

Implementation of Restorative Justice in Resolving Criminal Acts of Defamation in Cyberspace (Case Study of Kendal Police Resort)

Fendi Setiawan¹⁾ & Gunarto²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: fendisetiawan933@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: gunartowr2@yahoo.com

Abstract. *The development of social media is getting faster along with the development of science and technology and reaching all levels of society. Social media combines elements of information and communication, internet networks through several features for the needs of its users. Some of the information we now receive can be through status uploads or stories on the WhatsApp, Instagram, Telegram, Facebook applications, sharing news links, communication via chat, audio/visual communication and others are superior features of social media. With the development of applications that we can easily access on smartphones, if used positively, it certainly brings benefits, but it can also be misused so that various crimes arise. In the Police itself, crimes using the internet/social media have increased significantly, one of which is the crime of defamation. From the background description above, the author tries to dig deeper into Restorative Justice in resolving cybercriminal acts of defamation, so the author takes the thesis title Implementation of restorative justice in resolving criminal acts of defamation in cyberspace (Case study of the Kendal Police Resort). The approach method used in this study is sociological juridical. The specification of the research approach used is descriptive analytical. The sources and types of data used are primary data and secondary data. This study uses data collection techniques in the form of field studies at the Kendal Police and literature studies. The results of the study obtained are, Settlement of cases with a Restorative justice approach so as not to give rise to diversity in investigation/investigation administration and differences in interpretation of investigators and deviations in its implementation, handling guidelines are needed according to Perka Polri Number 8 of 2021.*

Keywords: *Crime; Defamation; Justice.*

1. Introduction

The development of social media is getting faster along with the development of science and technology and reaching all levels of society. Social media combines elements of information and communication, internet networks through several features for the needs of its users. Some of the information we now receive can be through status uploads or stories on the WhatsApp, Instagram, Telegram, Facebook applications, sharing news links, communication via chat, audio/visual communication and others are superior features of social media. With the development of applications that we can easily access on smartphones, if used positively, it certainly brings benefits, but it can also be misused so that various crimes arise. In the Police itself, crimes using the internet/social media have increased significantly, one of which is the crime of defamation.

In criminal law, there is a term known as crime or criminal act or delict. Delict in Dutch is called *Strafbaarfeit*, which consists of 3 words, namely *straf*, *baar*, and *feit*. Where all three have the following meanings: *Straf* is interpreted as criminal and legal, *Baar* is interpreted as can and may, *Feit* is interpreted as an act, event, violation and deed. So the term *Strafbaarfeit* is an event that can be punished or an act that can be punished while delict in a foreign language is called delict which means an act whose perpetrator can be punished.¹

Defamation can generally be equated with gossip, because both acts have the same intention to denigrate others. In Indonesia, in accordance with the culture of its society which still upholds eastern culture, acts containing defamation such as insulting, slandering, or similar are very contrary to good manners, so these acts are anti-social and must be discriminatory.² Defamation is also known as insult, which is basically attacking someone's good name and honor that is not in a sexual sense so that the person feels disadvantaged. A crime that is accepted as a fact that is detrimental to society, both in the simplest (primitive) society and in modern society. The losses incurred can be in the form of material or immaterial losses. Material losses include victims of crime and damaged or destroyed property and increased costs that must be incurred for its handling. Immaterial losses can be in the form of reduced or lost public trust in the implementation of law enforcement carried out by law enforcers.

The development of defamation crimes is increasingly advanced in line with sophisticated information and communication technology. There are many factors behind this crime, including because there is an element of unintentional, or envy seeing other people get luck, success, jealousy, victory and so on. Self-control is needed in saying something, as the saying goes "your mouth is your tiger", you should always be careful in speaking. Even in cyberspace. Making the wrong status on social media can lead to legal proceedings. Some examples of defamation cases

¹Adami Chazawi, *Criminal Law Lessons Part I*, (Jakarta: Rajawali Pers, 2011), p.69

²Zainuddin Ali, *Philosophy of Law*, Sinar Grafika, Jakarta, 2014. P. 78.

in Indonesia that have occurred:

