

Implementation of *Restorative Justice* in the Police in Realizing a Just Legal State

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Abstract

The upholding of justice, as well as the usefulness and certainty of the law are the fundamental goals of the law that was created. However, in this case it also turns out that in reality it is difficult to realize it together. The police have an active role and participate in enforcing the law in Indonesia, especially regarding matters that might damage Indonesian public order. Restorative justice has the main aim of seeking justice in it, namely by focusing on peace efforts by prioritizing return or restoration to the initial or overall state. *Restorative justice* This is to restore a situation to be better in people's lives, not to take revenge for a crime or crime committed. With the existence of restorative justice, it is hoped that it will be able to create a just legal state as mandated by the Indonesian Constitution.

KEYWORDS

Polri, *Restorative justice* , Rule of law

Introduction

As a country based on just laws and in accordance with the mandate of laws relating to the National Police, basically the police have the main task of providing protection, protection, and also services to the community at



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large in order to uphold the law in Indonesia. ¹And law enforcement carried out by the police must of course also be based on the existing Criminal Procedure Code. Apart from that, in this case the Indonesian Police have also intensified the existence of PRESIDI, namely by prioritizing the concept of Transformation towards a Police that is Predictive, Responsible and Fairly Transparency (PRESISI) ².

In general, the task of the police is to prioritize the interests and hopes of the Indonesian people in order to create a sense of security and order in people's daily lives, which is guided by a system that is open, humanist, accountable and easy to use. carry out supervision. So far, the thing that has been most highlighted by the police is the implementation of processes in upholding law and justice in society based on a harmonized sense of justice ³. Therefore, the creation of a *restorative justice* breakthrough in law enforcement in Indonesia can be used as a turning point in enforcing laws that are always guided by the sense of justice in Indonesian society. In line with the theory put forward by Gustav Radbruch, with justice, benefit and legal certainty, *restorative justice* will be in line with this theory ⁴.

Talking about justice , usefulness and legal certainty, so far this can also be correlated with existing legal theories that have developed over time. Currently, the issue of justice is something that has become the spotlight in the legal realm in Indonesia. Basically, the decision that has been given or sentenced by a judge before the court, the decision made must be based on the values of justice therein, namely guided by legal justice which prioritizes the interests of the community ⁵. A judge's decision based on justice can also

¹ Muhammad Rosikhu, Opan Satria Mandala, and Saparudin Efendi, "Restorative Justice in the Juvenile Criminal Justice System," *Science Collaborative Journal* 6, no. 7 (2023): 605–11, <https://doi.org/10.56338/jks.v6i7.3712>.

² Roy Rovalino Herudiansyah and Nur Rochaeti, "The Conception of Restorative Justice in Actualization of the Indonesian Criminal Justice System," 2020, 26040–46.

³ Melva Noya et al., "Penerapan Proses Restorative Justice Melalui Pendekatan Restorative Conferencing Initiatives Di Indonesia" 1, no. 4 (2021): 312–18.

⁴ Noya et al.

⁵ Ali Muhammad, "The Restorative Justice Approach To the Implementation of Children'S Criminal Justice System in Indonesia," *Jurnal Ilmiah Kajian Keimigrasian* 1, no. 2 (2018): 189–98, <https://doi.org/10.52617/jikk.v1i2.32>.

be interpreted as a decision that is neutral and does not take sides with any party. Apart from that, the decision in the case being tried must also be based on objectivity and clear legal certainty and rationality or in this case it will also provide benefits to the surrounding environment and the parties concerned ⁶.

Apart from that, it has been explained that the issue of justice is a problem that is urgent for law enforcement in Indonesia, where this issue of justice is the root cause of the establishment of a rule of law based on the values of justice. According to Friedman's view, in this case the problem of justice will also be in line with the benefits contained in it. Apart from that, the existence of a law that has been stated is also basically something that in general or specifically must be allocated according to each portion. There are changes in society from time to time, so of course the existing legal system which is running and being enforced will also be influenced by the various existing changes, namely by continuing to follow developments over time from time to time. Apart from that, this change will certainly affect the scientific process in reviewing the legal process that is currently taking place right now. Therefore, the laws that exist and are enforced at this time certainly go hand in hand with the development of the current era, namely by paying close attention to the changes that occur in one period which will certainly occur significantly ⁷.

With the rise of various problems in legal cases that occur in Indonesia, the author feels interested in exploring problems related to the search for solutions or solutions to these problems, namely with the aim that law enforcement in Indonesia will always uphold the values of justice in it. , and can achieve usefulness and legal certainty for the Indonesian people at large and without discrimination, especially regarding the involvement of the National Police in the context of law enforcement and justice within the

⁶ Herudiansyah and Rochaeti, "The Conception of Restorative Justice in Actualization of the Indonesian Criminal Justice System."

