



## **A Restorative Justice Approach to The Settlement of The Persecution Crime at Police Central Barumun**

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### **Abstract**

It is hoped that the crime of persecution, both severe and light persecution, can be resolved by using approaches that are capable of resolving the criminal act of persecution in the jurisdiction of the Barumun Tengah Police. For example, 3 (three) cases of persecution have been successfully resolved using a restorative justice approach. Currently, the settlement of criminal acts of persecution has prioritized the principle of restorative justice by mediating paying compensation and medical expenses to victims. The problems in this study, namely: the legal regulation of a restorative justice approach in resolving criminal acts of persecution; the process of settlement with restorative justice against criminal acts of persecution at the Barumun Tengah Police; obstacles and efforts of investigators in resolving criminal acts of persecution through restorative justice at the Barumun Tengah Police. This research is a study of the legal theory of justice which is carried out by applying a scientific analytical process. The data used is secondary data which is supported by empirical data. The data used in legal research is sourced from primary, secondary, and tertiary legal materials.

Secondary data collection was carried out using library research techniques and data collection tools in the form of document studies. Empirical data were collected using field study techniques and data were collected through in-depth interviews. Data analysis used qualitative methods. Conclusions are drawn using the inductive method. The results of the study show that: The legal arrangement of a restorative justice approach in resolving criminal acts of persecution to date, starting from the level of investigation, prosecution, to trial; The process of resolving with restorative justice against criminal acts of persecution at the Barumun Tengah Police, starting from the pre-restorative justice stage, restorative justice stage, and post-restorative justice stage; The most conspicuous obstacle is the legal culture barrier related to requests for compensation by the victim's family which the perpetrators cannot fulfill.

**Keywords :** *Persecution; Barumun Tengah; Restorative Justice.*

## **INTRODUCTION**

In this study, the focus will be on the crime of maltreatment handled by the Barumun Tengah Police Criminal Investigation Unit. Approaches can be given to solving criminal acts of persecution in the Barumun Tengah Police. With the procedure provided, it is hoped that it will resolve criminal cases involving the community, victims, and perpetrators of crime to achieve justice for all parties so that it is hoped that conditions will be the same as before the crime occurred and prevent further crimes from occurring.

The data on the Number of Crimes (JTP) and the Number of Completion of Crimes (JPTP) specifically for Persecution at the Barumun Tengah Police, can be seen in the table below:

**Table 1. Number of Crimes (JTP) and Number of Crimes Completion (JTP) of Persecution Crimes at the Barumun Tengah Police 2019-2020**

No.	Information	2019	2020
1.	Total Number of Police Reports Incoming:	80	96
2.	Number of Crimes of Persecution	27	28
3.	Number of Crimes of Persecution whose investigations were discontinued	16	21

Source: Administrative Section, Barumun Tengah Police, 2021.

From the table above, when compared to the total Complaint Reports submitted with the number of crimes of persecution, in 2019 as many as 33.75% were crimes of persecution. Whereas in 2020, the number of crimes of persecution was 29.16%. Settlement by stopping the investigation of the crime of persecution from the number of crimes of persecution, in 2019 was 59.25%, while in 2020 it was 75%. This means that the crime of persecution by the Barumun Tengah Police is a crime that often occurs among people in the Barumun Tengah jurisdiction.

Based on this explanation, it is hoped that the criminal act of persecution, both serious maltreatment and minor maltreatment, can be resolved using approaches that are capable of resolving criminal acts of persecution in the jurisdiction of the Barumun Tengah Police. As an example of a case, 3 (three) cases of persecution were successfully resolved using a restorative justice approach. At present, the settlement of criminal acts of persecution has put forward the principle of restorative justice by conducting mediation and paying compensation along with medical expenses to victims.

The reality of people's social life, in addition to law enforcement that is carried out by the criminal function, it turns out that cases of violations of the law, at least those involving disputes between citizens, are resolved informally by social institutions or individuals citizens (neighbors), even by police officials, such as persecution.

Thus, a criminal act is not processed until the trial stage. Criminal acts that are not processed until the trial stage, have put forward the principle of restorative justice in their settlement.

According to Muhammad in Rachmat Aribowo, "In practice, this practice no longer even recognizes only light criminal cases but also includes cases such as humiliation, persecution, fraud and embezzlement, negligence resulting in injury, unpleasant acts, even theft, and gambling".

Examples of cases of criminal acts of persecution that were resolved using a restorative justice approach at the Barumun Tengah Police, namely:

1. Police Report No. LP/62/VII/2020/SU/Palas/Sek.Barteng, dated July 18th, 2020 Rapporteur of Pardomuan Siregar,<sup>1</sup> with a brief description of the incident, as follows: "On Saturday, July 18, 2020, around 16.00 WIT, when I arrived at my yard which is located in Bara Batu Village, Kec. Barumun Tengah Kab. Padang Lawas, the Rapporteur also met a child named Raja Matua Siregar. Then, the Rapporteur asked him "Where is our ox?", then he answered: "There", then I went to my ox from the direction of Sdra's oil palm plantation. H. Gong Matua Siregar because some of my cows are not visible. Then, the Complainant also came to the side of Sdra's house. Aminha Hasibuan Alias Mindak. The Reporting Party saw the Reporting Child (Raja Matua Siregar) arguing with Sdra. Aminha Hasibuan Alias Mindak. He told the Reporting Child, "I'll kill you later", then the Reporting Child replied, "kill". Then, the Reported Child said to the Reporting Child "Pay you guys", then the Reporting Child replied "Yes, I'll pay later", then the Reporting Child turned around to chase away the Reporting's ox which

<sup>1</sup> Secondary data obtained from the Barumun Tengah Police, 2020.

