

Restorative Justice: An Approach in the Settlement of Land Crimes in the Indonesian National Police

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ABSTRACT

This study examines the use of restorative justice in dealing with land crimes at Police level. Land disputes that were originally civil often turn criminal. Various crimes on land are often under the jurisdiction of the South Sulawesi Regional Police. This study aims to identify and analyze the approach of restorative justice in solving land crimes as a police discretion and the implementation of restorative justice in solving land crimes by Indonesian National Police investigators. The restorative justice approach is part of the Polices discretion to deal with land crimes. The discretion given to police organizations cannot be separated from the universal nature of police law enforcement. This approach empowers the police to explore community values in solving land crimes through restorative justice. Among other things the negotiation of peace between victims and perpetrators of crimes on earth. The application of restorative justice in dealing with crimes on land is carried out through discussions between the complainant and the reported mediated by Indonesian National Police investigators. Afterwards the record of the peace agreement was signed and the report to the police station was cancelled. The application of restorative justice to land crimes aims to restore social cohesion in society. Cohesive values of unity become fragile when legal issues are passed over to pro-justice.

Keywords: land crimes, restorative justice, settlement.

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I. INTRODUCTION

Land is one of the requirements for development in a variety of sectors. The construction of public facilities, specifically the issue of land, is an important issue in national infrastructure development activities. However, the availability of the required land is extremely limited because, in general, land rights are attached to it (Zainuddin, 2022).

The imbalance between the amount and area of land available with the increasing need for community use causes the land to be vulnerable to problems. State intervention through its institutions in the land law order becomes inevitable. The amount and area of land that is not balanced with the needs of the community will give birth to a competition between fellow humans to acquire land. In addition, due to the many functions and benefits but the limited availability of land in supporting human life, there are many land cases that arise in each community in different forms (Wirawan, 2021).

Land disputes are in fact part of agricultural sector law and therefore part of civil procedural law. However, it cannot be denied that many people commit criminal acts related to these legal issues in the process of violating civil law. Various criminal activities in the land sector also often fall under the jurisdiction of the South Sulawesi Regional Police.

A large number of facts show that various land crimes are happening in society. The Regional Police of South Sulawesi assembles a task force to root out the Land Mafia. The task force was created when lawsuits were brought against state assets especially those controlled by state-owned enterprises (BUMN). These include PT. Indonesia Port, PT. State Electricity Company (PLN), Al Markaz Mosque, Toll Road and Hasanuddin University worth an estimated IDR 1 trillion. There is also a land dispute case between Hadia Binti Lebu and Tasman heirs in Mannyioi, Gowa Regency. The case has now entered legal proceedings at the South Sulawesi Regional Police Station. Deputy Public Prosecutor Hadia Binti Lebu of the NGO INTAI (Indonesian Government Transparency Investigative Institute) officially reported Tasman to the South Sulawesi Regional Police case number: 037/LSM-INTAI/PST/X/2021.

A series of facts in the field prove that various land crimes occur in the community. The Regional Police (Polda) of South Sulawesi (Sulsel) formed a special team to eradicate the land mafia. The formation of this task force was carried out in the midst of a lawsuit against state-owned assets, especially those controlled by State-Owned Enterprises (BUMN). Among them belong to PT Pelindo, PT PLN, Toll Roads, Al Markaz Mosque, and Hasanuddin University, whose value is estimated at Rp 1 trillion. There

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

Several previous studies on land disputes, such as Vani Wirawan's (2021) research, indicate that the reconstruction of legal politics in order to resolve land disputes and land conflicts in the future administrative and bureaucratic realm requires a review of the implementation of land law politics regarding State Controlling Rights (HMN) and various laws and regulations related to land (Wirawan, 2021).

Nia Karnati (2016) in her research has stated that land disputes of a civil nature can be settled out of court through cross-procedural or arbitral arbitration. A memorandum of agreement prepared by an arbitrator in an arbitration proceeding specifically designed to bind the parties to the arbitration proceeding is rendered final and binding in arbitration. Arbitration can therefore be a means of dispute resolution that meets the principles of legal certainty, the principles of adequacy and the principles of fairness. Arbitration damages are reinforced by final and binding arbitration in the settlement process (Kurniati, 2016).

