



THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN LAW ENFORCEMENT IN ITS ACCEPTANCE OF LAW ENFORCEMENT (Comparison of Law Application in Bantul Police)

Hartanto*

Faculty of Law Widya Mataram University, Yogyakarta, Indonesia

hartanto.yogya@gmail.com

Bambang Tri Bawono

Faculty of Law Sultan Agung Islamic University, Semarang, Indonesia

bambang@unissula.ac.id

Roni Sulistyanto Luhukay

Faculty of Law Widya Mataram University, Yogyakarta, Indonesia

roniluhukay22@gmail.com

Gusti Fadhil Fithrian Luthfan

Faculty of Law Widya Mataram University, Yogyakarta, Indonesia

gustifadhil@gmail.com

Syafiqurrohman

Faculty of Law Widya Mataram University, Yogyakarta, Indonesia

syafiqurrohman@ombudsman.go.id

Abstract: The application of restorative justice at the investigation level based on the Circular Letter of the Chief of the Indonesian National Police Number: SE/8/VII/2018 concerning the Application of Restorative Justice (Restorative Justice) has been widely SE. 08/2018 concerning the Application of Restorative Justice in the context of accelerating the realization of justice, using a comparative study of criminal cases in the Bantul Regional Police; in this study used normative research methods. The application of the Chief of Police's Circular on Restorative Justice in the case of the crime of theft which is an example/case study in the Bantul Police Region in fact cannot be carried out in general (generalization), this is seen from the factor, namely the losses suffered by the victims. Comparison of cases in BP/.../VIII/2020/RESKRIM and BP/.../III/2020/RESKRIM, both efforts were made to resolve restorative justice but some were completed and some were continued, because essentially a case (case) is not necessarily the same exactly. There is also a disparity in the application of restorative justice based on S.E. National Police Chief with Supreme Court Regulation 2 of 2012.

Keywords: Restorative Justice, Law Enforcement, Crime, Theft, Justice.

INTRODUCTION

The settling of crime certainly requires a legal basis, whereas the development of law enforcement indicates that there is a difference in interpretation in law enforcement, this can be seen in any completion by using the law in the area or by the law of custom. In the second quarter of 2007, the company's net profit in the first half of 2007 fell to 2.1 trillion rupiahs from rp2.9 trillion rupiahs in the same period last year. Positive application of the law cannot be fully applied, for:

Though it is undeniable that often implementation and the enforcement of legislation do not proceed effectively and efficiently. In other words, "force" legislation is not the maximum for managing or resolving present problems. These obstacles are primarily in the; Substance aspect, covering: (1) materials related to the law of forming legislation; There is an element of desire in forming rules that do not fit the proportion/limitations of need; Disharmony of the underlying substance between the rules, as well as the continued development of science and dynamics of society (developing). (2), the aspect of the process/formation of legislation that begins before legislation (academic scripts, Prolegnas, the implementation of inter-ministry meetings and harmonizing with state budgets, parliament legislation, then continues to be enforced and socially enforced. The legal state as mentioned in chapter 1 verse (3) of the constitution of the republic of Indonesia in 1945 states that "Indonesia is a legal state." The existence of a legal state system indicates that systems in Indonesia are regulated by legislation. According to the words of Nur Kholid, Francisca

Harjiyatni, and Sri Handayani Retna Wardani (2017) in his research mentions that The point in the state system is that any act or authority of the ruler according to the rule of law, although in reality the process of observing the law cannot be run by itself. The rules of execution are required under the rule of law.

The above concept suggests that to achieve a legal state system of course in a country's system must be created with legislation or other legislation in order to ensure its implementation, the many criminal patterns and kinds of law enforcement of the law of the United States of law emerged the policy of the Indonesian republic of Indonesia: SE/8/VII/2018 about the application of restorative justice in criminal cases. Applications of the circular law were implemented in the completion of criminal proceedings. In the Indonesian criminal justice system, a highly massive application of restorative justice is used under law no. 11 of 2012 on child criminal justice, in which case children can act on child abuse when indeed children are dealing with the law in criminal cases. In contrast with the Indonesia republic's police officer letter number: SE/8/VII/2018 about the application of restorative justice (restorative justice) in criminal crimes opens the door to solving other criminal crimes with perpetrators other than children.

