

## Juridical Review of Restorative Justice in The Case of Criminal Negligence Causing Death in The Gianyar Resort Police

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### ABSTRACT

In Article 5 and Article 6 of the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, some conditions must be met for a case to be resolved through restorative justice. This regulation emphasizes that not all criminal acts can be resolved through restorative justice. Settlement through restorative justice is not necessarily able to eliminate or stop an investigation and/or investigation in the Police, especially against article 359 of the Criminal Code because legal norms are blurring. for example, in the case of the Ayuterra Resort Owner and the Contractor, can be interpreted as who is most responsible for the breaking of the elevator / Inclinator rope which caused the death of 5 (five) employees because in one criminal event, it is not possible that both can be used as Criminal Offenders. Obstacles in the application of restorative justice experienced by the investigators of the Gianyar Resort Police on the crime of negligence that caused death, among others: There is no common perception of the application of articles 359 on negligence causing death among law enforcement officials regarding the handling of restorative justice for the best interests of the perpetrators of criminal acts of negligence causing death

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## INTRODUCTION

The Indonesian National Police (Polri) is an instrument of a state whose main tasks are regulated in Law Number 2 of 2002 Article 13, namely; Maintaining security and public order, Enforcing the law, Providing protection, protection, and services to the community. Law enforcement carried out by the Indonesian National Police with justice certainly cannot be separated from the discussion of justice as a legal ideal that must be used as direction and guidance in law enforcement itself.

Article 1 Point 2 of the Criminal Procedure Code states that "Investigation is a series of investigator actions in the case and according to the method regulated in this law to seek and collect evidence with which the evidence makes light of criminal acts that occur and to find the suspect." So in conducting an investigation, the investigator has the duty and function to seek and collect evidence with which the evidence makes light of indications of a criminal offense and to find the suspect. The action of the Police investigator who conducted the title of the case showed the Investigator's caution in processing an indication of a criminal offense.

In the case of traffic accidents or elevator/escalator falls, there is no intention of the perpetrator to commit a criminal offense, but negligence or inattention is the main factor in the accident. Negligence that occurs is not necessarily just an offense that can be resolved by a fine. Some cases of negligence end up causing death, which is often in the spotlight regarding the role of the police in dealing with negligence that causes death. Negligence, negligence, or culpa is a type of fault in criminal law as a result of lack of care, so that something accidentally happens. The law itself does not define the meaning of culpa, but related to culpa, in Indonesia there is an article on negligence that results in the death of another person regulated in Article 359 of the Criminal Code: "Any person through whose fault another person dies shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year."

In Article 359 of the Criminal Code, R. Soesilo argues that death in the context of Article 359 of the Criminal Code is not intended at all by the perpetrator. Because the death is only a result of the lack of care or negligence of the perpetrator. Negligence or culpa has 3 (three) elements, as follows:

1. The perpetrator does something other than what should be done according to written or unwritten law, so that he or she has actually committed an act (including inaction) that is against the law;
2. The perpetrator has acted imprudently, carelessly and thoughtlessly; and;
3. The actions of the perpetrator are reprehensible, therefore the perpetrator must be responsible for the consequences of his actions.

Indonesia has declared itself as a state of law as stipulated in the 1945 Constitution of the Republic of Indonesia. The commitment taken by the founding fathers was approved by various groups of people who sociologically agree that Indonesia is a state of law for various reasons. To realize this commitment, development in the field of law continues to be developed. The

development carried out is not only in the field of positive legal development, but also extends to the system, law enforcement, legal services and increasing public legal awareness. One that continues to develop is the concept of restorative justice.

## LITERATURE REVIEW

The main principle of resolving criminal offenses through a restorative approach is a settlement that must be able to penetrate the hearts and minds of the parties involved in the settlement process in order to understand the meaning and purpose of conducting a recovery and the form of sanctions applied is a sanction that is restorative or preventive. Meanwhile, the punishment system is applied as a reaction to a person's actions that violate legal norms. The ultimate goal of a punishment is to provide a deterrent effect, order, security or to create the rule of law. Restorative justice ties criminal justice to its social context which emphasizes rather than isolates it in a closed manner. One example of a case of settlement through restorative justice in a case of negligence that causes death but the case continues is the case of the death of 5 (five) employees due to the breaking of the elevator / escalator rope at the Ayuterra Resort hotel, Ubud, Gianyar, where the efforts made are through an agreement with the provision of compensation for the victim's family and a peace agreement has been made and signed together by the owner of Ayuterra resort and the victim's family, but the legal process is still carried out by the Gianyar Resort Police in investigating this case until it is completely resolved.

