Journal of the Master of Law "Law and Humanity" 65-84

Application of Restorative Justice in Settlement of Criminal Cases by the Indonesian National Police (POLRI)

By:
[1] Kahardani , [2] Suwarno Abadi, [3] Nuryanto, [4] Taufiqurrahman
[1,2,3,4] Master of Law at Wijaya Putra University, Surabaya
Emails: [1] kahardani@gmail.com , [2] suwarnoabadi@uwp.ac.id , [3] nuriyanto@uwp.ac.id , [4] taufiqurrahman@uwp.ac.id

Abstract

Restorative justice is expected to be able to reduce the buildup of cases and reduce the number of detainees who indirectly burden the state in financing the handling of cases and the handling *of detainees in state detention centers. Therefore, the legal issue behind this thesis is the ambiguity of norms related to the implementation of restorative justice policies by the Indonesian National Police. The type of research in this thesis is normative law using a statutory approach and a conceptual approach, so that it can be concluded that the legal power of resolving criminal cases through restorative justice as an instrument in terminating the investigation and investigation process at the POLRI is based on applicable legal provisions. Because the National Police of the Republic of Indonesia as a government agency that is at the forefront of law enforcement, in resolving criminal cases is not solely focused on legal certainty in the form of repressive acts of criminal law enforcement, but also puts forward the values of justice and the principles of living humanity. grow and develop in society through preventive actions in the form of tasks carried out as a prevention from the emergence of criminal acts and other disturbances of security and public order.*

Keywords: Police , Restorative Justice, discretion

A. INTRODUCTION

1. Background

The function of the Police is one of the functions of the state government in the field of law enforcement, community protection and service, community guidance in the framework of ensuring order and upholding of law and fostering public peace. Based on the functions above, basically the police institution is one of the government institutions that has an important role in a rule of law country. One of the characteristics of a rule of law state is that legal life is determined by several factors, including structural factors or legal institutions, legal substance factors, and legal culture factors. This is in accordance with the opinion of Lawrence M. Friedman that:

> " *The legal system, first of all, has a structure. They have forms, patterns, and persistent styles. The structure is the body, the framework, the long lasting shape of the system: the way courts of police departments are organized, the lines of jurisdiction, the tables are organized* ". (A legal system, first of all, has a structure. A legal system has a form, a pattern, and a style that remains constant. Structure is the body, the framework, the enduring form of the system: the way the police department courts are organized, the lines of jurisdiction, the tables are organized.) .[1]

From Lawrence M. Friedman's opinion above, it can be concluded that the operational effectiveness of a legal structure or institution is largely determined by its position in state organizations. The Police Agency is a legal institution and lives in a larger human community that can shape everything that is done by the organization, so the attachment of a police institution in a state organization becomes more important for the implementation of the duties and responsibilities assigned and the performance of the police institution.

According to Sadjijono, in carrying out his function as a law enforcement officer, the police must understand the legal principles used as material for consideration in carrying out their duties, namely:

1. The principle of legality, in carrying out their duties as law enforcers must obey the law.
2. The Principle of Obligation, is the obligation of the Police in dealing with problems in society that are discretionary in nature, because they have not been regulated in law
3. Principle of Participation, In order to protect the community environment, the Police coordinate self-defense security to realize the power of law among the community.
4. The Preventive Principle always prioritizes prevention rather than prosecution.
5. Subsidiarity principle, carrying out the duties of other agencies so as not to cause bigger problems before being handled by the institution in charge.[2]

Based on the principles mentioned above, the function of the Police contained in Law Number 2 of 2002 concerning the Indonesian National Police has undergone a change in image, so the function of the police has become flexible in the sense that one day they must be firm in handling a criminal incident. However, in certain situations they must be very close to the community in order to carry out the preventive principle. Therefore, they must be able to understand the developments that occur in society, as well as their needs, in obtaining security protection. This situation requires the Police to

---

[1] Sadjijono, 2008, *Police Law Series, Police and Good Governance* , Laksbang Mediatama, Surabaya, h. 1.

[2]Sadjijono, 2010, *Understanding Police Law* , Yogyakarta; Laksbang Persino. h. 17.

know when and what time they have to act if there is a major violation in society.

Regarding the general authority of the Indonesian National Police, it is regulated in Article 15 of Law Number 2 of 2002 Indonesian National Police which states: In general, it states that the National Police has the authority to:

a. Receive reports or complaints;
b. Assist in resolving community disputes that may disturb public order;
c. Preventing and overcoming the emergence of community diseases;
d. Supervise currents that can lead to divisions or threaten the unity and integrity of the nation;
e. Issuing police regulations within the scope of police administrative authority;
f. Carry out special inspections as part of Police actions in the context of prevention;

In the Criminal Justice system, the police and prosecutors are two law enforcement institutions that have a very close functional relationship. These two institutions should be able to work together and coordinate properly to achieve the goals of this system, namely tackling crime or controlling the occurrence of crime so that it is within the tolerance limits that society can accept.

