

The Principle of Legal Monodualism in the Implementation of Restorative Justice at the South Jakarta Metro Police Resort

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Abstract. *Legal events in the form of criminal acts are interpreted as conditions that are not balanced between the rights of the victim and the responsibility of the perpetrator. This conflict is sought for an alternative solution through the principle of Restorative Justice. This article aims to analyze the principle of monodualism in Restorative Justice at the South Jakarta Metro Police. The research method used is normative juridical with a conceptual approach, statutory regulations and case studies. The orientation of the analysis is focused on the theory of Penal Mediation and confirmed based on data on minor criminal cases studied. The results of the study found that the principle of legal monodualism works when law enforcement officers activate the resolution of certain criminal cases, through the perspective of the interests of the victim and the responsibility of the perpetrator. The practice of implementing restorative justice for certain criminal acts at the South Jakarta Metro Police is based on Police Regulation No. 8 of 2021. Proposal, APH to be clearer in formulating the costs of losses for victims.*

Keywords: *Crimes; Justice; Monodualism; Principle.*

1. Introduction

Paradigm changes in legal developments require rapid adaptation from the Law Enforcement Officers (APH). The police are one of the components in law enforcement in Indonesia. The authority granted through Law of the Republic of Indonesia No. 2 of 2002 concerning the Indonesian Police, is the main task and function of the Police in law enforcement.

The development of theoretical discourse and criminal law reform in various countries has a strong tendency to use criminal/penal mediation as an alternative solution to problems in the field of criminal law. The argument is that the indication of increasing restitution in criminal law shows that there is no major difference and no function between criminal and civil law. This fact indicates a gap in the application and renewal of

criminal law in the world. The focus of the legal gap occurs because the paradigm of retaliation in criminal law is found to be no longer effective as a form of criminal law policy.

Changes both at the academic and practical levels of law require an active role for the Police in responding to these developments. One of the steps of the Police policy in an effort to harmonize restorative justice is formulated Police Regulation No. 8 of 2021 concerning the handling of criminal acts based on restorative justice. The legal order referred to in Police Regulation No. 8 of 2021 is the authority of the Police as regulated in Article 16 and Article 18 of Law No. 2 of 2002. Article 16 of Law No. 2 of 2002 regulates the main duties and functions of the Police in the criminal case process. Specifically, this provision regulates the termination of the investigation process in criminal cases. This regulation is formulated in Article 16 paragraph (1) letter h. In addition, the formulation of Article 18 paragraph (1) of Law No. 2 of 2002 stipulates that "For the public interest, officials of the Republic of Indonesia National Police in carrying out their duties and authorities can act according to their own judgment." The phrase according to their own judgment can be interpreted systematically, that the Police can stop the investigation process in accordance with the principle of benefit in criminal law.

Existing legal issues and indicating criminal cases tend to increase. Paradigm shifts in the academic world of law and the practical world of law see the need for other alternatives in handling certain criminal cases. So this article questions the problems surrounding the legal issue of implementing restorative justice. *Locus of crime* which is the subject of the study is located in the jurisdiction of the South Jakarta Metro Police. The formulation of the problem that can be formulated in this study is to answer the question of how the principle of legal monodualism in the application of justice *restorative* at the South Jakarta Metro Police Resort.

2. Research Methods

The research method used in this article is qualitative research. The approach used is through normative legal research (*normative law research*), namely legal research that studies laws that are conceptualized as norms or rules that apply in society, and become a reference for each person's behavior. This research is classified as descriptive analytical research, namely this research aims to explain, summarize various conditions, various situations or various variables that arise in the community that is the object of the research based on what happens and seeks relationships between the variables studied.

Regulations related to restorative justice, both conceptually and legally,

are studied in such a way that they can be explained through relevant legal theories. Thus, the legal research method in this study is oriented towards conceptual analysis of law and the statutory approach.

3. Results and Discussion

Literature review and literature in the discussion of this paper, uses the theory of Restorative Justice explained by Prof. Barda Nawawi Arief. In essence, the discussion analyzes the principles, principles and legal theories related to justice restorative. As a practical perspective, the researcher presents the application of justice *Restorative* at the South Jakarta Metro Police in certain criminal cases.

