

## Application of restorative justice and corruption practices

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**Abstract:** This study aims to analyse the application of restorative justice as an alternative to punitive measures when settling criminal cases at the police level. It also seeks to identify potential forms of corruption in the application of restorative justice relating to criminal acts. This study uses socio-legal research with an emphasis on law implementation, particularly regarding the handling of criminal cases by law enforcement agencies, especially the police. Police environment, especially in the East Java region; victims and perpetrators of crimes whose cases were resolved by a restorative justice mechanism, namely victims of cases of domestic violence, abuse, and theft; Community leaders involved in the process of settling cases with a restorative justice mechanism. To complete the interview, a Focus Group Discussion (FGD) was held involving academics, practitioners and civil society organisations, consisting of the Centre for Human Rights Law Studies, Kontras, LBH Surabaya, Indonesian Corruption Watch Malang, the Surabaya Children's Crisis Centre, and legal professionals. The results of this study indicate that in practice there are a number of vulnerabilities to corruption that are not in line with the ideal values of restorative justice. The function of a mediator, carried out by investigators, is vulnerable to abuse due to the disharmony of arrangements, lack of oversight mechanisms, and the interests of the litigants. Corrupt behaviour arises through the "buying and selling" of cases, which can be resolved through the process of restorative justice. Victim-Offender Mediation and Family and Community Group Conference are restorative justice models which can be used.

**Keywords:** Restorative Justice; Corruption; Police; Abuse Of Authority

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### Introduction

In the development of positive law in Indonesia, there have been many changes in formal law through the addition of regulations stipulated in laws and the internal regulations of law enforcement agencies. Despite these additions and amendments, people remain disappointed with slow and costly law enforcement and the dissatisfying application of some laws. This indicates that there are still weaknesses in the legal system in Indonesia, such as the independence of law enforcers in exercising their authority, high levels of corruption in law enforcement, low development of law enforcement apparatus resources, weak management, and low levels of accountability in the law enforcement process. To overcome this, the government and law enforcers need to prove their commitment to restoring public trust in the application of law in Indonesia so that they can guarantee justice and prevent public disappointment in the application of the law (Usman, 2011).

One legal approach that has begun to be widely used in Indonesia is restorative justice. Restorative justice means no longer defaulting to the use of sanctions in the criminal justice system, but rather emphasising curative aspects which prioritise the settlement of criminal cases from the perspective of victims and perpetrators. Restorative justice is considered a solution that can provide justice and problem solving, especially for the most disadvantaged victims. This approach is in line with the views of Carl von Savigny, who said that restorative justice is a developing legal standard, in which people do not only depend on procedures, but also achieve justice and problem solving.

From 2021 to March 2022, the national police resolved 15,039 cases using restorative justice, an increase of 28.3% from the previous year (Alfarizi, 2022). Although the use of restorative justice provides new hope for achieving justice, the increase in the number of criminal cases handled with this approach has also created several problems, such as the transparency of case

settlements and the accumulation of restorative justice cases at the police level. This is related to the fact that criminal law enforcement, especially in general crimes which are predominantly regulated by the Regulation of the Indonesian National Police Number 8 of 2021, is the domain of local police at the research and investigation level.

There are several internal regulations in Indonesia that provide guidelines for law enforcers when implementing restorative justice, including the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020, the Republic of Indonesia National Police Regulation No. 8 of 2021, and the Decree of the Director General of the General Court of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020. In the context of agencies such as the police, the Attorney General's Office and the Supreme Court, there is no obligation for inter-agency coordination and supervision to be carried out across agencies. This causes the three agencies to appear to be independent, which does not provide horizontal control obligations that allow law enforcement agencies to monitor the handling of criminal acts committed by the other law enforcement agencies handling those alleged criminal acts.

Within the police, the prosecutor's office, and the Supreme Court, horizontal control is not able to be carried out using pretrial institutions or other mechanisms contained in Law No. 8 of 1981 concerning Criminal Procedure Code (KUHAP), bearing in mind that the penal mediation model is not regulated in the Criminal Procedure Code, and also that legal products issued based on these regulations are not objects that can be examined by a pretrial institution. A good control mechanism between law enforcement agencies when implementing restorative justice is very important to prevent corrupt practices or culture from occurring. In addition, the results of a survey conducted by the Indonesian Survey Institute (LSI) in 2022 further emphasised the high level of corruption within the police and prosecutorial agencies (Simanjuntak, 2022).