1) Denise Chariesta has been officially announced as a suspect in the Razman Arif Nasution defamation case. On Friday, December 22, 2023, Denise Chariesta on the Intense Investigation YouTube channel, the feud between Razman Arif Nasution and Denise Chariesta began with the alleged fraud case of Medina Zein in mid-2022. At that time, Denise claimed to be a victim of Medina Zein's fraud and opened a complaint post for other victims. At that time, Razman Arif Nasution was Medina Zein's attorney, tasked with defending his client. He then sent a warning letter for Denise Chariesta to retract her statement about Medina Zein and to prohibit the existence of a complaint post for victims. Denise Chariesta did not accept this and instead challenged her to have an open debate with him. The dispute at that time ended with Razman Nasution reporting Denise Chariesta to the North Sumatra Police on charges of violating the ITE Law;³

2) Karimunjava alleged defamation case, Previously, Abdul Rachim, Hasanudin, and Sumarto Rofiun who are environmental activists were reported for alleged violations of the Electronic Information and Transactions Law (UU ITE). The three activists were reported for allegedly committing defamation and hate speech against Sutrisno, a shrimp farmer in Karimunjava. The report on alleged defamation and hate speech was made at the Central Java Regional Police on November 28, 2023. The Director of Criminal Investigation of the Central Java Regional Police, Senior Commissioner Dwi Subagio, confirmed that the report on alleged defamation had been discontinued because the results of the investigation with witnesses, 2 experts and evidence showed no criminal incidents.⁴

Apart from the above cases, there are still many other cases that end up in the legal realm which are lessons for anyone who will convey opinions, criticisms, and freedom of expression. No exception, in Kendal Regency there is still a lack of wisdom and a lack of awareness that occurs a lot in the lower classes and the general public.

From the background description above, the author tries to dig deeper into Restorative Justice in resolving cybercrime of defamation, with the title **Implementation of Restorative Justice in Resolving Criminal Acts of Defamation in Cyberspace (Case Study of Kendal Police).**

2. Research methods

The approach method used in this thesis is the sociological legal approach method. Sociological legal research is a research based on normative legal science (statutory regulations), but does not study the norm system but rather observes

³ <https://yoursay.suara.com/entertainment/2023/12/22/203546/denise-chariеста-tetap-tenang-usai-ditetapkan-jadi-tersangka-case-pencemaran-nama-baik>. Accessed on May 11, 2024

⁴ <https://regional.kompas.com/read/2024/05/27/164236678/kas-dugaan-pencemaran-nama-baik-3-aktivis-lingkungan-karimunjava>. Accessed May 11, 2024.

how reactions and interactions occur when the norm system works in society.⁵The research examines from the perspective of legal science and other written regulations as well as the Implementation of Restorative Justice in Resolving Criminal Acts of Defamation in Cyberspace (Case Study of Kendal Police Resort)

3. Results and Discussion

3.1. Implementation of Restorative Justice in Resolving Criminal Acts of Defamation in Cyberspace (Case Study of Kendal Police).

Freedom of expression has certain limitations as long as it is carried out without violating rights. The right to freedom of speech is also limited by the criminal provisions in Articles 310-321 of the Criminal Code concerning insults. These limitations are maintained and can take various forms. There are those who defame, including defamation in writing. There are those who slander, report slanderously, and accuse slanderously. Almost all over the world, articles related to insults are still maintained. The reason is, the result of insults in the form of defamation is character assassination and in this case is considered a violation of human rights.

The development of digital technology has opened the door to various new types of crimes, with cybercrime being one of the most prominent.⁶One of the cases or cyber crimes that is discussed in this thesis is the Cybercrime of defamation. Currently, everyone can also be subject to criminal threats for acts of insult and/or defamation on the internet. Specifically for internet users, the criminal threat is formulated through Article 27 paragraph (3) in conjunction with Article 45 of the ITE Law. Through this provision, internet users can also be subject to coercive measures considering that the maximum criminal threat is 5 years in prison. The implementation of these legal provisions has invited many protests from the public because it is considered a criminalization of freedom of expression.

One form of renewal in Indonesian criminal law is the regulation of criminal law from the perspective and achievement of justice towards the improvement or restoration of conditions after an event and criminal justice process known as restorative justice which is different from retributive justice or justice that emphasizes retribution and restitutive justice which emphasizes justice on compensation.⁷

Restorative justice in the development of legal and punitive schools (the development of human civilization) the state returned the mandate of *ius ponale*

⁵Bernard L. Tanya, et al., 2010, *Legal Theory: Human Orderly Strategies Across Space and Generations*, Yogyakarta: Genta Publishing, p. 212.