3.1. New Paradigm of Restorative Justice in Criminal Law

Criminal law experienced a shift in application when the paradigm *retributive* or retaliation is changed with the restorative or recovery paradigm. This view is driven by the fact that the approach *retributive* is no longer relevant. This means that the criminal law policy that uses a retaliatory approach is no longer in accordance with the dynamics of community law that wants restorative justice. A paradigm shift in the juvenile criminal justice system, which assumes that child victims, as a result of violence, have not received substantive justice in the current courts.⁴For this reason, children's rights relating to the law must be protected by the state.

Legal practice in Indonesia, places restorative justice in the Juvenile Criminal Justice System. Public legal awareness should consider the best interests of children in practices related to children in contact with the law.⁶The formulation of the legal limitations referred to in restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation. This legal limitation is formulated in Article 1 number 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This legal limitation clearly regulates the parties in conflict in criminal law, the objectives of justice to be achieved and the reaffirmation of no longer using the paradigm of retaliation in criminal law.

Although in the new legislation it is manifested in the System Juvenile Criminal Justice, however, in practice in the criminal law enforcement process it is commonly used by Law Enforcement Officers.

3.2. Commonly Used Terms in Restorative Justice (Penal Mediation) Several terms that are often mentioned are synonymous with penal mediation (*penal mediation*)

- 1) Terms in several languages: *mediation in criminal cases* or *mediation in penal matters* (English). *Breaking through* (Netherlands). *Der Aubergerichtliche Tataus- Gleich* (abbreviated ATA: Germany). *The mediation of the case*(French).
- 2) Because the main principle of penal mediation is to bring together the perpetrator of the crime with the victim, it is often known as *Victim Offender Mediation* (VOM), *Tater-Support-Surface-Glide* (TOA), or *Offender – Victim Arrangement* (OVA).

The term in penal mediation is also known in the literature on restorative justice. This term is based on the important stage of the meeting event between the perpetrator of the crime and the victim. For that, the term mediation is used or bringing together the perpetrator and victim of the crime.

Understanding Restorative Justice (Penal Mediation)

Penal mediation is an alternative form of dispute resolution outside the courts (ADR: *Alternative Dispute Resolution* or also called *Appropriate Dispute Resolution*). Generally in the civil case environment. Based on the current law, criminal cases cannot be resolved outside the court.

However, in current law enforcement practices, criminal cases are often resolved outside the courts through:

- 1) Various law enforcement discretions
- 2) Deliberation or peace
- 3) Forgiveness institutions that exist in society (family deliberations, village deliberations, customary deliberations and so on)

The development of theoretical discourse and criminal law reform in various countries has a strong tendency to use criminal/penal mediation as an alternative solution to problems in the field of criminal law. The argument is that the indication of increasing restitution in criminal law shows that there is no major difference and no function between criminal and civil law.

Principles of Restorative Justice (Penal Mediation) Criminal mediation is based on the following ideas and working principles:

1) Conflict Handling (*Conflict Handling*)

The basic idea is that crime has caused interpersonal conflict. This conflict is what is targeted in the mediation process. So the mediator's job is to make the parties forget the legal framework and encourage them to engage in

the communication process.

2) Process Oriented (*Process Orientation*)

Penal mediation emphasizes the quality of the process rather than the results. The emphasis of the process includes: making the perpetrator of the crime aware of his mistakes, the needs of the conflict resolved, the victim's peace of fear and so on.

1) Informal Process (*Informal Proceeding*)

2) Penal mediation is informal, the process is non-bureaucratic and avoids strict legal procedures.

3) There is active and autonomous participation of the parties (*Active and Autonomous Participation*)

The parties (perpetrators and victims) are not seen as objects of criminal law procedures, but as subjects who have responsibilities. Thus, Models in Restorative Justice (Penal Mediation) Some of the mediation models that are developing include:

1) Model "*Informal Mediation*"

This model is implemented by criminal justice personnel in their normal duties. This task can be carried out by the Public Prosecutor (JPU), by inviting the parties to resolve informal issues, the aim being that if an agreement is reached, no prosecution will be carried out. Several officials can carry out this model, namely social officials or supervisory officials (*probation officer*), by the Police and Judges.

2) Model "*Traditional Village or tribal moots*"

This model invites the entire community to meet and solve the crime conflict among its citizens. This model chooses the benefits for the wider community.

3) Model "*Victim-Offender Mediation*"

Mediation between victims and perpetrators, the most common model in people's minds. This model involves mediators: formal officials, independent mediators, or a combination. This model of mediation can be held at any stage of the process.

Includes the police policy stage, the prosecution stage, the sentencing stage and after sentencing.

