

The Authority of Police in Implementation of Restorative Justice in Framework of Enforcement of Criminal Actions in Indonesia

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Abstract.

This study aims to identify and examine the authority of the Police in the application of restorative justice in the context of law enforcement of criminal acts in Indonesia. This study uses a normative juridical approach with descriptive analysis. The data used was secondary data, which was then analyzed qualitatively. Based on the research, it is concluded that the authority of the Police in the application of restorative justice in the context of law enforcement of criminal acts in Indonesia is based on the provisions of Article 16 paragraph (1) letter l, Article 16 paragraph (2) and Article 18 of Act No. 2 of 2002 which is known as Police discretionary terms. Based on this authority, the Police may act on the basis of their own discretion and judgment in carrying out the functions of the Police. To ensure uniformity in the implementation of restorative justice within the Police, the Republic of Indonesia National Police (Polri) Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice was issued. The handling of criminal acts based on restorative justice by the Police based on Police Regulation Number 8 of 2021 must meet general and special requirements. The general requirements apply to the activities of carrying out the criminal investigation, investigation, or investigation functions, while the special requirements only apply to criminal acts based on restorative justice in investigative or investigative activities. Besides that, the role of the National Police is largely determined by the level of public trust, which can be seen from the way they handle each case and public problem.

Keywords: Authority; Crime; Enforcement; Justice; Restorative.

1. Introduction

The increasing prevalence of criminal acts that occur in Indonesia, with various modus operandi and increasingly sophisticated means used, have disrupted the life of the community. A criminal act it self is an act or action that is threatened by law, is contrary to the law and is carried out by a person who is capable of being responsible.¹

¹Bahri, Zulfikar Hanafi. (2018). Consideration of Semarang District Court Judge's Decision in Case Dropped Because The Crime of Defense of Emergency. in *Jurnal Daulat* Vol. 1 No. 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3322/2453>.

Law enforcement is one of the parameters in the success of the rule of law.² The main implementation of the rule of law is law enforcement through the judiciary, in this case the criminal justice system. The number of criticisms of the settlement of cases in the criminal justice system is a fact. Some adverse facts, such as trials which often take a long time, are expensive, complicated, and are considered less able to fulfill the community's sense of justice.³

*The practice of law enforcement in Indonesia for more than half a century turns out to be based on a retributive and deterrent philosophy. Such practice, of course, only focuses on quantitative aspects as output. In this case, the dimension of the assessment is how many cases are handled and the number of criminals who are imprisoned is also calculated. It is certain that the criminal justice system is considered successful if law enforcement officials are able to bring criminals to court and of course receive prison sentences.*⁴

It is undeniable, law enforcement that glorifies the deterrence aspect in many cases turns out to be a dilemma. In fact, the Correctional Institution (Lapas) has over capacity. Also since 1964 the correctional system has been in effect, not prisons. Other facts also prove that it can cause public dissatisfaction, and doubt its usefulness as an outcome impact from law enforcement, even spending the state budget. Law enforcement, which is based on a retributive and positive philosophy in many cases, is often said to be unfair. It is also clear that it disturbs the peace and sense of justice in the community and doubts its usefulness.⁵

*The settlement of criminal cases should prioritize social balance in society. The balance referred to here is between the perpetrator and the victim of a crime, so as to recreate social harmonization in society. This form of settlement is carried out in a balanced manner by way of deliberation between the perpetrator and the victim. The principle of a win-win solution must be prioritized in order to reach an agreement to resolve the case. In the end, it is hoped that the perpetrator apologizes to the victim and promises not to do it again, if necessary to compensate for all the losses suffered by the victim. On the other hand, the victim forgives the perpetrator and does not take the case to court. The concept of settlement like this is called restorative justice.*⁶

Through restorative justice, not all criminal cases must be resolved at the court, but can be ended between the perpetrator and the victim themselves. The settlement method adopted through restorative justice is in accordance with the culture and ideology of the Indonesian nation as mandated in Pancasila. In restorative justice, the victim is able to restore self-confidence and relieve fear,

²Wahyuningsih, Sri Endah and Rismato. (January-April 2015). Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana Di Indonesia. *Jurnal Pembaharuan Hukum*, Vol. II No. 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4136/2887>.

