

Implementation of Restorative Justice at The Investigation stage of Fraud Criminal Acts in the Directorate of General Criminal research of the Bali Regional Plice (POLDA)

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Abstract

Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, accommodate the norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community. It is emphasized in the Regulation at the police level regulated in the Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The problem is; How is the implementation of restorative justice for fraud crimes in the Bali Regional Police area and What are the obstacles to the implementation of restorative justice for fraud crimes in the Bali Regional Police area? This research is a normative legal research supported by empirical research, namely by conducting research through observation and then comparing it with the concepts contained in library materials with a legislative approach and a conceptual approach. Restorative justice which is usually taken by Bali Regional Police investigators uses two models, namely the Victim-Offenders Mediation model and the Family and Community Group Conferences. Victim-Offenders Mediation is a settlement model that involves several parties who meet in the process of implementing restorative justice, namely victims, perpetrators of criminal acts, and families of both parties using the Family and Community Group Conferences model. Obstacles to the Implementation of Restorative Justice for fraud crimes are the number of Police HR, the public's ignorance of restorative justice by investigators, and the minimal role of the community as social control and cultural factors in responding to the enactment of a law.

Keywords: Restorative Justice, Criminal Acts ,Fraud

Introduction

The Second Amendment to the 1945 Constitution of the Republic of Indonesia Chapter XII concerning State Defense and Security, Decree of the MPR RI No. VI/MPR/2000 and Decree of the MPR RI No. VII/MPR/2000, then constitutionally, there has been a change that confirms the formulation of the duties, functions, and roles of the Indonesian National Police and the separation of the institutions of the Indonesian National Army and the Indonesian National Police by their respective roles and functions.

The main task of the Police, as stated in the Police Law Number 02 of 2002 Article 13 letter C, is to protect, serve, and serve from various social ills. The rapid development of increasingly sophisticated technology and the increasing number of criminal cases requires strict law enforcement by the Police in carrying out their duties, especially in the management of investigations carried out by the Police to be able to prosecute every perpetrator of a criminal act as has been emphasized by the applicable legal regulations.

Resolving criminal cases in Indonesia can be resolved through litigation or trial. In the 1960s, the idea of resolving criminal cases using non-litigation methods emerged, which is also known as restorative Justice. Restorative Justice means restoring relationships and atoning for wrongdoings that the perpetrator wants to do to the victim using methods outside the court to ensure the problem can be adequately resolved and an agreement can be reached between the parties. This method is usually used in civil disputes. Still, in Indonesia, it has begun to be used to resolve criminal cases by prioritizing the principle of benefit for both interested parties or a win-win solution. To answer the development of the legal needs of the community and fulfill the sense of Justice of all parties, the Police are given authority by Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police need to formulate a new concept in enforcing criminal law that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of Justice of the community. Restorative Justice is a concept of thought that responds to the criminal justice system's development by emphasizing the need for community involvement and victims who feel marginalized by the mechanisms that work in the current criminal justice system.

On the other hand, restorative Justice is also a new framework of thought that law enforcers and legal workers can use to respond to a crime. The primary legal basis for the Police in implementing restorative Justice is the Regulation of the Republic of Indonesia National Police (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. This Regulation regulates how the Police handle criminal cases with a restorative justice

approach, emphasizing victim recovery, peace, and fair resolution. The resolution of criminal cases using restorative Justice is focused on efforts to transform the mistakes made by the perpetrator with efforts to improve, including improving the relationship between the parties related to the incident.

Restorative Justice aims to restore the conditions before the crime occurred, compensate the victim, and achieve peace between the perpetrator and the victim. Conditions of Cases That Can Be Resolved Restorative Justice is generally applied to minor criminal cases with specific criminal threats (as regulated in articles 364, 373, 379, 384, 407, and 482 of the Criminal Code), and the value of the loss does not exceed a specific limit. The application of restorative Justice also has particular requirements, such as the case being minor or a complaint offense, not causing social conflict, the willingness of the perpetrator and victim to reconcile, and a statement of no objection from the victim. On the other hand, restorative Justice is also a new framework of thinking that law enforcers and legal workers can use to respond to a crime. The implementation of restorative Justice in fraud crimes in the Bali Police area has been carried out with the condition of agreement between each party. If each party agrees to carry out restorative Justice, the Bali Police have a role as a facilitator in the implementation of restorative Justice. However, the Bali Police do not have any authority in the agreement that has been agreed upon and will be carried out by each party, both the reporter and the reported party. The Bali Police will cross-check whether the reported party has truly fulfilled the agreement produced through restorative Justice as a requirement to withdraw the report submitted to the Bali Police.