Kadek Oldy Rosy *et al.* (2020) in their research concluded that the application of mediation in land disputes in Setra Karang Rumpit had been carried out at the time of the trial but still experienced several obstacles, so that the mediation process did not run smoothly. Obstacles in the mediation process for the Setra Karang Rumpit Land in Temukus Village, Banjar District, Buleleng Regency, which was carried out at the Singaraja District Court Class 1B because the defendant was not willing to hand over the Setra Karang Rumpit Land to the plaintiff. Residents who were also present at the Singaraja District Court even tended to be anarchists and interfered with the mediation between the disputing parties (Rosy *et al.*, 2020).

According to the above research findings, no one has investigated land crimes whose resolution is handled by the police using restorative justice. This study offers a new perspective that land crimes dealt with by the police can be addressed through a restorative justice approach. Therefore the question of this study is the use of restorative justice methods by the South Sulawesi Regional Police in solving land crimes.

II. METHOD

It is an empirical legal study that uses empirical facts derived from human behavior such as verbal behavior obtained through interviews and actual behavior observed through direct observation. The approach of this research is sociological juridical, where the law is seen as the result of human interaction. In this context, it is the activity of investigators who take a restorative justice approach in the settlement of land crimes of the Indonesians National Police, case studies of South Sulawesi Regional Police. The respondents in this study were seventy-five samples selected by purposive sampling. types and sources of data using quantitative data obtained from the results of the questionnaire. In addition to quantitative data, there is also qualitative data sourced from interviews with respondents. Secondary data comes from books, journals, and other scientific publications. The data analysis technique uses a qualitative descriptive presentation.

III. THE USE OF RESTORATIVE JUSTICE IN LAND CRIME SETTLEMENT AS POLICE DISCRETION

In general, a settlement of land problems or disputes can be reached in two ways, namely by using litigation or non-litigation. Basically, these two paths aim to create justice for society in general and justice for the parties in particular. The use of one of the ways to settle cases, both litigation and non-litigation, will be largely determined by the concept and objectives of the settlement of the case to be achieved by the parties. What is no less important is the good faith of the parties to resolve the case (Flora, 2018).

Restorative justice is a new model of approach to criminal justice. Unlike traditional criminal justice systems this approach emphasizes the direct involvement of offenders and the community in solving criminal cases (Syaufi, 2020).

The application of restorative justice in the resolution of land disputes by the police is at the discretion of the police. The word discretion means power or authority under law exercised by judgment and conviction and emphasizes moral judgment rather than legal judgment. Police discretion is the power to

make decisions based on the personal judgment and opinion of a member of the police force in certain circumstances (Ramadhan, 2021).

Article 18 Paragraph 1 of the National Police of the Republic of Indonesia Law No. 2 of 2002 provides for the exercise of discretion by the police and provides that in the public interest of the officers of the National Police of the Republic of Indonesia. The authorities may act at their own discretion, followed by paragraph (2) stating “The provisions of paragraph (1) may be applied only in the most necessary circumstances in compliance with the laws and regulations as well as the rules of professional conduct of the Indonesian National Police. The explanation of Article 18 Clause (1) also states that what it means to make a decision is that Indonesian National Police members must act by taking into account the potential benefits and risks. Actions and truth are in the public interest”.

Pursuant to Law No. 2 of 2002 on the Indonesian Police Article 18 Paragraph 1 the Police Commissioner has issued Regulation No. 08 of 2021 concerning the treatment of restorative judicial offenses by the Indonesian Police. Police discipline which deals with crime based on restorative justice is a new concept of criminal law enforcement that meets society’s conventional wisdom and values as a solution while securing legal certainty. Social Justice to Provide Concern and Awareness It deals with the development of socio-legal needs to meet the sense of justice of all stakeholders and is a statement of the polices powers under Law No. 02/2002 on the Indonesian Police.