The Criminal Procedure Code number 8 of 1981 serves as a guideline for police, prosecutors and judges (even including legal advisers) in carrying out their duties of investigation, investigation, arrest, detention and examination in court. One of the duties and powers of the investigator is to receive reports or complaints from someone about a criminal act in accordance with Article 5 of the Criminal Procedure Code. The investigation, in this case the police, in accordance with the provisions of Article 1 point 4 of the Criminal Procedure Code on the report/complaint, is looking for and finding an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out. The description contained in the Criminal Procedure Code above is a process by law enforcement agencies (police and prosecutors) in upholding law and justice.

According to Soerjono Soekanto Law enforcement as a process is essentially the exercise of discretion which involves making decisions that are not strictly regulated by the rule of law, but have an element of personal judgement. [3]Conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship of values embodied in solid principles and attitudes as a final stage of the elaboration of values, to create, maintain and maintain social peace. This conception which has a philosophical basis

[3]Soerjono Soekanto , 1983, *Factors Influencing Law Enforcement* , Jakarta; Raja Grafindo Sejahtera, h. 7.

requires further explanation so that it will appear more concrete, in law enforcement itself there are three elements that must be considered, namely; Legal Certainty *(rechtssicherheit)* , Benefits *(zweckmassigkeit)* , and Justice *(gerechtigkeit).*

In its development , a concept or pattern of law enforcement emerged aimed at achieving a sense of justice for people who are in conflict with the law, namely by applying restorative justice, *where* the concept of restorative justice *is* an alternative for handling and preventing acts against the law in a formal sense. because it offers a wide range of comprehensive and effective solutions. Restorative justice *(restorative justice)* aims to empower victims, perpetrators, families and communities to correct an unlawful act by using awareness and conviction as a basis for improving social life.

Restorative justice itself emerges as a form of reaction to the retributive theory which is oriented towards retaliation, in which case it can be explained that criminal sanctions are suffering that is intentionally imposed on an offender, as stated by JE Jonkers. [4] that the criminal sanction is focused on the punishment applied to the crime committed. While action sanctions originate from the idea "what is the punishment for?" If in retributive theory criminal sanctions are aimed at the wrongdoing of a person through the imposition of suffering (so that the person concerned becomes deterrent), then action sanctions will be directed at efforts to provide advice and help to change.

In realizing efforts to resolve cases through restoration justice, the National Police, which in this case is the gateway for handling cases through the mechanism of inquiry and investigation, has formulated rules or mechanisms for settling cases based on *restorative justice* through Police Regulation Number 08 of 2021 concerning Handling of Crimes Based on Restorative Justice . The Police Regulations (Perpol) then become the basis for the organizers of the investigative function (Reskrim) in carrying out *Restorative Justice* by referring to matters relating to requirements, procedures and supervision. As explained in article 3 of Police Regulation Number 08 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice is limited.

Restorative justice *(restorative justice)* is expected to be able to reduce the accumulation of cases and can reduce the number of detainees which indirectly also burdens the state in financing the handling of cases and the handling of detainees in state prisons. The concept of *restorative justice* itself at the implementative level also raises various problems, namely including different perspectives on aspects of the legal approach that have not been based on stronger legal norms, and settlement of cases through restorative justice as an opportunity for law enforcement elements to commit acts that

[4]Muladi and Barda Nawawi Arief, 1998, *Several Aspects of Criminal Law Enforcement and Development Policies* , Bandung; Citra Aditya Bakti, h. 4.

undermine professionalism and abuse authority in investigations. So that the legal *issue* that is the background of this thesis is the blurring of norms related to the application of *restorative justice policies* by the Indonesian National Police.

2. Formulation of the problem

Based on the background above, the authors draw the formulation of the problem: How is the application (restorative justice) by the Indonesian National Police?

3. Research methods

The type of research used by researchers in this thesis research is Normative Juridical Research, which is defined as a science that has a sui generis nature with the focus of its study on positive law which is law that applies at a certain time and place. The normative juridical method is an approach based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as the library approach, namely by studying books, laws and regulations and other documents related to this research.

B. DISCUSSION

1. Police Discretion as a Means of Implementing Restorative Justice

Police Discretion is the authority given by law to act in special situations in accordance with the judgment and conscience of agencies or officers in carrying out Polri's duties as law enforcers, maintainers of security and public order.[5] Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police states that in the public interest officials of the Indonesian National Police in carrying out their duties and authorities can act according to their own judgement.

As an institution appointed by the state it can even be said that it was appointed by God to be able to decide with conscience entrusted by God and the state as stipulated in Law Number 49 of 2009 concerning Judicial Power in Article 4 paragraph (1) it is explained "The trial is carried out" For the sake of Justice Based on Belief in the One and Only God", this is as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Code Article 197 paragraph (1) point a it is written "The head of the decision which is written reads "For the sake of Justice Based on Belief in One Almighty God" .

