

Penal Mediation By Police Institution In Handling Hate Speech Through Electronic Media: A Legal Efforts To Resolve With A Restorative Justice Approach

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ABSTRACT

In the era of the industrial revolution 4.0 which caused the information to be easily spread, it turned out to have a bad impact, which led to the birth of the post-truth era. The post-truth era is an era in which objective facts become blurred because of broad public opinion. This makes it easy to spread hoaxes and expressions of hatred in society. The high perpetrators of hoax distribution and expressions of hatred make a legal solution needed that not only focuses on the deterrent effect for the perpetrators but the recovery of the community in its original condition. To restore the community's condition to its original condition, a restorative justice approach is used, one of which is through mediation by the police. This article will discuss, firstly related to the concept of mediation of penalties by the police in Indonesia and secondly it will discuss the approach of mediation of penalties by the Indonesian police in the handling of criminal acts of hate speech in electronic media. This article is a legal article that uses a statute approach, conceptual approach, and case approach. Based on the analysis in this article, it was found first the police nowadays have an authority to solve the problem with restorative justice secondly that the first approach that police need to use in handling hate speech is by mediating in order to realize restorative justice by police agencies in Indonesia..

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I. Introduction

Criminal law is a set of legal regulations made by the state, the contents of which are in the form of prohibitions and obligations, while violators of these prohibitions and obligations are subject to sanctions that can be imposed by the state [1]. The purpose of criminal law in Indonesia must be in accordance with the basis of the state, namely to protect the interests of individuals or human and community rights as contained in the Pancasila philosophy. The purpose of criminal law is known as two streams, namely: [2]:

1. To scare everyone not to do bad deeds (classic);
2. To educate people who have done bad deeds to be good and can be accepted back in their environmental life (modern school).

Criminal law has a general function and a special function. The general function of criminal law as one part of the law is to regulate social life or to organize governance in society. While the special function of criminal law is to protect legal interests against acts that want to rape her (*rechtsguterschutz*), with sanctions in the form of criminal sanctions that are sharper in nature when compared to sanctions contained in other branches of law [3].

In its development, one of the reforms in Indonesian Criminal Law is the regulation of criminal law in the perspective and achievement of justice for the improvement and restoration of the situation after events and criminal justice processes known as restorative justice which is different from retributive justice (emphasizing justice in retaliation) and restitutive justice. (emphasizing fairness on compensation). When viewed from the development of criminal law and the nature of modern punishment, it has introduced and developed what is called the " *Doer-Victims* " Relationship

approach . A new approach that has replaced the action or actor approach or " *daad-dader straftecht* " [4].

Restorative justice is a philosophy, process, idea, theory and intervention that emphasizes repairing harm caused or disclosed by criminal behavior. This process is in stark contrast to the standard way of dealing with crimes that are seen as offenses committed against the state. Restorative justice finds its footing in the basic philosophy of the fourth principle of Pancasila, namely deliberation on priorities in decision making. The purpose of settlement by mediating victims of violators is to humanize the justice system, justice that is able to answer what the real needs of victims, perpetrators and society are [5].

The specific formulation of regulations governing restorative justice does not yet exist, but that does not mean that the application of restorative justice has no legal basis. Especially in the theory of legal discovery, the task of law enforcement includes also finding the law that lives in society [6]. If, for example, the existing law (retributive justice) turns out to be unable to solve the problems experienced by the victim, then according to the study of socialegal studies , the apparatus does not mean silence (doing omission), but trying how the law is changed, innovated in order to be able to create justice [7].

In the Handbook on Restorative Justice Programs published by the United Nations it is stated that [8]: " 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 ." 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.

Bagir Manan, in his writing, describes the substance of *restorative justice* which contains the principles, among others: Building joint participation between perpetrators, victims, and community groups to resolve an event or criminal act. Placing perpetrators, victims, and the community as " stakeholders " who work together and immediately try to find a solution that is considered fair for all parties (win-win solutions) [9].

The implementation of the authority to investigate and/or investigate criminal acts by the National Police applying the principles of restorative justice is based on the provisions of Article 7 paragraph (1) letter j and Article 5 paragraph (1) letter a number 4 of Law Number 8 of 1981 concerning The Criminal Procedure Code (KUHAP) which stipulates that investigators and investigators because of their obligations have the authority to take other actions according to the responsible law [10].

