

## DISCRETION AS AN ENTRY POINT FOR RESOLVING CRIMINAL CASES THROUGH RESTORATIVE JUSTICE : BUILDING JUSTICE AND PEACE

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### ABSTRACT

The public's request that Polri investigators understand their authority to take action against perpetrators of criminal acts in investigations based on Pro Justitia, is evidenced by certain legal actions in the criminal justice system (Criminal Justice). As investigators, the police have their own jurisdiction based on the 1981 Criminal Procedure Law, Law no. 2 of 2002 concerning the Republic of Indonesia Police & Article 1 point J and regulations of the Indonesian National Police, to avoid ambiguity in the law. This action is governed by Article 16 paragraph 1 point 1 and Article 18 "Other actions may be taken" subject to "certain conditions" determined at the discretion of the Foler, which is called Discretion. Coroners must implement restorative justice as a solution to fulfill people's sense of justice in carrying out their current duties and rights by creating a strategic environment for community needs. Conceptually, restorative justice is a criminal justice model approach that emphasizes the direct involvement of perpetrators, victims and the public in the criminal justice process. Through founding principles and a restorative justice approach, it is one that can be used in a healthy criminal justice system.

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### INTRODUCTION

Indonesia is a country based on the principle of the rule of law, which is stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This principle guarantees that every citizen is treated equally before the law, and anyone who violates the law will be sanctioned in accordance with applicable regulations. The Criminal Justice System is tasked with implementing this principle and has the aim of preventing, tackling, fostering, and reducing crimes or violations of criminal law. In the implementation of the law, there are two main bases used, namely material criminal law and formal criminal law or criminal procedure law.

In handling criminal cases, the police are at the forefront, and are therefore often referred to as the *Gate Keeper* in the Criminal Justice System. It is through the hands of the police that a legal event is constructed, whether it is a criminal case or not. If the legal event is a criminal case, then the police as investigators will process it further in accordance with their authority based on the provisions stipulated in the regulations. In exercising their authority, the police *mindset is* always oriented towards normative provisions, so that in a positivistic point of view, all criminal cases will be processed and end up in the Criminal Justice System (CJS). This is inseparable from the approach in the conventional criminal law system, which prioritizes the approach of punitive sanctions against criminal offenders in resolving a criminal case.

The approach of punitive sanctions against the perpetrators of criminal punishment in the settlement of criminal cases or known as the retributive approach, basically aims to provide appropriate retribution against the perpetrators of crimes, so that they become deterrent, do not

reoffend, and provide a deterrent or preventive effect, so that other people will not violate the law. This approach is only limited to the aspect of punishment and does not pay attention to the needs of other parties, such as victims, families of victims, and communities affected by the actions of criminal offenders. The meaning is that through the retributive approach, when a criminal case has been processed through the Criminal Justice System, the case is considered to have been handled by the Law Enforcement Officials (APH), even though there is another side that has not been handled, namely the social conditions that are torn apart due to the behavior or actions of the perpetrators of criminal acts.

Observing the aforementioned situation, therefore, there is currently an alternative idea in resolving a criminal case, namely through the Restorative Justice approach. In this approach, the focus of attention in resolving a criminal case is not only on the perpetrator of the crime, but also on the recovery and reconciliation of the parties affected by the criminal behavior. In the retributive approach, it can be said that victims, families of victims, and affected communities have no role to play in resolving criminal cases that occur. Whereas through the *Restorative Justice* approach, the parties are given a role to talk about how to resolve criminal cases that occur, reconcile, and restore torn social conditions, so that it is hoped that justice and peace will be realized again.

