



## Normative Studies of *Restorative Justice* As A Form of Fulfillment of The Rights Of Crime Victims In The Indonesian Criminal Justice System

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### Abstract:

**Background:** Everyone has the potential to commit crimes, which means violating human rights. With this restriction, which affects us as human beings, given that others are suspected of violating human rights, it is a must.

**Aim,** such an attitude has not been seen when someone sees a police officer who is suspected of violating human rights.

**Methods** and literature review used in this paper

**Results,** In police institutions, there are policies such as Discretion, Community Policing (Polmas), Alternative Dispute Resolution (ADR), and Restorative Justice, which include victims in their implementation. The existence of this policy affects the settlement of criminal acts by the police.

**Conclusions.** The existence of this policy affects the police's settlement of criminal acts.

**Keywords:** normative, restorative, justice, criminal, system



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### INTRODUCTION

Every human being has the potential to commit crimes and also as a victim of crime. Crime does not happen without a cause. The cause of the crime cannot be detected beforehand. When a person commits a crime, he cannot control himself, so his actions become immoral and immoral. This act that is not "moral" and not "moral" is called a crime by society and the law. Crimes will be considered as violating the Human Rights of others.

Everyone has the potential to commit crimes, which means violating human rights. With this restriction, occupying us as human beings in view others who are suspected of violating

human rights is a must. Such an attitude has not been seen when someone sees a police 'person' who is suspected of violating human rights. The "black" color of the police officer is really shown, while the "white" color that has existed and will continue to exist, is not shown. If so, where are human rights? What has been lost, along with the "caliphate" that has been committed? Of course not, because human rights are attached to the person as a gift from God, and not to his position and deeds.

The public has not understood the existence of human rights attached to their people and not to the positions and deeds that are done. The government must be present to explain it. The 1945 Constitution of the Republic of Indonesia emphasizes: "The State protects the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the life of the nation and participate in carrying out world order based on independence, eternal peace and social order" (Fourth Clause of the 1945 Constitution).

Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution as amended on October 19, 1999 also affirms: "The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic state of law, the implementation of human rights is guaranteed, regulated and outlined in laws and regulations."

According to Barda Nawawi Arief, the current criminal law emphasizes more on the protection of victims "*in abstracto*" and "indirectly". The provision of protection for victims is directly limited in the form of providing compensation by the perpetrators of criminal acts. There are no provisions for compensation given by the state to victims of criminal acts. Compensation by the state is only limited to the victim as a suspect, defendant or convict.<sup>1</sup>

Meanwhile, when talking about laws and regulations related to Human Rights, it is only focused on Law No. 39 of 1999. Such an understanding needs to be perfected, because if we only focus on this Law, then human rights become very narrow, namely only regarding rights as regulated by the Law.

By referring to the definition of acts that are not "moral" and not "moral" and cause victims and losses are crimes that mean violating human rights, then all laws imposing sanctions for these crimes become part of the Human Rights Law. Thus, it can be understood that talking about the Law on Human Rights is not only Law No. 39 of 1999. All laws that

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<sup>1</sup>Barda Nawawi Arief, *Some Aspects of Criminal Law Enforcement and Development Policy*, (Bandung: Alumni, 2004), pp. 86 and 87.  
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deal with the issue of human rights, both material and formal, are part of the Human Rights Law.

When a person who commits a "crime" is processed at the investigation level, certain rights as a human being are still attached until he or she has the status of a convict. Article 8, paragraph (1) of Law No. 48 of 2009 states: "Every person who is suspected, arrested, detained, prosecuted, or before the court must be presumed innocent before there is a court decision declaring his guilt and having obtained permanent legal force". In addition to Article 8, paragraph (1) of Law No. 48 of 2009, in the Criminal Procedure Code, it also provides guarantees of fair rights for the accused, as stipulated in 50 to 69 articles.

The suspect and the defendant have been guaranteed protection against possible violations of their rights as citizens. Is protection for victims part of the fulfillment of human rights?