⁷ Noya et al., "Implementation of the Restorative Justice Process Through the Restorative Conferencing Initiatives Approach in Indonesia."

scope of the Republic of Indonesia. Related to this, the problem in law enforcement efforts in restorative justice is a law enforcement effort which will later make it easier for the police as investigators to uphold justice, benefits and also legal certainty for the community ⁸. Apart from that, from the implementation of *restorative justice* in solving this criminal act, there will of course be various consequences that could result from this ⁹.

The upholding of justice, as well as the usefulness and certainty of the law are the fundamental goals of the law that was created. However, in this case it also turns out that in reality it is difficult to realize it together. Therefore, in relation to this, various efforts have been made to harmonize the three ¹⁰. And related to this, Rad Bruch is of the view that in implementing the 3 main values, the principle of justice must be prioritized first, and benefits can be added to it, so that later legal certainty will emerge. In fact, in the field, it turns out that in dealing with an existing principle in practice you must continue to adjust the portion of the case as appropriate ¹¹. In an existing case problem, the value of justice is used as a priority in efforts to resolve the problem, but on the other hand there is also a case where the resolution of the problem is based on expediency, this law in Indonesia is of course used as the main guideline in achieving expediency and certainty. law in society, which in this case is by prioritizing existing legal rules. Order in society is the main goal of this law. With the existence of an orderly social life, of course an orderly social life will also be created, therefore in this case there is a need for legal certainty ¹². The law must contain certainty, where we can view certainty in this law from two aspects,

⁸ Muhammad, "The Restorative Justice Approach To the Implementation of Children'S Criminal Justice System in Indonesia."

⁹ Noya et al., "Implementation of the Restorative Justice Process Through the Restorative Conferencing Initiatives Approach in Indonesia."

¹⁰ Herudiansyah and Rochaeti, "The Conception of Restorative Justice in the Actualization of the Indonesian Criminal Justice System."

¹¹ Armunanto Hutahaeen, "Implementation of Restorative Justice by the National Police of the Republic of Indonesia to Realize Legal Objectives," *To-Ra Law Journal: Law to Regulate and Protect Society* 8, no. 2 (2022): 140–48, <https://doi.org/10.55809/tora.v8i2.119>.

¹² Rosikhu, Mandala, and Efendi, "Restorative Justice in the Juvenile Criminal Justice System."

the first is certainty in resolving concrete events, and the second aspect is the need for legal protection in the face of actions that are filled with arbitrariness. In essence, legal certainty has the intention that when resolving problems that occur in society, the law is used as the main benchmark in resolving them.¹³

Apart from that, in an effort to resolve all forms of problems that occur in society, the participation of government institutions which have duties and obligations related to this matter is also required. Legal certainty and legal protection must be able to go hand in hand, in this case, because in creating a just, prosperous and orderly society, legal protection is needed in carrying out daily life ¹⁴. Legal protection for the Indonesian people is very important, bearing in mind that this form of legal protection is one of the ways to uphold the dignity of human life and also as a citizen who is based on the law therein ¹⁵. To achieve clear legal certainty as desired, in this case it is necessary to have a form of decision that does not take various interpretations, or in this case is final ¹⁶. If there are various different interpretations in a decision, then in this case it is feared that there will be a lack of synchronization between the law that is enforced and the decision that has been taken.

¹³ Faculty of Law, University of Lampung, and Bandar Lampung, "E-ISSN: 2598-3105 P-ISSN:2723-2581 [Http://Jurnal.Fh.Unila.Ac.Id/Index.Php/Cepalo](http://Jurnal.Fh.Unila.Ac.Id/Index.Php/Cepalo)" 6, no. 1 (2022): 74–85, <https://doi.org/10.2648/cepalo.v6no1>.

¹⁴ Arman Sahti, "Application of the Restorative Justice Concept in Settlement of Traffic Accident Cases Linked to Circular Letter from the Police of the Republic of Indonesia Number: Se/8/Vii/2018 Concerning the Application of Restorative Justice in Settlement of Cases," *Aktualita (Law Journal)* 2, no. 2 (2019): 615–42, <https://doi.org/10.29313/aktualita.v2i2.5176>.

¹⁵ Yohana Puspitasari Wardoyo Sulardi, "Legal Certainty, Benefits and Justice in Child Criminal Cases," *Judicial Journal* 8 no 3 (2015): 251–68.

¹⁶ Baren Sipayung and Subandi Subandi, "Implementation Of Restorative Justice In Samarinda City From A Legal Philosophy Perspective, Case Study Of Restorative Justice House Water Container Implementation Of Restorative Justice In Samarinda City From A Legal Philosophy Perspective, Case Study Of Restorative House" 4, no. 1 (2023): 95–102.

Methods

This research is a type of normative juridical research, namely looking at how *restorative justice is implemented* in Indonesia, especially at the Pangkal Pinang Police. This research tries to look at the facts that occur related to the implementation of restorative justice in Indonesia. This research approach is qualitative, namely cases related to restrative justice will be inventoried and analyzed in the form of a descriptive manuscript. We try to describe the various cases in as much detail and clarity as possible, so as to be able to understand the root causes of the cases, but still subject to limitations relating to the issues raised in this research ¹⁷.

