

## RESTORATIVE JUSTICE IN RESOLVING EMBEDDING AT CIREBON CITY POLRES

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### Abstract

The settlement of the crime of embezzlement by using restorative justice provides the best solution in resolving private crime cases between people (*natuurlijkepersonen*) or legal entities (*recht personen*). The implementation of restorative justice in the settlement of criminal acts of embezzlement at the Cirebon City Police has been carried out, but there are obstacles. The research uses an empirical juridical approach, by means of field research, namely examining legal regulations which are then linked to data and behavior that lives in the midst of society in the form of primary data. Research shows that restorative justice is the process of resolving criminal cases by involving victims of crime, criminals and representatives in society to be able to meet together to find common ground that will benefit both parties. The concept of applying restorative justice in cases of criminal acts of embezzlement is better than the criminal system and the conventional judicial process which takes a long time and costs a lot from both the victim and the government itself in terms of facilitating the examination process, up to the execution process of the embezzlement case. alone. Restorative justice is a fast, simple and low-cost means of settlement which allows it to be used in the settlement of criminal cases of embezzlement as an offense with a private dimension between the victim and the perpetrator of the crime. The obstacle is that people don't know much about restorative justice, especially the model so that many people don't want to be solved with restorative justice. The application of restorative justice should be applied to every criminal case if the perpetrator and the victim want it, not just a case of embezzlement.

**Keywords:** Embezzlement, Crime, Restorative Justice

## INTRODUCTION

The positive legal system adopted by the Indonesian state as a result of the adoption of the Continental European legal system (civil law) originating from mainland Europe which was brought by the Dutch colonial Empire, began to abolish existing laws in society. At the time of the reign of the Kingdom of the Netherlands in the colonial area of the Dutch East Indies itself, which is now the territory of the Republic of Indonesia, highly respects the laws that exist in society. In the *Het Herzien Inlandsch Reglement (HIR)* or what we know as the Updated Indonesian Reglement (RIB) as a guide to procedural law for the indigenous people (bumiputra) in Java and Madura, in the seventh chapter, Articles 84-99 concerning district courts and in the seventh chapter, Articles 84-99 concerning district courts. eight Articles 100-114 regarding district courts,<sup>1</sup> and the *Rechtreglement Buiten Gewesten (RBG)* or what we know as the overseas regulations as guidelines for indigenous procedural law (bumiputra) outside Java and Madura in these two procedural law books, the colonial government of the Kingdom of the Netherlands implemented the initial courts before the *Landraad* (the current district court). such as *Negorij Rechtbank* (village court) and *Magistraat* (village deliberation council), if these cases cannot be resolved in the two judicial institutions, then the file can be submitted to *Landraad* (current district court). which is regulated in the *Reglement op de rechterlijkeorganisatie en het beleid der justitie* (regulations for the organization of the judiciary and the high court) itself<sup>2</sup>.

The efforts used by the government of the Kingdom of the Netherlands show and acknowledge the existence of laws that grow and develop in society as Frederick Carl von Savigny said that "*Das recht wächst also mit dem volke fort, bildetsich aus mit der zeit, eigensthumlichkeit verliert*"..<sup>3</sup> In the English translation translated by Abraham Hayward "Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its nationality"<sup>4</sup>, und stirbt endlich ab, so wie das volk seine. In a free translation "Law grows with the growth of the people and is strong with strong people, and finally dies when the nation loses its uniqueness", nationality or what is translated as distinctiveness is the soul of the nation (*volksgeist*) itself.

The old ideas that have developed in Indonesian society which are always based on a rigid grip such as the law must be written and adhere to the system of positivism, in which humans become servants of the law itself regardless of the origin of the existence of the law. This shows a new criminal system which is expected to bring a sense of justice in the conflicted society itself<sup>5</sup>.

Restorative justice is an effort or a new model approach in Indonesia that is very close to the principle of deliberation which is the soul of the Indonesian nation itself. Sentencing as a last resort (*ultimum remedium*) can be avoided, if conflicts that arise in society can be resolved by both parties by prioritizing a sense of justice from both parties to the dispute.

