

RECONSTRUCTING LAW ENFORCEMENT IN THEFT CASES WITHIN THE POLICE FORCE BASED ON HUMAN RIGHTS PRINCIPLES

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ABSTRACT

Operationally, the Indonesian National Police (Polri) aims to implement structural, instrumental, and cultural changes. Through this approach, Polri's independence becomes a key pillar in realizing a civil society. The structural aspect involves the institution, organization, structure, and position. Instrumental changes encompass modifications in philosophy, doctrine, authority, competence, function capabilities, and technology. Meanwhile, cultural changes focus on the management of resources, operational management, and the system of community supervision, which will ultimately lead to shifts in behavior, ethics, and the culture of police services. Universally, the role of the police in society is defined as law enforcement, maintaining order, and combating crime. However, in a state with an authoritarian political system, the role of the police as law enforcers is reduced to merely being an instrument of power. As a result, the police become distanced from the people, no longer protecting or serving them, but instead operating as a tool of authority.

Keywords: Reconstruction of events, Law enforcement practices, Theft-related cases, Police operations, and the protection of Human Rights.

INTRODUCTION

Indonesia, as a rule-of-law state, is defined in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "The state of Indonesia is a state based on law." Additionally, Article 27, paragraph (1) of the 1945 Constitution further strengthens Indonesia's position as a rule-of-law state by declaring that "All citizens are equal before the law and government and must uphold the law and the government, without exception." This emphasizes that all Indonesian citizens must act in accordance with existing legal norms. Therefore, Indonesia must strive to foster an environment in which its citizens are aware of the law, leading to legal order. Legal norms are meant to be obeyed, and violations should result in sanctions. The government must ensure a safe and orderly atmosphere in society, meaning that if a citizen feels unsafe, they have the right to seek legal protection from authorities or the government. Consequently, upholding security and public order necessitates sanctions or punishment.

As we all know, law enforcement is a key effort in creating order, security, and peace in society. This includes both preventive measures and actions to address violations that disrupt societal order and fairness. It is essential to also consider the concept of legal anthropology to ensure alignment with contemporary legal frameworks. According to Soerjono Soekanto, law enforcement is the process of harmonizing values expressed in stable legal norms and behaviors to create, maintain, and preserve peaceful social relations.

When discussing law enforcement, it is important to consider the role of law enforcement officers, such as the Indonesian National Police (Polri), which plays a key role in maintaining security and public order. Therefore, Polri is expected to continue developing professionally. The 2002 Law No. 2 on the Indonesian National Police emphasizes that the police force's primary duties include protecting and preserving public order, upholding the law, safeguarding human rights, and providing services to society. The police force and society are intrinsically linked; without society, there would be no police, and without police, societal processes would not run smoothly. According to Soerjono Soekanto, "One of the functions of law, both as a norm and as a behavior, is to guide human conduct. The impact of law is not only limited to the creation of compliance but also includes the overall effect of law on behavior, whether positive or negative."

Article 4 of Law No. 2 of 2002 further consolidates the position and role of the police as a government institution tasked with maintaining public security and order, law enforcement, protection, and public service while respecting human rights. Polri's role is crucial in ensuring the safety and well-being of citizens. Without the police, the criminal code (KUHP) would remain a mere set of written norms. The work of a police officer is not just a normative job but also a culturally complex and expansive humanitarian task. In carrying out their mission, the police must not only adhere to their prescribed duties but also anticipate how those duties will be executed. The Indonesian National Police must be capable of investigating and addressing all forms of crime, including utilizing scientific and technological advancements to protect human rights.

In terms of crime prevention, Polri's role in combating theft has yielded positive results, as evidenced by their performance in carrying out their duties. Operationally, Polri has been working to implement structural, instrumental, and cultural changes. Through these efforts, Polri's independence has become a cornerstone in achieving a civil society. Structural changes involve institutional adjustments, organizational restructuring, and role clarification. Instrumental changes address philosophical, doctrinal, and competency shifts, including advancements in science and technology. Meanwhile, cultural changes focus on managing resources, operational management, and community oversight systems, which will result in shifts in conduct, ethics, and police service culture.

Globally, the police are recognized as law enforcement officers, maintainers of order, and crime fighters. However, in authoritarian political systems, the role of the police as law enforcers is often reduced to merely an instrument of power. Consequently, rather than being close to and protective of the people, the police may become distant and confrontational. In democratic nations, police forces must be transparent and not serve to defend political power. Therefore, oversight of such institutions, which possess the authority to use force, must be carried out by the people through independent bodies that ensure transparency and accountability.