The data used in this research are primary and secondary data. Primary data was obtained from the Pangkal Pinang Police . And related to secondary data, namely data obtained indirectly related to the implementation of restorative justice in Indonesia. This data includes data on several case settlements. This secondary data was obtained from various online media ¹⁸.

This research uses primary legal research materials and secondary materials. Primary material, consisting of various relevant laws and regulations, especially the Pangkal Pinang Police. Meanwhile, secondary materials consist of books, articles, journals, proceedings and various official websites related to the research topic. Data processing in this research was carried out by describing the data in the form of regular, coherent, logical, non-overlapping and effective sentences, making it easier to understand and interpret the data. This goes through several stages, including: data examination (editing), classification, verification, analysis and concluding.

¹⁷ Z Ali, *Legal Research Methods* (Sinar Graphics, 2021),
https://books.google.co.id/books?id=y%5C_QrEAAAQBAJ.

¹⁸ Muhaimin, *Legal Research Methods* , Mataram University Press , 2020.

Regarding this research, the researcher carried out an editing process for several case resolutions using *restorative justice* as well as several relevant references. Classifying is done by grouping all the data obtained according to needs, this is done so that the data is easy to read and understand. Next, verification of the data is carried out, to ensure the information is truly valid. Data that has been verified is studied using qualitative descriptive methods, namely analysis that describes the condition or status of phenomena in words or sentences, then separated according to categories to obtain conclusions. The conclusion will later become data related to the researcher's research object ¹⁹.

Result and Discussion

Indonesia as a Just Legal Country

Regarding the decisions taken in the world of law, Gustav Radbruch has made many contributions related to this matter. The ideals of establishing law in Indonesia must be in line with the basic objectives of the founding of a country. This existing law must of course be guided by three basic values, namely justice, usefulness and legal certainty which must work in harmony. However, in reality it turns out that these three things can also run into each other, which can also give rise to potential tensions within the three. If we take the example of legal certainty, then in relation to this, legal certainty can shift the meaning of law as justice and contains benefits, because in this case legal certainty will only be oriented towards values that have regulations ²⁰.

Law in Indonesia is of course used as the main guideline in achieving benefits and legal certainty in society, which in this case is by prioritizing the legal rules that are already in force. Order in society is the main goal of this law. With the existence of an orderly social life, of course an orderly social life will also be created, therefore in this case there is a need for legal certainty. The law must contain certainty, where we can view certainty in this law from two aspects, the first, namely certainty in resolving concrete events, and the second, namely the need for legal protection in the face of actions that are filled with arbitrariness. In essence, legal certainty has the

¹⁹ SHMH Dr. DJULAEKA et al., *TEXTBOOK: LEGAL RESEARCH METHODS* (SCOPINDO MEDIA PUSTAKA, 2020), <https://books.google.co.id/books?id=alrUDwAAQBAJ>.

²⁰ Almin Hatta et al., "The Law of Bribery in an Islamic Perspective in the Field of Sports Almin Hatta," *Journal of Religion: Journal of Religion, Social and Culture* 1, no. 3 (2023): 200–208.

meaning that in resolving problems that occur in society, the law is used as the main benchmark in resolving them ²¹.

Efforts to resolve all forms of problems that occur in society also of course require the participation of government institutions which have duties and obligations related to this matter. Legal certainty and legal protection must be able to go hand in hand, in this case, because in creating a just, prosperous and orderly society, legal protection is needed in carrying out daily life. Legal protection for the Indonesian people is very important, bearing in mind that this form of legal protection is one way to uphold the dignity of human life and also as a citizen who is based on the law therein. To achieve clear legal certainty as desired, in this case it is necessary to have a form of judgment that does not take various kinds of interpretation, or in this case is final. If there are various different interpretations in a decision, then in this case it is feared that there will be a lack of synchronization between the law that is enforced and the decision that has been taken.

There are several demands that must be fulfilled by this law. In reality, if we look at the development of criminal justice in Indonesia, the imprisonment of criminals is the most important witness in providing a deterrent effect on criminals who have been found guilty in court decisions. However, in relation to this matter, if we examine it more deeply, it turns out that Indonesian society also needs a return to the situation as it was before the crime occurred. One of the hopes desired by our society is the need for criminal resolution using restorative justice, or often called *restorative justice*. In the scope of the world of law in Indonesia, in *restorative justice*, namely in resolving a criminal matter, it will involve several parties, namely starting from the victim, the perpetrator, the victim's family, the family of the perpetrator, religious leaders, community leaders or traditional leaders, and others. etc ²². These legal settlement efforts simply have the main objective of seeking justice in them, namely by focusing on peace efforts by prioritizing return or restoration to the original or original state.

