

The Implementation of Restorative Justice at the Investigation Stage

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Abstract. *The research objectives in this study are to describe and analyze the application of restorative justice at the investigation stage of criminal cases at the Kendal Resort Police, to analyze legal thinking by Kendal Police Investigators regarding accountability in the implementation of restorative justice at the Investigation stage. This research uses a sociological juridical approach, with quantitative descriptive research methods. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty. The results of the research concluded that the implementation of Restorative Justice at the Investigation stage of criminal cases at the Kendal Police Department means that criminal cases can be closed by law and the prosecution is terminated based on Restorative Justice if the following conditions are met: the suspect is committing a crime for the first time, the crime is only threatened with a fine or threatened with imprisonment for not more than 5 (five) years; and the criminal act is committed with the value of the evidence or the value of losses incurred as a result of the criminal act not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah)."*

Keywords: *Implementation; Justice; Police; Restorative.*

1. Introduction

Restorative justice is a resolution process carried out outside the criminal justice system (Criminal Justice System) by involving victims, perpetrators, families of victims and perpetrators, the community and parties with an interest in a

criminal act that occurred to reach an agreement and resolution.¹Restorative Justice is the process of resolving criminal acts by implementing joint efforts for deliberation between the victim, the perpetrator's family and the community in the hope of finding the best form of resolution to restore the losses suffered by all parties.²Equality between criminal sanctions and action sanctions is very useful for maximizing the use of both types of sanctions appropriately and proportionally. This is because the sanctions policy is integral and balanced between criminal sanctions and action sanctions (restorative justice in the form of diversion, by maximizing settlement through penal mediation).³Based on this understanding, it can be seen that the concept of Restorative Justice is the concept of resolving criminal cases that are carried out outside of court by involving the perpetrator of the crime, the victim of the crime, the family of the perpetrator of the crime and the family of the victim as well as other related parties to discuss together to find a middle ground justice by emphasizing the restoration of the rights of crime victims and seeking mutual agreement in imposing responsibility on perpetrators without considering the imposition of responsibility as retribution.

The authority of the Police in implementing Restorative Justice at the Investigation stage is contained in Article 2 Paragraph (1) letter b of the Republic of Indonesia National Police Regulation Number 8 of 2021, which states that "Handling of criminal acts based on Restorative Justice is carried out during Investigation activities".⁴ This provision gives authority to police officers from the Criminal Investigation Unit to implement Restorative Justice, one of which is by attempting to stop investigations. Termination of Investigation as an embodiment of Restorative Justice has also been regulated in the Political Regulation, namely in Article 2 Paragraph (5) which states that "Handling of Criminal Acts as referred to in Paragraph (1) letters b and letter c can involve stopping the Investigation or Investigation".⁵Based on the authority mentioned above, Restorative Justice is actually not always or is not required to be applied to efforts to terminate investigations only, even though stopping investigations is included in the implementation of restorative justice, the true essence of restorative justice is as a case resolution carried out by prioritizing needs and victims' rights.

¹Fiska Ananda, Implementation of Diversion as a Legal Protection Effort for Children Perpetrating Crimes, *Journal of Sovereign Law*, Vol. 1, No. 1(2018).

² Dr. Marlina, SH, M.Hum, 2009, *Juvenile Criminal Justice in Indonesia. Development of the Concept of Diversion and Restorative Justice*, 1st Edition, Refika Aditama, Bandung, p. 31.

³I Dewa Putu Gede Anom Danujaya, Formulation of a Model of the Child Punishment System in Indonesia, *Journal of Sovereign Law*, Vol 1, No.1(2018).

⁴Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Article 2 Paragraph (1) letter b. P.3.

⁵*Ibid.* Republic of Indonesia State Police Regulation Number 8 of 2021. Article 2 Paragraph 5. P.3.

