



Juridic Analysis of Implementation of Resolving Criminal Acts of Fraud Through Restorative Justice (Study of Directorate of General Criminal Investigation of the Riau Islands Police)

Reni Nanda^{1*}, Laily Washliati², Erniyanti³, Soerya Respationo⁴

Postgraduate of Law Studies Program, Faculty of Law, Universitas Batam, Indonesia

Corresponding Author: Reni Nanda reneyhnanda88@gmail.com

ARTICLE INFO

Keywords: Restorative Justice, Fraud, Crime

Received : 21, October

Revised : 23, September

Accepted: 30, November

©2022 Nanda, Washliati, Erniyanti, Respationo: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](#).



ABSTRACT

The police are law enforcement agencies that are given the authority to carry out investigations and investigations of criminal acts which are then faced with legal developments in the form of the concept of resolving criminal cases using restorative justice which aims to provide legal certainty, benefit, and justice. Therefore, this study aims to find out how the legal arrangements, implementation, and constraint factors as well as solutions related to the application of a Restorative Approach to the Settlement of Criminal Cases by the Directorate of General Criminal Investigation of the Riau Islands Police are made. This study uses empirical legal research (field) using a normative juridical approach, namely in the form of an analysis of the legal arrangements that regulate matters that become problems to obtain secondary data, and a sociological juridical approach to obtain primary data through field research. The results of this study indicate that the legal arrangements in this writing are the Circular Letter of the Chief of Police Number SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, the Regulation of the Chief of Police Number 6 of 2019 concerning Investigation of Criminal Acts Article 12 and the State Regulation of the Republic of Indonesia Number 8 2021 on Handling Crimes Based on Restorative Justice.

INTRODUCTION

The development of law enforcement in the Republic of Indonesia is increasing following the rapid development of technology and easier access to legal information via the internet to increase public knowledge and public awareness of the law; it also triggers an increase in public awareness and knowledge to report crimes experienced by the community in order to obtain justice and legal certainty for the occurrence of violations of criminal law experienced to the authorized law enforcement officials, namely the Indonesian National Police. The process of investigating and investigating criminal offenses is the entrance of criminal law enforcement through the criminal justice system in Indonesia. Therefore, the process of investigating and investigating a criminal offense is the primary key to whether or not a criminal case can be continued to the prosecution and judicial process in order to realize the goals of the law, namely justice, legal certainty, and benefit by continuing to prioritize the principles of simple, fast and low-cost justice. One of the most frequent and common criminal offenses in Indonesian society is the crime of Fraud, where this type of crime itself is regulated in Article 378 of the Criminal Code (K.U.H.Pidana).

LITERATURE REVIEW

Definition of Restorative Justice or Restorative Justice Restorative Justice, according to National Police Chief Regulation No. 6/2019 on Criminal Investigation Management, is the resolution of criminal cases involving perpetrators, victims, and their families and related parties to achieve justice for all parties. Definition of Restorative Justice According to National Police Chief Regulation, Number 8 of 2021 concerning Handling Criminal Acts Restorative Justice is the resolution of criminal acts involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair solution through peace by emphasizing restoration to the original state. Given the importance of the application of Restorative Justice in the settlement of criminal cases based on reports from victims of fraud and all its legal aspects, the researcher is interested in conducting research with the title "Juridical Analysis of the Settlement of Fraud Crime Through Restorative Justice (Research Study at the Directorate of General Criminal Investigation of Riau Islands Police)".

METHODOLOGY

Researchers conducted normative and empirical legal research. This research was conducted at the Ditreskrimun Office of the Riau Islands Police Jl. Hang Jebat No. 81 Batu Besar Village, Nongsa District, Batam City, Riau Islands Province. The population of this research is the relevant officers at the Riau Islands Police Department Office. The sample in this study was 1 (one) structural official of the Head of the Development and Operations Section of the Directorate of General Criminal Investigation of the Riau Islands Police and 1 (one) investigator at the Directorate of General Criminal Investigation of the Riau Islands Police. The data collection technique used in this research is to use primary data collection techniques and secondary data. To analyze the legal

material collected in this researcher using a qualitative analysis method, namely, a research procedure that produces descriptive-analytical data.

