

The Nature of Settlement of Land Crimes Through Restorative Justice In The South Sulawesi Regional Police

Agus Haerul¹, Sufirman Rahman², Syahrudin Nawi² & Zainuddin²

¹Doctor of Law, Universitas Muslim Indonesia

²Faculty of Law, Universitas Muslim Indonesia

ABSTRACT

The purpose of this study is to analyze the settlement of land crimes through restorative justice in the South Sulawesi Regional Police. The type of research that will be conducted is descriptive research with a combination of normative legal research. The results of the study indicate that the settlement of land crimes through restorative justice in the South Sulawesi Regional Police is essentially an implementation of police discretion, realizing peace between the parties and accelerating the principle of simple, fast and low-cost justice. Settlement of land crimes through restorative justice in the South Sulawesi Regional Police is less effective because there are still many cases of land crimes that continue to be pro-justice.

Keywords: Land; Justice; resort

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I. Introduction

The problem of natural resources, especially concerning land, is then emphasized in Article 33 Paragraph (3) of the 1945 Constitution. This article in principle provides a legal basis that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest benefit of the people. Furthermore, the land is regulated in the Basic Agrarian Law (UUPA No. 5 of 1960), in Article 2 paragraph (1) of the BAL which states that "Earth, water and space, including natural resources therein, are at the highest level controlled by the state as an organization of all power. people".

Based on this, the state as the governing body over the earth, water, space and natural resources contained therein has the authority to regulate to achieve the greatest prosperity for the Indonesian people. The purpose of Article 2 paragraph (1) of the UUPA is that the state has the power to regulate land owned by a person or legal entity or free land that is not owned by a person or legal entity will be directly controlled by the state.

The Basic Agrarian Law further states that the state determines the types of land rights granted to a person or legal entity. Therefore, every holder of land rights will be released from state control rights because national interests are above the interests of individuals or groups, although that does not mean that individual or group interests can be sacrificed for reasons of public interest.

Various conflicts of interest indicate the uncertainty of the relationship of control between humans and land, while that certainty is fundamental to developing their lives and livelihoods, therefore, one of the essential certainties is the legal certainty of land ownership. Legal certainty will be fulfilled if there are no more doubts and worries about the ownership of the land, whether it is a belief from himself or the recognition of other parties.

The more advanced the people's economy and the national economy, the greater the need for legal certainty in the land sector. The longer the land, the more people are involved in economic problems such as buying and selling land, and land as collateral for credit at the bank. In everyday life, land rights certificates often become disputes and even go to court. This arises because the land has a very important function in people's lives, which makes people try to acquire land in various ways, even one of them is by taking other people's land.

The land conflict itself started since there were differences in interests or differences in perceptions regarding the status of land between one person and another, including legal entities. Land disputes can be found anywhere and in any country including Indonesia, these land disputes continue to increase along with the increasing human need for land.

Conflicts that occur in the land sector can lead to prolonged conflicts between the disputing community members, and even their heirs, which can cause many victims. It all started with questions about who was more entitled to the land, so the parties were competing to prove that they had more rights to the land.

Land dispute cases are a juridical area of the agrarian sector and therefore become part of civil procedural law. However, it is undeniable that in the process of violating the civil law, it is often found that there are criminal violations committed by people related to these legal issues. Various criminal acts that occur in the land sector are also often found in the jurisdiction of the South Sulawesi Regional Police.

There are various ways to resolve land crimes, one of which is a restorative justice approach. Land dispute handling carried out by law enforcement officers, especially the National Police in the framework of enforcing criminal law with a restorative justice approach, offers different views and approaches in understanding and handling a crime as a condition for the existence of certain conditions that place restorative justice as the basic value used in responding to a crime. criminal case.

The National Police as law enforcers as regulated in Article 30 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia (UUD NRI) states "The State Police of the Republic of Indonesia as a state instrument that maintains public security and order must protect, protect, serve the community, and enforce the law"

While in Article 2 of Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia, states that the function of the Police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, protection and service to the community. The Indonesian National Police as law enforcers of course has the authority to enforce the law.

