

Police Policy In Using Restorative Justice Methods Against Child Criminal Actors

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Abstract.

Children as the nation's buds in building the nation and state for the future of the child itself. restorative justice is an approach that focuses on the conditions for creating justice and balance for the perpetrators of criminal acts and their victims. The mechanism for criminal justice procedures focusing on sentencing is transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement for victims and perpetrators. Problems 1. How is the Implementation of Police Policy in the Use of Restorative Justice Methods Against Child Criminal Actors? with descriptive-analytical research specifications and sources of secondary and primary data. the results of police policy research in using the method of restorative justice against perpetrators of child crimes, police policies in carrying out settlement efforts through mediation and recovery consultations with non-punitive decisions prioritizing solutions in the best interests of the perpetrators, victims, and the community. The policy of the Police of the Republic of Indonesia is to issue a Circular Letter of the Police of the Republic of Indonesia Number: 8 of 2021 concerning the Application of Restorative Justice. prioritizing the interests of the victim and the perpetrator in order to reach an agreement together to seek a solution to the crime by emphasizing on recovery, not retaliation. It is through law enforcement that this becomes a reality. However, in enforcing the law there are 3 (three) elements that need to be considered, namely: legal certainty, expediency and justice

Keywords: Restorative Justice, Child Crime Perpetrators, Police Policy

I. INTRODUCTION

Children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being. Children are an inseparable part of the survival of human life and the sustainability of a nation and state. The consequences of the provisions of Article 28 B of the 1945 Constitution of the Republic of Indonesia need to be followed up by making government policies aimed at protecting children. Children are a mandate and gift from God that still require special care and protection from the state and society. A child by nature still has reasoning power that is not yet good enough to distinguish good and bad things. Criminal acts committed by children in general are a process of imitating or being influenced by persuasion from adults. The formal criminal justice system which ultimately places children in prison status certainly brings considerable consequences in terms of child growth and development. The process of punishment given to children through the formal criminal justice system by placing children in prison did not succeed in deterring children and becoming better individuals to support their growth and development process. Prisons often make children more professional in committing crimes.¹ One solution that can be taken in handling cases of child crimes is a restorative justice approach which is carried out by diversion. Restorative justice is a settlement process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties with an interest in a crime that occurred to reach an agreement and settlement.² In this regard The Supreme Court (MA), the Indonesian National Police (Polri), and the Indonesian Attorney General's Office (Kejagung) have issued guidelines for the application of restorative justice.

The Supreme Court stipulates the Decree of the Director General of the General Judiciary Agency No: 1691/DJU/SK/PS. 00 /12/2020 concerning Guidelines for the Implementation of Restorative Justice in

the General Courts; and on August 19, 2021 issued Republic of Indonesia National Police Regulation No. 8 of 2021 concerning the Handling of Crimes based on Restorative Justice; and the Attorney General's Office stipulates Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice.³ Meanwhile, the legal basis or legal umbrella for the National Police for the settlement of criminal cases outside the court is alternative dispute resolution by way of peace, namely through Law Number 48 of 2009 concerning Judicial Power, (State Gazette of the Republic of Indonesia Number 157, Supplement to the Gazette. Republic of Indonesia Number 5076), Article 1 (one) of Law Number 48 of 2009 concerning Judicial Power which reads "Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the rule of law of the Republic of Indonesia. It was emphasized "all courts throughout Indonesia are state courts and are stipulated by the law in the meaning "this provision does not rule out the possibility of resolving cases outside the state courts through peace or arbitration".

Formulation of the problem

1. How is the Implementation of Police Policy in the Use of Restorative Justice Methods Against Child Crime Actors?
2. What are the obstacles to the implementation of the Police Policy in the Use of Restorative Justice Methods Against Child Criminal Actors?
- 3.

II. METHODS

The research method used is a normative juridical research type. The problem approach used is the statutory approach, concept analysis approach, and case approach. The legal materials used are primary legal materials and secondary legal materials. Procedures and Collection of Legal Materials through literature study and Processing and Analysis of legal materials are then analyzed using description using qualitative methods.

III. DISCUSSION

1. Implementation of Police Policy in the Use of Restorative Justice Methods Against Child Crime Actors.

Restorative Justice is a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts as well as alternative punishments such as social work and others. Bagir Manan stated that the substance of Restorative Justice contains the following principles: building joint participation between perpetrators, victims, and community groups in resolving an event or crime; placing the perpetrators, victims, and the community as "Stakeholders" who work together and immediately try to find solutions that are considered fair for all parties (win-win solutions). "Restorative Justice focuses on the process of direct criminal responsibility from the perpetrator to the victim and the community. If the perpetrator and the victim as well as the community whose rights have been violated feel that justice has been achieved through joint deliberation efforts, it is hoped that the implementation of punishment can be avoided. This shows that the perpetrator is not the main object of the Restorative Justice approach, but a sense of justice and the recovery of the conflict itself which is the main object.⁴ The government has made a joint agreement in handling cases of children in conflict with the law through a Joint Decree between the Minister of Law and Human Rights, the Minister for Women's Empowerment and Child Protection, the Minister of Social Affairs, the Attorney General of the Republic of Indonesia and the Indonesian National Police as well as the Supreme Court on the Handling of Children.

