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# The Phenomenon of Civil Dispute Claim Settlement through Police Report a Restorative Justice Approach

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## Abstract

*This research was initiated by the phenomenon of civil disputes which were reported to the police, so what was originally civil disputes became criminal domain. The principle of restorative justice is a breakthrough in the criminal legal system seeks to provide justice to the parties (especially to the victims) by prioritizing recovery to its original state (before crime happened) and restore good relationship in the society, instead in factual (das sein) restorative justice was used to resolve civil cases such as account receivable claim or bad debt through police reports, which theoretically (das sollen) account receivable claim or bad debt should be resolved through the mechanism of civil law proceedings. The author chooses qualitative research method type of document study (literature study) using primary data and secondary data as sources of data in this study, including examining police regulations and restorative justice books written by police writers, police practitioners who are also academics, to understand the problems and to answer the research questions, as well as to achieve the research objectives. From this research the authors found that there is privilege in using criminal approach that was not found in the civil law proceedings, and by using the principle of restorative justice it is more possible for the parties to reconcile in a criminal case.*

Keywords
restorative justice; police report; criminal; civil; claim

## I. Introduction

This research is based on the phenomenon of civil dispute claim settlement through police report. There were news like *"Civil Dispute Becomes Criminal, Police Was Asked to be Careful", bisnis.com on February 28, 2019"*; *"Bareskrim Polri should not force civil cases into the criminal jurisdiction"* kontan.co.id on July 10, 2020; *"Promissory Notes do not need to be investigate into criminal jurisdiction"*, kompas.com on June 15, 2021; *"Law enforcement officers investigate civil cases through criminal approach is a criminalization"*, rri.co.id on September 15, 2020. There were many others similar news that are easily to find which describes this phenomenon (Krismen, 2019); (Goodrum, 2021).

In theory as Das Sollen, civil disputes should be resolved according to the characteristics of the dispute, through: (1) civil lawsuits, (2) small claim courts, (3) bankruptcy petitions, (4) postponement of debt restructuring petitions, (5) arbitrations. However, in factual as Das Sein, some civil disputes were actually reported to the police, so that initially civil problems became criminal matters.

The facts that there are phenomenon of resolving civil disputes through police reports, of course, there must be reasons or at least privileges in the criminal proceedings that are not available in settlement of civil disputes (Ramadhani & Lubis, 2021); (Wu et al., 2022). This is the background in this writing, which the author relates to the principle of restorative justice.

## II. Review of Literature

### 2.1 Dispute Principles in the Context of Civil Law & Criminal Law

Disputes in the context of civil law are disputes that arise from civil relations, either due to default (Whincop et al., 2018). A dispute in the context of criminal law is a violation of the regulations governing an act that has criminal consequences. *Nullum delictum nulla poena sine praevia lege poenali*, which the author translates freely (more or less) meaning that an action cannot be punished unless there are criminal rules that regulate it before the act is committed (Paganelli & Simon, 2022).

### 2.2 Principles of Retributive Justice & Restorative Justice in the Criminal Justice System in Indonesia

Restorative Justice, *"restorative"* means *"to restore justice"*, which focuses on the victim and how to restore to the condition (as if) before crime happen. Retributive Justice, *"retributive"* means *"to punish"*, which focuses to punish the perpetrator for committing criminal act.

There are at least 3 regulations regarding restorative justice established by the National Police, i.e.:

a. Regulation Police Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice ("*Perpolri 8/2021*").
b. Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigations ("*Perkapolri 6/2019*").
c. Circular Letter of the Chief of Police Number SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases ("*SE Polri 8/2018*").

### Problem Focus

1. What are the advantages of a police report compared to civil dispute resolution options? (from the reporter's perspective)
2. Is the National Police an extension of justice seekers to resolve civil problems? (from the perspective of the police)

## III. Research Method

Author choses qualitative research method type document study. The author uses primary data from laws and regulations, the Criminal Code, the Civil Code, police regulations, and provisions related to restorative justice.

