

APPLICATION OF RESTORATIVE JUSTICE IN RESOLVING THE CRIME OF RAPE AT THE INVESTIGATION LEVEL BASED ON LAW NUMBER 12 OF 2022 CONCERNING SEXUAL VIOLENCE CRIMES

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Abstract

The implementation of legal efforts with restorative justice tends to not run optimally, focusing more on the rights of suspects without paying attention to the rights of victims. Therefore, it is interesting and important to further examine how to arrange the resolution of sexual violence crimes at the investigation level. Restorative Justice in Indonesian criminal law? and how is the application of restorative justice in solving sexual violence crimes based on National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice? To answer these problems, normative legal research methods are used with statutory and conceptual approaches and use secondary data obtained from primary legal material sources, secondary, and tertiary, as well as qualitative data analysis techniques. From the results of the research, it was found that the National Police itself has issued at least three regulations of the Chief of Police relating to the handling of Sexual Violence Criminal Acts (TPKS), namely: Perkap No. 8 of 2021 concerning Handling Criminal Acts based on Restorative Justice. Investigators as law enforcement officers must make adjustments and look for guidelines or patterns to reshape, improve again, shape better, carry out changes and renewals, rearrange so that perpetrators and victims are encouraged to deliberate to improve conditions to restore conditions as before. The need for synchronization and harmonization of Perkap No. 8 of 2021 with the provisions of the Sexual Violence Crime Law (TPKS).

Keywords: Restorative Justice, Crime, Investigation, Sexual Violence.

Abstrak

Implementation effort law with restorative justice tends to be Not yet walk maximum , more focused related with rights suspect without notice the rights of the victims. Therefore interesting and important study more carry on How arrangement solution follow criminal violence sexual level investigation . Justice Restorative in law Indonesian criminal law ? and how application of restorative justice in solution follow criminal violence sexual based on Regulation National Police Number 8 of 2021 concerning Handling Act Criminal Based on Justice Restorative ? For answer problem mentioned , is used method study law normative with approach regulation statutory and conceptual as well as using secondary data obtained from source material primary, secondary and tertiary laws , as well as technique qualitative data analysis . From the results study obtained that National Police Alone has publish at least three regulation The relevant National Police Chief with handling Act Criminal Violence Sexual (TPKS), namely : Perkap No. 8 of 2021 concerning Handling Act Criminal based on Justice Restorative . Investigator as apparatus enforcer law must do adjustment yourself and search guidelines or pattern For form back , repair return , form more OK , carry on change and renewal , do preparation back so that perpetrators and victims are encouraged do discussion For repair condition To use return circumstances like beginning . Necessity synchronization and harmonization Perkap No. 8 of 2021 with provision Constitution Act Criminal Violence Sexual (TPKS).

Keywords : Restorative Justice, Action Crime , Investigation , Violence Sexual

INTRODUCTION

Crime sexual is form crimes that abuse and disfigure dignity humanity , as well can categorized as as type crime outside ordinary (*extraordinary crime*).¹In the Indonesian Criminal Code (KUHP) , crime in form rape This arranged in Article 285 of the Criminal Code . this article arranged in Book II Chapter XIV about Crime to Decency . As for Article 285 of the Criminal Code state as following : “ Whoever with violence or threat violence force a woman who isn't his wife have sex with he was punished Because rape with punishment prison for a maximum of 12 (twelve) years ” .

Violence Sexual causing the victim to suffer loss material , physical and also psychological . Often in the solution public Still many think It's trivial , someone can solve it with method perpetrator pay change make a loss with money, someone married the victim to perpetrator , even there are those with method perpetrator pay fine to environment public like pave road and so on. Whereas That The same very No Can return the victim to circumstances beginning . The trauma experienced is very necessary a very long time , especially with get married with the perpetrator , the victim will life with perpetrator lifetime alive and still There is potency perpetrator will do violence Again towards the victim.

In the settlement process case criminal with track law often considered No fulfill a sense of justice . Need is known that in discussion criminal procedural law especially related ones with rights basic human , more dominant discuss related matters with rights suspect without notice the rights of the victims. That matter become base birth of the idea of *restorative justice* Because necessity renewal in effort solution case emphasized criminality to condition creation justice and balance between the rights of victims and perpetrators follow criminal .