Settlement of land crimes in the Indonesian National Police through a restorative justice approach is based on Indonesian Police Regulation No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

The facts on the ground are that various land crimes have occurred in the community, such as The Regional Police (Polda) of South Sulawesi (Sulsel) formed a special team to eradicate the land mafia. The formation of this task force is in the midst of a lawsuit against state-owned assets, especially those controlled by State-Owned Enterprises (BUMN), including those owned by PT Pelindo, PT PLN, Toll Roads, Al Markaz Mosque, and Hasanuddin University. Its value is estimated at around IDR 1 trillion.

Then the case of a land dispute between the heirs of Hadia Binti Lebu and Tasman located in Mannyioi Hamlet, Tamannyeleng Village, Barombong District, Gowa Regency is now entering the legal process at the South Sulawesi Regional Police. Tasman was officially reported by the assistant to the heirs of Hadia Binti Lebu by the Non-Governmental Organization for Investigation of the Transparency of the Indonesian Apparatus (NGO INTAI) to the South Sulawesi Regional Police (Polda Sulsel) with Number: 037/LSM-INTAI/PST/X/2021.

II. Research Methods

The type of research used in this study is empirical law (*non-doctrinal*) by observing the implementation of the settlement of land crimes through restorative justice in the South Sulawesi Regional Police. This research was conducted in the Legal Area of the South Sulawesi Regional Police and specifically will be selected and determined four districts/cities, each as a representative representation of the 24 districts/cities in South Sulawesi, namely the South Sulawesi Police, Wajo Police, Bulukumba Police, Maros Police, and Polres Tana Toraja. The five locations were chosen with rational and objective considerations and reasons that the five, in addition to the representation of district/city representation in South Sulawesi, have also made efforts for restorative justice through mediation or deliberation in the settlement of land crimes.

III. Discussion

The Nature of Settlement of Land Crimes Through Restorative Justice in the Regional Police of South Sulawesi

1. Implementation of Police Discretion

The police are street law enforcement officers who directly deal with the community. The role of the police is generally known as the maintenance of security and public order as well as law enforcement officers in the sentencing process. In carrying out their daily duties, the police always chat and have direct contact with the community as the object of policing duties, meaning that wherever there is a community there is a police officer on duty to maintain order and security in the community from all forms of crime ranging from anticipation or prevention to taking action against a crime. crime.^[1]

The function of the Police according to Article 2 of Law no. 2 of 2002 is "one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community." The duties or roles of the police universally include: (a) *to serve to protect*; (b) *public servant* (protection, protection and service); (c) *maintain security & public order* (maintain security and order); (d) *law enforcement agency/officer* (law enforcement/investigator); and (e) *peacekeeping official*.^[2]

In the context of law enforcement, the Police have the task of investigating a criminal case which is the implementation of the function of the Police and the mandate of Article 6 paragraph (1) of Law no. 8 of 1981

concerning the Criminal Procedure Code. However, the implementation of investigations in uncovering a criminal case in the sub-system of an investigation by the Police is not always easy to do.^[3]

In a formal juridical manner, discretionary actions carried out by police investigators are regulated in the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as Law No. 8 of 1981). Based on Article 7 paragraph (1) letter j of Law no. 8 of 1981 stipulates that "Investigators ... because of their obligations have the authority to take other actions according to the law and are responsible."

The concept of Police Discretion is carried out in Article 18 of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, which regulates:

(1) In the public interest, officers of the State Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their judgment

(2) The implementation of the provisions as referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations, as well as the Professional Code of Ethics of the State Police of the Republic of Indonesia

Article 18 paragraph (1) of Law no. 2 of 2002, is an authority that comes from the principle of general police obligations (*plichtmatigheidsbeginsel*), which is a principle that authorizes the police apparatus to act or not to take any action based on their judgment in the context of their obligations to maintain, maintain order and maintain public security. Such authority is known as "police discretion", whose legitimacy is based on consideration of its need to carry out its duties and obligations, and this depends on its subjective ability as an officer.

