

Application of Restorative Justice in Criminal Case Settlement in Indonesia: A Literature Perspective

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ABSTRACT – This research aims to explore the application of restorative justice principles in the Indonesian criminal law system through a literature review. Restorative justice, as an alternative approach, offers a more humanist and social recovery-oriented solution compared to the traditional retributive approach. This study found that the application of restorative justice in Indonesia has been regulated through several policies, such as Law No. 11/2012 on Juvenile Justice System, but its implementation is still limited to certain cases, such as minor offenses and crimes involving children. The research also identified key challenges to implementation, including low understanding by law enforcement officials, cultural resistance to dialogic conflict resolution, and a lack of comprehensively integrated regulations. Suggestions include increased training for law enforcement officials, regulatory reform to expand the scope of restorative justice, and strengthening community participation in the legal process. This study contributes to the development of a more inclusive and equitable criminal justice system in Indonesia.

Keywords: restorative justice, criminal law, mediation, regulation, social justice, rapprochement, Indonesia.

A. INTRODUCTION

The application of restorative justice principles in the criminal law system in Indonesia has become an important discourse, especially to deal with the complexity of criminal cases that require alternative approaches. Restorative justice seeks to prioritize dialogue between perpetrators, victims, and the community to achieve a fair settlement. However, its implementation in Indonesia still faces various obstacles, such as regulatory incompatibility and lack of understanding by law enforcement officials.

In the Indonesian criminal justice system, Law No. 11/2012 on the Juvenile Criminal Justice System became the initial foundation for the

implementation of restorative justice. However, the limited coverage of only juvenile cases raises the question of whether this principle can be implemented more broadly. Research by Wulandari (2021) reveals that this concept faces resistance due to the absence of harmonization between regulations and practices in the field. Sihotang (2020) pointed out that the National Police Chief's regulation on the settlement of minor crimes through restorative justice is still minimal to provide operational guidance. This lack of understanding has led to non-uniform application in various jurisdictions. This is exacerbated by the low level of community involvement in the mediation process.

In law enforcement, restorative justice is an approach that aims to repair the harm caused by criminal acts through dialogue and reconciliation between perpetrators, victims, and the community. However, the application of restorative justice principles faces various challenges, especially in cases involving corporations. Cases involving corporations, such as corruption crimes, show great challenges in the application of restorative justice. Suharyanto (2016) notes that although this concept is recognized, the focus on restoring state losses is often not balanced with efforts to improve relations between perpetrators and society. The application of restorative justice in cases based on local wisdom also faces challenges. This reflects the need for integration between customary norms and positive law in Indonesia's criminal justice system.

The development of information technology has brought significant impacts in various aspects of life, including in the fields of law and crime. With technological advances, new forms of crime have emerged that utilize digital platforms, one of which is defamation through social media. The widespread existence of social media provides space for individuals to interact and share information, but also opens up

opportunities for actions that harm others, such as spreading false information or harming one's reputation. In this case, restorative justice becomes relevant to avoid the disproportionate impact of punishment on the perpetrator. However, law enforcement often lacks understanding of the technical aspects of technology-based cases. Restorative justice approaches are also limited to minor offenses, which implies a lack of flexibility to be applied to serious criminal cases. Nasution et al. (2022) emphasized that this concept requires more comprehensive regulatory support in order to be fully implemented in Indonesia's criminal law system.

In the scope of juvenile justice, the concept of restorative justice has been implemented quite well. Ratu (2019) showed that diversion through mediation has succeeded in reducing stigma against child offenders. However, the absence of a monitoring mechanism after the mediation process is an obstacle to ensuring long-term effectiveness. Sulaiman and ul Hosnah (2022) revealed that overcrowding in correctional institutions is one of the main reasons driving the implementation of restorative justice. However, the lack of human resources who understand this concept among law enforcement officials hinders its optimal implementation.

Darmawan et al. (2021) asserted that the surge in hoax and defamation cases during the COVID-19 pandemic shows the urgency of implementing restorative justice as an alternative approach to dispute resolution, which is oriented towards restoring relationships between the parties involved, compared to the more repressive retributive approach. However, the lack of clarity in the legal framework, including regulatory inconsistencies related to the definition, limitations, and implementation procedures of restorative justice, pose significant challenges to the effectiveness of the mechanism. This uncertainty has the potential to lead to disparities in handling in various jurisdictions, weaken the protection of victims, and create room for abuse of the law by irresponsible parties.

