

Criminal Settlement Analysis In The Level of Investigation Through Restorative Justice Approach

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Abstract: The purpose of this study is to examine and analyze the settlement of criminal cases at the investigation stage through restorative judicial approach, and to examine and analyze the obstacles encountered by investigators in the settlement of criminal cases at the stage of investigation through restorative justice approach. The research method used is normative approach method, that is the study of legal principles, legal synchronization, and legal system.

Keyword: *Criminal, Settlement, Restorative Justice*

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I. INTRODUCTION

The State of Indonesia is a state of law (*recht staats*), then any person who commits a crime must be held accountable for his actions through legal process. Law enforcement implies that a crime is an act that is prohibited by a rule of law, in which the prohibition is accompanied by a threat (*sanction*) in the form of a specific criminal responsibility. The function of law enforcement is to actualize the rules of law to conform to that aspired by the law itself, that is, to manifest human attitudes or behavior in accordance with the framework defined by a law or law. A law enforcement system that has good values is concerned with harmonizing values with rules and with real human behavior. Essentially the law has an interest in ensuring the social life of the community, because the law and society can be interrelated. The criminal justice system should always promote the interests of the law and justice. Whatever theory of justice is used, the definition of justice should include: During this time the role of law enforcers in the process of criminal law enforcement (*integrated criminal justice system*) are:

1. Prevent the commission of criminal acts by upholding the legal norms for the protection of the community.
2. To popularize the convicted by holding a coaching so that it becomes a good and useful person.
3. Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace within the community.
4. Release the guilt of the convicted and forgive the convicted person.

Regarding the mechanism of law enforcement in the criminal justice system in Indonesia, it would refer to Law number 8 of 1981 on the Criminal Procedure Code and other regulations outside the Criminal Procedure Code which regulate the procedure or procedure of the Indonesian criminal justice system for enforcing the material criminal law. The enforcement of criminal law starts from the investigation and investigation process in the police, prosecution by the Public Prosecutor in the court, the sentence or punishment penalty.

Judges and fostering of prisoners by correctional institutions. So essentially law enforcement is one form of punishment (*penalty*). In connection with this, Sauer provides three basic definitions of criminal law, namely the nature of the law, mistakes and criminal.

Speaking of our legal system which is a legacy from the Netherlands, suggests that the implementation of criminal just can not be separated from the willingness of the people and the willingness of the state to create a sense of security, peace and peace in living everyday life. From a long time ago, criminal matters have absorbed much of the energy of the nation's children to build social reconstruction. Increasing criminal activities in various forms demands hard work in building new ideas about future policy directions. The direction of legal policy aims to make law a rule that provides protection for the rights of citizens and ensures the life of future generations. Therefore, the legal system of each country in practice continues to experience modernization and no one country can reject it.

In general, criminal provisions entered in the realm of public law means that the state has a very vital role to enforce it. This is certainly different from the civil law, which is the point of emphasis on individual issues. In essence, the law regulates all the behavior of society to live in a community in a country.³

A restorative justice approach since the UN's 5th annual Congress: "Congress on Crime Prevention and

The Treatment of Offenders". In 1990 and 1995, NGOs from several countries sponsored a number of meeting sessions to specifically discuss restorative justice. Year 2000 produced UN, Basic Principles On The Use Of Restorative Justice Programs In Criminal Matters which contains a number of fundamental principles of the use of restorative justice approach. The model of this approach is the settlement of criminal cases that focus on the direct participation of perpetrators, victims and communities in the process of settling criminal cases. Despite the fact that this approach is still debatable theoretically, this view is in fact growing and influencing many of the legal and practice policies in many countries.