In police institutions, the implementation of restorative justice by the police is carried out on the basis of discretionary authority. Discretion itself in legal science is something that is permitted when used for noble purposes and protects victims. Discretion relates to decision-making that is not bound by law, where personal judgment also plays an important role. In Article 5 and Article 6 of National Police Chief Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, there are conditions that must be met so that a case can be resolved through restorative justice. If it does not meet the material requirements in Article 5 and the formal requirements in Article 6, a criminal offense cannot be resolved through restorative justice. The regulation emphasizes that not all criminal acts can be resolved through restorative justice. In addition, if it has been specifically determined through the law that a criminal offense cannot be resolved through restorative justice, then settlement through restorative justice cannot be pursued.

The formulation of the problem in this writing are as follows: How is the application of restorative justice in the Gianyar Resort Police in the case of criminal negligence causing death and what are the obstacles in the enforcement of criminal negligence causing death through restorative justice in the Gianyar Resort Police.

## **METHODOLOGY**

This type of research in this writing uses the method of normative legal writing supported by research with a Case Approach through the results of interviews and based on the number of cases in the field in the application of the settlement of criminal negligence cases, especially those that cause death through restorative justice in the Gianyar Resort Police. Then compared with the concepts contained in the literature materials used and legislation as a legal basis in solving the problem. Thus it is not only limited to studying the articles, laws and regulations and the opinions of experts to then be described, but also use the normative material in order to process and analyze the data from the field presented as a discussion.

## **RESULTS AND DISCUSSION**

### **The Application of Restorative Justice in the Gianyar Resort Police in the Crime of Negligence Causing Death**

The definition of restorative justice according to Artidjo Alkostan is: a method of recovery that involves the perpetrators of crime, victims and their communities in the criminal process by providing opportunities for the perpetrators to realize their mistakes and repent so that the perpetrators can return to their community life again. The application of restorative justice emphasizes the pure willingness of the perpetrator to repair the harm he has caused as a form of responsibility. The repair of losses must be proportional by taking into account the rights and needs of the victim. To produce an agreement between the parties, in this case the victim and the perpetrator, it is necessary to conduct informal dialogues such as mediation and deliberation.

The Indonesian National Police has conducted internal policies to realize justice earlier for the community. The policy is in the form of the issuance of several letters, one of which is related to the regulation of the basic principles of restorative justice, namely the National Police Chief Letter No. Police: B/3022/XII/2009/Sde Ops which was then followed up with the Kabareskrim Telegram Letter Number: ST/110/V/2011, stipulates that one form of social problem resolution pattern is through alternative channels, among others through efforts to resolve cases outside the court by applying the concept of Alternative Dispute Resolution (ADR).

According to Article 1 Paragraph (27) of the Regulation of the Chief of the Indonesian National Police (hereinafter referred to as PERKAP RI) Number 6 of 2019 concerning Criminal Investigation states, this restorative justice must involve the perpetrator, victim and / or his family and related parties. This aims to achieve justice for all parties. Launching the Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice, it can be further explained that restorative justice is a principle of law enforcement in case settlement that can be used as an instrument of recovery and this method has been implemented by the Supreme Court in the form of policy implementation. However, its implementation in the Indonesian criminal justice system is still not optimal. This is because there are several conditions in resolving cases with a restorative justice approach that have been regulated in

Article 12 letters A and B of Indonesian National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation, including the following:

1. Crimes that are resolved are minor crimes or crimes that are absolute/relative complaints.
2. There is a desire from the parties (perpetrator and victim) to reconcile and the consequences of the problem do not have a broad/negative impact on community life.
3. Reconciliation activities must be carried out by bringing together the litigants and involving social institutions such as local community leaders.
4. In resolving cases, it is necessary to pay attention to the factors of intention, age, socio-economic conditions, the level of loss caused, family / kinship relationships and not a recidivist act.
5. If the act is preceded by an agreement/bond (leading to civil).
6. The victim must withdraw the report/complaint.
7. In the event of dissatisfaction of the litigants after being conducted outside the court mechanism, settlement is carried out in accordance with applicable legal procedures.
8. If there is a repetition of the criminal offense committed, the legal process must be carried out in accordance with applicable regulations / laws.