Damaiswari and Marlina (2021) highlight the importance of restorative justice as an approach that focuses on the recovery and protection of children's rights as victims of sexual violence, emphasizing the need to prioritize the welfare of victims over punishment alone. However, the

implementation of this mechanism faces serious challenges in the form of potential intimidation of victims during the mediation process, especially if the perpetrator or related parties have power or influence that can affect the course of negotiations.

This research offers an analysis of the implementation of restorative justice in various criminal cases in Indonesia, including technology-based crimes and serious crimes. The study also explores the role of local wisdom and its integration with positive law to expand the scope of restorative justice. This study aims to analyze the effectiveness of restorative justice implementation in Indonesia's criminal law system. In addition, this study also aims to identify challenges and opportunities to expand the application of restorative justice in various types of criminal offenses, including technology-based and serious crimes.

B. METHOD

This research uses a normative juridical method that focuses on analyzing legal literature as the main source of data. This method was chosen to comprehensively explore the concept of restorative justice in Indonesian criminal law, as well as to identify challenges and opportunities in its application based on the review of legal documents, legislation, and academic literature. This type of research is normative juridical, which is legal research that aims to examine legal principles, norms, and doctrines relating to restorative justice in the criminal justice system. This approach aims to provide a systematic overview of how restorative justice is applied and can be expanded in Indonesian criminal law.

The data sources used in this research include three sources. Primary sources from relevant laws and regulations, such as Law No. 11/2012 on the Juvenile Criminal Justice System, the National Police Chief Regulation on the Settlement of Minor Crimes, and other official documents. Secondary sources are journal articles, books, and research reports that discuss the application of restorative justice in criminal law, including literature that has been provided. Tertiary sources are legal dictionaries, legal encyclopedias, and legal literature indexes to support conceptual analysis.

The data collection method is conducted through literature study, namely the collection and analysis of legal documents, scientific

articles, and other relevant literature related to restorative justice. The validity of the data in this research is guaranteed through source triangulation, where data from various legal documents, academic literature, and regulations are compared and verified to ensure the consistency and accuracy of the information.

The data was analyzed using a qualitative descriptive analysis method. This method involved identifying patterns, themes and key concepts relating to the application of restorative justice. The analysis process was conducted in three main stages: data reduction, data presentation, and conclusion drawing. In addition, the analysis also refers to the principles of criminal law and the principle of restorative justice. With this approach, the research is expected to be able to provide a clear picture of the effectiveness of restorative justice in the Indonesian criminal law system as well as the challenges it faces in wider implementation.

C. RESULTS AND DISCUSSION

Restorative Justice in the Indonesian Criminal Law System

In law enforcement efforts that increasingly prioritize aspects of rehabilitation and recovery, restorative justice emerges as a promising alternative to resolve conflicts more constructively. This approach focuses on punishment for the perpetrator, as well as on restoring the relationship between the perpetrator, the victim, and the community. In Indonesia, the application of restorative justice has been regulated through various laws and regulations, including Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA Law), which provides a legal framework for implementing the principles of restorative justice in handling cases involving children. This concept aims to prioritize conflict resolution through a dialogical approach between perpetrators, victims, and the community. According to Suharyanto (2016), restorative justice is an alternative measure to reduce the burden on the criminal justice system which is often considered too repressive. This approach is particularly relevant in cases involving juvenile offenders or minor crimes. The SPPA Law explicitly regulates restorative justice and requires the application of this approach in the juvenile criminal justice system. Article 5 paragraph (1) of the SPPA Law states that "The Juvenile Criminal Justice System shall prioritize

the Restorative Justice approach". This demonstrates the legislative commitment to integrate the principles of restorative justice into the Indonesian legal system, particularly in handling cases involving children.

The application of restorative justice in juvenile justice aims to create restorative justice by involving perpetrators, victims and the community. This approach emphasizes dialogue and mediation as a means of reaching a fair agreement and encourages peaceful conflict resolution. Restorative justice is oriented towards restoring social relations and reintegrating offenders into society, while paying attention to the needs of victims. In the Indonesian legal framework, this principle is reflected in Law No. 11/2012 on the Juvenile Justice System, which prioritizes out-of-court settlements to protect the future of children as perpetrators.

Studies show that restorative justice can reduce recidivism rates, especially for children involved in criminal offenses. The participatory process provides space for offenders to take responsibility for their actions and for victims to express their needs and expectations. However, the application of this principle has not been evenly distributed throughout Indonesia. One of the main obstacles is the lack of understanding of the concept of restorative justice among law enforcement officials, which results in a bias towards a retributive approach. In addition, not all regions have the supporting infrastructure, such as mediation institutions or trained facilitators, that can ensure the implementation of this process in accordance with applicable legal standards.

