

## **Implementation of Restorative Justice in the Criminal Act of Assault in the Directorate of General Criminal Research of the Bali Regional Police**

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### **Abstract**

The implementation of restorative justice in the crime of assault in the general criminal investigation directorate of the Bali Regional Police goes through a process that must be carried out before the termination of the investigation/investigation is carried out. The stages of investigation and inquiry continue to run in accordance with applicable procedures. The first stage in carrying out the peace process is carried out through mediation by both parties where the victim can express their feelings of discomfort and complaints felt as a result of the assault carried out by the perpetrator. The perpetrator or victim submits a written application letter addressed to the Head of the Bali Regional Police, accompanied by documents, namely a statement of peace between the perpetrator and the victim, the results of the clarification are fulfilled, the investigator will submit a request for approval to carry out a case title. After the case title is carried out, the investigator prepares a report on the results of the special case title which then issues a letter of order to stop the investigation/investigation and a letter of determination to stop the investigation/investigation for legal reasons. Obstacles to resolving Crimes with the Restorative Justice approach can be identified in general, namely, internal and external obstacles in the form of investigator competence in the Criminal Investigation Unit in the field of legal knowledge, legislation.

**Keywords :** Restorative Justice, Police and the Crime of Assault

## **Introduction**

Restorative justice in its implementation requires a concept that has legitimacy in its application. As a manifestation of the actualization of this philosophy, the concept must be outlined in legislation. The existence of regulations on police discretion in Article 18 of the Police Law has actually provided a legal basis for Polri investigators to apply the restorative justice philosophy in handling criminal cases. When the police are truly protectors, guardians, and servants of the community, the law is not the primary benchmark. In many cases, not a few individuals or groups of people plan to commit assault against others due to several factors such as revenge, defamation, feelings of betrayal or harm, feelings of insult to their self-esteem and dignity, and other motives. Furthermore, many people are also involved in disagreements, fights, or arguments that lead them to commit assault unintentionally.

By looking at the background above, the following problem formulations can be drawn: first, the Implementation of Restorative Justice in the Crime of Assault in the Directorate of General Criminal Investigation of the Bali Regional Police, second, obstacles to the Implementation of Restorative Justice in the Crime of Assault in the Directorate of General Criminal Investigation of the Bali Regional Police. This study aims to determine the policy for handling criminal acts through

the Restorative Justice approach and the obstacles or constraints in resolving the crime of assault using the Restorative Justice approach.

## **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 statutory regulations and secondary legal materials in the form of library materials related to restorative justice as sources of research material. Johnny Ibrahim is of the opinion 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 side, or which takes the form of an effort to discover law that is adapted to a particular case. This research is also supported by empirical research.

## **Results and Discussion**

### **Implementation of Restorative Justice in Mob Crimes at the Bali Regional Police General Criminal Investigation Directorate**

Roscoe Pound, that: Discretion is an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience. It is an idea of morals, belonging to twilight zones between law and morals.

Under Indonesian Positive Law, criminal cases cannot be resolved outside the court process, but in certain cases it is possible to do so. In practice, criminal law enforcement in Indonesia, despite the lack of a formal legal basis, criminal cases are often resolved outside the court process through the discretion of law enforcement officials, peace mechanisms, customary institutions, and so on. The consequences of the increasing application of penal mediation as an alternative to restitution in criminal law cases in the criminal process indicate that the differences between criminal and civil law are not that significant and that these differences are becoming dysfunctional.

The current criminal law largely still uses the French Code of Criminal Law, better known as the Code Penal. Over time, this criminal law has drawn criticism for its perceived rigidity in application and sometimes insufficient focus on the principles of justice within society.

According to Muladi, restorative justice aims to empower victims, encouraging perpetrators to prioritize recovery. Restorative justice prioritizes meeting the victim's material, emotional, and social needs.

Restorative justice theory views crime as a violation of humanity, and therefore requires a humane resolution. Restorative justice is a problem-solving approach to crime that involves the parties themselves and the community at large in an active relationship with legal bodies. Several universally applicable principles inherent in the concept of the restorative justice approach in resolving criminal

acts include: the Principle of Fair Settlement (Due Process), Equal Protection, Victims' Rights need to be considered, Proportionality, Presumption of Innocence, and the Right to Consultation or Legal Counsel.

The Directorate of General Criminal Investigation of the Bali Regional Police is a National Police Organization tasked with conducting investigations and criminal investigations, one of which is the New Restorative Justice mechanism through Interpersonal Communication. Interpersonal Communication is important in the success of Restorative Justice because of the efforts of meetings and good communication between each other, allowing both to communicate so that good relationships are re-established and efforts to find solutions that are all through Interpersonal Communication, both with Investigators, or the community with investigators. Through restorative justice with restorative peace, an effort is made to mediate between perpetrators and victims to achieve peace and find solutions that benefit both parties without involving the courts. Restorative justice has colored the development of law in the world and become a breakthrough for justice for all parties. Ideally, court decisions should reflect the values of justice, legal certainty, and benefit, but in practice it is very difficult to include or accommodate these three values in a court decision. The procedures for implementing peace as stipulated in Articles 10-15 of Attorney General Regulation Number 15 of 2020, generally restorative justice is implemented through three stages: 1) Peacemaking efforts; 2) Peacemaking process; 3) Implementation of the peace agreement.

