



Portrait Handling Criminal Acts with Restorative Justice at the Police Institution

Emmilia Rusdiana^(✉) and Taufiqul Hakim As'ad

Department of Law, Faculty of Social Sciences and Law, Universitas Negeri Surabaya,
Surabaya, Indonesia

emmiliarusdiana@unesa.ac.id

Abstract. The reason for the preparation of formal requirements in Police Regulation Number 8 Year 2021 concerning Handling Crimes Based on Restorative Justice is that there is compensation as a follow-up to the settlement of agreements on criminal acts. This study aims to analyze the compensation by the parties in the settlement of agreements in society. The purpose of this study is to validate compensation for criminal offenses through alternative dispute resolution based on restorative justice. The research uses a statutory approach, a case approach, and a conceptual approach, and is analyzed using a qualitative descriptive analysis. The results show that the concept of compensation implies that there is consistency in the fulfillment of the agreement. This has an impact on the restoration of the balance between the victim and the crime, and harmonious relations in society. Recommendations are there are guidelines in the preparation of agreements related to compensation.

Keywords: alternative dispute resolution · restorative justice · police · Police Regulation Number 8 Year 2021

1 Introduction

In the last ten years, countries in the world, for example in China, stated that some observations are made on the efficiency of the regime to evaluate if the applicable rules are in line with economic starting points when compensating marine ecological damage arising from offshore drilling [1]. This includes Indonesia having held law enforcement through restorative justice in the hope that the loss and suffering of victims and their families can be recovered [2], there is also a mechanism for compensation for victims that can be sought through litigation and non-litigation. Litigation path [3].

The existence of compensation in the settlement of criminal acts based on restorative justice is expected as a follow-up to legal developments in Indonesian society. The resolution of criminal acts in the community is the implementation of restorative justice in the settlement of delinquency cases at the Donggala Police, which has not been optimal, from several reports that have been submitted to the Donggala Police, they have not fulfilled the resolution of cases in restorative justice because there is no agreement between the victim's family and the perpetrator's family. Barriers in the application of

restorative justice to delinquency cases that conflict with the law, namely the lack of public trust in the rules for implementing restorative justice, the time factor due to the difficulty of bringing together the families of the perpetrators, and the families of the victims, and the compensation factor that hinders the process of resolving cases/peace between victims and perpetrators [4]/Another implementation is that the handling of criminal cases of children through restorative justice will be carried out optimally if accompanied by the role of law enforcement officers so that the same understanding and perception is needed between law enforcement officers in resolving cases of child crimes, including regarding the fulfillment of restitution for victims of child crimes. Covers the application procedure for the granting of restitution. In providing legal certainty for the fulfillment of restitution for victims of child crimes, it is necessary to emphasize the obligation to provide restitution in the application of restorative justice so that children's crimes that cause harm and suffering can be subject to restitution [5].

This rule regarding restorative justice has been put into practice through the handling of cases at the National Police that 11,811 cases were resolved through a restorative justice mechanism throughout 2021 [6], and since the 999 cases submitted, the Attorney General's Office (AGO) has approved 907 cases [7].

Currently, the State of Indonesia is anticipating the settlement of criminal cases in the future which has been recognized by the ratification of the Regulation of the Head of the Indonesian National Police Number 6 Year 2019 concerning Criminal Investigations. Indonesian Prosecutor's Office Regulation Number 15 Year 2020 concerning Termination of Prosecution based on Restorative Justice and Police Regulation Number 8 Year 2021 concerning Handling of Crimes Based on Restorative Justice.

The hope for the existence of the trial as a settlement of criminal cases at this time is to lead to the development of a paradigm of punishment with justice obtained by litigants by providing opportunities for perpetrators to improve themselves and be accepted by the community [8]. In Indonesia, the practice of resolving criminal cases using restorative justice has been carried out, especially for settlements of minor crimes [9].

This study aims to demonstrate a deep understanding of the dynamics of law enforcement in Police Regulation Number 8 Year 2021 concerning the Handling of Crimes Based on Restorative Justice. Article 2 Paragraph (1) that the Handling of Criminal Acts based on Restorative Justice is carried out in the following activities: the implementation of the Criminal Investigation function; investigation; or investigation, then the Handling of Criminal Acts based on Restorative Justice (Article 3) and then according to Article 4 that the general requirements include: material; and formal. The follow-up is Article 6 Paragraph (3) that the formal requirements for fulfilling the rights of the victim and the responsibility of the perpetrator are the return of goods and compensation, replacing the costs incurred as a result of the crime; and/or replacing the damage caused by the Crime.

