

Settlement of Criminal Acts in The Law Enforcement Process Based on Restorative Justice (Research Study at Langkat Resort Police)

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Abstract. *Handling of criminal acts that can be stopped by investigation based on restorative justice in Article 4 paragraph (2) letter f of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. The general requirements for handling criminal acts based on restorative justice regarding crimes against life cannot be resolved by handling criminal acts based on restorative justice. However, in the process of resolving cases of crimes against life by the Langkat Police, legally and applying applicable legal provisions, the resolution of this case is also often carried out based on restorative justice through channels outside the court or in other words resolved through peace (islah) between the parties. The formulation of the research problem is how to resolve criminal acts in the law enforcement process based on restorative justice, and how is the implementation of the resolution of criminal acts in the law enforcement process based on restorative justice by the Langkat Police Resort? The approaches used in this research are normative-juridical and empirical. Normative-juridical research refers to legislation and utilizes secondary data. Empirical research, on the other hand, is field research utilizing primary data. The results of this study can be concluded that the resolution of criminal acts in the law enforcement process based on restorative justice. The Indonesian National Police (Polri) has outlined standards for using a restorative justice approach for violations or minor crimes, namely Polri Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. The general requirements for handling criminal acts based on restorative justice include material and formal requirements. Material requirements include: Not causing unrest and/or rejection from the community; Not impacting social conflict; Not having the potential to divide the nation; Not being radicalism and separatism;*

Not being a repeat offender of a crime based on a court decision; and Not being a criminal act of terrorism, a crime against state security, a criminal act of corruption, and a crime against human life. For general requirements, handling criminal acts based on restorative justice in the form of formal requirements, include: Peace from both parties proven by a peace agreement and signed by the parties, except for narcotics crimes; and Fulfillment of the rights of victims and the responsibilities of the perpetrators, in the form of returning goods, compensating for losses, reimbursing costs incurred as a result of the crime and/or replacing damage caused by the crime. Proven by a written statement in accordance with the agreement signed by the victim (except for narcotics crimes). Implementation of criminal settlement in the law enforcement process based on restorative justice by the Langkat Police Resort insettlement of crimes against life in the investigation process in the police there are limitations for handling crimes that can be stopped by investigation based on restorative justice, but in reality many occur in society the settlement of crimes against life is based on penal mediation, but has not been accommodated by a regulation for the sake of legal force and certainty. peace in criminal cases against life, with forgiveness, and compensation by the perpetrator to the victim and the victim accepts sincerely and forgives the perpetrator, in fact there are no more parties who are harmed and the reprehensible nature of the perpetrator's actions is lost because of the good faith of the perpetrator to apologize and take responsibility for his actions. Related to the purpose of punishment, peace in resolving disputes is in line with the purpose of punishment, especially as a means of resolving conflicts, restoring balance and bringing a sense of peace in society.

Keywords: Crime; Policing; Restorative Justice.

1. Introduction

Over time, Indonesia has strived to increase development to achieve a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). One area of this development is the legal sector.¹ Protection of the people through legal instruments is an absolute

¹ Law is a rule that regulates the order of life in order to achieve social order.. The role of law as protection, and social control (social control), social change (social engineering) and integrative means. Sajipto Rahardjo, Law and Social Change, Alumni, Bandung, 1983, page 127. In addition to protecting human interests, law aims to create an orderly and balanced social order. Sudikno Mertokusumo, Understanding Law: An Introduction, Liberty, Yogyakarta, 1996, page 64. For the Indonesian state, law is a means of regulating a safe and orderly social life.

must, there is no point in protecting the entire nation and its bloodshed if it turns out that the people still suffer in the form of unequal rights.²which is caused by law enforcement not being oriented towards the values of justice.

The state may not arbitrarily determine which actions are criminal acts and which sanctions are imposed, and must base it on the principle of equality before the law as a reflection of justice, as stated in the 5th principle of Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia in paragraph 4. The principle of equality before the law is reaffirmed in the articles of the 1945 Constitution of the Republic of Indonesia, namely:

1. Article 27 (1): All citizens have equal status before the law and government and are obliged to uphold the law and government without exception.
2. Article 28 D (1): Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.
3. Article 28 H (2): Everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice.
4. Article 28 I (2): Everyone is free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment.

The scope of criminal law policy includes evaluating the substance of criminal law for future reform, with the application of criminal law to determine whether the substance of criminal law has fulfilled society's sense of justice. Law enforcement is one way to create order, security, and peace in society, as an effort to prevent and prosecute violations of the law.³Law enforcement is the state's duty⁴through judicial institutions which are expected to realize the value of justice.