System Justice Indonesian criminals enter half new in its development . One of form existing updates in law Indonesian criminal law is arrangement about law criminal in perspectives and accomplishments justice to repair nor recovery circumstances after events and judicial processes known crime with justice different restorative justice with retributive (pressing justice in retribution) and justice *restitutive* (pressing justice in exchange make a loss).²

Carry out task enforcement law , Investigator The National Police of the Republic of Indonesia has duties , functions and authority in the field investigation follow criminal in accordance with regulation implemented legislation in a way professional , transparent and accountable to every case criminal To use realization supremacy reflecting law certainty law , a sense of justice and expediency .³

¹ Atikah Rahmi, “ Urgency Protection for Victims of Violence Sexuality In The System Justice Criminal Integrated Gender Justice ”, Journal Mercatoria , Vol. 11, no. 1, 2018, p . 37-60.

² Irvan Maulana and Mario Agusta, “ Concept and Implementation *Restorative Justice* in Indonesia”, Datin Law Journal , Vol. 2, no. 2 2021, p . 46-70.

³Indonesia, *Regulations Head Republic of Indonesia State Police regarding Investigation Act Criminal* , Regulations Head Republic of Indonesia State Police Regulations Head State Police

Criminal justice system or *Law enforcement system* as one of the sub systems internal state administration context enforcement law criminal . *Criminal justice system* is a sub system Justice mutual punishment related including the Police , Prosecutor 's Office , Courts and Correctional Institutions with objective cope crime .⁴ Cope interpreted as control crime to be within the limits of tolerance .⁵

In terms of This is the law role protect rights every victim of the crime criminal . Rule law about implementation *restorative justice* has arranged in a number of regulation that is :

1. Constitution Republic of Indonesia Number 11 of 2012 concerning System Justice Child Crime (SPPA);
2. Director's Decree General of the General Judicial Body of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement Guidelines Application Justice Restorative ;
3. Regulation attorney Republic of Indonesia Number 15 of 2020 concerning Termination Prosecution Based on Justice Restorative ; And
4. Regulation Republic of Indonesia State Police Number 8 of 2021 concerning Handling Act Criminal Based on Justice Restorative .

However in a way factual implementation effort law with *restorative justice* tend Not yet walk maximum , still many victims feel it injustice because of the settlement process case criminal through track law more focus on discussing related matters with rights suspect without notice the rights of the victims. Like as well as in the settlement process case violence against women now Still become issue it's important to continue fought for rights justice by the people Woman .

News about handling case rape return appear to public , first case employee honorary of the Ministry of Cooperatives and SMEs, who experienced *gang rape* moment follow Outside Office Meeting (RDK) . The rape that occurred with the initials N is suspected carried out by 4 (four) colleagues work , each with the initials MF, NN, WH, and ZP in December 2019. In October 2022 the drowning case return emerged , after the media reported it effort N's family opened case This return .

Incident This started when N was with the employees Ministry on December 6 2019 held Out-of-office meeting attended by N and the perpetrators . There N was then raped .⁶ Rape happened at the hotel place meeting ongoing , 4 employees rape

of the Republic of Indonesia Number 6 of 2019, State Gazette of 2019 Number 1134 , Precautionary Section letter a.

⁴ Mardjono Reksodipuro , *System Justice Indonesian Criminal : A Look To Crime and Law Enforcement Within the Limits of Tolerance* , (Jakarta: Indonesian Faculty of Law, 1993), p . 1.

⁵ Lilik Mulyadi, *Compilation of Criminal Law in Perspective Theoretical and Practical Justice* , (Bandung: Mandar Maju, 2007), p. 5.

⁶ Konde.co, “ Gang Rape Happened at Kemenkop UKM: Activists Find it Case Engineering ” , (19 December 2022), <https://www.konde.co/> . Accessed on September 30 2023, at 13.58 WIB .

namely : ZP, WH, MF, NN and 2 people guarding door and 1 person comes in until location . These three people are : A, T, E. After the victim reports it to police , suspects perpetrator come the victim's parents ' house and requested legal proceedings No next because ZP will married N. Among fourth expected perpetrator , only ZP is still there *single* , while the others Already Marry . The perpetrator also invited family they when come victim's house and urgently victim's family for stop the case . Even a Ministry of Cooperatives and UKM officials who have relationships family with one expected the perpetrator also came victim's house and offers solution case in a " fraternal " manner. When fourth expected perpetrator detained , effort solution case in a way peace through Weddings are also facilitated by the Kanit Bogor Police Women's and Children's Services (PPA) , such as said the victim's father. After agreement peace made on March 6 2020, the victim's parents returned called . In the room work , the Head of the 2019-2020 PPA Unit handed over around 40 million rupiah to victim's mother . Money is put inside pocket crackle and said as cost wedding . The wedding took place on March 13 2020 at the South Jakarta Religious Affairs Office (KUA). Kanit request proof wedding , so a number of day after marriage of the victim and parents deliver Photo wedding . That day was also the fourth perpetrator released from prisoner . They only worn must report . Bogor Police then issue a Notification Letter Termination Investigation (SP3) on March 18 2020. The reasons termination investigation follow criminal Because *restorative justice* to 4 (four) defendants .⁷

