



The role of police officers in handling criminal acts through the concept of restorative justice

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ABSTRACT

The police are one of the functions of state government in the field of maintaining security and public order, enforcing the law, as well as providing protection, guidance and community services in the context of maintaining domestic security. focuses more on enforcing criminal law on proving the guilt of criminals, focusing more on the consequences of a criminal act, while the causes of criminal acts are seen more as facts or evidence of criminal acts rather than as the root of the problem which should be a concern for losses and recovery for victims of the crime. Criminal law, the National Police through the Republic of Indonesia Police Chief Regulation Number 8 of 2021 concerning handling criminal acts based on restorative justice, provides space for investigators and assistant investigators to implement restorative justice where Litigation is the last resort in handling criminal acts. the concept of restorative justice can embrace the interests of all parties in conflict, this research aims to determine the role of police officers in handling criminal acts through the concept of restorative justice, the research uses normative research methods, namely research that in its study refers to and is based on norms and rules. legal rules, applicable laws and regulations, and other literature materials relevant to the research topic. The collection of legal materials was carried out by means of a literature study, namely through a study of police regulations regarding restorative justice, so that it could be concluded that police restorative justice is a progressive law that sets aside the retributive justice that has been applied so far, as well as mediation efforts for criminal acts that give rise to social conflict or criminal acts. Other penalties can be applied according to the elements specified in the political regulation on restorative justice.

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1. Introduction

The police as law enforcers carry out their duties objectively in accordance with applicable laws and regulations(Heriyanto, 2022)(Heriyanto, 2022), especially those that regulate judicial

procedures in the general judicial environment at all levels of justice as stated in Law Number 8 of 1981 concerning the Criminal Procedure Code (Naibaho, 2022), the provisions of this law focus more on the process of law enforcement and proving the guilt of criminals, focusing more on the consequences of a criminal act (Andriyanti, 2020) (Kristanto, 2022). The criminal justice process, which consists of a series of stages starting from inquiry, investigation, arrest, detention, prosecution, examination at trial, to punishment, is a very complex activity. However, the National Police does not necessarily enforce the law, because the police's job is also to maintain security and public order (Sunarso et al., 2022) (Andriyani et al., 2023).

The police is one of the functions of state government in the field of maintaining security and public order, enforcing the law, as well as providing protection, guidance and community services in the context of maintaining domestic security. (Anshar & Setiyono, 2020) (Arif, 2021), in handling criminal acts, the National Police has so far carried out a formal juridical investigation and investigation of criminal acts, namely placing more emphasis on enforcing criminal law on proving the guilt of criminals. (PANGGABEAN, 2022) (Imanuddin & Polri, 2020), focuses more on the consequences of a criminal act, while the causes of criminal acts are seen more as facts or evidence of criminal acts rather than as the root of the problem which should be a concern for losses and recovery for victims of criminal acts (Waluyo, 2022) (Fithri, 2020).

Restorative justice is an approach in handling criminal cases that focuses on recovering both moral and material losses experienced by victims who have experienced criminal acts. (Damanik, 2020) (ANGGRAINI, 2023). Restorative justice is an alternative form of resolving criminal cases that does not focus on punishing the perpetrators of criminal acts but places more emphasis on restoring losses and peace between perpetrators and victims who have experienced criminal acts. (Andriyanti, 2020) (AR Hambali, 2020).

The implementation of a restorative justice approach in handling juvenile criminal cases has been outlined in article 5 paragraph 1 of Law number 11 of 2012 concerning the juvenile justice system. (Haryanto & Swardhana, 2021) (Wulandari, 2021) (Ningtias et al., 2020). This article clearly states that the criminal justice system for children must be based on a restorative justice system. The underlying reason why the handling of criminal cases in juvenile justice uses a restorative justice scheme is because minors must be treated according to their age so that the handling of criminal cases involving minors must be different from adults in general. (Riza & Sibarani, 2021) (MA Hambali, 2021) (JANITRA, 2023). However, this law only covers justice for children, so its application to adults still requires statutory regulations that specifically regulate Restorative Justice Efforts for criminal acts committed by adults. (Ningtias et al., 2020) (Maulana & Agusta, 2021) (Haryanto & Swardhana, 2021). This research aims to: find out and analyze regulations relating to restorative justice by the police, and to know and analyze the role of police officers in handling criminal acts through the concept of restorative justice.