Referring to Article 1 Number 5 of the Criminal Procedure Code, it is stated that the meaning of Investigation is "Investigation is a series of actions carried out by Investigators to find out and discover incidents that are suspected of being criminal in order to determine whether or not an Investigation can be carried out", while Investigation according to Article 1 Number 1 of the Criminal Procedure Code "Investigation is a series of actions by investigators in accordance with the methods regulated in law to search for and collect evidence which, with this evidence, can shed light on the criminal act that occurred and in order to find the suspect." Based on this understanding, investigations can only be carried out based on the results of the investigation. Investigation focuses on finding the object of a criminal act, while investigation is the development of that object with the aim of finding out and determining whether or not the case is appropriate to be transferred and prosecuted by the District Attorney before the trial.

The District Court has the authority to examine and decide and adjudicate a case, including pre-trial proceedings. Article 77 Letter a of the Criminal Procedure Code (KUHP) emphasizes that pre-trial is an attempt by the District Court to conduct an examination of "the legality or otherwise of the arrest, detention, termination of investigation, or termination of prosecution".⁶The object that can be submitted for Pre-Trial is whether or not the arrest and detention of a person suspected of being the perpetrator of a criminal act is legal, then evaluate whether or not the investigation and prosecution are valid or not. In these regulations there is no theme of stopping an investigation so that it can be submitted to Pre-Trial, so it is clear that stopping an Investigation is not included in the object of Pre-Trial, the Criminal Procedure Code only determines that only stopping an Investigation can be submitted for review to a Pre-Trial institution.

Considering the police's authority to terminate investigations as regulated in Article 2 Paragraph (1) letter b and Article 5 of the Republic of Indonesia State Police Regulation Number 8 of 2021, the termination of investigations carried out by the Police is not included in the Pre-Trial object, so that in this case The termination of the investigation does not have a control function (check and balance) so that the accountability and credibility of case termination activities at the investigation stage will be doubted.

Regarding the termination of the investigation, it has reached the legal review stage and has been decided by the Constitutional Court. The review was submitted by Anita Natalia Manafe as the applicant who filed an objection to the termination of the investigation into the criminal fraud case she experienced on the grounds that the case was not a criminal case. In this case, investigators had not yet examined the witnesses, but the case was stopped, causing the

⁶Source: Criminal Procedure Code (KUHP)

Petitioner to feel disadvantaged. The Petitioner in his petition submitted a review of the constitutionality of Article 77 letter a of the KUHAP which does not provide authority to test the legality of terminating an investigation, so that Article 77 letter a of the KUHAP is in conflict with the 1945 Constitution of the Republic of Indonesia. In this review the Constitutional Court has decided through a Decision Number 4/PUU-XX/2022 stating that it rejects all applications submitted by the Petitioner.⁷In this decision, the Constitutional Court rejected the petition submitted by the Petitioner, thus it can be concluded that the termination of the investigation is still not or is not an object as a condition for being submitted to pre-trial, so that the termination of the investigation can still be applied to the criminal investigation function of the National Police.

Restorative Justice must be enforced professionally, if enforcement is carried out by amateur personnel then the essence of the objectives of Restorative Justice will be felt to be in vain and will result in injustice that will harm the community's sense of justice. Based on the background that has been described, this is the reason for the author to carry out research and study in the form of a thesis with the title "Implementation of Restorative Justice at the Investigation Stage at the Kendal Resort Police".

This research aims to describe and analyze the application of Restorative Justice at the investigation stage of criminal cases at the Kendal Resort Police..

2. Research Methods

This research uses a sociological juridical approach. The type of research used in completing this thesis is a qualitative descriptive research method. The data used is primary and secondary data which will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives, the theory of legal certainty.

3. Results and Discussion

3.1. Application of Restorative Justice at the Investigation Stage of Criminal Cases

Criminal law aims to prevent perpetrators of criminal acts from repeating crimes they have previously committed, therefore criminal law is implemented as a countermeasure against the frequent occurrence of criminal acts in Indonesia.⁸ Criminal law provides direction regarding criminal provisions which are intended

⁷<https://www.mkri.id/index.php?page=web.Berita&id=18146&menu=2.MK> Decides on Investigation in KUHAP. Access 11 July 2023. 03.39 WIB.

⁸Andi Hamzah, 2005, Indonesian Criminal Procedure Law, Sinar Graphics, Jakarta, p 22

and function to regulate and control legal order in society, as well as guarantee the upholding of justice in society from the actions of individuals or groups of people.⁹ There are several criminal acts that are often committed by someone in Indonesia. Crimes have an evil nature and evil acts, crimes are regulated in the Criminal Code Book II starting from article 104 of the Code.