Similar cases also occurred in the regions Pekanbaru , Riau. In the beginning in 2022, busy news peace case rape that occurred in Pekanbaru . In fact , at the end in 2021, maybe circulating news person Police at the Police Station North Tambusai who threatened a rape victim Because reject solution case in a way peace with perpetrator through marriage between the victim and perpetrator . By individuals Police , p This plural called as effort For reach *restorative justice* (justice restorative).⁸

Dotted reject from cases rape mentioned above , in practices implementation *restorative justice* in Regulation Republic of Indonesia State Police Number 8 of 2021 concerning Handling Act Criminal Based on Justice Restorative⁹(*Restorative Justice*) is used as reference base solution case in the investigation and investigation process follow criminal To use can give certainty law , as arranged about termination investigation (SPP-Lidik) and termination investigation (SP3)

⁷ *Ibid* .

⁸ Institute for Criminal Justice Reform, "Restorative Justice That Doesn't Restorate and Doesn't Justice", (25 October 2022), <https://icjr.or.id/> . Accessed on September 30 2023, at 14.05 WIB .

⁹Indonesia, *Regulations Republic of Indonesia State Police regarding Handling Act Criminal Based on Justice Restorative* , Regulation State Police of the Republic of Indonesia Number 8 of 2021, State Gazette of the Republic of Indonesia of 2021 Number 947.

with legal reasons based on justice restorative . will researched and disclosed in writing This is as following :

1. How arrangement solution follow criminal violence sexual level investigation based on Justice Restorative in law Indonesian criminal law ?
2. How application of restorative justice in solution follow criminal violence sexual based on Regulation National Police Number 8 of 2021 concerning Handling Act Criminal Based on Justice Restorative ?

RESEARCH METHODS

Types of research This is study law juridical normative . Study law juridical normative this can also be called as study law doctrinal . Dogmatic Legal Science reviewing , maintaining and developing building law positive with building logic , the so -called “ doctrinal ” studies or also called study “ normative ” law . Approach study use method approach legislation (statute approach), approach case (case approach) and approach conceptual . The type of data in this research is Secondary Data. This is a very important factor, because the data source will relate to the quality and results of the research. Therefore, the data source is a consideration in determining the data collection method. Data collection techniques used in study This is technique study bibliography ((library research). Data collection tools can in the form of document study or studies References or study bibliography (library research) for obtain secondary data .

RESULTS AND DISCUSSION

A. Arrangement Completion Act Criminal Violence Sexuality at the Investigation Level Based on Justice Restorative in Indonesian Criminal Law

1. History of Formation Draft *Restorative Justice*

History of emergence *restorative justice*, it is known as factors in many countries because dissatisfaction and frustration with system formal justice or interest in preserve and strengthen law customs and practices Justice traditional has cause calling For response alternative For crime and chaos social. Many alternatives This provide parties involved, and often the community around, opportunity For participate in finish conflict and handling the consequences. Justice program restorative based on belief that conflicting parties must involved active in complete and reduce consequence negative. *Restorative Justice* is also based, in a number of case, on desire For return to taking decisions and society local. Approach this is also seen as means For push expression peace conflict, for promote tolerance and inclusiveness, building award on diversity and apply practice responsible society answer.¹⁰

Restorative justice arise Because exists dissatisfaction with system Justice criminal offenses that have been there are, which are not can involve the parties to the conflict, but rather only between the state and the perpetrator. Victims as well public local No involved in solution conflict, different with restorative justice system where victims and society involved as party For finish conflict.¹¹

In Indonesia, this is the case criminal resolved through system Justice criminal. System Justice criminal according to Mardjono Reksodiputro is system something public For cope crime. ¹²System goals Justice criminal that is:

- a. Prevent public being a victim of crime;
- b. Finish case the crime that occurred so that public satisfied that justice has enforced and guilty convicted; And
- c. Working so that those who have do crime no repeating again crime¹³

The term restorative justice emerged First time in A book published anthology in 1977 entitled *Restitution in Criminal Justice, A Critical Assessment of Sanctions* edited Joe Hudson and Burt Galaway. Book the is collection of writings from A conference about restitution in 1975. Was deep Albert Eglash book the use term *restorative justice* first time in his writing title *Beyond*

¹⁰Strong Praise Prayitno, *Application The concept of Restorative Justice in Indonesian Justice*, (Yogyakarta: Genta Publishing, 2012), p. 8.

¹¹ Hariyanto, "Legal Legitimacy of Investigators Police Under Standstill Investigation A Form of Restorative Justice Efforts", (Semarang: Thesis at Sultan Agung Islamic University Semarang, 2023), p. 68.

