

Police Efforts to Legitimize the Concept of Restorative Justice in the Judicial Process

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Abstract: *The purpose of this research is to review and analyze Police legal policy product specifications in implementing the concept of restorative justice. In this writing, the author uses a normative legal method with a research specification in the form of descriptive analysis. In its implementation, the handling of criminal acts in Indonesia still uses a retributive justice system that is oriented towards retribution and prioritizes legal certainty. If the handling of criminal acts between extraordinary crimes, ordinary crimes, and minor motives is not distinguished, especially criminal acts whose losses are possibly recoverable, of course it can sacrifice the sense of justice and social reaction to the victim. In this problem, the victim is not only the party who is harmed, but the suspect is also a victim of the criminal process which is essentially to provide justice for both parties. Therefore, an optimal alternative action is needed from the applicable rules, namely in the form of discretionary actions at the stages of the criminal justice system, one of which is the Police institution.*

Keywords: *criminal; legal; Police.*

1. Introduction

In general, we all implement the law. Often without realizing it, we implement the law. Every day in meeting our daily needs, we implement the law. It's just that in the event of a violation of the law or a dispute, the implementation or enforcement of the law is often handed over to the authorities in making decisions and to determine whether or not someone is guilty based on the decision, in this case the authorities in question are in the judicial power. In the event of a violation of the law, the implementation or enforcement is a monopoly of the judicial power.¹

The problem of criminal acts, both minor (*lichte misdrijven*) and criminal acts in general are things that always exist and occur in society and must be seen with

¹Aziz Saputra, et al. (2023), Implementation of Restorative Justice in Handling Criminal Acts to Realize Community Benefits and Justice, *Jurnal Litbang Polri*, 26 (3), December, p 155

consideration of practical interests, namely so that these cases can be tried quickly to avoid the accumulation of cases in court, because the number of cases of this type is greater than other types of criminal acts. Although, initially the classification of minor crimes was the result of consideration of the lack of courts, currently the existence of minor crimes and minor crimes in general can be seen in another connection, namely in the aspect of the need for simple, fast and low-cost justice.²

Justice applied in the criminal justice system in Indonesia today is more dominant in retributive justice. Meanwhile, the justice that is expected is restorative justice or a process where all parties involved in a particular crime together seek solutions (problem solving) to deal with the consequences in the future.

The role of the Police, to reduce imprisonment for perpetrators of criminal acts through restorative justice is a positive breakthrough in the world of criminal law enforcement. In the sense that criminal law enforcement at the operational-practical level no longer fully makes imprisonment an instrument of legal settlement from time to time, but with restorative justice, efforts are made to conduct dialogue or mediation between victims-perpetrators and their families, as long as the mediation does not violate the human rights of the victims and perpetrators, and does not violate applicable laws and regulations.

The police's duty is to realize social justice with legal certainty so that legal order is created in the midst of society according to the duties of law enforcement. However, law enforcement activities should pay attention to various aspects of life in society.³ Law enforcement carried out by the Republic of Indonesia National Police with justice certainly cannot be separated from the goal of justice as a legal ideal that must be used as a direction and guideline in law enforcement itself.

The implementation of discretion decided by the Police in the action to set aside a case, an effort to detain or not detain a suspect/perpetrator of a violation of the law or stop the investigation process, is not an individual discretionary action without asking for instructions or decisions from his superiors. Such actions are bureaucratic discretionary actions because in making discretionary decisions based on or guided by the policies of the leadership in the organization and this has been agreed upon between them.⁴

In the problematic implementation of restorative justice by the Police, is it part of the criminal law enforcement policy that has legal force through internal regulations issued? or is it only part of the authority of law enforcement agencies so that the resolution of criminal cases that occur is not entirely oriented towards

²Karim. (2019). *Ius Constituendum (Regulation of Settlement of Minor Criminal Cases Through Restorative Justice)*. Surabaya: Jakad Media Publishing. p 29

³Hariman Satria, (2018), *Restorative Justice: A New Paradigm for Criminal Justice*, *Jurnal Media Hukum*, 25 (1), June, p 15

⁴Abbas Said, (2012), *Benchmark for Assessing the Use of Discretion by the Police in Criminal Law Enforcement*, *Journal of Law and Justice*, 1 (1), March, p 149.

imprisonment which has so far left many problems of its own, but restorative justice does not have legal force that can later be questioned in the future.

Based on the description of the dynamics of the active role of the police in realizing the concept of restorative justice as mentioned above, the author conducted research related to the purpose of this research is to study and analyze the specifications of the Police's legal policy products in implementing the concept of restorative justice.

