



UDC 34

IMPLEMENTATION OF RESTORATIVE JUSTICE LAW ENFORCEMENT FOR THE COMMUNITY

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ABSTRACT

The writing is intended to analyze the impact and implementation of the restorative justice restoration in public life, and to analyze the similarities of law enforcement officers' conception to the justice restoration developed in each sub-criminal justice system, the police, the prosecutor, and the Supreme Court. The writing method used by the type or type of research conducted is a descriptive type of research using qualitative research methods. It also employs analysis approaches. Its importance is known about the impact and equality of justice's conception.

KEY WORDS

Restorative justice, analysis, sub-criminal justice system.

Restorative justice aims to consider criminal acts in a broader context, and one way to achieve this is to emphasize the importance of truth and justice as top priorities for law enforcement officials. By adopting this approach, the focus shifts from simply punishing the perpetrator to understanding the causes of crime and finding ways to repair the harm caused to victims and society as a whole. This approach recognizes that a person's actions are influenced by factors such as upbringing, environment, and personal circumstances, and seeks to address these underlying issues to prevent future offending. Additionally, restorative justice encourages dialogue and communication between perpetrators, victims, and affected parties, giving them the opportunity to express their feelings, needs, and concerns. Through this collaborative process, the parties involved can work together to reach a resolution that not only holds the perpetrator accountable for their actions but also promotes healing, reconciliation, and positive change. By prioritizing truth and justice within a restorative justice framework, law enforcement officials can contribute to a more holistic and effective approach in dealing with crime and its consequences.¹ Moeljatno defines criminal acts as actions that damage the realization of a just and equitable social order, thereby posing a threat to society, and showing characteristics that are contrary to prosocial behavior.²

The idea of restorative justice emerged as a response to dissatisfaction with the performance of the criminal justice system, which has been seen as tending to ignore victims. According to Margery Fry (1951), victims began to be neglected in the criminal justice system and in 1970 a movement emerged regarding the need to guarantee victims' rights. One of the driving factors for the implementation of Restorative Justice is the problem of prisons and detention centers experiencing overcapacity. Based on data, Indonesia ranks 8th in terms of having the most prisoners and based on SDP data as of June 2022, it is stated that the capacity of Indonesian prisons and detention centers is 132,107 people, but the population is 278,487 people or with a density of 211%. This happens because criminal sanctions are still the favorite model of punishment for perpetrators of criminal acts. Research conducted shows that since 1998. In 2019, 482 laws were passed, 187 of which regulate criminal instruments or 40% are punitive (punitive).

The sanctions outlined in Article 10 of the Criminal Code can be classified into two, namely basic penalties and additional penalties. Primary penalties include death, imprisonment, imprisonment plus a fine. On the other hand, additional penalties include

¹ Wahid, Abdul. "Keadilan Restoratif: Upaya Menemukan Keadilan Substantif?." *Jurnal Hukum Responsif* 5, no. 5 (2018): 54-63. h. 2.

² Moeljatno, *Asas-Asas Hukum Pidana, Rineka Cipta, Jakarta, 2008, hlm. 3.*



revocation of certain rights, confiscation of designated assets, and public announcement of the judge's decision.

Restorative justice is a criminal resolution strategy that seeks to restore the parties involved in a crime, including victims, perpetrators, or other related individuals. This concept stems from the idea that crime includes more than just breaking the law or violating government authority; instead it causes various losses for victims, society, and even the perpetrators. In addition, restorative justice aims to create social balance in society, similar to the situation before the crime, through the active participation of the victim, perpetrator or other affected individuals. The concept of restorative justice is a concept that has existed in society for a long time, this is reflected in the 4th and 5th principles of Pancasila, namely democracy led by wisdom in deliberation/representation and social justice for all Indonesian people. The values of Pancasila, especially the 4th and 5th principles, are embedded and deeply rooted in the traditions and culture of Indonesian society which prioritizes consensus deliberation to resolve problems that occur in society and the implementation of this concept is able to maintain harmony in society itself.

Resolution using restorative justice can be implemented for minor crimes, which places more emphasis on balance, harmony, harmony and kinship. The reality on the ground is that the implementation of Restorative Justice experiences obstacles or there are problems between law enforcers, especially the prosecutor's office and the police, who do not yet have the same agreement and concept in handling cases in Restorative Justice.

The principle of restorative justice should not be viewed narrowly as a way to resolve cases peacefully, but rather as a comprehensive approach to achieving justice for all individuals involved in criminal cases, which includes the involvement of victims, perpetrators and the local community.³

METHODS OF RESEARCH

The type of research conducted is descriptive research using qualitative research methods. This study falls into the category of normative legal research, which is specifically conducted to identify legal regulations, principles, and doctrines in order to solve legal problems and obtain arguments, theories, or concepts. The methodology used includes statutory and conceptual approaches. The data for this research was obtained from secondary sources including primary, secondary, and tertiary legal materials. Data analysis uses a qualitative descriptive approach, which provides a comprehensive explanation of the legal events under study and utilizes legal theories, concepts, or principles, as well as positive law, expressed in a scientifically accessible manner.

