



Termination of investigation in criminal action settlement by prioritizing restorative justice

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Abstract

The purpose of this study is to find out and explain the mechanism for stopping investigations in the settlement of criminal acts by prioritizing Restorative Justice and to find out or explain the implementation of stopping investigations based on restorative justice in the Aceh Regional Police. This article uses an empirical legal research approach (applied law research) by looking at how the implementation occurs in the field, namely seeing how a case that has begun its investigation must end at the investigation level based on Police Regulation No. 8 of 2021 concerning Termination of Investigation based on Restorative Justice. The results of the study found that the mechanism used was to call the litigants for mediation before the case was transferred to the public prosecutor stage with the condition that it must meet material requirements, namely not causing unrest and rejection from the community, not having an impact on social conflict, not having the potential to divide nation, not radicalism or separatism, and not the use of a criminal act then the parties who are experts agree to make peace in which the perpetrator is obliged to fulfill the rights of the victim referred to here is to return goods, compensate for losses, replace costs incurred from as a result of a criminal act and to replace the damage caused by a criminal act and on the basis of this peace, this is the basis for stopping the investigation based on restorative justice and its implementation in the field has shown a change in the settlement of cases and the concept of restorative is effective in handling a case without causing turmoil in society.

Keywords: restorative justice, criminal law

Introduction

The Criminal Procedure Code (KUHAP) broadly recognizes 3 (three) stages of examining criminal cases, namely the Investigation Stage, Prosecution Stage and Examination in Court, known as the Integrated Criminal Justice System. An integrated system means that the authority for investigation, prosecution and trial, although carried out by each law enforcer in accordance with their authority at each stage, is still a unified whole or interrelated with one another in a criminal justice system. Investigative activities include the activities of investigators to seek and collect evidence and with that evidence to make light of the crime that occurred and to find the suspect (Frans Maramis, 2012) ^[9].

In this case, Polri investigators are given the authority to carry out investigations and investigations to determine whether the case is a criminal act or not as regulated in Article 7 paragraph (1) letter a of the Criminal Procedure Code, because of their obligation to have the authority to receive reports or complaints from someone. Regarding the existence of a criminal act, here we can mean that a case can be categorized and can be raised for prosecution based on the results of the examination at the investigation stage carried out by the investigator.

Nowadays, the punishment of confinement or imprisonment is no longer appropriate because it creates many new problems so that criminal law should be made a last resort in terms of law enforcement. This has meaning if a case can be resolved through other channels, namely kinship, negotiations, mediation, civil and administrative law should be taken first, so that in this case it is deemed necessary for the National Police Chief to issue the National Police Chief Regulation Number 8 of 2021 concerning stopping investigations by putting forward Restorative justice as a legal product by prioritizing the principle of ultimum remedium or punishment as a The last resort in law enforcement means that if a case can be resolved at the investigation stage, the National Police investigator is authorized to stop the case in order to achieve justice, benefit and legal certainty.

The implementation of the authority to investigate and/or investigate criminal acts by Polri Investigators who apply the principles of restorative justice in their investigative methods can be based on the provisions of Article 7 paragraph (1) letter j of Law Number 8 of 1981 KUHAP, that "investigators because obligation to have the authority to take other actions according to the law that is responsible" and Article 18 of Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia explains that "For the public interest, officers of the State Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment". Furthermore, in Article 22 paragraph (2) letters b and c of Law no. 30 of 2014 concerning

Government Administration states that "every use of discretion of government officials that aims to fill legal voids and provide legal certainty".

Hanafi Arief in his article stated that restorative justice aims to empower victims, perpetrators, families, and the community to correct an act against the law by using awareness and conviction as a basis for improving social life, explaining that the concept of Restorative Justice is basically simple. Restorative Justice is a theory of justice that emphasizes the recovery of losses caused by criminal acts. Restorative justice approach focuses on the needs of both victims and perpetrators of crime. In addition, the Restorative Justice approach helps criminals to avoid other crimes in the future (Hanafi Arief, 2018).

