

PARADIGM CHANGE IN THE LAW OF THE NATIONAL POLICE OF THE REPUBLIC OF INDONESIA IN SOLVING CRIMINAL CASES TOWARDS RESTORATIVE JUSTICE

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Abstract

The police spearhead the maintenance of public security and order as well as law enforcement throughout the territory of the Unitary State of the Republic of Indonesia. Currently, the Police have applied the concept of restorative justice in solving criminal cases. The most common types of cases handled using a restorative justice approach are fraud, embezzlement, domestic violence, and minor abuse. This research is a legal research with a normative juridical approach, the nature of this research is descriptive analytical with data collection methods through literature studies which will then be analyzed through qualitative juridical methods. The results showed that the right concept for the National Police of the Republic of Indonesia in solving criminal cases is to make a legal paradigm shift from the concept of retributive justice to restorative justice on the basis of justice, expediency and legal certainty, so that in the future the Police in solving criminal cases based on restorative justice is not limited to certain cases.

Keywords: Police, Criminal, and Restorative Justice.

I. INTRODUCTION

The Indonesian National Police is one of the law enforcement officers who has always been at the forefront in protecting, serving and protecting the community.¹ As a law enforcement officer who protects, serves and protects the community, it is certainly not a light task, because the scope of the Police duties is very broad, which covers the entire community and the development of community progress and prevents crime in people's lives.

The police in relation to the government is one of the functions of the state government in the field of maintaining public security and order, law enforcement, protection, protection, and service to the community, which aims to realize internal security which includes the maintenance of public security and order, order and law enforcement, the implementation of protection, protection and service to the community, and the building of community peace with Uphold human rights.²

Law enforcement in Indonesia is increasingly felt to be increasingly away from the sense of justice of the community, there are many examples that can be proposed to reinforce this opinion, from the Sengkong-Karta case that occurred about thirty years ago, to the cocoa case committed by Mbok Minah that occurred some time ago, and many more cases that can be used as an indication of the increasingly expensive sense of justice in this country for people who are socioeconomically not Benefitting.³

In the above law enforcement practice, it shows that law enforcement officials, including the Police, in solving criminal cases tend to be too rigid in adhering to the Principle of Legality, both for minor criminal cases and serious criminal cases. Even though not all criminal cases are resolved using the Principle of Legality. For this reason, the Police must be able to integrate criminal policies, namely by utilizing facilities outside of criminal sanctions (*non-penal*). The criminal approach (*penal*) is used

¹ Syamsiar Arif, *Penyelesaian Pelanggaran Kode Etik Profesi Bagi Anggota Kepolisian Yang Melakukan Tindak Pidana*, El-Iqtishady, Volume 1 Nomor 2 Desember 2019.

² Sadjijono, *Memahami Hukum Kepolisian*, Yogyakarta: Laksbang Persino, 2010, hlm.5.

³ Maryanto, *Pengaruh Filsafat Positivisme Dalam Penegakan Hukum di Indonesia*, Artikel Dosen Fakultas Hukum Unissula, hlm.17.

as the last instrument (*ultimum remedium*)⁴ when other efforts have been made, while *non-penal* efforts that need to be developed by the Police in solving criminal cases are through a restorative justice approach.

In its development, utilization *restorative justice* In solving criminal cases, it has been regulated more specifically in Article 12 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation. The provisions of Article 12 are in line with the 4 (four) main programs of the National Police during the leadership of General Listyo Sigit Prabowo, namely: Firm and humanist pores; National Police capable of providing good public services; National Police that provide transparent services; A National Police that can enforce just laws. To implement the 4 (four) main programs, General Listiyo Sigit Prabowo carries jargon “PRESISI” that is “Prediktif, Responsibilitas, Transparansi dan Berkeadilan”.⁵

According to data from Kompolnas, police investigators in various regions began to routinely use a *restorative justice* approach in solving cases. Since the Circular Letter of the Chief of Police Number SE/2/II/2021 dated February 19, 2021 was issued, at least 1,864 cases have been resolved without having to go to the green table. The most common types of cases handled using a restorative justice approach include fraud, embezzlement, domestic violence, and minor persecution.⁶ Departing from these problems, it is considered necessary to study more deeply related to the change in the legal paradigm of the Police in solving criminal cases towards restorative justice.