Indonesia as a country based on law is expressly stated in the 1945 Constitution of the Republic of Indonesia, namely Article 1 paragraph (3): Indonesia is a country based on law. The state is a vehicle for a nation to achieve its ideals or goals. The state's goal is to provide for the welfare and happiness of the people, or to create a just and prosperous society.⁵Law as a basis is embodied in

² Ridwan, *Criminal Law Enforcement Policy in Eradicating Corruption in Indonesia*, Human Jurisprudence Journal, Volume 1, 2009, page 74.

³ Ratna Nurul Aflah, *Evidence in Criminal Proceedings*, Sinar Grafika, Jakarta, 2002, page 6.

⁴ The state as the authority in law enforcement has the right to impose criminal sanctions and has the right to punish (*ius punindi*) to protect legal goods (rechsgoederen) using appropriate tools (gepaste middelen), and intentionally threatening or inflicting suffering, and avoiding inappropriate actions. E. Utrecht, Series of Criminal Law Lectures I, Tintamas, Surabaya, 1987, page 78.

⁵ Soehino, *Science of the State, Liberty*, Yogyakarta, 2005, page 148.

statutory regulations, culminating in the constitution or basic law of the state, which contains the idea of constitutionalism, namely the limitation of power and the guarantee of basic rights of citizens. In a state governed by the rule of law, state power is based on law, not mere power, and state government is based on a constitution that adheres to constitutionalism.⁶

Law enforcement is an effort to make the ideas of justice, legal certainty, and social benefit a reality. The process of realizing these ideas is the essence of law enforcement. Law enforcement is a process of realizing legal desires, namely the thoughts of the legislature, formulated and established in legal regulations that then become reality.⁷ Law enforcement also means the overall activities of law enforcement officers towards upholding the law, justice and protection of human dignity, order and peace and legal certainty in accordance with the 1945 Constitution of the Republic of Indonesia.

Indonesia is a state of law and not based solely on power. All state power must be regulated by law. In an effort to protect society from disturbances and to create a peaceful, safe, and secure life, it must be protected from all violators of social norms. One means of addressing violations of social norms is criminal law, which is a regulation that maintains public order by prohibiting actions that violate the law and inflicting suffering on those who violate these prohibitions.

Law enforcement, linked to protecting society against crime, is inherently linked to criminal law enforcement. The purpose of establishing criminal law is as a means of criminal policy, namely, to protect society, often known as social defense. The functionalization of criminal law is defined as efforts to make criminal law functional, operational, or workable, and concretely realized. The term functionalization or concretization of criminal law is essentially the same as criminal law enforcement.⁸

Criminal law has been agreed upon and standardized as part of public law (algemene belangen). With this nature, when someone commits a crime that harms the interests of others, retaliation against the perpetrator is not only the right of the victim of the crime, but develops into a shared obligation of the entire family, society, and ultimately, this retaliation becomes part of the state's responsibility. State law is also the sole instrument for resolving criminal cases through established procedures. Punishment is the suffering imposed by the state on someone who violates criminal law, felt as suffering, so that it becomes a deterrent.⁹ Criminal punishment is a reaction to a crime and takes the form of

⁶Ridwan, State Administrative Law, Raja Grafindo Persada, Jakarta, 2011, page 2.

⁷Satjipto Rahardjo, Problems of Law Enforcement, A Sociological Review, Sinar Baru, Bandung, 1993, page 15

⁸Barda Nawawi Arif, Several Aspects of Criminal Law Enforcement and Development Policy, Citra Aditya Bakti, Bandung, 1998, page 11.

⁹Sudarto, Selected Chapters on Criminal Law, Alumni, Bandung, 1998, page 108.

misery that the state deliberately inflicts on the perpetrator of the crime.¹⁰ The reaction to a crime indicates that a crime can result in a reaction if violated, namely the threat of punishment or criminal penalties. Misery is not the ultimate goal that society aspires to, but rather a more immediate goal.

The primary purpose of criminal law is to systematically organize all the material obtained from punishment in general to regulate life in accordance with mutually agreed-upon legal norms. Criminal law is both an anthropological and a social science. Law enforcement is not solely the responsibility of law enforcement officials, but also the responsibility of society in confronting and overcoming various forms of crime that harm and disturb society.¹¹ Law enforcement is also the activity of harmonizing the values outlined in the rules and firm views, and embodying them in attitudes and actions as a series of final value interpretations to create peaceful social interactions. The enforcement of the law is characterized by several closely interrelated factors, namely the law and its rules.¹²

This legal value is the principle of equality before the law, meaning that every citizen must apply it without exception, so that no citizen is immune from the law. Every violation of the law must be resolved through applicable legal procedures. In enforcing the law, attention must be paid to its benefits or usefulness for society, because the law is actually made for the benefit of society which will ultimately cause unrest. Law enforcement is a social process that involves its environment, therefore law enforcement will exchange actions with its environment which can be called an exchange of actions with human, socio-cultural, political and other elements, so law enforcement is influenced by various kinds and circumstances that occur in society.

