

Legal Reconstruction of the Authority of *Bhabinkamtibmas* in Settlement of Criminal Acts through *Polmas* Strategy to Realize Domestic Security Based on Restorative Justice Values

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Abstract

The research aims to analyze and discover the weaknesses of the regulatory authority of *Bhabinkamtibmas* in resolving criminal acts through the community policing strategy to realize domestic security at this time and to reconstruct the authority of *Bhabinkamtibmas* in resolving criminal acts through community policing strategies to realize domestic security based on restorative justice values using a constructivism paradigm, through direct interviews with informants empirically supported with studies literature through theoretical steps. Research Result Show that the Reconstruction of the regulatory authority of *Bhabinkamtibmas* in resolving criminal acts through a community policing strategy in order to realize domestic security based on restorative justice values can be done by reconstructing Article 15 paragraph (1) letter b of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, Article 1 number 5, Article Article 3 paragraph (1), and Article 7 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 7 of 2021 concerning Bhayangkara Building Security and Public Order, and Article 1 number 3 of the Regulation of the National Police of the Republic of Indonesia Number 1 of 2021 concerning Community Policing, which is related to the authority of *Bhabinkamtibmas* with a community policing strategy in resolving all forms of legal violations and other forms of disturbance that can disturb the community in a fair manner with a restorative and rehabilitative approach.

Keywords: Legal Reconstruction, *Bhabinkamtibmas*, Domestic Security, Justice Value.

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INTRODUCTION

In the implementation of community policing, to prevent disturbances in security and public order, it is necessary to prioritize the function of Bhayangkara as a Community Security and Order Advisor (*Bhabinkamtibmas*) as a community security and order supervisor in his/her area of duty as stated in Article 1 number 4 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 7 of 2021 concerning Bhayangkara as a Security and Order Public Advisor.

Article 2 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 7 of 2021 states that *Bhabinkamtibmas* aims to: Increase community participation, community legal awareness, and community compliance with laws and regulations; and Guarantee the maintenance of security and social

order in the village/sub-district environment and other names at the same level (Togatorop, 2022).

Bhabinkamtibmas basically carries a very strategic role and function in realizing the partnership between the National Police and the community. Partnership relationships have the opportunity to detect symptoms that cause various social ills in society. In practice, *Bhabinkamtibmas* acts as a mediator, negotiator, and facilitator during the problem-solving process.

This role does not merely involve directly using formal legal approaches and procedures, but rather through deliberation and consensus by prioritizing patterns of social norms and local customs that apply in the region. Based on the main task, *Bhabinkamtibmas* is the person who carries out community policing in villages/sub-districts, where officers are placed in

villages/sub-districts with the aim of reducing the percentage of crime in the area through the realization of their main tasks.

Bhabinkamtibmas in today's context carry the demand to create inclusive relationships with the community and services for every citizen by placing greater emphasis on a personal approach rather than a formal or procedural approach. The placement of National Police personnel as community policing officers is a permanent assignment and lasts for quite a long time, so that in these conditions the personnel are able to build personal relationships and partnerships with community members in the assigned area.

The authority and responsibility of *Bhabinkamtibmas* and the Police and Community Partnership Forum (FKPM) are independent and independent. This means that in this context, there is a kind of independence of decision-making in solving problems to resolve conflicts between the community, local officials, and National Police personnel. FKPM materially functions as a forum for discussing and discussing problems in society, so there is no prolonged conflict or even conflict when there are differences in interests. In Short, FKPM is a means for the community to obtain information, consult on problems, and assist in reaching a certain consensus through conflict mediation efforts between communities (Widodo, 2019).

By Intensifying the Polri's function in the field of community development has consequences for the Polri having to build a partnership approach and relationship with the community to work side by side with the community to create security and order. *Polmas* requires the National Police and the community to make major changes, in which case the National Police is the party that experiences obstacles when working independently. The National Police needs to synergize with the community in making decisions together with the community in the problem-solving process, along with optimizing its resources (Audie, 2023).

The Society's Police (*Polmas*) makes partnerships the focal point between the police, other organizations, and the community for the identification process. Parties outside the police, namely the community, are able to play an active role in efforts to create security and order and are not limited only to authority according to procedures. Meanwhile, other organizations are able to contribute through their resources and authority to solve public problems.