In the explanation of Article 5 paragraph (1) letter a number 4 of the Criminal Procedure Code, it is regulated that what is meant by other actions is the action of the investigator for the purpose of the investigation provided that:

- a. Not against a rule of law
- b. In line with legal obligations that require official action to be taken
- c. The action must be appropriate and reasonable and included in the environment of his office
- d. On proper consideration based on compelling circumstances
- e. Respect human rights.

One form of crime that can be carried out by restorative justice is hate speech through electronic media. One form of settlement with a restorative justice approach can be carried out by the Indonesian National Police (Polri). This is based on the Circular Letter of the Chief of the National Police Number 6 of 2015 (SE 6/2015) concerning the Handling of Hate Speech (hate speech), hate speech can be in the form of criminal acts regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code. , which take the form of, among others: insults, defamation, blasphemy, unpleasant acts, provoking, inciting, and spreading false news. Hate speech can have the effect of degrading human dignity, and can encourage collective hatred, exclusion, discrimination, violence, loss of life and or widespread social conflict [11].

SE 6/2015 regulates the handling of acts of hate speech, namely through preventive and repressive measures. Preventive actions against acts of hate speech include, every member of the National Police having knowledge and understanding of the forms of hate speech that arise in the community, making effective and prioritizing intelligence functions to find out real conditions in conflict-prone areas, conducting outreach to the public regarding hate speech. and the negative impacts that will occur, as

well as bringing together parties suspected of committing hate speech with victims of hate speech to find a peaceful solution [12]. However, Article 5 of the Regulation of the Indonesian National Police Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice (Perpol 8/2021) stipulates that the conditions for a criminal act to be resolved in a restorative manner are the following: "a. does not cause unrest and/or rejection from the public; b. does not result in social conflict; c. does not have the potential to divide the nation; d. not radicalism d separatism; repetition of Crime based on e. not repeat offenders based on Criminal Acts based on Court Decisions; and f. not a crime against terrorism, a crime against state security, a crime against corruption, and a crime against people's lives." From Article 5 of Perpol 8/2021, it has the potential to make criminal acts of hate speech in electronic media unable to be resolved through a restorative justice approach, because of the potential for social conflict, national division, radicalism, and/or separatism from the spread of such hate speech.

If preventive actions have been taken but do not solve the problem, then the solution can be done through law enforcement efforts in accordance with the Criminal Code, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination, Law Number 7 of 2012 concerning Handling of Social Conflicts, and Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2013 concerning Technical Handling of Social Conflicts, and Perpol 8/2021.

The law enforcement of hate speech that applies the principles of *restorative justice* is enhanced by the Circular Letter of the Chief of Police Number 8 of 2018 (SE 8/2018) concerning the Application of Restorative Justice in the Settlement of Criminal Cases. In SE 8/2018 it is explained that the principle of restorative justice cannot be interpreted as a method of peacefully ending cases, but more broadly in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and local communities as well as investigators/investigators as mediators. While the settlement of cases, one of which is in the form of a peace agreement and the revocation of the right to demand from the victim, it is necessary to request a judge's determination through the public prosecutor to abort the authority to demand from the victim, and the public prosecutor.

The use of discretion or authority to take other actions by law enforcement officials aims to fill legal voids and provide legal certainty. SE 8/2018 stipulates that the settlement of criminal cases with a *restorative justice approach* must meet handling guidelines consisting of material requirements and formal requirements. Material requirements include, not causing public unrest, no community rejection, no social conflict, no objections from all parties involved, the level of guilt of the perpetrator is not serious and the perpetrator is not a recidivist, and can only be carried out on criminal acts in the investigation process and investigation before the Order for the Commencement of Investigation (SPDP) is sent to the public prosecutor.

However, it turns out that there are many crimes of hate speech that are not carried out by *restorative justice*, for example in the case of Ahmad Dhani. In the Decision of the Surabaya District Court Number 275/Pid.Sus/2019/PN Sby, Ahmad Dhani was declared legally and convincingly guilty of committing a crime of hate speech because he intentionally and without rights distributes and makes accessible electronic information and electronic documents containing content. insult and defamation, so that the Surabaya District Court sentenced him to 1 (one) year in prison.