Perpetrators of criminal acts are groups or people who commit acts or criminal acts in question, meaning people who commit them intentionally or unintentionally as required by the Law or who have consequences that are not intended by the Law, whether these are elements -objective or subjective elements, regardless of whether the action was carried out on one's own decision or with the encouragement of a third party. Barda Nawawi Arief stated that "criminal acts can generally be interpreted as acts that are against the law both formally and materially".¹⁰

Investigation is the initial stage in the investigation process, investigation is an inseparable part of the investigative function, because to carry out an investigation process that determines a suspect in a criminal act, an investigation must be carried out first to determine whether a particular act is a criminal act or not, which the investigator carries out by collecting evidence. The function of an investigation, among others, is to protect and guarantee human rights, the existence of strict requirements and restrictions on the use of coercive means, strict supervision and the existence of compensation and rehabilitation institutions, it is related that not all events that occur and are suspected of being criminal acts are visible.

Based on Article 4 of the Criminal Procedure Code, anyone who can become an investigator is any police official of the Republic of Indonesia. So only members of the police can become investigators, this is different from investigators, who can become investigators not only members of the police but certain civil servants who are given special authority by law. From the provisions of Article 1 paragraph 5 concerning investigations and Article 5 paragraph 1 letters (a) and (b) of the Criminal Procedure Code concerning the duties and authorities of investigators, they are: 1. When viewed from the duties and authorities of investigators based on law, they can be: 1) Receiving reports or complaints; 2) Looking for information and evidence; 3) Order someone who is suspected to stop and ask and check personal identification; 4) Take other actions according to responsible punishment. 2. The investigator's authority on the investigator's orders: 1) Arrest, prohibition from leaving the place, search and confiscation; 2) Examination and confiscation of letters; 3) Taking fingerprints and photographing

⁹PAF Lamintang and Theo Lamintang, 2017, Indonesian Panitentiary Law, Sinar Graphics, Jakarta, p 20

¹⁰Barda Nawawi Arif, 1984, Sari Lecture on Criminal Law II, Bandung, Undip Faculty of Law, P 37.

a person; 4) Bring and present someone to investigators. In Dutch, investigation is the same as *opsporing*. According to De Pinto, investigating (*opsporing*) means an initial inspection by officials appointed by law as soon as they hear news that is merely reasonable that a violation has occurred.¹¹The investigative duties carried out by POLRI investigators (Police of the Republic of Indonesia) are the sole investigators for general criminal acts, their duties as investigators are very difficult and require enormous responsibility, because investigations are the initial stage of a series of criminal case resolution processes which means they will have an impact on the next stage of the pretrial process.¹²The investigator's task is to carry out an investigation, namely a series of investigative actions in terms of and according to the methods regulated in the Criminal Procedure Law to search for and collect evidence that will shed light on the criminal act that occurred and in order to find the suspect.

Restorative Justice is the process of resolving acts of legal violations that occur when the victim and perpetrator (suspect) sit together in one meeting to talk together. During this meeting, the mediator gives the perpetrator the opportunity to provide as clear a picture as possible regarding the actions they have taken. In this mediator, the perpetrator explains about the action he was late in carrying out and the reasons why the perpetrator took this action. The victim has an obligation to listen carefully to the perpetrator's explanation.

Restorative justice is often interpreted as resolving criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just solution by emphasizing restoration to the original condition, not retaliation. Justice produced by Stage holders (perpetrator, victim, community) autonomously, to resolve criminal cases, by emphasizing efforts to restore them to their original state and not in the form of retaliation. RJ contains elements of dialogue (deliberation), restorative (healing, improvement, recovery), conflict resolution, equality of position (the balanced approach), forgiveness, responsibility, moral learning, community participation and concern, a win-win solution RJ contains justice that is autonomous, authentic, substantive and non-procedural

The presence of the idea of Restorative Justice or often translated as restorative justice, which in the legal process is interpreted as transferring case handling from the criminal justice process to a formal process to be resolved through deliberation.¹³ Restorative Justice is also defined as a form of resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim,

¹¹Andi Hamzah, 2001, Indonesian Criminal Procedure Law, Sinar Graphics, Jakarta, p. 118

¹²Yasmil Anwar and Adang, 2009, Criminal Justice System, Widya Padjadjaran, Bandung, p. 79.

