

The Restorative Justice Policy in the Process of the Investigation of Theft Crime

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Abstract.

The purpose of this research is to find out and analyze the Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime With Violence. To find out and analyze the Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime with Violence in the Indonesian National Police. The method used by the researcher is normative legal approach and the specifications in this study are descriptive analytical. The sources and types of data in this study are secondary data obtained from library studies. Based on the results of the study that the restorative justice policy in the investigation process for perpetrators of criminal acts of theft with violence is carried out based on the National Police Chief Regulation Number 08 of 2021 concerning Handling of Crimes based on Restorative Justice. The National Police Chief Regulation Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice in Articles 5 and 6 is a material and formal requirement for criminal cases that can be carried out by restorative justice. These requirements have been implemented and applied by investigators and assistant investigators. Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime with Violence in the Indonesian National Police investigators are expected to be able to understand the scope of duties and authorities of the Police regarding Restorative justice. Knowing the issuance of the Circular Letter of the Chief of Police Number 08 of 2018 concerning the Application of Restorative justice in the Settlement of Criminal Cases. Able to translate and discuss the procedures carried out in handling cases with the completion of the Restorative justice method. Able to answer policies taken by investigators/assistant investigators to discuss Restorative justice issues.

Keywords: Crime; Investigation; Justice; Policy; Restorative.

1. Introduction

Humans are social beings and individual creatures. As social beings, humans interact with one another in group life. These groups can be in the form of small groups consisting of two people, community associations consisting of many people and the largest community in the form of a state.¹

Based on this, the relationship between humans who are individual creatures in the bonds of their social groups cannot run freely without norms or rules. The freedom of each individual must be controlled by these norms or rules to maintain the freedom of other individuals. The norms or rules are translated in the form of legal norms. Law is an order or prohibition to do something. The application of legal norms is to protect the community from various threats and crimes or can be used as a way of life and order of life.²

¹R. Soeroso, (2013), *Pengantar Ilmu Hukum*, Sinar Grafika, Jakarta, p. 297.

²<https://penerbitbukudeepublish.com/materi/norma-hukum/amp/>

It can be concluded that the applicable legal norms are made to limit the space for human movement. Not to limit it in a negative sense, but so that humans do not want to do what they want and must comply with the guidelines and regulations that apply to be safe, peaceful, and just. In the Big Indonesian Dictionary, justice which comes from the word fair has the meaning of being equal, impartial, impartial, siding with the right and not arbitrary. While justice is defined as a character or act or fair treatment³.

The role of law in matters of justice is to realize the idea of justice into a concrete form, so that it can benefit human relations. According to Gustav Radburg, the presence of law must be able to realize 3 (three) basic values, namely: the value of justice, the value of certainty, and the value of utility.⁴ The synergistic application of the three is certainly not easy, but ideally in every preparation of legal products and law enforcement, the presence of the three must get a balanced proportion, in addition to the balanced fulfillment of the three basic elements.

In the implementation of the three basic values of justice, certainty and expediency, there is often a conflict between one element and another. This contradiction, as explained by Satjipto Raharjo, occurs because the three elements of the law contain potential conflicts between their ideal values (*das sollen*) and their real values (*das sein*). Law and justice have a very close interaction⁵.

Whereas another area of concern is where the victim or the complainant wants the goods or the loss suffered by the violator to be returned or reported to have occurred, making the victim or the complainant consider the case to be 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.⁶

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

- Remedy for those who have suffered losses due to crime;
 - 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 the people involved in it. In restorative justice also allows imprisonment if the sanctions are the demands of the victims and it is true that by carrying out these sanctions the perpetrators are considered to be accountable for their actions.⁷

³<http://kbbi.web.id/adil>. Mengacu pada KBBI Daring (Dalam Jaringan) Edisi III Hak Cipta Pengembangan dan Pembinaan Bahasa Kemendikbud, September 2015

⁴Sudikno Mertokusumo, (1993), *Penemuan Hukum: Sebuah Pengantar*, Liberty, Yogyakarta, p. 1-2.