In Law Number 48 of 2009 concerning Judicial Powers Article 4 paragraph (1) and as also stipulated in Law Number 8 of 1981 concerning

[5]National Police Commission, 2013, *op. cit* ., h. 7.

Criminal Procedure Code stipulates that judges are indirectly responsible directly to God in deciding a case, so that the law requested by the community which is the main part of the state and as a source of the law can be taken into consideration in terms of deciding, this is a manifestation of the jargon the voice of the people is the voice of God (voxpopulivoxDei *)* .

As regulated in Law Number 48 of 2009 concerning Judicial Power in Article 28 paragraph (1) it is explained that "Judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society", and in paragraph (2) it is written "In considering the severity of the crime, the judge must also pay attention to the good and bad characteristics of the defendant". From these two articles it shows that in fact judges can draw the basis of their decisions from laws that grow in people's lives, and from paragraph (2) of Law Number 48 of 2009 it can be concluded that in fact judges have been given the power to decide by having to pay attention to the elements of good faith from the perpetrators of criminal acts. As in the case of embezzlement, where when the perpetrator of the criminal act of embezzlement returned the embezzled money, the good faith element contained in Article 28 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power has actually been fulfilled.[6]

The law does not become the main basis for deciding a criminal case. In terms of implementing restorative justice in the handling of criminal cases by the Police of the Republic of Indonesia, legal certainty is needed, where there is a need for binding legal decisions originating from institutions that truly represent God, not being the mouthpiece of what the state wants.

As explained in the case of embezzlement in Article 372 of the Indonesian Criminal Code, namely: "Whoever intentionally and unlawfully owns goods which wholly or partly belong to another person, but which is in his power not because of a crime is threatened with embezzlement.. .." [7]From this statement it can be concluded that the elements of Article 372 of the Indonesian Criminal Code regarding embezzlement are:

1. Whoever
2. On purpose
3. Against the law
4. Mastering the goods wholly or partly belonging to other people.

From these elements, it is actually based on the existence of default (breaking of promises) committed by the perpetrators of criminal acts in which the trust given by the owner of the goods is violated and the agreement formed at the time of delivery of goods that occurs legally. In addition, the main

[6]www.komisiyudisial.go.id, *Law Number 48 of 2009 Concerning Judicial Powers* , 7 October 2014, page 5

[7]Soenarto Soerodibroto, *Criminal Code and Criminal Procedure Code* , Rajawali Pres, Jakarta, 2007, p. 231.

thing that is the main basis for reporting is because of the losses suffered by victims so that if it is related to the meaning of reports and complaints as explained in Law Number 8 of 1981 concerning Criminal Procedure Code.

In Law Number 8 of 1981 in points 24 and 25. The embezzlement case is more suitable if a complaint is made instead of a report, namely where the main basis for filing the case is the loss as a result of the embezzlement. So that it is not appropriate if the crime of embezzlement is equated with the handling of criminal acts in general, purely it must be resolved by a conventional judicial process that overrides the process of resolving cases by deliberation to reach a consensus, which prioritizes the recovery of losses suffered by victims of crime.

Basically, the crime of embezzlement does not need to be divided into 2 (two) offenses (crimes) as we know them, namely complaint offenses and general offenses. While the main basis of the criminal act of embezzlement is the loss suffered by the victim. Accountability does not eliminate the public element, but the moral improvement process can be directly assessed by the public and the victims of the embezzlement crime itself.

As a subsystem of the *Criminal Justice System* , the Indonesian National Police is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection and service to the community in the context of maintaining internal security (Article 5 paragraph (1) of the Law) . -Law No. 2 of 2002 concerning the Indonesian National Police).

Furthermore, in Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police, it is stated that the Indonesian National Police have the following main tasks:

1) Maintain public order and security
2) Uphold the law
3) Provide protection, shelter, and service to the community.

In order to carry out these law enforcement duties, especially in the field of criminal justice processes, Law Number 8 of 1981 concerning the Criminal Procedure Code has regulated in more detail the position, role and duties of the Indonesian National Police in relation to the criminal justice process as investigators and investigators as well as carry out coordination and supervision of certain civil servant investigators who are given special authority by law.

The National Police of the Republic of Indonesia as a government agency that is at the forefront of law enforcement, in resolving criminal cases is not solely focused on legal certainty in the form of repressive acts of criminal law enforcement, but also puts forward the values of justice and the principles of humanity that live, grow and develop in society through preventive actions in the form of tasks carried out as a prevention of criminal acts and other

disturbances to security and public order. Because law arises and is formed from the beginning with the aim of regulating the peaceful association of human life, to create security, order and justice for the welfare of human life in society.[8]

The large number of reports or complaints that have come in, but have not been resolved until there has been a backlog of cases can reduce the level of public trust in the Polri institution, because the POLRI has an obligation to complete all reported cases and those caught in the act.