¹³Fultoni, et al. 2012, Parelegal Pocket Book Series 7 Children in Conflict with the Law (ABH), National Library of the Republic of Indonesia Catalog Data in Publications (KDT), Jakarta, Page. 20

and other related parties to jointly seek a fair solution by emphasizing restoration to the original condition, and not retaliation.¹⁴ Restorative justice is seen as emphasizing humanism and is not meant to replace retributive justice, so that restorative justice is a form of law enforcement towards humanist justice.¹⁵ Restorative justice focuses on the idea that victims' needs must be addressed, perpetrators must be encouraged to take responsibility, and those affected by the offense must be included in the process. Restorative justice expands the circle of stakeholders in criminal acts beyond the government and perpetrators to include victims and community members.¹⁶ Restorative justice is also an alternative resolution of criminal cases that focuses on punishment which is transformed into a dialogue and mediation process. According to Clifford Dorn, from the restorative justice movement, restorative justice is defined as a philosophy of justice that emphasizes the importance of the relationship between perpetrators, victims, society and the government in cases of crime and juvenile delinquency.¹⁷

The implementation of Restorative Justice in Criminal Law Enforcement is carried out through Out of Court Settlement, the results receive approval (recognition) from APH/Determination of the Head of the District Court (Diversion in the SPPA Law) the legal basis of the RJ Law is carried out in Court Settlement by APH: Restorative justice results receive "recognition law" ends the legal process, in the form of stopping the investigation or no prosecution (the reason for the abolition of the authority to prosecute).

Restorative Justice as an effort to seek peaceful conflict resolution outside of court is still difficult to implement. In Indonesia, there are many customary laws that can be restorative justice, but their existence is not recognized by the state or not codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the conflicting parties. The emergence of the idea of Restorative Justice as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts. The reason is that the parties involved in the conflict are not involved in resolving the conflict. Victims are still victims, perpetrators who are imprisoned also raise new problems for families and so on.¹⁸

¹⁴ <https://paralegal.id/pengertian/keadilan-restoratif/> downloaded 8 April 2023 at 22.30 WIB

¹⁵ Agus Widjojo, National Webinar "Law Enforcement Towards Humane Justice from a Criminal Perspective". Lemhannas RI

¹⁶ Febby Mutiara Nelson. Due Process Model and Restorative Justice in Indonesia: A Conceptual Study. *Journal of Criminal Law & Criminology*, Vol 01 No 01 Edition October 2020, Page. 92-112

¹⁷ Susan C. Hall, *Restorative Justice in the Islamic Penal Law. A Contribution to the Global System*, Duquesne University School of Law Research Paper, No. 2012-11, P. 4

¹⁸ Setyo Utomo, 2014, *Penalty System in Criminal Law Based on Restorative Justice*, *Mimbar Justitia*, Faculty of Law, Suryakencana University, Cianjur, Vol. V No. 01, p. 86

Restorative justice is basically guided by restorative values, namely prioritizing collaborative and consensus procedures rather than adjudicative and adversarial forms that often characterize conventional criminal justice procedures.¹⁹Center for Justice & Reconciliation (CJR) states that restorative justice is a theory of justice that emphasizes repairing harm caused by criminal behavior. This is best done when the parties collectively consciously meet to decide how to do this. This can lead to a transformation of relations between communities.²⁰

Regulations regarding the conditions for implementing restorative justice are regulated in Police Regulation 8/2021 and Prosecutor's Regulation 15/2020. The requirements contained in Police Regulation 8/2021 will be applied when carrying out criminal investigation, investigation or inquiry functions. Meanwhile, the requirements contained in Prosecutor's Regulation 15/2020 will be applied at the prosecution stage by the public prosecutor. Based on Police Regulation 8/2021, it can be seen that to implement restorative justice there are general and/or specific requirements. Special requirements explain additional requirements for certain criminal offenses such as drugs, traffic, and electronic information and transactions. Meanwhile, general requirements consist of material requirements and formal requirements. Material requirements are explained in the provisions of Article 5 of Police Regulation 8/2021 which reads: "Material requirements as intended in Article 4 letter a, include:

- a. does not cause unrest and/or rejection from the community;
- b. does not impact social conflict;
- c. does not have the potential to divide the nation;
- d. not radicalism and separatism;
- e. not a repeat perpetrator of a criminal act based on a court decision; And
- f. "Not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a criminal act against people's lives."

