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The Urgency of The Judge's Supervisory Role Regarding Restorative Justice Implemented by Police Investigators to Prevent the Commodification of Criminal Cases

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Abstract: The urgency of the judge's role as a supervisor over the implementation of restorative justice by police investigators has become an important issue in the development of Indonesia's criminal justice system following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The reform of national criminal law reflects a paradigm shift from a purely retributive approach toward a more restorative, humane, and recovery-oriented system. Within this framework, restorative justice is increasingly recognized as an alternative mechanism for resolving criminal cases by emphasizing reconciliation, restoration of losses, and the participation of offenders, victims, and the community in achieving a fair settlement. In practice, police investigators play a strategic role in determining whether a criminal case may be resolved through restorative justice at the investigation stage. However, the broad discretionary authority granted to investigators raises concerns regarding accountability, legal certainty, and the protection of victims' rights. Normatively, various regulations have provided legal grounds for the implementation of restorative justice by the Indonesian National Police. Nevertheless, the existing legal framework has not yet clearly regulated the relationship between the authority of investigators to terminate investigations through restorative justice and the supervisory function of judges within the criminal justice system. This situation creates a legal gap that may lead to inconsistencies in the application of restorative justice and potentially weaken public confidence in criminal law enforcement. Therefore, the concept of Judicial Scrutiny emerges as a mechanism to ensure that restorative justice agreements are carried out voluntarily, fairly, and in accordance with the principles of restorative justice. Judicial supervision is expected to function as an instrument of checks and balances over the exercise of investigative discretion without undermining the effectiveness of criminal investigations. Furthermore, one of the major challenges in implementing restorative justice is the potential commodification of criminal cases through transactional settlements commonly referred to as "buying and selling cases." The absence of effective supervisory mechanisms may increase the risk of abuse of authority and allow restorative justice to be used as a means of avoiding criminal accountability rather than achieving genuine restoration. In this regard, the role of judges as supervisors becomes increasingly important in ensuring that restorative justice remains oriented toward the protection and restoration of victims' rights, accountability of offenders, and the realization of substantive justice. Accordingly, an ideal model of judicial

supervision is required to create a more transparent, accountable, and fair restorative justice system while preventing the commodification of criminal cases within Indonesia's criminal justice framework.

Keywords: Restorative justice, Judicial Scrutiny, Judicial Supervision, Criminal Case Commodification, Criminal Justice System Reform

INTRODUCTION

Developments in modern criminal law reveal a paradigm shift from a retributive approach to a restorative one regarding the resolution of criminal cases. This shift is driven by criticism of conventional criminal justice systems, which tend to focus on punishing the offender while failing to fully provide redress for victims or the community affected by the crime. In recent developments, criminal justice is no longer viewed solely as a means of exacting retribution against the offender, but rather as a mechanism for repairing harm, restoring social relationships, and balancing the interests of the offender, the victim, and the community. The concept of restorative justice has emerged as an approach that seeks to address these needs. Under this approach, criminal cases are resolved by involving the offender, the victim, their families, and the community in a dialogue process aimed at reaching a fair, restoration-oriented agreement.

In Indonesia, the development of restorative justice has become a crucial part of the national criminal law reform agenda. The restorative approach gained further legitimacy with the enactment of Law Number 1 of 2023 concerning the Criminal Code, which affirms a shift in the orientation of Indonesian criminal law toward corrective, rehabilitative, and restorative approaches.⁴ The establishment of the new Criminal Code demonstrates the state's commitment to building a criminal justice system that is more humane, responsive to societal needs, and aligned with the values of Pancasila.⁵ Consequently, restorative justice is no longer viewed merely as an alternative mechanism; rather, it has become an integral part of national criminal law policy in realizing justice that is more oriented toward restoration.

The application of restorative justice by the police offers various benefits, such as expediting case resolution, alleviating the burden on the criminal justice system, and providing victims with greater opportunity for direct redress.⁹ However, the broad discretionary power held by investigators also gives rise to various legal issues. A frequently cited concern is the potential for abuse of authority when determining whether a case is suitable for resolution through restorative justice mechanisms.

This issue is increasingly significant because the termination of a case through restorative justice fundamentally concerns interests that extend beyond a mere agreement between the perpetrator and the victim. The resolution of a criminal case involves not only the private interests of the parties involved but also the public interest in law enforcement. Therefore, the application of restorative justice requires assurances that the reconciliation process is voluntary, free from coercion, and genuinely provides fair redress for the victim. In practice, concerns have arisen that restorative justice mechanisms could undergo a functional shift and be exploited as a means to commodify criminal cases. Such commodification occurs when the case resolution process ceases to prioritize the attainment of justice and instead transforms into a transactional object driven by economic motives or other non-legal interests. This situation is likely to emerge when reconciliation is viewed merely as an administrative formality capable of halting legal proceedings, without regard for the substance of genuine restoration.

