

Restorative Justice in The Settlement of Fraud Crimes in The Banyumas Police Criminal Investigation Unit

Marsitiningsih¹, Ira Citra Ningrom², Yusuf Saefudin³

^{1,3}Faculty of Law, Universitas Muhammadiyah Purwokerto, Indonesia

²Faculty of Medicine, Universitas Muhammadiyah Purwokerto, Indonesia

ARTICLE INFO

Article history:

DOI:

[10.30595/pssh.v14i.911](https://doi.org/10.30595/pssh.v14i.911)

Submitted:

June 08, 2023

Accepted:

September 29, 2023

Published:

November 16, 2023

Keywords:

Crime, Fraud, Restorative Justice

ABSTRACT

The settlement of fraud cases with restorative justice is an innovative step to follow the dynamics of the development of the legal world which began to shift from positivism to progressive. Restorative justice is an approach that focuses more on the conditions for the creation of justice and balance for the perpetrators of criminal acts and the victims themselves. The research method used is empirical juridical, namely legal research on the implementation of restorative justice in action in the settlement of fraud cases by the Banyumas Police Criminal Investigation Unit. The purpose of this research is to analyze the settlement of fraud crimes through restorative justice and to find out the obstacles in the settlement of theft crimes through restorative justice at Satreskrim Polresta Banyumas. The results showed that the Banyumas Police Criminal Investigation Unit resolved fraud cases using a restorative justice approach based on Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, namely by bringing together the perpetrator and victim and seeking to restore the losses suffered by the victim. The obstacles faced by Satreskrim Polresta Banyumas are that the victim does not want the involvement of outside parties in resolving his case and the inability of the perpetrator to fulfill the compensation requested by the victim, causing the settlement of fraud cases through restorative justice to fail.

This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).



Corresponding Author:

Marsitiningsih

Faculty of Law, Universitas Muhammadiyah Purwokerto

Jl. KH. Ahmad Dahlan, Kembaran, Banyumas, Jawa Tengah 53182, Indonesia

Email: ningpriyanto@gmail.com

I. INTRODUCTION

Restorative Justice was born and developed in the United States, first introduced by Albert Eglash in 1977 and began to be practiced in the settlement of criminal cases in Indonesia in 2012.¹ Restorative justice is essentially an effort to divert from the criminal justice process towards settlement through peaceful means between the two parties. Restorative justice cannot be applied to all types of criminal events but in minor crimes it can be applied such as in cases of fraud.²

¹ Hariman Satria, 2018, Restorative Justice: Paradigma Baru Peradilan Pidana, *Jurnal Media Hukum* 25, no. 1. hlm. 34.

² G.Widiartana, 2013, Viktimologi Perspektif Korban Dalam Penanggulangan Kejahatan, *Universitas Atma Jaya Yogyakarta*, Yogyakarta, hlm.102.

The settlement of fraud cases through restorative justice is considered more in accordance with the principles of simple, fast and cheap justice and the rights of victims are better protected. Justice based on peace between perpetrators, victims and the community is the moral ethic of restorative justice, therefore justice is carried out as the "Just Peace Principle". This principle reminds us that justice and peace are essentially inseparable. Peace without justice is oppression, justice without peace is a new form of persecution or oppression.³ In resolving criminal cases through restorative justice at the police level, the police act as facilitators in resolving a case by reconciling the parties based on the values of togetherness, kinship, deliberation, and other moral values.⁴ Restorative justice was first regulated in the Chief of Police Circular Letter Number: SE/8/VII/2018 concerning the Application of Restorative Justice in Criminal Case Resolution. The circular letter is used as a legal basis and guideline for Police Investigators to carry out investigations or investigations, including as a guarantee of legal protection and supervision in applying the concept of restorative justice.⁵

Responding to the development of legal needs of society that fulfill the sense of justice of all parties, in accordance with Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, the National Police then formulated a new concept as outlined in the Indonesian National Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. The Police Regulation is a breakthrough from the Police for handling criminal offenses based on restorative justice.⁶ Perpol No. 8 defines Restorative Justice not as an amicable termination of the case, but more broadly as fulfilling the sense of justice of all parties to the case.⁷ Since its launch in August 2021, Police Regulation Number 8 of 2021 has begun to be implemented, especially in the case of fraud case settlement in the jurisdiction of the Banyumas Police.

II. RESEARCH PROBLEMS

1. How is the settlement of fraud through restorative justice at the Banyumas Police Criminal Investigation Unit?
2. What are the obstacles in the settlement of fraud through restorative justice at Banyumas Police Criminal Investigation Unit?