The existence of discretionary powers conferred on police agencies is inextricably linked to the broader nature of police enforcement. All major installations work well if done according to proper and professional procedures (Suhartono, Amiruddin and Pancaningrum, 2022).

This approach empowers the police to explore the values of society in the context of investigation; Should the case be disposed of at the first stage of the trial court, or should it proceed to the trial stage? But the police are often worried when they want to act discreetly. This is due to lack of awareness of positive law and concerns over the general public’s judgment of what they perceive as a ploy by the police to benefit the parties involved in the case. Even the initial idea of knowledge in the practice of investigating criminal cases comes from the litigants and not from the victims (Wagiu, 2015).

Through a restorative justice approach the police discretion used by the researchers in this case is an approach that focuses on situations that create justice and balance for crime and victims. Criminal justice mechanisms typically focus on prosecution and then transition to dialogue and mediation processes to create fair criminal justice settlement agreements. Therefore restorative justice is an instrument of justice that includes victims offenders and society (Zainuddin, 2017).

Direct dialogue between the offender and the victim enables the victim to express his feelings and express his desire that the rights and wishes of the criminal case be fulfilled. Through communication offenders are expected to realize their mistakes, to make amends and to be fully aware of their crimes and to take responsibility. Through this dialogue process the community can also participate in reaching consensus outcomes and monitoring its implementation. Hence settlement of cases through arbitration (criminal arbitration) is also known as restorative justice (Pradityo, 2016).

IV. THE APPLICATION OF RESTORATIVE JUSTICE BY POLICE INVESTIGATORS IN SOLVING LAND CRIMES

Restorative justice is a change in the criminal justice system that prioritizes justice for victims and perpetrators as well as other punishments such as social work and others. According to Bagir Manan the elements of restorative justice include the following principles: encouraging joint participation between victims and community groups in resolving incidents or criminal acts; They define victim offenders and communities as stakeholders who work together and immediately seek to find a solution that is fair to all parties (win-win solutions) (Lawalata *et al.*, 2022).

The National Police Regulation of the Republic of Indonesia Number 08 Year 2021 regulates the handling of criminal acts based on restorative justice which is used as a basic reference for resolving cases in the process of investigation and investigation of criminal acts to provide legal certainty, as stipulated in the termination of investigations (SPP-Lidik) and termination of the investigation (SP3) for reasons of law based on restorative justice. Police investigators prioritize a restorative justice approach in handling cases. Investigators must facilitate mediation between victims and perpetrators as well as parties involved in cases who wish to make peace. All cases are prioritized using a restorative justice approach, with the exception of cases that have the potential to be divisive, nuanced by SARA, radicalism, and separatism.

Based on Article 1 Number 27 of the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations, it is stated that restorative justice must involve the perpetrators, victims, and/or their families as well as related parties. This is aimed at achieving justice for all parties.

There are many requirements for resolving cases using restorative justice methods. These requirements are set forth in Articles 12 Letters A and B of Regulation No. 6 of the Indonesian Police Commissioner 2019 on Criminal Investigation and include:

- 1) The criminal act that has been resolved is a minor crime or a criminal offense that is a complaint offense, either absolute or relative.
- 2) The parties to the lawsuit (accused and victim) desire reconciliation and the outcome of these cases will not have a widespread or negative impact on people’s lives.
- 3) Reconciliatory activities must be carried out by bringing together the litigants and involving social institutions such as local community leaders.
- 4) In resolving a case attention should be paid to factors such as the intended, age, socioeconomic conditions, and the degree of loss due to family and ethnic relationships rather than recidivism.
- 5) If the action starts with a contract or obligation (leads to civil law).
- 6) Victims must withdraw their report or complaint.
- 7) If the parties to the litigation are dissatisfied after being carried out outside the court mechanism, a settlement will be carried out according to the applicable legal procedures.
- 8) If there is a repetition of a criminal act committed, a legal process must be carried out in accordance with applicable regulations and laws.

