



LEGAL REFORM ON THE CONCEPT OF RESTORATIVE JUSTICE IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Restorative justice is an alternative to solving criminal cases, which in the resolution mechanism involves the perpetrator, victim, perpetrator's family, victim's family, community leaders, or stakeholders to jointly find a fair solution and emphasize returning to the situation as before. The implementation of the concept of restorative justice is needed in an effort to reform the law of the criminal justice system. This study aims to understand, explain, analyze, and make a comparison with the implementation of the concept of restorative justice as an effort to reform criminal law. The method used in this study is normative legal research. There are efforts to reform the law or legal findings in a criminal justice system regarding the resolution of criminal cases. The concept of restorative justice can be adopted and simultaneously applied. In addition to minimizing the accumulation of case files, restorative justice prioritizes the rights of perpetrators and victims and the restoration of the situation.

A. INTRODUCTION

The Republic of Indonesia's 1945 Constitution states explicitly in Article 1 paragraph (3) that the State of Indonesia is a state of law (*rechtsstaat*).¹ This means that all sub-systems of the administration of the Indonesian state and its constitutional system and social order system must be governed by law, and also all elements of the instruments of state power and citizens must obey the laws created for the Indonesian legal state. This is also called constitutionalism, which is adopted in the rule of law. Since the law is the basis for regulation and a guarantor of maintaining order, all strategies for law formulation, the use of the law, legal institutions, and law enforcement become very important in understanding the ideal of the rule of law.² Law is a set of rules concerning the conduct of people as members of society, while the only purpose of law is to establish salvation, happiness, and order in society. Each society has a variety of colorful interests that can cause clashes with each other. If clashes occur, then the community becomes shaken, and this shock must be avoided. For this reason, the law creates certain relationships in society.³

Indonesia appears to have failed in its efforts to establish an acceptable level of enforcement for formal criminal justice processes. In this modernization era, many crimes among Indonesian people lead to court lines, where people tend to use court channels as an effort to solve a case that they think conceptually and theoretically will create justice, but in reality, it is not easy to achieve because of its nature that tends to be a win-lose solution. In light of this fact, the conclusion of a matter through the judicial system that is only a win-lose solution in general often causes a sense of "bad or disappointed" holds grudges, feels dissatisfied, feels unfair and even worse, intending to seek revenge. The police are in control of examinations, the prosecutor's office is responsible for charges, and the courts are responsible for rendering verdicts, according to Indonesia's current system of law. On the contrary, it appears that law enforcement via official routes still suffers from a deficit of criminal justice where the demands between the general public and those harmed who have not yet attained their position are overlooked.⁴ These things will be so deeply ingrained in the mind of the losing party that he will attempt to seek "justice" to the further level of justice (both appealing and

¹ Janpatar Simamora. "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14, no. 3 (2014): 556.

² Laurensius Arliman. "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia." *Dialogia Iuridicia: Jurnal Hukum Bisnis dan Investasi* 11, no. 1 (2019): 2.

³ Maharidiawan Putra. " Hukum dan Perubahan Sosial (Tinjauan Terhadap Modernisasi Dari Aspek Kemajuan Teknologi)." *Jurnal Morality* 4, no. 1 (2018): 49.

⁴ Rena Yulia. "Mengkaji Posisi Korban Kejahatan Dalam Sistem Peradilan Pidana." *Mimbar Hukum* 28, no. 1 (2016): 35.

cassation for the party displeased with the high court's verdict). With this phenomenon, of course, it has caused the District Court, High Court, and Supreme Court levels) to see a sharp increase in the volume of cases being heard there, so there is a backlog of cases.⁵

In addition to adding to the pile of cases, many crimes, particularly those committed in Indonesia, including the theft of AAL's flip-flops, Rasminah's plate, Aminah's IDR 2,500.00 worth of cocoa, and a number of other incidents of a similar nature, ought not to be charged and brought before a judge. This is due to the general public having harshly condemned the judges' decisions in these and other incidents like them for not upholding their ideals of fairness. This is exacerbated by the judiciary's role and function, which are considered to be no longer functioning properly.⁶ According to Satjipto Rahardjo,⁷ the resolution of disputes through the legal system, which results in court judgments, is a form of regulation that moves things along slowly. This is due to the lengthy process of regulation, which involves levels such as the Police, Prosecutor's Office, District Court, High Court, and even the Supreme Court.⁸ This process eventually impacts the buildup of incidents that are not minor in the trial, which causes the criminal justice system to be less optimal in its implementation. In addition, because it is costly, laborious, exhausting, and fails to resolve the issue, the resolution that is predicted through official routes often fails to demonstrate a feeling of fairness. There are still many similar cases, such as fraud, bribery, and nepotism. This makes Indonesian law not qualified.⁹