## IV. Results and Discussion

### 4.1 What are the Advantages of Police Reports Compared to Civil Dispute Resolution Options? (From the Reporter's Perspective)

#### a. Purpose of Dispute Settlement in the Context of Civil Law & Criminal Law

The purpose of dispute settlement in the context of civil law is to demand compensation for costs, losses, and interest (Arato, 2019), for actual direct losses and direct profits which should be enjoyed (KUHPerdata Ps.1246 s/d Ps.1248), and on moratorium interest (or negligent interest) of 6% (Criminal Code Ps.1250 juncto Staatblad 1848 No. 22). This is the goal in dispute settlement through civil litigation proceedings, which is economic motives of the plaintiff/applicant. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020).

The purpose of dispute settlement in the context of criminal law is punishment, in the form of imprisonment and confinement (Kanner et al., 2019); (Resnik et al., 2020). This is the goal in criminal litigation proceedings, which is to punish the perpetrator.

The question is that "why there were complainants who choose police report to settle civil dispute? Can the purpose of resolving civil disputes be achieved through criminal approach? Are there any advantages in resolving disputes through police reports that are not applicable civil litigation proceedings?"

#### b. Options in Civil Disputes Litigation Proceedings

There are at least 5 ways to resolve civil disputes, namely:

1. Civil Lawsuits In Court

The District Court is authorized to examine, decide, and resolve civil cases and criminal cases at the first level (Law 2/1986 Ps.50).

The plaintiff has to submit and register a lawsuit for "default" (KUHPerdata Ps.1243) or "act against the law" (KUHPerdata Ps.1365) to the district court in its jurisdiction (HIR Ps.118). The lawsuit must at least contain: (a) "information" regarding the plaintiff and the defendant; (b) "posita", description of the facts that underline the plaintiff's claim; and (c) "petitum", which is the plaintiff's claim to the defendant (HIR explanation Ps.118). The length period for the court to examine and settle the case are different in each court level as summarized below.

**Table 1.** Period of Examination and Settlement of Cases in Court

| **Summary** ***(Lawsuit in Court)*** | **Period of Examination and Settlement of Cases in Court** | |
|---|---|---|
| | ***(currently)*** *(based on SEMA 2/2014 & KMA 214/2014)* | ***(previous)*** |
| First Level (PN) | **5 months** | 6 months |
| Appeals Level (PT) | **3 months** | 6 months |
| Cassation Level (MA) | **250 days** | 1 year |
| Review Level (PK di MA) | **250 days** | 1 year |

2. Small Claim Court

In 2015, the Supreme Court made a breakthrough by issuing Perma 2/2015 concerning Procedures for Settlement of Small Claim Court Proceedings, which provides simpler, faster, and less cost solution. Then in 2019, the Supreme Court refined it through Perma 4/2019 which revised Perma 2/2015.

The length period for the court to examine and settle small claim court proceedings is no later than 25 days from the first day trial, and the decision of small claim court can only be challenge 1x (one time) through objection. These are the characteristic of small claim court as summaries below.

**Table 2.** Summary of Small Claim Court

| **Summary** ***(Simple Lawsuit)*** | **Perma 4/2019** | **Perma 2/2015** |
|---|---|---|
| Value of Material Claim | Maximum IDR 500,000,000.- | *(previously)* IDR 200,000,000.- |
| Legal Territory The Parties *"domiciled in the same jurisdiction"* | Plaintiff or can be only the Attorney Plaintiff and Defendant *"domiciled in the same jurisdiction"* | Plaintiff and Defendant *"domicile in the same jurisdiction"* |
| E-Court Synchronization | Case administration in court may be via an electronic system *(e-court)* | *(previously none)* |
| Legal Remedies | Verstek decisions can be challenged by submitting a verzet (resistance) | judge may impose a verstek on the defendant who is not present at the first trial |
| Security Seizure | The Judges may order the determination of the confiscation of collateral for the property belonging to the defendant or the plaintiff's property which is in the possession of the defendant | Perma 2/2015 does not regulate the authority to confiscate collateral |
| Procedures Execution of Decisions | The Head of the District Court may issue decision *on aanmaning* (reprimand) | Perma 2/2015 does not regulate the determination of *aanmaning* (reprimand) |

