

Efforts to Settle Cases of Theft Crimes are Linked to the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Restorative Justice

Piki Krismanto¹⁾ & Sri Kusriyah²⁾

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

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

Abstract. *The aim of this research is to find out and analyze efforts to resolve criminal cases of theft related to the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Restorative Justice. To find out and analyze the legal considerations of police officers regarding perpetrators of criminal acts of theft in relation to the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Restorative Justice. The method used by researchers is a normative juridical legal approach and the specifications in this research include analytical descriptiveness. The sources and types of data in this research are secondary data obtained from literature studies. The data was analyzed qualitatively. Based on the results of the research, efforts to resolve cases of criminal acts of theft related to the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Restorative Justice can be carried out by integrating the restorative justice model as a priority for dispute resolution within the scope of the police, which is an effort to make peace by the disputing parties by paying attention to type of criminal act of theft with the qualifications of fulfilling material and formal requirements as stated in Perkap Number 6 of 2019 and Perpol Number 8 of 2021. Apart from that, traditional institutions and social institutions that are well known in the community are also optimized. The legal consequences that arise from the failed application of restorative justice for perpetrators of petty theft crimes is to forward the case to the realm of general justice. Meanwhile, if peace efforts meet a common ground and have been outlined in a peace deed, the final process is to terminate the investigation for legal reasons. The legal considerations of police officers regarding perpetrators of criminal acts of theft are related to the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Restorative Justice which refers to Perpol Number 8 of 2021*

concerning Handling of Criminal Acts Based on Restorative Justice so that Investigators are more directed at resolving cases outside of court, namely by using a Restorative Justice approach.

Keywords: *Crime; Justice; Restorative; Theft.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia, in Article 28D (1) states that: "Everyone has the right to recognition, security, protection and legal certainty as well as equal treatment before the law". However, the implementation and regulations issued by the law makers in this case the Government and the Parliament of the Republic of Indonesia (DPR RI) are not in line with the wording of Article 28D (1).¹

Crime is often defined as deviant behavior from the rule of law that results in someone being subject to punishment. Crime can occur when someone breaks the law either directly or indirectly, or a form of negligence that can result in punishment. In this legal perspective, criminal behavior seems active, humans commit crimes. Crime needs to identify the perpetrator and victim, the perpetrator is the person who commits an act that violates the rights and welfare of a person, while the victim is the person whose rights and welfare are violated. From a criminal law perspective, identification will greatly influence the making of demands and legal accountability for the existence of legal acts.

In Book II of the Criminal Code, it discusses Minor Criminal Offenses, not only covering violations, but also minor crimes consisting of minor animal abuse, minor insults, minor assault, minor theft, minor embezzlement, minor fraud, minor vandalism, and minor receiving of stolen goods.²

Along with the development of the modern era that is happening today, it has resulted in a consumerist personality for someone to follow the development of the era with various ways to fulfill the consumerism, there is a positive way to fulfill their needs by working, not to forget there is a negative way to fulfill their needs which is at risk of legal consequences that must be faced, namely committing a crime. The crime referred to here is the crime of theft as regulated in the Criminal Code Article 362.

Always in enforcing the application of the law quoted from the German legal philosopher Gustav Radbruch since the beginning of the development of law in

¹Endang Kusnandar, Anis Mashdurohatun, Siti Rodhiyah Dwi Istinah, 2020, Protection Analysis Of Children's Rights That Was Born From The Rape Causing (Study in State Court (PN) in Ex-Residency Cirebon Jurisdiction), Journal of Sovereign Law Volume 3 Issue 1, ISSN : 2614-560X, p. 15, <http://jurnal.unissula.ac.id/index.php/RH/article/download/8395/3927>

²Leonardo OA Pandensolang, 2015, Study of Minor Crimes in the Criminal Justice Process, Lex Crimen Vol. IV/No. 1/Jan-Mar, pp. 24-34

Europe has stated that in principle there are 3 values that the law itself aims for, namely justice, benefit and certainty.³Gustav added that in reality, the objectives to be achieved by the law will be incompatible and competing, there must be something that is prioritized and set aside, therefore the priority principle needs to be used. Gustav Radbruch emphasized that if these three values compete with each other, then justice becomes the dominant one that must be prioritized by law enforcers to achieve compared to certainty and benefit, this is based on the premise *recht ist wille zur gerechtigkeit* (law is the will for the sake of justice).

