Police Discretion in Criminal Cases of Abuse by Minors with the Application of Diversion Restorative Justice

Virza Imeldha Bahari, Nuria Siwi Enggarani
c100202429@student.ums.ac.id, nse178@ums.ac.id

Faculty of Law, Muhammadiyah University of Surakarta

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Abstract
The objective of this investigation is to analyze the utilization of prudence in the manifestation of restorative justice in solving cases of persecution and to analyze from the perspective of legal sociology the practice of implementing restorative justice in handling cases of abuse. This thesis uses a legal sociology approach with data collection techniques by observation, interviews, and documentation. Factors that led to the crime of persecution: ego factors, economic factors and environmental factors. In cases of abuse, if there are 2 pieces of evidence, namely the statements of 2 witnesses and a post-mortem examination, then the most likely thing is to reduce the evidence, namely witness testimony, so that the witness who has been questioned must withdraw the statement and carry out a special case title to stop the case to determine SP3. The role of Bhabinkamtibmas in restorative justice is as a mediator or facilitator. Bhabinkamtibmas acts as a mediator in solving problems to reduce larger conflicts. Before holding the meeting, Bhabinkamtibmas first accommodated the aspirations of perpetrators and victims who did not want their cases to be processed legally. Bhabinkamtibmas then, together with community leaders, studied the habits of the perpetrators and saw whether this incident could still be repaired. If it can still be repaired, the parties are brought together and followed by deliberations to reach a consensus. Related to the causes of mistreatment of husbands against wives starting from the issue of biological needs, infidelity and economic problems. The positive effects of carrying out mediation for mild abuse by a husband against his wife are Improved husband's behaviour; The creation of household harmony; Re-communication of both sides; Providing a sense of justice to both parties; and settlement of legal issues more quickly and cheaply.

1. Introduction

Progress over time has provided great changes and influence on the State of Indonesia. These changes also have an impact on societal development, behaviour

and cultural shifts in society.[1]Apart from the positive impact, this progress also has a negative impact in the form of increasing the number of violations. Crime and criminal acts often occur in society and within the family environment. One of the crimes That often occurs in society is criminal acts of abuse.[2]

Until now, persecution has become a phenomenon that is difficult to disappear in social life. Acts of abuse that occurred included beatings and physical violence that caused injuries to the victim's body or limbs. It is not uncommon for victims of abuse to become physically disabled for life, or even cause death. It is not uncommon for acts of abuse to cause psychological effects or impacts such as trauma, fear, and threats, and sometimes some even experience mental and mental disorders. The phenomenon of acts of abuse is nothing new in acts of physical and psychological violence and can be found everywhere, such as in the household or family environment, in public places, or other places, and can happen to anyone when faced with something problems with other people. Observing the phenomenon of acts of abuse that occur, it seems that it is not something that just happens but is thought to be related to various factors such as social influence and delinquency, thuggery, social jealousy, economic pressure and inequality, disharmony in household relationships or with other people, competition, conflicts of interest. and others.[3]

The case in 2023 that was handled by the Surakarta Police regarding abuse was the case that occurred at the Bonoloyo Cemetery Complex in Surakarta by secondary school students in Surakarta. This is related to cases of abuse of junior high school students carried out by students from other schools. This case began when the victim's child came to the Jurug hero's grave to resolve a problem with Alvira's child. When they arrived, the victim's child, Marcel, was invited by the perpetrators (children) to Gebang, precisely at Bonoloyo's grave. Arriving at the grave, the child victim Marcel was told to make a statement, after which the child victim Marcel was abused in turn by the perpetrators by alternately hitting, kicking and slapping. Marcel's child victim was silent and did not reply. The perpetrators did not use tools, only their bare hands. After the child victim experienced this abuse, the child victim went home alone.

On Tuesday, January 3 2023, at approximately 23.00 WIB, at Bonoloyo's grave, Jln Sumpah Pemuda, Kadipiro, Banjarsari Surakarta, Mr HDP as the reporter,

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[1] Yeun Joon Kim, Soo Min Toh, and Sooyun Baik, "Culture Creation and Change: Making Sense of the Past to Inform Future Research Agendas," Journal of Management 48, no. 6 (2022), https://doi.org/10.1177/01492063221081031.

[2] Dwi Nissa Kamalia Putri and Ahmad Izzuddin, "Pertimbangan Hakim Pengadilan Agama Singaraja Dalam Penetapan Nafkah 'Iddah , Nafkah Mut'ah Dan Eksekusinya Pada Putusan Verstek Cerai Gugat," *Sakina: Journal of Family Studies* 6, no. 4 (2022): 1–16, https://doi.org/10.18860/jfs.v7i1.2518.

[3] Wahab Aznul Hidaya, "Delik Penganiayaan Terhadap Anak Di Kota Makassar," *Justisi* 6, no. 1 (2020): 35–45, https://doi.org/10.33506/js.v6i1.778.

MCO as the child of the reporter became victims of abuse carried out by Mr. RJ bin DS, JPP bin AS, Ms AS bint AS and Ms MSNF bint Alm. SMRJ. MCO, the reporting child, was abused by beating him alternately with his bare hands, so the reporting child MCO suffered injuries including, a swollen upper lip, nose bleed/bleeding, stomach pain, and right shoulder swelling.

The student's parents who learned about this incident immediately reported it to the police. They demand that the perpetrator be responsible for his actions. The Surakarta Police Criminal Investigation Unit has four suspects in this abuse case. They are Br. RJ bin DS (16 years), JPP bin AS (16 years), Miss AS bint AS (17 years) and Miss MSNF bint Alm. SMRJ (14 years old). They are high school students at the Secondary School in Surakarta. In this case, the Surakarta Regional Education and Culture Service (Dispendikbud) even visited the Secondary School in Surakarta. This is related to cases of abuse of junior high school students carried out by seniors who were in secondary school. His visit was to seek mediation between the victim and the perpetrator. It is hoped that mediation will result in the withdrawal of the report or the case ending peacefully considering that the perpetrator is still at school. The Surakarta Police who handled the case then resolved it by agreement of both parties through a restorative justice process. This action is as mandated by Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, where materially the case has been fulfilling material requirements, namely that it does not cause anxiety and/or social conflict; does not cause disputes; does not have the potential to divide the nation; not radicalism and separatism; not a repeat perpetrator of a criminal offence based on a Court Decision; and not crimes against humanity, crimes of treason, crimes of corruption and crimes against people's lives.

