

## Restorative justice penal system based from value of justice: A study in Kotawaringin city of Indonesia

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### Abstract

The study aims to examine and analyze the application of restorative justice system in the justice-Based Value conducted in west Kotawaringin city Police Resort. This study method of research is descriptive analytical, which used in order to reveals the related law relating to the legal theories that has become the object of research. The findings in this research are that the application of restorative justice to the perpetrators of criminal acts is done to accommodate the votes of the people involved, and provide input to the leadership or the competent in the making of laws / regulations / provisions to legalize restorative justice as one way in settling the case with More humane reasons and put forward a sense of justice and conscience, so that will be obtained legal and formal legal standing, as a form of application of modern law.

**Keywords:** *restorative justice*, penal system, crime, value of justice, kotawaringin

### Introduction

The tasks carried by the police are not light, especially the tasks that involve maintaining public order and security. However, in carrying out it must be based on legal norms, religious norms, courtesy, propriety and must always uphold basic human rights (HAM). Recently in Indonesia, the criminal law has developed a new discourse to address a crime that is considered to be restored. The discourse is known as a paradigm of punishment called restorative justice, in which the perpetrator is encouraged to correct the harm he has inflicted on the victim, his family, and society. For that, the main program is "a meeting place for people" to find solutions to repair relationships and damage caused by crime (*peace*)<sup>[1]</sup>.

The concept of restorative justice is a process involving all parties involved in a crime, participating in solving the problem and its implications in the future. It is clear that not only the perpetrators must be considered but all parties involved must also be involved in solving the case.

Mediation has been known as one of the alternative dispute resolution mechanisms used in-out of court dispute resolution method ranging from matter from business, environmental, labor, land, housing, and so forth cases that embody the public demand for fast, effective and efficient dispute resolution. So the author wants to understand how the reconstruction of peace in implementing restorative justice at the level of criminal investigation based on progressive law The principle of mediation is the way of settling disputes outside the court through negotiations involving third parties that are neutral (non-intervention) and impartial (impartial) and accepted its presence By the parties in dispute<sup>[2]</sup>.

This research uses analytical-descriptive method of research<sup>[3]</sup>,

Namely a research that aims to describe in a systematic, factual and accurate a particular population or region, about certain traits, characteristics or factors. This study examines the role of investigators in the reconstruction of restorative justice systems in criminal justice-based criminal justice malpractice, the weakness of restorative justice system in current progressive law-based justice crime, and the application of restorative justice system in criminal justice crime based on progressive justice value In west Kotawaringin police resort.

The data sources of this study include secondary data and primary data. Primary data were collected from interviews with resource persons and respondents, with tools in the form of interview guidelines. The interview was conducted using a pre-prepared questionnaire as an interview guide. The interviews used in this study are structured interviews<sup>[4]</sup>. Whereas secondary data are obtained thru literary research.

The data obtained then are grouped based on the formulation of predetermined problems, then analyzed by using qualitative methods. Conclusions are drawn inductively, ie from things that are specific to the things that are in general<sup>[5]</sup>.

### Research result and discussion

The Role of Investigators in the Restorative Justice System of Police Crimes, in law enforcement is an agency that deals directly with the violators of the law. In Article 13 of Law Number 2 Year 2002 on the Law of the Republic of Indonesia states that: "The duty and authority of the police is to maintain the security and order of the people, to uphold the law, and to provide protection, wisdom and service to the community".

The investigator in the activity to collect the evidence, is authorized to perform certain actions to him, thereby enabling him to complete the investigation and ready to be submitted to the Prosecutor.

Investigations conducted by the investigator are focused along legal issues. The starting point of investigation before the

<sup>1</sup> Kuart Puji Prayitno, *Restorative Justice* for Indonesian's Court, DIPA UNDIP No. 0160.0/023-04.2/XIII/2009, 18 March 2009 and Surat Perjanjian Pelaksanaan Hibah Penelitian Program Doktor No. 124B/H7.2/KP/2009 tanggal 18 Maret 2009, Universitas Negeri Jenderal Soedirman, p : 408.

<sup>2</sup> *Ibid.*, p : 58.

<sup>3</sup> Bambang Sunggono, 2001, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta, P : 36.

<sup>4</sup> *Ibid.*, p: 24.

<sup>5</sup> Aslim Rasyad, 2005, *Metode Ilmiah : Persiapan Bagi Peneliti*, UNRI Press, Pekanbaru, p : 20.

investigator is the suspect. From him are then obtained information about criminal events being examined. However, even if the suspect becomes the starting point of the examination, it must be applied to the accusation principle. Suspects should be placed in human positions that have dignity. He should be judged as a subject, not an object. The act of criminal acts committed is the object of examination. The examination is directed towards a criminal offense committed by the suspect. The suspect shall be deemed innocent, in accordance with the principle of the law of "presumption of innocence" until a decision of a court of law has been established <sup>[6]</sup>.

