

Effectiveness of Joint Investigation of Violent Crime Cases Based on Restorative Justice

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Abstract. *Investigations into violent crimes jointly by investigators are carried out in accordance with applicable legal procedures, namely the Criminal Procedure Code and the Chief of Police Regulation No. 6 of 2019 concerning the Investigation of Criminal Acts. Justice Restorative is an alternative to resolving cases, especially resolving criminal cases of violence together during the investigation process. Efforts are needed in the form of socialization to the community. that restorative justice is not only intended for certain groups, but for everyone. For law enforcers in the investigation process, there needs to be an increase in quantity and quality equipped with certified training and experience. the method used by the author in this thesis research is a normative legal research method using the Legislation approach as a basic foundation in research and analyzing based on library study materials and other literature and scientific works. this study aims to determine the implementation of the investigation process. collective violence crimes Currently, to analyze and find weaknesses in the investigation process and its solutions, and to determine the effectiveness in resolving cases in the investigation process based on restorative justice? The results of the study indicate that the investigation process begins with a report, which is then from the party investigators are made in the police report registration and after being equipped with a task order by the leader, the investigator who is ordered to conduct an investigation into the report of a crime under Article 170 of the Criminal Code and identify the report by taking the first action at the scene of the crime to seek information and evidence. Furthermore, after collecting the existing evidence and witnesses, the investigator can arrest someone suspected of being the perpetrator and process them to court, in the investigation process collective violence restorative justice can be done (restorative justice) but in the implementation of a regulation there are weaknesses in the restorative-based investigation process, namely the lack of police personnel and the community not yet knowing the restorative justice process.*

Keywords: *Criminal; Investigation; Restorative.*

1. Introduction

In many cases of crime today, many people or groups plan to commit violence together. the same thing towards other people due to several factors such as revenge, defamation, feelings of betrayal ordis advantaged, feeling that their self-esteem and dignity are being violated, and other motives. In addition, many people are also involved in disagreements, fights, or quarrels that lead them to commit violence unintentionally.

Violence committed by a person or together is increasing and disturbing the community and law enforcement officers. In law, criminal acts do not only occur to one perpetrator, but it often happens that more than one person is involved in one criminal incident or ifIn a crime involving several or more people, known as participation. The Criminal Code, Book II, Chapter V regulates crimes against public order, which are contained in Articles 153-181. Article 170 paragraph (1) of the Criminal Code states that: "Anyone who openly and with joint force uses violence against people or property threatened with a maximum sentence of five years and six months.¹

Law enforcement is carried out using formal justice methods in the form of repressive police action which is then continued with a litigative legal process (*law enforcement process*), will generally end in a win-lose or lose-lose situation. The end of the litigation process will only result in the perpetrator being punished for his actions, while the restoration of the victim's rights and the physical and psychological losses suffered by the victim due to the incident cannot be fulfilled. The form of punishment currently used can also be said to not provide a deterrent effect for lawbreakers.

The criminal justice system which has so far been supported by the doctrine and theory of the deterrent effect (*deterrenceeffect*) is no longer effective for use in the problem solving process, this situation encourages handling of problems through informal mechanisms (misdemeanor) by involving a third party as a facilitator to carry out victim-offender*Reconciliation*and or Alternative Dispute Resolution is more beneficial for the various parties involved.²Apart from that, with the manyaccumulationcases in the police force cause the resolution of a case to take longer and ultimately lead to the failure to full fill legal certainty. Likewise with the current conditions where prisoners or detainees who enter with various criminal cases have made correctional institutions/detention

¹Adami Chazawi, Criminal Law Lesson 3, *TrialAndInclusion*, Jakarta: PT RajaGrafindo Persada, 2008, p. 24

²Sudarsono, Teguh. ADR Construction Problem and Dispute Resolution*Through the ProcessRestorative*, Diponegoro University Publishing Agency, Semarang, 2009, p. 39

centers over capacity and not ideal, thus having an impact on the emergence of criminal acts in the correctional institution/prison environment itself, for example drug abuse, gambling, forms of violence or abuse, theft, fraud and many other criminal acts.

Currently, society needs law enforcement. Accommodate interests and resolve problems fairly and accommodate the aspirations of the will of the community itself, especially the interests of the recovery of victims who have been the disadvantaged party and have not received attention. The implementation of law enforcement duties by the Police at the practical level in the field, in addition to law enforcement that prioritizes formal law, is also faced with taking other policies with various considerations in law enforcement in the form of non-formal ones that are oriented towards community justice. This is what underlies the idea of carrying out restorative justice or implementing restorative justice in the realm of the Police in investigation and investigation activities.

Provisions on investigations are regulated in Chapter XIV of the Criminal Procedure Code, consisting of two parts, namely investigation and inquiry. Investigations are regulated in Articles 102 to 105 and Investigations are regulated in Articles 106 to 136. If associated with the provisions of the Criminal Procedure Code which regulate the authority and actions of investigators and the authority of investigators, "a series of actions by investigators and investigators" as defined by investigation and inquiry are not only listed in Chapter XIV of the Criminal Procedure Code, but also listed in other chapters and articles in the Criminal Procedure Code. The authority, obligations of investigators and the scope of investigations must also be seen from other chapters and articles in the Criminal Procedure Code. The National Police then attempted to organize the scattered chapters and sections in the Criminal Procedure Code to make them more systematic as stated in the Indonesian National Police Circular Letter SE/8/VII/2018, Concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases and Regulation of the Head of the Indonesian National Police Number 6 of 2019 Concerning Criminal Investigations. Investigations and inquiries, the National Police are always influenced by social change factors. The National Police are the face of daily law enforcement because the performance of the National Police is always in the public space. The performance of the National Police is always in the public spotlight. The public expects the National Police to always be able to present justice since law enforcement began. This study aims to determine implementation joint investigation of violent crimes based on restorative justice.

2. Research Methods

The method used by the author in this thesis research is a normative legal research method using the Legislation approach as a basic foundation in research and analyzing based on library study materials and other literature and scientific works.

