

## **Implementation and Implementation *Restorative Justice* in Criminal Cases by Police Investigators**

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### **Abstract**

*Restorative justice is an approach that focuses more on conditions for creating justice and balance between perpetrators of criminal acts and victims. Criminal justice mechanisms and procedures that focus on punishment are transformed into a dialogue and mediation process to create an agreement on a more just and balanced resolution of criminal cases, both for the victim and the perpetrator. The aim of the research is to determine implementation and application Restorative Justice in criminal cases by police investigators. This research uses a type of juridical-normative research. The approach used in this research includes a statutory approach (statute approach) and conceptual approaches (conceptual approach). The results of this research can be concluded that implementation and application restorative justice In criminal cases, police investigators usually use two models, namely the model Victim-Offenders Mediation And Family and Community Group Conferences which focuses on punishment could be changed to a dialogue and mediation process to create an agreement on resolving criminal cases that is fairer and more balanced for the victim and the perpetrator. Application of principles restorative Justice It also provides opportunities for criminals to admit their mistakes, correct their behavior, and improve relationships with victims and society as a whole.*

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## **1. INTRODUCTION**

Law enforcement in Indonesia currently still has various problems that must be resolved, especially criminal cases involving one party and another in society. The sense of justice expected from law enforcement cannot yet be enjoyed by the people of this country. Moreover, as is known, the criminal justice system in Indonesia does not regulate much regarding victims. Thus, sometimes the existence of victims tends to be ignored or "forgotten", considering that this system focuses more on the perpetrators of crimes. Protection of victims' rights is essentially part of human rights protection. 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 this situation or condition (Arief & Ningrum, 2018: 175).

Restorative justice is an approach that focuses more on the conditions for creating justice and balance between the perpetrator of a crime and the victim. Criminal justice mechanisms and procedures that focus on punishment are transformed into a dialogue and mediation process to create an agreement on a more just and balanced resolution of criminal cases, both for the victim and the perpetrator. Restorative justice means restorative justice.

In criminal justice, restitution or compensation for victims is currently known, while restoration has a broader meaning.

Criminal procedural legal instruments and the criminal system in Indonesia formally regulate procedures for the resolution of criminal cases. However, it is known that in practice it is often used as a repressive tool by law enforcement officials. Meanwhile, the fundamental problem faced by society is full social control through efforts to protect life and property by every member of society and to realize the desired social order and is described through order, propriety and harmony. This can only be realized if the government can implement these laws to create a sense of justice in society.

Based on the explanation above, it can be understood that victims must actually receive sympathy and justice, this can be felt if the resolution of criminal cases is carried out through restorative justice. The main principle of resolving criminal acts through a restorative approach is a resolution that must be able to penetrate the hearts and minds of the parties involved in the resolution process in order to understand the meaning and purpose of carrying out a recovery and the form of sanctions applied are sanctions that are restorative or preventive. Meanwhile, the criminal system is implemented as a reaction to someone's actions that violate legal norms. The perpetrators of crimes are considered to no longer care about the security and rights of other people as well as the interests of the victim. The ultimate goal of punishment is to provide a deterrent effect, orderliness, security or to create the upholding of the rule of law (Fridoki, 2019: 4).

The aim of this research is to investigate whether the implementation of restorative justice can be implemented well. Through analysis of issues such as disrupted implementation, low engagement in justice practices, and legal uncertainty, this research seeks to show where appropriate legal modifications can improve law enforcement or restorative justice systems. This research will examine best practices for increasing integrity, increasing the application of restorative justice, and upholding the supremacy of law in criminal case processes, as well as implementation and the application of law enforcement by police investigators in implementing restorative justice in criminal cases. This will be done using a juridical-normative approach. Thus, it is hoped that this research can significantly advance our knowledge regarding the importance of law enforcement reform to uphold the integrity of judicial institutions in the future and strengthen democracy.

## **2. RESEARCH METHOD**

Several techniques will be applied in this research to develop a comprehensive understanding of the enforcement and application of restorative justice in criminal cases by police investigators. Initially, a literature review will be carried out to examine statutory regulations regarding the implementation of restorative justice. Researchers will be able to understand the implementation of restorative justice in this topic with the help of evaluating scientific literature and statutory regulations, which will also provide a strong theoretical basis.

By examining various strategies that have been implemented in various judicial environments, this study will assess the implementation and application of restorative justice. An in-depth understanding of the implementation by law enforcers of police investigators in implementing restorative justice can be obtained through scientific studies and statutory regulations.