Then, the formal requirements are explained in Article 6 paragraph (1) of Police Regulation 8/2021 which reads: "Formal requirements as intended in Article 4 letter b, include:

- a. peace from both parties, except for drug crimes; And

¹⁹Robins quoted in <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/key-issues/1--concept--values-and-origin-of-restorative-justice.html> accessed April 8, 2023

²⁰Dvannes, 2008, Restorative Justice Briefing Paper-2, Center for Justice & Reconciliation, P. 1

b. fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes."

Furthermore, Article 6 paragraph (3) of Police Regulation 8/2021 explains the purpose of fulfilling the victims' rights above, namely in the form of returning goods, compensating for losses, compensating for costs incurred as a result of criminal acts, and/or compensating for damage caused arising from the criminal act.

Based on the provisions of these articles, it can be seen that there are conditions that must be fulfilled if restorative justice is to be implemented. These conditions include an agreement between the parties to make peace, not repeat criminal acts, the victims' rights have been fulfilled, and the application of restorative justice does not receive rejection from the community, and is not for certain crimes. Furthermore, the conditions regarding the application of restorative justice when in the prosecution stage are explained in Article 5 paragraph (1) of the Prosecutor's Office Regulation 15/2020 which reads: "Criminal cases can be closed by law and prosecution terminated based on Restorative Justice if the following conditions are met:

- a. The suspect has committed a crime for the first time
- b. criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years; And
- c. "criminal acts are committed with the value of the evidence or the value of losses incurred as a result of the criminal act not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah)"

However, for criminal acts related to property, criminal acts against persons, bodies, lives and freedom, and if criminal acts are committed due to negligence, then the conditions stated in Article 5 paragraph (1) of the Prosecutor's Office Regulation 15/2020 can be partially deviated from. . Therefore, the application of these conditions is not enforced rigidly, but can be waived in certain cases. Apart from the 3 (three) conditions mentioned in Article 5 paragraph (1) of Kejari Regulation 15/2020, the implementation of restorative justice must also fulfill several other conditions as stated in Article 5 paragraph (6) of Kejari Regulation 15/2020 which reads: "termination of prosecution based on Restorative Justice is carried out by fulfilling the following conditions:

- a. there has been a restoration to its original condition carried out by the suspect by:
 1. return items obtained from criminal acts to victims;

2. compensate victims' losses;
 3. reimburse costs incurred as a result of criminal acts; and/or repair damage resulting from criminal acts;
- b. there has been a peace agreement between the victim and the suspect; And
 - c. the community responded positively"

3.2. Implementation of Restorative Justice at the Investigation Stage of Criminal Cases at the Kendal Resort Police

According to Simons, the definition of a criminal act is an act of violating criminal law that has been carried out intentionally or unintentionally by someone who can be held responsible for their actions and by criminal law has been declared an act that can be punished. According to Moeljatno, criminal acts are actions that are prohibited by a rule of law, this prohibition is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition.

Bambang Poernomo is of the opinion that the formulation of criminal acts will be more complete if an act is prohibited by a criminal law rule and is punishable by a criminal offense for anyone who violates this prohibition.²¹ The term criminal act is also often used in legislation even though the word "act" is shorter than "action" but "action" does not refer to abstract things such as actions, but only expresses concrete circumstances, as with events with the difference that action is a person's behavior, behavior, movements or physical attitude, which is better known as action. -horn, action and acted and recently also often used "acted".

An investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated in the law.²²The investigation was carried out based on:

- a. Information or reports received or known directly by investigators
- b. Police report
- c. Minutes of inspection at the crime scene

²¹Ismu Gunadi and Jonaedi Efendi, 2014, Criminal Law, Jakarta, Kencana, P. 35.