To increase the effectiveness of the application of restorative justice in juvenile justice, efforts are needed to strengthen the capacity of law enforcement officials through specialized training on the concept and technical implementation. The government also needs to provide adequate infrastructure and resources, including mediation institutions at the local level. In addition, collaboration between the government, the community and non-governmental organizations is essential to support the comprehensive implementation of restorative justice. By strengthening regulations and coordination between agencies, restorative justice is expected to be an effective solution in the juvenile criminal justice system, in line with the principles of child protection and restorative justice.

Restorative justice has been applied in various cases, including petty theft and assault, as a step towards more inclusive justice. This approach focuses on resolving conflicts through dialogue and mediation involving the offender, victim and community. The aim is to restore social relations and provide a fair solution for all parties involved. However, the application of restorative justice also raises debates, especially regarding the perception of favoritism towards perpetrators. The mediation process, which focuses more on social reconciliation, is often perceived as ignoring the victim's need for strict justice.

Criticism of restorative justice often centers on the feelings of victims who feel that justice is not fully served. Ropei (2022) suggests that in some cases, victims feel neglected because the focus of mediation is more on restoring the relationship than on punishing the offender. This imbalance can lead to dissatisfaction on the part of the victim and a perception that the offender is getting a more lenient treatment. Therefore, it is important to ensure that the restorative justice process still provides space for victims to express their needs and aspirations without compromising the principles of justice.

To overcome these challenges, mechanisms need to be put in place that balance restoring social relationships with strict law enforcement. Law enforcement officers need to be trained to understand how to implement restorative justice without overriding the rights of victims. In addition, clearer regulations on the boundaries and guidelines for mediation are also needed to ensure the process is fair and transparent. With the right balance, restorative justice can be an effective solution to create inclusive justice while fulfilling the legal needs of all parties involved.

Challenges of Restorative Justice Implementation

Despite its potential, the implementation of restorative justice in Indonesia still faces significant challenges. One of the main challenges is the lack of a deep understanding by law enforcement officials of the principles of restorative justice. Many law enforcement officers still prioritize a retributive approach to resolving criminal cases..

One of the main challenges in implementing restorative justice is the need for a paradigm shift in the criminal justice system. Sonhaji

(2018) asserts that the relationship between the offender and the justice system in the context of restorative justice is different from the conventional employment relationship regulated in the Labor Law. This creates a legal dilemma that needs to be addressed through adjustments to regulations and law enforcement practices. However, restorative justice is considered a more humane approach and has the potential to provide more balanced justice. Tjandraningsih (2021) emphasizes the importance of adopting a more flexible and adaptive regulatory approach to accommodate the unique characteristics of cases involving children or minor crimes.

The role of the community to support the implementation of restorative justice is also very important. Without community involvement, the process may lose its dialogic essence. Public awareness about the importance of restorative justice is still low, so more intensive legal education efforts are needed. Cultural aspects are also a challenge in implementing restorative justice. Some communities in Indonesia still hold the view that justice can only be achieved through severe punishment of the perpetrator. This creates resistance to more dialogic and rehabilitative approaches. The implementation of restorative justice in Indonesia is a complex and challenging process. Cultural challenges are one of the main factors hindering the development of restorative justice. However, with systematic and sustained efforts, as well as involving various parties, this can be overcome in order to establish a more just and humane justice system.

The implementation of restorative justice requires active participation from the community. The community has an important role in the mediation process and the reintegration of the offender into the community. Therefore, education and socialization to the community regarding the principles of restorative justice are crucial for its successful implementation. In minor crimes, restorative justice can be applied as an alternative resolution that is more efficient and effective. This approach allows cases to be resolved without having to go through a lengthy and costly formal justice process. The application of restorative justice in Indonesia, especially in cases involving children and minor crimes, has a strong legal foundation and great potential to create a fairer and more effective justice system. However, its implementation

still requires continuous efforts in terms of improving regulations, increasing the capacity of law enforcement officers, and educating the public.

However, in practice, the application of restorative justice still faces various obstacles, including the unfamiliarity of law enforcement officials with this concept. Halipah et al. (2022) noted that the lack of training and socialization is one of the main factors hindering the implementation of restorative justice principles. In addition, the existence of regulations that have not been fully integrated with the general criminal law system is also a significant obstacle. In addition, the integration between restorative justice and the formal criminal law system has not been fully realized. Some regulations, such as Law No. 31/1999 on the Eradication of Corruption, have not provided sufficient space for the application of restorative justice in certain contexts. This suggests the need for a more comprehensive revision of the law to accommodate this approach within the Indonesian criminal law framework (Prayitno, 2012).