So this article will discuss the police's authority in handling criminal acts based on the restorative justice approach and the police's authority in handling hate speech crimes in Indonesia with a restorative justice approach.

II. Methods

This research is a legal research (*doctrinal research*) [13] . According to Hutchinson , *doctrinal research* [14] : “ *research which provides a systematic exposition of the rule governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and perhaps, predicts future development* ”. According to Abdulkadir Muhammad , basically *doctrinal research* focuses on an inventory of positive law, legal principles and doctrines of legal discovery in cases *in concreto* , legal systems, legal synchronization levels, legal comparisons, and legal history in order to answer the legal issues being analyzed [15] . This legal research was conducted to analyze the

restorative justice arrangements by the National Police in the settlement of the Crime of Hate Speech in Indonesia.

Legal research should require certain approach methods to obtain information from various aspects to answer legal issues raised as research objects. The approaches used in this article are the statutory *approach*, the *conceptual approach*, the *case approach*, and the *comparative approach* [16]. Thus, these 4 (four) approaches are used as analytical tools to analyze legal issues related to the settlement of bribery crimes in the licensing sector with a *deferred prosecution agreement mechanism*.

In legal research, generally the legal materials used consist of two, namely primary legal materials and secondary legal materials [17]. Primary legal materials are legal materials obtained from the laws and regulations in the Indonesian legal system. Secondary legal materials are obtained from legal literature, research, theses, dissertations, articles, legal journals, legal dictionaries, internet media or comments on court decisions that are related to the formulation of the problem under study. The legal materials collected are relevant legal materials to address legal issues related to the regulation of restorative justice by the Police in the settlement of the Crime of Hate Speech in Indonesia.

All primary and secondary legal materials that have been collected are analyzed systematically and rationally. Analysis of legal materials is done by first being classified based on the problems based on the formulation of the problem. Then, the legal material will be analyzed normatively and conceptually. The analysis will eventually lead to a conclusion which is a prescription for the formulation of the problem.

III. Result and Discussion

A. The Authority of the Police in Handling Crimes Based on a Restorative Justice Approach

Law enforcement is an authority given to the National Police as regulated in Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police (UU 2/2002) which stipulates that the Police are one of the organizers of government duties and functions, in carrying out their duties and functions they must based on valid ratification according to applicable law. The main task of the National Police is to maintain public security and order, enforce the law and provide protection, protection, and service to the community. Article 14 paragraph (1) of Law 2/2002 also stipulates that in carrying out its main duties, the National Police is tasked with conducting investigations and investigations of all criminal acts in accordance with the criminal procedure law and other statutory regulations.

Restorative Justice emerged in the midst of the saturation of society who saw that formal law was dominated by the positivist school of thought, so that it could not optimally place a sense of justice. In addition, the conventional and retributive judicial system is considered no longer able to provide protection for human rights and the transparency of the public interest is increasingly not perceived. The existence of a *restorative justice process* as an alternative for resolving criminal cases is largely determined by the awareness and knowledge of the community and the Police as law enforcement officers. Understanding that the state has the right to impose sanctions on its citizens who violate the rules, so that the process of resolving criminal cases only prioritizes the application of rules that prove the perpetrators' mistakes and give punishment will not be able to accept the concept of restorative justice [18].

The investigation practice that has been going on so far shows that the flow of legal positivism or legalism and based on the principle of legal certainty is a legal philosophy school that is the mainstream in the implementation of the investigative authority carried out by Polri investigators, and the method whose interpretation or interpretation is dominant is interpretation. authentic and grammatical. This means that the main legal interpretation model in the implementation of investigative authority by Polri investigators is the legal positivism reasoning model [19].

The fact shows that many people prefer to settle their criminal cases outside the court system. Restorative justice places more emphasis on solving problems between the parties in social relations rather than confronting the perpetrators with government officials. The philosophy of the just peace principle is integrated with the process of meeting, discussing, and actively participating in deciding criminal matters. The integration between the perpetrator on the one hand and the victim and the

community on the other hand forms a unity to obtain a solution in order to return to the pattern of good relations in society. The advantage of using a restorative justice approach is that the community is given the space to handle their own legal problems which are felt to be fairer, eliminate the prosecution and trial process, avoid the imposition of prison sentences, avoid the burden of excess occupants on prison capacity (over population), and save the state financial budget so that can be used for other purposes [20].