When analyzing the effectiveness of law enforcement using restorative justice methods in resolving the problem of abuse, it cannot be done without first discussing law at a normative level (law in books) and law at a reality level (law in action). This is because, without comparing these two variables, it is impossible to measure the level of effectiveness of law enforcement being implemented. Donald Black believes that legal effectiveness is one of the main problems in the sociology of law which is obtained by comparing the legal reality in theory with the legal reality inpracticeSo there appears to be a gap between the two. Law enforcement is considered ineffective when there are still differences between the litigants. Efforts to find solutions, solution steps, or steps that must be taken to bring the legal reality (das sein) closer to the legal ideal (das sollen) so that the 2 (two) variables (law in books and law in action) become the same or at least go hand in hand.[4]

[4] Muhammad Zulfadli, Kasman Abdullah, and Fuad Nur, "Penegakan Hukum Yang Responsif Dan Berkeadilan Sebagai Instrumen Perubahan Sosial Untuk Membentuk Karakter Bangsa," in *Prosiding Seminar Pendidikan Ilmu-Ilmu Sosial Membentuk Karakter Bangsa Dalam Rangka Daya*

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background is added with supporting data and legal issues are created, so that readers can believe that this research needs to be carried out.

Effective law is a law that is by the regulations that have been made in law and law that is by the hopes or ideals of society. The existence of this law will create a social order in society. Talking about law is very complicated, there is a measure of legal reality and legal ideal. Sometimes what has been stipulated in a law is not by the wishes of the community, or vice versa, the community wants a new law. Changes in law in society can occur because it is felt to be very necessary, namely by the presence of regulations or norms that are appropriate to current conditions. Starting from several basic concepts of characteristics and matters studied by legal sociology, it is known that the use of legal sociology can be used to analyze a law enforcement process that happens in society.

Legal sociology is a study that studies the impact of the enactment of a law in society so that social phenomena can emerge and develop in society. Visible social phenomena are events for an individual or social group when they encounter the law. Just like cases that have surfaced in various media, including television, radio, newspapers, online media or the internet, etc. Sociology of law looks at the order of empirical reality in society which is related to the application of law. Whether justice occurs or not in disclosing an existing legal fact. The public can also assess how well or not law enforcement officers are functioning in carrying out their duties, so sometimes social stratification in society has quite a big influence on the law enforcement system. This means that people who have positions or positions in government will easily influence the operation of legal mechanisms, while people who have nothing can only surrender and submit to existing legal regulations. The response from the public is quite high towards law enforcement which is considered to be unfair and the law has not been implemented to society's expectations. The impact of unjust laws is that people have less confidence in law enforcement so the image of the law in the eyes of the public fades. Instead, the purpose of implementing the law is to create order and peace in society. Legal sociology does not talk about the substance or material of law but rather refers to the impact of applying legal sources.

Therefore, in the discussion of this research, the author will use the construction of a legal sociology perspective to analyze the effectiveness of implementing restorative methods in handling cases of abuse. The use of legal sociology is that it can function as the basis for a sociological understanding process in the form of social facts about how restorative justice mechanisms give rise toreactionin society. With analysis using legal sociology, it will be able to provide the ability to predict and evaluate "social facts" or social facts related to law that are empirical, non-doctrinal and non-normative. By understanding the sociology of law, you will be able to understand the realities that arise and develop and influence law

Saing Global" (Makassar: Kerjasama: Fakultas Ilmu Sosial Universitas Negeri Makassar dan Himpunan Sarjana Pendidikan Ilmu-ilmu Sosial Indonesia, 2016).

in society[5].

In short, legal sociology examines the relationship between law and society. There is a clear difference between normative/dogmatic legal studies and sociological studies of law. In this research, the community's legal knowledge, understanding, attitudes and behavioural patterns of both the community and members of the police will be examined regarding the practice of resolving criminal acts of abuse using restorative justice methods at the Surakarta Police.

So, based on this background, the author is interested in raising the theme of Police Discretion in Criminal Cases of Abuse by Minors with the Application of Diversion Restorative Justice.

2. Research Method

Research design

In this research, the author used a qualitative approach. Using a qualitative descriptive research design, the aim is to explore facts regarding the analysis system for investigating criminal acts carried out by minors in the Surakarta Police area.

Research Instrument

The research instrument, as in the qualitative research tradition, is humans, namely the researchers themselves, using tools in the form of notes, tape recorders, and cameras. Notes, tape recorders, and cameras are only used as aids in conducting research. Therefore, as a research instrument, researchers understand the meaning of the data that researchers obtain in the field. So, the research instrument in qualitative research is a person or people, while tools such as notes and others are only complementary "weapons".

Data source

Primary data sources in this research consist of:

Head of Criminal Investigation Unit for Surakarta Police.

The Head of the Criminal Investigation Unit is in charge of and creates activity programs, in terms of dealing with disturbances in public security and order, leading and ordering the Criminal Investigation Unit and carrying out control over all activities that occur in his jurisdiction. Apart from that, it is an element carrying out the main tasks and is responsible to the Chief of Police. In carrying out its daily duties it is under the control of the Deputy Chief of Police and is assisted by several unit elements in the unit.

Head of Criminal Investigation Unit (KBO)

The task of the Head of a Criminal Investigation Unit (KBO) is to assist the Head of the Criminal Investigation Unit in carrying out the development of Criminal Investigation unit personnel through case analysis and title, studying and reviewing the implementation of investigation and investigation tasks, dividing tasks in terms

[5] Abdul Haq Syawqi, "Multiparadigma Sosiologi Hukum Keluarga Islam," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 4, no. 1 (2022): 66–89, https://doi.org/10.19105/al-manhaj.v4i1.6200.

of receiving reports from the public according to the units in the Criminal Investigation Unit.