⁵Satjipto Rahardjo, (2000), *Ilmu Hukum*, Citra Aditya Bhakti, cetakan ketiga, Bandung, p.19.

⁶Ragil Tri Wibowo and Akhmad Khisni, *Restorative Justice in Application for Crime Investigation on Property*, *Jurnal Daulat Hukum Volume 1 No. 2 June 2018 ISSN: 2614-560X* [10.30659/jdh.1.2.565 - 570](https://doi.org/10.30659/jdh.1.2.565-570)

⁷Yudi Hendarto and Umar Ma'ruf, *Diversion In Children Criminal Justice System Through Restorative Justice*, *Jurnal Daulat Hukum Volume 1 Issue 2, June 2018 ISSN: 2614-560X*

The purpose of the research that the author conducted is as follows: To find out and analyze the Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime With Violence. To find out and analyze the Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime with Violence in the Indonesian National Police.

2. Research Methods

The method used by the researcher is normative legal approach and the specifications in this study are descriptive analytical. The sources and types of data in this study are secondary data obtained from library studies.

3. Results and Discussion

3.1. Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime with Violence

The theft crime that occurred in the State of Indonesia in 2021 was 222,543⁸ with this it can be interpreted that around 18,500 crimes occur every month. This figure is relatively high. Therefore, in order to continue to reduce the crime rate, one of which is the National Police issued a special police operation. One of the targets for special police operations is curing, stealing and stealing, commonly abbreviated as 3C.

From the police special operations, one of the figures that will be derived is the theft crime with violence. Indeed, there are many factors that encourage criminals to do this, ranging from inadequate income, the ever-increasing cost of living, the high unemployment rate, and so on. Especially with today's environmental developments that have been negatively affected by the Corona virus. Increasing the incentive of the perpetrators to commit crimes.

Then for the theft crime with violence based on the Criminal Code contained in article 365 which reads:

Paragraph 1 With a maximum imprisonment of nine years, the punishment is that the theft is preceded, accompanied or followed by violence or threats of violence against people, with the intention of preparing or facilitating the theft or if caught red-handed (caught) so that there is an opportunity for himself or his friends who participated in the crime will flee or so that the stolen property remains in his hands. (KUHP 89, 335).

Paragraph 2 A maximum imprisonment of twelve years is imposed: 1e if the act is committed at night in a closed house or yard, with a house or on a public street or in a moving train or tram. (KUHP98, 363). 2e. If the act is committed by two or more people together (KUHP 363-4). 3e. if the wrongdoer enters the place of committing the crime by dismantling or climbing, or by using a fake key, a false order or a false official attire (KUHP99, 100 ,364 s) 4e. if the act causes someone to be seriously injured (KUHP 90).

⁸ <https://www.antaraneews.com/berita/2618125/kapolri-sebut-jumlah-kejahatan-dilaporkan-sepanjang-2021>

Paragraph 3 A maximum imprisonment of fifteen years is imposed if someone dies because of this act. (KUHP 35, 89,366).

Paragraph 4 The death penalty or imprisonment for life or imprisonment for a maximum of twenty years is imposed, if the act causes a person to be seriously injured or to die, is committed by two or more persons together and is accompanied by one of the things described in No. 1 and 3. (KUHP 339, 366, 486).

