

Analysis of the Implementation of Restorative Justice at the Investigation Stage in Resolving Assault Cases (Case Study at Bandar Police Station)

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Abstract. *This study on "Analysis of the Implementation of Restorative Justice at the Investigation Stage in Resolving Assault Cases (Case Study at Bandar Police Station)" aims to determine and analyze the implementation of restorative justice at the investigation stage in resolving assault cases at Bandar Police Station, obstacles and solutions. The approach method used is sociological juridical. Data collection through interviews, literature studies and documentation studies. Data analysis is done descriptively. The study concluded that the application of restorative justice at the investigation stage in resolving the assault case at the Bandar Police Station was guided by the Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR), Regulation of the Chief of Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties, Circular Letter of the Chief of Police Number: SE/08/VII/2018 dated July 27, 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases and Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigation. The application of restorative justice in the case of assault to obtain a fair settlement of the parties in a family manner that culminates in the settlement of the criminal case outside the court with the aim of creating a sense of justice and humanity, prioritizing the interests of the victim and the perpetrator in order to reach an agreement together to seek a solution to the crime and its implications by emphasizing recovery rather than retaliation. The obstacles faced by Bandar Police investigators in the application of restorative justice at the investigation stage in resolving assault cases include limited personnel resources both in terms of quantity and quality, victims do not want to reconcile, low public understanding of restorative justice, and the worsening image of the Police in the midst of community life. The solution is to improve the professionalism and understanding of investigators about restorative justice and coordination*

with the Police, resolve cases through the courts, provide an understanding of restorative justice to the community and establish good relations with the community.

Keywords: *Restorative Justice, Investigation, Mob Attack*

1. Introduction

The concept of the Legal State or “Rechtsstaat” which was previously only included in the Explanation of the 1945 Constitution, in the fourth amendment to the 1945 Constitution in 2002 was formulated firmly in Article 1 paragraph (3) which states, “The State of Indonesia is a State of Law.” In the concept of the Legal State, it is idealized that what must be made the commander in the dynamics of state life is law, not politics or economics. Therefore, the jargon commonly used in English to refer to the principle of the Legal State is ‘the rule of law, not of man’. What is meant by government is essentially law as a system, not individuals who only act as ‘puppets’ of the system scenario that regulates it. The concept of the legal state in question must be able to accommodate various legal problems in Indonesia such as dispute resolution in criminal law through a restorative justice approach.

Restorative justice is part of the criminal justice system that emphasizes the restoration of victims and balance related to criminal acts with a level of reprehensibility in society. Restorative justice is also an implementation of the principle of a speedy trial that emphasizes the aspects of effectiveness, efficiency, and affordability.¹ *Restorative justice* in factis a “critique” of the conventional criminal law enforcement process which tends to emphasize the “criminalization” aspect as the “primary aspect” in the criminal justice system.² This tends to deny the perpetrators and victims of criminal acts who are sometimes ignored by the conventional criminal law enforcement process which emphasizes law as a text and process.³

The concept of restorative justice is actually related to the idea that in resolving a problem in criminal law, it should not only be based on resolution through

¹ EE Wati, RN Purwokerto, and AT Wibowo, “Implementation of the Principle of Fast, Simple, and Low-Cost Justice in the Examination of Marriage Dispensation Cases,” *Econ. Soc. Humanit. J.*, Vol. 1, No. 1, 2021., p. 18, see also MH Ilham, “Study of the Principle of Fast, Simple, and Low-Cost Justice in Fulfilling the Rights of Justice Seekers,” *Verstek*, Vol. 7, No. 3, 2019, p. 125

² H. Christianto, “Norm of Unity as a Limitation of Criminal Acts of Spreading Hate Speech Through the Internet,” *Verit. Justitia*, Vol. 6, No. 1, 2020, pp. 94-126

³ AMD Mappatunru, “The Pure Theory of Law and Its Influence on the Formation of Indonesian Law,” *Indones. J. Crim. Law*, Vol. 2, No. 2, 2020, pp. 136–139

formal criminal law procedures.⁴In this context, criminal law should actually facilitate certain procedures that facilitate perpetrators and victims to resolve criminal law issues amicably. In Tony F. Marshall's view, restorative justice is a criminal justice process that emphasizes joint resolution by the parties involved (law enforcers, perpetrators, and victims) to restore victims, treat perpetrators proportionally, and be forward-looking to prevent future criminal acts.⁵Furthermore, Adrianus Meliala, a criminologist, emphasized that the concept of restorative justice is actually a critique of the criminal justice system which actually comes with inefficient procedures and gives rise to injustice.⁶