Law enforcement in the criminal justice system aims to address all crimes. This is intended to ensure that any actions that violate the law and regulations are prosecuted and that community life is safe, peaceful, and controlled, while remaining within the limits of societal tolerance. Article 13 of the Police Law explains that the primary duty of the police is to maintain public security and order. In the context of law enforcement, one factor is the quality of law enforcement, which is determined by their ability to understand the nature of criminal law enforcement. With high-quality law enforcement, they can take the best measures, one of which is when law enforcement conducts case screening.

A legal objective is not always identical to the explicitly formulated objective; what is stated in a regulation is not necessarily the real reason for creating the

¹⁰Roeslan Saleh, Indonesian Criminal System, Aksara Baru, Jakarta, 1993, page 9.

¹¹Soerjono Soekanto, Factors Influencing Law Enforcement, Raja Grafindo Persada, Jakarta, 1993, page 3

¹²Alvi Syahrin, Several Legal Problems, Softmedia, Medan, 2009, page 11.

regulation.¹³ So it is necessary to examine that in reality the law is not blindly applied to anyone and in any condition as stated in the law.

The police discretion granted to the Indonesian National Police (Polri) is expected to achieve legal objectives, namely justice, benefit, and legal certainty. Based on the description, this study is interested in conducting research related to the Settlement of Criminal Acts in the Law Enforcement Process Based on Restorative Justice (Research Study at the Langkat Police Resort).

2. Research Methods

Soedjono Soekanto and Sri Mamudji classify legal research into two types: normative legal research and sociological/empirical legal research. This research is both normative and empirical in nature.¹⁴ Normative legal research refers to legislation using secondary data, while empirical research is field research using primary data.

The normative juridical approach by studying or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in applicable legislation, so this research is understood as library research or secondary data research.¹⁵

3. Results and Discussion

3.1. Settlement of Criminal Acts in the Law Enforcement Process Based on Restorative Justice

Every Indonesian, and indeed every global citizen, feels that a dispute in life should not be left unaddressed. Efforts to resolve it are necessary due to its negative impacts, such as worsening relations between the disputing parties and disrupting social harmony. Dispute resolution adheres to the principle of freedom to benefit the disputing parties, meaning that the parties have greater freedom to create and explore possible options for resolving the dispute.¹⁶

Peaceful conflict resolution (disputes) has been practiced in Indonesian society for centuries. Indonesians feel that peaceful dispute resolution has led to a harmonious, just, and balanced life, and maintained the values of togetherness within society. They strive to resolve their disputes quickly while upholding the values of togetherness and without depriving or suppressing individual freedoms.

¹³Soerdjono Soekanto, Effectiveness of Law and the Role of Sanctions, Remaja Karya, Jakarta, 1995, page 7.

¹⁴Soerjono Soekanto and Sri Mamuji, Normative Legal Research, A Brief Review, Rajawali, Jakarta, 1996, page 15.

¹⁵Ibid, page 15.

¹⁶Syahrizal Abbas, Op, Cit, page 285.

Consensus is the philosophy of Indonesian society in all decision-making, including in dispute resolution. Deliberation and consensus, as a national philosophical value, are translated into the nation's foundation, Pancasila. The fourth principle of Pancasila states that democracy is guided by the wisdom of deliberation/representation. The principle of deliberation and consensus is a fundamental value used by disputing parties in seeking solutions, especially outside the courts. The value of deliberation and consensus is found in several forms of resolution, such as mediation. Throughout Indonesian law, the principle of deliberation and consensus has resulted in peaceful resolution of civil disputes. This is evident in a number of laws and regulations, from the Dutch colonial era to the present, which still contain the principle of peaceful deliberation. There has even been a strong push to strengthen the principle of peace through mediation and arbitration in dispute resolution.¹⁷

Article 24 of the 1945 Constitution of the Republic of Indonesia stipulates that judicial power is exercised by a Supreme Court and subordinate judicial bodies within the general courts, religious courts, military courts, state administrative courts, and a Constitutional Court. Article 24 of the 1945 Constitution mandates that disputes within the community be resolved through litigation. The Indonesian legal system also provides opportunities for resolving disputes outside the courts (non-litigation). Green mentions two models of dispute resolution: formal and informal dispute resolution.¹⁸ In Indonesian justice, the dispute resolution process adheres to the principles of simplicity, speed and low cost.¹⁹ Implementation The principle of simplicity, speed and low cost has experienced obstacles in judicial practice, the large number of cases received, limited number of judges, and minimal support facilities for institutions. the judiciary, especially the first level judiciary, whose territory The law covers district/city levels and the cassation level at the Supreme Court. The stalled implementation of this principle has made it difficult for justice seekers to access justice quickly and obtain their rights. This situation has negatively impacted law