Justice Restorative provides the best solution in resolving private crime cases between people (*natuurlijke personen*) or legal entities (*recht personen*) by giving priority to the core problem of a crime. The solution that is important to pay attention to is the improvement of the social order of the community which has been disrupted due to crime events<sup>6</sup>.

<sup>1</sup>R. Soesilo, RIB/HIR With Explanation, Politeia, Bogor, 1980, p. 76

<sup>2</sup>Agustinus L. Runggu, Legal Values in Society for Fair Judges' Decisions, Galangpress, Jogjakarta, 2009, p. 14

<sup>3</sup>Friedrich Carl von Savigny, *Vom Beruf Unser Zeit Für Gesetzgebung Und Rechtswissenschaft*, Ben Mohs Und Eimmer, Heidelberg, 1814, p. 11

<sup>4</sup> www.books.google.co.id, (Friedrich Carl von Savigny, *The Vocation of Our Age For Legislation and Jurisprudence*, The Law Exchange.ltd, New Jersey, 2007) 09 June 2021, p. 27

<sup>5</sup>Ibid, p. 27.

<sup>6</sup>Rufinus Hutahuruk, *Combating Corporate Crime Through a Restorative Approach A Breakthrough of the*

Restorative justice is not only aimed at the perpetrators of criminal acts (dader) but on the contrary rehabilitating conflicts with justice and the law that was violated by the perpetrators of these crimes.<sup>7</sup> Restorative justice focuses on the process of direct criminal responsibility from the perpetrator to the victim and the community, if the perpetrator and victim and the community whose rights have been violated feel that justice has been achieved through joint deliberation efforts, then punishment (ultimum remedium) can be avoided. This shows that the perpetrator is not the main object of the restorative justice approach but a sense of justice and conflict recovery itself which is the main object<sup>8</sup>. So that the restorative justice approach is a suitable way in the process of resolving criminal cases, with a restorative justice approach that can fulfill the principles of fast, simple, and low-cost trial, it has become a common opinion that criminal law is part of public law. With a concept like this, the interests to be protected are general rights, so that the position of the state with its law enforcement tools becomes dominant.

In the case of mediation, efforts are only applied in civil cases, while in criminal cases mediation is considered impossible and prohibited in Indonesian criminal law, which violates the positivism adopted by the Indonesian state. When the sense of justice has been fulfilled, should the state intervene in the conflict between the disputing parties, where the state itself only cares about its affairs, such as in the case of fines imposed in the state treasury, instead of being given to victims so that they are covered and treated? conflict in society<sup>9</sup>. Whereas the function of law itself and the most important thing besides legal certainty and benefit is justice. When the two disputing parties make peace through the penal mediation process which is a restorative justice process, it shows that the two conflicting parties have found justice that can be directly felt so that they can treat social conflicts in society. The abstract nature of justice can only be felt by one's mind, and this is what the law itself upholds, both from the law that written or unwritten, so that the closest to justice is the law that grows and develops in society itself "Das recht wird nicht gemacht und wird mit dem Volk gewachsen"<sup>10</sup>, because justice grows According to Hans Kelsen, "the goal always rests on subjective value considerations and therefore relies on relative considerations".<sup>11</sup>

## LITERATURE REVIEW

The term restorative justice is a foreign term that has only been known in Indonesia since the 1960s era with the term Restorative Justice. In some developed countries, restorative justice is not just a discourse by academics of criminal law and criminology. In several European countries such as North America and Australia, restorative justice has been applied in the conventional criminal justice process stage; starting from the stage of investigation, prosecution, adjudication (the process of resolving public information disputes decided by the Information Commission is equivalent to a court decision) and the execution stage.<sup>12</sup>

*"Restorative justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school disciplined system) that emphasizes*

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Law, Sinar Graphic, Jakarta, 2013, p.107

<sup>7</sup>Ibid. p. 106

<sup>8</sup>Ibid.

<sup>9</sup>Rufinus Hutahuruk, Opcit, p. 113.

<sup>10</sup>Donald Rumokoy and Frans Maramis, Introduction to Legal Studies, Raja grafindo persada, Jakarta, 2014, p. 187.

