

# Restorative Justice Implementation: A Case Study from Police and Community Partnership Forum

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## Abstract

Law enforcement by deliberation and consensus or Restorative Justice System conducted by the Police and Community Partnership Forum is another police effort in law enforcement beyond the law enforcement in conformity through the District Court. Problems reviewed: 1) What is the legal aspect of the Police and Community Partnership Forum? 2) What is the benefit of the implementation of a criminal case settlement through Deliberation and Consensus or Restorative Justice for society and the State? 3) What are the obstacles faced by the process? The research that the authors do is a sociological law study and the approaches used include actual daily practice approaches or empirical statutes, conceptual approaches and comparative approaches. The deliberative and consensus-based policy on the settlement of criminal disputes in Indonesia has not been largely regulated while most of the settlement of criminal disputes are resolved conspicuously through the general criminal court of the District Court. However, in daily practice in the Semarang city community, there is a criminal dispute settlement through the deliberative and consensus process / Restorative Justice that is pioneered by the Police and Community Partnership Forum. Restorative Justice's policy in criminal cases has not been set in Indonesia's positive law, but the future will show the development and attention of Restorative Justice as an alternative judiciary, evidenced by its accommodation in the judicial law of a child. The conclusion is that in real life practice there has been a criminal case settlement through the "Restorative Justice System" pioneered by the Police and Community Partnership Forum, this is a manifestation of the practice of Pancasila values.

**Keywords:** Restorative Justice System, Police, and Community Partnership Forum, Deliberative, Consensus.

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## INTRODUCTION

The globalization of the world has been approaching almost all over the country, including Indonesia, which has many lives in a society with its implications. Good or bad, conscious or unknowingly, we all have included in it even a few have contributed to the change. Starting from the lifestyle to the ways of socializing even globalization has been able to erode little by little the roots of a nation's long life that has been laid by the founders of this nation, who have struggled to lay the foundation of the nation's life, and the state of the noble values of personality Indonesian nation "Pancasila".

After the fall of the "Orba" regime, there were many demands for change including the Indonesian Police Institutions. These claims were based on the fact that in the "Orba" period, the police received a lot of attention, both from within or abroad of human rights violations as well as service to the community which is in unsatisfactory value. The claim was responded by the

government by separating the police from the Indonesian National Army Section within Tap MPR No. VI / 2000, in which the Police have a significant authority as stated in Tap MPR No. VII / 2000. This positive development is viewed as a starting point, and the encouragement of instruments, structural, and cultural reforms. The police are looking for a breakthrough to meet the best service demands for the community. In the end, it is hoped that the synergy between the Police as a servant and the protector of society in the frame of the NKRI. It is certainly hoped later in the day the state will come to a prosperous state of welfare and social welfare and able to protect the whole of its citizens (social defense) can stand taller with other citizens of the nation's founding fathers who are implicitly set forth in the Preamble of the 1945 Constitution of the Republic of Indonesia.

However, the Indonesian nation is forced to live the nation, and the state by adopting the old patterns of life of other nations which are certainly more unsuitable with the personality of the Indonesian

nation. The police are incorporated into the Criminal Justice System which means that the need for good legal instruments which the Police can do well because we know that without law, then the Police are like foam in the middle of the ocean. This legal instrument is essential for the future of the police. The current law enforcement system after independence Indonesia is a system inherited by Dutch colonizers to our nation, and its fundamentals are different from ours. For example, the rule does not provide space for law enforcement institutions to provide discretion in the criminal settlement including subsystems (Police Institutions, Investigators). The irony of the system by the Dutch itself has begun to be abandoned, and evidently, in the Dutch Criminal Code, there is an article governing forgiveness.

It shows that the Indonesian nation is too bound and its own feet with gold chain rules set by other nations and this system is a legacy of Dutch colonizers who have long been in this beloved country. This system is more popular with the term Criminal Law Enforcement System (SPP) by promoting the theory of Retributive Justice System with a model of criticism that focuses on criminal-oriented retaliation or criminal offenders, and this practice has been running half a century. Like a sick person in parables for a violator of law then it should not always be prescribed with high drug rates (criminal law), but may be prescribed in lower rates (law outside criminal law) or Deliberation (in RJ concept) The criminal law is a curien amsintom [1], while this constituent element is actually the tradition of the Indonesian nation. Why do not we study deeper?