¹² Mardjono Reksodiputro, *System Justice Indonesian Criminal* (See Crimeand Law Enforcement within the Limits of Tolerance), (Jakarta: UI Center for Justice and Legal Service, 1994), p. 84.

¹³ *Ibid*.

Restitution-Creative Restitution . In his writing , Eglash describe three type justice : (1) *retributive justice* ; (2) *distributive justice* and; (3) *restorative justice* .¹⁴

¹⁴Ferry Fathurokhman Ph.D , "The Origin of the Term Restorative Justice", <https://www.biem.co/read/2023/06/25/96899/asal-mula-term-restorative-justice/> , accessed on January 25, 2024 at 22.24 WIB.

Eglash take notes that *retributive* and *distributive justice* own a number of similarity , temporary *creative restitution* own different way in handle crime . For example , *punishment* and *therapeutic treatment* (as Another name for Eglash For *retributive* and *distributive justice*) focuses on behavior perpetrator , temporary *restorative justice* focuses on damage and loss as consequence from action si perpetrator as well as impact towards the victim. ¹⁵From the victim's perspective , retributive and distributive justice see the victim as not more as witness . Temporary *creative restitution* put victims and their interests first as consideration important and gives victims a significant role in get justice and development rehabilitation or correctional programs .

Apparently , Albert Eglash No just people who use it for the first time the term restorative justice, but it can also be seen as embryo from form of a *restorative justice* program . Although so , interestingly , as end the writing is , Eglash confess that *creative* restitution basically designed for the perpetrators crime , if any profit for the victim then that's just a bonus : " *For me, restorative justice and restitution, like its two alternatives, punishment and treatment, is concerned primarily with offenders. Any benefit to victims is a bonus, gravy, but not the meat and potatoes of the process* . As stated Eglash , *restorative justice* has an initial idea that focuses on the perpetrator being responsible on deeds that have been done done , recover circumstances , fulfill what the victim needs . Hence the concept restorative justice , different with justice retribution and justice distributive (*rehabilitative*).¹⁶

In fairness *retributive* and *rehabilitative* , perpetrators attempted convicted For accountable his actions , and correct them self For can do it in time Later return to public . In fairness rhetorical , doer own obligation For restore circumstances as before happen follow criminal . Therefore the interests of the victim (*victim interest*) become important heard and fulfilled so that the perpetrator can be a responsible person . Therefore , he was imprisoned perpetrator become No relevant and not fair in perspective justice restorative , because the victim is not get nothing , and the truth is No finish problem in a way comprehensive . The victim was abandoned so course , and the perpetrator No given chance repair , restore casualty losses . Although in the practice Later , *restorative justice programs* were very diverse , including variety precisely *restorative justice* working / running after criminal dropped .¹⁷

2. Restorative Justice in System Justice Indonesian Criminal

System Justice criminal justice *system* in Indonesia is regulated in a way firm in the Criminal Procedure Code (KUHP) or Law no. 8 of 1981. It is said thereby Because Law no. 8 of 1981 or the actual Criminal Procedure Code (KUHP). identical with enforcement law criminal offense which is something system power or the powers granted to internal countries straighten up law criminal ie police , prosecutors , judges and institutions correctional . Understanding system Justice criminal justice *system* also called term *law enforcement system* because in it contain something understanding , that basically what institutions do That is business concrete For straighten up rules law abstract .¹⁸

¹⁵ *Ibid* .

In various principles and models of *restorative justice approaches*, dialogue processes between the perpetrator and victim are the basic capital and parts most importantly from application justice. This direct dialogue between the perpetrator and the victim makes the victim able to disclose what he felt, expressed hope for fulfillment of rights and desires from something solution case criminal. Through dialogue also actors expected to intrigue his heart. For correct yourself, realize his mistake and accept it not quite enough as consequence from follow crime committed with full awareness. From this dialogue process also the community can join in as well as participate in realize results agreement and monitoring its implementation. So from that's basically it *restorative justice* also known as solution case through mediation (penal mediation).¹⁹

Internal penal mediation law criminal have objective glorious at completion case crime that occurred in public. By conceptual, said by Stefanie Trankle in Barda Nawawi Arief, penal mediation developed that leaving of ideas and principles work (working principles) as following:

- a. Handling conflict (*Conflict Handling / Conflictbearbeitung*): The mediator's job is create the parties forget legal framework and encourage they involved in the communication process. This matter is based on the idea, that crime has give rise to interpersonal conflict. Conflict that is what the mediation process aims to do.
- b. Process oriented. More penal mediation oriented towards process quality rather than results, namely: awakening perpetrator follow criminal will mistakes, needs conflict resolved, calm the victim from fear, etc.
- c. Informal process (*Informal Proceedings/ Informalität*): Penal mediation is an informal process, no nature bureaucratic, avoidant procedure strict laws.
- d. There is participation active and autonomous parties (*Active and autonomous participation / Parteiautonomie / Subject tivierung*): The parties (perpetrator and victim) do not seen as object from procedure law criminal, however more as the subject has not quite enough answer personality and abilities For do. They expected do on his will Alone.²⁰

3. *Arrangement Act Criminal Violence Sexuality in the Police*

Before birth Constitution Act Criminal Violence Sexual (TPKS), institutions enforcer law has publish internal guidelines for handle case Woman face to face with law included case violence sexual - among others Supreme Court through PERMA No. 3 of 2017 concerning Guidelines

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Bryan A. Garner, *Black's Law Dictionary*, Ed Eight, (United States: West Publishing CO, 2004), p. 901.

¹⁹ Hanafi Arief and Ningrum Ambarsari, "Application Principles of Restorative Justice in the System Justice Indonesian Crime", *Al'Adl*, Volume 187.

²⁰ Barda Nawawi Arief, *Penal Settlement Mediation Case Outside the Court*, (Semarang: Pustaka Magister, 2012), p. 4-5.

Putting Women on Trial with Law and the Prosecutor's Office through Guideline No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Case Criminal .

National Police Alone has publish at least three regulation The relevant National Police Chief with handling Act Criminal Violence Sexual (TPKS), namely :²¹

- a. Perkap No. 6 of 2019 concerning Investigation Act Criminal ;
- b. Perkap No. 8 of 2021 concerning Handling Act Criminal based on Justice Restorative ;
- c. Perkap No. 3 of 2008 concerning Establishment of Service Space Specifics and Procedures for Examining Witnesses and/ or Victims of Crimes Criminal .

Institutional internal regulations and guidelines enforcer law This is step forward in the middle emptiness existing laws at the time That . On the other hand , regulations and guidelines This assessed Enough practical used by the authorities enforcer law For understand complexity situations faced by victims and principles gender equality as well friendly Woman in handling case .

- a. Perkap No. 6 of 2019 concerning Investigation Act Criminal

Scope regulation This applies For bearer function environmental investigations National Police . Background publishing Perkap This based on duties , functions and authority Police in the field investigation follow criminal in accordance with regulation legislation , which requires instruction implementation investigation follow criminal . As instruction implementation , Perkap This intended for Investigators can carry out duties , functions and authority in a way professional , transparent and accountable .

Perkap This give instruction implementation about :²²

- 1) Reports and Investigations ,
- 2) Investigation ,
- 3) Investigation Technical Assistance ,
- 4) Supervision and Control , and
- 5) Evaluation Investigator / Investigator Servant

The settings nature general For all type follow criminal , fine For man nor Woman . There are only One intended provisions For handling the perpetrator's PBH that is search . Article 20 paragraph (2) states that search clothing and/ or body against Woman carried out by female police officers /PNS Polri trusted and appointed woman / women For requested assistance by the Investigator / Investigating Officer Servant .²³

- b. Perkap number 8 of 2021 concerning Handling Act Criminal Based on Restorative justice

Perpol This arrange about handling follow criminal based on justice restorative , which is used as reference base solution case in the investigation and investigation process follow

²¹Siti Aminah Tardi, Hayati Setia Inten, Annisa Irianti Ridwan, Andi Misbahul , Sri Nur Herwati , Evandri Pantouw , “ Urgency Arrangement Mechanism Handling Women's Confrontation By Law (PBH) in the Police Republic of Indonesia”, (Jakarta: National Commission on Violence Against Women, 2023), p . 7.

²² *Ibid* .

²³Indonesia, Regulations Police chief Number 6 of 2019 Concerning Investigation Act Criminal Article 20 paragraph (2).

criminal To use can give certainty law , as arranged about termination investigation (SPP-Lidik) and termination investigation (SP3) with legal reasons based on justice restorative .

Perpol This issued with consideration that The National Police of the Republic of Indonesia is necessary realize solution follow criminal with put forward justice stress restorative recovery back to the situation restoration and balance protection and interests of victims and perpetrators follow criminal offense that is not punishment oriented is something need law public . At a time For answer development need law a society that fulfills a sense of justice all party , required formulation draft new in enforcement law criminal law that accommodates applicable norms and values in public as solution at a time give certainty law especially expediency and a sense of justice public .²⁴

Handling follow possible punishment resolved based on justice restorative , excluded For follow criminal terrorism , act criminal to state security , act criminal corruption and crime criminal to people's lives . With thus , other than those excluded all follow criminal can resolved with mechanism justice restorative , incl violence to Woman . Mechanism justice restorative this also delivers condition special , only For Act Criminal Drugs , Action ITE Crimes and Actions Traffic Crime .

