victim's rights and the perpetrator's responsibility (in the crime of theft, usually the return/compensation for stolen goods).

In the crime of theft in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police, the victim and the perpetrator have signed a Joint Agreement Letter, which was acknowledged by the local Village Head and the Head of Karang Taruna and witnessed by the local Hamlet Head, RW Head, Bhabinkamtimas, Babinsa, FKPM Head, and religious leaders. This is in accordance with the provisions of Article 6 paragraph (2) of Perpol Number 8 of 2021 which states that peace is evidenced by a peace agreement letter and signed by the parties. The points of the Joint Agreement Letter are as follows:

1. The perpetrator has admitted his mistake and promised not to repeat his actions, and the victim has forgiven the perpetrator's actions.
2. The perpetrator is willing to return and replace the losses experienced by the victim in the amount of IDR 8,000,000.
3. The perpetrators promised to be able to maintain order and security in the area around their residence and/or community environment.
4. The perpetrator and the victim have agreed to resolve the problem amicably and not continue to the legal process.
5. If in the future the perpetrator repeats his actions, he is willing to be prosecuted legally.

In this case, the perpetrator has also returned Rp. 8,000,000 to the victim as a refund of the money that had been taken by the perpetrator, which was witnessed by the local Hamlet Head. This is proven by the receipt which is attached to the case resolution file based on restorative justice. Thus, the formal requirements as stipulated in Article 6 of Perpol Number 8 of 2021 have been met, so that the case can be resolved based on restorative justice. This is in accordance with the provisions of Article 6 paragraph (3) of Perpol Number 8 of 2021. Fulfillment of the victim's rights and the perpetrator's responsibilities can be in the form of: a) returning goods; b) replacing losses.

¹²Results of an interview with Aiptu Wisnu Eko Prasetyo, as an investigator at the Banyumas Police Criminal Investigation Unit, November 15, 2024.

¹³Ibid.

Master of Law, UNISSULA

The procedure for resolving the crime of theft in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police based on restorative justice is as follows:¹⁴

1. The Peace Application Letter from both parties (the reporter and the reported party which has been signed on stamped paper is submitted to the investigator.
2. The application letter is received by the investigator, then submitted to the superior to obtain approval.
3. The Banyumas Police Chief as the superior approved the application letter and determined the time for signing the peace statement.
4. Conducting a conference to produce an agreement signed by the parties involved.
5. The investigator makes a Service Note to the Head of Unit/ Supervisor regarding the request for a special Case Title to terminate the case.
6. Implementation of Special Case Title attended by the Reporter/reporter's family, the reported/reported family, representatives of community leaders, Head of Criminal Investigation Unit, investigators, Internal supervisors from the legal function, the government if necessary. In the case title a mutual agreement is produced.
7. Preparation of administrative and document requirements
8. Issue a letter of order to stop the investigation/probe and a letter of determination to stop the investigation/probe on the grounds of restorative justice, which is approved by the Banyumas Police Chief.
9. Investigators recorded in the B-19 register book that restorative justice cases were counted as case settlements.

Based on the description above, it can be seen that the investigation into the crime of theft based on restorative justice in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police has complied with the Criminal Procedure Code and Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. Investigation into the crime of theft is carried out by prioritizing mediation efforts between the perpetrator, victim and the community to achieve a fair resolution of the case without ignoring legal principles such as respect for human rights and fulfillment of the rights of the parties in the legal process.

3.2. The Reason for Investigation into Criminal Acts of Theft is Based on Restorative Justice

The crime of theft is an act of taking another person's property, whether tangible or intangible, illegally and of course against the law.¹⁵In the crime of theft, the settlement of the case through the courts is actually less beneficial for the victim, because the victim only gets satisfaction from the punishment received by the perpetrator of the crime and only gets revenge. This happens for example when the defendant is sentenced to imprisonment and a fine, then the fine money is not immediately given to the victim, but is handed over to the

¹⁴Results of an interview with Aiptu Wisnu Eko Prasetyo, as an investigator at the Banyumas Police Criminal Investigation Unit, November 15, 2024.

¹⁵I Kadek Krisna Muliawan, Gde Made Swardhana, Criminal Acts of Ordinary Theft in the Perspective of Restorative Justice, Kertha Desa Journal, Vol. 11 No. 8 of 2023, p. 3202

Master of Law, UNISSULA

state, so that the victim remains the injured party, because the victim does not receive compensation.¹⁶

At present, the direction of criminal justice in Indonesia has shifted. The punishment system that previously emphasized the retributive and restitutive approach through the mechanism of retribution and compensation, has now shifted to a more humanistic punishment system, namely through the Restorative Justice approach. One of the causes of this paradigm shift is that the retributive and restitutive approaches have not proven effective in correcting perpetrators of law violations.¹⁷

Restorative justice is an approach that emphasizes restoration and justice for all parties involved in a crime, including victims, perpetrators, and the community. This approach promotes alternative punishments that are more rehabilitative and reintegrative, reducing detention and prioritizing behavioral improvements for prisoners. In addition, the restorative justice approach is an effort to overcome overcapacity and also includes alternative punishments such as community work, coaching, and training to allow perpetrators of criminal acts to get the opportunity to contribute positively to society.¹⁸ A restorative approach to the crime of theft is important because it can provide a more humane, fair and solution-oriented alternative compared to the traditional retributive approach.