<sup>11</sup>Hans Kelsen, General Theory of Law and State, Bee Media Indonesia, Jakarta, 2007, p. 8

<sup>12</sup>Eriyantouw Wahid, 2009, Restorative Justice and Conventional Justice in Criminal Law, Trisakti University, Jakarta, p. 1

*restoring the victim and community rather than punishing the offender*” which means “Restorative justice has become a term that is commonly used in the sentencing approach (as a punishment system such as a disciplinary school system) which emphasizes the concept of putting the victim and the environment back to their original state rather than punishing the perpetrator of a crime.”

According to Eva Achjani Zulfa, restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system.<sup>13</sup>

According to Bagir Manan, in general, the notion of realigning the criminal justice system is more just, both for perpetrators, victims and the community.<sup>14</sup> Various definitions of restorative justice can be classified into narrow and broad groups. Narrow definitions emphasize the meaning of meetings between parties with an interest in crime and the period after it, while broad definitions emphasize values restorative justice. Then there were definitions that combined the two and one of them was formulated by Van Ness from Canada as follows: “Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through inclusive and cooperative process” which means Restorative Justice is a theory of justice that prioritizes recovering losses due to bad behavior, where restoration is complete through an inclusive and cooperative process.<sup>17</sup>

Based on the above definition, it can be formulated that restorative justice is a way to resolve criminal cases involving the community, victims and perpetrators of crimes with the aim of achieving justice for all parties, so that it is expected to create the same conditions as before the crime and prevent further crimes.<sup>15</sup>

Van Ness, as quoted by Mudzakkir said that restorative justice is characterized by several prepositions, namely:

- a. Crime is a conflict between individuals that results in harm to victims, society and the perpetrators themselves.
- b. The goal to be achieved from the criminal justice process is to reconcile the parties while repairing the harm caused by the crime.
- c. The criminal justice process must be able to facilitate the active participation of victims, offenders and the community.

Not criminal justice should be dominated by the state to the exclusion of others.<sup>16</sup> Restorative justice would be contrary to the principles of legality and legal certainty (*rechtzakerheid*). This is because restorative justice does not focus on imprisonment, but on how to improve or restore the victim's condition after the occurrence of a crime. In this case, the perpetrator of the crime may be required to pay compensation, perform social work, or other reasonable actions ordered by law enforcement or the court.

The restorative justice approach in criminal law has the power to restore relations between the perpetrator and the victim. It also has the power to prevent further enmity

<sup>13</sup>Eva Achjani Zulfa, 2009, *Restorative Justice*, Publishing Agency, Faculty of Law, University of Indonesia, Jakarta, p. 65.

<sup>14</sup>Albert Aries, 2006, *Minor Theft Settlement and Restorative Justice*, *Varia Judicial Magazine*, Year XX. No. 247, (Publisher of the Indonesian Judges Association, June 2006). 3.

<sup>15</sup>Johnstone and Van Ness, 2005, *The Meaning of Restorative Justice*, Paper for the 11th Five-Yearly United Nations Conference, Workshop 2, Bangkok-Thailand, pp. 2-3.

<sup>16</sup>Amelinda Nurrahmah, 2012, *Restorative Justice* [http://m.kompasiana.com/amelindanurrahmah/restorative-justice\\_55101738813311ae33bc6294](http://m.kompasiana.com/amelindanurrahmah/restorative-justice_55101738813311ae33bc6294). accessed on June 14, 2021

between the parties and encourage voluntary reconciliation between the perpetrators and victims. Another strength is to encourage the participation of other members of the community, such as family members or neighbors and to emphasize the importance of the victim's role in a process towards justice.

On the victim's side, restorative justice gives the power to give the perpetrator the opportunity to express his regret to the victim and it is better if it is facilitated to meet in a professional meeting. This perspective of restorative justice is a result of a shift in law from *lex talionis* or retributive justice by emphasizing restoration efforts (restorative).