3. Results and Discussion

3.1. Investigation Joint Violent Crimes.

In Indonesia, the law is seen as the commander of the law against perpetrators of criminal acts. One of the criminal acts is ganging up. The crime of collective violence -the same lately has happened a lot because of the actions of one person to another person beyond the limits of reasonableness. The crime that often occurs is collective violence which is regulated in the criminal code, namely Article 170 of the Criminal Code. Usually, the crime of collective violence is carried out by more than one perpetrator and has been planned using tools such as blocks, wood or other sharp weapons.³

Violence committed by individuals, either together or alone, against people or property is increasing and is disturbing the community and law enforcement officers. The Criminal Code, Book II, Chapter V regulates crimes against public order, which are contained in Articles 153-181. Article 170 paragraph (1) of the Criminal Code states: that: "Anyone who in public, together commits violence against people or goods..." can be seen in the article has elements that provide limitations to be able to ensnare someone who commits a violent crime. Compared to other violent crimes that are also contained in the Criminal Code, Article 170 of the Criminal Code has a heavier criminal threat than the articles that regulate other forms of violence in the Criminal Code. Article 170 paragraph (2) 1 of the Criminal Code further emphasizes that ". The guilty person shall be punished with imprisonment for a maximum of seven years, if he intentionally damages goods or if the violence committed causes someone to be injured". In this article, not only the element of violence, but the element of causing someone to be injured is included in it. Judging from its elements, Article 170 of the Criminal Code has a difference from Article 55 paragraph (1) of the Criminal Code regarding criminal acts committed by more than one person.

In Regulation of the Chief of Police Number 14 of 2012 concerning Management of Criminal Investigation, it has been clearly regulated how the criminal investigation process is carried out. This is necessary because of the consideration that in law enforcement duties, investigators of the Indonesian National Police are able to carry out their duties, functions, and authorities in the field of criminal investigation professionally, transparently, and accountably for every criminal case in order to realize the supremacy of law that reflects a sense of justice.

³ Leden Marpaung. Criminal Case Handling Process, Sinar Grafika, Jakarta, 1992. p. 21

The investigation process is a basic process or a series of existing legal rules. The process of carrying out investigations into violent crimes together is the investigative method used to search for and collect evidence in order to clearly find the data and to find the suspect in accordance with the method regulated in the Criminal Procedure Code.

The investigative process to uncover perpetrators of violent crimes together includes:

1. Investigation of a person who has committed a crime.

In an investigation process, as mentioned in Article 102 of the Criminal Procedure Code (KUHP), the following matters are:

- a. Investigators who know, receive reports or complaints about the occurrence of an event that is reasonably suspected of being a criminal act are required to immediately carry out the necessary investigative actions.
 - b. In the case of being caught red-handed without waiting for the investigator's order, the investigator is obliged to immediately take the necessary action in the context of the investigation as referred to in Article 1 paragraph (5) letter b of the Criminal Procedure Code.
 - c. Regarding the actions taken in paragraphs (1) and (2), the investigation is obliged to make an official report and report it to the jurisdiction.
2. The commencement of the investigation, the investigation will be carried out in accordance with the basis of the police report and the investigation warrant. After the investigation warrant is issued, a warrant is made to commence the investigation or known as the Investigation Commencement Order (SPDP) which at least contains the basis for the investigation in the form of a police report and an investigation warrant, the time the investigation commenced, the type of case, the article suspected and a brief description of the crime being investigated, the identity of the suspect (if the suspect's identity is already known) and the identity of the official who signed the SPDP.
3. The investigation process in coercive efforts includes:

a. Summons

The summons is made in writing by issuing a summons based on a police report and an investigation warrant according to Article 17 of the Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2019.

b. Arrest

Article 1 paragraph (20) of the Criminal Procedure Code (KUHP) states that an arrest is an act by investigators in the form of a temporary arrest of the freedom of a suspect or defendant if there is sufficient evidence for the

purposes of investigation or prosecution or trial in cases and according to the methods regulated in the Law.

c. Detention

Detention according to Article 1 paragraph (21) of the Criminal Procedure Code is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge by his/her decision, in the case and according to the method regulated by the Law. In detention, investigators have the authority to carry out detention based on:

1. There is a strong suspicion that the suspect committed a crime based on sufficient evidence.
2. It is feared that the suspect will flee, damage or remove evidence or repeat the crime.
3. Suspects who commit criminal acts are threatened with imprisonment of more than 5 years and/or violating certain articles.

d. Search

Searches can be divided into 2 types, namely body searches and house searches. Body searches according to Article 1 paragraph (18) of the Criminal Procedure Code are actions by investigators to conduct body and/or clothing inspections of suspects to search for objects that are strongly suspected of being on or under their bodies and to be confiscated. And the definition of a house search according to Article 1 paragraph (17) of the Criminal Procedure Code is a house search is an investigator's action to enter a residence and other closed places to carry out inspections and confiscations or arrests.

e. Foreclosure

According to Article 1 paragraph (16) of the Criminal Procedure Code, confiscation is a series of investigative actions to take over or store under control movable or immovable, tangible or intangible objects, for the purposes of evidence in investigations, prosecutions and trials. Article 38 of the Criminal Procedure Code explains that confiscation can only be carried out by investigators with a permit from the local district court chairman.

4. Inspection

According to Article 23 of the Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2009, the purpose of the examination is to obtain evidence in the investigation process, obtain statements from witnesses, experts and suspects which are stated in the examination report.

The examination process is divided into two, namely the examination of suspects and the examination of witnesses, namely:

a. Witness Examination

According to Article 1 number 26 of the Criminal Procedure Code, a witness is a person who can provide information for the benefit of investigators, prosecution and justice about a criminal case that seen, heard, and experienced on his own.

b. Examination of suspects

The examination of the suspect is the most important because from the suspect information is obtained about the criminal event being examined. The suspect may not be immediately accused of being guilty but must undergo examination, according to Article 8 of Law No. 4 of 2004 the suspect must be considered innocent. in accordance with the legal principle of "presumption of innocence".⁴ Until a court decision is obtained that has permanent legal standing. Because the suspect is also a human being and must be placed in the same position before the law which has dignity and honor and rated as a subject not as an object.

