

## Implementation Restorative Justice in Criminal Cases at Investigation Level

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### Abstract.

*The objectives of this study are: 1. To analyze implementation restorative justice in the settlement of criminal cases at the investigation level at the Pati Police Resort at this time. 2. To analyze the constraints that arise in implementation restorative justice in the settlement of criminal cases at the investigation level at the Pati Police. 3. To analyze restorative justice in the settlement of criminal cases at the investigation level at the Pati Police in the future. The research method used is juridical empirical. Types / Specifications of Research, Types of Data and Data Sources, Data Collection Methods, Data Analysis Methods. Research results and discussion: Handling of criminal cases by the Police (investigators) at the Criminal Investigation Unit of the Pati Police with criteria including the category of criminal offenses punishable by criminal sanctions of up to 1 (one) year must be prioritized to apply diversion, criminal acts subject to sanctions. a sentence of more than 1 (one) year to 5 (five) years of the Pati Police Criminal Investigation Unit is carried out with the criteria, among others, considering the law enforcement process in accordance with the applicable positive law and if the settlement is through restorative justice. The use of restorative justice by the police in solving criminal cases at the level of future investigations can represent a logical step in public service and general case handling reform. This contributes to improved community police relations. New participatory programs can encourage a form of direct accountability to the communities they serve. Police officers can apply the principles of restorative justice to develop sustainable collaborative partnerships with the community.*

*Keywords : Restorative Justice, Investigation, Criminal Case.*

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### 1. Introduction

Implementation is an application of ideas, concepts, policies, or innovations in the form of practical actions so as to have an impact, both changes in knowledge, skills, and values and attitudes.<sup>1</sup> According to Wright, the main goal of restorative justice is restoration, while the second goal is compensation.<sup>2</sup> This means that the process of overcoming criminal acts through a restorative approach is a process of solving criminal acts, which aims to restore the situation which includes compensation for the victim through certain methods agreed upon by the parties involved in it.

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<sup>1</sup>Hamalik, Oemar. (2007). *Dasar-dasar Pengembangan Kurikulum*, Bandung: PT Remaja Rosdakarya. p. 237

<sup>2</sup> <http://www.restorativejustice.org>, accessed on 30 March 2020.

Settlement of a certain criminal act that involves all interested parties to jointly seek solutions and at the same time seek solutions in dealing with events after the occurrence of the crime and how to deal with its implications in the future.<sup>3</sup> In carrying out its duties and responsibilities in handling criminal cases, it is still guided by existing regulations, including Act No. 8 of 1981 concerning the Criminal Code (KUHP) and Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2012 concerning Management. Crime Investigation.<sup>4</sup>

One form of reform that exists in Indonesian criminal law is the regulation of criminal law in the perspective of achieving justice for the improvement and recovery of conditions after events and criminal justice processes known as restorative justice.<sup>5</sup>

*Restorative justice* is a settlement process carried out outside the criminal justice system by involving the victim, the perpetrator, the victim's family and the community as well as parties with an interest in a criminal act that occurs to reach an agreement and settlement.<sup>6</sup> Restorative justice is considered a new way of thinking / paradigm in seeing a crime committed by a person.

## 2. Research Methods

The research method used by juridical empirical in this study means that in analyzing the problem it is done by combining legal materials which are secondary data with primary data obtained in the field. The type / specification of the research used is descriptive analytical, which describes the applicable laws and regulations related to legal theories. This research includes primary data research and secondary data, which are related to implementation *restorative justice* in the settlement of criminal cases at the level of investigation. Types of Data and Data Sources, it can be distinguished between data obtained directly from the community and data obtained from library materials. The types of data in this study include secondary data and Primary data is data obtained directly from practice that can be seen and relates to the object of research.<sup>7</sup>

Data collection methods, using literature study, observation and interviews. The data analysis method used is Normative Qualitative. Normative because this research has a starting point from existing regulations as positive

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<sup>3</sup>Tony Marshall, *Restorative Justice: An Overview*, London: Home Office Research Development and Statistics Directorate, 1999, [http // www.restorativejustice.org](http://www.restorativejustice.org). accessed on March 30, 2020.