In carrying out the duties of the National Police, as a philosophy, Community Policing is a police model that emphasizes relationships that uphold human values and displays polite attitudes and mutual respect between the police and citizens. Community policing contains principles that are very much in line with the spirit that civil society organizations always promote, such as

transparency, participation, equality, permanent assignment and personalization, and decentralization (Widodo, 2018).

Community policing in the community helps create public order, including resolving criminal acts by deliberation and consensus, becoming a new trend and hope in implementing penal mediation with a restorative justice approach, based on Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice.

Practice in the community shows that community policing is the leading organ in resolving every problem, both in the field of public order and civil affairs, by actively mediating with the parties and also involving local community/traditional/religious leaders. This type of problem-resolution model must be institutionalized and must be monitored, so that the parties not only get justice and benefits, they also get legal certainty.

Every person who commits an act that causes harm to another person is obliged to be responsible for the act. In criminal law, a person who commits a criminal act is punished by being held accountable for his actions in the context of law enforcement, but aspects of criminal law enforcement must be understood so as not to worsen social harmony in society. Law enforcement cannot be separated from the creation of social harmonization. If there is the best solution to the problem, there is no need for law enforcement whose implementation will worsen people's lives.

Based on this Problem, the author then Formulate Several Problem Discussed in this Article, Namely:

1. What are the weaknesses of The Authority of *Bhabinkamtibmas* in Settlement of Criminal Acts through *Polmas* Strategy to Realize Domestic Security in Indonesia currently?
2. How Is The Legal Reconstruction Of The Authority Of *Bhabinkamtibmas* In Settlement Of Criminal Acts Through *Polmas* Strategy To Realize Domestic Security Based On The Value Of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Authority of *Bhabinkamtibmas* in Settlement of Criminal Acts through *Polmas* Strategy to Realize Domestic Security in Indonesia Currently

Every society has the potential for conflict because every member of society will have interests that must be fulfilled, and in fulfilling them will have to sacrifice the interests of other citizens. The above situation will become increasingly troublesome for the world of law and justice if all conflicts that occur are to be processed through legal channels or often referred to as existing formal channels, while the formal channels that will be taken will not necessarily bring about the expected justice, and fulfill the interests of all parties and decisions. What is taken is truly fair. *Polmas* is here to provide solutions for parties in conflict.

The concept of community policing is a cooperation between the police and the community to realize community empowerment, having a very big role in creating efforts to resolve and prevent larger conflicts. *Polmas* is able to create conducive security and public order, the indicators are the ability of the forum to find and identify the root of the problem, the ability of *Polmas* officers together with the forum to resolve problems including conflicts or disputes between residents, reduced levels of crime or overall, as well as increased reports of crimes that have occurred so far. Rarely reported.

The discretionary authority possessed by the police is a complement to the legal regulatory system itself, which encourages the realization of justice in line with changes in the values held in society. Police discretion as a form of authority granted by law to resolve criminal problems or cases using a restorative justice approach, has received a legal umbrella, namely National Police Chief Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, however, in its implementation in the Community Policing program there are still obstacles, so that it can disrupt the realization of security and order in society. These obstacles originate from the interrelated components of the legal system. If one component does not work well, then law enforcement will also not work well (Toebagus, 2022).

Implementing community policing in the spirit of restorative justice, in practice is an effort to resolve conflicts outside of court. Conflict resolution outside of court is more acceptable to all parties, and by resolving the conflict immediately it can prevent larger conflicts.

The Police of the Republic of Indonesia, through *Polmas*, is one of the government institutions responsible for maintaining domestic security and order, has the obligation to carry out good government (good governance) in carrying out its duties as protector, protector, and public servant and as a law enforcement officer, so that Applying restorative justice in resolving conflicts in society is a necessity (Widodo, 2023).

Community Policing, which is part of the Police, was born due to the awareness of Police leaders that the policing methods implemented so far are no longer effective in tackling crime and social security in today's society. The community policing program builds and fosters mutual trust in building partnerships with the community. The police recognize the importance of partnership and cooperation with the community and the benefits that can be achieved from this cooperation.

The police as the first gateway in handling every conflict that occurs in society, in their daily activities must embody community policing and restorative justice. The police of the future will be the police who prioritize efforts to reconcile people or groups of people in conflict, not how to imprison them. Preventive (prevention) actions are more important than curative (treating or curing), let alone repressive. The main weapon of the police of the future is to foster the widest possible communication with the public, no longer guns, and how to arrest, detain, and imprison people. However, in certain cases the police are still given the authority to take firm action as long as all standard procedures have been fulfilled.