The police are very careful in handling child criminal cases, of course referring to the applicable laws and regulations, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely with restorative justice efforts. child crime, the implementation of its implementation is by diversion efforts, namely the settlement of children's cases from the criminal justice process to the judicial process outside criminal justice. The method taken is to mediate between the perpetrator and the victim by involving lawyers, courts and community leaders. Referring to Article 2 of Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia, which emphasizes that the function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community. Furthermore, in Article 15 paragraph (1) letter e of the law, it is explained, in order to carry out the tasks as referred to in Articles 13 and 14, the Indonesian National Police are generally authorized to issue police regulations within the scope of police administrative authority. To answer the development of the legal needs of the Indonesian people who tend to follow the development of community justice, the Indonesian National Police as the institution authorized to conduct investigations and investigations of criminal acts formulaes a new concept in the criminal law enforcement system that is able to accommodate the values of justice that grow and develop.

in the community the National Police Chief as the highest leader of the Indonesian National Police on August 19, 2021 issued Regulation of the State Police of the Republic of Indonesia Number 08 of 2021 concerning Handling of Crimes based on Restorative Justice, (Restorative Justice) State Gazette of the Republic of Indonesia of 2021 Number 947. This can be seen in one of the considerations for the issuance of the Circular of the Chief of Police, namely in order to answer the development of the legal needs of the community and fulfill the sense of justice of all parties, the National Police as an institution that is given the authority as investigators and investigators as well as coordinators and supervisors of criminal investigations, feels the need to formulate a new concept in the criminal law enforcement system that is able to accommodate the values of justice in society as well as provide legal certainty, especially process certainty. The terms and mechanisms for resolving cases are very strictly regulated. These cases did not cause unrest and there was no public rejection and did not result in social conflict and did not cause human casualties, where the level of guilt of the perpetrators was relatively light and the perpetrators were not recedivists. Based on the requirements and mechanisms above, the settlement of cases at the investigation level will not experience many obstacles in its implementation, because the process does not involve other agencies/institutions within the framework of the criminal justice system, except legal advisors. In the event that the handling of the case has reached the investigation stage, the reason for stopping the investigation will be difficult for other components of the criminal justice system to accept because in accordance with the Circular, the termination of the investigation is carried out on the grounds that it is resolved with restorative justice.

When the reason for the termination of the investigation on the grounds of being "solved with a restorative justice approach" has not been accommodated by the Criminal Procedure Code, The Indonesian National Police took the opportunity to settle the case (termination of the investigation) on the grounds that it was resolved with a restorative justice approach before sending an Investigation Commencement Order (SPDP) to the public prosecutor, which means that the Indonesian National Police only has less than seven days to do so. Seeing the strict requirements and mechanism for stopping the investigation on the grounds of being "solved with a restorative justice approach" as stipulated in the Circular Letter of the Chief of Police, at the implementation stage it will be quite difficult to implement. Based on the descriptions above, it can be stated that the police policies mentioned above are a series and dynamics of the police's efforts to realize a more just law. Viewed and analyzed in terms of the Legal Harmonization Theory, the policy is carried out by seeking harmony, conformity, compatibility, compatibility and balance with other laws and regulations. This effort or process is to realize harmony, conformity, compatibility, compatibility, balance between legal

norms in laws and regulations as a legal system in a unified national legal framework.⁵ Judging from the concept of Gustav Radbruch's Legal Objectives, the police policy is also an effort to make a priority scale if there is a tension between the three basic legal values, namely justice, certainty and expediency. that the three legal aspects are arranged in a structural order, starting with justice, certainty and ending with finality. Justice must be understood as something that is a principle in law, even the heart of the law.

When the law has not been able to provide certainty due to the absence of norms, in order to create order, the Indonesian National Police must prioritize justice and expediency, then make policies that reflect "just certainty" and "fair benefits" which in the end will be able to create order. The Harmonization of Law theory and the concept of Gustav Radbruch's Legal Objectives correlate with the discretionary authority of the Indonesian National Police. According to Andi Hamzah, in carrying out law enforcement practices, the police are always faced with two choices, namely law enforcement as stipulated in the Criminal Procedure Code, or actions that emphasize personal morals and legal obligations to provide legal protection to the community (discretion).⁶ The criminal justice process begins with the stage of investigation and investigation which then leads to the prosecution stage, this is carried out by the public prosecutor. The Criminal Procedure Code contains the authority of the public prosecutor to receive and examine investigative case files from investigators or assistant investigators. After receiving and examining the case file, the prosecutor is obliged to conduct a pre-prosecution if there is a deficiency in the investigation by the investigator, by providing any instructions and directions that must receive the completion of the investigation file from the investigator. which is completed perfectly then the case is transferred to the court which is followed by the examination stage at the District Court.