was in Sdra's garden. Gong Matua Siregar and suddenly Aminha Hasibuan alias Mindak stabbed the Reporting Child back 1 time from the back of the Reporting Child using a knife. After that, he told the Reporting Child "I will kill you", knowing this, the Reporting Child ran away, and when the Reporting Child arrived at Sdra's stall. Basri Harahap and met with him, then the Complainant's son also said to him "Mindak I've been stabbed, I'm done, you fill in my credit first" while showing him the stab wound on his back. After that, the Reporting Child called Sdr. Imran Hasibuan via cellphone and then the Reporting Son also informed him "My Mind has been stabbed". Then, he answered, "He stabbed?" Then the Complainant asked him, "Where were you?", then he answered, "At the Binanga Market Week". Next, the Rapporteur visited Imran Hasibuan by riding the Reporter's motorbike at the Binanga Market when he got there, then met and then Imran Hasibuan brought the Reporting Child to the Binanga Health Center and due to this incident, the Reporting Child suffered lacerations on his back. Regarding this incident, the Reporting Child as a victim and the Rapporteur himself objected and were traumatized by the perpetrator's actions, so he reported it to the authorities at the Barumon Tengah Police in Binanga to be processed by the laws in force in the Republic of Indonesia.

2. Police Report No. LP/70/XI/2019/SU/Tapsel/TPS.Barteng, dated November 24th, 2019 Rapporteur Lukman Siregar Titled Sultan Porkas, with a brief description as follows:<sup>2</sup> "On Sunday, November 24, 2019, around 20.00 WIB. When the Reporting Party was walking to the Maulid Nabi Event which was in the yard of Sdra Gunawan's house located in Wil. Marenu Village, Kec. Aek Nabara Barumon, Kab. Padang Lawas, suddenly when the Rapporteur was walking in front of Saud's house, Ali Natas Pasaribu came to meet the Reporter. Then he told the Rapporteur "You said you were hanging up my jettor's wages", then the Reporter replied, "When it rains there is no money from my rubber". Then Ali Natas Pasaribu told the Rapporteur, but Sdra Sanusi said, "You are hanging on to my money, don't mess with these migrants." Then, the Complainant replied "Do what you want", then suddenly Ali Natas Pasaribu choked the Complainant's neck using both of his hands. Knowing this, the Reporting Party rejected both of his hands that were holding the Reporter's neck. Then Ali Natas Pasaribu immediately hit the Reporter's right side of the face under the Reporter's right eye 1 (one) time using his hand in a fist. After the Reporter was hit by the blow, then Saud came to intervene and then the Reporter went to the Reporter's house due to this incident the Reporter suffered abrasions and bruises on the right side of the face under the Reporter's right eye. Regarding this incident, the Reporting Party/Victim felt objections and trauma, so he reported it to the authorities at the Barumon Tengah Police in Binanga to be processed by the laws in force in the Republic of Indonesia.
3. Police Report No. LP/78/XII/2019/SU/Palas/TPS.Barteng, dated December 23rd, 2019 Reporter Junedi Harahap, with a brief description of the incident as follows:<sup>3</sup> "On Monday, December 23, 2019, around 10.30 WIT I finished working on the reservoir in the Aek Dap-Dap rice fields by the APBDES of Tanjung Morang Village in Tanjung Morang Village, Kec. Sihapas Barumon, Kab. Padang Lawas, TA. 2019. On the way to return home by riding a Yamaha KLX motorbike to be precise at the Silenjeng Bridge, Sukarjan Harahap approached the Reporting Party and said to the Reporting Party, "No, I accept the construction of the dam if there is no ditch". The reporter replied, "Indeed there was no construction of the reservoir ditch in the RAB".

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<sup>2</sup> Secondary data obtained from the Barumon Tengah Police, 2020.

<sup>3</sup> Secondary data obtained from the Barumon Tengah Police, 2020.

It turned out that Sukarjan Harahap did not accept the Reporter's answer, then the Reporter said to Sukarjan Harahap, "Wait here I will first pick up the RAB Reservoir to my house", the Reporter went to pick up the RAB. When the Reporting Party returned to pick up the RAB, it turned out that Sukarjan Harahap was no longer on the bridge. The Reporter went to look for Sukarjan Harahap at the coffee shop in Silenjeng Village, which is usually where Sukarjan Harahap drinks coffee. Sukarjan Harahap was not at the shop, then the Reporting Party returned home via the road in front of Sukarjan Harahap's house, and the Reporting Party saw Sukarjan Harahap together with Mantari Harahap on the public road in front of his house. The Reporting Party also stopped the Yamaha KLX Motorcycle which the Reporting Party was driving to meet the two of them.

After face-to-face, the Rapporteur was about to show the RAB of the Reservoir to Sukarjan Harahap, suddenly Mantari Harahap pulled out a machete from the rear bar of the Honda Revo motorbike driven by Sukarjan Harahap which he seemed to want to chop at the Complainant. Then, the Rapporteur said to Mantari Harahap, "Paaluma", in the local language which means, "Do it", but he did not slash the Reporter, suddenly Sukarjan Harahap approached and approached the Reporter's body, then using a fist on his right hand, punched part of the Reporting Party's mouth, resulting in a broken wound bleeding. Suddenly, Bincar Harahap came to separate the Reporter from Sukarjan Harahap. When Bincar Harahap was holding the Rapporteur while separating us, it was at that time that His Majesty Tolangit Harahap came to approach the Reporter and hit the Reporter's right eye (temple) body, causing swelling and bruising, and the Reporter fell half sitting alias squatting. Then, came Maga Harahap punched and stepped on the body on the left shoulder, causing bruises, and came again. Mantari Harahap trampled on the Complainant's body, while the Complainant only tried to avoid being hit by both of their hands to the Complainant's body by blocking it with the Complainant's hand, then the public was separated by the people who saw what happened to the Complainant. As a result of the persecution committed by the perpetrators (Sukarjan Harahap, Baginda Toga Langit Harahap, Mantahari Harahap, and Maga Harahap) the Complainant's body suffered injuries, namely:

- a. Cracked wound bleeding on the upper lip and lower lip;
- b. Swollen sores on the face under the right and left temples;
- c. Swollen wound on the forehead;
- d. Feel pain in the head;
- e. Pain in the right and left shoulder;
- f. Embarrassed in front of many people where I currently serve as Head of Tanjung Morang Village, Kec. Sihapas Barumun Kab. Padang Lawas.

