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THE URGENCY OF RESTORATIVE JUSTICE IN RENEWING CRIMINAL LAW

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ABSTRACT

This change in the concept of punishment is partly due to the consequences of imprisonment having greater negative effects and not proving its success in reducing crime rates. The purpose of this writing is to analyze the retributive justice paradigm in current criminal law enforcement, and to analyze the urgency of restorative justice in criminal law reform in Indonesia. The research uses a normative juridical approach and the specifications of this research use descriptive analysis methods. The results of this research are that the punishment system through imprisonment makes a prisoner isolated from society and family, so that psychologically the prisoner can experience stress and decline in mental health. The concept of restorative justice offers a recovery process that involves the perpetrator and victim or the victim's family directly in solving the problem. The application of restorative justice returns the conflict to the parties in order to emphasize human rights and the need to restore the impact of social injustice in a simple way, still providing the perpetrators with justice rather than formal (legal) justice where victims do not get justice. Restorative justice also seeks to restore security, personal respect and dignity to the victim.

1. Introduction

Indonesia's constitutional mandate, as regulated in Article 1 paragraph (3) of the 1945 Constitution, clearly states that Indonesia is a rule of law state.¹ The

1 Muhammad Zainuddin (et. al), Politik Hukum Restorative Justice Dalam Pembaharuan Hukum

implementation of prison sentences in Indonesia is a law left over from the Dutch colonial era which is punitive and repressive. This characteristic was none other than influenced by the punishment teachings that were in effect at that time, namely retributive. According to retributive theory, punishment is given because the perpetrator of the crime must accept the punishment for the sake of the mistake. Punishment is fair retribution for the losses caused by his actions. Thus, according to this theory, appropriate punishment is given to criminals based on the consideration that the criminal is proven to have committed a crime. Punishment expresses that the perpetrator of the crime is responsible for the law he violated.²

The criminal justice system has indeed succeeded in prosecuting and imprisoning people, but on the other hand it has failed to create a safe social life. This awareness was initiated by the women's movement under the name "National Association for Victim Assistance Schemes". This movement not only focuses on the role of victims, but also provides assistance services for victims. Crime victims should be treated with dignity, then the perpetrator and the victim or their family should be reconciled. Perpetrators must not only be held accountable but must also be reintegrated into society.³

The development of punishment with the value of restorative justice in various parts of the world has made significant changes to the pattern of retributive punishment with prison institutions that has been adopted up to now. In some countries, prison sentences have even begun to be abandoned and instead social work penalties, supervision penalties and fines have been introduced.⁴ This change in the concept of punishment is partly due to the consequences of imprisonment which have greater negative effects and do not prove their success in reducing the crime rate.⁵

The resolution of criminal cases that is built should prioritize the social balance of society, the balance in question is between the perpetrator and the victim of a criminal act, so that social harmony can be re-created in society. This form of resolution is carried out in a balanced manner through deliberation between the perpetrator and the victim. This kind of settlement concept is called restorative justice.⁶

Settlement of cases through peace as mentioned above is part of the manifestation of the application of the principles of restorative justice and has

Pidana Di Indonesia, *Semarang Law Review (SLR)*, Vol. 3, No, 1, 2022, page 120-129

2 Ibnu Artadi., Menggugat Efektivitas Penerapan Pidana Penjara Pendek Menuju Suatu Proses Peradilan yang Humanis, *Jurnal Hukum Pro Justitia*, Vol.24 No.4, 2006, page. 376-389

3 Dede Kania., Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia, *Yustisia*. Vol.4 No.1, 2015, page.49-62

4 Dwidja Priyatno., *Sistem Pelaksanaan Pidana Penjara di Indonesia*, Refika Aditama, Bandung, 2009, page.34

5 Prianter Jaya Hairi., Konsep dan Pembaruan Residivisme dalam Hukum Pidana di Indonesia Concept and Reform of Recidivism in Criminal Law in Indonesia, *Negara Hukum*, Vol.9 No.2, 2018, page.199-216

6 Eva Achjani Zulfa dan Indriyanti Seno Adji., *Pergeseran Paradigma Pemidanaan*, Lubuk Agung, Bandung. 2010, page.27

been in operation since the birth of Islamic law. The process of resolving criminal cases through peace can be the basis for renewing the existing justice system in Indonesia. This confirms that the concept of the aim of criminal law is *ultimum remedium* (last remedy) not as *premium remedium* (main remedy). The concept of applying restorative justice, which has been around for a long time in Islamic criminal law, is worthy of consideration in reforming and reforming material criminal law in Indonesia. The face of the criminal system in Indonesia should appear with a restorative and responsive character.⁷