The juridical implications of compensation as a condition of agreement on the occurrence of a crime are adjusted to the expectations of the community and there is consistency in the fulfillment of the agreement. This has an impact on restoring the balance of protection between victims and perpetrators, and harmonious relations in society. The intention is to avoid new conflicts between communities and can result in following up on reports or case complaints through the penal route, as well as helping criminals [10] to avoid other crimes in the future.

2 Methods

This research is normative legal research [11], as a know-how activity in legal science, not just knowing about it. As a know-how activity, legal research is carried out to solve legal issues faced. The legal issue faced and to be analyzed is the dynamics of law enforcement of Police Regulation Number 8 Year 2021 concerning Handling of Crimes Based on Restorative Justice.

The approach used in this research is the Statute Approach and the conceptual approach. The legal approach is carried out by reviewing all laws relating to the legal issues to be investigated. The case approach is carried out by examining cases related to legal issues on cases that have been decided by judges in court. The conceptual approach departs from the views and doctrines that develop in the science of law. The sources of research material in this legal research were obtained from legal materials. Primary legal materials consist of legislation, official records, or treatises in making laws or judicial decisions, and Secondary legal materials are all publications on law, including textbooks, legal dictionaries, legal journals, and annotations of court decisions.

The collection of primary legal materials in the form of laws and regulations is carried out by taking an inventory of laws and regulations, and secondary legal materials in the form of textbooks, dictionaries, and relevant legal journals using library research, then the legal materials are inventoried and classified according to the problem to be analyzed. The collected legal material is then analyzed by descriptive analysis and then interprets and or analyzes all aspects to understand inductively the meaning of the relationship between aspects that are the main problems of the study.

3 Discussion

The dynamics of law enforcement began with the ratification of Law Number 8 Year 1981 concerning the Criminal Procedure Code (KUHP), then since the paradigm of criminal law enforcement shifted to involving victims, the application of the restorative justice approach began to be implemented, although not significantly.

Mardjono Reksodiputro [12] said that restorative justice is an approach that aims to build a criminal justice system that is sensitive to victim issues. Restorative justice is important for victims of crime because this approach is a form of criticism of the current criminal justice system in Indonesia which tends to lead to retributive goals, namely emphasizing justice in retaliation, and ignoring roles.

Law enforcement with a restorative justice approach with an *in concreto* program is to give authority to law enforcement officials and with secondary rules to authorize judges, prosecutors, and police to create, extinction, and alteration of primary rules with a restorative justice process [13]. This indicates that the police are given the right to create, extinction, and alteration of primary rules.

The police have a role in handling investigations and investigations or known as investigators and investigators [14]. To follow up law enforcement with a restorative justice approach, then there is the ratification of Police Regulation Number 8 Year 2021 concerning Handling of Crimes Based on Restorative Justice which describes in Article 2 Paragraph (1) that Handling of Crimes based on Restorative Justice is carried

out in the following activities: implementation of the Criminal Investigation function; investigation; or investigation, then the Handling of Criminal Acts based on Restorative Justice must meet general and specific requirements (Article 3). The study that their general requirements include: material; and formal (Article 4). This is followed up with formal requirements for fulfilling the rights of the victim and the responsibility of the perpetrator, namely the return of goods and compensation, replacing the costs incurred as a result of the crime; and/or replacing the damage caused by the Crime -Article 6 Paragraph (3).

The interesting thing that appears in *Perturan Kapolri* (Chief Police Regulation) Number 8 Year 2021 is that the fulfillment of rights is proven by a statement following the agreement signed by the victim [Article 6 paragraph (4)]. This can be fulfilled by the parties after going through the fulfillment of material and formal requirements. Material requirements in the form of not causing unrest and/or rejection from the public; does not result in social conflict; does not have the potential to divide the nation; not radicalism and separatism; is not a repeat offender based on a Court Decision; and not criminal acts of terrorism, crimes against state security, crimes of corruption and crimes against people's lives (Article 5). Material requirements are requirements related to the substance of a criminal act.

The material requirements above, show that the requirements can be subjective or objective. The subjective requirements are the requirements not to cause unrest and/or rejection from the public; does not to result in social conflict; does not to have the potential to divide the nation; not radicalism and separatism; while the objective requirements are on determining the data as a result of the investigation, namely not repeating criminal acts based on Court Decisions; and not criminal acts of terrorism, crimes against state security, crimes of corruption and crimes against people's lives. Meanwhile, subjective requirements are requirements whose fulfillment is based on the assessment of certain people or groups, while objective requirements are the fulfillment of requirements with evidence based on scientific principles.