Despite facing various challenges, the prospect of implementing restorative justice in Indonesia is promising. One step that can be taken is to expand the scope of regulations to accommodate this approach in various types of criminal offenses. Nasution et al. (2022) noted that restorative justice approaches can be an effective tool to reduce overcapacity in correctional institutions, especially if applied to minor offenses. Intensive training for law enforcement officials on the principles and practices of restorative justice is a crucial step toward enhancing the effectiveness of its application in the legal system. These comprehensive training programs can include case simulations, comparative studies with countries that have successfully implemented restorative justice, and technical guidance on mediating conflicts between offenders and victims, fostering a deeper understanding of restorative practices (Aribowo, 2022).

Technology support is an important element in increasing the effectiveness of restorative justice implementation, especially in the digital era. Darmawan et al. (2021) showed that the use of digital platforms, such as online mediation applications, can facilitate interactions between perpetrators and victims in a more flexible and safe manner, especially in conditions where in-person meetings are difficult, such as during a

pandemic or in geographical areas that are difficult to reach. This technology accelerates the mediation process and can also reduce potential trauma by giving victims greater control over their involvement in the process. However, the implementation of technology in restorative justice requires policies that regulate data security, user privacy, and the competence of law enforcement officers in using digital tools to ensure a fair and transparent process.

The integration of restorative justice into the legal education system in Indonesia is a strategic step that can support criminal justice system reform. The introduction of this concept to prospective law enforcement officers through the legal education curriculum is expected to increase understanding of the principles of restorative justice. Thus, the new generation of legal officers can be more adaptive in applying this approach effectively. Restorative justice provides an alternative to the retributive approach and offers a more inclusive and humanist solution for resolving legal conflicts, especially in cases involving juvenile offenders or minor crimes.

In the long term, the application of restorative justice integrated with legal education has the potential to create a criminal justice system that is more oriented towards recovery and peaceful conflict resolution. This approach also supports human values and social justice, which are the cornerstones of national lawmaking. Through a process that involves offenders, victims, and the community, restorative justice can encourage settlements that restore relationships and repair the social impact caused by the criminal offense. Thus, the legal system in Indonesia can move towards a new paradigm that emphasizes social harmony and the sustainability of relationships between individuals.

Realizing this potential requires policies that support the development of restorative justice as a key pillar of legal reform. The government, educational institutions and the judiciary need to work together to create regulations, curricula and infrastructure that support the implementation of restorative justice as a whole. This will increase the capacity of human resources in the legal field and strengthen public confidence in a fairer and more inclusive legal system. Thus, restorative justice can be a solid foundation for legal reform that prioritizes human values and social justice.

D. CONCLUSIONS

Restorative justice as an alternative approach in Indonesia's criminal justice system offers a more humanist and inclusive solution to resolve criminal cases. This approach focuses on restoring social relationships between the offender, victim and community. Restorative justice has been implemented through regulations such as Law No. 11/2012 on the Juvenile Justice System. This approach has proven effective in certain cases, such as minor crimes and offenses involving children. However, the integration of this concept into the general criminal law framework still faces various obstacles, including the limited understanding of law enforcement officers and the lack of supporting regulations at a broader level.

Key challenges include low understanding of law enforcement officials, cultural resistance to a more dialogic approach, and lack of community engagement. Nonetheless, the prospects for implementing restorative justice are promising, especially with opportunities to expand the scope of regulations, improve training for legal officers, and utilize digital technology for mediation.

The government needs to integrate restorative justice principles into broader legislation, including in the handling of certain serious crimes that allow for dialogic approaches as an alternative. Intensive training programs should be provided to law enforcement officials to improve their understanding of restorative justice principles and practices. This includes technical guidance in the conduct of mediations and case simulations.

Restorative justice should be integrated into the legal education curriculum in Indonesia to create a new generation of law enforcement officers who are more adaptive to this approach. The government and civil society organizations need to raise public awareness about the importance of restorative justice through educational campaigns and legal counseling. The development of digital platforms to facilitate the mediation process can be an innovative solution, especially in cases where direct meetings between perpetrators and victims are difficult. With these steps, restorative justice can be optimized to create a criminal justice system that is more inclusive, effective, and oriented towards restoring social relations, and is able to answer the challenges of the dynamics of modern society.

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