Criminal cases in principle cannot be resolved through out-of-court mechanisms. The term Restorative Justice, is often used in cases of misdemeanors in a criminal justice. The active roles of the two sides are significant in the restoration-based paradigm of handling criminal situations. Restorative practices support offenders to actively repair the damage inflicted on individuals, interpersonal relationships, and communities.¹⁰ Thus, the

⁵ Arman Tjoneng. "Gugatan Sederhana Sebagai Terobosan Mahkamah Agung Dalam Menyelesaikan Penumpukan Perkara di Pengadilan dan Permasalahannya." *Dialogia Iuridica* 8, no. 2 (2017): 96.

⁶ Iklimah Dinda Indiyani Adiesta. "Penerapan Restorative Justice Sebagai Inovasi Penyelesaian Kasus Tindak Pidana Ringan." *Interdisciplinary Journal on Law, Social and Humanities* 2, no. 2 (2021): 149.

⁷ Satjipto Rahardjo. "Hukum Progresif Berhadapan dengan Kemapanan." *Jurnal Hukum Progresif* 4, no. 1 (2008): 3. See also, Ahmad Faisal. "Pemikiran Hukum Progresif Prof. Dr. Satjipto Rahardjo." *International Journal of Cross* 1, no. 2 (2023): 321.

⁸ Junaidy Maramis. "Penambahan Plea Bargaining Dalam Sistem Peradilan Pidana di Indonesia." *Lex Administratum* 10, no. 5 (2022): 2.

⁹ Ahmad Faizai Azhar. "Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana di Indonesia." *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 137.

¹⁰ Mark B. Scholl and Christopher B. Townsend. "Restorative Justice: A Humanistic Paradigm for Addressing The Needs of Victims, Offenders, and Communities." *Journal of Humanistic Counseling* 0, no. 0 (2023): 1.

concept of restorative justice was born. The definition of restorative justice is: "a reconciliation and restoration of injustices that the culprit of the criminal act (his family) desires to do to the vulnerable of the crime (his family) (harmony efforts) with the goal and intent that legal issues that arise from the commission of the unlawful act can be solved effectively by accomplishing contract and bargain among the parties."¹¹ Retributive justice has been practiced in Indonesia's judiciary. The difference between retributive justice and restorative justice is that retributive justice is oriented towards retribution in the form of punishment and imprisonment, while restorative justice is oriented towards restoring a situation by using approaches between perpetrators and victims in finding and achieving the best solutions and alternatives to solve the case.¹²

Restorative justice, which is a procedure when all sides engaged in a specific criminal conduct work together to address the issue of how to cope with repercussions in the future, is what is intended. Depending on the nation's legal system, restoration justice may be applied differently. Restorative justice can only be used if allowed in a court.¹³ The main method used to carry out this procedure is discretion and transfer, which is the need for judges' consideration when deciding the right time to try a case and transferring a matter from a criminal justice environment to an informal environment that can be decided through deliberation.¹⁴ If noticed, Law enforcement in Indonesia still has a number of issues that need to be rectified, particularly when it comes to criminal cases between two parties from the same group. The public has not experienced the sense of justice expected from the authorities. Furthermore, as is common knowledge, Indonesia's judicial system does not heavily regulate victims. Because this system places greater emphasis on criminals than victims, occasionally, the reality of victims is disregarded or "forgotten." In essence, the defense of human rights includes the defense of the rights of both victims and offenders. For victims' liberties to be upheld, they must be protected because victims' liberties are now less safeguarded than offenders' rights in Indonesia's judicial system. In this problem, Restorative Justice can be a solution to these circumstances or conditions. Based on the background of the research, there are problems that can be raised, among others: (1) what is the principle of restorative justice in criminal

¹¹ Agnes Sutarnioa and Iwan Setiawan Djaya. "Tinjauan Terhadap Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Terpadu." *Jurnal Hukum Pemberdayaan Hukum* 5, no. 2 (2015): 45.