5. Determination of suspect

Article 25 of the Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 states that the determination of a suspect is based on at least 2 (two) pieces of evidence supported by physical evidence and is carried out through a case title mechanism, unless caught red-handed.

6. Filing

Article 27 of the Regulation of the Chief of the Indonesian National Police Number 6 of 2009 after the investigation is completed, a resume is made as a summary and conclusion of the results of the criminal investigation. If the resume has been completed, then the case files are prepared which include the administration of the investigation.

7. Submission of Case Files

Article 28 of the Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2009 states that the submission of case files to the public prosecutor is carried out after the filing process in the investigation process is completed.

8. Handover of Suspects and Evidence

Article 29 of the Regulation of the Chief of the Indonesian National Police Number 6 of 2009, the handover of suspects and evidence is carried out after the case files are declared complete by the public prosecutor. If all case files are considered complete or have been fulfilled, the handover of the suspect and evidence to the public prosecutor so that the arrest and detention of the suspect can be carried out.

9. Termination of Investigation

⁴Article 8 of Law Number 4 of 2004, Concerning the Principles of Judicial Power.

Article 30 of the Regulation of the Chief of the Indonesian National Police Number 6 of 2009, termination of investigation is carried out through a case title. The investigation is considered complete within 14 days if the public prosecutor does not return the results of the investigation or if before the deadline has expired there has been a notification about it from the public prosecutor to the investigator. The end of the investigation is to full fill justice.

There are 3 (three) ways to resolve criminal cases according to the Criminal Procedure Code the stages are:

1. Examination stage at the investigation level
2. Stage prosecution
3. Examination stage in court hearing

In the investigation process, restorative justice can be carried out, in Article 12 if the following conditions are met:⁵

Materials, including:

- 1) does not cause public unrest or there is no public rejection.
- 2) does not result in social conflict;
- 3) there is a statement from all parties involved that they do not object and waive their right to sue before the law.
- 4) limiting principle:
 - a) to the perpetrator:
 1. the level of the perpetrator's guilt is relatively not serious, namely the guilt is in the form of intent; and
 2. the perpetrator is not a repeat offender;
 - b) on criminal acts in process:
 1. investigation; and
 2. investigation, before the SPDP is sent to the public prosecutor;
 - a. formal, including:
 1. Letter of request for peace from both parties (reporter and reported);
 2. a statement of peace (deed of settlement) and settlement of the dispute between the parties to the case (the reporter and/or the reporter's family, the reported party and/or the reported party's family and representatives of community leaders) is acknowledged by the investigator's superior;
 3. Minutes of additional examination of the parties to the case after the case has been settled through restorative justice.

⁵ Regulation of the Republic of Indonesia National Police Number 6 of 2019, Article 12 concerning the investigation process.

4. Recommendation of a special case title that approves a restorative justice settlement; and
5. the perpetrator did not object and did it voluntarily for responsibility and compensation.

The investigation process by investigators into joint acts of violence is carried out with reports or complaints from members of the public about the occurrence of a criminal act in the form of joint acts of violence. Furthermore, the investigators make it into registration of police reports and after being equipped with a task order by the leader, the investigators who are ordered to investigate reports or complaints against violent crimes jointly identify the report. Identification of reports is carried out to determine whether or not a violent crime has occurred together, by taking the first action at the scene of the crime, taking fingerprints and other identities, looking for information and evidence.⁶ Furthermore, after collecting the existing evidence and witnesses, the investigators can arrest someone suspected of being the perpetrator and process them in court so that the perpetrator can be punished according to the actions they have committed.

Implementation Process *Restorative* Justice against perpetrators of violent crimes committed by the perpetrators, where the Police after receiving a report from the public immediately went to the scene of the crime to take the first action in the form of securing the victim, securing evidence, taking pictures and looking for witnesses after that taking the victim to the Health Center for treatment and then taking him to the Sector Police to make a Police Report and conduct an Examination of the Victim and witnesses and confiscating the existing evidence, then the Head of Criminal Investigation Unit along with assistant investigators and investigators conducted a case title.⁷

Case Title usually determines who the perpetrator is and the investigation plan. However, in this case, the police have not been able to determine who the perpetrators of violence are together so that the investigation activities involving all members of the police are carried out to seek information and tools. Evidence that sheds light on the crime and to find the suspect. In a series of levels of investigation involving the Role of Bhabinkamtibmas (Public Security and Order Supervisory Officers) where Bhabinkamtibmas are members of the Police who are directly assigned to work in villages in accordance with the Police Leadership program 1 (one) Bhabinkamtibmas oversees 1 (one) Village which has been implemented in the jurisdiction of the Resort Police.

In this series of investigative activities, Bhabinkamtibmas provides direction to the community regarding cases of collective violence that occurred in the village

⁶ Hanafiah, A. "Guidebook for Implementing Police Duties in the Field", Kalem diklat, Jakarta 2000.

⁷ Ahmad, Ali Ustadi "Implementation of Restorative Justice in Handling Criminal Cases at Jati Police Sector, Kudus Police Resort". Thesis, (Semarang: UNISSULA, 2023), p. 75

where he is assigned in accordance with the BINMAS (Community Development) function. He carries. In his role that is directly attached to the village with the Village Government Apparatus, the community can directly convey cases that exist in the village. In this case, the perpetrators and their families have met with the victim and his family to make a peace agreement amicably and convey this to the Village Head who then forwarded it to the Bhabinkamtibmas in the village, so that the Bhabinkamtibmas in the village reported it to the Kapolsek as the Head of the Police in the Sub-district.

With the agreement of the parties involved in this case of joint violence, the Police Chief asked the Criminal Investigation Unit to follow up on it. Furthermore, the Criminal Investigation Unit ordered the Assistant Investigator to present the parties involved in the crime. Collective violence by involving the Village Head to provide an explanation to the community about the criminal case of collective violence that has occurred.

By holding a meeting of the parties and the community involving the Village Head, the Chief of Police Sector (Kapolsek) provided direction to the community regarding the decision taken regarding the case of the joint violent crime that occurred.

