

Application of Restorative Justice in the Settlement of Criminal Cases and Regulation of the Indonesian National Police (PERPOL) Number 08 Years 2021 concerning Handling of Crimes based on Restorative Justice.

Based on these provisions, in general it can be stated that the investigation process begins after reports or findings of events suspected of being a crime have been made. These reports or findings are followed up with an investigation, whether there was a crime or not in the incident. The investigation is stopped if there is no suspicion of a criminal act in the incident, and vice versa, the investigation continues to the investigation stage if there is a suspicion of a criminal act in the incident. If the investigator has conducted an investigation, it must be notified to the Public Prosecutor (JPU).

In the investigation process, investigators have the authority to summon witnesses, experts and suspects, examine witnesses, experts and suspects, arrest and detain suspects, conduct body searches and search houses/buildings, and confiscate evidence. Investigators carry out these activities in order to collect evidence which will later be used as evidence in court. If the investigation process is considered sufficient, the investigator will delegate the case file to the public prosecutor (Phase I). The suspect and evidence must be submitted by the investigator to the public prosecutor if the case file has been declared complete (Phase II). When the investigator has carried out Phase II, there is a transfer of authority and responsibility from the investigator to the prosecutor.

In conducting investigations and investigations, the Indonesian National Police (POLRI) is always influenced by factors of social change. POLRI is the face of everyday law enforcement because POLRI's performance is always in the public sphere. The performance of the POLRI has always been in the public spotlight. The community hopes that the POLRI will always be able to provide justice since law enforcement has just begun. The fact shows that there are still many groups of people who prefer to settle their criminal cases outside the system. Settlement outside the system is either carried out by the parties (perpetrators and victims independently) or by involving law enforcement officers. Dissatisfaction with the Criminal Justice System is thus related not only to the mechanism of handling cases and administration, but also the final result of the ongoing process. The restorative justice approach was previously not regulated as one of the reasons for stopping the investigation. On the other hand, society is developing so fast, faster than the development of the law itself.

On the other hand, law Criminal law as public law has a character that in principle does not recognize conciliatory efforts in the settlement of a criminal case in contrast to civil cases which even require mediating the case before the case is finally examined by a panel of judges. However, there are certain criminal cases which in practice are handled contrary to justice and do not benefit the community if the settlement is carried out by means of criminal law enforcement, instead these cases will provide more benefits and reflect the value of justice if the settlement is through a restorative justice mechanism. However, there is often discrimination in the application of restorative justice in a criminal case where only certain people have "access" that can be applied to restorative justice because the legal umbrella did not yet exist at that time so there was no legal certainty in its application until then there were official arrangements regarding this matter. that. In this article, we will discuss how effective the application of restorative justice is in solving criminal cases at the investigative level and what are the obstacles encountered in the implementation process at the City Resort Police Office (POLRESTA) Malang.

2. Restorative Justice

Restorative justice is a model of approach used in criminal justice efforts. In contrast to traditional judicial approaches that focus on deterring women offenders, this approach focuses on the direct involvement of offenders, victims and communities in the criminal justice process.

The concept of restorative justice itself has long been practiced by indigenous and tribal peoples in Indonesia, such as Papua, Bali, Toraja, Minangkabau, and other communities where the culture is still strong. , the resolution of disputes within indigenous communities is resolved internally without the involvement of state institutions. The measure of justice is not based on the retributive justice of revenge (an eye for an eye) or imprisonment, but on conviction and forgiveness (restorative justice). This mechanism has proven successful in maintaining social harmony even when common crimes that the community deals with go against the law (DS. Dewi and Fatahillah A. Thanks, 2011).

A general understanding that can be used to understand restorative justice was proposed by Toni Marshall, cited by Ridwan. "The commonly accepted definition of restorative justice is that of the process by which the parties involved in a particular crime come together to collectively determine how to deal with the aftermath of the crime and its future consequences." In a sense, restorative justice is the process by

which parties involved in a crime work together to solve problems related to dealing with post-crime problems and their future consequences.