3. Bankruptcy Petition

Bankruptcy Petition and PKPU Petition are the 2 options that are quite attractive and popular for resolving claim disputes. As long as the applicant is able to meet the requirements (a) the debt is due and payable can be collected; (b) the debt can be simply proven; and (c) the same debtor has 2 or more creditors.

If the debtor is unable to defend from bankruptcy petition, the debtor will be in a state of bankruptcy, therefore all assets of the debtor will be in the general confiscation of bankruptcy, and the management and settlement will be carried out by the receiver under the supervision of the supervisory judge (Law 37/2004 Ps..1.1).

The measurable length period of 60 days in the proceedings and the threat of all assets of the debtor being in general confiscation of bankruptcy are deathly combination in 'forcing' the debtor to immediately pay off the account receivable claim to the creditors.

4. Postponement of Debt Restructuring Petition (PKPU Petition)

The PKPU petition is probably the most favorable and is quite happening for resolving civil disputes regarding account receivable claim. The requirements and threat are similar to bankruptcy petition, and even faster, PKPU has time period of 20 days in the proceedings, and its relatively easy to fulfill the requirements, then the court must grant the application and give no later than 45 days in the provisional pkpu (Law 37/2004 Article 225 Paragraph 3) and can be extended in total of 270 days of fixed pkpu (UU 37/2004 Ps.228 paragraph 6).

In the PKPU stage before the fixed PKPU period ended, the debtor has the right to submit reconciliation proposal, or we call it composition plan proposal, to creditors (Law 37/2004 Ps.265) and a vote will be held amongst creditors to determine whether or not such proposal is accepted (UU 37/2004 Ps. 280), provided that the composition plan proposal can be accepted if there is (a) approval of more than 1/2 of "concurrent creditors" who are present at the creditors meeting whose rights are recognized or temporarily recognized, which represent at least 2/3 parts of all claims of concurrent creditors or their proxies recognized or temporarily recognized; and (b) approval of more than 1/2 of "separatist creditors" (creditors whose receivables are guaranteed by pledges, fiduciary guarantees, mortgages, or other material guarantees) present at the creditors meeting, which represents at least 2/3 of the total claims from the separatist creditors or their proxies who are present (Law 37/2004 Ps.281)

If the debtor is unable to 'reject' the application for PKPU, then the debtor will be included in the temporary PKPU; and if the debtor fails to 'secure' the vote within the fixed PKPU, then the court must declare the debtor in a stage of bankrupt (Law 37/2004 Ps.289). Even more sadistic than the bankruptcy petition, there is no appeal against the decision of the PKPU petition, including no cassation (Law 37/2004 Ps.235 Paragraph 1, Ps.285 Paragraph 4 in conjunction with Ps.293).

If the debtor failed to reject the PKPU Petition within 20 days, and the debtor must deal with all creditors who have claim rights against the debtor, and the debtor must settle (restructure) all its debt obligations in the financial report; and if the debtor does not submit composition plan proposal or fails to 'secure' the vote of the proposal, then the court must declare the debtor in a stage of bankrupt. This may also be the main reasons the PKPU application is the most popular among other civil dispute resolution options.