The basis used by the Police in implementing Restorative Justice is 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 police's authority to act according to their own judgment. Within the Indonesian National Police, investigators, through their discretionary authority, are allowed to resolve cases by prioritizing the principles of Restorative Justice. This is supported by internal POLRI regulations, namely: 1. Letter from the Chief of Police No. Pol.: B/3022/XII/2009/Sde Ops, dated December 4, 2009, concerning Case Handling through Alternative Dispute Resolution/ADR. 2. Telegram Letter from the Head of the Indonesian National Police Criminal Investigation Agency to the Director of General Crimes, Director of Criminal Investigation Agency and Director of Narcotics Investigation Agency of all Regional Police Number: ST/110/V/2011, dated May 18, 2011 regarding Alternative Case Settlement Outside the Court. 3. Secret Telegram Letter from the Head of the Indonesian National Police Criminal Investigation Agency to the Director of General Crimes, Director of Criminal Investigation Agency and Director of Narcotics Investigation Agency of all Regional Police Number: STR/583/VIII/2012, dated August 18, 2012 regarding the Implementation of Restorative Justice. 4. Circular Letter of the Chief of Police Number SE/7/VII/2018, dated July 27, 2018 regarding the Termination of Investigation. 5. Circular Letter of the Chief of Police Number SE/8/VII/2018 of 2018 regarding the Implementation of Restorative Justice in the Settlement of Criminal Cases. 6. Regulation of the Republic of Indonesia National Police Number 8 of 2021

concerning Handling of Criminal Acts Based on Restorative Justice.

In its implementation, handling criminal cases using a restorative justice approach in the crime of assault at the Bali Regional Police goes through a process that must be carried out before the investigation/inquiry is terminated. This research is the result of an interview with Bagus Sigit Nugroho, PS. Panit 2 Unit 1 Ditreskrimum Polda Bali, that the important thing that must be underlined is that the investigation and inquiry stages continue to run according to applicable procedures. Based on the results of the research, the settlement of the assault case using the principle of Restorative Justice has been carried out by Investigators in accordance with what is formulated in Articles 5 and 6 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the requirements for resolving cases outside the court.

### **Obstacles to the Implementation of Restorative Justice in Mob Crimes at the Bali Regional Police General Criminal Investigation Directorate**

Indonesian Positive Law stipulates that criminal cases cannot be resolved outside the court process, but in certain cases it is possible to do so. In practice, criminal law enforcement in Indonesia, despite the lack of a formal legal basis, criminal cases are often resolved outside the court process through the discretion of law enforcement officials, peace mechanisms, customary institutions, and so on. The consequences of the increasing application of penal mediation as an alternative to restitution in criminal law cases in the criminal process indicate that the differences between criminal and civil law are not that significant and that these differences are becoming dysfunctional.

Penal Mediation that applies the values of Restorative Justice is not something new for Indonesian society, in fact now this justice is said to be a progressive approach as stated by Marc Levin "The approach that was previously declared obsolete, old-fashioned and traditional is said to be a progressive approach".

Based on the research results, there are several factors that cause perpetrators, both children and adults who are the cause of committing criminal acts of mob violence, namely: 1. Educational Factors, The level of education is considered as one of the factors that influence someone to commit a crime in this case the act of mob violence, Education is a means for someone to know what is good and what is bad. And by doing an act whether the act has a certain benefit or even creates problems or causes certain losses.; 2. Religious Factors, This factor is a basic element in human life which is the same spiritual need. The norms contained in it have the highest value in human life because these norms are divine norms and everything that has been outlined by religion is always good and guides humans towards the right and good path. 3. Economic Factors, Poverty is a phenomenon that cannot be denied in every country. Until now there has been no way out to resolve this phenomenon. From this it can be concluded that in every country where there are many poor people, secretly there are many criminals, religious violators and criminals of various types; and 4. Environmental Factors: Someone

who lives or resides in an environment that supports gang violence will eventually commit such acts. Many factors contribute to environmental factors contributing to crime (gang violence). For example, the need to socialize with peers, a lack of environmental control, and association with someone who engages in gang violence.