The principles of restorative justice according to Adrinus Meliala are as follows:

- a. Make the perpetrators of criminal acts responsible for repairing the losses caused by their mistakes.
- b. Providing opportunities for criminals to prove their capacity and quality in addition to dealing with their guilt constructively.
- c. Involve victims, families and other parties in problem solving.
- d. Create a forum to work together to solve problems.
- e. Establish a direct and real relationship between actions that are considered wrong or evil and formal social reactions.

*Ultimate Remedium* in the Criminal Law which is the last weapon in the settlement of embezzlement cases through restorative justice. The law must be seen from a social perspective, behavior that can actually be accepted by and for all the people in it. Considering that criminal law is a law that is used as a "last medicine", one must be careful in its use. Because it contains severe sanctions for perpetrators of criminal acts. Supposedly, the applicable criminal law reflects the ideology, concern and attachment of the government to its people, not merely a law that the people want to regulate them. Laws that are in favor of the people, which pay attention to social conditions, which reflect the protection of human rights. Before harsh and sharp criminal sanctions are imposed, if other legal functions are lacking, then criminal law is used. Criminal law as an *ultimum remedium* should not only be a theory that must be known by law enforcement officials in particular. However, it should be an understanding of the purpose of these principles and their implementation in real life.

The juridical basis for the implementation of penal mediation as the embodiment of restorative justice for the police in terms of investigations is the Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police, Article 18 paragraph (1) in conjunction with Article 16 paragraph (1) letter I which regulates the authority of the police to act according to their own judgment or commonly referred to as discretion.

## RESULT AND DISCUSSION

### A. Implementation of Restorative Justice in the Settlement of Crime of Embezzlement at the Cirebon City Police Station

The existence of the Restorative Justice process as an alternative for resolving criminal cases is largely determined by the awareness and knowledge of the community itself, including law enforcement officers. An understanding of the judiciary that only puts forward the application of rules to prove the perpetrator's guilt and then punish him will not be able to accept this concept.

This paradigm shift in thinking needs to be supported by national legislation policies and an understanding of scientific developments in the judiciary. This means that the restorative circles model is built from a social-pedagogical point of view or through a social education view that the cause and effect of crime is a social problem.

Thus, the implementation of restorative justice by the National Police in the needs of modern society as well as part of the sub-chapter of the national legal system has at least the

following character and line of thought:

- a. Implemented based on the state philosophy of Pancasila;
- b. Designed to achieve certain stages of state goals as stated in the preamble to the 1945 Constitution;
- c. Minimize the enforcement and application of norms that actually cause injustice, because the application of such legal practices will create new injustices;
- d. The formation of the law must invite participation and absorb the aspirations of the community through procedures and mechanisms that are fair, transparent and accountable, and oriented towards the development of social justice, guaranteeing the existence of civilized religious tolerance, and paying attention to and adopting the principles or rules of related international conventions that have been ratified.
- e. Law enforcement must be carried out systematically, directed and based on clear concepts, aimed at increasing legal guarantees and certainty in society, both at the central and regional levels, so that justice and legal protection of human rights can be felt by the community.

The police are the living law or the spearhead in the enforcement of criminal law. In making arrests and detentions, for example, the police face or have their own problems. At the time of deciding to make arrests and detentions, the police have carried out a multifunctional job, namely not only as police but also as prosecutors and judges at the same time and at the same time exercising discretion.

The investigative practice that has been going on so far shows that the flow of legal positivism or the understanding of legism and based on the principle of legal certainty is a flow of legal philosophy that is the main stream in the implementation of the investigative authority carried out by Polri investigators, and the method of interpretation or investigative authority by Polri investigators is the legal positivism model of reasoning.<sup>17</sup>

In addition, investigations based on the sociological jurisprudence legal reasoning model are commonly carried out by Polri investigators. This is done by Polri investigators by implementing the approach or the concept of restorative justice in handling criminal act.