When compared to some other countries, restorative justice is applied differently, but all are applied only to certain offenses. In New Zealand, England and Wales, the Philippines and Canada for example, criminal cases committed by children and adolescents. In South Africa the approach of restorative justice was used in solving cases of violence perpetrated by the Apartheid regime. Australia, Canada, Finland, Ghana, Bulgaria, or Belgium, restorative justice is used with the concept of mediation. The UK, New Zealand, or South Africa, are used in systematization.⁴ In Indonesia restorative justice becomes a very popular discourse in the midst of saturation of society who see formal law dominated the flow of thought positivism and can not optimally accommodate the sense of justice of society for more emphasis on legal certainty (Rechtssicherheit). Restorative justice comes by offering the concept of non formalistic solutions that just put forward the formal legalistic side, but it can be done by mediation between the perpetrator and the victim, the reparation (the perpetrator re-fixes everything that is damaged), the victims-victim conference (involving families of both parties and community leaders), and victim awareness work an attempt by the perpetrator to be more concerned about the impact of his actions). In addition, the existing criminal justice system is considered no longer able to provide protection against human rights and transparency towards the increasingly undesirable public interest. Based on a study conducted by Eva Ahjani Zulfa showing that 62% of respondents chose not to pass the case to the prosecution stage (case stopped at investigation level in the police); 82% stated that peaceful efforts are the primary choice in solving the problems that arise from the crime that occurred. The peace initiative is not solely in the form of compensation but more done through direct apology. The peace initiative comes from relatives (43%), apparatus (35%) and the rest are from friends or opponents. The reality shows that many people prefer to complete criminal case that happened outside the system.⁵ An out-of-system settlement is either conducted by the parties (perpetrators and victims independently) or by involving law enforcement officials. Dissatisfaction with the Criminal Justice System is thus linked not only to the handling of cases and administrative mechanisms, but also to the final outcome of the process.

The police of the Republic of Indonesia in carrying out their duties in the field of criminal law enforcement basically stands between the two interests of interests that are in harmony with the social objectives and fulfill the legal objectives of the creation of legal certainty. Law in the context of public order requires that not only as a means to achieve certainty but must pay attention to order in the midst of society. Implementation between legal certainty and order among society conducted by Polri allows conflict especially in controversial cases such as: banana theft case in Cilacap Central Java, theft flip-flop case in Central Sulawesi, Case of cocoa / chocolate theft and still many other issues, on the other hand, large-scale economic-economic conflicts created conflicts between mining companies and or plantations with local communities, such as the Mesuji Lampung and Palembang cases, the Sape / Bima West Nusa Tenggara case, PT Freeport in Papua, the conflict between company employees and companies. Cases with socio-cultural background such as conflicts of background Religious intolerance (Case burning mosque in Tolikara Papua, burning Church in Aceh Singkil Prov Aceh), cultural clash (Tribal war in Lampung that is between citizens of Lampung with descendants of Bali, tribal war in Sampit Waringin east Kalimantan is between Dayak tribe with Bugis and Madura or vice versa, tribal war in Papua

In essence, the implementation of restorative justice is to improve the social damage caused by the perpetrators, to develop recovery for victims and the community, and to return the perpetrators to the community. This effort requires the cooperation of all parties and law enforcement officers. Restorative Justice offers something different because the judicial mechanisms focused on proving criminal cases are transformed into a process of dialogue and mediation. In addition, the ultimate goal of the system runs within the criminal justice system is to prove the offender's mistake and sentence is changed to seek agreement on a favorable criminal case settlement. The purpose of punishment is directed to improving the social relations of the parties.

II. FORMULATION OF THE PROBLEM

How to solve criminal case at investigation stage through restorative justice approach? what are the obstacles encountered by investigators in the settlement of criminal cases at the investigation stage through restorative justice approach?

III. THEORETICAL FRAMEWORK

1. Theory of the legal system.

A system is a unit that operates with certain limits. The legal system can actually be seen as a collection of legal rules, from regular legal norms. The system can be mechanical, organic and social. Like every law, the legal system is a product of legal consciousness, which means that the legal system also contains irrational aspects. But the emphasis now is not on that aspect, because a legal system occurs by forming an interconnected whole, its more prominent rational aspect.

1) Structure of the law.

The legal structure is the whole existing legal institutions and their apparatus, including among others police with police officers, prosecutors with prosecutors, courts with judges, and others.

2) Substance punishment.

The substance of the law is the entire rule of law, legal norms and legal principles, both written and unwritten.

3) Legal Culture.

Furthermore, legal culture is the opinions, beliefs (beliefs), habits, ways of thinking, and how to act, both from law enforcers and from citizens, about the law and various phenomena associated with the law.