The implementation of the authority to investigate and/or investigate criminal acts by the National Police applying the principles of restorative justice is based on the provisions of Article 7 paragraph (1) letter j and Article 5 paragraph (1) letter a number 4 of Law Number 8 of 1981 concerning The Criminal Procedure Code (KUHAP) which stipulates that investigators and investigators because of their obligations have the authority to take other actions according to the responsible law.

In the explanation of Article 5 paragraph (1) letter a number 4 of the Criminal Procedure Code, it is regulated that what is meant by other actions is the action of the investigator for the purpose of the investigation provided that:

- a. Not against a rule of law
- b. In line with legal obligations that require official action to be taken
- c. The action must be appropriate and reasonable and included in the environment of his office
- d. On proper consideration based on compelling circumstances
- e. Respect human rights.

The first time the Police initiated the handling of criminal acts based on restorative justice in the integrated criminal justice system in Indonesia was through a Memorandum of Understanding with the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Head of the Indonesian National Police Number 131/KMA/SKB/X /2012, M.HH-07.HM.03.02, KEP-06/E/EJP/10/2012, B/39/X/2012 concerning the Implementation of Adjustment on the Limitation of Minor Crimes and the Amount of Fines, Quick Examination Procedures, and Implementation Restorative *Justice* (NKB MA, Kemenkumham, Polri, and AGO in 2012) [21] . In the Memorandum of Understanding, the settlement of criminal acts based on restorative justice can be carried out for minor crimes. The minor crimes referred to are acts regulated in Article 364, Article 373, Article 379, Article 384, Article 407 and Article 482 of the Criminal Code. The Memorandum of Understanding also determines the terms of the criminal acts referred to in these articles. These conditions include:

- a. Threatened with imprisonment for a maximum of 3 (three) months;
- b. The fine is multiplied to 10,000 (ten thousand) times from Rp. 250, - (two hundred and fifty rupiah), so it must be read: Fine of Rp. 2.500.000,- (two million five hundred thousand rupiah);
- c. The words “two hundred and fifty rupiah” in articles 364, 373, 379, 384, 407 and article 482 of the Criminal Code are read as “Rp. 2.500.000,- (two million five hundred thousand rupiah)”

Settlement of minor crimes based on restorative justice, as carried out provided that peace has been carried out between perpetrators, victims, families of perpetrators/victims, and related community leaders who are litigating with or without compensation [22] , carried out by Polri Investigators or Judges [23] . The reconciliation between the litigants was then confirmed in a written agreement [24] . The Memorandum of Understanding also stipulates that the settlement of minor crimes based on restorative justice does not apply to repeat offenders in accordance with the provisions of laws and regulations [25] .

In 2013, the National Police then adopted a method of resolving criminal acts based on restorative justice in the Regulation of the Head of the State Police Number 8 of 2013 on Technical Handling of Social Conflicts (Perkapolri 8/2013) [26] . However, the Perkapolri only determines the form of settlement of criminal acts based on restorative justice which is specific to social conflicts [27] . The Perkapolri only urges that social conflicts can prioritize restorative justice in efforts to resolve disputes, especially for minor violations of the law or small losses and/or the perpetrators are children and the elderly [28] .

The forms of efforts to promote restorative justice are limited to the following persuasive actions:

- a. provide an understanding to the public that not every legal problem is resolved through a court hearing;
- b. encourage an agreement between the disputing parties with an emphasis on the protection of victims;
- c. include a third party/mediator as agreed by the disputing parties;
- d. remind and socialize the results of the agreement between the two parties as outlined in a joint statement as a form of problem solving; and
- e. remind and socialize the results of the written agreement as a basis/consideration that the matter will not proceed to court.
- f. settlement by way of law enforcement through the judicial process is the last step, if the above steps are not achieved.