Criminal acts according to the Restorative Justice perspective, are violations against humans and relations between humans. Restorative justice can be implemented through: 1) Mediation between victims and offenders; 2) Family group discussions; 3) Community services that are restorative for both victims and perpetrators.⁸

Termination of investigation and inquiry into a criminal act is carried out by submitting a written application, made by the perpetrator, victim, perpetrator's family, victim's family or other related parties, accompanied by a letter of peace requirements and evidence that the victim's rights have been restored, addressed to the Head of Criminal Investigation Unit of the Indonesian National Police at the Headquarters level, the Regional Police Chief at the Regional Police level, while for the Resort Police and Sector Police levels, it is addressed to the Chief of Police.

Based on the letter of request to stop the investigation and inquiry, investigators in the investigation activities will conduct research on the completeness of the documents, provide clarification to the parties as stated in the minutes, carry out a special title, and if the results are satisfactory, a letter of order to stop the investigation will be issued. Investigation (SPP-Lidik) and a letter of determination to stop the investigation (SK.Lidik) for legal reasons.

⁸ Herlina, A. et al., Protection of Children in Conflict with the Law, 2004

Meanwhile, investigators in investigative activities after receiving a letter of request to stop the investigation will conduct additional examinations which are stated in the minutes, clarification to the parties which are stated in the minutes, carrying out special titles, and if the results are met, a letter of order to stop the investigation (SP3) and a letter of determination to stop the investigation (SK.Sidik) will be issued with legal reasons based on restorative justice.

Circular Letter Number 8/VII/2018 states that the application of the principle of restorative justice in the concept of criminal investigation and inquiry in order to realize the public interest and sense of justice of the community that does not yet have a legal basis and can be used as a guideline for its implementation and in order to realize the non-uniformity of understanding and application of restorative justice within the Indonesian National Police, a legally binding product is needed as a guideline for investigators and Polri investigators who implement it, including guarantees of legal protection and supervision of control.

That the principle of restorative justice cannot be interpreted as a method of peaceful termination of cases, but more broadly on the fulfillment of the sense of justice of all parties involved in criminal cases through efforts involving victims, perpetrators and local communities as well as investigators/investigators as mediators, while the resolution of cases, one of which is in the form of a peace agreement and the revocation of the right to sue from the victim, requires a judge's determination through the public prosecutor to revoke the authority to sue from the victim and the public prosecutor. That the implementation of the authority to investigate and/or investigate criminal acts by Polri investigators who apply the principle of restorative justice in their investigation methods can be based on the following provisions:

- 1) Article 7 paragraph (1) letter in conjunction with Law Number 8 of 1981 concerning Criminal Procedure Law, states that investigators due to their obligations have the authority to carry out other actions according to the law for which they are responsible;
- 2) Article 16 paragraph (1) letter L and Article 18 of Law Number 2 of 2002 concerning the Republic of Indonesia National Police and Article 5 paragraph (1) number 4 of Law Number 8 of 1981 concerning Criminal Procedure Law state that other actions as referred to in Article 16 paragraph letter L are investigative and investigative actions which are carried out if the following requirements are met:
 - a. Does not conflict with a legal rule;
 - b. In accordance with legal obligations that require such action to be taken;
 - c. Must be appropriate, reasonable, and within the scope of the position;
 - d. Reasonable consideration based on compelling circumstances and
 - e. Respect for human rights

- 1) Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, states that in the public interest, officials of the Indonesian National Police in carrying out their duties and authorities may act according to their own judgment. Article 18 paragraph (2) of Law Number 2 of 2002 concerning the Indonesian National Police as referred to in Article 18 paragraph (1) may only be carried out in very necessary circumstances by paying attention to statutory regulations and the Indonesian National Police's Code of Professional Ethics;
- 2) Article 22 paragraph (2) letters b and c of Law Number 30 of 2014 concerning Government Administration states that every use of discretion by government officials is aimed at filling legal gaps and providing legal certainty.

Whether a law is effective or not can be seen in the Legal System Theory. According to Soerjono Soekanto, one of the factors of legal effectiveness is influenced by legal factors (statutes). Law contains elements of certainty of justice and benefit. When facing a problem related to law, at least the main priority is justice. And the extent to which a group can achieve its goals. Law can be said to be effective if there is a positive legal impact, at that time the law achieves its target in guiding or changing human behavior so that it becomes legal behavior.⁹

Regarding the effectiveness of the law means discussing the power of the law in regulating and/or forcing society to obey the law. The law can be effective if the factors that influence the law can function optimally. A law or regulation will be effective if the citizens behave in accordance with what is expected or desired by the Regulation and achieve the desired goals, then the effectiveness of the law or regulation has been achieved. The measure of the effectiveness or ineffectiveness of a Regulation in force can be seen from behavior.

The theory of legal effectiveness put forward by Soerjono Soekanto is relevant to the theory put forward by Romli Atmasasmita, namely that the factors that hinder the effectiveness of law enforcement do not only lie in the mental attitude of law enforcement officers, namely judges, prosecutors, police and legal advisors, but also lie in the legal socialization factor which is often ignored.¹⁰ In the case of collective acts of violence, the community can take the alternative of restorative law from the police, providing a way to resolve the case through mediation, where the restorative process. Accepted community and apply the restorative concept with very efficient considerations in resolving it.

⁹ Soerjono Soekanto. Effectiveness of Law and Application of Sanctions. Bandung. CV. Ramadja Karya. 1988. p. 80

¹⁰ Romli Atmasasmita. Legal Reform, Human Rights & Law Enforcement. Bandung. Mandar Maju. 2001. p. 55

3.2. Weakness Investigation Case Joint Violent Crimes and the solution.

The weaknesses in the implementation of investigations at the police level into cases of violent crimes are:

1. Law enforcer

Responsibility in implementation investigation by investigators in the police cannot be separated from the legal basis/legal umbrella that will be used as a reference. With a clear legal umbrella, it then becomes a strength for law enforcers in realizing true justice to all levels of society. The presence of law enforcers as investigators both in terms of quantity and quality is an absolute necessity that must be fulfilled by a law enforcement agency.