³Waluyo, Bambang. (2020). *Penyelesaian Perkara Pidana, Penerapan Keadilan Restoratif & Transformatif*. Ed. 1. Jakarta: Sinar Grafika, p. 2.

⁴*Ibid.*, p. 132.

⁵*Ibid.*, p. 132-133.

⁶Sulistiyowati. (2020). *Alternatif Penegakan Hukum Pidana Berbasis Nilai Keadilan*. Ed. 1. Yogyakarta: Deepublish, p. 111-112.

while the perpetrator is encouraged to take responsibility as a step in correcting the mistakes caused by the crime and in building a social value system.⁷

Law enforcement work in the Indonesian criminal justice system, one of which is carried out by the Police. The police are essentially a living law, because in the hands of the police the law has its manifestation, especially in the criminal field. The police, as the spearhead of law enforcement, is realized to get closer to real justice.

The existence of the Police in the community aims to help create public order, including resolving crimes that occur in the community by consensus, which is a new trend and hope in implementing penal mediation with a restorative justice approach. The purpose of this research is to find out and examine the authority of the Police in the application of restorative justice in the context of law enforcement of criminal acts in Indonesia.

2. Research Methods

The type of research used in writing this legal journal was normative juridical, which is descriptive in nature. The data used is secondary data, then analyzed.

3. Results and Discussion

Basically, all humans agree that in life they must obey the law because it will provide peace, order, and a sense of security. When the law is not obeyed there will be chaos and disorder.⁸

Obeying the law is an obligation for the creation of security and order.⁹ So if there is a violation then the law must be enforced. Basically, law enforcement is at the same time an indicator of the rule of law.¹⁰ Consistent law enforcement will provide a sense of security, justice and certainty.¹¹ Law enforcers are required to carry out their duties in accordance with the mandate of laws and regulations that

⁷Wicaksono, Rizky Adiyanzah and Kusriyah, Sri. (December 2018). Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children. *Jurnal Daulat Hukum Vol. 1 No. 4*. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4136/2887>.

⁸Hafidz, Jawade. (2021). Cyberbullying, Etika Bermedia Sosial, & Pengaturan Hukum-nya. in *Jurnal Cakrawala Informasi, Vol. 1 No. 1*. url: <https://itbsemarang.ac.id/sijies/index.php/jci/article/view/147/110>.

⁹Arsyad, Jawade Hafidz and Karisma, Dian. (2018), *Sentralisasi Birokrasi Pengadaan Barang & Jasa Pemerintah*. Ed. 1. Jakarta: Sinar Grafika, p. 23.

¹⁰Syahri, Alvi. (September 2020). Law Enforcement against Policies Who Breached the Code of Conduct. *Jurnal Daulat Hukum, Vol. 3 No. 3*. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/11238/4399>.

¹¹Praptiwi, Aggrin Gayuh and Hanim, Lathifah. (September 2019). Effectiveness And Role Of The Food Duty Unit Of Police Region Of Central Java In Law Enforcement In The Field Of Food In The Regional Law Of POLDA Central Java. *Jurnal Daulat Hukum, Vol. 2 No. 3*. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5669/3416>.

lead to decisions with substance in the form of justice for the parties.¹² The function of law enforcement is expected to prevent people from committing crimes.¹³

*Law enforcement is an effort to enforce real legal norms as a code of behavior related to legal traffic in the life of society, nation and state, which is expected to encourage creativity and an active role in building the nation's society, especially in guaranteeing the independence of human rights because they are natural basic rights, which are inherent in humans and the universe.*¹⁴

Bambang Poernomo stated that law enforcement in modern society is not only interpreted in a narrow sense, but also in a broad sense, as in Indonesia law enforcement is associated with the human element and the social environment.¹⁵

As a state of law, the Indonesian state has an obligation to protect the entire Indonesian nation, a task that must be carried out by the government, whose obligations are the basic rights of citizens without exception.¹⁶ It is also stated in the 5th Pancasila principle, which reads: "Social justice for all Indonesian people", it can be explained that one of them is related to law which is the right of the Indonesian people to justice in truth.¹⁷ Based on this, law enforcement in Indonesia is based on justice and truth as the ideals and goals of the Indonesian nation.