RESULT AND DISCUSSION

Legal Arrangement of Juridical Analysis of Fraud Crime Settlement through Restorative Justice

The term criminal offense in Dutch criminal law is called "strafbaar feit," but there is no official explanation of the meaning of the "strafbaar feit"; therefore, legal experts try to provide the meaning and content of the term. In Lamintang's book, "strafbaar feit" is defined by Pompe as a violation of norms (disturbance of legal order) that has been intentionally or unintentionally committed by an offender, where the imposition of punishment on the offender is necessary for the maintenance of legal order. Operationally, criminal offense countermeasures can be carried out through penal and non-penal means, as stated by Hoefnagels, that crime prevention can be done through penal (criminal law) and non-penal (outside of criminal law) channels. The two means are a pair that cannot be separated from each other; it can even be said that they complement each other to overcome criminal acts in society.

The crime of Fraud is regulated in Article 378 of the Criminal Code (K.U.H.Pidana), which reads, "Whoever, to benefit himself or another person unlawfully, either by using a false name or a false condition, either using tricks and deceit, or using false words, induces someone to give something, create a debt, or write off a debt, shall be punished by fraud, with imprisonment for four years". Efforts to overcome criminal acts are known as criminal politics or criminal policy. According to Mayer and Green-Wood, a policy is a decision that describes the effective and most efficient way to achieve a goal set collectively. More clearly, the policy can be interpreted as a plan from policymakers regarding what to do in dealing with specific problems and how to do what is planned. Criminal offense countermeasures through penal means use criminal law as the primary means, up to material criminal law, material criminal law, and formal criminal law, as well as criminal implementation law through the criminal justice system to achieve specific goals. Meanwhile, countering criminal acts through non-penal means can mean an atmosphere outside the criminal justice system and without using criminal sanctions. Criminal offense countermeasures through non-penal means can be carried out with a restorative justice approach.

Overview of Restorative Justice

Restorative Justice is justice that seeks to restore the situation to its original condition, benefits and wins all parties, and is not confined to rigid and procedural legal mechanisms. In addition to Restorative Justice, there is also the term penal mediation, which is an application of restorative justice, where Penal Mediation is a settlement of criminal cases using mediation through deliberation with the help of a neutral mediator, attended by victims and perpetrators either individually or together with their families and community representatives (religious leaders, community leaders, traditional leaders, etc.).

which is carried out voluntarily, with the aim of recovery for victims, perpetrators, and the community environment.

Based on Article 1 Point 27 of National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation, Restorative Justice is the resolution of criminal cases involving perpetrators, victims, their families, and related parties to achieve justice for all parties.

Based on Article 1 Point 3 of the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, Restorative Justice is the resolution of criminal acts involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair solution through peace by emphasizing restoration to the original state. Thus, from the opinions of these legal scholars, it can be concluded that the resolution of a criminal offense by applying Restorative Justice prioritizes the parties' agreement to the case by prioritizing the future.

Principles of Restorative Justice

Restorative Justice has the following basic principles:

1. Seeking peace outside the court by the perpetrator of the crime (his family) against the victim.
2. Provide an opportunity for the perpetrator of the criminal offense to be responsible for making amends by compensating for the loss caused by the criminal offense.
3. Resolve criminal law issues between the perpetrator of the crime and the victim if an agreement is reached between the parties.

Purpose of Restorative Justice

James Dignan quotes Wright's opinion that the main goal of restorative justice is restoration, while the secondary goal is compensation. This means that handling criminal acts through a restorative approach is a process of resolving criminal acts that aims to restore the situation, which includes compensation for victims in a manner agreed by the parties involved.