Clifford Dorn, from a philosophical perspective, defines restorative justice as a movement regarding orientation in the criminal justice system that emphasizes the source of the crime in efforts to resolve it.⁷By referring to the source and cause of the crime, restorative justice seeks not only to "try" the perpetrator of the crime but also to prioritize the aspect of justice in resolving a criminal case. In this case, restorative justice does not see the crime as a "single skeleton" that stands alone, but as a systemic unity with the factors that cause the crime to arise.⁸Because it has an orientation to comprehensively and substantively resolve a criminal law problem, restorative justice prioritizes social solutions by involving the community (social aspect of criminal law) as well as healing, restoring, and providing compensation to victims.⁹

Referring to the various views above regarding restorative justice, in fact, from the perspective of experts from the "west", restorative justice is understood as an effort to resolve disputes that is oriented towards victims and the values of justice in society.¹⁰Victim orientation means that modern criminal resolution does not only focus on punishing the perpetrators of the crime but also on how to heal and restore victims of the crime. In this context, restorative justice

⁴ M. Vooren, I. Rud, I. Cornelisz, C. Van Klaveren, W. Groot, and H. Maassen van den Brink, "The effects of a restorative justice program (Halt) on educational outcomes and recidivism of young people," *J. Exp. Criminol.*, Vol. 1, No. 1, 2022, p. 6

⁵ RH Madu, FM Wantu, and LW Badu, "The Restitution of Children as Victims of the Crime of Obscenity in the Principles of Restorative Justice," *Estud. Law J.*, Vol. 2, no. 3, 2020, p. 530–546

⁶ Henny Saida Flora, "Restorative Justice in the New Criminal Code in Indonesia: A Prophetic Legal Study", *Rechtsidee Vol 11*, December 2022, p. 8

⁷ GJS and AVH Annemieke Wolthuis, Jacques Claessen, "Dutch developments: restorative justice in legislation and in practice," *Int. J. Restor. Justice*, Vol. 2, no. 1, 2019, p. 119

⁸ VS Ariani Hasanah Soejoeti, "Restorative Justice Discussion in the Context of Sexual Violence on Campus," *Deviance*, Vol. 4, No. 1, 2020, pp. 67–83

⁹ C. Hanum, "Prospects of Restorative Justice in Indonesian Legislation," *Veritas*, Vol. 7, No. 1, 2021, p. 3.

¹⁰ M. Rusydia, "Reformulating Fraud Crimes Under Article 378 Of The Criminal Code Based On Restorative Justice Values," *Prophet. Law*, Vol. 3, no. 2, 2021, p. 221

emphasizes retributive punishment (replacement/restitution).¹¹From the aspect of values in society, restorative justice seeks to view a crime as an attitude or action of "reprehensibility" from a social perspective. It is the duty of society and the social environment to resolve the crime while preventing potential criminal acts in the future.

Restorative justice According to the legal perspective that is developing in Indonesia, it is fundamentally relevant to the legal ideals of Pancasila. There are three relevances between restorative justice and the legal ideals of Pancasila, namely: first, restorative justice emphasizes the resolution of a criminal case by optimizing the balance of interests between values that develop in society, victim recovery, and treating the perpetrator proportionally. This is in line with the values of humanity in Pancasila, especially the second principle which emphasizes that humanity must be an important value and orientation in the life of the nation and state.¹²In this case, restorative justice actually has an effort to implement the second principle of Pancasila, especially the value of humanity.

Second, restorative justice emphasizes the implementation of criminal acts resolution that refers to societal values. In this case, restorative justice implements the people's values in the fourth principle. The fourth principle of Pancasila actually contains several important substances including: people's values, wisdom, and deliberation.¹³The three substances in the fourth principle are actually things that are implemented through restorative justice practices. Third, restorative justice places victims and perpetrators as "family" who try to solve problems together.¹⁴When compared to court settlement through litigation, court settlement is vis-à-vis or the victims and perpetrators of the crime are considered as "opponents" and face each other.¹⁵The practice of restorative justice does not consider the relationship between the victim and the perpetrator to be one of confrontation, but rather the victim and the perpetrator are considered as part of an "extended family" so that the

¹¹ S. Ramadhani, "The Role of the Prosecutor's Office in Realizing Restorative Justice as an Effort to Combat Crime," *Progressive Law*, Vol. 15, No. 1, 2021, p. 78

¹² A. Suadi, 2019, *Philosophy of Law: Reflection of Pancasila Philosophy*. Prenada Media, Jakarta, p. 10.