Justice in the scope of restorative is not only a violation of the law, however, related to this right it is also a violation of relations between human beings. Therefore, because of this, of course, *restorative justice* will place more emphasis on recovery from situations or efforts to recover from damage caused by crimes that have occurred. And in relation to this, of course various efforts are needed to recreate the self-esteem that exists in the perpetrator concerned, and so that later it can be returned to society. Therefore, in general, the existence of restorative justice is to restore the situation by providing confirmation of the values of society that have been

²¹ Habibul Umam Taqiuddin, "The Idea of the 1945 Constitution as a Political Constitution, Economic Constitution, and Social Constitution," *Econetica* Vol. 3 No., no. November (2021): 38–54.

²² Law, Lampung, and Lampung, "E-ISSN: 2598-3105 P-ISSN:2723-2581
[Http://Jurnal.Fh.Unila.Ac.Id/Index.Php/Cepalo](http://Jurnal.Fh.Unila.Ac.Id/Index.Php/Cepalo)."

damaged by the perpetrator of a crime or crime. In justice which is based on *restorative justice*, it is understood that restoring the situation is an urgency after a criminal act ²³. The most important thing that law enforcement officials in Indonesia do is not to give law to the perpetrators, but rather to repair all forms of damage resulting from a crime or crime, especially those related to the values that exist in society. . Furthermore, Braithwaite, J. said that the method for resolving criminal cases through restorative justice is as follows ²⁴.

1. From the perpetrator's side, to achieve restorative justice, there must be an apology to the victim. Such an expressed attitude of regret shows that the perpetrator of a criminal act understands the impact of his actions and recognizes that the criminal act he committed was wrong in society. This attitude of regret is needed to improve the relationship between the perpetrator of the crime and the victim of the crime, as well as to restore the role of the perpetrator of the crime in society.
2. From the victim's side, through this conception, the attitude of regret, expressing forgiveness from the perpetrator of the crime must be synergistic with the victim's acceptance. Victims need to see the perpetrator with understanding and compassion as a fellow member of society. Modern society agrees that forgiveness can promote reconciliation. With reconciliation, the victim's desire to avenge the perpetrator of the crime against the victim and the perpetrator of the crime against the community ²⁵.

Talking about victims, an apology must be in line with what is used as a form of acceptance by the victim. In this case, the victim must see the perpetrator based on compassion for humans or fellow citizens. If we observe modern society, in this regard, they themselves agree that giving forgiveness will be able to encourage reconciliation. Acceptance of this forgiveness will create reconciliation. Reconciliation has become what the victim who has the intention of seeking revenge wants, it will melt away by itself.

Implementation of Restorative Justice

As time goes by, of course, Indonesian society requires several aspects to fulfill its sense of justice. In this regard, the Police of the Republic

²³ Armunanto Hutahaean, "Implementation of Restorative Justice by the National Police of the Republic of Indonesia to Realize Legal Objectives."

²⁴ Lisa Aminatul Mukaromah et al., "Implementation of Restorative Justice in National Economic Recovery: Efforts to Realize Humane Justice (Study of the House of Restorative Justice Bojonegoro)" 6, no. 2 (2023): 6349–60.

²⁵ Ardyan Ardyan, Ariman Sitompul, and Ruslan Ruslan, "The Form Of Resolving The Laka Lalu Case With A Restorative Justice Approach According To Police Regulation Number 8 Of 2021 On Handling Criminal Acts Based On Restorative Justice," *Legalpreneur Journal* 2, no. 1 (2023): 158–70, <https://doi.org/10.46576/lpj.v2i1.3752>.

of Indonesia as mandated in Law Number 2 of 2022 concerning the Police of the Republic of Indonesia. At the level of Indonesian law, criminal law is considered as a solution that can provide justice to all society without exception, where this will of course be able to provide legal certainty to society. As one of the law enforcers in Indonesia. The National Police has the main task, namely to ensure peace in its community and also to create a just life for its community ²⁶. Therefore, as a step that can be taken in resolving this matter, namely by prioritizing restorative justice, which in this case will be based on recovery efforts. return to the state it was in before ²⁷. Apart from that, this *restorative justice* effort also aims to create a balance in protection efforts in order to provide guarantees for the interests of victims and also perpetrators of criminal acts, but in this case the emphasis is not on criminal efforts ²⁸.

Efforts made to provide treatment for criminal acts with a *restorative justice orientation* are required to fulfill two general requirements, namely formal requirements and material requirements as well as related to other special requirements. In relation to restorative justice efforts, in general there are formal requirements that must be present in efforts to resolve the case, which can be described as follows:

1. It does not cause any rejection or unrest in the community
2. Does not result in social conflict in the community concerned
3. It does not create the potential for division in the sense of national unity and defense
4. Does not contain elements of radicalism or paratism
5. The perpetrator in question is not a repeat perpetrator in a criminal case based on a court decision that has permanent legal force
6. Not committing acts of terrorism or committing crimes that could harm the country
7. Not a perpetrator of a criminal act of corruption
8. Not perpetrators of criminal acts that are oriented towards taking people's lives

Regarding formal requirements that must be fulfilled, including that there must be an agreement or peace between the two parties involved. However, in this case the exception is for perpetrators of drug crimes. For

²⁶Herudiansyah and Rochaeti, "The Conception of Restorative Justice in the Actualization of the Indonesian Criminal Justice System."