RESULTS AND DISCUSSION

Law enforcement in Restorative Justice, hereinafter referred to as RJ, and is carried out at the Supreme Court, Attorney General's Office and Police levels. The role of three law enforcement agencies in implementing Restorative Justice has a very important role. Restorative Justice is an effort to harmonize or harmonize the relationship between victims and perpetrators and the community as a facilitator to provide conditions that are acceptable to both parties to achieve justice. This justice does not mean that one party has to languish in a detention cell, but how to create a harmonious relationship that can later prevent acts of revenge between the perpetrator and the victim.

Currently in Indonesia criminal law enforcement is still oriented towards punishment for the perpetrator; there is nothing that regulates the position of the victim in criminal law enforcement. In the end, the aim of punishment only focuses on the reintegration of the perpetrator. Imposing a crime against the perpetrator of a crime only has an effect on the perpetrator but the rights of the victim are ignored.⁴ This observation is based on the idea

³ Yahya, Achirul. "Pendekatan Restoratif Justice Dalam Penegakan Hukum Pidana." *Jurnal JURISTIC* (2023): h. 3.

⁴ Mareta, Josephin, and J. H. R. R. S. Kav. "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak." *Jurnal Lex et Societatis* 3, no. 1 (2018): 104. h. 4



that Indonesian criminal law still adheres to the Dutch WvS, despite the fact that the WvS still prescribes individual punishments that are no longer applicable given contemporary advances in criminal behavior.⁵ In order to effectively achieve the desired goal of punishment, namely to uphold the rights of all parties involved, it is important to build a paradigm that does not depend on retribution. Instead, the emphasis should be placed on restorative justice, specifically returning affected individuals to their pre-crime conditions.⁶

Transitioning from a retributive justice framework to a restorative justice approach is a complex endeavor that requires careful consideration of the social context within a society. In the case of Indonesia, it is very important to examine various political, economic and socio-cultural factors to develop an appropriate criminal law system. It is important to enact substantive and procedural laws that facilitate the application of restorative justice principles, thereby aligning the criminal justice system with the needs and interests of offenders, victims and society at large. It is important to note that restorative justice does not mean the abolition of prison sentences, but rather the diversion of cases from traditional justice processes to the path of reconciliation and peace.⁷

In this case, RJ functions to provide an opportunity for the perpetrator to find peace with the victim by repairing the damage. The concept of RJ exists as a paradigm that is always used as an opponent of restorative justice, where retributive justice makes punishment the aim of punishing the perpetrator.

Restorative justice will certainly shift the criminal paradigm in Indonesia, RJ will be a rebuilding of the criminal system. Basically, restorative justice is directed at reparation or restoration of the damage and losses suffered by the victim as a result of the perpetrator's crimes. RJ avoids future conflicts so that the peace settlement only focuses on this restorative settlement.⁸ Based on facts on the ground, the restorative justice approach is not only limited to resolving criminal acts that directly harm victims, but also includes crimes without victims. In fact, in situations where this approach is believed to be more appropriate to meet justice needs and protect victims' rights, there is potential for its application in very serious cases, such as domestic violence. However, the likelihood of implementing a restorative justice approach in such cases depends on a variety of factors, including community characteristics, cultural context, and the specific design of the restorative justice program to be implemented.⁹

In various principles and models of restorative justice approaches, the mediation process between the perpetrator and the victim is a central and very necessary component. This direct exchange provides a forum for victims to express their emotions and convey their hopes that their rights and wishes will be taken into account in resolving criminal cases. The purpose of mediation is to encourage the perpetrator to reflect on his actions, admit his mistakes, and assume responsibility for his conscious involvement in the crime. In addition, the community can actively participate in the realization of agreed results and monitor their implementation. Therefore, restorative justice is generally characterized as resolving cases through penal mediation.

According to Covey, this RJ resolution can be called a win-win solution, where the resolution can satisfy all parties involved, because in his philosophy, to achieve success, we need to realize the interconnected nature of the world and the need for cooperation. Therefore, in various areas of life, cooperation with other parties is very important to achieve prosperity. By recognizing this interdependence, individuals will be more likely to commit to collaborative efforts that ensure mutual success, thereby enabling everyone to achieve victory. This embodies the basic principles of a win-win mentality, which will facilitate smoother interactions and produce agreements and solutions that satisfy the wishes of all parties involved.¹⁰

This is where the role of law enforcers is to enforce the law based on conscience and not blindly divided. The court, prosecutor's office and police need to have an agreement that

⁵ Fallin, "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia", *Jurnal Cendekia Hukum*, Vol. 3 No. 1, September 2017, hlm. 16

⁶ Capera, Brilian. "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia." *Jurnal Lex Renaissance* (2021). h. 7.

