

## **Restorative Justice Policy in the Police Investigation Function**

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**Abstract:** *The aim of this research is to determine and analyze the scheme of restorative justice efforts by the Police during the investigation process. In this writing the author uses a normative juridical method with research specifications in the form of descriptive analysis. The authority of the National Police to stop investigations only based on non-criminal reasons; insufficient evidence; or by law. The National Police is not given the authority to stop cases on the grounds that they were resolved outside of court or set aside cases for certain considerations or resolve cases using a restorative justice approach. Such conditions have made the National Police leadership take internal policy steps based on awareness of the importance of the concept of restorative justice as the soul and personality (volkgeist) of Indonesian society and in order to create a sense of justice in society. In the National Police Chief Regulation Number 6 of 2019, it is also reaffirmed in Article 1 point 1 that the National Police of the Republic of Indonesia has an essential role in maintaining security and public order, enforcing the law and providing protection, guidance and service to the community. So, in this case it can be observed that the role of the police in society is very important, both as a protector for the community, maintaining security and order, realizing legal certainty, and providing a sense of justice for the community so that a harmonious social order is created between each other.*

**Keywords:** *Investigation; Justice; Police; Restorative.*

### **1. Introduction**

The Unitary State of the Republic of Indonesia is one of the big countries that highly prioritizes the applicable legal provisions. The positive legal rules that apply in Indonesia are clearly an important component in building a safe,

peaceful and peaceful life.<sup>1</sup>As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, it has been emphasized that Indonesia is a country of law, this phrase is stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. This emphasizes that the implementation of the government of the Republic of Indonesia must always be based on and in accordance with the will of the law. Paragraph 4 of the Preamble to the 1945 Constitution, which is the constitutional basis of this country, states that one of the goals of the state is to create general welfare and to educate the nation's life.<sup>2</sup>This has implications that general welfare becomes a constitutional ideal, accompanied by the growth of an intelligent Indonesian society that is capable of leading the Indonesian nation to become a sovereign and prosperous country.

In the life of society, there are often criminal acts in the form of violations or crimes, both serious and minor. In essence, all these criminal acts are a violation of norms in other legal fields such as civil, constitutional and government administrative law.<sup>3</sup>Of the many criminal acts, all have the same nature, namely the nature of breaking the law (*wederrechtelijkheid*). This is what makes many people seek justice from law enforcers.

So far, the State has addressed the public interest by punishing the perpetrators and then providing rehabilitation for them, but this has not touched the interests of the victims in any form. The State does not seem to think much about what the victims need. The perpetrators who are found guilty are thrown into prison at the expense of the state, while the victims are no longer a concern after the case is resolved. For this reason, public participation in the criminal justice system must be expanded and the police must know and be aware of the problems that occur.

At the end of 2009, Mbah Minah (55), a grandmother from Sidoharjo Hamlet, Darmakradenan Village, Ajibarang District, Purwokerto Regency, picked three cocoa fruits belonging to a cocoa plantation in the Purwokerto area. The cocoa fruit that was taken was intended by Mbah Minah to be used as seeds that would be planted on her own land. However, before she could take the cocoa fruit home, it turned out that her actions were discovered by the plantation guard. Then the plantation guard reported the theft case to the Ajibarang Police. After the legal process was carried out, finally by the Purwokerto District Court, Mbah Minah was sentenced to 1.5 months in prison with a term of

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<sup>1</sup> Sumaryono and Sri Kusriyah, (2020), The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN.Blora). *Jurnal Daulat Hukum*: 3 (1), p 237

<sup>2</sup> Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, (2020), Judgment Considerations Policy in Decree of the Court Criminal StatementBased On Criminal Destination, *Jurnal Daulat Hukum*: 3 (1), p 179

<sup>3</sup>Wirjono Prodjodikoro, (2003), *Certain Criminal Acts in Indonesia*, Bandung: PT. Refika Aditama, p 1.

