



Interpreting the Material Requirements of Recidivism: Realizing Restorative Justice in the Police Force

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Abstract

The implementation of restorative justice in the Indonesian Police Force is conducted by settling the case in the preliminary investigation and investigation stage. There are material requirements that should be fulfilled one of which is that the case is not a recidivism based on a verdict. In practice, this requirement remains unclear. For instance, an issue will arise when a perpetrator who committed a theft then settled with a restorative justice mechanism in a police station but then caught for committing another theft. The problem that emerges is whether the second offense can be still solved by restorative justice in police stations. Considering that one of the material requirements is that the case is not a recidivism according to the court's verdict whilst restorative justice settlement is not counted as a verdict. This issue requires reinterpretation so that the implementation of restorative justice can provide justice for all parties. The purpose of this research is to re-interpret clearly material requirements in terms of not repeating criminal acts based on judicial decisions for the future implementation of restorative justice in the police station. The research method employs a normative juridical with cases approach whilst the data is analyzed descriptively to describe the material requirements in the form of not repeating a crime based on a court decision in the police stage. The results of the study reveal that in practice repetition of criminal acts must be based on court decisions. The police are still implementing restorative justice for the second criminal act with the condition that the victim and the perpetrator have reconciled. Therefore, it is necessary to deconstruct the meaning of not repeating a crime based on a court decision, so that it is not a repetition of a crime that has been resolved by means of restorative justice in the police. This is so that the recovery goals of restorative justice are achieved. Therefore, it is necessary to deconstruct the meaning of not repeating a crime based on a court decision, so that it is not a repetition of a crime that has been resolved by means of restorative justice in the police phase. This deconstruction is important to achieve restorative justice's goals.

Keywords: crime repetition, restorative justice, Indonesian police force

Abstrak

Penerapan keadilan restoratif di kepolisian dilakukan dengan menyelesaikan perkara di tingkat penyelidikan dan penyidikan. Terdapat syarat materil yang harus diterapkan, antara lain "bukan pengulangan tindak pidana berdasarkan putusan pengadilan". Dalam praktek, syarat ini menimbulkan ketidakjelasan. Sebagai contoh, seorang pelaku melakukan tindak pidana pencurian, lalu diselesaikan dengan keadilan restoratif di tingkat kepolisian. Artinya tindak pidana tersebut tidak berlanjut ke pengadilan. Kemudian dalam waktu berikutnya, pelaku kembali tertangkap melakukan pencurian. Persoalan yang muncul adalah apakah perbuatan pidana yang kedua masih dapat diselesaikan dengan keadilan restoratif oleh kepolisian? Mengingat syarat materilnya adalah pengulangan tindak pidana berdasarkan putusan pengadilan bukan penyelesaian dengan keadilan restoratif. Hal ini memerlukan pemaknaan kembali agar penerapan keadilan restoratif dapat memberikan keadilan bagi para pihak. Tujuan dilakukan penelitian adalah untuk memaknai kembali dengan jelas berkaitan dengan syarat materil berupa bukan pengulangan tindak pidana berdasarkan putusan pengadilan dalam penerapan keadilan restoratif di kepolisian. Metode penelitian menggunakan yuridis normatif dengan pendekatan kasus, data dianalisis dengan deskriptif untuk menggambarkan syarat materil berupa bukan pengulangan tindak pidana berdasarkan putusan pengadilan dalam tahap kepolisian. Hasil penelitian dapat diketahui bahwa dalam praktek, pengulangan perbuatan pidana harus berdasarkan putusan pengadilan. Kepolisian masih menerapkan keadilan restoratif untuk perbuatan pidana yang kedua kali, dengan catatan korban dan pelaku telah melakukan perdamaian. Oleh karena itu diperlukan pemaknaan secara dekonstruksi terhadap bukan pengulangan tindak pidana berdasarkan putusan pengadilan menjadi bukan pengulangan tindak pidana yang pernah diselesaikan dengan keadilan restoratif di kepolisian. Hal ini agar tujuan pemulihan dari keadilan restoratif tercapai.

Kata kunci: bukan pengulangan tindak pidana, keadilan restoratif, kepolisian Indonesia

I. Introduction

The police play a huge role in the progress of the nation. In addition, the police also become a positive legal force for the law itself, namely the police play a role in moving the law to run as mandated by the maker.¹ In line with Satjipto Rahardjo's opinion, "the development of Indonesian society and the international world demands that the Indonesian police not only stand as guardians of the status quo of the law but as leaders of their nation, who must always be one step ahead".² Restorative justice is an approach that focuses on repairing the harm caused by criminal behavior and involving all stakeholders in the justice process.³

Currently, the Police can enforce the law through the judiciary and outside the judiciary. Developing out-of-court case resolution through the role of the Police is restorative justice. Restorative justice is an approach or concept that emphasizes the recovery of losses arising from criminal acts through a cooperative process of all interested parties. In the police environment, it can be carried out at the pre-investigation stage, at the investigation stage, and at the investigation stage.⁴

Restorative justice is regulated in the Indonesian National Police Regulation (Perpol) Number 08 of 2021 concerning Handling Crimes Based on Restorative Justice. The regulation was promulgated and took effect on August 20, 2021.

