

# The Role of the National Police of the Republic of Indonesia in the Application of Restorative Justice

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## Abstract

Restorative justice is a process in which all interested parties to a particular offense meet together to resolve together to resolve together how to resolve the consequences of the violation in the interest of the future. Based on the findings in the field regarding the mechanism for handling restorative justice systematically, the mechanism for changing losses to victims in an effort to handle restorative justice cases by looking at it from the humanitarian side, namely between the two parties already understands each other and agrees with each other to finance the injuries caused to the victim and the change of losses must also be in accordance with the ability of the perpetrator, in the process of handling restorative justice cases must involve all stakeholders (all parties in society including individuals or groups who have an interest or role), this is done openly to reach an agreement between the two parties, this is done so that no one is harmed, besides that In handling the restorative justice case, the police cannot force the victim to only provide a place to conduct mediation and mediation only the village officials where both parties live, then Identify and take steps to recover losses for the victim. In addition to imprisonment that brings consequences to the families of prisoners, the current system is considered not to be a relief or cure for victims. Moreover, the legal process takes a long time. On the contrary, on the restorative model, what is emphasized is conflict resolution. The idea of Restorative Justice has also been accommodated in the draft criminal law book, namely the introduction of an alternative criminal system in the form of social work punishment and supervision punishment. So that in the end Restorative Justice pays attention at the same time to the interests of crime victims, perpetrators of crime and society.

**Keywords:** Role, Policing, Restorative Justice

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## 1. Introduction

Restorative justice or often translated as restorative justice is a model approach that emerged in the 1960s in an effort to resolve criminal cases (Nuraeni: 2019:84-97). Unlike the approach used in the conventional criminal justice system, this restorative justice approach emphasizes the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. Despite this fact that this approach is still theoretically debated, but this view is in fact developing and affecting many legal policies and practices in various countries.

In Indonesian restorative justice can be interpreted as a type of justice such as various teachings of justice, or as a concept of punishment that intends to find a way in enforcing a more just and balanced punishment system (Rudi Rizky: 2008: 3). For example, between the interests of the perpetrator and the victim, the current system of punishment is very little concerned about the victim, and it seems as if the provision of punishment or sanctions to the perpetrator is more towards "revenge". But in restorative justice, the purpose of punishment must be to formulate a sentencing goal that leads to a mechanism for achieving the goal.

The concept of restorative justice concerns the interests of the perpetrator and the obligations of the perpetrator, namely so that the perpetrator returns to be a responsible citizen both for the victim, his family and the surrounding community. In other words, this concept reflects how to solve criminal acts (acts) outside the judicial process or at least not fully following the criminal justice proceedings.

The purpose of punishment in restorative justice is to return the perpetrator to be a good and responsible citizen. Some examples of cases that can be resolved in restorative justice, traffic accidents that cause the death of the victim can be seen that the meeting between the perpetrator and the victim's family can be carried out as long as this is facilitated by the mediator.

The weakness of the criminal justice that exists today is that the victims and the community have not yet obtained their positions so that the interests of the two become neglected. Meanwhile, in the concept of resolving criminal cases using a restorative justice approach, the active role of these two parties is important in addition to the role of the perpetrator, because the victim is the most disadvantaged party in the crime (Flora: 2018: 142-148).

The concept of restorative justice originated from countries that used the common law system (anglo saxon) of the English language. Such as Canada, the United States, Australia, New Zealand and the United Kingdom. The English definition of restorative justice is "... is a form of conflict resolution and seeks to make it clear to the offender that the behaviour is not condoned (welcomed), at the same time as being supportive and respectful of the individual/s (Adrianus Meliala:2010). In general it is a form of conflict resolution and seeks to explain to the

abuser that the behavior is not forgiven (accepted), at the same time supporting and respecting the individual.

Restorative justice has also been regulated in the prosecutor's regulation of the Republic of Indonesia Number 15 of 2020 concerning the termination of prosecutions based on restorative justice. In Article 1 number 1, it is explained that restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly seek a fair settlement by emphasizing recovery back to the original situation and not retaliation.