The theory put forward by Robert B. Seidman, namely the theory of how the law works, which basically states that:

"How a law enforcement agency will perform in response to legal regulations is a function of the regulations directed at it, its sanctions, the entire complex of social, political, and other activities acting upon it, and the feedback coming from role occupants. "occupants)".

One of the weaknesses of investigators in handling cases of violent crimes together is the lack of investigators who meet the requirements as required by laws and regulations. Because investigators at the Polsek are investigators who are seconded by investigators at the Polres, so that investigators are not always at the location where a legal incident is reported and the things faced in the field are sometimes very different from what is in the Law, so the experience of investigating is very influential in applying knowledge about the rights of suspects.

The solution to this is the quantitative aspect seen from the number of police officers / number of investigators, the need for additional personnel and equipped with the quality of improving the professionalism of investigators, by being involved in every activity to improve education and training in the field of investigation in the police where one of the qualifications of an investigator is to be certified. investigation of cases of violent crimes together so that the investigation process can run well. Followed up effectively and efficiently so that the community gets legal certainty through law enforcement and increases public trust in handling violent crimes together - the police can make the public confident that the police handle cases objectively and fairly.

2. Public

Public reports relating to a collective act of violence are used by investigators as consideration in carrying out investigative actions, considering that a perpetrator who commits a crime needs to receive the best possible treatment from investigators, therefore it is important that the investigation is carried out carefully so that the investigation can provide legal certainty.

There are conditions that are often unacceptable to the community when reporting a violent crime together. The community as the reporter does not want to resolve their case through the restorative justice process. The reason given is the desire to make the perpetrator regret (deterred) if put in prison. One of the obstacles in the restorative process is the issue of information related to these efforts has not been socialized massively to the community.

This condition is what hinders the police's task in carrying out restorative justice so far against violent crimes together. For that, the restorative justice system as an alternative to resolving violent crimes together must be socialized by the Government and the Police, considering that the level of public awareness is still low. This socialization can be done through awareness, that restorative justice is not only intended for certain groups, but for everyone. Therefore, if someone becomes a victim, they must be ready to accept the restorative justice methods. In resolving a legal case, the role of the community is very important, which aims to become one of the mediators to achieve peace in society.

3.3. Effectiveness of Joint Investigation of Violent Crime Cases Based on Justice Restorative

Restorative Justice strive to be able to review the impact of unlawful acts and at the same time determine things that can improve the violations committed by the perpetrators of the crime. Criminal together. This perspective views the perpetrator as being responsible for everything he has done, where the perpetrator will repair all the losses he has done from the violation of the law he has committed. Thus, the concept of restorative justice does not focus on the sanctions that can be imposed on the perpetrator, but seeks to repair the losses that have arisen as a result of the violation of the law. Rather than a process that focuses on the perpetrator, restorative justice focuses on those who have been harmed and the losses they have experienced. In the restorative justice process, victims are empowered to participate more fully than in the traditional system.¹¹

This actually emphasizes that restorative justice seeks to balance the interests of the perpetrator, victim and community. This can be seen from the orientation of restorative justice which is not only in the form of ensuring an "agreement" between the perpetrator and victim, but also involves the role of the state to be able to see the interests of the community or society where a crime was committed. The interests of the community here are not understood narrowly in the form of the interests of community leaders or even the majority of society, but rather the aspect of community morality that grows and develops in society as part of a living and growing law. This means that restorative justice has three

¹¹J. Hobson, A. Twyman-ghoshal, R. Banwell-moore, and DP Ash, "Restorative Justice, Youth Violence, and Policing : A Review of the Evidence," MDPI, vol. 11, no. 62, pp. 1–20, 2022

basic concepts that must be met in its implementation, namely:¹²First, it must guarantee and protect the interests of the victim as the party harmed by the crime. Second, it must guarantee the perpetrator's responsibility to the victim proportionally. And third, restorative justice is carried out on violations or crimes with a minor category or at least a crime that is not viewed by society as a crime or a despicable act that cannot be forgiven.

Modern criminal law must place more emphasis on understanding restorative justice, namely efforts to provide appropriate compensation for a crime committed.¹³The provision of appropriate compensation must be interpreted as an effort to make the orientation of criminal punishment more effective, not only just to "imprison", but punishment must also be a "medicine" for the perpetrator, the victim, and society in general. The orientation of criminal law as a medicine is well-known in the legal adage which states that, "*Lexsemperdabit Remedy*" which means that the law must be a cure for social "diseases" that exist in society.¹⁴Quoting the view of Satjipto Rahardjo, as a medicine, the law must focus on the substance contained in the medicine and not focus on the brand or name of the medicine.¹⁵Therefore, in short, legal remedies must focus on substance, not only dwell on institutions and formal-procedural procedures which are sometimes ineffective and even result in injustice in society.

Restorative justice in this context emphasizes efforts of proportionality between victims, perpetrators, and society based on an understanding of the concept of restorative justice that is oriented as a medicine, not just a placement in prison for lawbreakers. In the context of developments in the world, restorative justice is applied from various legal systems. This confirms that restorative justice is a development and symptom of global law that is not limited to a particular legal system. In this case, it is actually irrelevant to identify restorative justice as a characteristic of a particular legal system because almost all legal systems adopt provisions regarding restorative justice.

In this study, the Netherlands, the United States, and Malaysia Argument Practices in various worlds, the application of restorative justice. restorative justice practices with the three countries, namely: first, comparing with the Netherlands because the Netherlands represents a country with a civil law or Continental European legal system. In addition, because the Netherlands is a "former" colonizer of Indonesia, there is a historical and practical closeness

¹² M. Rusydiaanta, "Reformulating Fraud Crimes Under Article 378 Of The Criminal Code Based On Restorative Justice Values," *Prophet. Law*, vol. 3, no. 2, p. 221, 2021.

¹³ EOS Hiariej, *Criminal Procedure Law*. South Tangerang: Open University, 2015.

