

Police Mechanism in Stopping Investigations into Minor Crimes to Achieve Restorative Justice

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Abstract: *The aim of this research is to examine and analyze police procedures in terminating investigations into minor crimes as a form of restorative justice. 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 out 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. The National Police took a step further with the promulgation of the Perpol. No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, in the provisions of this Perpol there are several requirements that must be fulfilled in the handling mechanism based on restorative justice.*

Keywords: *Crime; Investigation; Restorative.*

1. Introduction

Regarding minor criminal cases regulated in the Criminal Code, such as minor theft (Article 364 of the Criminal Code), minor embezzlement (Article 373 of the Criminal Code), minor fraud (Article 379 of the Criminal Code), minor fraud by sellers (Article 384 of the Criminal Code), minor vandalism (Article 407 paragraph 1 of the Criminal Code) and minor receiving (Article 482 of the Criminal Code) which are often not applied by law enforcement officers so as not to reflect a sense of justice for the perpetrators of the crime. As with the crime of theft with a small value of goods that are tried in court, it has received quite a lot of attention from various groups in society.

The public generally considers that it is very unfair if the perpetrators of minor theft must be given a prison sentence, because it is not comparable to the value of the stolen goods. The large number of cases that have gone to court has also burdened the court, both in terms of budget and public perception of the court. Minor crimes should be resolved quickly and simply but still reflect legal certainty and justice. So that legal settlement also requires utility value, and the challenges and challenges that exist today meet the objectives of the law to achieve fair and beneficial legal certainty, to carry out a possible criminal investigation process.¹

The Republic of Indonesia National Police as a law enforcement institution also has the function of serving, protecting, and protecting the community from threats and criminal acts that disturb and threaten the sense of security and also cause psychological and material harm, by maintaining social order and order, enforcing the law or more precisely enforcing justice in society based on the law.

Provisions on investigations are regulated in Chapter XIV of the Criminal Procedure Code, consisting of two parts, namely investigation and inquiry. Investigations are regulated in Articles 102 to 105 and Investigations are regulated in Articles 106 to 136. When associated with the provisions of the Criminal Procedure Code which regulate the authority and actions of investigators and the authority of investigators, "a series of actions of investigators and investigators" as defined by investigations and inquiries are not only contained in Chapter XIV of the Criminal Procedure Code, but are also contained in other chapters and articles in the Criminal Procedure Code. The authority, obligations of investigators and the scope of investigations must also be seen from other chapters and articles in the Criminal Procedure Code. The National Police then attempted to organize the scattered chapters and sections in the Criminal Procedure Code to make them more systematic as stated in Perkap 14/2012 concerning Investigation Management and stated in Perkabareskrim 3/2014 concerning SOP for Investigations.

With in the framework of the criminal justice system, the process carried out by the police is a process or stage before the trial (pre-trial processes). This process begins with an input, which is then processed (process), then produces an output. The input of a case begins with a report received by the police and/or a case discovered by the police themselves. The process carried out by the police will produce an output, whether it will be resolved by the police or submitted to the public prosecutor to be submitted to the trial. If the case is submitted to the public prosecutor, the output from the police will be input for the public prosecutor. And so on, the process in the criminal justice system continues, until there is an inkraht decision and until the convict has completed his sentence and returned to society.

¹PH Sihotang, (2020), Settlement of Minor Criminal Offenses According to the Chief of Police Regulation in Realizing Restorative Justice (Study at the Deli Serdang Police). *Iuris Studia: Journal of Legal Studies*, 1 (2), p 107

The process that The tendency to prioritize the formal legal system has given rise to several cases that have harmed the public's sense of justice, including the case of Grandma Minah who was proven to have stolen three cocoa pods in Banyumas in 2009, the case of theft of plates committed by Grandma Rasmiah in Tangerang in 2010, the case of theft of sandals committed by AAL (15 years old) a student at SMK 3 Palu, Central Sulawesi in 2011, the case of theft of wood belonging to Perhutani committed by Grandma Asyani in Situbondo in 2015, the case of abuse committed by Muhammad Azwar alias Raju (8 years old) against the victim Armansyah (15 years old) in Langkat Regency, North Sumatra in 2006², and the trial case of Prita Mulyasari, a housewife who shared her experience after receiving poor service from the OMNI International Hospital via email to online media and spread across various mailing lists which was then processed under Article 310 of the Criminal Code.³On a large scale, the formality of handling cases also still leaves conflicts that occur in society, including conflicts with an economic background, conflicts with a socio-cultural background and conflicts with a SARA background. Conflicts with an economic background, for example, conflicts between mining and plantation companies with local communities in Mesuji Lampung and Palembang and conflicts between employees with PT Freeport in Sape Bima NTB. Conflicts with a socio-cultural and SARA background, for example, cultural clashes between Dayak and Bugis and Madurese in Kalimantan, fights between Lampung residents and residents of Balinese descent, fights between residents in Southeast Sulawesi, tribal wars in Papua, the Ahmadiyah and Cikesik cases, and other conflicts.⁴

Based on the description of the background of the selection of legal material as described above, the researcher is interested in conducting research withThe purpose of this research is to study and analyze police procedures in stopping investigations into minor crimes as a form of restorative justice.

