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# **APPLICATION OF RESTORATIVE JUSTICE AS AN ALTERNATIVE TO SETTLEMENT IN CRIMINAL ACTS OF FRAUD AND EMBEZZLEMENT IN THE JURISDICTION OF SURABAYA POLICE AREA, INDONESIA**

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## **ABSTRACT**

The purpose of restorative justice in the settlement of criminal cases is to restore justice to its proper position. Both the perpetrator and the victim have apologized and agreed not to sue each other again in the future. It is hoped that the creation of peace between the perpetrator and the victim through deliberation can reduce the number of prisoners both in the Correctional Institution and in the jails; remove the stigma or stamp of criminality and return the perpetrators of crimes to the general public; criminals will be able to recognize their mistakes and not repeat their actions; and reduce the workload of the police, prosecutors, penitentiaries, courts, and penitentiaries. The fundamental problem of this research is the application of restorative justice as an option for resolving cases of fraud and embezzlement at the Surabaya Police Station, as well as obstacles in the application of restorative justice as an alternative to resolving cases of fraud and embezzlement at the Surabaya Police Station. This study uses an observational research approach in the form of a survey, namely an investigation carried out directly at the research site using data collection instruments in the form of interviews. Normative legal research is used in this article. The research findings show that: resolving criminal cases of fraud and embezzlement through restorative justice does not reduce criminal behavior. It is recommended that the sentencing policy be changed for the purpose of resolving lawsuits. The obstacle to the adoption of this restorative justice principle is the lack of an umbrella or legal foundation that is similar to both the Criminal Code and the Criminal Procedure Code since it is still governed in the internal police.

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## **Introduction.**

Security is a defining element in the administration of a sovereign and authoritative government, which is the essential necessity to support the development of a just, successful, prosperous, and civilized civil society based on Pancasila and the 1945 Republic of Indonesia Constitution. attempts to carry out the tasks and roles of the police in ensuring public security and order, law enforcement, protection, and community service while safeguarding human rights (Mucsllich, 2012).

In realizing a just, prosperous, and civilized society based on Pancasila and the 1945 Constitution (UUD 1945), it is necessary to guarantee domestic security. To realize this security, the Indonesian National Police (Polri) is required as stipulated in Article 30 Paragraph 4 of the 1945 Constitution, which functions as a state instrument that maintains public security and order and has the task of protecting, nurturing, serving the community, and enforcing the law. The National Police is one

of the many police forces in the world that play a very large role in the progress of the nation. The police are also a positive legal force for the law itself, meaning that the police play a role in moving the law so that it can run as mandated by the legislators. According to Satjipto Rahardjo, "the development of Indonesian society and the international community requires that the police not only stand as guardians of the status quo from the law, but as the leader of the nation, who must always be one step ahead" (Rahardjo, 2002).

One of the main tasks of the National Police in achieving internal security is stated in Law No. 2 of 2002 concerning the Indonesian National Police, namely law enforcement through the process of investigation. According to Article 1 paragraph (2) of the Criminal Procedure Code, an "investigation" is defined as a series of investigators' efforts in accordance with the law to find and collect evidence of a criminal act, which with that evidence reveals the nature of the crime that occurred and identifies the suspect (KUHP and KUHP). (KUHP, 2017). Meanwhile, according to Article 1 paragraph (10) of Police Law No. 2 of 2002, investigators are National Police of the Republic of Indonesia officials who are given the authority to conduct investigative efforts (Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, 2010). In Indonesia, the process of investigation and investigation by Polri investigators is the first point of entry into law enforcement through the criminal justice system. The process of investigating a criminal case is the main factor in determining whether or not a criminal case can proceed to the prosecution and criminal justice processes.

In January 2022, the people of Surabaya were busy discussing cases of fraud and embezzlement. The Satreskrim Police Station in Surabaya revealed a suspect in a fraud and embezzlement case with a recruitment mode to become a State Civil Apparatus (ASN) at the Surabaya City Dispensa. ADS always accompanies TR and ensures that the victims are also promised to become ASN. He knows that they receive money from the victims and claims to know the City Government employee in the civil service department, who according to him can help recruit prospective ASN employees (insiders) (Utomo, 2022). From a number of people who entered, the police finally determined that TI (57), who worked as an ASN and ADS (37), was the suspect. The two of them are husband and wife who are married in a serial manner. On November 23, 2021, after learning of reports from victims of fraud, TI did not come to work and left Surabaya City for the Sindangsari Village area, Tanjung Bintang District, and South Lampung Regency. It was the house of his wife's parents, whose initials were ADS. Of the seven alleged victims, they were suspected of embezzling \$1 billion. To account for his actions, the suspect was charged with articles 378 and 372 of the Criminal Code with a penalty of 4 years in prison (Muhammad, 2022).