2. Theory of law enforcement

According to Barda Nawawi Arief in the book Heni Siswanto. In essence penal policy, both in enforcement in abstracto and in concreto, is part of the overall policy of the system (enforcement) of national law and is part of the effort to support national development policy. This means that the enforcement of criminal law in abstracto (law enforcement) in law enforcement should aim to support the achievement of the national development goals, vision and mission (bangnas) and to support the establishment of national law enforcement system.

Soerjono Soekanto in his book entitled "Factors affecting law enforcement" suggests there are 5 (five) influencing factors are:

1) The legal factor itself, which in this article will be limited to the law.

2) Law enforcement factors, ie the parties that make up and apply the law.

3) Factors of facilities or facilities that support law enforcement.

4) Community factors, ie the environment in which the law applies or applies.

5) Cultural factors, namely as a result of work, inventiveness, and taste based on human initiative in the social life.

3. Theory of Legal Purposes

Law is a means not a goal. The purpose is human, but because human as a member of society can not be separated by law, the purpose of law is human with the law as a tool to achieve the purpose of the law.

There are so many grand theories about what is the purpose of law. The legal objective theory used by the author to discuss the problems in this paper is the theory of Gustav Radbruch. Gustav Radbruch is a German legal philosopher who teaches the concept of three basic ideas of law.

Gustav teaches that there are three basic legal ideas which most legal theorists and legal philosophy experts have also identified as the three legal objectives of justice (gerechtigkeits), usefulness (zweckmaessigkeit), and legal certainty (rechtssicherheit) (Achmad Ali 2002: 3.) Radbruch taught that it is necessary to use the priority principle in determining the objectives of the law, where the first priority is justice, the second is the benefit and the last is the legal certainty. When the judge is confronted with the choice between fairness, benefit and legal certainty, he should prioritize justice, then the ultimate benefit of legal certainty. Radbruch's theory, which was originally regarded as an advanced and wise theory, was in some cases incompatible with the needs of the law. In certain cases it was considered that justice should take precedence over the usefulness and certainty of the law, but in other cases maybe more benefit should take precedence over justice and legal certainty. Seeing this fact, the emergence of the theory of casuistic priorities in which the objectives of law include justice, benefit, and legal certainty with priority order in proportion to the cases faced and want to be solved.

3. Theory of Restorative Justice

Restorative justice is a concept of thinking that responds to the development of the criminal justice system by focusing on the needs of the involvement of the perpetrators, the community and the victims as a healing / recovery step in social relations. Restorative justice solutions are different from conventional justice processes. Conventional justice is a court that determines errors and takes care of the damage / suffering experienced by a person or persons in a forum between the perpetrators of crime and the state according to systematic rules. Restorative justice the settlement process by involving victims, perpetrators and the community. This is as stated by Howard Zehr in 1990. Restorative justice is also a new framework of thought that can be used in responding to a criminal act for Integrated criminal justice system in realizing the

Utilization and Legal Certainty after the parties feel / obtain justice in the process of implementation. It's good to look at the theory put forward by Gustav Radbruch that there are three legal purposes namely; benefit, certainty and justice. In exercising these three legal objectives by using "priority principle". However, justice must occupy the first position and the main of the certainty and usefulness. Based on the three objectives of the law, of course, can not be implemented together because as it is known, in fact often between legal certainty happened clash with expediency, or between justice with legal welfare, between justice happened clash with expediency. Howard Zehr, in (Marlina, 2006: 50).