This research can contribute to the development of the concept of restorative justice, especially in the context of law enforcement in Indonesia. It can support the development of theory and understanding related to the restorative justice approach in handling criminal cases and practically provide a basis for recommending changes or improvements to legal policies related to the handling of criminal cases by the police, especially those related to the application of restorative justice. This research aims to contribute to the development of knowledge related to the concept of restorative justice and its implementation in the context of policing. This may involve a deeper understanding of the principles, processes and impacts of restorative justice approaches.

2. Method

In this research, Normative research methods are used, namely research which in its study refers to and is based on legal norms and rules, applicable laws and regulations, and other literature materials that are relevant to the research topic. The collection of legal materials was

carried out by means of a literature study, namely by examining police regulations regarding restorative justice. The approach used in this research is a juridical approach, namely analyzing the implementation of the principles of restorative justice in the police.

3. Analysis and Results

3.1. Problems with the Criminal Justice System in Indonesia

The essence of law is basically differentiated and greatly influenced by space and time, the law that applies in a certain area will be different from the law that applies in other areas, so the law that occurred in the past will be different from the law in the present and the law in the future, the law will experience changes and updates in line with developments in human life. The law experiences changes from time to time which are influenced by the development of society which is the object of the law itself. Legal changes are needed to realize *ius constituendum* which is a law that is expected to suit the needs of society today. The development of criminal law in Indonesia tends to lead to regulatory specialization in almost all aspects of human life. Positive law has taken over many ways of resolving disputes between the parties involved who are used to resolving problems using values and methods based on the living law or based on local wisdom, with a solution that is foreign to the parties which often undermines the sense of community solidarity, where the parties involved come from.

The concept of criminal law in Indonesia is oriented towards retributive justice or known as the concept of retribution, justice which appears as a justification or justification for carrying out punishment or can also be referred to in the principle of *lex talionis* or the crime of revenge, the principle of *lex talionis* is usually interpreted as a person who has injured another person. must be punished with the same injury by the injured party or according to a more subtle interpretation the newspaper must ask for adequate compensation. The criminal justice system should be able to fulfill a sense of justice and the benefit of the law to the community by providing criminal responsibility in the form of criminal sanctions to the perpetrators. From a criminal perspective, the justice system to date has given rise to various problems, including the problem of state detention centers experiencing overcapacity and also State detention centers are no longer an effective solution because detention centers have shifted their function from reintegration and resocialization, but in fact detention centers are more of a place where prisoners hone their abilities and skills in committing criminal acts, because in detention centers, prisoners meet other prisoners. with different criminal cases so that prisoners will more easily master and learn more easily to carry out criminal acts committed previously as well as criminal acts experienced by other prisoners so that prisoners will be more "knowledgeable". Another problem that arises is the blocking of state funding to finance the criminal justice process, then if you look at the inquiry and inquiry process stages, criminal cases that are escalated to the prosecution stage, victims and perpetrators usually do not want to attend, because they have already reconciled, which will cause problems and create criminal cases will depend.

In the provisions of the Criminal Procedural Law (KUHAP) as regulated in Law number 8 of 1981 concerning criminal procedural law, there are no regulations governing the termination of the legal process at the investigation stage or at the stage of investigating a criminal act through a negotiation table or a formal settlement. Non-Litigation (peaceful mediation, settlement outside the judicial process) in pure criminal cases, in the provisions of law number 8 of 1981 concerning criminal procedural law in article 102 paragraph (2) the conditions for stopping an investigation include the first because there are not enough evidence, the two incidents turned out not to be criminal acts, and the three investigations were stopped by law, apart from the three reasons above, investigators have no basis or reason to stop investigations into cases of pure criminal offenses, except in criminal acts which are complaint offenses. .