In resolving criminal cases, the police as the frontline in the SPP, should not only use a normative *mindset* (Positivistic Approach), where the resolution of criminal cases will always end in SPP. If this way of thinking is carried out, it will result in all criminal cases having to be processed and end up at the SPP, and there will be *stuck* in the SPP, due to the overload of processing existing criminal cases. Indeed, the legal politics of the government has thought about this, so that the existing SPP will not experience *stuck* due to the overload in processing criminal cases, namely by giving the police the authority as APH to take other actions according to the law that are responsible. In taking these other actions, the police must fulfill the conditions set out in the regulation, namely:

- Not contrary to a rule of law;
- Align with the legal obligation that requires the Action to be taken;
- It must be proper, reasonable and within the scope of the position;
- Reasonable considerations based on compelling circumstances; and
- Respect human rights.

The authority to take other actions according to the law that are responsible by the police as APH, is better known as Police Discretion. In essence, discretion is the authority given to law enforcement to make wise and fair decisions in handling a problem in society, including in handling a legal problem or criminal case. The police discretionary authority granted by the state to the police as APH, is basically inherent in every individual police personnel from the lowest rank to the highest rank. In the context of handling a criminal case, therefore every member of the police as an investigator has the discretionary authority available to him to be used in choosing the resolution of a criminal case, will be resolved through SPP or using an alternative approach, namely the *Restorative Justice* approach.

Realizing the authority possessed by each individual police personnel in the form of police discretionary authority, and observing that the resolution of a criminal case does not always have to be resolved through SPP, but can use other alternatives, namely through the *Restorative Justice* approach, the police regulate it into a regulation. The regulation is in the form of State Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice (State Gazette of the Republic of Indonesia of 2021 Number 947).

### **Problem Formulation**

- How is the discretionary authority of police investigators related to their duties and authority in solving criminal cases?
- How is discretion as an entry point for resolving criminal cases carried out by Police Investigators through Restorative Justice?

## **RESEARCH OBJECTIVES**

This research aims to

- Analyze the extent to which the discretionary authority of Police investigators as Law Enforcement Officials is related to their duties and authorities.
- Analyze the implementation of police authority in handling criminal cases through *restorative justice*.

### **Legal Research Methods**

This research adopts normative and empirical legal analysis methods, which observe the implementation of case settlement policies with the principle of restorative justice carried out by the Indonesian National Police (Polri) Investigators. Information was obtained through the application of document study techniques. The document study method was used to retrieve the required secondary information. The action taken is to collect secondary references in the form of primary legal materials, secondary laws and tertiary laws that are relevant to the topic under study.

Data analysis can be carried out through qualitative juridical analysis methods by following the three main stages in the qualitative data analysis process, namely data reduction, data presentation, and conclusion drawing.

## **DISCUSSION**

### **Discretionary Authority of Police investigators as Law Enforcement Officials in relation to their duties and authorities**

Moylan expressed his opinion on the meaning and definition of policing as follows:

"Throughout history, the term 'police' has had different meanings in the sense in which it was originally given. Also the term given by each country to the notion of "police" is different because each country tends to give the term in its own language. For example, the term "constable" in England has a certain meaning for the notion of "police", namely that constable contains two kinds of meaning, first as a unit for the lowest rank in the police (police constable) and second means the police office (office of constable)".

Polri universally has the same task, namely as an apparatus in charge of maintaining security and public order and law enforcement officers, although in practice in each country has different work patterns and procedures. With the development of human civilization and the development of crime patterns, the task of the Police is getting heavier and more complex. The function of the Indonesian National Police can be seen in the 1945 Constitution of the Republic of Indonesia Article 30 paragraph (4) (after amendment): "The Indonesian National Police as a state instrument that maintains security and public order is tasked with protecting, protecting, serving the community and enforcing the law".

The National Police of the Republic of Indonesia (abbreviated as Polri) is the National Police in Indonesia, directly responsible to the President. Previously this police force was named Badan Polisi Negara (BPN), Djawatan Polisi Negara (DPN) and Angkatan Kepolisian Republik Indonesia (AKRI). Polri has the motto *Rastra Sewakotama* which means *Abdi Utama for Nusa Bangsa*. Polri carries out state police duties throughout Indonesia, namely maintaining public security and order; enforcing the law; and providing protection, protection and services to the community.