This model can be applied to all types of criminals such as: specifically for children, certain crimes (eg: shoplifting, robbery and violence). There are

also those that are especially aimed at child offenders, novice offenders, but it also does not rule out the possibility of perpetrators of serious crimes and even *recidivist*.

4) Model "*Reparation Negotiation Programmer*"

This model is solely to estimate/assess the compensation or repairs that must be paid by the perpetrator of the crime to the victim, usually during the court hearing process.

This model is not related to reconciliation between the parties, but is more focused on a material improvement planning program.

In this model, perpetrators of criminal acts can be subject to a work program so that they can save money to pay compensation.

5) Model "*Community Panels and Courts*"

This model is a program to divert criminal cases from prosecution or trial to more flexible and informal community procedures and often involves elements of mediation or negotiation.

6) Model "*Family and Community Group Conference*"

This model involves community participation in the criminal justice system. The parties involved are not only the perpetrators and victims, but also the perpetrators' families and other members of the community. There are also certain officials such as police and juvenile judges and supporters of the victims. It is hoped that the perpetrator and his family will reach a comprehensive agreement that satisfies the victim and can help protect the perpetrator from further hardship/problems.

The principle of monodualism in restorative justice can be identified from two perspectives. First, how the victim sees the crime he/she experienced, then is able to forgive the perpetrator of the crime. Second, the perspective of the perpetrator of the crime. The perspective of the perpetrator is related to the perspective of the victim of the crime suffered or the loss experienced by the victim. These two perspectives that become one in the framework of achieving restorative justice are how the principle of monodualism in restorative justice law works.

The purpose of law according to Radbruch consists of three. First, legal certainty. Second, benefit and third, justice. These three factors attract each other according to the context of the dynamic legal position case. When the legal resultant leads to legal certainty, benefit and justice depends on the stakeholders involved.

3.3. Case Example of Restorative Justice Implementation at South Jakarta Metro Police

The following is an example of a criminal case handled by the South Jakarta Metro Police using a case study approach. *restorative justice*(RJ):

1) Case of Abuse in Cilandak (2023)

The case of the alleged criminal act of assault in Cilandak can be described as follows:

Locus of crime at Satu Lagi Bar Hotel Kristal, Cilandak South Jakarta. A person named GDS was allegedly assaulted by Pierre. Chronology of the incident on Friday, June 30, 2023 at around 22.00 WIB.

The perpetrator of the assault (Pierre) began when the victim was sitting at one of the tables with his friend. Immediately the perpetrator came. Without further ado, the perpetrator immediately hit the victim. The perpetrator thought the victim was looking at him cynically. That was the *casus belli* for the alleged crime of assault.

When reporting the incident to the South Jakarta Metro Police, the victim said that "the perpetrator came to my table and immediately said, you seem to have been looking at me cynically the whole time". The victim replied: "Cynical in what way?"

But the incident turned into an open conflict, when the perpetrator suddenly pushed the victim from his chair and at that time the perpetrator hit the victim until the victim fell. When he fell to the floor, the victim was hit repeatedly by the perpetrator.

After the incident, the victim's family could not accept the perpetrator's

actions. The legal action taken by the victim's family was to report the alleged criminal act to the Integrated Police Service System (SPKT) of the Jakarta Metro Police. The report was received and registered with the number LP/B/1981/VI/2023/SPKT/Polres Metro Jaksel/Polda Metro Jaya. Pierre was then named a suspect and detained. However, the case now resolved amicably.

Analysis of the alleged criminal case of abuse in Cilandak, South Jakarta in 2023. The legal incident in the case involved two people, namely the perpetrator and the victim of the crime. Due to a misunderstanding between the two people, a conflict occurred which resulted in the perpetrator beating the victim.

The victim's family could not accept the incident. The victim's family's right is to report the incident to the SPKT section of the South Jakarta Metro Police.

The analysis of the police investigators, the legal incident was appropriate and sufficient initial evidence so that the case was upgraded to an alleged criminal act of assault. Evidence of reporting the incident or legal incident with the number LP/B/1981/VI/2023/SPKT/Polres Metro Jaksel/Polda Metro Jaya is the first door of action for investigators in determining suspects and detention.

The next legal narrative, the alleged abuse case was resolved through Restorative Justice. The discussion of the alleged abuse case handled by the South Jakarta Metro Police can be explained as follows:

First, Legal norms applied by the South Jakarta Metro Police. Police

Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice is the legal umbrella for the application of restorative justice by the Police. Analysis of the norms applied in Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice includes:

- 1) The scope of restorative justice activities in the following activities:
 - a. implementation of criminal investigation functions;
 - b. investigation; or
 - c. investigation.