The police are the gates, their role as investigators and criminal investigators puts the police in touch with most common or ordinary crimes. Most police work reactively rather than proactively, relying heavily on community members to complain or report suspected criminal acts. With sufficient evidence, based on the Criminal Procedure Code (KUHAP), the police as investigators delegate the case to the Prosecutor's Office for prosecution, related to the investigator's authority to seek information, make arrests and other necessary actions, detain or stop investigations. As regulated in Article 7 paragraph (1) of the Criminal Procedure Code (Law Number 8 of 1981 concerning the Criminal Procedure Code) jo.

- a. to receive reports or complaints regarding the existence of a criminal act;
- b. take the first action at the scene;
- c. order the suspect to stop and check the suspect's identification;
- d. make arrests, detentions, searches and confiscations;
- e. conduct inspection and confiscation of letters;
- f. take fingerprints and photograph a person;
- g. summon someone to be heard and examined as a suspect or witness;
- h. bring in the necessary experts in connection with the examination of the case;
- i. termination of investigation;
- j. Take other legally responsible actions.

The implementation of investigations against children's crimes carried out by the police are:
An investigation is a series of actions by an investigator to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out. In general, based on the provisions of Law Number 11 of 2012 that investigations of perpetrators of child crimes can only be carried out if the perpetrator of the crime exceeds the age limit of 18 (eighteen years), children under the age of eight who commit a crime will receive guidance and returned to the parent/guardian. To find out that a crime has occurred, the police can obtain information through several things, including reports, complaints, being caught red-handed and known directly by Indonesian police officers.

The police have the authority to stop investigations as regulated in the Criminal Procedure Code for three reasons, namely:

- 1) The case being handled is not a crime;
- 2) Not enough evidence;
- 3) Terminated by law.

The police have discretionary authority based on Law No. 2 of 2002 concerning the Police which states that:

- 1) For the public interest, the Indonesian National Police Officer in carrying out his duties and authorities may act according to his own judgment;
- 2) The implementation of the provisions as referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations as well as the professional code of ethics of the Indonesian National Police.

Restorative Justice Arrangements related to Juvenile Justice

The principle of restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court in the form of policy enforcement (Supreme Court Regulations and Supreme Court Circulars) but its implementation in the Indonesian criminal justice system is still not optimal. The Supreme Court and the Circular Letter of the Supreme Court are⁷:

1. Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning the adjustment of the limits for minor crimes and the amount of fines in the Criminal Code
2. Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning guidelines for implementing diversion in the juvenile criminal justice system
3. Joint Decree of the Chairperson of MARI, Indonesian National Police, Minister of Law and MAM RI, Minister of Social Affairs of the Republic of Indonesia, and Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 166A/KMA/SKB/XII/2009, 148A/A/JA/12/2009, 45/XII/2009 M. MH. 08/ HM. 03.02/2009, 10/PRS-KPTS/2009. 02/Men, PP and PA/XII/2009 concerning Handling Children in Conflict with the Law

Restorative justice The core ideas that have been adopted as guidelines for the settlement of criminal cases by the three institutions involved in the Republic of Indonesia after the Memorandum of Understanding have been agreed:

- 1) Circular Letter of the Head of the State Police of the Republic of Indonesia Number. 8 of 2021 concerning the Handling of Crimes based on Restorative Justice
- 2) Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigations (Perka Polri 6/2019);
- 3) Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Perkejaksaan 15/2020; and Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines Application of Restorative Justice in the General Courts environment on December 22, 2020.

Restorative Justice Arrangements in Criminal Law in the Criminal Code and the Criminal Procedure Code itself within the framework of criminal liability (criminal liability) and the criminal system tends to make prison sanctions the *prima donna* of punishment for convicts. Other penalties are only considered as alternative sanctions. Based on the conception of criminal law regulation in the Criminal Code and the Criminal Procedure Code, judges who hear criminal cases make imprisonment as the main sanction. The conception of justice that is expected and needed by the community, especially the victims of the crime, is

the maximum possible condition as before the occurrence of the crime. Law enforcement should be in the criminal justice system against criminal acts that are categorized as complaint offenses,⁸

Restorative Justice arrangements in Law Number 2 of 2002 concerning the Indonesian National Police. The National Police in carrying out police duties which include police activities and police operations are given discretionary power. Discretionary authority is a legal authority where the police have the right to continue or discontinue a case. Based on this authority, the police can divert (diversion of a case so that the perpetrator does not have to deal with a formal criminal court settlement. Discretion is not an authority but is another action). Police and must be accounted for by law and norms that apply in the midst of society. Discretion is very vulnerable to abuse of power so that it is necessary to provide clear and strict supervision of its implementation. The discretion that exists in the task of the police is because when the police take action, they are then faced with 2 (two) choices, whether to process it according to their duties and obligations as a criminal law enforcer or to put the case aside in the sense of taking police discretionary action. This discretionary act has the meaning of not carrying out its obligations as a criminal law enforcer based on reasons that can be justified by law. These reasons can be in the form of fostering perpetrators, for the sake of order or for other legal reasons. Overall, these reasons are also closely related or fall within the framework of the police's preventive task. then faced with 2 (two) choices of whether to process it in accordance with its duties and obligations as a criminal law enforcer or to put the case aside in the sense of taking police discretionary action.