Justice is basically the implementation of the law, in the sense of demanding concrete rights or disputes or violations, a function performed by an institution by giving binding decisions and aiming to prevent vigilantism (*eigenrichting*).¹⁸

Along with the development of society, the resolution of conflicts that occur or the prevention of criminal acts, which is highlighted is not affirming the fault of the violator and then imposing criminal sanctions, but the active role of the

¹²Setiyadi, Iwan and Kusriyah, Sri. (June 2019). Law Enforcement Process Analysis By Agencies Of Provos Indonesian National Police (Inp) On Discipline Violation In The Form Of Crime By Police Members (Case Study In National Police Headquarter). *Jurnal Daulat Hukum*, Vol. 2 No. 2. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/5424/3345>.

¹³Gita, Dany Andhika Karya. Purnawan, Amin and Djauhari. (March 2018). Kewenangan Kepolisian Dalam Menangani Tindak Pidana Pertambangan (Illegal Mining) Menurut Undang-Undang Nomor 4 Tahun 2009 (Studi Di Kepolisian Negara Indonesia). *Jurnal Daulat Hukum*, Vol. 1. No. 1. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2561/1918>

¹⁴Tasmo and Suharto, Rahmat Bowo. (2019). The Legal Consequence Of The Judge Decision In The Case Of Children Criminal Justice Which Do Not Based On Society Research From Society Supervisor (Studies on Settlement Case of Children Crime In State Court of Cirebon). in *Jurnal Daulat Hukum* Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8362/3900>.

¹⁵Hamzah, Muhammad Dani. (2018). Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang. in *Jurnal Daulat Hukum* Vol. 1. No. 1, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/2563/1920>.

¹⁶Su'aidi, Farhan Munirus and Cholil, Abdullah Arief. (December 2019). Law Protection on Wife Whose The Claims Fall Due To Husband Refuse His Recompensation On Implementing Of Divorce Pledge. *Jurnal Daulat Hukum*, Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8367/3897>

¹⁷Hasanah, Lailatul Nur and Wahyuningsih, Sri Endah. (December 2019). The Application of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State Court of Pati). *Jurnal Daulat Hukum*, Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8353/3910>.

¹⁸Rusydan, Wilmar Ibni. Ma'ruf, Umar. and Bawono, Bambang Tri. (2019). Judicial Activism In Criminal Case To Ensure The Human Rights Upholding (Study In State Court Of Semarang). in *Jurnal Daulat Hukum* Vol. 2 No. 4. url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8347/3868>.

conflicting party through mediation or compensation for material and immaterial losses in the form of restitution or compensation and restoration of harmonious relations of humanity between the parties (humanization). The orientation of criminal justice is to life in the future. Therefore, an out-of-court settlement by means of reconciliation and negotiation is recommended.¹⁹

The shift in the concept of crime and the orientation of criminal law, has brought bright hopes for legal protection for victims. The shift from retributive justice to restorative justice has a positive impact on crime prevention and control. However, it should be noted that in restorative justice, each case must be carried out differently.

The purpose of administering criminal justice is to resolve conflicts (conflict resolution) that occur as a result of violations of criminal law, thereby reducing the role of the state in the system, and on the other hand empowering the role of crime victims and society on the one hand and offenders on the other. The target of the criminal justice process according to the perspective of restorative justice is to hold violators accountable for their actions and consequences, namely how to restore the suffering of people whose rights have been neglected (victims of crime) as in the position before the violation was committed or the loss occurred, both material aspects and immaterial aspects.²⁰

