

Settlement Of Crimes Of Persecution Through Restorative Justice In The Jurisdiction Of The Bali Regional Police

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ABSTRACT

The Indonesian state is a state of law, based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that within the Unitary State of the Republic of Indonesia, the law must be upheld and become a means of carrying out activities in all aspects of national and state life. Laws that uphold human rights and guarantee equal status before the law are required to respond to all problems and conflicting interests of society. The problem formulation is how to resolve criminal acts of abuse through restorative justice in the Bali regional police? And what are the obstacles in resolving criminal acts of abuse through restorative justice in the Bali regional police? The research method in this case is empirical research, descriptive research, the data source is primary data; secondary data; and tertiary data, data collection techniques namely observation; interview; and documentation, and data processing and data analysis techniques, namely descriptive qualitative. Resolving criminal acts of abuse through Restorative Justice in the jurisdiction of the Bali Regional Police is carried out by integrating three forms of law enforcement, namely preemptive, preventive and repressive. However, the obstacles to this resolution are the lack of eyewitnesses, lack of human resources for law enforcement, and the trauma suffered by victims which is difficult to remove, so psychological support and long-term therapy are really needed to help victims recover emotionally and mentally.

Keywords: *Law, Restorative Justice, Persecution*

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INTRODUCTION

The State of Indonesia is a state of law, based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that in the Unitary State of the Republic of Indonesia, the law must be upheld, which is an instrument or means of carrying out activities in all aspects of the life of the nation and state. This is interpreted as a law that upholds Human Rights and guarantees equal status in the eyes of the Law.

The lack of legal awareness in society today causes distrust between members of the community and distrust between law enforcement officials and the government. Especially with the relatively difficult economic conditions of our country, resulting in the emergence of crime that occurs in the community environment which is motivated by the increasing needs of life in society. Conditions that often occur and are experienced by the community, such as snatching, stabbing, theft, robbery, persecution, rape, murder, juvenile brawls, or better known as "street crime" or "street crime" are challenges to the law enforcement process. Legal tools needed to solve problems or conflicts within society. One of the efforts to prevent and control the crime is to use the criminal law with its sanctions in the form of criminal (Married and Married, 1998).

Violence is an act or behavior that uses physical force, threats, or coercion to cause physical, psychological, or emotional harm to another person. Violence can occur in various forms and contexts, both in personal, family, and community relationships, as well as in broader conflict situations such as wars or political disputes. The Handbook on Restorative

Justice Programmes published by the United Nations states: "Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community." (Nations, 2006) (Nations, 2015) In relation to criminal law enforcement, restorative justice is an approach in solving criminal problems involving victims, perpetrators, and elements of society in order to create justice.

In relation to criminal law enforcement, restorative justice is an approach in solving criminal problems involving victims, perpetrators, and elements of society in order to create justice. Restorative justice as a criminal philosophy in its implementation requires a concept that has legitimacy in its application, as a form of actualization of the philosophy, the concept must be stated in laws and regulations. Considering that if it is too easy to give a criminal penalty to someone, it also provides other problems such as overcapacity in correctional institutions.

In connection with the above background, in the writing of this thesis, several problems were found that will be studied, namely how to solve the crime of persecution through restorative justice in the Bali regional police? What are the obstacles in resolving the crime of persecution through restorative justice in the Bali regional police? The purpose of this study is to find out the settlement of the crime of persecution through restorative justice in the Bali regional police. To find out the obstacles in resolving the crime of persecution through restorative justice in the Bali regional police.

METHOD

The research method used in this study is empirical, which is a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical relics and archives. Empirical juridical research is a field research (research on primary data), which is a research that examines legal regulations which are then combined with data and behaviors that live in the midst of society.