Several obstacles were experienced by the Police so that this happened accumulation of cases is as follows:

1) Lack of qualified personnel as investigators
2) The lack of budget support in the investigation process
3) The technology is not yet supported, so it is difficult to find evidence.
4) The facilities and infrastructure used are inadequate.
5) In certain cases, witnesses often feel shy or afraid of threats or intimidation from perpetrators so that the information obtained is not optimal.
6) Many minor cases that do not end in court, are usually resolved through mediation or *Restorative Justice* .[9]

Initially, the settlement of criminal cases handled by the police could only be carried out at the investigation stage. Whether it's by submitting case files and responsibilities for suspects and evidence to the public prosecutor if the case files have been declared complete (P-21) or the investigation of the case is stopped by issuing an Investigation Termination Order (SP3).

Article 7 paragraph (1) letter i of the Criminal Procedure Code states that investigators, because of their obligations, have the authority to terminate an investigation. A termination of an investigation by issuing an Investigation Termination Warrant (SP3) carried out by a National Police investigator must be legally justifiable, in the sense that the termination of the investigation is based on the facts that have occurred which by law are considered proper and the investigation must be stopped. Issuance of SP3 can raise public suspicion if it is not accompanied by strong reasons why the SP3 was issued.[10]

The reasons for stopping the investigation are contained in Article 109 paragraph (2) of the Criminal Procedure Code, namely:

1) There isn't enough evidence
   After conducting an investigation, it turned out that the evidentiary requirements in accordance with Article 183 of the Criminal Procedure

[8]National Police Commission, 2013, *Police Discretion: In Reviewing Law and Its Implementation in the Field* , Jakarta, Kompolnas, h. 43.

[9]National Police Commission, 2015, Cold Cases: What and How?, Jakarta, Kompolnas, h. 21.

[10]Johana Olivia Rumajar, " *Reasons for Termination of Investigation of a Corruption Crime* ", Journal of Lex Crimen, Vol. III Number 4 August-November 2014, p. 9.

Code could not be fulfilled, namely that there were at least 2 (two) valid pieces of evidence.

2) The incident turned out to be not a crime.
   After analysis, it turned out that the elements of the alleged crime were not fulfilled in part or in whole.
3) The investigation was stopped by law.
   The reason for the investigation being stopped for the sake of law is in principle in line with the abolition of the authority to prosecute and carry out crimes regulated in the Criminal Code (KUHP), namely:
   a. *Nebis in idem* , the criminal act has a judge's decision that has permanent legal force (Article 76 of the Criminal Code).
   b. The suspect died (Article 77 of the Criminal Code).
   c. The incident expired (Article 78 of the Criminal Code).
   d. The complaint is revoked (Article 75 of the Criminal Code), provided that the case includes a complaint offense and a written statement is attached and an official report is made.

If the termination of the investigation is carried out without proper reasons, then it is possible that there will be a pretrial lawsuit because the investigator is considered unprofessional, giving rise to a bad image of the police in the eyes of the public. Therefore, investigators must carry out case titles first before stopping the investigation, in accordance with the provisions of Article 76 paragraph (2) of the Chief of Police Regulation Number 14 of 2012 concerning Management of Criminal Investigations, which reads "Before stopping an investigation, it is mandatory to hold a case title" . The title of the case aims to determine specific police actions, so as to avoid errors in judgment and decision making.

Thus indicating that there has been a shift in the method of settling cases from the criminal justice process which prioritizes repressive aspects in the form of law enforcement to processes outside of criminal justice which prioritizes the values of justice that live, grow and develop in society. Settlement of criminal cases that are only focused on punishing perpetrators of crimes in prison is no longer effective along with the number of inmates who are always increasing so that correctional institutions (Lapas) become over capacity.

As a result, many new problems have arisen, ranging from riots, drug trafficking in prisons, corrupt officers, and so on, so that coaching for inmates is not running optimally. Prisons are no longer the right place to re-socialize these convicts, instead it seems as if prisons have shifted their function as an academy of crime, a place where convicts are more honed in their abilities to commit crimes. [11]Because people actually become more evil after serving prison sentences in correctional institutions. This is one of the motivating

[11]Marlina, 2009, *Child Criminal Justice in Indonesia* , Refika Aditama, Bandung, h. 23.

factors for an ex-convict to commit another crime, which is commonly called a recidivism.[12]

The application of imprisonment in certain cases has become a public concern and has created a social reaction in the form of demands for justice. Many sharp criticisms have been leveled at this type of crime of deprivation of liberty, both in terms of its effectiveness and in terms of other negative consequences that accompany or are related to the deprivation of one's liberty.[13]

Legislation in Indonesia tends to use imprisonment as a punishment. It can even be said that almost all criminal acts are punishable by imprisonment, because so far the measure of success in sentencing is when law enforcement officials succeed in imposing prison sentences. Whereas imprisonment has a negative impact not only on those affected, but also on society. For those affected, suffering is not only experienced by themselves, but also for their families and people whose lives depend on the convict. For society, the loss appears from the frequent occurrence of recidivism as a result of imprisonment.[14]

In order to reduce these various negative impacts, and achieve very dynamic social changes in society, the development of the law enforcement system in Indonesia must eventually follow the changes in mindset and legal culture that exist today.