## LITERATURE REVIEW

In spite of the concept, the Indonesian Republic Police try to formulate the task of serving as a civil servant, guardian, and protector under Law No. 2 of 2002, Article 5. The formulation is contained in a program called the Community, and Community Partnership Forum which has received a special response from the community even longer has a significant impact on the benefits of the system. It is expected that this system will be a solution to the legal vacuum while the Police are in the field. Disadvantages of implementation in the course of existence would have been, as the nation's and nation's lives grew, and the rule of law continued to grow short on time including in Indonesia with the aim of becoming an independent, sovereign and prosperous state as set forth in the Preamble of the Law Country Policy RI. It is realized or not, the application of the system does not have a legal umbrella which is still felt uncomfortable, but it has represented or as a drug on the sense of justice that has existed and evolved within society.

Starting from this understanding, the Police should look for new breakthroughs related to the more active and growing law enforcement in the communities

where the society accepts and is still worthy of this has been owned by the Indonesian nation and may be distinctly not owned by other nations by the noble predecessors of Indonesian founders that life should be sublime and virtuous when addressing any occurrence or event occurring in community life. The existence of a custom (living character) that is mutual-cooperation between the two can be combined like two currencies: mutual-cooperation and deliberation in committing. Starting from the philosophy then it would be appropriate if the settlement of disputes or settlements in the public life including criminal disputes in society is attached to that philosophy.

Perhaps more precisely what Vinogradoff said that human beings are social creatures and social beings have the dynamic characteristics that always interact with other beings [2]. Responding to the sense of justice that must be fulfilled then it is appropriate that the position of SPP is closer to the life of Indonesian people: mutual-cooperation, deliberation, and consensus are combined with other living and growing breakthroughs accepted in society. It is expected that this SPP is not the only one but an alternative to Restorative enforcement which is a selection system in the real law enforcement of the nation's soul and it will be closer to the existence of perceived justice.

During this time in Indonesia the criminal justice system referred to in the procedural Law known as administration of justice, was in line with the other law expert La Ptra, the Theory was more concerned with the administration than the law itself, and normative doctrine supported by system approach analysis or system approach [2]. It causes much excess to the life of the nation and the state, and such a system is not the soul and personality of the Indonesian nation in which the nation has actually had a superior civilization that is deliberation and consensus in resolving any dispute as enshrined in Pancasila and the 1945 Constitution.

Currently, there are paradigm shifts in the community in Semarang as an example, and the authors conduct observations in Muktiharjo Lor village Genuk sub-district of Semarang. The use of criminal law has gradually been abandoned and has been chosen by other means in the form of deliberation as it has been said earlier that some law experts Schultz nzik, for example, argue that crime is unrelated to changes in its law or tendencies in court decisions related to the work or functioning of major cultural changes in the social life of another expert Johannes Andenaes argues that the criminal law has been practiced for the whole of the cultural context, there is a mutual influence between the law and the other factors that shape our attitudes and actions [3]. If we carefully observe the character of the Indonesian nation it is clear that the basis of the 1945 Constitution is as a constitutional foundation and Pancasila as its philosophical foundation, further Sri

Endah Wahyuningsih conveys two things recommended in National Law seminars, first of the principal principles of national law in 1963: The fundamental basis of the national law of the Republic of Indonesia is Pancasila, the second semester of 1968: The 1945 Constitution can only be implemented on Pancasila. The Implementation of the 1945 Constitution against the spirit and soul of Pancasila means the manipulation of the constitution and treason against Pancasila.

In connection with that, it is necessary to conclude the implementation of Pancasila in all aspects of life [4]. Here it is clear that law enforcement in Indonesia does not always use the means of enforcing the criminal law but with the Indonesian culture in the soul of "Pancasila" does not mean that the existing law enforcement system such as the Conventional Law is, but at least, can move together in a more aligned, suitable and widely accepted by residents of Muktiharjo Lor village, Genuk subdistrict, Semarang city where prefer law enforcement with restorative system. This fact that conventional law enforcement has long been less favorable to the sense of justice, even though its reforms have been assessed failing where initially from some of the agendas of one would make the law a commander not yet realized. By that concept of thought the author would raise the issue in the hope In the future these basic ideas will materialize, namely: aligning the Retributive Justice System with the Restorative Justice System.

The society demands a comprehensive change of civil society that upholds law, democracy and protects human rights. To realize that, it is necessary to have a sense of security, a sense of comfort, a safety guarantee, the creation of peace and the existence of legal certainty. The Indonesian republic's police in accordance with the Law No. 2 of 2002, Article 5 paragraph (1) which reads "The State Police of the Republic of Indonesia is a State instrument that plays a role in maintaining public order and security, upholding the law, and providing protection and service to the public in the framework of preserved domestic security", Looking at the above-mentioned society's demands, besides the police's duty as a criminal law enforcer, the police are also required to assist in resolving issues or conflicts that occur in the community, safely, comfortably, safeguarding, and creating a sense of security.