Although at the formulative level, the National Police strictly regulates the implementation of the concept of restorative justice in the National Police Chief No. Pol: TR/1124/XI/2006 concerning Instructions and Directions (Jukrah) for the handling of children in conflict with the law, but in the practice of investigations that have taken place so far, the concept of restorative justice is also applied in the investigation of other crimes. The practice of investigating criminal acts by Polri investigators by implementing the concept of restorative justice, among others, in cases or cases of intellectual property rights (IPR) such as trademarks and copyrights whose settlement is through an agreement between the two parties which ends with the revocation of the police report.

In carrying out investigations into criminal acts of fraud and embezzlement by the Cirebon City Police Satreskrim, it must be carried out in accordance with applicable legal procedures and provisions. If it is not in accordance with the procedure, there is a threat from the reporting party and the reported party in the form of a pre-trial lawsuit. The legal basis for carrying out investigations into criminal acts of fraud and embezzlement at the Cirebon City Police is the Criminal Code, the Police Law, Perkap No. 3 of 2014 concerning Operational Standards for the Implementation of Criminal Investigations. In the case that the

<sup>17</sup>Zulkarnein Koto, "Legal Reasoning of Police Investigators: Between Legal Certainty and Justice (Ideas for Realizing Pancasila Justice)," *Journal of Police Studies STIK-PTIK*, Edition 075, June-November 2011

Cirebon City Police handle cases of fraud and embezzlement, based on the provisions of the SOP for Criminal Investigation Investigations starting from: Receiving Police Reports In this case, a plaintiff, namely Mr. Arya Wicaksana Rismulyanto made a report that he felt wronged by Br. Budi Santoso, namely by pawning 1 (one) unit of Daihatsu Terios car to Br. Gufron without the knowledge and permission of Br. Arya Wicaksana Rismulyanto worth IDR 35,000,000

a. Conducting Investigation After receiving the report or complaint, the investigator immediately seeks information and evidence related to the reported crime. The investigation was carried out through the following activities,

- crime scene management,
- observation,
- Interview,
- shadowing,
- disguise,
- tracking,
- document research and analysis

The results of the investigation are submitted to the leadership which contains an analysis of whether or not there is a report made by the investigator. The process of investigating this crime is in accordance with the SOP for investigation no. 3 of 2014.

b. Notification of Commencement of Investigation (SPDP)

The following items are contained in the SPDP, namely:

- The basis for the investigation is in the form of a police report and an investigation warrant;
- The time of commencement of the investigation;
- The type of case, the article suspected and a brief description of the criminal act being investigated;
- The identity of the investigator who signed the SPDP.

c. Forced Effort

The coercive measures include:

- Summons;
- Arrest;
- Detention;
- Search;
- Confiscation and inspection of mail.

Coercive measures must be accompanied by a warrant except in the case of being caught red-handed. Before carrying out coercive efforts, investigators make an action plan as a support and guideline in the implementation of coercive efforts and after the implementation make an official report and report to the leadership.

d. Inspection

Before conducting the examination, the investigator makes an examination plan. Expert examination is required in certain cases. To avoid irregularities in the examination, supervision must be carried out by the leadership. Standard Operational Procedures for Examination of witnesses, Examination of experts, Examination of suspects, Examination and examination of documents and letters.

Therefore, the examination includes the following activities:

- Witness examination;
- Expert examination;
- Examination of suspects;
- Examination and research of documents and letters;

- Examination of digital evidence and so on.
- e. Case Degree

The case title is carried out in order to support the effectiveness of the investigation and supervision of the investigation. The case title is carried out in order to streamline the duties and roles of investigator supervisors and investigators' superiors. The case is held in the context of clarifying public complaints so as to increase public trust in law enforcement and legal certainty. The case title is carried out based on the needs in the investigation process and not the intervention of the leadership.

Completion of Case Files Completion of case files includes two stages, namely making a case file resume and filing. The case file resume must be completed in a standardized systematic manner and contain, among other things, the basis of the investigation, description of the case and facts, case and juridical analysis and conclusions. Case files are resolved according to the time and level of difficulty of the case. In the event that the investigator encounters very difficult obstacles in the investigation, the time provision can be ignored. ForIn the interests of the administration of the investigation, the resume of the case file is signed by the investigator and the introduction to the case file is signed by the investigator's superior.