The law must provide a space of tolerance that allows members of the public and law enforcers to move more freely following the dynamics of society. One alternative is to apply restorative justice in the settlement of criminal cases. The application of restorative justice can be started from the process of inquiry and investigation in which Polri members have the freedom to act or discretion in the public interest in accordance with their considerations or policies and or laws.

Restorative justice views a crime as a social disease that must be cured. Healing is the main concern, which can only be carried out by involving all parties, including victims, perpetrators and society because the crime is not seen solely as an act of violating the law with individual motivation, but occurs because of social conditions that need to be repaired together.[15] The concept of restorative justice (*restorative justice*) is able to function as an accelerator

---

[12]Strong Puji Prayitno, " *Restorative justice for justice in Indonesia* ", Journal of Legal Dynamics, Volume 12 Number 3 September 2012, h. 407.

[13]Barda Nawawi Arief, 2010, *Anthology of Criminal Law Policies (Development of Drafting the New Criminal Code)* , Prenada Media Group, 2nd printing, Jakarta, h. 193.

[14]Puteri Hikmawati, " *Criminal Supervision as a Substitute for Conditional Criminal Towards Restorative Justice* ", journal Negara Hukum, Vol. 7, Number 1, June 2016, p. 86.

[15]Moh. Mahfud MD, " *Restorative Justice in Law Enforcement* ", in ditreskrimsus Polda Kalsel.blogspot.com, accessed on 12 June 2022.

of the principle of simple justice, fast and low cost, so as to better guarantee the fulfillment of legal certainty and social justice.[16]

Settlement of criminal cases through restorative justice can be applied at every stage of the criminal justice process. Within the scope of work of the Indonesian National Police, it can be carried out at the investigation stage by issuing an Investigation Termination Order (SP3) or at the investigation stage by issuing an Investigation Termination Order (SP2Lidik). The application of restorative justice in the settlement of criminal cases at the investigation stage concerns the authority of the police in terms of terminating an investigation based on police discretion.

The reasons underlying the investigators of the Indonesian National Police have the authority to terminate the investigation are as follows:

1) This incident is not a crime.
   Based on the Investigation Report (LHP) made by the Investigator, it turns out that the elements of the alleged crime were not fulfilled in part or in whole.

2) There isn't enough evidence.
   If at the stage of investigation the facts and evidence collected are insufficient and the evidentiary requirements cannot be met in accordance with Article 183 of the Criminal Procedure Code, that is, there are at least two valid pieces of evidence. So to provide legal certainty, an investigation can be terminated by issuing an Investigation Termination Warrant (SP2Lidik) in accordance with point 2 of the Chief of Police Circular Letter Number: SE/7/VII/2018 dated 27 July 2018 concerning Termination of Investigations.

3) Termination of investigation on the grounds of *restorative justice*
   This policy is implemented based on number 3 letter c point 8 of the Chief of Police Circular Number: SE/8/VII/2018 dated 27 July 2018 concerning the Application of restorative justice *in* the settlement of criminal cases.

In a society that is currently undergoing changes, the discretion of law enforcement officers is important to break through rigid legal rules. The application of discretion will encourage the realization of justice in line with changes in the values adopted in society.[17] The use of discretion is the answer to overcoming existing legal limitations as a basis for carrying out tasks by

[16]Rocky Marbun, "Restorative justice as an alternative to the future penal system", in the legal world forum blogku.wordpress.com, accessed on 12 June 2019.

[17] Yunan Hilmy, " *Law Enforcement by the Police Through a Restorative Justice Approach in the National Legal System* ", Rechtsvinding Journal, Volume 2 Number 2, August 2013, h. 8-9.

adjusting the developments and changes in society that take place continuously.[18]

The discretionary authority possessed by the police can be the basis for investigators to settle criminal cases through the principles of restorative justice at the investigation stage, so that they do not have to be resolved through the courts, in accordance with the provisions in several regulations as follows:

1) Article 7 paragraph (1) letter J of Law Number 08 of 1981 concerning the Criminal Procedure Code, that investigators because of their obligations have the authority to take other actions according to the law who are responsible;
2) Article 16 paragraph (1) letter L and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police and Article 5 paragraph (1) number 4 of Law Number 08 of 1981 concerning the Criminal Procedure Code that other actions as referred to in Article 16 paragraph (1) letter L are investigative and investigative actions carried out if the following conditions are met:
   a. Does not conflict with a rule of law;
   b. Consistent with the law requiring the act to be performed;
   c. Reasonable consideration based on compelling circumstances;
   d. Must be reasonable, proper, and included in the position environment, and;
   e. Respect human rights (HAM).
3) Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, that for the public interest the Head of the Indonesian National Police in carrying out his duties and authorities can act according to his own judgement.
   Article 18 paragraph (2) of Law Number 2 of 2002 concerning the Indonesian National Police as referred to in Article 18 paragraph (1) can only be carried out in very necessary circumstances by taking into account the law and the Police Professional Code of Ethics.
4) Article 22 paragraph (2) letters b and c of Law Number 30 of 2014 concerning Government Administration states that any discretionary use of government officials aims to fill the legal vacuum and provide legal certainty.