In the jurisdiction of the Gianyar Resort Police against cases of criminal negligence causing death, from 2016 the first case of negligence causing death until 2023 which has been resolved as many as 6 (six) cases of negligence causing death through a restorative justice approach, while 1 (one) case is still in the process of being delegated to the Prosecutor's Office to proceed to the Court stage. The restorative justice approach was carried out, because of the mutual will between the victim and the perpetrator and the families of both parties. Then it was strengthened by a joint agreement between the two parties in front of the Village Head, and the Village Head. Furthermore, both parties came to the Gianyar Resort Police, by submitting a request to revoke the complaint by attaching a letter of peace stating to revoke the complaint and/or express their will that the case be resolved amicably, not forwarded to the court and not sue each other in the future. In response to the request/statement, the Chief of the Gianyar Resort Police has the authority to review and close the investigation of the case by referring to the provisions of police discretion as normative in Article 18 of the National Police Law Jo. Article 5 paragraph (1) letter a number 4 Jo. Article 7 paragraph (1) letter j of KUHAP. Thus, in principle, police discretionary actions are carried out as a form of police responsibility given by the state.

That after receiving a letter requesting the revocation of the complaint report attached with a letter of reconciliation between the complainant and the reported party, the Investigator of the Gianyar Resort Police conducted a case title in order to obtain conclusions and recommendations from the participants of the case title conducted aims to consider and provide a legal basis in the termination of the investigation. Finally, it was concluded that the investigation was terminated due to insufficient evidence which was then issued an Order to

Terminate Investigation (SP3) by the Gianyar Resort Police. The follow-up of the SP3 is the determination of the termination of the investigation based on the Decree which is also issued by the Gianyar Resort Police, then the case is terminated by the investigator.

The crime of negligence causing death committed by the perpetrator is an offense or can be said to be a crime against humans and between humans. Crime creates an obligation to make things better by involving victims, offenders and the community in finding solutions to repair and reassure. Restorative justice is a process in which all parties involved in a particular crime sit down together to solve the problem and think about how to deal with future consequences.

Table 1. The Following is a Table of Data on The Application of Restorative Justice in Cases of Criminal Negligence Causing Death in The Gianyar Resort Police, From the Period 2014 to 2023

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
<b>2014</b>								
1.	LP-B/ 29 / V / 2014 / Bali / Res Gianyar / Sek Blth, Tgl 08 Mei 2014 Tindak Pidana Karena lalainya mengakibatkan orang luka Psl 359 KUHP	Pada Kamis 8 Mei 2014 Pkl 16.00 wita di Sebelah utara SD N No.4 Medahan, Ds.Medahan Blhbatuh Gianyar korban terkena senapan angin yang tanpa sengaja meletus yang mengenai perut korban.	I PUT U ANG GA ADIP UTRA , 13 Thn,L :aki, Pelajar, Br.Le bah, Ds.ke ramas Blahbatuh Gianyar.	RISKI, 15 Thn, Laki,Pe lajar, Br.Leb ah, Ds.ker amas Blahbatuh :aki, Pelajar, Br.Le bah, Ds.ke ramas Blahbatuh Gianyar.	KOMANG AGUS ADITYA, 12 Thn,Pelajar,B r.Anggarkasi h,Ds.Medaha n Blahbatuh Gianyar.	1 buah senapa n angin merk sharp warna hitam.	Pro ses Sele sai AD R	BR IG NY M SU DI AS A
2.	LP-A/ 25 / VII/ 2014/ Bali / Res Gnr/ Sek Pyg, tanggal 12 Juli 2014 Karena lalainya	Pada Sabtu, tanggal 12 Juli 2014 Pkl 12.00 wita di perbatasan banjar tataq	I MAD E KERT YA, 42 Thn,L	I KETU T JAWI, Lkai, buruh,	1satu unit mesin pemotongan kayu merk Choke(sensor)	SELES AI KELU AGAA N	BRI PKA I MA DE BU	