The approach of restorative justice system is considered as it offer a more comprehensive and effective solution as it aims to empower victims, perpetrators, families and communities to improve the actions / effects of unlawful acts, using awareness and persistence as the foundation for improving the living order of the society. Restorative justice approach is needed because the criminal justice system that has been adhered to in fact promotes retributive justice (retaliation) and restitutive (compensation), and gives enormous authority to the state and / or delegates to law enforcement officers (Police, Prosecutors and Judges ) To settle all criminal cases. This is at the empirical level that are considered less satisfactory. Because the perpetrators and victims are not given the opportunity to convey the version of justice they want. Therefore, it is not surprising that a crime that should be resolved by agreement between the parties must always be brought to justice, resulting in the saturation of the case in court.

The results of this study have paradigmatic implications, particularly in relation to the tradition of positivistic legal thinking that has evolved so far that the laws act as the only absolute standard of truth, whereas customary law (the law that lives in society) is only Seen as complementary. In one country must necessarily consist of the right to express and apply national identity even by minorities <sup>[7]</sup>.

In this study, a model of reconciliation between the victim and the participating parties involved in conducting deliberations to determine how much the cost of treatment and or repair of the vehicle in case of a car crash for example. The collective agreement process is witnessed by the Community Leader or local Village Apparatus without any interference from the investigator, after a reconciliation agreement are then proceeds to carry out what was agreed in a formal written Joint Statement. This peace process is actually a customary law that has long been valid in society. So it takes Paradigmatic changes from Positivistic, from a positivistic( Rule- Obeying ) Police to Police who able to fluidly find justice in the investigation of criminal acts of traffic based on Progressive Law

Through a restorative justice approach, a criminal offense can be resolved fairly by involving perpetrators, victims, their families and other parties involved in a crime, to jointly seek a resolution to the offense and its implications by emphasizing restoration Back to the original state of a relationship between

individuals, groups, families, and societies, injured by the actions of criminals. Restorative justice approach, already recognized and applied by other countries in continental Europe and Anglo Saxon <sup>[8]</sup>.

According to Van Apeldoorn : "The purpose of the law is to regulate the intercourse of living in peace". Peace among men is preserved by law by protecting the rights and interests of human society concerned with honor, freedom, soul, property, and so on from harmful acts <sup>[9]</sup>. Implementation of restorative justice on settling criminal cases of persecution as intended in Article 351 paragraph (1) and paragraph (2) of the Criminal Code jo. Article 352 of the Criminal Code in west Kotawaringin Police resort area is considered effective and efficient because :

- a) Establishes a joint participation between the perpetrator, the victim, and the community group to complete an incident or minor offense;
- b) Places perpetrators, victims, and communities as "stakeholders" who work together and directly seek to find solutions that are deemed fair to all parties (win-win solutions);
- c) Encourage completion of an event or offense in more informal and personal ways, rather than settlement in formal (rigid) and impersonal ways of attorney;
- d) To persuade perpetrators of the persecution not to repeat their actions and to constantly engage in personal and social relationships with victims peacefully.

Judging from the perspective of the objective of law, the application of restorative justice to the acts of minor maltreatment, closely matches the priority theories of case approach that teach the application of priority depends on the case at hand. In addition, it also corresponds to the progressive legal theory which asserts that the law is made for man, not the other way around (man for the law). Compared to the formulation of Article 581 to Article 590 of the Draft Law on the Criminal Code above, with the formulation of Articles 351 to 355 of the Criminal Code, there is an expansion of the offense of maltreatment not only of maltreatment of the body, but also the inclusion of factional groups and domestic violence Ladder as a "crime offense". In addition, the formulation of sanctions is also more severe and the weight of 1/3 of the maximum criminal threat. Applied Restorative Justice System In Criminal Justice-Based Persecution Progressive Lawsuit

Crime becomes one of the important issues that must be addressed by the legal apparatus. The high level of crime in Indonesia is one proof that so many crimes and violations occur. Criminal acts are closely related to the role of law enforcers either directly or indirectly have an important role in every case resolution. However, law enforcers in Indonesia are only guided by the formal paradigm, one of which is regulated in the Criminal Procedure Code (Criminal Procedure Code). As long as law enforcement officers do not change the idea that the main purpose of criminal law enforcement is to realize truth and justice, as long as the legal process will cause controversy <sup>[10]</sup>.

<sup>6</sup> M. Yahya Harahap, 2000, *Pembahasan Permasalahan Dan Penerapan KUHAP, Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta, p : 134.