Based on the definition of the police itself, the police have brief duties, functions and authorities as a state instrument to organize public security and order through law enforcement and community protection to maintain domestic security. However, police duties are more clearly regulated in Law No. 2 of 2002.

Police in all countries have the same duties, both as security officers and as law enforcement officers, despite the fact that each country has different work models and processes. With the development of human civilization and the development of crime models, police duties are increasingly difficult and complex. The function of the Indonesian National Police can be seen in the 1945 Constitution of the Republic of Indonesia Article 30 Paragraph (4) (as amended): "The National Police as a state instrument for maintaining public order and security is responsible for protection, education, community service and law enforcement".

In accordance with Law Number 2 of 2002, the existence of the Police in Indonesia carries 4 strategic roles, namely law enforcement, protectors, protectors and community guides, especially in

terms of compliance and obedience to applicable laws. Based on these provisions as stipulated in Article 13 of Law No.2 of 2002, police duties include:

- maintaining security and public order;
- enforce the law; and
- provide protection, protection, and
- service to the community.

Based on this article, we can conclude that the duties of the Indonesian National Police are Tri Brata and Catur Presetya polri. The police function in Indonesia has also been regulated in Article 2 of Law No.2 of 2002 which explains that "The police function is one of the functions of state government in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community. and furthermore it is also regulated in Article 3 paragraph 1 of Law No.2 of 2002 that:

"The bearer of the police function is the Indonesian National Police assisted by :

- a. special police force;
- b. Civil servant investigators; and/or
- c. forms of self-directed security.

In addition to the duties and functions of the police in Indonesia, of course the police also have a lot of authority, regarding the authority of the police is regulated in Article 15 paragraph 1 of Law No.2 of 2002, namely:

- receive reports and/or complaints;
- help resolve community disputes that may disrupt public order;
- prevent and mitigate the growth of community diseases;
- monitoring streams that may cause division or threaten the unity of the nation;
- issuing police regulations within the scope of police administrative authority;
- carry out special examinations as part of police action in the context of prevention;
- take the first action at the scene;
- taking fingerprints and other identifiers and photographing a person;
- search for information and evidence;
- organizing the National Criminal Information Center; k. issuing licenses and/or certificates required in the context of community service; l. providing security assistance in the trial and implementation of court decisions, activities of other agencies, and community activities; m. receiving and temporarily storing found items.

The duties of the police as law enforcers include participating in the development of national law; maintaining order and ensuring public security; coordinating, supervising and providing technical guidance to special police, civil servant investigators and forms of self-initiated security; investigating all criminal acts in accordance with the Criminal Procedure Law and other laws and regulations; organizing police identification, police medicine, forensic laboratories and police psychology for the benefit of police duties. Furthermore, the duties of POLRI as a protector and servant of the community include protecting the safety of body and soul, property, society and the environment from disturbances of order and/or disasters including providing assistance and help by upholding human rights; serving the interests of citizens temporarily before being handled by the competent agencies and/or parties; providing services to the community in accordance with their interests within the scope of police duties.

In the interpretation of Article 18 paragraph (1) of Law No. 2 of 2002 concerning the Indonesian National Police with the provision that "acting at his own discretion" means actions that can be taken by members of the Indonesian National Police who in acting must consider the benefits and risks of their actions and are truly in the public interest.

Discretion is a policy carried out by law enforcers in exercising the authority given to them by law. Discretion comes from the English nation, namely discretion, which means wisdom, discretion. Discretion is the use of authority that is not always in accordance with the laws governing that authority. Discretion can be interpreted as the exercise of authority that prioritizes morals over law. In principle, discretionary authority is owned by all elements involved in law enforcement, such as

the police, prosecutors, judiciary, and other law enforcement agencies. The use of discretion in law enforcement can be justified as long as it does not conflict with the public's sense of justice.