With regard to the application of restorative justice in the settlement of a criminal case, Surbakti (2015), explains as follows: "The process of settling criminal cases by granting forgiveness is an attitude and action carried out within the framework of resolving criminal cases that occur between individuals in society who uphold the values of traditional wisdom values. As an institutionalized attitude and behavior, forgiveness is a choice of attitude from someone who is in a position as a victim of an act that is harmful, both material and immaterial losses, committed by another person or party. In the context of solving this case, forgiveness is an attitude or reaction presented by a victim of a crime or his family in dealing with the attitudes and actions of the perpetrator of the harmful act. As an attitude or reaction from the victim, forgiveness takes place when the perpetrator of the detrimental act has conveyed a sense of regret and apology to the victim and or his family (Surbakti, 2015).

Surbakti (2015), explained that deliberation in the settlement of criminal cases through a restorative justice approach, is always directed at achieving satisfaction for all parties, and can be realized by the perpetrator of the crime, where the resulting agreement contains things such as (1) Application apology from the perpetrator of the crime to the victim, (2) Performing various unpaid work to the victim, (3) Financial compensation to the victim, (4) Volunteer work for social organizations, (5) Compensation in the form of money for social purposes, (6) Providing first aid at the time of the incident, (7) Obeying the agreement wholeheartedly. The kinds of agreements that may result from negotiations are unlimited and the variations depend on each negotiation.

3. Method

The term methodology comes from the word method which means a path, however, according to custom the method is formulated with the possibilities of a type used in research and assessment (Narbuko & Achmadi, 2003). The research method is a way of doing something by using the mind carefully to achieve a goal by searching, recording, formulating, and analyzing until compiling a report (Soekanto, 2012).

Types of research

The type of research used is empirical research, where this research includes research on legal identification and research on legal effectiveness. Empirical research is research with field data as the main data source. So, law is not only seen as prescriptive and applied, but also empirical or legal reality. In this case, what will be studied is related to its application and validity KAPOLRI Circular No. 8 of 2018 and POLRI Regulation No. 8 of 2021.

Problem Approach Method

The approach used in this study is a socio-legal approach. This approach emphasizes research aimed at obtaining legal knowledge empirically by going directly to the subject (Soekanto, 2005). Sociological legal research refers to legal research that verifies the effectiveness of restorative justice by using secondary data as initial data and continuing primary data in the field or region, and research on the relationship (correlation) between different symptoms. It is a study that explores or variables. Sociological justice approaches deal with reality by considering the application of law.

Data Collection Method or Legal Material Collection Method

The techniques or methods of data collection or collection of legal materials used in this study are (1) Interview, An interview is a personal role situation in which someone, the interviewer, asks questions in order to obtain answers that are relevant to the research question of the respondent (Amirudin, 2015). In this case, the interviewed investigator he was POLRESTA Malang. All questions were arranged in a systematic, clear and targeted manner in accordance with the legal issues raised in the investigation, and interviews were conducted to obtain truthful and accurate information from pre-established sources. helpful, (2) Observation, The observation method is used by researchers when they want to know empirically about the phenomenon of the object being observed. Observation is the observation of the human senses (vision and hearing) to catch the observed symptoms and what needs to be recorded. Furthermore, the records were analyzed (Andi, 2004). Observations were carried out with the aim of answering the problems raised in the study, namely related to the effectiveness of the application of related regulations and the constraints of their application by visiting the study location, namely POLRESTA Malang, (3) Documentation Data collection techniques through documentation are a complement to the use of observation and interview techniques. Documentation is a way of obtaining data by studying and