Regarding the incident that the Reporting Party experienced, the Reporting Party (Junedi Harahap) objected and sued the perpetrators by applicable law.

The three cases reported above ended with peace between the reporting party and the reported party. The peace is outlined in an agreement, which is called the "Letter of Peace". In criminal law, it is not recognized that peace can abolish the punishment. However, in practice at the Barumun Tengah Police, it turned out that with the existence of the peace certificate, the Police as investigators did not continue their investigation and investigation into the crime of persecution. This research tries to see from the point of view of criminal law related to the restorative justice approach in solving cases of criminal acts of persecution. This was strengthened by the existence of a letter of revocation of complaints from the Reporting Party against the Reported Party.

The ultimate goal of the concept of restorative justice is that by applying the right approaches, it is hoped that the number of prisoners in prison will be reduced; eliminate the

stigma or stamp and return the perpetrators of crimes to normal human beings; perpetrators of crimes can realize their mistakes so that they do not repeat their actions and reduce the workload of the police, prosecutors, detention centers, courts, and penitentiary institutions; saving state finances does not create a feeling of revenge because the perpetrator has been forgiven by the victim, the victim quickly gets compensation; empowering the community in overcoming crime; and reintegration of offenders in society.<sup>4</sup>

From this description, it is very appropriate if the concept of jurisprudence of restorative justice approach as an alternative settlement of criminal acts. This is because restorative justice is an approach that focuses more on conditions for the creation of justice and balance between the perpetrators of crimes and victims. Criminal justice mechanisms and procedures that focus on punishment are changed to a dialogue and mediation process to create an agreement on a more just and balanced settlement of criminal cases for both victims and perpetrators. Restorative justice has the meaning of restoring justice. In the current criminal justice system, restitution or compensation is known for victims, while restoration has a broader meaning.

The problems in this study are as follows: 1) How is the legal arrangement of the restorative justice approach in resolving criminal acts of persecution; 2) What is the process of resolving with restorative justice for the criminal act of persecution at the Barumon Tengah Police? The aims of this study are 1) to examine and analyze the legal arrangements of the restorative justice approach in resolving criminal acts of persecution; 2) to Review and analyze the settlement process with restorative justice for the crime of persecution at the Barumon Tengah Police.

Rachmat Aribowo has conducted a research, with the title, “Application of Case Settlement Through a Restorative Justice Approach in Handling Criminal Acts of Persecution”. As for the discussion in the study, namely: Legal arrangements for handling cases of criminal acts of persecution; settlement through restorative justice at the Medan Polrestabes eliminates criminal acts, or not; and investigators' obstacles in handling cases of criminal acts of persecution through restorative justice at the Medan Polrestabes.<sup>5</sup> This research is different from previous research because this research chose the research location in the Barumon Tengah Police, Padang Lawas Regency. Thus, the legal culture in each region is different.

## RESEARCH METHODS

This research is normative legal research.<sup>6</sup> The nature of the research is descriptive.<sup>7</sup> The approach used is the statute approach. The type of data used is secondary data sourced from primary, secondary, and tertiary legal materials.<sup>8</sup> Primary data is used to support secondary data. Secondary data was collected using library research and field research techniques.<sup>9</sup> The data collection tools are documentary studies and interviews using the in-depth interview method without interview guidelines to focus more on research objectives. As informants in the interview were Barumon Tengah Police

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<sup>4</sup> Rachmat Aribowo in Olma Fridoki, “Penerapan *Restorative Justice* Dalam Penyelesaian Perkara Tindak Pidana Penipuan dan Penggelapan di Polrestabes Medan”, *Tesis*, Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Sumatera Utara, Medan, 2019, hlm. 10-11.

<sup>5</sup> Rachmat Aribowo, “Penerapan Penyelesaian Perkara Melalui Pendekatan Restorative Justice Dalam Penanganan Tindak Pidana Penganiayaan”, *Tesis*, Program Studi (S2) Magister Ilmu Hukum Fakultas Hukum, Universitas Sumatera Utara, Medan, 2018.

<sup>6</sup> Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2001), hlm. 6.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media Group, 2007), hlm. 93-95.

<sup>8</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum-Normatif dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2015), hlm. 156.