Preliminary data, which was traced by the author in early May 2022, was obtained that at the Banda Sakti Police Station, the application of restorative justice has been carried out for about 2-3 years. But it was maximized around 2019. If taken from the average then in 2020 there were about 45 cases; in 2021 there were 401 cases and about 32 cases were solved by restorative justice. For 2022 (January-August) 581 cases resolved by restorative justice. The application also did not all go smoothly because there were also some who faced obstacles, such as the difficulty of reconciling the warring parties.

Therefore, law enforcement in Indonesia now still leaves various problems that must be resolved, especially criminal cases involving one party and another in society. The sense of justice expected from law enforcement has not been enjoyed by the people of this country. Moreover, as is known, the criminal justice system in Indonesia does not regulate many victims. Thus sometimes the existence of victims tends to be heeded or "forgotten", considering that this system is more focused on the perpetrator of the crime. The protection of victims' rights is essentially part of the protection of human rights. Victims need protection to ensure their rights are fulfilled. Because so far in the criminal justice system in Indonesia, the rights of victims are less protected than the rights of suspects. In this problem, restorative justice can be a solution to the situation or condition. In connection with what has been explained in the background above, the research on "The Role of the National Police of the Republic of Indonesia in the Application of Restorative Justice. Based on the background description above, the problems in the preparation of this thesis can be formulated as follows How the role of the Indonesian National Police in the application of restorative justice.

## 2. Research Methods

The type of research used in this writing is normative legal research, namely by examining problems that arise in terms of law and their sources come from applicable laws and regulations, legal theories and legal views as a basis for reference (Zainuddin Ali: 2010: 34). Normative law research uses normative case studies in the form of legal behavior products, for example reviewing laws. The main point of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. The use of this type of research can be expected to provide an overview of especially those related to the application of restorative justice in the settlement of rape crime cases.

## 3. Discussion and Analysis

### a. The Role Of The Indonesian National Police In The Application Of Resorative Justice

Restorative justice is an approach that emphasizes the improvement of losses caused by or related to criminal acts. Restorative justice is carried out through a cooperative process involving all parties (stakeholders). Restorative justice is seen by many as a philosophy, a process, an idea, a theory and an intervention (as a philosophy, process, idea, theory, and intervention) (Darrell Fox:2009:56).

Restorative justice focuses on crime as a loss / damage and justice (justice) which is an effort to repair damage with a vision to elevate the role of crime victims, perpetrators of crime and society as three dimensions of determinants that are very important in the criminal justice system for the welfare and security of society (Muladi: 2013: 122).

In addition, restorative justice is also based on feminist relational theory, based on the relational nature of the human being and "the understanding of the self as it is based in and through relationships with others". It views error in relational terms, as damage caused to individuals in relationships with others and in relationships between and between them. This definition of restorative justice cited, includes a series of key values, such as voluntary participation, honest speaking, the creation of a safe and respectful environment, a positive commitment to improvement and concerns to clarify accountability for harm. This is not a complete list of core values, but it highlights how important relational values are to restorative processes. Awards are very important.

Criminal offenses, and other types of injustice, are experienced fundamentally as acts of disrespect, failure to respect one's inherent dignity, identity, rights and feelings. This disrespect can only be overcome with respect, with a clear recognition on the part of the perpetrator that the victim does not deserve to be treated as it is, and that their rights, feelings and interests are as important as the rights of the perpetrators. Restorative justice offers an alternative vision of criminal justice and appropriately puts the interests of the victims of crime at its core (Asmara R&Iskandar:2021).

Bagir Manan elaborated on the substance of restorative justice containing the principles of settlement that are seen as fair to all parties "(win-win solutions)". Restorative justice is an alternative or other way of criminal

justice by prioritizing the approach of integrating the perpetrator on the one hand and the victim / community on the other as a unit to find solutions and return to the pattern of good relations in society.

The key word of restorative justice is "empowerment", even this empowerment is at the heart of restorative, therefore restorative justice is determined by this empowerment (C. Barton, 2011). In the traditional concept, the victim is expected to remain silent, accept and not interfere in criminal proceedings. Fundamentally the idea of restorative justice seeks to reorganize the role of such victims, from the beginning who passively wait and see how the criminal justice system handles their crimes, empowered so that victims have a personal right to participate in criminal proceedings. In the literature on restorative justice, it is said that empowerment is related to parties in criminal cases (victims, perpetrators and society).