RESULTS AND DISCUSSION

A. Settlement of Crimes of Persecution Through Restorative Justice in the Bali Regional Police

Article 1 paragraph (3) of the 1945 Constitution explains that the Unitary State of the Republic of Indonesia is a state of law. This is interpreted as a law that upholds human rights and guarantees equal standing in the law. The state of law wants the law to always be enforced, respected, and obeyed by anyone without any exceptions. This aims to create security, order, and prosperity in the life of society, nation, and state. The law exists in every society anywhere on this earth. Primitive and modern, a society must have a law. Therefore, the existence of law is universal. Law cannot be separated from society, the two have a reciprocal relationship. (Prasetyo & Criminal, 2005) (Prasetyo & Barkatullah, 2005) Talking about criminal law often makes people imagine that it is evil, dirty, and full of deception. Anyway, when people talk about criminal law, what comes to mind is the suppression of crime by the police, prosecutors, and judges.

The criminal justice system is a system that regulates the procedures for handling criminal cases in order to achieve justice and legal certainty in various criminal acts. Restorative justice can be formulated as an idea that can respond to the development of SPP in Indonesia. Restorative justice aims to use belief awareness as a foundation to improve social life and build peace so that perpetrators, victims, families, and communities can correct their mistakes. In addition, restorative justice prioritizes the harmony of community members rather than punishment, restorative justice can also be used as a concept used by law enforcement officials in responding to crime. Restorative justice is not just a violation of criminal law, but also a social phenomenon that can and harms relationships in society. Here are the five main elements of restorative justice, including:

- a. Restorative justice is a conception in criminal proceedings that is widely known and has begun to be widely applied as a step in handling criminal cases in developed countries;
- b. Restorative justice assumes that crime is not a crime against the state, but a crime against the victim and can be in the form of an individual or a group;
- c. Restorative justice focuses on the victim's loss and suffering, not on the punishment of the perpetrator;
- d. Restorative justice can be in the form of mediation or direct dialogue or reconciliation or justice;
- e. Restorative justice is not just a form of temporary reconciliation such as presentation.

The handling approach that is in accordance with the criminal justice system in Indonesia in the future is a restorative approach. In the restorative approach, there is an effort to improve human beings with a method of punishment, in this case the perpetrator is given the responsibility to correct his mistakes. The enforcement of restorative justice by law enforcement, both the police, prosecutor's office, and the judiciary can stop the process if the parties are willing to resolve their cases through restorative justice. The reform of the criminal law essentially makes law enforcement more effective in eradicating/combating crime in order to protect society, handle social and humanitarian problems, and seek to review and reassess the ideas, main points of thought, socio-philosophical and socio-cultural values that have been the basis of criminal and legal policies so far. (Zainuddin et al., 2022) The basic principle of restorative justice is that victims harmed by crime get compensation, peace, and other reconciliations. Perpetrators have the opportunity to participate in creating the restoration of conditions, some play a role in creating peace, namely the community and there are courts that play a role in maintaining public order. The principles of restorative justice include:

1. Priority on healing and support for victims;
2. Responsibility of the perpetrator for the act that has been committed;
3. There is a dialogue process to reach understanding;
4. The perpetrator does not repeat his mistakes in the future;
5. The community helps the interaction process between the perpetrator and the victim.

The characteristics of restorative justice according to Muladi are as follows:

1. Crime is considered a conflict and is defined as a violation of another person;
2. Focus on future obligations and how to solve the problem;
3. The normative nature of dialogue and negotiation;
4. The community as a facilitator in handling the problem;

5. Criminal acts are understood in terms of moral, social, economic, and comprehensive;
6. The impact of the perpetrator's actions must be accounted for.

The purpose of handling criminal cases through restorative justice is:

1. Establishing laws and regulations that are only based on legal truth with aspects of life that prioritize equality and pay attention to balance;
2. Reaffirming the place of community in the integrated criminal justice system;
3. Bringing justice for both parties (win-win solution);
4. Establishing the foundation of the judicial trilogy;
5. Affirming socialization or community as a single system;
6. Ensuring the effectiveness and efficiency of the implementation of the criminal justice system.