⁷ Ibid.,

⁸ Badan Pembinaan Hukum Nasional. *Penerapan Restorative Justice dalam Penyelesaian Tindak Pidana yang dilakukan oleh Anak-Anak*, Jakarta: BPHN, (2013). h. 80.

⁹ Rahmawati, Maidina. *Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia*, 2022. h. 18.

¹⁰ Covey. *The Seven Habits of Highly Effective People* (terjemahan) Covey Leadership Center, 1994. h. f-3



covers the implementation or implementation of restorative justice, there is legal certainty for the community and the community feels grateful for the implementation of restorative justice carried out by law enforcers, there is a sense of justice felt by the community. The implementation of restorative justice is very important for society on a global scale. However, it is important to examine the entity responsible for implementing the implementation of restorative justice in each legal framework. This consideration is very important in order to build consistent governance and prevent conflicts that arise due to different legal principles.

Currently the implementation of RJ law enforcement in the Prosecutor's Office is known as the Restorative Justice House, where this place aims to resolve problems on a family basis, in this RJ House where the parties will meet to resolve criminal problems in accordance with the RJ mechanism, this is for both the victim and The perpetrator will make peace so that this matter does not proceed to court.

This RJ House is an alternative solution to criminal cases. The difference in resolving this case lies in restoring society to the state it was in before the crime occurred, which can be achieved through the application of restorative justice. Restorative justice, as a logical extension of the principle of *ultimum remedium*, emphasizes punishment as a last resort and embodies the principles of justice, proportionality and efficiency. Therefore, the use of restorative justice in terminating prosecutions aims to safeguard the interests of victims and uphold other legal principles, as well as encouraging harmonious social life. Prosecutors as law enforcers and holders of the *dominus litis* principle, must uphold the law by prioritizing peace and restoration to its original state, not only burdening the provision of punishment but must be oriented towards recovery.

It is hoped that the formation of the RJ House will be a real implementation of law enforcement through restorative justice, which can reduce the backlog of cases in court. Currently the Indonesian Attorney General's Office as the pioneer of RJ has resolved 1,454 cases as of December 2022.¹¹ Meanwhile, the Indonesian Police agency has resolved 15,809 RJ cases in 2022.¹² This can prove that the implementation of RJ law enforcement is very effective in society.

The perception between law enforcement officials towards the implementation of RJ must of course have an in-depth study of the rules issued by each agency. Indonesia recognizes the existence of a criminal justice system, the criminal justice system is a harmony of elements of legal institutions in achieving the objectives of the criminal justice system. The criminal justice system, also known as the law enforcement system, embodies the concept that its main function is the real implementation of abstract legal principles.¹³ To support this system, of course coordination is needed regarding the concept of RJ itself. The criminal justice subsystem consisting of the Police, Prosecutor's Office and Supreme Court must not only adhere to the principle of legality, but also recognize the principle of legitimacy through combining local and situational wisdom in decision making.

Therefore, it is not surprising that the criminal justice system in Indonesia, which includes the police, prosecutors, and the Supreme Court, has implemented different policies and approaches to apply the principles of restorative justice when dealing with certain criminal acts committed by individuals. With the increasing prominence of institutional guidelines such as National Police Chief Regulations, Attorney General Regulations, and Supreme Court Regulations governing procedural law, the integration of restorative justice principles must be carried out methodically and comprehensively. This requires the establishment of a strong legal framework to accommodate the diverse perspectives and legal requirements involved.

The main objectives of the criminal justice system are to proactively protect individuals from becoming victims of criminal acts, effectively address the occurrence of crime by meeting society's demands for justice and retribution, and implement measures to prevent recidivism among offenders.¹⁴ Barda Nawawi Arief outlined the importance of the criminal

¹¹ Santosa, Bagus. "Kejagung Selesaikan 1.454 Perkara Lewat 'Restorative Justice' Sepanjang 2022." *Kompas.Com*, December 30, 2022. <https://nasional.kompas.com/read/2022/12/30/15223891/kejagung-selesaikan-1454-perkara-lewat-restorative-justice-sepanjang-2022>.

¹² Nabel. "Tahun 2022, Sebanyak 15 Ribu Kasus Diselesaikan Restorative Justice." *Tribatanews Polda Babel*, December 31, 2022. <https://tribatanews.babel.polri.go.id/2022/12/31/tahun-2022-sebanyak-15-ribu-kasus-diselesaikan-restorative-justice/>.