Restorative justice is an alternative form of dispute resolution outside the court. According to Barda Nawawi Arief is defined as penal mediation (penal mediation). This mediation is often referred to as "mediation in criminal cases" or "mediation in penal matters" which in Dutch terms is called "Starfbemiddeling" .27 Penal mediation is used to reconcile between perpetrators of crime and victims, thus deflating this penal often known as " victim offender mediation "or" offender victim arrangement ".28 The practice of penal mediation emerges as one of the alternative thinking in solving the problem of the criminal justice system. Restorative justice discourse seeks to accommodate the interests of victims and perpetrators of criminal acts, as well as seek a better solution for both parties, addressing the various problems of the criminal justice system. Penal mediation which is part of the restorativejustice concept places a criminal justice system. (Barda Nawawi Arief, Mediasi 2010:1-2)

The role of law enforcement apparatus especially Polri in criminal law enforcement is essentially functional of criminal law, Barda Nawawi Arief, criminal policy, paper submitted at Seminar seminar, Semarang, 16-18 September 1991, that one effort to overcome crime by using legal means including criminal law is a field of law enforcement policy aimed at achieving public welfare. Crime prevention efforts are essentially an integral part of social protection efforts. Therefore, it can be said that the main purpose of criminal politics is the protection of society to achieve the welfare of society.²⁹ meaning that functionalization plays an important role in a law enforcement, ³⁰ Barda Nawawi Arief states that functionalization of criminal law can function, operate or work and manifested real. The functionality of criminal law is identical to the operation or concretization of criminal law, which is essentially the same as law enforcement (Barda Nawawi Arief, 1994: 157).

The functionality of criminal law can be interpreted as an attempt to make the criminal law work, operate or work and manifest itself. The functionality of criminal law is identical to the operation or concretization of criminal law, which is essentially the same as law enforcement. This functionalization there are three stages of policy is the formulative policy stage as a stage of criminal law formulation by the legislator. the applicative policy stage as the stage of enforcement of criminal law by law enforcement, the administrative policy stage, which is the implementation stage by the legal execution apparatus. At this stage of the policy applicable Police with the authority of discretion can solve criminal cases at the level of investigation through the approach and strengthening of restorative justice.

IV. DISCUSSION

1. Settlement of criminal cases at investigation stage through restorativejustice approach.

The concept of restorative justice is the development of human thought based on ancient Arabian traditions, the Greeks and Romans in which the principles conform to the principles existing in Indonesian culture as well as in solving problems including problem solving criminal act.

In Indonesia the application of restorative justice based on the soul of the nation (Volksgeist) Indonesia itself is listed in Pancasila as the ideology of the state of Indonesia itself that the law is derived from the soul of the nation (volksgeist) Indonesia sendiri. Where given the opportunity at deliberation to reach the mufakat in finding the point a fair meeting for both parties.

In the settlement of a crime through restorative justice to a conflict or damage arising as a result of a criminal offense, between the social relations of that member of the community to be resolved and restored by all parties together, where the principle of deliberation for achieve mutual consent to find the identity of justice itself within each person, the process of completion by giving the opportunity to both parties to take part in the process of settling the crime.

Umbreit as quoted Rufinus Hutahuruk explains that: "restorative justice is a " victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime "(restorative justice is a "Victim-centered criminal response that allows victims, perpetrators of criminal acts, their families, and community representatives to resolve damages and losses caused by criminal acts.").

The main basis of the settlement of criminal acts through restorative justice is a solution that is not merely a means to encourage both parties to mediate penal in terms of finding an agreement, but restorative justice aims to penetrate the hearts and minds of both parties involved conflicts in order to understand the meaning and purpose of a recovery and the sanctions imposed are preventive restorative sanctions.

Implementation of restorative justice in the judicial system, especially at the level of investigation by the Police of the Republic of Indonesia, viewed from a legal perspective, the police work is nothing but the application or enforcement of the law, in other words the police become the status quo of the law. From this it shows that the duty of the police must be in line with what is required by the material criminal law and the formal criminal law, so that the law becomes the central point and make the Police as the legal servant itself. According to Satjipto Rahardjo such policing style, known as the "Antagonist Police" is the police who position themselves against the people. From this the police need to look at the principles that exist within the community itself, so that the police can put the people as its center is not just based on the law alone.

When police become patrons, penganyoms, and servants of the real society, then the law is not the main benchmark. Without seeing the inner nature, seeing from the conscience. So the police are no longer locked in the formal formulation of legislation that threatens prison sentences for a thief, but sees the case according to his heart and mind.¹⁷² Where he sees deeper into the habits inherent in the life of the people own. So the police here have the courage to get out of the circle of written law that has been making himself a servant.