Meanwhile Article 23 of the Law Act Criminal Violence Sexual (TPKS) mentions that case Act Criminal Violence Sexual No can done settlement outside the judicial process , except to Child perpetrators as arranged in Constitution .²⁵ So that Perpol *Restorative Justice* This need synchronization and harmonization with provision Constitution Act Criminal Violence Sexual (TPKS).

B. Application *Restorative Justice* in Resolution Act Criminal Violence Sexual Based on Regulation National Police Number 8 of 2021 Concerning Handling Act Criminal Based on Justice Restorative

1. Mechanism Handling System Justice Criminal Integrated Handling Violence Cases Against Women (SPPT-PKKP)

One of framework the laws and policies pushed by the National Commission on Violence Against Women are System Justice Criminal Integrated Handling Violence Cases Against Women (abbreviated as SPPT-PKKTP). Concept built since 2003 , it is based on need handling violence to Woman through system Justice possible punishment fulfil right Woman on justice , truth , and restoration . Can not denied women victims of violence experience obstacle in access system Justice criminal , because system law Not yet fully give guarantee protection and fulfillment victims' rights .

²⁴ Siti Aminah Tardi, Hayati Setia Inten, Annisa Irianti Ridwan, Andi Misbahul , Sri Nur Herwati , Evandri Pantouw , *Op. Cit* , p . 8.

²⁵Indonesia, Law Republic of Indonesia Number 12 of 2022 concerning Act Criminal Violence Sexual Article 23.

System Justice Criminal Integrated Handling Violence Cases Against women , among others aim For :²⁶

- a. Speed up the settlement process case ; And
- b. Ensure that rights Woman face to face with law guaranteed by law No violated .

The parties in question in SPPT-PKKTP are subsystem Justice criminal that is :

- a. Investigator / investigators ;
- b. Prosecutor general ;
- c. Judges and institutions correctional ; And
- d. Subsystem consisting recovery from service reporting , health physical and mental, psychosocial and rehabilitation social , mentoring law , and empowerment economy .

Mechanism handling Act Criminal Violence Sexual (TPKS) at level Police that is :²⁷

- a. Investigators in charge TPKS cases must be fulfil condition own integrity and competence about Handling perspective matters right basic humans and Victims and have follow training related Handling case Act Criminal Violence Sexual .
- b. Investigator do inspection towards witnesses/victims/ suspects / defendants with still uphold tall right basic human , honor , dignity , without intimidation , and no justify error , no do victimization on method life and decency , incl experience sexual with nature questions ensnare or whether it causes trauma to the victim or not relate with Act Criminal Violence Sexual .
- c. Victims can accompanied by a Companion for all level inspection .
- d. Investigator must tell right on Restitution to Victims and LPSK.
- e. Investigator can do foreclosure to treasure riches perpetrator Act Criminal Violence Sexual as guarantee Restitution with permission local district court .
- f. police must accept Report in space service special guarantee safety and confidentiality of Victims.
- g. Reporting accepted by the officer or carrying out investigators service special more victims.
- h. Within 1 x 24 hours calculated since accept report Act Criminal Violence Sexual , police can give Protection temporary to the Victim and so on must submit request Protection to LPSK.
- i. Investigator in matter suspect No detained can emit determination restrictions motion perpetrator , whether with purpose For distance perpetrator from the Victims within distance and time certain nor restrictions right certain from perpetrator .
- j. Investigator can do examination of Witnesses and/ or Victims through recording electronic Good in a way direct nor through means electronic from distance Far .
- k. Inspection at stage investigation done in space service especially in the police , in matter certain , examination can carried out at UPTD PPA.

²⁶Siti Aminah Tardi, Hayati Setia Inten, Annisa Irianti Ridwan, Andi Misbahul , Sri Nur Herwati , Evandri Pantouw , *Urgency Arrangement Mechanism Handling Women's Confrontation By Law (PBH) in the Police Republic of Indonesia* , (Jakarta: National Commission on Violence Against Women, 2023), p . 3.

²⁷ *Ibid* , p . 6.

- l. Before do inspection towards victims, investigators must coordinate with Companion about readiness and need related Victim's condition . In the event that the victim experiences severe trauma , the investigator can convey question through Companion .
- m. Investigator authorized make a data and/ or system related electronics Act Criminal Violence Sexual so as not to can accessed besides for the judicial process .