In 2018 the National Police then provided guidance on the settlement of criminal acts based on restorative justice SE Kapolri 8/2018 . This Circular is used as an effort to create a uniform understanding and application of restorative justice within the Police. The Circular also fully explains that the model for resolving criminal acts based on restorative justice within the Indonesian National Police **is not interpreted as a method of peaceful cessation of cases** , but is broader in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and the community. local authorities as well as investigators/investigators as mediators. While the settlement of cases, one of which is in the form of a peace agreement and the revocation of the right to demand from the victim, it is still necessary to ask for a judge's determination through the public prosecutor to abort the authority to demand from the victim and the public prosecutor.

The Circular also limits the number of crimes that can be resolved based on restorative justice. Some of these types of crimes include:

- a. Article 76 paragraph (1) of the Criminal Code states that except in the case that a judge's decision may still be repeated, a person may not be prosecuted twice because an act in which an Indonesian judge found him/her has been tried with a final decision.
- b. Article 7 paragraph (1) of Law 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) at the level of investigation, prosecution and examination of children in the District Court is required to seek diversion.
- c. Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantee that the Fiduciary Guarantee certificate has the same executive power as a court decision that has obtained permanent legal force.
- d. Article 51 paragraph (7) of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province section that in order to release criminal offenders and criminal charges according to the applicable criminal provisions, a statement of approval is required to be carried out from the Head of the District Court that is in charge of the territory obtained through the Head of the District Attorney relating to the place where the crime occurred.

Settlement of criminal acts based on restorative justice in this Circular is carried out at the stage of investigation and/or investigation of criminal acts by Polri Investigators. The authority to investigate and/or investigate criminal acts by Polri Investigators who apply the principles of restorative justice in their investigative methods .

Circulars are not enough, in 2019 the National Police then issued a regulation that regulates the settlement of criminal acts based on restorative justice at the level of the Head Regulation. The National Police initiates the method of resolving criminal acts based on restorative justice at the investigation stage in the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Acts of Investigation (Perkapolri 6/2019).

Perkapolri 6/2019 determines that in the investigation process restorative justice can be carried out, if the following conditions are met:

- a. materials, which include:
 - i. does not cause public unrest or there is no public rejection;
 - ii. does not result in social conflict;

- iii. there is a statement from all parties involved not to object, and waive the right to sue before the law;
- iv. limiting principle:
 - (1) on the perpetrator:
 - the level of the perpetrator's error is relatively light, namely the error in the form of intentional; and
 - the perpetrator is not a recidivist;
 - (2) on criminal acts in progress:
 - investigation; and
 - investigation, before the SPDP is sent to the Public Prosecutor;
- b. formal, including:
 - i. letter of request for reconciliation of both parties (the reporting party and the reported party);
 - ii. the statement of reconciliation (deed of dading) and the settlement of disputes between the litigants (the reporting party, and/or the family of the reporting party, the reported party and/or the reported family and representatives of community leaders) are known by the investigator's superiors;
 - iii. minutes of additional examination of the litigating parties after the settlement of the case through restorative justice;
 - iv. recommendation of special case title approving restorative justice settlement; and
 - v. the perpetrator does not object and is carried out voluntarily on responsibility and compensation.

At its peak, in 2021, the National Police issued a chief regulation that specifically regulates in detail the settlement of criminal acts based on restorative justice as stated in Perpol 8/2021 [29]. The form of settlement of criminal acts based on restorative justice in the investigation and investigation stage is to terminate the investigation or investigation [30].

Settlement of criminal acts based on restorative justice must meet general and/or special requirements, as stated in Article 3 of Perpol 8/2021. General requirements apply to the handling of Crimes based on Restorative Justice in the activities of the Implementation of the Criminal Investigation, Investigation or Investigation Function. While the special requirements only apply to the handling of criminal acts based on restorative justice in investigative or investigative activities.

The general requirements include material requirements and formal requirements, as stated in Article 4 of Perpol 8/2021. Material requirements based on Article 5 of Perpol 8/2021 include:

- a. does not cause unrest and/or rejection from the public;
- b. does not result in social conflict;
- c. does not have the potential to divide the nation;
- d. not radicalism and separatism;
- e. is not a repeat offender based on a Court Decision; and
- f. not a crime against terrorism, a crime against state security, a crime against corruption and a crime against people's lives.

