

# Application of Restorative Justice Against the Criminal Act of Employment at Polrestabes Semarang

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**ABSTRACT:** *The purpose of this study was to identify and analyze the application of restorative justice to the perpetrators of embezzlement at the Semarang Police. The research approach uses legal and empirical methods. The result of this investigation is the application of restorative justice against perpetrators of criminal acts of embezzlement carried out by investigators in the jurisdiction of Smaran Polestaves, but there are legal obstacles to its application, this happens because the officers prioritize the method of family embezzlement. Investigators use their discretion to resolve cases outside the criminal justice system. The procedure for revocation of an ongoing investigation is a form of legal, deliberative, and belief-based police discretion that emphasizes moral considerations over the legal framework.*

**Keywords**—Restorative Justice, Crime of Embezzlement, Police Discretion

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## I. Introduction

According to Gustav Radbruch, the purpose of the law is to enforce the law to achieve legal certainty, legal justice, and the legal interests of the parties. (Adzim, 2020) This is by the Preamble to the 1945 Constitution of the Republic of Indonesia, and Pancasila in the Second Mandate, which reads "A Just and Civilized Man". This shows that the public prosecutor must instill a sense of justice and humanity in the public prosecutor, both victims and perpetrators.

According to Lawrence M. Friedman, effective law enforcement has three components: legal substance, legal structure, culture, or community culture. (Khoiru Umah, nd) The content of the law includes regulations and laws aimed at seducing criminals. The legal structure includes institutions that have the authority to enforce laws and regulations. Of course, this requires good talent. Community culture or culture means the attitude and behaviour of the community towards the existence of applicable laws in society, regardless of whether the community is classified as a law-abiding society.

Current developments will lead to the development of knowledge about Indonesian procedural law. This development shows the progress of the country where the people have a mindset and perspective that is slightly open to the problems and legal processes that accompany it. People usually want a fast, accurate, and fair trial for the parties to a trial.

The State of Indonesia is known for its unity and integrity, and making decisions, is preceded by a balance of mutual agreement/recognition of deliberation while still fulfilling the rights and obligations of each party. This is considered appropriate when used to end a legal process that satisfies the sense of justice of each

party. Indonesia has also enacted customary law before the law was formed as it is today. This is sufficient to provide a sense of justice for the perpetrators and victims.

The current legal path from prosecution to the district court to report to the police is believed to be very long, and if the criminal sentence does not match the victim's sentence, my victim does not support it. Hope. Perpetrators do not have the opportunity to conduct reconciliation or mediation as a first step in resolving the problem. In addition, the parties must take the time to go through the legal process from hearing victims and witnesses to appearing in district courts and undergoing trials, and trials will not be held once or twice. This is considered illegal, moreover, the parties have to bear the operational costs to attend police summons and regional court hearings. Especially for the perpetrators of crimes and their families, if a perpetrator is arrested by the police, it will certainly have an impact on the economy of the perpetrator's family. As a result, Law enforcement officers at the police level are now prioritizing reconciliation and restoration of the victim's condition and taking legal action in the form of an out-of-court process under restorative justice or restorative justice that has befallen them. To the community and residents through deliberation and consensus. When the main purpose of applying restorative justice is to resolve a case quickly, accurately, and cheaply, and to provide a sense of justice to the parties involved in the proceedings.

According to Professor Teguh Prasetyo, the dignified justice theory argues that the law needs to humanize humans in Javanese *nguwongkeuwong*.<sup>1</sup>The law must be able to give rights and status to people, in this case, victims and perpetrators, according to their respective divisions. Professor Teguh Prasetyo who is involved in criminal prosecution in Indonesia can be equated with restorative justice, namely the settlement of cases outside the court.