The National Police of the Republic of Indonesia, hereinafter abbreviated as Polri, is a state tool that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection, and services to the community in order to maintain domestic security. The Head of the National Police of the Republic of Indonesia, hereinafter abbreviated as the Chief of Police, is the head of the police and the person in charge of organizing police functions. The Head of the National Police of the Republic of Indonesia, hereinafter abbreviated as the Chief of Police, is the head of the police and the person in charge of organizing police functions.

The Regional Police, hereinafter abbreviated as Polda, is the acting duties and authorities of the police in the provincial area under the Chief of Police. The Head of the Regional Police, hereinafter abbreviated as the Chief of Police, is the head of the police in the provincial area and is responsible to the Chief of Police. The Resort Police, hereinafter abbreviated as Polres, is the acting duties and authorities of the police in the regency/city area under the Chief of Police. The Chief of Police, hereinafter abbreviated as the Chief of Police, is the head of the police in the region and is responsible to the Chief of Police. Polres is a unit of police organizations domiciled in the capital of the regency/city in the legal area of each Polres is tasked with carrying out the main duties of the police in maintaining public security and order, enforcing the law, as well as providing protection, protection, and services to the community and carrying out other police duties within the police's legal area, in accordance with the provisions of the laws and regulations. The Police Department performs the following functions:

Providing police services to the community, in the form of receiving and handling reports/complaints, providing assistance and assistance including securing community activities and government agencies, and licensing/information services, as well as complaint services for the actions of police members in accordance with the provisions of laws and regulations;

Implementation of intelligence functions in the field of security in order to carry out early detection and early warning;

Investigation and investigation of criminal acts, identification functions and functions of field forensic laboratories in the context of law enforcement, as well as the guidance, coordination, and supervision of Civil Service Investigators (PPNS);

Community development, which includes community empowerment through community policing, coaching and developing forms of self-defense security in order to increase awareness and compliance of community members with the law and the provisions of laws and regulations, establishing relationships between the police and the community, coordination and supervision of special police;

Implementation of Sabhara's functions, including regulatory activities, guarding escorts, patrols (Turjawali) as well as securing community and government activities, including the enforcement of minor crimes (Tipiring) securing protests and controlling crowds, as well as securing vital objects, tourism and Very Important Persons (VIPs);

Implementation of traffic functions, including Turjawali traffic activities, including enforcement of violations and investigation of traffic accidents as well as registration and identification of motor vehicles in the context of law enforcement and guidance of security, safety, order, and smoothness of traffic;

Implementation of water police functions, including water patrol activities, first handling of water crimes, search and rescue of accidents in water areas, development of aquatic communities in the context of crime prevention, and maintenance of security in water areas; and Implementation of other functions, in accordance with the provisions of laws and regulations.

Furthermore, if traced by documentation and looking at the source of the laws and regulations, basically the Police have authority in terms of service standards to the community as stated in the Police Law number 2 of 2002 concerning the National Police of the Republic of Indonesia. In addition, in the Criminal Procedure Code, the Police are given authority based on Article 7 Paragraph (1) point j of Law No. 8 of 1981 concerning the Criminal Procedure Code, Article 16 Paragraph (1) and Article 18 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia in the form of, "being able to take other actions", with "certain conditions" or referred to as "discretion". The investigator may take discretionary action in the form of stopping, or not taking action against an offense that has been established by law. That is, the investigator is required to choose by

policy how he should act. the authority vested in it under the applicable provisions. It is used as a justification for pursuing a prudent way of approaching the reality of its duties based on the moral, humanitarian and conscience approaches of the formal provisions.

The police as one of the sub-systems of the criminal justice system has the task of law enforcement in optima forma. The police is a living law, because in the hands of the police the law can experience its embodiment. In it, there is a lot of human involvement as a decision maker. Things of a philosophical nature in ordinary law are transformed into humane mediators.

The police as a public service organization must of course be able to exercise their authority in the midst of society. As a police officer who functions to maintain security, he must be able to enforce humanitarian-based regulations in order to create justice. In addition, as a forum in charge of providing services and protection to the community, of course, the police cannot be separated from other administrative tasks inherent as an institution.

