

Restorative Justice Approach in Dealing with Crimes at Police Level (A Study at *Polresta* and *Polres Sorong*)

¹ Gerson Sem Buinei

Faculty of Law, Universitas Muhammadiyah Sorong, Indonesia.

Email : gersonsem495@gmail.com

² Wahab Aznul Hidayat

Faculty of Law, Universitas Muhammadiyah Sorong, Indonesia.

Email : wahabaznulhidaya@um-sorong.ac.id

³ A. Faqih Mursid

Faculty of Law, Universitas Muhammadiyah Sorong, Indonesia.

Email : afaqihmursid2@gmail.com

* Correspondence email: gersonsem495@gmail.com

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Abstract: *In knowing and explaining the application of the Restorative Justice Approach in resolving criminal offences at the police level, it is essential to know and explain the influencing factors in overcoming criminal acts using this approach. Then the method used in this study is a sociological juridical approach. It identifies and conceptualizes law as a natural and functional social institution in a real-life system. Indonesian peoples have long practised the concept of a case settlement approach through restorative justice, such as in Papua, Bali, Toraja, Minangkabau, and other traditional communities that still hold their culture. In the event of a criminal offence by a person (including unlawful acts committed by children), the dispute is resolved internally in the customary community without involving state officials. The obligation to apply restorative justice approaches in the diversion process is not just a desirable approach but a requirement that has legal consequences if not complied with by law enforcement. It shows the importance of ensuring that efforts to resolve children's cases involve approaches that prioritize restorative justice to achieve more holistic justice and support the development of children in conflict with the law.*

Kata Kunci:

Restorative justice;
Tindak Pidana;

Abstrak: Untuk mengetahui dan menjelaskan penerapan Pendekatan Restorative Justice dalam penyelesaian tindak pidana di tingkat kepolisian dan untuk mengetahui serta

Polresta Sorong Kota
& Polres Sorong.

menjelaskan faktor yang mempengaruhi dalam penanggulangan tindak pidana dengan menggunakan konsep pendekatan ini. Kemudian metode penelitian yang digunakan dalam penelitian ini adalah pendekatan yuridis sosiologis. Pendekatan yuridis sosiologis adalah mengidentifikasi dan mengkonsepsikan hukum sebagai institusi sosial yang riil dan fungsional dalam sistem kehidupan yang nyata. Konsep pendekatan penyelesaian perkara melalui restorative justice (keadilan restoratif) sebenarnya telah lama dipraktekkan masyarakat adat indonesia, seperti di papua, bali, toraja, minangkabau dan komunitas tradisional lain yang masih kuat memegang kebudayaannya. Apabila terjadi suatu tindak pidana oleh seseorang (termasuk perbuatan melawan hukum yang dilakukan anak), penyelesaian sengketa diselesaikan di komunitas adat secara internal tanpa melibatkan aparat negara di dalamnya. Kewajiban untuk menerapkan pendekatan restorative justice dalam proses diversi bukan hanya sebagai pendekatan yang diinginkan, melainkan sebagai suatu keharusan yang memiliki konsekuensi hukum jika tidak dipatuhi oleh penegak hukum. Hal ini menunjukkan pentingnya memastikan bahwa upaya penyelesaian perkara anak melibatkan pendekatan yang mengutamakan restorative justice untuk mencapai keadilan yang lebih holistik dan mendukung pembinaan anak yang berkonflik dengan hukum.

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INTRODUCTION

When individual behavior is externalized and labeled as criminal, this is known as criminalization (criminal policy), which is closely related to the problem of the crime itself¹. Crime, or strafbaar feit, is translated here as crime. The Dutch phrase *strafbaar feit* consists of the three words "*straf*," "*baar*," and "*feit*," where "*straf*" means punishment, "*baar*" means may, and "*feit*" is an act. Concerning the overall noun, *strafbaar feit*, *straf* can also mean law. Furthermore, translating *recht* into English as "law" is conventional, as if the two words were synonymous². There are two alternatives for "*baar*," may, and "can," respectively. The word "*feit*" encompasses four different concepts: behavior, occurrence, offense, and conduct. Thus, the term *strafbaar feit* is a punishable event or

¹ Rasyid Ariman dan Fahmi Raghil, *Hukum Pidana* (Malang: Setara Press, 2016).