In the law enforcement process, the police have full authority in the investigation process and the termination of the investigation, in accordance with the applicable provisions in accordance

with the provisions of Law Number 8 of 1981 concerning Criminal Procedure Law, if based on the rights of the parties involved in a legal case, it must have benefits and justice for them, the agreement between the victim and the perpetrator as well as the return and restoration of the victim's rights based on restorative justice will give rise to the benefits and justice they are looking for, so that it will automatically be felt by the community in conflict with the law, from the agreement between the victim and the perpetrator and the return and restoration of the perpetrator. The victim's rights will make the case at hand not fulfill the elements of a criminal act because the information and evidence will be made out to be insufficient evidence, so that in Article 18 letter k of the Republic of Indonesia Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia, the police must provide services. to the community in accordance with their interests within the scope of police duties. Therefore, the National Police must prioritize the interests of the community based on the principle of benefit with consideration of security and public order.

3.2. Police Restorative Justice Regulations and Their Implementation

In the practice of enforcing criminal law, the police as law enforcers implement the law objectively, where law enforcement is based on applicable laws and regulations, especially those that regulate judicial procedures in the general justice environment at all levels of justice, namely law number 8 of the year 1981 concerning the Criminal Procedure Code, focuses more on the process of law enforcement and proving the guilt of criminals, so that it focuses on the consequences of a criminal act, while the causes of criminal acts are seen more as facts or evidence of criminal acts, not as the root of the problem. which should be a focus on losses and restoration of the rights of victims of criminal acts, the hopes and demands of the community regarding the performance of the National Police as a law enforcement apparatus are currently receiving very large attention from the wider community. Many people ask questions directly or via social media about how law enforcement is handled and implemented by the police, where people think that law enforcement carried out by the police is too rigid and unprofessional and tends to be discriminatory against certain groups of people. For example, the case of 55 year old grandmother Minah stole 3 (three) cocoa beans and was detained for 3 (three) months, the case of Basar Suyant and Kholik, stole watermelon worth IDR 30,000.00 (thirty thousand rupiah) and was sentenced to prison for 2 (two) months, 10 (ten) days, and many other viral cases which have caused polemics and given rise to pros and cons in society, even though basically the police have been working and have carried out their duties in accordance with the provisions of the applicable laws. (see Rj page 19)

In the context of the authority and duties of the police, there are essentially two main concepts in the duties of the police, namely: the concept of law enforcement in the context of maintaining security and order which is usually known as preventive efforts, the second concept is the concept of protection, protection and service to one party and enforcement. law on the other hand, so that these two concepts are logically contradictory concepts, therefore the balance between the two must be very important, the concept of protection, protection and service in its concrete application is on the side of the victim, although it is also carried out against the suspect, especially protection against arbitrariness, vigilantism (*eigenrechting*), so the need for objective assessment and professionalism of the police is very important. Sadjijono (283) argues that interpreting the term discretion cannot be separated from the concept of power and authority inherent in acting freely with one's own considerations and responsibility for those actions.

In the development of positive law in Indonesia, the approach to the principles of restorative justice has been recognized and applied in Law Number 11 of 2012 concerning the Juvenile

Criminal Justice System, this law specifically regulates the juvenile criminal justice process, treatment, of children who are in conflict with the law. , of course it is seen as a specialization of the Justice System in general, children must be treated differently from adults in general, children as the nation's successors must receive protection by law, Restorative justice in the juvenile criminal justice system is part of the implementation of diversion, Diversion itself is diversion resolution of children's cases from the criminal justice process to a process outside criminal justice. Meanwhile, Restorative Justice based on this law is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration back to the original condition, and not retaliation. Implementation is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is mandatory for children who are in conflict with the law, provided that the criminal act committed is punishable by imprisonment for less than 7 (seven) years and is not a repetition of the criminal act. So that in the process, investigators, public prosecutors and judges who deliberately do not carry out their obligations to take action against children who are in conflict with the law in accordance with the provisions that have been regulated can be punished according to the criminal provisions that have been determined.