The potential for the commodification of cases increases when the success of restorative justice is measured solely by the compensation or restitution provided by the offender to the

victim. In certain circumstances, the offender's financial capacity can become the dominant factor in determining the successful resolution of a case through restorative justice. Consequently, an impression arises that the termination of criminal proceedings can be secured through financial means, thereby potentially conflicting with the principle of equality before the law and undermining public trust in the criminal justice system. Furthermore, the victim's position in the reconciliation process is not always equal to that of the perpetrator. In some instances, victims may agree to a settlement due to social pressure, an imbalance of power, or a limited understanding of their rights. If such conditions are not adequately monitored, the resulting settlement risks undermining the principles of voluntariness and victim protection—which are central to restorative justice.

However, to date, the relationship between the police authority to terminate investigations via restorative justice and the supervisory function of judges has not been comprehensively regulated within the Indonesian criminal justice system. This situation creates a need to examine the synchronization of existing regulations and to formulate an ideal concept regarding the role of judges in supervising the application of restorative justice. Such an examination is crucial for preventing the commodification of criminal cases, strengthening accountability in the exercise of police investigative discretion, protecting victims' rights, and upholding the integrity of the Indonesian criminal justice system. Against this backdrop, this research is conducted under the title: “The Urgency of the Judge’s Role in Supervising Restorative Justice Implemented by Police Investigators to Prevent the Commodification of Criminal Cases.”

METHOD

This study employs a normative-juridical research method—a form of legal research that focuses on analyzing legal norms found in legislation, court rulings, and legal doctrines within the field of jurisprudence. Normative-juridical research views law as a system of norms that regulates societal behavior and serves as a guideline for the conduct of state affairs. This approach is utilized to examine the regulations governing the application of restorative justice by police investigators and the critical role of judges in providing judicial scrutiny within the Indonesian criminal justice system. Normative legal research aims to identify legal principles and concepts, as well as to assess the synchronization of legal norms, in order to address the specific issues under investigation. Furthermore, this study seeks to construct a systematic legal argument regarding the relationship between the authority to terminate investigations through restorative justice and the judge's supervisory function as a mechanism for controlling the exercise of discretion by law enforcement officials. Soerjono Soekanto explains that normative legal research is conducted by examining library materials or secondary data as the basis for analyzing legal issues.

This study is descriptive-analytical in nature, systematically outlining the regulations governing restorative justice and oversight mechanisms within the Indonesian criminal justice system while analyzing their relevance to law enforcement practices. A descriptive approach is employed to detail the regulations regarding the authority of investigators to terminate investigations through restorative justice and the role of judges in overseeing this process. An analytical approach is used to examine the regulatory alignment concerning these two powers and the necessity of establishing an effective oversight mechanism. Furthermore, the study analyzes the potential commodification of criminal cases in the application of restorative justice and its implications for the protection of victims' rights, legal certainty, and the integrity of the criminal justice system. This research not only describes prevailing legal norms but also evaluates the adequacy of legal regulations in preventing the abuse of authority in practice. Peter Mahmud Marzuki explains that legal research is prescriptive and applied in nature, as it aims to provide arguments based on the analysis of the legal issues under study.

This research employs the statutory approach, the conceptual approach, and the case approach. The statutory approach involves examining various legal provisions related to restorative justice, the authority of police investigators, the function of judicial power, and the criminal justice system—specifically Law Number 1 of 2023 concerning the Criminal Code, the Criminal Procedure Code, Law Number 48 of 2009 concerning Judicial Power, Law Number 2 of 2002 concerning the Indonesian National Police, and Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. The conceptual approach is used to analyze the concepts of restorative justice, authority, judicial scrutiny, legal protection, and the commodification of criminal cases. Meanwhile, the case approach is utilized to examine the practical application of restorative justice and the issues arising during its implementation, particularly those concerning the exercise of investigator discretion and the protection of victims' rights.

RESULT AND DISCUSSION

Harmonizing Regulations on Police Authority to Terminate Investigations via Restorative Justice with the Judicial Oversight Function in the Indonesian Criminal Justice System

The Indonesian National Police is a law enforcement institution authorized to conduct preliminary inquiries and formal investigations into criminal offenses within Indonesia's criminal justice system. This authority is conferred by legislation as part of the state's function to maintain security and public order and to uphold the law.⁴⁵ In carrying out their duties, investigators do not focus solely on repressive law enforcement but also consider aspects of utility and justice. Developments in modern criminal law have fostered a more flexible approach to resolving certain criminal cases. One such approach, which is gaining traction and being applied in law enforcement practice, is restorative justice.