² Wahab Aznul Hidayat and Rajab Lestalu, "Penerapan Sanksi Pidana Terhadap Eksploitasi Pada Kawasan Hutan Konservasi Di Wilayah Kota Sorong," *Justisi* 8, no. 2 (2022): 126–34, <https://doi.org/10.33506/js.v8i2.1663>.

act³.

Handling criminal cases, of course, must be accompanied by law enforcement and the resolution of applicable criminal acts. One of them is knowing,⁴ understanding, and considering the reasons and every process of action taken by law enforcement officials. Then, in the end of it they can enforce the law against the offenders⁵. The background of this crimes is that the perpetrator does not realize that his actions are against the law, is pressured by circumstances, or has become a habit committed by the perpetrator. Thus, handling misdemeanor must emphasize justice for both the victim and the offender.

Referring to the condition of law enforcement problems against criminal acts as described above, it is necessary to analyze the alternative model for resolving misdemeanor. One of the criminal completion processes used by the Sorong City Police (*Polresta*), especially in misdemeanor, is applying the *Alternatif Penyelesaian Sengketa (APS)*, better known as the Restorative Justice Method. The *APS* method resolves cases before they are submitted to the Court⁶. Usually, this method can find a decision that is considered fair and acceptable to all parties involved in the dispute. In its development, alternative dispute resolution is used not only to resolve civil laws but also to resolve crimes.

The use of mediation by the *APS* method to resolve criminal matters is based on various factors, namely the level of crime and reaction through the criminal justice system, the development of dispute resolution, public acceptance of the values of restorative justice, the movement to protect victims' rights, and political approaches to crime prevention. Handling criminal cases using a restorative approach offers a different view and approach to understanding and handling crimes.

Furthermore, restorative justice must be regulated in Indonesia by separate legislation. However, the concept of restorative justice has also been used by law enforcement officials, namely judges, to implement it in their decisions. It is due to Article 10 paragraph (1) of Law No. 48 of 2009 on Judicial Powers (*Kekuasaan Kehakiman*), which states that judges cannot refuse to hear cases that must be heard

³ Adami Chazawi, *Pelajaran Hukum Pidana Bagian I* (Jakarta: Rajawali Pers, 2011).

⁴ Ahmad Dahlan et al., "Restorative Justice Dalam Penyelesaian Tindak Pidana Di Kota Sorong Papua Barat Daya" 3, no. 2 (2024): 79–94.

⁵ Wahab Aznul Hidayat, "Delik Penganiayaan Terhadap Anak Di Kota Makassar" 6, no. 1 (2020): 35–45, <https://doi.org/10.33506/js.v6i1.778>.

⁶ Sophar Maru Hutagalung, *Praktik Peradilan Perdata Dan Alternatif Penyelesaian Sengketa* (Jakarta: Sinar Grafika, 2014).

following Article 10⁷.

Law enforcement, other than judges who apply the concept of restorative justice approach in case settlement and also the duty of the Indonesian National Police (*Kepolisian RI*) to complete the settlement of criminal offenses, restorative justice should be given *top billing*⁸. It means giving equal weight to the needs of those who have been harmed and those who have committed non-punitive offenses and focusing on restoring the *status quo*⁹. It is reflected in the Indonesian National Police Regulation Number 8 of 2021 on Handling Criminal Offenses Based on Restorative Justice (*Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif*)¹⁰.

Then, from the concept of restorative justice in handling criminal offenses above, it should be noted by the Police, especially within the scope of *Polresta* Sorong, cases regarding the occurrence of criminal offenses. Whether offenses in terms of aggravation or misdemeanor, every year tends to increase. Thus, in this case, it is related to the number of criminal offenses and also affects the performance of the Police in resolving criminal offenses that are entered and recorded by *Polresta* Sorong.