¹⁷ Mediation, based on deliberation toward a peaceful agreement, is specifically regulated in a number of legal documents from the Dutch East Indies and in independent Indonesian law to this day. The regulation of alternative dispute resolution within legal regulations is important, considering that Indonesia is a state of law (rechtstaat). In a state of law, the actions of legal institutions areThe state and state apparatus must have a legal basis, because actions by the state or state apparatus that lack a legal basis can be annulled or rendered null and void. Mediation as a dispute resolution institution can be carried out by judges (state apparatus) in court or by other parties outside the court, so its existence requires legal regulations. Ibid, page 287

¹⁸ Ibid, page 292.

¹⁹ This provision is regulated in Article 4 paragraph (2) of Law Number 14 of 1970 concerning the Basic Provisions on Judicial Power as amended by Law Number 35 of 1999 and amended by Law Number 4 of 2004 and has been amended by Law Number 48 of 2009 concerning Judicial Power. This principle applies to institutionsholders of judicial power consisting of the Supreme Court and judicial bodies under it.

enforcement in Indonesia.

Facing such formidable challenges, the Indonesian legal system actually has legal regulations that can be used to resolve disputes quickly both in and out of court. In the judicial environment, peaceful means can be taken through mediation, where the judge is involved in reconciling the disputing parties. Outside the court, arbitration, mediation, or negotiation are used as alternative dispute resolution channels. Provisions that emphasize mediation are contained in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Government Regulation Number 54 of 2000 concerning Institutions Providing Services for Environmental Dispute Resolution Outside the Court, and Supreme Court Regulation Number 01 of 2008 concerning Mediation Procedures in Court.

Law Number 30 of 1999 brought a breath of fresh air for parties seeking to resolve disputes outside the courts. Out-of-court dispute resolution adheres to the principle of mutual benefit, unlike court dispute resolution, which adheres to the principle of win-lose. This law encourages disputing parties to demonstrate good faith, as without it, any decision made outside the courts cannot be enforced.

Provisions for mediation in court were initially regulated in Supreme Court Regulation No. 2 of 2003 concerning Mediation Procedures in Court. The Supreme Court then refined this by issuing Supreme Court Regulation No. 1 of 2008 concerning Mediation Procedures in Court. The Supreme Court Regulation places mediation as part of the process of resolving cases brought by the parties to court. Judges do not directly resolve disputes through the judicial process (litigation); mediation (non-litigation) must first be attempted. Mediation is an obligation that judges must undertake when deciding cases in court.

In reality, theory does not always match practice; sometimes practice differs from theory. In criminal cases, there is no such thing as a settlement agreement, nor does criminal law and criminal procedure law regulate settlement agreements. Likewise, judges are not required to reconcile the parties during court hearings, and are not even permitted to offer settlement agreements. Therefore, in criminal cases, it is impossible to reach a settlement agreement in court to stop prosecution. However, in practice, suspects/defendants and victims often reach a settlement agreement outside of court.

Peace is an agreement in which both parties, by handing over or retaining an item, end a pending case or prevent a case from arising.²⁰ In a peace agreement, both parties release some of their demands to end an ongoing case or to prevent a case from arising. Peace is carried out on the basis of awareness or is voluntary between both parties entering into peace, peace is made in writing and signed by

²⁰R. Subekti, *Various Agreements*, Alumni, Bandung, 1999, page 177.

both parties.

Peace in a criminal case is an agreement between both parties (the perpetrator and the victim), aimed at avoiding hostility and used as an excuse to reduce the sentence for the perpetrator (the defendant). Peace is a reciprocal (bilateral) agreement, because peace is an agreement, it naturally has a subject as the implementer of the agreement.²¹ A reciprocal agreement arises from a legal relationship between two or more people who bind themselves. Each party will occupy a different position: one person as the perpetrator (the person at fault) and the other as the victim (the person affected by the crime).

In criminal cases, the perpetrator acts as the debtor, and the victim as the creditor. However, both parties (creditor and debtor) can be represented by their families. The subjects of a criminal settlement agreement are the perpetrator and the victim. Because a settlement agreement only binds the parties, in criminal cases, a settlement agreement is merely a private deed, allowing investigators to continue investigating the case and forwarding the case to the Public Prosecutor and ultimately to the court for a legally binding decision.

