

ALTERNATIVE HANDLING OF CRIMINAL ACTS THROUGH POLICE REGULATION NUMBER 8 OF 2021 CONCERNING THE HANDLING OF CRIMINAL ACTS BASED ON RESTORATIVE JUSTICE

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Abstract

Law functions as a tool for social engineering to create a safe and peaceful society, as posited by Roscoe Pound. Reforming criminal law, including the application of restorative justice, is necessary to align with social dynamics. Restorative justice, which prioritizes recovery over retaliation, involves the offender, the victim, and the community in resolving cases. In Indonesia, this approach is regulated by Police Regulation No. 8 of 2021, aimed at resolving cases at the investigation and preliminary examination stages. This study explores the legal basis and practical regulations of restorative justice, identifying obstacles and solutions for its implementation.

Keywords: *Justice, Restorative, Criminal*

1. INTRODUCTION

Roscoe Pound states that the law is a tool of social engineering to create a safe and peaceful society. Law exists to solve problems in society and keep up with the development of social dynamics. Legal reform, especially criminal law, is important to adapt to the development of society. (Nata Sundari, Morocco Zahra Luthfiyah, 2024)

One of the issues of criminal law reform that is being discussed is justice Restorative or restorative justice. Restorative justice Resolve cases by involving victims, perpetrators, and related parties, emphasizing redress rather than retaliation. (Lathif, 2017) It is considered a more humane alternative to retributive justice, which focuses on punishment.

Restorative justice It is considered the fulfillment of human rights by paying special attention to victims and eliminating conflicts between perpetrators and victims. (Firman Muntaqo, 2020) Historically, this concept began to be discussed in the 1970s in Canada through mediation between victims and perpetrators. In Indonesia, this concept is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

An example of unfair law enforcement is seen in the case of Mina's grandmother in 2009, who was convicted of stealing three cocoa pods. Even though legally the delicacies

are fulfilled, the community considers the punishment to be unconscionable and unfair. This shows the need for criminal law reform to prioritize restorative justice.

The restorative justice approach is an approach that focuses more on creating justice and balance for the perpetrators of criminal acts and the victims themselves, mechanisms and procedures, and criminal justice that focuses on criminalization is transformed into a process of dialogue and mediation to create agreements and settlements in criminal cases.

One of the rules related to restorative justice is Police Regulation Number 8 of 2021 (hereinafter referred to as PERPOL Number 8 of 2021) concerning the handling of criminal acts based on restorative justice. The implementation of the rules on restorative justice of course applies to all types of general criminal acts, with several requirements, namely general requirements and special requirements, the general requirements in question include formal and material requirements.

One example of the implementation of restorative justice based on Police Regulation Number 8 of 2021 is the case of the arrest of 40 farmers in Muko-muko for allegedly stealing on the disputed land of PT Daria Darma Pratama (PT DDP) on May 12, 2022 with the charge of article 363 of the Criminal Code with a threat of 7 years in prison which was then resolved through restorative justice at the police level through Police Regulation Number 8 of 2021.

Police Regulation Number 8 of 2021 concerning the handling of criminal acts raises several questions that need to be examined. First, the limitations of cases that can be handled through restorative justice are not explicitly regulated in the regulation. This results in uncertainty regarding whether victimless crimes such as gambling, or other crimes such as crimes against morality that require criminal accountability, can be resolved through restorative justice. Although the Circular Letter of the National Police Chief Number 8 of 2018 states that all general crimes can be resolved through restorative justice, this has not been expressly regulated in the legislation (Butler et al., 2024).

Second, regarding the legal basis of restorative justice at the investigation and investigation stage, there are no laws and regulations that specifically regulate norms regarding this matter. Thus, the use of restorative justice at this stage still seems to be floating and the legal basis is unclear.

Third, the concept of restorative justice applied in Police Regulation Number 8 of 2021 needs to be understood further. Does this concept lead to the termination of investigation (SP3) as regulated in the Criminal Procedure Code, or is there another approach used by the police in the context of restorative justice? Although restorative justice is recognized as an approach that can provide alternative solutions in the resolution of criminal cases, there is still uncertainty and the need for firmer and more specific regulations in

legislation to regulate the implementation and limits of the use of restorative justice in law enforcement in Indonesia (Rossner & Taylor, 2024).