Based on previous research from Gilang Gemilang in a journal entitled "Legal Politics of Restorative Justice in Reforming Criminal Law in Indonesia", it was found that "in resolving criminal cases in Indonesia so far this can actually be done using a restorative justice approach, where the mechanism used is deliberation. consensus between the perpetrator, the victim/victim's family, the community and the state as stakeholders in criminal law."⁸

Another research from Dede Kania in a journal entitled "Prison Punishment in the Reform of Indonesian Criminal Law" found that "prison sentences still have many shortcomings that must be corrected so that the sentences imposed on criminals do not have a negative effect on the perpetrators and their families. Apart from that, the punishment imposed on the perpetrator of the crime must simultaneously improve the condition of the victim, the victim's family, and restore the condition of society in accordance with the development of the concept of punishment towards restorative justice."⁹

This research aims to explore the importance of restorative justice in the criminal justice system in Indonesia, especially in cases involving complex criminal acts such as human trafficking. Restorative justice not only provides a more constructive alternative to imprisonment, but also creates opportunities to repair the social balance damaged by criminal acts. By considering the needs of victims, perpetrators and society, this approach is expected to encourage social reintegration and prevent future criminal offenses. This research seeks to provide a more focused justification for why restorative justice is very relevant in Indonesia. Seeing the challenges faced by a retributive-based legal system, restorative justice emerges as an approach that not only meets legal needs but also answers community aspirations to create justice that is more inclusive and focuses on recovery.

Based on the background description above, the purpose of this paper is to analyze the retributive justice paradigm in current criminal law enforcement, and to analyze the urgency of restorative justice in criminal law reform in Indonesia.

7 Nor Soleh., Restorative Justice Dalam Hukum Pidana Islam Dan Kontribusinya Bagi Pembaharuan Hukum Pidana Materiil di Indonesia, *Istidal: Jurnal Studi Hukum Islam*, Vol.2 No.2, 2015, page.123-136

8 Gilang Gemilang., Politik Hukum Restorative Justice Dalam Pembaharuan Hukum Pidana Di Indonesia, *Innovative: Journal of Social Science Research*, Vol.4 No.1, 2024, page.7370-7382

9 Dede Kania., Perlindungan Hak Asasi Manusia Terhadap Pekerja Domestik Di Indonesia, *Yustisia*, Vol.4 No.1, 2015, page 55-72

2. Research Methods

The research uses a normative juridical approach, namely research on positive legal rules and legal principles which is carried out by evaluating relevant legal rules (legislation). Normative methodology was chosen because the focus of this research is on the analysis of positive legal rules, legal principles and doctrines that are relevant to the issues discussed. This method allows critical evaluation of applicable regulations to identify the consistency, adequacy, or application of laws related to research problems. The specifications of this research use descriptive analysis, the characteristic of descriptive analysis is solving the problem being studied by connecting it to legal theories and the practice of implementing positive law regarding the problem being researched, and the data collected is first compiled, explained and then analyzed.¹⁰ The normative juridical approach includes analysis of statutory regulations, legal doctrine, and principles that are relevant to uncovering certain legal issues, while descriptive analysis focuses on presenting facts and phenomena related to the issue being discussed. Considering that the approach method in this research is normative juridical, the data used is secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. In order to obtain this data, it was carried out through the literature study method.¹¹ This approach is complemented by descriptive analysis that connects the problems studied with legal theory and the practical application of positive law. The data collected, consisting of primary, secondary and tertiary legal materials, was compiled, described and explained using the literature study method.