Meanwhile, the formal requirements based on Article 6 of Perpol 8/2021 include:

- a. peace from both parties, except for Drug Crimes; and
- b. fulfillment of the rights of victims and responsibilities of perpetrators, except for drug crimes.

The peace referred to in the process of resolving criminal acts based on restorative justice is evidenced by a peace agreement letter and signed by the parties. Meanwhile, what is meant by fulfilling the rights of victims and responsibilities of perpetrators in the process of resolving criminal acts based on restorative justice, based on Article 6 paragraph (3) of Perpol 8/2021 can be in the form of:

- a. return thing;
- b. indemnify;
- c. replace the costs incurred as a result of the Crime; and/or
- d. compensate for the damage caused by the crime.

Meanwhile, special requirements that only apply to the handling of criminal acts based on restorative justice in investigative or investigative activities. is an additional requirement for the type of crime , based on Article 7 Perpol 8/2021 :

- a. Electronic information and transactions;
- b. Drugs; and
- c. Traffic.

Specific requirements for criminal acts of information and electronic transactions , based on Article 8 of Perpol 8/2021 at least include:

- a. perpetrators of Information Crimes and electronic transactions that spread illegal content;
- b. the perpetrator is willing to delete the uploaded content;
- c. the perpetrator apologized through a video uploaded on social media accompanied by a request to remove the content that had spread; and
- d. the perpetrators are willing to cooperate with Polri investigators to carry out further investigations.

Specific requirements for drug crimes , based on Perpol 8/2021 include:

- a. drug addicts and victims of drug abuse who apply for rehabilitation;
- b. at the time of being caught red-handed:
 - i. evidence of the use of narcotics for 1 (one) day is found with the classification of narcotics and psychotropics in accordance with the provisions of the legislation; and
 - ii. no evidence of drug crime was found, but urine test results showed positive for drugs;
- c. not involved in drug crime networks, dealers and/or dealers; d. an assessment has been carried out by an integrated assessment team; and
- d. the perpetrators are willing to cooperate with Polri investigators to carry out further investigations.

Specific requirements for Traffic Crimes , based on Article 10 of Perpol 8/2021 include:

- a. traffic accidents caused by driving a motorized vehicle in a dangerous manner and condition resulting in material loss and/or minor injuries; or
- b. traffic accidents on the road due to negligence resulting in human casualties and/or property loss.

Perpol 8/2021 also provides detailed procedures for resolving minor crimes based on restorative justice. Settlement of minor crimes based on restorative justice in accordance with Article 11 of Perpol 8/2021 is carried out against:

- a. Reports/complaints.

Reports/complaints referred to here are reports/complaints prior to a police report.

- a. find out if there is any suspicion of a crime.

Thus, the Police who incidentally are one of the Caturpraja (*Quattro Politica*) as described by van Vollenhoven above, then from this description , if you look at the regulations that have been described above, the settlement of criminal acts based on restorative justice within the Polri environment, it can be concluded as follows:

- a. Implemented against minor crimes with certain requirements (special, general, formal, and material);
- b. carried out at the stage of investigation and/or investigation;
- c. Implemented by Police Investigators; Members of the National Police who carry out the Community Development function; and members of the National Police who carry out the function of Samapta Polri;

- d. Executed on the basis of an Order to Terminate an Investigation/Investigation and a Decision Letter to Terminate an Investigation/Investigation preceded by a Declaration of Peace (Deed Dading), as well as settlement of disputes between the parties to the litigation (the reporting party, and/or the family of the reporting party, the reported party and/or the reported family and representatives of community leaders) is known by the investigator's superior; and
- e. Although preceded by a Declaration of Peace (Akte Dading), the settlement of criminal offenses based on restorative justice within the Police **cannot be said to be a peaceful settlement of criminal acts**, but based on restorative justice. In the sense that this settlement is considered broader in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and the local community as well as investigators/investigators as mediators.

B. The Authority of the Police in Handling the Crime of Hate Speech in Indonesia Using a Restorative Justice Approach .

One form of crime committed by restorative justice is hate speech. Based on the Circular Letter of the Chief of Police Number 6 of 2015 (SE 6/2015) regarding the Handling of Hate Speech (*hate speech*), hate speech can be in the form of criminal acts regulated in the Criminal Code (KUHP) and other criminal provisions outside the Criminal Code, which in the form of, among others: insults, defamation, blasphemy, unpleasant acts, provoking, inciting, and spreading false news. Hate speech can have the effect of degrading human dignity, and can encourage collective hatred, exclusion, discrimination, violence, loss of life and or widespread social conflict.