²⁷ Sipayung and Subandi, "Implementation Of Restorative Justice In Samarinda City From A Legal Philosophy Perspective, Case Study Of Restorative Justice House Water Container Implementation Of Restorative Justice In Samarinda City From A Legal Philosophy Perspective, Case Study Of Restorative Justice."

²⁸ Herudiansyah and Rochaeti, "The Conception of Restorative Justice in the Actualization of the Indonesian Criminal Justice System."

peace to be carried out by both parties, it must be proven by the existence of a letter of agreement that has been made and also handled by the parties concerned, fulfilling the rights of victims that should be obtained, and in this case also requires responsibility. responsibility imposed by the perpetrator on the victim ²⁹. Fulfillment of these rights can be done in various ways, namely by returning goods, compensation for the costs of losses incurred or other costs resulting from crimes committed by the perpetrator, and in this case the perpetrator is also required to provide compensation. losses or costs resulting from criminal acts that have been committed. Apart from that, in this case the perpetrator is also required to provide compensation for the damage caused by the criminal act he has committed ³⁰.

Restorative justice means that if the formal and material requirements have been met, then in this case also the parties who are willing can terminate the ongoing investigation efforts, in which case the efforts to terminate the investigation or inquiry must proceed based on title of a special case, namely with reasons if the termination is based on law. The level of the Indonesian legal state that has implemented restorative justice is required to be able to realize the existence of 3 basic values in the law that is enforced, which in this case is based on the values of justice and usefulness and is also related to legal certainty ³¹.

In fact, in the field, it turns out that justice is a form of peace in legal efforts, where in its implementation it must fulfill several formal and material requirements. Apart from that, in fact it also turns out that investigators as law enforcement officers have carried out their duties dominated by procedures that are felt to be less effective or seem still old-fashioned. Investigators as law enforcement officers also largely still adhere to this legislative pattern, namely by relying on a positivistic paradigm. By continuing to adhere to this, it has resulted in the doubts that exist among investigators in carrying out their duties, namely related to efforts to stop the investigation. In relation to this, it is necessary to have material and formal requirements in it. If any of the formal or material requirements are incomplete, then the legal action cannot be carried out. There are still many investigators who are afraid of stopping investigative efforts by using restorative justice efforts in them, because they are afraid of committing violations of the Criminal Procedure Code and are worried that they will receive sanctions from their superiors.

As a country with a diversity of cultures, tastes, social strata and religions, the existence of this diversity must also be accompanied by a

²⁹ Cekli S. Pratiwi, "Optimizing Restorative Justice Program for the Best Interest of the Children in Reforming the Juvenile Justice System in Utah," *Legality: Legal Scientific Journal* 27, no. 2 (2019): 242–58, <https://doi.org/10.22219/jihl.v27i2.10172>.

³⁰ Noya et al., "Implementation of the Restorative Justice Process Through the Restorative Conferencing Initiatives Approach in Indonesia."

³¹ Armunanto Hutahaeen, "Implementation of Restorative Justice by the National Police of the Republic of Indonesia to Realize Legal Objectives."

conducive social life, so that in the future a safe, peaceful and peaceful social life will be achieved as expected. Apart from that, the existing diversity also requires a form of good management as has become the ideal of the founding of this nation in Indonesia. Conflicts that occur in social communities in Indonesia will certainly become a problem in the peace of life of the people. With the occurrence of various conflicts in Indonesian society, it is feared that social conflicts will spread to all corners of this country. It is feared that conflicts that occur at any time or small frictions that arise in the social life of the community could also tarnish state security, especially in a local or national scope. Indirectly, the security of a nation is also one of the most important aspects in creating a legal society that is just and adheres to the values of Pancasila and the 1945 Constitution ³².

As one of the state apparatuses that plays an active role in maintaining the right and order of the Republic of Indonesia, the National Police is given the authority to carry out this mandate as mandated by the Indonesian constitution. In this case, the National Police has the authority to continue to realize security in a just Indonesian society. The National Police has the authority to always maintain the security of people's lives, so as to create a safe, peaceful, peaceful and prosperous social life, while always adhering to the values of justice. As a country based on just laws, the police have an active role in participating in enforcing the law in Indonesia, especially regarding matters that might damage Indonesian public order ³³. As mandated by the law relating to the National Police, basically the police have the main task of providing protection, guidance, and also strong support to the community in order to uphold the law in Indonesia. And law enforcement carried out by the police must of course also be based on the existing Criminal Procedure Code . Apart from that, in this case also the Indonesian Police have intensified the existence of PRESIDI, namely by prioritizing the concept of Transformation towards a Police that is Predictive, Responsible and Fairly Transparency (PRESISI) ³⁴.