Restorative justice or restorative justice is also developing and is considered very effective in its resolution, so it is widely practised as one of the pillars of law enforcement in various countries. This is Polri's policy to apply restorative justice in the cases handled. However, there is no clear legal umbrella for the laws and regulations that implement restorative justice in Indonesia. Therefore, the National Police Chief issued the Chief of Police Decree Number: SE/8/8/VII/2018 on 27 July 2018 concerning the application of restorative justice in the settlement of criminal cases. August 19, 2021, the issuance of Perpol Number 8 of 2021 concerning the Handling of Restoration Crimes. Police circulars and regulations are the basis for the implementation of case handling at the police level and must meet the requirements of the provisions contained therein. The requirements that must be met are stated in Article 5 and Article 6 paragraph (1) regarding Material requirements and Formal requirements, while the contents of Article 5 Perpol Number 8 of 2021 Material requirements include: Does not cause unrest and/or rejection from the community, does not impact social conflict, does not have the potential to divide the nation, does not have the character of radicalism and separatism, is not the perpetrator of repeating criminal acts based on court decisions and not Terrorism Crimes, Crimes Against State Security, Corruption Crimes, and Crimes Against People's Lives. Meanwhile, Article 6 paragraph (1) of the formal requirements include Peace for both parties, except for drug crimes, and fulfilment of the rights of victims and responsibilities of perpetrators, except for drug crimes. Article 6 paragraph (2) The reconciliation as referred to in paragraph (1) letter a, is evidenced by a letter of agreement and signed by the parties. Article 6 paragraph (3) Fulfillment of the rights of the victim and the responsibility of the perpetrator as referred to in paragraph (1) letter b, can be in the form of returning goods, compensating for losses, replacing costs incurred as a result of the crime; and/or replace the damage caused by the Crime. Article 6 paragraph (4) Fulfillment of the rights as referred to in paragraph (3), evidenced by a statement letter by the agreement signed by the victim. In addition, the form of the peace agreement as referred to in Article 6 (5) (2) and the statement as referred to in paragraph (4) are contained in the Appendix which is an integral part of this Police Regulation.

The embezzlement case handled by the Semarang Criminal Investigation Unit in March 2022 became the subject of laptops and jewellery. At work, Mr A's teacher felt uncomfortable and asked his colleague, Mr B, to take him to the hospital for treatment. He was given Mr A because he needs to see a doctor. B/The victim/goods are entrusted to the perpetrator. When Mr A/victim was examined, Mr B/perpetrator pawned a

laptop and jewellery worth Rp. 6,000,000 (Rp. 6 million) at the Pegadaian. Bp A / The damage suffered by the victim will be reported to the police. After the investigation stage was carried out and continued with the investigation stage between Mr A and Mr B, an agreement was reached to resolve the case.

From 2018 until now, criminal cases of embezzlement handled by investigators and deputy investigators of the Semarang Police are: At the investigation stage there are 162 cases, of which 62 details can be completed in 2019/P21 and 100 at the investigation and investigation stage, as well as 71 cases, including 20 details that could be resolved by 2020/P21. And 41 cases are at the investigation stage. investigation and investigation stage, 35 cases including 28 cases completed in 2021/P21 details, 7 cases in the investigation and investigation stage, and details of 40 cases completed from 2022 to June. There were 58 cases, including 16 cases, and 16 cases of misappropriation were processed in 2022. They were resolved with restorative justice.

## **II. Problem**

The formulation of the question in this study is how to apply restorative justice to the perpetrators of embezzlement of money at the Semarang Police Station. Can be applied.

## **III. Research methods**

In this study, we try to describe and analyze problems based on newly issued legislation and legal events that occur in society, using empirical legal research methods. In this study, the author wants to explain and analyze the application of restorative justice to embezzlers in the jurisdiction of the Semarang Police. The survey data uses secondary data, namely materials that are closely related to primary legal materials that can support the writing of this journal. In this study, the authors use secondary legal materials or very timely legal articles. Laws and regulations and other laws and regulations and findings (through interviews and open-forformestionnaires), books, literature, etc.

## **IV. Discussion**

Applying restorative justice to perpetrators of embezzlement in the jurisdiction of the Semarang Police. The crime of embezzlement is regulated in Article 372 of the Criminal Code, which intentionally violates the right to something that belongs to something that is completely or partially different, and which does not fall into the hands of a criminal offence and e is punished. It is not only sufficient for law enforcement officers to acbacte law, but law enforcement officers and authorized officials as law enforcement officers are criminal acts such as the police, prosecutors, and courts.

In the event of serious misappropriation of losses, the victim always demands the perpetrator to return the compensation to him, or the perpetrator must submit to a court process so that when investigators investigate a case, they always face these demands, the demands of the victims or the demands of the victims. The provisions of the Indonesian criminal justice system do not regulate these stages, but the perpetrators so that these problems can be solved relatively.