METHOD

The method used in this study is a sociological juridical approach. It is an approach that identifies and conceptualizes law as a real and functional social institution in a real-life system. Here, the researcher uses three types of data sources, namely primary data and secondary data: Primary Law, namely the Criminal Code, Law Number 8 of 1981 on Criminal Procedure, Law Number 2 of 2002 on the Police, Regulation of the Attorney General of the Republic of Indonesia Number: Per- 006/A/J.A/04/2015 on Guidelines for the Implementation of Diversion at the Prosecution Level (*Pedoman Pelaksanaan Diversi Pada Tingkat Penuntutan*), Regulation of the Attorney General's Office Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice (*Penghentian Penuntutan Berdasarkan Keadilan Restoratif*), National Police Chief Regulation Number 6 of 2019 on Crime Investigation (*Penyidikan Tindak Pidana*), National Police Chief Circular Letter Number 8 of 2018 on the Application of Restorative Justice in Criminal Case Resolution (*Penerapan Restorative Justice dalam Penyelesaian Perkara Pidana*).

⁷ *Undang-Undang Tentang Kekuasaan Kehakiman, Undang-Undang Nomor 48 Tahun 2009, Lembaran Negara RI Tahun 2009 Nomor 157, Tambahan Lembaran Negara RI Nomor 5076, Ps 10 Ayat (1)*, n.d.

⁸ Wahab Aznul Hidayat and Muharuddin Muharuddin, "Penerapan Diversi Undang-Undang No 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak (Studi Kasus Polres Sorong Kota)," *JUSTISI* 6, no. 2 (2020): 52–63, <https://doi.org/10.33506/js.v6i2.965>.

⁹ Wahab Aznul Hidayat, "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Justisi* 5, no. 2 (2019): 84–96, <https://doi.org/10.33506/js.v5i2.543>.

¹⁰ *Peraturan Kepolisian Negara Republik Indonesia Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, Perkap No. 8 Tahun 2021, Ps 1 Ayat (3)*, n.d.

DISCUSSION

A. The Implementation of Restorative Justice Approach in Handling the Crimes at the Police Level.

Restorative justice refers to the resolution of legal offenses through a collaborative process that involves both the victim and the offender in a meeting. In this meeting, a mediator facilitates dialog between the two parties. The offender can clearly explain the sequence of events, expecting the victim to listen, understand, and accept the explanation. The perpetrator is also expected to express their responsibility towards the victim and the community for their actions¹¹.

Furthermore, the victim responds to the offender's explanation. If required, community representatives may also be present to provide additional information about the case if they are aware of it¹².

In the current development of modern law, the restorative justice approach has become one of the critical crime resolution mechanisms. It can be observed through its practice in various countries as follow;

- New Zealand called Family Group Conference (FGC) in 1991;
- Amerika Serikat called Victim Offenders Mediation (VOM) in 1970;
- Negara bagian Vermont called Youth Panel in 1996;
- Kanada called Circles in 1992;
- Community Panels Meetings / Traditional Village or Tribal Moots

The concept of a case settlement approach through Restorative Justice has long been practiced by Indonesian original peoples, such as in Papua, Bali, Toraja, Minangkabau, and other traditional communities that still strongly hold their culture¹³. In the event of a criminal offense by a person (including unlawful acts committed by children), dispute resolution is resolved internally in the customary community without involving state apparatus. The measure of justice is not based on retributive justice in the form of revenge or imprisonment but on conviction and forgiveness¹⁴.

¹¹ Wahab Aznul Hidayat, "The Role of Witness and Victim Protection Agency for Imekko Tribe in Criminal Justice System in Sorong" 8, no. 2 (2023): 176–91, <https://doi.org/10.23917/laj.v8i2.2363>.

¹² Hidayat and Lestalu, "Penerapan Sanksi Pidana Terhadap Eksploitasi Pada Kawasan Hutan Konservasi Di Wilayah Kota Sorong."

¹³ Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019): 15, <https://doi.org/10.30641/kebijakan.2019.v13.15-30>.

¹⁴ Ds.Dewi, "RESTORATIVE JUSTICE, DIVERSIONARY SCHEMES AND SPECIAL CHILDREN'S COURTS IN INDONESIA," n.d.

The restorative justice implementation by government of Indonesia reflects in some regulations and policies that have been developed, as follow;

Law no. 2 of 2002 on police (*Kepolisian*): This law provides a legal basis for *Kepolisian RI* to implement restorative justice in law enforcement.