In the consideration, it is stated that the stipulation of the regulation is:

- 1) The National Police of the Republic of Indonesia needs to realize the resolution of criminal acts by promoting restorative justice which emphasizes the restoration to the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented toward punishment is a legal necessity of society.
- 2) The Indonesian National Police, in order to respond to the development of legal needs of the community that meet the sense of justice of all parties, is given the authority in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, it is necessary to formulate a new concept in criminal law enforcement that accommodates the norms and values prevailing in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community;

The police have implemented restorative justice, where the parties involved in a criminal offense jointly solve the problem with all the consequences that will occur in the future. To find justice in criminal cases involving victims, perpetrators, and the community to find solutions with a sense of security. It can be said that restorative justice is a form of justice that centers on the needs of victims, criminals, and society.⁵

In accordance with the mandate of Police Regulation No. 01 of 2021 concerning Community Policing, in carrying out their duties Bhabinkamtibmas personnel are ordered to be able to assist Criminal Investigation officers to resolve criminal problems so that the Police can carry out legal action in accordance with community expectations. Technically, the settlement of restorative justice will involve Bhabinkamtibmas in the Police Sector. This reason makes the application of restorative justice very suitable to be studied at the police sector level.

Based on Indonesian National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, in applying restorative justice there are material and formal requirements. Material requirements as referred to in Article 4 letter a, include:

¹ Edi Setia Budi Santoso, "Penerapan Keadilan Restoratif dalam Penyelesaian Masalah Tindak Pidana oleh Bhabinkamtibmas Polri di Provinsi Lampung", *Proceeding: Call for Paper national Conference for Law Studies: Pembangunan Hukum Menuju Era Digital Society*, (2020): 859-879, 859.

² Satjipto Rahardjo, *Biarkan Hukum Mengalir: Catatan Kritis tentang Pergulatan Manusia dan Hukum*, (Jakarta: Kompas, 2007), 37.

³ V. O. Belonosov, "On the Twenty-Fifth Anniversary of the Restorative Justice Movement in Russia," *Juridical Journal of Samara University* 8, no. 3 (2022): 61-69.

⁴ Ian D. Marder, "Mapping Restorative Justice and Restorative Practices in Criminal Justice in the Republic of Ireland," *International Journal of Law, Crime and Justice* 70 (September 1, 2022).

⁵ Yoachim Agus Tridiatno, *Keadilan Restoratif*, (Yogyakarta: Cahaya Atma Pustaka, 2015), 27.

1. Does not cause unrest and/or rejection from the community
2. Does not result in social conflict
3. Does not have the potential to divide the nation
4. No radicalism and sparatism
5. Not a repeat offender of a criminal offense based on a court decision
6. Not a criminal offense of terrorism
7. Not a criminal offense against state security
8. Not a crime of corruption
9. Not a crime against the life of a person.

While the general requirements in the form of formal requirements according to the regulation include:

- a. Peacemaking between two parties is evidenced by a peace agreement signed by the parties, except for narcotics offenses.
- b. Fulfillment of victims' rights and perpetrators' responsibilities, in the form of returning goods, compensating losses, compensating costs incurred because of criminal acts, and/or compensating damage caused by criminal acts. Proven by a statement letter in accordance with the agreement signed by the victim (except for narcotics crimes).

From these requirements, there is a material requirement in the form of number 5, namely not a repeat offender based on a court decision, which raises issues in its application at the police level. The material requirement "Not a repeat offender based on a court decision" raises different interpretations of whether perpetrators who have committed a criminal offense and then have their case resolved using restorative justice previously by the Police include meeting this material requirement.

The problem is approached by analyzing the application of restorative justice in the police sector. The application of restorative justice at the policy level has been implemented at the sector-level police, the sector level police are the only police level that has Bhabinkamtibmas personnel who are tasked with maintaining community security and order directly in a persuasive manner using dialogic techniques, besides the sector-level police are in each sub-district, this makes the community closer to the sector level police.

In relation to restorative justice in the police, there have been several previous studies, including those conducted by I Gusti Ngurah Yoga Surya Nugraha and I Gusti Ngurah Parwata with the title "Qualification of Restorative Justice Materiel Requirements Based on National Police Chief Regulation Number 6 of 2009 concerning Criminal Investigation". The focus of this research is on the relationship between guilt and the qualification of guilt with settlement through restorative justice. This is more about the limiting principle in the requirements for the application of restorative justice.⁶ Another research is written by Armunanto Hutahean entitled Application of Restorative Justice by the Indonesian National Police to Realize Legal Objectives. The research focuses more on the implementation of restorative justice by investigators.⁷

We have also conducted research related to restorative justice in the police entitled "Juridical Review of Restorative Justice Arrangements in the Police". This research found that there was a shift in the principle of restorative justice from case settlement to case termination. It is necessary to reformulate the limiting principle which must focus on case settlement, not just case termination. This research still examines the National Police Chief's Circular Letter on the Application of Restorative Justice in Criminal Case Settlement and the Indonesian Police Chief Regulation Number 6 of 2019 on Criminal Investigation.⁸

⁶ I Gusti Ngurah Yoga Nugraha dan I Gusti Ngurah Parwata, "Kualifikasi Syarat Materiel Keadilan Restoratif Berdasarkan Peraturan Kapolri Nomor 6 tahun 2009 Tentang Penyidikan Tindak Pidana", *E-Journal Ilmu Hukum Kertha Wicara*, Volume 9 Nomor 11, (2020): 1-13.

⁷ Armunanto Hutahean, "Penerapan Restorative Justice oleh Kepolisian Negara RI untuk Mewujudkan Tujuan Hukum", *Jurnal Hukum to-ra*, Volume 8 Issue 2, (2022): 140-148

⁸ Rena Yulia dan Aliyih Prakarsa, "Telaah Yuridis terhadap Pengaturan Restorative Justice di Kepolisian", *Jurnal Wajah Hukum*, Volume 5(2), Oktober, (2021), 562-572, 562.

This research is certainly different from the three studies related to restorative justice and the police.^{9,10} This research will examine the material requirement of not repeating a criminal offense based on a court decision. This material requirement is fundamental considering that the meaning of not repeating a criminal offense based on a court decision is ambiguous at the police level. This is also related to the authority of investigators in resolving criminal cases through restorative justice at the police level.