Furthermore, Repeat Mangun Sosiawan explained that Restorative Justice is a main approach, which currently, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, must be carried out in cases of children who are in conflict with the law. This approach focuses more on the conditions for creating justice and balance for the perpetrators of criminal acts and the victims themselves. Procedures and criminal justice mechanisms that focus on sentencing are transformed into a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is more fair and balanced for the victims and perpetrators (Ulang Mangun Sosiawan, 2016).

In its development in Aceh, restorative has become an alternative settlement of the dominant case in Aceh, considering the culture of the Acehnese society which is thick with kinship and besides that the Acehnese people who are familiar with the qanun first have a case resolution rule which we know as the gampong qanun so that every problem has to be resolved first at the village level with the presence of restorative justice in the police, there are many cases that can be resolved, resolved, but there are also cases that can still be continued, meaning that not all cases can be carried out with a restorative justice approach. Cases that can be applied to restorative justice are cases that have fulfilled the material and formal requirements contained in Article 5 and Article 6 of Perpol Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. The material requirements are that it does not cause unrest or rejection from the community, does not have an impact on social conflict, does not have the potential to divide the nation, is not radicalism and separatism and is not a repeat offender based on court decisions. Furthermore, the formal requirements are the existence of peace from both parties, except for narcotics crimes, and the fulfillment of the rights of the victims and the responsibility of the perpetrators for narcotics crimes.

Based on Article 14 of Perpol Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, the procedure for implementing restorative justice in the Police begins with inviting the conflicting parties, facilitating or mediating the parties, making a report on the results of the implementation of mediation and recording in the register of restorative justice solvers. Problems and the termination of the tipping investigation. Departing from this background, in this case, the "Mechanism of Termination of Investigation in the Settlement of Crimes by Prioritizing Restorative Justice and Implementation of Termination of Investigations Based on Restorative Justice in the Aceh Regional Police". The application of a mechanism is necessary to raise this problem into a thesis research with the formulation of the problem of how to stop investigations in the settlement of criminal acts by prioritizing restorative justice and restorative justice as the latest model in the settlement of criminal cases.

Materials and Methods

The research method used in this research is empirical juridical. Empirical juridical research is field research, namely examining the applicable legal provisions and what is happening in reality in society. In analyzing the problem, it is done by combining legal materials with data obtained directly from field activities in this research, namely the Aceh Regional Police (Polda Aceh) (Suharsimi Arikounto, 2012). The approach method used in this research is a sociological juridical approach, which conceptualizes law as a real and functional social institution in a real life system (Soerjono Soekanto, 1968).

Results and Discussion

Mechanism of Termination of Investigation in the Settlement of Crimes by Prioritizing Restorative Justice

Whereas in the process of investigating and investigating criminal acts, it is the entry point for criminal law enforcement through the criminal justice system in Indonesia. Therefore, the process of investigating and investigating a criminal act is the main key in determining whether or not a criminal case can proceed to the prosecution and criminal justice processes in order to realize the legal objectives of justice, legal certainty and expediency while still prioritizing the principles of justice which are simple, fast and low cost. The Indonesian National Police, hereinafter referred to as Polri, is a state instrument that plays a role in maintaining public security and order and also plays a role in law enforcement and provides protection and services to the community in the context of maintaining domestic security (Fuji Lestari Hasibuan, 2018).

Investigators of the State Police of the Republic of Indonesia in terms of law enforcement are given a fairly large and broad authority as an entry point in the criminal justice system where initially the investigation is carried out by Polri investigators in order to find a criminal act and for a case where a criminal act is found, the investigator The National Police is obliged to delegate the case to the prosecution as regulated in Article 8 of the Criminal Procedure Code paragraph (2) the investigator submits the case file to the public prosecutor and after the prosecutor conducts research and the examination is declared complete, the case is immediately brought to trial (Supriyanta, 2019) [34]. In the event of termination of investigation as regulated in Article 109 paragraph (2) of

the Criminal Procedure Code. An investigator, both Polri and PPNS, in stopping the investigation of a case must be based on the following reasons:

- a. There is not enough evidence
- b. The incident turned out to be not a criminal act;
- c. The investigation was stopped for the sake of law, namely because the case was *nebis in idem*, the defendant died, the case expired/*verjaring* and the case was withdrawn which was a complaint offense.