3 month trial.<sup>4</sup>

In practice, each law enforcement officer implements internal policies, including those carried out by the police. To carry out the investigation and inquiry process that is under its authority, the police refer to the Criminal Procedure Code as a general rule of formal law. In accordance with the Criminal Procedure Code, there are one of two forms of process resolution carried out by the police, namely: Proving the crime committed by the suspect (as input for the next component of the criminal justice system/public prosecutor); or Stopping the investigation. Thus, if the police succeed in collecting evidence that shows the fulfillment of at least two pieces of evidence for a crime allegedly committed by the suspect, the police must continue the case to the prosecutor's office and become input for the prosecutor's office for the next process up to the court and correctional institution.

The police in their duties as investigators and investigators are an important part of the Indonesian criminal justice system that has extraordinary discretionary power. They are the ones who guard the gates of "justice" and decide which reports or complaints (of criminal acts) will be passed to continue being investigated and if deemed complete the files will be forwarded to the Prosecutor (P-19 and P-21) or which will be terminated (P-14). One very important authority here relates to the issuance of a letter of order to terminate the investigation (SP3 or P-14).<sup>5</sup>

Based on the description of the background of the selection of legal material as described above, the author is interested in writing withThe purpose of writing is knowing and analyzing the restorative justice scheme by the Police in the investigation process.

## **2. Research Methods**

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

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<sup>4</sup>Agus Muhammad Septiana, (2012), Overcoming the Legal Legitimacy Crisis Through Progressive Law. MMH, 41 (4), p 565

<sup>5</sup>I Made Tambir, (2019), Restorative Justice Approach in Resolving Criminal Acts at the Investigation Level. Udayana Master Law Journal, 8 (4), p 549

### 3. Results and Discussion

#### 3.1. Restorative Justice

*Restorative Justice* is a reaction to the retributive theory that is oriented towards retribution and the neo-classical theory that is oriented towards the equality of criminal sanctions and action sanctions. In the retributive theory, criminal sanctions are based on the idea of "why is there a punishment". In this case, criminal sanctions emphasize more on the element of retribution (retribution) which is actually reactive to an act. It is a suffering that is deliberately imposed on a violator.

*Restorative Justice* is a justice system that emphasizes reparation for losses caused or related to criminal acts. Restorative Justice is carried out through a cooperative process involving all parties (stakeholders).

*Restorative Justice* in principle is a philosophy (basic guideline) in the peace process outside the courts by using mediation or deliberation in achieving justice expected by the parties involved in the criminal law, namely the perpetrators of the crime and the victims of the crime to find the best solution that is agreed and agreed upon by the parties. Restorative Justice is said to be a basic guideline in achieving justice carried out by the parties outside the courts because it is a peace process from the perpetrators of the crime and the victims that arise as a result, namely the victims or losses from the criminal act.

There for it can be said that Restorative Justice contains basic principles including:

- a. Striving for peace outside the court by the perpetrator of the crime (his/her family) towards the victim of the crime;
- b. Provide an opportunity for perpetrators of criminal acts to be responsible for atone for their mistakes by compensating for losses resulting from the criminal acts they have committed;
- c. Resolving criminal law problems that occur between perpetrators of criminal acts and victims of criminal acts if an agreement and consent is reached between the parties.<sup>6</sup>

#### 3.2. Restorative Justice Effort Scheme by the Police in the Investigation Process

Law No. 2 of 2002 concerning the Republic of Indonesia National Police in Article 1 number (1) explains that the Police are all matters relating to the functions and institutions of the police in accordance with laws and regulations. The term police in this Law contains two meanings, namely the function of the police and the police institution. In Article 2 of Law No. 2 of 2002 concerning the Republic of Indonesia National Police, the function of the police as one of the functions of state government in the field of maintaining public security and order, law

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<sup>6</sup>Ivo Aertsen et al, (2011), Restorative Justice and The Active Victim: Exploring the Concept of Empowerment, TEMIDA Journal, 5 (9), p 8-7

enforcement, protection, guardianship and service to the community. While the police institution is a government organ that is designated as an institution and is given the authority to carry out its functions based on laws and regulations.

The Police's duties in the field of criminal justice are limited to the field of investigation and inquiry. Other duties are not directly related to criminal law enforcement, although there are indeed some aspects of criminal law. For example, the task of maintaining public order and security, preventing social diseases, maintaining safety, protection and assistance to the community, and seeking legal compliance of citizens are certainly broader duties than those simply stated as criminal acts (crimes/violations) according to the provisions of applicable positive criminal law.