II. RESEARCH METHODS

This research is a legal research with a normative legal research approach, namely research that focuses on law as a system building norms that include principles, rules, laws and regulations, and doctrines related to the topic of discussion.⁷ The nature of this research is descriptive analytical, which is research that aims to provide a systematic picture of the facts and / or laws and regulations that apply comprehensively then associated with legal theories regarding the topic of discussion.⁸ Data collection is carried out through literature studies by collecting secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data obtained are then analyzed by qualitative juridical methods, namely research that is carried out in depth as a whole and then poured into a descriptive sentence narrative.⁹

III. RESULT AND DISCUSSION

A. Application of *Restorative Justice* in Criminal Case Resolution by the National Police of the Republic of Indonesia

The concept or idea of *restorative justice* was started by the United Nations when in the 10th Congress of Vienna, Austria in 2000 specifically discussed the issue of restorative justice. According to the United Nations Restorative Justice is an alternative model in the Criminal Justice System defined as a unique response to crime, which must be distinguished from both rehabilitative and retributive theoretical angles. Restorative justice is a process by which all parties, with regard to

⁴ Muhammad Tito Karnavian & Hermawan Sulistyono, *Polri Dalam Arsitektur Negara*, Jakarta: Pencil-324, 2017, hlm.17-19.

⁵ Prediktif adalah kemampuan polisi untuk memprediksi dan menganalisis situasi. Responsibilitas adalah rasa tanggungjawab yang diwujudkan dalam ucapan, sikap, perilaku, dan responsif dalam melaksanakan tugas. Transparansi berkeadilan adalah realisasi dari prinsip, cara berpikir dan sistem yang terbuka, akuntabel, humanis.

⁶ Ayu Mumpuni dan Kudus Purnomo, *Keadilan Restoratif Ala Polri: Saat Pemidanaan Jadi Nomor Dua*, diakses dari <https://kompolnas.go.id/index.php/blog/keadilan-restoratif-ala-polri-saat-pemidanaan-jadi-nomor-dua> pada tanggal 24 Januari 2022, pukul 15.38 WIB.

⁷ Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2005, hlm. 93.

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 2010, hlm. 10.

⁹ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Bandung: Alfabeta, 2009, hlm. 216.

their involvement in the offense in particular, jointly resolve the consequences of the violation and its future implications.¹⁰

In the 10th United Nations Congress in 2000 produced “*United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*” which contains a number of basic principles and the use of *restorative justice* in handling criminal cases. In the Vienna Declaration on Criminal Offences and Justice,¹¹ Among other things, it was argued that to provide protection to victims of crime, mediation mechanisms and restorative justice should be introduced. *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*” which also includes issues of mediation that have been received ECOSOC (PBB) on 24 July 2002 based on Resolution 2002/12. Thus, it means that the UN has recognized the approach *restorative justice* as one approach that can be used in the national criminal justice system.¹²

In Indonesia, the practice of *restorative justice* has been applied in the lives of indigenous peoples of the archipelago since ancient times and developed in several existing laws and regulations and has also been practiced in solving various criminal cases. In the traditional life of indigenous peoples, the priority is balance and harmony where everything is a common property and responsibility by prioritizing the interests of indigenous communities, including the implementation of customary justice, is common property. The occurrence of criminal acts is a threat to the balance and harmony of these indigenous communities. Settlement through customary courts is not only for the benefit of aggrieved community members but what is at stake is the interests of the indigenous community as a whole. Efforts to restore the disruption of balance and harmony due to criminal acts in indigenous communities are carried out by paying a sum of money or part of property to the aggrieved party. In the simplicity of traditional life of indigenous peoples, efforts to restore balance and harmony in indigenous communities can be done immediately and not too expensive.