The development of the criminal justice system from the concept of retributive justice to restorative justice also affects law enforcers in seeing their goals, duties, functions, powers and responsibilities. As is the case with the State Police of the Republic of Indonesia, which in turn has led to the growth of various demands and expectations of the community towards the implementation of the duties of the State Police of the Republic of Indonesia which is increasing and is more oriented towards the people it serves.²¹

The change in the investigation model from being purely punitive (punishing) to a restorative one, cannot be separated from the discretionary authority of the Police. The term discretion associated with the police is known as "police discretion", meaning an authority attached to the police to act on the basis of its own discretion and judgment in carrying out the functions of the police.²²

It is stated in Article 16 paragraph (1) letter l and Article 16 paragraph (2) of Act No. 2 of 2002, that:

- Article 16 paragraph (1) letter l of Act No. 2 of 2002
In the context of carrying out the tasks as referred to in Articles 13 and 14 in the field of criminal proceedings, the Indonesian National Police has the authority to:
- Article 16 paragraph (2) of Act No. 2 Year 2002

¹⁹Julia, Rena. (2013). *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*. Cetakan Kedua. Yogyakarta: Graha Ilmu, p. 188.

²⁰*Ibid.*, p. 190.

²¹Kurniawan, Rudy Cahya. (2021). *Pengaturan Kewenangan KPK & Polri Dalam Penyidikan Tindak Pidana Korupsi Di Indonesia*. Ed. 1. Yogyakarta: Deepublish, p. 72-73.

²²Sadjijono and Santoso, Bagus Teguh. (2017). *Hukum Kepolisian Di Indonesia, Studi Ke-kuasaan & Rekonstruksi Fungsi Polri Dalam Fungsi Pemerintahan*. Ed. 1. Surabaya: LaksBang PressIndo, p. 184.

Other actions as referred to in paragraph (1) letter l are investigative actions and investigations carried out if they meet the following requirements:

- a. Does not conflict with a rule of law;
- b. In accordance with the legal obligations that require the action to be carried out;
- c. Must be appropriate, reasonable, and included in the environment of his office;
- d. Appropriate consideration based on compelling circumstances; and
- e. Respect human rights.

There is no limit/formula of discretionary action. The judgment that is believed by members of the Police to act (discretion), is strongly influenced by concrete situations and conditions requiring action where each individual is different depending on experience, knowledge, intelligence and morality.²³

It is also formulated in Article 18 of Act No. 2 of 2002, that:

- (1) In the public interest, officers of the State 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 as 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 Professional Code of Ethics of the State Police of the Republic of Indonesia.

The use of this article opens the door for criminal proceedings based on the concept of restorative justice, because the opportunities provided for the police are actions that go outside the official line, but do not violate the law. The State Police of the Republic of Indonesia who in acting must consider the benefits and risks of their actions and are truly in the public interest²⁴.

There is a close relationship between the act of discretion and the restorative justice process. Therefore, strengthening the Police members' understanding of the concept of restorative justice needs to be accompanied by strengthening their understanding of the concept of Police discretion. In simple terms, understanding the concept of Police discretion is knowing that the authority of Police members to choose decisions from various actions in ending criminal cases they handle is in the public interest, which is based on law and on the basis of situations and conditions, according to their own considerations and decisions of conscience, while Restorative justice can simply be understood as a philosophy of punishment that positions the victim at the central point in ending criminal cases through diversion, in order to prevent criminals from being deprived of their freedom.²⁵

To ensure uniformity in the implementation of restorative justice within the Police, the Regulation of the Indonesian National Police (Polri) Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice was issued, which was recorded in the State Gazette of the Republic of Indonesia of 2021 Number 947. The regulations of the Police are all regulations issued by the National Police of the

²³Sadjijono. (2010). *Memahami Hukum Kepolisian*. Yogyakarta: LaksBang Press Indo, p. 145.

²⁴Yusuf, Anas. (2016). *Implementasi Restorative Justice Dalam Penegakan Hukum Oleh Polri, Demi Mewujudkan Keadilan Substantif*. Ed. 1. Jakarta: Universitas Trisakti, p. 21.

²⁵*Ibid.*, p. 22.