SE 6/2015 regulates the handling of acts of hate speech, namely through preventive and repressive measures. Preventive actions against acts of hate speech include, every member of the National Police having knowledge and understanding of the forms of hate speech that arise in the community, making effective and prioritizing intelligence functions to find out real conditions in conflict-prone areas, conducting outreach to the public regarding hate speech. and the negative impacts that will occur, as well as bringing together parties suspected of committing hate speech with victims of hate speech to find a peaceful solution.

Based on Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, law enforcers are given the role of conciliatory judges or " *judex mediators* ", which connect conflicting parties with the community, and must be able to take into account various interests, norms and values that exist in society . Thus, the Police have the freedom to act (discretion) by resolving cases through mediation. The decision to apply discretion is based on several considerations, namely, *first* , the perpetrator confessed during the investigation; *second* , the perpetrator has agreed and can compensate the victim for the damage caused by the crime or other forms of restitution; *third* , the perpetrator and the victim agree to participate in the mediation process; *fourth* , a judicial process is not necessary, given the nature of the crime, the manner in which the crime was committed, and the personal circumstances of the perpetrator, or there are substantial reasonable grounds that it is probable that the court will consider the remorse of the offender as a mitigating circumstance.

The importance of discretionary action, considering: *first* , no law is so complete that it can regulate all human behavior; *second* , the delay in laws and regulations adjusting developments in society creates legal uncertainty; *third* , the lack of costs for implementing laws and regulations as required by the legislators; *fourth* , there are individual cases that require special handling.

The regulation on police discretion in Article 18 of Law 2/2002 provides a juridical basis for the police as investigators to apply *restorative justice* in handling hate speech cases. One of the actions that can be taken in implementing *restorative justice* is to position the victim at the central point in resolving criminal cases and keep the perpetrators from being imprisoned, but held accountable. In relation to the performance of the police, the requirements for the ability of law enforcement officers need to be a concern in carrying out their duties. The meaning of ability is not only given the meaning of quantity or number of personnel, but what is more important is the quality. The quality of police personnel includes the level of intellect, morals, performance, discipline, firmness, exemplary and piety. In policy efforts, overcoming criminal acts, G. Peter Hoefnagels describes that *criminal policy* includes; *first* , influencing the public's view of crime and crime through the mass media; *second* , the application of criminal law (practical criminology) and *third* , prevention without criminal which includes: social politics, community mental health plans, and others.

The practice of applying discretion by law enforcement officials is very dependent on the subjectivity in question. If law enforcement officials live up to moral and ethical values, then the application of discretion will give birth to a sense of justice and peace in society. But if it's the other way around, it will give birth to *arbitrariness* and *uncertainty*. This is in line with the opinion of Wayne LaFavre, quoting the opinion of Roscoe Pound, that in essence discretion lies between law and ethics in a narrow or moral sense. Law enforcement as a process is the application of discretion that involves decision making which is regulated by legal norms rather loosely, but the element of personal judgment is contained therein.

If preventive actions have been taken but do not solve the problem, then the solution can be done through law enforcement efforts in accordance with the Criminal Code, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 40 of 2008 concerning Elimination of Racial and Ethnic Discrimination, Law Number 7 of 2012 concerning Handling of Social Conflicts, and Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2013 concerning Technical Handling of Social Conflicts.

The law enforcement of hate speech that applies the principles of restorative justice is perfected by the Circular Letter of the Chief of Police Number 8 of 2018 (SE 8/2018) concerning the Application of *Restorative Justice* in the Settlement of Criminal Cases. In SE 8/2018 it is explained that the principle of restorative justice cannot be interpreted as a method of peacefully ending cases, but more broadly in fulfilling the sense of justice of all parties involved in criminal cases through efforts that involve victims, perpetrators and local communities as well as investigators/investigators as mediators. , while the settlement of cases, one of which is in the form of a peace agreement and the revocation of the right to demand from the victim, it is necessary to request a judge's determination through the public prosecutor to abort the authority to demand from the victim, and the public prosecutor.