The scope of the criminal investigation function can be done to resolve minor crimes. The definition of minor crimes is a case that is threatened with imprisonment or confinement of a maximum of 3 months and/or a fine of up to seven thousand five hundred rupiah and minor insults except traffic violations.¹⁴This legal limitation qualifies minor crimes as crimes with a maximum prison sentence of 3 months. In addition, it includes crimes with a maximum fine of Rp. 7,500. The Supreme Court has converted this fine to Rp. 7.5 million, as stated in the Regulation of the Supreme Court of the Republic of Indonesia No. 02 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code. The next limitation is minor insults with the exception of traffic violations. Thus, the legal limitation of minor crimes minor crimes are the three qualifications above. In the quo case, because it is suspected of committing a crime of assault, Police Report Number LP/B/1981/ VI/2023/SPKT/Polres Metro Jaksel/Polda Metro Jaya is included in the category of minor crimes.

The next activity that can be done in the process *restorative justice* is

an investigation by a Police Investigator. The definition of a normative investigation is a series of investigator actions to search for and find an

event suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated by law.¹⁵ The investigation activity is a series of investigator actions in terms of and according to the methods regulated by law to search for and collect evidence that with that evidence makes clear about the Criminal Act that occurred and to find the suspect. Both activities have been carried out by the Police in handling the case *a quo*. The evidence that can be submitted is the determination of the suspect and legal action in the form of detention of the suspect by the Police investigator. Thus, referring to the norms stipulated in Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, the *quo case* can be carried out through a restorative justice process.

Second, the procedure for handling criminal acts that can be resolved through the restorative justice process. This provision is regulated in the Chapter on Procedures for Settling Minor Criminal Offenses Articles 11 to 18 of Police Regulation No. 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice. The norm of Article 11 regulates the existence of reports/complaints from the public. The legal formulation: "The settlement of Minor Criminal Offenses as referred to in Article 2 paragraph (4) is carried out against:

- a. report/complaint; or
- b. directly discovering the existence of suspected criminal acts."

This regulation is a system input in resolving minor criminal offences based on *restorative justice*. There are three possibilities for this system to move: sourced from reports, complaints, direct findings of alleged criminal acts. The legal norm of the report according to Article 1 number 24 of the Criminal Procedure Code is a notification submitted by a person, who because of his rights or obligations under the Law, to an authorized official about, has or is or is suspected of having a criminal event. As for the legal norm of the complaint based on Article 1 number 25 of the Criminal Procedure Code, the notification is accompanied by a request by the interested party to the authorized official to take legal action against a person who has committed a criminal complaint that is detrimental to him. If you understand the case *a quo* then the victim's family reported to the police the consequences of the perpetrator's actions as evidenced by the following text: "*Legal action taken by the victim's family to report the alleged incident*"¹⁵Article 1 number 9 of the Regulation of the Chief of the Republic of Indonesia National Police Number 14 of 2012 concerning the Management of Criminal Investigations

the crime to the Integrated Police Service System (SPKT) of the South Jakarta

Metro Police."

Thus, the first procedure that is input from the Police in processing allegations of minor crimes (assault) is in the form of a complaint from the victim or the victim's family. This is in accordance with Article 11 paragraph (1) of Perpol No. 8 of 2021.

Article 13 of Police Regulation No. 8 of 2021 regulates that a written application from a party who wishes to submit a case for the settlement of an alleged minor crime will be resolved in a written manner. *restorative justice*. The legal formulation of Article 13 of Perpol No. 8 of

2021 is as follows:

"(1) Settlement of minor criminal acts as referred to in Article 2 paragraph (4) is carried out by submitting a written application letter to Chief of Police Resort and Chief of Police Sector.

(2) The letter of application as referred to in paragraph (1) is made by the perpetrator, victim, perpetrator's family, victim's family, or other related parties. (3) The letter of application as referred to in paragraph (2) is accompanied by the following documents:

- a. peace declaration letter; and*
- b. evidence that the victim's rights have been restored.*

(4) The requirements as intended in paragraph (3) letters a and b, are excluded if there are no victims."

