

The Application of Restorative Justice Approach by Law Enforcement in Resolving Criminal Cases within the Criminal Justice System

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Abstract. This study investigates the implementation of restorative justice within the police domain, specifically focusing on its potential to halt and conclude criminal case proceedings at both the investigative and prosecutorial stages. The application of restorative justice principles is limited to non-recidivist offenders and encompasses all categories of criminal offences, with the exception of those outlined in article 5 letters d, e, and f of Police Regulation Number 8 of 2021, which pertains to the handling of crimes based on restorative justice. The primary aim of this thesis is to examine and evaluate the application of a restorative justice approach by law enforcement agencies in resolving criminal cases, with a specific focus on the cessation of such cases. Additionally, this study seeks to investigate and analyse the extent to which a restorative justice approach employed by the police contributes to legal certainty. The present study uses a normative juridical approach that places emphasis on conducting library research. This study used various approaches, including the statutory approach, the conceptual approach, the case approach, and the philosophical approach, in conjunction with qualitative analysis of legal materials. The findings of the research indicate that the implementation of a restorative justice approach in the police's handling of criminal cases has been observed at both the investigation and investigative stages, in accordance with the guidelines outlined in Police Regulation Number 08 of 2021, which pertains to the handling of crimes based on restorative justice principles.

Keywords: Criminal Justice System, Legal Certainty, Restorative Justice, Resolving Criminal Case.

1 Introduction

In past centuries, the primary objective of law enforcement conducted by the police has been to uphold legal certainty. This entails ensuring that established legal regulations are duly enforced and adhered to as prescribed. The ultimate outcome of a law enforcement procedure involving material offences is primarily focused on imposing physical punishment as a means of deterring potential offenders. The discretionary authority of law enforcement agencies to depart from or diverge from the prescribed procedures for formal or substantive offences is solely determined by the police, as stipulated in Law Number 2 of 2002 concerning the National Police. Article 16, letter 1, grants the police the power to "undertake other actions in accordance with the law that are deemed responsible," while Article 18 allows police officials to exercise their own judgement in carrying out their duties and exercising their authority in the best interest of the public. The cessation of a police investigation in a case is governed by Article 109, Paragraph 2 of Law Number 8 of 1981 (KUHAP). This provision states that an investigation may be terminated if there is insufficient evidence, if the incident is determined not to be a criminal offence, or if the investigation is halted in accordance with legal requirements. In such cases, the responsibility for further investigation lies with either the public prosecutor, the suspect, or the suspect's family. In the event that a case fails to meet the necessary legal prerequisites for further proceedings, such as having been previously processed and a decision rendered (*ne bis in idem*), or due to the demise and subsequent expiration of the suspect, legal comprehension is hindered. In line with the community's need for the values of justice and the benefits of law in addition to the value of legal certainty in undergoing legal processes, on August 19, 2021 the National Police Chief General Police Drs. Listyo Sigit Prabowo, MSi. signed the Regulation of the State Police of the Republic of Indonesia Number 08 of 2021, Regarding the Handling of Crimes Based on Restorative Justice and recorded in the State Gazette of the Republic of Indonesia of 2021 number 947 as the formal basis used by the police in resolving a criminal case by saving restorative justice or restorative justice that suppresses recovery returning to its original state and balancing the protection of the

interests of victims and perpetrators of crimes that are not oriented towards punishment, but rather accommodate the prevailing norms and values as a societal solution while at the same time providing legal certainty, especially benefits and a sense of community justice, the process of which involves perpetrators, victims, families of perpetrators, victims' families, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a just resolution of problems through peace.