¹³ FP Disantara, "Perspective of Dignified Justice in the Paradox of Ethics and Law," *J. LITIGATION*, Vol. 22, No. 2, 2021, pp. 205–229

¹⁴ DE Prasetio, FP Disantara, NH Azzahra, and D. Perwitasari, "Strategy of Legal Pluralism of Customary Courts in the Era of Legal Modernization," *rechtsidee*, Vol. 8, No. 1, 2021, p. 9

¹⁵ D. McQuoid-Mason, "Could traditional dispute resolution mechanisms be the solution to reduce the volume of litigation in post-colonial developing countries— particularly in Africa?," *Oñati Socio-Legal Ser.*, Vol. 11, no. 2, 2021, p. 591

resolution emphasizes the family dimension.¹⁶When associated with the values of Pancasila, resolving the issue amicably is actually a form of implementing the third principle, namely Indonesian unity.

According to the concept of restorative justice, handling crimes that occur is not only the responsibility of the state but also the responsibility of society. The concept of restorative justice is built on the understanding that crimes that have caused losses must be restored, both the losses suffered by the victim and the losses borne by society.

The existence of a new paradigm in the criminal law enforcement process called the Restorative Justice approach, a crime can be resolved fairly by involving the perpetrator, victim, their family and other parties involved in a crime, to jointly seek a solution to the crime and its implications by emphasizing the restoration of the original state of a condition of relationships between individuals, groups, families, and society, which are injured by the actions of the perpetrator of the crime. Of the various principles and models of the restorative justice approach, the dialogue process between the perpetrator and the victim is the basic capital and the most important part of the implementation of this justice.

The paradigm shift in criminal law enforcement from retributive justice to restorative justice, which was initially developed in the United States, has begun to be widely used to resolve criminal cases today. Albert Eglash first proposed restorative justice in 1977, when he distinguished three types of criminal justice: retributive justice, distributive justice, and restorative justice.¹⁷

In Indonesia, restorative justice practices have also been carried out, known as family settlement. The existing practices still have a basis in restorative justice that has been recognized by many countries, which in its implementation has now been implemented in a number of rules and patterns or methods.

In 2018, the Institute for Criminal Justice Reform (ICJR), the Indonesian Judicial Research Society (IJRS), and the Institute for the Study and Advocacy for Judicial Independence (LeIP) in collaboration with the Ministry of National Development Planning/National Development Planning Agency (Bappenas) conducted a mapping related to regulations that provide opportunities for the implementation of restorative justice in the current criminal justice system in Indonesia, which is oriented towards involving perpetrators-victims and the community to achieve recovery. At the investigation stage, there is the authority to bring together perpetrators and victims through discretionary authority by investigators, withdrawal of complaints for complaint offenses in

¹⁶ ZA Senen, "Reconceptualization of Law Enforcement Against Perpetrators and Victims of the Electronic Information and Transactions Law Based on Restorative Justice," *Lex Renaissance*, Vol. 6, No. 2, 2021, pp. 266–269,

¹⁷ Hariman Satria, "Restorative Justice: A New Paradigm of Criminal Justice", *Jurnal Media Hukum*, Vol. 25, No.1, 2018.

Articles 73, 74, 75 of the Criminal Code and the implementation of Circular Letter No. 8 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases which explains the mechanism for implementing restorative justice at the investigation level. Based on these opportunities, investigators can exercise their authority by orienting themselves towards victim recovery in line with the accountability of the perpetrators.¹⁸

Restorative justice provide the best solution in resolving cases of crime or violations, namely by prioritizing the core problem of a crime. An important solution to note is to repair the damage or loss caused by the crime and violation.

Indonesian society as a society has implemented the settlement of a criminal case through a restorative justice approach. This is inseparable from the culture and culture of Indonesian society which upholds a sense of family and mutual cooperation that is carried over to all aspects of their lives, without exception in resolving a case. The sense of mutual respect and appreciation as well as compassion as the soul of the community's personality also encourages the practice of resolving a case in society with a restorative justice approach. The settlement of cases in society like this is usually carried out before the case is reported to law enforcement, namely the police.

Police investigators as law enforcers are the spearhead in resolving criminal cases and play an important role in implementing the resolution of criminal cases with a restorative justice approach. According to the Indonesian Criminal Justice System, police investigators are law enforcers who initially carry out various actions in resolving criminal cases before the case is continued in the next process such as examination in court. One of the actions that can be taken by police investigators in resolving criminal cases is resolving criminal cases through a restorative justice approach.

One of the cases that can be resolved through a restorative justice approach is a crime in public by jointly committing violence against people as regulated in Article 170 of the Criminal Code. This crime is known as a gang crime or a crime committed by more than one perpetrator against another person together. Gang crimes often occur in society caused by a problem where the parties cannot control their emotions and use violence as a way to solve the problem.

