Restorative Justice in the Handling of Criminal Acts Related to Information and Electronic Transactions

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Abstract

This study was motivated by the fact that investigators from the Cyber Crime Directorate of the Indonesian National Police often do not prolong the case process and encourage victims/reporters and perpetrators/reported parties to resolve the case through deliberation. This is based on Indonesian National Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts based on restorative justice. The purpose of this study is to objectively determine the handling of ITE criminal cases using a restorative justice approach, the effectiveness of the resolution, and the factors that influence it. The theoretical basis uses the Legal System, Theory of Justice, Theory of Legal Limiting Principles, Concepts of Investigation and Inquiry, Concept of Democting Policing, Concept of Restorative Justice, Concept of ITE Crimes, and Concept of Police Science. A qualitative approach was used with a case study method, with primary and secondary data sources using interview, observation, and document study techniques. Data analysis techniques included data reduction, data presentation, and conclusions. The results of the study show that 1) The handling of ITE criminal cases with a justice-based approach at the Cyber Crime Directorate of the Indonesian National Police is guided by Perpol Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, ST Kapolri No. 339/II/Res. 1.1.1/2021 concerning Guidelines for Handling Criminal Cases and SE Kapolri Number SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Indonesian Digital Space.

Investigators adhere to the principle that criminal law is a last resort in law enforcement (ultimatum remedium) and prioritize restorative justice; 2) The settlement of ITE criminal cases using a restorative justice approach has not been effective, even though there is a clear legal framework, but its implementation has not yet led to the optimal application of the philosophy of restorative law enforcement; 3) Factors that influence the effectiveness of handling ITE criminal cases with a restorative justice approach include legal substance, legal structure, and legal culture.

I. Introduction

The role of the internet in today's world is becoming increasingly important in human life. Every year, the internet affects various aspects of society, from social and economic to political aspects. The Indonesian Internet Service Providers Association (APJII) noted that the number of internet users in Indonesia from 2019 to 2020 was 196.71 million people, or 73.7% of Indonesia's total population. This figure is an increase from the previous year, which only reached 64.8% or 171.17 million internet users out of Indonesia's total population. In 2021, there was a 15.5% increase from 2020, reaching 202.6 million people (tekno.kompas.com). This increase shows that the benefits provided by the internet have become a basic need for most Indonesian citizens in this era of globalization and modernization.

On the other hand, the internet also poses various serious threats to human life. Based on research by the International Telecommunication Union (ITU), Indonesia's cyber security index is still ranked 24th out of 193 countries. From January to March 2021, Kaspersky products detected and blocked 9,639,740 different cyber threats transmitted via the internet to computers of Kaspersky Security Network users in Indonesia. Cybercrime statistics on the cyber patrol portal show that in the last 5 years, there have been 20,033 reported cyber cases with a total loss of 5.05 trillion. The data also shows that the most commonly reported types of cybercrime are online fraud, the spread of provocative content, pornography, and illegal access.

The Indonesian government needs to take cyber threats seriously because they can threaten national unity and integrity. In this case, the Indonesian National Police, as law enforcement officials, are required to anticipate these threats, as stipulated in Article 2 of Law No. 2 of 2002 on the Indonesian National Police. The police force is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, security, and community service. The article explicitly states that the role and function of the Indonesian National Police as a state apparatus is to provide services to the community to resolve existing problems, including criminal acts related to Electronic Information and Transactions (ITE). The Polri, as a state apparatus tasked with maintaining domestic security, constantly observes and anticipates developments in the strategic environment and cyberspace. This is because cyberspace is often a volatile, uncertain, complex, and ambiguous domain.

The presence of the Polri in cyberspace is very important, especially in providing services and a sense of security to internet users, making the presence of the Polri important to realize. This was initiated by the National Police Chief, General Pol. Listyo Sigit, into the concept of predictability, responsibility, transparency, and fairness (Presisi). This concept is implemented in four areas, one of which is operational transformation (transforming operation) carried out to improve the

performance of maintaining security and public order through strengthening interactions with stakeholders oriented towards participation and problem solving. With this concept, it is hoped that the National Police will be able to become an institution with good public order maintenance performance, not only in the real world but also in cyberspace. The hope of achieving a Precise National Police is reflected in one of the National Police Chief's priority programs, namely Improving Law Enforcement Performance. The National Police is required to deliver a law enforcement process that meets the public's sense of justice. The output of this program is to prioritize progressive law in case resolution through Restorative Justice. This program not only considers legal certainty but also benefits and justice. The National Police is expected to play an active role in resolving criminal acts through restorative justice, including cybercrimes.