Recently, various forms of theft have become widespread and are causing concern in everyday life. In some communities, people have become desensitized to violent theft, even perceiving such crimes as a necessity. Theft, as defined in Article 362 of the Indonesian Criminal Code (KUHP), consists of subjective and objective elements:

1. **Subjective element:** with the intent to unlawfully take possession of an item.
2. **Objective elements:**
 - a. The person (or anyone) who takes something.
 - b. The act of taking or removing.
 - c. The object taken (any goods).
 - d. The object is wholly or partially owned by someone else.

Theft under Article 365 KUHP, which involves violence, is considered qualified theft with aggravating circumstances. Thus, Article 365 addresses a single crime that combines theft with the use of violence against individuals. It is clear that theft, especially when accompanied by violence, violates religious, moral, ethical, and legal norms, and poses a threat to the community, the nation, and the state. From a national interest perspective, theft undermines moral standards and harms society.

The role of the police in realizing a just and prosperous society, both materially and spiritually, based on Pancasila and the 1945 Constitution, is integral to ensuring peace, order, and harmony in both national and international contexts. The police serve the public by receiving reports and complaints within 24 hours, thus directly contributing to the safety and comfort of citizens in their daily activities. The primary duties of the Indonesian National Police are outlined in Article 45 of the relevant legislation.

The desire for a peaceful and orderly society continues to drive efforts toward effective law enforcement. Proper law enforcement is expected to foster order, security, and tranquility within society, achieved through preventive, punitive, and corrective measures. Moreover, while the police are meant to protect society, the public's perception of police performance must align with their actual duties and functions. The police's role in combating crime is critical, and public awareness of the importance of adhering to the law is essential to ensure effective crime prevention and the avoidance of vigilantism, as Indonesia is a rule-of-law state.

RESEARCH METHOD

This research employs an empirical legal approach, which means that in analyzing the issues, the researcher combines legal materials (as secondary data) with primary data obtained directly from the field.

DISCUSSION

No	Before Reconstruction	After Reconstruction
1	Minor criminal offenses will be resolved amicably, and if not, they will proceed with investigation and inquiry until the court level.	Minor criminal offenses will be resolved through restorative justice, with a focus on diversion for juvenile offenses.
2	The process takes a long time and incurs high costs for each stage of the investigation.	The process becomes more efficient, reducing both time and costs, especially when minor offenses are resolved through restorative justice.

Litigation is the process of dispute resolution through legal means, serving as the ultimate recourse (*ultimum remedium*) before the court when other alternative dispute resolution methods have been unsuccessful. In litigation, the parties are positioned in opposition to one another. Thus, litigation can be described as a process of resolving disputes between parties conducted in front of a court.

Non-litigation, on the other hand, refers to dispute resolution outside the court system, often referred to as alternative dispute resolution (ADR). One method of non-litigation dispute resolution is mediation, a negotiation process aimed at reaching an agreement between the parties with the assistance of a mediator.

According to Bagir Manan, the enforcement of law in Indonesia can be described as "*communis opinio doctorum*," meaning that the current law enforcement system is considered to have failed in achieving the objectives prescribed by the law. As a result, an alternative approach to law enforcement, known as the restorative justice system, has been introduced.

The reconstruction of law enforcement through restorative justice is a new movement in the fields of victimology and criminology. It acknowledges that crime causes harm to individuals and communities and emphasizes the need to repair the harm done to the victims while allowing the parties involved to participate in the process. Therefore, restorative justice programs enable victims, offenders, and affected members of the community to engage directly in addressing the crime.

Article 1, Number 27 of the Indonesian National Police Chief Regulation Number 6 of 2019 on Criminal Investigation defines restorative justice as the resolution of criminal cases involving the offender, the victim and/or their families, and other relevant parties, aiming to achieve justice for all involved.