Head of Women and Children Services Unit (PPA)

The Head of the Women and Children Services Unit (PPA) is a part of the National Police organizational structure at the Police level under the Criminal Investigation Unit. In carrying out its duties, it is responsible to the Criminal Investigation Unit Head. Then he is tasked with handling problems including criminal crimes involving women and children. Therefore, it is hoped that the involvement of the Women's and Children's Services Unit (PPA) in this research will help researchers to reveal further the cases experienced directly related to the handling of cases of criminal crimes committed by minors so that it will provide facts. new to this research.

Surakarta Police Criminal Investigation Investigator

In carrying out its duties to serve reports of criminal acts involving women and children, the Surakarta Police Criminal Investigation Unit, the Women and Children Services Unit (PPA) has implemented a position to serve women and children which has been proven to have used policewomen investigators. Because one of the problems of this research concerns the analysis of investigations of minors carried out at the Surakarta Police, the investigator in this case is considered very relevant to provide data regarding this research.

3. Results and Discussion

The National Police of the Republic of Indonesia as a law enforcement agency also has the function of protecting, protecting and serving the community from threats and criminal acts that disturb and threaten the sense of security and also cause psychological and material harm, by maintaining social order and order, enforcing the law or more precisely, upholding justice in society based on law.[6]One of the legal bases used in law enforcement is criminal law. In its understanding, criminal law has been agreed upon as part of public law (Algemene Belangen). With these characteristics, if someone has committed a criminal act that harms the interests of other people, then for legal reasons against the perpetrator it not only becomes the right of the victim of the criminal crime but also develops into a joint obligation of the entire family, community and ultimately the because this law is part of the state's responsibility. Legal rules in a country have become the only

[6] Tarya Sonjaya et al., "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Berdasarkan Prinsip Pembangunan," *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 203–14, https://doi.org/10.32801/lamlaj.v5i2.162; Rifky Adji Sukmana, Kurniati Kurniati, and Lomba Sultan, "Paradigma Keadilan Dalam Penegakan Hukum Negara Berdasarkan Teori Kebenaran Perspektif Filsafat Hukum Islam," *Jurnal Ilmiah Falsafah: Jurnal Kajian Filsafat, Teologi Dan Humaniora* 8, no. 2 (2023): 17–32, https://doi.org/10.37567/jif.v8i2.1589.

instrument in resolving criminal cases with predetermined procedures and rules.[7]

This concept has been in effect in Indonesia since the promulgation of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). As is regulation In this legislation, law enforcement only relies on the State as a provider of justice, which turns out to be based on the minimal involvement of individuals in seeking to resolve criminal crime cases. The search for justice in criminal cases relies entirely on the system or pattern established by the Police, Prosecutor's Office, Courts and Correctional Institutions. Justice that is provided by the State is not necessarily by the wishes of the justice seekers themselves, because everyone has varying needs and levels of acceptability for a sense of justice.[8]

By more carry-on, Yahya Harahap described criticisms of judicial institutions, namely that the deadline for resolving disputes through litigation takes a very long time, estimates of litigation costs are expensive, courts are less responsive, court decisions do not resolve problems, and the ability of judges who are generalists.[9]

Weaknesses and dissatisfaction with the operation of the criminal justice system have encouraged law enforcement agencies, especially the police, to look for alternative case resolution solutions from the existing criminal justice system by resolving cases outside of the penal route, the method in question is mediation as an embodiment of restorative justice so that It is necessary to think about resolving criminal cases through Alternative Dispute Resolution (ADR) channels to resolve conflicts that occur between perpetrators and victims, also to overcome formality patterns in the applicable criminal justice system, as well as avoiding negative effects arising from the existing criminal justice system. At the moment.[10] One concept to realize this idea is to apply a restorative justice pattern to resolve criminal cases outside of court. Judging from the problems mentioned above, mediation between the parties is deemed more appropriate to realize the principles of simple, fast and cheap justice which are very important for protecting the rights of victims and perpetrators.[11]

The mechanism for mediation, which is part of alternative dispute resolution (ADR), is only known in the realm of private law. However, currently,

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[7]Eva Achjani Zulfa, "Pergeseran Paradigma Pemidanaan Di Indonesia," *Jurnal Hukum & Pembangunan* 4, no. 2 (2017): 93–100, https://doi.org/10.21143/jhp.vol36.no3.1256.

[8]Ibid., p. 3

[9] Nabitatus Sa'adah, "Mekanisme Penyelesaian Sengketa Pajak Dalam Sistem Peradilan Di Indonesia," *Administrative Law and Governance Journal* 2, no. 1 (2019): 19–33, https://doi.org/10.14710/alj.v2i1.19-33; Moch. Marsa Taufiqurrohman, Jayus Jayus, and A'an Efendi, "Integrasi Sistem Peradilan Pemilihan Umum Melalui Pembentukan Mahkamah Pemilihan Umum," *Jurnal Konstitusi* 18, no. 3 (2022): 562–84, https://doi.org/10.31078/jk1834.

[10] Salman Luthan, "Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara," *Jurnal Hukum IUS QUIA IUSTUM* 2, no. 4 (2016): 59–61, https://doi.org/10.20885/iustum.vol2.iss4.art7.