¹² Lysa Angrayni. "Kebijakan Mediasi Penal Dalam Penyelesaian Perkara Tindak Pidana Ringan Perspektif Restorative Justice." *Jurnal Hukum Respublica* 16, no. 1 (2016): 92-93.

¹³ Hanafi Arief and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia." *Jurnal Al'Ad* 10, no. 2 (2018): 175.

¹⁴ Deborah Beim, Tom S. Clark, and John. W Patty. "Why So Courts Delay?." *Journal of Law and Courts* 5, no. 2 (2017): 3.

law enforcement in Indonesia? (2) What is the policy of the criminal justice system in Indonesia in adopting the concept of restorative justice?

B. RESEARCH METHODS

This study examines legal norms as its subject matter and employs normative legal research techniques that enable internal legal analysis. The approach used is a statutory approach, a concept approach, and a comparative approach, namely making a comparison of the legal norms of the country of origin with foreign countries. Primary, secondary, and tertiary legal resources are the different categories of legal resources employed in this study. However, the Constitution 1945 is the primary legal source used in this study, in addition to the Criminal Code and Supreme Court Rules No. 3 of 2022 concerning mediation in court. Books and scholarly articles pertinent to this study serve as additional legal resources, while research-based tertiary legal resources are assessed utilizing normative methods. Tertiary legal materials are legal materials that are complementary to provide additional instructions or explanations to primary and secondary legal materials, namely an analytical strategy and criminal law concepts that make reference to regulations and laws and are used to inventory and assess the legal resources that are being gathered.¹⁵

C. RESULT AND DISCUSSION

1. Principles of Restorative Justice in Criminal Law Enforcement Efforts in Indonesia

According to the Indonesian Code of Criminal Procedure, criminal matters cannot be settled outside of the legal system, but it may be feasible in some circumstances. Practically, criminal law enforcement in Indonesia, although the Criminal Code and the Code of Criminal Procedure or other Criminal Acts specifically regulated in a separate Law do not regulate the process of resolving criminal acts by mediation, but in practice is frequently discovered to be settled beyond the judicial system at the judgment of law enforcement personnel, settlement processes, conventional organizations, and so forth.¹⁶

The results of the growing use of criminal arbitration as a substitute for restoration in criminal cases to resolve matters in law enforcement demonstrate how little there is between civil and criminal laws, and the

¹⁵ Anak Agung Sagung Laksmi Dewi et al. "Balinese Local Wisdom's Perspective on Legal Protection for Children as Victims and Perpetrators of Sexual Abuse." *Jurnal Hukum Novelty* 14, no. 1 (2023): 35.

¹⁶ Ana M. Nascimento, Joana Andrade, and Andreia de Castro Rodrigues. "The Psychological Impact of Restorative Justice Practices on Victims of Crimes-a Systematic Review." *Trauma, Violence, & Abuse* 24, no. 3 (2023): 1929.

difference does not work.¹⁷ The concept of criminal case resolution with a restorative justice method utilized by solving cases through peaceful channels, known as penal mediation, is considered to have several advantages.¹⁸ The concept of restored justice can be determined as feedback to the evolution of the legal system for crime that emphasizes the requirement for civic engagement and individuals who are disregarded by the systems already in place.¹⁹ For victims and offenders to be able to solve their disputes, the use of restorative justice necessitates the cooperation of society and authorities. The most impacted parties (victims), those who committed the crime, and their "social interaction interests" are brought back into conflict through reconciliation, and their needs are given precedence. Instead of just offering offenders formal or legal justice while providing victims with no justice, restorative justice highlights fundamental rights and the necessity to identify the impacts of social inequalities and find easy solutions for reestablishing them.²⁰ The needs of both victims and offenders are the main emphasis of the restoration of justice method. Additionally, a restorative justice strategy aids offenders in preventing future offences. It is founded on the philosophy of justice that considers crimes as crimes against individuals or society, not crimes against the state in principle.²¹