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 other documents related to this study.

²N. Surbakti, (2015). Restorative Justice in an Empirical, Theory and Policy Framework. First ed. Yogyakarta: Genta Publishing, p. 38-39.

³Faisal. (2010). Breaking Through Legal Positivism. Yogyakarta: Rangkang Education, p. 5

⁴R. Bonnie, A. Syahrin, Marlina & J. Leviza, (2016). The Role of the Police in Implementing Restorative Justice in Handling Criminal Cases (Study at the Binjai Police). USU Law Journal, 4 (4), p. 70.

3. Results and Discussion

3.1. Restorative Justice

Liebmann simply defines restorative justice as a legal system that "aims to restore the well-being of victims, perpetrators and communities damaged by crime, and to prevent further violations or criminal acts."⁵

Liebmann also provides a formulation of the basic principles of restorative justice as follows:

- 1) Prioritize victim support and healing.
- 2) Violators are responsible for what they do.
- 3) Dialogue between the victim and the perpetrator to reach an understanding.
- 4) There are efforts to properly assess the losses incurred.
- 5) Offenders must be aware of how to avoid crimes in the future.
- 6) The community also helps in integrating the two parties, both the victim and the perpetrator.⁶

A British criminologist, Tony F. Marshall in his writing "Restorative Justice an Overview" said: "Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future" (restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future).

3.2. Police Procedures in Terminating Investigations of Minor Crimes as a Form of Restorative Justice

The criminal justice system adopted by the Criminal Procedure Code and special criminal procedure rules is an integrated criminal justice system that is placed on the principle of functional differentiation, namely distinguishing between the functions and authorities of each component of law enforcement based on its agency. The integrated criminal justice system places all law enforcement officers in an equal position based on their functions and authorities.⁷

The police are street law enforcement officers who directly deal with the public. The role of the police is generally known as maintaining public order and security as well as law enforcement officers in the criminal process. In carrying out their daily duties, the police always interact and have direct contact with the public as the object of policing duties, meaning that wherever there is a community there are police who are tasked with maintaining order and security in the community

⁵Marian Liebmann, (2007), *Restorative Justice, How it Works*, London and Philadelphia: Jessica Kingsley Publishers, p. 25

⁶*Ibid*, p. 26

⁷Ruslan Renggong, (2014), *Criminal Procedure Law (Understanding Human Rights Protection in the Detention Process in Indonesia)*, Kencana, Jakarta, p. 164

from all forms of crime, from anticipation or prevention to taking action against a crime.

In the field of criminal law, the current Criminal Code is a legacy of the Dutch colonial era, which enforces the principle of legality very strictly, so that patterns of resolving criminal cases through deliberation and consensus are not known in Indonesian criminal law. The concept of restorative justice offers a mechanism that prioritizes the concept of peace, the concept of penal mediation and the concept of reconciliation, which prioritizes the resolution of cases by involving the direct participation of perpetrators, victims, law enforcement officers and the community.⁸contradicts the current criminal justice system. Therefore, in the practice of law enforcement in Indonesia, especially criminal law, there are still various problems. Good intentions and intentions in enforcing the law often lead to undesirable consequences in its implementation, especially related to the sense of justice, as in the examples of cases above. This happens because the problem of law enforcement is a complex problem that will always leave further problems due to certain things. Even according to Bagir Manan, he said that Indonesian law enforcement is "communis opinio doctorum" which means that the objectives stipulated by the law have failed to be achieved in law enforcement.⁹

In practice, each law enforcement officer carries out 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:

- 1) Proving the crime committed by the suspect (as input for the next component of the criminal justice system/public prosecutor) or;
- 2) Stop the investigation.