[11]Ibid.

the mediation process in law enforcement efforts is starting to be widely practised in resolving criminal crime cases due to a shift in the paradigm in criminal law enforcement from a retributive justice pattern to a restorative justice pattern. In the principle of retributive justice, the orientation of resolving criminal disputes is by retaliating for a crime against the perpetrator by imposing a prison sentence as a form of court decision. Meanwhile, according to the principle of restorative justice, there is a development in dispute resolution which is felt to be more able to restore the rights of victims and accommodate the interests of the parties by providing justice and benefits. To accommodate the interests of these parties, efforts to resolve a criminal crime case through mediation are used as a form of dispute resolution effort outside the judiciary (non-litigation) with the help of another person or what is usually referred to as a neutral and impartial third party. and does not act as a decision-maker who is then called a mediator. In this case, the aim is to reach an agreement to resolve the dispute being faced by the parties without anyone feeling defeated.[12]

The advantages of resolving a dispute through mediation efforts include cheap costs, fast time estimates, can satisfaction of the disputing parties because they make cooperative efforts, reduce the backlog of cases, eliminate the element of revenge, strengthen friendly relations and strengthen and maximize the function of the judiciary in efforts to resolve disputes in addition to adjudicative court processes. Through the pattern of resolving criminal cases using discretionary efforts, National Police investigators have the authority to make decisions or provide other policies outside of statutory regulations in resolving criminal cases that are handled based on situations and conditions, which are aimed at the general interest. Meanwhile, restorative justice can simply be interpreted as an effort to resolve criminal crime cases involving the community, victims and perpetrators of crime to create justice for all parties in the hope of creating a situation that is the same as before the criminal crime occurred and preventing crime from occurring. Furthermore. As a philosophy of dignified punishment, its implementation requires a concept that can have concrete legitimacy.

The criminal justice system embraced by the Criminal Procedure Code and special criminal procedural law rules is an integrated criminal justice system which is placed on the principle of functional differentiation, namely differentiating between the functions and authorities of each law enforcement component based on the agency. his. The integrated criminal justice system places all law enforcement officers in an equal position based on their function and authority.[13]

The police are law enforcement officers who directly deal with the public. The role of the police in general is known as maintaining security and public order

[12]Please, Op. Cit. matter. 59

[13]Renggong, Ruslan. Criminal Procedure Law (Understanding Human Rights Protection in the Detention Process in Indonesia), Kencana, Jakarta, 2014, p. 164

and also as a law enforcement officer in the criminal process. In carrying out their daily duties, the police always interact and have direct contact with the community as the object of their policing duties, meaning that where there are people, there are police whose job is to maintain order and security in the community from all forms of crime, from anticipation or prevention to taking action against something. crime.[14]

The function of the Police as stated in Article 2 of Law no. 2 of 2002 is "one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, protection and service to the community." Therefore, in the context of law enforcement, the Police have the task of investigating a criminal case which is the implementation of the Police function and the mandate of Article 6 paragraph (1) of Law no. 8 of 1981 concerning the Criminal Procedure Code. However, carrying out investigations in uncovering a criminal case in the police investigation sub-system is not always easy to carry out.[15]

In this case, the Police Institution has a full role as the spearhead in law enforcement efforts, especially in criminal crimes, which has the duty and authority to act to stop the process of resolving the case or there needs to be a follow-up in the criminal justice process for reasons. certain. The statutory regulations that form the background for this effort are Article 18 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, which reads; "In the public and community interest, officials of the Indonesian National Police in carrying out their functions, duties and authority can act according to their judgment." Meanwhile, in paragraph (2) of the Law, it is explained that the implementation of the provisions as intended in paragraph (1) can only be carried out in very necessary circumstances by taking into account statutory regulations, as well as the Professional Code of Ethics for the National Police of the Republic of Indonesia. Therefore, in carrying out their duties and authority, investigators from the police have the authority to make discretionary efforts to determine the actions that will then be carried out. In simple terms, understanding the concept of discretion in the police means understanding that the police have the authority to make decisions and/or choose various actions in resolving criminal crime cases that they handle based on the law based on situations and conditions, as well as considerations and decisions of conscience as a whole. private for the sake of the public interest.[16]

Police discretion can indirectly be used in applying the mediation process in handling cases between both parties, namely the perpetrator and the victim of a criminal act, to resolve legal problems properly and to achieve justice and benefits which are part of the objectives of the law. So in this case the police can become

[14]Ibid., p. 175
[15]Ibid., p. 176
[16]Sitompul, Some Duties and Roles of the National Police, CV. Wanthy Jaya, Jakarta, 2000, p. 2.

heroes for their nation, by making the right choices in carrying out their duties and authority as a police professional.[17]

The discretionary authority possessed by the Police as a state institution as a public official in matters of law enforcement (Law Enforcement) is familiar, but when an investigator handles a criminal case process, sometimes a Police Investigator is faced with problems that are considered minor, the investigation is less effective and efficient until it is handed over (P21) to the Public Prosecutor's Office, and then to the Court stage to be decided by the Judge. Bearing this in mind, the benefit of this discretion from the Police is that policy implementation is based on deep professionalism work from the Police who are required to work optimally in providing service, guidance and protection to the wider community in general and enforcing the law in particular from the Police more effectively and efficiently.[18]

As the Head of the Satreskrim Unit of the Women and Child Protection Services (PPA) Surakarta Police as an informant, gave the following definition of discretion:[19] the investigator's actions according to his judgment to determine whether a case will proceed to court or be resolved amicably or it can also be interpreted as a policy based on his breadth to carry out an action based on his considerations and beliefs. So the discretion is not exercised independently of legal provisions, but the discretion is still exercised within the legal framework.

As Faal states, "Police discretion is a policy based on the power to carry out an action based on his considerations and beliefs." Then as in Faal "if the word discretion is combined with the wordPolice, the term is at the investigator's discretion." As for what can be interpreted as a policy based on the power to carry out an action based on one's considerations and beliefs. So, discretion associated with the police and investigators is an investigator's discretion based on the power to carry out an action based on his considerations and judgment.[20]

The concept of discretion is contained in the Republic of Indonesia Law No. 2 of 2002 about The National Police of the Republic of Indonesia contained in Article 18 paragraph (1) and paragraph (2) which reads: "In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authority can act according to their judgment." Then paragraph (2) reads; "Implementation of the provisions as intended in paragraph (1) can only be carried out in very necessary circumstances by paying attention to statutory regulations, as well as the Police professional code of ethics." In the official Explanation Chapter of Law Number 2 of 2002, paragraph (1) has been further explained that what is meant

[17]Raharjo, Satjipto. Building Civilian Police, Legal, Social and Community Perspectives, Kompas Media Nusantara, Jakarta, 2007, p. 262

[18]Faal, M. Screening of Criminal Cases by the Police (Police Discretion), Pradanya Paramita, Jakarta, 1991, p. 15-16.