Comprehensive research is needed to map the potential for corruption and mechanisms for dealing with it in the law enforcement sector, particularly in the implementation of restorative justice, so as to find solutions and implement improvements. This research proposes the following questions: "How is the application of restorative justice an alternative in the settlement of criminal cases at the police level?", and "What forms of and potential for corruption can occur in the application of restorative justice?"

## Literature Review

### Inquiries and Investigations

Law No. 8 of 1981 clearly distinguishes between inquiries and investigations as different but interrelated stages in handling criminal cases. Investigation aims to find evidence related to alleged criminal acts, with the hope of fostering a careful and responsible attitude in law enforcement and avoiding actions that prioritise recognition rather than finding evidence (Efendi, 2014). Article 1 point 5 of the Criminal Procedure Code explains that investigation is a series of investigative actions to determine whether an event constitutes a crime, as well as whether an investigation is necessary in accordance with applicable law. Meanwhile, Article 1 point 4 determines the officers of the State Police of the Republic of Indonesia who are authorised by law to carry out investigative actions (referred to as investigators). After carrying out investigations, the investigator then determines whether or not an investigation can be carried out if the incident constitutes a criminal incident.

The term Investigation has the same meaning as investigation (Prasetyo, 2020). The Criminal Procedure Code defines an Investigation in Article 1 point 2 as a "series of actions to seek and collect evidence proving a crime and finding a suspect, in accordance with the procedures regulated in this law". As well as investigations, the Criminal Procedure Code also regulates police officers who are responsible for investigations, as stipulated in Article 1 point 1 of the Criminal Procedure Code. "Investigators are officials of the state police of the Republic of Indonesia or certain civil servant officials who are given special authority by law to conduct investigations." In addition, Article 1 point 3 of the Criminal Procedure Code states "auxiliary investigators are officials of the Indonesian National Police who, because they are given certain powers, can carry out investigative tasks regulated in this law." Based on these provisions, investigation involves

three stages, namely the stage of finding and collecting evidence, the stage of making clear the crime, and the stage of finding the suspect, which is carried out in stages by the investigator.

### **Restorative Justice**

Restorative justice is a concept or philosophy that emerged in the 1970s and 1980s in the United States and Canada, alongside a form of practice that has come to be known as the *Victim Offender Reconciliation Program* (VORP). The VORP concept aims to re-establish balance in relationships and encourage recovery for both victims and perpetrators. The main objective is to establish a fair conciliation and emphasise that this remedy is not based solely on money.

In simple terms, restorative justice is a legal system that aims to restore the welfare of victims, perpetrators, and communities affected by crime while preventing further criminal acts (Flora, 2018). The process of restorative justice involves all parties implicated in a particular violation coming together to address and resolve the consequences of the violation and its implications for the future (Flora, 2018). Restorative justice is considered a faster path in case resolution when compared to the justice system which ends in a court verdict. Restorative justice is also considered a better way to restore relationships between perpetrators, victims, and society, compared to the use of prisons as an act of revenge. Criminal law should not only provide punishment, but also improve and restore relations between all parties involved (Pangaribuan, 2009). Walker (1962) argues that the goal of criminal law should not be retaliation.

The law enforcement system and methods in Indonesia have developed and some now follow the principles of restorative justice, aiming to restore damage and losses to victims through perpetrators' opportunity to admit mistakes, apologise, and return (as much as possible) to the environment before the crime was committed. Settlement of criminal cases through non-formal mechanisms such as restorative justice, especially through penal mediation, is considered more satisfying because it benefits both parties. Penal mediation, as a form of renewal of criminal law in Indonesia, is based on several ideas, such as victim protection, harmony, restorative justice, overcoming the rigidity of the criminal justice system, avoiding the negative effects of the penal system, and seeking other alternatives to imprisonment (Arief & Ambarsari, 2018). In addition, it also aims to reduce stagnation and the accumulation of court cases, simplifying the judicial process.