The crime of fraud and embezzlement is reported to be a crime that is very disturbing to the public and is the most reported to the police. According to data from the National Police Headquarters, the number of reports of fraud cases dominated by online fraud (cybercrimes) for the January-July 2019 period totaled 1,243 cases (Lidwina, 2019). Many factors contribute to the rise in fraud and embezzlement cases in Indonesia, including advances in science and technology, which cause the form or mode of operation of fraudulent crimes to become diverse and difficult to track, such as fraud through social media. Besides that, economic needs and consumptive lifestyles are the main factors motivating the perpetrators to carry out their actions.

According to Prof. Satjipto Raharjo's progressive legal theory, the law must be able to give happiness to its people (Rahardjo, 2010). The fundamental tenet of progressive law is that law exists for humans, not for humans to exist for law. The law was created to achieve human welfare and happiness. According to B. Arief Sidharta, progressive legal characters hold fast to their conscience and reject material servants (Rahardjo, 2012). In a state of law, the police are an important pillar for bringing legal promises into reality (Rahardjo, 2002). According to Satjipto Rahardjo, the police in the field exercise discretion because if general provisions are forced to be applied to certain unique events, the law can risk causing social unrest. Actually, the law does not plan to create such a commotion, so police discretion is needed. With the police's discretion, the law can find its meaning (Rahardjo, 2002).

Police discretion is one of the powers possessed by the National Police as regulated in Article 18 paragraph (1) of Law No. 2 of 2002 concerning the Indonesian National Police. Discretion is the authority possessed by the National Police in carrying out their duties and authorities and being able to act according to their own judgment. The discretionary authority of the police has great power because the police can make decisions that can be outside the provisions of the law but are justified or allowed by the law. In this case, every member of the National Police is required to be able to interpret their environment with the wisest

possible considerations. In exercising discretion, every member of the National Police must act after considering the benefits and risks of their actions and truly in the public interest.

One of the ideal forms of approach for the enforcement of general criminal law (fraud and embezzlement) by Polri investigators is restorative justice. One of the discretionary efforts in handling criminal acts as part of the implementation of the concept of progressive law by Polri investigators is through the application of restorative justice in the process of investigating criminal cases. Restorative Justice is the process of resolving criminal cases with the aim of achieving justice that is fully implemented and achieved by perpetrators, victims, and the wider community (Edi Setiadi, 2017). The rules regarding the method of resolving cases by Polri investigators through a restorative justice approach have not been clearly regulated in the legislation. The application of restorative justice, which has been regulated by laws and regulations, namely in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which regulates the settlement of cases with child offenders, as well as the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2002 concerning the Adjustment of Limits for Minor Crimes and the Amount of Fines in the Criminal Code

There are many examples of criminal law enforcement cases in courts that have recently received public attention, which should not need to be resolved through a formal criminal justice process but can be resolved with a restorative justice approach that is based on or in accordance with the discretionary authority of the police, and this needs to be done. This is done because the role and function of the judiciary are considered to be overloaded, slow, a waste of time, very expensive, and unresponsive to the public interest, or considered too formalistic and too formal. technically (technically) (Corley & Reed, 1986).

According to Adrianus Meliala, as quoted by Eli Satris, it is said that there are several other types of general crimes regulated in the Criminal Code (KUHP), which do not have to be resolved through a formal criminal justice system but rather through criminal policy with the concept of mediation based on the discretionary authority of the police. Potential criminal cases are resolved through out-of-court settlement efforts, including by exercising discretion, among others: 1. Cases of fraud and embezzlement in which the perpetrator has returned the loss suffered by the victim; 2. Violations as stipulated in the third book of the Criminal Code; 3. minor offense punishable by imprisonment or imprisonment for a maximum of 3 (three) months or a fine of Rp. 7,500 (seven thousand five hundred rupiah); 4. Minor crimes (*lichte misdrijven*) as regulated in the Criminal Code are as follows; a. Article 302 concerning light abuse of animals; b. Article 352 concerning minor mistreatment of human beings; c. Article 364 concerning minor theft; d. Article 373 concerning light embezzlement; e. Article 379 concerning fraud; f. Article 482 concerning light detention; and g. Article 315 on minor insults.