This approach differs from the conventional criminal justice system, which places greater emphasis on punishing the offender. Under restorative justice, the victim, the offender, and the community are given the opportunity to participate in the case resolution process. The primary objective of this approach is to achieve a resolution that is fair and acceptable to all parties involved. Consequently, restorative justice is viewed as a mechanism capable of realizing more substantive justice.

The implementation of restorative justice in Indonesia is integral to the national criminal law reform agenda, which prioritizes humanitarian values and social balance. This reform gained further momentum following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The law reflects a paradigm shift in criminal law—moving away from a purely retributive approach toward one that is more restorative and rehabilitative.⁴⁷ In this context, resolving cases through reconciliation has garnered increased attention in law enforcement practice. The adoption of restorative justice forms part of the effort to create a criminal justice system that is more responsive to the needs of the community.

The legal basis for the Police's authority to apply restorative justice is found in Law Number 2 of 2002 concerning the Indonesian National Police.⁴⁹ This Law empowers the Police to act based on their own judgment in specific circumstances for the public interest. Furthermore, this authority is linked to the Police's duty to maintain public security and order and to enforce the law. These provisions serve as the foundation for exercising discretion in resolving criminal cases through a restorative approach. Thus, restorative justice is closely linked to the discretionary authority held by investigators.

Police Regulation Number 8 of 2021 stipulates that not all criminal cases can be resolved through restorative justice.⁵¹ Only specific cases meeting the requisite legal and social criteria may utilize this mechanism. Investigators are required to ensure that a voluntary agreement is reached between the perpetrator and the victim, free from coercion by any party.

Furthermore, there must be an effort to redress the victim's losses as part of the perpetrator's accountability for their actions. These requirements are intended to ensure that restorative justice remains aligned with the objectives of justice and legal protection.

Harmonizing Regulations on the Authority to Terminate Investigations via Restorative Justice with the Supervisory Function of Judges in the Indonesian Criminal Justice System

Harmonizing regulations regarding the authority to terminate investigations via restorative justice with the judicial oversight function is a key issue in the evolution of Indonesia's criminal justice system. The strengthening of the restorative approach in resolving criminal cases has granted investigators greater latitude to exercise discretion in halting investigations based on settlements reached between the parties involved. Conversely, the rule-of-law principle dictates that any exercise of authority by law enforcement officials must remain within the bounds of accountability and oversight. This situation creates a need for oversight mechanisms capable of ensuring that the application of restorative justice is lawful and consistent with legal objectives.⁵⁵ Consequently, aligning investigative authority with judicial oversight is crucial for establishing a balanced criminal justice system.

In the Indonesian criminal justice system, investigators are law enforcement officials empowered to conduct preliminary inquiries and formal investigations into alleged criminal offenses. This authority encompasses various legal actions aimed at establishing facts and determining whether a case warrants proceeding to the prosecution stage. The restorative justice approach allows investigators to consider aspects of utility, reconciliation, and reparation when resolving specific cases; the exercise of this authority constitutes part of the discretion granted to the Police by law.

On the other hand, judges are agents of judicial power charged with upholding the law and justice in accordance with statutory regulations. In the Indonesian legal system, the judicial function is generally exercised through the examination and resolution of cases brought before the court. However, the evolution of modern legal thought indicates a need to expand judicial oversight regarding the actions of law enforcement officials during the pre-adjudication stage. This concept is known as "judicial scrutiny"—a mechanism of judicial oversight concerning actions that potentially affect citizens' rights. Through this concept, the judge serves as an instrument of oversight regarding the exercise of authority by law enforcement officials.⁵⁷

The need for judicial oversight in the application of restorative justice arises because the termination of an investigation based on a settlement carries significant legal consequences. A decision to terminate an investigation results in the case not proceeding to the prosecution stage or to trial. However, to date, there are no regulations explicitly establishing a mechanism for judicial scrutiny regarding the termination of investigations through restorative justice. The Criminal Procedure Code primarily recognizes the **praperadilan** (pretrial hearing) mechanism as a means of overseeing the actions of investigators. In essence, **praperadilan** empowers the court to assess the legality of specific actions taken by investigators and public prosecutors. Yet, the scope of **praperadilan** does not specifically cover the oversight of the substance of peace agreements reached through restorative justice.⁵⁸ This situation indicates a regulatory gap that requires attention during the reform of criminal procedural law.