2. Mechanism Termination Investigation for *Restorative Justice* Efforts

Since stipulation : (1) Changes Second The 1945 Constitution of the Republic of Indonesia (UUD 1945) Chapter XII concerning National Defense and Security ; (2) RI MPR Decree Number VI/MPR/2000 (separation of TNI and Polri); and (3) MPR RI Decree Number VII/MPR/2000 (the role of the TNI and the Role of the Police), occurred change big to place , position , function and duties police in framework of the Unitary State Republic of Indonesia. Through change constitution confirmed about separation institutional Indonesian National Army from National Police of the Republic of Indonesia. The provisions of Article 30 paragraph (4) of the 1945 Constitution result amendment stipulates : " The National Police of the Republic of Indonesia as guarding State apparatus security and order public on duty protect , protect , serve public as well as straighten up law .

Based on structure constitutional according to the 1945 Constitution, institutions police is under Ministry scope (unit administration government) led by the Head of Government (President as head executive). Implementation duties and authority daily delegated to Head National Police appointed by the President . This matter firm stated in provisions of Article 5 of the Law Number 2 of 2002 concerning Police The Republic of Indonesia stated that The National Police of the Republic of Indonesia is below President .²⁸ Furthermore provisions of Article 2 of the Law Number 2 of 2002 concerning Police The Republic of Indonesia emphasized that task police is For run one function state government in the field maintenance security and order society , enforcement law , protection , protection and service to public .²⁹

Function purpose government based on provisions of Article 1 number 2 of the Law Number 30 of 2014 concerning Government Administration is function in carry out-organize administration encompassing government function regulation , service , development , empowerment and protection . Duties and authority protect , protect , look after security and order society (*internal order*) is delegated to institution police . Consequence from That is that Indonesian Police now This is part from government agencies responsible civil answer direct to President . So one task police (field enforcement (criminal) law must understood as part task government in the field enforcement law mandatory punishment executed accordingly law .

Restorative justice looking that crime No just as violation towards the state, rather put A crime as something symptoms that occur part from action social . Focus the solution No directed

²⁸Indonesia, Law Number 2 of 2002 concerning Police (State Gazette of the Republic of Indonesia 2002 Number 2 , Supplement State Gazette of the Republic of Indonesia Number 4168) Article 5.

²⁹ Indonesia , Law Number 2 of 2002 concerning Police (State Gazette of the Republic of Indonesia 2002 Number 2 , Supplement State Gazette of the Republic of Indonesia Number 4168) Article 2 .

For punish perpetrator crime , but rather on recovery relationships social and justice broken society consequence crime . John Braithwaite, one of them figure front in defend restorative ideas , put forward that *restorative justice* as direction new between *justice* and *welfare* model as well between *retribution* and *rehabilitation* .³⁰ By simple , *restorative justice* is alternative in system Justice criminal with put forward integral approach between perpetrator with victims and the community as One unity For look for solution as well as back to the pattern connection Good in public .³¹ Related with investigation , no There is none of the provisions that apply written arrange approach *restorative justice* in finish follow criminal level investigation .

If in the investigation process found reason For investigation dismissed , then investigation can stopped . Reason for giving authority termination This can stated among others:

- a. For straighten up principle enforcement fast , precise and cost legal light and at the same time For upright certainty law in life public . because if investigator Already concluded that based results inquiry and investigation No Enough proof or reason For demand suspect in advance the judge For What he must drag on handle and check suspect . More Good investigator in a way official state termination inspection investigation , so that with thereby created certainty law Good for investigator Alone especially to suspects and the public .
- b. So that the investigation spared from possibility demands change loss . Because if the thing Later continued , but later it turns out No Enough proof or reason For demand or punish , with itself give right to suspect / accused For demand change loss based on Article 95 of the Criminal Procedure Code (KUHAP).³²

The Criminal Procedure Code (KUHAP) states in a way limited reasons used investigator For do termination investigation , which is regulated in Article 109 Paragraph 2 in full sounds as as follows : “In case investigator stop investigation Because No there is Enough proof or incident the No is follow criminal or investigation tell matter That to prosecutor general , suspect or his family .³³

Based on the provisions of Article 109 Paragraph 2 of the Criminal Procedure Code above , exist a number of circumstances Where A investigation to case criminal can stopped . Circumstances the is No there is Enough evidence , events it turns out No follow crimes and cases the closed by law .

Termination investigation in discussion this time No in the concept of the Criminal Procedure Code , but rather seen from the concept of restorative justice. This matter is something draft new in enforcement law in Indonesia. In completion case through justice restorative , police consider a number of things , including :³⁴

³⁰S. Candra, “Restorative Justice: A Overview to Criminal Law Reform . Journal Rechtsvinding ”, Vol.2 No.2, 2013, p . 268.