Police discretion is not formulated boundaries, elements and criteria, so the use of police discretion is vulnerable to abuse of authority and arbitrary actions. Because police discretion is used in order to carry out government functions and is largely determined by the behavior of each member of the police as a government apparatus, then in taking action and judgment must remain based on the law and human rights, not contrary to the general principles of good governance and based on good governance, so that the use of discretionary authority cannot only use the power approach, but must consider human rights and police functions inherent in the existence of police institutions. Acts of abuse of authority or negligence in the performance of duties, especially in exercising discretion, if it harms other parties or police officers because of one of their negligence must be held accountable and receive punishment in accordance with the legal system or norms that are violated.

Police discretion is generally applied in cases of minor offenses. Police discretion has no limits, determining factors and criteria, so that the arbitrary use of police power is considered an abuse of power and arbitrariness. Because police discretion is carried out in the context of carrying out government functions and is largely determined by the behavior of each member of the Police as a government apparatus, then in acting and assessing it must be based on law and human rights, not based on law and human rights. contrary to the general principles of good governance, and based on good governance, so that the use of discretionary power is not just using authority but must also pay attention to human rights and police functions inherent in the existence of public security institutions. Abuse of authority or negligence in carrying out its functions, especially in exercising its discretion, if it harms other parties or police officers, due to one of its negligence, it can be held accountable and punished according to the law. legal system or norms have been violated.

The role of the police is generally recognized as maintaining public order as well as law enforcement officers in criminal proceedings. The police are street law enforcement officers who deal directly with society and crime. As stipulated in Article 2 of Law No. February 2002 concerning the Indonesian National Police, that the function of the police is one of the functions of state government in the field of public order and security, law enforcement, safeguarding, protecting, nurturing and serving the community. In addition to being a *law enforcement agency*, the police are also an *order maintenance officer*. The police are the mainstay of the integrated criminal justice system. Do the police alleviate the shadows of criminal cases? The police must be able to uncover the wild nature of crime in society and find the perpetrators. The police are required to be able to uncover the wild nature of crime in society and find the perpetrators. The police must carry out a series of actions to seek and find evidence to shed light on a crime and find the perpetrators.

Law enforcement, maintaining security and public order (Kamtibmas) as well as serving and protecting the community are the main tasks of the police as a noble profession, whose application must be based on applicable laws and human rights. Or in other words, it must act professionally and adhere to a strict and rigorous code of ethics, so as not to fall into behavior that is hated by society.

### **Implementation of police authority in handling criminal cases through restorative justice.**

The Indonesian National Police (Polri), as part of an integrated criminal justice system, plays a very important role in criminal law enforcement. In Law No. 2 of 2002 concerning the National Police, Section 2 states that the function of the police is to carry out every function of state government in the task of protecting, nurturing, and serving the community and law enforcement. Article 14 paragraph (1) letter g of Law Number. February 2002 stipulates that the police have the authority to investigate criminal offenses for which the investigator has carried out previous investigative actions. Law enforcement carried out of course law enforcement must be in accordance with the provisions of the legislation (KUHAP), also refers to the national sheriff priority program which carries the concept of transformation into a predictive, accountable and transparent enough police (PRESSISI).

The transition to the Ethical Police includes 4 areas, 16 priority programs, 51 activities and 117 action plans. In the field of operations, one of the Sheriff's priority programs is the Law Enforcement Performance Improvement Program. In this case, one of the Chief of Police's main concerns is the existence of a law enforcement process that responds to people's sense of justice. This can be achieved by prioritizing progressive law in case resolution through restorative justice, not only considering aspects of legal certainty but also interests and justice. This interpretation is in line with what Gustav Radbruch stated. Gustav Radbruch referred to justice, expediency and legal certainty as the three basic ideas of law or the three objectives of law, and can also be equated with legal principles. Judgments and court decisions must be valid because judges must base their decisions on the law. Decisions must also be fair, objective and impartial. Therefore, the ideal decision is one that contains justice, interest, and legal certainty in equal measure.