3. Results And Discussion

3.1 Retributive Justice Paradigm in Current Criminal Law Enforcement

Criminal law regulates the forms of prohibited acts and the form of punishment and regulates who can be punished. Criminal law is public law as the state's protection for citizens because there is a violation of the public interest. What is included in the definition of public interest are state bodies and regulations and the legal interests of every human being.¹² This violation of the public interest forces the state to use the full means to deal with the perpetrators with criminal law. In order to protect and create peace and protect against "rape" or violations of various legal interests, the state is given the authority and power to impose penalties, actions or policies in accordance with applicable regulations.¹³

10 Winarno Surachmad., *Dasar Dan Teknik Research: Pengantar Metodologi Ilmiah*, Bandung, CV. Tarsito, 1970, page.19

11 Soerjono Soekanto dan Sri Mamudji., *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta, Rajawali Pers, 2012, page.13

12 Brilian Capera., Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia, *Lex Renaissance*, Vol.2 No.6, 2021, page.225-234

13 Failin., Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia,

The criminal system in Indonesia is closely related to the criminal law regulations inherited from Dutch colonialism, namely *Wetboek van Strafrecht* or the Criminal Code (KUHP). The punishment system contained in the Criminal Code adheres to a retributive paradigm, namely providing retribution against perpetrators of criminal acts. This retributive paradigm can be seen from the types of punishment in the Criminal Code which only focus on appropriate action or retribution for perpetrators of criminal acts.¹⁴

Retributive justice can influence perpetrators of criminal acts by providing punishment commensurate with the crime committed. Appropriate punishment can have a deterrent effect on perpetrators, so that they think twice about committing similar acts in the future. In this case, retributive justice acts as a crime prevention tool by providing serious consequences for perpetrators of sexual violence. Apart from that, retributive justice also provides protection for society by emphasizing that acts of sexual violence will not be tolerated, and that perpetrators will receive punishment commensurate with the crime they committed. This provides legal certainty and sends a message to the public that the criminal justice system is committed to protecting them from crime.¹⁵

In the retributive paradigm, the state, through law enforcement officials, represents victims of criminal acts to avenge the suffering they have experienced by punishing the perpetrators of criminal acts through the court process. The aim of this retributive paradigm is that perpetrators of criminal acts are deterred and do not repeat their actions, so that all aspects of punishment only pay attention to the perpetrators of criminal acts. This results in the interests of victims of criminal acts as parties experiencing suffering due to criminal acts being marginalized.¹⁶ Even though the perpetrator of the crime has been sentenced, the suffering experienced by the victim of the crime has not been able to be recovered, so that in its development a restorative justice paradigm has emerged to resolve criminal cases.

In the retributive theory, criminal sanctions are aimed at someone's wrongdoing through the imposition of suffering (so that the person concerned becomes deterred), then action sanctions are directed at efforts to provide assistance so that he or she changes.¹⁷ Action sanctions aim to be more educational and oriented towards community protection.¹⁸

Jurnal Cendekia Hukum, Vol.3 No.1, 2017, page.15.

14 Bambang Waluyo, *Desain Fungsi Kejaksaan Pada Restorative Justice*, Depok, Rajawali Pers, 2017, page 148.

15 Ghina Nabila (et. al)., Konsep Retributive Justice Dalam Perspektif Jeremy Bentham Relevansinya Terkait Pemenuhan Hak Bagi Korban Kekerasan Seksual, *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat*, Vol.2 No.1, 2023, page.1-25

16 Mudrika (et. al)., Penerapan Restorative Justice Tindak Pidana Korupsi Dengan Nominal Kecil Dalam Sistem Peradilan Pidana Di Indonesia, *Sentri: Jurnal Riset Ilmiah*, Vol.2 No.12, 2023, page.5261–5272

17 Muladi dan Barda Nawawi Arief., *Teori-Teori Dan Kebijakan Pidana*, Bandung, Alumni, 1984, page.4

18 Andi Hamzah., *Sistem Pidana dan Pemidanaan Indonesia, dari Retribusi ke Reformasi*, Jakarta, Pradnya Paramita, 1986, page. 53

According to Smith and Hogan, the retributive theory of punishment is considered a relic of barbarism.¹⁹ Apart from that, in the understanding of determinism, people do not have free will in carrying out an action because it is influenced by their personal character, biological factors and social environmental factors. Therefore, perpetrators of crimes cannot be blamed for their actions and cannot be punished, but need treatment measures aimed at improvement. On the other hand, criminal law which adheres to indeterminism believes that humans have free will and this is the cause of all volitional decisions. Without free will, there can be no error. If there is no error, then there is no blame, so there is no punishment.