The problems arising in the development of dynamic human life form humans need one another to provide for their needs. In that dynamic dynamic, it turns out that not all human desires are self-accommodation or self-fulfilling. Many of the factors that drive up the issue, such as when it comes to society providing for its own needs are found to be inadequate, so

in various ways to address them are adopted in the unusual ways of stealing.

Of course, there are many other means of theft, and the cost of bullying is certainly considerable, since the ACTS committed by the perpetrators are criminal ACTS of both quality and quantity, but the cost and the evidence taken certainly have varying value. Therefore, in order to bring about a sense of justice and common sense between the victim and the victim, it is necessary to establish more common ground for law enforcement to be carried out in the community's interest of the perpetrator and the victim.

MAIN PROBLEM

The problem with this research is how law no. 08 of the year 2018 implementation of restorative justice in order to accelerate justice, using the comparative study of police-issue crimes is done?

METHOD OF RESEARCH

The type of research used in this research is normative legal research. There are several approaches to legal research, and with these approaches, researchers will obtain information from various aspects regarding the issues being sought or solved. (Irwansyah, 2020)

Through a research approach, the researcher will obtain information from various aspects regarding the issue being studied. (Marzuki, 2013) The research approach used is a statute approach and a case approach.

The sources of legal materials in this study consist of primary legal materials and secondary legal materials. Then the data in the form of legal materials that have been obtained are presented in the form of

narrative text, and descriptions arranged in a systematic, logical, and rational manner. In the sense that all the data obtained will be linked to one another according to the subject matter under study so that it forms a unified whole.

RESEARCH RESULT AND DISCUSSION

Law enforcement is an effort to create an obedient life because its bylaws can bring about justice in society. The walk of the law is more determined than the actor in its enforcement. These actors consist of good law enforcement officers, judges, legal advisers, and communities themselves, as actors in determining to succeed at least as law enforcement actors complement each other so as to walk properly and achieve community security and order.

Law enforcement through the 2018 release of law no. 08 of the year 2018 about the application of restorative justice in law enforcement a crime has in theory been the key to solving crime problems such as theft in the area of aid linked to criminal law. Police investigators have the 2002 statute number 2 on state police and article 7 verses (1) the letter j of the KUHAP that any handling of cases as proper as its jurisdiction is in any other way in conducting law enforcement of ACTS of legal responsibility.

According to Soedarto (1990), one must first meet the following conditions:

1. Works that fulfill the statute of limitations;
2. Unlawful (no justifiable reason);
3. To the perpetrator or person there must be an element of error;

4. People who do things are capable of responsibility;
5. Dolusor culpa (no excuse for forgiveness).

The first case, based on a report from the state police assistance with a BP/2020/VII/2020/reskrim, described the case of the early perpetrators to find a bag containing a wallet and a cellphone that was originally found with a cost of his wallet and phone. Based on the findings, the suspect returned the bag and his wallet but did not recover the contents and cell phones, causing the victim to suffer losses and report to the police.

Case number two, with a BP/PROJECTED/III/2020/ major rim check. In this case, it is associated with the theft of grain with an rp200,000 + kg loss of grain. According to data provided by law enforcement, the government has issued state bonds worth rp3 trillion.

The settlement of the restaurant justice has had an impact on the victim's material toll of 3 million, although the cost to the victim is relatively small, it still does not fit the criteria for a misdemeanor rule no. 2. Therefore, if such losses are dismissed as above the rule of the Supreme Court and there are no forced ACTS, then the 2018 release of chief justice can be used as a basis for settlement besides police inspection.

The implementation of the system of restorative justice has been done on the news with BP/.../VIII/2020/reskrim, but in the wake of the release of the check with BP/NO. /VIII/2020/reskrim examiners to the trial and the verdict, so that the position of the justice of the republic of Indonesia (restorative justice) of the penal system of thievery can provide legal certainty.

Then, Enforcement of law enforcement on the ground is often in conflict between the certainty of law and justice. This is because the conception of justice is an abstract formula, whereas legal certainty is a normative/concrete procedure; It means that in the proper enforcement of law enforcement, there is a jurisdictional basis, therefore an act or policy (discretionary) that seems to be infallible as long as the policy or action is governed under a definite rule, in this case, there is an authority granted by the rule of law.