In developed nations, the criminal justice system is inherently based on the restoration of justice principle. As mentioned above, the rule is still applied to criminal charges in Indonesia, where it has not yet been reconciled between perpetrators of crimes and victims of criminal acts, both during conviction and after conviction. There needs to be a third party who takes the initiative to improve the connection between criminals and those victimized by their crimes. The initiative needs to be carried out because both criminals and victims of crime each have reasons to close themselves to third parties.²² Criminal justice, in its implementation, "due process of law," is a legal concept that neatly sums up the principles of criminal justice: a fair and decent legal process. Fair and proper legal process is a criminal justice system. In addition

¹⁷ Dziky Saeful Rohim. "Mediasi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Penipuan Di Indonesia Ditinjau Dari Asas Contante Justice." *All Adll: Jurnal Hukum* 12, no. 1 (2021): 209.

¹⁸ Henny Saida Flora. "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia." *University Of Bengkulu Law Journal* 3, no. 2 (2018): 147.

¹⁹ Kadek Diva Firman Adinata. "Penerapan Prinsip Restorative Justice Terhadap Pelaku Tindak Pidana Lanjut Usia (Studi Tentang Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum)." *Jurnal Hukum Media Justitia Nusantara* 12, no. 1 (2022): 27.

²⁰ Irvan Maulana and Mario Agusta. "Konsep dan Implementasi Restorative justice di Indonesia." *Datin Law Jurnal* 2, no. 2 (2021): 47.

²¹ Anak Agung Ngurah Adhi Wibisana and I Ketut Rai Setiabudhi. "Restorative Justice Dalam Penyelesaian Sengketa Cyberbullying." *Jurnal Magister Hukum Udayana* 11, no. 2 (2022): 443.

²² Masahiro Suzuki. "Victim Recorvery In Restorative Justice A Theoretical Framework." *Criminal Justice and Behavior* 50, no. 12 (2023): 1898.

to the application of criminal procedure law in accordance with its principles, it must also be supported by the inner attitude of law enforcement that respects the rights of citizens. In order to reform the criminal law, of course, there must be a reorientation towards various Dutch heritage rules that are often said to be obsolete and unjust, outdated and no longer in accordance with reality (outmoded and unreal) because they are not rooted in cultural values and are no longer responsive to today's social needs.

Efforts to reform criminal law that rely on societal values are continuous efforts because they are continuous and continuous activities. The best judicial framework for Indonesian authorities is restorative justice because there is a balance in obtaining legal protection, namely, in addition to protecting the interests of the state, it also provides legal protection to perpetrators and victims.²³ The law that creates balance and harmony like this is more in line with the legal ideals (*rechtsidee*) of Pancasila because it contains a model that reflects the ideological values and socio-cultural values of Indonesian society, which are characterized by harmony, harmony, and balance as contained in Pancasila. Legal protection of victims of criminal acts should be an integral part of legal protection for society. The establishment of legal protections for the supply of restoration and reimbursement, medical care, and legal aid, as well as the accessibility of these rights, have been controlled by Law No. 13 of 2006 regarding the Protection of Witnesses and Victims. The rule of positive law is very necessary because it can end uncertainty and balance the treatment between criminals and those who have been the victims of crimes. The community's strong legal culture, which includes the law enforcement system, has a significant role in determining whether the restorative justice process exists as an alternative to resolving criminal matters. The judicial awareness that only prioritizes the application of rules proves the guilt of the perpetrator and then punishes him cannot accept this idea.²⁴ The judicial system is the government's authority to punish people who break the law. The goals of the offender, the community, and the state-dominated judicial concern are due to detention and/or therapy being a highly important aspect.²⁵ Restorative justice originated over 20 years ago as an alternate approach to youth crimes. In fact, resolving disputes through restoration or deliberative processes is nothing new in Indonesia. Even Indonesian customary law makes no distinction between resolving civil and crime disputes; instead, all disputes can be settled through discourse to achieve balancing or replenishing the state of criminal law

²³ Abdul Halim. "Analysis of Restorative Justice in The Criminal Justice System." *Enigma in Law* 1, no. 1 (2023): 12.

²⁴ Darryl Heller. "Reparations and Restorative Justice: A Path to Racial Healing." *Hastings Journal on Gender and the Law* 34, no. 2 (2023): 51.