II. Research Problems

The problem formulation in this research is as follows:

1. How is the implementation of restorative justice in the Police based on Police Regulation Number 08 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice?
2. How is the meaning of "not a repeat offender of a criminal offense based on a court decision" as a material requirement for Restorative Justice in the Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice?

III. Research Methods

This research uses juridical-normative and qualitative research methods. Juridical-normative research is legal research that places the law as a building system of norms. The system of norms in question is about principles, norms, rules from laws and regulations, court decisions, agreements and doctrines (teachings).¹¹ Meanwhile, according to Sudikno Mertokusomo, normative legal research is legal research that examines rules or norms.¹² The approach method used is a case approach, with data taken from one of the Polsek in Serang Banten. Data collection techniques using literature study as well as conducting interviews as support. Data sources used secondary data in the form of primary legal materials and secondary legal materials. Data and legal materials are analyzed descriptively analytically to describe the meaning of material requirements in the form of not repeating criminal acts based on court decisions in the application of restorative justice in the police.

IV. Results and Discussion

1. Implementation of Restorative Justice in the Police based on Police Regulation Number 08 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice

There are three important components in the practice of criminal law enforcement, namely the Police, the Prosecutor's Office, and the Court. In the practice of criminal law enforcement in these three institutions, there is an alternative to resolving a case, namely restorative justice. Restorative justice itself basically as expressed by Howard Zehr views crime as a violation of people and relationships that create an obligation to do the right thing. Justice involves victims, offenders, and the community in finding solutions that promote repair, reconciliation, and reassurance.¹³ Basically, restorative justice places the victim as the central position that must be considered for their rights.^{14,15}

⁹ Steve Kirkwood, "A Practice Framework for Restorative Justice," *Aggression and Violent Behavior* 63 (March 1, 2022).
¹⁰ Keisha April et al., "Conceptualizing Juvenile Justice Reform: Integrating the Public Health, Social Ecological, and Restorative Justice Models," *Children and Youth Services Review* 148 (May 1, 2023).
¹¹ Mukti Fajar, Yulianto Achmad, *Dualisme Penelitian Hukum-Normatif dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2015),
¹² Sudikno Mertokusomo, *Penemuan Hukum*, (Yogyakarta: Cahaya Atma Pustaka, 2014),
¹³ Kristian dan Christine Tanuwijaya, "Penyelesaian Perkara Pidana dengan Konsep Keadilan Restoratif (*Restorative Justice*) dalam Sistem Peradilan Pidana Terpadu di Indonesia", *Jurnal Mimbar Justitia*, Vol. 1 No. 2, (2015), hlm. 598
¹⁴ Heather Strang and Lawrence Sherman, "The Morality of Evidence: The Second Annual Lecture for Restorative Justice: An International Journal," *Restorative Justice* 3, no. 1 (January 2015): 6-27.
¹⁵ M. Hazrati and R. J. Heffron, "Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels," *Energy Research and Social Science* 78 (August 1, 2021); Chunghyeon Seo and Nathan E. Kruis, "The Impact of School's Security and Restorative Justice Measures on School Violence," *Children and Youth Services Review* 132 (January 1, 2022).

The application of the concept of restorative justice does not always lead to criminal punishment, but to a settlement that prioritizes the interests of restoring victims and holding perpetrators accountable.¹⁶ In its implementation, the Police regulates restorative justice in Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. Second, the Attorney General's Office regulates restorative justice in Attorney Regulation Number 15 of 2020. Third, in the Supreme Court, followed by the issuance of the Decree of the Director General of the General Criminal Justice Agency of the Supreme Court of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice.

First, restorative justice at the police level is regulated in Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. The police is the first sub-system of the criminal justice system to respond to the issue of restorative justice in resolving a criminal case by issuing an initial restorative justice regulation as outlined in Circular Letter Number: SE/VII/2018 concerning the Application of Restorative Justice in Criminal Case Resolution.

Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice provides an understanding of restorative justice as a settlement of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair solution through peace by emphasizing restoration to the original state.

Police Regulation Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice does not mention in detail what cases can be resolved by restorative justice, but it mentions the material and formal requirements that must be met so that the criminal offense can be resolved restorative justice, this is in accordance with Article 3 paragraph (1) letter a. Material requirements are regulated in Article 5 of Police Regulation Number 8 of 2021 concerning Handling Criminal Offenses Based on Restorative Justice. The material requirement of "not a repeat offender of a criminal offense based on a court decision" gives rise to different interpretations in police practice.

Police Regulation No. 8/2021 on Handling Criminal Offenses Based on Restorative Justice also has special requirements for several criminal offenses, according to Article 7 these criminal offenses include information and electronic transactions, drugs, and traffic. The technical implementation of restorative justice at the police level is regulated in Chapter III of Police Regulation Number 8 of 2021. The chapter does not explain in detail the steps for implementing restorative justice at the police level. The chapter focuses more on explaining the duties and functions of investigators or investigators in implementing restorative justice.

The police as the main and first gate in resolving criminal acts, of course, must have legal tools that can realize the law enforcement needed by society today. Therefore, the purpose of this regulation is to restore the original situation and balance the protection and interests of victims and perpetrators. Law enforcement so far is considered not to provide a balance of protection for victims and perpetrators and does not restore back to the original state, therefore a restorative justice mechanism is regulated which is able to realize these expectations.

The handling of crimes by the police in relation to restorative justice was originally regulated in Circular Letter Number: SE/8/VII/2018 concerning the Application of Restorative Justice in Criminal Case Resolution and Police Regulation Number 6 of 2019 concerning Criminal Investigation.