Guidelines for handling cases through a restorative justice approach are outlined in Circular Letter Number: SE/8/VII/2018 on the Implementation of Restorative Justice in Criminal Case Resolution in conjunction with Articles 12(a) and 12(b) of the Indonesian National Police Chief Regulation Number 6 of 2019 on Criminal Investigation. These guidelines are as follows:

Material Requirements:

1. The resolution does not cause public unrest and there is no societal rejection.
2. It does not lead to social conflict.
3. There is a statement from all involved parties expressing their consent and waiving their right to pursue legal action.
4. The principle of limitation applies:
 - a. **For the Offender:**
 1. The offender's crime is relatively minor, characterized by fault (schuld) or mens rea, particularly intentional wrongdoing (dolus or opzet), especially when the intention is the primary goal (opzet als oogmerk).
 2. The offender is not a repeat offender (recidivist).
 - b. **For the Criminal Offense in Process:**
 3. Investigation phase.
 4. Before the Submission of the Investigation Report (SPDP) to the Public Prosecutor.

Formal Requirements:

1. A letter of agreement for reconciliation from both parties (complainant and reported party).
2. A Reconciliation Statement (akte dading) and settlement of disputes between the parties (complainant and/or the complainant's family, the reported party and/or their family, and representatives from religious figures) known to the superior of the investigator.
3. An Additional Investigation Report after the dispute has been resolved through restorative justice.
4. A special case review recommendation approving the use of restorative justice in resolving the case.
5. The offender willingly accepts responsibility, compensation, or restitution without objection.
6. While all criminal offenses are eligible for restorative justice, certain crimes, such as radicalism and terrorism, cannot be addressed through this approach.

When both formal and material requirements are met, the case may be submitted for a request for reconciliation to approve a restorative justice resolution to the superior of the Police Investigator. In theft cases, if the offender is willing to take responsibility and provide restitution, a restorative justice resolution can be proposed. However, it is also important to consider other factors when submitting a restorative justice resolution, such as the type of theft committed, which falls under the category of minor theft offenses. This aligns with the Supreme Court Circular No. 2 of 2012 regarding the Resolution of Minor Criminal Offenses, Attorney General Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, and National Police Regulation No. 8 of 2021 on Handling Criminal Acts Based on Restorative Justice, which sets a minimum loss threshold of IDR 2,500,000.00.

The choice of resolving a case through restorative justice should always be prioritized when the case meets the formal and material requirements. Law enforcement officials, acting as mediators, must uphold human rights for both the offender and the victim, ensuring that the law is enforced firmly but humanely, without intimidating any party.

CONCLUSION AND SUGGESTION

Conclusion

1. Reconstruction of Law Enforcement in Theft Cases at the Police, Based on Human Rights Values

The selection of restorative justice as a resolution for cases should be prioritized when the case meets both formal and substantive requirements. Law enforcement officials, acting as mediators, must consistently uphold human rights for both the perpetrator and the victim, ensuring that enforcement remains firm yet humane and free from intimidation.

2. Obstacles in the Reconstruction of Law Enforcement in Theft Cases at the Police, Based on Human Rights Values

The lack of clear regulation regarding restorative justice in the law, combined with the low level of legal awareness among the public, presents significant challenges. Moreover, if law enforcement officials such as the police, prosecutors, and judges predominantly hold a retributive (punitive) mindset, it can hinder the progress of human rights-based law enforcement.

3. Efforts to Overcome Obstacles in the Reconstruction of Law Enforcement in Theft Cases at the Police, Based on Human Rights Values

Massive socialization efforts by law enforcement, in collaboration with stakeholders at various levels, are expected to raise public awareness regarding the legal process. Encouraging public participation in disseminating legal knowledge should continue to enhance the quality of legal understanding and increase public trust in the police institution.

B. Suggestions

1. Reconstruction of Law Enforcement in Theft Cases at the Police, Based on Human Rights Values

Effective coordination across all aspects of law enforcement, with continuous communication and collaboration, will contribute to ongoing improvement. This will optimize the system, enabling the realization of human rights-based enforcement in theft cases.

2. Obstacles in the Reconstruction of Law Enforcement in Theft Cases at the Police, Based on Human Rights Values

The perspective of law enforcement officials responsible for implementing legislation must be tightened and closely monitored. Ensuring that these officials prioritize professionalism and uphold human rights in every aspect of criminal law enforcement, particularly in theft cases, is essential. The success of law enforcement is largely determined by the

mindset and integrity of the enforcers themselves.

3. **Efforts to Overcome Obstacles in the Reconstruction of Law Enforcement in Theft Cases at the Police, Based on Human Rights Values**

Although human rights-based law enforcement through restorative justice is not a new concept, its application should be more strongly promoted. In addition to fostering a humane and non-intimidatory approach, restorative justice should become the preferred first option for law enforcement in theft-related crimes.

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