The provisions of Article 13 contain the principle of monodualism in law, namely the existence of two interests that can be returned to the position before the conflict. From the victim's perspective, the fulfillment of needs occurs when there is documentary evidence as "evidence that the victim's rights have been restored." Meanwhile, the perpetrator of a minor crime has fulfilled his obligation, namely to restore the victim's rights that he has violated. This legal mechanism seems to view that the conflict in minor crimes begins with the interests of the victim's rights that have been violated by the perpetrator of the crime. *Casea quo*, explains that the perpetrator violated the victim's right to a sense of security and safety. Beating is a form of violence carried out by the perpetrator in violating the victim's rights. For that reason, the right to a sense of security and to admit the guilt of the perpetrator of the crime is very important. This is essentially the essence of restorative justice, the core of its legal relationship. The perpetrator returns the victim's rights that have been taken from the victim. The deprivation is in the form of a feeling of insecurity regarding personal safety due to the beating carried out by the

perpetrator of the crime of abuse.

The role of the Police in the context of procedures for resolving minor crimes is regulated in Article 14 of Police Regulation No. 8 of 2021. The legal formulation is as follows:

"...Community Development function officers, and the Samapta Polri function: a. inviting the conflicting parties;

b. facilitating or mediating between parties;

c. make a report on the results of the implementation of mediation; and

d. record in the Restorative Justice register the resolution of problems and termination of the investigation of minor crimes."

The regulation can be understood that as Law Enforcement Officers (Minor Crimes), Police officers are authorized to invite conflicting parties, facilitate or mediate and make a report on the implementation of the results of the mediation. The record of the mediation results in the Restorative Justice register book is evidence for Police investigators to terminate the case they are investigating.

Third, formal and material requirements for minor crimes can be resolved through the Restorative Justice mechanism. Article 4 of Perpol No. 8 of 2021 regulates these requirements with the following formulation:

"The general requirements as referred to in Article 3 paragraph (1) letter

a, includes:

a. Material; and

b. Formal.

Next, in the formulation of Article 5 of Perpol No. 8 of 2021, the material requirements for restorative justice are regulated with the following legal formulation:

"The material requirements as referred to in Article 4 letter a, include: a.

Not causing unrest and/or rejection from the community;

b. Does not result in social conflict;

c. Does not have the potential to divide the nation;

d. Not radical or separatist;

- e. *Not a repeat offender of a criminal offence based on a court decision; and*
- f. *Not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives."* The formal requirements for Restorative

Justice are regulated in Article 6 of Perpol No. 8 of 2021, with the following formulation:

" (1) *The formal requirements as referred to in Article 4 letter b, include:*

- a. *Peace from both parties, except for Drug Crimes; and*
- b. *Fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes.*

1) *The peace as referred to in paragraph (1) letter a, is proven by a peace agreement letter and signed by the parties.*

2) *Fulfillment of the victim's rights and the perpetrator's responsibilities as referred to in*

3) *paragraph (1) letter b, may take the form of:*

- a. *Returning goods;*
- b. *Compensate for losses;*
- c. *Replacing costs arising from the consequences of criminal acts; and/or*
- d. *Replacing damage caused by criminal acts.*

1) *Fulfillment of the rights as referred to in paragraph (3) is proven by a written statement in accordance with the agreement signed by the victim.*

2) *The format of the peace agreement letter as referred to in paragraph (2), and the statement letter as referred to in paragraph (4), are listed in the attachment which is an integral part of these Police Regulations."*

In the context of the case *a quo* then both formal and material requirements to be resolved through the Restorative Justice mechanism are met.

4. Conclusion

Principle *monodualism* in criminal law which is based on the perspective of the perpetrator and victim of the crime, it can be assessed based on the objectives of Restorative Justice (*Restorative Justice*). Legal practice within the authority of the Police, the principle is regulated in Police Regulation No. 8 of 2021. It seems that certain crimes are viewed as legal events that are not balanced between the perpetrator and the victim. The cause is the violation

of the victim's rights by the perpetrator of the crime. The balance of the victim's rights and the perpetrator's responsibilities is regulated in such a way that the material and formal requirements are met. The implementation of Restorative Justice was successfully implemented by the South Jakarta Metro Police in a case of minor crimes (assault). The perpetrator and victim reconciled through the legal rules in Police Regulation No. 8 of 2021. The author's proposal related to the implementation of restorative justice is to further clarify the costs of losses for victims in accordance with the principle of fairness. This clarity is important as an effort to maintain the character of criminal law which is *lex certainly, lex script* and *strict lex*.

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