Looking at the principle of restorative justice adopted by the circular letter, the circular letter wants restorative justice as one of the models of case settlement that can be carried out by the police, namely by restoring the balance that has previously been damaged by the behavior of the perpetrator. Restoration of damage can be in the form of compensation given to the victim.

¹⁶ Agus Sahbani, "Melihat Pedoman Penerapan Keadilan Restoratif di Pengadilan", <https://www.hukumonline.com/berita/a/melihat-pedoman-penerapan-keadilan-restoratif-di-pengadilan-1t5ff2dc079da4a/>, dikunjungi pada tanggal 16 Juni 2023 pukul 23.30 WIB.

This restorative justice model is applied as part of law enforcement efforts carried out in the framework of addressing the emergence of various problems in the law enforcement process that are unbalanced, unsupportive case costs, all of which have an impact on the public's view of law enforcement itself.¹⁷

The Circular Letter stipulates the requirements for offenders who can be resolved with restorative justice, or the limiting principle for the offender. Namely, the level of guilt of the perpetrator is relatively not serious and the perpetrator is not a recidivist. This is the second limiting principle. If we look at the definition of criminal law, a recidivist is a person who commits a crime repeatedly, has been convicted by a judge, serves a sentence. After completing the sentence, he/she is released from prison, and then commits another crime. In the practice of restorative justice resolution, a different understanding of recidivism is needed because it does not rule out the possibility that a person who has been reported to the police and then finished / stopped with restorative justice, then later committed a crime again. Is it included as a recidivist or not.¹⁸ Therefore, the research conducted by Rena Yulia and Aliyih Prakarsa provides suggestions regarding the term repeat offender or repetition of criminal acts by the perpetrator so that a settlement can be made with restorative justice or law enforcement to the next level.

The practice of restorative justice implementation in the police sector (research location in Taktakan Police Station, Serang Banten) is carried out by 3 (three) technical police functions, the first is the technical function of Community Development, the second is the technical function of Samapta and the third is the technical function of Criminal Investigation.

The Community Development technical function is authorized to resolve minor crimes committed by local communities with local community victims, before a written report is made to the Police. The Samapta technical function is authorized to resolve minor crimes reported in writing and the Criminal Investigation technical function is authorized to resolve crimes at the investigation and investigation stages.

Technically, the Community Development Unit at Taktakan Police Station is authorized to resolve these crimes through deliberation. The work area of the Community Development Unit is in each village, so the minor crime problem handled by the Community Development Unit is limited to the area of the village that is the fostered area. If the victim or perpetrator is not a resident of the same Neighborhood, the case will be coordinated by the Community Development Unit with investigators. This is intended to minimize errors in making decisions. The coordination is a form of inter-unit connectivity in serving the community for the realization of security and order in the Taktakan Police jurisdiction.¹⁹

In the practice of resolving crimes using restorative justice, the Criminal Investigation Unit coordinates with the Community Development Unit and the Samapta Unit. The community development personnel, namely Bhabinkamtibmas (*Bhayangkara Pembina Keamanan dan ketertiban Masyarakat/ Community Safety and Order Supervisory Police*) personnel, are personnel who work directly in the community every day by prioritizing local wisdom. That is the reason the Criminal Investigation Unit always coordinates with Bhabinkamtibmas personnel in solving criminal cases. Because in solving criminal cases based on restorative justice, the Criminal Investigation Unit does not ignore the local wisdom that exists in the community.²⁰

The data taken in this study are data on criminal cases reported at the Integrated Police Service Center at the Taktakan Police Station which were resolved by restorative justice. Namely Police Reports from August 20, 2021 to February 28, 2023. The data is processed and adjusted to the information of the investigators at Taktakan Police Station, through the interview method so that the data obtained is data whose validity can be accounted for.

¹⁷ Rena Yulia dan Aliyih Prakarsa, "Telaah Yuridis terhadap Pengaturan Restorative Justice di Kepolisian", *Jurnal Wajah Hukum*, Volume 5(2), Oktober, (2021) 562-572, 564.

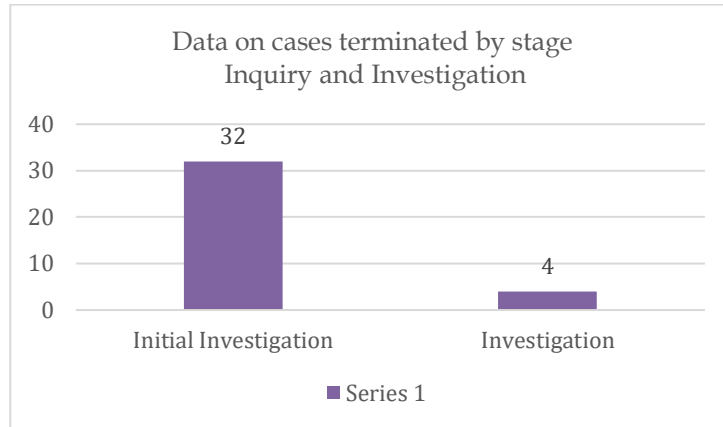
¹⁸ Rena Yulia, 566.

¹⁹ Interview with the Head of Criminal Investigation Unit, Taktakan Police, February 10, 2023.

²⁰ Ruby Long et al., "Community Engagement via Restorative Justice to Build Equity-Oriented Crisis Standards of Care," *Journal of the National Medical Association* 114, no. 4 (August 1, 2022): 377-389.