Among the three principles, the one that is often highlighted is the issue of justice. Friedman states that, "in terms of law, justice will be judged as how law treats people and how it distributes its benefits and costs", and in this connection Friedman also states that, "every function of law, general or specific, is allocative", (every function of law, whether general or specific, is an allocation).

Seen as a policy process, criminal law enforcement is essentially a policy enforcement, (Felisiano & Paripurna, 2010), through several stages, namely: 1) Formulation stage, which is the stage of law enforcement in abstracto by the lawmaking body. This stage is also called the legislative policy stage. 2) The application stage, which is the stage of applying criminal law by law enforcement officers ranging from the police to the courts. This second stage can also be called the judicial policy stage. 3) The execution stage, which is the stage of concrete implementation of criminal law by the criminal implementing apparatus. This stage is called the executive or administrative policy stage. Polri also has the authority to take other actions according to the law responsibly. This authority is the authority of Polri in the context of criminal proceedings as investigators and investigators as stipulated in Article 5 paragraph (1) letter a number 4 and Article 7 paragraph (1) letter j of KUHAP. In order to carry out tasks in the field of criminal proceedings, Polri is authorized to conduct other actions in the form of investigative and inquiry actions which are carried out as follows: 1) not contrary to a rule of law; 2) in line with the legal obligation that requires the action to be taken; 3) must be appropriate, reasonable, and within the scope of his/her position; 4) proper consideration based on compelling circumstances; and 5) respect for human rights. Some laws that can be used as the legal basis for the application of discretion, especially in the process of criminal law enforcement, include Law Number 2 of 2002 concerning the Police, 1) Article 15 (2) The Indonesian National Police in accordance with other laws and regulations is authorized to exercise other authorities included in the scope of police duties. 2) Article 16 (1) In order to carry out its duties in the field of criminal proceedings, the Indonesian National Police is authorized to: 1. conduct other actions according to responsible laws. 2) Other actions as referred to in paragraph (1) letter l are investigation and investigation actions which are carried out if they fulfill the following conditions: a. not contrary to a rule of law; b. in line with a legal obligation that requires the action to be taken; c. must be appropriate, reasonable, and included in the scope of his/her position; d. feasible considerations based on compelling circumstances; and e. respect for human rights.

In the development of the criminal justice system in Indonesia, punishment by imprisoning criminals is the main sanction against criminals who are proven guilty in court. Meanwhile, if we examine more deeply, the community needs not only imprisonment of the criminal, but also the hope to be able to restore the situation to before the crime occurred. This public expectation is urgent to be resolved by restorative justice. Restorative justice is the resolution of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair settlement through peace by emphasizing the restoration of the original state.

In the restorative justice view, crime is not just a violation of the law, but fundamentally a violation of human relationships. Restorative justice therefore emphasizes restoring the damage caused by crime, through material and symbolic restitution, rebuilding offenders' self-esteem, and returning them to society. It further emphasizes that restorative justice facilitates the restoration of community by affirming the values that were damaged by the criminal. Furthermore, restorative

justice argues that in the event of a criminal offense, the most important thing to do is not to punish the perpetrator of the crime, but to prioritize the repair of damage arising from the crime, including damage to the value system in a community. Furthermore, Braithwaite, J. said that the way to resolve criminal cases through restorative justice is as follows: First, from the offender's side, to achieve restorative justice, there must be an apology to the victim. Such an attitude of expressed remorse shows that the criminal offender understands the impact of his actions and recognizes that the criminal acts committed are wrong in a society. Such an attitude of remorse is necessary to repair the relationship between the criminal offender and the victim of the crime, as well as to restore the role of the criminal offender in society. Second, from the victim's side, through this conception, the attitude of regret expressing forgiveness from the perpetrator of the crime must be synergistic with the acceptance of the victim. The victim needs to see the offender with understanding and compassion as a fellow member of society. Modern societies agree that forgiveness can promote reconciliation. With reconciliation, the victim's desire for revenge will melt away. This can be the emotional basis to encourage the restoration of relationships, offender to victim and offender to society.