Therefore, investigators use their discretion to try to resolve cases outside the criminal justice system. In other words, mediate and prioritize the roles of the parties so that they can resolve the case. The investigation will not continue. The process of stopping the investigation by the investigator is also a form of police discretion, not emphasized in a legal framework with moral considerations, by the police under the law based on their considerations and beliefs. However, the police's discretion in stopping the investigation is not in line with the provisions of the Criminal Procedure Code (KUHAP). As explained in Article 109 (2) of the Criminal Procedure Code (KUHAP), in connection with the reasons law enforcement officers can stop the investigation, namely:

1. The evidence, in this case, is not sufficient. That is, the investigator did not obtain enough evidence to prosecute the suspect, or the evidence obtained by the investigator was not sufficient to prove the suspect's guilt.
2. The incident investigated by the investigator does not constitute a criminal act.
3. The investigation is closed for legal reasons, this reason can be used if there is a reason that causes the cancellation of the right of prosecution and the loss of the right to commit a crime, especially because of basis in *idem* (denied action). (the suspect cannot be prosecuted twice in the same case), the suspect dies or the criminal case has ended (Veryerring)

Based on the provisions of Article 109 paragraph (2) above show that the settlement of criminal cases by peaceful or familial means cannot erase a criminal act, so investigators should still be obliged to continue the investigation process to the Prosecutor's Office level but on the grounds of prioritizing the principles of justice and the principle of expediency. then for cases that have been resolved amicably by the investigators, the investigation process is not continued or the investigation is stopped because the parties have felt true justice.

The juridical basis for the implementation of penal mediation as the embodiment of Restorative Justice for the police in terms of investigations is the Republic of Indonesia Law Number 2 of 2002 concerning the Indonesian National Police, Article 18 paragraph (1) in conjunction with Article 16 paragraph (1) letter 1 which regulates the authority of the police to Act according to his judgment or commonly referred to as Discretion, Kapolri Regulation No. 7 of 2008 concerning basic guidelines for strategy and implementation of community policing in the implementation of police duties. Article 14 letter f stipulates that one form of activity in the implementation of *Palmasas* is the implementation of the ADR concept (pattern problem-solving). through alternative channels that are more effective in the form of efforts to neutralize problems other than through legal processes or non-litigation) for example through peace efforts.

There are 2 (two) penal mediations in the police environment, namely those carried out by investigators as the mediator and those carried out with the help of FKPM (Police and Community Partnership Forum) as the mediator. Based on the results of research by examining several concrete cases and by interpreting the results of interviews with Semarang *Polrestabes* investigators, it can be concluded that criminal cases that can be resolved through penal mediation by the Police do not have standard criteria or provisions. Police considerations to resolve criminal cases through penal mediation are flexible and *casuistic*.

In resolving cases through Restorative Justice, the Police consider the following:

- 1) Viewed from the perspective of the perpetrator, such as the background of the perpetrator committing the crime (the purpose of the perpetrator to commit the crime, the socio-economic condition of the perpetrator, the perpetrator for the first time committing a crime), the perpetrator admits the crime committed and promises not to repeat his act, the perpetrator can still foster, the perpetrator is willing to compensate the victim as a restoration of the sense of justice that was injured, the perpetrator/perpetrator's family is willing to apologize to the victim/victim's family.
- 2) Seen from the side of the victim, such as the willingness of the parties, especially the victim, to settle amicably and free from pressure, and the ability of the victim to forgive and accept the actions of the perpetrator.
- 3) Viewed from the side of the case, the cases that are resolved are not cases that stand out or become public attention so that there will be no turmoil in society, for example, the cases of rape, robbery, murder and others.

The exercise of discretion by police investigators creates unique patterns and forms that are influenced by the circumstances and circumstances of the case, local socio-economic and cultural conditions, as well as the legal conditions and circumstances experienced by police investigators. Investigative practices, such as handling criminal cases, follow very strong practices. Rape, wife kidnapping, theft, sexual harassment, fraud,

embezzlement, beating, adultery, etc. The action of a police investigator, in this case, is to supervise, coordinate and supervise the process of carrying out criminal procedures, which in addition to aspects of legal certainty also aspects of justice and benefits to avoid sanctions must be achieved. From the law itself to human values, which can transcend the boundaries of criminal law, human rights,ts and violations.

According tpadda Slamet Widodo, SH who is in charge of the Economic Idik II subunit of the Semarang Police Criminal Investigation Unt, explained that the use of investigators' discretion in handling the investigation process is based on the discretion of the police investigators. The achievement of the objectives of justice and interests in the preliminary criminal proceedings. Even though the police mission is a criminal charge with a repressive function, the preventive function as a police officer is always associated with this repressive mission.<sup>1</sup>

From the explanation above, we can see those police investigations are also viewed from a preventive and oppressive perspective. Therefore, in investigating criminal cases, not only formal criminal law is very strict, but also aspects of the wisdom and wisdom of police investigators based on sociological aspects in carrying out the task of investigating criminal cases are prioritized. handle.

*Restorative justice is a term of punishment, and as a condition of sentencing is not limited to the provisions of criminal law (formal and material). Restorative justice also needs to be considered in criminology and the prison system.* According Bagir Manan, stated in his writing that the substance of restorative justice includes the following principles: Cooperating with perpetrators, victims, and the community to immediately find solutions that are considered fair for all parties (win-win solutions).