Investigation is a series of investigator actions to search for and collect evidence in order to find the suspect. Meanwhile, according to K.wantjik Saleh quoted in the Sahuri Lasmadi law journal, investigation itself is defined as an effort and action to search for and find the truth about whether a crime really occurred, who committed the act, what the nature of the act is and who is involved in the act.<sup>7</sup>

The ongoing investigative practices show that the legal positivism or legalism school of thought and based on the principle of legal certainty is the legal philosophy school that is the mainstream in the implementation of investigative authority carried out by Polri investigators, and the dominant method of interpretation is authentic or grammatical interpretation. This means that the main legal reasoning model in the implementation of investigative authority by Polri investigators is the Legal Positivism reasoning model. The dominance of Legal Positivism which interprets the law according to rules and logic in accordance with the principle of legal certainty in decision-making in the investigation process which is more determined by the formalism aspect of the law alone, not based on the substantive material aspect of the law with teleological or sociological interpretation to provide justice.<sup>8</sup>

Law enforcement carried out using formal justice methods in the form of repressive police actions followed by a litigative legal process (law enforcement process) will generally end in a win-lose or lose-lose situation. The end of the litigative process will only result in the perpetrator being punished for his actions, while the restoration of the victim's rights and the physical and psychological losses suffered by the victim due to the incident cannot be fulfilled. The form of punishment currently used can also be said to not provide a deterrent effect for lawbreakers.

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<sup>7</sup>Sahuri Lasmadi, (2010), *Overlapping Investigative Authority in Corruption Crimes from the Perspective of the Criminal Justice System*, Jenderal Soedirman University, Faculty of Law, Purwokerto, *Journal of Legal Studies*, 2 (3), p 10.

<sup>8</sup>Koto, Zulkarnein, (2011), *Legal Interpretation of Police Investigators in Criminal Case Investigations in the Indonesian Criminal Justice System*, Dissertation, UNPAD, p 95.

The criminal justice system that has been supported by the doctrine and theory of the deterrent effect is no longer effective for use in the problem solving process, this situation encourages handling problems through informal mechanisms (misdemeanor) by involving third parties as facilitators to carry out victim-offender Reconciliation and or Alternative Dispute Resolution which is more beneficial for the various parties concerned. In addition, the large number of cases in the police has caused the resolution of a case to take longer and ultimately led to the failure to fulfill legal certainty. Likewise with the current conditions where prisoners or detainees who enter with various criminal cases have made correctional institutions/detention centers over capacity and not ideal, so that it has an impact on the emergence of criminal acts within the correctional institution/detention center environment itself, for example drug abuse, gambling, forms of violence or abuse, theft, fraud and many other criminal acts.

In the current practice of criminal law enforcement, especially in the Police, in order to accommodate the implementation mechanism of restorative justice, under the leadership of the Chief of Police Listyo Sigit Prabowo, Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice was born. The handling based on Restorative Justice is exempted for disturbing criminal acts, acts of terrorism, state security, corruption, repeat crimes and crimes against people's lives.

The presence of Perpol No. 8 of 2021 concerning Restorative Justice provides space for members of the Police in the Criminal Investigation Unit to resolve cases more quickly and provides normative guidelines for acting to resolve criminal cases using the restorative justice method. In terms of handling cases as determined by Perpol No. 8 of 2021, it can be seen that when there is a complaint report related to cybercrime, that is when restorative justice is attempted. However, in its implementation, restorative justice is carried out in all initial stages of criminal proceedings, from investigation to investigation.

Regarding the investigation process and mechanism by applying the principle of restorative justice in the Indonesian National Police, it is also regulated and described in the Chief of Police Regulation Number 6 of 2019 and the Chief of Police Circular Number 8 of 2018. Regarding the investigation process with the principle of restorative justice, it is stated in Article 12 of the Chief of Police Regulation Number 6 of 2019 that a criminal act whose resolution is through the principle of restorative justice must meet several material requirements, including:

- 1) Criminal acts that occur in society do not cause prolonged conflict.
- 2) There is a statement from the parties involved to waive the right to sue before the law.
- 3) The crime committed by the perpetrator is not a serious crime or is a minor crime.