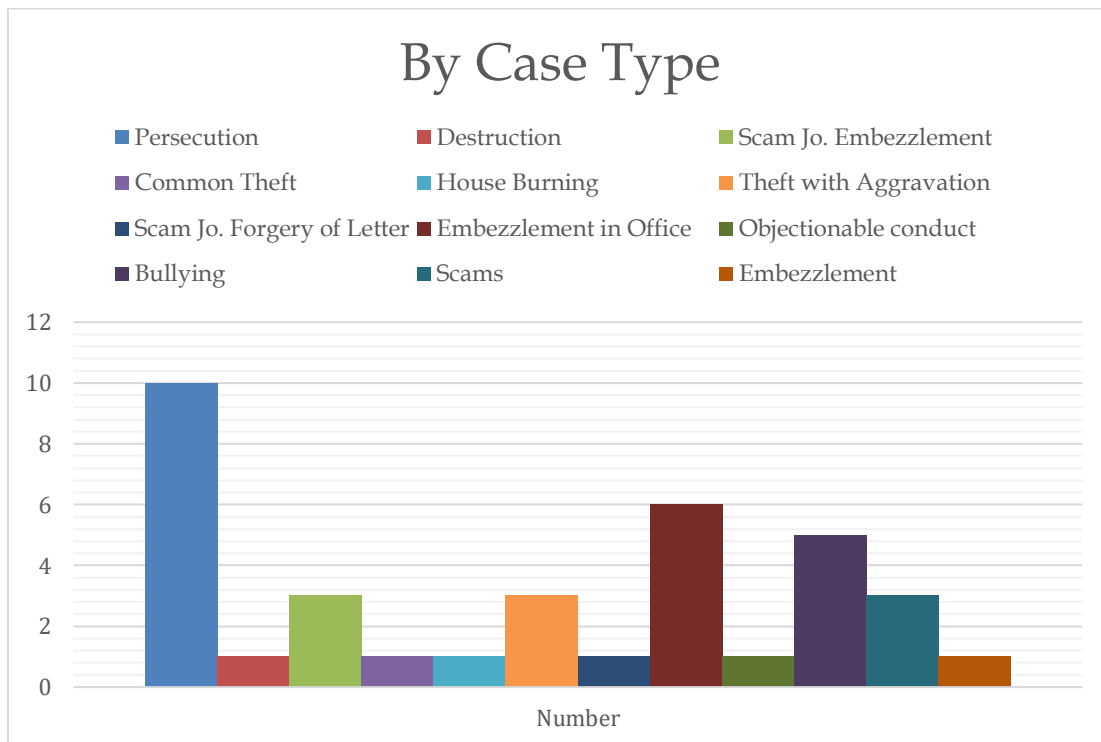
Each case in the data is a case handled by Taktakan Police investigators. The total number of cases resolved through restorative justice is 36, which can be seen in the graph below:

Graph 1. Cases resolved through restorative justice at Taktakan Police Station



The graph above illustrates the cases that came to Taktakan Police Station and were resolved at the investigation and investigation stages. Of the 36 cases completed with restorative justice, 32 cases were completed at the investigation stage and 4 cases were completed at the investigation stage. This shows that the functions of the 3 units in the sector police can really be functioned well, especially in the application of restorative justice at the investigation stage.

Graph 2. Types of criminal offenses resolved with restorative measures at Taktakan Police Station



The graph above is data obtained from data on the termination of investigation / termination of investigation with reasons for the sake of law due to restorative justice in the Criminal

Investigation Unit of Taktakan Police, Serang City Police from August 20, 2021, to February 28, 2023.

From the graph, the most common criminal offense is persecution with 10 cases, then vandalism with 6 cases, embezzlement in office with 6 cases, and beating with 5 cases. The rest were ordinary theft, ordinary fraud, and embezzlement. These cases often occur in the community and are cases that can be resolved amicably. With the existence of restorative justice in the police, this will certainly be very helpful in resolving cases that can indeed be resolved in a family manner, especially when the police act as mediators in the peace process.

According to the testimony of Taktakan Police investigators, overall, the implementation of restorative justice in Taktakan Police, Serang City Police runs well and smoothly, there are no significant obstacles in its implementation. The settlement process takes place quickly and does not use a lot of money. This can reduce the accumulation of cases in the Police and the burden on the state budget in financing criminal cases at the police level. Furthermore, it also has the same impact at the prosecutor's office and court level. Of course, the recovery of victims of crime is the goal of the application of restorative justice.

Characteristics of restorative justice in Indonesia described by Ferry Fathurokhman²¹ Restorative Justice is divided into 4 (four) categories, namely based on its origin, based on its initial form, based on timeline operations, and based on its enforcement. Meanwhile, the characteristics of restorative justice in Indonesia when looking at the substance of Police Regulation Number 08 of 2021 concerning Handling Crimes Based on Restorative Justice can be analyzed into several categories, namely: (1) Based on its origin, the process of implementing restorative justice in Indonesia comes from local wisdom, namely deliberation; (2) Based on the initial form, restorative justice in Indonesia is closer to conferences; (3) Based on the operation of the timeline, restorative justice in Indonesia is carried out before a trial in court, categorized as Diversion; (4) Based on its enforcement, restorative justice in Indonesia is categorized as voluntary, implemented voluntarily between offenders and victims.

The application of restorative justice in the above cases is in accordance with the characteristics of restorative justice in Indonesia, namely voluntary. The initial idea of restorative justice is to "resolve collectively", not by one party alone, this means that voluntary consent from each party is needed.