The National Police as one of the state organizing institutions and at the same time carrying out the duties and functions of the government must be based on the legitimacy of the applicable law, where the main function of the police is to enforce the law and serve the interests of the general public, so it can be said that the duty of the National Police is to prevent crime and provide protection to the community.¹³

If reviewed in the laws and regulations in Indonesia, the actual application of *restorative justice* in solving criminal cases has been contained in Article 18 of the Police Law which states that:

- (1) In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment.
- (2) The implementation of the provisions referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations, as well as the Code of Professional Ethics of the National Police of the Republic of Indonesia.

In the Explanation of Article 18 paragraph (1) of the Police Law, it is explained that what is meant by “acting according to their own judgment” is an action that can be taken by members of the National Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions and are really in the public interest. This means that every official of the National Police of the Republic of Indonesia has the authority of “Discretion”, which is the authority to act in the public interest based on his own judgment. Thus, with the discretionary authority, the Police can use it in solving criminal cases based on a *restorative justice approach*.

The settlement of criminal cases based on *restorative justice* carried out by the National Police of the Republic of Indonesia in its development refers to the Regulation of the Chief of the National

¹⁰ M. Ali Zaidan, *Menuju Pembauran Hukum Pidana*, Jakarta: Sinar Grafika, 2015, hlm.240.

¹¹ Barda Nawawi Anief, “*Mediasi Penal: Penyelesaian Perkara Pidana Di Luar Pengadilan*”, makalah dalam: <http://bardanawawi.wordpress.com/2009/12/27/mediasi-penal-penyelesaian-perkara-pidana-di-luar-pengadilan>, diakses tanggal 29 Agustus 2023, hlm. 12.

¹² Kongres PBB ke- 10/2010, dokumen A/CONE I 87/4/Rev.3.

¹³ Mahmud Mulyadi, *Kepolisian dalam Sistem Peradilan Pidana*, Medan: USU Press, 2009, hlm. 40.

Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation. In addition, the Police also refer to the internal regulations of the Police, namely :

1. Letter of the Chief of National Police No. Pol.: B/3022/XII/2009/Sde Ops.,, dated December 4, 2009 concerning Case Handling through Alternative Dispute Resolution/ADR.
2. Telegram Letter from Kabareskrim POLRI to the Director of Reskrimum, Director of Reskrimus and Director of Resobat throughout POLDA Number: ST/110/V/2011, dated May 18, 2011 concerning Alternative Settlement of Cases Outside the Court.
3. Secret Telegram Letter from Kabareskrim POLRI to the Director of Reskrimum, Director of Reskrimus and Director of Resobat throughout POLDA Number: STR/583/VIII/2012, dated August 18, 2012 concerning the Application of *Restorative Justice*.
4. Circular Letter of the Chief of National Police Number SE/7/VII/2018, dated July 27, 2018 concerning Termination of Investigation.
5. Circular Letter of the Chief of National Police Number SE / 8 / VII / 2018 of 2018 concerning the Application of *Restorative Justice* in the Settlement of Criminal Cases.
6. Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning Handling Criminal Acts Based on *Restorative Justice*.