Implementation of Juridical Analysis for Resolving Fraud Crimes Through Restorative Justice

Based on the results of interviews with the Head of the Development and Operations Section (Kabagbinopsnal) Ditreskrimun Polda Kepri, namely AKBP Adolfin Cn. Tuerah, S.H. said that in handling community reports handled by the Riau Islands Police Ditreskrimun, the form of criminal case settlement can be resolved through the stages of investigation and investigation of alleged criminal acts, which if based on the results of the investigation, a minimum of 2 (two) sufficient evidence is found, then the investigators of the Ditreskrimun Polda Kepri determine the suspect and carry out filing and the Case File (Phase I) is then sent to the Public Prosecutor, which in this case is the Riau Islands High Prosecutor, if the results of the research of the case file are declared complete (P21) by the Public Prosecutor (JPU), the suspect and the evidence (Phase II) are then submitted to the Public Prosecutor (JPU) for the prosecution

process in the trial and then this process is called the settlement of criminal cases through filing until P21, While other forms of settlement are based on the results of investigations or investigations where no elements of alleged criminal acts or lack of evidence or not a criminal case or expired or the suspect dies, the settlement of criminal cases is resolved or terminated by law by issuing a notification letter of termination of investigation (SP2Lid / Stop Investigation) or notification letter of termination of investigation (SP3).

In order to explore the law enforcement process by the Kepri Police Ditreskrim, researchers use the Law Enforcement theory put forward by Muladi, which states that law enforcement is a system, sub-system, and inner sub-system, which, in reality, the arrangement is always in process. Thus, the purpose of law enforcement is not only law enforcement but peace maintenance. This is because the nature of law enforcement is a process of integration between values, rules, and natural behavior patterns aimed at achieving peace. In enforcing the law, three elements must always be considered, namely legal certainty (Rechtssicherheit), expediency (Zweckmassigkeit), and justice (Gerechtigkeit).

Kabagbinsopsnal Ditreskrim Polda Kepri also explained that based on data on the number of cases handled by Ditreskrim Polda Kepri from 2023 to September 2023, it was recorded that the number of criminal offenses that occurred (Crime Total / CT) was 77 (seventy-seven) cases and the number of case settlements (Crime Clearance / CC) was 53 (fifty-three) cases consisting of 10 (ten) cases of termination of the investigation, termination of investigation (SP3) as many as 17 (seventeen cases) cases and the settlement of cases from P21 (complete investigation as a result of the research of case files by the Public Prosecutor) as many as 24 (twenty-four) cases, while 6 (six) cases were stopped investigation or investigation through the process of restorative justice (Restorative Justice).

Obstacle Factors and Solutions for Juridical Analysis of the Settlement of Fraud Crime through Restorative Justice at the Directorate of General Criminal Investigation of Riau Islands Police

Based on an interview with one of the auxiliary investigators at Ditreskrim Polda Kepri, namely BRIPKA JONSON HASIBUAN, revealed that there are several obstacle factors in the application of restorative justice in case settlement at Ditreskrim Polda Kepri, namely as follows:

1. Internal Factors
 - a. Human resources of Investigators and Investigators in the application of Restorative Justice, namely the lack of members of Investigators and Investigators as well as the level of education of Law graduates and Masters in Law for Investigators and Investigators in the application of Restorative Justice to provide legal certainty so that the application of the law is not multi-interpreted.
 - b. Facilities and infrastructure for Investigators and Investigators in the application of Restorative Justice to provide legal certainty that supports in improving the performance of investigators and

Investigators, namely the lack of facilities and infrastructure for Investigators and Investigators in the application of Restorative Justice, namely in the form of computer equipment and printers and a particular room that can be used as a room for mediation of the parties to the case.

2. External Factors

External obstacle factors in the application of Restorative Justice are as follows:

- a. The absence of laws and regulations governing the criminal justice system to guide law enforcement officials to obtain uniform, in-line, binding, comprehensive arrangements in applying restorative justice carried out by criminal justice system devices, namely the Police, Prosecutor's Office, and Court.
- b. The restorative justice process is an effort to divert from the criminal justice process towards deliberative settlement, which is the soul of the Indonesian nation, to solve problems in a family manner to reach a consensus. However, in reality, the restorative justice process is understood by some parties as compensation (the cost of compensation for stolen/lost goods, damaged goods, medical expenses, and other costs), so in its implementation, there is often disagreement between the parties because the nominal figure is not by the wishes of the victim or family.