²⁵ M. Alvi Syahrin. "The Implementation of Restorative Justice Principles in Integrate Criminal Justicel System." *Majalah Hukum Nasional* 1, no. 1 (2018): 98.

repressively felt not to solve problems in the criminal justice legal system.²⁶ Reducing incarceration rates, abolishing shame and labels, and transforming wrongdoers into ordinary individuals are the most important objectives of this restoration justice idea. The burden of law enforcement, prosecutor's offices, jails, the judiciary, and imprisonment is reduced, state finances are saved, animosity is avoided because the victim has pardoned the criminal, and victims swiftly receive recompense, enabling localities to combat criminality and reintegrate criminals into the community. Systems and processes in criminal justice that emphasize penalty are changed into an approach of negotiation and mediation, resulting in settlements for a more equitable and equal resolution of crimes for both victims and offenders. Restitution or compensation to victims is known in criminal justice today, while restoration has a broader meaning. When viewed normatively, the normative provisions formulated in Article (1) number (10) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution state that the community may use other alternatives in resolving disputes.

Its implementation can vary, among others, by conciliation, mediation, negotiation, consultation, and the use of customary justice mechanisms. This mechanism (customary justice) is still in effect in rural areas in many countries worldwide. Peaceful dispute resolution has long been and commonly used by communities.²⁷ This can be seen from customary law, which places traditional heads as mediators and makes customary decisions for disputes between residents. The form of settlement and the level of the binding force of the results of the settlement of criminal cases certainly vary following the relevant customary law. The tradition of dispute resolution in indigenous peoples is based on the philosophical values of togetherness (communal), sacrifice, supernatural values, and justice. In customary law societies, the common interest is a philosophy of life that permeates the chest of every member of an indigenous community. Common interests are upheld that exceed individual interests, so there are known to be common interests in indigenous peoples. Disputes between individuals and between groups, in the view of customary law communities, are actions that interfere with common interests (communal); therefore, they must be quickly resolved wisely using customary settlement patterns. The meaning that can be taken is the divine values

²⁶ Suwito et al. "Educating Children On Legal Matters Through Local Wisdom Principles Approaches And Enhancing Restorative Justice In The Criminal Law System: (strengthening Restorative Justice in the Criminal Law system)." *Journal of Law and Policy Transformation* 8, no. 1 (2023): 14-15.

²⁷ Nurcahyo Jungkung Madyo. "Implementation of Local Wisdom in Stopping Prosecutions Based on Restorative Justice." *International Conference on Politics, Social, and Humanities Sciences* 2, no. 1 (2022): 387.

(forgiving) and deliberation contained in them, which are nothing but a reflection of the values of Pancasila.²⁸

2. Comparative Study on Comparative Implementation of Restorative Justice Concept in Crime Resolution in Indonesia

The direction of Indonesian criminal law reform is in a position on how to accommodate laws that live in society into positive laws within the framework of national goals oriented to Pancasila as well as alternatives that can be used to respond to legal pluralism in Indonesia to avoid conflicts between one law and another.²⁹ The criminal justice process takes a long time and does not guarantee certainty for perpetrators and victims. Orientation is given to offenders' punishment and the judicial process centres only on the offender and the state. With this framework, victims and the fulfillment of their rights gradually began to be neglected. It was not until around the 1970s that the awareness of the vital role of victims was echoed. The public began to realize the importance of the role of victims. The victim movement is widely recognized and is in line with the birth of the concept of restorative justice.³⁰ The provisions of Law No. 1 of 2023 concerning the Criminal Code do not specifically explain the implementation of the concept of restorative justice, but in the provisions of the law, there are objectives and several considerations that are the basis that the restorative concept needs to be used as an effort to solve certain crimes in the criminal justice system in Indonesia. The intended purpose is based on the provisions of Article 51 Letter C and Article 52 of the Criminal Code, including Article 51 Penalties, which aim to "resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace in society." While Article 52 states, "Punishment is not intended to degrade human dignity". From the statement of the article, the concept of restorative justice has a role in its resolution considering that a punishment must be considered as stipulated in Article 54 paragraph (2) of the Criminal Code Law, which states:

"The lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time of the crime and what occurred later can be used as a basis for consideration not to impose a crime or not to impose action by considering the aspects of justice and humanity."