In order to achieve certainty, benefit, and justice in a balanced way by bringing balanced justice closer to the community and proper law enforcement must be able to avoid cheating on power or manifestations of arbitrary attitudes and despicable acts by abusing power to pursue personal interests. As is known, law is a set of norms that are right or wrong where its existence by the government is stated in writing or unwritten which binds the relationship between one human being and another and is always closely related to certainty and justice that complement each other.

One of the crimes that is very disturbing to society today is the crime of theft. The perpetrators of the crime of theft carry out their actions anywhere and anytime and often take advantage of the carelessness or negligence of their victims. It is not uncommon for the perpetrators to use violence to obtain the victim's property.

The increase in the number of criminal acts has an effect on the law enforcement process in Indonesia. Law enforcement is an activity to harmonize the relationship of values outlined in solid and embodied rules and attitudes as a series of final stage value descriptions to create, maintain and defend peace in society.⁴

The crime of theft is a social phenomenon that is always faced by society, various efforts made by the authorities and the community itself to eradicate it occur continuously in society in order to create a safe, comfortable and peaceful environment, however, these efforts are impossible to be realized in their entirety, because every crime will not be eliminated easily but can only be reduced in terms of intensity and quality.⁵In addition, the crime of theft is also a crime committed by individuals or groups who seize, take other people's belongings intentionally and harm the victims. The crime of theft that occurs in society today is not only committed by adult perpetrators (legally competent) but also by children. This is very worrying, not only because the crime committed is very detrimental to the victim but also for the perpetrators of theft committed by children can be subject to legal sanctions for their actions.

³O. Notohamidjojo, 2011, *Basic Questions of Legal Philosophy*, Griya Media, Salatiga, p. 33

⁴ H. Salim HS, 2013, *Mining Dispute Resolution Law in Indonesia*, Pustaka Reka Cipta, Bandung, p. 44

⁵Endro Didik, 2016, *Criminal Law*, Airlangga University Press, 1st printing, Surabaya, p. 63

The objectives to be achieved from this study are as follows: To find out and analyze efforts to resolve theft criminal cases in relation to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice. To find out and analyze the legal considerations of the Police apparatus against perpetrators of theft criminal acts in relation to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice.

2. Research methods

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

3. Results and Discussion

3.1. Efforts to Resolve Criminal Cases of Theft Linked to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice

Law enforcement in Indonesia cannot be separated from Law Number 8 of 1981 concerning Criminal Procedure Law. The form of law enforcement is the imposition of criminal penalties on a crime. There are three basic definitions in criminal law, namely, unlawful nature, criminal and error. Law enforcement must be based on the regulations that have been made. Every regulation made must basically have utility and justice for society.

In many countries including Indonesia, there is often dissatisfaction and frustration in the formal justice system, which has led to a response to alternatives in law enforcement, namely Restorative Justice. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator's or victim's family, and other parties directly related to the resolution of criminal cases in order to jointly seek a fair resolution oriented towards restoring the original state and not retaliation. This alternative path provides the parties involved and the surrounding community to participate in resolving the conflict that occurs. The alternative path with Restorative Justice involves the victim as an individual who is inseparable from the conflict that occurs directly involved in the case resolution process and encourages the perpetrator to be responsible for the crime he has committed by apologizing sincerely and replacing the losses in the form of money for the treatment of the victim of the crime. Restorative Justice has the meaning of restorative justice which emphasizes the conditions for creating justice and balance between the victim and the perpetrator. So that punishment is considered less effective in enforcing the law. In enforcing criminal law, it is not enough to simply regulate a criminal act in the law. Law enforcement officers as implementers of the Law, namely as authorized institutions, have a very important role.

The Indonesian National Police as the gateway for criminal cases is an institution

that has the authority to investigate and investigate criminal acts. To address this, police investigators use their authority to make efforts to resolve criminal cases outside the Indonesian criminal justice system. This authority is discretion, where discretion is the authority of the police to make decisions or choose actions in resolving legal problems, whether violations or crimes that they handle. One form of discretion in the authority of the police is the termination of investigations/investigations carried out by the Police based on considerations and beliefs by prioritizing morals compared to the applicable legal framework.