According to Article 1, letter 3 of Police Regulation No.8 of 2021, Restorative Justice is a method of resolving criminal offences that involves the active participation of various parties, including the offender, victim, offender's family, victim's family, community leaders, religious leaders, traditional leaders, and other relevant stakeholders. The primary objective of this approach is to collaboratively pursue a mutually agreeable resolution. The restoration of justice can be achieved by prioritising peaceful means, with a particular emphasis on reinstating the state of re-election to its initial condition. Restorative justice diverges from the adversarial criminal justice system by prioritising a dialogue-based approach that goes beyond determining winners and losers. This process aims to foster communication among all individuals impacted by a crime, including victims, offenders, their respective supporters, and society at large. This entails a procedural approach in which all parties who are vulnerable to a specific criminal act collaboratively endeavour to collectively address the consequences of the crime and its ramifications for the future[1]. In contrast to the procedural mechanism outlined in the Criminal Procedure Code, this police regulation stipulates that crimes reported, complained about, or caught in the act can be terminated at the investigation stage, provided that certain general and specific requirements, encompassing material and formal aspects, are met. The material prerequisites encompass the avoidance of inducing anxiety and/or rejection within the community, the prevention of exacerbating social conflict, the absence of potential to foster national division, the exclusion of radicalism and separatism, the absence of prior convictions as determined by a court of law, and the exclusion of criminal acts pertaining to terrorism, threats against state security, corruption, and harm to individuals. The formal prerequisites encompass the attainment of peace by both parties, which is substantiated by the signing of a peace agreement, with the exception of offences related to narcotics. Additionally, the fulfilment of victims' rights and the responsibilities of perpetrators is required. This entails the restitution of goods, compensation for losses, reimbursement of costs incurred due to criminal acts, and the replacement of damages caused by such acts. The victim's agreement, with the exception of drugs crimes, is supported by a statement as evidence.

The police have implemented the formal and material requirements in the process of settling criminal cases using a restorative justice approach. This information was disclosed by Senior Commissioner Pitra A. Ratulangi, the Middle Policy Analyst for General Crimes at Bareskrim Polri. It was stated that a total of 15,811 cases have been resolved through Restorative Justice from 2021 to 2022. The law enforcement authorities successfully resolved 9.3 percent of cases by employing a restorative justice approach. According to the information provided, it has been reported that a significant number of criminal cases, totaling 275,500, have taken place subsequent to the issuance of Police Regulation (Perpol) Number 08 of 2021. Among these cases, the police have successfully resolved 170,000, with 15,811 being resolved through the implementation of a restorative justice mechanism. Consequently, this development is expected to have a direct impact on the capacity of correctional institutions within the nation[2]. The current attainment of 9.3 percent remains relatively modest in relation to the Chief of Police's Priority Programme, known as PRESISI, which aims to foster a transformative, accountable, and equitable police force. Within this programme, one of the key focal areas is the promotion of impartial law enforcement in operational contexts. Based on the aforementioned facts, it can be inferred that a substantial proportion of criminal cases, specifically 91.7 percent, are currently undergoing further processing within the relevant criminal justice system. Scholars posit that numerous factors have played a role in the absence of a formal foundation for Police Regulation Number 08 of 2021, which pertains to the management of criminal offences through restorative justice principles. The agencies that demonstrate the highest implementation of restorative justice in settling cases are the Polda of East Java, West Java, and North Sumatra. The three agencies that exhibit the lowest level of implementation of restorative justice are Polda of West Kalimantan, East Kalimantan, and Polda Bengkulu. Moreover, there exist challenges in implementing a restorative justice approach in handling cases[3]. These challenges stem from the fact that the rules governing this approach are currently limited to implementing regulations and have not been elevated to higher regulations at the level of laws, as mandated by Law No. 12 of 2011, which has since been amended to Law No. 13 of 2022, pertaining to the establishment of laws and regulations. Furthermore, the limitations of law enforcement in this particular scenario are to the expertise and capacity of police employees in effectively aiding the process of mediation or deliberation among the involved parties. The restorative justice strategy, which places mediation or deliberation at the forefront, encounters significant resistance and challenges from both the victimised community and external parties who object to the sole reliance on contemplation for case resolution.

2 Research Methodology

The technique used in research methodology is normative legal research. According to Soerjono Soekanto and Sri Mamuji, normative legal research encompasses various aspects such as identifying legal principles, analysing legal systematics, examining law enforcement practises conducted by institutions, and studying legal settlement processes in practical scenarios. Additionally, this type of research involves investigating the vertical and horizontal synchronisation of laws, as well as conducting comparative law analysis and exploring legal history.