In police institutions, there are policies such as Discretion, Community Policing (Polmas), Alternative Dispute Resolution (ADR) and Restif Justice which include victims in their implementation. The existence of this policy has an effect on the settlement of criminal acts in the police. The question is whether the victim's participation in the settlement of a criminal act at the investigation stage can be called a form of fulfilling the victim's rights?

## **DISCUSSION**

### **Discretion**

At the investigation level, there is a policy of "Discretion" that allows the rights of victims to be fulfilled, as implied in article 16 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia. Article 16 paragraph (1) of Law No. 2 of 2002 states that "The police have the authority to carry out other actions according to responsible law". The explanation of the statement, as long as it is not contrary to the law, is in line with the legal obligation, reasonable within the scope of his position, is based on a coercive nature and respect for human rights.

To be able to exercise this authority, of course, is not interpreted as an opportunity "to increase the punishment, but as a legalization to minimize the punishment or also as an opportunity to eliminate the punishment. To understand these concepts, order of thinking and intelligence are needed.

M. Faal as quoted by Sadjijono, the requirements for intelligence to be able to exercise discretion for the police are:<sup>2</sup>

- a. The level of intelligence must be high enough at least at the average level for non-commissioned officers and above the average for officers (due to this requirement, the rank of enlisted is not in accordance with the functions and duties of the National Police, except for special units such as the Brimob);
- b. Analytical power and synthesis power that is sharp enough to allow it to observe and solve problems quickly and precisely;
- c. High social *comprehension* so that the police concerned are sensitive enough and quickly react to social conditions in their environment;
- d. Imagination and creativity are good enough not to be fixated on rigid rules that may make it difficult to deal with impromptu or unusual problems.

### **Community Policing (Polmas).**

His submission on the implementation of community policing cites the National Police Chief's Regulation No. 7 of 2008, dated September 26, 2008, regarding Basic Guidelines for the Strategy and Implementation of Community Policing in Carrying out the Duties of the National Police, and the Decree of the Head of Police No. Pol.: Skep/433/VII/2006, dated July 1, 2006, concerning Guidelines for the Formation and Operationalization of Community Police (Polmas).

The rules for Community Police officers (Polmas) in resolving small offenses and disagreements between residents are based on the sub-attachment of the Decree of the National Police Chief No. Pol.: SKEP/433/VII/2006, which was issued on July 1, 2006. (a) Police officers have the power to settle inter-resident conflicts and minor offenses without conducting an investigation. Police personnel must be able to solve the case and uphold the community's sense of justice in order to have this authority. (b) The following minor cases/disputes between citizens are covered by this guideline: 1. violations listed in the Criminal Code's third book; 2. petty crimes that carry a maximum sentence of three (three) months in jail or a maximum fine of Rp 7,500 (seven thousand five hundred rupiah); 3.

The following are examples of misdemeanor crimes/lichte misdrijven: Article 302 of the Criminal Code, which deals with minor animal abuse; Article 352 of the Criminal Code,

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<sup>2</sup> Sadjijono, *Police Law Series and Good Governamce*. Laksbag Mediatama, June, Surabaya, 2008, p. 228  
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which deals with minor mausia abuse; Article 364 of the Criminal Code, which deals with minor theft; Article 373 of the Criminal Code, which deals with misdemeanor embezzlement; Article 482 of the Criminal Code, which deals with misdemeanor fraud; and Article 315, which deals with minor insults. 4. Citizen conflicts are disagreements between people and other people, as well as between people and groups, which are merely involved in small infractions and crimes. The conflict may get larger and potentially turn into a social conflict involving many community groups, including ethnicity, race, and religion (SARA), if police personnel do not act swiftly and decisively.