The study in the form of formal requirements in fulfilling the rights of the victim and the responsibility of the perpetrator is the return of goods and compensation, replacing the costs incurred as a result of the crime; and/or replacing the damage caused by the Crime. This raises an additional explanation regarding the calculation of compensation, the return of this item is only for violations of rights to property, and reimbursement of costs arising from the consequences of a criminal act.

3.1 The Concept of Compensation

The enforcement of criminal law on corruption crimes prioritizes the return of state financial compensation from the perpetrators of corruption. And in Yayan Indiana's thesis [15] bound by criminal imposition in the form of payment of compensation which can be used as a basis for returning state financial losses there are several obstacles so the decision seems to be in vain, including a. The existence of a fairly long period between the occurrence of acts of corruption and the trial process makes it difficult to trace money or the proceeds of criminal acts of corruption. b. Money or income from the criminal act of corruption has been exhausted or has been carried out in other forms that are difficult to reach by law. c. The inability of the convict to pay compensation. The

statement above is an illustration of the implementation of the return of state financial compensation from perpetrators of criminal acts of corruption which of course cannot be used as parameters and has not provided recommendations for general crimes, namely crimes that are not regulated outside the Criminal Code.

The process of returning evidence in a crime in the jurisdiction of the Sibolga District Court [16] is a case with an *inkracht* decision, then the judge draws up an excerpt of the verdict within one week. The excerpt of the decision is given to the prosecutor for the preparation of the minutes of the implementation of the judge's determination and the minutes of the return of the evidence, and the prosecutor immediately returns the evidence to the owner mentioned in the contents of the excerpt of the verdict. The result of the writing above is the process of returning evidence after going through the process in criminal procedural law with national law.

The discussion regarding compensation and return of goods in this context is to the Dani and Damai tribal communities in Papua [17] that the theft of valuable items such as seashells which are commonly used as dowry from the male side, the customary punishment is the cutting of two tails. pigs and stolen goods must be returned. Meanwhile, the theft of pets (pigs, birds, or plants in the field) is done through meetings and compensation through the payment of a fine in the form of three pigs.

The calculation of state losses [18] in corruption crimes uses several calculation patterns, namely the calculation of total losses, total losses with adjustments, and net losses. The patterns used by the accountants to determine state losses include the following:

- a. Total Loss, as a loss without being based on a calculation method without regard to the achievements given, meaning that the loss is the sum of all costs incurred. namely by calculating the number of payments that have been issued without any investigation and adjustment.
- b. Total Loss with Adjustment, the principle is not different from the type of total loss, but because the loss has caused other burdens that the government should not have borne if the goods or service provider performs their obligations correctly, adjustments will be made to expenditures made by the state or other actions. certain also costs to destroy or get rid of
- c. Net Loss, i.e. If in the pattern of calculating total losses with adjustments made by way of upward adjustments, then the pattern of calculating net losses is adjusted downwards. For example, if the provider of goods or services is still unable to meet the qualifications of certain goods, the loss is calculated based on the value of the payment issued with an adjustment to the difference in the net value of the goods.

Based on the calculation of losses above, it is only special in the case of corruption, but the calculation pattern can be adopted in calculating the calculation of compensation for the consequences of criminal acts.

4 Conclusion

The calculation of compensation needs to be formulated as a guide for the parties in fulfilling the formal requirements for the settlement of certain criminal cases in the

investigation stage by the police. The recommendation is that there are parameters that can be proposed as guidelines for the provision of compensation in terms of the amount, the submission process, and other agreements related to compensation by the parties to the community.

Acknowledgments. The author wishes to thank God for providing fluency in writing the article. Thanks also to the reviewer, who provide input to the article through the process of writing it appropriately. We would also like to thank the other researchers whose research findings we cite as references, which allowed all of these publications to be completed on time and ready for publication.

Authors' Contributions. The author comprises one students and one supervisor who also contributed to writing the article. Article writing is separated into numerous stages of research and writing that are completed in 2 (two) months. The author investigates related themes based on observations made in the field over many months. The writer offers the ideas in this scientific article based on observable data.