The National Police realizes that the task of maintaining security and public order is not an easy task for the police, but must be a common awareness of all elements of the nation and mutual trust between the people and police. Whereas sometimes we forget that criminal law has several limitations including a) Crime is outside criminal law, b) Criminal law is only a small part of the means of social control, c) Criminal law is only a "kurieren am symptom", only syntactic, d) The question is "ultimum remedium" contains contradictory

or paradoxical properties and contains negative elements and side effects. e) The criminal system is fragrant and individual or personal, not structural or functional, f) The limitations of the types of criminal sanctions and the system for formulating criminal sanctions are rigid and imperative, g) Functioning of criminal law requires supporting facilities that are varied and more costly [3].

For some of these reasons, the police have penetrated the law to settle legal cases. Not only as a state device that always uses a power approach with repressive action. Given the situation and condition, the police capture the paradigm shift in the community to resolve any dispute including criminal disputes. The effort is to accommodate and become mediators and facilitators of dispute settlement cases in society to the village level, and the effort is a promising character that is now rapidly developing. The Police and Community Partnership Forum is a National Police self-reforming lens by making a more appropriate policy, a positive response from the public regarding the policy of implementing the Decree of the Indonesian Police Head of Police Number: SKEP / 737 / X / 2005 dated October 13, 2005.

Based on the above explanation, several issues are formulated and scientifically solved, namely: 1) How the Law Aspects of the Police and Community Partnership Forum 2) What is the advantage of the implementation of the criminal case settlement through Deliberation and Justice or Restorative Justice for society and the State.

## RESEARCH PURPOSES AND METHODS

In accordance with the above issues, the purpose of this study is to study and analyze and exploit all issues concerning the role of the Police and Community Partnership Forum (FKPM) in resolving criminal cases through Restorative Justice System, Case Study in Semarang which include: a) Understanding and analyzing how its implementation and what are the general legal grounds between the Police and Community Partnership Forum in the Restorative Justice System mechanism and as a sampling in the city of Semarang. b) Understanding and analyzing how the role of the Police and Community Partnership Forum in implementing the Restorative Justice System with sampling in the jurisdiction of Genuk sector police c) Understanding and analyzing the obstacles and solutions conducted by the Policy and Community Partnership Forum in implementing the settlement of the case through Restorative Justice System sampling in the jurisdiction of Genuk sector police.

The authors work on research that are sociological law research and the approaches used include real-life practice approaches or empirical statutes, conceptual approaches and comparative approaches.

## RESULTS & DISCUSSION

### Legal Aspects of the Police and Community Partnership Forum

#### Law Number 2 of 2002

The settlement of the matter is informally based on practice in the functioning of the police force, and the policy is formulated in the explanation of Law Number 13 of 1961, and Law Number 2 of 2002 is accommodated in the concept of discretion on the police Article 18 of Law No. 2 of 2002, legal action by highlighting the key principles of informal mechanisms and raising local wisdom. Community Oriented Policing (COP) context is the link between Police and Community Partnership Policy and Forum. Partnerships in the context of community policing in Indonesia are all efforts to build synergies with the potential of the community which includes communications based on concern, consultation, information dissemination, and various other activities in order to achieve orderly and peaceful public goals.

#### Chief of Police Regulation

Decree of the Chief of the Indonesian National Police number Skep / 737 / X / 2005 dated October 13, 2005, which was then refined by the Chief of Police Regulation number 03 / V / 2015, dated May 26, 2015, concerning the police strategy in maintaining public order and security. Which is not bound by any agency and that is a combination of representatives of elements in the community, ranging from community leaders, religious leaders, traditional leaders, youth leaders, female leaders, including the involvement of "Babinsa" (TNI-AD), elements of the police, "Bhabinkamtibmas" officers who work and settle in the community. Presidential Regulation number 52 of 2010, and several Decrees of the Chief of the National Police include: a) Decree of the Chief of the National Police Number Skep / 737 / X / 2005, b) Regulation of the Chief of Police Number 7 of 2008, c) Regulation of the Chief of Police Number 23 of 2010.

As a new institution or institution that is pure and established by society, the Police and Community Partnership Forum has a structure that supports the implementation of law enforcement tasks with the principle of deliberation and consensus by adopting the principle of cheap, simple, quick and useful, where the principle is also a fundamental principle of Criminal Law Enforcement System which is still in use is a cheap, simple, fast and useful principle. The management system in the forum contained in it was the result of the internal consultation of the FKPM board, still incorporating the elements of the police in its management represented by the police officers in every region. The existence of the police force, serves as an isolator and stabilizer accompanying the Police and Community Partnership Forum at the Police and Community Partnership Forum (BKPM) in implementing daily tasks and functions by giving consideration as well as legal guides at BKPM which

means that FKPM does not necessarily lead to a solution, and the solving of each item in order not to contravene the National Law.