<sup>7</sup> Wahyu Widodo, Sapto Budoyo and Maryanto, *Understanding The Concept Of Nationalism : Using Comparative Law For A Better Indonesian Immigration System In Handling The Illegal Immigrant*, International Journal of Humanities and Social Sciences. ISSN 2250-3226 Volume 7, Number 1 (2017), p : 23.

<sup>8</sup> Harian Bangsa, 23 Juni 2011. Darsem Lolos dari Pancung.

<sup>9</sup> Van Apeldoorn, 1958, *Inleiding tot de Studie van Het Nederlandse Recht*, Terjemahan M. Oetarid Sadino, *Pengantar Ilmu Hukum*, Noordhoff-Koff, Jakarta, p : 20.

<sup>10</sup> Gustav Radbruch, *Teori Gabungan (vereniging theori)* dalam Muhammad Taufiq, "Model Penyelesaian Perkara Pidana Yang Berkeadilan

One of the process in law enforcement, namely investigation, that are carried out police officer known as investigators. The investigation conducted by law enforcement officers (investigators) who was still far from the sense of justice expected by the community. Handling is too fixated with legislation, so it can be seen that the understanding of law enforcement officers against the law became one of the causes of failure to realize substantial justice. The application of the law has tended to lead to syllogism in which the judge only confronts that the law can be applied to the event, then the judge applies it according to the law <sup>[11]</sup>.

The legal system is not only refers to the rules (codes of rules) and regulations (regulations), but covers a broad field, including structures, institutions and processes (procedures) that fill it and associated with living law in the community (living law) and Legal structure (legal structure) <sup>[12]</sup>. According to Lawrence Friedman, elements of the legal system consist of legal structure (legal structure), legal substance (legal substance) and legal culture (legal culture). Based on Friedman's theory if it is associated with the development of national legal system in Indonesia, then the national legal system is the unity of various national subsystems, namely the substance of national law, the structure of national law, and national legal culture. Based on the research conducted by the author shows that there are still weaknesses to the legal system in Indonesia as seen from the substance, structure and legal culture <sup>[13]</sup>. The poor legal system in Indonesia is the root of the failure to realize substantial justice in the criminal justice system.

In relation to the criminal justice system, failures in law enforcement and legal empowerment are suspected because of its submissive attitudes towards the completeness of existing laws such as procedures, doctrines and legal principles of Indonesia, in addition to the inability of criminal justice systems in carrying out their duties. The result raised a number of questions that question the extent to which the efficiency of the judiciary can be relied upon as a justice seeker, amid the unprofessional apparatus of the Prosecutor and other law enforcement agencies, which leads to dissatisfaction with the existence of the judiciary in this country. Especially if the judicial system is also controlled by the judicial mafia.

Judicial mafia is the cause of failure to function justice as a means of seeking justice. So widespread and deep-rooted. the Judicial mafia action is seen from so famous mafia term justice itself. Judicial mafia is defined as a systematic, conspirative, collective action perpetrated by certain actors affecting the law enforcement process and thus the mafia plays a role in violation of human rights. Moving from the practice of judicial mafia this then developed into judicial corruption. The ideal law enforcement institution according to the author should be progressive. Law enforcers must be able to explore justice beyond the text of legislation. This is in line with Satjipto Rahardjo's opinion which in his theory states that the law is not

only a law as a written in a text, in which there is a spirit of a society beyond what's written in a codes. Contrary to That, Laws are often still interpreted as mere letters that are printed in a rule, because of that the law is nothing more than a living skull that runs without a life.

Pancasila is the five teachings of Indonesia. The first principle of Pancasila is trust in God Almighty; the second is a just and civilized humanity; the third is the unity of Indonesia; the fourth is the one who is directed by wisdom in the consideration of representation; and the fifth is social justice for all Indonesians. Indonesians believe that every law; General or law within the Indonesian legal system must always contain the spirit of Pancasila <sup>[14]</sup> based on the argumentation provided above, the authors are then compose three propositions. The first is restorative justice should be a legal principle that can overcome the rule of law, such as punishment rules. Second, Opinion to instill restorative justice in the hybrid political philosophy of the Republican-feminist-socialist-capitalist. Third, is to transcends the jargon "from Persia to China: The Silk Road of Restorative Justice", which identifies the earliest example of this Hybridity from Iran to China, to advance normative hybridity accounts. Traveling the Silk Road is a metaphor for comparative methods needed The reformers who seek better governance through hybrid government <sup>[15]</sup>.

Through restorative justice, not all criminal cases must be settled on the green table, but can be terminated between themselves. Between the perpetrator and the victim. Settlement through restorative justice in the future will lead to completion flexibly without having to stick to law and law enforcement. However, it must first be seen to how to apply the restorative justice in Indonesia.