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The legal umbrella for the presence of the National Police in the context of investigations to provide a sense of justice is often constructed related to police actions as in Law Number 2 of 2002 concerning the Indonesian National Police, namely in the editorial "other actions" which tend to mean "police discretion". Police investigators are given personal authority as stated in Article 7 paragraph (1) point j of Law Number 1 of 1981 concerning the Criminal Procedure Code and Article 16 paragraph (1) point 1 and Article 18 of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia. which authorizes Polri investigators to "be able to take other actions" under certain conditions and this is identical to the meaning of police discretion. Police discretion in Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police states: "(1). In the public interest, State police officers Indonesian administrators in carrying out their duties and authorities can act according to their own judgment. (2). The implementation of the provisions as referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations as well as the Professional Code of Ethics of the State Police of the Republic of Indonesia. "is an action that can be taken by the Indonesian National Police which in acting must consider the benefits and risks of its actions and is truly in the public interest".

The National Police has scheduled the implementation of restorative justice in order to provide a sense of justice to the community. The implementation of restorative justice can be seen from several policies that have been formulated by the Police, including Regulations and Telegram Letters from the Head of Criminal Investigation Unit of the Police regarding the application of restorative justice for handling child cases, as stated in the TR Kabareskrim Polri Number: TR/1124/XI/2006. The Police's internal policy regarding restorative justice also regulates in the framework of stopping cases in the public interest in the Secret Telegram No. STR/583/VIII/2012 concerning the application of Restorative Justice from the Criminal Investigation Department to the Director of Criminal Investigation, Dir. Article 18 of the Police Law, which is "to take action based on self-assessment based on consideration of the benefits and risks of such action and really in the public interest". This effort to find the right legal basis is then interpreted differently by each investigator. There are those who think that the legal basis for stopping an investigation in the public interest is that there is not enough evidence because the victim,

Restorative Justice aims to empower victims, perpetrators, families, and the community to correct an act against the law by using awareness and conviction as a basis for improving community life explaining that the concept of Restorative Justice is basically simple. Restorative Justice is a theory of justice that emphasizes the recovery of losses caused by criminal acts. The concept of Restorative Justice is basically simple. The measure of justice is no longer based on retribution from the victim to the perpetrator (either physically, psychologically or in punishment); however, the hurtful act is healed by providing support to the victim and requiring the perpetrator to be held accountable, with the help of family and community when needed. then it is interpreted that Restorative Justice itself means a fair settlement involving the perpetrator, victim, family and other parties involved in a criminal act and jointly seeking a solution to the crime and its implications by emphasizing restoration back to its original state. With the issuance of Circular Letter of the Police of the Republic of Indonesia Number: 8 of 2021 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. The issuance of the circular letter is based on the development of systems and methods of law enforcement in Indonesia showing a tendency to follow the development of community justice, especially the development of the concept of restorative justice which reflects justice as a form of balance in human life. This is as explained in Point 2 of the Circular Letter of the Police of the Republic of Indonesia Number: 8 of 2021 concerning Handling criminal acts based on Restorative Justice in the Settlement of Criminal Cases, namely:

a. that the process of investigating and investigating criminal acts is the entry point for criminal law enforcement through the criminal justice system in Indonesia. to the prosecution and criminal justice processes in order to realize the legal objectives, namely justice, legal certainty and benefit while still prioritizing the principles of justice which are simple, fast and low cost;

b. that the development of law enforcement systems and methods in Indonesia shows a tendency to follow the development of community justice, especially the development of the principle of restorative justice which reflects justice as a form of balance in human life, so that deviant behavior from criminals is considered as behavior that eliminates balance. Thus the case resolution model that is carried out is an effort to restore this balance, by burdening the obligations of the perpetrators of the crime with his awareness of admitting mistakes, apologizing, and returning the damage and losses to the victim as before or at least resembling the original condition, which can fulfill the victim's sense of justice;

c. that the development of the concept of law enforcement in the criminal law enforcement system in various countries that adopt the principle of restorative justice and along with the emergence of various problems in the criminal law enforcement process in Indonesia such as prisons that are over capacity, arrears, increasing cases, the number of law enforcers which is not balanced with the development of cases, case fees that are not able to support the increase in cases and so on, have an impact on changes in the legal culture of the community, especially the Indonesian people's perspective on the criminal law enforcement process;

d. that in the context of responding to the development of the legal needs of the community and fulfilling the sense of justice of all parties, the State Police of the Republic of Indonesia as the institution given the authority as investigators and investigators and administrators and supervisors of criminal investigations, feel the need to formulate new concepts in the criminal law enforcement system, especially the process of investigating and investigating criminal acts that are able to accommodate the values of justice in society as well as provide legal certainty, especially process certainty;