In this case, the termination of the investigation which was previously based on Article 109 paragraph (2) of the Criminal Procedure Code, the object is actually increased by the National Police Chief Regulation Number 8 of 2021 concerning Restorative justice, in which the contents of this political regulation regulate the termination of previous investigations that are not regulated in the Criminal Procedure Code and other laws. other laws with the existence of this political regulation can answer our dynamic legal developments (Virgina Garcia, 2020) ^[37].

In positive Indonesian law (KUHAP and KUHP), the principle is that criminal cases cannot be resolved through peace, however, in practice there are several criminal cases that are resolved peacefully, including: through the discretion of law enforcement officials, customary institutions, and the Juvenile Criminal Justice System. In criminal cases, reconciliation does not eliminate criminal acts, peace is only limited to providing relief from criminal threats that will be imposed on judges. Most of the time, the one who bridges peace in criminal cases is the police by making a peace deed agreed upon by the parties and then to carry out according to the agreement (Randy Pradityo, 2016) ^[24].

Based on the system adopted by the Criminal Procedure Code, the stages that must be passed systematically in criminal justice are: The investigation stage by the police. Prosecution stage by the prosecutor, to the stage of examination in court by a judge (Article 8 to Article 214 paragraph (7) KUHAP). However, with the National Police Chief Regulation Number 8 of 2021 concerning Restorative justice, it stopped at the investigation stage and clearly this disturbs our criminal justice system as regulated in the Criminal Procedure Code and is contrary to the principle of legality which should be included in the investigation and out in the decision or execution. So based on empirical facts, procedural justice is no longer relevant to be applied.

Restorative justice or in other terms often referred to as restoration justice (restorative justice) is a new approach in efforts to resolve criminal cases, even restorative justice is not a new thing in the criminal justice system because it was previously regulated in the SPPA (child criminal justice system) or which we often know as diversion or settlement outside the court. The approach or concept of restorative justice or recovery justice focuses more on the participation or direct participation of perpetrators, victims and the community in the process of resolving criminal cases (Ahmad Faizar Azhar, 2019) ^[2].

To unravel the problem of the nature of stopping an investigation for the sake of law, the theory of the purpose of law and the theory of the purpose of punishment is used, and the theory of authority of the institution. The police as law enforcers and builder of public security and order, there are three main functions of the National Police, namely, community guidance, preventive and repressive.

The relevance of the Police's authority in carrying out their duties as public officials is an authority that is obtained by attribution which is normatively regulated in the Police Law. without having to obtain approval from the central government, are free to carry out their functions and authorities as long as they do not conflict with the laws and regulations governing them.

Restorative justice itself has the meaning of restoring justice. In the conventional criminal justice process, restitution or compensation is known. victim, while restoration has a broader meaning. Restoration includes restoring the relationship between the victim and the perpetrator. "Investigation is a term that is intended to be parallel to the meaning of *opsporing* (Dutch) and investigation (UK) or tactics or tactics (Malaysia)."1 Article 1 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Code, investigators are state police officers of the Republic of Indonesia. Indonesia or certain civil servants authorized by law to conduct investigations.

Article 1 paragraph (2) of the Regulation of the Head of the National Police of the Republic of Indonesia concerning the Management of Criminal Investigations defines an investigation as follows: "A series of investigative actions in terms of and according to the method regulated in this law to seek and collect evidence which with the evidence makes clear information about the crime that occurred and to find the suspect (Andi Hamzah, 2008).