2. Research Methods

The normative legal approach is an approach that is carried out based on the main legal materials by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this research.

3. Results and Discussion

3.1. Definition of Restorative Justice

Restorative Justice or often translated as restoration justice, is a model of approach that emerged in the 1960s in an effort to resolve criminal cases. Different from the approach used in the conventional criminal justice system, this approach emphasizes the direct participation of the perpetrator, victim and community in the process of resolving criminal cases.

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

3.2. Product Specifications of Police Legal Policy in Implementing the Restorative Justice Concept

To answer the development of the legal needs of the community that fulfills the sense of justice of all parties, the Indonesian National Police is authorized by Law

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

⁶*Ibid*, p 26

No. 2 of 2002 concerning the Indonesian National Police to formulate a new concept in enforcing criminal law that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community.⁷If we refer to the function of law enforcement and legal protection for the community, then the police have the authority to ensure that the law truly provides protection and justice for the community without any difference in treatment (discrimination).

Seeing all of this, the Indonesian National Police need to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment.

The paradigm leap of law enforcement and legal protection for the community, especially for victims of criminal acts in the realm/police level (investigation) through restorative justice is part of the implementation policy of criminal law whose regulation is actually strengthened by internal police regulations (Perpol on Restorative Justice) not in the Criminal Procedure Code. Thus, the police as part of the state government actually see the development of community law as input to create new policies for criminal law enforcement in the area of practice to produce law enforcement (output) that is no longer oriented towards imprisonment as has been carried out previously.

Within 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 at 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.

The process that tends 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

⁷Yana Kusnadi Srijadi & Ari Wibowo, (2023). The Role of the Police in Resolving Criminal Cases through the Restorative Justice Mechanism, *Wacana Paramarta Journal of Legal Studies*, 22 (2), p 26

Armansyah (15 years old) in Langkat Regency, North Sumatra in 20065 and the trial case of Prita Mulyasari, a housewife who told 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 with Article 310 of the Criminal Code.

The orientation of the criminal justice system focuses on criminal acts (crime, strafbaarfeit) and perpetrators of criminal acts (criminal, dader).⁸The mindset of each component of the criminal justice system tends to be based on formal rules or is positivistic without wanting to care about the benefits and sense of justice which are the spirit of criminal law enforcement. The criminal justice process reflects more justice between the interests of the state and the interests of the perpetrators.

As Siswanto Sunarso said, it is necessary for law enforcement officers to have a consistent leadership attitude, commitment and always have the drive to have a competent attitude in law enforcement.⁹The 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 violation to be resolved by involving the victim, the perpetrator, the victim's family and the perpetrator's family as well as involving local community leaders by paying attention to and considering the community's sense of justice.

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 forward by enacting Perpol. No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

Article 1 number 3 of Perpol No. 8 of 2021, restorative justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just resolution through peace with restoration to the original state. The resolution of criminal acts through restorative justice in the police is carried out in the implementation of criminal investigation, investigation, or inquiry functions.

The benefits obtained by implementing restorative justice at the investigation stage include: (1) Opening the way for the rights of the parties to the case because they can be directly involved and jointly resolve the problem; (2) No cases piling

⁸Howard Zehr, (1990). *Changing lenses : A New Focus for Crime and Justice*, Waterloo: Herald Press, p 181

⁹NKSutrisni, (2015). *Advocacy Regulation 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

up; (3) Cases can be resolved simply, quickly, and at low cost because they do not need to go through the court process; (4) Reducing capacity in correctional institutions; (5) Avoiding pretrial lawsuits, compensation, or rehabilitation; (6) Reflecting the justice desired by the community; (7) Creating security and order in society; (8) Preventing vigilante action; (9) Preventing future crimes; (10) Increasing public trust in the police; (11) Avoiding corrupt practices by law enforcement officers; (12) Preventing crimes from perpetrators who are dissatisfied with the punishment imposed on them.

The Police Policy in facilitating restorative justice efforts within the scope of the Police's authority through Perpol is not without problems. The Police's problems in practical analysis are in instrumental problems, which are from the side of the laws and regulations that regulate restorative justice in Indonesia, especially the implementation in the police. Three instrumental problems in the implementation of restorative justice in Indonesia by the Police include those related to legal legitimacy and its implementation; termination of investigations that are full of contradictions with the Law; legal follow-up if no agreement is reached.