e. that the application of the principle of restorative justice in the concept of investigation and investigation of criminal acts in order to realize the public interest and a sense of community justice that does not yet have a legal basis and can be used as a guideline for its implementation as well as in the context of realizing non-uniform understanding and application of justice for various problems in the criminal law enforcement process in Indonesia. Indonesia such as prisons that are over capacity, arrears in cases are increasing, the number of law enforcers is not balanced with the development of cases, case fees are not able to support the increase in cases and so on have an impact on changing the legal culture of society, especially the Indonesian people's perspective on the criminal law enforcement process. ;

d. that in the context of responding to the development of the legal needs of the community and fulfilling the sense of justice of all parties, the Indonesian National Police as the institution given the authority as investigators and investigators as well as the supervisor of the investigation of criminal acts, feels the need to formulate a new concept in the criminal law enforcement system, especially the process of investigation and investigation. criminal acts that are able to accommodate the values of justice in society as well as provide legal certainty, especially process certainty;

e. that the application of the principle of justice (restorative justice) in the concept of investigation and investigation of criminal acts in order to realize the public interest and a sense of community justice that does not yet have a legal basis and can be used as a guideline for its implementation as well as in the context of realizing non-uniform understanding and application of restorative justice (restorative justice) within the Police. For the State of the Republic of Indonesia, a product with legal force is needed as a guide for investigators and Polri investigators who carry out the implementation, including guarantees of legal protection and control supervision;

f. that the principle of justice (restorative justice) cannot be interpreted as a method of peaceful cessation of cases, but is broader in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and local communities as well as investigators/investigators as mediators, while the settlement cases, one of which is in the form of a peace agreement and the revocation of the right to demand from the victim, it is necessary to request a judge's determination through the public prosecutor to abort the authority to demand from the victim, and the public prosecutor;

g. that the various methods of resolving criminal cases that reflect the application of the principles of justice (restorative justice) and can be used as a reference in the application of the principles of justice (restorative justice) to criminal cases are as follows:

Article 76 paragraph (1) of the Criminal Code that except in the case that a judge's decision may still be repeated, a person may not be prosecuted twice because of an act that an Indonesian judge has tried against him with a final decision;

h. that the implementation of the authority to investigate and/or investigate criminal acts by Polri Investigators who apply the principles of restorative justice in their investigative methods may be based on the following provisions:

1) Article 7 paragraph (1) letter j of Law Number 8 of 1981 concerning the Criminal Procedure Code, that because of his obligations, investigators have the authority to take other actions according to the law that is responsible;

2) Article 16 paragraph (1) letter L and Article 18 of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia and Article 5 paragraph (1) number 4 of Law Number 8 of 1981 concerning the

Criminal Procedure Code that other actions referred to in Article 16 paragraph (1) letter L is an action of investigation and investigation carried out if it meets the following requirements:

- a) does not conflict with a rule of law;
- b) consistent with the legal obligation that requires the action to be taken;
- c) must be appropriate, reasonable, and included in the environment of his office;
- d) due consideration based on compelling circumstances; and
- e) respecting human rights.

3) Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, that in the public interest, the Head of the Indonesian National Police in carrying out his duties and authorities may act according to his own judgment. Article 18 paragraph (2) of Law Number 2 of 2002 concerning the Indonesian National Police as referred to in Article 18 paragraph (1) can only be carried out in very necessary circumstances by taking into account the law and the Police Professional Code of Ethics.

4) Article 22 paragraph (2) letters b and c of Law Number 30 of 2014 concerning Government Administration states that every use of discretion of government officials aims to fill legal voids and provide legal certainty.⁹

The policy of the Police of the Republic of Indonesia is to issue a Circular Letter of the Police of the Republic of Indonesia Number: 8 of 2021 concerning the Application of Restorative Justice (Restorative Justice). settlement of the crime and its implications by emphasizing on recovery not on retaliation. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. In this case the law that has been violated must be enforced. It is through law enforcement that this becomes a reality. However, in enforcing the law there are 3 (three) elements that need to be considered, namely: legal certainty, expediency and justice. The application of Restorative Justice by the Police in the process of handling children's cases the existence of Law Number 2 of 2002 concerning the Police in which there are articles that are implicitly relevant to the existence of police actions to carry out diversion through police policy/discretion authority, namely Article 16 and Article 18 of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia which discusses the matter of Police Discretion. Regulation of the Indonesian Police Criminal Investigation Unit Number 1 of 2012 concerning Standard Operational Procedures for Handling Children in Conflict with the Criminal Investigation Agency has formulated that investigators who can be appointed as child investigators are investigators who have specialized in handling cases involving children.