Therefore, from the above background, the author discusses two problem formulations, namely the first, wanting to explore: What is the legal basis for the implementation of PERPOL Number 8 of 2021 concerning the handling of cases with a restorative justice approach? and second, how to regulate the implementation of restorative justice in criminal cases in accordance with PERPOL Number 8 of 2021? . This research is expected to provide a comprehensive overview of the obstacles faced and the efforts that can be made to overcome them. Therefore, the author is interested in conducting research with the title "Alternative Handling of Criminal Acts Through Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice".

2. IMPLEMENTATION METHOD

This research is the main means in the development of science and technology, this is because the research aims to reveal the truth systematically, methodologically and consistently through this research process will be analyzed and constructed on the data that has been collected and processed. This research is normative legal research that focuses on the study of literature and laws and regulations related to Police Regulation Number 8 of 2021. Normative legal research is also known as doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is the process of finding legal rules, legal principles, and legal doctrines with the aim of answering the legal issues being studied (Sugiyono, 2018).

3. RESULTS AND DISCUSSION

The Legal Basis Underlying The Implementation Of Perpol Number 8 Of 2021 Concerning The Handling Of Cases With A Restorative Justice Approach

Term "restorative justice" It was first known in Indonesia's positive law through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially in Article 1 number 7. This approach emphasizes the interests and future of the victim's child or child witness, because the child is considered not legally capable even though he can still be held legally responsible if he commits a criminal act.(Wirawan, 2023) However, the diversion approach in this law is limited because it only applies to children under 18 years old and requires a peace agreement, and it is only applied to criminal acts with a criminal threat of less than seven years.(Arief & Ambarsari, 2018)

Along with the development of legal needs in society, especially the problem of overcapacity of prisons and logistics costs for prisoners, several regulations related to

restorative justice institutions have been formed. Some of them are Attorney General's Regulation Number 15 of 2020, Circular Letter of the National Police Chief Number 8 of 2018, Decree of the Director General of the General Judicial Agency of the Supreme Court Number 1691 of 2020, and Police Regulation Number 8 of 2021 (Setiyawan et al., 2024).

Police Regulation Number 8 of 2021 emerged to meet the needs of out-of-court case settlement at the investigation and investigation level, as well as as a refinement of the National Police Chief's Circular Letter Number 8 of 2018. The legal basis of this regulation refers to the discretionary authority of the police as stipulated in Articles 16 and 18 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia.

However, Police Regulation Number 8 of 2021 does not contain the previous restorative justice rules as a legal basis, as stipulated in Law Number 11 of 2012, Circular Letter of the National Police Chief Number 8 of 2018, Attorney General's Regulation Number 15 of 2020, and Decree of the Director General of the General Judicial Agency of the Supreme Court Number 1691 of 2020. In fact, in accordance with Law Number 12 of 2011 concerning the Formation of Laws and Regulations, previous rules of the same or higher type must be used as a reference to ensure the harmonization of regulations.

Although the Police Regulation is not explicitly mentioned in the hierarchy of laws and regulations in Article 7 of Law Number 12 of 2011, this regulation is included in the category of written laws and regulations.

The position of the Police is equivalent to that of the Ministry because both are under the President and carry out government functions in their respective fields. Therefore, the products of laws and regulations produced by the Police and the Ministry can be considered parallel (horizontal, not subordinative). This authority is inherent continuously and can be exercised as needed, within predetermined limits (Alkalah, 2024).

Laws and regulations made by state agencies or unauthorized officials can be canceled or null and void. Although the Police Regulation is not formally mentioned in the hierarchical structure of laws and regulations according to Article 7 paragraph (1) of Law Number 12 of 2011, this does not mean that the Police Regulation is not included in the laws and regulations. Article 8 of Law Number 12 of 2011 recognizes laws and regulations outside the hierarchy, as long as they are formed based on orders of higher laws and regulations or based on existing authority.

To understand the Police Chief Regulation, we can refer to the considerations of Police Regulation Number 7 of 2018 concerning the Revocation of Police Chief Regulation Number 11 of 2016 concerning the Establishment of Police Regulations, which states:

- a. Based on Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, the types of laws and regulations include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Board, the Judicial Commission, Bank Indonesia, Ministers, Agencies, Institutions, or

equivalent levels established by law or the Government by order of the Law, the House of Representatives Provincial Regions, Governors, Regency/City Regional People's Representative Councils, Regents/Mayors, Village Heads or equivalent. Therefore, the existence of the Regulation of the Chief of the National Police of the Republic of Indonesia is changed to the Regulation of the National Police of the Republic of Indonesia, whose content is binding in general and/or is a delegation of higher laws and regulations.