Methods

The research method used in this study is a normative research method that uses various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of library materials relating to restorative Justice in fraud cases as sources of research materials. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on the logic of legal science reviewed from the normative part or in the form of an effort to find law adjusted to a particular case. The sources of legal materials obtained are then analyzed descriptively, systematically, evaluatively, and

argumentatively and describe legal materials in a quality manner with regular, sequential, logical, non-overlapping, and effective sentences to facilitate the interpretation of legal materials and to understand the results of comprehensive analysis.

Results and Discussion

Implementation of Restorative Justice in criminal acts of fraud in the Bali Regional

Police Area

Restorative Justice, only known as restorative Justice, is a form of Justice that focuses on restoring victims, perpetrators of crimes, and society. The definition of Restorative Justice in Indonesia is explained in several laws and regulations, such as Article 1 number 6 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which reads: "Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation. In addition, restorative Justice is also explained in Article 1 number 3 of the State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice (hereinafter referred to as Police Regulation 8 of 2021), Restorative justice efforts carried out by investigators as an effort to resolve criminal acts of fraud based on discretionary authority by the provisions of Article 16 paragraph (1) letter L in conjunction with Article 18 of Law No. 2 of 2002 concerning Polri jo. Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

Restorative Justice is applied to law enforcement institutions in Indonesia, especially at the police level, referring to Article 1 number 3 of Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, which states that restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders

or stakeholders to jointly seek a just resolution through peace by emphasizing restoration to the original state.

Restorative Justice is a diversion process in which all parties involved in a particular criminal act work together to solve the problem. It creates an obligation to make things better by involving victims, children, and the community in finding solutions to improve, reconcile, and calm the hearts that are not based on retaliation.

Article 6 paragraph (3) of Police Regulation 8 of 2021 explains the purpose of fulfilling the rights of victims above, which can be in the form of returning goods, compensating for losses, compensating for costs incurred as a result of a criminal act, and/or compensating for damages caused by the criminal act. Based on the provisions of these articles, some conditions must be met if Restorative Justice is to be implemented.

In resolving a case according to the concept of restorative Justice, the role and involvement of community members are instrumental and essential to help correct mistakes and deviations in the surrounding community environment. Settlement with a restorative justice system is expected so that all parties who feel disadvantaged will be restored, and there will be appreciation and respect for victims of a crime. Respect is given to victims by requiring the perpetrator to make restitution for the consequences of their crime.

The purpose of restorative Justice is to encourage increased application of the concept of Justice and the fulfillment of the principles of fast, low-cost, and straightforward Justice with balanced Justice. Restorative Justice can be applied in cases of minor crimes with a maximum prison sentence of three months and a fine of IDR 2,500,000 (Articles 364, 373, 379, 384, 407, and 482). In addition, the principle of restorative Justice is also used for children or women who conflict with the law, children who are victims or witnesses of crimes, and addicts or drug abusers.

Based on the Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, fraud in cases according to Police Report

Number: LP/B/149/III/2023/SPKT/POLDA BALI, dated March 27, 2023, has been classified as a case that can be subject to restorative justice efforts. In addition to the existing formal provisions, investigators have several material considerations by referring to the provisions of the Circular, including:

a. Considering the law enforcement process through restorative Justice is good because the principle is win-win solutions, and the resolution is fast. This is coupled with looking at the psychology of the community in the area and considering fulfilling the community's sense of Justice.

b. Settlement through restorative Justice by prioritizing the principles of benefit and legal Justice, not the legal certainty approach, is carried out selflessly and solely for Justice and without reward.

c. The restorative justice process proposes the real substantial reason, namely, how law enforcement efforts can guide the community through a mediation process so that they do not commit unlawful acts.

d. Investigators use Article 16 paragraph (1) letter L in conjunction with Article 18 of Law No. 2 of 2002 concerning the Indonesian National Police, namely "in the public interest, taking action based on one's own judgment" based on considerations of the benefits and risks of the action.

According to investigators, the Police's authority to act based on one's judgment is challenging to measure the limits of. However, in some instances, investigators consider it appropriate to conduct restorative justice efforts. Restorative justice efforts that Bali Regional Police investigators usually take use two models, namely the Victim-Offenders Mediation model and the Family and Community Group Conferences model.