Based on the data obtained, the land crimes handled by police investigators that were successfully resolved using a restorative justice approach can be seen in the following Fig. 1:

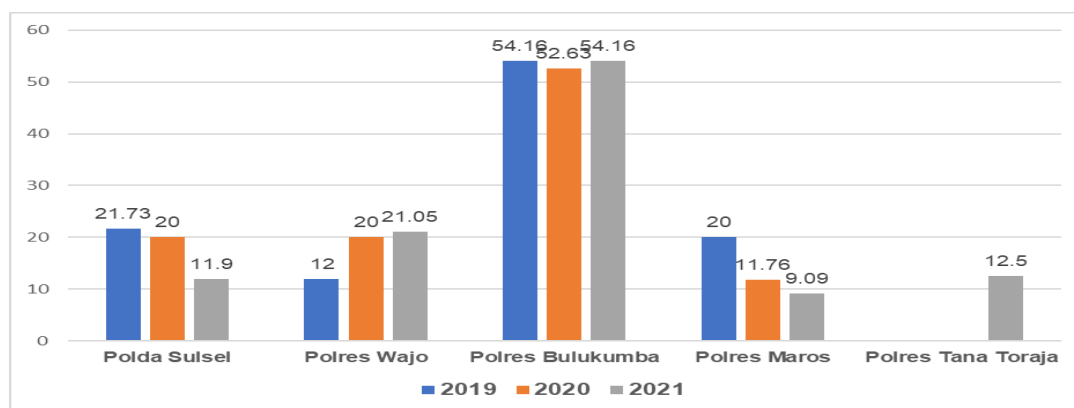


Fig. 1. Percentage of restorative justice implementation in land crimes.

Based on the above facts, it shows that cases of land crimes reported to the police in the last three years at five research locations totaled 276 reports, the most in 2021, with as many as 115 reports. According to data, in the last three years, the Bulukumba Police have managed to carry out restorative justice for land crimes in more than 50% of all reports, while the Tana Toraja Police in 2019 and 2020 have failed to carry out restorative justice.

Furthermore, the legal norms used by the investigator against the reported party to deal with land crimes carried out by restorative justice can be seen in the Fig. 2 below:

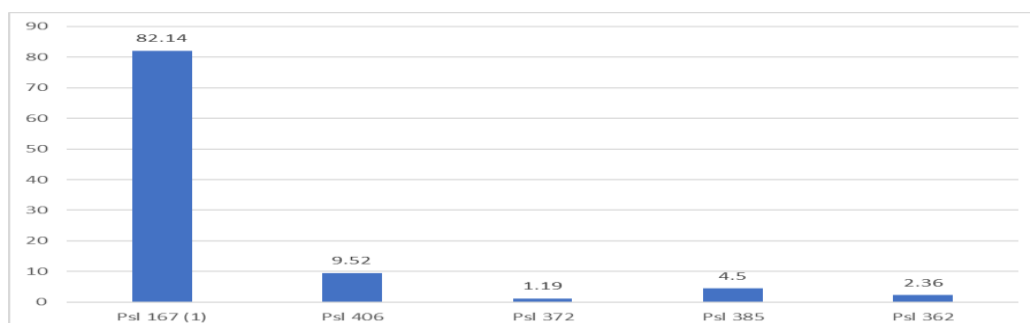


Fig. 2. Percentage of restorative justice based on legal norms.

The above empirical data show that Article 167 Paragraph (1) of the Criminal Code imposed on the reported party related to the crime of entering other people’s yards is the case with the most restorative justice (82.14%), followed by violations of Article 406 regarding vandalism (9.52%), Article 372 concerning fraud (1.19%), Article 385 concerning robbery (4.5%), and Article 362 concerning the crime of theft (2.36%).

In general the types of land crimes that have been successfully addressed by restorative justice include: (1) the crime of a person forcing their way into someone else’s house, room, or even a closed yard as

regulated in Article 167 Paragraph (1) of the Criminal Code; (2) the crime of forging letters as regulated in Article 263 of the Criminal Code; (3) the crime of falsifying authentic deeds as regulated in Article 264 of the Criminal Code; (4) the crime of ordering to enter false information into an authentic deed as regulated in Article 266, the Criminal Code; (5) the crime of theft as regulated in Article 362 of the Criminal Code; (6) the crime of embezzlement as regulated in Article 372 of the Criminal Code; (7) the criminal act of fraud as regulated in Article 378 of the Criminal Code; (8) protection of land owners from confiscation as regulated in Article 385 of the Criminal Code; (9) criminal acts of vandalism as regulated in Article 406 of the Criminal Code.