<sup>9</sup> Mestika Zed, *Metode Penelitian Kepustakaan*, Ed. Ke-2, (Jakarta : Yayasan Obor Indonesia, Januari 2008), hlm. 1.

officers, and perpetrators and victims of criminal acts of persecution. Furthermore, these data were analyzed using qualitative analysis methods.<sup>10</sup>

## RESULTS AND DISCUSSION

### Literature Review of Restorative Justice

The theory of restorative justice, that the view of the concept of restorative justice is that handling crimes that occur is not only the responsibility of the state but also the responsibility of society. The concept of restorative justice is built on the notion that the losses caused by crime will be recovered, both the losses suffered by the victims and the losses borne by the community.<sup>11</sup>

In answering the above problems, the theory of restorative justice put forward by Aristotle and explained again by Marlina in her dissertation is used. According to Marlina, restorative justice is a settlement process that is carried out outside the Criminal Justice System by involving victims, perpetrators, victims' supporters, perpetrators' supporters, and the community as well as parties with an interest in a criminal act that occurred to reach an agreement and settlement. Restorative justice is considered a new way of thinking/paradigm in viewing a crime committed by a human being. The concept of restorative justice has the basic understanding that crime is an act against people or society and is related to violations as a violation of legal norms.<sup>12</sup>

The implementation of restorative justice is inseparable from the discretion of the police. Based on the provisions of Article 2 of the Polri Law, it can be seen clearly that Polri, in its position as a law enforcement officer, has the function of upholding the law in the judicial, preventive, and repressive fields. So that by having discretionary authority in the judicial sector as stated in Article 18 paragraph (1) of the Police Law, that: *"In the public interest, officials of the Indonesian National Police in carrying out their duties and authorities can act according to their judgment"*. Of course, in carrying out these actions it must be by Article 4 of the Police Law, namely by upholding human rights.

Then, the term *"police discretion"* according to Article 15 paragraph (2) letter k of the Police Law is known as *"other powers"*. According to Article 16 paragraph (1), letter l is known as *"any other legally responsible action"*, and according to Article 7 paragraph (1) letter j of the Criminal Procedure Code it is known as *"any action according to the law that is responsible"*.

Actions of investigation and investigation as the duties of the police, specifically the action of *"police discretion"*, must meet the following requirements:

- 1) "Not contrary to a rule of law;  
That is, running by positive law and other applicable laws in places where Police Discretion is taken by an officer. In the legal system in Indonesia, there are 4 (four) types of sources of law, namely state law or positive law, customary law, religious law, and customs.
- 2) In line with legal obligations that require action;  
That is, the actions taken are regulated by certain rules as a legal obligation to be enforced.
- 3) Must be appropriate, reasonable, and included in the position environment;

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<sup>10</sup> Burhan Bungin, *Penelitian Kualitatif: Komunikasi, Ekonomi, Kebijakan Publik, dan Ilmu Sosial Lainnya*, (Jakarta: Kencana, 2009), hlm. 153.

<sup>11</sup> *Ibid.*

<sup>12</sup> Allison Morris & C. Birelle Maxwell in Marlina, "Pengembangan Konsep Diversi dan Restorative Justice Dalam Sistem Peradilan Pidana Anak di Indonesia (Suatu Studi di Kota Medan)", *Disertasi*, Sekolah Pascasarjana Universitas Sumatera Utara, Medan, 2006, hlm. 45.

That is, acceptable with common sense for the environment in which the action was taken.

- 4) Reasonable consideration based on compelling circumstances;  
That is, the implementation or method of delivery in the field is based on events that are only at certain moments (emergencies) without in-depth observation or research on what was decided.
- 5) Respect human rights.  
That is, by human rights provisions and does not violate these human rights provisions”.<sup>13</sup>

Article 16 paragraph (1) and Article 18 of the Police Law and Article 7 paragraph (1) sub j of the Criminal Procedure Code if there are no clear and firm restrictions, the exercise of discretion can be misinterpreted which can lead to acts of deviating police discretion. As for the application of “*police discretion*” which cannot be prosecuted before the law, of course, is police discretion which has a legal basis for exercising discretion by Article 18 of the Police Law and Article 7 of the Criminal Procedure Code. However, of course, this authority can be exercised with certain considerations as limitations. So, discretionary authority is now not unlimited. Discretionary actions by the police are limited by:

- 1) “The principle of necessity, that the action must be necessary.
- 2) The actions taken are truly in the interests of the police's duties.
- 3) The principle of purpose is that the most appropriate action to eliminate a disturbance or not cause concern for a bigger consequence.
- 4) The principle of balance is that in taking action a balance must be taken into account between the nature of the action or target used and the size of the disturbance or the severity of an object to be acted on”.<sup>14</sup>

The policy steps taken by police officers are usually well understood by the functional components of the criminal justice system, especially by prosecutors. According to M. Faal, the policy steps taken by the police are usually based on the following considerations:

- 1) “The use of local customary law is felt to be more effective than the prevailing positive law.
- 2) Local law can be felt more by the parties between the perpetrators, victims, and the community.
- 3) The wisdom adopted has more benefits than simply using existing positive laws.
- 4) Of their own free will.
- 5) Not contrary to the public interest”.<sup>15</sup>

### **Legal Arrangement of Restorative Justice Approach in Resolving Criminal Acts**

The concept of restorative justice has been adopted in several regulations, such as Chief of Police Regulation No. 6 of 2019 concerning Investigation of Criminal Acts and RI Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, but the existing regulations are felt to be insufficient as a reference for restorative justice practices in Indonesia.<sup>16</sup> In addition, there is the Chief of Police Regulation No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. Before the Chief of Police

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<sup>13</sup> Mabes Polri, *Buku Pedoman Pelaksanaan Tugas Bintara Polri di Lapangan*, (Jakarta: Mabes Polri, 2002), hlm. 132.

<sup>14</sup> *Ibid.*, hlm. 132.

<sup>15</sup> M. Faal, *Penyaringan Perkara Pidana oleh Polisi (Diskresi Kepolisian)*, (Jakarta: Pradnya Paramita, 1991), hlm. 74.

<sup>16</sup> Hukumonline.com., “Akademisi Usul Restorative Justice Dituangkan Dalam UU”, <https://www.hukumonline.com/berita/baca/lt610507960a5ed/akademisi-usul-i-restorative-justice-i-dituangkan-dalam-uu/?page=1>, diakses Minggu, 21 November 2021.