⁶Sitta Saraya. 2024. *Technological Developments on Criminal Procedure Law in the Bookchapter Latest Developments in Indonesian Criminal Procedure Law*. Gita Lentera, Padang, West Sumatra. Pg. 56

⁷Sitta Saraya. 2024. *National Webinar Paper Entitled Restorative Justice Legal Policy in Criminal Law Political Reform Based on Pancasila Values*. Organizer: Faculty of Social Sciences and Humanities Borneo Lestari, August 5, 2024.

and *ius poniendi* to society within the framework of healing and recovery.⁸ Restorative justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the need to involve perpetrators, the community and victims as a step towards healing/social recovery in social relations in society.

Restorative justice settlement is different from the conventional justice process. Conventional justice is a court that determines guilt and takes care of the damage/suffering experienced by a person or several people in a forum between the perpetrator of the crime and the state according to systematic rules. Restorative justice is a settlement process involving the victim, the perpetrator and the community. This is as stated by Howard Zehr in 1990 in his book which states:⁹

"Restorative Justice sees things differently... crimes are a violation of people and relationships... it creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance".

Restorative justice is also a new framework for thinking that can be used in responding to a criminal act for an integrated criminal justice system in realizing legal benefits and certainty after the parties feel/obtain justice in the implementation process.

Restorative justice is one of the alternative forms of dispute resolution outside the court. According to Barda Nawawi Arief, it is defined as penal mediation. This mediation is often referred to as "mediation in criminal cases" or "mediation in penal matters" which in Dutch is called *Starfbemiddeling*.¹⁰ Penal mediation is used to bring together the perpetrator of a crime and the victim, so this penal mediation is often also known as "victim offender mediation" or "offender victim arrangement".¹¹

The practice of penal mediation emerged as an alternative way of thinking in solving problems in the criminal justice system. The discourse of restorative justice seeks to accommodate the interests of victims and perpetrators of criminal acts, and to find better solutions for both parties, overcoming various problems in the criminal justice system. Penal mediation, which is part of the concept of restorative justice, places the criminal justice system in the position of a mediator. The following table shows the mechanism for Handling Criminal Cases with

⁸Zulfa, Eva Achjani, *Paradigm Shift in Criminalization*, Lubuk Agung Publisher, Bandung, 2011, p. 74

⁹Howard Zehr in Marlina, *Development of the Concept of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia (A Study in Medan City)*, Dissertation, Postgraduate School, University of North Sumatra, Medan, 2006, p. 50

¹⁰Barda Nawawi Arief, *Penal Mediation: Settlement of Cases Outside the Court*, Master's Library, Semarang, 2010, pp. 1-2

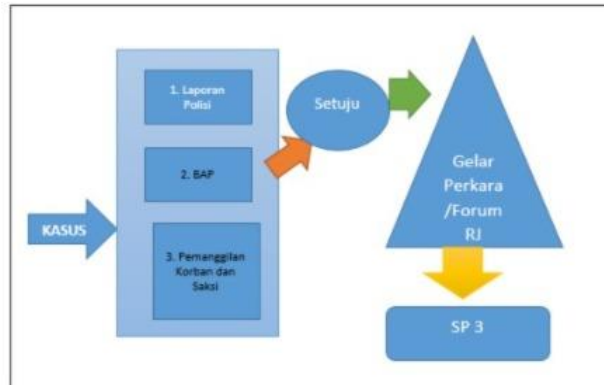
¹¹Yuarsi Susi Eja, *Initiating a Safe Place for Women*, 1st printing, Center for Population and Development Studies

Gadjah Mada University Policy, Yogyakarta, 2002, p. 87

Restorative Justice.

Table 1:

Mechanism for Handling Criminal Cases with Restorative Justice



Source: Author Summary

The above mechanism shows that a case or matter has come into contact with the criminal justice system, in this case the Police, when a case occurs the Police, namely the investigator, conducts an examination of the reported criminal incident. During the investigation process, the parties, namely the perpetrator and the victim, are brought together.

If an agreement is reached for a settlement through deliberation and family or restorative justice, then a case conference will be held in the restorative justice forum to make a joint decision, which will then be followed by an SP3 (Termination of Investigation) using the police's discretionary authority, so that the case stops at the investigation level and does not go to court.

Termination of investigation carried out by investigators with the consideration that restorative justice has been carried out still refers to the mechanism for terminating investigations as regulated in the Police Regulation Number 8 of 2021 which mandates the handling of cases related to the concept of restorative justice, namely through a report withdrawal mechanism to be followed by the preparation of a BAP containing the withdrawal of the relevant statement in the previous BAP by both the reporter and the reported party so that the elements of the article are reduced on the basis of insufficient evidence) so that the investigation can be stopped on the grounds of insufficient evidence.