To respond to the development of the legal needs of society that fulfills a sense of justice for all parties, the Republic of Indonesia State Police must provide services to the public in accordance with their interests within the scope of police duties. The Police are given authority in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the State Police Republic of Indonesia, the National Police of the Republic of Indonesia needs to formulate a new concept in enforcing criminal law that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially benefits and a sense of justice to the community, in normative law enforcement criminal cases that are pure offenses are not can be revoked by the victim or reporter, but due to considerations of security and order in society, and the emergence of larger and more widespread conflicts, the principle of legal certainty is put aside by prioritizing the principle of benefit, so that in 2021, the National Police issued police regulation number 8 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, as a form of resolving criminal acts by prioritizing restorative justice which emphasizes restoration to its original state and to respond to developments in the legal needs of society that fulfill a sense of justice. All parties are given authority in accordance with Article 16 and Article 18 of the Law. Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it is necessary to formulate a new concept in criminal law enforcement that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially for the benefit and sense of justice of the community.

In police regulation number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, it explains the meaning of Restorative Justice, namely the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders together. seek a just solution through peace by emphasizing restoration to the original condition, which is carried out at the investigation and investigation stage, at the investigation and investigation stage of criminal acts based on restorative justice. Investigation and investigation can be terminated, in accordance with the provisions contained in police regulations Accordingly, police regulation number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, has regulated 2 (two) handling requirements, namely, among others

a) General Requirements, including: 1. Material, in the material requirements there are several things that must be considered, namely: Do not cause unrest and/or rejection from the community; does not impact social conflict; does not have the potential to divide the nation; not radicalism and separatism; not a repeat perpetrator of a criminal act based on a court decision; not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives. 2. Formal, includes: peace between both parties, except for drug crimes. (Peace is proven by a peace agreement signed by the parties), fulfillment of the rights of the victim and the responsibility of the perpetrator, except for drug crimes. (In fulfilling the rights of the victim and the responsibility of the perpetrator, it can be in the form of, a. returning the goods; b. compensating for losses; c. replacing costs incurred as a result of the crime; and/or d. replacing damage caused as a result of the crime)

b) Special Requirements, which are additional requirements for criminal acts, include: 1. Information and electronic transactions; provided that (a. the perpetrator of a criminal act of information and electronic transactions that spreads illegal content; b. the perpetrator is willing to delete the content that has been uploaded; c. the perpetrator conveys an apology through a video uploaded on social media accompanied by a request to delete the content that has been spread ; and d. the perpetrator is willing to cooperate with National Police investigators to carry out further investigations), 2. Drugs; with the conditions (a. Drug addicts and victims of drug abuse who apply for rehabilitation; b. when caught red-handed: 1. evidence of drug use for 1 (one) day is found with the classification of narcotics and psychotropics in accordance with the provisions of statutory regulations; and 2. no evidence of drug crime was found, but the urine test results showed positive for drugs; c. is not involved in a drug crime network, dealer and/or dealer; d. an assessment has been carried out by an integrated assessment team; and e. the perpetrator is willing to cooperate with Police investigators to carry out further investigations.), 3. traffic. With the conditions (a. traffic accidents caused by driving a motorized vehicle in a dangerous manner and condition which results in material loss and/or minor injuries; or b. traffic accidents on the road due to negligence which results in human casualties and/or property loss)