### **Protection of Crime Victims**

The restorative justice approach aims to improve policies and criminal law enforcement so that it adapts better to the protection needs of victims. This is an important step in improving criminal law policies as it applies the values of restorative justice which already exist in the nation's philosophy of life and Indonesian customary law. This approach represents a change in the paradigm of legal justice, particularly in criminal law as public law.

The goal of implementing this approach is to focus on restoring the rights of victims of crime, not simply punishing the perpetrators. This means that partiality will appear towards victims, society, and perpetrators proportionally. The goal is to find a point where justice is achieved is not solely by punitive punishment but by restoring the rights of victims of crime. Thus, the scope of crime must include violations of the interests of all parties, particularly victims, perpetrators, and society, not only violations of the public or state interests (Supreme Court of the Republic of Indonesia, n.d.).

### **Methods**

This research uses juridical-empirical method. The researchers understand the implementation of case settlement with a restorative justice approach, as well as the potential for corrupt practices amongst law enforcement when implementing restorative justice. The goal of the research is to formulate a model of corruption prevention mechanisms for the application of restorative justice. The choice of this method requires a number of data collection and analysis methods and activities. The data collection methods used are:

### Focus Group Discussion (FGD)

To complete the interviews, a Focus Group Discussion (FGD) was held which was useful for cross-checking the veracity of the correspondence. The FGD was held on the 25<sup>th</sup> of November 2022. This FGD involved academics, practitioners, and civil society organisations consisting of academics from the Faculty of Law at Airlangga University, the Centre of Human Rights Law Studies (HRLS), the Commission for Missing Persons and Victims of Violence (KontraS), Surabaya Legal Aid Institute, Malang Corruption Watch (MCW), the Surabaya Children Crisis Centre (SCCC), and legal advocates. The aim of the FGD was to enrich the results of research that had been carried out and to understand the practice of resolving criminal cases with a restorative approach.

### Interview

The sources for this research consist of Law Enforcement Officers (APH), including police officers and prosecutors in East Java who have handled cases using a restorative justice approach; victims/perpetrators of crimes that have been settled using a restorative justice approach, including in cases of domestic violence, abuse, narcotics, embezzlement, and theft; as well as community leaders involved in the process of resolving cases with restorative justice mechanisms.

### Review of Policy, Law, and Literature

This research, in addition to reviewing laws and regulations, also scrutinises internal policies of law enforcement institutions, searching for vulnerabilities that could encourage corrupt practices by the police. This research will also utilise research and publications that have been conducted before, providing critical notes on developments in the context of the bureaucracy of power politics within the police. The study analyses information related to interventions, loopholes and corrupt practices in other forms of reporting and reproduction of knowledge through document studies, namely by analysing reports, complaints and news articles, as well as court decisions and their accompanying documents. To support this legal research by solving the legal issues raised by the authors, the legal materials used by the authors are primary legal materials consisting of laws and regulations that are related to the research being conducted. The primary legal materials are the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code, Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police, Regulation of the Head of the National Police of the Republic of Indonesia Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases within the Indonesian National Police, Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2011 concerning the Professional Code of Ethics for the Indonesian National Police, Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2012 concerning Criminal Investigation Management, Regulation of the Head of the Indonesian National Police's Criminal Investigation Agency Number 3 of 2014 concerning Standard Operational Procedures for Investigating Criminal Acts, Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts, Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, Republic of Indonesia Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Decision of the Director General of the Supreme Court General Court No. 1691/DJU/SK/PS.00/12/2020 concerning the application of restorative justice.

## Results and Discussion

### The Practice of Handling Criminal Acts Based on Restorative Justice

The resolution of criminal cases through restorative justice at the police level must comply with the terms and conditions set out by the Regulation of the State Police of the Republic of Indonesia No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. There are several general and specific requirements that must be met so that criminal acts can be handled using a restorative justice approach in investigative activities. Conditions for the resolution of cases based on restorative justice consist of material requirements and formal requirements.