III. RESEARCH METHODS

The method used in this research is empirical juridical with qualitative descriptive research specifications. The empirical juridical research method is a legal research method regarding the enactment or implementation of normative legal provisions in action on each specific legal event that occurs in society. In this study, researchers analyzed the settlement of fraud through restorative justice at the Banyumas Police Criminal Investigation Unit. This type of research focuses on the behavior of the legal community and is based on facts that exist in society. The research was conducted at Banyumas Police Station by identifying and clarifying legal facts with police officers (investigators) who handled fraud cases at the Banyumas Police Criminal Investigation Unit.

IV. RESULT AND DISCUSSION

1. Settlement of fraud through restorative justice in the Banyumas Police Criminal Investigation Unit

The settlement of criminal cases using a restorative justice approach is the settlement of criminal acts by involving the perpetrator and the victim, the perpetrator's family and the victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair settlement through peace by emphasizing restoration to the original state. The concept of Restorative Justice is basically carried out through discretion and return, namely the transfer of the criminal process through non-litigation to be resolved by deliberation of both parties. Settlement through mutual agreement is not new to Indonesia, even customary law in Indonesia does not distinguish between the settlement of criminal and civil cases, all cases can be resolved by deliberation with the aim of getting a restoration of the situation.⁸ The restorative justice approach in resolving fraud cases focuses on the fulfillment of losses and restoration of victims' rights by the perpetrator. The victim is included in the case resolution process and the perpetrator is encouraged to take responsibility for his actions by correcting his mistakes by apologizing and upholding the rights of the victim. Upholding the right to restore a fair situation in resolving fraud and embezzlement cases is based on mutual respect between the parties to avoid future disputes.

For fraud cases that will be resolved with restorative justice, a special case title will be conducted. In this case title, special cases will be reviewed and considered in advance by internal parties including assistant

³ Irvan Maulana, dkk, 2021, Konsep dan Implementasi Restorative justice di Indonesia, *Datin Law Jurnal* 2, no.2. hlm. 54.

⁴ *ibid*

⁵ Surat Edaran Kapolri Nomor 8 Tahun 2018 tentang Penerapan Restorative Justice dalam Penyelesaian Perkara Pidana.

⁶ Peraturan Kepolisian Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.

⁷ *ibid*

⁸ Duwi Aryadi. 2020. Implementasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Sebagai Perwujudan Nilai-Nilai Yang Berwawasan Pancasila. *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 9. no. 2. hlm. 145.

investigators and heads of local function units so that the determination to carry out restorative justice does not have an impact on the community at large and the settlement of the case will involve the Supervision Section (Siwas), Profession and Security (Propam) and Legal Aid (Bankum).

When the case is at the investigation level, there are no more obstacles to making peace, but if the case is already at the investigation level, restorative justice can be carried out if the file has not been sent a Notice of Commencement of Investigation to the Prosecutor or Attorney. The next step is for the perpetrator or victim to submit a written request addressed to the Chief of Banyumas City Resort Police, the request letter as intended is made by the perpetrator, victim, perpetrator's family and victim's family.

The application letter must be accompanied by other documents such as a statement of peace between the perpetrator and the victim and evidence that the victim's rights have been restored, such as proof of transactions using account mutations or treatment from a doctor. Reconciliation means that the perpetrator and victim have made a reconciliation agreement with a special case title (mediation) attended by the victim's family and the perpetrator's family as well as witnesses.

The application letter must be accompanied by other documents in the form of a statement of peace between the perpetrator and the victim, then proof that the victim's rights have been restored such as proof of transactions using account mutations or treatment from a doctor. The peace in question is that previously the parties, namely the perpetrator and the victim, had made a peace agreement with a special case title (mediation) which was attended by the victim's family and the perpetrator's family and also witnesses. The conception of punishment in restorative justice does not recognize the realm of punishment aimed at retaliation, but rather leads to the concept of restoring the conflict that occurred between the parties.