By the Regulation of the State Police of the Republic of Indonesia, Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, the philosophy built on restorative justice can be seen in the Preamble section considering the letter a, that the State Police of the Republic of Indonesia needs to realise the settlement of criminal acts by prioritizing justice. Restorative therapy that emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not criminally oriented is a legal necessity of the community.

The implementation of restorative justice by police investigators certainly has its pattern and form which is influenced by the circumstances and situation of the case, social and economic conditions as well as local culture as well as the conditions and legal situation experienced by a police investigator. As is the case with the settlement of criminal cases that are settled according to custom, whose customary law status is very strong at the time of the investigation. Such as cases of rape, taking women away, theft, molestation, fraud, embezzlement, beatings and adultery.

The steps taken by police investigators, in this case, are to supervise and coordinate and monitor the course of the settlement of a criminal case which aims to achieve aspects of justice and benefits in addition to aspects of legal certainty that avoid sanctions that can exceed the limits of human rights and injury. from the law itself to human values.^[4]

Some of the benefits that can be obtained from the application of restorative justice in the settlement of criminal cases at the investigation stage are as follows:

- 1) Does not cause accumulation of cases;
- 2) Cases are resolved with a fast, simple process and of course, the costs are also low because there is no need to go through several stages in the criminal justice process;
- 3) Very effective in reducing overcapacity in correctional institutions;
- 4) Avoid prosecution/pretrial lawsuits or compensation or rehabilitation, because at the investigation level there is no coercive effort made by the police;
- 5) Reflect a sense of justice in society. Restorative justice that is applied in resolving cases at the investigation stage can resolve conflicts that occur between perpetrators, victims and the community so that justice can be felt directly;
- 6) Support the creation of a safe and conducive public order and security situation. Settlement of cases through restorative justice carried out by the police as a preventive effort to prevent the emergence of criminal acts and disturbances of public order runs more optimally;
- 7) Opening the widest possible access to the rights of victims and perpetrators, because all litigants are directly involved in the settlement of cases;
- 8) Avoid the practice of corruption, collusion and nepotism by law enforcement officers because the case is quite finished at the investigation stage by the police, so as not to burden other law enforcement officers;
- 9) Increase public confidence in the police institution. Settlement of criminal cases at the investigation stage by applying restorative justice involving perpetrators, victims and the community can increase public confidence that the police can resolve cases that occur by providing justice and legal certainty;
- 10) Preventing vigilante action by the community;

11) Preventing the occurrence of a greater crime due to the perpetrator's dissatisfaction with the sentence he received;

The implementation of restorative justice in cases of land crimes handled by the Police is part of the discretion of the police. Crime in the land sector is a criminal offence complaint. Complaint offences occur when there are complaints or reports from people who are victims of criminal acts. The complaint offence can be withdrawn if the complainant withdraws his report, for example, because there is a peace agreement or peace agreement which is known by the investigator when it has entered the investigation stage. Crimes in the land sector handled by the Police in carrying out their duties recognise the term discretion, power or authority exercised by law based on considerations and beliefs and emphasize moral considerations rather than legal considerations.