According to Article 5, the material requirements for resolving a restorative justice case stipulate that resolution must not cause public unrest and rejection, not cause social conflict, not have the potential to divide the nation, not lead to the repetition of criminal acts, and not cannot include acts of terrorism, state security or corruption. The formal requirements include that peace must be achieved from both parties as well as the fulfilment of the victims' rights and the responsibilities of the perpetrators, with the exception of drug crimes. The peace agreement letter must be signed by all parties, and the perpetrator must adhere to several fulfilments of the victim's rights, such as compensating for losses or returning lost or damaged items.

In determining the classification of criminal acts, police use legal considerations that can be resolved by a restorative justice approach based on the material requirements in the Republic of Indonesia National Police Regulation No. 8 of 2021, and police discretion based on Article 18 of the Police Law Number 2 of 2012. Based on the results of in-depth interviews with several sources of police investigators, it was revealed that crimes that can be resolved through restorative justice are usually those that are humane and social in nature, cases that are incur losses equivalent to or below IDR. 2,500,000, and traffic offences which lead to the death of a victim related to the perpetrator's family. There are also humanitarian considerations, and the resolution must not cause unrest or rejection in the community.

After the parties involved are given information about the advantages of a restorative approach, the this model can be selected. The restorative justice model refers to the victim-offender mediation model (Prayitno, 2012) and family and community group conferences, where parties seek the best way to resolve crimes with "mediators" including police officers or prosecutors. In principle, the two forms of penal mediation are good models of case settlement if the "mediator" in the penal mediation process has certified special expertise. However, at the time of this article, it is not known whether is special training provided to law enforcers when carrying out penal mediation.

### **Characteristics of Crimes that can be Resolved through Restorative Justice**

In this study, as a result of the Focus Group Discussion, a number of instances of abuse of power were found where restorative justice did not fully satisfy the wishes of the community (victims). It was found that law enforcement officials, in carrying out their authority, resolved cases with restorative justice mechanisms in a number of criminal cases that were not within the scope of cases that can be resolved using this approach. Regarding the position of law enforcement officials, as the results of the FGDs that have been carried out, it was found that in several cases there was a tendency for police mediators to "push" or "force" one of the parties to agree to settle the case with a restorative approach. In cases where assistance was provided by FGD participants, there were a number of cases where one of the litigants requested that the case be settled with a restorative justice mechanism. This meant that law enforcement officials encouraged the perpetrator/victim to agree to settle the case with a restorative justice mechanism even though it was not fully agreed upon by the other party.

Based on the results of field research, the criminal cases resolved through restorative justice included theft, fraud, embezzlement, minor maltreatment, and domestic violence. There was also a tendency for police to apply a restorative justice approach to cases of sexual violence. As found in this study, based on the results of the FGDs, sexual harrasment committed by grandparents against minors were sometimes attempted to be resolved through channels outside the court. Investigators acting as mediators attempted to contact the victim's family and requested a meeting between the perpetrator and the village officials. As a form of recovery for the victim/victim's family, they were offered a sum of between IDR 10,000,000-25,000,000, the result being an expectation to withdraw the report of the sexual abuse case. Other efforts have also been taken by bringing together victims and perpetrators with village officials and neighbourhood administrators. In these cases, restorative justice related to victim recovery was generally understood to be limited to giving replacement money, which is a fundamental misunderstanding of its purpose. This idea results in the values of restorative justice not being fully fulfilled.

By carrying out the settlement of cases with the restorative justice process, victims are meant to get restoration of rights that have previously been violated by perpetrators of criminal acts.

Restorative justice is also expected to help reduce the burden of cases in courts and enable them to focus attention onto big cases and those that are more detrimental to society as a whole., so that the time and budget spent in handling criminal cases can be saved (Djuhriyadi, 2020). Restorative justice involves all parties in the crime reaching an agreement about how the crime occurred and what must be done to remedy the suffering caused by the crime (Atalim, 2013). The concept of restorative justice is not new, especially in customary law, where it has long been used as a problem-solving mechanism in Indonesian customs and culture.