The settlement of criminal cases based on *restorative justice* by the Police begins from the entry of cases in the investigation and investigation stage. The investigation process and investigation in criminal cases are still carried out according to procedures. Based on the results of the author's research that the implementation of the principle of *restorative justice* in criminal cases already has a legal basis for the implementation of out-of-court settlements and its implementation has been running in accordance with the internal rules of the National Police properly. However, there are several problems that will be faced by police investigators in their application that must be resolved immediately. These problems include:

1. In solving cases through restorative justice, of course, it is very beneficial for both parties to the litigation. However, the lack of knowledge of investigators related to the concept of restorative justice is an obstacle in its application, this is due to the lack of socialization related to the National Police Regulation of the Republic of Indonesia Number 8 of 2021. Not all investigators have participated in the socialization related to restorative justice. So that investigators consider that the resolution of cases through restorative justice means is only an ordinary peace effort. Even though in its application there are material and formal requirements that must be met.
2. The culture of investigator performance is still mostly old-fashioned and still performs its duties through a legistic mindset and adheres to a positivistic paradigm, this raises doubts in investigators in carrying out their duties, especially in stopping investigations, where there is a fear that if they stop investigations through restorative justice mechanisms, they will be considered to violate the rules (Criminal Procedure Code) and will get a reprimand from superiors.
3. The litigant is very burdened by the additional examination set forth in the minutes of procedure, in which case the litigants after making peace before the investigator, must come back to the investigator to make clarifications as stated in the minutes.
4. The involvement of community leaders, religious leaders, traditional leaders or stakeholders in the implementation of special case titles is a difficulty for investigators.
5. In the Criminal Procedure Code, it is explained that there are several reasons for the investigator to stop the investigation. The reason for stopping the investigation was because there was not enough evidence, the incident turned out not to be a criminal offense, or the investigation was stopped for legal reasons (expired or the suspect died). The non-inclusion of the reason for stopping the investigation due to restorative justice in the Criminal Procedure Code raises doubts for investigators in stopping the investigation of a criminal act.
6. The absence of a law that expressly regulates *restorative justice is an obstacle in itself and can only be applied to perpetrators who admit their actions, law enforcement officials who play a role in it are police, prosecutors, and judges, if most of them still think retributive (punishment), then restorative justice will be difficult to realize* .

7. The low level of legal literacy of the community will certainly also be a challenge and obstacle in itself. Therefore, more massive socialization by law enforcement officials with *stake holders* at various levels is the main agenda that must be carried out.

8. The application of *restorative justice in solving criminal cases in the Police is still limited to certain cases, so that cases other than those regulated in the National Police Regulation of the Republic of Indonesia Number 8 of 2021 cannot be resolved by restorative justice, although the potential for peace is very large.*

Based on some of the obstacles above, in the future there needs to be a solution related to the application of *restorative justice in solving criminal cases by the Police so that the resolution of criminal cases in the Police is not only in certain cases, so that in the future the settlement can ensure justice, expediency and legal certainty.*

B. Paradigm Change of the National Police of the Republic of Indonesia in Solving Criminal Cases Based on *Restorative Justice*

Restorative justice arises because of dissatisfaction with the existing criminal justice system, which does not involve parties to the conflict, but only between the state and the perpetrators. Victims and communities are not involved in conflict resolution, in contrast to *restorative justice* where victims and communities are involved as parties to resolve conflicts.¹⁴

Restorative Justice is 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* (recover) losses suffered by victims of crime. *Justice* in criminal law should aim to restore the state as it was before the crime occurred. When someone violates the law, things change. So that's where the role of law is to protect the rights of every victim of crime.¹⁵

Retributive Justice by many seen as “*a philosophy, a process, an idea, a theory and intervention*”.¹⁶ *Restorative Justice* is a judiciary that emphasizes reparation for losses caused or related to criminal acts. *Restorative Justice* conducted through a cooperative process involving all parties (*stake holders*).¹⁷

Helen Cowie and Dawn Jeniffer identify the following key aspects of restorative justice:¹⁸

1. Improvement, however, is not about gaining victory or accepting defeat, accusation, or revenge, but about justice;
2. Rapprochement is not punitive - criminals take responsibility for mistakes and correct them in a number of ways, but through an open and direct process of communication between victims and criminals, potentially changing the way they relate to each other;
3. Reintegration, at its broadest level, provides an arena where children and parents can have a fair process. The intention is for them to learn about the consequences of violence and crime and understand the impact of their behavior on others.