Finally, to gain practical insight into the issues faced during the implementation of the research, researchers studied scientific articles, literature reviews and according to legal experts regarding restorative justice. Through the use of scientific studies and literature

reviews, this research will provide comprehensive knowledge regarding the need to enforce the implementation of restorative justice in criminal law cases.

### 3. RESEARCH RESULTS AND DISCUSSION

#### 3.1 Implementation and Implementation of Restorative Justice in Criminal Law Cases

A person who commits a criminal act must basically be subject to legal consequences. The legal consequences generally take the form of criminal penalties (Moeljatno, 2018:54). In Indonesian positive law, criminal cases basically cannot be resolved outside of court. However, in the practice of law enforcement in Indonesia, criminal cases are often resolved outside of court through mediation, peace institutions and so on.

Law enforcement is a problem faced by every society. The word law enforcer has the connotation of enforcing, implementing the provisions within public, so that in a broader context law enforcement is a process of realizing abstract concepts into reality. The law enforcement process ultimately reaches its peak when it is carried out by the law enforcement officials themselves (Soekanto, 2021: 5).

Nowadays, when a crime occurs, society tends to use the court route which conceptually and theoretically will create justice, but in reality, this is something that is not easy to achieve. It is necessary to realize that the results to be achieved from the process of resolving cases using judicial channels are of a nature *win-lose solution*, with such characteristics, there will be parties who win and there are also parties who lose. With a reality like this, resolving a case through traditional justice generally often gives rise to a feeling of "unpleasantness", holding a grudge, feeling dissatisfied, feeling unfair and even worse, intending to take revenge.

Criminal justice system (*criminal justice system*) is a system that regulates how a criminal case that has occurred will be resolved in a series of judicial activities with the aim of achieving justice and obtaining legal certainty. Because the criminal justice system is a system, each component in the system is interconnected with each other, meaning that this system never runs and reaches its goal if one part of the system does not work (Atmasasmita, 2016: 15).

Muladi (2016:2) in his book entitled "Capita Selecta Criminal Justice System" stated that the criminal justice system (*criminal justice system*) is a network (*network*) judiciary that uses material criminal law, formal criminal law and law executor criminal. However, this institution must be seen in a social context. A nature that is too formal if based solely on the interests of legal certainty will bring disaster in the form of injustice.

The criminal justice system in Indonesia is strictly regulated in the Criminal Procedure Code (KUHAP) or Law no. 8 of 1981. It says so because of Law no. 8 of 1981 or the Criminal Procedure Code (KUHAP) is actually synonymous with criminal law enforcement, which is a system of power or authorities given to the state in enforcing criminal law, namely the police, prosecutors, judges and correctional institutions. Understanding the criminal justice system (*criminal justice system*) is also called the term *law enforcement system* because it contains an understanding that basically what these institutions do is a concrete effort to enforce abstract legal rules (Muladi, 2016: 7).

Associated with *integrated criminal justice system* or integrated criminal justice system, Muladi in his book entitled "Kapita Selektta Criminal Justice System" emphasizes that the meaning of an integrated criminal justice system is a synchronization or simultaneity and alignment, which can be distinguished in the

following ways: 1) Structural synchronization (*structural synchronization*) is simultaneity or harmony in the context of relations between law enforcement agencies; 2) Synchronization substantial (*substantial synchronization*) is simultaneity or vertical and horizontal harmony in relation to positive law; and 3) Cultural synchronization (*cultural synchronization*) is harmony in understanding the views, attitudes and philosophies that thoroughly underlie the running of the criminal justice system (Muladi, 2016: 10).

*Restorative Justice* can be formulated as a thought that responds to the development of the criminal justice system by focusing on the need for involvement of the community and victims who feel marginalized by the mechanisms that work in the current criminal justice system. Besides that, *Restorative Justice* can be used as a framework for thinking that can be used in responding to a criminal act for law enforcers.

Regarding criminal cases, then *Restorative Justice system* at least aims to repair/restore (*to restore*) criminal acts carried out by perpetrators with actions that are beneficial for the perpetrator, victim and their environment which involve them directly in solving problems, and are different from the way adults are handled, which will then lead to the purpose of the crime itself. The purpose of punishment is based on "protection community" and "protection/development of individual perpetrators of criminal acts".