In restorative justice there are several values contained, including *meeting*. The purpose of the meeting is for the parties to develop an understanding of the crime, the other parties involved, and the steps needed to rectify the wrongdoing. The meeting ends when an agreement and can be reached all parties. The damage that has been done cannot be undone, but certain steps can be taken to repair it. The Second value of restorative justice is *repair*. Repair means making amends. In a sense, of course, full repair is always impossible. The restorative response is more concerned with repairing damage than with punishment, which ignores the need and obligation to make repairs.

The third value of restorative justice is *reintegration*. Reintegration means that a person, victim or perpetrator, can return to life in society as a whole, make a contribution and be a productive person. This means more than just tolerating the person's presence or making room for them. It means building relationships marked by respect, commitment and intolerance towards deviant or unlawful behaviour. The final value is *participation*. The direct participation of all parties is relevant because the goal is to reach an agreement that will lead to a resolution.

### **Modus and Corrupt Practices in Handling Cases with a Restorative Justice Approach**

In handling criminal cases using a restorative justice approach, the implementation of settlement procedures including investigations and prosecutions, is based on the initiation of the reporting party (victim), while the reported party will be offered to be able to resolve the alleged crime through a settlement mechanism based on restorative justice. One of the things that needs attention in this regard relates to the area of implementation of the settlement, which is based on Article 2 paragraph (1) of Police Regulation No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. This regulation states that restorative justice is to carried out through one of the following mechanisms: (1) Implementation of general detective function; (2) Investigation; and (3) Inquiry

As previously mentioned, pursuant to Article 1 point 5 of the Criminal Procedure Code (which states that "an investigation is a series of investigative actions in searching for and finding an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method stipulated in this law"), at the investigation process it is not yet clear whether a complaint or report constitutes a criminal incident which can be further processed by the inquiry mechanism, or whether it is not a criminal incident, whereupon the investigation should be terminated. This process contains several weaknesses, including:

First, At the investigation stage it is not yet possible to determine whether a complaint or report about an event is a criminal incident or not in another field of law. This means that if in the investigation stage a settlement is carried out, it does not rule out the possibility of an error occurring in the application of the settlement. Criminal cases using restorative justice also have the potential to meet the requirements of criminal law settlement, the first and foremost choice in solving all legal problems faced by society. This contradicts the function of crime as the last remedy (*ultimum remedium*), deviating from the objective of implementing restorative justice and instead burdening Law Enforcement Officials (APH), especially the police. The quality of handling criminal cases based on restorative justice has the potential to deteriorate if it is not accompanied by improvements to the governance system, transparency, and quality of human resources.

Second, During the investigation stage there is no transparency between law enforcement agencies (the prosecutor's office), the reporting party and the reported party. Considering that the information found by the prosecutor's office is obtained at the start of the investigation (SPDP), with no information provided by investigators to enforcement agencies in other departments (especially the prosecutor's office) there is no horizontal control, and the settlement

of the case is carried out by stopping the investigation (the rules for stopping the investigation are not contained in Law No. 8 of 1981 concerning Criminal Procedure Code) which allows for the fulfilment of the rights of the victim and the reported party.

Third, Termination of investigation is not an object of pretrial as referred to in Article 77 of the Criminal Procedure Code. This means that in the event of an error in the procedure by the parties, the prosecutor's office cannot resolve it with pretrial procedures. Reports/new complaints can only be made by the complainant (victim), which actually makes the judicial process repetitive and tends to be ineffective-contrary to the principles of simple, fast and low-cost justice.

In several cases, the initiation of restorative settlements emerged from law enforcement officials who carried out the investigation and inquiry process, basing their judgments on the losses incurred, as well as the type of case. Before offering to handle cases using a restorative justice approach, law enforcement officials would first examine whether the crime meets the classification of a crime that can be resolved using a restorative justice approach. Based on the standards set out by the Police and the Attorney General's Office (Police Regulation No. 8 of 2021 and the Attorney General's Regulation of the Republic of Indonesia No. 15 of 2020), criminal acts that can be resolved using restorative justice are limited to several types with a good value of loss., The alleged criminal act committed should also be personal in nature (a more minor crime which can be resolved between perpetrators and victims and does not have implications for the general public).