²⁸ Herlina Manullang et al. "Penyelesaian Tindak Pidana Biasa Bermotif Ringan Dengan Restoratif Justice Sebagian Bentuk Upaya Pembaharuan Hukum Pidana." *Nommensen Journal of Legal Opinion* 1, no. 1 (2020): 65.

²⁹ Yaris Adhial Fajrin and Ach. Faisol Triwijaya. "Arah Pembaharuan Hukum Pidana Indonesia di Tengah Pluralisme Hukum Indonesia." *EKSPOSE: Jurnal Penelitian Hukum dan Pendidikan* 18, no. 1 (2019): 737.

³⁰ Robert Peacock. "Restorative Justice and Access to Justice: Critical Reflections of The Global North-South Divide." *The International Journal of Restorative Justice* 6, no. 2 (2023): 197.

Based on the article's statement, the purpose of punishment is not to degrade human dignity. Therefore, it is necessary to consider the terms of justice and humanity by leading to the restoration of the balance of conditions due to certain criminal acts committed affecting the community. Restorative justice theory and practice are considered to emerge and be shaped in depth as an effort to respond to the needs of victims and perpetrators. Definitions and principles are needed to provide answers regarding the orientation or purpose of implementing restorative justice and in what situations law enforcement officials can apply restorative justice. The history of the development of criminal law in the world shows that there is a greater concern for the interests of victims in criminal law enforcement that goes hand in hand with the emergence of new approaches to the purpose of punishment, from mere deterrence and retributive to rehabilitation. The application of restorative justice in the criminal law system shows a positive development.³¹

There are several common practices and ideas in the implementation of restorative programs ranging from the national level in several countries to the international level, for example, by prioritizing the interests of victims, communication between perpetrators and victims, returning conditions to victims and communities, and involving community groups instead of making punishment a personal scourge. Based on comparative studies of the comparative implementation or practice of the concept of restorative justice in solving crimes between countries, as follows:³²

1. Netherlands

In the example of restorative justice practice in the Netherlands, it seems that efforts to balance participation between victims and perpetrators are very dominant, both through mechanisms available within the criminal justice system and outside the criminal justice system. In addition, there is also a great focus on providing pathways or processes to obtain restorative results between perpetrators and victims, be it through mediation or conferencing models.

2. Australia

In the example of restorative justice practice in Australia, the application of restorative justice shows the existence of referral mechanisms at various levels. The mediation mechanism also shows that there are adequate victim engagement efforts. In addition, the restorative justice approach can also be applied to the resolution of sensitive crimes, such as domestic violence.

³¹ Lode Walgrave. "Concern About the Meaning of Restorative Justice: Reflections of a Veteran." *The International Journal of Restorative Justice* 6, no. 3 (2023): 353.

³² Maidina Rahmawati. *Peluang dan tantangan penerapan restorative justice dalam sistem peradilan pidana di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2022), 7.

3. Philippines

In the example of restorative justice practice in the Philippines, the application of restorative justice has succeeded in reducing the backlog of cases in court, which has an impact on budget savings, increasing harmony between various stakeholders, and having a positive impact in terms of empowering and involving victims.

4. Canada

In Canada, arrangements in various legislations strengthen the restorative justice approach. The mechanisms available are quite diverse for crimes involving children and adults.

In the view of some experts and concerning the basic principles on the use of restorative justice programmes in criminal matters adopted by the United Nations, it has been affirmed that restorative justice is process-oriented and outcome-oriented. Based on practice, the restorative justice approach is applied to crimes that affect victims and victimless crimes. If it is felt that it is better able to fulfill the sense of justice and the rights of victims, the restorative justice approach can be applied to serious crimes, for example, domestic violence crimes. However, this possibility also depends on the characteristics of the community, the cultural context, and the nature of the restorative justice program to be implemented.