Referring to the draft law enforcement program in the Precision concept above, it can be implied that the resolution of ITE crimes carried out by the Cyber Directorate of the Indonesian National Police's Criminal Investigation Unit needs to be based on restorative justice. Investigators from the Cyber Crime Directorate are required to have expertise and specialized knowledge in the field of restorative justice in order to act and behave professionally, autonomously, neutrally, and independently in resolving criminal offenses, including ITE crimes. Investigators from the Cyber Directorate of the Indonesian National Police's Criminal Investigation Unit are required to be neutral and avoid any attempts to exploit the situation for personal gain. Investigators from the Cyber Directorate of the Indonesian National Police's Criminal Investigation Unit must also be able to prioritize the aspects of legality and justice in resolving ITE crimes using a restorative justice approach.

The restorative justice approach in resolving ITE criminal cases has sparked pros and cons. On the one hand, the National Police is required to be able to provide a fair law enforcement process while also providing benefits to the parties involved, whether they are perpetrators, victims, or the community. On the other hand, the restorative justice approach can lead investigators to exercise their power of discretion. The existence of power of discretion makes investigators prone to discriminate against certain ITE cases. This has become a polemic that must be resolved and reaffirmed through the application of appropriate legal regulations so that the police do not discriminate in prosecuting crimes.

The application of ITE law enforcement with restorative justice is closely related to administrative problems that are often encountered by the community. These administrative problems include costly, lengthy, and complicated court proceedings. This reality is in contrast to the Criminal Procedure Code, which requires criminal justice to be a simple, fast, and inexpensive process. Restorative justice was chosen because of public dissatisfaction with the conventional administration of justice. However, sometimes these administrative obstacles do not completely make the

criminal justice system restorative. In some criminal cases, such as child sexual exploitation, cyberbullying, and digital terrorism, the justice used in the criminal justice system is still retributive and conventional. Meanwhile, for criminal acts of defamation, slander, insult, spreading false news/hoaxes, and hate speech against groups, religions, races, and ethnicities, the impact of which is not yet considered severe, restorative efforts are an appropriate choice for resolution.

Cybercrimes need to be handled seriously through an appropriate and suitable criminal justice system. There are some cases that need to be resolved retributively through the conventional criminal justice process, and there are also cases that should be resolved peacefully using the principles of restorative justice. This is of course based on various aspects and the severity of the cybercrime case being handled. The resolution of ITE crimes through restorative justice should result in a conclusion that is satisfactory to all parties, including the perpetrator, the victim, and the community. Therefore, the questions asked are: 1). How are ITE criminal cases handled using a restorative justice approach? 2). How effective is the resolution of ITE criminal cases using a restorative justice approach? 3). What are the factors that influence the effectiveness of handling ITE criminal cases using a restorative justice approach?

2. Theory and Concepts

1) Legal System Theory

Legal System Theory, proposed by Hans Kelsen, states that a legal system is a system of norms, which can be said to be valid if it is derived from a higher norm above it, continuing to the level where the norm cannot be derived from another higher norm, which is referred to as the basic norm. Based on the nature of the basic norm, Kelsen divides the system of norms into two types, namely the static system of norms and the dynamic system of norms (Kelsen, 2008). Meanwhile, Lawrence M. Friedman states that law is composed of legal subsystems in the form of legal substance, legal structure, and legal culture. These elements of the legal system greatly determine whether a legal system can function properly or not. Legal substance concerns all aspects of legal regulation or legislation, legal structure emphasizes the performance of legal apparatus and legal facilities and infrastructure, while legal culture concerns the behavior of society (Friedman, 1975). The structural components of a legal system include various institutions created by the legal system with various functions in supporting the workings of the legal system. One of these institutions is the judiciary with its various components.

2) John Rawls' Theory of Justice

John Rawls (2011) in his theory of justice explains that the main subject of justice is the basic structure of society, or more precisely, the way in which key social institutions distribute fundamental rights and obligations and determine the distribution of benefits from social cooperation. The principles of justice for the basic structure of society are the goal of the agreement. These principles will govern further agreements; they determine the types of social cooperation that can be entered into and the forms of government that can be established. According to John Rawls, this view of the principle of justice is called fairness, or the theory of contract. This theory means that when the basic structure of society as the main subject of justice has an agreement in choosing a principle where no party is benefited or disadvantaged. This theory is in line with the concept of restorative justice, whose main objective is to restore the relationship between the perpetrator, the victim, and the community, where the resolution is reached through an agreement made by the perpetrator, the victim, and the community so that no party benefits or suffers from the criminal act. The current criminal justice system is considered incapable of providing a sense of justice because the role of victims and society in the system has been taken over by institutions through public prosecutors. In this case, victims and society cannot participate directly in the final determination of a criminal case.