Examples of cases of fraud and embezzlement amounting to Rp. 3,910.000.000,- are given in the Kabareskrim Telegram Letter Number: STR/583/VII/2012 dated August 8, 2012 regarding the Handling of Cases Relating to the Concept of Restorative Justice, with Police Report Number: LP/4X/2007/Direskrim Polda DIY dated September 20, 2007. In the Telegram Newsletter of Kabareskrim number: STR/583/VII/2012, it is also explained that the handling of cases exemplified in the letter has described the occurrence of restorative justice at the level of cassation, so that it is a legal finding that can be used as a basis for consideration for Indonesian Police investigators in carrying out law enforcement. According to the explanation above, this study tries to examine the Application of Restorative Justice as an Alternative Settlement for Fraud and Embezzlement in the Surabaya Police Area.

The purpose of this study is to investigate the key issues with the use of restorative justice at the level of inquiry in the resolution of criminal cases of fraud and embezzlement. These issues can be expressed as follows:

- 1) How is the application or implementation of Restorative Justice as an Alternative Settlement for Fraud and Embezzlement Crimes in the Surabaya Police Legal Area?
- 2) What Are the Barriers to the Implementation of Restorative Justice as an Alternative Settlement for Fraud and Embezzlement Crimes in the Surabaya Police Legal Area?

### **Research Methods.**

The type of qualitative research used by researchers in this study is a case study. A case study is a study that explores a case in depth, collecting complete information using various data collection procedures based on a predetermined timeline. This case can be an event, activity, process, or program.

This type of case study research is appropriate as a method to answer questions in this study, namely the effect of applying restorative justice in resolving cases for interested parties, especially investigators, victims, and suspects, and investigators' considerations of applying restorative justice in resolving cases of fraud and embezzlement, especially in Surabaya Police Area. The data used to conduct this research comes from two sources, namely:

1) Primary data. The method used in this study was interviews with the Surabaya Police Station, with its relevance in the policy of resolving criminal acts of fraud and embezzlement through restorative justice.

2) Secondary Data. Secondary data is obtained not directly but indirectly from what the author is looking for in books, journals, and scientific works related to writing research regarding the implementation of restorative justice in the settlement of criminal acts of fraud and embezzlement at Surabaya Police Area.

## **Findings And Discussion.**

### **1. Implementation of Restorative Justice as an Alternative for the Settlement of Fraud and Embezzlement at the Surabaya Police**

Law enforcement that is exclusively focused on retributive justice and imposing punishments on criminals is frequently unable to address societal issues that occur as a result of crimes perpetrated by perpetrators. Because, despite the fact that the perpetrator has been convicted, the victim has not been able to forgive the perpetrator, and thus the seeds of conflict that remain between the offender and the family might arise at any time (Damanik, 2020). However, if the law enforcement procedure also considers the victim's interests, it is hoped that something like this will not occur and that the victim and the criminal can coexist happily as before the incident.

As a result, the implementation of the restorative justice paradigm is both essential and vital (Waluyo, 2016). Based on the author's conversation with Busser Unit Head (*Kanit*) at Surabaya Police, the following is the method of using restorative justice as an alternative to addressing criminal offenses of fraud and embezzlement at Surabaya Police Area:

Based on the STR/583/VIII/2012 Criminal Investigation Agency Police Telegram (*Bareskrim POLRI*). Regarding the use of restorative justice, both the criminal and the victim have made peace first without force or pressure from any party in the process of processing instances of fraud and embezzlement, which are regarded as litigants. As a result, in line with Article 18 Paragraph 1 Letter L, as amended by Article 16 Paragraph 2 of Law Number 2 of 2002 concerning the Indonesian National Police, which reads:

“The police can take other actions according to the law that are responsible, with the limitation that such actions are not contrary to applicable law and are in line with legal or professional obligations that require the action of the position; such actions must be appropriate and reasonable, including within the scope of their position, based on considerations made by the police. appropriate under coercive circumstances and respect for human rights”. (*“Polisi dapat mengadakan Tindakan lain menurut hukum yang bertanggungjawab dengan Batasan bahwa Tindakan tersebut tidak bertentangan dengan hukum yang berlaku, selaras dengan kewajiban hukum/profesi yang mengharuskan dilakukannya Tindakan jabatan tersebut, tindakan tersebut harus patut dan masuk akal termasuk dalam lingkup jabatannya, didasarkan pada pertimbangan yang layak berdasarkan keadaan yang memaksa dan menghormati hak asasi manusia.”*)