[19]Interview with Aiptu Budi Santoso, Head of the Surakarta Criminal Investigation Unit, September 23 2023.

[20]Faal, Op. Cit., p. 20

by "acting according to their judgment" is an action that can be carried out by members of the Indonesian National Police who in acting must consider the benefits and the risks of his actions and are truly in the public interest. This explanation has the meaning that the exercise of discretion must be based on aspects of the public interest. Even though these actions are carried out according to their judgment, they must consider the benefits and risks that arise after the actions are by the authority and position of a Police officer.[21]

The application of discretion by the police must also be based on the discretion needed and exercised by the police because they are not only law enforcement officers but also order keepers whose task is to maintain peace and order maintenance. The role of the police in law enforcement is like living law because, in the hands of the police, there are legal objectives to protect and create safe conditions in society. It is through the hands of the Police that these are thingsWhichphilosophical nature in law can be translated into reality, but precisely because of the nature of its work, the police have a lot of contact with the community and run the risk of receiving sharp scrutiny from the community they serve.[22]

The general function of the police is to carry out preventive and repressive social control of society, in French, it is known as a police administration.[23]This function is regulated in Law no. 2 of 2002 concerning the Republic of Indonesia PoliceIndonesia and the Criminal Procedure Code. In Article 2 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, "The function of the Police is one of the functions of state government in the field of maintaining security and public order, law enforcement, protection, protection and service to the community."[24]

Article 4 of Law no. 2 of 2002 also emphasizes that the "State Police of the Republic of Indonesia" aims to realize domestic security which includes maintaining security and public order, order and upholding the law, providing protection, protection and service to the community, as well as maintaining public peace by upholding human rights man". In carrying out these main tasks, Article 14 paragraph (1) Letter g of Law no. 2 of 2012 concerning the State Police of the Republic of Indonesia states that the State Police of the Republic of Indonesia is tasked with carrying out inquiries and investigations into all criminal acts by the criminal procedural law and other statutory regulations. In Article 16 paragraph (1) of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, it is stated that to carry out the duties as intended inChapter13 and 14 in the field of

[21]Utomo, Warsito Hadi. Police Law in Indonesia. Achievement Library, Jakarta, 2005, p. 106
[22]Dwilaksana, Chrysnanda. Discretionary Patterns in the Traffic Accident Investigation Process, UI Press, Jakarta, 2001, p. 36
[23]Rahardjo, Satjipto. Civilian Police in Social Change in Indonesia, Kompas, Jakarta, 2009, p. 28
[24]Ibid., p. 43

criminal proceedings, the National Police of the Republic of Indonesia has the authority to carry out several very urgent actions.[25]

In Article 16 paragraph (2) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, it is stated that other actions as intended in Article 16 paragraph (1) letter I are investigative actions and investigations are carried out if they meet the following requirements; Does not conflict with any legal regulations; In line with legal obligations that require the action to be carried out; Must be appropriate, reasonable, and included in the scope of the position; Reasonable consideration based on compelling circumstances; and Respect human rights.

In Article 18 paragraph (1), in the public interest, officials of the Indonesian National Police can act according to their judgment. Paragraph (2) Implementation of the provisions, as intended in paragraph (1), can only be carried out in very necessary circumstances by taking into account statutory regulations, as well as the professional code of ethics for the Indonesian National Police. This article explains that members of the National Police in carrying out their duties have what is called discretion. So by having discretionary authority in the judicial sector as stated in Law no. 2 of 2002 in Article 18 paragraph (1) "In the public interest, officials of the Indonesian National Police in carrying out their duties and authority can act according to their judgment." Of course, carrying out these actions must be by Article 4 of Law no. 2 of 2002, namely by upholding human rights. In Article 22 paragraph (2) letters b and c of Law no. 30 of 2014 concerning Government Administration states that every use of discretion by government officials aims to fill legal gaps and provide legal certainty.

Implementation of the restorative concept *of justice* in cases of abuse at the Surakarta Police is part of police discretion. A case of abuse is a form of case that is included in an ordinary offence if it is in the serious category (causing serious injury or death) and is a complaint offence if it is minor. Ordinary offences are offences that can be processed directly by investigators without any consent or complaint from the victim. The implementation of restorative justice in handling cases of abuse is a deviation from the rules that apply in the Criminal Procedure Code so the implementation of restorative justice with mediation in cases of abuse is using discretionary authority.

Mediation is a form of alternative dispute resolution outside of court. The purpose of mediation is to resolve disputes between the including an impartial third party. Mediation can lead third parties to the realization of a permanent and sustainable peace agreement, considering that resolving disputes through mediation places both parties in the same position, there is no winning or losing

[25]Soetoprawiro, Koerniatmanto. et al., "Legal Accountability System of the Indonesian National Police Organizationally and Personally", Publication Manuscript, Institute for Research and Community Service, Prahayangan Catholic University, Bandung, 2013, p. 22.

party (win-win solution).

In mediation, the parties to the dispute are proactive and have full authority in decision-making. The mediator does not have decision-making authority, but only assists the parties in maintaining the mediation process to realize their peace agreement. Dispute resolution through mediation is very beneficial because the parties have reached an agreement that ends their dispute in a fair and mutually beneficial manner. Even in failed mediations, where the parties have not reached an agreement, they have felt the benefits. The main model of dispute resolution is the desire and good faith of the parties in ending their dispute. Desires and faith Both of these, sometimes require third-party assistance in realizing them. Mediation is a form of dispute resolution that involves a third party.

To respond to the development of the legal needs of society and fulfil the sense of justice of all parties, the National Police of the Republic of Indonesia as an institution given the authority to investigate criminal crimes feels the need to formulate a new concept in the criminal law enforcement system, feels the need to formulate a new concept in the enforcement system criminal law, especially the process of investigating and investigating criminal crimes, can accommodate the values of justice in society while providing legal certainty, especially process certainty.