Furthermore, the researcher undertook an extensive review of relevant literature, encompassing not only legal statutes and regulations, but also scholarly works exploring the jurisdiction of law enforcement in resolving criminal cases through the Restorative Justice framework. Additionally, pertinent material pertaining to the subject of investigation was also examined. The research methodology employed in this study is normative juridical law research. The researchers utilised three distinct approaches, including the statutory approach, the conceptual approach, and the instances approach.

3 Result and Discussion

3.1 Terminating Criminal Cases by Police Institutions Using a Restorative Justice Framework

The Indonesian National Police (Polri) plays a crucial function within the Criminal Justice System by effectively implementing criminal legislation. According to Article 2 of Law no. 2 of 2002 regarding Polri, the police are mandated to fulfil a key role within the state administration, specifically in the areas of upholding public order and security, enforcing the law, as well as providing protection and service to the community. In accordance with Article 14, paragraph (1), letter g of the specified document, it is stated that... The police are responsible for conducting inquiries and investigations into all criminal offences in conformity with the Criminal Procedure Code and other relevant legal statutes. This provision mandates that the National Police, in the execution of their responsibilities pertaining to the examination and investigation of a criminal offence, must adhere to the criminal procedure law as stipulated in the Criminal Procedure Code, as well as the procedural law specifically designated by other relevant statutes and regulations. However, along its evolution, law enforcement agencies frequently encounter circumstances that need deviating from established legal regulations in order to uphold security and preserve public order. Hence, as stipulated in Article 16, letter l, and Article 18, paragraph (1), the police possess the legal mandate to undertake additional actions deemed appropriate and exercise their own discretion. This discretionary authority bestowed upon the police is commonly known as police discretion. In order to prevent ambiguity within the community and to avoid the misuse of authority by members of the Police in the enforcement of the law, it is essential to align with the evolving legal dynamics that prioritise the welfare and justice for victims rather than focusing solely on punitive measures such as corporal punishment for offenders. Consequently, in 2021, the Head of the National Police of the Republic of Indonesia issued Police Regulation Number 08 of 2021. Regarding the Management of Crimes Utilising Restorative Justice: A Comprehensive Examination of the Protocols and Provisions The implementation of restorative justice in addressing criminal offences can be executed through the execution of the criminal investigation function, which is performed by police personnel fulfilling the Community Development Function and the Police Samapta in accordance with their designated responsibilities and jurisdiction over minor offences. Additionally, investigative and inquiry activities are conducted by investigators of the Indonesian National Police, who are subject to general and specific prerequisites in terms of material and formal requirements as stipulated in the relevant regulations. The material requirements, as outlined in Article 5, aim to prevent the occurrence of unrest, community rejection, social conflict, national division, radicalism, separatism, repetition of criminal acts as determined by the court, involvement in terrorism, threats to state security, corruption, and acts endangering human lives. The formal prerequisites encompass the establishment of peace between the involved parties, which is demonstrated by the signing of a peace agreement. Additionally, the fulfilment of the victim's rights and the perpetrator's responsibilities is required. This entails the return of goods, compensation for losses, reimbursement of costs incurred due to the crime, and restitution for the damage caused by the crime. The victim's agreement, with the exception of drugs crimes, is supported by a statement as evidence. In addition to the overarching requirements, Article 8 of the aforementioned regulation delineates specific prerequisites for individuals who commit criminal acts pertaining to Electronic Information and Transactions (ITE). These prerequisites entail the voluntary deletion of uploaded content, the submission of an apology through a video upload, and the accompanying request for content removal. The aforementioned phenomenon has disseminated and the individuals responsible are inclined to collaborate with law enforcement officials in order to facilitate additional inquiries. Narcotics offenders who solely function as users and victims of narcotics abuse and seek rehabilitation are subject to specific criteria. Upon apprehension, if evidence is discovered indicating the use of narcotics and psychotropics in accordance with legal regulations, or if urine tests yield positive results despite the absence of physical evidence, these individuals are subject to special requirements. The individuals involved in the incident were found to be unaffiliated with the drug distribution network following a comprehensive