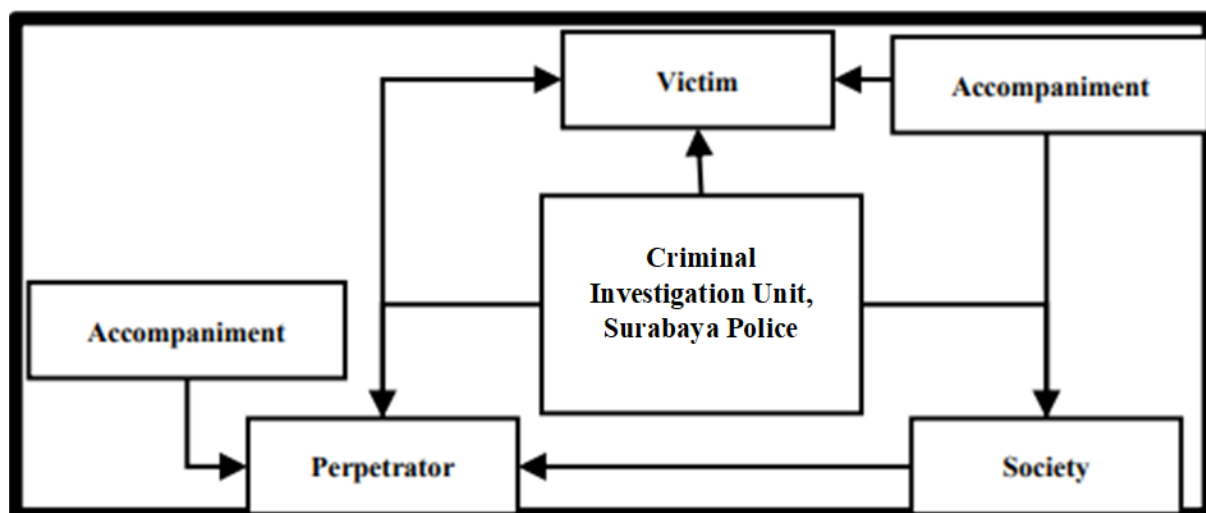
When the police conduct an investigation into previously reported criminal activity. If the agreement is agreed to and executed on purpose under the banner of restorative justice, then SP3 will be carried out, which is the act of terminating the investigation at the discretion of the police, so that the case terminates at the level of investigation and preparation. If, in the BAP, both the complainant and the respondent reverse significant facts in such a way that the components of the article are decreased due to inadequate evidence, the inquiry may be discontinued due to insufficient evidence. The material requirements are contained in the Circular Letter of the President of the Court police number SE/8/VII/2018 regarding the application of restorative justice in criminal cases. The following guidelines are established (Damanik, 2020):

- a. Material requirements are fulfilled
  1. There is no rejection in community and does not cause unrest in the community
  2. There will be no impact on social conflict

3. All involving actors are willing, and voluntarily relinquish the rights to sue before the law marked by a statement
4. The limiting principle:
  - a) Against Perpetrators
    - 1) For the perpetrators, the level of error committed is relatively light, namely the error (*sculd* or *mensrea* in the form of intentional (*dolus* or *opzet*) especially intentional as an intention or goal;
    - 2) The perpetrator is proven not to be a recidivist;
    - 3) SPDP has not been sent to the Public Prosecutor in the process of investigating and investigating criminal acts.
  - b. Formal Requirements are Fulfilled
    1. There is a letter of application for reconciliation between the two parties (the reporting party and the reported party);
    2. Letter of settlement of the dispute between the parties in the litigation which is known by the investigator's superior with a statement of peace;
    3. Minutes of additional examination of the litigating parties after the settlement of the case through restorative justice;
    4. Things that are done voluntarily, namely compensation and responsibility, must be carried out by the perpetrator without any objections;
    5. For general crimes that do not cause human victims and all criminal acts, restorative justice can be applied.

Criminal cases cannot be handled outside of court under Indonesian positive law; however, law enforcement procedures in Indonesia are frequently addressed outside of court through mediation, peacemaking institutions, and other means (Kelana, 2002). It should be emphasized that the police have no ability in this situation to coerce or urge the complainant and the accused to reconcile, and in this case, there is an agreement that happens previously outside of the authority and affairs of the police, which is purposeful. between two parties, the complainant and the accused, to make remedies, such as payment of the victim's loss to be paid by the perpetrator who did the act. The implementation of this restorative justice concept must result in a healthy written peace, that is, a letter of peace written with the knowledge of each individual and signed and verified in front of the police.