“UmThere are two pillars in restorative justice, the first is the view that in human life there is a network of relationships between one person and another, first institutions and other communities, if a violation or crime occurs then the harmonious relationship or network is damaged, so to restore the relationship a joint meeting must be held between the parties involved in the relationship. Second, the difference in views of the legal system that views crime as a violation of state or community regulations, crime is a violation of the victim because the victims, the community and the perpetrators themselves are the ones who bear the impact of the crime, so the priority is the recovery of the victim by involving the victim, the perpetrator and the community, third, there is collaboration or cooperation through meetings and deliberations to restore between the victim, the perpetrator and the community, all parties can talk about the experience of being a victim and a perpetrator, then there is responsibility for the recovery of the victim and the compensation given by the perpetrator, the victim and the community, fourth, there is a value of respect, by showing a meeting and dialogue between the parties involved, different from the court process which is interrogative.⁶

Related to this, Satjipto Rahardjo stated that the settlement of cases through the judicial system that culminates in a court verdict is a law enforcement towards the slow lane. This is because law enforcement is through a long distance, through various levels starting from the police, prosecutors, district courts, high courts and even to the Supreme Court.⁷In the end, this has an impact on the accumulation of cases, which is not a small number, in court.

Restorative justice presents a series of flexible actions that can be adapted to the applicable Criminal Justice System and are carried out in a complementary manner by considering legal, social and cultural conditions. The use of restorative justice will not harm the State's right to prosecute suspected criminals.⁸

Efforts to Resolve Criminal Cases of Theft Linked to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative

⁶Yoachim Agus Tridiatno, 2015, Restorative Justice, Cahaya Utama Pustaka, Yogyakarta, pp. 42-43

⁷Satjipto Rahadjo, 2009, Law Enforcement: A Sociological Review, Genta Publishing, Yogyakarta, p. 82

⁸Muladi, 1995, Selected Chapters on Criminal Law, BP Diponegoro University, Semarang, p. 14

Justice can be done by integrating the restorative justice model as a priority for resolving disputes within the police, which is an effort to reconcile the disputing parties by considering the type of theft crime with the qualification of fulfilling material and formal requirements as stated in Perkap Number 6 of 2019 and Perpol Number 8 of 2021. In addition, customary institutions and social institutions that are known in the community are also optimized. The legal consequences arising from the failed implementation of restorative justice against perpetrators of minor theft crimes are to forward the case to the general courts. Meanwhile, if the peace efforts find common ground and have been stated in a peace deed, the final process is the termination of the Investigation for legal reasons.

3.2. Legal Considerations of Police Officers Against Perpetrators of Theft Crimes Linked to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice

In relation to the problem of crime or criminal acts, as a general description, the legal definition of crime or criminal acts is an act that is prohibited by law and violations are subject to sanctions, and in criminology, crime or criminal acts are acts that violate the norms that apply in society and receive negative reactions from society, and psychologically, crime or criminal acts are abnormal human actions that are unlawful, which are caused by psychological factors of the perpetrator of the act.⁹

Efforts to resolve problems outside the court carried out by perpetrators of criminal acts (their families) and victims of criminal acts (their families) are expected to be the basis for consideration in the process of examining perpetrators of criminal acts in court in imposing criminal sanctions by the judge/panel of judges. Justice is a consideration in the criminal law enforcement system and is included in the new Criminal Code (KUHP), especially for criminal complaints (Klacht delict) so that it focuses on the conditions for creating justice and balance in 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 resolution. Because the deterrent effect as the ultimate goal of criminal punishment (imprisonment) for perpetrators of criminal acts is now no longer achieving its target as expected. There needs to be a breakthrough in the implementation of the criminal system in Indonesia, not only through imprisonment alone but also through the application of Restorative Justice.¹⁰

⁹Prakoso, Djoko, and Agus Imunarso. 1987. *The Human Rights of Suspects and the Role of Psychology in the Context of the Criminal Procedure Code*. Bina Aksara, Jakarta:

¹⁰Annis Nurwianti, Gunarto, Sri Endah Wahyuningsih, *Implementation of Restorative Justice in the Settlement of Traffic Accident Crimes Committed by Children at the Rembang Police Department* Khaira Ummah Law Journal Vol. 12. No. 4 December 2017

Legal regulations are primarily aimed at concrete perpetrators, namely at the actual perpetrators of violations, and are also aimed at public order so that they do not become victims of crime, and so that crimes do not occur.¹¹

Aggravated theft or theft is qualified as regulated in Articles 363 and 365 of the Criminal Code. Theft under aggravating circumstances can be interpreted as special theft, namely as a theft in certain ways so that it is more severe, so proof of the elements of the crime of aggravated theft must begin with proving the theft in its principal form.¹²

The ultimate goal of the restorative justice concept is to eliminate stigma and return criminals to normal human beings, criminals can realize their mistakes, so they do not repeat their actions, do not cause feelings of revenge because the perpetrator has been forgiven by the victim, victims quickly receive compensation, empower the community in overcoming crime and, reintegration of criminals into society.¹³

In handling the crime of theft if the requirements or criteria of Restorative Justice have all been met, including the perpetrator has admitted his actions, the victim wants to forgive the perpetrator and there is community support, and the perpetrator has never been convicted, then a Restorative Justice approach can be taken in a mediation forum. With the aim of recovery for the perpetrator, victim and community. If successful, this case can be issued with an SP3 (Investigation Termination Order) issued by the investigator. Restorative Justice will conflict with the principles of legality and legal certainty. This is because Restorative Justice does not focus on imprisonment, but rather on how to improve/restore the victim's condition after the crime. In this case, the perpetrator of the crime can be required to pay compensation to the victim of the crime who was harmed by the perpetrator's actions.