Regulation No. 6 of 2019 concerning Investigation of Criminal Acts, the concept of restorative justice is contained in the Chief of Police Circular Letter No. SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. This Circular Letter stipulates that the principle of restorative justice cannot be interpreted as a method of peacefully ending cases, but more broadly as fulfilling a sense of justice for all parties involved in criminal cases through efforts involving victims, perpetrators, and the local community, as well as investigators/investigators as mediators.<sup>17</sup>

In settling cases, the Circular of the Chief of Police said that one of them was carried out in the form of a peace agreement and revocation of the right to sue from the victim, it was necessary to ask for a judge's decision through the Public Prosecutor to cancel the authority to sue from the victim and the public prosecutor. However, the definition of restorative justice in the Circular Letter was amended by the Chief of Police Regulation No. 6 of 2019 concerning the Investigation of Criminal Acts, where the community is not part of solving cases. The definition of restorative justice as Perkap is the settlement of criminal cases involving perpetrators, victims, and/or their families and related parties, to create justice for all parties.<sup>18</sup>

Chief of Police Regulation No. 6 of 2019 focuses on victim recovery, but not on the recovery of perpetrators, and there is no emphasis on restoring the relationship between victims and perpetrators. The target is to achieve peace, regardless of its substance. According to Agustinus, this regulation only reduces workload but does not restore relations between victims, perpetrators, and society.<sup>19</sup>

Other rules that adopt restorative justice, namely: RI Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation defines restorative justice as the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.<sup>20</sup> However, there are criminal acts that are exempt from the application of restorative justice, such as narcotics.

The Prosecutor's Regulation is almost the same as the Chief of Police Regulation No. 6 of 2019 concerning Criminal Investigation which focuses on victim recovery, there is no emphasis on restoring the victim's relationship with the perpetrator. And the target is to achieve "peace" (regardless of its substance).

From these various matters, Agustinus believes that the application of restorative justice in Indonesia needs to be outlined in the form of a law or at least in government regulation. The guidelines that are regulated are not only related to procedural aspects, but also the stages needed to realize reconciliation and recovery for victims, perpetrators, and the environment affected by criminal acts. Procedures are needed that promote the ability of citizens to solve their problems. The role of the state through investigators, public prosecutors, and judges is

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<sup>17</sup> Point 2 letter b Circular of the Chief of Police No. SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. The reference for the restorative justice approach is the Chief of Police Circular No. 8/VII/2018. In the Circular Letter, the restorative justice approach is used if the case meets the material and formal requirements. The formal conditions that must be fulfilled, for example, the case does not cause unrest and there is no rejection from the community, does not result in social conflict, and the level of guilt of the perpetrators is relatively not serious. Criminal cases can be handled with a restorative justice approach if the Investigation Commencement Order (SPDP) has not been submitted to the prosecutor's office. As for those that include formal requirements, for example, there is a letter of conciliation (Dading Deed) from both parties, namely: the Reporting Party and the Reported Party, there is a recommendation for a case title that approves the use of a restorative justice approach, and the perpetrator does not object to responsibility and compensation.

<sup>18</sup> Article 1 point 27 of the Chief of Police Regulation No. 6 of 2019 concerning Investigation of Criminal Acts.

<sup>19</sup> Agustinus Pohan, *Op.cit.*

<sup>20</sup> Article 1 number 1 Attorney General's Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.



limited to facilitators and mentors in efforts to realize reconciliation and recovery for victims, perpetrators, and the environment affected by crime.<sup>21</sup>

According to the Head of the Public Information Section (Kabagpenum) at the National Police Headquarters, Kombes. Pol. Ahmad Ramadhan, there is a Circular of the Chief of Police No. SE/2/II/2021, dated 19 February 2021 concerning Awareness of an Ethical Culture to Create a Clean, Healthy, and Productive Indonesian Digital Space. Since the circular letter was circulated, 1,864 cases have been resolved without having to go to trial, because the cases that were resolved used a restorative justice approach at the regional police level.<sup>22</sup>

At the regional police level, the most cases were in the East Java Regional Police (385 cases), the South Sumatra Regional Police (287 cases), and the South Sulawesi Regional Police (172 cases). At Bareskrim there were also (28 cases) which were resolved by restorative justice. In the Circular of the Chief of Police No. SE/2/II/2021, the National Police Chief, General Listyo Sigit Prabowo, instructed Polri investigators to prioritize a restorative justice approach in handling cases that use the Electronic Information and Transaction Law (UU ITE). Investigators must facilitate mediation between victims and perpetrators as well as parties involved in cases who wish to reconcile. All cases are prioritized using a restorative justice approach, except for cases that have the potential to be divisive, and have SARA nuances, radicalism, and separatism. According to Kombes. Pol. Ahmad Ramadhan, technical instructions (juknis) and instructions for handling cases using a restorative justice approach have been distributed to all Polda and Polres.<sup>23</sup>

In addition to several Circular Letters, Regulations of the Chief of Police, and the Telegram of the Chief of Police, Decree (SK) of the Director General of General Courts of the Supreme Court of the Republic of Indonesia No. 1691, dated 22 December 2020 is also a guide for restorative justice considerations. The Decree details the terms and types of criminal acts that may be resolved peacefully. In the Decree, it was emphasized that dialogue which is the method of settling cases will be attended by the victim, the victim's family, and the perpetrator. This method is intended so that there is the recovery of victims with compensation and other agreements.