**Table 3.** Summary of Bankruptcy & PKPU Petition

| **Summary** ***(Bankruptcy & PKPU)*** | **Bankruptcy Petition** | **PKPU Petition** |
|---|---|---|
| Requirements | 1. for debt, dua, and payable;<br>2. proof is done simply; and<br>3. the debtor has 2 or more creditors. | |
| Time Period | Decision max **60 days** | Decision max **20 days** |
| Legal Efforts | Cassation (60 days) | No legal remedies |
| Advantages | If the Bankruptcy Petition is granted, then the respondent is in a state of bankruptcy (insolvency). | - The debtor has **20 days** to pay off his debt so that the creditor withdraws the PKPU petition before the decision.<br>- If after the provisional pkpu is granted, the proposal for reconciliation plan is rejected by the creditors, the debtor is in a state of bankruptcy. |

| | | |
|---|---|---|
| Disadvantages | Bankruptcy Petition was accepted but in cassation was canceled. | The PKPU Petition is used to get money from the receiver fees. |
| Risks | The bankruptcy petition is granted but the debtor can appeal to supreme court | - If the PKPU petition is granted, the debtor will face all of his creditors:<br>- If the debtor fails to win the vote on the proposal for reconciliation plan, the court declares the debtor in bankrupt stage. |

5. Application for Arbitration

Arbitration is an alternative for out of court settlement (Law 48/2009 Ps.58 juncto Law 30/1999 Ps.1.1). The arbitration agreement or arbitration clause is the basis for the parties to solve civil dispute amongst the parties through arbitration proceedings (Law 48/2009 Ps.59 juncto Law 30/1999 Ps.4 Paragraph 1 & 2). There are advantages and also disadvantage of resolving claims through an arbitration institution as summarize below.

**Table 4.** Summary of Arbitration BANI & BAPMI

| | **Arbitration BANI** | **Arbitration BAPMI/OJK** |
|---|---|---|
| Requirements | There is an arbitration clause or arbitration agreement | |
| Time Period | Max 180 days | Max 180 days |
| Award | *Final & Binding (although the parties may request the cancellation of the arbitral award if there is suspected evidence of forged documents, there is evidence of documents that have just been discovered and determine, there is a ruse in the examination of the dispute)* | |
| Advantages | - of closed trial;<br>- The arbitration award is final and binding on the parties;<br>- the arbitral tribunal is a professional field. | |
| Disadvantages | If the arbitral award is not implemented voluntarily, it is necessary to submit a request for confiscation of execution to the court. | |

### c. Main Problems in the Settlement of Civil Disputes

The facts that there were phenomenon of resolving civil disputes through police reports, of course, there are features in criminal approach which covers the main problems in the civil litigation proceedings. The author sees that there are at least 3 main problems in the civil litigation proceedings i.e.: (a) execution problems; (b) length of time for litigation proceedings; and (c) costs of civil litigation proceedings.

1. Execution Problems

Execution problem in carrying out court decisions were difficult to be understood by common people. Even though the plaintiff succeeded in winning and his claim was granted by the court, there is still an appeal or cassation for the defeated party, until the decision has permanent legal force or the legal term is “inkracht van gewisjde” (Law 48/2009 Ps.55 Paragraph 1), and there are still legal remedies for judicial review, although legal remedies for judicial review do not stop or delay the execution of decision that has permanent legal force (UU 14/1985 Article 66 Paragraph 2).

2. The length of time for litigation proceedings

The length of time to achieve the desired goal is also a problem in the settlement through civil litigation. The total length of time for the proceedings can be up to 16 months 10 days or 1 year 4 months 10 days (5 months + 3 months + 250 days), this does not yet count the administrative time to file an appeal, memorandum of appeal, counter memorandum of appeal, and administrative time to file a lawsuit against cassation, memorandum of cassation, counter memory cassation, and also administrative time for the inzage process on each appeal and cassation.