Some of the benefits that can be obtained from the application of restorative justice in the settlement of criminal cases at the investigation stage are as follows:

1) Do not cause accumulation of cases. Many minor cases can be resolved through the concept of restorative justice without having to go to court and are counted as settlement of cases.

[18]National Police Commission, 2013, *op. cit* ., h. 31.

2) Cases are resolved in a fast, simple process and of course the costs are also low because there is no need to go through several stages in the criminal justice process.
3) Very effective reduce overcapacity in prisons.
4) Avoiding the emergence of pretrial prosecutions/lawsuits or compensation or rehabilitation, because at the investigation level there were no forced efforts made by the police.
5) Reflecting a sense of justice in society. Restorative justice that is applied in solving cases at the investigation stage can resolve conflicts that occur between perpetrators, victims and the community so that justice can be felt directly.
6) To support the creation of a safe and conducive situation of security and public order.
7) Opening the widest possible access to the rights of victims and perpetrators, because all parties to the case are directly involved in settling the case.
8) Avoiding the practice of corruption, collusion and nepotism by law enforcement officials because the case is sufficiently completed at the investigation stage by the police, so it does not burden other law enforcement officials.
9) Increase public trust in the Police institution. Settlement of criminal cases at the investigation stage by implementing restorative justice involving perpetrators, victims and the community can increase public confidence that the police can resolve cases that occur by providing justice and legal certainty.
10) Prevent the occurrence of vigilante actions by the community.
11) Preventing a bigger crime from happening due to the offender's dissatisfaction with the punishment he has received.

Settlement of criminal cases through restorative justice at the investigative stage must fulfill the formal requirements in the form of a statement of conciliation (deed of dading) which contains points of agreement and settlement of disputes from the litigants. This reminds us that justice and peace are basically inseparable. Peace without justice is oppression, justice without peace is a new form of persecution/pressure. However, it needs to be underlined that the settlement of criminal cases through the principle of restorative justice *cannot* be interpreted as a method of peacefully ending cases which in police terms is often referred to as 86 (eight six), but more broadly in fulfilling the sense of justice of all parties involved. in criminal cases through efforts that actively involve victims, perpetrators and the local community as well as investigators/investigators as mediators who act

neutrally so as to create a safe and conducive situation of security and public order.[19]

2. Application of *Restorative Justice* in Handling Minor Crimes

A misdemeanor is a crime punishable by a maximum imprisonment of 3 (three) months or a maximum fine of Rp. 250 (two hundred and fifty rupiahs). After the issuance of Supreme Court Regulation Number 2 of 2002 concerning Adjustments to the limits of minor crimes and the amount of fines in the Criminal Code dated 27 February 2012, the words "two hundred and fifty rupiahs" are read as IDR 2,500,000 (two million five hundred thousand rupiahs) or the value of the rupiah is adjusted to 10,000 (ten thousand) times the fine.

These minor crimes include criminal acts regulated in the following articles:

a. Article 364 Criminal Code (minor theft)
b. Article 373 Criminal Code (light embezzlement)
c. Article 379 of the Criminal Code (minor fraud)
d. Article 384 of the Criminal Code (mild fraud by sellers)
e. Article 407 paragraph (1) (minor damage)
f. Article 482 (light collection)

The perpetrators of minor crimes cannot be detained because they do not meet the objective requirements for detention as stipulated in Article 21 of the Criminal Procedure Code, namely that such actions are punishable by imprisonment of 5 (five) years and above or such actions are punishable by imprisonment of less than 5 (five) years which categorized under the exception article. Therefore, to fulfill society's sense of justice, settlement of minor criminal cases can be carried out through restorative justice provided that peace has been implemented between the perpetrators, victims, families of perpetrators/victims, and related community leaders who are in litigation with or without compensation. .

The settlement between the litigants is then confirmed in a written agreement. As stipulated in Article 4 of the Memorandum of Understanding between the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 131/KMA/SKB/X/2012, Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-07.HM.03.02 Th 2012, Attorney General Republic of Indonesia Number: KEP06/E/EJP/10/2012, and the Head of the Indonesian National Police Number: B/39/X/2012 dated October 17, 2012 concerning the Implementation of the Implementation of Adjustments to the Limits of Minor Crimes and the Number of Fines, Quick Examination

[19] Strong Puji Prayitno, " *Restorative Justice for Judiciary in Indonesia* ", Journal of Legal Dynamics, Volume 12 Number 3 September 2012, h. 408.