Quoted from the journal article "Application of Restorative Justice in the Settlement of Criminal Cases of Fraud and Embezzlement: Investigation Level" written by Ismawansa Ismawansa; Madiasa Ablisar; and Alvi Syahrin (2022); there is a stages of Restorative Justice process figure:



*Fig. 1 Stages of Restorative Justice Process*

The steps of the restorative justice process at the Criminal Investigation Unit at Surabaya Police (Bareskrim Polrestabes Surabaya) are as shown in Figure 1:

1. The reporter/victim will be summoned to the mediation room, along with assistance from the Legal Aid Institute (LBH);
2. The investigator will then open the program and notify the stages of the investigation;
3. After the investigator opens the event, the victim will be invited to express his wishes regarding compensation/compensation, moral and material compensation (if there is a loss);
4. The parties are expected to listen to the victim's information.
5. After hearing the victim's account, the investigator encourages the perpetrator to express his ability in terms of moral and monetary compensation, as well as the explanation for the perpetrator's crime.
6. After the parties have provided information, the investigator will provide the victim and the Legal Aid Institute (LBH) the opportunity to comment.
7. Once the parties have reached an agreement, the investigator negotiates a peace treaty between the culprit and the victim.
8. If there is no consensus among the researchers, a description of the mediation efforts is sufficient.
9. The investigator requests that the participants sign a letter of agreement in advance, requesting that the culprit follow the arrangement.

## **2. Obstacles to the Implementation of Restorative Justice as an Alternative for the Settlement of Fraud and Embezzlement at the Surabaya Police**

The police are an entity with responsibility for upholding the law in the national legal system, particularly in the realm of criminal law. The most visible law enforcers are police personnel who have direct contact with the community as required by the Penal Code in terms of inquiry and investigation; in this instance, a case may not go via the criminal justice system for trial or punishment. The police may halt an investigation or fail to bring a case to the prosecutor's office. According to the Code of Criminal Procedure, the police have the ability to halt investigations for three reasons:

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

The authority to investigate and investigate criminal acts by Indonesian National Police investigators who use the principle of restorative justice in their investigations can be based on the provisions of Article 7 paragraph (1) letter j of Law Number 8 of 1981 concerning the Criminal Procedure Code, which states that "the investigator has the authority to take other actions in accordance with the law for which he is responsible."

In this case, there are no obstacles that are too difficult for investigators at Polrestabes Surabaya to overcome because the idea of restorative justice has been carried out with the cooperation of both parties, and this is done to produce justice for each party.

As is well known, many cases intersect with the criminal justice system but do not reflect or produce justice, and the wishes and needs of the parties, especially the victims, cannot be met. On the other hand, new issues are created by the accumulation of cases in court, which results in an imbalance in the capacity of prisons. The lack of standards that are equivalent to the law, such as those contained in the Criminal Code and the Criminal Procedure Code, is a challenge for researchers in the application of restorative justice because sometimes it can lead to decisions that are not legal and are not known by the public, but socialization of restorative justice is still lacking.

### **Conclusions.**

The process of using restorative justice as an alternative to resolving criminal acts of fraud and embezzlement in the Surabaya Police, based on the investigation process carried out by the competent police, is referred to as "diversion" in Article 1, Paragraph 1, Letter L, which is expanded in Article 16, Paragraph 2, of Law No. 2 of 2010. The settlement of cases of criminal acts of fraud and embezzlement through restorative justice at the investigative level does not result in the abolition of these crimes because investigations are only terminated if inadequate evidence is uncovered. The inquiry is terminated by the Termination of Investigation Decree, which is followed by the Termination of Investigation Order (SP3). For investigations into criminal crimes of fraud and embezzlement whose investigations have been disabled, the SP3 can be reopened at any moment if it was initiated by a prior

order of one of the parties. It is critical to resolve cases as quickly as possible using the restorative justice concept, so that justice can be served to both the perpetrators and the victims while also reducing the cost of the investigation.

There are few significant challenges that the party idea encounters in this circumstance because the implementation of restorative justice is accomplished with the permission of each party. The parties are entitled to finish the inquiry in line with the rules of the Code of Criminal Procedure, specifically, for three reasons: 1) the case being processed is not a criminal case; 2) there is insufficient evidence; 3) for the sake of the law, and in this case, stop the investigation that occurred due to a lack of evidence due to the revocation of the complainant's and defendant's reports, which shows that a peace agreement has been resolved.

In this case, a legislative standard or regulation is required to ensure the comparability of the acts of Indonesian police investigators while applying the idea in order to ensure the consistent application of restorative justice principles within the Indonesian National Police. Offenders can benefit from restorative justice. law enforcement, as well as providing credibility to Indonesian Police investigators, allowing all activities to be carried out. Restorative justice and humanistic approaches to justice are not alternatives to retributive justice. The humanistic approach must be adopted from the formation of the legislation and is part of the criminal justice system, and the discretionary authority of police investigators is the first step in reintroducing justice into the criminal justice system.

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