¹³ Bryan A. Garner, *Black's Law Dictionary*, Edisi Delapan, West Publishing CO, Amerika Serikat, 2004, . 901.

¹⁴ Sumedana, Ketut. *Mediasi Penal Dalam Sistem Peradilan Berbasis Nilai-Nilai Pancasila*. Genta Publishing, 2020. h. 1



justice system, emphasizing the amount of attention its development has received. The criminal justice system is not merely considered as a means of preventing criminal activity, but rather as a societal issue that is parallel to the concept of crime.¹⁵

The police have their own regulations regarding the RJ mechanism in the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, hereinafter referred to as Perpol 8/2021. Meanwhile, the Prosecutor's Office also has its own regulations regarding the RJ mechanism in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, hereinafter referred to as Perja 15/2020. And the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice also regulates RJ. If you look closely at the RJ regulations, you can see that there are disparities. For example, in the RJ Polri regulations, restorative justice is interpreted as a process of resolving criminal acts involving the perpetrator, victim, their respective families, community leaders, religious leaders, traditional leaders, or stakeholders. The aim is to collaboratively seek a just solution through peaceful means, with an emphasis on restoring the situation to normal (Article 1 number 3). Meanwhile, restorative justice as described by the Prosecutor's Office is the process of resolving criminal cases through the active role of the perpetrator, victim, families of both parties, and other stakeholders, with the aim of achieving a fair resolution collectively. which prioritizes restoring the original situation rather than asking for retribution (Article 1, number 1). In essence, RJ emphasizes resolving criminal cases without having to go through court mechanisms, where the perpetrator and victim both look for a solution, of course by prioritizing the rights of the victim themselves.

The police and prosecutor's regulations certainly have differences in interpreting the RJ mechanism itself. Like RJ in the Police, there are two general requirements for RJ, namely material and formal, which basically means that the Police prohibits carrying out RJ in criminal cases of terrorism, state security, corruption, people's lives, drugs, ITE and traffic. Meanwhile, if you look at the RJ requirements from the Prosecutor's Office, the conclusion is that if the perpetrator is a first-time criminal, the criminal offense is threatened with a fine or imprisonment of no more than five years and does not cause losses of more than two million five hundred thousand rupiah, then the Prosecutor's Office can calculate that RJ can be carried out.

Looking at the two different law enforcement regulations above, of course there is a need for a common perception and synchronized cooperation between institutions or the criminal justice system regarding RJ itself. As well as the need for regulations which are the main guidelines in implementing this RJ, both in the form of the Draft Criminal Procedure Code (RKUHAP) and the Draft Criminal Code (RKHUP)¹⁶. In this way, it can provide the same legal umbrella between criminal justice sub-systems such as the Police, Prosecutor's Office and Supreme Court in enforcing this RJ law.

The comprehensive implementation of RJ justice in judicial institutions in Indonesia is still difficult. This assertion is supported by a study of the "development of the concept of restorative justice" which shows that the implementation of restorative justice in Indonesia has not yet occurred or is currently categorized as potentially restorative or it could be said that Indonesia has achieved the implementation of restorative justice at a partial level.¹⁷

CONCLUSION

The application of restorative justice in society offers a more efficient way of resolving disputes outside the legal system. The criminal law paradigm currently in force in Indonesia prioritizes the punishment of criminals as the only way to achieve justice for victims and society. Although the restorative process is included in the duties of law enforcement officers,

¹⁵ Djunaedi, Djunaedi. "OPTIMALISASI UPAYA RESTORATIVE JUSTICE DALAM PENYELESAIAN PERKARA TINDAK PIDANA RINGAN." PhD diss., UNIVERSITAS ISLAM SULTAN AGUNG, 2023. h. 19

¹⁶ Syaputra, Eko. "Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang." *Lex Lata* 3, no. 2 (2021). h. 13

¹⁷ Azhar, Ahmad Faizal. "Penerapan konsep keadilan restoratif (restorative justice) dalam sistem peradilan pidana di Indonesia." *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 134-143. H. 9.



the main focus remains on providing punishment. This highlights the continued existence of repressive and coercive approaches, exemplified by the widespread use of prison sentences as the main form of punishment for offenders. To ensure the achievement of the desired goals of punishment, namely the fulfillment of the rights of all parties involved, a transition is needed from the existing retributive justice paradigm to a paradigm centered on restorative justice.

This transformation can be facilitated by modifying legal substance, legal structure and legal culture, which ultimately increases the effectiveness of criminal law enforcement and the need for uniform understanding of law enforcement officials in implementing the principles of restorative justice. The various elements of the criminal justice system, namely the Police, Courts and Correctional Institutions, are expected to collaborate and build an "integrated criminal justice system" to effectively deal with this restorative approach to justice.

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