Thus, if the police successfully collect evidence that shows that at least two pieces of evidence for a crime allegedly committed by the suspect are met, 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. In such cases, the police do not have the authority to stop the investigation of the crime that occurred. The police's authority to stop the investigation is only based on reasons that are not criminal acts; insufficient evidence; or by law. The police are not given the authority to stop a case on the grounds that it was settled out of court or to set aside the case for certain

⁸C. Kristian & Tanuwijaya, (2015). Settlement of Criminal Cases with the Concept of Restorative Justice in the Integrated Criminal Justice System in Indonesia. *Mimbar Justitia Law Journal*, 1 (2), p 599

⁹H. Arief, & N. Ambarsari, (2018). Application of Restorative Justice Principles in the Criminal Justice System in Indonesia. *Al-'Adl*, 10 (2), p 173-190

considerations or to resolve the case with a restorative justice approach. Such conditions have made the police leadership take internal policy steps based on an awareness of the importance of the concept of restorative justice as the soul and personality (*volkgeist*) of Indonesian society and in order to realize a sense of justice in society. The police leadership is committed that there will be no more cases that harm the public's sense of justice.

As Siswanto Sunarso said, it is necessary for law enforcement officers to have a consistent leadership attitude, have commitment and always have the drive to have a competent attitude in law enforcement.¹⁰The Indonesian National Police are aware of the dissatisfaction of some members of the public with the criminal justice process and want certain acts of law violations to be resolved by involving the victim, the perpetrator, the victim's family and the perpetrator's family and involving local community leaders by paying attention to and considering the community's sense of justice. This challenge is answered by the Indonesian National Police by making consensus (restorative justice approach) as the framework of the strategy for handling criminal cases to address public dissatisfaction, especially with the Indonesian National Police.

The Indonesian National Police have implemented internal policies to realize early justice for the community. These policies are in the form of issuing several letters, telegrams, telegrams and regulations of the Chief of Police, namely: Letter of the Chief of Police No. Pol: B/3022/XII/2009/Sde Ops, dated December 4, 2009 concerning Handling Cases through Alternative Dispute Resolution/ADR. Telegram Letter from the Chief of Criminal Investigation of the Indonesian National Police to the Director of Criminal Investigation, Director of Special Criminal Investigation and Director of Narcotics Investigation of all regional police Number: ST/110/V/2011, dated May 18, 2011 concerning Alternative Settlement of Cases Outside the Court.

Secret Telegram Letter from the Chief of Criminal Investigation Unit of the Indonesian National Police to the Director of Criminal Investigation Unit, Director of Special Criminal Investigation Unit and Director of Narcotics Investigation Unit of all regional police departments Number: STR/583/VIII/2012, dated 18 August 2012 concerning the Implementation of Restorative Justice. Regulation of the Chief of Police 15/2013 concerning Procedures for Handling Traffic Accidents. Regulation of the Chief of Police 3/2015 concerning Community Policing. In further developments, since the Chief of Police was held by Police General Tito Karnavian, the Chief of Police has a program known as the PROMOTER Program, which consists of 11 (eleven) Action Optimization Programs that are actualized into 61 (sixty-one) Priority Programs. In one of the Action Optimization Programs (Program IX; More Professional and Just Law Enforcement), there is a Priority Program to Resolve Minor Cases Through a Restorative Justice Approach. As a

¹⁰NK Sutrisni, (2015), Advocacy Regulations for the Rights of Persons with Disabilities against Discrimination in the Field of Law Enforcement. *Udayana Master of Law Journal*, 4 (1). p 101-111

follow-up to the Priority Program, the Chief of Police issued two Circulars (SE), namely: SE Kapolri No. SE/7/VII/2018, dated July 27, 2018 concerning Termination of Investigation. SE Kapolri No. SE/8/VII/2018, dated July 27, 2018 concerning Implementation of Restorative Justice in Settlement of Criminal Cases.

In the case of minor crimes such as theft, embezzlement, flogging, molestation, adultery, rape, the actions taken by police investigators are to monitor and coordinate the resolution of the case in order to achieve aspects of justice and legal benefits in order to avoid witnesses who could exceed the injury and limitations of the humanitarian values of human rights. To handle criminal cases outside the courts, the National Police have taken a step further by enacting Perpol. No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, in the provisions of the Perpol there are several requirements that must be met in the handling mechanism based on restorative justice, namely, as follows:

1) Material requirements

As stated in Article 5 of Police Regulation No. 8 of 2021, material requirements include:

- a. does not cause rejection and fear in society
- b. does not affect conflicts in society;
- c. it is not possible for there to be any division of the nation;
- d. not a criminal act of a radical or separatist nature;
- e. not a repeat criminal act by the perpetrator based on a court decision; and
- f. not a crime against state security, a crime against human life, a crime of terrorism, or a crime of corruption.