Justice *Restorative* is harmonization between members of society, not punishment. The five main elements of Restorative Justice are: 1. *Restorative Justice* is a type of justice which is a legal concept of the criminal process or criminal justice system which is universally recognized and initiated and is increasingly being used in various criminal cases in developed countries. 2. *Restorative Justice* views that criminal acts are not crimes against the state/public but rather crimes against the victim. This can take the form of an individual or several people/groups. 3. *Restorative Justice* focuses on the suffering or loss suffered by the victim and not on punishing the perpetrator. 4. *Restorative Justice* can take the form of direct or indirect dialogue in the form of mediation or reconciliation or court. 5. *Restorative Justice* not only in the form of reconciliation transitional as in the presentation (Ali, 2019:24).

In various bases and model approaches to restorative *justice*, the dialogue process between the perpetrator and the victim is the basic capital and the most important part of implementing justice. Direct dialogue between the perpetrator and the victim allows the victim to express what he feels, express hopes for the fulfillment of his rights and desires from a resolution of the criminal case. Through dialogue, it is hoped that the perpetrator will be inspired to correct himself, realize his mistakes and accept responsibility as a consequence of a criminal act committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. So that's basically it *Restorative Justice* also known as resolving cases through mediation (penal mediation) (Arief, 2020:19).

Penal mediation in criminal law has a noble aim in resolving criminal cases that occur in society. Conceptually, said by Stefanie Trankle in Barda Nawawi Arief, the penal mediation that was developed was based on the following ideas and working principles: 1. Conflict handling (*Conflict handling/conflict processing*): The mediator's task is to make the parties forget about the legal framework and encourage them to engage in the communication process. This is based on the idea that crime has given rise to interpersonal conflict. That conflict is what the mediation process addresses. 2. Process oriented (*Process orientation/process orientation*): Penal mediation is more oriented towards the quality of the process rather than the results,

namely: making the perpetrator of the crime aware of his mistake, the need for the conflict to be resolved, the victim's calm from fear, etc. 3. Informal processes (*Informal Proceedings/Informality*): Penal mediation is an informal, non-bureaucratic process, avoiding strict legal procedures. 4. There is active and autonomous participation of the parties (*Active and autonomous participation/Parteiautonomie/Subjectivierung*): The parties (perpetrator and victim) are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and the ability to act. They are expected to act according to their own will (Arief, 2020:21).

The main problem for enacting or implementing a restorative justice approach or concept (*restorative justice*) in a legal system in general and in the criminal justice system in general specifically lies in the resolution mechanism offered by the restorative justice approach or concept (*restorative justice*) is different from the settlement mechanism offered by the current criminal justice system so it is still difficult to accept. This is due to the mechanisms offered by the restorative justice approach or concept (*restorative justice*) prioritizes the concept of peace, the concept of "mediation" and the concept of reconciliation in which perpetrators, victims, law enforcement officers and the wider community participate directly in resolving criminal cases, of course inversely proportional to or contrary to the traditional criminal justice system which has been in place for a long time and has been in effect until At the moment.

This matter is motivated by the focus of attention and views on a criminal act and the justice achieved in resolving a criminal case. The view of the meaning of a criminal act and punishment adopted in the current traditional criminal justice system is "*is a violation of the state, defined by law breaking and guilty*" (a state offense is defined as breaking the law and being guilty). Meanwhile, justice in the traditional criminal justice system is understood as "proving the indictment and imposition of a crime on the perpetrator by the State as the holder of sovereignty in imposing the crime. In the end, such authority actually results in conditions where the interests of victims and society are not represented in a system that is related to one another.

Problem solving practices using a restorative justice approach or concept (*restorative justice*) does exist in the culture of the Indonesian nation, even though it is carried out by certain elite groups in society. Braithwaite believes that by providing a little training it will not only be the elite who can facilitate practices solution problem with the approach or concept of restorative justice but more people, even so, efforts to democratize restorative practices towards Asian people can potentially cause confusion (Kristian, 2019:313).

### **3.2 Implementation of Police Investigators in Implementing Restorative Justice in Criminal Law Cases**

*Restorative justice* is a case resolution concept that must be implemented through a real process. Application of the principles and values contained in the approach *restorative justice* can be seen in various models and forms of criminal settlement outside of court that have been carried out by society. Process *restorative justice* This can be done in several mechanisms, depending on the existing situation and conditions as well as the habits of the local community. Some even combine several existing mechanisms, this shows that the model for resolving criminal cases is through an approach *restorative justice* has various models and names of solutions according to the mechanism or settlement procedure used.