In in caseembezzlement, the settlement of the case file is carried out by making a letter of request for peace, a statement of mutual agreement, and finally a letter of application for the revocation of the case made by Br. Arya Wicaksana Rismulyanto.

## **B. Obstacles faced in carrying out restorative justice in the settlement of criminal acts of embezzlement at the Cirebon City Police**

Draft *restorative justice* is a new paradigm in criminal law enforcement, although in fact the concept has long been developed and practiced in the settlement of cases in several countries that adhere to the common law system. Because the concept is relatively new, it is not surprising that efforts to implement the concept in the practice of criminal law enforcement in Indonesia, especially by the National Police, have encountered many obstacles. The problem is the lack of understanding of Polri members on the concept of restorative justice.

Police members in general often hear the mention of the term restorative justice but in fact not a few members who do not understand the term, let alone apply it. Because the concept is relatively new in criminal law enforcement. Moreover, in Law Number 2 of 2002 concerning the National Police, which only introduces the concept of Police discretion.

Although the discretion is already contained in Article 18 of Law Number 2 of 2002 concerning the Police so as to provide opportunities for police officers to apply discretion as an act that does not deviate, but in the practice of carrying out police duties, there are still many police officers who are hesitant to use this authority. especially in handling criminal cases.

Article 18 of Law Number 2 of 2002 concerning the Indonesian Police states:

1. In the public interest, the acting National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment.
2. The implementation of the provisions as referred to in paragraph (1) can only be carried out in very necessary circumstances with due observance of the laws and regulations as well as the Professional Code of Ethics of the State Police of the Republic of Indonesia.

Furthermore, the explanation of Article 18 paragraph (1) of the Police Law explains that what is meant by "acting according to his own judgment" is an action that can be carried out by members of the Indonesian National Police who in acting must consider the benefits and risks of his actions and really in the public interest.



The application of police discretion is often seen as a trick by the police to obtain material benefits from litigants so that there is a fear of negative judgment from the public. To provide an understanding of Polri members to the concept of restorative justice, it must coincide with an understanding of the concept of police discretion, because there is a link between discretion and restorative justice.

In implementing or implementing the concept of restorative justice, Polri investigators often experience doubts in making decisions in the investigation process, especially if the perpetrator or his family and the victim or his family or the community actually want peace in the settlement of the case or case. This is because there are no rules or legal umbrellas or formal procedures or mechanisms to accommodate this so that this situation becomes a dilemma for Polri investigators in the field based on factors including:

1. The investigator's concern or fear will be blamed by the leadership or superiors and questioned on supervision and examination by the supervisory institution and the internal inspector of the National Police using formal procedural parameters.
2. There is still a strong paradigm in society that requires that every criminal act that arises must be sentenced to criminal punishment and the negative response from the community to efforts to resolve through peace and kinship carried out by law enforcement officers is one of the obstacles to the application of the concept of restorative justice to the handling of cases. criminal case.
3. It is more profitable for the perpetrator where the victim must return the money for the loss to the perpetrator, namely Mr. Arya Wicaksana Rismulyanto. The advantages are that case handling is quickly completed or completed in 1 (one) case and can save budget.

## **CONCLUSION**

Restorative implementation at the Cirebon City Police for the crime of embezzlement in law enforcement has been carried out but with certain conditions without ignoring the investigation process. As a manifestation of the application of restorative justice, it will encourage the realization of justice in line with changes in the values adopted in society. Restorative justice should not only be applied to criminal acts of embezzlement, but cases or other criminal law problems that can be applied.

The obstacles faced by the Cirebon City Police in the application of restorative justice are the concerns of investigators in examination and supervision, the strong paradigm in society towards settlement efforts through peace and kinship carried out by law enforcement officers, and more favorable to the victims, where the perpetrators are prosecuted. must return the money for the loss suffered by the victim. investigators should have Standard Operating Procedures, which will be used as guidelines in resolving criminal cases of fraud and embezzlement by means of restorative justice so that it is not more profitable than only one party and each Law Enforcement Apparatus must be active in seeking restorative justice in any case so that the implementation of Criminal procedural law is not rigid.

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