recording the contents of books, archives or documents, and matters related to research (Ahmad, 2003). This is done to obtain data that can be used to analyze the effectiveness of the application of restorative justice itself, (4) Determining the Sample Method A sample is part of the population and its characteristics. Findings from the selection can be applied to the general population. Non-probability sampling is used in this study along with the technique used namely purposive sampling. Purposive sampling is a sampling technique with certain aspects. These certain aspects, for example, it is believed that a person knows best what we expect, or whether or as a ruler to facilitate the study of a study object or social situation. In this case, Malang-based Polre chose cases that contained a situation that could be resolved through restorative methods, and (5) Data Analysis or Analysis of Legal Materials Analysis is an explanation of all materials and data that have been collected and explained previously systematically. The explanation is explained logically according to the thoughts of the author. The method of material analysis used by the author in this research, ie. the method of legal material analysis, is a qualitative method, or the method of material analysis, in the grouping and selection of data obtained from field research and then systematically arranged according to quality and truth.

The Effectiveness of the Implementation of Restorative Justice in POLRESTA Malang

Based on an interview with POLRESTA Malang investigator AIBDA Anto, as Sub-Directorate II of the Malang Police PPA unit, related to restorative justice, said that, the parties involved in a criminal case have the full right to choose whether to resolve a criminal case that occurred with a restorative approach. justice or not. Investigators may not intervene in this matter, but the investigator has the right to consider whether the case can be resolved by a restorative justice approach or not.

Under Article 7(1) J of Law No. 08 of 1981 on the Code of Criminal Procedure (KUHAP), it is stated that investigators, on the basis of their duties, have the power to take other measures according to: . Relevant legislation (Apriyanto Edwin, 2016). Next, in Articles 16(1)L and 18 of the Indonesian National Police Law No. 2002 and Article 6(1) Article 4 of the Code of Criminal Procedure, referred to in Article 16(1)L. Any other act committed is a criminal investigation. Surveys performed when the following conditions are met (Pandelaki, Glenn Richard, 2018):

1). not contrary to the rule of law, 2). 3) in accordance with the laws governing the acts to be performed; Reasonable consideration due to unavoidable circumstances 4). It must be reasonable, appropriate and integrated into the office environment 5). Respect for Human Rights (HAM).

In addition to the matters stated in the Law, there are other matters that must be considered by investigators in deciding whether a case can be resolved with restorative justice or not. This is one of the formal requirements in the guidelines for handling cases with a restorative justice approach contained in the KAPOLRI Circular Letter No. 8 of 2018, that all criminal acts can be carried out with restorative justice for general crimes that do not cause human victims. So, in resolving criminal cases with a restorative justice approach, these things must be considered by investigators to be able to determine whether a criminal case can be resolved with a restorative justice approach or not.

From the results of research conducted by the author regarding the application of restorative justice in the settlement of criminal cases at POLRESTA Malang, it can be used to resolve criminal cases, including: Criminal acts involving children and also minor crimes. Based on cases resolved using the restorative justice method from 2020-2022 (January-December) at POLRESTA Malang as follows: 21 cases in 2020, 32 cases in 2021, 11 cases in 2022. From interviews conducted with investigators, namely AIBDA, Anto explained, the restorative justice approach can be said to be a suitable settlement method for several criminal cases that occurred at POLRESTA Malang. With the implementation of restorative justice, it has a positive impact on both perpetrators and victims of criminal acts themselves, this is because in practice restorative justice is able to accommodate the wishes of the parties involved in certain cases. So that the case can be resolved according to the wishes of the parties involved.

By agreeing to the use of restorative justice by both parties involved in the case, the offender must perform the provision as a form of offender liability. A form of liability or compensation to a victim for what the perpetrator has done. This is in line with one of the formal conditions for the application of restorative justice according to SE KAPOLRI No. 8/2018 that the offender shall not be liable, indemnified or voluntarily contest.

There are at least 4 (four) main values that must be considered by an investigator who acts as a mediator to apply the Restorative Justice approach in efforts to resolve criminal cases, namely (Bonarsius Saragih, 2009) (1) Encounter (meet each other), (2) Amends (improvements), (3) Reintegration (rejoining society), and (4) Inclusion (open). Meanwhile, to take steps to stop investigations into criminal cases on the grounds of measurable, clear, effective and efficient restorative justice so as not to create diversity in the administration of investigations and differences in interpretations of investigators and to avoid deviations

in its implementation so that it can be legally accounted for and procedural, it must pay attention to the following procedures (1) Planning (administrative stages), (2) Preparation, the formal requirements of the case consisting of (1). Letter of Request for Reconciliation of both parties signed on stamp duty, (2) The perpetrator does not object to the responsibility, compensation, or done voluntarily, (3) This case is a general crime that does not cause human casualties.