The determinist view, according to Alf Ross, gave birth to the modern movement regarding the anti-punishment campaign with the famous slogan the struggle against punishment or abolition punishment which according to Kinberg is that crime in general is a manifestation of the abnormality or immaturity of the offender. requires more treatment than criminal action.²⁰

In this regard, Karel Menninger believes that there needs to be a shift from a criminal attitude towards a treatment attitude.²¹ And according to F. Gramatica, social protection law must replace the current criminal law and integrate individuals into social order and not punish actions. Social protection law requires the elimination of criminal liability (guilt) and its place is replaced by a view of anti-social acts. Grammatical teachings reject conceptions of criminal acts, criminals and criminals.²²

Criminal sanctions formulated based on a retributive paradigm tend to cause suffering to perpetrators of criminal acts. According to the retributive paradigm, criminal sanctions that are/aimed at suffering the perpetrator of a criminal act are not wrong because criminal sanctions are indeed imposed on the perpetrator as retaliation for his wrongdoing against the victim. In the retributive paradigm, the victim is considered to have been represented by the state (including in terms of his sense of justice), so that when the state (through its law enforcement officials) imposes sanctions on the perpetrator, then this is considered to have provided justice to the victim. The actions of law enforcement officers based on legal rules based on a retributive paradigm are also considered to represent the interests of victims in resolving cases. The process of resolving criminal cases in a legal system based on a retributive paradigm never significantly involves victims.

Criminal sanctions and the process of resolving criminal cases in a criminal law system that is based on a retributive paradigm are lacking, in fact they do not pay attention to the interests of victims but are more concerned with the state's

19 Smith and Hogan, *Criminal Law*, London, Butterworths, 1978, page 6.

20 J. Andenaes., *The General Part of the Criminal Law of Norway*, Fred D. Rothmant & Co, London, Sweet & Maxwell Ltd, 1965, page.86

21 Stanley Grupp., *Theories of Punishment*, Indiana University Press, London, 1971, page 250

22 Pardomuan Gultom., Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice dalam Perkara Tindak Pidana Korupsi di Indonesia, *Jurnal Hukum dan Masyarakat Al-Hikmah*, Vol.3 No.1, 2022, page.154-178

need for its citizens to be lawful and the interests of the authorities to carry out their authority in enforcing the law, so the resulting justice is only normative justice. or procedural justice, not substantive justice.²³

3.2 The Urgency of Restorative Justice in Criminal Law Reform in Indonesia

The punishment imposed on criminals is fair from various criminal theory perspectives. However, justice and the expediency of the form of punishment that will be imposed on the perpetrator of the crime must also be considered. Don't let the sentence imposed violate the human rights of the perpetrator of the crime himself.²⁴

Imprisonment as a type of crime that deprives a person of their right to freedom of course violates human rights, especially if the prison sentence is imposed for life, this is a form of punishment that is very inhumane.²⁵ Sometimes a person who has been sentenced to death sentence has to undergo a prison sentence, often without clarity as to when he will be sentenced. It must be admitted that there are many negative things about the prison system that prisoners have to experience, including: Sociologically, imprisonment separates a person from his family. If he is the head of the family then in fact he has the obligation to provide for his family, his wife and children as well as other people whose support before he was imprisoned, apart from that of course the fulfillment of his biological needs is also disturbed; In prison, it turns out that the development system is not working well. In prison, groups are found that often blackmail other groups, act violently and fight. Prison officers often act in favoritism, and prisons also function as a place for the transfer of crime knowledge, so the adage arises that prisons are a crime science school (SIK). The punishment system through prison sentences makes a prisoner isolated from society and family, so that psychologically prisoners can experience stress. and decline in mental health. Coming out of prison, people are actually afraid and don't even want to accept ex-convicts back, because they are afraid that the ex-convict will commit another crime. There is labeling of ex-convicts as criminals, so that after leaving prison it is very difficult for them to find work to support themselves and their families, so that quite a few prisoners end up committing crimes again.

The development of criminal and sentencing theory from retributive to restorative justice, which requires more humane treatment for criminals, and protects the rights of victims, their families and society. In the process of resolving criminal cases according to restorative justice through deliberation to reach consensus, where each party has an equal position and no one

23 Gregorius Widiartana., Paradigma Keadilan Restoratif dalam Penanggulangan Kejahatan dengan Menggunakan Hukum Pidana, *Justitia Et Pax*, Vol.33 No.1, 2017, page.1-22

24 Andi Istiqlal Assaad., Hakikat Sanksi Dalam Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam. *Al-Ishlah: Jurnal Ilmiah Hukum*, Vol.20 No.2, 2017, page 50-64.