Victim-offender mediation is a settlement model involving several parties who meet in the restorative justice implementation process: the victim, the perpetrator of the crime, the

families of both parties to the case, and the investigator as a mediator. This model is applied if the victim and perpetrator are not residents in the jurisdiction of the Bali Regional Police. If the victim and perpetrator are residents in the jurisdiction of the Bali Regional Police, the Family and Community Group Conferences model is used. This settlement model involves the victim, perpetrator, and their family, as well as community leaders who are considered to have an essential role in reducing social unrest in the community. In fraud cases, Bali Regional Police investigators use the Family and Community Group Conferences model as a restorative justice settlement. Family and community leaders play an essential role. The presence of all of them in the negotiations is expected to produce a comprehensive agreement with both parties regarding the case, the families of both parties and community leaders as community representatives. Both parties accepted the restorative justice offer by the Bali Regional Police investigators. Restorative Justice in fraud cases can be described as follows:

After the case was entered on March 27, 2023, Bali Regional Police Investigators took action from the investigation process to the investigation. In the process of summoning the suspect, victim, and witnesses, the investigator has offered and explained the resolution of the case through restorative Justice to the suspect and the victim's family with the following steps:

First, the investigator directs both parties to make a Peace Application Letter. Second, the investigator provides an understanding of the essential benefits of restorative Justice, namely maintaining family relationships between the parties. Third, the investigator directs the victim and suspect to make a Joint Agreement Letter. After this Agreement Letter is made, there are no problems between the two parties. After that, both parties signed the letter, which community leaders and the families of the parties witnessed. In the final stage, the investigator prepares the complete administration, special case title documents, and the case title results in a report.

Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice provides an opportunity for investigators to make legal

breakthroughs in resolving fraud crimes with the concept of Restorative Justice. In the Circular, investigators can only undertake restorative justice efforts if both parties request reconciliation. However, investigators, with their discretionary authority, offer restorative justice efforts as a settlement of fraud cases and withhold SPDP from being sent to the public prosecutor.

Then, the restorative justice process carried out by investigators is based on the principles put forward by Barda Nawawi, namely: First, this process is accompanied by investigators who are also mediators between the parties involved. Second, based on the orientation process, where investigators encourage the parties to understand the dynamics that occur so that the needs of the conflict are resolved, for example, in an agreement, the suspect is aware of his mistakes and will not repeat his actions so that the victim does not need to be afraid to meet the suspect. Third, avoid formal procedures but pay attention to family procedures to create harmony when solving problems. A process in mutual conflict resolution and the results can reveal the moral order between individuals.

Interview with IPTU I KETUT SOMA ARDANA, SH, serving as Panit 1 Unit 5 Subdit 1 Ditreskrimum Polda Bali as an Investigator, explained that the SOP for handling criminal cases using restorative Justice in the Bali Regional Police Area.

1. Acceptance of reports filed by victims, victim families, or parties aware of a crime committed by someone.
2. Report identification is carried out by members of the Bali Police Poda, who also carry out community development functions.
3. Mediation or Settlement of criminal acts outside the court or non-litigation is carried out when all parties to the case agree to the Settlement of the criminal act. The Bali Police become the facilitator in the implementation of mediation as part of restorative Justice in accordance with that regulated in Perpol No. 8 of 2021.
4. A peace agreement letter will be prepared when an agreement has been reached and

the parties to the case agree to sign it.

5. Withdrawal of the report is the last step that can be taken when all the requirements and steps above have been met and implemented.
6. A letter of application for Settlement of the case was submitted in writing to the head of Bali Police Polda.
7. Clarification of the parties to the case is carried out to ensure their availability to request to terminate the investigation and investigation of their own volition based on their desires that no one forces.
8. During the implementation of the special case title, it is mandatory to be attended by the Head of the Bali Regional Police, the Bali Regional Police Investigation Supervisor, the principal investigator, the internal supervisory role, and the legal role.