Below the author provides data related to case handling using restorative justice at the Kendal Police.

Table 2:

Case Data With Efforts to Terminate Investigations Through Restorative Justice at Kendal Police

No	Year	Type of Case	Information
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1	2024	3	1. Criminal Act of Aggravated Theft; 2. Criminal Act of Assault; 3. Criminal Act of Theft
2	2023	4	1. Domestic Violence Crimes (2); 2. Criminal Act of Molestation (1); 3. Criminal Act of Embezzlement (1)
3.	2022	7	1. Criminal Act of Theft (2); 2. Criminal Act of aggravated theft (1); 2. Criminal Acts of Fraud and Embezzlement (1); 3. Criminal Act of Assault (1); 4. Not a criminal act (2)

Source: Recap of Restorative Justice Implementation Data at Kendal Police 2022, 2023, 2024.

Based on the table above, we can see that Restorative Justice at the Kendal Police has been implemented based on the mandate of the Chief of Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice.

In this study, for example, there is an alleged cybercrime of defamation, namely the alleged dissemination of false identities and/or medical records of Covid-19 positive patients through an electronic system in the form of WA email (WhatsApp) and administrative violations, in accordance with the complaint report of Ms. Cyntia Paramita Binti Tri Budiarto, dated February 22, 2022. Law enforcement officers in this case the Kendal Police have conducted an investigation and restorative justice efforts, initially the reporter provided information regarding the alleged defamation. However, in this case, after an investigation, it was found that the incident occurred when the Covid virus was spreading, so that the provision of patient data from the Covid task force was in accordance with the procedures for handling and anticipating the spread of Covid-19 in Kendal Regency in particular.

According to the explanation of the expert witness in the case title, it was explained that the matter of submitting data regarding positive Covid-19 patients via an electronic system in the form of WA (WhatsApp) email according to the chronology of the explanation above, does not constitute a criminal act of alleged dissemination of the identity and/or medical records of positive Covid-19 patients incorrectly via an electronic system in the form of WA (WhatsApp) email. and administrative violations. In this case, there is no allegation of the dissemination

of the identity and medical records of positive Covid-19 patients. In terms of submitting medical record results, it is permitted if it is based on public interest. Based on Law Number 36 of 2009 concerning Health. Article 57 paragraph (2) of this Law states that the provisions regarding the right to confidentiality of personal health conditions do not apply if they concern the interests of the wider community, especially in the Covid-19 pandemic.

By opening medical information belonging to Covid-19 patients, it is hoped that the public can find out about the subject, location of domicile and history of social interactions of patients or suspected Covid-19. This certainly realizes transparency that is very much needed as a means of early protection against the risk of transmission by limiting interactions. Another provision is in the Minister of Health Regulation 36 of 2012 concerning Medical Confidentiality, there are conditions that allow for the opening of medical confidentiality, in the Minister of Health Regulation Number 36 of 2012 paragraph 5 it is stated that in the case of opening medical confidentiality related to the threat of an extraordinary event or epidemic, the patient's identity can be opened with the note that it is only opened to authorized institutions for follow-up purposes. The opening of confidentiality based on the provisions without the patient's consent can be done in the interests of enforcing ethical discipline and the public interest.

Legal Basis for Handling Covid-19 Presidential Regulation Number 11 of 2020 concerning the Implementation of Health Conditions broadly regulates two things, namely: First, Covid-19 is known as a disease that causes public health problems, and second, this nature creates a responsibility to serve it to take action in accordance with legal provisions. So medical secrets or medical records of positive Covid-19 patients from someone can be opened if they are faced with public health interests or public interests.¹²

Of the many criminal cases that occurred in Kendal Regency and efforts to implement restorative justice have been made, there was only 1 (one) case related to the alleged cyber crime of defamation and it occurred during the Covid-19 period, then with restorative justice efforts the investigation was stopped because the case was not a cyber crime of defamation.

The following is one of the documentations of Restorative Justice Efforts at the Kendal Police.