3. Cost of Civil Litigation Proceedings

Costs of litigation that needs to be paid by the plaintiff until final and binding of the court decision is not small. Plaintiffs who do not understand how to litigate in court or in arbitration need to appoint a proxy law and pay legal fees to represent the interests of the plaintiff starting from a subpoena, litigation at the first level (district court), at the appeal level (high court), and at the cassation level (supreme court). In addition, if the defendant sues back (reconvention lawsuit) then the plaintiff needs to pay extra fees legal services to attorneys for additional work to defend counter-claims. Not to mention if the defendant does not carry out a decision that has permanent legal force voluntarily, then there will be further legal fees for submitting a request for execution, aanmaning, confiscation of execution, notification of execution of voiding, and auction of execution, so you can imagine the costs of litigation for the settlement of civil disputes is not cheap, although the administrative costs of litigation in court are relatively cheap.

### d. Privileges in Using a Criminal Approach

There are at least 2 privileges in using a criminal approach, namely: (a) the complainant has control over withdrawing the police report; and (b) the police have the power to make forced arrests and detentions.

The Reporter is in Control of Revoking Police Reports

People seeking justice can make reports or complaints through SPKT at the Polda, Polres, Polsek levels, and through the "Satker" that carries out the investigation function at the National Police Headquarters level (Perkapolri 6/2019 Ps.2). Reports are submitted based on having or are suspected of having a criminal event (KUHAP Ps.1.24). Complaints are submitted based on the occurrence of a criminal complaint that harms the complainant (KUHAP Ps.1.25). Some of the differences in reporting (aangifte) and complaints (klacht) according to R. Trsena in his book entitled Principles of Criminal Law Accompanied by Discussion of Some Important Criminal Acts, namely:

**Table 5.** Differences in Reporting (Aangfte) & Complaints (Klacht)

| | **Reporting *(Aangfte)*** | **Complaints *(Klacht)*** |
|---|---|---|
| 1 | Reporting is filed for all criminal acts. | Complaints are only about certain crimes, where the complaint is a condition. |
| 2 | Everyone can report an incident (has, is currently, or is suspected of having a criminal event). | Complaints can only be filed by people who are entitled to file them. |
| 3 | Reporting is not a requirement for filing criminal charges. | Complaints in certain crimes are a condition for filing criminal charges. |

From this definition of reporting and complaints, we get a "criminal incident" or what is called an ordinary offense (gewone delict) and "complaint crime" or called complaint offense (klacht delict). In the case of a complaint offense, (a) the complaint may only be made within 6 months from the time the person entitled to complain finds out that the complaint has been committed if he resides in Indonesia, or within 9 months if he resides outside Indonesia (KUHPidana Article 74 Paragraph 1); and (b) the person who filed the complaint has the right to withdraw his complaint within 3 months after the complaint (KUHPidana Ps.75), even the Supreme Court has given an exception which complainer can still withdraw his report even though the time limit of 3 months has lapsed, with the restorative justice consideration.

Investigators can only detain a suspect who commits a crime (or attempts or provides assistance in a criminal act) in terms of:

1. Criminal offense punishable by imprisonment of 5 years or more;
2. The criminal acts in the following articles (even though they are subject to imprisonment under 5 years), namely: … Article 372, Article 378, Article 379a, … (KUHAP Ps.21 Paragraph 4).

**Table 6.** Comparison between Arrest and Detention

| | **Arrest** | **Detention** |
|---|---|---|
| **Legal Ground** | phrase *"there is sufficient evidence"* (at least 2 pieces of evidence) | the phrase *"sufficient evidence"* (at least 2 pieces of evidence) |
| **Terms** | of arrest warrant and warrant for assignment | of detention warrant |
| **Maximum** | period of 1x24 hours | maximum 20 days |
| **Extension** | (not any) | can be extended for a maximum of 40 days |
| Articles of Fraud Crime | Ps.378 to Ps.393 bis | Ps.378, Ps.379a, Ps.382, Ps.387 Paragraphs 1 & 2, Ps.388 Paragraphs 1 & 2 |
| Articles of the Crime of Embezzlement | Ps.372 to Ps.375 | Ps.372, Ps.374, Ps.375 |

### 4.2 Will the Police Become an Extension of Justice Seekers to Solve Civil Dispute? (From a Police Perspective)

#### a. Police Report Initial Investigation, and Investigation

Police reports at the Polda, Polres, and Polsek levels are carried out through SPKT which stands for Integrated Police Service Center (Perkapolri 6/2019 Ps.3 Paragraph 2b). SPKT officers receive reports/complaints from the public and conduct an initial study to assess whether or not a police report is appropriate (Perkapolri 6/2019 Ps.3 Paragraph 3b) and record reports/complaints in the police report model B (Perkapolri 6/2019 Ps.3 Paragraph 5b).