3) The Theory of Limiting Principles of Law (limiting principle)

The theory of the principle of legal limitation was presented by Nigel Walker (in Nawawi, 1998), who stated that in the functionalization of criminal law, the following matters must be taken into consideration: (1) Criminal law should not be used solely for the purpose of retribution; (2) Criminal law should not be used to punish acts that do not cause harm or danger; (3) Criminal law should not be used to achieve a goal that can be achieved more effectively by other, less severe means; (4) Criminal law should not be used if the harm/danger arising from the punishment is greater than the harm/danger of the act/criminal offense itself; (5) Criminal law prohibitions should not be more harmful than the acts they seek to prevent; (6) Criminal law should not contain prohibitions that do not have strong public support.

Walker argues that considerations for discretion in British law have been put forward in: (1) Requests for clemency, and acknowledgment of the offender's guilt and the length of time taken to submit the request; (2) Ensuring that the punishment imposed does not exceed the offender's capacity, with various exceptions taking into account special circumstances such as the physical or mental condition of the offender; (3) Officers exercising discretion in accordance with Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police, which discusses police

discretion, must consider three factors, namely: (1) Legal factors; (2) Extra-legal factors; (3) Factors associated with the decision-makers.

4) The Concept of Democratic Policing

Democratic policing is policing that takes place and is carried out in the context of democratic state life, and is carried out with respect for the civil rights of the community (Karnavian & Sulistyo, 2016). The police must view the concept of democratic policing as prioritizing the interests of the wider community as its goal. Democratic policing is a process of implementing policing efforts in accordance with the demands or expectations of the community based on the best quality of police performance accompanied by comprehensive supervision based on the principles of transparency, fairness, and professionalism (Karnavian, 2017). This concept of democratic policing contains several important notes regarding its characteristics, including: (1) The police must work in accordance with democratic principles, namely professionally, understanding human rights standards, and acting in accordance with applicable laws; (2) As the holders of the community's mandate, the police must be professional in all their actions, refer to the law, and uphold the ethical values and norms that apply in the community and institutions; (3) The police must have the primary priority of securing and protecting the lives of the community; (4) The police must always serve the community selflessly and be accountable to the community; (5) The protection provided by the police for life and property is the primary function of other police operations; (6) The actions of the police must be in accordance with human dignity and human rights; (7) In carrying out their duties, the police must be neutral, impartial, and non-discriminatory.

5) The Concept of Restorative Justice

Restorative justice is a system that seeks to distinguish between what are seen as three different forms of criminal justice. The first relates to retributive justice, where the emphasis is on punishing the perpetrator for what they have done. The second relates to distributive justice, where the main emphasis is on the rehabilitation of offenders. The last is restorative justice, which is broadly equated with the principle of restitution (Dignan, 2005).

The general principles of the restorative approach that apply universally and are inherent in the concept of the restorative approach to criminal justice are: (1) The principle of fair resolution; (2) Equal protection; (3) The rights of victims must be taken into account; (4) Proportionality; (5) Presumption of innocence; (6) The right to obtain consultation or legal counsel. Restorative justice can be viewed as a concept

that responds to the development of the criminal justice system by emphasizing the need to involve the community and victims who feel marginalized by the mechanisms that currently operate within the criminal justice system. According to Liberman, restorative justice is a legal system that aims to restore the welfare of victims, perpetrators, and communities damaged by crime, and to prevent further violations or criminal acts. In its implementation, restorative justice has several basic principles: (1) Prioritizing support and healing for victims; (2) Offenders are responsible for their actions; (3) Dialogue between victims and offenders to reach understanding; (4) Efforts to properly assess the losses incurred; (5) Offenders must be aware of how to avoid crime in the future; (6) The community helps to integrate both parties, the victim and the offender (Braithwaite & Heather, 2002).

6) The Concept of Electronic Information and Transaction Crimes

Based on Law Number 11 of 2008 concerning Electronic Information and Transactions, electronic information and transaction crimes (ITE) are categorized as crimes targeting technology and crimes related to illegal content. Crimes targeting the internet, computers, and technology are called contemporary crimes that produce new forms of crime. These can be classified as: (1) Hacking; (2) Illegal Interception; (3) Defacing; (4) Electronic Theft; (5) Interference; (6) Facilitating Prohibited Crimes; and (7) Identity Theft. These types of crimes are actually regulated in the Criminal Code and other laws. Types of illegal content according to Law Number 11 of 2008 concerning ITE are: Pornography, Gambling, Defamation, Extortion, Dangerous deception, hate speech, and threats of violence against others.