Types of crimes that may be resolved in this way, such as petty theft of plantation products, embezzlement of installments by employees of the financial sector, petty fraud, trade fraud, and destruction of goods with a loss of only Rp. 600 thousand, and the recipient whose loss value is only Rp. 600 thousand. The maximum penalty for these criminal cases is only three months in prison and a fine of Rp. 2.5 million.<sup>24</sup> Therefore, it is deemed unnecessary to settle the case through the courts. The condition is that the perpetrator must be ensured that he is not a recidivist who repeats the crime.

In Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, Article 6 paragraph (3) has provided examples of restorative justice, namely: returning goods; compensating for losses; replacing costs incurred as a result

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<sup>21</sup> Agustinus Pohan, *Op.cit.*

<sup>22</sup> Ayu Mumpuni & Kudus Purnomo Wahidin in Website Resmi Kompolnas, "Keadilan Restoratif ala Polri: Saat Pemidanaan Jadi Nomor Dua", <https://kompolnas.go.id/index.php/blog/keadilan-restoratif-ala-polri-saat-pemidanaan-jadi-nomor-dua>., accessed Sunday, November 21st, 2021.

<sup>23</sup> Information from the Head of the Public Information Section (Kabagpenum) at the National Police Headquarters, Kombes. Pol. Ahmad Ramadhan, at the National Police Headquarters Building, South Jakarta, Wednesday, June 08th, 2021.

<sup>24</sup> The Republic of Indonesia Supreme Court Regulation No. 2 of 2012 concerning Adjustment of the Limits on Misdemeanor Crimes and the Number of Fines in the Criminal Code stipulates that the limit for the value of losses in tipping cases is a maximum of IDR 2.5 million and for cases that carry a maximum penalty of three months in prison or a fine.

of a criminal act; and/or replace damages caused by criminal acts.<sup>25</sup> Fulfillment of these rights is evidenced by a statement by the agreement signed by the victim.<sup>26</sup>

The handling of criminal acts based on restorative justice must meet the general requirements and special requirements. General requirements apply to crimes based on restorative justice at the stage of carrying out the functions of a criminal investigator, investigation, or investigation.<sup>27</sup> Special conditions only apply to the handling of criminal acts based on restorative justice at the investigation or investigation stage.<sup>28</sup>

*“General requirements consist of material requirements and formal requirements. Material requirements, including:*

- 1. Does not cause anxiety and/or rejection from the community;*
- 2. Does not impact social conflict;*
- 3. Does not have the potential to divide the nation;*
- 4. Not radicalism and separatism;*
- 5. Not a repeat offender based on a court decision; And*
- 6. Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives”.*<sup>29</sup>

The formal requirements set out in Perkap No. 8 of 2021, are as follows: 1) *“Peace from both parties, except for drug crimes; and 2) Fulfillment of victims' rights and responsibilities of perpetrators, except for drug crimes”.*<sup>30</sup>

Peace between the two parties is peace between the reporter and the reported party as evidenced by the existence of a peace agreement signed by the parties.<sup>31</sup> Meanwhile, the fulfillment of the victim's rights and the responsibilities of the perpetrators, as follows: 1) *“Returning goods; 2) Compensate for losses; 3) Replacing costs incurred as a result of criminal acts; and/or 4) Compensate for damages caused by criminal acts”.*<sup>32</sup>

Fulfillment of these rights is evidenced by a statement by the agreement signed by the victim. The format for the peace agreement letter is also regulated in the Chief of Police Regulation No. 8 of 2021.<sup>33</sup>

### **The Process of Settlement of Cases with Restorative Justice Against the Crime of Abuse at the Barumun Tengah Police**

The case settlement process by applying the principles of restorative justice carried out by the Barumun Tengah Police Criminal Investigation Unit was based on the direction of the Padang Lawas Police Satreskim regarding the crime of persecution, based on interviews conducted with the Iptu. Syawalludin, as the Head of the Barumun Tengah Police, the mediation mechanism

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<sup>25</sup> Article 6 paragraph (3) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>26</sup> Article 6 paragraph (4) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>27</sup> Article 3 paragraph (1) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>28</sup> Article 3 paragraph (2) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>29</sup> Article 5 Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>30</sup> Article 6 paragraph (1) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>31</sup> Article 6 paragraph (2) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>32</sup> Article 6 paragraph (3) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

<sup>33</sup> Article 6 paragraph (4) and paragraph (5) Regulation of the Head of the Indonesian National Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

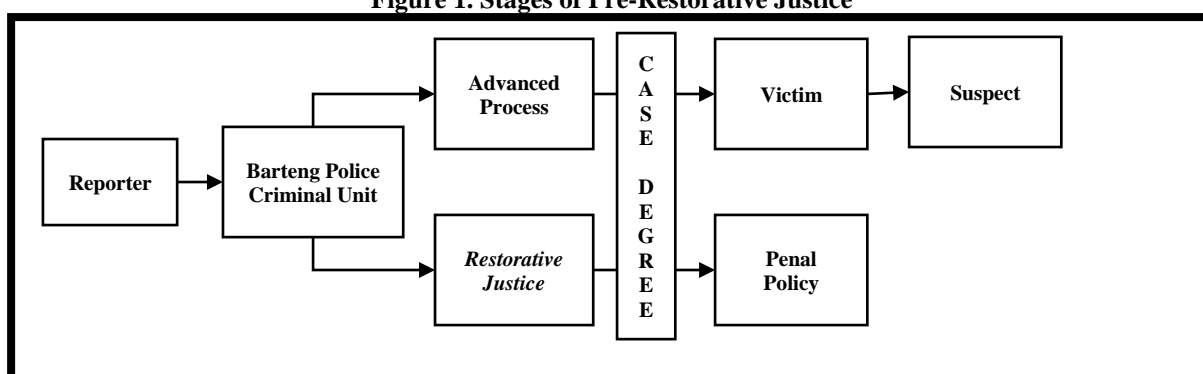
carried out was: the “Pre-Restorative Justice Stage; Stages of the Restorative Justice Process; Stages of Post-Restorative Justice”. This mechanism is a restorative justice mechanism carried out by the Satreskrim Polres Padang Lawas followed by the Barumon Tengah Police so that criminal cases handled by investigators have indeed applied the principles of restorative justice.<sup>34</sup>