In initial investigation, the key word is to find and determine whether or not a crime has been committed in the police report (KUHAP Ps.1.5). The police prepare and report the results of the initial investigation and carry out a case title to determine whether in the police report a criminal act has occurred or not (Perkapolri 6/2019 Ps.9 Paragraph 1). Then based on the results of the case title if a crime has occurred, it will proceed to the investigation stage, but if it is not a criminal act, the police will stop the initial investigation (Perkapolri 6/2019 Ps.9 Paragraph 2).

In investigation, the key word is to collect evidence to make it clear that the crime that occurred and to find out who the alleged perpetrator is (KUHAP Ps.1.2). Procedurally proven, from the beginning the police focused on investigating whether there was an element of crime in the actions or events reported by the complainant in the police report (Zulyadi, 2020); (D'Souza et al., 2019). If it is proven to be a criminal act, the police need to investigate and summon the reported witness (KUHAP Ps.112) and then determine who the alleged perpetrator is (Perkapolri 6/2019 Ps.10 Paragraph 1e). On the other hand, if the police do not find elements of a criminal act (there is no evidence of a criminal act in the actions or events reported by the complainant in the police report), then the police cannot continue their investigation to investigation.

In answering the question, is the National Police an extension of justice seekers to resolve civil problems? From the perspective of the police, of course the answer is no, because in fact (a) it was the reporter who reported the (alleged) criminal act committed by the reported party; (b) if the act or incident in the police report turns out to be not a crime, then there is no legal basis for the police to proceed with the case, therefore the police are obliged to stop the investigation; (c) in PP 2/2003 concerning disciplinary regulations for members of the National Police there are many prohibitions for the police; and (d) in Perkapolri 14/2011 concerning the police code of ethics, there are also many prohibitions and sanctions if they violate the code of ethics.

### b. Police Discipline and Code of Ethics

In Perkapolri 14/2011 investigator police is prohibited from engineering and manipulating cases that are their responsibility in the context of law enforcement, the police forbidden to manipulate the contents of the information in the inspection report, even the police forbidden to meet either directly or indirectly outside the interests of the service, and the police prohibited from handling cases that have the potential to cause a conflict of interest (Perkapolri 14/2011 Ps.14); and if there is a member of the police who violates this professional code of ethics for the police, then the person concerned may be subject to sanctions in the form of (i) an obligation to apologize verbally/written; (ii) take part in the mental development of personality, psychology, religion, and professional knowledge (1 week to 1 month); (iii) reassigned, moved positions, (or) changed functions, (or) moved areas which were demotional in nature (at least 1 year); and (iv) administrative sanctions in the form of recommendations for PDTH (disrespectful dismissal) (Perkapolri 14/2011 Ps.21).

From a police perspective, the author concludes that the police detectives focus on handling police reports (or complaints from the public) where there are allegations of criminal acts. In a broad sense, it may happen that the reporter strategically puts forward the police report on the alleged crime committed by the reported party, but in fact the reporter has the goal of making the reported person pay compensation, fees, and interest, and waiting for the right momentum when the case goes up to investigation status, the reported party becomes a suspect, the investigator arrests and detains him, then the reported/suspect will ask to be mediated to reconcile with the complainant, and at that time

it is almost certain that the reporter will achieve his goal of getting compensation, fees, and interest.