3. Research Methodology

This study uses a qualitative approach with a case study method. The data sources used are primary data, obtained from informants including the Director of Cyber Crime at the Indonesian National Police; the Head of the Cyber Crime Sub-Directorate at the Indonesian National Police; Cyber Crime Investigators at the Indonesian National Police; suspects; and victims. Meanwhile, secondary data sources are obtained from scientific literature reviews or other relevant documents. The data collection techniques used were interviews, observation, and document study. The data collected from these sources was then analyzed using qualitative data analysis techniques consisting of three stages, namely data reduction, data presentation, and conclusion drawing. Then, data validity was tested through triangulation by looking at the validity of the person, paper, and place.

4. Results and Discussion

1) Analysis of the Handling of Electronic Information and Transaction Crimes Using a Restorative Justice Approach

The handling of a criminal offense by the Indonesian National Police is generally carried out at the investigation stage by investigators, starting from the preliminary investigation stage. There are two mechanisms for preliminary investigations, namely those that are not preceded by a police report/complaint and those that are preceded by a report. Both preliminary investigations that are preceded and those that are not preceded by a police report/complaint are required to produce a preliminary investigation report, which will be used as the basis for conducting an investigation. In general, there are 10 stages carried out by the police in conducting investigations. Based on Article 10 of Perkapolri Number 6 of 2019 Jo Article 15 of Perkapolri Number 14 of 2012, the stages of investigation referred to are as follows: (1) Investigation; (2) Commencement of investigation or submission of SPDP; (3) Coercive measures; (4) Examination; (5) Case presentation; (6) Completion of case files; (7) Submission of case files; (8) Transfer of suspects and evidence; (9) Termination of investigation; and (10) Taking other measures in accordance with the law. These ten stages are carried out systematically and continuously, forming a process in which each stage is inseparable from the others.

The handling of ITE criminal cases using a restorative justice approach is fundamentally problematic in Indonesian procedural law because it is considered illegal and is not a mechanism provided for in the legislation on Criminal Procedure Law. However, in reality, the practice of applying ITE criminal cases based on restorative justice has become the primary option in resolving various cases such as defamation or libel, extortion and/or threats, spreading false news, and acts of spreading hatred or hostility based on ethnicity, religion, race, and class.

The policy that specifically regulates the handling of ITE criminal cases based on Restorative Justice is currently stipulated in Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Article 3 of Indonesian National Police Regulation Number 8 of 2021 states that the handling of criminal offenses based on restorative justice must meet general and/or specific requirements. The general requirements for handling criminal cases consist of material and formal requirements. The material requirements are listed in Article 4 letter a of Regulation of the Indonesian National Police Number 8 of 2021 concerning the

Handling of Criminal Acts based on Restorative Justice, namely:

- Does not cause unrest and/or rejection from the community;
- Does not cause social conflict;
- Does not have the potential to divide the nation;
- Is not radical or separatist in nature;
- Is not a repeat offender based on a court decision;
- Is not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption, or a criminal act against human life.

Meanwhile, the formal requirements for handling criminal acts based on restorative justice in Article 6 of the Indonesian National Police Regulation Number 8 of 2021 are as follows:

(1) The formal requirements as referred to in Article 4 letter b include:
- Reconciliation between both parties, except for drug crimes; and
- Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes.

(2) Reconciliation as referred to in paragraph (1) letter a shall be evidenced by a letter of reconciliation agreement signed by the parties.

(3) The fulfillment of the rights of victims and the responsibilities of perpetrators as referred to in paragraph (1) letter b may take the form of:
- Returning goods;
- Compensation for losses;
- Reimbursement of costs incurred as a result of the criminal offense; and/or
- Compensation for damage caused as a result of the criminal offense

(4) The fulfillment of rights as referred to in paragraph (3) shall be evidenced by a statement letter in accordance with the agreement signed by the victim.

(5) The format of the peace agreement referred to in paragraph (2) and the statement referred to in paragraph (4) are set out in the Appendix, which forms an integral part of this Police Regulation.

In addition to the general requirements, there are also specific requirements. Specific requirements in handling ITE Criminal Acts with a restorative justice approach include at least the following: (1) Perpetrators of ITE Criminal Acts who disseminate illegal content; (2) The perpetrator is willing to delete the content that has been uploaded; (3) The perpetrator submits an apology through a video uploaded on social media accompanied by a request to delete the content that has been spread; and the perpetrator is willing to cooperate with the Indonesian National Police investigators to conduct further investigations. Other provisions governing guidelines for investigators in handling ITE criminal cases that can be resolved through mediation or restorative justice are contained in the Chief of Police Telegram Letter No. 339/II/Res. 1.1.1/2021 concerning Guidelines for Handling Criminal Cases, which determines the types of ITE criminal cases that can be resolved through restorative justice, namely:

