

Penerapan Keadilan Restoratif Sebagai Upaya Alternatif Penyelesaian Perkara Penipuan (Studi Penerapan Pendekatan Keadilan Restoratif di Kepolisian) = Application of Restorative Justice as an Alternative Effort to Settle Fraud Cases (Study of the Application of a Restorative Justice Approach in the Police)

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Abstrak

Viktimisasi lanjutan yang dialami korban tindak pidana khususnya dalam perkara penipuan terjadi karena pengambilalihan sudut pandang posisi korban oleh negara yang mengakibatkan terbatasnya peran korban dan menyulitkan korban memperjuangkan hak-haknya dalam proses peradilan pidana. Terkait hal tersebut sebenarnya Polri telah menerbitkan peraturan yang diharapkan dapat mengakomodir kepentingan korban dalam proses peradilan, yaitu SE Kapolri No. SE/8/VII/2018 dan Perpol No. 8 Tahun 2021 yang didalamnya mengadopsi nilai nilai keadilan restoratif. Namun peraturan-peraturan tersebut memungkinkan timbulnya konflik norma hukum dan proses pelaksanaannya yang masih menjadi tanda tanya besar mengingat mekanisme yang ditawarkan merupakan mekanisme baru dalam sistem peradilan pidana. Berdasarkan latar belakang tersebut maka penulis merumuskan tiga pertanyaan penelitian yaitu, bagaimanakah eksistensi pendekatan keadilan restoratif dalam proses penyelesaian perkara pidana pada tahap pra-ajudikasi? Bagaimanakah aspek legalitas penerapan keadilan restoratif dalam peraturan internal yang diterbitkan Kepolisian Negara Republik Indonesia? Bagaimanakah pelaksanaan penyelesaian perkara penipuan di kepolisian jika mengacu kepada Perpol No. 8 Tahun 2021 yang mengatur penyelesaian perkara dengan pendekatan keadilan restoratif? Penelitian hukum ini merupakan penelitian hukum normatif dengan melakukan studi dokumen dan wawancara terarah dengan narasumber penelitian hukum ini yaitu anggota Kepolisian yang pernah menangani perkara penipuan dengan pendekatan keadilan restoratif. Berdasarkan penelitian yang dilakukan diperoleh kesimpulan bahwa telah banyak model penerapan keadilan restoratif pada tahap pra-ajudikasi di berbagai negara yang dapat dicontoh oleh penegak hukum di Indonesia, namun perlu dipahami bahwa peraturan Polri merupakan perwujudan peraturan kebijakan sehingga perannya terbatas. Meskipun peraturan internal Polri dapat menjadi pisau bermata dua, namun berdasarkan studi lapangan yang dilakukan penulis ternyata sudah banyak aparat penegak hukum yang mengedepankan penyelesaian perkara dengan mekanisme keadilan restoratif yang mengacu pada peraturan Polri tersebut.

.....The continued victimization experienced by crime victims especially in fraud crimes, occurs because the state takes the victim's point of view, which makes the role of the victim limited and makes it difficult for victims to fight for their rights in the criminal justice process. Regarding this matter, the Police have actually issued regulations that can accommodate the rights and interests of victims in the judicial process, namely the Circular Letter of the Head of the Indonesian National Police Number. SE/8/VII/2018 and Regulation of the Indonesian National Police Number 8 of 2021 which adopts the values of restorative justice. However, these regulations can cause conflict of legal norms and the implementation process which is still a big question mark considering that the mechanism offered in these regulations is a new mechanism in the criminal justice system. Based on this background, the authors formulate three research questions, first, how is the existence of a restorative justice approach in the process of resolving criminal cases at the pre-trial

stage? Second, what are the legal aspects of applying restorative justice in the regulations issued by the Indonesian National Police? third, how is the implementation of the settlement of fraud cases in the police when referring to Regulation of the Indonesian National Police Number 8 of 2021 which regulates case settlement with a restorative justice approach? This legal research is a normative legal research by conducting document studies and focused interviews on the source of this legal research, namely members of the Police who have handled fraud cases with a restorative justice approach. Based on this research, it can be concluded that there have been many models of applying restorative justice at the pre-trial stage in various countries that can be emulated by law enforcement in Indonesia, but it should be understood that the Indonesian National Police Regulation is the embodiment of policy regulations so that its role is limited. Although the internal regulations of the Indonesian National Police can be a double edged sword, based on field studies conducted by the author, it turns out that there are many law enforcement officers who put forward the settlement of cases with a restorative justice mechanism that refers to the internal regulations of the Indonesian National Police.