The settlement of a criminal case at the investigation stage with a restorative justice approach by a police investigator of the Indonesian republic country is based on discretion or policy, this is in accordance with what is described in law number 2 of 2002 on the police of the Indonesian republic state in article 18 states that for the public interest , the police officer of the Republic of Indonesia in carrying out his duties and authorities may act in his or her own judgment, this can only be done in a very necessary circumstances with due regard to the laws and regulations of professional profession of the Indonesian National Police.

This is also in accordance with what is stipulated in the Indonesian Criminal Procedure Code, namely Law No. 8 of 1981 regarding the Criminal Procedure Code (KUHAP) in Article 7 Paragraph (1) point i explains "Investigators as referred to in article 6 paragraph (1) a because its obligation has the authority to receive a report or complaint from a person about the existence of an offense, taking the first action at the time of the incident. Tried to stop a suspect and check the suspect's ID. Conducting arrest, detention, defacement and seizure. Conducting inspection and confiscation of the letter. Take fingerprints and photograph someone. Calling people to be heard or checked as suspects or witnesses. Bring in an expert who is required in relation to the examination of the Conducts discontinuation of the investigation and performs other acts according to the responsible law.

It is from this duty and authority that the police have the authority to make a policy in stopping the process of investigating this as well as described in article 109 paragraph (2) "in the event that the investigator stops the investigation because not enough evidence or incident is not a crime or investigation suspended by law, the investigator informs the public prosecutor, the suspect or his family "The authority to terminate this investigation may be done by the police in order not to harm the penal law as the ultimate drug of the law, it shows that positive law and growing law in society can side by side. Through this policy the police are given the authority to explore the values that exist within the community in terms of conducting an investigation, whether this case can be completed in the first stage of the judicial system is investigation, or should be continued and examined at the stage of prosecution. However, this discretion is often feared to be used by the police because of the lack of knowledge and fear of positive law, and become feared by the police for the assessment of ordinary people who think that this police discretion is an illegal event that is a trick on the part of the police to take advantage of parties - the litigants. Whereas in the practice of criminal case investigation, the initial idea of discretion came more from the litigants, especially the victim.¹⁷⁵ So the basis for restorative justice implementation on the police is based on the discretion given by the law.

Roscoe Pound, as quoted by R. Abdussalam, defines police discretion as: "an authority conferred by law to act in certain conditions or situation; in accordance with official's official agency's own considered judgment and conscience. It is an idea of morals, belonging to the twilight zone between law and morals ". And as quoted by R. Abdussalam "Police discretion is an act of the legal authorities to act definitively on the basis of circumstances, according to the considerations and decisions of his conscience." Judging from the investigation conducted by the police, the settlement of criminal cases at the investigation stage through restorative justice approach is often done, only with the consideration of each case of the case differingly mengigit concrete situation faced by police investigators.

Berikut adalah data tentang perkara pidana yang masuk dalam proses peradilan pidana (*Criminal Justice Process*) di kesatuan reserse kriminal polres Biak Numfor:

Table 1 : The proceeds of criminal proceedings in 2015 2017 In the jurisdiction of Polres BiakNumfor.

No	Year	TOTAL CRIMINAL ACT	, SETTLEMEN		INVESTIGATION
			RESTORATIVE JUSTICE (SP3)	RETRIBUTIVE JUSTICE (P21)	
1	2015	561	366	86	109
2	2016	565	374	80	111
3	2017	594	380	91	123
TOTAL		1.720	1.120	257	343

Data source: Polres criminal detective unit BiakNumfor.

From the data obtained by the authors that the Polres Biak Numfor in several criminal cases at the stage of investigation has been resolved through restorative justice.

The following is a recapitulation of criminal cases handled by investigators of criminal investigation unit of Biak Numfor Police which has been completed through restorative justice within the period of 2015 until 2017, as follows:

Table 2: Recapitulation of the number of cases settled through restorative justice approach or penal mediation by criminal investigation unit of Biak Numfor Police.