(1) Criminal cases of hate speech involving defamation, slander, or insult

(2) Criminal cases that have the potential to divide the nation, such as those involving SARA, hatred against groups or religions or races and ethnicities

(3) Criminal cases involving the dissemination of false news/hoaxes that cause unrest

Furthermore, in the National Police Chief Circular Letter Number SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Indonesian Digital Space, instructions are given to National Police investigators who receive reports related to Law -Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning ITE, are requested to adhere to the following guidelines, among others:

(1) In receiving reports from the public, investigators must be able to clearly distinguish between criticism, input, hoaxes, and defamation that can be criminalized in order to determine the steps to be taken.

(2) From the moment a report is received, investigators must communicate with the parties involved, especially the victims, and facilitate and provide ample space for the disputing parties to engage in mediation.

(3) Conduct a comprehensive review and case hearing of the case being handled by involving Bareskrim/Cyber Directorate (can be through a Zoom meeting) and make a collective collegial decision based on the available facts and data.

(4) Investigators adhere to the principle that criminal law is a last resort in law enforcement (ultimatum remedium) and prioritize restorative justice in

case resolution.

In the Criminal Procedure Code, investigators have the authority to terminate the investigation of a criminal act if it meets the legal requirements stipulated in Article 109 paragraph (2) of the Criminal Procedure Code, namely not obtaining sufficient evidence, the alleged incident is not a criminal act, and the termination of the investigation is in accordance with the law. These reasons can be used if there are grounds for the extinction of the right to prosecute and the loss of the right to impose punishment, including ne bis in idem, the death of the suspect, or the criminal case has passed the statute of limitations. Although the conditions for terminating an investigation are stipulated in Article 109 paragraph (2) of the Criminal Procedure Code, there is still room for investigators to take other legal actions. As stated in Article 16 letter l of Law Number 2 of 2002 concerning the Indonesian National Police, their authority is to "take other actions in accordance with the law." In relation to the termination of an investigation, investigators have the authority to act based on their own assessment. This authority is called discretion (Iman Imanuddin, 2019:155), whereby a National Police officer can exercise discretion in various cases and focus more on selective enforcement.

The authority to act according to the investigator's assessment as referred to in Article 16 paragraph (1) letter l of Law Number 2 of 2002 concerning the Indonesian National Police provides the possibility for investigators to take action to terminate the investigation of a criminal case that has been committed. Mediation and restorative meetings can be conducted as long as other legal actions are truly the result of an agreement between the parties to take certain actions aimed at restoring the original situation. These other actions must be justified by the investigator with reasonable grounds and be reasonable in order to provide justice for the victim, the perpetrator, and the community.

The application of restorative justice in the settlement of ITE criminal cases is in line with the concept of democratic policing. This concept requires policing to be in line with the expectations of the community. This is based on the best quality of police performance accompanied by comprehensive supervision based on the principles of transparency, fairness, and professionalism. This concept is also in line with discretion as selective action, where investigators are required to be able to select and sort out which cases are appropriate to be processed so that there is no backlog of cases and inefficiency for all parties.

The application of the concept of democratic policing can be linked to the duties of investigators at the Cyber Crime Directorate of the Indonesian National Police in handling ITE criminal cases. In carrying out these duties, investigators are required to take a broad view by looking at case handling from various

perspectives. By thinking more democratically, investigators are expected to have integrity and a comprehensive perspective on the implementation of tasks related to law enforcement, so that the best decisions taken are in the interests of ensuring public security and order in general. Investigators must take a comprehensive view of the causes of ITE crimes and their impact after enforcement. By having a perspective that emphasizes the principle of benefit, in addition to the principles of justice and legal certainty, it is hoped that the steps taken will reflect legal policies that are more favorable to the interests of the community. Thus, the public can feel the benefits of law enforcement without having to perceive the police negatively as being oriented towards retributive punishment such as imprisonment.

The handling of ITE criminal cases based on restorative justice is linked to John Rawls' (2011) theory of justice as fairness, referred to as contract theory. The basic structure of society as the main subject of justice has an agreement in choosing a principle where no party is benefited or disadvantaged. This theory is in line with the concept of restorative justice, with the main objective being to restore the relationship between the perpetrator, the victim, and the community. The resolution is based on an agreement made by the perpetrator, the victim, and the community so that no party is benefited or disadvantaged from the criminal incident. Restorative justice is not only about repairing the damage caused by a criminal case settlement, but also about justice.