²²M. Husein Harun, 1991, Investigators and Prosecutors in the Criminal Process, PT Rineka Cipta, Jakarta, p. 56

d. Minutes of examination of suspects and/or witnesses.²³

The police is an organization that has very broad functions, the police were well known in the 6th century as a State apparatus with authority that reflects broad powers in maintaining security and order in Indonesian society, the National Police of the Republic of Indonesia or usually abbreviated to Polri in relation to Government is one of the functions of the Indonesian government which aims to realize security in the country as contained in Article 4 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia.²⁴

Criminal Procedure Law in Indonesia is regulated in one law, namely KUHAP, or Law No. 8 of 1981, State Gazette No. 76 of 1981 which came into effect on 31 December 1981, where those who are obliged to defend the law of the Unitary State of the Republic of Indonesia, are represented by National Police investigators, Military Police investigators and public prosecutors, therefore the criminal law is dwangenecht / coercive, the victim is the one who reports or commits. If there is a complaint that a criminal act has occurred, the investigator or the authorities are not obliged to decide whether to continue or stop the case, meaning that in criminal acts of complaint or *clach delict*, according to R. Soesilo, from many criminal cases, almost all crimes can only be prosecuted based on a complaint from the victim. who experienced material or non-material losses in the incident.²⁵

Based on Article 1 paragraph (1) of the Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2012 concerning Management of Criminal Investigations, the National Police of the Republic of Indonesia, abbreviated to Polri, is a State instrument that plays a role in maintaining security and order, the community, enforcing the law, and providing protection, protection and service to the community in the context of maintaining domestic security. In order to enforce the law on criminal acts committed by someone, the police are tasked with looking for evidence and making the case clear so that it is clear who the perpetrator of the criminal act is, in this case the police carry out an investigation first, the purpose of conducting the investigation is to determine whether there is or not the criminal act occurred, and who is criminally responsible for the criminal act that occurred. So, in order for further action to be taken by investigators, preparation is needed to carry out the investigation, including the following:

1. Suspected person who has committed a criminal act

²³M. Husein Harun. Op, Cit p 57

²⁴Budi Rizki Husin, Study of law enforcement agencies, Bandar Lampung, University of Lampung, p 15 Quoted on 27 October 2023

²⁵R. Soesilo, 1993, Criminal Code (KUHP), Politeia, Bogor, p.87

2. Objects or goods or letters used to commit a criminal act, which investigators will later use as evidence in investigations or in court trials
3. Places or buildings or means of transportation used for the crime.²⁶

The following are the preparations that need to be made to carry out an investigation, and to carry out an investigation can be done as follows:

1. In an open way, this investigation is carried out if the information or data or evidence needed is easy to obtain and in this way it is determined that it will not hinder the progress of the further investigation process
2. The investigator must also show a personal identification card or authorized member card, in accordance with Article 104 of the Criminal Procedure Code when conducting an investigation;
3. Investigations carried out in private are usually carried out in the world of intelligence and investigators must be able to avoid actions that are contrary to the rules or regulations regulated by law.²⁷ So that the objectives of the investigation can be achieved according to plan, before carrying out investigative activities, first prepare an investigation plan so that it is more focused and can be well controlled.

The Investigation Plan contains:

1. Source of information needed to be contacted such as (person, agency, body, place or other)
2. Information or evidence required from this source which is useful for proving a criminal act committed by someone.
3. Members of officers who are obliged to carry it out
4. Time limit for implementation activities.²⁸

Through the report on the results of the investigation after the investigation is completed, the investigator then processes the data that has been collected and then prepares a report on the results of the investigation that has been carried out, which report contains:

²⁶By, Rován Kaligis, The Function of Investigation in the Process of Resolving Criminal Cases, Lex Crimen Vol. II/No.4/August/2013. P 16

²⁷Ibid.p.16

²⁸Ibid.p.16

1. Source of data or information obtained from each source
2. Evidence obtained from the results of the investigation

After making a report and analyzing it to reach a conclusion about whether or not there was a crime that occurred and determining who the perpetrator of the crime was, it is necessary to carry out further actions that need to be taken at the next stage in accordance with the provisions of the applicable law.²⁹In the process of investigating criminal acts there must be a basis for conducting the investigation, the investigation process is regulated in article 4 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 14 of 2012 concerning Management of Criminal Investigations. Basic Investigations are carried out:

- a. police report/complaint;
- b. assignment warrant;
- c. investigation results report (LPH);
- d. investigation warrant; And;
- e. SPDP.