Usually the community will try to resolve the crime through a family settlement before the case is brought to the legal realm. Settlement through law is carried out when a family settlement does not reach an agreement so that the case is reported to the authorities, namely the police. The police

¹⁸ Maidina Rahmawati, 2022, Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia, Institute for Criminal Justice Reform, Jakarta, p. 20

through investigators will make various efforts to resolve the cases they receive, one of which is resolving cases with a restorative justice approach.

Based on the description above, this study will discuss the application of restorative justice in resolving the assault case that occurred in the jurisdiction of the Bandar Resort Batang Police. This is interesting considering that in resolving the case in question, a study can be carried out on various aspects in it, such as the obstacles faced by investigators in resolving the case with a restorative justice approach.

2. Research Methods

2.1. The problem

The problems formulated in this research are:

1. How is restorative justice applied at the investigation stage in resolving the assault case at the Bandar Police Station?
2. What are the obstacles and solutions faced by the Bandar Police in implementing restorative justice at the investigation stage in resolving the assault case?

2.2. Method Study

This research uses a sociological legal approach. The sociological legal approach is an approach that seeks to "study law in a social context. The desired result is to explain and connect, test and also criticize the workings of formal law in society". However, law is always linked to individuals and society, so that the workings of law cannot be separated from the social reality in which the law is embedded. Law is presented so that individuals and society behave as desired by law.¹⁹

Data collection through interviews, literature studies and documentation. An interview is "a meeting of two people to exchange information and ideas through questions and answers, so that meaning can be constructed in a particular topic."²⁰ Literature study, namely the activity of collecting and examining and tracing literature that can provide various data and information or statements needed by researchers. Documentation study, namely research on documents related to research. The documents studied are minutes of the application of restorative justice in resolving cases in public by jointly committing violence against people or ganging up on people.

¹⁹ Bachtiar, 2018, *Legal Research Methods*. Unpam Press, South Tangerang, pp. 90-91.

²⁰ *Ibid*, p. 42

3. Results and Discussion

3.1. Implementation of Restorative Justice at the Investigation Stage in Resolving the Assault Case at the Bandar Police Station

The criminal justice system is the oldest way to deal with crime, as old as human civilization itself. The criminal justice system has so far been more repressive without considering the interests of victims and perpetrators. The current development of criminal law shows a tendency to shift the concept of justice and the paradigm of punishment in the criminal law system, namely from the concept of retributive justice (criminal justice) to the concept of restorative justice.²¹

Restorative justice is a concept of thought that responds to the development of the justice system by emphasizing the need to involve the community and victims who feel marginalized by the mechanisms that operate in the current criminal justice system.²²

The emergence of the concept of restorative justice is based on criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. The reason is that the parties involved in the conflict are not involved in resolving the conflict. The victim remains a victim, the perpetrator who is imprisoned also raises new problems for his family and others. The emergence of the concept of restorative justice does not mean eliminating imprisonment, in certain cases that cause mass losses and are related to the value of someone's life, imprisonment can still be used.

Restorative justice more emphasis on protecting victims of crime, restoring victims' losses and re-harmonizing the relationship between perpetrators and victims of crime. In restorative justice, criminal acts are not seen as crimes against the state or the public, but crimes against victims, so that in its resolution the emphasis is on the recovery of the victim, not on punishing the perpetrator. While in the implementation of the criminal justice system we still emphasize the application of "restitutive justice" and "retributive justice" which focus on the perpetrator of the crime, how to prove his guilt and punish him, this is also what greatly influences law enforcement officers in carrying out their duties who view whoever is guilty must be punished in accordance with applicable regulations.

The concept of restorative justice theory offers answers to important issues in resolving criminal cases, namely: first, criticism of the criminal justice system that does not provide opportunities, especially for victims (criminal justice system that disempowers individuals); second, eliminating conflicts, especially between

²¹ Arman Sahti, "Implementation of the Restorative Justice Concept in Settling Traffic Accident Cases", *Aktualita*, Vol.2 No.2 (December) 2019, p. 621

²² Marlina, 2007, *Juvenile Criminal Justice in Indonesia, Development of the Concept of Diversion and Restorative Justice*, Refika Editama, Bandung, p. 95

perpetrators and victims and society (taking away the conflict from them); third, the fact that feelings of helplessness experienced as a result of criminal acts must be overcome in order to achieve reparation.²³

If restorative justice is associated with the duties of the Police, then the restorative justice approach is part of the Police's duties through a preventive and repressive approach. The Police's duties conceptually include preventive and repressive duties or order maintenance and law enforcement duties. Restorative justice can of course be given to all areas of the Police's duties, both within the scope of preventive duties such as Traffic Police, Sabhara and so on, as well as in repressive duties such as the Detective Police, both in the duties of maintaining order (order maintenance) and in the duties of law enforcement or repressive.