NO	JENIS TINDAK PIDANA	JUMLAH TINDAK PIDANA
1	Theft	238
2	Persecution	269
3	Beatings	137
4	Rape	3
5	Destruction	42
6	Fraud	107
7	Embezzlement	35
8	Fencing	4
9	False information	2
10	Falsification of letters	9
11	Counterfeit Brand	1
12	Handy / senpi/ sajam without permission	9
13	Blackmail	25
14	Incitement	2
15	Insult	40
16	Fornication	4

Data source: Police criminal detective unit Biak Numfor.

The results of interviewees with the police officers on duty in the field stated that the application of restorative justice as an alternative to criminal case settlement at the investigation stage is very effective and efficient. It will also create a sense of justice towards witnesses, victims, and suspects so that the public is satisfied with the services of the investigator.

Applying Hary Bahar The settlement of criminal case at investigation stage with restorative justice or mediation approach, fast process, no complicated, cost-effective investigation and created a sense of kinship / brotherhood between victims and perpetrators and the families of both parties. (Wawancara dengan Aiptu FAJAR, S.Sos., Kanit resum satuan reskrim polres Biak Numfor, tanggal 29 Maret 2018).

According to I WAYAN LABA, the settlement of criminal case at investigation stage with restorative justice approach is often done by Police of Biak Numfor related case which there is no indication to complain. The requirements that must be met by the witness, the victim, and the suspect is first, there must be a joint agreement between the witness, the victim, and the suspect and secondly there should be a letter of revocation of the police report from the victim. Given these two conditions, of course with the use of mediation penal will lead to a sense of justice for witnesses, victims and the team. (Interview with Akp I WAYAN LABA, SH.) Reskrim Polres Biak Numfor, dated March 29, 2018.).

According to HERVINA SAKUR, the mediation as an alternative solution of criminal case in investigation stage with restorative justice approach is to avoid social impact of society which sometimes make investigator be cornered. (Interview with Bripta HERVINA SAKUR, SH Kanit PPA unit reskrim Polres Biak Numfor, dated March 29, 2018.) Unlike the above opinion, I WAYAN LABA, explained that the use of mediation in the settlement of criminal cases at the stage of investigation with restorative justice approach is to increase public trust to the police station Biak Numfor. But if it turns out that the perpetrator is often a crime, then the investigator will not mediate the settlement with the consideration that the offender has a sense of deterrence.

Juridically in the criminal law enforcement system in Indonesia, law enforcers have been given certain powers by law to override criminal cases or settle criminal cases without passing them to court (non litigation facilities). Like the police, as regulated in Law number 2 of 2002 on the police of the Republic of Indonesia. In article 18 of Law No. 2 of 2002 on Police, has authorized the police (investigators) to discretion, namely the right not to process the law against criminal acts insofar as it is in the public or moral interest, since the discretion is essentially in between law and morals. In Article 18 paragraph (1) of Law No. 2 of 2002 on the Police states that "for the public interest of the police officers of the state of the Republic of Indonesia in carrying out its duties and authorities may act in its own judgment". Furthermore, in paragraph (2) it is stated that "the implementation of the provisions referred to in paragraph (1) can only be done in a very necessary circumstances with due observance of legislation, as well as the code of ethics of the Police profession". In the elucidation of article 18 of this law, it provides an understanding of "acting in its own judgment" as an action that can be done by members of the INP that must take into account the benefits and risks and the costs and benefits of its actions public interest.

Act No. 8 of 1981 on the Criminal Procedure Code (KUHAP), in Article 5 paragraph (1) letter a number 4 and Article 7 paragraph (1) letter j of Law number 8 of 1981 on the Book of the Law, Criminal Procedure Code (KUHAP) states that police as investigators and investigators have the authority to take other actions according to responsible law. The meaning of "other acts" in the explanation of these two articles is an act of the police (investigator / investigator) for the purpose of investigation / investigation provided that: (a) not contrary to a rule of law, (b) in accordance with the legal obligations which require the conduct of office, (c) the act shall be appropriate and incompatible and inclusive within the sphere of office, (d) for proper consideration under coercive circumstances, and (e) respect for human rights.