A police report is a document which contains written information relating to an event which is suspected of being a criminal act committed by a person, a police report is a formal form or implementation based on article 1 paragraph (24) of the Criminal Code, a report is a notification submitted by a person due to rights or obligations based on law to authorized officials regarding whether a criminal offense has occurred or is being committed or is suspected to be occurring. In article 5 paragraphs (2) and (3) of the Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2012 concerning Management of Criminal Investigations, it is explained that there are police reports or complaints:

- a. Model A Police Report as referred to in paragraph (1) letter a, is a police report made by members of the National Police who experienced, knew about, or discovered directly the incident that occurred.
- b. Model B Police Report as intended in paragraph (1) letter b, is a Police Report made by members of the National Police based on reports or complaints received from the public.

²⁹Ibid

Investigation activities before an investigation is carried out based on article 11 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 14 of 2012, investigation activities are carried out before there is a police report or complaint and after a police report or complaint is made in the context of an investigation, the investigation activity is carried out to search for and discover criminal acts that are occurs, investigative activities are part of or one of the ways of conducting investigations to:

- a. Determining whether an event that occurred is a criminal act or not a criminal act;
- b. Make the case clear until determining the perpetrator; and
- c. Used as a basis for carrying out coercive measures.

Investigation activities carried out as intended in article 11 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 14 of 2012 include:

- a. Processing the case Incident Scene;
 - 1) Search for and collect information, clues, evidence, identity of suspects, as well as witnesses or victims for the purposes of further investigation;
 - 2) Look for relationships between witnesses or victims, suspects, and existing evidence;
 - 3) Obtain an overview of the operational mode of the criminal act that occurred.
- b. Observation (observation);
 - 1) Carry out surveillance of certain objects, places and environments to obtain information needed for investigations;
 - 2) Obtain clarity or complete existing information based on previously known knowledge and ideas.
- c. Interview (interview);
 - 1) Conduct interviews to obtain information from certain parties through closed or open interview techniques; And
 - 2) Obtain clarity on the criminal act that occurred by looking for answers to the questions who, what, where, with what, why, how, and when.

d. Surveillance;

- 1) Following someone who is suspected of being the perpetrator of a criminal act or other person who can lead to the perpetrator of a criminal act;
- 2) Find out the activities, habits, environment or network of criminals; And
- 3) Participating in the distribution of goods or storage of goods resulting from criminal activities.

e. Disguise (under cover);

- 1) Infiltrating a certain environment without knowing their identity to obtain information or information;
- 2) Integrate with a certain group to gain a role from that group, in order to find out the activities of the perpetrators of criminal acts.

f. Tracking (tracking); And

- 1) Search for and follow the whereabouts of criminals using information technology;³⁰
- 2) Carrying out tracking in collaboration with Interpol, ministries or institutions or bodies or commissions or related agencies; And
- 3) Tracking the flow of funds suspected to be proceeds of crime.

g. Document research and analysis.

- 1) Collect documents that are suspected to be related to the criminal act that occurred; And
- 2) Examining and analyzing the documents obtained in order to compile the anatomy of criminal cases and their operating modes.

The targets of the investigative activities carried out are:

a. Person;

b. Objects or items;

³⁰Ibid.p.19

- c. Place;
- d. Events or occurrences that occur;
- e. Activities that occur.

Based on the report that has been made by members of the National Police, investigators will follow up with investigative activities to find out whether a criminal act has really occurred. After an investigation is carried out by members of the National Police, if it is proven that a criminal act has occurred then the case will move to the investigation stage, at which point the investigator collect evidence and make clear the reported criminal incident, the length of the investigation process will depend on the level of difficulty in obtaining evidence of a criminal act committed by someone, and if the sooner the evidence can be found, the faster the investigation process of the case will be. reported, every report received is required to be accounted for by the investigator, and if evidence is found of a criminal act that has been committed by someone then it is required to be handed over to the Public Prosecutor,³¹and if as a result of the investigation into the report no evidence is found then the authorized investigator has the right to stop the case, if the reporting party objects to the termination of the investigation then they can take a pre-trial through the District Court at that location.