<sup>4</sup>Kusfitono, Umar Ma'ruf, Sri Kusriyah, *Implementasi Putusan Mahkamah Konstitusi Nomor 130 / PUU-XIII / 2015 Terhadap Proses Penyidikan Tindak Pidana Pencurian Dengan Pemberatan Di Sat Reskrim Polres Kendal*, Jurnal Hukum Khaira Ummah Vol. 12. No. December 4, 2017: 862-874

<sup>5</sup> <http://pn-tual.go.id/id/berita/artikel-hukum/konsep-restorative-justice.html>, accessed on 30 March, 2020

<sup>6</sup>Anita Indah Setyaningrum, Umar Ma'ruf, *Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Melalui Pendekatan Restorative Justice Oleh Penyidik Polda Jawa Tengah*, Jurnal Hukum Khaira Ummah Vol. 12. No. 4 December 2017

<sup>7</sup>Sepha Dwi Hananto, Anis Mashdurohatun, Jawade Hafidz, *Penegakan Hukum Pidana Terhadap Terdakwa Pengguna Narkoba Yang Menjalani Rehabilitasi Di Polda Jateng*, Jurnal Hukum Khaira Ummah Vol. 13. No. March 1, 2018

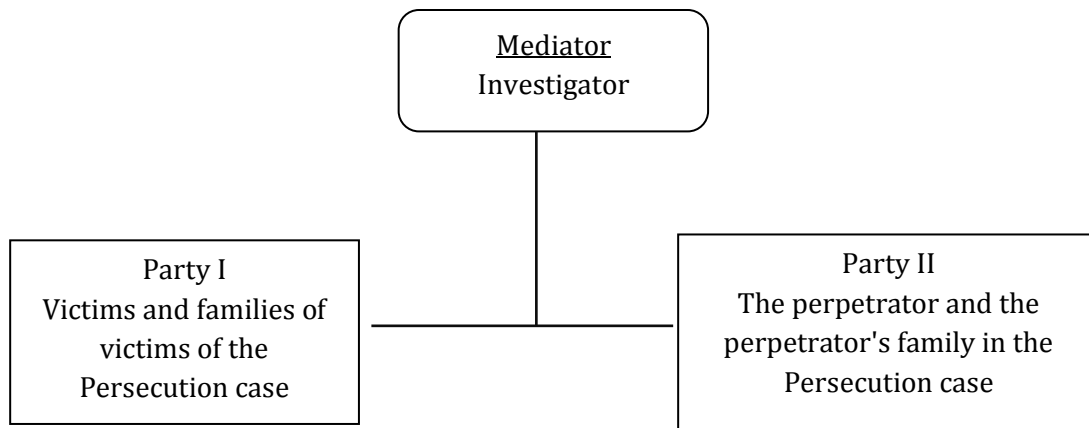
legal norms, while qualitative means data analysis which is based on information obtained from respondents to achieve clarity on the issues being discussed.<sup>8</sup>

### 3. Results and Discussion

#### 3.1. Implementation restorative justice in the settlement of criminal cases at the investigation level at the Pati Police Resort at this time?

Handling of cases carried out by the Criminal Investigation Unit of the Pati Police by applying restorative justice to cases of persecution, restorative justice is carried out with the consideration that the reporter and the reported have made peace in addition to that the investigators at the Criminal Research Unit assess that if the criminal act of insult continues the investigation process can have implications the emergence of disturbances in security and public order. The restorative justice mechanism can be carried out with alternatives, namely outside the judicial system without involving law enforcement officials, outside the judicial system by involving law enforcement officials and parts of the justice system. The mechanism for resolving cases without contact with criminal justice is described in the following scheme / chart:

Chart 1. The Victim-Offenders Mediation Model

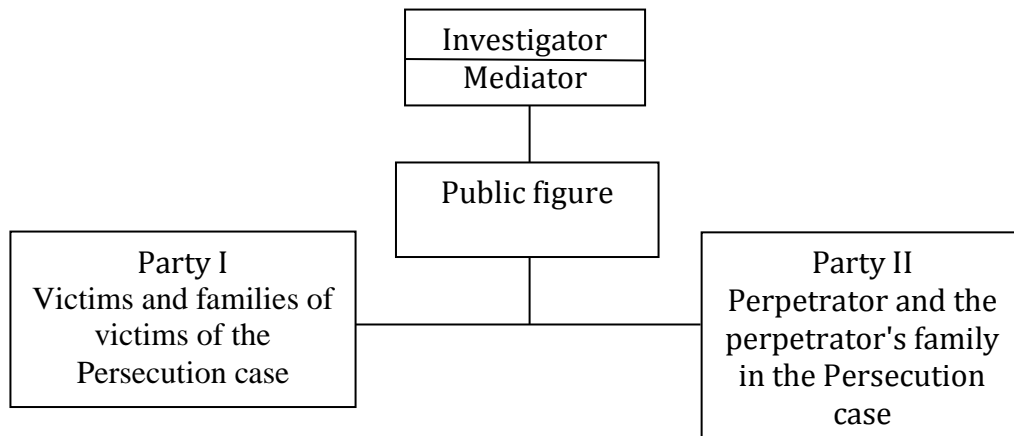


Source Chart: Pati Police Investigators

The Victim-Offenders Mediation Model is a settlement model that involves several parties who meet in the process of implementing restorative justice, namely victims, perpetrators of criminal acts, and the families of both litigants and investigators as mediators. Even though the locus of the case was in the Pati District Police, this model was applied if the victim and the perpetrator were not members of the Pati community. If the victim and the perpetrator are residents of Pati District / Regency, use the Family and Community Group Conferences model.

#### Chart 2. Model Family and Community Group Conferences.

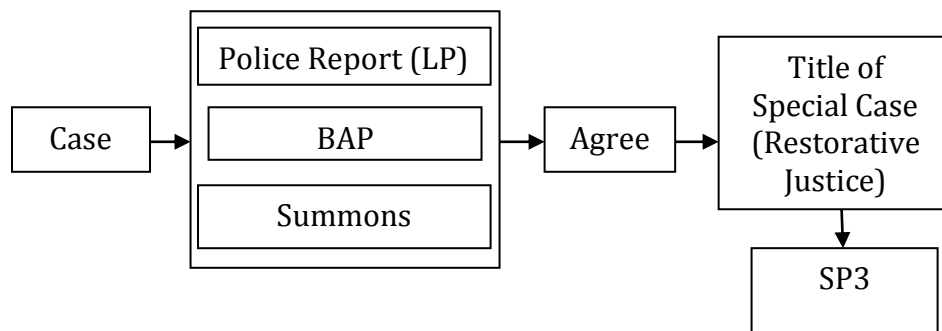
<sup>8</sup>Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, *Tindak Pidana Kekerasan Dalam Proses Belajar Mengajar Di Tinjau Dari Perspektif Hukum Pidana dan Undang-undang Nomor 14 Tahun 2005 Tentang Guru dan Dosen*, Jurnal Daulat Hukum Vol. 1. No. March 1, 2018 ISSN: 2614-560X



Source Chart: Pati Police Investigators

The efforts to offer restorative justice by Polres pati was accepted by both parties. Restorative justice efforts in this case can be described as follows:

**Chart 3. Restorative Justice Effort Process**



Source Chart: Pati Police Investigators

After the case was entered on February 15, 2019, the Pati Police took action from the investigation to the investigation process. In the process of summoning suspects, victims and witnesses, investigators have offered and explained the settlement of the case in restorative justice to the suspect and the victim's family. However, the victim's family still objected to giving up their right to sue him. The investigation process continues until the investigator issues the SPDP and will hand over the SPDP to the public prosecutor, reported, and victim / reporter within the next day.

There are several restorative justice efforts implemented by Pati Police investigators.

- a. The investigator directed both parties to prepare a Peace Request Letter.
- b. Investigators provide an understanding of the important benefits of restorative justice, namely the maintenance of kinship between parties, especially when they are neighbors.

c. The investigator directed the victim, represented by his father as the 1st Party and the suspect as the 2nd Party, to make a Joint Agreement which contained the following:

- 1) Second Party admitted to having committed a criminal act of molestation against children of 1st Party;
- 2) The second party regretted his actions;
- 3) The II Party apologizes to the I Party and the II Party forgives the II Party;
- 4) The 2<sup>nd</sup> Party promises not to commit any form of criminal act of maltreatment against the children of the 1st Party or other people;
- 5) If the second party repeats, it can be prosecuted by law in effect in Indonesia;
- 6) After this Agreement was made, there were no problems between the two parties.