The restorative approach aims to achieve holistic justice by considering all parties affected by the crime of theft, not just punishing the perpetrator. The restorative approach in the justice system aims to resolve legal conflicts in a more humane manner by prioritizing recovery for victims, perpetrators, and the community. This can be a solution to overcome the problem of case backlog and overcapacity of correctional institutions (prisons).

3.3. Obstacles in Investigation of Criminal Acts of Theft Based on Restorative Justice and Their Solutions

Obstacles in investigating criminal acts of theft based on restorative justice and their solutions at the Banyumas Police can be described in the following table:

No	Obstacle	Solution
1	Limitations of the law	Synchronization of laws and regulations related to the resolution of criminal acts based on restorative justice so that the aspect of legal certainty is fulfilled.
2	The victim does not want restorative justice to be carried out	Victims are given a deep understanding of the concept of restorative justice and its benefits where the perpetrator will

¹⁶Prayogo Kurnia, Resti Dian Luthviati, Restika Prahanela, Law Enforcement Through Ideal Restorative Justice as an Effort to Protect Witnesses and Victims, GEMA, Year XXVII/49/August 2014 - January 2015, p. 1055

¹⁷Abdul Rasyid Hendarto, Restorative Justice in Handling Overcrowded Prisons, <https://www.ditjenpas.go.id>, accessed November 20, 2024.

¹⁸Restorative Justice Becomes a Solution to Overcapacity in Prisons and Detention Centers, <https://emedia.dpr.go.id>, accessed November 20, 2024.

No	Obstacle	Solution
		compensate for the losses he has experienced.
3	There is no peace agreement	Proceed to prosecution stage
4	Passive law enforcement officers in the implementation of restorative justice	intensive specialized training on the concepts, benefits and practices of restorative justice
5	Lack of support from some communities	Education and understanding for the community, that restorative justice is an effort to restore victims so that they can receive their rights back by returning the losses they suffered.

4. Conclusion

The investigation into the crime of theft based on restorative justice in case Number LP/B/02/IV/2023/SPKT/Ajibarang Police/Banyumas Police/Central Java Police has been carried out in accordance with the Criminal Procedure Code and Police Regulation Number 8 of 2021. The reason for the investigation into the crime of theft based on restorative justice is because restorative justice can provide a more humane, fair, and solution-oriented alternative compared to the retributive approach and also as a solution to overcome the problem of case backlog and excess capacity of correctional institutions (Lapas), but there are still obstacles both internally and externally.

5. References

Journals:

- Alfi Nur Fata and Umar Ma'ruf, The Prosecutor's Authority In Criminal Law Enforcement With A Restorative Justice Approach, *Khaira Ummah Law Journal*, Vol 16, No 3, 2021
- Anita Indah Setyaningrum and Umar Ma'ruf, Diversion as a Form of Settlement of Child Criminal Cases Through a Restorative Justice Approach by Central Java Police Investigators, *Khaira Ummah Law Journal*, Vol. 12. No. 4 December 2017.
- Guruh Bagus Eddy Suryana, The Implementation of Restorative Justice in Handling the Crime of Theft, *Ratio Legis Journal*, Volume 1 No. 4, December 2022.
- I Kadek Krisna Muliawan, Gde Made Swardhana, Criminal Acts of Ordinary Theft in the Perspective of Restorative Justice, *Kertha Desa Journal*, Vol. 11 No. 8 of 2023.
- Lailatul Nur Hasanah and Sri Endah Wahyuningish, The Application of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State Court of Pati), *Journal of Law Daulat*, Volume 2 No. 4, December 2019.
- Muhammad Adiel Aristo and Umar Ma'ruf, Criminal Law Police Against Actor of Criminal Performance Persecution, *Jurnal Daulat Hukum*, Volume 3 Number 1, 2020.

Master of Law, UNISSULA

Prayogo Kurnia, Resti Dian Luthviati, Restika Prahanela, Law Enforcement Through Ideal Restorative Justice as an Effort to Protect Witnesses and Victims, GEMA, Year XXVII/49/August 2014 - January 2015.

Rully Trie Prasetyo, Umar Ma'ruf, Anis Mashdurohatun, Corporate Crimes in the Perspective of Criminal Law Formulation Policy, Khaira Ummah Law Journal, Vol. 12. No. 4 December 2017.

Books:

Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Pustaka Pelajara, Yogyakarta.

Pujiyono, 2007, Collection of Writings on Criminal Law, Mandar Maju, Bandung.

Soerjono Soekanto, 1992, Crime in Society, Prisma, Jakarta

Legislation:

Law Number 2 of 2002 concerning the Republic of Indonesia Police. Jakarta, 2002.

Law Number 8 of 1981 concerning Criminal Procedure Law.

Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations

Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation

The 1945 Constitution of the Republic of Indonesia

Internet:

Abdul Rasyid Hendarto, Restorative Justice in Handling Overcrowded Prisons, <https://www.ditjenpas.go.id>, accessed November 20, 2024.

Ajeng Dwita Ayuningtyas, Theft is the Most Massive Crime in Indonesia, <https://goodstats.id/article>, accessed August 10, 2024.

Heri Sumiarso, 2016, Law Enforcement Process Against Perpetrators of Violent Theft at Semarang Police, Thesis, Unissula, Semarang.

Restorative Justice Becomes a Solution to Overcapacity in Prisons and Detention Centers, <https://emedia.dpr.go.id>, accessed November 20, 2024.