Although investigators of Ditreskrim Polda Kepri face several obstacles in implementing restorative justice in resolving criminal cases, Ditreskrim Polda Kepri still has solution efforts to overcome these obstacles. Solution efforts made by Ditreskrim to overcome these obstacles are as follows:

1. Internal Constraints Efforts

The efforts made against internal constraints factors, which Ditreskrim Polda Kepri has carried out, are to propose additional personnel needs along with planning for the needs of facilities and infrastructure to support the needs of the investigation and investigation process and conduct special training for personnel in the process of resolving criminal acts, especially criminal fraud.

2. External Constraints Measures

- a. The efforts of the Ditreskrim Polda Kepri in overcoming the absence of laws and regulations governing the criminal justice system in order to guide law enforcement officials to obtain uniform, in-line, binding, comprehensive arrangements in the application of restorative justice implemented by criminal justice system devices, namely the Police, Prosecutor's Office and Court, The Criminal Investigation Unit of Polda Kepri has been actively coordinating or conducting meetings such as coffee mornings between Criminal Justice System devices, namely the Police, Prosecutor's Office and Court so that through these meetings a mutually beneficial relationship can be created so that obstacles in the law

enforcement process can be easily solved and create a shared understanding in the application of Restorative Justice in resolving criminal cases.

- b. Efforts that the Ditreskrim Polda Kepri can make against obstacles to disagreements over the number or nominal desired by the victim or his family can be made by providing legal understanding to the parties regarding the legal process that will be passed if the case is continued in the judicial process and providing an understanding of the victim or his family in proposing compensation with a logical and reasonable amount according to the social conditions of the community so as not to make the restorative justice process a tool or means intending to seek profit, or considered as an attempt at extortion or intimidation and so on against the perpetrator.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of research and data analysis that has been carried out by the author, it can be concluded, namely:

- a. The legal arrangements in this writing are Chief of Police Circular Letter Number SE/8/VII/2018 on the Application of Restorative Justice in Criminal Case Resolution, Chief of Police Regulation Number 6 of 2019 on Criminal Investigation Article 12, and National Police Regulation Number 8 of 2021 on Handling Crimes Based on Restorative Justice.
- b. The implementation of the settlement of criminal acts of fraud through Restorative Justice by the Kepri Police Ditreskrim has been running as a rule of law enforcement steps to achieve legal objectives, namely providing legal certainty, legal benefits, and justice for the community.
- c. Obstacle factors and solutions to the implementation of the settlement of criminal acts of fraud through Restorative Justice by the Ditreskrim Polda Kepri, namely proposing additional personnel needs along with planning the needs of facilities and infrastructure to support the needs of the investigation and investigation process and conducting special training for personnel in the process of resolving criminal acts, especially criminal acts of fraud and increasing coordination and meetings with Criminal Justice System devices, and related to the obstacles of disagreement with the number or nominal desired by the victim or his family can be done by providing legal understanding to the parties regarding the legal process that will be passed if the case is continued in the judicial process and providing understanding to the victim or his family in proposing compensation with a logical and reasonable amount according to the social conditions of the community so as not to make the restorative justice process (restorative justice) later become a tool or means with the aim of seeking profit, or considered as an effort of extortion or intimidation and so on against the perpetrator.

FURTHER RESEARCH

This research still has limitations so further research needs to be done on this topic "Juridic Analysis of Implementation of Resolving Criminal Acts of Fraud Through Restorative Justice (Study of Directorate of General Criminal Investigation of the Riau Islands Police)".

REFERENCES

Atmasasmita, Romli, Sistem Peradilan Pidana (Criminal Justice System) Persepektif Eksistensialisme Dan Abolisionalisme, Bina Cipta, Jakarta, 1996.

Atmasasmita, Romli, Sistem Peradilan Pidana Kontemporer, Kencana Prenada Media Group, Jakarta, 2010.

Ali, Achmad, Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence, Kencana, Jakarta, 2009.