It can be said that the Police can apply a restorative justice approach in carrying out their duties, both preventive and repressive. The application of the restorative justice approach by the Police is certainly carried out with various considerations, both legally and socially. If so, the Discretionary authority owned by the Police becomes a consideration in implementing the restorative justice approach.

Several regulations that serve as the basis and guidelines for the National Police in resolving criminal acts using the restorative justice approach include the Regulation of the Chief of Police Number 15 of 2013 concerning Procedures for Handling Traffic Accidents, Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigation, Circular Letter of the Indonesian National Police Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in Resolving Criminal Cases, Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR) and 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.²⁴

In the Circular Letter of the Republic of Indonesia Police Number: SE/8/VII/2018 Concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, it aims to create a sense of justice and humanity, prioritizing the interests of victims and perpetrators in order to reach an agreement together to seek a resolution to the crime and its implications by emphasizing recovery rather than retaliation. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. In this case, the law that is violated must be enforced. Through law enforcement, it becomes a reality. However, in enforcing the law there are 3 (three) elements that need to

²³Ibid.

²⁴ Interview with AKP Herry Rubiono, SH, Bandar Police Chief, December 20, 2023.

be considered, namely: Legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*) and justice (*gerechtigkeit*).²⁵

In addition, the National Police in resolving criminal cases through a restorative justice approach is also based on Perkap Number 6 of 2019 concerning Criminal Investigation. Furthermore, the National Police in resolving criminal cases through a restorative justice approach is also based on the Letter of the Chief of Police No. Pol: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR) and Regulation of the Chief of the Republic of Indonesia National Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties.

Especially in Bandar Police, resolving criminal acts through the Restorative Justice approach is one part of the strategy in resolving criminal cases in the local area. Bandar Police is one part of the police unit under the Batang Police. Bandar Police is located in the Bandar District, Batang Regency. One of the criminal cases that has been resolved using the restorative justice approach by Bandar Police is a mob attack case.²⁶

Bandar Police in implementing the restorative justice approach in resolving criminal cases of assault is an effort to resolve cases outside the court by taking peace steps for the parties involved in the assault case. Handling assault cases with a restorative justice approach or settlement outside the court by Bandar Police Investigators at the investigation stage is carried out if there is an agreement from the parties to resolve the assault case amicably, or outside the court. In this case, the Bandar Police investigators are only mediators or facilitators regarding the method or mechanism for resolving assault cases from the parties.²⁷

In principle, every criminal case including assault, especially those that cause injuries or even death, is a criminal case and must be resolved through the courts. What is meant by the application of restorative justice or settlement outside the court is the settlement of the case amicably, namely between the perpetrator and the victim's family to make peace.²⁸

The settlement of criminal cases is done outside the court, which concerns the settlement of cases between the parties involved without going through the courts. The settlement process is carried out by the parties themselves because each party agrees to resolve without going through a complicated and time-

²⁵ Interview with AKP Herry Rubiono, SH, Bandar Police Chief, December 20, 2023.

²⁶ Interview with AKP Herry Rubiono, SH, Bandar Police Chief, December 20, 2023.

²⁷ Interview with AKP Herry Rubiono, SH, Bandar Police Chief, December 20, 2023.

²⁸ Setio Agus Samapto, "Settlement of Criminal Cases Outside the Court Against Alleged Crimes of Article 359 of the Criminal Code in Traffic Cases", *Jurnal Manajemenial*, Vol. 5, No. 2 September 2009, p. 9.

consuming process, this is because the court will study the existing evidence in order to find the truth and justice that can be accepted by both parties.

In the case of resolving cases outside the court as mentioned above, the police's task as investigators and law enforcers is to act as mediators and/or facilitators for each party and if each party has reached an agreement regarding reimbursement of costs if the victim is treated in hospital, covering funeral costs, funeral services until completion and providing a sum of money as condolence money in the event of the victim's death and after that making a statement stating that the case has been completed and there is no further prosecution from each party, then the police declare the case to be completed.²⁹

The police as investigators in handling criminal cases must first see the causes of the case, so that the case can be resolved outside the court or must go through the court. The police in determining these criteria must have a special expertise basis because the police in handling the case must be able to resolve it properly and fairly as the spirit contained in restorative justice.

The police in determining whether a case is resolved through the courts or not must be based on field investigations, witness examinations and suspect examinations. If in the investigation the suspect is not proven guilty and it turns out that the fault lies with the victim, then the case can be resolved out of court and a letter of termination of investigation is issued to the suspect. Likewise, in the event that there is a fault on the part of the suspect but the victim is willing to resolve the case peacefully and not cause unrest in the community and is in accordance with applicable laws and regulations, the case can be resolved out of court.