In order to prove the case, evidence is needed as stipulated in Article 184 of the Criminal Procedure Code which must be fulfilled by the investigator in the investigation process so that a criminal incident can be submitted to the next stage. So that this also applies to the theft crime with violence that occurred at the Jepara Police, they must meet the evidence so that the case can be transferred to the Prosecutor's Office. The stages carried out by investigators at the Jepara Police in accordance with Perpol number 6 of 2019 concerning the investigation of criminal acts include:

- Receive reports of alleged criminal acts of stealing;
- If the victim is injured, the investigator advises the victim to immediately take medical treatment first / bring the victim for treatment;
- Carry out crime scene handling;
- Completing the administration of the investigation / investigation;
- Clarifying/examining witnesses;
- Collect evidence;
- Doing a case;
- Sending SP2HP to the reporter;
- If the suspect has been arrested and detained, then the investigator will do the filing;
- Sending the second stage case file to the prosecutor's office (jpu);
- Sending the suspect and evidence to the prosecutor (jpu).

By following the steps of the SOP above, the case can be resolved at the judicial stage. However, in the current era, the development of society is so fast as well as a sense of justice in the community that is developing. So that in some events the community does not want to settle cases until the judicial process to get a sense of justice.

The concept of Restorative justice has actually been practiced by Indonesian indigenous peoples for a long time, such as in Papua, Bali, Toraja, Minangkabau and other traditional communities that still hold on to their culture. If a criminal act occurs by a person (including an unlawful act committed by a child), dispute resolution is resolved in the customary community internally without involving state officials in it. The measure of justice is not based on retributive justice in the form of revenge or imprisonment, but based on conviction and forgiveness.

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.⁹Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and

⁹Kristin 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

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.¹⁰The victim can convey about the loss suffered and the perpetrator is also given the opportunity to make up for it, through compensation mechanisms, peace, social work, or other agreements.¹¹Efforts to solve problems outside the court carried out by criminals (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.¹²

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.¹³

In the Regulation of the Indonesian National Police Number 08 of 2021 concerning the Handling of Criminal Acts based on Restorative Justice, it does not only mention material criteria for cases that can be resolved by restorative justice. There are also formal requirements that investigators need to fulfill so that the case can be resolved by restorative justice. This is stated in article 6, namely:

- The formal requirements as referred to in Article 4 letter b, include:
 - peace from both parties, except for drug crimes.
 - Fulfillment of the rights of victims and responsibilities of perpetrators, except for drug crimes.
- The reconciliation as referred to in paragraph (1) letter a shall be proven by a peace agreement letter and signed by the parties.
- The fulfillment of the rights of the victim and the responsibility of the perpetrator as referred to in paragraph (1) letter b, may take the form of:
 - return thing;

¹⁰UNODC, (2006), *Handbook on Restorative Justice Programmes. Criminal Justice Handbook Series*, Vienna: UN New York, p. 5

¹¹Kristin Reimer, Op.cit, p. 6

¹²Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, *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 Desember 2017

¹³Ibnu Suka, Gunarto, Umar Ma'ruf, *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 March 2018

- indemnify;
- replace the costs incurred as a result of the Crime; and/or
- compensate for the damage caused by the crime.
- The fulfillment of the rights as referred to in paragraph (3) is proven by a statement letter in accordance with the agreement signed by the victim.
- The format of the peace agreement letter as referred to in paragraph (2), and the statement letter as referred to in paragraph (4), are listed in the Appendix which is an integral part of this Police Regulation.

The restorative justice policy in the investigation process for perpetrators of violent theft at the Jepara Police is carried out based on the National Police Chief Regulation Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice. The National Police Chief Regulation Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice in Articles 5 and 6 is a material and formal requirement for criminal cases that can be carried out by restorative justice. These requirements have been implemented and applied by investigators and assistant investigators at the Jepara Police Criminal Investigation Unit.

3.2. Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime with Violence in the Indonesian National Police

The issuance of the Chief of Police Circular Number 08 of 2018 concerning the Application of restorative justice in the Settlement of Criminal Cases is one form of strengthening carried out by the Police in order to be able to carry out their main tasks. The issuance of this circular was driven by developments in society regarding a sense of justice. Indeed, the application of an out-of-court settlement has become a method that is widely used by foreign countries and in Indonesia, which has received the umbrella of the Law on the settlement is Law Number 35 of 2014 concerning Child Protection. In this law, a form of restorative justice is carried out by diversion of child suspects. So that with the diversion there is a big enough opportunity for suspects and child perpetrators to be resolved outside the court in general.