### c. Restorative Justice in Handling Crime

Restorative justice is the settlement of criminal acts by involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just through reconciliation by emphasizing restoration to its original state (Perpolri 8/ 2021 Art.1.3), in which the elements of restorative justice are: (a) settlement of criminal acts; (b) involving the parties; (c) a just settlement through reconciliation that emphasizes restoration to its original state.

The elements of reconciliation are (i) the existence of a reconciliation agreement signed by the parties (Perpolri 8/2021 Ps.6 Paragraph 2); and (ii) the compensation given by the reported party to the victim, can be in the form of returning goods, compensating for losses, replacing costs, and/or damage caused (Perpolri 8/2021 Ps.6 Paragraph 3), the implementation of which is proven by a statement letter. according to the agreement with the victim (Perpolri 8/2021 Ps.6 Paragraph 4).

In handling criminal acts based on restorative justice, it is obligatory to fulfill:

1. General Requirements (Perpolri 8/2021 Ps.4)
   a) Material Requirements (Perpolri 8/2021 Ps.5)
   b) Formal Requirements (Perpolri 8/2021 Ps.6)
2. Special Requirements (Perpolri 8/2021 Ps.7)
   a) Information and Electronic Transactions;
   b) Drugs; and
   c) Traffic.

General requirements for handling criminal acts based on restorative justice, which consist of material and formal requirements generally applicable to all settlements of criminal acts except for drug crimes, while the special requirements are additional requirements in addition to the general requirements, which apply specifically to (a) information crimes and electronic transactions; (b) drug crimes; and (c) traffic crime. The author will not discuss further the specific (additional) requirements for handling criminal acts based on restorative justice for criminal acts of information and electronic transactions, drug crimes, and traffic crimes (Perpolri 8/2021 Ps.8, Ps.9, Ps.10).

**Table 7.** Requirements of Restorative Justice

| **General Requirements (Perpolri 8/2021 Ps.3 Paragraph 1a & 2)** | | **Special Requirements (Perpolri 8/2021 Ps.3 Paragraph 1b & 3)** |
|---|---|---|
| **Material Requirements** (Perpolri 8/2021 Ps.5) | **Formal Requirements** (Perpolri 8/2021 Ps. 6) | Namely additional requirements for criminal acts (Perpolri 8/2021 Ps.7) |
| a. does not cause unrest and/or rejection from the public; | a. reconciliation from both parties, except for drug crimes (proven by a reconciliation agreement letter and signed by the parties); and | a. information and electronic transactions; |
| b. does not result in social conflict; | b. fulfilment of the rights of victims and responsibilities of perpetrators, except for drug crimes form of:<br>i. return of goods,<br>ii. compensate for the loss,<br>iii. compensate the costs incurred as a result of the crime; and/or<br>iv. compensate for the damage caused by the crime. (as evidenced by a statement letter according to the agreement signed by the victim) | b. drugs; |

Material requirements are easy to fulfill considering (a) the limited number of parties involved in criminal acts; (b) in the context of criminal acts of fraud and embezzlement, it is private; (c) the complainant and the reported party have an interest to achieve reconciliation. The only thing that can hinder the application of restorative justice in criminal acts of fraud and embezzlement is if the reported/suspect is a recidivist perpetrator or has been found guilty of committing a crime based on a court decision that has permanent legal force.

The main challenge is actually fulfilling the formal requirements, namely (a) reconciliation negotiations (reconciliation agreement letter) and (b) payment of compensation (fulfillment of the rights of victims and responsibilities of perpetrators). This is the main key that must be achieved and fulfilled if the parties want to apply restorative justice as a win-win solution to the existing problems.

The complainant wants the account receivable claim to be paid in full, while the reported wants the police report to end immediately and not to be arrested, detained, and sent to prison. Judging from the criminal privileges, the complainant has control to withdraw the police report, and the police can use their authority to arrest and detain suspects. These are the 2 privileges as complainant's bargaining power to "force" the reported party to comply with the complainant's demands. In reconciliation negotiations, generally the reported party will try to bargain lower than the complainant's demands. Here, the main challenge in the reconciliation negotiation process is to find common ground that can still be accepted by the complainant and the reported party.