The Efforts to enforce criminal law by law enforcers will face the supremacy of law and justice. When law enforcers are faced with the supremacy of law

and justice, the meaning of the purpose and function of human life emerges, therefore law enforcement cannot be separated from human morals (ethics).

In the application of restorative justice in conflict resolution by community policing, and law enforcement, of course, the law is manifested for humans, not for the law. Like theft where the nominal loss is not much, then law enforcers use so much state power with positivistic understanding and still try the defendant so they have to languish in prison. Law enforcement that is carried out should be carried out using a local wisdom approach in order to obtain substantive justice, in the sense that law enforcement does not only look at the formal aspects of an act but must also look at how the law lives in the surrounding community.

Discretion in the principles of restorative justice is an urgent need and is not only oriented toward the interests of the perpetrator but also the interests of the victim and society. Building joint participation between perpetrators, victims, and community groups through police discretion based on applicable social rules, certainly enters the realm of professional and fair criminal law enforcement. Encouraging perpetrators of criminal acts to be responsible towards victims for criminal acts that have caused injury or loss to victims will fill the space for feelings of justice.

The approach or concept of restorative justice today has become the dominant model of the criminal justice system in the development of history and human civilization in the world. Restorative justice returns conflict to the most influential parties, namely victims, perpetrators, and the interests of their communities, and gives priority to their interests. The Indonesian state can emulate the police in Japan, which in carrying out their duties is always imbued with moral values, thereby creating security and order, and making it easy to interact with the public.

Resolving criminal cases using a restorative justice approach has many benefits because it is more practical in terms of time and energy, and also saves costs. Settlement of cases using the concept of restorative justice is an alternative effort that can be made to handle criminal cases with benefits and ease in the process, and handling criminal cases through legal channels can be applied as a final effort (*ultimum remedium*).

2. Legal Reconstruction of the Authority of *Bhabinkamtibmas* in Settlement of Criminal Acts through *Polmas* Strategy to Realize Domestic Security Based on the Value of Justice

In Essence, it can be said that the police are a living law because, in the hands of the police, the law experiences its manifestation, especially in the criminal field. If the law aims to create order in society by fighting

crime. Finally, the police will concretely regulate what is called order enforcement.

The police are the gatekeepers of the criminal justice system. As Donald Black in Jonlar (2013) said, his role as investigator and investigator of criminal acts places the police in contact with most of the common or common crimes. Based on sufficient evidence, based on the Criminal Procedure Law (KUHAP), the police as investigators delegate the case to the Prosecutor's Office for prosecution.

The development of society, the supremacy of law, and other factors have brought about a change in the investigative model from being purely punitive (punishing) to restorative (restorative), and is a change in more than just techniques, but also the culture of investigation, therefore requiring a long process to adaptation. For example, a scheme involving victims (victims participation scheme) in the investigation or investigation process is not an easy thing because it requires changing patterns that are usually closed to become more open. The responsibility of the perpetrator and the participation of victims as a whole has the potential to provide restorative benefits, especially the recovery and rehabilitation of victims.

The change in the investigation model from being purely punitive to restorative is inseparable from the police's discretionary authority. The existence of Article 16 paragraph (2) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia is a further elaboration (as a control) that allows for discretion because Article 16 paragraph (1) only states that the Police are given the authority to carry out other actions according to the law that are responsible because there are no limits/formulations of discretionary actions. The judgment that members of the Police believe to act (discretion) is greatly influenced by concrete situations and conditions that require action where each individual is different depending on experience, knowledge, intelligence, and morality.

Facing minor cases, discretion/with a restorative justice approach by law enforcement officials, in this case, the Police as the spearhead is realized to bring closer to real justice. The mechanism that has been operating so far has become a habit, starting from a case being submitted to the Police, then discretion is exercised by mediating between the parties involved in the case to reach a consensus so that peace can be established between the parties involved in the case.

The development of society in all aspects was also followed by the development of the law, as well as adjustments in its implementation, then a forum was formed in the Police, which is known as Community Policing (*Polmas*), which forum is stated in the Republic of Indonesia State Police Regulation Number 1 of 2021 concerning Policing Community as well as Regulation of

the Head of the National Police of the Republic of Indonesia Number 7 of 2021 concerning Bhayangkara Fostering Community Security and Order.