In addition to restorative justice, the police also have conflict resolution called discretion. According to Lawrence M Friedman, there are at least 3 (three) prerequisites needed to control or reduce discretion, namely: (1) There must be a literal or figurative rule book, in other words, there must be a specific source that states clearly and straightforwardly what the actor (in this case the Police) must do. Discretion develops from vague rules that are open to interpretation; (2) There must be a system of communication up and down, some way of referring the rulebook to the actor and communicating its provisions, and some way of finding out how he or she is performing in terms of the express and implied rules; (3) There must be some way to keep the actor on track to ensure compliance.²²

The three discretionary conditions expressed by Friedman become a reference for the Police in conducting investigation termination using restorative justice by paying attention to the impact that occurs after discretion. The requirements in question can be described as follows:

First, discretion in the Police is regulated in Article 18 of Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police which reads:

Article (1)

In the public interest, officers of the Indonesian National Police in carrying out their duties and authorities may act according to their own judgment;

²¹ Ferry Fathurokhman, *Police-Community Partnership Forum (FKPM) as a means of implementing Restorative Justice Study Case in Lasem*, Rembang, Central Java, Indonesia, DOI: https://doi.org/10.17931/ivr2013_wg152_02 ,

²² Lawrence M Friedman, M. Khozim (Penerjemah), *Sistem Hukum Perspektif Ilmu Sosial*, (Bandung: Nusa Media, 2009), Pg 49

Article (2)

The implementation of the provisions referred to in paragraph (1) may only be carried out in very necessary circumstances with due regard to laws and regulations, as well as the Code of Professional Ethics of the Indonesian National Police.

In relation to the hierarchy of legislation when regulations conflict, higher regulations control lower regulations, basically the exercise of discretion by the Police against the termination of investigations in the above cases is in principle the same, namely for the public interest carried out in an emergency.

Second, upward and downward communication to communicate the provisions of the regulation, in the general provisions it is stated that the Indonesian National Police, hereinafter referred to as Polri, is a state instrument that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection and services to the community in the context of maintaining domestic security. This is in accordance with the definition of Restorative Justice, which is the resolution of crimes by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair solution through peace by emphasizing restoration to the original state.

Third, the discretionary decision to stop the investigation by conducting a special case title supervised by the supervision of the Profession and Security Unit and stakeholders in the Serang City Police so that the process of stopping the investigation remains supervised and stays on track.

Restorative justice can be understood as guiding the case through a path outside the trial, namely towards peace. It can still punish the perpetrator without resorting to imprisonment and especially can restore the losses suffered by the victim in a short time, only up to the stage in the Police Department where the victim has been restored by the application of restorative justice.²³

The combination of the three legal systems in the application of restorative justice is needed, so that restorative justice can provide justice and benefits to the community. It can restore the balance in society that is disturbed because of the crime that occurred. The legal structure in the form of the Police who become mediators in the settlement of cases through restorative justice, the regulations contained in the Police Regulation have regulated well, both formal and material requirements, coupled with public attitudes that support the settlement of criminal cases with the aim of restoring harm and balance, then the application of restorative justice at the Police level will work well and provide a more useful legal option than just punishing the perpetrator without restoring the victim's loss.

2. The meaning of "not a repeat offender based on a Court Decision" as a material requirement of Restorative Justice in the Indonesian National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice

In relation to the meaning of "not a repeat offender based on a court decision", the researchers studied a case with Police Report Number: LP/B/166/XI/2022/SPKT/Polsek Taktakan/Polresta Serang Kota/Polda Banten. This case is a theft case that has been committed repeatedly by the perpetrator and resolved with restorative justice.

The case occurred on Monday, November 28, 2022 at approximately 17.30 WIB in front of the Madura stall, Sepang Kelapa Neighborhood RT 03 RW 01 Sepang Village, Taktakan District, Serang City. Theft with aggravation of 1 (one) cellphone brand Vivo S1 Pro, purple color, belonging to IA, by 2 (two) perpetrators named AMR and S. The victim IA parked his motorbike in front of the Madura shop, by storing his cellphone in the dashboard of the front trunk of his

²³ Jonathan Hobson and Brian Payne, "Building Restorative Justice Services: Considerations on Top-down and Bottom-up Approaches," *International Journal of Law, Crime and Justice* 71 (December 1, 2022); Janet C. Gerson, "Restorative Justice and Alternative Systems," *Encyclopedia of Violence, Peace, & Conflict: Volume 1-4, Third Edition* 4 (January 1, 2022): 125-136.

motorbike. Then the victim IA bought cigarettes at the Madura shop, and at that time AMR and S approached the victim's motorcycle and stole the victim's cellphone. Then they fled towards Ciracas, Serang City. The victim saw that his cellphone was stolen and chased the perpetrator, arriving at intersection 4 (four) ciracas the two perpetrators were shouted "thief" by, then the two perpetrators were secured by the surrounding community, after which the two perpetrators were taken and secured at Taktakan Police Station for investigation.²⁴

After preliminary investigating, it was found that 2 (two) sufficient evidence that AMR and S had committed the crime of theft so that the Police raised the status of the case investigation to the investigation stage. After that, the two perpetrators were named as suspects with the charge of violating Article 363 of the Criminal Code on theft with aggravation. Both perpetrators were detained at the Taktakan Police Detention Center.²⁵

From the information of the perpetrator's parents that AMR and S had committed theft and the case was stopped through Restorative Justice by the Police 3 (three) times, the suspects committed theft in different places. Namely theft in the jurisdiction of Kramatwatu Police Station, Serang City Police Station and finally at Taktakan Police Station.²⁶

In this repeat theft, restorative justice was applied. On December 04, 2022 the victim and the suspect's family jointly submitted a letter of request to the Taktakan Police Chief and the Serang City Police Chief so that the case reported at the Taktakan Police Station with Police Number LP/B/166/XI/2022/SPKT/Polsek Taktakan/Polresta Serang City/Polda Banten was revoked and not continued for reasons of Restorative Justice, the victim was re-examined by the investigator with an Additional Investigation Report.