The implementation of Restorative Justice is shown by cases handled by the PPA unit of the Kendal Police Criminal Investigation Unit. The PPA Unit of the Kendal Police Criminal Investigation Unit received reports that there had been sexual abuse committed by children and the victims were also children. There were 2 child perpetrators in the name of KU and AD, when the perpetrator was committed, the perpetrator was 11 years and 6 months old, where the status of the perpetrator was still a student at one of Kendal's elementary schools, then the victim, named ADR, was 6 years old and his status was a grade 2 student in Sukodono Kendal Elementary School. The perpetrator molested the victim 4 times, the first in May 2015 and the last in June 2015, with all the molestation carried out in the perpetrator's older brother's room in the perpetrator's house in Karangmalang hamlet, Rt 01 Rw 01, Sukodono Village, Kendal City District, Kendal Regency. The perpetrator and the victim still have a family relationship, namely the victim's grandmother is a brother and sister with the perpetrator's father and the perpetrator's house is next to the victim's house, then the perpetrator found out about the obscene act from the internet when the perpetrator was playing on the internet in an internet cafe until the trial and the decision by the court based the demands of the prosecutor where the decision was made. Namely, the perpetrator on behalf of KU was declared legally and

³¹Ibid.p.19

convincingly guilty of committing a criminal act by intentionally threatening a child to commit several obscene acts which were seen as continuing acts as per the second alternative indictment from the public prosecutor, sentencing the child to imprisonment in Kutoarjo Children's Prison for 3 (three) years and 6 (six) months, determines that the child undergoes work training at a work training institution for 6 (six) months and AD is declared legally and convincingly guilty of committing a criminal act by deliberately threatening the child to commit several obscene acts. is seen as a continuing act as stated in the second alternative indictment of the public prosecutor, sentencing the child to imprisonment at the Kutoarjo Children's Prison for 2 (two) years and 6 (six) months, stipulating that the child undergo work training at a work training institution for 3 (three) months must serve a prison sentence in the Juvenile Correctional Institution.

4. Conclusion

The application of Restorative Justice at the Investigation stage of criminal cases at the Kendal Police Department means that criminal cases can be closed by law and the prosecution terminated based on Restorative Justice if the following conditions are met: a). The suspect is a first time criminal, b). criminal offenses are only punishable by a fine or punishable by imprisonment for not more than 5 (five) years; and c). "The criminal act is committed with the value of the evidence or the value of the loss incurred as a result of the criminal act not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah)." The implementation of Restorative Justice is shown by cases handled by the PPA unit of the Kendal Police Criminal Investigation Unit. The PPA Unit of the Kendal Police Criminal Investigation Unit received reports that there had been sexual abuse committed by children and the victims were also children. There were 2 child perpetrators in the name of KU and AD, when the perpetrator was committed, he was 11 years and 6 months old, where the perpetrator's status was still a student at an elementary school in Kendal, then the victim, named ADR, was 6 years old and his status was a grade 2 student. at Sukodono Kendal Elementary School. The perpetrator on behalf of KU was declared legally and convincingly guilty of committing a criminal act by deliberately threatening a child to commit several obscene acts which were seen as continuing acts as per the second alternative indictment from the public prosecutor, sentencing the child to imprisonment in Kutoarjo Children's Prison for 3 (three) years and 6 (six) months, determines that the child undergoes work training at a work training institution for 6 (six) months and AD is declared legally and convincingly guilty of committing a criminal act by deliberately threatening the child to commit several obscene acts deemed as a continuing action as stated in the second alternative indictment of the public prosecutor, sentencing the child to imprisonment at the Kutoarjo Children's Prison for 2 (two) years and 6 (six) months, stipulating that the child undergo

work training at a work training institution for 3 (three)) months must serve a prison sentence at the Juvenile Correctional Institution.

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