In the process of law enforcement can show a decent, well-ordered life according to the rules. In the law enforcement system, in general, law enforcement in Indonesia is done in a second way: preventive measures are done to prevent unlawful actions from occurring. According to Rusli Muhammad's (2019) opinion, when viewed from a policy process, law enforcement is, in effect, the enforcement of policies through several stages; Repressive is a form of law enforcement with bullying when or has been committed a crime.

It is hoped that the fundamental task of the Indonesian republic of Indonesia, based on the 2002 no. 2 law, will better stabilize the position and role, and performance of the Indonesian police force as an integral part of the systematic reform of the entire national and state order of life in the

development of a just, prosperous and civilized civil society.

The meaning of theft in the Indonesian dictionary (KBBI), is the meaning of the word "steal," meaning to take away what belongs to another without permission or illegally, usually in secret. Whereas the meaning of "theft" is a process, method, or action. Whereas article 362 of the criminal code states that "*Anyone who takes anything, the whole or part of another person, with the intent of unlawful possession, is threatened for theft, with a maximum of five years' imprisonment or a maximum of nine hundred rupiahs in fine*".

The term restorative justice is a new foreign term known in Indonesia since the 1960s with the term restorative justice. According to Eriyantouw Wahid (2009): Industrialized nations restorative justice is not merely a narrative by academics of criminal and criminal law. North America, Australia, and several countries in Europe have applied restorative justice in the conventional process of criminal justice, starting with the investigation, prosecution, authentication, and execution stages.

He further said that the rupiah was expected to strengthen to Rp. 9,100 per dollar in the Jakarta interbank spot market on Tuesday. Based on the value of restaurant justice, many of the world's most influential people are associated with restorative justice as follows:

1. According to Eva Achjani Zulfa, restorative justice is "a concept of thought that

responds to the development of the criminal justice system by focusing on the needs of the public and felt victims being marginalized by the mechanism that works on the current criminal justice system."

2. According to the buffet of Ibal Sauqi, the general understanding of restorative justice is "the restructuration of a more equitable system of idling, both to perpetrators and to citizens".

The various definitions of restorative justice can be classified into small and large groups. Whereas narrow definitions place the sense of meeting between parties of interest in crime and the period thereafter, broad definitions place emphasis on the value of restorative justice. Then come the definitions combining both and one of them formulated by Van Ness (2007) as follows: restorative justice is a theory of justice that revealed the harming behavior or revealed by criminal behavior. It is best to cooperate through a cooperative process (restorative and cooperative process).

By that definition, it can be determined that restorative justice is a way to solve criminal cases involving society, victims, and perpetrators for the purpose of achieving justice for all parties, and is expected to create the same circumstances as before the crime occurred and prevent further crime.

Restorative justice seems to conflict with the legal principles and certainty of the law (*rechtzakerheid*).

This is because restorative justice is not focused on rehabilitation (prison), but on how the aftermath or restoration of the state of the victim after a crime has occurred. In that case, the slag should be (Agustina, 2016):

1. Perpetrators of a criminal act are expected to pay for their guilt by repaying the damage done
2. Perpetrators of criminal crimes were given the opportunity to prove their ability and qualities to ease their guilt clearly and measurably.
3. Involving victims, families, and others in terms of a settlement.
4. Created a forum to work together on problem-solving.
5. Establish a direct and apparent connection between presumed wrong or evil acts with formal social reactions.

Law enforcement is part of the effort to make sure of the legal system, so in carrying out its enforcement efforts, it is certainly necessary for a unified, vigorous legal structure in its enforcement. Basically, law enforcement in the current perspective, should not imprison the perpetrator, but how wake the perpetrator is up to the actual circumstances that he is guilty, which means that the perpetrator is being punished not only for criminal accountability, but the circumstances of the perpetrator being conscious of the consequences of his actions and is willing to actually apologize in return for damages. Based on this certainly not all enforcement of law enforcement

is carried out in a way of law enforcement that ends in a court of law, so based on the 2018 release of restorative justice in law enforcement, can be seen from the execution based on BP/.../VIII/2020/reskrim as follows:

a. Chronology

On Sunday, August 9, 2020, around 21.00 WIB, the perpetrator AG walked on the shores of Samas beach and then found a wallet and cell phone and then took it finishing