The criminal case settlement process can be carried out in a manner that is by the Criminal Procedure Code and can also be carried out using a case settlement process outside of court. On application Penal mediation in criminal cases of assault at the Surakarta Police in 2023 can be seen in the table shown as follows:

Table 1. Persecution Cases Resolved Using Restorative Justice Mechanisms

No	Date Selra	LP/Complaint Basis	Name Reporter	Name Reported	Case
1	March 17, 2023	LP / B / 47 / II / 2023 / SPKT / Polres Surakarta / Polda Jateng, Date 21 February 2023	MO, 52 Years, Private, Surakarta City		Collaborative destruction of Article 170 of the Criminal Code
2	April 12, 2023	LP / B / 81 / III / 2023 / SPKT / Polres Surakarta /Polda Jateng, Date 24 March 2023	DH, 51 years old, Surakarta City	J.C., 15 Th, Student, Surakarta City	Child Abuse Article 80 of the Republic of Indonesia Law No. 35 of 2014 concerning Amendments to the Republic of Indonesia Law No. 23 of 2002 concerning Child Protection
3	July 11, 2023	LP / B / 153 / VI / 2023 /SPKT/Polres Surakarta /Polda Jateng, Date 11 June 2023	SP, 42 years old, housewife, Beji, Surakarta City.		Persecution Article 351 of the Criminal Code
4	August 9 2023	LP / B / 122 / V / 2023/ SPKT/ Surakarta Police/ Central Java Police Date 11 May 2023	SP, 47 Th, Surakarta City.		Attacking Article 170 of the Criminal Code

The latest internal police regulation that regulates restorative justice is Perpol Number 8 of 2021. Meanwhile, Perpol Number 8 of 2021, Restorative Justice is the resolution of criminal crimes by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just solution through peace by emphasizing restoration to its original state. Handling of criminal crimes based on Restorative Justice is carried out in the following activities: carrying out the Criminal Investigation function; investigation; or investigation. The implementation of the Criminal Investigation function is carried out by the community development function (Bimas) and Samapta Polri by their duties and authority. Handling of criminal crimes can be carried out in the handling of minor criminal crimes. Handling of criminal acts can involve ending investigations or investigations. Handling of criminal crimes based on Restorative Justice must meet general requirements; and/or special. General requirements apply to the handling of criminal offences based on Restorative Justice in the activities of Carrying out Criminal Investigation, Investigation or Investigation Functions. Special requirements only apply to the handling of criminal offences based on Restorative Justice in Investigation or Investigation activities.

The application of restorative justice to cases of abuse is strengthened by the National Police Chief's Regulation Number 6 of 2019 concerning Investigation of Criminal Crimes which perfects Perkap number 14 of 2012. Another supporting regulation is the existence ofPerpolNo. 8 of 2021 concerning Restorative Justice. In Perkap Number 6 of 2019 and Perpol No. 8 of 2021, conditions are set for a case to be able to carry out a restorative justice process. For Perkap Number 6 of 2019, the prerequisites are set out in Article 12 which states that restorative justice can be carried out in the investigation process if the conditions are met:

1) Material, including a) Does not cause public unrest or there is no rejection from the community; b) Does not impact social conflict; c) There is a statement from all parties involved not to object, and waive the right to sue before the law; (1) Limiting principles: (a) For the perpetrator: The perpetrator's level of guilt is relatively not serious, and the perpetrator is not a recidivist or repeat criminal crime; (b) For criminal offences still in progress: Investigation; and Investigation before the SPDP is sent to the Public Prosecutor.

2) Formal, covers: a) Letter of request for peaceful settlement by both parties (reporter and respondent); b) A statement of peace and resolution of disputes between the parties involved in the case (the reporter, and/or the family of the reporter, the reported person, and/or the family of the reported party, and/or representatives of community figures) is known to the head of the investigator; c) Minutes of additional examinations of the litigants after the case has been resolved through restorative justice; d) Recommendations for special case titles that approve restorative justice solutions; and e) The perpetrator does not object and is carried

out voluntarily for responsibility and compensation.

Regarding the material requirements in Article 5 of Perpol no. 8 of 2021, the criteria include: (a) not causing unrest and/or rejection from the community; (b) does not impact social conflict; (c) does not have the potential to divide the nation; (d) no radicalism and separatism; (e) not a repeat perpetrator of a criminal offence based on a court decision; and (f) is not a crime of terrorism, a crime against state security, a crime against corruption, and a crime against people's lives.

Meanwhile, general requirements in the form of formal requirements are regulated in Article 6 of Perpol Number 8 of 2021 including (a) peace between the two parties as evidenced by a peace agreement signed by the parties, except for narcotics crimes, (b) compliance the rights of victims and the responsibilities of perpetrators, in the form of returning goods, compensating for losses, compensating for costs incurred due to criminal acts and/or compensating for damage caused due to criminal acts. Proven by a statement letter by the agreement signed by the victim (except for narcotics crimes)

Regarding procedures solution cases of minor abuse through Restorative justice are based on Chapter III of Perpol No. 8 of 2021, explained as follows:

a) Settlement of criminal acts Persecution is carried out on reports/complaints or direct discovery of suspected criminal acts. The report/complaint is a report/complaint before the police report.

b) Completion of the crime of light maltreatment by members of the National Police who carry out Community Development functions; and members of the National Police who carry out the functions of Samapta Polri.

c) Settlement of the crime of light maltreatment is carried out by submitting a written application letter to the Head of the Surakarta City Resort Police, where the application letter is made by the perpetrator, victim, perpetrator's family, victim's family, or other related parties accompanied by documents: statement letter peace; and proof that the restoration of the victim's rights has been carried out. This requirement is waived if there are no victims.

d) Based on the Application Letter for submitting restorative justice, the officer then: (1) invites the parties to the conflict; (2) facilitates or mediates between parties; (3) prepares a report on the results of the mediation implementation; and (4) record in the Restorative Justice register to book the resolution of the problem and the termination of the minor criminal offences investigation.