The stages of resolving violation cases as in the 3rd book of the Criminal Code regarding minor offenses and misdemeanors by Polmas: (a) accepting reports/complaints from the public politely; (b) prepare a place for the receipt and recording of information; (c) inviting the whistleblower to convey his information completely and clearly; (c) provide views on whether or not the information should be forwarded with a police report and be a facilitator for deliberation; (d) request the complainant to be able to submit witnesses who can be accompanied by information and evidence; (e) ensure that the case is a minor matter that can be resolved by deliberation; (f) utilize related parties and community leaders in resolving cases in accordance with applicable norms in the community; (g) settlement by deliberation is carried out at the Post (Balai) through the Community Police Partnership Forum (FKPM); (h) in settlement through Polmas it is stated by a statement on paper that is material as the basis for legal liability in the future; (i) in the settlement, avoid partiality from Polmas officers and the community; (i) If the case cannot be resolved by the Polmas <sup>3</sup>and FKPM, the <sup>4</sup> settlement of the case may be recommended to be officially reported to the Police/Police.

## Alternative Dispute Resolution

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<sup>3</sup> Polmas, also known as community policing, is the execution of police duties based on the understanding that the community cannot be the object of the police's unilateral efforts to create safe and orderly conditions; rather, the police and the community must work together to empower the community through their partnership so that they can jointly identify symptoms that may lead to problems in the community, find solutions to foresee problems, and maintain security and order in their surroundings. (National Police Chief's Regulation No. 7 of 2008, Article 1 Number 7).

<sup>4</sup> The Poisi and Community Communication Forum (FKPM) is a vehicle for communication between the National Police and residents who carry out on the basis of mutual agreement in the context of discussing Kantibmas problems and social problems that need to be solved together by the community and Police officers in order to create conditions that support the smooth implementation of police functions and improve the quality of life of the community (Article 1 number 16 of the National Police Chief Regulation No. 7 of 2008).

The Criminal Investigation Letter No. ST/110/V/2011, issued May 10, 2011, about the Handling of Criminal Cases through Alternative Dispute Resolution (ADR), serves as the foundation for the Ministry of Police's implementation of ADR. In general, it governs the basis for evaluating the settlement of criminal cases through Alternate Dispute Resolution (ADR), which covers the following issues, according to the Criminal Investigation Letter.

1. For the achievement of domestic security, which entails upholding law and order, protecting the people, and providing community services with protection.
2. The legal system has not fully allowed for the restoration of more humane and stigmatized rights, the reduction of case arrears, the proportionate settlement of cases, or the use of local knowledge as a state resource.
3. The official settlement of criminal cases is being replaced by a different type of settlement that benefits the parties involved (the victim and the perpetrator). The police's discretionary power and other activities that are legally accounted for form the basis of the alternative solution to this case.
4. The goal of legal law is to accomplish legal advantages for the community in addition to guaranteeing justice and legal certainty. In their role as investigators, police should put the interests of the parties involved in the case (perpetrators and victims) first in order to achieve this purpose.

Human tendency is to seize, according to Frederic Bastiat. Human-made laws are applied in this situation to safeguard property rights and prevent deprivation. Humans are the issue that gives rise to the law. Focusing solely on specific individuals leaves the law open to misuse. According to Frederic, legal plunder took place during a period when the abuse was committed collectively under pretenses. He also underlined that putting aside the presumption that the law must be fair is one of the rights that must be taken into account before examining the law. The legislation is likely unjust because it was created by humans or a group of people. He contends that rather than being seen favorably (to advance justice), the law should be seen negatively (to avoid injustice)..<sup>5</sup>

Taking these factors into account, the handler may employ Alternative Dispute Resolution (ADR) in certain situations. These situations include: a. the criminal suspect is still a minor; b. There were no fatalities or serious injuries as a result of the act; c. the

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<sup>5</sup>*Ibid*, p. x  
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criminal act posed a threat of death or serious harm for more than five years; and d. the act was not a drug offense. The following requirements must be met for ADR to be used to resolve a case: a. the alternative is a truly appropriate, necessary, and beneficial step for the community to achieve the principle of balance; b. the action must be accountable, not against the law, in line with legal and professional obligations, appropriate and reasonable within the scope of the position based on proper considerations and respect for human rights; c. there has been a peace agreement (reconciliation) between the parties involved; d. the victim and the offender's consent; e. the decision to settle criminal cases through ADR must be reviewed and approved by the National Police's Criminal Investigation Branch, the Director of Police Serse, and the Chief of Police.