Procedures, and the Implementation of Justice Restorative (*Restorative Justice*).

3. Application of *Restorative Justice* in All Crimes Against General Crimes That Do Not Cause Human Victims

Number 3 of the Chief of Police Circular Letter Number SE/8/VII/2018 concerning the Application of restorative justice *in* the settlement of criminal cases, states that all criminal acts can be carried out with *restorative justice* for general crimes that do not cause human victims, with the following provisions:

a. Fulfilled material requirements, namely:

1) Does not cause public unrest and there is no public rejection of the perpetrators.
   In essence, the implementation of restorative justice is to repair social damage caused by perpetrators, develop remedies for victims and society, and return perpetrators to society.
2) Does not impact social conflict.
   With the settlement of criminal cases through restorative justice at the investigation stage which focuses more on the values of peace and peace in society, it is hoped that it will not cause disputes in society which will have an impact on social conflict. Because so far the settlement of cases through the criminal justice process cannot completely solve the problem, instead it can widen conflict and hostility between members of the community, so that the restorative justice approach is preferred.
3) There is a statement from all parties involved not to object, and to waive their right to sue before the law, set forth in a written agreement.
4) Limiting principle:
   a) The error rate of the perpetrators is relatively not serious, and does not cause mass losses.
   b) The perpetrator is not a recidivist.
      For criminal cases that are carried out repeatedly, the settlement of cases through restorative justice cannot be applied.

b. The formal requirements are met, namely:

1) Letter of Request for Reconciliation of both parties (reporter and reported party) signed on stamp duty.
2) Statement of Conciliation (deed of dading) and settlement of disputes between the litigants (the complainant, and/or the reporting family, the reported party and/or the reported family and representatives of community leaders) known by the investigator's superiors.
3) Minutes of Additional Examination of litigants after settlement of cases through *restorative* justice

4) Recommendation for the title of a special case that approves the completion of *restorative* justice
5) The perpetrator does not object to responsibility, compensation, or is done voluntarily.
6) All criminal acts can be carried out by Restorative Justice against general crimes that do not cause human victims.

C. CONCLUSION

The legal power of resolving criminal cases through restorative justice as an instrument in terminating the investigation and investigation process at the POLRI is based on applicable legal provisions. Because the Indonesian National Police as a government agency is at the forefront of law enforcement, in resolving criminal cases it is not solely focused on legal certainty in the form of repressive acts of criminal law enforcement, but also promotes the values of justice and living human principles, grow and develop in society through preventive actions in the form of tasks carried out as a prevention of criminal acts and other disturbances to security and public order.

D. BIBLIOGRAPHY

Arief, Barda Nawawi, 2010, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Prenada Media Group, cetakan ke 2, Jakarta.

Faiz, Pan Mohamad, 2009, *Teori Keadilan John Rawl*, dalam Jurnal Konstitusi, Volume 6 Nomor 1.

Hadjon, Philipus M., tanpa tahun, *Tentang Wewenang*, makalah disampaikan dalam seminar yang diselenggarakan oleh Universitas Airlangga, Surabaya;

Harahap, Yahya, 2016, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan dan Penuntutan)*, edisi kedua, Jakarta, Sinar Grafika, cet. 17.

Hikmawati, Puteri, "*Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif*", jurnal Negara Hukum, Vol. 7, Nomor 1, Juni 2016.

Hilmy, Yunan, "*Penegakan Hukum Oleh Kepolisian Melalui Pendekatan Restorative Justice Dalam Sistem Hukum Nasional*", Jurnal Rechtsvinding, Volume 2 Nomor 2, Agustus 2013.

Hutahaean, Armunanto, Erlyn Indarti*, Lembaga Penyidik Dalam Sistem Peradilan Pidana Terpadu Di Indonesia*, Jurnal Legislasi Indonesia Vol. 16 No.1 - Maret 2019.

Hutauruk, Rufinus,2013, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*, Sinar Grafika, Jakarta.

Indroharto, 1994, *Asas-Asas Umum Pemerintahan yang Baik*, dalam Paulus Efendie Lotulung, *Himpunan Makalah Asas-Asas Umum Pemerintahan Yang Baik*, Bandung: Citra Aditya Bakti;

Johana Olivia Rumajar, "*Alasan Pemberhentian Penyidikan Suatu Tindak Pidana Korupsi*", Jurnal Lex Crimen, Vol. III Nomor 4 Agustus-November 2014.

Kaligis, O. C., 2011, *Deponering Praktek dan Teori*, Bandung; Alumni,.

Kelsen, Hans, 2011, *General Theory of Law and State* , diterjemahkan oleh Rasisul Muttaqien, Bandung, Nusa Media.

Komisi Kepolisian Nasional, 2013, *Diskresi Kepolisian: Dalam Tinjauan Hukum dan Implementasinya di Lapangan*, Jakarta, Kompolnas.

Komisi Kepolisian Nasional, 2015, Cold Cases: Apa dan Bagaimana?, Jakarta, Kompolnas.