e) Termination of investigations or investigation of criminal acts is then carried out by submitting a written request to the Surakarta Police Chief made by the perpetrator, victim, perpetrator's family, victim's family, or other related parties accompanied by documents: peace statement; and proof that the restoration of the victim's rights has been carried out.

f) Based on the application letter, the investigator in the investigation activity carries out: (1) research on the completeness of the documents; (2)

clarification of the parties as stated in the minutes; (3) submission of a request for approval to carry out a special case title, if the research results for completeness of documents are met; (4) preparation of a report on the results of a special case title; (5) issuance of an order to terminate the investigation and a decree to terminate the investigation for legal reasons; (6) recording in the Restorative Justice register book the termination of the investigation and counting it as case settlement; and (7) enter data into the electronic Investigation management system.

g) Based on the letter of application for restorative justice, the investigator in the investigation activity carries out: (1) additional examinations as outlined in the minutes; (2) clarification of the parties and stated in the minutes; (3) submission of a request for approval to carry out a special case title, if the results of additional examinations and clarification results are met; (4) preparation of a report on the results of a special case title; (5) issuance of an order to terminate the investigation and a decree to terminate the investigation for legal reasons; (6) recording in the Restorative Justice register book the termination of the Investigation and counting it as case settlement; (7) sending a letter of notification of the termination of the Investigation by attaching a letter of determination of termination of the Investigation for the case for which the notification letter of the commencement of the Investigation has been sent to the public prosecutor; and (8) enter data into the electronic Investigation management system.

The following is documentation of the results of mediation to achieve peace in the restorative justice process in cases of minor abuse.



Figure 1. Documentation of the Implementation of Restorative Justice

Regarding the chronology of cases where restorative justice was then implemented, it can be described as follows:

On Tuesday, January 3 2023, at approximately 23.00 WIB, at the Bonoloyo Graveyard, Jln Sumpah Pemuda, Kadipiro, Banjarsari Surakarta, Mr HDP as the reporter, MCO as the child of the reporter became a victim of abuse carried out by Mr. RJ bin DS, JPP bin AS, Ms AS bint AS and Ms MSNF bint Alm. SMRJ. MCO, the reporting child, was abused by beating him alternately with his bare hands, so the reporting child MCO suffered injuries including, a swollen upper lip, nose

bleed/bleeding, stomach pain, and right shoulder swelling. The reporter, as the victim's father, did not accept this incident and reported it to the Surakarta Police Headquarters.

Meanwhile, in the process at the investigation stage, there was no agreement on a mediation process to comply with article 184 of the Criminal Procedure Code regarding prerequisites for improvement status investigation to the investigation stage which must fulfil 2 (two) pieces of evidence obtained, so in the above case the evidence obtained is the statement of 2 witnesses and a post mortem. By carrying out an investigation process and carrying out a case related to this matter, the perpetrator can be made a suspect. After this process, there was an agreement/win-win solution between the victim and the suspect, namely that the parties were willing to resolve it amicably considering that the two of them still had a family relationship and both of them also agreed to resolve it amicably and not proceed to the next stage, the solution was already in place. stated in a joint statement and witnessed by other parties, including community leaders and local religious leaders. Because the process already exists and there are already sufficient 2 pieces of evidence by Article 184 of the Criminal Procedure Code, something must be done to reduce the evidence that has been found. By the investigator's discretion at that time, the condition "insufficient evidence" was valid for implementing SP 3, so the reduction of evidence was carried out, namely by withdrawing the Minutes given by one of the witnesses to the examiner so that the weight of the existing evidence was reduced and finally a case was held related to this matter so that SP 3 (Order to Stop the Persecution Case) was determined.

The issuance of the suspect determination by investigators has gone through an investigation process, although in certain cases, namely being caught red-handed, the suspect determination was not carried out through the investigation process. If we refer to Article 1 number 2 of the Criminal Procedure Code, an investigation is a series of investigator's actions to collect evidence to shed light on a criminal offence and find the suspect. So the determination of the suspect must be carried out after investigators find evidence. After someone has been named a suspect, it turns out that investigators have the right to issue an SP3 (Order to Stop Investigation). This SP3 is issued when someone has been named a suspect. If referring to the Criminal Procedure Code, SP3 is only regulated in 1 article and 1 paragraph, namely Article 109 paragraph (2) which reads in full:

> "If the investigator stops the investigation because there is not enough evidence or the incident turns out not to be a criminal offence or the investigation is stopped by law, then the investigator informs the public prosecutor, the suspect or his family." If we examine these norms, there are three reasons for issuing the SP3, namely: Insufficient evidence; The incident was not a criminal offence; By-law. Regarding witness evidence which is carried out discretionarily by investigators to fulfil the requirement of

"insufficient evidence", this refers to the principle of unus testis nullus testis, namely that 1 witness is not a witness. When determining someone as a suspect, investigators must have two witnesses. "This is also strengthened as regulated in Article 185 paragraph (2) of the Criminal Procedure Code."

The implementation of Restorative justice or resolving cases outside of court as a chronology of the cases above is by instructions from superiors who provide solutions if indeed the people involved in the case have found a win-win solution in resolving the problem, namely in a discretionary manner. reduce existing evidence so that the case lacks evidence and cannot be continued.

Based on interviews with informants regarding the application of Restorative justice in the investigation of criminal acts of Persecution in the chronology of the cases above, this needs to be implemented considering the desire of every reporter whose losses are returned to withdraw the report, remembering that the Police Report cannot immediately be revoked if the losses are returned, p. this is not fair for perpetrators who are reported and are willing to take responsibility for the losses or wishes of the agreed upon victim. So restorative justice steps are very appropriate if they are carried out to accommodate the wishes of each party involved in the case because prison sentences do not solve the problem, there will be resentment, a sense of injustice and so on.[26]

Apart from that, the resource person also explained that the process of implementing restorative justice cannot be separated from Eastern customs, namely deliberation to reach a consensus. Where the community upholds the principle of kinship, the application of restorative justice to cases of abuse is appropriate considering that the desire has been fulfilled, namely to compensate for all the losses caused by the abuse, and will not carry out the same act and will not make other demands, as is the case with investigators in the implementation of restorative justice can only be done legally.[27]

In addition to providing benefits to litigants, the application of restorative justice reduces the performance of police investigators and saves the budget spent by the state related to the costs of the investigation and investigation process at the police, prosecution at the prosecutor's office and execution at the court as well as placement in correctional institutions which has had a significant impact on reducing the number of prisoners in Correctional Institutions are currently over capacity and have reduced the budget in Correctional Institutions regarding feeding. Regarding this matter, the investigative informant also provided information that: 27

[26]Interview with Aiptu Budi Santoso, Head of the Surakarta Criminal Investigation Unit, September 23 2023.