Discretion involves making decisions that are not bound by law, where personal judgment also plays a role. Police discretion is an authority regarding the making of a decision under certain conditions based on the personal considerations and beliefs of a member of the police force.^[5]

Through this policy, the police are given the authority to explore the values that exist in society in terms of conducting investigations, whether this case can be resolved at the first stage in the judicial system, namely investigation, or should it be continued and examined at the prosecution stage. However, this discretion is often used by the police because of their lack of knowledge and fear of positive law, and the police are afraid of the judgment of ordinary people who think that this police discretion is an illegal event which is a trick on the part of the police to take advantage of the public - litigants. Whereas in the practice of examining criminal cases, the initial idea for the emergence of discretion comes more from the litigants, especially the victims^[6]

The Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning regulates handling guidelines that meet material requirements, as follows:

- a) Does not cause public unrest and / community rejection;
- b) Does not impact social conflict;
- c) does not have the potential to divide the nation;
- d) not radicalism and separatism;
- e) is not a repeat offender based on a Court Decision; and
- f) not a crime against terrorism, a crime against state security, a crime against corruption and a crime against people's lives.

Meanwhile, the formal requirements are as follows:

- a) Letter of request for reconciliation of both parties (rapporteur and reporter);
- b) peace from both parties, except for Drug Crimes; and
- c) fulfilment of the rights of victims and responsibilities of perpetrators, except for drug crimes.

According to Peter C. Kratoski in Marlina, there are three types of concepts for implementing the application of restorative justice programs, namely:^[7]

1. The implementation of social control (*social control orientation*), namely law enforcement officers hand over the perpetrators in the responsibility of supervision or observation of the community, with obedience to the approval or warning given. The perpetrator accepts responsibility for his actions and is not expected by the community to give the perpetrator a second chance.
2. Social services by the community to actors (*social service orientation*), namely carrying out functions to supervise, interfere, improve and provide services to perpetrators and their families. The community can interfere with the perpetrator's family to provide repairs or services.
3. Towards a restorative justice process or negotiation (*balanced or restorative justice orientation*), namely protecting the community, giving the opportunity for the perpetrator to be directly responsible to the victim and the community by making a mutual agreement between the victim, the perpetrator and the community. In practice, all relevant parties are brought together to reach an agreement on actions for the perpetrators.

2. Realizing the Peace of the Parties

Restorative justice is carried out by taking the peace efforts offered by the Investigator to the Victims and Suspects without pressure, coercion or intimidation. Peace efforts are carried out at the stage of investigation and investigation. Peace efforts continue until a peace agreement is agreed upon between the two parties.

Peace between victims and perpetrators of criminal acts has an important role as a means of reforming criminal law. Peace in customs and customary law (Indonesia) is not limited to civil disputes, peace is also common in criminal acts (cases). It is not uncommon for a criminal act to be resolved amicably. In the past, the important role of conciliation was carried out by traditional leaders or customary heads, heads of clans or heads of relatives.^[8]

In various principles and models of the restorative justice approach, the dialogue process between the perpetrator and the victim is the basic capital and the most important part of implementing this justice. Direct

dialogue between the perpetrator and the victim allows the victim to express what she feels and expresses hopes that the rights and desires of a criminal case will be fulfilled. Through dialogue, the perpetrator is also expected to be moved to correct himself, realize his mistake and accept responsibility as a consequence of a crime committed with full awareness. From this dialogue process, the community can also participate in realizing the results of the agreement and monitoring its implementation. Therefore, restorative justice also known as case settled through mediation (penal mediation)^[9].

The handling of criminal cases with a restorative justice approach and penal mediation is not the same, although the two are difficult to distinguish, because the role of the police in handling criminal cases with a restorative justice approach is only as a facilitator, not as a mediator, while in penal mediation the police apparatus should be able to act as a mediator. . Facilitators and mediators of course also cannot be equated, because according to Denny Boy Cochran, it is said that a facilitator is someone who helps a group of people to understand common goals/achievements and helps to plan efforts that can be made to achieve goals without having a special interest in the discussion process. , and the main task of the facilitator is to help everyone to be able to express opinions, and thoughts and do their best in a meeting or discussion, while the definition of a mediator is based on Article 1 point 2 of the Regulation of the Supreme Court Number 1 of 2016, is a judge or other party who has a certificate of mediator as a neutral party who assists the parties in the negotiation process to find various possible dispute resolutions without resorting to breaking or imposing a settlement.^[10]

However, the implementation of restorative justice is not only facilitated by the police but also through mediation. Therefore, the mediation carried out by investigators in the Police is basically penal, namely the settlement of criminal cases outside the procedure with the aim of not continuing the prosecution if an agreement is reached. According to Mark William Baker, penal mediation is "a process of bringing victims and offenders together to reach a mutual agreement regarding restitution would become the norm.