Further stages after the administrative formal requirements are met, a Peace Request for both parties (reporter and reported party) signed on stamp duty is submitted to the KAPOLRES for approval then a conference is held which results in a Peace Statement (deed dading) and dispute resolution signed by all parties those involved (the reporter, and/or the family of the reporter, the reported and/or the family of the reported and representatives of community leaders) were discovered by the investigator's superiors, carried out a special case title, then issued an Investigation Termination Order (SP3).

Obstacles Faced in the Process of Implementing Restorative Justice at POLRESTA Malang

In the settlement of cases outside the court, the investigator has a very important role in which he can act as a facilitator in carrying out the settlement of criminal cases outside the court by means of peace based on the values of togetherness, kinship, deliberation, and other moral values.

In the event that there is peace, of course, formal conditions must be fulfilled, such as the perpetrator not objecting to responsibility, compensation, or doing it voluntarily. However, in certain cases that occurred in POLRESTA Malang, it sometimes could not run effectively, and even became a dilemma and burdensome for the investigators. For example, the perpetrators of crimes are unable to provide compensation because they do not have money to pay compensation, do not have families who can help, live far away, even outside East Java Province. In other words, materially meets the requirements for restorative justice or proper consideration based on compelling circumstances. However, if it is delegated it is not in sync with the restorative justice policies that apply at the prosecutor's and court's level.

The application of formal conditions, especially the existence of a peace statement (deed dading) will clearly be related to the fulfillment of other formal conditions, namely that the perpetrator does not object to responsibility, compensation, or is done voluntarily. These requirements are sometimes seen as not being able to run effectively, or in other words, they are one of the obstacles in implementing restorative justice in certain cases at POLRESTA Malang.

In addition to the obstacles mentioned above, there are several other factors that become obstacles in the implementation of restorative justice at POLRESTA Malang, these factors include:

Internal factors

(1) Investigator competence in the areas of legal knowledge, legislation, the criminal justice system, and technical and tactical investigative skills remains suboptimal and does not fully understand the principles of restorative justice, (2) Regarding the behavior of investigators and the application of ethical codes in investigations, this is reflected in their lack of determination, tenacity, tenacity, and often negligent approach, tending to go beyond the limits of their authority in the performance of tasks, and lacking independence. appear discriminatory in the handling of the case because they are under the influence of other parties, fail to maintain the mystery of the investigation, frequent words/phrases or gestures aimed at obtaining rewards; Furthermore, it is associated with frequent collusion with those involved in the case, and (3) Regarding the budget, cases submitted to the public prosecutor's office are handled by the investigation budget/P-21, so the range of cases that can be resolved at the investigation level is limited. Synchronization between working units such as the Criminal Investigation Division (RESKRIM) and the Center for Integrated Police Service (SPKT) or other support functions to solve community problems raised by prioritizing restorative justice principles There is none.

Internal factors include

(1) Society's legal issues are often closely related to political issues and the development of the strategic environment. These conditions therefore have a significant impact on police actions and actions. The Malang social culture, which favors legal methods to solve social problems, is one reason for the high number of police reports investigators have to deal with. There is no synergy in cooperation among law enforcement agencies as subsystems of Indonesia's criminal justice system. Communication between subsystems of the integrated criminal justice system is still a formality, with no unified perception of providing fast, easy, and inexpensive justice services. It shows the exchange of case files between investigators and prosecutors. The subject of discussion is neither substantive nor trendy, and (2) This can be seen from the indicators that the investigation has not prioritized cases of public concern (viral), has not provided information about the development of cases optimally, there is still discrimination in the investigation of people who do not understand the law, namely by prioritizing normative law so that people are less sympathetic, and).