The use of a restorative justice approach in the settlement of criminal acts has various advantages, one of which is that the resolution of the conflict is fully left to the agreement of the parties involved. In addition to this, the recovery of losses from the party who was harmed can be quickly recovered by obtaining compensation. However, it remains true that even as executors of laws and regulations who are required to be professional in exercising their authority in law enforcement, the APH is not immune to corrupt practices in law enforcement, which are in principle limited by the existence of a control mechanism regulated in the Criminal Procedure Code. Based on the results of field research and the results of the FGDs that have been conducted, a number of corrupt practices were identified using a restorative justice approach when resolving alleged criminal acts. These were found to be a result of the lack of supervision and openness in resolving criminal cases, as well as the utilisation of system weaknesses that are regulated separately in the institutional rules of each law enforcement agency.

The recovery of victims' losses by providing compensation in the form of payment is not merely a form of 'recovery' for the victims and society. Payment of "peace money", in this case is made by law enforcement officials as "mediators", is also practiced for revoking case files, making additional examination files and for holding case titles which should not be collected from the public. Based on the results of the FGDs, the tendency to use regulations to stop criminal cases with a restorative justice approach is not limited to being used by law enforcers. Occasionally, a third party from the general public acts as a "facilitator" of peace, taking advantage of gaps in the restorative justice process by offering "services" due to their personal closeness with law enforcement officials.

Corrupt practices occurring in the process of settling criminal cases with restorative justice occur through exploiting the weaknesses in various regulations can be identified. Such weaknesses include: (1) Differences in procedures and classifications of criminal acts that can be handled with restorative justice; (2) The lack of a reporting mechanism for case handling as an obligation of transparency and control between law enforcement agencies; (3) No obligation to coordinate and supervise between law enforcement agencies in handling cases with restorative justice in the institutional rules of each agency (in this case the police and the Attorney General's office); (4) No database containing information on cases and parties whose cases have been handled with restorative justice; (5) Law enforcers have absolute authority when handling cases and there is no opportunity for third parties (as certified mediators) from society to be involved in settling cases; (6) The basis of authority and limits of authority that have not been regulated in law-based regulations; and (7) A Warrant for Termination of Investigation (SP2 Lid), which is not an object of pretrial, means that horizontal control cannot be exercised when terminating investigations using restorative justice.

It is undeniable that the settlement of cases outside the court is carried out at the request for peace by the perpetrator against the victim. This is done by providing a certain amount of money as a substitute for the sanctions for the crime they have committed so that the victim may feel 'restored' (returned to their original state), as it was before the crime occurred. This type of justice is the result of an agreement between the parties, namely the victim and the perpetrator, not based on a judge's considerations, which would arguably be more comprehensive and fairly considered. This is a weaknesses of resolving criminal cases using restorative justice as it is contrary to legal principles and has the potential to lead to corrupt practices, given the limited access other law enforcement agencies have to exercise control over the judicial process, particularly in the investigative process.

In addition to the above, there are several negatives to restorative justice, namely the vulnerability to abuses of authority by unscrupulous law enforcement officials (Purba, 2017). Existing practices show that restorative justice is actually interpreted in the form of restitution, namely compensation in the form of a certain nominal amount. The emotional recovery of the victim's condition is interpreted as secondary, and compensation often does not achieve the recovery that is required by victims of crime. The practice of handling cases with a restorative justice approach is often interpreted as giving "peace money" as a substitute for sanctions or to compensate for losses caused by perpetrators of criminal acts against their victims. This shows that there has been a shift in the meaning and value of restorative justice.

Corruption that may be committed by law enforcers in carrying out their duties with a restorative justice approach includes potential acts of abuse of authority in the settlement of criminal cases, achieved by exploiting loopholes in Police Regulation No. 08 of 2021 concerning the Handling of Crimes Based on Restorative Justice, and Republic of Indonesia Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This corruption can also fall under the classification of several provisions in Law no. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The actions which fulfil the requirements of these offenses are as follows:

First, Extortion, carried out according to the classification of the provisions in Article 12 letter e of Law No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The potential for extortion that is carried out is an indirect impact of the absence of a supervisory and control mechanism for handling cases. The potential for extortion arises as a result of a monopoly in the handling process, which is also caused by absolute authority/"discretion" to stop or not stop alleged criminal acts with available restorative justice mechanisms.