Penal mediation prioritizes the interests of the perpetrators of the crime as well as the interests of the victims, to achieve a *win-win solution* that benefits the perpetrators of the crime. criminal justice and its victims. In penal mediation, victims are met directly with the perpetrators of criminal acts and can express their demands to produce peace between the parties. Penal mediation is carried out transparently so that it can reduce the dirty game that often occurs in the traditional criminal justice process. Given the many advantages that exist in penal mediation, as has been practised in several countries, requires an effort in the form of studies to apply penal mediation in the Indonesian criminal justice process as part of the criminal justice system Indonesia.^[11]

[According to Mudzakkir, 7 cases are resolved through penal mediation, namely violations of criminal law:

- 1) category of complaint offence, both absolute and relative complaints;
- 2) categories according to Article 80 of the Criminal Code, payment of compensation;
- 3) the category of "violation", not "crime", which is only punishable by a fine;
- 4) criminal acts in the field of administrative law that place criminal sanctions as the *ultimum remedium*;
- 5) light/light category and law enforcement officers use their authority to exercise discretion;
- 6) ordinary people who are terminated or not processed by the Attorney General in court (deponirs) by their legal authority;
- 7) categories of violations of criminal law exist^[12]

mediation is developed from ideas and working principles, namely as follows^[13]:

- 1) Conflict handling
The mediator has the task of making the parties involved in the dialogue/communication process. This is based on the idea that crime has caused interpersonal conflict. This conflict will be addressed by the process of dialogue (mediation).
- 2) Process Oriented
In penal mediation, it is more oriented toward the quality of the dialogue process than the results. This dialogue process makes the perpetrator aware of the mistakes he has made, the needs of the conflict are resolved, and the victim calms from fear.
- 3) Informal process
Penal mediation is an informal process that is not rigid, not bureaucratic, and avoids a strict legal process.
- 4) There is active and autonomous participation of the parties
The parties, namely the perpetrator and the victim, are not seen as objects of criminal law procedures, but rather as subjects who have personal responsibility and an ability to act. It is hoped that they will do something of their own accord.

According to Bonarsius Saragih, there are 4 (four) main values that must be considered by an investigator who acts as a mediator to apply the restorative justice approach in the settlement of criminal cases, namely:

- 1) *Encounter* (meeting each other), which creates opportunities for the parties involved and has the intention to hold meetings to discuss problems that have occurred and after the incident.
- 2) *Amends* (remedies), where it is hoped that the perpetrator will take steps to repair the losses that have occurred as a result of his actions.

- 3) *Reintegration* (rejoining the community), namely looking for steps to restore the parties as a whole to contribute to the community; and
- 4) *Inclusion* (open), which provides opportunities for all relevant parties to participate in handling the problem.^[14]

Penal mediation is also a form of exception to the imposition of punishment, where before penal mediation it can be ascertained that the settlement of criminal cases will end in sentencing. If viewed from the contemporary philosophy of punishment, penal mediation is a punishment theory based on the just desert principle, which means the imposition of punishment based on fair rewards. Where legal events that make other people (victims) suffer both material and non-material losses can be healed and reconciled. In this principle, victims get new rights, namely in the form of participation in the process to protect the interests of victims, both in financial and psychological restitution without violating the interests of judges, defendants, and prosecutors. So the principle of just desert provides an opportunity for the Defendant to reconcile with the victim. Because criminal justice aims to protect and improve human dignity, both for victims of crime, perpetrators, and society as a whole.^[15]