4. Discussion

Criminal resolution through restorative justice is not applicable to all types of crimes. Even if these offenses must meet substantive requirements such as (1) Does not cause fear and/or rejection by the community, (2) Does not affect social conflict, (3) Does not have the potential to divide the country. Not radicalism or separatism, (4) No recidivism of criminal offenses based on court decisions, (5) No crimes of terrorism, crimes against national security, crimes against corruption, and crimes against human life. Meanwhile, the fulfillment of the rights of victims of crime and the responsibilities of perpetrators can take the form of (1) To return the goods, (2) Compensation for damages, (3) Reimbursement of costs incurred as a result of the crime, and/or (4) damages resulting from the crime.

With the existence of a legal umbrella related to resolving criminal cases with mechanisms *restorative justice* at the investigative level, it certainly brings fresh air for people who are dealing with criminal cases because the regulations regarding this matter already have legal certainty and all people can access it or have the same rights for this matter. In contrast to before the existence of this regulation where discrimination often occurred in terms of the application of restorative justice, even those who had access to it were only people who had a special affinity/special approach to the investigator concerned.

Application *restorative justice* in POLRESTA Malang is quite effective for certain cases, especially since there are related regulations as a legal umbrella. With such an arrangement, of course it is very helpful for the people who have the right to access it. However, there are still many certain cases that must meet the formal and material requirements to be resolved through a mechanism *restorative justice* but it still fails (does not work) so it needs to be evaluated in terms of its implementation, especially for certain cases that should be worthy of being resolved by mechanism *restorative justice*'s just that because of the administrative requirements and unprofessional factors of officers/investigators (including the investigator's lack of understanding of relevant regulations) it is certainly very detrimental to the public who are facing a criminal case.

For this reason, it is necessary to socialize the relevant regulations well so that the public can know with certainty regarding their legal rights, including the right to have their cases resolved through a restorative justice mechanism, as well as related investigators, of course, need to be given training in order to increase understanding regarding related regulations and improve oversight of performance monitoring. investigators so that they can be professional in carrying out their duties, especially in the settlement of criminal cases at the investigative level through a restorative justice mechanism. In addition, it is also necessary to simplify the process of resolving criminal cases through a restorative justice mechanism so that people can easily access it, especially those related to matters of an administrative nature, so as not to hinder the process of implementing restorative justice itself. Because after all the law is essentially for justice, legal certainty and benefit, if the law cannot achieve the purpose of the law itself, it even causes harm to the parties and to the state, then such a law ideally is a law that needs to be reviewed. Because the law is essentially for humans and not humans for law.

5. Conclusion

The purpose of holding restorative justice for perpetrators is to provide a deterrent effect because they have to pay compensation for their actions to victims as agreed in mediation while for victims it is aimed at fulfilling the rights of the situation as before by giving compensation, so that the existence of restorative justice reduces the dissatisfaction of victims so that he does not intend to take revenge for what happened to him. The effectiveness of implementing restorative justice as an effort to resolve a criminal case at POLRESTA Malang has generally been effective for certain cases even though there are still many cases that fail to apply restorative justice, as many as 64 cases have been disabled which have been resolved using the restorative justice method during the last three years, namely since 2020 -2022.

Obstacles faced by Polresta Malang, especially investigators in the application of restorative justice generally come from aspects of implementing the peace agreement that has been agreed upon by the parties, one of the parties does not perfectly carry out the contents of the agreement that has been agreed upon, so that one of the parties objects. In addition, there are internal factors such as; lack of the competence of investigators in the field of legal knowledge, the application of a code of ethics for investigators that is not optimal, budgets, and unsynchronization between work units. As well as external factors such as; the lack of public trust in the police agency, the mass media coverage that tends to corner the POLRI, becomes an obstacle for the Malang POLRESTA police officers in resolving criminal cases using the restorative justice method effectively.

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