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
	mengakibatkan orang lain luka	dengan Br. Bresela korban menabrak tiang listrik yang disebakna oleh KETUT JAWI menebang pohon aren dan mengenai tiang listrik sehingga roboh ke jl raya bresela dgn kerugian Rp 1.000.000,-	aki, Polri, Br,Bu kian, Kangi n, Ds.Bu kian Payan gan Gainyar.	Lingk. Puman, Ds.Bre sela,Ke c. Payangan Gianyar			DIA YSA	
<b>2016</b>								
3.	LPB/ 101 / X / 2016 / Bali / Res Gnr / Sek Ubud, 03 Oktober 2016 Tindak Pidana Krn Lalainya mengakibatkan orang lain meninggal Psl 359 KUHP OA ,	Pada hari Senin tgl 03 Oktober 2016, pkl 15.00 wita di sungai Ayung lokasi Br. Tanggayuda, Kedewatan, Ubud, Gianyar, korban tenggelam pada saat refting	I MAD E SUD ARIA NA, ST, Lk, 44 th, Wiras wasta , Hindu , Br. Peng aji, Ds. Melin ggih Kelod , Paya ngan, Gianyar	Lidik	-	Sidik		
4.	LPB/ 107 / X / 2016 / Bali / Res	Pada Hari Rabu tgl 19 Oktober	IDA BAG	Lidik	-			

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
	Gnr / Sek Ubud, 19 Oktober 2016, Tindak Pidana Krn Lalainya mengakibatkan orang lain meninggal Psl Psl 359 KUHP	2016, pkl 15.30 wita di villa Masih lokasi Jl. Raya Katik Lantang Br. Katik Lantang, Singakerta, Ubud, Gianyar	US SEDE BASK ARA, Lk, 28 th, Hindu , Karya wan swast a, Jl. Sri wedar i Gg. Serun i No 2 Lingk . Tama n Kaja, Ubud, Gianyar					
<b>2019</b>								
5.	LP-B/ 32 VII /2019/ Bali/Res Gianyar, tanggal 04 Juli 2019 Kecelakaan dalam lembaga pendidikan	Pada kamis, 4 Juli 2019 Pkl 15.35 wita di kampus politehnik transportasi darat Bali Jl. Batuyang No. 109 X Ds.Batubulan Kangin, Kec.Sukawati Kab.Gianyartela h terjadi kecelakaan	IDA AYU MASY UNI, Perm puan, Denp asara 24 Peb" 1974, PNS, Dsn./ Br.Sil adan RT/R W	Dalam Lidik		Proses selesai	UNI TI AIP TU I WA YAN ART A	

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
		<p>dalam lembaga pendidikan</p> <p>Korban A.n ILMA PALAMA CITRA ,Natar, 08 Juni 21 Thn,Perempuan, pelajar, Dsn induk Merak Batin RT.1/I/ Merak batin, Natar Lampung Selatan.</p>	Bangli.					
<b>2022</b>								
6.	<p>LP/A/254/IV/2022 /SPKT.SATRESK RIM/ POLRES GIANYAR/ POLDa BALI,tgl 10 Mei 2022</p> <p>Tindak pidana menyebabkan orang mati karena kelalaian psl 359 KUHP</p>	<p>Pada senin,2 Mei 2022 Pkl 18.00 wita korban mengendarai ATV di Out Back Ubud alamat Br.Silakarang,D s.Singapadu kec.Ubud Gianyar menuju rute alam dengan melintasi jl Umu subak wahem wilayah Br.Kederi Ds.Singapadu kaler kec.Sukawati Gianyar,dimana pasaa melintasi jalur tersbut korban kurang konsentrasi yang mengakibatkan ATV yang dikendari korban oleng ke kiri dan</p>	<p>I KAD EK BISM ANTA RA,S H, 27 thn, Polri, Asra ma Polre s Gianyar.</p>			<p>Proses Sidik</p> <p>Proses selesai/ RJ</p>	<p>UNI T IV</p> <p>AIP DA GAL IH KU RNI ANT O.</p>	

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
		jatuh ke sungai kedlama 3 meter atas kejadian tersebut korban an. LAURA CRISTIANI SUKENDRO,Pe rempuan, 29 Thn, Indonesia, IRT, mengalami luka di bibir dan pingsan,selanjut knya dilarikan ke RS kasih Ibu Ds,saba kec.,Blahbatuh gianyar dinyatakan meninggal  MO; Karena lalai/culva.						
<b>2023</b>								
7.	LP/A/6/IX/2023/S PKT.SATRESKRI M/POLRES GIANYAR/POLD A BALI,01 September 2023 Tindak Pidana kelalian mengakibatkan orang mati UU No. 1 Th. 1946 KUHP pasal 359	Pada hari Jumat tanggal 1 September 223 sekira pukul 13.00 Wita, bertempat di AyuTerra Resort Br. Kedewatan Let, Ds.Kedewatan, Kec. Ubud, Kab. Gianyar, telah terjadi kecelakaan kerja Lift jembatan yang dinaiki oleh 5 orang karyawan AyuTerra Resort tali seling yang terbuat dari baja putus kemudian lift (Gondola)	I KOM ANG JUNI ARTH WISM AYA,L aki, Giany ar, 30 Thn,P olri, Asra ma Polre s Giany ar Jl.Ng urah Rai 6	- NIK .51 030 A 630 12 600 012 MU JIA NA Jog jak arta ,,30 Des emb er 196	a. Tali Sling dari Tatakan Inclinator sepanjang 3,85 Meter m, tgl 6 Okto ” 2023 /Reskri m, tgl 6 Okto ” 2023 Tsk MUJIA NA Gulungan Mesin Penarik Tahap II ttgl 18 Dese ” 2023 c. 1 (satu) buah	Prtoses selesai/ P21 Tahap I BP/42/ X/2023 /Reskri m, tgl 6 Okto ” 2023 Tsk MUJIA NA Gulungan Mesin Penarik Tahap II ttgl 18 Dese ” 2023	UNI T IV	