Utility is one of the goals of the law. Legal justifications serve as the foundation for ADR case settlements. When criminal matters are settled through alternative dispute resolution (ADR), the investigation is concluded and the case/crime clearance is recorded.

### **Restorative Justice**

The State Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, the Prosecutor's Office Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, and the Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice are cited in his submission concerning the use of Restorative Justice in the criminal justice system. Attachment to the General Judiciary Director General's Decree Number: 1691/DJU/SK/PS.00/12/2020, issued December 22, 2020, regarding Guidelines for the General Judiciary's Implementation of Restorative Justice.<sup>6</sup>

The study of restorative justice will be given top attention during the investigation phase of the legal procedure, which consists of three stages: prosecution, court, and investigation. Cost and time are considered to be efficient if the criminal investigation stage can be finished. Meanwhile, it's important to realize that the police have the main objective when it comes to

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<sup>6</sup>Decree of the Director General of the General Judiciary of the Supreme Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of *Restorative Justice*, until this writing is made, its enforcement is still suspended.  
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criminal law enforcement. When carrying out their tasks, police officers must take into account three essential components of law enforcement: justice, efficacy, and legal fairness..<sup>7</sup>

Theoretically, restorative justice blends the ideas of participatory or restorative justice with logical justice. The combination of these two justices will result in a criminal case resolution process that is founded on program planning, execution, and evaluation through participation. However, according to Meneryt Dam Prima, who cited Widodo's viewpoint, restorative justice is a collection of concepts of possible justice that are defined by empathy, kindness, and the human soul's logic through group counseling that includes both offenders and victims..<sup>8</sup>

Prioritizing retribution against the offender (Retributive Justice) at first, criminal law enforcement eventually changed its strategy to one that aims to improve the situation (Restorative Justice).The basic concepts of both can be seen in the following table:<sup>9</sup>

Table 1. The Difference of Restitutive Justice and Restorative Justice

Restitutive Justice		Restorative Justice	
1.	Crime is framed as a violation against the state, and the nature of the conflict from crime is obscured and suppressed	1.	Crime is formulated as a violation of one against another, and is recognized as a conflict
2.	Notice is being directed at determining faults in the past	2,	Points of attention on solving the problem of accountability and liability in the future
3.	The relationship between the parties is oppositional, through an orderly and normative process	3.	The normative nature is built based on dialogue and negotiation
4.	Determination of suffering for deterrence and prevention		Restitution as a means of improvement for the parties, reconciliation, and restoration as the primary goal.
5..	Justice is formulated intentionally and by process	5.	Justice is formulated as a relationship of rights, judged based on results
6.	One social loss is replaced by another	6.	A means of attention to social improvement

<sup>7</sup> Mahendra, as quoted by A.A. Ngurah Bagus Krisna Wirajaya, et al., Petty Crimes Through Restorative Justice, as a Form of Criminal Law Reform Efforts, Journal of Legal Construction, Volume 3, Number 3, September 2022, p. 547. Retrieved September 28, 2022, at 16.11 WIB.

<https://www.ejournal.armadewa.ac.id/index.php/jukonhum/article/view/5345/3723>

<sup>8</sup> Adam Prima Mahendra, Penal Mediation at the Investigation Stage Based on Restorative Justice, Jurist-Diction, volume 3, Number 4, July 2020, p. 1162. <https://e-journal.unair.ac.id/JD/article/view/20200/11101>. Retrieved September 28, 2022, at 15.53 WIB.