ADR (Alternative Dispute Resolution) is relatively new in Indonesia, but in fact, consensus resolution of disputes has long been carried out by the community, which essentially emphasizes efforts to reach consensus, kinship, peace and so on. Dispute Resolution Options or also known as Alternative Dispute Resolution which in foreign terms is called Alternative Dispute Resolution hereinafter abbreviated as ADR is a concept that includes various forms of dispute resolution apart from the judicial process through legal means, both based on a consensus approach, such as negotiation, mediation and conciliation or not based on a consensus approach, such as arbitration.

Arbitration takes place on the basis of an adversarial approach (dispute) that resembles a judicial process so as to produce a winning and losing party. Observers and practitioners who discuss Restorative Justice so far have essentially not been included in the traditional criminal justice process. Victims are only needed as witnesses when necessary, but they are not involved in policy decision-making at all. Decision making is only carried out by judges based on examination during the court process. "For the perpetrators, their involvement in the court is

only passive, most of their roles and participation are represented and voiced by their lawyers (Saifullah, 2007). To realize the aspired justice so that a view of Restorative Justice emerges. The idea of Restorative Justice first appeared among criminal law experts as a reaction to the negative impact of the application of criminal law (sanctions). Restructuring with the presence of Restorative Justice implies a realignment of Restorative Justice. In relation to rearranging the building of the Indonesian criminal law system, the term restructuring is very close to the meaning of reconstruction, namely: rebuilding the national criminal law system. So the two terms are closely related to the problem of law reform and law development, especially with regard to the renewal or development of the criminal law system (penal system reform/development or often referred to briefly as penal reform).

Based on observations and interviews with perpetrators and victims of criminal acts as well as law enforcement officers who directly handle cases, the mechanism carried out is through the following steps, first; summon the litigants, second; summoning village officials or families who are in litigation and then mediation is carried out to be resolved amicably to reach a peace agreement without compromising the rights of the victims themselves as regulated in Police Regulation No. 8 of 2021 concerning Termination of Investigations Based on Restorative Justice and of course In each of the pores and sectors in Aceh, there are some differences, but they are not substantive.

Implementation of Termination of Investigation Based on Restorative Justice in the Aceh Regional Police.

Restorative Justice according to Zehr “is an effort to meet the needs of both perpetrators and victims that leads to rehabilitation for perpetrators and healing for victims within their own communities. The parties will feel fair and guarantee from the community that the suffering of the victim is indeed a wrong action on the part of the perpetrator” (Zehr, 1990) ^[39].

Marshall believes that the main purpose of restorative justice is to meet the needs of victims and their families and provide opportunities for perpetrators to be held accountable for their actions. Restorative justice is defined as a procedure that directs various institutions and groups to solve crime problems by actively involving victims, perpetrators and the community (Marshall, Tony F, 1991) ^[19].

Judging from the development of the theory of punishment, which initially focused on the position of the perpetrator, it continued to the important role of the victim. In the development of criminal thinking, a new Criminal Philosophy was born which is oriented towards the settlement of criminal cases that benefit all parties, both victims, perpetrators and the community. In resolving a criminal case, it is unfair if solving a criminal problem only pays attention to one interest, both the perpetrator and the victim. So we need a theory of sentencing objectives that represent all aspects of resolving a case, both victims, perpetrators and the community (Muladi, 1995) ^[21].

Restorative justice is highly emphasized on efforts to protect the community and the responsibility of the perpetrator to recover the damage caused by his crime so that the perpetrator can be integrated with the community, these two emphases reflect the close relationship between restorative justice and reintegration. Restorative justice is an effort or a new model approach in Indonesia that is very close to the principle of deliberation which is the soul of the Indonesian nation (*volkgeist*). to provide the best solution in resolving private crime cases between people (*natuurlijkpersonen*) or legal entities (*recht personen*) by giving priority to the core problem of a crime.

Settlement objectives that are important to note are the improvement of the social order of the community that has been disrupted due to crime events, restorative justice focuses on the process of direct criminal responsibility from the perpetrator to the victim and the community, if the perpetrator and the victim and the community whose rights have been violated feel that something has been achieved. justice through joint deliberation efforts, then punishment (*ultimum remedium*) can be avoided.