25 Budi Kristiarso., Pencabutan Hak Politik Sebagai Pidana Tambahan Dalam Perspektif Hukum Hak Asasi Manusia Di Indonesia, *Lex Et Societatis*, Vol.6 No.4, 2018, page.15-24

dominates, the focus of the resolution lies in mediation and restoration of the relationship between the perpetrator of the crime and the victim.²⁶

The concept of restorative justice is a form of law enforcement that is in accordance with the legal awareness they have or in accordance with the values that exist and are highly upheld by the community. Because, when law enforcement is carried out, basically society expects legal certainty, because with legal certainty society will be more orderly, it is a justifiable protection against arbitrary actions so that someone will get something in certain circumstances.²⁷ On the other hand, society hopes that there will be benefits in implementing and enforcing the law, so don't let the implementation or enforcement of the law actually cause unrest in society. The community is also very interested in implementing or enforcing the law paying attention to the elements of justice, even though the law is not identical with justice, because the law is general in nature and binds everyone or generalizes, while justice is subjective, individualistic and does not generalize.²⁸

The essence of restorative justice is none other than the value contained in it which reflects the spirit of the Pancasila value, namely "deliberation". Based on this, restorative justice has basically been realized by several customary law communities in reflecting the value of deliberation, so that the essence of the concept of restorative justice is not a new concept. The use of a formal model by integrating restorative justice juridically has received recognition by accommodating restorative justice in law enforcement for minor crimes, namely by the formation of a Memorandum of Agreement with the Chairman of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of Police Republic of Indonesia concerning the Implementation of the Preparation of Limits for Minor Crimes and the Amount of Fines, Rapid Examination Procedures, and the Implementation of Restorative Justice, Number: 131/KMA/SKB/X/2012; Number: M. HH -07. HM. 03. 02 of 2012; Number: KEP -06/E/EJP/10/2012; Number: B/39/X/2012.²⁹

Handling criminal acts using restorative justice is not only seen from a legal perspective, but can also be related to religious, moral, economic, social aspects and local customs or wisdom. Apart from that, the development of criminal law also recognizes the existence of penal mediation. The application of criminal law in the use of penal mediation is considered a derivative of

26 Guruh Tio Ibiurwo (et. al)., Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif. *Jurnal Hukum Respublica*, Vol.21 No.2, 2022, page. 155-178.

27 Septa Chandra., Politik Hukum Pengadopsian Restorative Justice Dalam Pembaharuan Hukum Pidana, *Fiat Justisia Jurnal Ilmu Hukum*, Vol.8 No.2, 2014, page.255-77

28 Hasaziduhu Moho, Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan Kemanfaatan, *Majalah Ilmiah Warta Dharmawangsa*, Vol.13 No.1, 2019, page 1-13

29 Herlina Manullang (et. al)., Penyelesaian Tindak Pidana Biasa Bermotif Ringan Dengan Restoratif Justicesebagian Bentuk Upaya Pembaharuan Hukum Pidana, *Nommensen Journal of Legal Opinion*, Vol.1, No.1, 2020, page.64-77

restorative justice, considering that in principle there are similarities in that there is no need to carry out the judicial process through court. Although out-of-court case resolution is generally applied in civil cases, and criminal cases cannot be resolved outside of court, in practice it can be applied in certain cases, and it could even be that Alternative Dispute Resolution (ADR) is ideal.

Criminal mediation differs from other restorative practices, such as community conferences or victim-offender panels, in its structure and focus. Mediation tends to be more focused on direct interaction between the perpetrator and the victim, with the mediator as a neutral facilitator. Meanwhile, community conferences involve broader participation, including family members, the community and other parties affected by crime. Victim-offender panels are typically used in certain cases where there is no direct relationship between the perpetrator and the victim, but both parties wish to engage in a dialogue about the impact of the crime. Understanding these differences is important so that criminal mediation can be implemented appropriately according to the specific needs of the case being handled.

The concept of restorative justice in the conventional criminal procedure process can be seen in an event that has occurred, then peace occurs between the perpetrator and the victim or the victim's family by forgiving the perpetrator of the crime. If they are able to reach an agreement to make peace because of forgiveness, then the law enforcement authority cannot determine whether to continue the case in the criminal realm.³⁰

Formally, the criminal justice process takes a long time and does not guarantee certainty for the perpetrator or victim. Apart from that, the litigation process of justice is not necessarily able to fulfill or restore the relationship between the victim and the perpetrator. The conventional criminal process only makes the victim a witness in the trial which does not have much influence on the criminal decision, the task of prosecuting the authority remains with the prosecutor who has received the investigation files which have been processed as the basis for the criminal demand, without knowing and understanding the real conditions of the problem. Meanwhile, the position of the perpetrator is in the prison chair and must always be ready to accept the criminal sanctions that will be decided against him.