In realizing the enforcement of ITE criminal law with restorative justice, the Cyber Crime Directorate of the Indonesian National Police is required to focus on preemptive and preventive strategies. In the preemptive strategy, investigators are required to be able to provide advice to the community through social media so that they can be active in demonstrating legal awareness in their activities on social media. Preemptive strategies can also be implemented through community development activities to maintain security and order with the aim of increasing the community's resilience, prevention, and resistance to disturbances to public order. Meanwhile, preventive strategies focus on efforts and activities to maintain public security and order, maintain the safety of people, objects, and goods, including providing protection and assistance, particularly to prevent violations of the law. Both strategies need to be optimized because, so far, investigators from the Cyber Crime Directorate of the Indonesian National Police have focused on repressive measures, which are only taken after a criminal incident has occurred. By focusing on preemptive and preventive strategies, investigators are expected to be able to handle cybercrime incidents in the community before they occur and cause harm to the community.

2) The Effectiveness of Resolving Electronic Information and Transaction Crimes Using a Restorative Justice Approach at the Cyber Crime Directorate of the Indonesian National Police

The development of thinking about criminal punishment has moved towards a new orientation where the settlement of criminal cases is beneficial to all parties. This development has reached the stage of restorative justice, where justice is offered as an approach that is considered to meet demands. According to Johnstone (2003), the restorative process is considered a process outside the legal system that negates the authority of the state. The value of punishment, which is the deliberate infliction of suffering, seems to have disappeared. Marshal and Merry (1990) reinforce this assumption by stating that the concept of restorative justice has reduced criminal law to civil law. The practice of using the restorative justice approach that has been carried out so far has been criticized by Andrew Von Hirsch (1993), including (1) The ultimate goals of the approach are considered to be very diverse and unclear (multiple and unclear goals); (2) Uncertainty about how to achieve them; (3) Lack of clear criteria; (4) Difficulty in finding an evaluation model to measure the success of restorative justice.

In reality, there is no specific evidence to show that restorative justice can reduce crime rates in society. However, if we think about it rationally, the iceberg phenomenon in police crime statistics is actually created by the existence of cases that are resolved outside of the criminal justice system and are therefore not recorded. And if it is stated that restorative justice does not satisfy 90 percent of victims, isn't it the current criminal justice system that does not place victims as a determining factor in reaching a final decision? To date, many parties still doubt the implementation of the concept of restorative justice in all types of existing criminal acts. Anthony Bottoms adds that restorative justice actually triggers greater victimization than the current system. This condition also makes fewer victims willing to participate in the settlement of criminal cases.

Restorative justice basically has an impact on criminal law, both formally and materially. A different framework for the orientation of criminal case handling causes a change in the mindset of law enforcement officials. This has an impact on the criminal justice system. It is undeniable that the purpose of punishment and the criminal justice system is to reduce crime rates. Restorative justice is considered to be more effective at reducing crime than the current criminal justice system when viewed from the following perspectives:

• From the perspective of procedural justice, current criminal justice practices are considered to have failed to reduce crime, as evidenced by the annual increase in crime statistics, while restorative justice is considered to be more effective in preventing crime than the criminal justice system, even though the latter is based on deterrence theory.

• The concept of rehabilitation adopted by the current criminal justice system is aimed only at perpetrators, while the concept of rehabilitation for victims has not been given attention. The concept of rehabilitation in restorative justice not only pays attention to corrective or remedial actions for perpetrators but also includes recovery actions aimed at victims.

• In restorative justice, victims and the community are not merely spectators or supporting actors in the criminal justice arena, but play a leading role and are decisive in the final outcome of the criminal justice process itself.

• The criminal justice system is fundamentally incapable of applying the principles of simplicity, speed, and low cost. Restorative justice, on the other hand, provides opportunities to resolve criminal cases both within and outside the system by considering the characteristics of the crime and the resolution model desired by the perpetrator, victim, or community, while the state takes on more of a role as mediator or facilitator.

Katleen Daly attempts to illustrate the differences between the current criminal justice system and the concept of restorative justice in the following table:

Criminal Justice System Restorative Justice

Victims are marginalized in the process. Victims are central to the process.

The focus of the process is to punish or rehabilitate the perpetrator. The focus of the process is to restore the negative impacts of the crime experienced by the victim and perpetrator, or if possible, the wider community.

The community is represented by the state. Members of the community or community organizations can actively participate in the process.

The characteristic of the ongoing process is a legal process between the parties. The characteristic of the ongoing process is a dialogue and negotiation between the parties.

Supporting factors are an important part if the restorative justice approach is to be applied more effectively in ITE criminal cases and become part of the criminal justice system. These supporting factors include: (1) Deliberative

Institutions; (2) Alternative Institutions; (3) Community Benefits; (4) Access to Justice; (5) Means of Reconciliation; and (6) Basis for Criminal Mitigation.