The application of restorative justice in cases of minor threats of crime provides flexibility to the community in solving problems in the community, in this case the settlement of minor criminal cases. Penal mediation allows it to be used in the process of resolving cases outside of conventional courts, as part of restorative justice. Based on the empirical facts of researchers in the application of restoratives at the General Criminal Directorate of the Aceh Police, there is a case that meets the criminal element or has sufficient evidence to be followed up and transferred to the public prosecutor based on the law, but because both parties have reconciled at the investigation level and the complainant withdraws return the report so that the case is stopped at the investigation level based on Perpol No. 8 of 2021 concerning the termination of investigations based on restorative justice which is contrary to the legality principle of the criminal justice system where the case that has begun its investigation should be continued or delegated to the Public Prosecutor but by the authority given by law to Polri investigators so that the case can be stopped at the investigation level.

Table 1: Data on Case Settlement through Restorative Justice in the Legal Territory of the Aceh Regional Police for 2017-2021

2017		2018		2019		2020		2021	
CT	CC	CT	CC	CT	CC	CT	CC	CT	CC
10.798	5.201	9.259	4.619	7.966	4.827	6.878	4.056	6.123	4.073
	49%		50%		61%		59%		66%

Source: Ditkrimum Polda Aceh

Based on this data, it is known that the percentage of restorative justice case settlements in the Aceh Regional Police jurisdiction from 2017-2021 experienced the highest increase, namely in 2021 with a presentation of 66% and the lowest in 2017 with a percentage of 49%. The increase in the case was motivated by the birth of Perpol No. 8 of 2021 concerning Termination of Investigations Based on Restorative Justice.

In principle, punishment accommodates the purpose of punishment from retributive to restorative. From retaliation to recovery or redress. This basic idea has become a stimulant in Perpol Number 8 of 2021. Although it must also be said, that not all criminal acts committed can be subject to restorative justice. There are at least two conditions that must be met when referring to Perpol No. 8 of 2021 concerning restorative justice, namely that they must meet formal and material requirements. Strictly speaking, restorative justice is a new institution in Indonesian criminal justice, so it requires further and comprehensive study.

This illustration shows that the implementation of investigations based on restorative justice in the Aceh Regional Police has received a positive response because many cases that can be resolved at the investigation stage are resolved without social conflict in the community, so that restorative justice can be achieved. The relationship between the nature and concept of restorative justice, the ambiguity between reality and the rules, findings in legal problems. In this case, how a case that begins its investigation must end at the level of investigation of police regulation No. 8 of 2021 concerning Termination of Investigation based on Restorative Justice. The results of the study found that the mechanism used was to call the litigants for mediation before the case was transferred to the public stage with the condition that it must meet material requirements, it is unlikely to cause unrest and disaster from the community, does not result in social conflict, does not divide. nation, not radicalism or separatism, and not the use of criminal acts, then the party who takes an action to make peace whose obligation to fulfill the rights of the victim referred to here is to return the goods, compensate for the loss, replace the costs incurred based on the crime as well as replacing the damage caused by criminal acts and on the basis of the peace that is the basis of considerations based on restorative justice and its implementation in the field there have been changes to cases and the concept of restorative is effective in handling a criminal case. There is no upheaval in society.

Conclusion

1. Based on the discussion above, it is known that the termination of Investigation in the Settlement of Crimes by Prioritizing Restorative Justice. is through the steps, first; summon the litigants, second; summon village officials or families in litigation and then mediate regulations to be resolved amicably to reach a peace agreement without compromising the rights of the victims themselves as regulated in Police No. 8 of 2021 concerning Termination of Investigations Based on Restorative Justice and of course on each -each party and sector in aceh there are some differences, but they will not be substantial.
2. Completion of investigations based on restoratives at the Aceh Regional Police (Polda Aceh) received a positive response because many cases could be resolved at the investigation stage without social conflict in the community, so that restorative justice could be achieved.

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