Arief, Barda Nawawi, Perkembangan Sistem Pemidanaan di Indonesia, cetakan ke-II, Badan Penerbit Universitas Dipenonogoro, Semarang, 2009.

Chazawi, Adami, Pelajaran Hukum Pidana. Bagian 1 : Stetsel Pidana, Tindak Pidana, Teori-teori Pemidanaan, Dan Batas Berlakunya Hukum Pidana, Raja Grafindo Persada, Yogyakarta, 2002.

Farid, Zainal Abidin, Hukum Pidana 1, Sinar Grafika, Jakarta, 2010.

Gunakarya, Widiada, Politik Criminal (Criminal Policy), STHB, Bandung, 1997.

Hamzah, Andi, Asas-Asas Hukum Pidana, Rineka Cipta, Jakarta, 1994.

Hamzah, Andi, Hukum Acara Pidana Indonesia, Sinar Grafika, Jakarta, 2010.

Harahap, M. Yahya, Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan, Sinar Grafika, Jakarta, 2004.

Huijbers, Theo, Filsafat Hukum Dalam Lintas Sejarah, Kansius, Yogyakarta, 1986.

Idham, Konsolidasi Tanah Perkotaan Dalam Perspektif Otonomi Daerah Untuk Mewujudkan Fungsi Lingkungan Hidup, Alumni, Bandung, 2010.

Ilyas, Amir, Asas-Asas Hukum Pidana: Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan, Rangkang Education Yogyakarta dan PuKAP-Indonesia, Yogyakarta, 2012.

Marlina, Peradilan Pidana Anak Di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice, Refika Aditama, Bandung, 2009.

Marlina, Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana, USU Press, Medan, 2010.

Reksodipuro, Marjono, Kriminilogi dan Sistem Peradilan Pidana, Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi Universitas Indonesia, Jakarta, 1997.

Rumengan, Jemmy & Idham, Metode Penelitian Kualitatif dan Kuantitatif, Perdana Mulya Sarana, Bandung, 2015.

Sadjijono, Seri Hukum Kepolisian Polri dan Good Governance, Laksbang Mediatama, Surabaya, 2008.

Sofyan, Andi dan Nur Azisa, Buku Ajar Hukum Pidana, Pustaka Pena Press, Makassar, 2016.

Soekanto, Soerjono dan Sri Mamudji, Penelitian Hukum Normatif, Rajawali Pers, 2015.

Susetyo, Heru, Sistem Pembinaan Narapidana Berdasarkan Prinsip Restorative Justice, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Azasi Manjsia RI, Jakarta, 2013.

Undang-Undang Republik Indonesia Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana.

Undang-Undang Nomor 73 Tahun 1958 tentang Menyatakan Berlakunya Undang-undang Nomor 1 Tahun 1946 Republik Indonesia tentang Peraturan Hukum Pidana Untuk Seluruh Wilayah Republik Indonesia dan Mengubah Kitab Undang-undang Hukum Pidana (Lembaran Negara Nomor 127 Tahun 1958, Tambahan Lembaran Negara Tahun 1660 Tahun 1958).

Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP) (Lembaran Negara Republik Indonesia Nomor 76, Tambahan Lembaran Negara Republik Indonesia Tahun 1981 Nomor 3209).

Undang-Undang Republik Indonesia Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 2, Tambahan Lembaran Negara Republik Indonesia Nomor 4168).

Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak (Lembaran Negara Republik Indonesia Tahun 2012 Nomor 153, Tambahan Lembaran Negara Republik Indonesia Nomor 5332).

Surat Edaran Kapolri Nomor: SE/8/VII/2018, tanggal 27 Juli 2018 tentang Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkara Pidana.

Peraturan Kejaksaan RI Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

Surat Keputusan Direktur Jenderal Badan Peradilan Umum Mahkamah Agung RI Nomor: 1692/DJU/SK/PS.00/12/2020 tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice).

Peraturan Kapolri Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.

Kurnia, Titon Slamet, "Hukum dan Keadilan: Isu Bagian Hulu dan Hilir," Refleksi Hukum: Jurnal Ilmu Hukum, Edisi April 2015.