³¹ K. P. Prayitno , “Restorative Justice for Judiciary in Indonesia (Perspective Juridical Philosophical in Law Enforcement in Concreto)”, Journal Legal Dynamics , Volume 12 Number 3, 2012, pp. 407-420.

³² Hariyanto , *Op. Cit* , p . 110.

³³Johana Olivia Rumajar , “Reasons for Dismissal Investigation Something Act Criminal Corruption ”, Lex Crimen Journal Vol.III No. 4 August-November 2014. p 96.

³⁴ Hariyanto , *Op. Cit* , p . 114

- a. From the corner look perpetrator , inside matter This can is known background behind from objective crime , circumstances social economy perpetrator , perpetrator Want to confess the deed , the perpetrator willing give change make a loss to victims, perpetrators promise No repeat Again the crime , the perpetrator willing built , and asked Sorry to victims and victims' families ;
- b. From the corner view of the victim, availability of the parties especially willing victims reconcile and forgive perpetrator without pressure ;
- c. In terms of case , settled matter No is interest general , so No give rise to noise in public Mechanism application *restorative justice* in the police before processed more carry on to Prosecutor's Office , that is as following :

- a. Done analysis administration after exists reception application peace between second party ;
- b. If application peace formally fulfilled , then in order to get agreement so submitted to superior investigator ;
- c. Determination time for the litigants For sign statement peace ;
- d. Agreement agreement that has been made signed by the parties to the lawsuit produced from implementation conferences ;
- e. Making official notes about application termination things done by title matter specific ;
- f. Execution title matter specific ;
- g. Compilation documents ;
- h. Publication of SP3 based on restorative justice;
- i. Issuance of SP3 signed by superior investigator ;
- j. Recording to in new register book B-19.³⁵

The benefits obtained with exists application of restorative justice to stages investigations , including :

- a. Open the way to rights litigants Because can involved directly and together finish problems ,³⁶
- b. Absence cases piling up ;
- c. Case can resolved with simple , fast and light cost Because No need through court proceedings ;
- d. Reduce capacity in institutions society ;
- e. Avoid exists lawsuit pretrial , change loss , or rehabilitation ;
- f. Reflect justice desired by society ;
- g. Create security and order in public ;
- h. Prevent vigilantism ;
- i. Prevent happen future crime ;

³⁵ *Ibid* , p . 120

³⁶ *Ibid* .

- j. Increase trust public to institution police ;
- k. Avoid practice of KKN officers enforcer law ;
- l. Prevent emergence crime from perpetrators who do not satisfied on punishment imposed to him .

According to Eva Achjani ULFA that “ *Restorative Justice* in enforcement law criminal with base law form discretion related with problem follow still criminal is at in the domain of investigation by the investigator , is intended that investigator as apparatus enforcer law must do adjustment yourself and search guidelines or pattern For form back , repair return , form more OK , carry on change and renewal , do preparation back so that perpetrators and victims are encouraged do discussion For repair condition To use return circumstances like beginning .³⁷

CONCLUSION

1. Arrangement solution follow criminal violence sexual level investigation based on Justice Restorative in Indonesian Criminal Law is contained in Perkap no. 8 of 2021 concerning Handling Act Criminal based on Justice Restorative , which is used as reference base solution case in the investigation and investigation process follow criminal To use can give certainty law , as arranged about termination investigation (SPP-Lidik) and termination investigation (SP3) with legal reasons based on justice restorative .
2. Application *restorative justice* in solution follow criminal violence sexual based on Regulation National Police Number 8 of 2021 concerning Handling Act Criminal Based on Justice Restorative . Handling follow possible punishment resolved based on justice restorative , excluded For follow criminal terrorism , act criminal to state security , act criminal corruption and crime criminal to people's lives . Benefits of *restorative justice* in solution follow criminal violence sexual from Opening the way to rights litigants Because can involved directly and together finish problem .

SUGGESTION

1. Article 23 of the Law Act Criminal Violence Sexual (TPKS) mentions that case Act Criminal Violence Sexual No can done settlement outside the judicial process , except to Child perpetrators as arranged in Constitution . So that Perkap No. 8 of 2021 concerning Handling Act Criminal based on Justice Restorative This need synchronization and harmonization with provision Constitution Act Criminal Violence Sexual (TPKS) .
2. Problem in application *restorative justice* can happens because arrangement application *restorative justice* in Indonesia still nature partial by each apparatus enforcer law , conditions the rules are still Partial the potential result diverse practice application *restorative justice* so that need Law was made about System Justice Criminal Integrated to reflect exists certainty law for public .

³⁷Eva Achjani Ulfa , *Shift Paradigm Penalty* , (Bandung: Lubuk Agung, 2011), p . 80.

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