- the first party as the victim was willing to drop the theft, the second party committed and settle the matter as a family.
- party ii was willing not to repeat himself again and if the party ii did it again, the party ii would be willing to proceed legally.
- party ii was willing to return his cell phone and the rest of the money by rp250,000,000.00 (rs);
- The rupiah's exchange rate at rp9,205/9,329 per dollar compared to rp9,310/9,329 per dollar the day before the closing session

b. Court Ruling

- perpetrators found guilty of criminal ACTS under section 362 of the criminal code.
- sentence the ag defendant to jail 5 (five) month.
- stating the evidence as:
 - 1 (one) black - white cell phone unit
 - rp250,000,000.00 (two hundred and fifty thousand dollars) in cash,- ;

- Return to the victim's head of hr
- charged the accused to pay a case fee of rp2,000,000.00 (rs).

Under the law, state minister for state enterprises Sofriawan said on Tuesday that the state of the union of the World Bank would continue to maintain the level of rp9,100 per dollar, he said. The realization of compensation for the losses has been carried out to offset the loss, so legal responsibility has been carried out in accordance with the law of the formative law, but the law of the formative law has not been entirely met in view of its cost to the state, under the rp 2,500,000, as state officials have been unable to achieve the restoration of justice. This is different from handling news checks with bp /34/ iii /2020/ reskrim as follows:

a. Chronology

On Wednesday, March 17, 2020 at approximately 12:00 p.m., the victim was in the house and then witness j informed the victim that the grain in front of the victim's house was carried by someone driving a blue r4. The resulting cost of the incident was rp200,000,000.00 (rs) of grain. Later on the incident the victim reported it to the police.

1) case settlement

- He said the rupiah was expected to continue to strengthen to rp9,100 per dollar in the Jakarta interbank spot market on Tuesday.

- Parties as victims are willing to disregard the theft of 1 (one) sacks of rice belonging to the ii party and be willing to settle the matter family (peace)
- Party ii was willing to stop repeating them and if the party ii repeated the act again, the party ii would be willing to proceed with the law at once

The completion of the case was carried out with the application of restorative justice. This justice was done by way of a way to settle the matter family and the perpetrators issued a letter expressing guilt for the act. He said the rupiah was expected to strengthen to rp9,100 per dollar in the Jakarta interbank spot market on Tuesday.

Both cases cited in the 2018 issue of the acquisition of chief prefect's bill no. 08, 2018, regarding the application of restorative justice, show that it still takes into account the cost of the victim. On the other hand, handling of the problem at the end of a felony, the theft has several different legal outcomes.

However, he added, the rupiah still had a chance to strengthen to rp9,100 per dollar, he said. This shows the importance of understanding the 2018 constable's release letter

08 in about the application of restorative justice as part of the investigator's path for investigative policy, as the police investigator said as follows:

As stated on the number 4 of the law's purpose, regarding the application of the citation of police is a technical step from a basic law law on Polri authority as arranged in article 15 letter b to help resolve citizen disputes that could harm public order and article 16 letter lis conducting another act according to the law which is responsible according to the republic of Indonesia act no. 2 of 2002. As well as the technical step as the investigator, whose investigator is a living law, a law that thinks well and as his authority is given by the law of article 7 letter j performs another act according to the laws that are responsible for the 1981 rule number 8 of the 1981 penal code (KUHAP).

The above statement shows the effort to implement the citation of chief's handbill, as a technical guideline for investigators on the disposition of the case. Apart from that, the chief's release can also be a basis for the investigation of discrepancy in any matter handled as its own jurisdiction as in article 7 of the verse (1) j kuhap the investigator in conducting other actions in carrying out law enforcement ACTS of legal responsibility.

Based on the dynamics of the investigation and the difference in settlement, it should at least be of concern that the application of such a settlement in criminal law renewal could provide investigators with progressive steps and taking into consideration living law, thereby creating the rules and policymakers of decisive measures to show substantial justice. Because fair is actually the very essence of justice.