The issuance of the Circular Letter of the Chief of Police Number 08 of 2018 concerning the Application of restorative justice in the Settlement of Criminal Cases still refers to the legal objectives, namely justice, legal certainty and expediency while still prioritizing the principles of justice which are simple, fast and low cost. With the issuance of this circular, the method of law enforcement in Indonesia follows the development of the sense of justice that exists in Indonesian society, especially the development of the principle of restorative justice (restorative justice) where this reflects justice is the balance of life which if there is a crime then the crime destroys the existing balance of life. With this method, what are the efforts to restore the original state that has been damaged by crime so that it causes an imbalance in life. Therefore, this settlement model emphasizes that the balance is re-established with the awareness of the perpetrator to admit mistakes and apologize to the victim, restore the damage or loss that has been taken by the perpetrator so that it can be like its original condition or at least resemble its

original condition. By doing so, it is hoped that it will fulfill the victim's sense of justice.

Using this method is also one of the solutions to internal problems of the criminal justice system itself, namely the Police, the Prosecutor's Office and the Court. As for the problems that arise with the enforcement of criminal law in Indonesia, among others; Correctional institutions that are over capacity, arrears in cases are increasing, the number of law enforcers is not balanced with the development of cases, case fees cannot be supported by budget because cases continue to increase. These things also support the legal culture of both the community and law enforcers themselves regarding the law enforcement process in Indonesia.

The National Police accommodates and provides solutions for legal certainty with the proper use of the sense of justice for the community by the issuance of the Chief of Police Circular Number 08 of 2018 concerning the Application of restorative justice in the Settlement of Criminal Cases. In order to strengthen the legal umbrella for investigators of the Indonesian National Police, the Republic of Indonesia National Police Regulation Number 08 of 2021 concerning the Handling of Crimes Based on Restorative Justice was issued. Information from the Jepara Police Criminal Investigation Unit stated as follows:

With this rule, the implementation of restorative justice carried out by the Indonesian National Police can unify the understanding and application of restorative justice cases. The implementation of this method is very clear, not only from the statement of peace from both parties, but also must be asked for legal provisions both in the process of investigation, prosecution or trial. So that in the future the authority of the victim is lost.

Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime With Violence in the Indonesian National Police able to:¹⁴

- Understand the scope of duties and authorities of the National Police regarding Restorative justice.
- Knowing the issuance of the Circular Letter of the Chief of Police Number 08 of 2018 concerning the Application of Restorative justice in the Settlement of Criminal Cases.
- Able to translate and discuss procedures carried out in handling cases with the completion of the Restorative justice method.
- Able to answer policies taken by investigators/assistant investigators to discuss Restorative justice issues.

4. Conclusion

The restorative justice policy in the investigation process for perpetrators of criminal acts of theft with violence is carried out based on the National Police Chief Regulation Number 08 of 2021 concerning Handling of Crimes based on Restorative Justice. The National Police Chief Regulation Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice in Articles 5 and 6 is a material and formal requirement for criminal cases that can be carried out by

¹⁴ibid

restorative justice. These requirements have been implemented and applied by investigators and assistant investigators. Restorative Justice Policy in the Investigation Process for Perpetrators of the Theft crime With Violence in the Indonesian National Police investigators are expected to be able to: Understand the scope of duties and authorities of the Police regarding Restorative justice. Knowing the issuance of the Circular Letter of the Chief of Police Number 08 of 2018 concerning the Application of Restorative justice in the Settlement of Criminal Cases. Able to translate and discuss procedures carried out in handling cases with the completion of the Restorative justice method. Able to answer policies taken by investigators / assistant investigators to discuss Restorative justice issues.

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