Good etiquette from each party, namely the suspect and the victim, also determines the settlement of the case outside the court. If the suspect in the examination has good etiquette to settle the case peacefully, then the case is declared settled, but it must be stated by both parties with a stamped statement. If there is no agreement from both parties to settle the case peacefully, then the case cannot be settled outside the court or in other words the case cannot be resolved with a restorative justice approach at the investigation level. This is because the restorative justice approach can also be carried out in court where the perpetrator's willingness to provide compensation to the victim is considered as something that can be considered as mitigating in the trial.³⁰

²⁹ Interview with AKP Herry Rubiono, SH, Bandar Police Chief, December 20, 2023.

³⁰ Interview with AKP Herry Rubiono, SH, Bandar Police Chief, December 20, 2023.

The resolution of the criminal case of assault through a restorative justice approach at the Bandar Police during the investigation stage includes two aspects, namely:³¹

3.2 Follow-up to the settlement of the criminal case of assault by the community who have reached a dead end in resolving the criminal case of assault through peaceful means.

There are times when the settlement of criminal cases of assault with the concept of restorative justice at the Bandar Police is a follow-up to the settlement of criminal cases by the community. It is not uncommon for assault cases to be preceded by the settlement of criminal cases by the community facilitated by village officials. This often happens considering that the people of Bandar District are rural communities that still uphold a sense of family and mutual cooperation so that every problem in the local environment will always be resolved by the community facilitated by the local village government.

In practice, the parties involved in the case/dispute resulting in a mob attack come to the Bandar Police accompanied by the community and village officials to resolve their problem because the resolution of the case at the village/community level has reached a dead end so it needs to be resolved at the Police, either through out-of-court settlement or through the courts in the event that the settlement of the criminal case in question outside the court cannot be carried out by the Bandar Police.

The community came to ask for a resolution of the case at the Bandar Police because the settlement through peaceful means by the community had reached a dead end. Furthermore, the Bandar Police attempted to resolve the criminal case of assault outside the court by implementing the concept of restorative justice. If the attempt to resolve the criminal case through the concept of restorative justice is unsuccessful, then a criminal procedure law process or case resolution process is carried out by continuing the investigation process to the next level, namely prosecution by submitting the case files to the Prosecutor's Office.

Settlement of criminal cases of assault through a restorative justice approach based on reports/complaints.

Settlement of criminal cases of assault with a restorative justice approach based on reports is preceded by a complaint/report of alleged criminal acts in the assault incident, usually resulting in losses due to assault, both material losses and fatalities. The police will record the complaint/report in relation to the complaint/report.

³¹ Interview with IPTU R Yonata, SH, MH, Batang Police Investigator, December 20, 2023

Based on the results of the actions taken by the investigator, it is then determined whether the report/action can be continued to the investigation or not. If the reported incident can be continued to the investigation, an investigation is carried out, if it cannot be continued, the report is declared unable to be continued at the investigation level and/or the investigation is terminated.

Before the criminal case is processed further, efforts are made to resolve the criminal case outside the court with a restorative justice approach. Settlement of criminal cases outside the court is carried out by calling the disputing parties to the Bandar Police. In practice in the Bandar Police area, the settlement of criminal cases outside the court sometimes involves village/sub-district mediators.

3.3 Settlement of criminal cases of assault that were known to the police themselves.

The criminal case of the assault that occurred can be known by the police officers themselves. This can happen because the police officers conduct security patrols in their area, there are also Bhabinkamtibmas who carry out the task of creating safe conditions in their area of duty.

Settlement of criminal cases of assault with a restorative justice approach is carried out with the agreement of the parties to resolve the case peacefully which is stated in the form of an agreement/statement of both parties. The matters that are generally regulated in the agreement to settle criminal cases outside the court include the following:³²

- 1) The parties who entered into the agreement / who made the statement;
- 2) Regarding the occurrence of an agreement, namely because of an alleged criminal act that is detrimental to one or both parties;
- 3) The perpetrator's ability to provide compensation, hospital care costs, compensation (in the event of the victim's death), funeral costs, and so on, the nominal amount of which is stated;
- 4) Agreement of the parties not to sue each other in court;
- 5) The ability to be sued before the court if the parties deny the contents of the statement letter;
- 6) Place and time of signing the agreement by the parties and witnesses;
- 7) The parties who sign the agreement/statement on stamped paper along with two witnesses.