3. Criminal Justice System Policy in Indonesia in Adopting the Concept of Restorative Justice

The criminal justice system in force in Indonesia has many weaknesses. The criminal justice system requires large costs both financially and in terms of human resources (HR). As a system, in the criminal justice system, there is a condition that must be met, namely cooperation among sub-systems. If one of the sub-systems does not work properly, it will disrupt the system as a whole. Therefore, the four sub-systems (namely the police, the Prosecutor's Office, the Courts, and the Penitentiary) have a close relationship.³³ The function of criminal justice is not to provide opportunities for perpetrators of crimes to repeat the same acts, which has proven to be a failure. This can be seen from the many types of crimes a person or group commits inside and outside prison. The element of pain and fear to imprison criminals in the criminal justice system is considered ineffective. The criminal justice system is

³³ Vivi Ariyanti. "Pembaharuan Hukum Pidana di Indonesia yang Berkeadilan Gender dalam Ranah Kebijakan Formulasi, Aplikasi, dan Eksekusi." *HOLREV: Faculty of Law 3*, no. 2 (2019): 179.

considered unable to handle crime problems because there are still recidivists, crime rates are increasing, and there is street justice.³⁴

The criminal justice system is unable to fulfill the sense of justice for victims because there is still delayed justice-denied justice and double victimization. The criminal justice system is unable to fulfill the sense of justice for perpetrators because, after the sentence, the offender will lose the capacity to lead a normal life.³⁵ The conventional criminal justice system largely focuses on applying the law, assessing guilt, and assigning punishment. Efforts to overcome criminal acts using criminal punishment or sanctions are essentially the oldest method, as old as human civilization.³⁶ Because they are regarded as offences targeting society rather than merely against specific victims, some actions are categorized as "crimes." The criminal justice system reacts for the good of the community since these are seen as communal blunders rather than private ones. Criminal offenses typically receive traditional justice responses that prioritize penalties, discouragement, condemnation, retaliation, and public safety—factors that judges must weigh when determining sentences.³⁷ With an emphasis on the demand for civic engagement and victims who are perceived to be left out of the procedures that operate in the existing criminal justice system, restoration justice is a paradigm of theory that reacts to the evolution of the criminal justice system. On the contrary, police enforcement and other professionals may react to a crime using a new mindset called restoration justice.³⁸

The Supreme Court has the authority to begin putting restoration justice into practice in Indonesia. This is so that the judiciary's highest court, the Supreme Court, may utilize its judicial authority. The Republic of Indonesia's 1945 Constitution, Law No. 48 of 2009 respecting Judicial Power, Law No. 14 of 1985 as revised by Law No. 5 of 2004, and Law No. 3 of 2009 addressing the Supreme Court are among the laws and rules that expressly address this. As a result, because the Supreme Court is the highest court in the legal system and a governmental entity, it is appropriate if the highest court implements the theory or methods of restorative justice. In this case, the Supreme Court is the culmination of a court so that the courts beneath the Supreme Court will take on, accept, and implement the notion of restoration justice if the Supreme

³⁴ Catherine S. Kimbrell, David B. Wilson, and Ajima Olaghere. "Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-analysis for Effectiveness." *Criminology & Public Policy* 3, no. 1 (2022): 162-163.

³⁵ Sahuri Lasmadi. "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia." *INOVATIF: Jurnal Ilmu Hukum* 4, no. 5 (2011): 3.

³⁶ Teguh Prasetyo. *Kriminalisasi Dalam Hukum Pidana* (Bandung : Nusa Media, 2019), 20.

³⁷ Dewi Setyowati. "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan." *Pandecta* 15, no. 1 (2020): 124.

³⁸ Lindsay Fulham, et.al. "The Effectiveness of Restorative Justice Programs: A Meta-analysis of Recidivism and Other Relevant Outcomes." *Criminology & Criminal Justice* 0, no. 0 (2023): 2.

Court embraces, sticks to, and implements it. In that manner, it is intended that the notion of restorative justice shall be used throughout Indonesia's whole court system, from the local court system to the highest court in the country and all in between.³⁹ Additionally, the Law on Judicial Power, specifically Article 5 clearly stipulates that judicial officers are required to investigate the principles that exist within society (the actual law or native understanding).