Although it has various models, applications *restorative justice* must fulfill at least 3 (three) of the following things: first, identify and take steps to repair loss/damage (*identifying and taking steps to repair harm*); second, involving all interested parties (*involving all stakeholders*); third, transformation from a pattern where the state and society confront perpetrators by imposing criminal sanctions into a pattern of cooperative relations between perpetrators on the one hand and society/victims in resolving problems resulting from crime (*transforming the traditional relationship between communities and theirs government in the responding to crime*) (Waluyo, 2017:42).

Stephenson, Giller and Brown (2021:11), distinguish 4 (four) case resolution models by using the approach *restorative justice*, that is: *victim offender mediation/VOM* (penal mediation), *restorative conference* (*conferencing*), *family group conference* (FGC), and *community panels meetings* (CPM). In implementing VOM, implementation *restorative justice* This is done by establishing a forum that encourages meetings between victims and perpetrators as well as third parties who act as neutral and impartial mediators. In this case, the mediator acts as a coordinator and facilitator in a meeting forum whose task is to help the parties communicate with each other in order to reach a mutual agreement. Mediators can come from formal officials, independent mediators, or a combination, mediation between victims and perpetrators is the model that most often comes to people's minds. This model has many variations and can be implemented at any stage of the process, whether at the police policy stage, prosecution stage, punishment stage or after conviction. In practice, this model is applied to all types of criminal offenders; some are specifically for children, some are for certain types of crimes (for example shoplifting, assault, theft, robbery and acts of violence). Some are mainly aimed at child offenders, novice offenders, but there are also those for serious offenses, even recidivists.

Implementation *restorative justice* carried out by investigators as an effort to resolve minor crimes based on discretionary authority in accordance with the provisions of Article 16 paragraph (1) letter L jo. Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police (Polri) jo. Article 69 letter b Perkap Number 14 of 2012 concerning Investigation Management jo. National Police Chief Circular Number SE/8/VIII/2018 concerning the Implementation of Restorative Justice (*Restorative Justice*) In the Settlement of Criminal Cases jo. PERKAP Number 6 of 2019 concerning Criminal Investigation jo. Republic of Indonesia Police Regulation (PERPOL) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

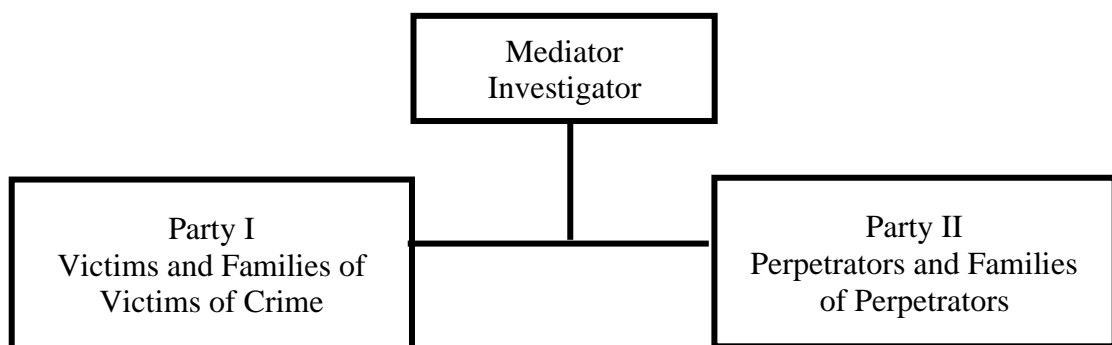
Based on the regulations that form the legal basis for implementation of *restorative justice* or restorative justice by the Indonesian Police above, acts of abuse and theft are classified as cases that can be carried out by restorative justice efforts. Apart from the existing formal provisions, investigators have several material considerations referring to the following provisions: 1). Consider the law enforcement process through *restorative justice* This is a good thing because of the principal *win-win solutions* and the solution is fast. In addition, by looking at the psychology of the people in the area and considering fulfilling the community's sense of justice; 2). Completion by *restorative justice* by prioritizing the principles of legal benefit and justice rather than the legal certainty approach, carried out selflessly and solely for justice and without compensation; 3). Process *restorative justice* stating the actual substantial reasons, namely how law enforcement efforts can guide the public through a mediation process so that they do not commit unlawful acts; 4). Investigators used Article 16 paragraph (1) letter L jo. Article 18 Law no. 2 of 2002 concerning the

National Police, namely "in the public interest, taking action based on one's own assessment" is based on considering the benefits and risks of the action.