In general, the task of the police is to prioritize the interests and hopes of the Indonesian people in order to create security and order in their daily lives, which is guided by a system that is open, humanist, accountable, and easy to carry out supervision. So far, the thing that has been most highlighted by the police is the implementation of processes in upholding law and justice in society based on a harmonized sense of justice. Therefore, the breakthrough of restorative justice in law enforcement in Indonesia can be used as a turning point in enforcing laws that are always guided by the

³² Taqiuddin, "The Idea of the 1945 Constitution as a Political Constitution, Economic Constitution and Social Constitution."

³³ Bobi Aswandi and Kholis Roisah, "The State of Law and Pancasila Democracy in Relation to Human Rights," *Journal of Indonesian Legal Development* 1, no. 1 (2019): 128, <https://doi.org/10.14710/jphi.v1i1.128-145>.

³⁴ Ardyan, Sitompul, and Ruslan, "The Form Of Resolving The Laka Lalu Case With A Restorative Justice Approach According To Police Regulation Number 8 Of 2021 On Handling Criminal Acts Based On Restorative Justice."

sense of justice in Indonesian society. In line with the theory put forward by Gustav Radbruch, with justice, benefit and legal certainty, restorative justice will be in line with this theory ³⁵.

The upholding of justice, as well as the usefulness and certainty of the law are the fundamental goals of the law that was created. However, in this case it also turns out that in reality it is difficult to realize it together. Therefore, in relation to this, various efforts have been made to harmonize the three. And related to this, Rad Bruch is of the view that in implementing the 3 main values, the principle of justice must be prioritized first, and this can be followed by the benefits therein, so that later legal certainty will emerge. In fact, in the field, it turns out that in dealing with an existing principle in practice one must continue to adjust the portion of the case as appropriate ³⁶. In an existing case problem, the value of justice is used as a priority in efforts to resolve the problem, but on the other hand there is also a case that In solving the problem, it is based on expediency.

Law in Indonesia is of course used as the main guideline in achieving benefits and legal certainty in society, in this case by prioritizing existing legal rules. Order in society is the main goal of this law. With the existence of an orderly social life, of course an orderly social life will also be created, therefore in this case there is a need for legal certainty. The law must contain certainty, where we can view certainty in this law from 2 aspects, the first, namely certainty in resolving concrete events, and the second, namely the need for legal protection in the face of actions to avoid arbitrariness ³⁷. In essence, legal certainty has the aim that when solving problems that occur in society, the law is used as the main benchmark in solving them. Apart from that, in an effort to resolve all forms of problems that occur in society, the participation of government institutions which have duties and obligations related to this matter is also required. Legal certainty and legal protection must be able to go hand in hand, in this case, because in creating a just, prosperous and orderly society, legal protection is needed in carrying out daily life.

Legal protection for the Indonesian people is very important, bearing in mind that this form of legal protection is one way to uphold the dignity of human life and also as a citizen who is based on the law therein. To achieve clear legal certainty as desired, in this case it is necessary to have a form of

³⁵ D. A. Ofori et al., "N," *Molecules* 2, no. 1 (2020): 1–12, <http://clik.dva.gov.au/rehabilitation-library/1-introduction-rehabilitation%0Ahttp://www.scirp.org/journal/doi.aspx?DOI=10.4236/as.2017.81005%0Ahttp://www.scirp.org/journal/PaperDownload.aspx?DOI=10.4236/as.2012.34066%0Ahttp://dx.doi.org/10.1016/j.pbi.201>.

³⁶ Rinsofat Naibaho and Indra Jaya M. Hasibuan, "The Role of the Supreme Court in Enforcement of Law and Justice Through Judicial Power," *Nommensen Journal of Legal Opinion* 2, no. 02 (2021): 203–14, <https://doi.org/10.51622/njlo.v2i02.388>.

³⁷ Rico Yodi Tri Utama and Retno Saraswati, "Independence and Urgency of Restructuring the Indonesian Criminal Justice System Based on Aspects of Judicial Power," *Adjudication: Journal of Legal Studies* 5, no. 1 (2021): 53–70, <https://doi.org/10.30656/ajudication.v5i1.2740>.

decision that does not take various kinds of interpretation, or in this case is final. If there are various different interpretations in a decision, then in this case it is feared that there will be a lack of synchronization between the law that is enforced and the decision that has been taken.

There are several demands that must be fulfilled by this law . In fact, if we look at the development of criminal justice in Indonesia , the imprisonment of criminals is the most important witness in providing a deterrent effect on criminals who have been found guilty in court decisions. However, related to this matter, if we examine it more deeply, it turns out that Indonesian society also needs a return to the situation as it was before the crime occurred. One of the hopes desired by our society is the need for a criminal resolution using restorative justice, or often called restorative justice.