The implementation of law enforcement is at its core to provide legal certainty, but the exercise of justice does require a selective attitude, even possible between the perpetrator or victim to feel that the process of law enforcement has not reflected justice. This usage, of course, was a comparatively modest effort in its application. In Indonesia, the legal system tends to have clear rules, showing that the Indonesian law system respects positive laws, while nonetheless paying attention to the values that arise and grow among people (living law).

The above statement contains significant meaning in law enforcement. Such all-important meaning lies in the certainty of law, judicial efficacy, legal justice, and the enforcement of law enforcement executed by law enforcement and acceptable to society. The mechanism of law enforcement as applied to law enforcement can be seen from bp /.../ viii /2020/ 2020/ 2020/ 2020 checkings and bp/iii /2020/reskrim entry with the number bp /.../ 2020/reskrim for several of these application purposes:

- a. certainty of the law

Based on the completion of the case with BP/.../VIII/2020/ 2020/ 2020 and with BP/III/2020/ reskrim,

it is completed in a manner that is equally legal in power. He said the rupiah was expected to strengthen to Rp9,100 per dollar in the Jakarta interbank spot market on Monday as investors bought the local unit on Tuesday. Then the settlement continues in judicial proceedings. According to a BP/VIII/VIII/2020/reskrim inspection, the case continues through the trial process until a ruling by law remains firm. This step is taken because of the legal process in a positive perspective, which results in legal certainty being achieved into consciousness

Law enforcement positions are part of a consistent effort to observe the rule of law and thus the settlement to preserve law enforcement. On the other hand, what is done by law enforcement is considered right and inviolate the rule of law, for according to its terms and authoritatises in holding that the act of the perpetrator is wrong and meeting the elements against the law; In harmony with the idea that the concept of restorative justice is an approach to the creation of justice and balance, it has actually been realized for the peace of both the perpetrator and the victim within the bounds of the act and the magnitude of the impact.

b. law enforcement

The law enforcement enforcement wish can be beneficial. This expectiveness when reviewed especially in the enforcement of criminal law at the completion of existing causes, specifically for the perpetrators and victims, but it can effectively affect the general public, as well as the current legal system.

With reference to profity-related news reports at BP/47/VIII /2020/reskrim in the case of the theft carried out with restorative justice, it shows that the completion of the case can provide significant profit, since both sides have been willing to accept and the presence of a peace agreement made before the police and the presence of public figures, by the police police has raised the case to a public inquiry. Expectiveness can be achieved when the SPDP (spr3th) is completed by published a cease and inspection warrant (sp3), as it can be done by enforcing other criminal enforcement, through its restaurant justice guidelines version se. Chief, with the records carefully done.

The basis for the restoration of justice settlement is that the parties agree to do restorative justice. Obstacles usually arise because of feelings of being harmed by property and/or feelings of self-worth. The transaction was carried out by a move of restorative justice which led to the issuance of state debentures, and the implementation of both formal and material requirements in law enforcement including the implementation of a peace agreement.

The effect of the implementation of law enforcement is not a restructuring of justice, but rather an effort to improve the legal system. According to Artidjo Alkostar, in Sompie (2015): in a modern society that has a constitution and legal tools, police institutions have not only moral legitimacy but, more clearly, a legal mandate to implement juridical actions. The

legal mandate of the police has a constitutional basis set out under the no.2 of the year 2002 law on the state police, and in sharp measure, human rights remain the focus of policing.

The prefect at 3 a and b specifies the materialization of restorative justice: no public unrest and no denial of prosperity; Do not impact social conflicts; There was a statement by all involved in objecting and relinquishing his claim before the law; The principles of limitation on the perpetrator are not relatively heavy (mistakes are not in the form of deliberation) and not penalties, and on criminal investigation and inquiry before the SPDP are sent to the public prosecutor. Thus, in a matter of BP/VIII/2020/ reskrim, while the total cost of mobile phones and money becomes a total of 3,000,000, rupiahs, it can still be completed using restorative justice, as the SPDP has been issued and has not yet been handed over to the prosecutor, and it includes a miscalculation of a case that can be solved through a mechanism of restorative justice with small costs. Citing an amount of 3.000,000 losses that are not consistent with the rule of the Supreme Court (perma) no. 2 year 2012 on the breaking down of the penal code (ti), which regulates the limitation of a minor crime with a loss under 2,500,000 writers' opinion that rp 500,000 could still be deposited at the time of investigation.