To find out the opinion of respondents regarding the success rate of restorative justice for land crimes, it can be seen in the Fig. 3 below:

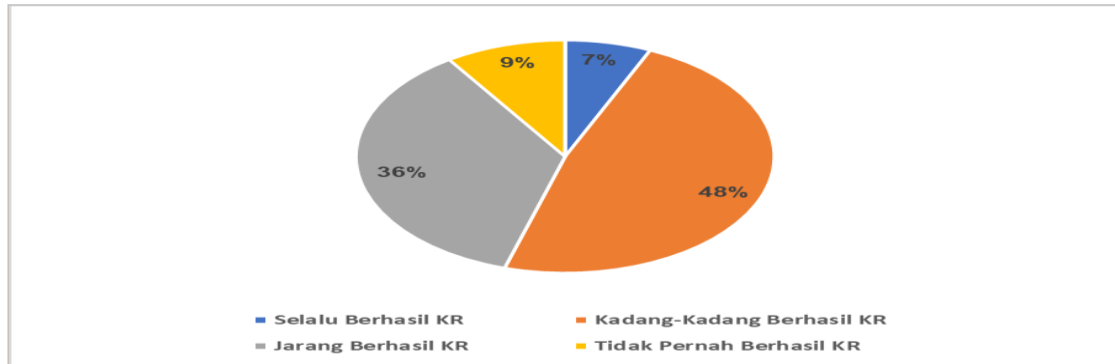


Fig. 3. Successful Implementation of Restorative Justice for Land Crimes

The data above shows that 48% of respondents stated that restorative justice was sometimes successful, 36% said it rarely worked, 9% never succeeded, and 7% said it always succeeded.

Based on the above information it is known that most of the cases registered are related to land offences at the Criminal Investigation Unit Polresta and the Directorate of General Crimes proceed to the prosecution level. This means that most land crimes are resolved through a formal criminal justice process. That is, in the settlement of land crime cases, there is a tendency to be resolved through a formal criminal justice process.

Based on research by conducting interviews with AIPDA Kamaruddin, S. Sos, and PS Head of Unit III, Bulukumba Police, the legal consequences of handling land crimes through restorative justice are in accordance with the elements of legal certainty and benefit. Legal certainty in the sense of providing certainty to the perpetrator that the crime he committed is legally declared resolved through restorative justice, while the benefit of the law is that the restorative justice provided will provide benefits for the perpetrator to realize his mistake and not commit a crime in the land sector again in the future.

Based on the data above, it is known that the number of cases of land crimes recorded at the Criminal Investigation Unit Polresta and the Directorate of General Crimes mostly proceeds to the prosecution level. This means that most land crimes are resolved through a formal criminal justice process. That is, in the settlement of land crime cases, there is a tendency to be resolved through a formal criminal justice process.

Actually, if restorative justice is successfully implemented, it can avoid social conflicts between communities, prioritize the principles of deliberation and consensus, and save the state budget. Regarding these budget savings, it must be acknowledged that the judicial process remains complex. In the internal police, there is also a process of investigation, investigation to court, and each of these stages takes a long time. If the settlement of this land crime is carried out through restorative justice in the form of peace, it will not cause the victims to incur substantial costs in the trial process in the criminal court. The settlement of land crimes by means of restorative justice will help a lot in the acceleration of the settlement of legal disputes in the land sector.

According to IPDA Wawan Hartawan, SH., Investigator of the Maros Police Criminal Investigation, the legal consequences of dealing with land crimes through restorative justice are consistent with the elements of legal certainty and benefit. Legal certainty is provided to the perpetrator in the sense that the crime he committed is legally declared resolved through restorative justice, whereas the benefit of the law is that the restorative justice provided will provide benefits for the perpetrator to realize his mistake and not commit a crime in the land sector again in the future.