The provision of Legal Considerations must be carried out optimally, objectively and only to the extent of formal juridical matters, where the Provision of Legal Considerations is carried out in writing in the form of correspondence discussing problems containing aspects of Civil and State Administrative Law, which must first determine whether it is included in the scope of duties and authority of the Civil and State Administrative Division and to anticipate any conflict of interest with other divisions accompanied by a SWOT analysis of the case.

¹¹Sumaryono and Sri Kusriyah, 2020, The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Bloro), Journal of Sovereign Law Volume 3 Issue 1, p. 237, <http://jurnal.unissula.ac.id/index.php/RH/article/download/8811/4075>

¹²Bambang, Poernomo, 2005, Principles of Criminal Law, Ghalia Indonesia. Jakarta, p.37

¹³Ibnu Suka, Gunarto, Umar Ma'ruf, 2018, The Role and Responsibilities of the Police as Law Enforcers in Implementing Restorative Justice for Justice and the Benefit of Society, Khaira Ummah Law Journal Vol. 13. No. 1

Legal Considerations of Police Officers Against Perpetrators of Theft Crimes Related to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice are:

1. Referring to Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, investigators are directed to resolve cases outside the courts, namely by using the Restorative Justice approach.
2. Because the conditions for implementing Restorative Justice can be fulfilled by the perpetrators so that it can be resolved outside the courts, including:
 - a. No rejection from the community
 - b. After the peace agreement there was no more conflict or hatred from either side.
 - c. There is no need to worry that it will divide the unity of the nation.
 - d. The criminal acts committed by these two mothers are not radicalism or separatism
 - e. These two mothers are not recidivists
 - f. Both mothers are also not connected to any terrorist network and have not taken the lives of other people.
 - g. Both victims have agreed to forgive and withdraw all charges against the two perpetrators without any coercion or pressure from anyone, purely because of the will or good intentions of the two victims.
 - h. There has been a peace agreement between the two victims and the two perpetrators, as evidenced by a peace agreement letter signed by the two victims and the two perpetrators on stamped paper.
 - i. The perpetrator is willing to take responsibility and return the victim's rights that have been taken, including returning the perpetrator's stolen goods to the victim and replacing the losses incurred.
3. Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice is broader, in the sense that it does not limit the nominal loss incurred, as long as all the requirements listed in Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice can be met, even if the loss is above IDR 2,500,000. Different from Perma Number 2 of 2012 which limits the maximum loss to IDR 2,500,000.

4. Conclusion

Based on the research results and discussion, the following conclusions can be drawn. Efforts to Resolve Criminal Cases of Theft Linked to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice can be done by integrating the restorative justice model as a priority for resolving disputes within the police, which is an effort to reconcile the disputing

parties by considering the type of theft crime with the qualification of fulfilling material and formal requirements as stated in Perkap Number 6 of 2019 and Perpol Number 8 of 2021. In addition, customary institutions and social institutions that are known in the community are also optimized. The legal consequences arising from the failed implementation of restorative justice against perpetrators of minor theft crimes are to forward the case to the general courts. Meanwhile, if the peace efforts find common ground and have been stated in a peace deed, the final process is the termination of the Investigation for legal reasons. Legal Considerations of Police Officers Against Perpetrators of Theft Crimes Linked to the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Restorative Justice refers to Perpol Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice so that Investigators direct more towards resolving cases outside the courts, namely by using the Restorative Justice approach. Based on the research conclusions that have been presented above, there are several suggestions or recommendations that will be described as follows. It is hoped that all members of the Indonesian National Police can understand the urgency of restorative justice in the Regulation of the Republic of Indonesia National Police Number 08 of 2021 concerning Handling of Criminal Acts based on Restorative Justice which is a legal need of society and a mechanism that must be built in the implementation of investigative or investigative authority and the renewal of the criminal justice system in accordance with the values of humanity, law, and justice that live in society.

5. References

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