Through the Policy and Community Partnership Forum, light issues and related issues of dispute among citizens can be solved at the community level intended to regain harmony and mutual living within the community. The Police and Community Partnership Forum in the implementation also talks deliberately on more urgent issues in social affairs including empowering citizens. Even in development, the Police and Community Partnership Forum serves as a consultant of various social issues in the "Kamtibmas" aspect of each region and finds the root of the problem and finds its solution. Since when it suddenly disappeared from Indonesian consciousness? That since the law is looted flood rationalism and rationalization it will become an isolated institution [5]. The police and community partnership forums are as a means of police in raising the noble character and living in the community and packaged in another form commonly called the Restorative Justice System which is a problem-solving model involving fair-oriented parties on the recovery of the original state of retaliation.

### The Advantages of Implementing The Settlement of The Case Through Restorative Justice

#### Restorative Justice

Informal settlement is based on the practice of living in the functioning of the police force (the policy is formulated in the explanation of Law Number 13 of 1961, and Law Number 2 of 2002 is accommodated in the police discretionary concept). The key principle of informal mechanisms is the restoration of harmony. Social order is more substance, especially in rural communities, where social and economic interdependence is higher. Thus, with unqualified nature in the general court hearing and prioritizing compromise and flexibility, non-formal courts have several advantages over the decisions of the state judges.

"The solution through the Restorative Justice System approach in sociological research is the settlement of disputes through public legal instruments or other informal approaches does not always mean ruling the formal process. In certain cases, it may be a criminal act to be processed in conventional law, while in general cases of disputes between parties are settled through informal restorative justice.

The idea of empowering local potential in this regard is specifically the Police and Community Partnership Forum in resolving litigation violations in line with law enforcement demands as one of the pillars in the country that upholds the supremacy of the law. It means that there should be confident that any violation of the law will require social reactions. Social reactions do not always have to be in the form of a formal



criminal justice system, "visionary and architect of the restorative justice movement" [6]. Social reactions in the form of informal even provide a guarantee of legal certainty. Therefore, if the formal criminal justice system is unable to guarantee legal certainty, then the informal system will need to be expanded, especially in dealing with criminal cases, as well as those involving disputes among citizens in a community. Farouk Muhammad insists that this conception is in line with the concept of community policing (CP) developed by the police today.

The restorative justice framework allows for a sense of restorative justice to focus on crime as loss/damage and justice. Furthermore, Muladi asserted that the Criminal Case could be resolved by the Restorative Justice System (RJ) is a minor criminal case and has a penalty of fewer than 7 years or in the third book of the Criminal Code, a criminal act that is threatened with imprisonment or jail term for a maximum of three months or a fine as much - a lot of IDR 7,500, - and minor crime (*Lichte misdrijven*), such as minor persecution, theft and others. Muladi in a forum states that inter-citizens disputes may occur between individuals with individuals, individuals, and groups (minor criminal cases), which, if not addressed immediately, may lead to more severe disputes even communal conflicts or even social conflicts.

#### **Pancasila Law**

The concept of authors is to align between Retributive justice System and Restorative Justice System to accommodate the needs and aspirations of the community. Indonesia has defined social policy in the form of social protection policy. The policy of providing social defense is one of them with the effort to prevent and overcome the actual or potential crime and crime that may occur. Any attempt to prevent such offenses or crimes is included in the criminal policy area with criminal penalties and therefore includes part of the penal policy. Efforts to eradicate all forms of crime are always ongoing. The criminal law policy has been a continuously evolving process as an attempt to counteract the crime can anticipate the maximally increasing crime. The use of criminal law as a means of protecting people from threats and criminal harassment is essentially a criminal political issue that is an effort to tackle crime.

Referring to the clarification, the authors intend to understand more about the issue of how the Police and Community Partnership Forum resolves minor criminal proceedings through the implementation of informal mechanisms, which have recently changed the mindset of the people who had always resolved each issue through the conventional judicial gates and switches to other forms that actually existed and developed in the past as the character of the Indonesian nation rooted in the culture of the ancestors of Indonesia is the deliberation of the consensus of

Pancasila's views, especially in the first and third numbers as inspiration as a matter should be brought to the realm of deliberation within reaching a consensus that also manifests the character and personality of Pancasila by the Indonesian people themselves without having to use the habits of others.