1. Attorney General of Republic Indonesia Regulation, No. Per-006/A/J.A/04/2015 on Guidelines for Implementing Diversion at the Prosecution Level: These guidelines guide prosecutors in implementing restorative justice diversion at the prosecution level.
2. Attorney General of Republic Indonesia Regulation, No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice: This regulation regulates the termination of prosecution based on the principles of restorative justice, which allows for out-of-court settlements involving restorative justice.
3. National Police Chief Regulation No. 6 of 2019 on Criminal Investigation: This regulation regulates the investigation of criminal offenses *Kepolisian RI* and provides a basic law for the application of restorative justice in the investigation process.
4. National Police Chief Circular Letter No. 8 of 2018 on the Application of Restorative Justice in Criminal Case Resolution: This circular directs police ranks to apply restorative justice in the settlement of criminal cases by prioritizing the reconciliation approach and victim recovery.

Furthermore, with these regulations and policies, the Indonesian government is committed to implementing restorative justice in the criminal justice system. It lines with the progressive legal view that prioritizes a more humanist and rehabilitative approach in law enforcement, as well as giving greater attention to the needs and interests of victims and perpetrators of crimes.

In implementing restorative justice, there are common requirements as follow;

- a. Does not cause unrest and/or rejection from the community.
- b. Does not result in social conflict or have the potential to devide the nation.
- c. Not related to radicalism and separatism.
- d. Not a repeat offender based on a court decision.
- e. Not related to criminal acts of terrorism, state security, corruption, and criminal acts against the life of the person.

Meanwhile, the specific recuirements as follow;

- a. The existence of peace between the two parties involved, as evidenced by a peace agreement signed by the parties. (except for drug crimes)
- b. Fulfillment of the rights of the victim and the perpetrator's responsibility, such as the return of goods, reimbursement of losses, reimbursement of costs incurred as a result of the criminal offense, or reimbursement of damage caused by the criminal offense. It is proven by a statement letter following the agreement signed by the victim. (except for drug crimes)

The settlement of criminal cases with restorative justice is not limited to misdemeanor but can also be applied to several other types of criminal cases, including;

- a. Juvenile Crimes: Restorative justice can be applied to resolve criminal cases involving minor offenders. The approach can assist in restoring the relationship between the offender, victim, and community, as well as providing an opportunity for the offender to improve their behavior.
- b. Crimes of women in conflict with the law: Restorative justice can be an alternative solution for criminal cases involving women as perpetrators or victims. This approach considers women's needs and interests in the criminal justice system.
- c. Narcotics Crimes: Although drug offenses are often considered severe, restorative justice can still be an alternative resolution option in some instances, especially if the offender is a drug user who is not a dealer or producer.
- d. Information and Electronic Transaction Crimes: Restorative justice can also be applied to resolve criminal cases related to crimes in the digital world, such as online fraud or the dissemination of false information. This approach allows for a more collaborative resolution and improves the relationship between the offender and victim.
- e. Traffic Crimes: Restorative justice can be an alternative in resolving criminal cases related to traffic offenses, such as accidents or violations of driving rules. This approach can help in improving awareness and responsible driving behavior.

In the data on criminal offenses that occurred in the jurisdiction of *Polresta* and *Polres* Sorong during the period 2019 to 2023, the following is an overview of the table as follow;

Table I. Data on Crimes Committed by Restorative Justice
2019-2023

No.	Types of Crime	Year	The Number of Crime	The Number of Restorative
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Justice				
1.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2019	1061	855
2.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2020	966	715
3.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud..	2021	747	520
4.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2022	911	422
5.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2023	632	103

Source: *Polresta* Sorong 2019-2023

The datum list s the types of criminal offenses. Then, with this data, the number of cases for each year (2019-2023) present. The study can involve further analysis related to trends, patterns, or special characteristics that may be found in criminal offenses in the

jurisdiction of *Polresta* Sorong during the time studied. From the data obtained at *Polres* Sorong, it can be seen that the implementation of the Restorative Justice Approach in the Settlement of Crimes is very much pursued at the Police level, both for misdemeanor to severe crimes, the implementation of Restorative Justice is still pursued by the Police.