1. The 2018 application of constable no. 08 year 2018 on the application of restorative justice in law enforcement in the case of the 2 case study case 2 (two) cases in the police area of aid has not been generally implemented (generalization), as seen from the factor that is the loss of the victim. However, BPKPM said that BPKP would also encourage BHP biliter to increase their lending rate by 25 basis points to 8.25 percent, he said. But restorative justice settlement efforts are not yet applicable; However, the rupiah still had a chance to strengthen to rp9,100 per dollar, he said.
2. Legal certainty of the handling of criminal crimes after the issuance of the Indonesia republic's police department number: se /8/ vii /2018 regarding the application of restorative justice (restorative justice) in the criminal case of the justice justice (I) there is still disparity because of the difference in the cost of crime in the sense of crime. The need for comprehensive socialization efforts by the police to assist investigators on the implementation of what is thought to be done with restorative justice must be done with such measures, even if it is to translate based on Chief.

CONCLUSION

Based on the discussion and analysis of this research, then the conclusion is:

RECOGNITION

Thank god it was to Edy Chrisjanto, a fellow law school at widya mataram university, and a police aide.

REFERENCES

- [1]. Aziza, Tri Agustina. (2016). *Analisis Yuridis Sosiologis Pelaksanaan Diskresi Kepolisian Untuk Mewujudkan Restorative Justice Dalam Penanganan Perkara Pencurian Dengan Tersangka Anak (Studi Di Kepolisian Resort Kota Batu)*, Tesis, Universitas Muhammadiyah Malang, (Mei-2016), p. 4.
- [2]. Eriyantouw Wahid. (2009). *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana*, Jakarta, Universitas Trisakti.
- [3]. Firman Nur Kholid, Francisca Romana Harjiyatni dan Sri Handayani Retna Wardani. (2017). *The Decree of Cancellation of The Minister of The Republic of Indonesia and The Implication of Authorityregional People's Representative Assembly*, Jurnal Kajian Hasil Penelitian Hukum, Vol. 1 (2), (November 2017):75
- [4]. Johnstone dan Van Ness. (2005). *The Meaning of Restorative Justice*, Makalah untuk Konfrensi Lima Tahunan PBB ke-11, Workshop 2, Bangkok-Thailand, p. 2-3.
- [5]. Kitab Undang-Undang Hukum Acara Pidana
- [6]. Kitab Undang-Undang Hukum Pidana
- [7]. Mirza Sahputra. (2022). *Restorative Justice sebagai Wujud Hukum Progresif Dalam Peraturan Perundang-Undangan di Indonesia*, Jurnal Transformasi Administrasi, Vol 12 No 01, p. 87.
- [8]. Muh. Ikbal Sauqi, Akhdiari Harpa Dj. (2022). *Konsepsi Restorative Justice Sebagai Upaya Penyelesaian Tindak Pidana Lalu Lintas Polres Majene*, Jurnal Hukum Unsulbar, Vol 5 No 1, p. 6
- [9]. Pocut Eliza (Pokja Penyusunan DPHN). (2016). *Dokumen Pembangunan Hukum Nasional Tahun 2016*, Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Ham.
- [10]. Rahman Amin, Muhammad Fikri Al Aziz, Iren Manalu. (2020). *Penerapan Keadilan Restoratif Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Berat Di Kepolisian Resort Metro Jakarta Pusat*, Kertha Bhayangkara, Volume 14 Nomor 1, (Januari-Juni 2020), p. 4.
- [11]. Ronny F Sompie. (2015). *Diskresi Polri Terhadap Pelaku Tindak Pidana Berdasarkan Restorative Justice*, Lex Librum, Volume 1 Nomor 2 (Juni 2015), p. 83.
- [12]. Soedarto. (1990). *Hukum Pidana I*. Semarang. Yayasan Sudarto, Fakultas Hukum Universitas Diponegoro.
- [13]. Surat Edaran Kapolri No. 08 Tahun 2018 Tentang Penerapan Keadilan Retoratif Dalam Penegakan Hukum
- [14]. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- [15]. Undang-Undang Nomor 2 Undang-Undang Tahun 2002 tentang Kepolisian Negara