Not only does it regulate the conditions for handling criminal acts, which are regulated in the police regulations, police regulation number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, also regulates the termination of the process of investigating and investigating criminal acts, provided that the perpetrator, victim, and family of the perpetrator , the victim's family, or other related parties submit a written application letter to the local police chief who handles the criminal case at hand, the application letter is accompanied by a statement of peace and proof that the victim's rights have been restored, so that the police based on the application letter submitted will do several things, including researching the completeness of the documents, clarifying the parties and setting them out in the minutes, submitting a request for approval to carry out a special case title, if fulfilled, a letter of order to stop the investigation and a decree on stopping the investigation for legal reasons will be issued. in carrying out the termination of an Investigation or Investigation based on Restorative Justice where coercive measures have been taken against the suspect, such as when the perpetrator or suspect has been arrested or has been detained, the investigator can, under specified conditions, release the perpetrator or suspect after a decree to terminate the Investigation or Investigation is issued.

Police regulations contain delegations from higher statutory regulations or police regulations whose content is included in the scope of police administrative authority. Police regulations are statutory regulations promulgated in the minutes of the Republic of Indonesia and have generally binding legal force. All processes regulated in police regulation number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice serve as a reference for handling police criminal acts. There are obligations or prohibitions as well as criminal provisions contained in Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice for police officers who carry out or make efforts to handle criminal acts based on restorative justice, but in the process if mediation occurs and is carried out by the victim. and perpetrators or parties who have an interest so that they make a decision to make peace, the National Police can terminate the investigation and investigation of criminal acts based on the interests of the community in accordance with the provisions of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, facing parties who want to make peace, investigators must be able to take action. decisions based on their own assessment, especially regarding criminal cases that have the potential to disrupt public security and public order.

3.3. The Role of the National Police in Restorative Justice in Criminal Acts

The police can use restorative efforts in various criminal acts in accordance with the provisions contained and regulated in police regulation number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice(Syaputra, 2021)(Irawan et al., 2022)(Lawalata et al., 2022), in its efforts for restorative justice, is an alternative approach to problem solving that focuses on restoring relationships between victims, perpetrators, and society after a criminal act or other detrimental act has occurred. This theory aims to rebuild disturbed relationships between the parties involved in the incident by providing space for victims and perpetrators to meet each other, dialogue and reach mutual agreements. The police must prevent the start of potential disturbances, such as criminal cases involving appears in the community, the police can encourage the community to carry out mediation with the condition that it involves the perpetrator, the victim, the perpetrator's family, the victim's family, and encourage the participation of community leaders, in restorative efforts, police officers must ensure legal certainty for victims and perpetrators so that the restorative goal is to return to the condition that was before. initially achieved in the interests of security and order in society.

The Restorative Justice process must encourage reconciliation between the litigants, so that it can produce an agreement that does not burden both parties and is able to prevent the emergence of vengeful hostility between the parties to the case. In its implementation, people who have an interest in the problem are obliged to participate in mediation so that they can decide on a decision that is as fair as possible for both parties so that it is hoped that it will satisfy the parties. which is felt to be difficult and/or troublesome and miserable for certain members of society.

4. Conclusion

In its application, police regulation number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice is a legal alternative which is a progressive legal breakthrough that has been issued by the Indonesian Republic Police. Restorative justice efforts can be applied in efforts to prevent and handle criminal acts that occur. in the community, in the provisions for implementing restorative justice as stated in police regulation number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, the National Police is not in a position to direct the community to take restorative justice efforts, but rather the facts on the ground, in

order to achieve security maintenance and order in society, members of the police need to provide a legal perspective to people who have problems with criminal acts to be able to carry out restorative justice efforts, these efforts are a form of preventing and handling criminal acts and are an alternative solution to problems in society, making relations in the community better, in practice, police officers must be able to embrace the victim and the perpetrator in the presence of family or interested community figures by talking and forgiving each other. In accordance with the applicable provisions in police regulation number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice.

This research can contribute to the development of an understanding of the concept of restorative justice, particularly in the context of police law enforcement. This could include a deeper understanding of the basic principles of restorative justice and how they can be implemented in police policies and practices.

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