¹²Explanation of expert witness Sitta Saraya, SH, MH on August 19, 2022 in a case regarding the alleged dissemination of incorrect identities and/or medical records of positive Covid-19 patients through an electronic system in the form of WA (WhatsApp) emails and administrative violations. With Investigators Iptu. Rozikin, SH., and Brigadier Fendi Setiawan, SH. as Assistant Investigators



Source: Restorative Justice Documentation at Kendal Police

Case resolution with a Restorative Justice approach so as not to give rise to diversity in investigation/investigation administration and differences in interpretation of investigators and deviations in its implementation, a handling guideline is needed. Guidelines for the Circular Letter of the Chief of Police Number: SE//8/VII/2018 dated July 27, 2018 concerning the Implementation of Restorative Justice. The guidelines are as follows:

- 1) The material requirements are met, namely:
 - a) Does not cause public unrest and there is no public rejection;
 - b) Does not result in social conflict;
 - c) There is a statement from all parties involved that they do not object and waive their right to sue before the law;
 - d) The principle of boundaries;
 - (1) To the perpetrator:
 - a) The level of the perpetrator's guilt is relatively not serious, namely guilt (schuld or mensrea in the form of intent (do/us or opzet) especially intent as an intention or goal (opzet als oogmerk);
 - b) The perpetrator is not a repeat offender
 - (2) In Criminal Acts in process:
 - a) Investigation
 - b) Investigation before the SPDP is sent to the Public Prosecutor;
 - 2) Fulfilled formal requirements, namely.
 - a. Letter of Application for Peace from both parties (reporter and reported);
 - b. The Peace Declaration Letter (deed of settlement) and settlement of the dispute between the parties to the case (the reporter and/or the reporter's family, the reported party and/or the reported party's family and representatives of community leaders) must be acknowledged by the investigator's superior;
 - c. Minutes of Additional Examination of the parties to the case after the case has been settled through restorative justice;
 - d. Recommendation of a special case title that approves restorative justice settlement,'
 - e. The perpetrator does not object to responsibility, compensation, or does it

voluntarily;

f. All criminal acts can be subject to restorative justice for general crimes that do not result in human casualties.

3. Mechanism for implementing restorative justice:

a. After receiving a peace request from both parties (the complainant and the accused) signed on a stamp, conduct an administrative investigation into the formal requirements for resolving the case through restorative justice;

b. The application for peace after the formal requirements have been fulfilled is submitted to the investigator's superior to obtain approval;

c. After the application has been approved by the investigator's superior (Kabareskrim/Kapolda/Kapolres), the time for signing the peace statement is then determined;

d. The implementation of a conference that results in an agreement signed by all parties involved;

e. Make an official note to the investigator supervisor or Head of Work Unit regarding a request to conduct a special case conference for the purpose of terminating the case;

f. Carrying out a special case title with the reporting participants, and/or the reporting family, the reported party and/or the reported party's family and representatives of community leaders appointed by the investigator, the investigator handling the case and representatives from the internal supervisory function and legal function and government elements if necessary;

g. Compiling administrative completeness and special case title documents as well as case title result reports;

h. Issuing a Letter of Order to Terminate Investigation/Prosecution and a Letter of Decision to Terminate Investigation/Prosecution on the grounds of restorative justice;

i. For cases at the investigation stage, the investigator issues an Investigation Cessation Order and Investigation Cessation Decree signed by.

1) Director of Criminal Research at the National Police Headquarters level;

2) Director of Criminal Research at the Regional Police level;

3) Chief of Police, at the Police Resort and Police Sector levels;

j. For cases at the investigation stage, investigators issue a Letter of Order to Terminate Investigation and a Letter of Determination to Terminate Investigation as stated in the Attachment to this Circular, which is signed by:

1) Director of Criminal Research at the National Police Headquarters level;

2) Director of Criminal Research, at the Regional Police level;

3) Chief of Police, at the Police Resort and Police Sector levels;

k. Recording in the new register book B-19 as a restorative justice case is counted as settling the case.³²

In the implementation of Restorative Justice in the Kendal Police area, the basis is the Regulation of the Republic of Indonesia National Police No. 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. As stated in Articles 1 to 11 which are the formal and material requirements that must be met

In the process of investigating criminal cases, the various articles above are steps and guidelines for investigators within the scope of the Republic of Indonesia National Police so that the investigation process can be in accordance with what is expected. Starting from the circular issued by the Head of the Republic of Indonesia National Police Number: SE / 8 / VII / 2018 concerning the Implementation of Restorative Justice in resolving criminal cases which after a year will be emphasized through the Regulation of the Republic of Indonesia National Police No. 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. All of these legal instruments are the basis for the criminal case process for traffic accidents with restorative justice.