Fulfilment of these material and formal requirements, investigators have the right to apply mediation as an effort to realize restorative justice in a crime that does not cause human loss or loss of a person's life, mediation can be sought to resolve the case. Juridically the object that becomes the element of a crime in the land sector is an object or object in the form of land. For this reason, investigators seek mediation against criminal acts in the land sector because they meet formal and material requirements, namely the type of general crime and the loss is material (goods and/or objects).^[16]

To achieve restorative justice, the police in this case apply mediation to the settlement of criminal cases of theft based on Crimes based restorative *Justice*. Not only does the Police apply mediation to all criminal acts, but in criminal acts of theft, mediation is carried out based on the reasons described above by considering the fulfilment of justice for the parties involved. Investigators, in this case, have the right to stop cases based on Police Regulation Number 8 of 2021.

Sociologically, seeing the condition of the perpetrator in the crime of theft being able to recover losses and fulfilling the agreement contained in the results of the deliberation is a factor that convinces investigators to terminate the case based on restorative justice. The presence of Police Regulation Number 8 of 2021, in this case, has provided an opportunity for victims to regain their full state before the crime occurred and provide a sense of deterrence to perpetrators and prevent perpetrators from depriving themselves of liberty.

Police Regulation Number 8 of 2021, in this case, is a medium to realize the interests protected by victims more deeply. This is described in the application of restorative justice related to the settlement of criminal cases from the aspect of fulfilling justice to the parties. Psychologically, the occurrence of a crime does not only cause material losses to the victim but indirectly psychologically the victim is also attacked. The presence of Police Regulation Number 8 of 2021 is expected to provide opportunities for victims to minimize the psychological impact of a crime. Settlement of cases by mediation can be interpreted as not requiring a time-consuming process, therefore while still paying attention to legal certainty regarding mediation arrangements in Polri Regulation Number 8 of 2021, victims do not need to go through the ranks of criminal justice to fulfil their rights as a result of a crime.^[17]

Steps for resolving criminal cases, especially crimes in the land sector, a restorative justice approach that brings together perpetrators and victims of criminal acts directly in the form of peace, can change the perspective of criminal law which has been known to be static in every conflict resolution process. and fixed and formal procedures. By using a restorative justice approach in every settlement of criminal cases, especially crimes in the land sector at the investigation level, the formal perspective of criminal law can be changed to a humanistic criminal law. Because in resolving criminal cases with a restorative justice approach, the main focus is not on retaliation for the perpetrator's actions, but on efforts to resolve conflicts, healing and peace which in turn can prosper the community. The meeting between the perpetrator and the victim of the crime of embezzlement aims to repair the damage or loss, both to the victim, the environment and the wider community. Several things that should be considered as the basis/reason for determining the policy of using penal mediation in the settlement of criminal cases can be stated as follows^[18] :

- 1) Before making a policy to use the means of penal mediation, law enforcement must be guided by the principle of legality that an action or deed must be based on the law. Thus, based on the current criminal justice system based on the Criminal Procedure Code, it is clear that there is no legal basis for penal mediation so it cannot be applied in the settlement of criminal cases in general, especially in the settlement of minor criminal cases. To legalize penal mediation in the criminal justice system, it is necessary to first examine the construction of legal politics in making policies to formulate the concept of penal mediation which will be outlined in normative rules generally accepted in society. In this case, legislative policymakers need to provide a firm formulation regarding the provisions of penal mediation. So that in the future, cases of minor crimes or crimes whose effects or economic losses or social losses are relatively

small or not too large already have a legal umbrella as the restorative justice process applied to the juvenile justice system.

- 2) In determining policies to formulate penal mediation in the criminal justice system in Indonesia, it is necessary to determine the criteria for criminal acts that can be resolved through penal mediation.

IV. Conclusion

The settlement of land crimes through restorative justice in the South Sulawesi Regional Police is essentially an implementation of police discretion, realizing peace between the parties and accelerating the principle of simple, fast and low-cost justice.

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