Although the concept of simple restorative and the benchmark of justice is not based on the same retribution of proportionate retribution between the victim and the perpetrator of the crime, this concept supports the victim and asks the perpetrator of the crime to take responsibility for his actions, of course with the help of his family and society if necessary. Among the various principles of the restorative justice approach, the most important part and which is the basic capital in the application of restorative justice is the process of expressing their feelings, desires, rights and expressing their desire to resolve the case that occurs by means of direct dialogue between the parties. The dialogue process also allows the community to monitor the implementation of the agreed results and can participate in implementing the agreed results. By not ignoring the procedures that apply to the formal legal system, the mechanism for resolving cases runs in society through deliberative institutions. The restorative-based judicial process is a very ideal process in criminal justice in Indonesia because it can provide protection to the state and victims, besides that there is a balance in seeking legal protection.

Restorative justice is also called settlement through mediation which aims to resolve events that occur in society that prioritize a sociocultural approach rather than a normative approach, so that through a sociocultural approach, the aspects of justice and social benefits are emphasized. Criminal law policies include material, formal, and criminal enforcement law policies. Through mediation, the perpetrator of the crime can also improve himself, admit his mistakes, and be held accountable for the crime committed before. (Kenedi, 2017) Mediation is part of the ADR mechanism that has been known in civil law. However, in today's era, in the settlement of criminal cases, the ADR mechanism has begun to be practiced, this is due to a shift in the paradigm of criminal law enforcement, which was initially a restorative pattern to a restorative pattern. The ADR mechanism as an alternative to out-of-court case settlement is applied based on the following principles:

1. Prioritizing deliberation for consensus;
2. Respecting local wisdom, culture, and customs;
3. Involving figures in the community;
4. Prioritizing the implementation of the Polmas mechanism;
5. The decision is based on the wishes of the parties to the case;
6. The perpetrator is willing to take responsibility for the acts that have been committed;
7. Beautify the foundation of ultimum remedium.

If the ADR mechanism is successfully implemented, the next step of the National Police requires the complainant to revoke the report and the parties then make a peace statement. Then the National Police made an additional Examination Report, thus in the BAP all parties retracted their statements, then the National Police conducted an examination of the parties who participated in the incident. Therefore, the handling of the case was stopped. The importance of restorative justice as the soul of Indonesian society makes law enforcement officials make a legal breakthrough.

An integral criminal law enforcement system needs to be seen in abstracto (law making and law reform) because criminal law enforcement in abstracto (law making/amending, law making/law reform) is the stage of making/formulating (formulation) of laws by the legislature (can be called the legislation stage). According to Barda Nawawi Arief, law enforcement in abstracto is carried out through (legislation / formulation / making of laws and regulations) carried out through legislation / formulation / making of laws and regulations. This legislation/formulation process is a very strategic start to the law enforcement process in concreto.

The existing criminal law enforcement system is not yet integral in abstracto (law making and law reform) at the stage of the process of making legislative products. Because there is no close intertwining or unity of the sub-system (component) of the integral criminal law norm/substance system, including material criminal law, formal criminal law, and criminal enforcement law which should be an integrated legal system or integrated legal substance. The law enforcement factor according to Soerjono Soekanto is that the effectiveness or not of a law is determined by 5 (five) factors, namely:

- a. The legal factor itself
- b. Law enforcement factors
- c. Factors of facilities or facilities that support law enforcement.
- d. Community factors.
- e. Cultural factors. (See also Featured Story, 2003)

The five factors above are closely related to each other, because they are the main thing in law enforcement, as well as a benchmark for the effectiveness of law enforcement. Of the five law enforcement factors, the law enforcement factor itself is the central point. This is because both the law is drafted by law enforcement, its implementation is also carried out by law enforcement and law enforcement itself is also a role model by the wider community. Based on an interview with I Wayan Gde Ari Gunawijaya, S.H as BA Unit 2 Sub-Directorate IV of the Bali Police Directorate of Criminal Investigation that the Handling of Minor Persecution Cases in the Karangasem Resort Police Area is the same as in other regional police in Indonesia which is divided into 3 efforts, namely Preemptive, Preventive and Repressive where the forms of law enforcement include:

1. Preemptive Law Enforcement

Preemptive Law Enforcement in Handling Cases of Minor Persecution in the Karangasem Resort Police Area is by educating public services related to procedures for solving problems through a familial musawarah process and an appeal to stop committing violence.