At some point of view, the Police as a servant, guardian, and protector of the public as well as law enforcement (Law No. 2 of 2002, article 5) The police are not really just law enforcement, it is proper that the Police should have something to do at the time Particularly in the face of a critical situation that requires the police to act properly, accurately and precisely. Besides that, it is legally obliged to be accountable. What is needed is not merely the discretion of the police, but the wider space and time for the police to innovate more with the law in the community, which can be accounted according to Pancasila's norms, and some references are in the other group of rules: a. The 1945 Constitution, b. c. Criminal Law Book, d. The Criminal Procedure Code, e. Law Number 2 of 2002 on National Police of the Republic of Indonesia, f. Law Number 16 of 2004, concerning the Attorney General's Office, g. Law Number 46 of 2009, regarding TPPU Court, h. Law Number 8 of 2010, regarding TPPU.

#### **Empirical Results**

Completing a problem among citizens through informal mechanisms (deliberation) or without conventional litigation (state courts). Zilmahram conveyed that through this mechanism of deliberation there is a "win-win solution" between the two parties, in the final settlement of the problem no one feels defeated or won unilaterally is well accommodated, since it is uncommon to settle the matter through formal mechanisms or The procedural process results in a prolonged injury that results in a new stigma for the perpetrator. The effort underlying the national police's mind in self-reform, it is true that creating a clean police force is not merely duty and police burden alone, it requires active participation from all elements in the community to realize the humanist civilian police and this assistant policeman is a strategy the police in overcoming the crime and maintaining "Harkamtibmas" (maintaining security, and public order) which include: a) It reduces the tension between the police and the community. b) it creates a trusting partnership. c) it improves the quality of service to the community. d) It creates a conducive atmosphere in the life of the nation and state.

The authors cited the case of NA (need assessment) in 2013 in several villages, among others, Sidorejo Lor village, Sidorejo sub-district, Noborejo village-Argo Mulyo sub-district, Kecandraan village, Sido Mukti sub-district, Salatiga City [7]. The results of the study were interesting, the first 40% of respondents claimed to have had a poor treatment, 73% still needed

the National Police to manage "Kamtibmas." This fact explains that the public's expectation of the Police and the Police is trying to serve better, protect, protect until the creation of a self-defense society.

According to Abraham Maslow who was then actualized by Douglas McGregor in his book "The Human Side of Enterprise" states that the sense of security occupies the highest hierarchical position after the physical need in the context of mankind including the need for the law sometimes raises a new problem or leaves a wound that will be difficult healed with various social solutions, and even material loss for an attempt to settle with conventional justice, the presence of stigma on former perpetrators as proposed by Muladi.

Zulfa argues "The evolving paradigm of the conventional criminal justice system, the main victim of a criminal offense is a state, not a victim in the real sense [8]. More than that, the actual victims are not infrequently sacrificed, on the grounds of proving the criminal justice process M. Niemeyer and D.Scichor: 1996, 90. Therefore, the criminal justice system that works has emerged as a new victim, the victim of a criminal justice system or often called secondary victimization."

It is evident that the use of criminal law in settlement of a dispute was only to punish the perpetrator, and that it was to waive the victim as far as possible to avoid. The criminal justice system has many limitations. According to Muladi, the purpose of the criminalization is to protect the public, to maintain public solidarity, general and special prevention, dispute resolution and dispute settlement, which is being applied by the Police and Community Partnership Forum through deliberation in consensus that the involvement of the parties is also dominant. When this is realized then the sub-system in the SPP such as the Police as an investigator and the prosecutor will tend to spend more time focusing on a more extensive and general criminal activity. A few quotes of earlier research on I Nengah WD, some of the benefits gained in the implementation of Restorative Justice by FKPM include: a) non-time completion b) unfamiliar solutions using cost c) the presence of human post-conflict elements.

## CONCLUSION

The legal grounds as the application form of several legal rules from the Police and Community Partnership Forum

- Law No. 2 of 2002 on State Police of the Republic of Indonesia, article 3, article 5 paragraph (1), and article 13;
- The police discretion referred to in article 18 of Law No. 2 of 2002;
- Government Regulation number 52 of 2010;
- Decree of the Chief of the Indonesian National Police number Skep / 737 / X / 2005 dated October

13, 2005, on Policing Policy and Strategy of the Community Policing Model;

- Decree of the Chief of the Indonesian National Police number Skep / 433 / VII / 2006 dated July 1, 2006, on Guidelines for the Establishment of Community Policing,
- Decree of the Chief of the Indonesian National Police number 03 / V / 2015 May 26, 2015
- Surah Al-Baqoroh Verse 178
- Surah As-Syura Verse 38.42
- Surah Al-Maidah Verse 2
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