The application of justice in the settlement of criminal acts committed by children is a legal, clear and firm order based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In consideration of this law, among other things, it is said, children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being. To maintain their dignity, children have the right to special protection, especially legal protection in the justice system. The restorative justice mechanism can be carried out outside the judicial system without involving law enforcement officers, outside the judicial system by involving law enforcement officers and part of the judicial system. The mechanism above shows that the Police, namely investigators, conduct an examination of the reported criminal events. During the investigation process, the parties, namely the perpetrator and the victim, were brought together. If an agreement is obtained for a settlement by deliberation and kinship or restorative justice, then a case is held in a restorative justice forum for a joint decision to be made which is then carried out by SP3 (Termination of Investigation) using the discretionary authority of the police, thus the case stops at the level of investigation and does not reach the Court .

A. Obstacles to Police Implementation Policies in Using Restorative Justice Methods Against Child Crime Actors

Barriers to the application/use of restorative justice methods in the investigation system encountered several obstacles, including:

- a. The investigative authority granted by the Criminal Procedure Code is the authority to prove a criminal act and find suspects who must be accounted for in front of the trial.
- b. In the Criminal Procedure Code, investigators are given the authority to stop an investigation on the grounds that it is not a crime, there is not enough evidence as a criminal act, and for the sake of the law. However, the Criminal Procedure Code does not give investigators the authority to settle cases outside the trial court or to rule out cases due to certain considerations.
- c. The Criminal Procedure Code regulates the revocation of reports or complaints only in certain cases, namely those which constitute a complaint offense. So that the formal juridical investigator, except in the case of a complaint offense, must forward it to the Public Prosecutor on cases which based on the investigation are proven to be criminal acts. Meanwhile, in the development of criminality, the parties prefer to settle cases outside the courts, even in cases that are classified as pure offenses / not complaint offenses.

Another obstacle faced in the application of restorative justice in the process of handling juvenile criminal cases was found that investigators better understand the existing positive law than understand the concept of customary law as a law that lives in the midst of society. In the context of implementation, investigators should also be open to understanding local customary law to provide a sense of justice to the community.

It can be described the obstacles faced by investigators in the application of restorative justice in handling criminal cases viewed from internal and external aspects as follows:¹⁰

1. Internal aspects

a. Related to the competence of investigators in the field of legal knowledge, legislation, the criminal justice system and technical and tactical investigation skills are still not optimal. This happens because not all personnel of the criminal justice function have attended vocational education for the technical functions of the detectives and supporting skills, such as the ability to use information technology in disclosing criminal cases. This includes the lack of a comprehensive understanding of the principles of restorative justice.

b. Regarding the behavior of investigators and the application of the code of ethics for investigations, this can be seen from the lack of firmness/ tenacity/ toughness and often neglecting procedures, in carrying out tasks there is a tendency to exceed the limits of authority, less independent and influenced by other parties so that it seems discriminatory in handling cases, less able to keep the secret of the investigation, often throw words/sentences or gestures aimed at getting a reward, and often conspire with parties related to the case.

c. Regarding the budget, that the investigation budget is accountable for cases that have been submitted to the public prosecutor / P-21, so that there is limited space for resolving cases that can be resolved at the investigation level. This condition will encourage all case settlements through the judicial process, while the community still hopes that it can be resolved at the investigation level.

d. There is no standard operating procedure (SOP) that can be used as a guide and law for investigators or SKPT to settle cases outside the judiciary or by conducting restorative justice in accordance with the interests of the litigants and seeking justice.

e. There has been no synchronization between work units, for example between the criminal justice function and SKPT, or other supporting functions to resolve community problems that arise by prioritizing the principle of restorative justice.

2. External Aspects,

a. Legal problems faced by the community are not infrequently closely related to political problems and the developing strategic environment. Therefore, such conditions greatly affect the steps or actions taken by the police. The social culture of the people who prefer the legal route in solving social problems is one of the reasons for the high number of police reports that must be handled by investigators.

b. There is no synergy between law enforcement agencies as a sub-system of the Indonesian criminal justice system. Communication between sub-systems in the integrated criminal justice system is still a formality, there is no one perception to provide fast, cheap and fair judicial services. So that investigators still seem to be *hulpmagistraat* (Assistant Prosecutors). This can be seen from the back and forth of case files between investigators and public prosecutors, where the subject of debate is not substantial and tendentious.

c. There are still views from the public regarding the investigation and efforts of the Police in realizing legal certainty and justice. This can be seen from that the investigation has not prioritized cases of public concern, has not provided information about the development of cases optimally, there is still discrimination in the investigation of people who are "legally literate" and investigations of citizens who are "legally illiterate", and investigations are carried out. still prioritizing juridical normative so that people are less sympathetic.

d. That the development of information technology in addition to having a positive impact also has an impact that contributes to the crime rate, this then becomes a new job challenge for investigators. Crimes caused by information technology media technically and investigative tactics clearly require counter technology, meaning that even though it is a general crime type, if it is carried out using information technology, investigators need more time and equipment than if investigators conduct investigations against conventional criminal acts. Therefore, on the one hand, technological developments are also a challenge for investigative tasks.

e. The mass media coverage that tends to corner the Police, especially in resolving cases that cause conflict in society, is also triggered by the weak ability of social communication and understanding of mass psychology to gain mass sympathies in cases involving This is also driven by the legal culture used by the media.