This is understandable because settlement agreements in criminal cases are not binding on investigators, prosecutors, and judges. The Criminal Code and the Criminal Procedure Code do not regulate settlement agreements. However, in practice, parties often reach settlements outside of court.

The police have broad authority to carry out their duties in accordance with the Police Law and the Police Code of Ethics. In carrying out their duties, they have the authority to decide on actions based not only on applicable regulations, laws, or laws but also on their own discretion, consideration, or fairness, known as police discretion.

The police in carrying out their duties must always be guided by the law and impose sanctions on violators. The police are also allowed to take action to release a violator from the legal process, in accordance with the discretionary authority stated in Article 18 paragraph (1) and (2) of Law Number 2 of 2002 concerning the Republic of Indonesia National Police, namely the public interest of police officers in carrying out their duties and authorities can act according to their own judgment. Implementation can only be carried out in very necessary circumstances by paying attention to statutory regulations and professional codes of ethics.

The implementation of discretion in investigations has its own pattern and form influenced by the case, local social, economic, and cultural conditions, the situation and conditions as well as the circumstances of the perpetrator and the

²¹These parties are called one person as the creditor and the other as the debtor. M. Yahya Harahap, Legal Aspects of Contracts, Alumni, Bandung, 2006, page 15.

victim. The application of police discretionary authority is implicitly regulated in the Letter of the Chief of Police No. B/3022/XII/2009/Sdeops on December 14, 2009 concerning Handling Cases Through Alternative Dispute Resolution, which regulates the following main points:

1. In an effort to handle criminal cases that involve small material losses, the resolution can be directed through the ADR concept.
2. Settlement of criminal cases using ADR must be agreed upon by the parties to the case, but if there is no agreement, it will be resolved in accordance with applicable legal procedures in a professional and proportional manner.
3. The resolution of criminal cases using ADR must be based on the principle of deliberation and consensus, known to the local community by including the local RT RW.

The issuance of the National Police Chief's Letter No. B/3022/XII/2009/Sdeops concerning Case Handling Through Alternative Dispute Resolution (ADR), the Police now have a legal basis for resolving criminal cases by undertaking non-penal efforts through penal mediation as an embodiment of the concept of restorative justice. The Police are required to have the ability to sort out cases, which can be mediated and which must be continued to the Prosecutor's Office. Several categorizations of benchmarks and scopes of cases that can be resolved outside the court through penal mediation are:²²

1. Violations of criminal law have a fine as a criminal threat and the offender has paid the fine (Article 80 of the Criminal Code).
2. Violations of criminal law fall into the category of violations, not crimes which are only punishable by fines.

Although Indonesia does not recognize mediation in the criminal justice system, in practice criminal cases are resolved through mediation, namely penal mediation with the following legal basis:

1. Letter from the Chief of Police No Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009 concerning Handling of Cases Through Alternative Dispute Resolution (ADR);
2. Regulation of the Chief of the Republic of Indonesia National Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Police Duties;

The policy of establishing penal mediation as an alternative settlement, which is

²²Mudzakkir, Alternative Dispute Resolution, Settlement of Criminal Cases in the Indonesian Criminal Justice System, Workshop Paper, Jakarta, January 18, 2007.

part of the criminal justice process, is very much needed, so that penal mediation can become a legitimate means of resolving criminal cases and the results of the agreement are binding on the parties, law enforcement officers, and the community so that criminal acts resolved through penal mediation eliminate the authority to prosecute.

Restorative Restorative justice places a higher value on the direct involvement of the parties. Victims are able to regain control, while perpetrators are encouraged to take responsibility as a step toward correcting the wrongs caused by the crime and building their social value system. Active community involvement strengthens the community itself and binds it to values of respect and compassion for others. This reduces the government's role in monopolizing the justice process. Restorative justice requires cooperative efforts from the community and government to create an environment where victims and perpetrators can reconcile their conflicts and repair their wounds.

The criminal justice system has not yet placed restorative justice as a formal form of case resolution, so this is where the role of law enforcement officers in acting on behalf of the law to resolve the crime that occurred, by punishing the perpetrator in accordance with the applicable law. However, law enforcement can also apply and interpret restorative justice according to their respective interpretations based on the limits of their authority, such as the police can use their discretion by issuing a Letter of Order to Terminate Investigation (SP3), the prosecutor's office through its deponing, and the court through its decision. Many parties consider that the effort of reconciliation between the perpetrator and the victim by admitting guilt, providing compensation and supporting the victim's family is a form of criminal responsibility by the perpetrator, even though reconciliation does not drop the criminal case charges.