Considering the scope of the world of law in Indonesia, in restorative justice, namely in resolving a criminal matter, it will involve several parties, namely starting from the victim, the perpetrator, the victim's family, the perpetrator's family, religious leaders, community leaders or traditional leaders, and so on. These legal settlement efforts simply have the main objective of seeking justice in them, namely by focusing on peace efforts by prioritizing the option of return or restoration to the initial or final state. Justice in the restorative scope is not only a violation of the law, however, related to this, it is also a violation of relations between human beings. Therefore, because of this, of course, restorative justice will place more emphasis on restoration of situations or efforts to recover from damage caused by crimes that have occurred ³⁸.

are needed to recreate the self-esteem that exists in the perpetrator concerned, and so that later it can be returned to society. Therefore, in general, the existence of restorative justice is to restore the situation by providing confirmation of the values of society which have been damaged by the perpetrator of a crime or crime. In justice which is based on restorative, it is understood that restoring the situation is an urgency after an act or criminal act ³⁹. The most important thing that law enforcement officials in Indonesia do is not to give law to the perpetrators, but rather to repair all forms of damage resulting from a crime or crime, especially those related to the values that exist in society. .

The litigants will certainly feel burdened by carrying out additional examinations contained in the minutes. And the litigants after a settlement has been made before the investigator are required to come back to the investigator to carry out classification as stated in the minutes. Apart from

³⁸ Husnul Hakim, "Synergy Between Good Government and General Principles of Good Government (Aaupb) in Efforts to Prevent Corruption," *DIALECTIKA: Journal of Economics and Social Sciences* 7, no. 2 (2022): 191–200, <https://doi.org/10.36636/dialektika.v7i2.1461>.

³⁹ Ardyan, Sitompul, and Ruslan, "The Form Of Resolving The Laka Lalu Case With A Restorative Justice Approach According To Police Regulation Number 8 Of 2021 On Handling Criminal Acts Based On Restorative Justice."

that, the presence of related parties such as religious leaders, community leaders, traditional leaders or stakeholders in the implementation of special cases is an obstacle for the investigating party in carrying out its duties and obligations. As explained in Law Number 8 of 1982 concerning Criminal Procedure Law, it is stated that investigators may be permitted to terminate the investigation, where the reasons include because the incident that occurred was not a criminal act, there was insufficient evidence, expired ⁴⁰.

The presence of related parties such as religious leaders, community leaders, traditional leaders or stakeholders in the implementation of special cases is an obstacle for investigators in carrying out their duties and obligations. As explained in Law Number 8 of 1982 concerning Criminal Procedure Law, it is stated that investigators may be permitted to terminate the investigation, where the reasons include because the incident that occurred was not a criminal act, there was insufficient evidence, expired. There is no reason for termination due to the existence of *restorative justice* in the Criminal Procedure Code which apparently results in doubt on the part of the investigator in order to stop the investigation efforts related to criminal matters.

The creation of justice, legal certainty and overall benefit is the goal of all elements of society in the world, including Indonesia. Therefore, in the context of law enforcement in Indonesia, the National Police has taken part in resolving cases through restorative justice. However, in order for restorative justice to be implemented, the police must complete several requirements first, both formal and material requirements, as stated in the Police Regulation of the Republic of Indonesia Number 8 of 2021. If all the requirements that have been determined have been fulfilled, they will be fulfilled. , then the investigator is permitted to dismiss the criminal offense in hand with legal reasons.

So far, many investigators in Indonesia still use a positivistic paradigm, and most of them do not fully understand restorative justice . Apart from that, it turns out that the Criminal Procedure Code also states that there is no reason for termination of a restorative justice investigation. Therefore, in this case, of course, there is doubt among investigators so that they stop studying the case at hand.

Strategic steps to overcome the problems that arise, in this case it is necessary to provide transparent and comprehensive socialization . So that later the investigator will be able to understand the concept of *restorative justice* properly, and not cause misunderstandings in its application. And so far it is felt that there is still a need for a paradigm shift in investigators, namely a change from a positivistic direction to a constructive one. Real supervision is also needed by investigators. Apart from that, in dealing with this problem it is also necessary to have a time frame for dismissing a case

⁴⁰ Mukaromah et al., "Implementation of Restorative Justice in National Economic Recovery: Efforts to Realize Humane Justice (Study of the House of Restorative Justice Bojonegoro)."

or cases that have been stopped with *restorative justice*. By implementing this, it is hoped that investigators will not have the intention of delaying the issuance of a decree to terminate the investigation into the case.