The implementation of restorative justice should also be seen as a form of police service to the community. By understanding the concept of service, the implementation of law enforcement does not only interpret the Act as a legal action. However, the concept of service in the implementation of restorative justice must be transformed into a law enforcement service that is oriented to the interests of the parties/stakeholders to achieve a sense of justice. Based on these obstacles, it is necessary to improve the quality of Polri personnel to accelerate restorative justice based on the aspect of the Polri's commitment to solving community problems and the strong desire of every Polri personnel to always improve their professionalism, but the competence of investigators in the field of legal knowledge, legislation, the judicial system criminal and technical skills and tactical investigations in implementing restorative justice are not sufficient, to receive complaints / reports from the public. and punishments. It was found that there were 2 (two) obstacles in the application or use of justice in practice, namely internal and external barriers. Internal barriers are obstacles that come from the PPA institution itself, external obstacles are obstacles that come from outside the PPA unit.

In line with the obstacles faced by the PPA unit, there are 5 (five).¹¹

1. Legal Factors (Laws)

That there are disturbances in law enforcement that come from the law which may be due to the non-compliance with the principles of enactment of the law, the absence of implementing regulations that are urgently needed to implement the law, and the unclear meaning of words in the law. laws that result in confusion in its interpretation and application

2. Law Enforcement Factor

Obstacles that may be encountered in implementing the proper role of role models or law enforcers may come from themselves or from the environment.

3. Facilities and Facilities Faktor

Without certain facilities or facilities, it is impossible for law enforcement to take place smoothly. These facilities or facilities, among others, include educated and skilled human resources, good organization, adequate equipment, sufficient finances, and so on. If these things are not fulfilled, it is impossible for law enforcement to achieve its objectives.

Facilities also have an important role in law enforcement. Without these facilities or facilities, it will not be possible for law enforcers to harmonize their proper roles with their actual roles

4. Community Factor

Law enforcement comes from the community, and aims to achieve peace in society. Therefore, viewed from a certain angle, the community can influence the law enforcers. The average citizen has hope that the police will be able to deal with the problems they face without taking into account whether the police officer has just graduated from police education or is an experienced police officer.

5. Cultural Factor

Cultural factors that are actually integrated into society are deliberately distinguished, because in the discussion the problem of the value system that is the core of spiritual or non-material culture is raised. The culture of the community also greatly influences law enforcement.

For the internal obstacles faced by the first PPA unit, namely the increasing need for human resources caused by the increasing number of criminal acts and the lack of facilities, which affect the course of law enforcement originating from law enforcers themselves. Complaints that PPA personnel are overwhelmed with the increasing number of existing cases must be addressed wisely, whether by adding more personnel or by training existing personnel so that they can work more professionally. Likewise, regarding the differences in the perspective of the apparatus, in this case the PPA unit personnel in dealing with children who are dealing with criminal law, of course it must be handled properly. To overcome obstacles or obstacles The restorative justice approach that the main goal is to realize truth and justice not because there is a certain nominal, which is used as a formal basis in handling criminal cases, reflects a sense of justice for the community, a more just humanist approach must be encouraged and prioritized from on a rigid formal approach that does not create justice in society. Because the real goal in a sentencing process is justice, so that later it can create justice and not based on punishment.

To overcome obstacles noonly formally address approaches that prevent children from becoming more criminal as they grow older. From the obstacles that occur, efforts to overcome these obstacles become a benchmark for success in implementing police policies in using the method / application of restorative justice against perpetrators of child crimes.

The efforts to overcome obstacles in using the restorative justice method carried out by the police are:¹²:

1) When the suspect's legal counsel is unable to attend, the child PPA investigator continues to ensure that the rights of the child suspect are fulfilled, and this has been notified to every PPA investigator;

2) detention of children in order to allocate a special place of detention for child suspects;

3) During the police policy examination process, investigators do several things, namely: not using official attributes, not yelling at the child, making the surrounding conditions more comfortable, providing facilities that make the child suspect comfortable;

4) For the suspect and the suspect's family who do not understand protection, sometimes the investigator will help the suspect and the suspect's family to understand what protection is, by giving examples of forms of protection;

5) The investigators sometimes try to contain the emotions of the suspect's parents so as not to scold the suspect. In the examination process, investigators carry out examinations by upholding the applicable law and always paying attention to human rights as stipulated in the Criminal Procedure Code.

Thus, although the Circular of the Chief of Police is not included in the order of laws and regulations, it can be said that the Circular of the Chief of Police. Number: No. 8 of 2021 concerning the Application of Restorative Justice in the Settlement of Criminal Cases is a policy regulation (beleidregel) that is internally binding within the scope of the police's authority as a new concept in the criminal law enforcement system that is issued based on discretion and has the basic footing of provisions of higher regulations, namely the Criminal Procedure Code and other special laws.