Lawrence Meir Friedman, 1998, *American Law; An Introduction*, second edition, New York; W.W. Norton & Company;

Lembaga Pendidikan POLRI, 2014, *Diskresi Kepolisian*, Lembaga Pendidikan POLRI Akademi Kepolisian, Semarang.

Lembaga Pendidikan POLRI, 2014, *Hukum Acara Pidana untuk Akademi Kepolisian*, Lembaga Pendidikan POLRI Akademi Kepolisian, Semarang;

M. Ghufran H. Kordi K, 2015, *Durhaka Kepada Anak Refleksi Mengenai Hak dan Perlindungan Anak*, Yogyakarta: Pustaka Baru Press.

Marbun, Rocky, "Restorative justice sebagai alternatif sistem pemidanaan masa depan", dalam forum dunia hukum blogku.wordpress.com, diakses pada tanggal 12 Juni 2019.

Marlina, 2009, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, Bandung: Refika Aditama.

Moh. Mahfud MD, "*Keadilan Restoratif Dalam Penegakan Hukum*", dalam ditreskrimsus Polda Kalsel.blogspot.com, diakses pada tanggal 12 Juni 2022.

Muladi dan Barda Nawawi Arief, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung; Citra Aditya Bakti.

Pound, Roscoe, dalam R. Abdussalam, 2007, *Hukum Kepolisian Sebagai Hukum Positif Dalam Disiplin Hukum*, Jakarta; Restu Agung.

Prayitno, Kuat Puji, "*Restorative justice untuk peradilan di Indonesia*", Jurnal Dinamika Hukum, Volume 12 Nomor 3 September 2012.

Rahardjo, Satjipto, 2009, "*Penegakan Hukum Suatu Tinjauan Sosiologis"*, Yogyakarta; Genta Publishing.

Rawls, John, 2006, *A Theory of Justice*, London: Oxford University Press, yang sudah diterjemahkan dalam bahasa indonesia oleh Uzair Fauzan dan Heru Prasetyo, Teori Keadilan, Pustaka Pelajar. Yogyakarta.

Sadjijono, 2008, *Seri Hukum Kepolisian, Polri dan Good Governance*, Laksbang Mediatama, Surabaya.

Sadjijono, 2010, *Memahami Hukum Kepolisian*, Yogyakarta; Laksbang Persindo.

Soekanto, Soerjono, 1983, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta; Raja Grafindo Sejahtera.

Soerodibroto, R. Soenarto, 2007, *KUHP dan KUHAP Dilengkapi Yurisprudensi Mahkamah Agung dan Hoge Raad*, Raja Grafindo Persada, Jakarta.

Soerodibroto, Soenarto, *KUHP dan KUHAP*, Rajawali Pres, Jakarta, 2007.

Sudaryono dan Natangsa Surbakti, 2005, *Buku Pegangan Kuliah Hukum Pidana*, Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta.

Supeno, Hadi, 2010, *Kriminalisasi Anak (Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan)*, Jakarta: Gramedia Pustaka Utama.

Supramono, Gatot, 2007, *Hukum Acara Pengadilan Anak*, Jakarta: Djambatan.

Surbakti, Natangsa, 2012, *Dari Keadilan Retributif Ke Keadilan Restoratif (Rangkuman Hasil Penelitian Penyelesaian Perkara Pidana dengan Pendekatan Keadilan Restoratif)*, Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta.

Suyono, Yoyok Ucuk dan Dadang Firdiyanto, 2020, *Mediasi Penal: Alternatif Penyelesaian Perkara dalam Hukum Pidana*, Yogyakarta; Laksbang Justisia.

Syafrudin, Ateng, 2000, Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung jawab, Jurnal Pro Justicia Edisi IV, Universitas Parahyangan, Bandung.

Tim Penulis, 2007, *Buku Panduan Penyidikan Terhadap Anak Yang Berkonflik Hukum*, Yogyakarta; Yayasan Samin Setara.

www. iuscrim.mpg.de/forsch/krim/traenkle_e.html Stefanie Tränkle, *The Tension between Judicial Control and Autonomy in Victim-Offender Mediation - a Microsociological Study of a Paradoxical Procedure Based*

on Examples of the Mediation Process in Germany and France, diakses pada tanggal 9 Juni 2022

www.Academia.edu.com, (Mediasi Penal), Tercantum dalam dokumen E/2002/INF/2/Add.2, international-research-project-report2 (sbr.: internet); diakses pada tanggal 9 Juni 2022.

www.Academia.edu.com, *Mediasi Penal,* diakses pada tanggal 9 juni 2022.

www.Academia.edu.com, *Mediasi Penal*, diakses pada tanggal 9 Juni 2022.

www.komisiyudisial.go.id, *Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman*, 7 Oktober 2014.

www.m.xamux.com/eng-indo.com, *Fraud*, diakses pada tanggal 9 Juni 2022.