Peace with the obligation to compensate for losses can be done outside the court if a peace agreement is reached between the parties, any form of compensation given by the perpetrator to the victim (or his/her family) will not stop the law enforcement process itself so that the case handling continues, and the peace agreement between the perpetrator and victim only sets aside the claim for compensation before the trial, because the judge can decide the amount of compensation based on the peace agreement between the parties involved. This creates a conflict of legal certainty for the parties, especially the perpetrators whose concerns about the continuation of the case to the court table will continue to overshadow, even though there has been an agreement between the parties for peace and compensation to be given. Before the existence of a formal legal umbrella, the application of restorative justice will not have the value of legal certainty, if there is legal certainty it will depend heavily on law enforcement officers according to the authority they have, this is what causes ambiguity in the application of restorative justice itself, because the

paradigm of law enforcement officers is what can interpret the concept of restorative justice. In addition, the paradigm that exists in some Indonesian communities, including law enforcement officers, is a formal legalistic paradigm that is fixated on laws, so that efforts to implement restorative justice have obstacles in the implementation of criminal law enforcement, which will greatly disturb the public's view if the perpetrator is not punished according to the act.

3.2. Implementation of Criminal Case Resolution in the Law Enforcement Process Based on Restorative Justice by the Langkat Police Resort

Law enforcement in Indonesia's criminal justice system consists of the police, prosecutors, courts, lawyers, and correctional institutions. The police interact directly with the public and are heavily involved in decision-making. Law enforcement is an indicator of a state of law.²³ All actions must be based on laws or regulations.²⁴ Consistent law enforcement provides a sense of security, justice and certainty.²⁵ In law enforcement efforts, law enforcers are required to carry out their duties in accordance with the mandate of statutory regulations, which leads to decisions with the substance of justice for the parties.²⁶

Law enforcement is an effort to enforce real legal norms as a code of conduct regarding legal traffic in social, national and state life, which is expected to encourage creativity and an active role in building a national society, especially guaranteeing the freedom of human rights because they are basic natural rights, which are inherent in humans and the universe.²⁷ The function of law enforcement is expected to prevent people (from committing crimes).²⁸ Bambang Poernomo stated that law enforcement in modern society is

²³Alvi Syahri, Law Enforcement against Policies Who Breached the Code of Conduct, *Jurnal Daulat Hukum*, Volume 3 Number 3, September 2020, url:<http://jurnal.unissula.ac.id/index>.

²⁴Achmad Sulchan, *Criminal Law Litigation Skills*, Unissula Press, Semarang, 2018, page 4.

²⁵Anggrin Gayuh Praptiwi and Lathifah Hanim, Effectiveness And Role Of The Food Duty Unit Of Police Region Of Central Java In Law Enforcement In The Field Of Food In The Regional Law Of POLDA Central Java, *Jurnal Daulat Hukum*, Volume 2 Number 3 September 2019, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5669/3416>.

²⁶Iwan Setiyadi and Sri Kusriyah, Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter), *Journal of Sovereign Law*, Volume 2 Number 2 June 2019, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/5424/3345>.

²⁷Tasmo and Rahmat Bowo Suharto, The Legal Consequence Of The Judge Decision In The Case Of Children Criminal Justice Which Is Not Based On Society Research From Society Supervisor (Studies on Settlement Case of Children Crime In State Court of Cirebon), *Journal of Sovereign Law* Volume 2 Number 4 of 2019, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8362/3900>.

²⁸Dany Andhika Karya Gita, Amin Purnawan and Djauhari, Police Authority in Handling Mining Crimes (Illegal Mining) According to Law Number 4 of 2009 (Study in the Indonesian National Police), *Jurnal Daulat Hukum*, Volume Number 1, March 2018, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/2561/1918>.

not only interpreted in a narrow sense, but also in a broad sense, such as in Indonesia where law enforcement is linked to human elements and their social environment.²⁹

The police are essentially living laws, because in the hands of the police the law is realized, especially in the criminal field, which aims to create order in society by fighting crime, and the police have the task of regulating chaos in society, and enforcing the law concretely, so that the police are enforcers of order. This is stated in the provisions of Article 13 of Law Number 2 of 2002, there are 3 (three) main tasks of the Police, namely:³⁰

1. Maintaining public security and order;
2. Enforcing the law;
3. Providing protection, care and services to the community.

The National Police's role in enforcing the law to maintain public order and security can essentially be seen as living law, because in the hands of the National Police, the law becomes concrete or is realized in society. In this position, the National Police are expected to play a significant role in law enforcement for the communities they serve.

Law enforcement is an effort to express the moral image embodied in the law. In addition to enforcing the law, the police also have the duty to maintain public order and security, provide consideration, protection, and service to the community. As law enforcement officers, in carrying out their duties, the police are required to instill a sense of trust in the community, because upholding the authority of the law essentially means instilling the value of trust in society. The police are also required to work professionally in upholding the law and justice, meaning they are impartial in carrying out their duties.