To respond to the development of legal needs of society that meet the sense of justice of all parties, the National Police is authorized by Law No. 2 of 2002 concerning the National Police to formulate a new concept in criminal law enforcement that accommodates the norms and values prevailing in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community. In view of all this, the National Police needs to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes restoring the original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment. The handling of criminal offenses based on restorative justice itself must meet general requirements which include material and formal requirements, as well as special requirements. The material requirements that must be met in resolving cases with restorative justice include:

1. Does not cause unrest and/or rejection from the community;
2. No impact on social conflict;
3. Does not have the potential to divide the nation;
4. No radicalism and separatism;
5. Not a repeat offender of a criminal offense based on a court decision, and
6. Not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against the life of the person.

While the formal requirements that must be met include the peace of both parties, except for drug crimes, this peace is evidenced by the existence of a peace agreement signed by the parties, and the fulfillment of the rights of the victim and the responsibility of the perpetrator, except for drug crimes. The fulfillment of this right can be in the form of returning goods, compensating for losses, replacing costs incurred as a result of criminal acts and replacing damage caused by criminal acts.

Ideally, in the process of law enforcement, law enforcement must achieve 3 (three) core values of law, or commonly referred to as legal objectives, namely justice, benefit, and legal certainty. For this reason, the promulgation of the 2021 Regulation of the Indonesian National Police Number 8 concerning Handling Crimes Based on Restorative Justice will be able to realize justice, benefit, and certainty of legal rights for the community, especially those in dispute. In relation to the application of restorative justice, the editor realizes that there are problems faced by law enforcers, in this case the police investigation during its implementation and these problems must be resolved immediately. These issues include case resolution through restorative justice, which is of course very attractive to both parties to the dispute. However, the lack of knowledge of investigators about the concept of restorative justice is an obstacle to its application, which is due to the lack of socialization related to digital police regulations. 8 of 2021. Not all investigators are involved in the socialization of restorative justice. So that investigators think that solving cases through restorative justice is only a conventional peaceful effort. Even if in its application there are material and form requirements that must be met. In addition, the performance culture of investigators is still largely underdeveloped, still carrying out their duties in accordance with legal thinking, following the

positivist model, which makes investigators hesitant in carrying out their duties, especially in stopping investigations, where there is concern that if they stop the investigation through a restorative justice mechanism, they will be considered violating the laws and regulations (KUHAP) and will be reprimanded by superiors.

The parties involved sometimes feel disadvantaged by the addition of the interrogation section of the minutes, in which case the parties involved after dialoguing with the investigator must return to meet the investigator to clarify the contents of the minutes. In addition, the involvement of community leaders, religious leaders, traditional leaders, or other stakeholders in the implementation of a particular case is a separate difficulty for the legal requirements of the investigator. Law No. August 1981 on KUHAP explains that there are several reasons why investigators stop an investigation. The reasons for stopping the investigation are insufficient evidence, the incident is not a criminal offense, or the investigation is stopped for legal reasons (the time limit has expired or the suspect has died). The non-inclusion of reasons for suspension of investigation due to judicial rehabilitation in the Criminal Procedure Code makes Investigators hesitant about the suspension of criminal investigations.

To realize the justice, interest and legal certainty that are the expectations of the community, Polri opens the door to resolving criminal cases through the mechanism of judicial re-service.

Ideally, in the process of law enforcement, law enforcement must achieve 3 (three) core values of law, or commonly referred to as legal objectives, namely justice, benefit, and legal certainty. For this reason, the promulgation of the 2021 Regulation of the Indonesian National Police Number 8 concerning Handling Crimes Based on Restorative Justice will be able to realize justice, benefit, and certainty of legal rights for the community. This is especially true for those who are in dispute.