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
		<p>meluncur deras kebawah yang mengakibatkan ke 5 korban meninggal dunia di tkp 2 orang dan 3 orang masih bernafas sehingga dibawa ke Rs payangan namun meninggal dunia.</p> <p>Korban an.</p> <ol style="list-style-type: none"> <li>1. Sang Putu Bayu Adi Krisna laki, 23 Thn, Hindu, Swasta, Br. /Ds. Kedewatan Ubud Gianyar;</li> <li>2. I Wayan Aries Setiawan, 23 Thn, Kary. Sw asta, Br. Abian semal, Ds. Lod tunduh Ubud Gianyar;</li> <li>3. Ni Luh Superningsih, Perempuan, 2 0 Thn, Hindu, Kary. Swasta, Br. Panaca, Ds .melinggih kelod, kec. payangan Gianyar;</li> <li>4. Kadek hardiyanti, Pe rempuan, 24 Thn, Hindu, K ary. Swasta, Br .Teruna, Ds. ta man Bali, Kec./Kab .Bangli.</li> </ol>	Gianyar.	<p>0/ 63 tah un, laki - laki , Isla m, Ind one sia, Kar y. Swa sta, SLT A(O tom otif) , Ds. Tri dad i, Kec Sle ma n, Kab .  Sle ma n, Pro vins i Dae rah Isti me wa Jog jak</p>	<p>roda rem warna merah</p> <p>d. 1 buah plat Pengaman warna hijau</p>	<p>Tahap I</p> <p>BP/43/ X/2023 /Reskri m, Tgl 6 Okto 2023</p> <p>Tsk an. VINCE NT</p> <p>JUWO NO.</p>		

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
		5. Kadek Yanti Pradewi, Perempuan, 18Thn, Hindu, Br. Dinas Beji, Ds.Munduk, Kec.banjar Buleleng.		arta , ala mat sek ara ng Dal ung Per mai Blo k E no 22 Br Lin gga Bu mi, Ds. Dal ung , Kec Kut a Uta ra, Kab .Ba dun g, Pro vins i Bali , , Tel p. 085 792 559 73.				

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
				<p>- Nik 317 201 100 556 000 9</p> <p>VIN CE NT JU WO NO, Mal ang , 10 Mei 195 6,/6 7 tah un, Jeni s laki - laki , Kat holi k, Ind one sia, Kar yaw an Swa sta, Pen didi kan tera akhir</p>				

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
				S2, ala mat asal P. Sa mu dra 2 Me nar a Ma rina LT. 9.0, RT/ RW. 012 /00 5, Des a Plui t, Kec am ata n Pen jari ngan, Jak arta Uta ra, Pro vins i DK I Jak arta ,				

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
				ala mat sek ara ng Jln. Ray a Ked ewa tan No. 17 A Ked ewa tan, Kec . Ub ud, Kab . Gia nya r				
8.	LP/A/1/IX/2023/S PKT.UNITRESKR IM/POLSEK UBUD/POLRES GIANYAR/POLD A BALI, Tanggal 27 September 2023, tentang TP. Karena Lalainya menyebabkan orang meninggal dunia Psl 359 KUHP	Pada hari Rabu tanggal 27 September 2023 sekira pukul 11.06 Wita, Bhabinkamtibma s Desa Lodtunduh AIPTU Made Sugianto / 78080111 menerima Telp dari Kelihan Br. Mawang Kaja An. I MADE ANTARA bahwa menginformasi n telah terjadi	Pelap or: I MAD E SUGI ANTO , Aiptu / 78080 111	Masih Lidik				