This law, known as Law of the Republic of Indonesia No. 48 of 2009, regards judicial power. Judges should, therefore, in basic terms, utilize the restorative justice strategy or idea to resolve cases since it is consistent with the Pancasila, or soul, of the Indonesian nation, with the norms underlying traditional law and religious values. Therefore, judges should fundamentally use strategies or ideas of restorative justice to resolve cases because they are consistent with the Pancasila, or soul, of the Indonesian nation, with the norms underlying traditional law and religious values. Justice in Indonesia is manifested in three forms, among others. First, it is under the authority of the court, especially against minor offenses, such as against women, children, and drug users. Second, outside the court's jurisdiction, his confession in the judge's decision applies to offenses not covered by the first form. Third, restorative justice is considered in judges' rulings without the implementation of a formal program. Here, judges adopt a values-oriented, restorative justice approach, putting aside its status as a program. This means that judges, although there is no structured restorative justice program, use these principles as a fundamental basis for legal decision-making. In the example case, two cases use restorative justice, including cases of obscenity of children and insult or defamation, and acts of persecution are relatively mild.⁴⁰ Meanwhile, crimes that cannot be solved with a restorative justice approach, such as life-related crimes, cannot be solved with restorative justice because the perpetrator cannot restore the victim's condition by reinstating the victim to return to what it was before the crime or giving some money to the victim's family because there is no nominal money that can be equated with someone's life. In addition, as with child protection crimes or, more specifically, the criminal act of sexual intercourse against children, perpetrators cannot restore the virginity condition of a child who is a victim, and his actions have a broad

³⁹ Adwi Mulyana Hadi, Anik Iftitah, and Syahrul Alamsyah. "Restorative Justice Through Strengthening Community Legal Culture in Indonesia: Challenges and Opportunity." *Mulawarman Law Review* 8, no. 1 (2023): 33.

⁴⁰ Handar Subhandi Bakthiar, Amriyanto, and Samsu Alam Maddussila. "Solution to Differences in Sentences For Parallel Integration Of Restorative Justice In Indonesian Courts." *Jurnal Hukum dan Peradilan* 12, no. 2 (2023): 417.

impact, namely fear for parents, children themselves or society, especially people who care about the safety of children.⁴¹

Additionally, it should be noted that the idea of restoration of justice is not limited to the Supreme Court. There are multiple phases or procedures that rights seekers must go through in the court system generally and in the criminal justice system of Indonesia in specific, from the level of examination, inquiry, charges, and investigation in the judiciary to the point of implementing a judge's decision. Given the accumulation of files in the court, in terms of handling criminal cases, it is relatively mild using restorative practice methods, which are more trying to restore the condition of the victim with the perpetrator, compared to the judicial process that ends in the conviction of the perpetrator by prioritizing the interests of the victim alone will have an impact on the surrounding environment. As a result, the notion of restoration justice should be adopted and applied as indicated at different tiers or during various court procedures. Currently, there is still no specific regulation related to restorative justice, so each agency creates its own internal rules, but with indicators of criminal acts that can be resolved with a restorative justice approach so that there are different views at the level of implementation in the community. The absence of restorative justice as a reason for stopping the handling of a criminal case is very vulnerable to death through pretrial if it is not specifically regulated, so regulations to accommodate this are urgently needed. Finally, crimes that can be resolved based on restorative justice must meet the circumstances of crimes that are minor, the impact caused is not widespread, and the perpetrator still has the opportunity to be responsible by restoring the condition of victims and perpetrators who are involved in criminal acts for the first time.⁴²

D. CONCLUSION

The criminal justice system tends to override basic principles in terms of fulfilling justice solely for fulfilling legal certainty. Restorative justice is an alternative dispute resolution outside the criminal justice realm that emphasizes restoring a situation between victims and perpetrators. The restorative justice method only applies and can be used for relatively minor crimes such as defamation, child molestation, and relatively minor acts of abuse, not applicable to crimes related to one's life or harming a country. Establishing a Restorative Justice system requires cooperative efforts from the community and government to create a condition where victims and perpetrators can recommend conflict between both sides.

⁴¹ Achmad Dewa Nugraha. "Urgensi Pengaturan Keadilan Restoratif (Restorative Justice) Sebagai Dasar Penghentian Penanganan Tindak Pidana." *Journal of Swara Justitita* 7, no. 1 (2023): 205.

⁴² Reda Manthovani et al. "The Practice of Applying the Concept of Restorative Justice in Law Enforcement in Indonesia." *Russian Law Journal* 11, no. 5 (2023): 1459.

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