2. Preventive Law Enforcement

Preventive Law Enforcement in Handling Cases of Minor Persecution in the Karangasem Resort Police Area in the form of surveillance and patrols to monitor areas prone to cases of persecution and the installation of CCTV at certain points to help the supervision process.

3. Repressive Law Enforcement

Repressive law enforcement in the handling of minor persecution cases in the Karangasem Resort Police Area generally follows the legal procedures that have been stipulated in state legislation. The process of handling persecution cases, both minor and severe, begins with a report by the victim or witness to the nearest police then Investigation and Investigation, Filing, Prosecution, Court and Sentencing (I Wayan Gde Ari Gunawijaya, 2024).

Referring to the results of the interview above, the Handling of Minor Persecution Cases in the Karangasem Resort Police Area when viewed from the theory of law enforcement Where in law enforcement there are three forms of enforcement, both preemptive, preventive, and repressive, then the law enforcement of the Karangasem Resort Police against minor acts of persecution has three elements of law enforcement, where preemptive law enforcement is in the form of education through community services, preventive law enforcement in the form of surveillance either in the form of patrols or through CCTV, and repressive law enforcement where enforcement starts after the occurrence of the incident, it can be seen from the reporting by the victim or witness to the nearest police then Investigation and Investigation, Filing, Prosecution, Court and Sentencing.

Basically, criminal law does focus on regulating crime problems that occur in society. Criminal law is a guardian so that people avoid crime. Criminal law is a guardian so that people avoid crime. If the Constitutional Court is often referred to as The Guardian of Constution, then the criminal law in relation to crime deserves to be referred to as The Guardian of Security which seeks to provide guarantees so that the public does not become victims of crime (Erdianto, 2011).

Crime is a complex phenomenon that can be understood from many different sides, that's why in everyday life we can capture various comments about a crime event that is different from each other. A civilized society certainly considers an action to be said to be a crime or not a crime, of course, in terms of law and a sense of justice in society. Further developments in an effort to find out the factors that cause a crime, legal science is always accompanied by criminology. (Yasa, 2015) Criminology refers to the scientific study of the nature, level, causes, and control of criminal behavior both in individuals and in social, cultural, political, and economic life. Thus, the scope of criminological studies does not only concern the events of crimes, but also includes the forms, causes, consequences of crimes, and social reactions to them, including reactions through laws and regulations and government policies in various fields (Utari & Arifin, 2020).

Law also functions to achieve order between human relationships in social life. The law maintains the necessities of life so that a psychological and physical balance is realized in life, especially the life of social groups who feel the pressure or inappropriateness of social bonds. This means that the law also maintains that justice is always realized in social life (society). So legal norms are something related to human life in a certain social group,

both in social situations. This is to achieve order for the sake of justice. Law as a norm has a specific characteristic, namely to protect, regulate, and provide balance in maintaining the public interest. (Is & S HI, 2017) As for the elements of the law itself, namely that the law contains regulations in social life, the law is held by the authorized body, namely the legislative body with the approval of the executive body and vice versa, in general the law is compulsory, that is, the law is strict, if violated, it can be subject to sanctions or the law in accordance with the applicable provisions (Asikin, 2020) (Amiruddin, 2012) (Simbolon & Sh, 2022).

Of the many motives for crime and criminal acts, one of the things that has attracted a lot of attention is the crime of persecution. Persecution is an act that results in physical and health damage that is contrary to the law as stipulated in article 351 paragraph 4 of the Criminal Code, namely: "By persecuting is equated with deliberately damaging health" (Intellectual, 2016) (Civil, 2016). According to Sudarsono, in his book, the legal dictionary gives the meaning that persecution is an act of hurting or torturing a human being or deliberately reducing or damaging the health of others (Sudarsono, 2012). This persecution clearly commits an act with the aim of causing pain or injury to others, the element of intentionality here must include the purpose of causing pain or injury to others. In other words, the perpetrator wants the consequences of an act. The will or purpose here must be inferred from the nature of the act that causes pain or injury to others. In this case, there must be touch on the body of another person which automatically causes pain or injury to others. For example, hitting, kicking, stabbing, scratching and so on.