Second, Exploiting weaknesses in transparency, control and supervision; in this case there is the possibility of criminal acts relating to Law No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, including: (1) The bribing of law enforcement officials to act or not act contrary to their authority can be enforced by Article 5 paragraph (1) of Law No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes; (2) The recipients of bribes who abuse their authority can be subject to the provisions in Article 11 of Law No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes; (3) In the event that a gift is found given to a law enforcer who received this supposed gift due to their position and the recipient does not report the gift to the Corruption Eradication Commission as stipulated in Article 12B paragraph (1) and paragraph (3), then the gratuity provision as regulated in Article 12B paragraph (2) of Law No. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is enforced.

### **Prevention of Corruption in Handling Criminal Cases with Restorative Justice**

"A person's need and greed to commit corruption is made easier by the opportunity that a person gets as an official who occupies a position in a place or work environment..." (Wilhelmus, 2018) This position or title in the context of handling criminal cases with restorative justice opens opportunities for someone to commit corruption, especially with the lack of supervision being carried out. There are still quite a number of weaknesses in restorative justice that need to be



corrected, both in the criminal case handling system, standard types of crimes that can be resolved using a restorative justice approach, patterns of access to information and transparency between law enforcement agencies, horizontal supervision between law enforcement agencies, as well as legal protection and certainty of the recovery of victims' rights.

In terms of preventing potential corruption from occurring in the application of a restorative justice, there are a number of steps that can be taken, including:

The need for harmonisation and standardisation of procedures and rules

As previously stated, Police Regulation No. 08 of 2021 concerning the Handling of Crimes Based on Restorative Justice, and Republic of Indonesia Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice have different values in determining whether cases can be resolved using a restorative justice approach. One of the regulations that should be able to accommodate for the implementation of restorative justice and enable the fulfillment of the rights of victims and perpetrators of criminal acts is the Criminal Procedure Code. With the regulation of restorative justice in the Criminal Procedure Code, the approach to restorative justice in resolving criminal cases becomes an integrated process in law enforcement within the jurisdiction of the Integrated Criminal Justice System.

The need for horizontal supervision between law enforcement agencies

The vulnerability towards corrupt behaviour within the restorative justice approach arises from the absence of a formal mechanism requiring oversight of the implementation of case settlements between law enforcement agencies. Although Police Regulation No. 08 of 2021 concerning the Handling of Crimes Based on Restorative Justice, and Republic of Indonesia Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice have regulated internal oversight within each police and attorney agency, this oversight still allows abuses of power to occur. A horizontal monitoring system needs to be created considering the confidentiality of the parties involved. This form of horizontal control must apply to cases in the process of investigation and prosecution as well as cases that are currently under inquiry, so that the public prosecutor can provide consideration, as well as oversight in the process of implementing restorative justice carried out by the Police at the investigative level. There should also exist a pretrial institution, the formation of which would be intended as an effort to correct investigative and prosecution actions. The existence of pretrial arrangements in the Criminal Procedure Code is a requirement for an investigator and public prosecutor in all investigative and prosecution actions. It should be carried out professionally in accordance with statutory regulations for the sake of upholding the rule of law.

Determination of a centralised decision to terminate cases

Another approach that can be implemented to provide legal certainty and function as a means of minimising the potential for corruption is to include all law enforcement agencies in breaking the chain of disinformation. One method that can be used is to present a commissioner judge. The Preliminary Examining Judge (Commissioner Judge) is also a form of legal renewal in criminal procedural law, one of whose function is to have the authority to decide whether a case is appropriate or not appropriate to be brought to the court. By involving the Commissioner judge in the criminal case settlement mechanism using a restorative approach, the results of the case settlement have the same force of law as a court decision with a conciliation decree. In addition, with the presence of the commissioner judge, the police and the Attorney General's office do not need to produce a termination of investigation and termination of inquiry which still have the potential to carry out pretrial lawsuits. Openness of information, as well as horizontal control can minimise monopolies and abuses of authority when settling cases within the framework of restorative justice.