NO	NO / TANGGAL LAPORAN POLISI	URAIAN KEJADIAN	KOR BAN/ PELP OR	TERS ANGK A	BARANG BUKTI	PERK EMBA NGAN PENA NGAN AN KASUS	KET	J M L/ BL N
		<p><i>bangunan roboh dengan korban (RUDI SUCITRO, Laki-laki, 33 tahun, Islam, Karyawan Swasta, Jawa, Indonesia, Dsn Wonorejo Rt.028/006 Druju, Sumbermanjing Wetan, Malang, Jawa Timur, NIK: 3507040101890 075) masih dalam reruntuhan selanjutnya Bhabinkamtibmas meneruskan informasi tersebut ke Ngakan Kumara selaku pawas Polsek Ubud dan BPBD Kabupaten Gianyar untuk bantuan alat berat mengingat korban tertimpa reruntuhan beton</i></p>						

Based on the results of an interview with Aipda I Putu Sukarma J as the Head of Unit 3 of the Criminal Investigation Unit of the Gianyar Resort Police who explained that the implementation of a restorative justice approach in the crime of negligence that caused death is something that can actually be said in terms of disclosure of its resolution, sometimes requires a very strong legal analysis, Because as we know the crime of negligence is a criminal offense that is sometimes committed intentionally or unintentionally, this becomes clear

because a negligence can also be done unintentionally, even if it results in death, but of course if the act is really proven to have occurred without intent, of course the application of restorative justice must be carried out. Meanwhile, if it is proven that the criminal act of negligence was committed consciously and intentionally with the perpetrator already knowing the consequences, the Restorative Justice approach cannot be carried out.

As an example in the death of 5 (five) employees due to the breaking of the elevator / escalator rope at the Ayuterra Resort hotel, Ubud, Gianyar. Where in this case the alleged analysis of the alleged article given to the owner of the hotel / resort with the contractor, which is equally subject to article 359 of the Criminal Code on negligence causing death, but it becomes a question in the legal events above who is most responsible in this case, with a legal analogy if the hotel / resort owner fully submits the project work to the contractor from the beginning of licensing, construction, installation, maintenance of the machine until completion of the work. However, during the operation of the elevator with a number of passengers, it turned out that during use there was damage which resulted in a break in the sling rope, resulting in the elevator falling down and killing 5 (five) victims of the elevator / inclinator passengers.

At the time of the investigation and inquiry stage, there was peace between the hotel/resort owner and the victim's family by agreeing on the amount of compensation, and so on. So that from the peace, the victim's family will not sue either Criminally or Civilly, but the investigation and inquiry process will continue until the hotel/resort owner is detained and processed to the Court stage. Thus, in the author's opinion, there are vague norms in the provisions related to how the right elements are in criminal acts of negligence that cause death that contain elements of intent and those that cannot contain elements of intent. A very precise analysis needs to be carried out in determining the application of restorative justice.

### **Obstacles in the Enforcement of Criminal Acts of Negligence Causing Death through Restorative Justice at the Gianyar Resort Police Force**

Obstacles in the implementation of restorative justice that are implemented with a lack of training in overcoming conflict and facilitating mediation and the implementation is less than perfect will lead to a lack of success in its implementation, where victims are not invited in the restorative justice process, besides that if not well prepared regarding the rights and responsibilities of each party in mediation, the process will not find the expected results.

Another obstacle in achieving mediation is if the victim is not assisted, either by her guardian, it will create a feeling of intimidation and victimization for the victim, especially if the perpetrator is present and the family is eager to reach an agreement. Restorative justice cannot be carried out in the event that one or more of the main parties does not participate or does not participate, is ignored in the process. On the other hand, restorative justice will succeed if the victim expresses his aspirations properly, honestly without coercion and intimidation and the perpetrator is willing to take responsibility by carrying out his obligations in providing compensation to the victim and both parties are

active in the negotiation process to formulate a settlement that is acceptable and correct for all parties.

When applying or implementing the concept of restorative justice, police investigators sometimes experience hesitation in making decisions in the investigation process, especially if the perpetrator or his family and the victim or his family or the community turns out to want peace in resolving the case or case, this is due to the absence of rules or legal umbrella as well as formal procedures and mechanisms to accommodate this so that this situation becomes a dilemma for police investigators in the field, from the results of interviews with Aipda I Putu Sukarma J as Head of Unit 3 Criminal Investigation Unit of the Gianyar Resort Police, the factors that underlie the problems in making the above decisions include:

1. Concerns or fears that the investigator will be questioned by the investigator's leadership or superiors as well as by the supervision and examination of Polri's internal supervisory and examining institutions that use formal procedural parameters;
2. There is no provision that regulates and serves as a basis for legitimacy in making decisions in the investigation process, whether it must be based on the concept of restorative justice;
3. There is no formal procedural procedure or mechanism to implement the concept of restorative justice.