- b. Regulation of the Chief of the National Police of the Republic of Indonesia Number 11 of 2016 concerning the Establishment of Police Regulations is one of the policy regulations whose content applies internally within the National Police of the Republic of Indonesia, so it needs to be replaced.

Based on considerations from Perpol Number 7 of 2018, the difference between the Police Regulation (Perpol) and the Police Chief Regulation (Perkap) shows the Police's efforts to harmonize its regulatory products with the current legal practice.(Marentek, 2021) This can be seen from the use of the nomenclature "Regulation" by state institutions such as the Supreme Court, the Constitutional Court, the Financial Audit Board, Bank Indonesia, and other state institutions that have the authority to form laws and regulations, without adding the word "Chairman" in their regulatory products.

For example, the Constitutional Court Regulation, the Supreme Court Regulation, and the Bank Indonesia Regulation. These institutions issue laws and regulations, both from attribution and delegation authority, using the nomenclature "Regulation" without the addition of the word "Chairman". In practice, we know the existence of the Chief Justice of the Constitutional Court's Regulation, the Chief Justice Decree, and so on. However, the "Chairman's Regulation" or "Chairman's Declaration" is only binding internally of the institution concerned and is referred to as a policy regulation.

Meanwhile, the institution's regulations are intended to bind the public by promulgating through the State Gazette and the State Gazette. This is the basis for the Police to adjust its regulatory products like other state institutions.

Thus, the fundamental difference between the Police Regulation (Perpol) and the Police Chief Regulation (Perkap) lies in its promulgation. Police Regulations are promulgated in the State Gazette of the Republic of Indonesia, while Perkap is not promulgated. This is based on Article 3 paragraph (2) of the Police Chief Regulation Number 2 of 2018, which determines: "The National Police Regulation as referred to in paragraph (1) letter a is a law and regulation and promulgated in the State Gazette of the Republic of Indonesia".(Erasmus A.T. Napitupulu dkk, 2022)

The following are the previous rules that underlie the enactment of restorative justice in Indonesia:

1. Constitution of the Republic of Indonesia in 1945

Article 18B paragraph 2 recognizes and respects the unity of customary law communities and their traditional rights, as long as they are still in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. It reflects the tradition of problem-solving through deliberation for the common good, avoiding greater social conflicts.

2. Law Number 1 of 2023 concerning the Criminal Procedure Code

Article 2 paragraph 1 of the Criminal Code emphasizes that there is no criminal sanction without applicable regulations before the act is committed. This article also provides space for the settlement of cases using customary law or non-litigation channels, as an implementation of Article 18B paragraph 2 of the 1945 Constitution.

3. Criminal Procedure Law Bill

The Criminal Procedure Bill introduces the concept of plea bargaining for fast, simple, and low-cost trials. This concept is limited to criminal acts with a threat of punishment of not more than 7 years, as a form of application of efficient judicial principles.

4. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

This law regulates alternative settlement of civil disputes outside the courts through mediation, negotiation, and adjudication. Mediation involves a third party without the authority to decide, negotiation only involves the disputing party, and adjudication involves a third party who has the authority to decide.

5. Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice

This regulation is the basis for Police Regulation Number 8 of 2021, because both discuss the application of restorative justice in case resolution.

These rules form the legal basis for the implementation of restorative justice in Indonesia, integrating a more restorative and reconciliation-oriented approach to case resolution.

How To Regulate The Implementation Of Restorative Justice In Criminal Cases In Accordance With Perpol Number 8 Of 2021

Some of the legal bases that underlie the settlement of criminal acts with a restorative justice approach involve a number of important regulations from various institutions. Among

them is the Attorney General's Regulation number 15 of 2020, which regulates the termination of prosecution based on the principle of restorative justice. In addition, the decree of the Director General of the General Judicial Agency of the Supreme Court number 1691 of 2020 provides guidelines regarding the application of restorative justice in the general judicial environment. No less important, the Indonesian National Police Regulation number 8 of 2021 regulates the handling of criminal acts with a restorative justice approach at the investigation and investigation stages. These three regulations collectively support the implementation of restorative justice in the criminal justice system in Indonesia.