3.2. Obstacles to the Implementation of Restorative Justice in Cybercrime of Defamation (Case Study in the Jurisdiction of the Kendal Police Resort)

1. Obstacles to the Implementation of Restorative Justice in Investigations.

The application of the restorative justice concept in the investigation system in the field of research is currently experiencing several obstacles, including:¹³

1) The investigative authority granted by the Criminal Procedure Code is the authority to prove a crime and find a suspect who must be held accountable in court. The Criminal Procedure Code does not give investigators the authority to stop a case if the criminal elements are met as a result of the investigation.

2) In the Criminal Procedure Code, investigators are given the authority to stop investigations on the grounds that it is not a criminal act, insufficient evidence as a criminal act, and by law. However, the Criminal Procedure Code does not give investigators the authority to resolve cases outside of court hearings or to set aside cases for certain considerations.

3) The Criminal Procedure Code regulates the withdrawal of reports or complaints only for certain cases, namely complaint offenses. So that investigators, legally formal except for complaint offenses, must forward to the Public Prosecutor for cases that are proven to be criminal acts based on investigations. Meanwhile, in the development of criminality, the parties prefer to resolve cases outside the courts even in cases that are classified as pure crimes/not complaint crimes.

¹³Agus Andrianto, Strategy for Implementing Restorative Justice Principles to Improve Excellent Service

In the Framework of Realizing Public Trust, National Police Headquarters, 20th SESPIMTI Education, Regional Military Command, 2012, p.

Another obstacle faced in the application of restorative justice in the process of handling criminal cases is that there are investigators who understand normative law or positive law better than understanding the concept of customary law as a law that lives in the midst of society. In the context of implementing restorative justice, investigators should also be open to understanding local customary law to provide a sense of justice to the community. The obstacles faced by investigators in the application of restorative justice in handling criminal cases seen from the aspects of internal and external factors based on the results of interviews with the Head of Criminal Investigation Unit of the Kendal Police are as follows:¹⁴

1) Internal factors, Internal factors can be identified as follows:

a. Regarding Facilities and Infrastructure.

At the Polres level, the equipment and infrastructure that support cyber crime investigations are not as complete as those at the Central Java Regional Police.

b. Related to the competence of investigators in the field of legal knowledge, legislation, criminal justice systems and technical and tactical skills of investigation are still not optimal. This happens because not all criminal investigation function personnel have followed vocational education for technical investigation functions and supporting skills such as the ability to use information technology in revealing criminal cases. This includes the lack of comprehensive understanding of the principles of restorative justice.

c. Regarding the behavior of investigators and the implementation of the code of ethics of investigation, this can be seen from the lack of firmness/tenacity/toughness and often ignoring procedures, in carrying out tasks there is a tendency to exceed the limits of authority, lack of independence and being influenced by other parties so that it seems discriminatory towards handling cases, less able to maintain the confidentiality of investigations, often throwing out words/sentences or gestures that aim to get rewards, and even often collaborating with parties related to the case.

d. Regarding the budget, the investigation budget is accounted for against cases that have been submitted to the public prosecutor/P-21, so that there is limited room for maneuver in resolving cases that can be resolved at the investigation level. This condition will encourage all case resolutions through the judicial process, while the public still expects them to be resolved at the investigation level.

e. There is no standard operating procedure (SOP) that can be used as a guide and legal umbrella for investigators or SKPT to resolve cases outside the courts or by carrying out restorative justice in accordance with the interests of the parties involved in the case and seeking justice.

f. There is no synchronization between work units, for example between the

¹⁴Interview with Head of Criminal Investigation Unit of Kendal Police, Mr. AKP. Untung Setiyahadi, SH, MH on August 10, 2024

criminal investigation function and SKPT, or other supporting functions to resolve community problems that arise by prioritizing restorative justice.

2) External factors, based on the identification results, can be described as follows:

a. Legal problems faced by the community are often closely related to political problems and the developing strategic environment. Therefore, such conditions greatly influence the steps or actions taken by the police.

b. Synergy or cooperation between law enforcement agencies as subsystems of the Indonesian criminal justice system is not yet optimal. Communication between subsystems in the integrated criminal justice system is still formal, there is no single perception to provide fast, cheap and fair justice services. So that investigators still seem to be *hulp magistraat*. This can be seen from the back and forth of case files between investigators and public prosecutors, where the subject of debate is not substantial and tendentious.