Criminal mediation by the National Police investigators is carried out with the National Police Chief's Letter No. Paul. : December 14, 20,09 B / 3022 / XII / 2009 / SDEOPS and the Order of the Commissioner of the National Police of 2008 No. 7, Police Obligations in Handling Cases with Alternative Dispute Resolution (ADR). However, this is a sub-task, not a necessary,ty and form of an investigator's legal policy on discretion. In essence, the principles of criminal mediation as outlined by the Head of Police letteemphasizedze that the settlement of criminal cases using the Alternative Dispute Resolution (ADR) must be agreed upon by the parties in the proceedings, otherwise investigators will follow a professional and proportional legal process.

The application of Restorative Justice by investigators in the investigation process is a breakthrough as a form of regulatory reform for handling criminal cases for the sake of resolving cases in people who want to obtain justice of the highest quality, but not through a formalistic, long, rigid, and inflexible and expensive criminal justice process. . Police discretion still needs to be given so that it can be used as a legal basis and can be used as a canal to open a deadlock in resolving cases involving the interests and justice of the general public. In exercising discretion in handling criminal cases, the investigator's authority must be limited and regulated so that it is not misused and at the outputs and outcomes are not counterproductive with the intention of granting discretion by law. The conditions for exercising discretion and at the same time limiting it, are least that the discretion issued or taken by the Police must always be based on the principles of Good Governance, which at least meet the principles of transparency and public accountability. These two main conditions need to be met in the making and implementation of discretion because according to Robert Klitigaard broad discretion will prevent corruption, therefore it must be balanced with transparency with public accountability. In addition, the application of restorative justice by investigators in handling criminal cases is one form of the implementation of the Police Reform Program which is defined as an effort to reform and reform the bureaucracy in the police environment. If it is determined that it is no longer compliant, then the dynamics of community development areis considered a performance target. This is related to the satisfaction of today's societywhichheexpects transparency, legal certainty and convenience through local, social, regional, and global environmental impacts. Justice by the mission, function, and main role of the police in the reform era.

According to Satjipto Rahaijo: Criminal justice policies also need to initiate reorganization and reforms that maintain a balanced pattern that not only protects victims or victims but also protects the interests of perpetrators. Re-contract with a high level of integrity and commitment, based on the perpetrator's sense of responsibility and full awareness, to create rights that the victim must accept. In this w, as he is awakened and finally, peace is realized, which benefits both the perpetrator and the victim.

According to Eva Achjani Ulfa, "Restorative justice in law enforcement has a legal basis in the form of discretion over crimes that are still within the scope of law enforcement investigations and requires law enforcement investigators to make adjustments. And to look for guidelines and patterns of reform, restoration, repair, change and reform, and realignment so that perpetrators and victims think about improving the situation and returning it to its original state."<sup>1</sup>

*Restorative justice is a concept of thought that responds to the evolution of the criminal justice system by focusing on the need for community participation and victims who feel excluded from the mechanisms that work in the current criminal justice system. Restorative justice, on the other hand, is also a new framework used in dealing with law enforcement crimes.*

## V. Closing

### 1. Conclusion

The use of restorative justice as a form of police discretion in resolving criminal cases of humiliation at Polrestabes Semarang is based on: Law Number 2 of 2002 concerning the Indonesian National Police, Order Number 7 of 2008 the Commissioner of the National Police regarding the Basic Guidelines. In the Regional Police Strategy and Implementation Act based on Article 14 (f), one form of activity in the implementation of Palmas is the application of the ADR (Alternative Dispute Resolution) concept with the Telegram letter number STR/583/. that. VIII/2012, August 8, 2012, set a legal precedent for the implementation of restorative justice by investigators. Its application is based on an agreement between the perpetrator and the victim, and the investigator only acts as a mediator.

### 2. Suggestion

The application of restorative justice as a form of police discretion in resolving criminal cases of fraud at the Semarang Polrestabes is based on: Article 14 (f) stipulates that one form of activity in the implementation of Palmas, Law Number 2 of 2002 and Regulation of the Minister of State Police Number 7 of 2008 concerning National Police of the Republic of Indonesia, is the application of the concept of ADR (alternative dispute resolution). ), strategy and implementation of community-based policing, Police Chief Letter No. B/3022/XII/2009/-SDEOPS dated 14 December 2009 regarding the handling of cases with ADR (Alternative Dispute Resolution), then telegram number STR/583/VIII/2012 dated 8 August 2012, signs that criminal justice has been carried out by investigators, its application to the agreement between the perpetrator and the victim is based on,

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