Removing the settlement of criminal cases based on restorative justice at the investigative level

The settlement of criminal cases based on restorative justice in the investigation process has many weaknesses that can be exploited by law enforcement officials, given the limited access to

control and information that can be obtained by other law enforcement agencies. In addition, the investigation process tends to conflict with several legal principles which can harm both the victim and the reported, considering that restorative justice cases require classification based on formal and material conditions stipulated in Republic of Indonesia Police Regulation No. 08 of 2021 concerning Handling of Crimes Based on Restorative Justice.

### Conclusions

The application of restorative justice at the police level is based on Republic of Indonesia Police Regulation No. 08 of 2021 concerning Handling of Crimes Based on Restorative Justice. Restorative justice is a mechanism expected by communities seeking recovery from losses suffered as a result of criminal acts. Community participation in resolving cases using this approach are also able to increase public awareness about the law, allowing it to function to prevent crime. The restorative justice models that are currently being implemented by the police are the Victim-Offender Mediation Model and the Family and Community Group Conference Model. However, the implementation of these models at the police level still needs a lot of improvement given the large amount of authority given to law enforcers, including the ability to settle or “terminate” cases at the investigative level, which has many weaknesses. Restorative justice is interpreted as a minor form of restitution, seen in the fact that monetary compensation in the form of a certain nominal amount is prioritised above the recovery of the victim's condition. Recovery of victims' losses by providing compensation in the form of money is not the only form of 'recovery' for victims and society. Payment of an amount of "peace money", which in this case is made by law enforcement officials as "mediators", is in practice is also collected as money for revoking case files, money for making additional examination files, and money for holding case titles which should not be collected from the public.

Corrupt behaviour is driven by the large influence of those assessing whether or not criminal cases should be resolved using a restorative justice approach, the non-regulated disclosure of information on the implementation of stopping investigations, inquiries, and prosecutions with a restorative justice approach, and the lack of horizontal supervision between law enforcers in the framework of an integrated criminal justice system. These issues can be minimized based on sectoral arrangements at the level of the police and the Attorney General's Office. The absolute authority of each law enforcement agency in stopping investigations, inquiries and prosecutions with a restorative justice approach allows for abuse of authority pertinent to provisions of Article 12 letter e of Law no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Corruption Crimes, in which law enforcers have the potential to apply psychological pressure on the basis of their authority either to determine the termination/continuation of criminal cases, or in terms of forcing the parties (perpetrators and victims) to carry out forced measures in the judicial process.

### Suggestion

In minimising the potential for corruption in the settlement of cases with a restorative justice approach, it is necessary to establish horizontal supervision between law enforcement agencies, disclose information on the implementation of restorative justice, and abolish the settlement of criminal cases based on restorative justice at the investigative level pertinent to Republic of Indonesia Police Regulation No. 08 of 2021 concerning Handling of Crimes Based on Restorative Justice. Determinations of restorative justice should be carried out by a Commissioner Judge so that they have more legal force and the resolution has a broader perspective of justice. This is necessary, bearing in mind that restrictions on authority need to be implemented in terms of preventing the abuse of authority by law enforcement officials, whose exercise of authority is not accompanied by clear mechanisms or legal certainty. The case settlement model of restorative justice will be more effective and can reduce the vulnerability of corrupt practices by using the community restorative board model, which has advantages compared to other models. Special training should also be provided to law enforcers carrying out mediation.

There is a need for standardised, legal guidelines for police officers and public prosecutors when exercising authority in resolving cases with a restorative justice approach. These laws need

to be made through the future improvement of the Criminal Procedure Code, which requires special arrangements regarding the types of criminal acts, procedures, supervision, and legal products produced. The aim is that handling criminal acts based on restorative justice should provide solutions as well as benefits, legal certainty and a broader sense of justice for society. The standardisation and harmonisation of regulations also requires system improvements, especially the integration of information that can be accessed by all law enforcement agencies. This would enable the implementation of horizontal control between law enforcement agencies when handling and settling criminal cases based on restorative justice.

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