The settlement of cases outside the criminal justice process is also accompanied by a process within the criminal justice system. In the case of a two-way settlement of criminal cases, a restorative approach is usually used for settlements outside the system. Meanwhile, the criminal justice system continues to run as it does in conventional processes.

3) Analysis of Factors Affecting the Effectiveness of Handling ITE Criminal Cases Using a Restorative Justice Approach at the Cyber Crime Directorate of the Indonesian National Police

Handling the settlement of ITE criminal cases using a restorative justice approach is closely related to a country's legal system. The components of the legal system are legal substance, legal structure, and legal culture, which influence whether or not the handling of ITE criminal cases can be resolved using a restorative justice approach.

Factors that influence the implementation of the restorative justice approach to handling ITE criminal cases at the Cyber Crime Directorate of the Indonesian National Police's Criminal Investigation Unit in three cases, namely the criminal acts of spreading hoaxes, ethnic, religious, racial, and intergroup conflicts (SARA) with case number: LP/A/0021/I/2021/BARESKRIM, Criminal acts of spreading false news (hoaxes) with LP: LP/B/0309/VI/2020/BARESKRIM, and Criminal acts of extortion through electronic media and threats with LP: LP/B/0842/IX/2019/Bareskrim can be grouped into legal factors, resource factors, community factors, and cultural factors.

a. Legal Substance

Legal substance is a component related to the application of criminal law in law enforcement activities. Currently, the handling of ITE criminal cases using a restorative justice approach is still based on National Police Chief Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, National Police Chief Telegram No. 339/II/Res. 1.1.1/ 2021 concerning Guidelines for Handling Criminal Cases, and National Police Chief Circular Letter Number SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Indonesian Digital Space, which regulates the handling of ITE criminal cases using a restorative justice approach.

Formally, the settlement of ITE criminal cases using a restorative justice

approach is regulated in the provisions of the law as the basis and legal foundation for investigators in settling ITE criminal cases outside the criminal justice system. Unfortunately, in practice, it is often found that the application of these rules is still ineffective and not in accordance with the philosophy of restorative justice.

In the criminal justice system, investigators play a central and important role as they are the gateway for criminal cases to be processed. Initial selection usually occurs during the investigation and inquiry process to determine whether a case should be forwarded to the prosecutor for prosecution. In general, there are several reasons why a case cannot be prosecuted, namely insufficient evidence, withdrawal of the complaint in the case of a complaint offense, and after the investigation, the police conclude that the case is not a criminal offense.

The meaning of discretion in this rule is more about the action taken by police officers in response to a particular event, which is actually a form of deviation from the applicable laws and regulations. The law enforcement tools that justify these actions are, in criminal law, better known as the institution of Justification (Rechtuitsluitingsgronden), and not as a form of diversion in the handling of a criminal case.

The understanding of discretion as an effort to divert or transfer a case to be handled outside the criminal justice procedure does not seem to be part of the meaning and authority of police discretion. Even if the termination of a case process is based on Article 109 paragraph (2) of the Indonesian Criminal Procedure Code (KUHAP), there are three reasons that allow such termination: insufficient evidence, the event is not a criminal act, and the police investigation of a criminal case is legally discontinued.

The consideration for applying the settlement of electronic information and transaction (ITE) criminal cases by investigators of the Cyber Directorate of the Indonesian National Police Criminal Investigation Agency (Bareskrim Polri) is based on three aspects: (1) the reported party has apologized to the reporting party; (2) both parties have agreed to resolve the issue amicably based on a peace agreement; and (3) the investigator taking the initiative to act as a mediator to reconcile the victim and the offender does not constitute discretion as referred to in the Police Law and is also not a mechanism that can be used to stop the case process as intended in the KUHAP.

Investigators in the field have applied a restorative approach in resolving ITE criminal cases, although its implementation does not yet have a permanent legal umbrella in the form of laws or the KUHAP. The basis for applying the

restorative approach is considerations of humanity, justice, and legal benefits. The investigator's diversion of the criminal justice process into mediation is not yet based on a valid legal foundation in the form of legislation. This is a concern as it may lead to legal uncertainty in determining the provision of restorative justice to offenders of ITE crimes.

b. Structure of The Law

The structure of the law is a component of the legal system related to human resources. In this context, the human resources referred to are the capabilities of investigators/detectives in selective law enforcement. This component involves factors influencing the investigator's choice in determining whether a law violator will be prosecuted or not in handling Information and Electronic Transaction (ITE) criminal cases. Investigators are required to be able to select or filter which cases are appropriate to be taken to court based on laws and regulations, to prevent case backlogs and ensure efficiency for all parties.