In accordance with existing formal provisions, investigators have several material considerations referring to the following provisions (Suharto, 2021:60): 1). Does not cause unrest and/or rejection from the community; 2). Does not impact social conflict; 3). Does not have the potential to divide the nation; 4). Not radicalism and separatism; 5). Not a repeat perpetrator of a criminal act based on a Court Decision; and 6). Not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a criminal act against people's lives.

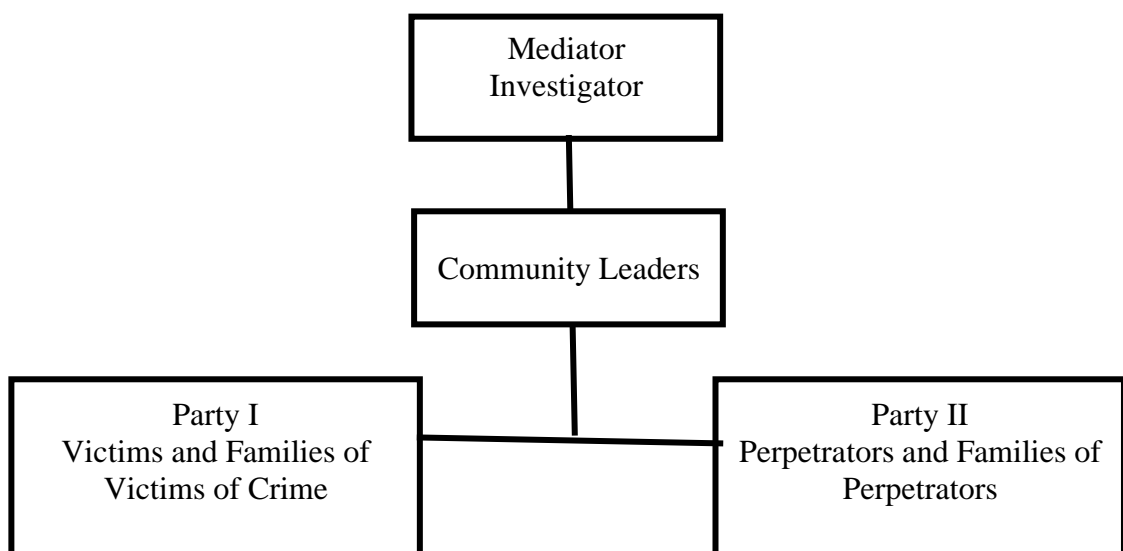
Effort *restorative justice* which is usually taken by investigators using two models, namely the model *Victim-Offenders Mediation* and *Family and Community Group Conferences* (Suharto, 2021:60).

Bagan 3.1. *Model Victim-Offenders Mediation*



Model *Victim-Offenders Mediation* is a solution model that involves several parties who meet during the implementation process *restorative justice* namely the victim, the perpetrator of the crime, and the families of both parties involved in the case and the investigator as mediator.

Bagan 3.2. *Model Family and Community Group Conferences*



Model *Family and Community Group Conferences* is a solution model that was born from the idea of kinship, involving the most influential people in their

environment, for example the Village Head/King, Community Group Leaders, rich people who have authority and can be listened to by their group.

#### 4. CONCLUSION

*Restorative Justice* (Restorative Justice) or known as “*reparative justice*” is an approach to justice that focuses on the needs of victims and perpetrators of crimes, and also involves community participation, and does not merely fulfill legal provisions or merely impose criminal penalties. In this case, victims are also involved in the process, while perpetrators of crimes are also encouraged to take responsibility for their actions, namely by correcting the mistakes they have made by apologizing, returning money that has been stolen, or by providing community service. *Restorative Justice* aims to empower victims, perpetrators, families and communities to correct an act against the law by using awareness and conviction as a basis for improving social life, explaining that the concept *Restorative Justice is basically simple*. *Restorative Justice* is a theory of justice that emphasizes recovery of losses caused by criminal acts.

Implementation and application *restorative justice* in criminal cases, police investigators usually use two models, namely the model *Victim-Offenders Mediation* and *Family and Community Group Conferences* which focuses on punishment could be changed to a dialogue and mediation process to create an agreement on resolving criminal cases that is fairer and more balanced for the victim and the perpetrator.

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