In addition, Bali Regional Police officers will do the following:

- a. Present all parties to the case;
 - b. Provide facilities for re-mediating the parties;
 - c. Prepare a report on the results of the remediation;
 - d. Problem-solving, investigation conclusions, and investigations of minor criminal offenses; and record the incident in the restorative justice register.
9. If the results of the implementation of the special case title are received and approved by the Head of the Bali Regional Police, then a letter of order to stop the investigation and investigation can be issued based on the approval of the Head of the Bali Regional Police.
 10. a letter of order to stop the investigation and investigation is issued with the approval of the Head of the Bali Regional Police.
 11. If confiscated goods or objects are found during the investigation, the investigator must return them to the party entitled to receive them.
 12. Finished.

Handling of criminal acts based on restorative Justice in the Bali Regional Police area must meet the general requirements, namely:

1. Material requirements

- a. The community does not feel restless and accepts the crime;
- b. Social conflict caused by the crime is almost non-existent;
- c. National division does not occur;
- d. The nature of the crime is not radicalism and separatism;
- e. Not a recidivist or repeat offender;
- f. It is not included in acts of terrorism, does not threaten state security, acts of corruption, and murder.

2. Formal requirements

The formal requirements that must be met include a peace agreement between all parties; there are exceptions for drug crimes; the peace agreement must have a peace agreement letter that has been strengthened by the signatures of both parties to be used as evidence, and implementation of Except for drug violations, the rights of victims and the obligations of the perpetrators have been implemented. This privilege can be used by returning goods, replacing losses, or paying costs incurred due to illegal activities.

Material requirements and formal requirements are requirements that must be met to terminate the investigation and inquiry. Of course, the investigation and inquiry are ended by obtaining a specific case title, and the justification for this is for legal reasons.

Constraints in the implementation of restorative Justice in fraud crimes in the Bali Regional Police area

The success of restorative justice efforts depends on the parties. Of course, there are many differences in the conditions and motivations of the parties in the process, for example, the

victim's orientation in seeking Justice, which means that Justice must imprison the suspect. This is in contrast to the mechanism offered by restorative Justice, which is more oriented towards the quality of the process, namely making the perpetrator of the crime aware of his mistakes and the need for conflict.

Based on an interview with IPTU I KETUT SOMA ARDANA, SH. Serving as Panit 1 Unit 5 Subdit 1 Ditreskrimum Polda Bali as a Polda Investigator, in conducting investigations, there are several obstacles in uncovering fraud cases in the Bali Regional Police, as follows:

1. Time Limitations for Implementing Restorative Justice

The time limitations for implementing restorative Justice are due to the many requests from the parties in the case for restorative Justice to be carried out. The number of fraud cases in restorative Justice at the Bali Regional Police in 2021 reached 5; in 2022, it reached 4; in 2023, it reached 5; and in 2024, it reached 4. These numbers are significant in terms of a year.

2. Limited Number of Officers from the Bali Regional Police

The constraint of the limited number of officers from the Bali Regional Police who handle the implementation of restorative Justice for criminal acts, especially fraud, is very small when compared to the number of cases received according to the request for restorative Justice,

1) The level of public understanding regarding restorative Justice is still low; efforts taken by the Police

2) The difficulty of finding common ground or agreement between the parties to the case at the Bali Regional Police as a mediator who embraces all parties is to record the points of agreement desired by the victim because, in this case, the victim is the injured party. When the perpetrator objects to the points of agreement desired by the victim, the perpetrator can express his objection and readiness to compensate the victim's losses. The parties insist on the points of agreement they want. The Bali Regional Police will offer an agreement or middle ground between the points of agreement desired by the victim and those agreed to by the perpetrator.

3) The Parties to the Case Are Not Cooperative

The uncooperativeness of the parties to the case can also be seen from the changing statements during the case conference.

a. In addition to the factors above, the problematic implementation of restorative Justice is influenced by cultural factors. According to Soerjono Soekanto, culture is one element of the legal system in the form of values that underlie the application of law. These values are abstract concepts regarding what is considered good and harmful.

Conclusion

The implementation of restorative Justice for fraud crimes by Bali Regional Police investigators formally refers to the regulations of Article 16 paragraph (1) letter L in conjunction with Article 18 of Law No. 2 of 2002 concerning the Indonesian National Police in conjunction with Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, using the Family and Community Group Conference model, namely restorative Justice that involves families and community leaders to produce a comprehensive agreement.

Obstacles to implementing Restorative Justice for Fraud Crimes at the Investigation Level at the Bali Regional Police 1) Public understanding of Restorative Justice is still low, 2). The difficulty of finding common ground or agreement, 3) The parties to the case are not cooperative.

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