[27]Interview with Aiptu Budi Santoso, Head of the Surakarta Criminal Investigation Unit, September 23 2023.

"Regarding the application of Restorative justice in the investigation of criminal acts of abuse at the Surakarta Police where it turns out there is still a relative relationship, I explained that as an officer who is directly in contact with the reported party and the reporter strongly agrees to carry out legal settlement efforts using the Restorative justice method, for reasons that the process carried out is relatively fast and does not require excessive costs, time and energy and most importantly the wishes of the victim and perpetrator can be accommodated. So that what is the wish of both parties can be heard and mutual agreement and mutual agreement can be sought. "The police also benefit from, among other things, case resolution can be carried out quickly and precisely, budgets can be minimized regarding the inquiry and investigation process, as well as work effectiveness that can be used to resolve other cases that have not been completed or cases that have just been entered."

Related process restorative justice carried out in cases of criminal acts of maltreatment which were used as case study examples, Aiptu Heru Purwanto as Assistant Investigator of the Women and Children Services Unit (PPA) of the Surakarta Police Criminal Investigation Unit stated that:[28]

"I agree if this is implemented because the application of Restorative justice reduces the performance of police investigators and saves the budget spent by the state regarding the costs of the investigation and investigation process at the police, prosecution at the prosecutor's office and execution at the court as well as placement in correctional institutions, which will have a big impact on reducing the number of prisoners in correctional institutions which are now over capacity and reducing budgets in correctional institutions related to feeding. In its implementation, restorative justice has stages that must be implemented, namely reducing existing evidence that can invalidate a criminal act, namely by reducing the evidence found by investigators or assistant investigators related to the case. For the case of abuse mentioned above, it was explained that 2 pieces of evidence were obtained, namely the statements of 2 witnesses and the post-mortem, so the evidence that was most likely to be reduced was the testimony of the witness, so that the witness whose statement had been questioned had to retract the statement and a special case was held for stop this matter."

Apart from that, there is legal certainty for people who commit criminal acts, there is a principle that must be seen and used as a reference for the implementation of restorative justice, namely the principle of expediency. The principle of benefit in question is the benefit of implementing restorative justice not

28Interview with Aiptu Heru Purwanto as Assistant Investigator of the Women and Children Services Unit (PPA) of the Surakarta Police Criminal Investigation Unit, September 23 2023.

only for those involved in the case but also for those around them or who take part in the legal process. Benefits for implementers, namely investigators and assistant investigators. If Restorative justice is implemented for investigators and assistant investigators, it will reduce the workload of investigators and assistant investigators, considering the reports submitted to the Surakarta Police so that the implementation of Restorative justice will help lighten the workload of investigators and assistant investigators. Apart from that, the implementation of Restorative justice also saves the budget for the inquiry and investigation process. The benefit for the Prosecutor's office is that it saves budget in the process of prosecuting defendants during the trial process at the District Court. Apart from that, the district attorney's office also carries out a file inspection process by the public prosecutor and for each file that is submitted, a budget that is not the same size is allocated. Apart from that, for district court agencies, in each trial they carry out, there is also a budget spent on each trial held, this will further increase the expenses related to one defendant. After the execution is carried out by the district court, the convict will be placed in the Correctional Institution and receive a sentence and stay in the Correctional Institution until the prison term ends. From the existing processes of investigation, investigation, prosecution, execution and placement in a special place in a correctional institution. It can be seen that each of these processes issues several budgets from the state to law enforcement against one person involved in a criminal case or case. But the most important thing in implementing restorative justice is that the wishes of victims and perpetrators are accommodated well and fulfilled.

So, based on the explanation above, it can be concluded that in the implementation of restorative justice, there are stages that must be implemented, namely reducing existing evidence that can invalidate a criminal act, namely by reducing the evidence found by investigators or assistant investigators related to the case. For the case of abuse mentioned above, it was explained that 2 pieces of evidence were obtained, namely the statements of 2 witnesses and a post-mortem, so the evidence most likely to be reduced was the testimony of the witness, so that the witness whose statement had been questioned had to retract the statement and a special case was held to stop it. the case to determine SP3 for the case. The application of Restorative Justice in the investigation of criminal acts of ill-treatment at the Surakarta Police has greatly helped investigators in completing their workload, restorative Justice is a breakthrough in legal development which shows that the law continues to change for the better because it accommodates all the wishes and input from The parties involved in the case, regarding the legal status of the reporter/victim and the perpetrator/suspect, can be abolished because there is a resolution in line with the expectations of the parties where law enforcement prioritizes justice.

4. Conclusion

In its implementation, restorative justice has stages that must be implemented, namely reducing existing evidence that can invalidate a criminal act, namely by reducing the evidence found by investigators or assistant investigators related to the case. For cases of persecution, it is explained that two pieces of evidence can be obtained, namely the statements of two witnesses and a post-mortem, so the most likely thing is to reduce the evidence, namely the statements of witnesses so that witnesses whose statements have been questioned must retract their statements and a special case is held. to stop the case to determine SP3 for the case. The application of Restorative Justice in the investigation of criminal acts of assault at the Surakarta Police has greatly helped investigators in completing their workload, Restorative Justice is a breakthrough in legal development which shows that the law continues to change for the better because it accommodates all the wishes and input from The parties involved in the case, regarding the legal status of the reporter/victim and the perpetrator/suspect, can be abolished because there is a resolution in line with the expectations of the parties where law enforcement prioritizes justice.

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