Although Restorative Justice has begun to be recognized as an alternative to handling people who are facing the law from criminal justice and has begun to receive support from many parties, there are still many inhibiting factors faced by law enforcement, namely: (1). The societal factor itself is an obstacle. Such as the societal perspective on crimes or violations of the law committed by someone, even though they are categorized as minor acts, they are still considered as criminals who must be punished. The strong desire to always punish criminals with prison sentences will hinder the implementation of Restorative Justice. This certainly results in the process of implementing restorative justice carried out at the investigation level sometimes being unsuccessful, especially because the culture of forgiveness in society towards perpetrators who are facing the law tends to be lacking. Another obstacle is due to the values that still underlie the applicable law, values are concepts regarding what is considered good and what is considered bad in society. (2). The victim's family insists on demanding that the perpetrator of the assault be processed according to law. The family of the victim of the assault who is under the control of those who do not agree with the extrajudicial process is a problem that greatly hinders the process of implementing restorative justice in this case, but in some cases there are still many families of victims who want to get justice to continue the case to court. The majority of the public, especially the victim's family, believes that perpetrators who are in conflict with the law must be punished appropriately. This occurs because the victim's family does not accept it when their family is injured due to acts of violence or abuse committed by the perpetrator. This will make it difficult for investigators to carry out the peace process because of the strong influence of the victim's family who oppose the implementation of restorative justice. (3). The understanding of Polri members regarding the restorative justice system is still low. The understanding of Polri members regarding the restorative justice system is because not all investigators have the same abilities between one investigator and another, so that in assessing a problem, some are indeed competent because they are supported by their experience, but many also assess a problem without taking into account the risks that will occur, so that what arises is a bigger problem because there is no understanding by all parties in understanding the implementation of restorative justice with the aim of recovery for perpetrators, victims, and the community so that as a result sometimes there are parties who intervene in the mediation process and inconsistencies in the application of regulations in the field. Although law enforcement officers will find it easier to understand and implement the principles of restorative justice because they are regulated by law, in reality there are still quite a lot of minor criminal cases that continue to the prosecution process and end up in prison. (4). The perpetrator will be difficult to be accepted by society. Because the culture of society thinks that if someone commits a

crime then he must be imprisoned. So every time there is a perpetrator of a crime, society will think about staying away from the perpetrator so as not to be affected by the impact that might arise considering that the perpetrator of a crime is someone who does not obey the law and always causes unrest in the community. (5). Facilities and infrastructure factors are inhibiting factors in the process of implementing restorative justice. To restore the mental and psychological state of the victim, however, this is still inadequate at every level of law enforcement agencies, such as the lack of psychologists and religious counselors to provide assistance and counseling in solving legal problems. (6). The low level of legal literacy in society will certainly also be a challenge and obstacle in itself. The relationship between law and society in Indonesia is very low. This can be seen from law enforcement, legal awareness and legal culture. Awareness of legal obligations is not solely related to legal obligations to the provisions of the law alone, does not mean the obligation to obey the law alone, but also to unwritten laws, such as customs and community habits. The factors causing the lack of public awareness are due to: First, the rule of law. A set of laws and regulations created by authorized institutions still do not provide adequate protection for the public. Second, the public feels that the law in Indonesia still cannot guarantee their rights. Third, law enforcement officers, as the makers and implementers of the law, are still unable to truly implement the established regulations. This means that we must not be blind to the regulations around us, especially those that directly relate to ourselves or our loved ones. Therefore, more extensive socialization by law enforcement officers together with stakeholders at various levels is a key agenda that must be implemented.

In addition to the inhibiting factors in the implementation of restorative justice mentioned above, in the implementation of restorative justice in the investigation system and methods in the current Investigation Division, especially in the Bali Regional Police, based on research at the Bali Regional Police Criminal Investigation Directorate, there are several obstacles, including: (a). The investigative authority granted by the Criminal Procedure Code is the authority to prove a crime and find a suspect who must be held accountable in court. The Criminal Procedure Code does not give investigators the authority to stop a case if the elements of a crime are met as per the results of the investigation. (b). In the Criminal Procedure Code, investigators are given the authority to stop an investigation on the grounds that it is not a crime, there is insufficient evidence as a crime, and by law. However, the Criminal Procedure Code does not give investigators the authority to settle cases outside of court or to set aside cases for certain considerations. (c). The Criminal Procedure Code regulates the withdrawal of reports or complaints only for certain cases, namely those that are complaint offenses. Therefore, investigators, in formal juridical terms, except for complaint offenses, must forward to the Public Prosecutor for cases that are proven to be criminal based on the investigation. Meanwhile, in the development of criminality, parties prefer to resolve cases outside the courts, even in cases classified as pure crimes (not complaints).

Another obstacle encountered in implementing restorative justice in criminal case handling is

that investigators understand normative law or existing positive law better than the concept of customary law as the law that lives within the community. In the context of implementing restorative justice, investigators should also be open to understanding local customary law to provide a sense of justice to the community.

## Conclusion

The implementation of restorative justice in the crime of assault in the Bali Regional Police's General Criminal Investigation Directorate went through a process that must be carried out before the investigation/inquiry was terminated. The stages of the investigation and inquiry continued in accordance with applicable procedures. The first stage in carrying out the peace process was carried out through mediation by both parties where the victim could express their feelings of discomfort and complaints felt as a result of the assault carried out by the perpetrator. Obstacles or constraints to resolving the Crime with the Restorative Justice approach can be identified in general, namely, obstacles that include internal and external obstacles in the form of the competence of investigators at the Bali Regional Police's Criminal Investigation Directorate in the fields of legal knowledge, legislation, the criminal justice system and technical and tactical investigative skills are still not optimal.

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