B. Obstacles in Resolving Crimes of Persecution through Restorative Justice in the Bali Regional Police

An obstacle is an obstacle, obstacle, or obstacle that prevents the achievement of the goals or the smooth running of a process, program, or effort. Obstacles can arise in a variety of contexts and can be physical, social, economic, political, or even psychological. Criminal law of persecution in Indonesia consists of three different levels of punishment, namely light, moderate, and severe persecution. The three levels of persecution are regulated in article 352 (1) of the Criminal Code for minor persecution, article 351 (1) of the Criminal Code for persecution, and article 353 (2) of the Criminal Code for persecution that causes serious injury. Persecution that causes death is the last category with the harshest punishment based on article 353 (3) of the Criminal Code.

Minor persecution according to article 352 of the Criminal Code is persecution that does not cause disease or permanent disability in the victim's body so as to prevent the victim from carrying out the work of the position. Article 353 (2) of the Criminal Code states that severe persecution is persecution that can result in permanent disability in the victim's body, which prevents the victim from carrying out his or her job or position. Persecution that results in death according to article 353 (3) of the Criminal Code is persecution without the intention of killing the perpetrator but results in the death of the victim.

Acts of persecution of other parties are a form of human activity that has indications of being unlawful or contrary to applicable laws, in the form of physical acts that are real, and result in damage to property, physical to the death of the victim. Although the form has

the same effect, the reasons or motives that motivate a person to commit persecution can be different. Different motives, for example, murder can be motivated by wealth or business competition, revenge or jealousy or even politics, rape has a lust gratification motive, persecution can be motivated by wealth or revenge, and so on.

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The five factors above are closely related to each other, because they are the main thing in law enforcement, as well as a benchmark for the effectiveness of law enforcement. Of the five law enforcement factors, the law enforcement factor itself is the central point. This is because both the law is drafted by law enforcement, its implementation is also carried out by law enforcement and law enforcement itself is also a role model by the wider community. The crime of persecution itself has been regulated in the Criminal Code (KUHP). A person commits a criminal act of persecution in public, caused by several causes, namely:

- a) Legal tools that lack protection for the public

Many members of the community want every criminal to be punished with the heaviest punishment and even the death penalty. Some regulations that contain criminal sanctions for criminals do not have a minimum penalty, so perpetrators of crime can be punished below the maximum penalty. Although some special crime laws have a minimum penalty, the minimum penalty is felt to be less of a deterrent and does not discourage a person's intention to commit a crime.

b) Economic factors

Economic factors are one of the drivers of violent crime in the country, because it has an impact on the problems of their lives that are not good enough, thus encouraging the emergence of human emotions in their lives and causing violent impacts, especially the violence in public will also have an impact on other people so that they can participate, initially separating themselves are actually involved in the problem because of mistakes. Understanding the consequences of emotions, which are not controlled so that people who want to separate violence, actually get involved and cause violence together and harm others. In relation to economic factors that have an impact on several other factors, for example, in the education factor, people who are classified as poor or unable to afford low education, because in their lives they cannot afford to pay the cost of education which is getting more and more expensive. Because of low education, a person will tend to become unemployed or only have a job as it is or odd jobs, so this can affect a person to have moral illness or an evil personality in order to achieve a desire.

c) Opening Opportunities to Commit Criminal Acts

Crime exists because of chance. Opportunities exist because opportunities are open for perpetrators. Not a few of these opportunities are opened by the community through attitudes that provide opportunities for criminals to commit crimes. For example:

- a. Demonstrative behavior of wealth and consumptive behavior.
- b. Coming home late at night or in the early hours of the morning.
- c. Traveling to a lonely place.
- d. Using clothes that are immodest and do not cover the aura, especially for women.
- e. Lack of supervision of children.
- f. Indecent remarks.
- g. It's too easy and quick to trust a new person.
- h. Not complying with applicable rules or norms.
- i. Not reporting new individuals in the environment.
- j. Security that is not optimal.

d) Emotional Factors

The emotional factor is a factor in human behavior that is irritable so that it cannot control the emotions in itself. The condition of human nature that is very easy to mar ah whose emotions cannot be controlled results in weak self-control so that it causes misunderstandings and can result in persecution. Emotions are an overflow of feelings that develop as a psychological reaction and recede in a short period of time. Emotions can be caused by several factors, but in general emotions are internal factors and external factors. The internal factors that cause emotions to arise are those that come from oneself, namely a person's feelings. A person's feelings are the main factor in the emergence of emotions. There are several disorders that make emotions from a person, namely feelings of inadequacy or stupidity, feelings of anxiety, feelings of disappointment in oneself and those around them, feelings of insecurity, feelings of sadness because of lack of affection, feelings of envy of siblings because they are treated unfairly. External factors that cause emotions to arise from within are the family environment that blames someone too often, inappropriate treatment from people around them, and too many demands on someone. Human emotions will be easily provoked

when seeing behavior that can disturb or provoke human anger, emotions that begin to be provoked will have a negative impact that causes persecution.

e) Environmental Factors

Environmental factors are factors that affect the occurrence of a violent crime that is committed together because the environment can have an effect on changing the personality and behavior of human beings doing an act according to what is done in the environment. Environmental conditions affect a human nature and behavior, because they always coexist and need one another because humans are social creatures. Humans have the instinct to always be in touch with their fellow humans. These continuous relationships produce a social pattern called a social interaction pattern. The association produces views on the good and the bad. Environmental factors in poor conditions make human association with the surroundings can be a cause of violent crimes, violent crimes arise because of social phenomena that exist in conditions with various poor life developments, due to every progress that has a negative impact and results in changes in people's social life. A human evil in his life will always coexist with the surrounding community, no human being can live without depending on or need others, because everyone to meet all their needs must always need others.

Based on an interview with Ida Bagus Wira Bhaskara, SH., M.H as BA Unit 2 Sub-Directorate IV of the Directorate of Criminal Investigation of the Bali Police, he said that the obstacle in the settlement of the Crime of Persecution through Restorative Justice in the jurisdiction of the Bali Regional Police is that the crime of persecution is often planned to be carried out so that when the crime of persecution is carried out there are few witnesses, Therefore, to prove the crime of persecution becomes more difficult where on the other hand there is a lack of human resources for law enforcement to trace a criminal act either by tracing or preventing patrols, traumatic suffered by victims of persecution so that it is difficult to provide complete testimony about the incident. Persecution occurs in places where it is difficult to obtain evidence of persecution.

In addition, even though the police provide witness and victim protection services, it is still difficult to eliminate the trauma of fear suffered by victims of persecution. They feel anxious every time they hear a voice similar to the perpetrator or even when they are in a crowded place. Some victims experience prolonged nightmares and difficulty sleeping at night. They also often feel apprehensive and uncomfortable when they have to leave the house, fearing that there will be further attacks. These feelings make it difficult for them to carry out daily activities and damage their overall quality of life. Psychological support and long-term therapy are needed to help them recover emotionally and mentally.

CONCLUSION

The settlement of criminal acts of persecution through Restorative Justice in the jurisdiction of the Bali Regional Police is carried out by integrating three forms of law enforcement, namely preemptive, preventive, and repressive. Preemptive law enforcement through public education, preventive law enforcement through surveillance and installation of CCTV, and repressive law enforcement through established legal procedures. Obstacles in Resolving Crimes of Persecution through Restorative Justice in the jurisdiction of the Bali

Regional Police are the lack of eyewitnesses and the lack of human resources for law enforcement to trace a criminal act, as well as the trauma suffered by victims of persecution that is difficult to remove.

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