The police's role as law enforcers, as well as servants, protectors, and guardians of the community, also means protecting human dignity, maintaining public order, and addressing crime, both through actions against perpetrators and through crime prevention efforts. The goal is for citizens to live, work, and carry out their activities in a safe and peaceful environment. The public expects a police force that is close to its people, transforming from being perceived as antagonistic to being a protagonist. Some people still consider the police to be the enemy of the community. Some police officers are arrogant and rude, even acting arbitrarily, which tarnishes the police's reputation. The public feels fear

²⁹Muhammad Dani Hamzah, Law Enforcement in Traffic Accident Criminal Cases Causing Loss of Life, Jurnal Daulat Hukum Volume 1 Number 1 2018, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/2563/1920>.

³⁰I Ketut Adi Purnama, Op, Cit, page 61.

and feels there are limits to interacting with the police.

As law enforcers and service providers, guardians, and protectors of the community, the police are not solely accountable to the law. In carrying out their operational duties, the police are bound by applicable laws, doctrines, and legal principles (particularly criminal law). At the same time, the police must also be accountable to the public, who expect professionalism in uncovering crimes and maintaining public order and security.³¹ Crime or criminal acts are potential factors that disrupt public order and security and constitute a complex social problem. A crime is an act or action that is punishable by law, violates the law, and is carried out by someone who is capable of taking responsibility.³²

Advances in science and technology have led to the proliferation of crime and the rise in crime rates, with increasingly sophisticated methods and methods. This demonstrates that crime is inextricably linked to the social environment. Changes and sophistication in crime go hand in hand with the ability to address it, whether through repressive, preventive, or curative means—namely, prevention and the crime itself. The ability to prevent and address crime is also a reflection of the social environment. Many old methods, techniques, and approaches have been refined.

Society and the police are two inseparable activities. Without them, societal processes would not run smoothly and productively. Police behavior is the everyday face of the law. The police are the tip of the spear for law enforcement, meaning they directly interact with the public, and in particular, with lawbreakers, in their efforts to enforce the law.³³ The public will perceive that if the police act badly, the law is bad. The public views the police as a reflection of the law, so poor police behavior will erode trust in the law, and it's not surprising that the public will take the law into their own hands, as they perceive the police as incapable of resolving problems and acting unfairly. Furthermore, the proliferation of problems or conflicts in the community will disrupt public order and security. The public has high expectations for the police to assist in resolving conflicts in a fair and just manner.

Conflict in society is something that cannot be avoided and accompanies the dynamics of life.³⁴ Various conflict resolution efforts undertaken by the

³¹Satjipto Rahardjo, Civil Police in Social Change in Indonesia, Kompas Books, Jakarta, 2002, page 25.

³²Zulfikar Hanafi Bahri, Consideration of Semarang District Court Judge's Decision in Case Dropped Because of the Crime of Defense of Emergency, Jurnal Daulat Hukum Volume 1 Number 2 of 2018, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3322/2453>.

³³Satjipto Rahardjo, Problems of Law Enforcement, A Sociological Review, Sinar Baru, Bandung, 1993, page 71.

³⁴Imam Tholkhah, Social Conflict with Religious Nuances, Agency for Research and Development of Religion and Religious Training, Ministry of Religion, Jakarta, 2002, page 1.

community and the government have appeared to merely resolve or end the conflict, failing to lead to sustainable conflict transformation efforts. Consequently, even when the conflict appears to have ended, the potential for similar conflicts to recur is still high. Addressing a series of conflicts that result in criminal acts such as violence, crimes against life, assault, robbery, and other crimes within the community requires attention from all parties, not just the police.³⁵ The Indonesian National Police (Polri) has undertaken various efforts to anticipate and minimize public complaints, address social issues, and address existing inequality. The Indonesian National Police (Polri) has a policy with six operational target outputs, namely:³⁶

1. Order within the organization;
2. Reduce total crime;
3. Improving crime clearance (case resolution);

Currently, criminal law enforcement is moving towards modern law enforcement, which is a concept that is oriented towards and emphasizes preventive rather than repressive measures, with the aim of reducing crime and the fear of crime, as well as improving the quality of life of local residents.³⁷ Polmas prioritizes good relations between the police and the community.