As mentioned above, the police have a discretionary right which is an inherent right in the police force which can be taken at any time and used for any matter as long as it is legally accountable. this sentence already explains that in fact the police can take a stand in resolving cases through restorative justice, not just rigid as a facilitator between the perpetrator and the victim. Such discretion is an inherent right in the body of the police not to proceed with a case. However, in this case, it is very rare for the police, especially the Banda Sakti Police, to exercise their discretionary rights.

In other respects, it has also been confirmed by informants that the Banda Sakti Police Department cannot and does not want to interfere with the substance of the dispute that occurred. Unless the matter has made a report or complaint and the investigation has begun. So here the Police must have issued a Warrant for commencement of investigation (SPDP) and made a copy to the prosecutor's office.

If the police have issued a SPDP, the case must be continued along with other administrative provisions such as the Minutes of Examination and a certificate about the restorative justice. This is a recommendation material for the Prosecutor's Office in making the indictment and prosecution letter. However, because the prosecutor's office also treats restorative justice, not all of these minor cases they continue in this case the Prosecutor's Office also plays an active role in solving the case. The prosecutor's office also did the same seeking to reconcile the parties.

Both agencies have the authority already granted by law to resolve minor issues in the community through the restorative Justice. This important role must be carried out by the agency, especially the Banda Sakti Police Station as a public organization that provides excellent service to the community in the form of legal protection.

This important role, of course, also has a legal basis so far which is regulated in the Aceh qanun. Nationally, other regulations are in police regulation number 8 of 2021 concerning the handling of crimes in a restorative manner. These two rules require the police to carry out their role in and in the midst of society. As a public organization, of course, it must be able to provide services to the community while also providing legal protection as its main task and function as the National Police of the Republic of Indonesia.

The thing that becomes urgent in handling problems through restorative Justice is that Polisu has carried out its functions and upheld the principles of law enforcement itself. For example, by heeding the principle of ultimum remedium so that not all problems can be pursued and choosing legal channels means that the police must be able to position themselves to help the community solve their problems amicably. in this way it is hoped that a peace that was once divided will be realized.

In other respects when the police choose and offer the steps that must be taken in restorative Justice this is basically what is included in a law enforcement system that is an effort towards justice through the deliberations of the Act. Next, the implementation of legal certainty This is because restorative justice has also been stated in the legal norms in Indonesia, which means that the elements of legality have been fulfilled to carry out the restorative legally.

Furthermore, it must also be able to analyze a case involving the parties. If the matter is small and will cause greater costs, a longer time. and other aspects of harm that could possibly come to the fore. from some of these considerations can be drawn a conclusion whether continuing the matter is more Beneficial to the party or not. if it does not provide more benefit then the police still advocate taking the path of restorative Justice. Now here there is actually a little problem, namely on the one hand it already has a legal basis to act but on the other hand it cannot impose restorative Justice and even interfere with the substance of the matter from the warring parties.

So far, the issues that are widely addressed through restorative justice are the misdemeanor mistreatment of minor theft in the family and defamation. for the handling of RJ in the Aceh Regional Police for its total number: Rj 2021 : 401 cases, Rj 2022 from January to August : 292 cases.

The police must be able to provide services and protection to the community, especially serving the perpetrators and victims well. Public services provided are activities or series of activities in order to meet the service needs of every citizen and resident of goods, services, and/or administrative services provided by public service providers. Public services based on the Decree of the Minister of State Apparatus Empowerment No: 63 /

KEP / M.PAN / 7/2003 as follows: Public services are all service activities carried out by public service providers as an effort to meet the needs of service recipients and the implementation of the provisions of laws and regulations.

The Minister of State Apparatus Empowerment in decree No.63 of 2003 concerning General Guidelines for the Implementation of Public Services stated that "the nature of public services is the provision of excellent services to the community which is a manifestation of the obligations of government officials as community servants". For the implementation of Restorative Justice efforts in the Aceh jurisdiction, the police really need support from all elements, both the government and the community. Community support and cooperation is the most urgent basis for the police. Community involvement is a benchmark for success factors for the police in solving problems through deliberation/consensus.

#### 4. CONCLUSION

Based on the results of the study and this conclusion was drawn is that Restorative Justice has made maximum efforts, although these roles and efforts have not been fully able to overcome the crime rate that occurs in society. Even if something cannot be resolved, the police continue the case according to the wishes of the parties.

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