However, indirectly, the circular also has the power to bind externally to the community, because the impact of using the policy regulations by the police in carrying out their operational duties, especially in terms of investigations and investigations will also affect the behavior of people who are in direct contact with the implementation of police duties.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

1. Implementation of police policies in the use of restorative justice methods against perpetrators of child crimes undertakes efforts to resolve cases outside the criminal justice system, namely by conducting mediation involving the perpetrators and victims and their families, the parties jointly mediate and discuss recovery with a decision as far as possible not being punitive and prioritizing solutions by taking into account the best interests of children, victims, and the community. The use of restorative justice methods where the role of the police is as a mediator, facilitator, or supervisor. In this case the police show the articles and provisions of the juvenile justice law, then the community is invited to find the best solution so that the process of repair, restoration of relations, conciliation and reconciliation between the victim and the perpetrator, the victim's family and the perpetrator's family occurs, with community acceptance. against the perpetrator without any stigma against the perpetrator

2. Obstacles faced in the use/application of restorative justice methods in handling juvenile crimes, it was found that investigators better understand existing normative or positive law than understanding the concept of customary law as law that lives in the midst of society. In the context of resorting to justice, investigators should also be open to understanding local customary law to provide a sense of justice to the community. To overcome obstacles to the use/application of restorative justice that the main goal is to realize truth and justice not because there is a certain nominal, which is used as a formal basis in every handling of criminal cases, it reflects a sense of justice for the community. a more just humanist approach must be encouraged and prioritized over a rigid legalistic formal approach that does not create justice in society. Because the real goal in a sentencing process is justice, so that later it can create justice and not based on punishment. In addition, there are concerns or fears that investigators will be blamed by their leaders or superiors and questioned on supervision and examination by supervisory institutions and internal police investigators who use formal procedural parameters, there is no legal umbrella that regulates and becomes the basis for legitimacy in making decisions in the investigation process whether based on the concept of Restorative Justice or other approach concepts.

B. Suggestion

1. Referring to the conclusions above, the researcher suggests to the relevant parties such as the police so that the police or investigators in carrying out their duties can be more effective in resolving cases that are included in the light category through a Restorative Justice approach. In addition, the police must also make improvements so that the image of the police in the eyes of the community is even better. For the community, it is hoped that the community will know more about settlements for minor criminal cases and do not take justice into their own hands against perpetrators of criminal acts of children

2. It is hoped that every law enforcement officer and the community can optimize the provisions and regulations regarding the application of existing restorative justice, namely in Law Number 11 of 2012, the Circular Letter of the Chief of Police Number 8 of 2021 and Prosecutor's Regulation Number 15 of 2020. In addition to optimizing the existence of provisions and regulations regarding the application of restorative justice in Indonesia, the government is expected to accommodate restorative justice in the renewal of Indonesia's national criminal law through the Draft Criminal Code (RKUHP).

REFERENCES

- [1] Rufinus Hutahuruk, *Combating Corporate Crime Through a Restorative Approach A Breakthrough of the Law* (Jakarta: Sinar Graphic, 2013),
- [2] Budoyo, S. 2014. *The Concept of Systematic Steps for Harmonization of Laws in the Formation of Legislation. CIVIS Scientific Journal*, 4(2), 607-622,
- [3] Hamzah, A. 2008. Academic Manuscript of the Draft Law Number..... Year concerning Criminal Procedure Law, in the Draft Criminal Procedure Code Team, p. 12. *Journal of Master of Law Udayana* Vol 8 th 2019 accessed
- [4] Jesylia Hillary Lawalata, et al. Restorative Justice Approach in the Settlement of Narcotics Crime Cases at the Investigation Stage, *Tatohi Journal of Legal Studies* Vol 2, No. 1 March (2022),
- [5] M. Joni and Zulchaina Z.Tanamas, 1999, *Legal Aspects of Child Protection in the Perspective of Child Rights Convection*, PT. Citra Aditya Bhakti, Bandung,
- [6] Marlina, 2008, Quoted <http://repository.usu.ac.id.2012/06/28> Development of the Diversion Concept And Restorative Justice in the Juvenile Criminal Justice System in Indonesia, download March 12, 2022 at 4:44
- [7] Ronni Bonic, et al, *The Role of the Police in Implementing Restorative Justice in Handling Criminal Cases USU Low Journal* vol. No. 4 October 2016 p
- [8] Soerjono Soekanto, 2008, *Factors Influencing Law Enforcement*, Jakarta: Raja Grafindo Persada,
- [9] The application of restorative justice in the general judiciary, Attachment to the General Decree of the General Court of Justice Number 1691/DJU/SK/PS00/12/2020 Dated 22 December 2020 Regarding the Implementation of Restorative Justice in General Courts
- [10] Fianhar, 2018, Circular Letter of the Chief of Police Number 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, accessed by Ari, <https://www.fianhar.com/2018/09/penerapan-keadilan-restoratif-perkara-pidana.html>, Accessed on June 15, 2022, 20.24 WITA.