2. **Obstacles in resolving fraud crimes through restorative justice at the Banyumas Police Criminal Investigation Unit.**

Law enforcement is the activity of harmonizing the relationship of values described in the rules, steady views and manifesting them in attitudes, actions as a series of final stage value elaboration to create peaceful living. Restorative justice is a "victim-centered response to crime that allows victims, offenders, their families, and representatives of the community to address the damage and loss caused by the crime".⁹ Case settlement with the principle of restorative justice is implemented in the form of mediation or in some terms it is also called mediation in criminal cases, or mediation in penalties, but along with the development of legal language it no longer uses mediation, in the case of restorative justice it is called a special case title. Therefore, the settlement of criminal cases with restorative justice principles in the form of mediation should be included or regulated explicitly in the applicable legal system.¹⁰

In terms of law enforcement of fraud cases using the restorative justice approach, the Banyumas Police Criminal Investigation Unit is often constrained by several obstacles originating from the parties involved (perpetrators and victims). One of the conditions that form the basis for the implementation of restorative justice is the existence of peace from both parties and also the fulfillment of victims' rights which is the responsibility of the perpetrator. The fulfillment of the victim's rights is carried out by returning money to the victim, for example by transferring and when the two parties are brought together, proof of transfer is shown and a receipt is made by the investigator as a receipt which then becomes evidence that the perpetrator's obligations have been fulfilled. However, it often happens that when the victim asks for their rights back and the perpetrator promises to compensate the victim, it turns out that the perpetrator is not fully prepared to fulfill the victim's rights.

The obstacle that comes from the investigator's side is the difficulty in presenting community leaders. In the general provisions of the Perpol, it is required that there are religious leaders, traditional leaders, community leaders, who are involved in case resolution, but victims or perpetrators often do not want their problems to be known by others because they are embarrassed. When the investigator wanted to bring in a public figure witness, both parties did not agree, while the public figure presented in the settlement of the case had an important role as a witness and was expected to later convey to the community that the fraud problem that occurred between the perpetrator and the victim had been resolved with restorative justice where the perpetrator had returned the loss to the victim.

The obstacle related to the implementation of the special case title is that the special case title must be held at the police station because if it is carried out at the police station closest to the position of the victim or perpetrator, it is possible that external parties such as the Supervision Section (siwas), Profession and Security (propam) and Legal Aid (bankum) are also accompanied by investigators and superior investigators (kasat) while

⁹ Vivi Arfiani Siregar, 2019, Analisis Eksistensi Restorative Justice Dalam Sistem Peradilan Pidana di Indonesia, *Jurnal Hukum Das Sollen* 3, no.1. hlm. 5.

¹⁰ Afhonul Afif. 2015. Pemaafan, Rekonsiliasi, & Restorative Justice. *Yogyakarta: Pustaka Pelajar*. hlm. 50.

the legal area of Polresta Banyumas is quite large so it is sometimes difficult to reach the domicile of the victim and perpetrator.

V. CONCLUSION

The application of the concept of restorative justice is the choice of the various parties involved (victims, victims' families, perpetrators, perpetrators' families and investigators) with the consideration that the application of the concept of restorative justice fulfills a sufficient sense of justice for both parties, the settlement process is faster, it can avoid punishment for the perpetrator, the victim's loss is replaced by the perpetrator based on a mutual agreement. The settlement of the crime of fraud with a restorative justice approach at the Banyumas Police Criminal Investigation Unit is carried out based on Police Regulation Number 8 of 2021. Investigators will resolve the case through administrative procedures and management of criminal investigations as stipulated in Police Regulation Number 8 of 2021. Termination of investigation and investigation of fraud cases begins with a mediation request letter from both parties and is continued with a special case title according to Article 15 of Police Regulation Number 8 of 2021 which is equipped with a peace statement document and proof that the victim's rights have been restored.

The obstacles in resolving fraud cases using the restorative justice approach at Polresta Banyumas are the unpreparedness of the perpetrator to compensate the victim and the reluctance of the parties to have community leaders involved in the case being resolved.

REFERENCES

- Afif, Afhonul, *Pemaafan, Rekonsiliasi, & Restorative Justice*, Yogyakarta, Pustaka Pelajar (2015).
- Soekanto, Soerjono, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, Jakarta, Rajawali Pers, 2014.
- Widiartana, G., *Viktimologi Perspektif Korban Dalam Penanggulangan Kejahatan*, Yogyakarta, Universitas Atma Jaya Yogyakarta, 2013.
- Duwi Aryadi, Implementasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Sebagai Perwujudan Nilai-Nilai Yang Berwawasan Pancasila, *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 9. no. 2, (2020).
- Hariman Satria, Restorative Justice: Paradigma Baru Peradilan Pidana, *Jurnal Media Hukum* 25, no. 1. (2018).
- Irvan Maulana, et all , Konsep dan Implementasi Restorative justice di Indonesia, *Datin Law Jurnal* 2, no.2, (2021).
- Vivi Arfiani Siregar, Analisis Eksistensi Restorative Justice Dalam Sistem Peradilan Pidana di Indonesia, *Jurnal Hukum Das Sollen* 3, no.1. (2019).