2) Formal requirements

As stated in Article 6 of Police Regulation No. 8 of 2021, formal requirements include:

- a. Peace between the parties with a signed agreement except in the case of drug crimes;
- b. In order to fulfill the rights and obligations of the victim as the perpetrator's responsibility, this can be done in the form of confiscation of goods, compensation, reimbursement of costs arising from the crime, and reimbursement of losses due to the crime as evidenced by a statement signed by the victim.

3) Special conditions

- a. Information and electronic transaction crimes

As stated in Article 8 of Police Regulation No. 8 of 2021, it is emphasized that the special requirements for information and electronic transaction crimes based on restorative justice include:

- a) Perpetrators of information and electronic transaction crimes who spread illegal content;
- b) The perpetrator is willing to delete the content that has been/is being uploaded, submitted in hard copy/soft copy form to the investigator;
- c) The perpetrator apologized via video for the content uploaded along with a request to delete the content that had been distributed, which was then submitted in hard copy/soft copy form to investigators;
- d) The perpetrator is willing to cooperate in conducting further investigations with police investigators.

b. Drug crimes

As stated in Article 9 of Police Regulation No. 8 of 2021, it is emphasized that the special requirements for handling drug crimes based on restorative justice include:

- a) Drug addicts and victims of drug abuse who apply for rehabilitation;
- b) At the time of the arrest, the perpetrator was found to have evidence of narcotics and psychotropic drugs with 1 day's use or no evidence was found but the urine test results stated positive for narcotics;
- c) Not as a distributor and/or dealer in a drug crime network;
- d) The evaluation is carried out by an integrated evaluation team;
- e) In further investigation, the perpetrator is willing to cooperate with police investigators.

c. Traffic crimes

As stated in Article 10 of Police Regulation No. 8 of 2021, the essence of which is to emphasize that the special requirements for handling traffic crimes based on restorative justice include:

- a) Driving a vehicle in a dangerous manner and under dangerous conditions resulting in a traffic accident that causes material losses and/or minor injuries; or
- b) Traffic accidents on the road caused by negligence resulting in human casualties and/or property losses.¹¹

The mechanism for implementing restorative justice in the Police before being further processed by the Prosecutor's Office is as follows:¹²

¹¹I Made Tambir, (2019), Restorative Justice Approach in Resolving Criminal Acts at the Investigation Level. Udayana Master of Law Journal, 8 (4), p.271

- 1) An administrative analysis is carried out after the acceptance of a peace application between the two parties;
- 2) If the formal peace request is fulfilled, then in order to obtain approval it is submitted to the investigator's superior;
- 3) Determination of the time for the disputing parties to sign the peace statement;
- 4) The agreement signed by the disputing parties is the result of the conference;
- 5) Preparation of an official note regarding the application for dismissal of the case carried out with a special case title;
- 6) Implementation of special case titles;
- 7) Preparation of documents;
- 8) Issuance of SP3 based on restorative justice;
- 9) Issuance of SP3 signed by the investigator's superior;
- 10) Recording in the new register book B-19.¹³

According to Bonarsius Saragih, there are 4 (four) main values that an investigator who acts as a mediator must pay attention to in implementing the Restorative Justice approach method in efforts to resolve criminal cases, namely:

1. *Encounter*(meeting each other), namely creating an opportunity for the parties involved and having the intention of holding a meeting to discuss problems that have occurred and after the incident.
2. *Amendments*(repair), where it is highly expected that the perpetrator will take steps to repair the losses that occurred as a result of his actions.
3. *Reintegration*(rejoining society), namely seeking steps to restore the parties as a whole to contribute to society; and
4. *Inclusion*(open), namely providing an opportunity for all related parties to participate in handling the problem.¹⁴

According to Kelsen, law is a system of norms. Norms are statements that emphasize the aspect of "should" or *das sollen*, by including several regulations about what should be done. Norms are products and deliberative human actions. Laws that contain general rules become guidelines for individuals to behave in society, both in their relationships with other individuals and in their relationships with society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.

¹²H. Arief, & N. Ambarsari, (2018). *Op.Cit*, 10(2), p 182

¹³Herry Kandati, (2013), *Implementation of Mediation by the Republic of Indonesia Police in Handling Criminal Acts as a Manifestation of Restoration*, *Justitia*, I (5), p.199

¹⁴Bonarsius Saragih, (2009), *Restorative Justice*, Bandung Law College, p.37.

4. Conclusion

Termination of investigation in this discussion is not in the concept of the Criminal Procedure Code, but rather seen from the concept of restorative justice. This is a new concept in law enforcement in Indonesia. To handle criminal cases outside the court, the National Police have taken a step forward by enacting Perpol. No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, in the provisions of the Perpol there are several requirements that must be met in the handling mechanism based on restorative justice.

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