¹⁴ PH Nanda Saputra Umara, "Building National Criminal Law on the Foundation of Pancasila Justice in the Form of the Value of the Almighty God," *Al-Qisth Law Rev.*, vol. 5, no. 1, p. 176, 2021

¹⁵ S. Rahardjo, *Legal Science*. Bandung: PT. Citra Aditya Bakti, 2014.

related to law enforcement. Second, comparing with the United States because the United States represents a country with a common law system, in addition because legal practices in the United States are also often used as examples from various countries in the world. Third, comparing with Malaysia because culturally Malaysia has a closeness to Indonesia, especially in the "Malay culture" which emphasizes more on informal resolution of certain crimes as long as they are not acts that are considered reprehensible by society.

In the Netherlands, the implementation of restorative justice is carried out by giving alternative punishments to prisoners. Alternative punishments emphasize more on punishments such as community service, the obligation to learn certain skills, rehabilitation, and administrative fines.¹⁶This applies especially to minor crimes and some moderate crimes. The provision of alternative punishments for prisoners in the Netherlands has proven to be quite effective in dealing with the problem of overcrowding or excess capacity of detention centers. In this case, the Netherlands also experienced excess capacity of detention centers in approximately 2007 until then the implementation of alternative punishment sanctions.¹⁷

Unlike the Netherlands, the United States can be said to be one of the pioneers of the idea of restorative justice. This can be traced historically to the Victim Offender movement. *Reconciliation Program (VORP)* in 1974 and continued in 1994 with full support from the American Bar Association (ABA) which supports and provides a formulation regarding mediation between victims and perpetrators in the United States courts. Even in 1995, NOVA (the National Organization for Victim Assistance) was formed, one of the ideas of which was the orientation and urgency of implementing restorative justice which eventually influenced various countries in the world, including Europe, Africa, Asia, and received support from the European Union and the UN.¹⁸ One of the characteristics of the implementation of restorative justice in the United States is the existence of financial compensation for victims, commonly known as financial restitution to victims.¹⁹ Financial restitution to *victims* is financial compensation to victims due to a criminal act committed by the perpetrator of

¹⁶GJS and AVH Annemieke Wolthuis, Jacques Claessen, "Dutch developments: restorative justice in legislation and in practice," *Int. J. Restor. Justice*, vol. 2, no. 1, p. 119, 2019.

¹⁷M. Vooren, I. Rud, I. Cornelisz, C. Van Klaveren, W. Groot, and H. Maassen van den Brink, "The effects of a restorative justice program (Halt) on educational outcomes and recidivism of young people," *J. Exp. Criminal.*, vol. 1, no. 1, p. 6, 2022, doi: 10.1007/s11292-022-09502-4.

¹⁸H. Morgan, "Restorative justice and the school-to-prison pipeline: A review of existing literature," *Educ. Sci.*, vol. 11, no. 4, p. 3, 2021, doi: 10.3390/educsci11040159.

¹⁹RH Madu, FM Wantu, and LW Badu, "The Restitution of Children as Victims of the Crime of Obscenity in the Principles of Restorative Justice," *Estud. Law J.*, vol. 2, no. 3, pp. 530–546, 2020.

the crime.²⁰In this case, the perpetrator of the crime will not undergo formal legal procedures as long as he has faith both to meet the victim, apologize to the victim, and provide financial compensation to the victim in a manner that is appropriate and agreed upon by the victim. The existence of this financial compensation is one of the progressive legal practices in the United States because with the existence of financial restitution to *victims* this can then reduce recidivism in the United States.

In Malaysia, not much different from Indonesia, there is also a Malaysian version of the Criminal Procedure Code, namely the Malaysian Internal Security Act 1960 or the Malaysian Internal Security Act.²¹Not much different from the Criminal Procedure Code in Indonesia, the Internal Security Act of Malaysia 1960 also does not specifically regulate restorative justice. However, in 2012, the Malaysian Government issued the Criminal Procedure Code 2012, one of the substances of which is to implement restorative justice through the practice of plea bargaining, namely the resolution of criminal cases more quickly and does not even require imprisonment based on an admission of guilt from the perpetrator.²²Based on the Criminal Procedure Code 2012, the plea bargaining process is carried out at a pre-trial conference or even during the trial. In this case, there is bargaining between the perpetrator, victim, and law enforcement officers (in this case the Malaysian Prosecutor). Bargaining in this case aims to balance the understanding of compensation experienced by the victim, adjusted to the perpetrator's ability, and based on the level of crime committed with consideration from law enforcement officers. The plea bargaining process, if it goes smoothly, can prevent the perpetrator from imprisonment or caning and only pay a fine for anti-material losses to the victim. However, it is not uncommon for the plea bargaining process to also reduce the prison sentence from the maximum prison sentence to the minimum prison sentence. The practice in Malaysia in the plea bargaining process also emphasizes the values of "Malay customs" which emphasize the importance of peace or the bargaining process for a crime that is not serious. This means that even though there is a plea bargaining process in the Criminal Procedure Code 2012, the permission or not of the plea bargaining process remains notice the role and opinions of legal apparatus in Malaysia, both prosecutors and judges.²³

²⁰ MZF Karin D. Martin, "Restitution without Restoration? Exploring the Gap between the Perception and Implementation of Restitution," *Sociol. Perspect.*, vol. 63, no. 6, p. 17, 2020

²¹ S. Sumiati and E. Kastro, "Legal and Institutional Framework on Counter-Terrorism in Indonesia," *J. Media Hukum.*, vol. 27, no. 1, pp. 68–78, 2020, doi: 10.18196/jmh.20200143.

²² N. Ab Aziz, N. Mohamad Amin, and Z. Ab Hamid, "Enhancing Plea Bargaining Process Through Mediation," *IJASOS- Int. E-journal Adv. Soc. Sci.*, vol. III, no. 7, pp. 306–306, 2017, doi: 10.18769/ijasos.320064.

²³ T. Effendi, *Eradication of Criminal Acts of Corruption*. Surabaya: Sucofindo Media Pustaka, 2021.