In the negotiation process, there are several factors that determine the success or failure of the complainant and the reported party to reach reconciliation, namely: (a) does the reported party have the ability to pay compensation to the complainant? (i) If the reported party does not have the ability to pay compensation to the complainant, the term is that the reported party surrenders and inevitably must be prepared to follow the ongoing criminal proceedings; (ii) If the reported party has the ability to pay compensation to the complainant, it is necessary to optimize negotiation efforts in order to find common ground for numerical problems; (b) Does the reported person appear psychologically afraid in facing the risk of arrest, detention, and sentencing? (i) If the reported party looks psychologically afraid, it is likely that the reported party will fulfill the complainant's demands or at least approach the complainant's demands; (ii) If the reported party appears to be fearless and calm in the face of the risk of arrest, detention, and sentencing, then this is a situation where reconciliation negotiations will be very challenging. Not to mention if it turns out that the reported party does not have the ability to pay and is ready to “go to jail”, and in that case the complainant may be confused because the initial purpose of reporting to the police was due to economic motives, wanting to get payment. If in such case the reported party undertakes to only pay half of the compensation to the complainant, then the complainant whose initial purpose of reporting to the police is an economic motive will be "forced" to lower his claim and accept the reported party's offer and sign it in a reconciliation agreement letter, or the remainder can be made a debt acknowledgment agreement with the agreed method of payment, but the consequence is that if there is a dispute over the remaining payment, the dispute settlement becomes a civil matter (there is no longer a criminal element).

The format of Reconciliation Agreement is attached in Perpolri 8/2021 (Perpolri 8/2021 Ps.6 Paragraph 5), which contains the following structure and description: (a) kopstuk, which includes the name of the institution/agency of the National Police in the upper left corner on the first page as a guide for the agency that issued the official document in question; (b) title: “Reconciliation Agreement Letter”; (c) the initial sentence

containing the day, date, month, and year of the signing of the reconciliation agreement or settlement agreement; (d) comparison of the parties, the complainant and the reported party; (e) a description contents agreement, namely: (i) an apology (or mutual forgiveness); (ii) ability to indemnify; (iii) promise not to repeat the act again; (iv) will not sue each other legally in the future; (v) other agreements between the complainant and the reported party; (f) identity and signature of (at least) 2 witnesses; (g) the signature complainant and the reported party; (h) know the officer's name, rank/NRP, and signature.

## V. Conclusion

From this research, the author concludes 2 important things, i.e : (1) there are privileges in resolving disputes using criminal approach, in particular, the reporter/complainant will get leverage to increase his/her bargaining position in "*forcing*" the reported party to fulfill his/her claim demands as necessary "*if the reported party want to reconcile*" before the reporter/complainant withdraw the police report. The shifting in the criminal justice system in Indonesia from the *"retributive justice"* to *"restorative justice"*, makes it possible to resolve criminal acts amicably between the reporter/complainant and the reported party. In resolving disputes using a criminal approach, there will be no execution problems and the time for criminal proceedings is relatively faster, this feature does not exist in civil litigation proceedings. (2) From the perspective of the police, the existence of disciplinary rules (PP 2/2003) and code of ethics (Perkapolri 14/2011) help in maintaining the dignity of the Police to remain objective and not to become an extension of the reporting party in suppressing the reported party; although in a broader sense it is possible that the reporter puts forward a criminal approach by utilizing the authority of the investigating police to make efforts to forcefully arrest and detain the suspects. The principle of restorative justice clearly prioritizes a just settlement through reconciliation. On the one hand, the reporter is happy to achieve his/her goal in the police report, on the other hand the reported party can also be "relieved" avoid being punished, and from the police side it is also very helpful to reduce the pile of cases, so through *"restorative justice"* approach all are happy.

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