Republic of Indonesia in the context of maintaining order and ensuring public security in accordance with statutory regulations.²⁶ These regulations must be implemented by all members of the Police without exception.

The handling of criminal acts based on restorative justice by the Police based on Police Regulation Number 8 of 2021 must meet general and special requirements. The general requirements for handling criminal acts based on restorative justice include material and formal requirements. The material requirements include:

- Does not cause unrest and/or rejection from the public;
- Does not impact social conflict;
- Does not have the potential to divide the nation;
- Not radicalism and separatism;
- Not perpetrators of repeating criminal acts based on court decisions; and
- Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.

The general requirements for handling criminal acts based on restorative justice in the form of formal requirements include:

- Peace from two parties as evidenced by a peace agreement and signed by the parties, except for narcotics crime;
- Fulfillment of the rights of victims and responsibilities of perpetrators, in the form of returning goods, compensating for losses, replacing costs incurred as a result of criminal acts and/or replacing damage caused by criminal acts. It is proven by a statement letter in accordance with the agreement signed by the victim (except for narcotics crime).

Special requirements, in handling criminal acts based on restorative justice, are additional requirements for other crimes, including:

- Information and electronic transaction crimes;

Specific requirements for handling criminal acts based on restorative justice for criminal acts of information and electronic transactions, at a minimum, include:

- Perpetrators of criminal acts Information and electronic transactions that spread illegal content;
 - Perpetrators are willing to delete content that is being uploaded, submitted to investigators in the form of soft copies and hard copies;
 - The perpetrator apologized through a video uploaded on social media accompanied by a request to delete content that had spread, submitted to investigators in the form of soft copy and hard copy; and
 - The perpetrators are willing to cooperate with Polri investigators to carry out further investigations.
- Drug crime;

The special requirements for handling criminal acts based on restorative justice for drug crimes include:

- Drug addicts and victims of drug abuse who apply for rehabilitation;

²⁶Arliman S., Laurensius. (2015). *Penegakan Hukum & Kesadaran Masyarakat*. Edisi Pertama. Cetakan Kesatu. Yogyakarta: Deepublish, p. 75.

- At the time of being caught red-handed, evidence of narcotics use for 1 (one) day was found with narcotics and psychotropic substances classified in accordance with the provisions of the legislation, and no evidence of drug crime was found but the results of the urine test showed positive for drugs;
 - Not involved in drug crime networks, dealers, and/or dealers;
 - An assessment has been carried out by an integrated assessment team; and
 - The perpetrators are willing to cooperate with Polri investigators to carry out further investigations.
- Traffic crime.
The special requirements for handling criminal acts based on restorative justice for traffic crimes include:
 - Traffic accidents caused by driving a motorized vehicle in a dangerous manner and condition resulting in material loss and/or minor injuries; or
 - Traffic accidents on the road due to negligence resulting in human casualties and/or property loss.

The Indonesian National Police, the restorative justice strategy, wants to increase public trust, because the Police act as a facilitator not as law enforcement leading to repressive actions, but the position of the Police here can act as a "peacemaker" in a criminal act (as a third party that results in a crime) a win-win solution).²⁷

4. Conclusion

The authority of the Police in the application of restorative justice in the context of law enforcement of criminal acts in Indonesia is based on the provisions of Article 16 paragraph (1) letter l, Article 16 paragraph (2) and Article 18 of Act No. 2 of 2002 which is known as the discretion of the Police. To ensure uniformity in the implementation of restorative justice within the Police, the Republic of Indonesia Police Regulation (Polri) Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice was issued. The handling of criminal acts based on restorative justice by the Police based on Police Regulation Number 8 of 2021 must meet general and special requirements. For law enforcement institutions, the rules for implementing restorative justice must be made at the level of the law, and apply to all institutions, so that there is uniformity and harmonization of regulations in the implementation of restorative justice by law enforcers.

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²⁷Setiadi, Edi and Kristian. (2017). *Sistem Peradilan Pidana Terpadu & Sistem Penegakan Hukum Di Indonesia*. Ed. 1. Jakarta: Kencana Prenada Media, p. 250-251.

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