In handling cases of criminal acts of persecution, investigators can carry out restorative justice by looking at the point casuistically. The principle of restorative justice that is carried out is to use a mediation approach (deliberation). If the offender wants peace, then the offender submits an offer of peace to the victim, and the perpetrator/his family agrees, then a peace agreement is made as outlined in the agreement. Thus, investigators will not continue examining the dossier of the crime of persecution.<sup>35</sup>

### ***Stages of Pre-Restorative Justice***

At the pre-restorative justice stage, the process can be seen as shown below:

**Figure 1. Stages of Pre-Restorative Justice**



Source: Barumon Tengah Police Criminal Unit, 2021.

Based on the picture above, the stages of pre-restorative justice at the Barumon Tengah Police Criminal Investigation Unit are as follows:<sup>36</sup>

- a. The victim made a report to the Investigator of the Criminal Investigation Unit of the Barumon Tengah Police;
- b. The investigator will then make a Minutes of Examination (BAP) by summoning all witnesses and confiscating some of the existing evidence;
- c. After conducting a BAP, and completing information regarding the cases that have been received, the investigator will then conduct an assessment of the case he is handling and whether restorative justice is necessary or not;
- d. If the case continues, the investigator will hold a case and summon and examine the victim;
- e. Furthermore, the investigator will decide who is the suspect in the case;
- f. If it is necessary to do restorative justice in this case, then the investigator will hold a case and summon and at the same time mediate between the perpetrator and the victim;
- g. As a result of mediation, a joint decision will be obtained which is known as a penal policy.

<sup>34</sup> Interview with the Barumon Tengah Police Chief, Iptu. Syawalludin, by telephone, Sunday, November 21, 2021.

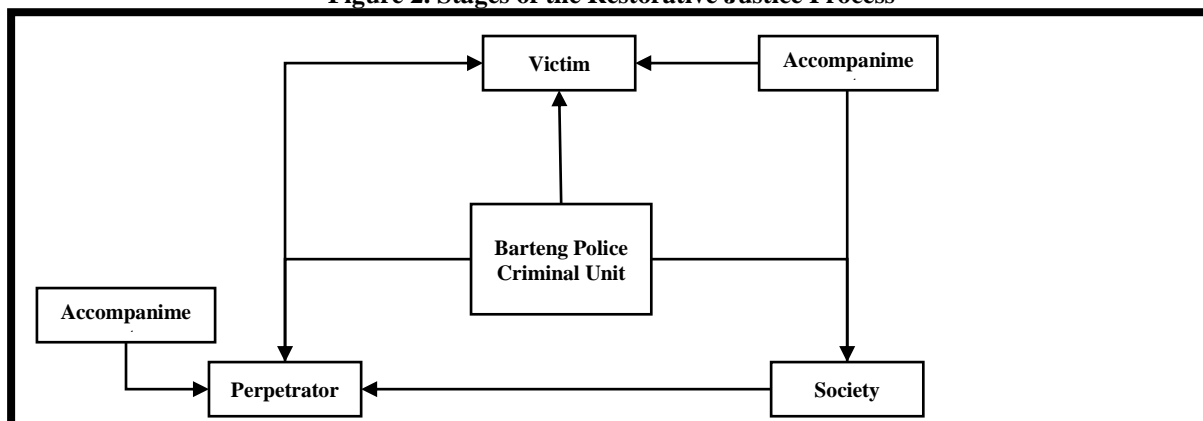
<sup>35</sup> Interview with the Barumon Tengah Police Chief, Iptu. Syawalludin, by telephone, Sunday, November 21, 2021.

<sup>36</sup> Interview with the Barumon Tengah Police Chief, Iptu. Syawalludin, by telephone, Sunday, November 21, 2021.

### ***Stages of the Restorative Justice Process***

The stages of the restorative justice process carried out by the Barumun Tengah Police Criminal Investigation Unit are as follows:

**Figure 2. Stages of the Restorative Justice Process**



Source: Barumun Tengah Police Criminal Unit, 2021.

Based on this figure, the stages of the restorative justice process at the Barumun Tengah Police Criminal Investigation Unit are as follows:<sup>37</sup>