Case Handling: LP / B / 18 / II / 2019 / Central Java / Res Pati, dated 15 February 2019 above, according to the authors reviewing the Restorative Justice Theory that in restorative justice, the perpetrator; victim; and society is considered as parties with an interest in the settlement of criminal acts, apart from the state itself. The involvement of these parties, especially the perpetrators; victim; and society, in the settlement of criminal acts are considered of high value. In addition, the viewpoint of restorative justice demands collaborative efforts between the community and the government to create an environment that allows victims and perpetrators to reconcile conflicts and resolve their losses while creating a sense of security in the community.

That the investigator is very professional in handling the case, for example in carrying out the termination of investigations carried out by the investigator with the consideration that restorative justice has been carried out, still refers to the mechanism of terminating the investigation as regulated in the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation and State Police. Republic of Indonesia Circular SE / 8 / VII / 2018, regarding the Application of Restorative Justice in Criminal Case Resolution, namely through a report revocation mechanism so that it is followed by the preparation of a BAP which contains the contents of the withdrawal of the information concerned in the BAP. So that investigations can be stopped for reasons of public interest and *Harkamtibmas*.

### **3.2. Constraints that arise in implementation *restorative justice* in the settlement of criminal cases at the investigation level at the Pati Police**

*Restorative justice* in solving criminal cases, the systems and methods of investigation, especially at the Pati Police, experience several obstacles, including:<sup>9</sup>

- a. The investigative authority granted by the Criminal Procedure Code is the authority to prove a criminal act and find suspects who must be accounted for in court. The Criminal Procedure Code does not authorize investigators to stop a case if the criminal element is fulfilled as per the results of the investigation.

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<sup>9</sup> Interviews with Investigator Adjunct Police Commissioner Yusi Andi Sukmana Polres Pati, on July 20, 2020

- b. In the Criminal Procedure Code, investigators are given the authority to stop investigations on the basis of the consideration that it is not a criminal act, insufficient evidence as a criminal act, and for the sake of law. However, the Criminal Procedure Code does not give the authority to investigators to settle cases outside the trial court or ignore cases due to certain considerations.
- c. KUHAP regulates the withdrawal of reports or complaints only for certain cases, namely those that constitute offenses for complaints. So that the formal juridical investigator, except for the complaint offense, must forward it to the Public Prosecutor for cases which are proven to be criminal acts based on the investigation. Meanwhile, in the development of criminality, the parties prefer to settle cases outside the court even though in cases classified as pure / non-complaint offenses.

Another obstacle faced in the implementation of restorative justice in the handling of child criminal cases is that investigators have a better understanding of existing normative or positive law than understanding the concept of customary law as a living law in the midst of society. It can be described the obstacles faced by investigators in the implementation of restorative justice in the handling of criminal cases seen from the aspects of internal and external factors based on the results of interviews with the Head of Criminal Investigation Unit at the Pati Police as follows:<sup>10</sup>

a. Internal aspects, can be identified as follows:

- 1) Regarding the competence of investigators in the field of legal knowledge, laws and regulations, the criminal justice system and technical and tactical skills in investigations are still not optimal. This happens because not all personnel in the criminal investigation function have attended vocational education for technical investigators and supporting skills, such as the ability to use information technology in disclosing criminal cases. This includes the lack of a comprehensive understanding of the principles of restorative justice.
- 2) Regarding the behavior of investigators and the application of investigative code of ethics, this can be seen from the lack of constancy / tenacity / resilience and often neglecting procedures, in carrying out tasks there is a tendency to go beyond the limits of authority, are less independent and influenced by other parties so that it seems discriminatory towards case handling, lack able to keep investigations secret, often utter words / sentences or gestures aimed at getting rewarded, and often connects with parties related to cases.
- 3) Regarding budget, that investigation budget is accountable for cases that have been submitted to the public prosecutor / P-21, so that there is limited space in the resolution of cases that can be resolved at the investigation level. This condition will encourage all settlement of cases through the judicial process, while the community still hopes that it can be resolved at the investigation level.