From the reference letter, the Taktakan Police then submitted a request to the Serang City Police Chief to carry out a Special Case Title at the Serang City Police, the special case title was carried out with the intention of holding whether the case could be discontinued due to restorative justice or not. The results of the special case title agreed that the investigation could be stopped due to restorative justice, it was with the consideration that it had fulfilled the material and formal requirements for the implementation of restorative justice in accordance with Police Regulation Number 08 of 2021 concerning Handling Crimes Based on Restorative Justice.²⁷

Furthermore, the perpetrator's family, the victim, community leaders and religious leaders of Sepang Village, Taktakan District made a peace agreement. The result of the agreement is that the perpetrator's family will restore the victim's condition by replacing the losses suffered due to the theft incident.²⁸

The repeated theft case illustrates that the police stopped the case on the grounds that restorative justice can still be applied even though the perpetrators have committed theft before or repeated criminal acts. The police argued that the perpetrators had never been convicted by the court, so the theft case could be stopped with restorative justice, because it had fulfilled the material and formal requirements in accordance with Police Regulation No. 08 of 2021 concerning Handling Crimes Based on Restorative Justice.

In addition to the above case, there is another case with police report number: LP/B/05/II/2023/SPKT/POLSEK TAKTAKAN/ POLRESTA SERANG CITY/ POLDA

²⁴ Based on the Minutes of the examination of the victim witness on November 28, 2022, the chronology of the incident, the basis for Police Report Number: LP/B/166/XI/2022/SPKT /Polsek Taktakan/Polresta Serang Kota/Polda Banten.

²⁵ Information from the assistant investigator of the Taktakan Police Criminal Investigation Unit in an interview on February 11, 2023, that there is a correspondence between the testimony of the victim witness, witnesses, testimony of the alleged perpetrator and evidence.

²⁶ Information from the assistant investigator of the Criminal Investigation Unit of the Taktakan Police in an interview on February 11, 2023, that the mother of Arjun Maulana Ramadhan stated that the case handled by the Taktakan Police against her son was the third case of theft of mobile phones, previously AMR had been arrested by the Serang City Police and Kramatwatu Police but the case was stopped all by deliberation.

²⁷ Information from the Taktakan Police Criminal Investigation Unit in an interview on February 11, 2023, that to fulfill the formal and material requirements in the implementation of restorative justice at the police station level, a special case title is held, and the termination of the investigation must be carried out at the Polres.

²⁸ The peace agreement was the result of a special case title on the termination of investigation at Serang City Police.

BANTEN with perpetrators named S and R, according to the recognition of Kuranji residents of Taktakan Subdistrict and confirmed by the perpetrator's family that S and R have committed the crime of theft of cellphones 2 (two) times, in the jurisdiction of Serang City Police but the case was stopped using restorative justice, while the case that occurred in the jurisdiction of Taktakan Police was the second case that was also stopped due to restorative justice. S and R committed mobile phone theft in 2019 in the jurisdiction of Serang City Police, but the case was dismissed because S and R's family apologized and restored the victim's condition by compensating the victim. Likewise, in 2023, the theft case was dismissed on the grounds of restorative justice.²⁹

From the 2 (two) cases above, there are several similarities. Namely the same type of criminal offense, in the form of theft. Repetition of the crime, meaning that the perpetrator was not the first time committing theft. It has been resolved through restorative justice. But in the criminal offense in the form of repetition, it is also the same as being resolved through restorative justice.

The interesting thing is that "not a repeat offender based on a court decision" is a material requirement for the application of restorative justice. In the two cases above, the offenses were repetitions committed by the perpetrators but were resolved through restorative justice so that there was no court decision.

Repetition of criminal offenses in criminal law is called recidivism. In general understanding, it is understood as a broad term that refers to the relapse of criminal behavior, including due to a rearrest, reconviction, and reimprisonment. A recidivist is also defined as a person who repeats a criminal offense. Meanwhile, recidivism is interpreted as the tendency of individuals or groups to repeat reprehensible acts even though they have been punished for committing such acts. However, as a concept in criminal law, a person can only be called a recidivist or commit recidivism if the person repeats a criminal offense with certain conditions which can then have implications for the aggravation of punishment for him.³⁰

Residivis berasal dari bahasa Prancis yang diambil dua kata Latin, yaitu *re* dan *co* atau *cado*. *re* berarti lagi dan *co* atau *cado* berarti jatuh, maka *recidivis* berarti suatu tendensi berulang kali hukum karena telah berulang kali melakukan kejahatan, dan mengenai *residivis* adalah berbicara tentang hukum yang berulang kali sebagai akibat perbuatan yang sama atau serupa³¹.

A person after serving a prison sentence commits another crime of the same type or by law is considered to be of the same type that has not passed 5 (five) years or is referred to as a recidivist. In the case of repetition of crime after serving a criminal sentence imprisonment makes people become more evil. In the provision of recidivism regulated in Book II Chapter XXXI of the Criminal Code, the aggravation of punishment against recidivists can apply if it has fulfilled the conditions of recidivism, one of which is getting a permanent judge's decision for the same act or by law is considered the same. The existence of a judge's decision is what distinguishes between *recidivism* (repetition) and *concursum* (compounding).

Therefore, it can be understood that there are two types of recidivists, namely: First, general recidive, meaning that the nature of the criminal act repeated is not considered, meaning that the recidivist just repeats the criminal act, even though the act is not similar to the previous criminal act, it is still classified as a repetition. Secondly, special recidivism, meaning that the nature of the criminal act repeated is very concerning, meaning that the act repeated must be of the same kind or class as the previous criminal act, for which the person concerned has served a sentence.³²

Interpreting the meaning of recidivism, the repetition of criminal acts is a certainty, but whether it is resolved through the judicial process is only possible. Criminal law generally

²⁹ Information from the Criminal Investigation Unit of Taktakan Police in an interview on February 12, 2023.