evaluation procedure. Moreover, they expressed a willingness to collaborate with investigators in order to facilitate additional inquiries. This pertains specifically to criminal infractions within the realm of traffic, encompassing incidents such as motor vehicle accidents caused by operating a motorised vehicle in a hazardous manner and state, which subsequently lead to tangible damages and/or minor bodily harm. Additionally, it encompasses road traffic accidents resulting in human fatalities and/or property damage due to acts of negligence.

In relation to the management of criminal cases employing a restorative justice approach during the investigation and inquiry stages conducted by investigators within the Investigation Function, the process bears resemblance to the resolution mechanism employed for minor offences. This entails initiating the procedure by means of a written request submitted by the offender, victim, offender's family, victim's family, and/or other relevant parties. The request should be accompanied by a peace statement document and evidence demonstrating the restoration of the victim's rights. These documents are directed to the Head of the Criminal Investigation Agency at the National Police Headquarters level, the Regional Police Chief at the regional police level, and the Resort Police Chief at the resort police level and sector police. In accordance with the stated request, the Investigator undertook an examination of the document's comprehensiveness, ascertained the involved parties, and documented these findings in the minutes. Furthermore, a dedicated session was organised, attended by Investigators, Investigative Supervisors, Police Internal Oversight Function, reporting parties, reported parties, representatives of community leaders, religious leaders, traditional leaders, and stakeholders. The purpose of this session was to seek approval for the completeness of the documents, present the outcomes of party clarification, and provide a description of the social conditions resulting from the commission of a crime. Once the Investigator has obtained the consent of all participants involved in the specific case, they will proceed to compile a report detailing the findings of the case. Subsequently, a Letter of Termination of Investigation or Investigation and a Decision Letter of Termination of Investigation or Investigation, based on legal grounds, will be issued. These documents will then be recorded in a register book dedicated to restorative justice and entered into the electronic management system. An investigation serves as a means of resolving legal problems. In instances of coercion, it is imperative for the investigator to promptly restore the confiscated items to the party with the highest entitlement. Additionally, it is necessary to eliminate any evidence pertaining to narcotics or other hazardous substances. The culprit or suspect should be released in the presence of a warrant and documented minutes. In the context of drugs offences, it is customary to include a letter of recommendation regarding the assessment outcomes, as provided by the Integrated Assessment Team.

The presence of "extrajudicial settlements" in criminal investigations conducted by law enforcement agencies frequently gives rise to concerns regarding the efficacy of police investigators in achieving case resolutions. The occurrence of a mutual understanding between the victim/reporter and the perpetrator/reported within the context of a police inquiry is frequently perceived as an abuse of power on the part of law enforcement officials. The altruistic motives of law enforcement agents who engage in "out-of-court settlements" throughout the course of police investigations, commonly referred to as SP3 (Warrant for Termination of Investigation), are frequently perceived as a form of transactional exchange. Cynical insinuations are frequently expressed regarding the monetary demands made by the investigator or the amount of money exchanged between the parties involved in the dispute, namely the reporter and the reported individual. In addition to the challenges faced by law enforcement officials and investigators, the absence of comprehensive regulations governing restorative justice rules poses a significant obstacle. Consequently, it is imperative to establish laws that provide a framework for restorative justice settlements, thereby ensuring legal certainty. The Polri investigators engage in the processing of criminal cases by adhering to the relevant legal provisions, including the Regulation of the Indonesian National Police Number 8 of 2021, which pertains to the management of crimes through the lens of restorative justice. In every instance of executing primary duties as an investigator, it is imperative to conscientiously evaluate the potential positive and negative consequences associated with law enforcement endeavours. This is due to the fact that the police, as a collective entity, possess dual authority within the realms of governance and jurisprudence. Within the realm of governance, two essential tasks can be identified: security and public order. Similarly, within the domain of law, a crucial role is played by investigators. In relation to the utilisation of Restorative Justice, it is important to note that the police wield authority not solely within the realm of law enforcement, but also within the domain of governance, notably with the objective of establishing and maintaining public order.