1. Conditions and mechanisms for terminating the prosecution of criminal acts based on restorative justice based on the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution in the Circulation of Restorative Justice:

Restorative conditions:

- a. The suspect has only committed a criminal act for the first time.
- b. Criminal acts are only threatened with a fine or threatened with imprisonment for not more than 5 (five) years
- c. The criminal act is committed with the value of evidence or the value of losses incurred as a result of the criminal act not exceeding Rp 2,500,000.00 (two million five hundred thousand rupiah).
- d. Return goods obtained from criminal acts to the victim
- e. Compensate for victims' losses
- f. Reimbursement of costs incurred as a result of a criminal act
- g. Repairing the damage caused by the crime (there has been a peace agreement between the victim and the suspect).

Mechanism restorative justice :

- a. The Public Prosecutor offers peace efforts to victims and suspects
 - b. Peace efforts as referred to in paragraph (1) are carried out without pressure, coercion, and intimidation.
 - c. Peace efforts as referred to in paragraph (2) are carried out at the prosecution stage, namely at the time of handing over responsibility for the suspect and evidence
2. Terms and mechanisms for handling crimes based on restorative justice, based on the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice:

Restorative justice requirements:

- a. Does not cause unrest and/or rejection from the community
- b. No impact on social conflicts
- c. Does not have the potential to divide the nation
- d. Not radicalism and separatism
- e. Not a repeat of the Criminal Offense based on a Court Decision
- f. Not a Crime of Terrorism, a Crime Against State Security, a Crime of Corruption and a Crime against People's Lives
- g. Peace from both sides
- h. Fulfillment of victims' rights and responsibilities of perpetrators
- i. Returning items
- j. Indemnification
- k. Replacing costs incurred as a result of a criminal act
- l. Replace the damage caused by the Criminal Act.

Restorative Mechanism:

- a. Submit a written application letter to the Resort or Sector Police Chief
- b. The application letter was made by the Perpetrator and the Victim, including a Peace Statement and Evidence of the Restoration of the Victim's Rights
- c. Police invite parties to the conflict
- d. The police mediate between parties
- e. Make a report on the results of mediation
- f. Document completeness research
- g. Clarification to the parties and stated in the minutes
- h. Submission of an application for approval to carry out a special case title
- i. Preparation of the report on the results of the case title
- j. Issuance of an order to stop the Investigation and a decree to stop the Investigation for reasons for the sake of law.

The regulation regarding restorative justice in Police Regulation Number 8 of 2021 is different from similar arrangements in other institutions. For example, Attorney General's Regulation Number 15 of 2020 regulates the termination of prosecution based on restorative justice, while Law Number 11 of 2012 applies diversion to children's cases. The main difference lies in the limitations of the type of crime: other laws often set limits such as maximum criminal threats and fines, while Police Regulation Number 8 of 2021 does not explicitly set such limits.

Police Regulations allow for the application of restorative justice without the limitation of criminal threats or fines, which can raise problems such as potential abuse of authority. For example, in the case of theft with aggravation in Bengkulu, the perpetrator who was

threatened with a sentence of 7 years in prison was not limited by the provisions of restorative justice.

The application of restorative justice by law enforcement focuses on resolving cases through an approach involving perpetrators, victims, and the community, in order to achieve restoration of the original state and peace. This concept aims to restore the relationship between the perpetrator, the victim, and the community without prioritizing criminalization.

In practice, restorative justice seeks to equalize the rights of perpetrators and victims and avoid injustice. Police Regulation Number 8 of 2021 stipulates that this approach can be carried out at the investigation and investigation stages, by involving various parties to seek a fair settlement. However, these regulations do not set clear boundaries like regulations in other institutions.

In general, supervision in the application of restorative justice is carried out by police institutions to ensure social recovery and balance. The authority of the police includes handling minor crimes with this approach, while the Attorney General's Regulation Number 15 of 2020 and the Circular Letter of the Director General of the Supreme Court Number 169 of 2020 provide more detailed guidelines regarding the limits and procedures for the implementation of restorative justice.

4. CONCLUSION

Police Regulation Number 8 of 2021 concerning the Handling of Crimes with a Restorative Justice Approach is based on the discretionary authority of the police as regulated in Law Number 2 of 2002 concerning the Police of the Republic of Indonesia and aims to complement and improve the Circular Letter of the National Police Chief Number 8 of 2018. This regulation reflects the need to resolve cases outside the court at the investigation and investigation stages, taking into account the principles of restorative justice regulated in various other legal regulations, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Attorney General's Regulation Number 15 of 2020. Although the Police Regulation does not explicitly mention the limitations that existed in the previous regulations, such as maximum criminal threats or fines, it seeks to integrate the principles of recovery and reconciliation in the handling of criminal cases.

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