Table II. Data on Crimes Committed by Restorative Justice
2019-2023

No.	Types of Crime	Year	The Number of Crime	The Number of Restorative Justice
1.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2019	166	34
2.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2020	220	50
3.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2021	215	62
4.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence (<i>KDRT</i>), fraud.	2022	282	62
5.	Mobbing, persecution/mistreat, burglary, motorcycle burglary (<i>Curanmor</i>), violence against children, domestic violence	2023	276	28

(KDRT), fraud.

Source: *Polres Sorong* 2019-2023

The data from 2019-2023 above shows that the implementation of Restorative Justice in Polresta Sorong City and Polres Sorong is equally high in its implementation.

B. Factors Affecting Crime Prevention Using the Concept of Restorative Justice

It is important to understand the dynamics and challenges in implementing diversion, especially in severe criminal cases, to implement restorative justice more effectively¹⁵. The reason behind it is some juvenile cases are required to be forwarded to the prosecutor's office, especially in cases of sexual abuse and drugs¹⁶. Meanwhile, diversion tends to be used for mobbing cases such as maltreatment or burglary.

Furthermore, these statements reflect the consideration that some instances, such as sexual abuse and drugs, are considered so severe that the police consider it necessary to forward them to the prosecutor's office without involving restorative justice. In contrast, diversion is often applied as an alternative form of peaceful resolution in misdemeanor cases. It is important to note that discretionary powers must always consider fairness, public safety, and the need to protect children involved in the criminal justice system.

Then, data from interviews with Mr. Iptu H. Muh Asri, SH, MH, revealed several obstacles in the application of the principle of Restorative Justice as follows;

1. Lack of Community Understanding: One of the main obstacles is the need for more community understanding of restorative systems and diversion. The community considers These terms foreign, and this lack of understanding can lead to children being judged en masse. It affects the mentality and development of children, who should receive protection and guidance, not a discrimination.
2. Lack of Understanding about Children and State Responsibility: In the judicial process, another inhibiting factor is the lack of understanding of children who commit criminal offenses and the state's responsibility towards children. This misunderstanding can lead to the failure of the diversion process due to a lack of support from parents and the community, who tend to be reluctant to accept or forgive children who have committed crimes.

¹⁵ Rr. Putri A. Priamsari, "Mencari Hukum Yang Berkeadilan Bagi Anak Melalui Diversi," *Perspektif Hukum* 18, no. 2 (2019): 175, <https://doi.org/10.30649/phj.v18i2.158>.

¹⁶ Fiska Ananda, "Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana," *Jurnal Daulat Hukum* 1, no. 1 (2018): 77-86, <https://doi.org/10.30659/jdh.v1i1.2566>.

3. Constraints on Neglected Children: In diversion cases, *Polresta* and *Polres* Sorong face obstacles when the children involved do not have capable family companions, such as neglected children. It shows the difficulty in providing assistance and guidance to children who lack family support.
4. Absence of the Reporting Party or Victim's Family in the Diversion Process: The investigation process can be hampered if the reporting party or the victim's family does not attend the diversion process at the investigation level. This party's desire to continue the investigation is also an inhibiting factor.

In overcoming these obstacles, conducting education and socialization efforts with the victim's family, the community, and other relevant parties is essential. A better understanding of the principles of Restorative Justice and its benefits in the diversion process can help ease uncertainty and increase acceptance of this alternative to conflict resolution.

CONCLUSION

The obligation to apply a restorative justice approach in the diversion process is not only a desirable approach but a necessity that has legal consequences if not complied with by law enforcement. It demonstrates the importance of ensuring that efforts to resolve children's cases involve approaches that prioritize restorative justice to achieve more holistic justice and support the development of children in conflict with the law.

Furthermore, the Attitudes of Victims' Families: Victim families tend to hold the view that Restorative Justice cannot fully represent accountability for children who commit criminal offenses. They are concerned that children can escape responsibility for their actions through this approach. This attitude is one of the main obstacles to implementing Restorative Justice. Lack of Community Understanding: Barriers also occur because the community needs to understand the concept and awareness of law enforcement using Restorative Justice. Limited understanding can lead to resistance to this approach and inhibit the success of the diversion process.

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