- 4) Criminal acts that can be resolved through the principle of restorative justice are criminal acts that are still under investigation (a series of actions to search for and discover events that are suspected to be criminal acts to determine whether or not an investigation can be carried out at the next stage).
- 5) Criminal acts that will be resolved through the principle of restorative justice are criminal acts for which a Notice of Commencement of Investigation (SPDP) has not been sent to the Public Prosecutor during the process.

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

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

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

- 1) After receiving a peace request from both parties (the complainant and the accused) signed on a stamp, the police will ensure that the formal requirements for resolving the criminal case through restorative justice have been met.
- 2) If the formal requirements have been met, the peace request will be submitted to the investigator's superior (Kabareskrim or Kapolres or Kapolda) to obtain approval.
- 3) After the peace request has been approved by the investigator's superior (Kabareskrim or Kapolres or Kapolda) a time will be set for the signing of the peace statement, and all parties involved will be involved.
- 4) A special case title was held with the reporter, the reported party, and representatives of community leaders appointed by the investigator.

- 5) Issuance of a Letter of Order to Terminate Investigation or Prosecution and a Letter of Decision to Terminate Investigation or Prosecution on the grounds of resolving criminal cases through restorative justice.
- 6) Then, there is a recording in the new register book B-19 as a settlement of criminal cases through restorative justice.

Handling of criminal acts based on restorative justice itself must meet general requirements that include material and formal requirements, as well as special requirements. Material requirements that must be met in resolving cases with restorative justice include:

- 1) Does not cause unrest and/or rejection from the community;
- 2) Does not result in social conflict;
- 3) Does not have the potential to divide the nation;
- 4) Not radical or separatist;
- 5) Not a repeat offender based on a court decision, and
- 6) Not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.<sup>9</sup>

While the formal requirements that must be met include Peace from both parties, except for drug crimes, this peace is proven by the existence of a peace agreement letter signed by the parties, and Fulfillment of the rights of victims and the responsibilities of the perpetrators, except for drug crimes. Fulfillment of these rights can be in the form of returning goods, replacing losses, replacing costs incurred as a result of the crime and replacing damage caused by the crime.

If the material and formal requirements have been fulfilled, then the investigation or inquiry can be terminated. Of course, the termination of the investigation or inquiry is carried out through a special case title mechanism, and the reason for terminating the investigation and inquiry is by law.

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

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<sup>9</sup>Armunanto Hutahaean, (2022), Implementation of Restorative Justice by the Republic of Indonesia National Police to Realize Legal Objectives, *to-ra Law Journal: Law to Regulate and Protect Society*, 8 (2), p 145



law in particular from the Police more effective and efficient.<sup>10</sup>The definition of discretion is "the investigator's action according to his own judgment to determine whether a case will go to court or be resolved amicably or it can also be interpreted as a policy based on his breadth to take action based on his own considerations and beliefs. So discretion is not carried out apart from legal provisions but discretion is still carried out within the legal framework.

#### 4. Conclusion

Regarding the complete mechanism for implementing restorative justice in resolving criminal cases, it is contained in the Circular Letter of the Chief of Police Number 8 of 2018. The mechanism for implementing restorative justice includes: after receiving a peace request from both parties (the reporter and the reported) signed on a stamp, the police will ensure that the formal requirements for resolving criminal cases through restorative justice have been met. If the formal requirements have been met, the peace request will be submitted to the investigator's superior (Kabareskrim or Kapolres or Kapolda) to obtain approval. After the peace request is approved by the investigator's superior (Kabareskrim or Kapolres or Kapolda), a time will be determined for the signing of the peace statement, as well as the participation of all parties involved. A special case title will be held with the reporter, the reported, and representatives of community leaders appointed by the investigator. The issuance of a Letter of Order to Terminate Investigation or Investigation and a Letter of Decree to Terminate Investigation or Investigation on the grounds of resolving criminal cases through restorative justice. Then, there is a recording in the new register book B-19 as a settlement of criminal cases through restorative justice.

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