There is no law that explicitly regulates the criteria or procedures for implementing restorative justice. The regulations governing restorative justice in Indonesia are contained in technical regulations issued by each law enforcement agency. The three regulations have problems in terms of the substance of the restorative justice regulations which are inconsistent, there is no common standard. There are different types of crimes that can be resolved through restorative justice. For example, Perja No. 15 of 2020 regulates that narcotics crimes cannot be resolved through restorative justice. However, Perpol No. 8 of 2021 and Decree of the Director General of Badilum No: 1691/DJU/SK/PS.00/12/2020 include it as one that can be resolved through restorative justice with certain conditions. These different regulations have an impact on the lack of legal certainty.

Based on Article 2 paragraph (5) of Perpol No. 8 of 2021, the handling of criminal acts based on restorative justice can be done by terminating the investigation or inquiry for legal reasons, and is counted as a settlement of the case. The Law on the Police and the Criminal Procedure Code give investigators the authority to terminate the investigation. However, the termination of the investigation must meet the requirements stipulated in the Criminal Procedure Code. Article 109 paragraph (2) of the Criminal Procedure Code stipulates that there are three reasons as the basis for terminating the investigation, namely insufficient evidence, the incident is not a criminal act, and by law.

There is a debate about the authority of investigators to terminate investigations based on restorative justice for legal reasons. Sukardi explained that restorative justice does not absolutely terminate investigations. Termination of a case for

legal reasons should be the authority of the court.¹⁰ There are also those who argue that the termination of a criminal case for legal reasons is the authority of the prosecutor as a public prosecutor. Thus, case files that have entered the investigation stage, even though there has been a peace, the case files must still be transferred to the public prosecutor, and the public prosecutor determines to stop the prosecution for legal reasons.

Police Regulation No. 8 of 2021 also does not regulate sanctions or follow-up actions if the perpetrator or victim does not comply with the peace agreement. This Police Regulation stipulates that the implementation of restorative justice must meet formal requirements (Article 4). Meanwhile, Article 6 paragraph (2), the formal requirements referred to are peace from both parties; and fulfillment of the rights of victims and the responsibilities of the perpetrators, except for narcotics crimes. Article 6 paragraph (2) above means that before a criminal case is resolved through the restorative justice mechanism or before a criminal case is brought to a special case conference forum, the parties must first prove that there has been a peace agreement, and the victim's rights have been restored.

The implementation of the restoration of victims' rights carried out after restorative justice will have an impact on the supervision of the implementation of the agreement. The police do not have the authority to supervise the implementation of the agreement. It is very likely that the parties will deny the agreement. In fact, one of the clauses of the statement letter attached to Perpol No. 8 of 2021 states that the parties agree not to sue each other legally in the future.

The fundamental legal reconstruction that must be carried out is in the product of criminal procedure law. This is because the Criminal Procedure Code is the core guideline for the work of the Police in the criminal justice process which is very strong in hierarchy with the constitutional status of the Law. Criminal procedure law is the entire legal regulation that regulates how law enforcement agencies implement and maintain criminal law.¹¹

The current Criminal Procedure Code does not regulate the settlement of criminal cases through the restorative justice mechanism. In fact, restorative justice is one of the mechanisms for resolving criminal cases, so it is included in the group of criminal procedural law. According to the author, in order to create a common understanding, and create uniformity of interpretation and legal certainty related to the application of restorative justice, its regulation must be regulated in the Criminal Procedure Code. Thus, the current Criminal Procedure Code must be immediately reconstructed to accommodate the application of restorative justice which also provides legal certainty for the Police in realizing restorative justice in its function of dealing with criminal investigations that meet the provisions for

¹⁰Ilhamdi Putra and Khairul Fahmi, (2021). Characteristics of *Ne Bis In Idem* and its Elements in the Procedural Law of the Constitutional Court, *Constitutional Journal*, 18 (2), June. p 363

¹¹Luhut MP Pangaribuan, (2013), *Criminal Procedure Law*, 1st edition, Jakarta: Djambatan, p 76.

restoration in order to create effective punishment in the Indonesian criminal justice system.

4. Conclusion

The Indonesian National Police took a step forward by enacting Perpol. No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Based on Article 2 paragraph (5) of Perpol No. 8 of 2021, handling of criminal acts based on restorative justice can be done by terminating the investigation or inquiry for legal reasons, and is counted as a settlement of the case. The Law on the Police and the Criminal Procedure Code give investigators the authority to terminate the investigation. However, the termination of the investigation must meet the requirements stipulated in the Criminal Procedure Code. Article 109 paragraph (2) of the Criminal Procedure Code stipulates that there are three reasons as the basis for terminating the investigation, namely insufficient evidence, the incident is not a criminal act, and by law.

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