From the three comparisons with the Netherlands, the United States, and Malaysia above, it can be concluded that: first, the concept of restorative justice is a general concept and is practiced in various countries with different legal systems, both countries with civil law and common law legal systems. Second, the concept of restorative justice, although global and general, its application is adjusted to the character, legal system, and capabilities of each country, especially in determining what crimes can or cannot be resolved through restorative justice, and third, the practice of restorative justice is also needed by exploring local wisdom values as in the practice in Malaysia which also tries to explore the values of "Malay customs" in its application.

Based on the description above, the concept of restorative justice in the renewal of criminal procedural law is needed because the development of the concept of restorative justice is global and is not only implemented by countries with certain legal systems. In addition, in Indonesia through the Prosecutor's Regulation and the Police Regulation on restorative justice, it has actually adopted the practice of restorative justice, but this is actually not enough because to make restorative justice part of the national criminal justice system, it is necessary to revise the criminal procedural law in Indonesia through a revision of the Criminal Procedure Code by emphasizing the concept and practice of restorative justice as part of the criminal justice system.

Provisions on investigations are regulated in Chapter XIV of the Criminal Procedure Code, consisting of two parts, namely investigation and inquiry. Investigations are regulated in Articles 102 to 105 and Investigations are regulated in Articles 106 to 136. If associated with the provisions of the Criminal Procedure Code which regulate the authority and actions of investigators and the authority of investigators, "a series of actions of investigators and investigators" as defined by investigation and inquiry are not only contained in Chapter XIV of the Criminal Procedure Code, but also contained in other chapters and articles in the Criminal Procedure Code. The authority, obligations of investigators and the scope of investigations must also be seen from other chapters and articles in the Criminal Procedure Code.

The Indonesian National Police then attempted to organize the scattered chapters and sections in the Criminal Procedure Code to make them more systematic as stated in Perkap 14/2012 on Investigation Management and stated in Perkabareskrim 3/2014 on Investigation SOP. Based on these provisions, in general it can be stated that the investigation process begins after a report or finding of an event suspected of being a criminal act. This report or finding is followed up with an investigation, whether or not there was a criminal act in the event.

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 house/building searches, and confiscate evidence. Investigators carry out these activities in order to collect evidence that will later be used as evidence in court.

To carry out the investigation and inquiry process that is under its authority, the National Police refer to the Criminal Procedure Code as a general rule of formal law. In accordance with the Criminal Procedure Code, there are one of two forms of process resolution carried out by the National Police, namely: proving the crime committed by the suspect (as input for the next component of the criminal justice system/public prosecutor); or stopping the investigation. Thus, if the National Police succeeds in collecting evidence that shows the fulfillment of at least two pieces of evidence for a crime allegedly committed by the suspect. The National Police are not given the authority to stop the case on the grounds that it was settled out of court or to set aside the case for certain considerations or to resolve the case with a restorative justice approach.

Termination of investigation in this discussion is not in the concept of the Criminal Procedure Code, but rather seen from the concept of restorative justice. This is a new concept in law enforcement in Indonesia. In resolving cases through restorative justice, the police consider several things, including:

- 1) From the perpetrator's point of view, in this case, the background of the crime's purpose, the perpetrator's socio-economic situation, the perpetrator's willingness to admit his actions, the perpetrator's willingness to provide compensation to the victim, the perpetrator's promise not to repeat his crimes, the perpetrator's willingness to be rehabilitated, and apologize to the victim and the victim's family can be known.
- 2) From the victim's point of view, the availability of the parties, especially the victim, to make peace and forgive the perpetrator without pressure;
- 3) In terms of the case, the case that was resolved was not of public interest, so it did not cause any commotion in society.²⁴

Before investigators carry out their duties to avoid errors in the investigation, a case conference is first carried out based on the provisions of Article 76 Paragraph (2) of Perkap No. 14 of 2014 concerning the management of criminal investigations. Investigators have their own forms and patterns in implementing discretion, this is influenced by the circumstances experienced by police investigators, socio-economic conditions, local culture, case situations, and the legal environment they experience.

In the case of minor crimes such as resolving cases in order to achieve aspects of justice and legal benefits in order to avoid witnesses who could go beyond in

²⁴ Hariyanto, "Legitimacy Investigator Law Police In Termination of Investigation Form of Effort Restorative Justice". Thesis, (Semarang: UNISSULA 2023), pp. 115-116

jurymand limitations on the humanitarian values of human rights. To handle criminal cases outside the courts, the Police have taken a step forward by enacting Police Regulation. No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

The mechanism for implementing restorative justice in the Police before being further processed by the Prosecutor's Office is as follows:²⁵

- 1) An administrative analysis is carried out after the acceptance of a peace application between the two parties;
 - After receiving the peace application from both parties (the complainant and the accused) signed on a stamp, conduct an administrative examination of the formal requirements for resolving the case through restorative justice;
- 2) If the formal peace request is fulfilled, then in order to obtain approval it is submitted to the investigator's superior;
- 3) Determination of the time for the disputing parties to sign the peace statement;
 - After the application has been approved by the investigator's superior (Kabareskrim/Kapolda/Kapolres), the time for signing the peace statement is then determined;
- 4) The agreement that has been signed by the parties to the case is the result of implementation conference;
- 5) Making an official note regarding the application for discontinuation of the case which is carried out with a special case title for the purpose of discontinuing the case.
- 6) Implementation of special case title
 - With the reporting participants, and/or the reporting family, the reported party and/or the reported party's family and representatives of community leaders appointed by the investigator, the investigator handling the case and representatives from the internal supervisory function and legal function and government elements if necessary;
- 7) Preparation of documents;
 - Following the completeness of the administration and documents for the special case title and the report on the results of the case title;
- 8) Issuance of SP3 based on restorative justice;
 - Issuing a Letter of Order to Terminate Investigation/Prosecution and a Letter of Decision to Terminate Investigation/Prosecution for reasons of restorative justice;

²⁵ *ibid.*, pp. 120-121

- 9) Issuance of SP3 signed by the investigator's superior;
 - For cases at the investigation stage, investigators issue a Letter of Order to Terminate Investigation and a Letter of Decision to Terminate Investigation signed by:
 - a. Director of Criminal Research at the National Police Headquarters level;
 - b. Director of Criminal Research at the Regional Police level;
 - c. Chief of Police, at the Resort Police and Sector Police levels

10) Recording in the new register book B-19

- as a case of restorative justice, it is counted as a resolution of the case.