Obstacles in the application of settlement through Restorative justice experienced by the investigators of the Gianyar Resort Police on the crime of negligence that causes death, among others:

1. Increasing needs are not proportional to resources (both personnel and facilities);
2. There is no common perception among law enforcement officials regarding the handling of restorative justice for the best interests of the perpetrators of criminal negligence causing death;
3. Lack of policy in carrying out the rehabilitation process or social organization to the community engaged in mental development for the victim's family so that they can be sent to a social institution to be fostered specifically given mental recovery.

Based on the results of the research in the settlement carried out with a restorative justice approach in the Gianyar Resort Police is a mediation process in accordance with the habit of deliberation, in the application of the principle of restorative justice in the Gianyar Resort Police carried out by the police through activities such as mediation of victims with perpetrators, deliberation, family groups, which is restorative for both the victim and the perpetrator where the involvement in the settlement process is the victim and the perpetrator as well as a third party, namely the police who become mediators and facilitators to mediate between the two parties to reach an agreement and the goal to be achieved through the deliberation process is to restore all losses and injuries that have been caused by the incident of negligence that caused the death.

Based on an interview with Aipda I Komang Purnawan, S.H. as an officer of the Criminal Investigation Unit of the Gianyar Resort Police, the Gianyar

Resort Police, in carrying out Restorative justice there are mechanisms that are carried out, among others:

1. Receive a report of maltreatment and make a police report and conduct an initial inquiry (Berita Acara Pemeriksaan) of the complainant/victim;
2. Then the investigator carries out the preparation of the task order and investigation;
3. Carry out examination of victim witnesses and provide sp2hp (notice of progress of investigation results);
4. Carry out examination of witnesses;
5. Conducting examination of the reported party;
6. After carrying out the above examination, the investigator informs the victim and the reported party regarding the handling of the case or the case can be resolved outside the court by means of peace or restorative justice;
7. Gives 7 days to implement peace with a family meeting;
8. The mediator (Bhaninkamtibmas) brings together the victim, the victim's family, the reported party, the reported party's family, the village head and the traditional shop, after conducting a family meeting and returning to the police station conveys the results of the meeting;
9. Then the investigator as mediator gave the opportunity to the victim's family and the reported party to provide an explanation regarding the results of the family meeting;
10. The result of the meeting was to reconcile and make a peace letter and then submit the peace result to the investigator;
11. Then the victim revoked the report;
12. After the victim revoked the report, the investigator made a letter of termination of investigation;

The concept of the implementation mechanism of Restorative Justice by the Gianyar Resort Police, namely:

1. Police deliberation, meaning that the parties involved in this process are the police, the perpetrator and the victim. The types of crimes that can be resolved through this mechanism are generally offenses and minor crimes. When the police find out that a criminal offense has occurred either directly (caught red-handed) or through a report or complaint from the victim or the community, then at that time the police can also summon the perpetrator suspected of committing a criminal offense to be questioned about the actions he has committed. The police provide an opportunity for the perpetrator to tell clearly and completely about the actions he has committed. After the police listen to the testimony of the perpetrator. Then the police can conclude whether the perpetrator is guilty of committing the alleged crime. If the perpetrator is not proven then the police must release him, but if the perpetrator is proven guilty, then the police can sanction the

perpetrator. The police can immediately impose sanctions if the perpetrator has admitted his actions;

2. Family deliberation The parties involved in the restorative justice process are the police, the perpetrator and the victim. The types of crimes that can be resolved through this mechanism are minor crimes, crimes of negligence without causing death.

As can be explained above that especially for criminal acts of negligence, which in fact is the scope of the crime, the police look more deeply related to the perpetrators of the criminal act whether it is done intentionally or not, which of course sometimes the Gianyar Resort Police experience obstacles or difficulties in proving the intentional element, which finally one of the cases handled in the Gianyar Resort Police Sector is a case of settlement through restorative justice in a case of negligence that causes death but the case continues is the case of the death of 5 employees due to the breaking of the elevator / escalator rope at the Ayuterra Resort hotel, Ubud, Gianyar.