3.2 The Concept of Legal Certainty Relating to The Termination of Criminal Cases; Specifically Focusing on The Utilisation of a Restorative Justice Approach by Police Institutions

The Criminal Procedure Code (KUHAP) serves as the guiding framework for the police in their role as a component of the criminal justice system, specifically in the handling of criminal cases. However, it does not encompass provisions regarding the resolution of criminal cases through restorative justice or the settlement of disputes through deliberation involving various parties such as the victim, perpetrator, victim's family, perpetrator's family, community leaders, religious leaders, traditional leaders, and other relevant stakeholders. To address the community's demand for a legislation that upholds principles of justice and efficiency, while also ensuring legal certainty, the Indonesian National Police (Polri) has broadened the grounds for halting the prosecution of criminal cases. The procedural framework for resolving cases using a restorative justice approach is outlined in Police Regulation Number 8 of 2021, which pertains to the management of criminal cases that are based on restorative justice principles. The termination of this case is founded upon police rules, which are legal instruments created by the Indonesian National Police in accordance with Law Number 2 of 2002 pertaining to the Indonesian National Police. According to Article 5, Polri possesses the requisite jurisdiction to issue Police Regulations within the realm of police administration in order to effectively fulfil their responsibilities. This phenomenon arises as a result of the role of the police inside the framework of government, encompassing many regulatory activities that extend beyond legislative processes. These functions involve the issuance of orders and prohibitions within the purview of police responsibilities, which are applicable to all members of society. According to Gustaf Radbruch's view on legal certainty^[4], the concept is derived from the existence of laws that effectively govern the diverse interests of all individuals and necessitate unwavering compliance. Legal certainty can be defined as a legislative provision that is enacted and disseminated in order to establish clear and rational regulations that do not give rise to uncertainties when multiple interpretations arise. The theory being discussed pertains to Police Regulation Number 8 of 2021, which focuses on the implementation of the Indonesian National Police's responsibilities in ensuring legal certainty throughout the management of criminal cases through the use of restorative justice principles.

The National Police has recently introduced Perpol. No. 8 of 2021, which addresses the management of criminal cases through restorative justice methods, as an alternative to court proceedings. This policy outlines various prerequisites that must be fulfilled in order to implement a restorative justice approach, including formal, material, and specific requirements. The peace process is being implemented and the fulfilment of duties is being pursued. The regulations pertaining to the management of cases using a restorative justice approach are outlined in Circular Letter Number: SE/8/VII/2018, which addresses the implementation of restorative justice. Once these specified conditions have been fulfilled, the case category may be formally presented to the superior of the Police Investigator as a means to seek resolution and promote peace. The submission of a peace request in the event of an alleged criminal act within the police force necessitates the complainant and the reported party to provide a written request for peace, duly signed and stamped. Subsequently, the administration of a restorative justice-based settlement is conducted in accordance with the prescribed format established by the Kabareskrim Polri. Based on the available evidence, it is evident that the inclusion of parties in the enforcement of criminal law, particularly in the context of the restorative justice approach, is exhibiting positive progress in ensuring legal certainty. The inclusion of this matter in the Criminal Procedure Code would undoubtedly enhance its efficacy and comprehensiveness. The most effective approach to enforcing criminal legislation is to include all relevant parties, including victims, suspects, and their families. The police play a crucial role in the enforcement of criminal law, particularly in terms of their jurisdiction over investigations and inquiries. The restorative justice approach serves as a proactive measure to address the aforementioned issues by seeking to engage victims who may experience marginalisation within the existing framework of the criminal justice system. Furthermore, the utilisation of the restorative justice strategy is a novel mindset that can be adopted by law enforcement officials when addressing instances of criminal behaviour.