³² Interview with IPTU R Yonata, SH, MH, Batang Police Investigator, December 20, 2023

To provide an illustration of the resolution of a criminal assault case using a restorative justice approach in the investigation at the Bandar Police, the following example is given:³³

a. Suspect

The criminal case of ganging up or a criminal act of committing violence against a person in public which caused injury was carried out by a suspect named:

- 1) Slamet Kusnoto alias Martawi bin Agus Ritman, Place and date of birth Batang, March 30, 1986, age: + 36 years, male gender, self-employed, address Dukuh Kampir RT 04 RW 03, Wonokerto Village, Bandar District, Batang Regency (address according to KTP, Dukuh Tembelang RT 04 RW.03, Tumbrep Village, Bandar District, Batang Regency); together with
- 2) Wastono alias Gombol bin Darmin, Place and date of birth, Batang, 16 October 1975, (age: 46 years), male, occupation: Self-employed, address: Dukuh Tembelang RT 04 RW.03, Tumbrep Village, Bandar District, Batang Regency (Not yet caught)

b. Victim

The victim of a criminal case of ganging up or a criminal act of violence in public against a person causing injury was carried out by the suspect, namely

- 1) Gigih Muyangjaya bin Sujono, 27 years old, self-employed, address: Perum Griya Arohmah RT. 04 RW. 08, Kadilangu, Kauman Village, Batang District, Batang Regency
- 2) Slamet Udianto bin Kasmari, age: 36 years, self-employed, address Kadilangu RT 06 RW07, Kauman Village, Batang District, Batang Regency

c. Position Case

The criminal case of ganging up or a crime in public involving joint violence against people causing injuries, as referred to in Article 170 paragraph (2) 1e of the Criminal Code, occurred on Thursday, February 24 2022, at around 17.00 WIB, on the side of the main road entering the Dukuh Cepoko area, Tumbrep Village, Bandar District, Batang Regency, which was carried out by the suspects, against the victims in the following manner:

Starting on Thursday, February 24, 2022, at around 17.00 WIB, the victim witness Slamet Udianto bin Kasmari riding a black Yamaha Vega R motorbike with the police number G-3430-SC, together with the victim witness Gigih Muyangjaya bin Sujono riding a black Honda Mega pro motorbike with the police number. Police: G-2041-ZC, after returning from work, walking in a row from south to north on the main road entering the Dukuh Cepoko area, Tumbrep Village, Bandar District,

³³ Police Station Port, Resume Case Criminal Based on ReportPolice Number:LP/B/01/II/2022/SPKT /BANDAR POLICE SECTION /BATANG POLICE REGIONAL POLICE/CENTRAL JAVA REGIONAL POLICE, dated February 24, 2022

Batang Regency, with the position of the victim witness Slamet Udianto bin Kasmari in front, while driving suddenly from the direction of the alley came 1 (one) unit of a white Suzuki Ertiga minibus motor vehicle with police number: H-9228-DM which was carrying the suspect Slamet Kusnoto alias Martawi bin Agus Ritman and Wastono alias Gombol bin Darmin (not yet caught), because the distance was close, the victim witness Slamet Udianto bin Kasmari who was riding a black Yamaha Vega R motorbike with police number G- 3430-SC, continued to drive in front of the white Suzuki Ertiga minibus motor vehicle with police number: H-9228-DM, and when overtaking the victim Slamet Udianto bin Kasmari, one of the suspects from inside the motor vehicle hit the helmet worn by the suspect. by the victim Slamet Udianto bin Kasmari using his bare hands 3 (three) times, knowing about the incident, the victim Gigih Muyangjaya bin Sujono who was behind the victim Slamet Udianto bin Kasmari immediately shouted at the suspect with the words "ojo diantemi melaske" (in Indonesian: don't beat him, have mercy). Hearing the screams, a white Suzuki Ertiga minibus with police number: H-9228-DM carrying the suspects Slamet Kusnoto alias Martawi bin Agus Ritman and Wastono alias Gombol bin Darmin (not yet caught), then stopped in the middle of the road followed by the victims Gigih Muyangjaya bin Sujono and Slamet Udianto bin Kasmari stopped their motorbikes behind the white Suzuki Ertiga minibus with police number: H-9228-DM, then the victims Gigih Muyangjaya bin Sujono and Slamet Udianto bin Kasmari got off their motorbikes and stood on the side of the highway, at the same time, the suspects Slamet Kusnoto alias Martawi bin Agus Ritman and Wastono alias Gombol bin Darmin (not yet caught) got off the motorbike they were riding in, then the two suspects approached the victim Gigih Muyangjaya bin Sujono who was on the side of the highway behind the motorbike, and then with a position Facing each other, the two perpetrators simultaneously hit the victim Gigih Muyangjaya bin Sujono with their bare hands clenched into fists several times (more than 5 times), but only hit the victim's hand that was trying to ward them off. Then the suspect, Slamet Kusnoto alias Martawi bin Agus Ritman, grabbed the victim Gigih Muyangjaya bin Sujono's clothes and dropped him (threw him down) until he fell. because he felt scared, the victim Gigih Muyangjaya bin Sujono then ran to save himself towards the south of the highway, then the suspect Slamet Kusnoto alias Martawi bin Agus Ritman and Wastono alias Gombol bin Darmin (not yet caught) approached the victim Slamet Udianto bin Kasmari who was approximately 3 (three) meters from the position of the victim Gigih Muyangjaya bin Sujono before, then with a position facing each other, the two suspects together beat the victim Slamet Udianto bin Kasmari using their bare hands clenching several times (more than 5 times) on the helmet that was still being worn by the victim Slamet Udianto bin Kasmari while uttering words in an angry tone, until finally the incident was broken up by witness Herman Effendi bin Sugiyono, who was the driver of a white Suzuki

