

Studi Keberlakuan Surat Edaran Kepala Kepolisian Republik Indonesia No. SE/8/VII/2018 Tentang Penerapan Keadilan Restoratif (Restorative Justice) dalam Penyelesaian Perkara Pidana = The Study of Enforceability of The Circular Letter of Indonesian National Police Chief Number SE/8/VII/2018 Concerning The Implementation of Restorative Justice in The Criminal Cases Settlement.

I Putu Asti Hermawan Santosa, author

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Abstrak

ABSTRAK

Kepolisian Republik Indonesia merupakan gerbang utama dalam criminal justice system, sehingga penentuan kearahmana penanganan tindak pidana ditentukan pada awal proses di kepolisian dalam penyelidikan maupun penyidikan, tujuan hukum yaitu untuk kemanfaatan, kepastian hukum dan keadilan, seringkali tidak dinamisnya tujuan hukum antara kemanfaatan dan kepastian hukum, hal ini menjadi polemik di masyarakat karena polisi selalu mengedepankan asas legalitas dalam mencapai kepastian hukum, sehingga kepolisian terlihat rigid dalam menangani suatu tindak pidana, sehingga hal ini menjadi perhatian khusus oleh Kepolisian Republik Indonesia yaitu dengan keluarnya Surat Edaran Kepala Kepolisian Republik Indonesia No. SE/8/VII/2018 tanggal 27 Juli 2018 tentang Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkara Pidana, sehingga melalui restorative justice ini akan menjawab keresahan yang ada dimasyarakat, aplikasi dari restorative justice ini diaplikasikan dengan mediasi penal, yaitu perkara pidana yang diselesaikan dengan cara mediasi antara pelaku dengan korban, sehingga menjadi menarik bagaimana penyelesaian perkara pidana oleh Kepolisian Republik Indonesia menggunakan mediasi penal berdasarkan konsep keadilan restoratif serta sejauhmana luas penerapan kebijakan hukum pidana dalam penyelesaian perkara pidana dihubungkan dengan konsep keadilan restoratif. Penelitian ini menggunakan metode kualitatif yaitu bersifat deskripsi analitis, dengan pendekatan yang mengkaji atau menganalisis study kasus, study empiris, self evaluasi dan data sekunder seperti bahan pustaka atau data sekunder yang terdiri dari bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Pendekatan penelitian yang digunakan dalam penelitian ini yakni pendekatan aturan yaitu Surat Edaran Kepala Kepolisian Negara Republik Indonesia No. SE/8/VII/2018 tanggal 27 Juli 2018 tentang Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkara Pidana dan Pendekatan Konsep yaitu konsep restorative justice sebagai grand theory, kebijakan hukum pidana sebagai middle theory, dan mediasi penal sebagai applied theory.

Surat edaran tentang restorative justice secara normatif bisa diterapkan oleh penyidik dalam menyelesaikan perkara pidana melalui mediasi penal, namun secara faktual tidak adanya keseragaman dalam menerapkan surat edaran tentang restorative justice tersebut, karena adanya perbedaan paham dalam menerapkan restorative justice, ada yang menerapkan sesuai dengan surat edaran, namun ada pula yang masih secara konvensional sebelum berlakunya surat edaran tersebut.

ABSTRACT

The Indonesian National Police is the main gate in criminal justice system, therefore; the determination of

the direction in handling the crime is determined at the beginning of the process at the police in inquiry and investigation, the purpose of law is for expediency, legal certainty and justice, oftentimes there are lacks of dynamism between the legal objectives of benefit and legal certainty, this thing becomes a polemic in the community because the police always prioritizes the principle of legality in achieving legal certainty, therefore; the police looks rigid in handling a crime, as a result; this becomes a special concern for the Indonesian National Police by the issuance of the Indonesian National Police Chief Circular Letter No. SE/8/VII/2018 dated 27th July 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, therefore; through this restorative justice will answer the unrest in the community, the application of restorative justice is applied by using penal mediation which is criminal cases that is resolved by mediating between the perpetrators and the victims, as a result; the settlement of criminal cases by the Indonesian National Police becomes interesting based on the concept of restorative justice and the extent to which the application of criminal law policies in the settlement of criminal cases which is related to the restorative justice concept.

This research used a qualitative analytical descriptive method with an approach that examined or analyzed case studies, empirical studies, self-evaluation and secondary data such as references or secondary data which was consisted of primary legal materials, secondary legal materials and tertiary legal materials. The research approach which was used in this study namely the rule approach that was the Indonesian National Police Chief Circular Letter No. SE/8/VII/2018 dated 27th July 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases and Approaches Concept that was the concept of restorative justice as grand theory, criminal law policy as middle theory, and mediation of penal as applied theory.

Circular on restorative justice could be applied normatively by investigators in resolving criminal cases through penal mediation, however; in fact there was no uniformity in applying the circular about restorative justice, because of differences in understanding in applying restorative justice, there were those who applied according to the circular, however; in other cases some of them were still used conventional way before the entry into force of the circular.