Investigators are not permitted to use restorative justice in resolving cases in Indonesia as *hidden income* or other income that can be used. It would be better if in the implementation of a special case title related to the case at hand it is not mandatory to include religious figures, community leaders, stakeholders, or traditional leaders, bearing in mind that basically for this special case title it is sufficient to present 2 parties, namely the parties the reporting party and also the reported party or with their respective lawyers (if any). By directly contacting the parties involved, namely the reporter and the respondent or their respective lawyers, this will certainly speed up the implementation of the special case title process. Apart from that, carrying out this effort will certainly provide convenience for the investigators concerned

Restorative justice in Indonesia is one of the approaches used in resolving criminal problems, where restorative justice is by emphasizing the restoration of circumstances. Basically, restorative justice is to restore a situation to be better in people's lives, not to take revenge for a crime or crime that has been committed. The implementation of restorative justice in Indonesia is by focusing on 3 things, namely as follows:

1. to make repairs to losses caused by a crime in which the victim was involved
2. by looking at the efforts made by the perpetrator or the responsibility of the perpetrator
3. as an effort to prevent future losses

The quality of life for people in Indonesia will improve with good cooperation between the community and the police. In this case, the police can take action as a facilitator or advisor, and can also provide support for every idea put forward by every existing element, namely by being guided by the welfare of the community. Therefore, in general, the concepts and ideas contained in restorative justice will be in line with the ideas *proactive policing* based on *community oriented policing* (COP) and *problem oriented policing* (POP). In relation to this POP, the National Police can be used as a means of utilizing all forms of creative solutions for all existing problems or other anxieties that exist in people's lives. Apart from that, this will also be related to crimes that occur within the scope of society ⁴¹.

Both restorative justice and proactive policing have the aim of providing acceleration and supporting the achievement of the objectives of the Indonesian Police in maintaining national security and stability.

⁴¹ Sahti, "The Application of the Concept of Restorative Justice in the Settlement of Traffic Accident Cases is Linked to the Republic of Indonesia Police Circular Number: Se/8/Vii/2018 concerning the Application of Restorative Justice in the Settlement of Cases."

Bhabinkamtibmas has an important role in carrying out the duties and functions of the police ⁴². Basically, in carrying out their duties, Bhabinkatibmas will be involved in the community directly, where they have the duty and authority to maintain order and security in their community. Bhabinkamtibmas has the duties and authority to foster public order and security in the sub-districts or villages of the same level. Bhabinkamtibmas has the authority to resolve all forms of problems that exist in its community ⁴³.

Bhabinkamtibmas has the authority to resolve all disputes that exist in society or communities by applying restorative justice in resolving them in the field. The application of restorative justice can be used to resolve cases of minor crimes, namely cases of minor insults, minor abuse, minor fraud, minor embezzlement, minor robbery and minor damage. Based on Article 11 of Perpol No. 8 of 2021, it has been explained that the resolution of this minor criminal act is based on a complaint or report, or if it is directly discovered that there is an alleged criminal act, where the complaint or report is before there is a report from the police.⁴⁴

Conclusion

Law enforcement in Indonesia must be able to cover several things, including that law enforcers in Indonesia must be able to achieve 3 embodiments of the basic values in existing law or in this case it is also closely related to the existence of legal objectives in Indonesia, where the objectives of this law are must include justice, usefulness and legal certainty in it. Therefore, one of the efforts made in realizing this law in Indonesia is the issuance of the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice which is expected to be able to provide the values of justice, usefulness and legal certainty for the community, especially those who have legal problems.

⁴² Mukaromah et al., "Implementation of Restorative Justice in National Economic Recovery: Efforts to Realize Humane Justice (Study of the House of Restorative Justice Bojonegoro)."

⁴³ Sipayung and Subandi, "Implementation Of Restorative Justice In Samarinda City From A Legal Philosophy Perspective, Case Study Of Restorative Justice House Water Container Implementation Of Restorative Justice In Samarinda City From A Legal Philosophy Perspective, Case Study Of Restorative Justice."

⁴⁴ Gatot Pramuka, "Bureaucratic Problems as Public Servants," *Journal of Society, Culture and Politics* 20, no. 1 (2007): 23–34.

In relation to this, restorative justice is of course in fact that in the field law enforcement officers in Indonesia find various legal probes in the implementation of restorative justice. One of the law enforcement officers who found problems in efforts to implement restorative justice was the National Police. In this restorative justice effort, the National Police, which plays the role of investigator, requires certain solutions in resolving the matter.

Restorative justice in Indonesia means that in its implementation efforts must be immediately sought to find a solution in order to achieve mutual benefit between both parties. Related to this, the resolution of all existing problems will benefit both parties concerned. However, what is at the heart of this problem is that sometimes investigators still lack knowledge regarding the concept of ethical values that should be implemented in this restorative investigation. One of the causes of this happening is because there is still a lack of socialization that discusses matters related to Police Regulation No. 8 of 2021. In fact, in the field, it turns out that there are still many investigators who have not fully participated in the relevant socialization regarding this matter. Therefore, investigators in Indonesia only assume that restorative justice is one of the normal peace efforts as it should be.

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