Ertiga minibus with police number: H-9228-DM which was carrying the suspects Slamet Kusnoto alias Martawi bin Agus Ritman and Wastono alias Gombol bin Darmin (not yet caught) and the two suspects were pulled into the motor vehicle, which then left the scene of the incident.

As a result of the incident, the victim suffered the following injuries:

- 1) Gigih Muyangjaya bin Sujono suffered injuries to: upper right chest bruised three by three centimeters, upper right arm bruised four by four centimeters, abrasions on right leg three by three centimeters, (conscious and receiving treatment at Bandar 1 Health Center);
- 2) Slamet Udianto bin Kasmari suffered injuries to: Head behind the left ear bruised four by four centimeters, upper right cheek bruised four by four centimeters, (conscious and treated at Bandar 1 Health Center)

d. Legal Analysis

Based on the facts and analysis of the criminal case of the assault, there are indications of a criminal act of jointly committing violence in public against a person causing injury to the victim, carried out by the suspects because the elements as formulated in Article 170 paragraph (2) 1e of the Criminal Code concerning jointly committing violence in public against a person causing injury have been fulfilled, namely

1) Elements of Whom

Based on the statements of the witnesses and the statement of the suspect himself in relation to the confiscated evidence, then as a person or legal subject who can be held responsible for his actions in a criminal case, jointly in public committing violence against the person who caused the injury are the suspects as in this case.

2) In public

The suspects in committing a criminal act in public together committed violence against a person causing injury, against the victim, it was carried out on the side of the highway entering the Dukuh Cepoko area, Tumbrep Village, Bandar District, Batang Regency, which is an open place for the public and is located on the side of the Bandar-Kambangan Highway so that the incident can be seen by anyone who is around the location of the incident.

3) Together

In committing a crime in public by jointly committing violence against a person causing injury to the victim on the side of the highway in the Dukuh Cepoko area, Tumbrep Village, Bandar District, Batang Regency, the suspects did not do it alone, but together, namely by carrying out the beating at the same time and in the same location.

4) Committing violence

The suspects committed violence by using their strength to hit the victims using their clenched bare hands and the beatings were carried out more than once.

5) Towards People

The suspects, in committing a criminal act in public, jointly committed violence against people which caused injuries, by beating or committing violence against 2 (two) male victims, namely: Gigih Muyangjaya bin Sujono and Slamet Udianto bin Kasmari.

6) Which causes injury

The actions carried out by the suspects against the victim above resulted in the victim suffering injuries as mentioned above.

4. Conclusion

The application of restorative justice at the investigation stage in resolving the assault case at the Bandar Police Station is guided by the Letter of the Chief of Police No. Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution (ADR), Regulation of the Chief of Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties, Circular Letter of the Chief of Police Number: SE/08/VII/2018 dated July 27, 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases and Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigation. The application of restorative justice in cases of assault to obtain a fair resolution for the parties in a family manner which culminates in the settlement of the criminal case outside the court with the aim of creating a sense of justice and humanity, prioritizing the interests of the victim and the perpetrator in order to reach an agreement together to seek a resolution to the crime and its implications by emphasizing recovery rather than retaliation.

Obstacles faced by Bandar Police investigators in implementing restorative justice at the investigation stage in resolving assault cases include limited personnel resources both in terms of quantity and quality, victims unwilling to reconcile, low public understanding of restorative justice, and the worsening image of the Police in the midst of community life. The solution is to improve the professionalism and understanding of investigators about restorative justice and coordination with the Police, resolve cases through the courts, provide an understanding of restorative justice to the community and establish good relations with the community.

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