From a regulatory perspective, the authority to terminate investigations via restorative justice is currently governed largely by Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Meanwhile, the oversight function of judges is regulated by various provisions pertaining to judicial authority and criminal procedural law. Regulatory inconsistencies have the potential to create various issues in law enforcement practice. Investigators may face uncertainty regarding the limits of their discretion when resolving cases through restorative justice. Conversely, judges lack a

clear legal basis to oversee the settlement agreements that serve as the grounds for terminating investigations. Such a situation can lead to divergent interpretations among law enforcement agencies regarding the validity of case resolutions. If left unaddressed, this state of affairs could undermine the effectiveness of restorative justice implementation and create legal uncertainty for the public.

Regulatory synchronization is essential to establish a harmonious relationship between the authority of investigators and the supervisory function of judges. This relationship is not intended to curtail the independence of investigators in performing their duties, but rather to ensure that their authority is exercised accountably. In the context of legal protection, judicial oversight plays a crucial role in ensuring that victims' rights are not disregarded during the restorative justice process. Judges can verify that settlement agreements are not obtained through coercion, intimidation, or an imbalance of power between the parties. Furthermore, judges can assess whether the form of redress provided to the victim satisfies the requirements of justice. Such oversight mechanisms can strengthen the legitimacy of outcomes reached through restorative justice, thereby helping to maintain public confidence in the criminal justice system.

Based on the foregoing, harmonizing regulations regarding the authority to terminate investigations through restorative justice with the judicial oversight function is an urgent necessity within Indonesia's criminal justice system. Strengthening the restorative approach must be balanced with oversight mechanisms capable of ensuring accountability and legal certainty. The absence of clear regulations governing the relationship between the investigator's authority and the judicial oversight function creates a potential for uncertainty and the abuse of power. Therefore, a reform and harmonization of regulations are required to integrate these two functions proportionately. Through effective synchronization, the implementation of restorative justice can proceed in a manner that is more transparent and equitable, while aligning with the objectives of national criminal law reform. Restorative justice was essentially developed as a mechanism for resolving criminal cases by focusing on repairing the harm suffered by victims, offender accountability, and the restoration of social relationships within the community. This approach emerged as an alternative to the conventional criminal justice system, which has traditionally prioritized the punishment of offenders. Over time, restorative justice has gained increasing significance within Indonesia's criminal law policy. As an institution situated at the initial stage of the criminal justice system, the police force has been granted the authority to apply this approach in specific cases. However, this expansion of authority also entails various risks that require serious attention.

Based on the foregoing, synchronizing regulations regarding the authority to terminate investigations via restorative justice with the judicial oversight function is an urgent necessity within Indonesia's criminal justice system. Strengthening the restorative approach must be balanced with oversight mechanisms capable of ensuring accountability and legal certainty. The absence of clear regulations governing the relationship between the investigator's authority and the judge's oversight function creates a potential for uncertainty and the abuse of power. Therefore, a reform and harmonization of regulations are required to integrate these two functions proportionately. Through effective synchronization, the implementation of restorative justice can proceed in a manner that is more transparent and equitable, while aligning with the objectives of national criminal law reform.

CONCLUSION

1. Regulations governing the Police's authority to terminate investigations via restorative justice have established a legal basis through various statutes and internal Police policies, reflecting the evolution of the criminal justice system toward a restorative approach. However, these regulations lack a clear and integrated judicial oversight mechanism within

the Indonesian criminal procedural law system. This situation creates a misalignment between the investigator's authority to terminate investigations based on restorative justice and the judge's supervisory function within the criminal justice system. The absence of explicit regulations regarding the form, scope, and mechanism of judicial scrutiny has hindered optimal oversight of investigation terminations via restorative justice. Therefore, regulatory synchronization is required to strike a balance between the flexibility of investigator discretion and the necessity of judicial oversight—acting as a system of checks and balances—to guarantee legal certainty, accountability, and the protection of the parties' rights.

2. The urgent need for a judicial supervisory role in the application of restorative justice by Police investigators stems from the potential commodification of criminal cases arising from the exercise of discretion without adequate oversight mechanisms. Such commodification can occur when the reconciliation process shifts away from restoring victim losses and social relationships, becoming instead a transactional means of resolving cases. In this context, judges should be assigned a supervisory role to ensure that restorative justice agreements are executed voluntarily, fairly, transparently, and in accordance with restorative justice principles. An ideal model of judicial oversight is not intended to usurp the investigator's authority but rather to serve as a control mechanism regarding the validity and substance of case resolutions achieved through restorative justice. Such oversight better guarantees the protection of victims' rights, accountability in the exercise of investigator discretion, and the integrity of the criminal justice system, thereby enabling restorative justice to optimally achieve its goal as an instrument of restoration.

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