Meanwhile, the judicial process is litigation and non-litigation through restorative justice in criminal cases. The concept of restorative justice offers a recovery process that involves the perpetrator and victim or the victim's family directly in solving the problem. The development of criminal law in resolving non-litigation problems is also known as the penal mediation system. Applying criminal law practice, penal mediation is considered a derivative of restorative justice, because it does not require carrying out criminal law through the courts.

30 Josefhin Mareta., Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak, *Jurnal Legislasi Indonesia*, Vol.15 No.4, 2018, page.309-319

The application of restorative justice returns the conflict to the parties in order to emphasize human rights and the need to restore the impact of social injustice in a simple way, still providing the perpetrators with justice rather than formal (legal) justice where victims do not get justice. Restorative justice also seeks to restore security, personal respect, dignity to the victim.

Discussions regarding restorative justice are still conceptual and lack depth in exploring its practical application. In fact, there is a large body of literature illustrating the success of restorative justice models in various types of fraud. For example, case studies from New Zealand which have integrated restorative justice into their criminal justice system, particularly in dealing with juvenile offending, show that this approach can significantly reduce recidivism rates. Additionally, Canada's experience in adopting restorative justice to handle domestic violence cases provides valuable insight into how mediation and dialogue can restore damaged social relations.

The implementation of restorative justice in serious crime cases faces significant challenges, both from a practical perspective and from public perception. One of the main challenges is doubt about the ability of restorative justice to deliver high-impact sentences for offenders, especially in cases involving violence or serious offenses such as murder, sexual exposure, or terrorism. Public perception tends to prioritize harsh punishment, such as prison or the death penalty, as a form of revenge and deterrence. Additionally, victims and victims' families often feel that restorative approaches can undermine their sense of justice, especially if the perpetrator does not show genuine remorse. From a practical perspective, challenges arise in creating a safe space for dialogue between victims and perpetrators, considering the potential for further trauma or power imbalances. To overcome this, the implementation of restorative justice in serious crimes requires facilitator training, a highly structured process, and support from the wider community through education about the benefits of recovery and social reintegration in creating sustainable justice.

This kind of neglect of literature exploration and case studies limits the scope of discussion, so that the potential for implementing restorative justice in Indonesia is not fully depicted. Given that Indonesia has unique socio-cultural characteristics, it is important to compare the local context with practices in other countries that have successfully implemented restorative justice. A more comprehensive study could include a discussion of how mechanisms such as community conferences, mediation between perpetrators and victims, and perpetrator rehabilitation programs have been used effectively in these countries.

The application of restorative justice has practical significance for policy makers, legal practitioners and society at large, especially in the context of providing benefits to victims and strengthening social harmony. For policymakers, this approach offers an opportunity to design criminal justice policies that are more inclusive and humane. By adopting restorative justice mechanisms, policies can focus on victim recovery, reducing recidivism, and social reintegration of offenders. For example, policies may include the

establishment of mediation centers between perpetrators and victims, recovery funds for victims, and perpetrator rehabilitation programs. This step not only increases the effectiveness of the legal system but also reduces the burden on often overcrowded public institutions.

4. Conclusion

The retributive paradigm of criminal sanctions primarily aims to impose suffering on the perpetrator as retaliation for their wrongdoing, focusing on normative or procedural justice rather than substantive justice. This approach often overlooks the broader implications for human rights, as imprisonment, a common retributive punishment, isolates offenders from society and their families, potentially leading to psychological stress and a decline in mental health. In contrast, the concept of restorative justice emphasizes recovery and reconciliation by directly involving both the perpetrator and the victim or their family in the resolution process. This approach prioritizes the restoration of social balance, the dignity of the victim, and human rights, offering a more humane and inclusive alternative to purely formal legal justice. Restorative justice not only seeks to provide justice to the victim but also facilitates a resolution that addresses the emotional and social consequences of crime, ensuring a more comprehensive and equitable outcome for all parties involved.

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