c. There are still negative views from the public about the investigation and the efforts of the Police in realizing legal certainty and justice. This can be seen from the indicators that the investigation has not prioritized cases that are of concern to the public, has not provided information about the development of the case optimally, there is still a perceived discrimination in the investigation of people who are "legally literate" and investigations of citizens who are "legally blind", and the investigation is still carried out prioritizing legal norms so that the public is less sympathetic.

d. That the development of information technology in addition to providing positive impacts also provides negative impacts that contribute to the crime rate, this then becomes a new job challenge for investigators. Crimes caused by information technology media in terms of investigative techniques and tactics clearly require counter technology, meaning that even though the type of crime is common, if it is carried out using information technology, investigators need more time and equipment than if investigators were investigating conventional crimes. Therefore, on the one hand, technological developments also become a challenge for investigative tasks.

e. The mass media coverage that tends to corner the Police, especially in resolving cases that cause conflict in society, is also triggered by the weak ability of social communication and understanding of mass psychology to gain mass sympathy in controversial cases. This is also driven by the participatory legal culture utilized by the media.

In carrying out the investigation process, the Indonesian National Police certainly prioritizes formal legal law enforcement to hold the perpetrator accountable based on the principle of fault (*GeenStraf Zonder Schuld*) rather than a solution-based approach with a restorative justice approach. This principle of fault is a principle applied in criminal responsibility, meaning that punishment is only imposed on those who have truly committed a crime. Regarding the definition of

this fault, Mezger said that "fault is the entire condition that provides a basis for personal blame against the perpetrator of the crime". Based on this opinion, it can be said that the fault contains an element of blame against someone who has committed the act, meaning that the act can be blamed on him. The difference between intent and negligence is solely needed in the midwifery and not the elimination of fault. The element to say that there is a criminal act is based on the existence of an error in the form of intent (*dolus*, *opzet*, intention) which is colored by an unlawful nature and then manifested in the attitude of the act. Errors in the form of negligence or *culpa* which are interpreted as a result of a lack of caution accidentally something happens. In Dutch, the principle of criminal acts without fault is known as "Geen Straf Zonder Schuld".¹⁵In carrying out its duties in the field of law enforcement, the Indonesian National Police has implemented the concept of restorative justice by classifying criminal acts committed by the perpetrators, namely criminal acts that affect the stability of public order and security, criminal acts that are categorized as minor crimes and criminal acts related to child protection.¹⁶Handling criminal cases with a restorative justice approach offers a different view and approach in understanding and handling a crime. The restorative justice view of the meaning of a crime is basically the same as the general criminal law view, namely an attack on individuals and society and social relations. Based on the restorative justice approach, the main victim of a crime is not the state, as in the current criminal justice system. The restorative justice dimension interprets crime to create an obligation to repair damaged relationships due to a crime. While justice is interpreted as the process of finding solutions to problems that occur in a criminal case where the victim is involved.

3.3 Efforts to Overcome Obstacles to the Implementation of Restorative Justice.

The implementation of restorative justice should also be seen as a form of Polri service to the community. By understanding the concept of service, the implementation of law enforcement does not only interpret the Law as a legal action. However, the concept of service in the implementation of restorative justice must be transformed into a law enforcement service that is oriented towards the interests of the parties / stakeholders to achieve a sense of justice. Based on the obstacles found, it is necessary to improve the quality of law enforcement carried out by Polri personnel to accelerate restorative justice based on the aspect of the Polri's commitment to solving community problems and the strong desire of each Polri personnel to always improve their professionalism, but the competence of investigators in the field of legal knowledge, laws and regulations, the criminal justice system and technical and tactical skills of investigation in implementing restorative justice is not adequate, of course it has an impact on the suboptimal formation of a new organizational structure where

¹⁵Sudarto, Law and Social Development, Sinar Baru, Bandung, 1983, p. 30,

¹⁶Sisiwanto, Law Enforcement of Psychotropic Drugs in the Study of Legal Sociology, PT. Rajagrafindo Persada, Jakarta, 2004, pp. 67-70

SPKT becomes a separate part of the Criminal Investigation function to receive complaints / reports from the community. This can be described as follows:

1) Strengthening the strong commitment of the Police Leadership to increase the effectiveness of resolving community problems through restorative justice professionally by optimizing efforts of legal concepts that live in society (living law) and providing strict sanctions against personnel who abuse their authority in implementing restorative justice. Efforts made by creating integrity facts.