³⁰ Prianter Jaya Hairi, Konsep dan Pembaruan Residivisme dalam Hukum Pidana di Indonesia (Concept and Reform of Recidivism in Criminal Law in Indonesia), *Jurnal Negara Hukum*, Volume 9 Nomor 2, (2018): 199-216, hlm 120. Doi: <http://dx.doi.org/10.22212/jnh.v9i2.1048>.

³¹ Prianter Jaya Hairi, Pg. 202.

³² La Patuju dan Sakticakra Salimin Afamery, "Residivis dalam Perspektif Sosiologi Hukum", *Jurnal Hukum Volkgeist*, Volume 1 No 1 Desember (2016):104-114, hlm 108.

assumes that recidivism must have a court decision, which is retributive justice. Committing a crime, being punished criminally, after being released, and committing a crime again, is called recidivism. Now the law enforcement process has shifted, it is very possible that the perpetrator commits a criminal act, is resolved by restorative justice, is released, commits a repeat criminal act, is interpreted as a recidivist. Of course, there is no judge's decision because the process only reaches the Police, but the existence of criminal recidivism cannot be denied.

There are differences in the meaning of recidivism at this time. In relation to the different meanings of recidivism between the community and national law, there needs to be an understanding between the two by law enforcement officials. National law as a burden for local communities, the law can certainly be effective if between the apparatus and the people there is a common understanding of the content of the law and why the law should do this or that to them, then legal communication is a big problem in itself, before the law can be implemented and accepted by the local community, in accordance with the objectives desired by the law.³³

The meaning of non-repetition of criminal acts is important in the application of restorative justice in the Police. Given that there are similar cases in the form of criminal repetition. Is it because there is no deterrent effect from the completion of law enforcement with restorative justice or is it because there is no functioning crime prevention and countermeasure system in the community.

The meaning of recidivist in Book II Chapter XXXI of the Criminal Code must also be interpreted against the material requirements contained in the application of Restorative Justice at the Police level as stated in Article 5 paragraph (5) of Police Regulation No. 08 of 2021 concerning Handling Crimes Based on Restorative Justice which reads "not a repeat offender of Criminal Acts based on Court Decision". The meaning of recidivism must be interpreted using deconstruction (considering that language does not have a definite, certain and constant meaning, there is no expression or form of language used to discuss objects that have a certain or definite meaning), there is a reversal of meaning as explained by Anthon Freddy Susanto³⁴, Recidivism is no longer seen as a "product" but is seen as a "process", a deconstruction that is seen not only if the criminal offender is categorized as a recidivist if the criminal offender commits a repeat crime based on a court decision from people who are defined as committing repeat criminal acts, but also from social agents such as social definitions that exist in society.

The meaning of recidivism and the characteristics of recidivism in criminal law apply when the criminal law enforcement process is through a court decision. However, if the process of resolving criminal cases only reaches the police because it uses restorative justice, then the recidivism in question is the repetition of criminal acts at the police level. Because it sees restorative justice in the police as a process, unlike a court decision which is a product. Therefore, recidivism at the police stage should be interpreted as not a court decision but a termination with restorative justice. When an offender has been recorded in the restorative justice case termination book, then it should be considered a court decision.

The meaning of not a repeat offender based on a court decision is interpreted using progressive legal theory by changing the way of law from simply applying positive law textually to a way of law by utilizing law with spiritual and social goals, missions, and dimensions. Progressive law places the interests and needs of humans / society as its orientation point, so it must have sensitivity to the problems that arise. The practice of progressive law can be applied in the application of restorative justice in the Police. Especially in terms of interpreting the non-repetition of criminal acts based on court decisions. Court decisions can be interpreted as the termination of cases on the grounds of restorative justice, so that perpetrators who have been stopped on the grounds of restorative justice will be included in this material requirement as repeat offenders, therefore restorative justice can no longer be applied to subsequent criminal acts.

³³ Satjipto Raharjo, *Penegakan Hukum Progresif*, (Jakarta: PT. Kompas Media Nusantara, 2010), Pg. 112-113.

³⁴ Anthon Freddy Susanto, *Semiotika Hukum (dari Dekonstruksi Teks Menuju Progresivitas Makna)*, (Bandung: PT. Refika Aditama, 2005), Cet. 1, Pg. 192.

If the court decision is interpreted textually, then no matter how long the perpetrator who commits a repeat offense and then resolved with restorative justice will never be processed in court. There should be a limit on the number of repeat offenses so that law enforcement can be carried out through justice. Restorative justice does not eliminate punishment for perpetrators but rather restores harm to victims of crime.

V. Conclusion

The implementation of restorative justice in the police has been ongoing since the enactment of Police Regulation No. 8 of 2021 on Handling Criminal Offenses Based on Restorative Justice. Technically, the police have units that can directly serve the community, such as Village Supervisory Police Officer, Criminal Investigation and Samapta Unit. However, in its implementation, there are still obstacles, especially related to the interpretation of the material requirements of not repeating a criminal offense based on a court decision. In practice, there are still case terminations on the grounds of restorative justice against repeat offenders, because they are considered not to have a court decision. The recommendation from this research is the need for the meaning of court decisions to be interpreted as case termination through restorative justice, meaning that every person who has committed a criminal act and then stopped with restorative justice then when that person commits a criminal act again, it must be considered as a repetition by constructing a settlement with restorative justice as a court decision.

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