The authority to act based on the investigator's judgment, as stated in Article 16 paragraph (1) letter l of Law Number 2 of 2002 on the Indonesian National Police, allows investigators to take legal action in the form of terminating an investigation on criminal cases that have undergone mediation through restorative meetings, provided that other legal actions are truly the result of an agreement between the parties aimed at restoring the original state. Such actions must be accountable by the investigator with reasonable and justifiable reasons to provide justice for the victim, the offender, and the community.

One factor influencing the handling of ITE criminal cases using a restorative justice approach related to the discretion authority of the investigator is the possession of *power of discretion* by the investigator. This leads to concerns about discrimination by investigators in cases involving offenders who contribute/pay, social status, or have special interests affecting the investigator's decisions and actions. By minimizing the possibility of abuse of authority, especially regarding the power of discretion, it is hoped that the Indonesian National Police can improve its image in the public eye through impartial policing. Effective policing requires qualified personnel capable of wisely using policies to handle a wide range of complex problems and situations. Wise decisions are crucial for the professional development of police roles, and overreliance on regulations and bureaucratic routines should be avoided (E. Bittner, 1970; 51).

The legal structure is also related to the limited facilities and infrastructure for handling electronic criminal cases as supporting means in case resolution.

Following the Constitutional Court Decision Number 20/PUU-XIV/2016, which conducted a judicial review on Article 5 paragraph (1) and (2), Article 44 letter b of Law Number 11 of 2008 on ITE, and Article 26A of Law Number 20 of 2001 on the Eradication of Corruption Crimes concerning the validity of electronic evidence, new provisions impose limitations on electronic evidence. Specifically, the use of electronic evidence must be carried out for law enforcement at the request of the police, prosecutors, and/or other law enforcement institutions designated under the law.

c. Legal Culture

Legal culture is a component that influences the investigation of Information and Electronic Transaction (ITE) criminal cases. This component is closely related to the community's level of education. It is reflected in the public's awareness in expressing opinions and criticisms through electronic media or social media. Generally, people with a low level of education tend not to consider the impact of their actions on social media; their concern is often limited to how to criticize an ethnic group or certain community based on their own perspective. The community still appears reluctant to respect religious, racial, and ethnic diversity (SARA), resulting in the spread of personal hatred toward certain groups through false news (hoaxes) on social media.

Another legal culture factor that affects the effectiveness of resolving ITE criminal cases through a restorative justice approach is the tendency of the society to lack a culture of forgiveness. The reporting party is often unwilling to forgive and attend every deliberation attempt during the investigation or inquiry stages, along with a public desire to continue the legal process based on the principle of deterrent effect. The prevailing societal paradigm still strongly believes that someone who has committed a crime must be punished or end up in prison. This culture of forgiveness factor significantly impacts the application of restorative justice in the settlement of ITE criminal cases.

4. Conclusion

The handling of ITE criminal cases with a justice-based approach is carried out in accordance with various regulations issued by the National Police Chief, whereby investigators from the Cyber Crime Directorate of the Indonesian National Police's Criminal Investigation Unit adhere to the principle that criminal law is a last resort in law enforcement (ultimatum remedium), so investigators tend to prioritize restorative justice in resolving cases, but the resolution is still not effective. Although the resolution of these cases has a fairly

clear legal basis, its implementation is still oriented towards retributive justice, not restorative justice. Therefore, this application must be supported by several factors, such as: the existence of deliberative and alternative institutions; direct benefits for victims, perpetrators, and the community; a significant role and contribution from the community; a swift and appropriate case handling process; and open access to justice, means of reconciliation, and grounds for criminal leniency. The factors that can influence the effectiveness of handling ITE criminal cases with a restorative justice approach include legal substance, legal structure, and legal culture.

It is recommended to take specific actions in handling the settlement of ITE criminal cases using a restorative justice approach, by increasing the role of cyber patrols as pre-emptive and preventive measures to prevent violations of ITE. Coordinate and disseminate information with relevant agencies in the Criminal Justice System (CJS), namely investigators, prosecutors, and judges, regarding the application of criminal cases using a restorative justice approach at the investigation level by notifying prosecutors and courts of the SP3 so that criminal cases resolved through restorative justice receive a ruling from the relevant court. It is necessary to improve the competence of investigators/detectives through various training and vocational education programs on ITE. Conduct internal supervision in the handling of ITE criminal cases using a restorative justice approach. Furthermore, the government and legislative bodies should pass the Draft Criminal Procedure Code Bill, which regulates the requirements and mechanisms of restorative justice in the settlement of criminal cases to serve as a legal basis for investigators in carrying out their duties, functions, and authorities.

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