The benefits obtained from the implementation of restorative *justice* at the investigation stage, including:²⁶

- 1) Opening the way for the rights of the parties to the case because they can be directly involved and jointly resolve the problem;
- 2) No backlog of cases;
- 3) Cases can be resolved simply, quickly and at low cost because there is no need to go through the court process;
- 4) Reducing capacity in institution scorial; rectional;
- 5) Avoiding pretrial lawsuits, compensation, or rehabilitation;
- 6) Reflect justice what society wants;
- 7) Creating security and order in society;
- 8) Prevent vigilantism;
- 9) Prevent future crimes from occurring;
- 10) Increase public trust in police institutions;
- 11) Avoid corrupt practices by law enforcement officers;
- 12) Preventing crimes from occurring from perpetrators who are dissatisfied with the punishment imposed on them.

According to Bonarsius Saragih, there are 4 (four) main values that an investigator who acts as a mediator must pay attention to in implementing the Restorative Justice approach method in efforts to resolve criminal cases, namely:

1. *Encounter* (meeting each other), namely creating an opportunity for the parties involved and having the intention of holding a meeting to discuss problems that have occurred and after the incident.

²⁶ *ibid.*, pp. 121-122

2. *Amendments*(repair), where it is highly expected that the perpetrator will take steps to repair the losses that have occurred. happens as a result of his actions.
3. *Reintegration* (rejoining society), namely seeking steps to restore the parties as a whole to contribute to society; and
4. *Inclusion*(open), namely providing an opportunity for all related parties to participate in handling the problem.²⁷

Criminal law policy must also begin to reorient and reform, which does not only protect victims but also carries out a balance pattern, namely protecting the interests of the perpetrators, so that both can conduct dialogue and re-agreement with good faith and high commitment based on a sense of responsibility and full awareness from the perpetrators in order to provide the rights that must be received by the victims. Thus, a construction peace that will be beneficial for both the perpetrator and the victim.

According to Eva Achjani Ulfa, "Restorative Justice in criminal law enforcement with a legal basis in the form of discretion related to criminal acts that are still within the domain of investigation by investigators, means that investigators as law enforcement officers must adjust themselves and seek guidelines or patterns to reform, repair, reform, carry out changes and renewals, and reorganize so that perpetrators and victims are encouraged to hold discussions to improve conditions in order to return the situation to its original state."²⁸

In the conclusion above is the effectiveness of joint investigations into cases of violence based on restorative (Restorative Justice) is the termination of an investigation through the issuance of a Letter of Termination of Investigation (SP3), through Perpol Number 8 of 2021 as the basis for carrying out restorative justice by investigators. Where the investigation files have not been delegated to the prosecutor's office so that the case is not to be continued to court by making peace between the two parties as stated in the Peace Agreement Letter, then the reporter makes a Letter of Withdrawal of the Police Report. Based on the Peace Letter and the Letter of Request for Withdrawal of the Police Report, the investigator re-examines the reporter. The examination is stated in the Minutes of Examination, the contents of which are to revoke previous statements, then the case is stopped from being investigated based on the case title. The results of the case title are recommended to make a Letter of Order to Stop Investigation (SP3) with the basis of restorative justice.

²⁷Bonarsius Saragih, *Restorative Justice*, Bandung Law College, 2009, p.37

²⁸Eva, Achjani Ulfa, *Paradigm Shift in Criminalization*, Bandung: Lubuk Agung, 2011, p. 80

4. Conclusion

Joint investigation of violent crimes –the same by investigators is carried out in accordance with applicable legal procedures, namely the Criminal Procedure Code and the Chief of Police Regulation No. 6 of 2019 concerning the Investigation of Criminal Acts. The process begins with a report, then carried out by the TKP, examination of people who know about the incident, collecting evidence, taking coercive measures, namely arrest and detention in accordance with the provisions of the Criminal Procedure Code. Another coercive measure is to confiscate evidence that functions to increase the investigator's confidence in the crime that occurred. The next step is to examine witnesses where the statements of one witness and another are in accordance so that the statements of the witnesses legally have evidentiary value to prove the occurrence of a legal event. Next, after all the evidence has been collected, the suspect is then examined to confirm whether the existing evidence is true. Confirmation of evidence and evidence to the suspect is important to convince investigators in proving the elements of a crime in Article 170 of the Criminal Code.

The weaknesses in joint investigations of violence are weaknesses related to law enforcement, the lack of qualified investigators as required by laws and regulations, related to the number of investigators which is still lacking and must be increased and what is faced in the field is sometimes very different from what is stated in the law. Weaknesses related to the community, because they do not yet understand the regulatory policies related to restorative justice resolution (*restorative justice*).

The concept of restorative justice is a general concept and globally is part of the development of legal practice and theory, therefore it is applied by various countries with both legal systems. *civil law* or countries with a common law system. Furthermore, the concept of restorative justice is relevant because it is oriented towards community involvement efforts and reviving the values of dispute resolution in society that prioritize harmony and anti-loss compared to the imprisonment process. The effectiveness of joint investigations of violence cases based on restorative justice is the termination of the investigation through the issuance of a Letter of Termination of Investigation (SP3), where the investigation files have not been transferred to the prosecutor's office so that the case is not continued to court by making peace between the two parties which is stated in the Peace Agreement Letter, then the reporter makes a Letter of Withdrawal of the Police Report. Based on the Peace Letter and the Letter of Request for Withdrawal of the Police Report, the investigator re-examines the reporter. The examination is stated in the Minutes of Examination, the contents of which are to revoke previous statements, so the case is stopped from being investigated based on the case title. The results of the case title are recommended to make a Letter of Order to Terminate Investigation (SP3) with

the basis of restorative justice. Issuance of SP3 signed by the investigator's superior, followed by recording in the new register book B-19.

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