The police need not only play a role in repressive law enforcement. This is because the percentage of Polri's work which is repressive in nature is smaller than the percentage of Polri's work which is preventive in nature, and even smaller than the percentage of pre-emptive Polri work. Such a combination of the roles of the National Police, implies that the police work is not like a "firefighter" who works after a disaster occurs, but must always precede the emergence of a disaster by prioritizing preventive and pre-emptive actions rather than repression.

The restorative justice model , which prioritizes efforts to restore the situation, increases the trust of the justice-seeking community. The role of the Police in restorative justice is as a "facilitator" and not as a seeker or collector of evidence for the sake of law enforcement that leads to repressive actions. Thus, the expected result of the restorative justice process is to promote the realization of "peace" between the parties through a win-win solution .

The use of discretion or authority to take other actions by law enforcement officials aims to fill legal voids and provide legal certainty. To ensure uniformity in the implementation of restorative justice within the Polri environment, a norm or rule is needed to ensure the similarity of the actions of Polri investigators in the application of the concept of restorative justice in criminal law enforcement, and also provide legitimacy to Polri investigators so that all actions taken in the implementation of restorative justice are for the benefit of the investigation is not labeled illegal and deviates from the applicable procedural law. SE 8/2018 stipulates that the settlement of criminal cases with a restorative justice approach must meet handling guidelines consisting of material requirements and formal requirements. Material requirements include, not causing public unrest, no community rejection, no social conflict, no objections from all parties involved, the level of guilt of the perpetrator is not serious and the perpetrator is not a recidivist, and can only be carried out on criminal acts in the process of investigation and investigation before the Order for the Commencement of Investigation (SPDP) is sent to the public prosecutor.

In the process of resolving the crime of hate speech through a *restorative justice approach*, a sanction is attached as a form of accountability from the perpetrator to the victim who is harmed. The form of sanctions chosen is that of restoring the situation and avoiding forms of criminal sanctions, and the selection of these sanctions is carried out by agreement as a condition for the acceptance of the perpetrator in the conflict resolution institution on the condition that the perpetrator is reinstated into society. In restorative justice , sanctions that emphasize imprisonment are the last alternative.

Sanctions that restore the situation will be able to restore the disturbed emotional relationship and restore all material losses suffered by the victim.

One case that shows positive results from the judicial system with the concept of restorative justice is the case of hate speech committed by children. The perpetrators of hate speech can not be detained and research conducted by the Correctional Center which recommends mediating the child. Mediation involves the Correctional Center, investigators as facilitators, victims and suspects as well as community leaders and mentors. From the results of the mediation, it was agreed that the child would not be criminally prosecuted but rehabilitated or returned to his parents to be fostered under the supervision of the Correctional Center and community counselors after the child understood his mistake and promised not to repeat and commit to be better in his education. While the victim wants the perpetrator to apologize to restore his good name and promise not to make hate speech so as not to defame others in the future. If it is observed here, it is in the interest of the child to be able to improve himself and continue his education without being labeled as a criminal and the victim can also resume activities with his good name. This shows that for cases where the level of loss is not large or minor crimes will be much more effective if resolved with a Restorative Justice approach.

The existence of a hate speech crime has the potential to not be resolved with a restorative approach if it is based on Article 5 of Perpol 8/2021, because it has the potential to conflict with material requirements. However, the Police should comprehensively look at the context of the hate speech holistically, both in terms of the sentence and the impact on the sentence. It is not equated. Therefore, the Police are required to be wise to look at the existence of such hate speech comprehensively.

IV. Conclusion

The National Police has the authority to handle criminal acts on the basis of a restorative justice approach, especially after the issuance of Perpol 8/2021, there have been comprehensive arrangements regarding this matter. The existence of a hate speech crime has the potential to not be resolved with a restorative approach if it is based on Article 5 of Perpol 8/2021, because it has the potential to conflict with material requirements. However, the Police should comprehensively look at the context of the hate speech holistically, both in terms of the sentence and the impact on the sentence. It is not equated. Therefore, the Police are required to be wise to look at the existence of such hate speech comprehensively

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