The use of mediation by applying restorative justice to police institutions by investigators can basically refer to the Police Law, especially Articles 18 and 19 as described above. If it refers to the two articles, then for children who violate the law, the police can divert children from the formal justice system process, including by not making arrests. This regulation is actually sufficient to provide a strong basis for members of the police in conducting investigations to apply restorative justice as an effort to avoid the

adverse effects of the judicial system, especially in preventing the formation of careers (development/improvement) of delinquency and recidivism.

According to BRIPKA M. Nur Hidayat, Investigator of the Wajo Police Criminal Investigation Unit, the investigators attempted restorative justice with the complainant and the reported party. So far, there have been no issues with the restorative justice process's implementation. However, the majority of cases go to court because the reporting and accusing parties cannot reach an agreement. The complainant's agreement is a deciding factor in achieving restorative justice.

Based on the results of an interview with AKP Muhammad Yusuf, SH., Head of Criminal Investigation at the Bulukumba Police, that Criminal Investigation Unit investigators in their approach to restorative justice often receive suspicion from the public. The existence of an agreement between the victim/reporter and the perpetrator/reported in the police investigation process is often considered as an abuse of authority by the law enforcers. The good intentions of police investigators who handle cases with "out-of-court settlements," are often considered as "commodities." Cynical satire is often said, such as "how much money did investigators ask for?," or "how much money did the disputing or disputing party give?" (reporter with reported).

Indicators of criminal activity that can restore justice include: (1) Not all crimes, although in different countries; (2) A criminal offense that carries a penalty of not more than five years because it is more than five years of a serious crime; (3) The crime is not life/life/body threatening; (4) Criminal acts of property/property such as theft, fraud, embezzlement, forgery; (5) Criminal acts of dignity (dignity) such as defamation, slander, hate speech; and (6) Minor crimes or fines.

Theoretically, there are several advantages that can be obtained if restorative justice is carried out at the investigation stage by the police, including: (1) The police are the only law enforcement agency in the criminal justice subsystem whose network reaches the street level. Structurally the police agency is the only law enforcement agency that is closest and most accessible to the people. In this organizational structure the police are a networked law enforcement agency at the lowest level (village level); (2) The number of police officers is higher than other law enforcement agencies although it is also recognized that not every police officer is involved in dealing with criminals. Adequate staffing capacity will greatly aid in the process of resolving errors; (3) As the National Police Agency is the first law enforcement officer involved in the criminal justice process restorative justice at the police level is about providing protective measures to prevent access to the criminal justice process as early as possible. means Therefore contact with law enforcement officers can reduce the negative impact.

Some of the advantages of applying penal mediation outside the court, especially in criminal acts in the land sector, are: to reduce court congestion in judicial institutions; increased community participation in the dispute resolution process (legal decentralization) or empowerment of disputing parties; promoting access to justice in society; provide opportunities to reach conflict resolution that results in acceptable outcomes for all parties; faster resolution of cases and low costs; closed/confidential nature; a higher level of possibility to carry out the agreement, so that the relationship between the disputing parties in the future is still possible to be well established; reduce the prevalence of dirty tricks in the judiciary.

Shifting the process from a judicial process to a non-judicial process at the police level will also avoid becoming a victim of violence at the investigation level, which is often the scourge of the judicial process.

V. CONCLUSION

Restorative justice is part of the polices desire to tackle crime on the ground. The existence of empowering police agencies with discretion is inseparable from the pervasive presence of the police as a law enforcement agency. The policy empowers the police to explore the values found in the society to solve land crime through the idea of maintaining peace between victims and criminals. The implementation of restorative justice in the settlement of land crimes is carried out by deliberation between the complainant and the reported party mediated by the police investigator. This was followed by the signing of the minutes of the peace agreement and then by the withdrawal of the report to the police. The values of community togetherness become fragile when legal issues are brought to the fore in pro-justice. On the other hand, applying restorative justice to land crimes can restore societys social cohesion the implementation of restorative justice in land crimes can restore the social cohesiveness of the community.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

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