In Indonesia, criminal cases are resolved through the criminal justice system. The criminal justice system according to Mardjono Reksodiputro is a system in a society to overcome crime. The objectives of the criminal justice system, namely:¹⁹

¹⁴ A. Mayastuti, “Restorative Justice Dalam Hukum Pidana Adat”, *Parental*, 1(3), 2014.

¹⁵ Mudzakir, *Analisis Restorative Justice: Sejarah, Ruang Lingkup, Dan Penerapannya*, Jakarta: Macana Jaya Cemerlang, 2013.

¹⁶ Kuart Puji Prayitno, *Aplikasi Konsep Restorative Justice dalam Peradilan Indonesia*, Yogyakarta: Genta Publishing, 2012, hlm. 4.

¹⁷ Bonic, R., Syahrin, A., Marlina, M., & Leviza, J, “Peran Polri Dalam Mengimplementasikan Restorative Justice Pada Penanganan Perkara Pidana (Studi Di Polres Binjai)”. *USU Law Journal*, 4 (4), 2016.

¹⁸ Helen Cowie & Dawn Jeniffer, dalam Hadi Supeno, *Kriminalisasi Anak*, Jakarta: Gramedia Pustaka Utama, 2010, hlm. 203.

¹⁹ Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Peran Penegak Hukum Melawan Kejahatan) dalam buku Hak Asasi Manusia Dalam Sistem Peradilan Pidana, kumpulan karangan buku ketiga*, Jakarta:



1. prevent people from becoming victims of crime;
2. resolve cases of crimes that occur so that the community is satisfied that justice has been served and the guilty are convicted; and
3. ensure that those who have committed crimes do not repeat themselves.

However, if it is connected with the history of the emergence of *restorative justice*, the criminal justice system does not work as expected, because it fails to give sufficient space to the interests of potential victims and potential defendants, in other words the current conventional criminal justice system in various countries in the world often causes disillusionment and disappointment.²⁰

Based on the provisions of Perpol RI No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, criminal handling activities based on restorative justice are carried out on: activities to carry out criminal investigation functions; investigation activities; or the giantness of the investigation. The handling of criminal acts based on restorative justice regulated in Perpol RI No. 8 of 2021 must meet several requirements consisting of general requirements and special requirements.

General requirements apply to the handling of criminal acts based on restorative justice in the activities of carrying out criminal investigation functions, investigations or investigations while special requirements only apply to the handling of criminal acts based on restorative justice in investigation or investigation activities. The general requirements in question consist of material and formal requirements. Material requirements include criminal acts that do not cause unrest in society, do not cause social conflicts, do not have the potential to divide the nation, are not radicalism and separatism, not repeat perpetrators of criminal acts; and not criminal acts of terrorism, crimes against state security, criminal acts of corruption and criminal acts against people's lives. While the formal requirements consist of the realization of peace and the fulfillment of the rights of victims and the responsibilities of perpetrators.

Based on the provisions contained in the Police Regulation mentioned above, there are several criminal acts that are exempt from the application of case resolution with a *restorative justice approach*. For this reason, in the future there is a need for a related legal update regarding the application of *restorative justice* in the settlement of criminal cases by the Police so that the resolution of criminal cases in the Police is not only in certain cases, so that in the future the settlement can ensure justice, expediency and legal certainty. To solve this problem, based on the results of research that has been conducted by the author, it was found that there needs to be a change in the legal paradigm from the concept of *retributive justice* to *restorative justice* based on aspects of justice, expediency and legal certainty.

Out of *court settlement* is a concept of *restorative justice*. The issue of applying restorative justice to the resolution of criminal acts arises as a reaction to the failure of *retributive justice* which is the legal basis in eradicating current criminal acts and the process of convicting perpetrators that are not in accordance with the main objectives of criminal law.