2) Improving the quality of every Polri personnel who carry out duties in the field of law enforcement. Efforts made are to improve understanding in the form of knowledge, skills and attitudes related to restorative justice. The understanding that must be possessed by personnel can be based on the concept of restorative justice itself which includes:

a) *Restorative justice invites full participation and consensus* (restorative justice contains full participation and consensus); Restorative justice seeks to heal what is broken (restorative justice seeks to heal the damage/loss that occurs as a result of a crime);

b) *Restorative justice seeks full and direct accountability* (restorative justice provides direct accountability for the perpetrator in full);

c) *Restorative justice seeks to recite what has been divided* (restorative justice seeks to reunite members of society who have been separated or divided due to criminal acts);

d) *Restorative justice seeks to strengthen the community in order to prevent further harms* (restorative justice provides resilience to the community to prevent further criminal acts from occurring).

3) *Restorative justice* implemented directly against criminal acts that occurred before the perpetrator entered the criminal justice system and cases that entered the criminal justice system. Cases that enter the criminal justice system are carried out by the authorities in the criminal justice system using their discretionary rights to take diversion actions by diverting criminal cases that occur to the informal process.

4) Eliminating institutional ego within the National Police that can hinder the improvement of the process of abstraction of values adopted by social institutions. Strengthening cooperation with social institutions by means of socialization and discussing cases being handled;

5) Avoiding violations and abuses committed by members of the Indonesian National Police in carrying out their duties and authorities by means of Rewards and Punishments that can be given to members of the Investigation Unit consistently and consequently without any discrimination, especially regarding personnel who are proactive in handling criminal cases through a restorative justice approach in accordance with the values adopted by social institutions.

In the practice of "restorative justice" the police often use methods that are considered outside the laws and regulations in resolving criminal cases that occur, even though this is not recorded in an official document. The possibility of this "deviation" has been recognized by experts. According to Romli Atmasasmita, "in a democratic country it appears that the police are always faced with two conflicts of interest, namely the interest in maintaining order on the one hand and the interest in maintaining the principle of legality on the other.¹⁷ It should be noted that Restorative justice is actually not a principle but a philosophy, namely a philosophy in the judicial process and also a philosophy of justice. Restorative justice is said to be a philosophy of justice because it is the basis for the preparation of judicial institutions. So it can be interpreted that Restorative justice is a series of judicial processes that basically aim to restore the losses suffered by victims of crime. Justice in criminal law must aim to restore the situation to what it was before the crime occurred. When someone commits a violation of the law, the situation will change. That is where the role of law is to protect the rights of every victim of crime.¹⁸ Restorative Justice requires cooperative efforts from the community and government to create conditions in which victims and perpetrators can resolve their conflicts. Restorative justice returns the conflict to the parties most affected (victims), the perpetrators and their "community interests" and gives priority to their interests. Restorative Justice also emphasizes human rights and the need to recognize the impact of social injustice and in simple ways to restore them, rather than simply giving the perpetrator formal or legal justice and the victim no justice at all. Restorative Justice also seeks to restore the victim's security, personal respect, dignity, and most importantly a sense of control.¹⁹

4. Conclusion

The development of digital technology has opened the door to various new types of crimes, with cybercrime as one of the most prominent. One of the cases or cyber crimes discussed in this article is the Cybercrime of defamation. The implementation of these legal provisions has invited many protests from the public because it is considered a criminalization of freedom of expression. One form of renewal in Indonesian criminal law is the regulation of criminal law in the perspective and achievement of justice for the improvement or restoration of conditions after the event and the criminal justice process known as restorative justice which is different from retributive justice or justice that emphasizes retaliation and restitutive justice which emphasizes justice on compensation. The implementation of the Termination of Investigation carried out by investigators with the consideration that restorative justice has been carried out still refers to the mechanism for terminating the investigation as regulated in the Regulation of

¹⁷Romli Atmasasmita, 2000, *Criminal Justice System*, Putra Abardin, Bandung, p. 5

¹⁸Mudzakir, 2013, *Analysis of Restorative Justice: History, Scope and Application*, Jakarta, p. 43.

¹⁹Zainal Abidin, 2005, *Criminalization, Criminal and Actions in the Draft Criminal Code*, Elsam, Jakarta, p. 13.

the Chief of Police Number 8 of 2021 which mandates the handling of cases related to the concept of restorative justice, namely through a report withdrawal mechanism to be followed by the preparation of a BAP containing the withdrawal of the relevant statement in the previous BAP by both the reporter and the reported party so that the elements of the article are reduced on the basis of insufficient evidence) so that the investigation can be stopped on the grounds of insufficient evidence.

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