References

1. M. Jiang and M. Faure, "The compensation system for marine ecological damage resulting from offshore drilling in China," *Mar. Policy*, vol. 143, no. June, p. 105132, 2022, doi: <https://doi.org/10.1016/j.marpol.2022.105132>.
2. H. S. Flora, "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia," vol. 3, no. 2, pp. 142–158, 2018.
3. Andi Maysarah, "Mekanisme Ganti Kerugian Terhadap Korban Tindak Pidana," *Warta*, vol. 59, no. 1, 2019.
4. B. D. Y. Hamka Muchtar, "Implementasi Restorative Justice Dalam Penyelesaian Perkara Delinkuensi," *Tadulako Master Law J.*, vol. 4, no. 2, 2020.
5. J. Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *J. Legis. Indones.*, vol. 5, no. 4, p. 319, 2018, [Online]. Available: <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/260/pdf>.
6. P. I. Savitri, "Kejagung hentikan penuntutan 907 perkara untuk keadilan restoratif," *antaranews.com*, 2022. <https://www.antaranews.com/berita/2801353/kejagung-hentikan-penuntutan-907-perkara-untuk-keadilan-restoratif>.
7. TIM, "Kapolri: 11.811 Kasus Selesai Lewat Restorative Justice pada 2021," *CNN Indonesia*, 2022.
8. R. Yulia, "Penerapan Keadilan Restoratif Dalam Putusan Hakim: Upaya Penyelesaian Konflik Melalui Sistem Peradilan Pidana," *J. Yudisial*, vol. 5, no. 2, p. 232, 2012.
9. M. Muhaimin, "Restoratif Justice dalam Penyelesaian Tindak Pidana Ringan," *J. Penelit. Huk. Jure*, vol. 19, no. 2, p. 185, 2019, doi: <https://doi.org/10.30641/dejure.2019.v19.185-206>.
10. H. Arief and N. Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl J. Huk.*, vol. 10, no. 2, p. 173, 2018, doi: <https://doi.org/10.31602/al-adl.v10i2.1362>.
11. Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Kencana Prenada Group, 2011.
12. Mardjono Reksodiputro, "Paradigma Restorative Justice dalam Pembaruan Hukum Pidana Indonesia," *Jurnal Perempuan*, 2019. <https://www.jurnalperempuan.org/warta-feminis/paradigma-restorative-justice-dalam-pembaruan-hukum-pidana-indonesia>.

13. K. P. Prayitno, "Restorative Justice Untuk Peradilan Di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum In Concreto)," *J. Din. Huk.*, vol. 12, no. 3, pp. 407–420, 2012, doi: <https://doi.org/10.20884/1.jdh.2012.12.3.116>.
14. T. Rohman, E. Erdianto, and E. Widia, "Pelaksanaan Penyelidikan Dan Penyidikan Perkara Pidana Oleh Kepolisian Terhadap Laporan Masyarakat Di Polisi Sektor Lima Puluh," *JOM Fak. Huk.*, vol. 3, no. 2, pp. 1–15, 2016.
15. Y. Indriana, "Pengembalian Ganti Rugi Keuangan Negara Pada Perkara Tindak Pidana Korupsi," *Cepalo*, vol. 2, no. 2, p. 123, 2019, doi: <https://doi.org/10.25041/cepalo.v2no2.1769>.
16. I. A. Permatasari, "Pengembalian Barang Bukti Dalam Tindak Pidana Kepada Pemiliknya," Universitas Muhammadiyah Sumatera Utara, 2018.
17. O. Murib, "Peranan Kepala Suku Dalam Penyelesaian Perang Antar Suku Di Kabupaten Timika Kajian Dari Segi Hukum Adat dikutip dalam 0Manuel Kaiseipo, Perang Suku dan Bias Cultural, Parakarsa Rakyat, Jakarta, 2006.," *Lex Soc.*, vol. 3, no. 9, 2015, [Online]. Available: https://www.researchgate.net/publication/269107473_What_is_governance/link/548173090cf22525dcb61443/download%0A. http://www.econ.upf.edu/~reynal/Civilwars_12December2010.pdf%0A. <https://www.think-asia.org/handle/11540/8282%0A>. <https://www.jstor.org/stable/41857625>.
18. Michael Julnius Christopher Siahaya, "Pengembalian Kerugian Keuangan Negara Dalam Tahap Penyidikan Tindak Pidana Korupsi dikutip dari D. Y Witanto, Dimensi Kerugian Negara Dalam Hubungan Kontraktual, CV.Mandar Maju Bandung, 2012," *Lex Crim.*, vol. 4, no. 2, 2015.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