There are several reasons for the failure of *retributive justice* in solving criminal cases in Indonesia. *First*, efforts to overcome crime with the use of criminal law institutions and physical punishment are classic methods in criminal law. *Second*, many negative aspects emerge such as *dehumanization*, *imprisonment* and *stigmatization*.²¹ *Third*, the energy of law enforcement officials and the state budget to focus on efforts to corporal punishment of perpetrators of crimes rather than focus on recovery from the consequences of crimes committed.

The paradigm shift in justice in criminal law is a global phenomenon because people are increasingly aware that there needs to be a radical change regarding the handling of criminal cases. A criminal justice system based on retributive and restitutive justice gives full authority to law enforcers

Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi Universitas Indonesia, 2007, hlm.84.

²⁰ Nicola Lacey, *A Life of H.L.A Hart: The Nightmare and The Noble Dream*, Oxpord; Oxpord University Press, 2004.

²¹ Muladi dan Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana*, Bandung: Alumni, 1984, hlm.77-78.

without giving perpetrators, or victims, the opportunity to convey the version of justice they want. The degree of justice for the victim is determined by giving a prison sentence to the perpetrator. This is one of the factors in the increasing crime rate committed by criminals because they are imprisoned they can actually learn crimes that they have never committed before from other prison residents.²²

The paradigm in handling perpetrators of criminal acts that offers a more comprehensive solution for both victims and perpetrators is restorative justice because it includes awareness of deeds, statements of apology, recovery of victims and even provision of compensation if needed. This is not contained in the paradigm values in restitutive justice or retributive justice.

The values of restorative justice give equal attention to victims and perpetrators hence the authority to determine the sense of justice is in the hands of the parties whereas the state serves as a facilitator. In this case, the application of restorative justice uses a flexible response approach to crime, perpetrators and victims that allow individual case resolution (not formally submitted to court) also uses a response approach to crime while maintaining the dignity and dignity of everyone, building mutual understanding and harmony through the recovery of victims, perpetrators and society.

Restorative justice can also reduce the impact of stigmatization for perpetrators, can be done in line with traditional mechanisms that are still maintained, prioritize problem solving and at the same time find the roots of conflict, restorative justice also pays attention to the losses and needs of victims, encourages perpetrators to look deeper into the causes and effects of their actions, realize them and take responsibility for these losses. In addition, restorative justice can also be adapted to local legal traditions, principles and philosophies and national legal systems, and is very appropriate for criminal cases by placing the role of society in an important place, not only to address the problems that occur, but also to prevent the reoccurrence of criminal acts in the future.

IV. CONSLUSIONS

The *restorative justice* approach is an approach used to resolve criminal cases and restore them to their original position by minimizing punishment. The authority to resolve criminal cases based on *restorative justice* is currently owned by the Police Agency based on the provisions of Article 18 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. The settlement of criminal cases based on *restorative justice carried out by the Police in its development refers to the Regulation of the Chief of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts and Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice*. The right concept for the National Police of the Republic of Indonesia in solving criminal cases is to make a legal paradigm shift from the concept of *retributive justice* to *restorative justice* on the basis of justice, expediency and legal certainty. There are several reasons for the failure of *retributive justice* in solving criminal cases in Indonesia. *First*, efforts to overcome crime with the use of criminal law institutions and physical punishment are classic methods in criminal law. *Second*, many negative aspects emerge such as *dehumanization, imprisonment* and *stigmatization*. *Third*, the energy of law enforcement officials and the state budget to focus on efforts to corporal punishment of perpetrators of crimes rather than focus on recovery from the consequences of crimes committed. By making *restorative justice* an approach, there are several benefits that can be obtained. *First*, the community is given space to deal with their own legal problems which are felt to be fairer. *Second*, the burden on the State has in some ways been reduced.

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²² Kristina Agustiani Sianturi, "Perwujudan Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak Melalui Diversi", *De Lega Lata*, Vol.1, No.1, 2016.

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