In addition, in the course of carrying out the duties, the police of the Indonesian republic have the authority to suspend the investigation. The investigator because of his obligation has the authority to suspend the investigation. Article 109 paragraph (2) of Law No. 8 of 1981 (KUHAP) states that police in this case investigators may stop the investigation of criminal cases because: (1) there is not enough evidence, (2) the event is not an act criminal, or (3) the investigation is terminated by law. In case the investigator stops the investigation for these three reasons, the investigator notifies this to the prosecutor, the suspect or his or her family. Of course, here also needs to think about the concept of how to stop the investigation on the basis of discretion.

2. Obstacles encountered by the investigator in the settlement of criminal cases at the level of investigation through restorative justice approach.

The settlement of criminal cases at the investigation stage through restorative justice approach, in the system and methods of investigation in Deterse Unit especially in Polres Biak Numfor currently experiencing some obstacles such as:

- a. The authority of the investigation provided in accordance with the law number 8 of 1981 on the

Criminal Procedure Code is the authority to prove a criminal offense and to find the suspect to be held accountable before the hearing. The Criminal Procedure Code does not authorize the investigator to stop the case if the criminal element is met as the result of the investigation.

b. In law number 8 of 1981 on KUHAP the investigator is authorized to discontinue the investigation with the consideration of non-crime, not enough evidence as a criminal offense, and by law. However, the Criminal Procedure Code does not authorize the investigator to resolve

Another obstacle faced in the settlement of criminal cases at the level of investigation through restorative justice namely the process of handling criminal cases found that investigators better understand the normative law or positive law that exist rather than understand the concept of customary law as a living law in the middle of society. In the context of the implementation of resort justice should investigators also open themselves to understanding local customary law to provide a sense of justice to the community.¹⁸⁷

Can be described obstacles faced by investigators on the process of settling criminal cases through restorative justice seen from internal and external factors aspect based on interview result with visible reskrim polres Biak Numfor, interview result with Acp I WAYAN LABA, SH. The Criminal Investigation Unit of the Biak Numfor Police Station, dated March 29, 2018. As follows: From the internal aspect, it can be identified that "In relation to the competence of investigators in the field of legal knowledge, legislation, criminal justice system and technical and tactical investigation skills are still not optimal. This happens because not all personnel of reskrim function follow vocational education of technical function of detective and support skill such as ability of using information technology in disclosure of criminal case. Included in this case is a lack of comprehensive understanding of the principle of restorative justice.

Furthermore, related to the behavior of investigators and the implementation of the code of ethics investigation, this can be seen from the lack of persistence / resilience / toughness and often ignore the procedure, in the implementation of the task there is a tendency to exceed the limits of authority, less independent and influenced by others so impressed discrimmatif against handling cases, less able to keep secrets of investigation, often throwing words / phrases or gestures aimed at getting rewards, often even conspiring with the relevant parties.

On the budget side, the budget of the investigation is accountable for the case that has been filed with the public prosecutor / P-21, so that there is limited space in the settlement of cases that can be resolved at the level of investigation. This condition will encourage all case settlement through the judicial process, while the community still expects to be completed at the level of investigation.

Similarly, there is no standard operating procedure (SOP) that can be used as a guide and legal umbrella for investigators to settle cases outside the judiciary or by restorative justice in accordance with the interests of the parties who litigate and menceleadilan. There has been no synchronization between work units, for example between reskrim function and Integrated Police Service Center (SPKT), or other support functions to solve community problems that arise by promoting the principle of restorative justice.

V. CONCLUSION

1. The settlement of criminal cases at the investigation stage through restorative justice approaches, is limited to cases of minor crimes; cases involving children as suspects; cases that do not result in casualties; as well as cases which, if not immediately reconciled, can lead to greater potential for conflict. The settlement of criminal cases through restorative justice by mediation is not conducted on cases that disturb the community even though there is peace between the two parties concerned.
2. Efforts made by Polres Biak Numfor to overcome obstacles to the implementation of restorative justice on the handling of criminal cases Implementation of restorative justice should also be seen as a form of police service to the community. By understanding the concept of service, the implementation of law enforcement not only interpret the law as a legal action . However, the concept of service in the implementation of restorative justice should be transformed into law enforcement services that are oriented to the interests of stakeholders to achieve a sense of justice.

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