There are several factors that necessitate consideration when operationalizing the restorative justice approach to facilitate the direct involvement of victims and perpetrators. It is crucial that the application of this approach is conducted on a voluntary basis, with the explicit consent of all parties involved. Furthermore, it is important to note that this approach can be implemented at any point during the criminal justice process. The voluntary nature of using a restorative justice method necessitates the presence of peace as a prerequisite for its implementation. There exists a potential for the parties engaged in a disagreement or dispute arising from a criminal act to opt for reconciliation and abstain from pursuing the legal proceedings associated with the case. The achievement of peace can be facilitated via the active engagement of both internal and external subsystems within the framework of the criminal justice system. Restorative Justice is a theoretical framework for addressing criminal matters that places emphasis on the rehabilitation and healing of victims, offenders, and the broader community. The basic tenet of Restorative Justice involves the active involvement of both victims and perpetrators in the resolution of cases, with the additional engagement of citizens as facilitators. This approach aims to ensure that abusers cease to disrupt the established social order. From the standpoint of restorative justice, a criminal act is regarded as a transgression against the fundamental rights of individuals and the interconnectedness among them. Restorative justice encompasses several approaches for facilitating the

resolution of conflicts and addressing harm caused by criminal behaviour. These approaches include mediation, which involves facilitating dialogue between victims and offenders, as well as family group meetings and community-based services that aim to provide remedial support for both victims and perpetrators. The implementation of the notion of restorative justice is contingent upon the legal system to which a country adheres. If the legal system does not endorse it, the enforcement of Restorative Justice cannot be compelled. Therefore, it can be inferred that the use of the Restorative Justice principle is a viable consideration in the development of a nation's legal framework. Despite a country's non-compliance with restorative justice principles, the potential for implementing them remains viable as a means to ensure justice, clarity, and legal advantages. The utilisation of restorative justice during the investigation phase yields several advantages. Firstly, it facilitates the recognition and fulfilment of the litigants' rights by enabling their direct involvement in the collaborative resolution of issues. Secondly, it prevents the accumulation of cases, ensuring a more efficient and streamlined process. Lastly, it allows for the expeditious and cost-effective resolution of cases, as it eliminates the necessity of undergoing a formal court proceeding. 4. The reduction of capacity within correctional institutions. 5. The avoidance of pretrial lawsuits, compensation, or rehabilitation. 6. The manifestation of justice as desired by society. 7. The establishment of security and order within society. 8. The prevention of vigilante actions. 9. The deterrence of future criminal occurrences. 10. The enhancement of public trust in the police institution. 11. The prevention of corrupt practises by law enforcement officials. 12. The prevention of crimes committed by dissatisfied perpetrators due to perceived inadequacy of imposed punishments. The utilisation of restorative justice as a means to halt the investigation and prosecution process within the Indonesian National Police (POLRI) serves as a pivotal component in the realm of law enforcement. This approach plays a crucial role in settling criminal cases, ultimately fostering a sense of certainty, advantageous outcomes, and legal equity.

4 Conclusion

The termination of criminal cases can be effectively executed through the application of a restorative justice approach at the investigative stage. This approach demonstrates that resolving criminal cases based on restorative justice is a viable strategy for achieving justice, legal certainty, and desired outcomes for all parties involved, including the perpetrators, victims, and society at large. The primary emphasis in this instance lies on the victim's interests, as stipulated by the Indonesian National Police Regulation (Perpol) Number 08 of 2021, which pertains to the management of crimes through the use of restorative justice. The use of the restorative justice strategy inside the police force has demonstrated its efficacy in mitigating case backlog and expediting case resolution. Additionally, this technique is advantageous for victims, as it involves reaching an agreement for the culprit to provide compensation for incurred losses. In the context of restorative justice, legal certainty is achieved through the culmination of the criminal case proceedings, serving as the conclusive component of the restorative justice mechanism. Nevertheless, this strategy presents a number of challenges, encompassing the stipulations outlined in police rules, aspects related to police investigators, and concerns within the community. In order to obtain legal certainty, it is imperative to implement strategic measures aimed at enhancing rules, bolstering the capabilities of investigators, and fostering a receptive mindset among the community towards this approach mechanism.

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