<sup>9</sup>Dey Revena, Criminal Policy (Empowerment of the Role of the Government and the Community in Tackling Crime Lantern Towards Change, Without Publisher, Bandung, 2004, p. 208 as quoted by Rena Yulia, *Victimology of Legal Protection against Crime Victims*, Graha Ilmu, Yogyakarta. 2010 pp. 49-51 162-163

The idea of criminal design in the perspective of Restorative Justice can be expressed as follows:

Highlights of the Restorative Justice Perspective Criminal Design Idea: <sup>10</sup>

No.	Main Themes	Basic Concepts
1.	Criminal (prison)	Criminal (imprisonment) is not important/unnecessary
2.	Criminal Purpose	1. Accountability of deeds 2. Conflict resolution 3. Reconcile
3.	Accountability	1. Responsibility for the impact/consequences of crime 2., loss, harm, and suffering 3. Not limited and shaped but understood in the context as a whole
4.	Criminal form	1. The obligation to restore the consequences of crime in the form of restitution or compensation 2. Reconciliation and social integration 3. The length of the sentence is disturbed by the magnitude of the disturbance that occurs
5.	Effect	1. Social responsibility 2. Preventive 3. Avoid stigmatization 4. Happiness in the Future.

The National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice states in article 1 number 3 that restorative justice is a type of criminal justice resolution in which the victim, the perpetrator, the victim's family, community leaders, religious leaders, traditional leaders, or other stakeholders work together to fairly resolve the crime through peace with a focus on repatriation in its original state.

Restorative justice-based criminal settlements must adhere to both general and unique requirements, such as formal and material requirements. According to Article 3, 4, and 5 of Perkap Number: 8 of 2021 dated August 20, 2021, criminal acts that can be resolved through restorative justice are those that: do not impact social conflicts; do not have the potential to divide the nation; do not have the characteristics of radicalism and separatism; do not repeat criminal acts based on court decisions; and are not crimes against life, crimes against the state, crimes against the community, or crimes against terrorism.

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<sup>10</sup>Mudzakir, Legal Position of Crime Victims in the Criminal Justice System, Dissertation of the University of Indonesia, Jakarta, 2001 Page 203 as quoted by Rena Yulia, *Victimology of Legal Protection against Crime Victims*, Graha Ilmu, Yogyakarta. 2010 p. 167

Maintaining harmony between the two parties, with the exception of drug-related offenses, and upholding the rights of victims and the obligations of the offender are examples of formal criminal acts that incorporate restorative justice. Returning items, offering indemnity, or paying back expenses incurred as a result of the criminal activities are some ways that the offender might satisfy their obligation and the victim's rights. According to the victim's signed agreement, a statement letter attests to the fulfillment of these rights (Article 6 of Perkap Number 8 of 2021).

Apart from the general standards, restorative justice must also fulfill additional requirements for the following categories of criminal acts: traffic crimes, narcotics, and information and electronic transactions. According to Articles 7 and 8 of Perkap Number 8 of 2021, there are special requirements for information crimes and electronic transactions. These include: the perpetrator must be willing to remove the uploaded content; the perpetrator must apologize via a video posted on social media and request that the content that was shared be removed; and the perpetrator must be willing to assist police investigators in their further investigations.

Drug abusers and victims of drug abuse who ask for rehabilitation must meet certain standards in order for restorative justice to be used to address drug-related offenses. b. At the time of arrest: 1. According to the legislation, there was proof of drug usage for one (1) day, with narcotics and spicotropic classifications; 2. There was no evidence of drug crimes, but the results of a urine test revealed the presence of drugs. b. Not a part of the illegal drug trafficking, dealer, or trafficking network. An evaluation has been conducted by an integrated assessment team. According to Article 9 of Perkap Number 8 of 2021, the offender is prepared to assist police investigators in their future work.

## CONCLUSION

The following requirements must be met for restorative justice to be fully applied to traffic crimes: incidents involving reckless motor vehicle driving and situations in which victims are killed or injured; or road traffic accidents brought on by carelessness that result in property losses and/or fatalities (Article 10 of Perkap Number 8 of 2021).

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