In relation to the application of restorative justice, there are problems faced by law enforcers, in this case the police investigation during its application and these problems must be resolved immediately. These issues include case resolution through restorative justice, which is of course very attractive to both parties to the dispute.

However, investigators' ignorance of the concept of restorative justice is an obstacle to its adoption, due to the lack of socialization regarding digital police regulations. January 8, 2021. Not all investigators are involved in the restorative justice access process. So that investigators consider case resolution through restorative justice is only a conventional peaceful effort. Even if in its application there are material and form requirements that must be met. In addition, the law enforcement culture of investigators, most of whom are still old-fashioned, still carry out their duties with the spirit of upholding the law and sticking to the principles of positivism, which creates suspicion for investigators in carrying out their duties, especially in the suspension of investigations and investigations. where there is a fear that if the investigation is stopped by the restorative justice mechanism, it is considered a violation of the rules (KUHAP) and will receive a reprimand from their superiors.

The parties involved feel disadvantaged by the addition of the interrogation section of the minutes, in this case the parties involved after dialoguing with the investigator must return to meet the investigator to clarify the contents of the minutes. In addition, the involvement of community leaders, religious leaders, traditional leaders, or other stakeholders in the implementation of a particular case is a separate difficulty for the legal requirements of the investigator. Law No. August 1981 on KUHAP explains that there are several reasons why investigators stop an investigation. The reasons for stopping the investigation are insufficient evidence, the incident is not a criminal offense, or the investigation is stopped for legal reasons (the time limit has expired or the suspect has died). The non-inclusion of reasons for suspension of investigation due to judicial rehabilitation in the Criminal Procedure Code makes Investigators hesitant about the suspension of criminal investigations.

To realize justice, interests and legal certainty that are the expectations of the community, the National Police opens the door to resolving criminal cases through restorative justice mechanisms. In handling criminal cases through restorative justice, investigators or investigators must first fulfill the material and formal requirements stipulated in the Indonesian Police Regulation No. 8 of 2021.

After all the requirements are met, the investigator or investigating officer can stop the investigation or stop the investigation for legitimate reasons. That there are still many investigators who follow the positivist model and do not understand the concept of restorative justice, besides



that in the Criminal Procedure Code (KUHAP) there is no reason to stop the investigation for restorative justice. This makes investigators suspicious and must stop the investigation.

## CONCLUSIONS

In handling criminal cases through restorative justice, the investigator or investigators must first fulfill the material and formal requirements as stipulated in the Indonesian National Police Regulation No. IX. August 2021. After all requirements are met, the investigator or investigating officer may stop conducting an examination or investigation for legitimate reasons. That there are still many investigators who follow the positivist model and do not understand the concept of restorative justice, besides that in the Criminal Procedure Code (KUHAP) there is no reason to stop the investigation for restorative justice. This makes investigators suspicious and must stop the investigation.

## ADVICE

To overcome the problems that arise, the author provides several suggestions as a solution to these problems, including the need to socialize widely so that all investigators understand the concept of restorative justice. Furthermore, it is necessary to change the enumeration model from positive to constructive. There must be supervision attached to the Investigator, there is a time limit for postponing a case that has been resolved and the restoration of justice is also important, this is to minimize the situation of arbitrary extension of the suspension decision. only. and do not let investigators treat this restorative justice case as a source of income or hidden income. In conducting a case title in special circumstances, it is not necessary to involve community leaders, religious leaders, traditional leaders or stakeholders, the complainant or reported party and their respective legal counsel to assist with the special case title is sufficient, if any, this is to expedite the resolution of the special case title and to create favorable conditions for investigators to handle the case in question. Amendments to the Criminal Procedure Code (KUHAP) are needed, adding that the resolution of cases with restorative justice is a reason for terminating the investigation.

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