The settlement of criminal cases outside the courts by the Indonesian National Police (Polri) is in accordance with ideal law enforcement mechanisms. The old model of Polri law enforcement, in resolving cases of conflict of interest indicating criminality, used repressive and preventive measures. Repressive measures are active actions taken by the authorities, namely the police, when social deviations occur, to stop the ongoing deviations. For example, the distribution of narcotics and illegal drugs (narcotics) began to enter remote rural areas, but the police successfully thwarted the actions of the drug couriers and arrested the couriers and drug dealers before the transactions and distribution of drugs became more widespread. Preventive measures are actions taken by the authorities, namely the police, before social deviations occur to suppress/prevent violations.³⁸

The public interest, as defined in Article 1, point 7 of Law Number 2 of 2002,

³⁵Rudy Cahya Kurniawan, Implementation of Police Duties in the Era of Change: Community Policing Model, Law Enforcement, and Local Wisdom, Op, Cit, page 14.

³⁶Ibid, page 14.

³⁷Rudy Cahya Kurniawan, Implementation of Police Duties in the Era of Change: Community Policing Model, Law Enforcement, and Local Wisdom, Op, Cit, page 15.

³⁸Rudy Cahya Kurniawan, Implementation of Police Duties in the Era of Change: Community Policing Model, Law Enforcement, and Local Wisdom, Op, Cit, page 161.

states: "The public interest is the interest of the community and/or the nation and state to ensure domestic security." This concept remains abstract and requires further elaboration to avoid misinterpretations that could lead to the impression of abuse of power or authority. In relation to police discretion, the values of order and tranquility are of particular interest. Law enforcement officers must be able to balance these two elements. Order emphasizes the public interest, while tranquility emphasizes individual interests. Both interests must be considered by every law enforcement officer in the field, especially the police. Likewise, the harmony between traditional and reformist values is crucial. To avoid unrest, the police must be able to approach and observe responsively. Consequently, all values within society influence police actions, including discretion. Officers need not pit customary values against positive law, but rather resolve them with discretion. In this way, cultural values influence officials in determining their policies, in this case, police discretion.³⁹

In this regard, Article 18 paragraph (2) of Law Number 2 of 2002 explains that: Implementation of the provisions as referred to in paragraph (1) may only be carried out in circumstances that are absolutely necessary by taking into account statutory regulations and the Code of Ethics of the Republic of Indonesia National Police.

Discretion is essentially a decision or action by the police that knowingly fails to fulfill their obligations or duties as law enforcers based on justifiable reasons. Discretionary policy thinking can compromise the legal requirements and the freedom to act.⁴⁰ Given the broad scope of discretionary authority, officers must possess certain requirements, particularly when assessing a case. Besides the requirement for skill and expertise, instruments are also needed to assist, for example, in the implementation of the Criminal Procedure Code (KUHAP), police officers must conduct an investigative process before conducting an investigation. Further understanding reveals that this investigative function can act as a filter to determine whether an incident can be investigated. This filtering function in the criminal justice system places the police as gatekeepers. Granting police discretion is not a simple matter, as it often involves conflicts of interest between legal interests and public interests.

4. Conclusion

1. Settlement of criminal acts in the law enforcement process based on restorative justiceThe Indonesian National Police (Polri) has outlined standards for using a restorative justice approach for minor violations or crimes, namely Polri Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The general requirements for handling criminal acts based

³⁹Ibid, page 111.

⁴⁰Satjipto Rahardjo and Anton Tabah, Police, Actors and Thinkers, Op, Cit, page 11.

on restorative justice include material and formal requirements. Material requirements include: Not causing unrest and/or rejection from the community; Not impacting social conflict; Not having the potential to divide the nation; Not being radical or separatist; Not being a repeat offender of a crime based on a court decision; and Not being a criminal act of terrorism, a crime against state security, a crime of corruption, or a crime against human life. For general requirements, handling criminal acts based on restorative justice, which are in the form of formal requirements, include: Peace from both parties, evidenced by a peace agreement and signed by the parties, except for narcotics crimes; and Fulfillment of the victim's rights and the perpetrator's responsibilities, in the form of returning goods, compensating for losses, reimbursing costs incurred as a result of the crime and/or replacing damages caused by the crime. Proven by a written statement in accordance with the agreement signed by the victim (except for narcotics crimes). 2. Implementation of criminal settlement in the law enforcement process based on restorative justice by the Langkat Police Resort in settlement of crimes against life in the investigation process in the police there are limitations for handling crimes that can be stopped by investigation based on restorative justice, but in reality many occur in society the settlement of crimes against life is based on penal mediation, but has not been accommodated by a regulation for the sake of legal force and certainty. peace in criminal cases against life, with forgiveness, and compensation by the perpetrator to the victim and the victim accepts sincerely and forgives the perpetrator, in fact there are no more parties who are harmed and the reprehensible nature of the perpetrator's actions is lost because of the good faith of the perpetrator to apologize and take responsibility for his actions. Related to the purpose of punishment, peace in resolving disputes is in line with the purpose of punishment, especially as a means of resolving conflicts, restoring balance and bringing a sense of peace in society.

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