Polmas includes various elements such as religious leaders, community leaders, and youth leaders who together with *Bhabinkamtibmas* can resolve small problems in society (cases) even though certain cases are regulated by the Criminal Code, as well as cases This has been reported/complained to the police. This is where the importance of the Police's discretion/policy in responding to this case. A formal mechanism of community policing with the personal assessment of the person concerned, which still adheres to the rules as regulated in the Republic of Indonesia State Police Regulation Number 1 of 2021 concerning Community Policing. In carrying out the duties of the National Police, it is used as a guideline to equalize perception and understanding of the concept and philosophy of Community Policing (*Polmas*) as well as a guideline for implementing activities in the context of implementing the Community Policing strategy throughout Indonesia. As a philosophy, community policing is a police model that emphasizes relationships that uphold human values and display polite attitudes and mutual respect between the police and citizens. Community policing contains principles that are very much in line with the spirit that civil society organizations always promote, such as transparency, participation, equality, permanent assignment and personalization, and decentralization (Tanjung, 2023).

Community policing in the community is related to helping create public order, including resolving criminal acts that occur by deliberation and consensus, apparently becoming a new trend and hope in implementing penal mediation with a restorative justice approach, which is based on Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice.

Practices that occur in society show that community policing is always the leading organ in resolving every problem, both in the field of public order and civil matters, by actively mediating with the parties and also involving local community/traditional/religious leaders. This type of problem-resolution model must be institutionalized and must be monitored so that the parties not only get justice and benefits as well as legal certainty.

Based on this, reconstruct the regulatory authority of *Bhabinkamtibmas* in resolving criminal acts through a community policing strategy in order to realize domestic security based on restorative justice values, by reconstructing Article 15 paragraph (1) letter b of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, Article 1 number 5, Article 3 paragraph (1), and Article 7 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 7

of 2021 concerning Bhayangkara Fostering Community Security and Order, and Article 1 number 3 of the Republic of Indonesia State Police Regulation Number 1 of 2021 concerning Community Policing, This is related to the authority of *Bhabinkamtibmas* with the community policing strategy in resolving all forms of legal violations and other forms of disturbance that can disturb the community in a fair manner with a restorative and rehabilitative approach.

Every person who commits an act that causes harm to another person basically requires that person to be responsible for his or her actions. Likewise, in criminal law, a person who commits a criminal act must be punished to be held accountable for his actions in the context of law enforcement, but the sociological aspects of criminal law enforcement must also be understood in order to not let law enforcement actually worsen social harmony in society.

The aim of law enforcement itself cannot be separated from re-creating social harmony in society which was lost due to an action. If there is the best solution to the problem, there is no need for law enforcement whose implementation will worsen people's lives. Law enforcement like this is not written in positive law but is an improvisation of human conscience in upholding justice.

CONCLUSION

1. The Weaknesses in the regulatory authority of *Bhabinkamtibmas* in resolving criminal acts through the current community policing strategy, are as follows: (i) the implementation of restorative justice is very dependent on the subjectivity of *Polmas* officers and the wishes of the parties, (ii) there is no firmness from *Polmas* members to implement restorative justice in resolving conflicts in society, (iii) there is a lack of understanding from *Polmas* members regarding their authority to implement restorative justice, (iv) there is doubt from *Polmas* members in implementing restorative justice because they do not comply with the procedures regulated in law, (v) lack of *Polmas* members or personnel in their assigned areas, and (vi) lack of synergistic coordination between *Polmas* and the community. the regulation of restorative justice at the Police level is still in the form of the National Police Chief's Regulations,
2. Reconstruct the regulatory authority of *Bhabinkamtibmas* in resolving criminal acts through the community policing strategy to realize domestic security based on restorative justice values, by reconstructing Article 15 paragraph (1) letter b of Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, Article 1 number 5, Article 3 paragraph (1), and Article 7 of the Regulation

of the Head of the National Police of the Republic of Indonesia Number 7 of 2021 concerning Bhayangkara Fostering Public Security and Order, and Article 1 number 3 of the Republic of Indonesia State Police Regulation Number 1 of 2021 concerning Community Policing, which relates to the authority of *Bhabinkamtibmas* with the community policing strategy in resolving all forms of law violations and other forms of disturbance that can disturb the community in a fair manner with a restorative and rehabilitative approach.

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