### Implementation of Restorative Justice System in Crime of Justice Based Violence

Fundamental changes that occur in the criminal penal system, thus affecting also in the system of investigation such as criminal investigation system that prioritizes the protection of human rights; Increasing the guidance of each law enforcement officer in accordance with their respective powers and functions; Presence of functional and institutional coordination relationship and synchronization of implementation; Indonesia's Police Institution (Polri) as the main investigator is obliged to coordinate the investigator of officials, civil servants by providing guidance and assistance supervision; Narrower authority restrictions and more rigorous supervision of investigators to uphold the law and protection of human rights; The obligation of the investigator to provide appropriate treatment with the obligation to provide protection and protection, for example in the case of a defendant incapable and having no legal counsel; And limiting the authority and tightening of surveillance against investigators who are accompanied by defenders to the suspects being examined. According to Satjipto Rahardjo that progressive law enforcement is to keep the law not merely as its a written rule (according to the letter), but according to the spirit and meaning of deeper (to very meaning) of the law or law. Law enforcement is not only intellectual intelligence, but with

Substansial<sup>11</sup>, diunduh dari [http://mtaufiq-advokat.blogspot.com/2013/11/model-penyelesaian-perkara-pidana-yang\\_27.html](http://mtaufiq-advokat.blogspot.com/2013/11/model-penyelesaian-perkara-pidana-yang_27.html), 24 May 2015.

<sup>11</sup> Suteki, Kebijakan Tidak Menegakkan Hukum (*Non Enforcement of Law*) Demi Pemuliaan Keadilan Substansial, Proffesor Inaugura Speech, Semarang, 4 August 2010, p : 5-7.

<sup>12</sup> *Ibid.*, p : 5-6.

<sup>13</sup> <http://www.republika.co.id/berita/breaking-news/hukum/09/12/05/93567-dilaporkan-men-curi-pisang-seorang-kakek-dipenjara> . Diakses tanggal 1 Juni 2012 Pukul 12.55

<sup>14</sup> Teguh Prasetyo, *Criminal Liability Of Doctor In Indonesia (From A Dignified Justice Perspective)*, *Int. J. Adv. Res.* 4(10), 1223-1229ISSN: 2320-5407, 2016, p : 1223

<sup>15</sup> John Braithwaite, *Hybrid politics for justice: the Silk Road of restorative justice II*, *Restorative Justice*, 5:1, (2017) p : 7

spiritual intelligence. In other words, law enforcement is done with full determination, empathy, dedication, commitment to the suffering of the nation and with the courage to find a way other than the usual <sup>[16]</sup>.

The criminal law system in Indonesia implies that criminal execution is essentially detached from the will of the people, so in general criminal law provisions remain violated despite the consent of the aggrieved party, this is of course different from the system in civil law. The world of legal science recognizes there is a separation between public law and private law but in many legal relationships, there are many that contain both public and private elements together. It is proper, in essence, that all laws govern human behavior in society for the salvation of society, whereas society is made up of man, then the interests of society are always a factor in all rule of law but in a certain legal relationship, the circumstance is such that the point The weight is in the interests of one human being, while in other relations it is the emphasis is on the public interest <sup>[17]</sup>.

The process of examination of the perpetrators of criminal acts in general in West Waringin are conducted based on sufficient evidence and asked to the examined the rights of the Suspect especially the right to be accompanied by the Legal Counsel (PH) <sup>[18]</sup>, While the process of examination of the perpetrators of criminal acts of persecution if using the approach restorative justice system of west Kotawaringin, the examination carried out in accordance with existing procedures and if the approach are done thru restorative justice system then usually between perpetrators with victims already found a peaceful reconciliation, already no parties feel harmed so then the restorative justice system can be well implemented <sup>[19]</sup>.

## Conclusion

From the constraints faced in the construction of law relating to Reconciliation as a legal standing in the implementation of restorative justice at the level of investigation of crime is a prominent constraint found in the field of weak law enforcement in Indonesia which in substantially there is no legal standing for restorative justice as a rule or Provisions that are legally formal as one form of settlement of criminal cases.

The application of restorative justice to the perpetrators of criminal acts is to accommodate the votes of the communities involved, and provide input to the leadership or the competent in the making of laws / regulations / provisions to legalize restorative justice as one way in the settlement of the case on the grounds of more humane and put forward a sense Justice and conscience, so that will be obtained legal and formal legal standing, as a form of application of modern law.

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<sup>17</sup> Wirjono Projoedikoro, *Asas-asas Hukum Pidana di Indonesia*, Refika Aditama, Jakarta, 2003, hlm. 2

<sup>18</sup> Bripka Kamarullah, assistant investigator interview results, 29 August 2015.

<sup>19</sup> Bripka Kamarullah, assistant investigator interview results, 29 August 2015.