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<sup>10</sup> Interviews with the invisible Criminal Investigation Unit of Polres pati AKP. Sudarno, on July 25, 2020

- 4) There is no standard operating procedure (SOP) that can be used as a guide and legal umbrella for investigators or SKPT to resolve cases outside the court or by carrying out restorative justice in accordance with the interests of the parties in litigation and seeking justice.
  - 5) There has been no synchronization between work units, for example between the official function and SKPT, or other supporting functions to solve community problems that arise by promoting the principle of restorative justice.
- b. External Aspects, based on the identification results can be described as follows:<sup>11</sup>
- 1) The legal problems faced by society are often closely related to political problems and the developing strategic environment. Therefore, this condition greatly affects the steps or actions taken by the police. The social culture of the people of Medan who prefers legal channels to solve social problems is one of the reasons for the high number of police reports that have to be handled by investigators.
  - 2) There is no synergy of cooperation between law enforcement agencies as a sub-system of the Indonesian criminal justice system. Communication between the sub-systems in the integrated criminal justice system is still a formality, there is no single perception to provide fast, cheap and fair judicial services. So that investigators still seem to be *hulp magistraat*. This can be seen from the back and forth of the case files between the investigator and the public prosecutor, where the material of debate is not substantial and tendentious.
  - 3) There are still negative views from the public regarding the investigation and efforts of the National Police in realizing legal certainty and justice.
  - 4) That the development of information technology in addition to having a positive impact also has a negative impact which contributes to the crime rate, this then becomes a new job challenge for investigators. Crimes caused by information technology media are technically and investigative tactics clearly require counter technology, meaning that although the types of criminal acts are common, if they are carried out using information technology, investigators need more time and equipment than if investigators carry out investigations on conventional crimes. Therefore, on the one hand, technological developments also pose a challenge to investigative tasks.
  - 5) Mass media coverage that tends to corner the National Police, especially in the resolution of cases that cause conflict in society, is also triggered by weak social communication skills and an understanding of mass psychology to get mass sympathy in controversial cases.

### **3.3. Restorative justice should be in the settlement of criminal cases at the investigation level at the Pati Police in the future**

Investigators carry out restorative justice in accordance with the ideas of

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<sup>11</sup> Interview with Criminal Investigation Unit of Polres pati AKP, Sudarmo, on 25 July 2020

penal reform and the idea of pragmatism.<sup>12</sup>The background of the idea of penal reform is the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of avoiding the negative effects of the criminal justice system and the criminal system. Investigators are of the view that the crime in this case was not seen, only that the suspect violated the law, but more so as a violation of the victim. Meanwhile, the background of the idea of pragmatism is to reduce stagnancy or the buildup of cases in the Court.

The exercise of investigative authority applies the principle of restorative justice based on the provisions of Article 16 paragraph (1) letter l and Article 18 paragraph (1) of Act No. 2 of 2002 concerning the Indonesian National Police. This provision becomes the basis for solving criminal cases not always using a retributive justice system, but also applying reformatory justice as an aspect of returning and recovering assets due to criminal acts. Apart from the side of justice, looking from a certain conditional side to see the impact of a criminal act, can preventive efforts be made through restorative justice or be followed up to court.<sup>13</sup>

#### 4. Conclusion

The implementation of restorative justice carried out by the Pati Police in the process of handling criminal cases that in the public interest and *Harkamtibmas* based on self-assessment by the Pati Police Criminal Investigation Unit is carried out with criteria including considering the law enforcement process according to the applicable positive law and if settlement through restorative justice is a matter that is very urgent by looking at the psychology of the people in the area as well as on the consideration to fulfill the sense of community justice.

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<sup>12</sup> Arief, Barda Nawawi. (2007). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. Yogyakarta: Genta Publishing. p. 18.

<sup>13</sup> Op.Cit. Yusi



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