In this case based on the interview of Aipda I Komang Purnawan, the efforts made are through an agreement with the provision of compensation for the victim's family and a peace agreement has been made and signed together by the owner of Ayuterra resort and the victim's family, but the legal process is still carried out by the Gianyar Resort Police in investigating this case until it is completely resolved. Related to the proven criminal act of negligence that causes death is done intentionally or unintentionally from the perpetrator then to be able to decide that the criminal elements committed by the owner of Ayuterra resort in accordance with the initial examination BAP, in this case the article imposed is Article 359 and Law Number 28 of 2002 concerning Building, while the Elevator / Inclinator Contractor as the one who works, build, take care of permits, machine maintenance, and so on are also equally subject to the same threat of punishment, namely Article 359 of the Criminal Code and Law Number 28 of 2002 concerning Building Buildings, so that there is legal certainty against the Ayuterra Resort Owner and the Contractor, the Gianyar Resort Police Investigator submits to the Prosecutor's Office so that the case can be submitted to the Court.

From the above case of the death of 5 (five) employees due to the breaking of the elevator / Inclinator rope of the Ayuterra Resort hotel, Ubud, Gianyar above there is a blurring of legal norms, because there is an interpretation of the meaning contained in Article 359 of the Criminal Code, this is against the Ayuterra Resort Owner and the Contractor, It should be interpreted who is most responsible for the breaking of the elevator / Inclinator rope which caused the death of 5 employees, in connection with the results of interviews with investigators, that the owner of Ayuterra Resort has made a work contract with the Contractor by submitting the overall workmanship and licensing in the elevator / inclinator maker. Examples of comparisons / parallels to other cases, such as the case of a driver and his boss who were driving a car and then the driver hit someone who resulted in death, a building contractor with a building owner who during the construction of a 3-story construction project there was a handyman who had an accident falling and causing death. From the examples of

these cases, a question arises whether both of them can be made Criminal Offenders. Towards the criminal incident of the death of 5 employees due to the breaking of the elevator / inclinator rope of the Ayuterra Resort hotel mentioned above, it can be concluded that the application of restorative justice settlement, may not necessarily be able to stop a criminal case process, even though the resort owner has compensated the victim's family and there is already a compensation for the victim's family.

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusion

Based on the discussion that has been described, the following conclusions can be drawn:

1. Settlement through restorative justice is not necessarily able to eliminate or stop an investigation and / or investigation in the Police, especially against article 359 of the Criminal Code because there is a blurring of legal norms, for example the case of the Ayuterra Resort Owner and the Contractor, it can be interpreted who is most responsible for the breaking of the elevator / Inclinator rope which caused the death of 5 employees because in one criminal event it is not possible that both can be used as Criminal Actors, so that there is legal certainty, the Investigator submits it fully to the Prosecutor's Office and the Court.
2. Obstacles in the application of settlement through restorative justice experienced by investigators of the Gianyar Resort Police against criminal acts of negligence that cause death, among others: There is no common perception of the application of articles 359 on negligence causing death among law enforcement officials regarding the handling of restorative justice for the best interests of the perpetrators of criminal negligence causing death, lack of policy in carrying out the rehabilitation process or social organizations to the community engaged in mental development for the families of victims so that they can be sent to social institutions to be fostered specifically given mental recovery.

### Recommendations

Based on the description above, the suggestions that the author can convey are as follows:

1. The police and the community must consider the deterrent effect that will be obtained by the perpetrator, due to the impact of the criminal act of negligence that causes death. The legal consequences arising from the application of Restorative Justice to the perpetrators of criminal negligence are indeed beneficial as a relief for the perpetrators, but the Police should really identify the perpetrators even though peace has been reached, in order to make the reason for the detention of the perpetrator in the future if he commits a criminal act of negligence in the future.
2. For the community, they must better understand that legal problems must prioritize settlement through restorative justice in order to create peace with other parties in a good and familial manner and use criminal law efforts by prioritizing the ultimum remedium principle which states that

criminal law is used as the last legal effort against a criminal problem they face.

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Wawancara dengan Aipda I Komang Purnawan, S.H. selaku Bintara Unit Reskrim Kepolisian Resor Gianyar, di Polres Gianyar tanggal 22 April 2024

Wawancara dengan Aiptu I Putu Sukarma J selaku Perwira Unit 3 Reskrim Polres Gianyar, di Polres gianyar tanggal 18 April 2024