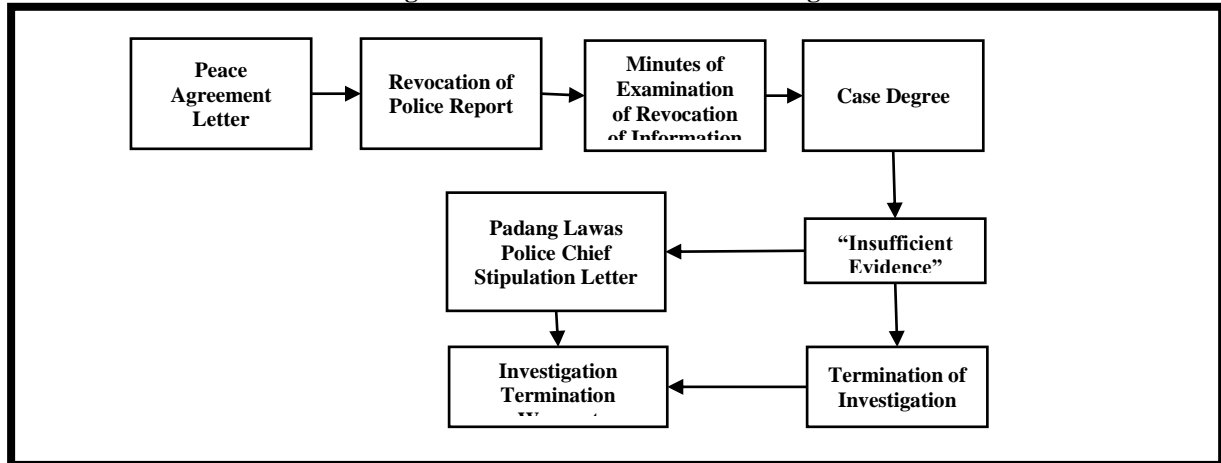
- a. The Reporting Party/Victim and their Legal Counsel will be summoned to meet in a mediation room;
- b. Then the investigator will open the program and notify the stages of the investigation;
- c. After the event is opened by the investigator, the investigator will invite the victim to convey his wishes regarding compensation/compensation, moral and material compensation (if there is a loss);
- d. The parties are expected to listen to the information provided by the victim;
- e. After hearing the statement from the victim, the investigator invites the perpetrator to convey his willingness regarding compensation/compensation/compensation morally and materially and the reasons for the perpetrator committing the crime;
- f. After the parties provide information, the investigator will provide an opportunity for the victim and assistance from the Legal Counsel to give their views;
- g. After an agreement has been reached between the parties, the investigator will draft a peace agreement between the perpetrator and the victim;
- h. If an agreement has not been reached, the investigator only needs to make a resume of mediation activities;
- i. The investigator asked the parties to sign a letter of agreement by first asking the perpetrator to fulfill what had been agreed upon.

### ***Stages of Post-Restorative Justice***

The post-restorative justice stages carried out by the Barumun Tengah Police Criminal Investigation Unit are as follows:

<sup>37</sup> Interview with the Barumun Tengah Police Chief, Iptu. Syawalludin, by telephone, Sunday, November 21, 2021.

**Figure 3. Post-Restorative Justice Stages**



Source: Barumun Tengah Police Criminal Unit, 2021.

Based on this figure, the post-restorative justice stages at the Criminal Investigation Unit of the Padang Lawas Police are as follows:<sup>38</sup>

- a. Peace Agreement signed by the parties;
- b. The reporter wrote a letter of revocation of the police report addressed to the Barumun Tengah Police Chief;
- c. Furthermore, a follow-up examination is carried out by the Rapporteur to confirm whether peace has occurred;
- d. If the report's statement states that it is true that a peace agreement has been reached using deliberation to reach a consensus, then the complainant retracts all of his statements that were given during the initial examination so that the witness's testimony is not available as evidence;
- e. With the revocation of the complaint report and revocation of the statement, the Investigator submitted a proposal to title the case to the Head of the Padang Lawas Police to hold the case at the Polres;
- f. The results of the case title stated that there was not enough evidence because there was no witness statement from the complainant so the case was stopped by the investigation;
- g. From the title of the case, it was recommended to the Padang Lawas Police Chief through the Padang Lawas Police Headquarters to issue a Decree regarding the Termination of the Investigation followed by the issuance of an Investigation Termination Warrant (SP3), so that the case was terminated and would not be continued to further legal proceedings.

Based on these stages, the Investigators from the Criminal Investigation Unit of the Barumun Tengah Police act actively to resolve criminal acts of persecution, both for perpetrators and victims. If both parties agree and agree to pursue peace through mediation. The application of the principles of restorative justice carried out by the Barumun Tengah Police Criminal Investigation Unit aims to consider sociological factors, both for perpetrators and victims, so that both parties get justice.

## CONCLUSION

Legal arrangements with a restorative justice approach in resolving criminal acts of persecution to date, starting from the level of investigation, prosecution, to trial, are as follows: a) Investigation Stage, consisting of Chief of Police Circular Letter No. SE/8/VII/2018 concerning

<sup>38</sup> Interview with the Barumun Tengah Police Chief, Iptu. Syawalludin, by telephone, Sunday, November 21, 2021.

the Implementation of Restorative Justice in the Settlement of Criminal Cases; Chief of Police Regulation No. 6 of 2019 concerning Investigation of Criminal Acts; Circular of the Chief of Police No. SE/2/II/2021, dated 19 February 2021 concerning Awareness of an Ethical Culture to Create a Clean, Healthy, and Productive Indonesian Digital Space; and Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice; b) Prosecution Stage, namely: RI Attorney Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and c) Trial Stage, namely: Decree of the General Judiciary Body of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for Implementing Restorative Justice.

The settlement process with restorative justice for the crime of persecution at the Barumun Tengah Police starts from the pre-restorative justice stage, the restorative justice stage, and the post-restorative justice stage. Based on these stages, investigators from the Barumun Tengah Police Criminal Investigation Unit act actively to resolve criminal acts of persecution, both for perpetrators and victims. If both parties agree and agree to pursue peace through mediation. The application of the principles of restorative justice carried out by the Barumun Tengah Police Criminal Investigation Unit aims to consider sociological factors, both for perpetrators and victims, so that both parties get justice.

In resolving the crime of persecution at the Barumun Tengah Police, it is better: a) For the National Police Leaders to make and regulate regulations regarding the application of restorative justice as technical guidelines and implementation instructions for handling cases with a restorative justice approach that has been distributed to all Polda and Polres conducting basic training or outreach in the application of restorative justice; b) Investigators from the Barumun Tengah Police in carrying out mediation efforts by bringing together the perpetrators to the victims always use objective, not subjective, assessments. This is to put restorative justice in its place so that justice is achieved for both victims and perpetrators.

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