

The Nature of Restorative Justice in Indonesian Criminal Justice System

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Abstract

This research aims to comprehensively explore Restorative Justice within Indonesia's judicial system, examining its role, necessity, and implementation methods. The theoretical framework emphasizes reconciliation, reparation, and the involvement of victims, offenders, and communities in justice processes, contrasting with punitive approaches by prioritizing healing and peace restoration. Methodologically, the study employs normative legal research, analyzing Indonesian laws, conducting comparative studies, and exploring doctrinal principles relevant to Restorative Justice. Findings underscore the need for a unified legal framework to ensure consistent application across different judicial levels, advocating for judges to apply Restorative Justice principles effectively through proper training and guidelines. This research contributes valuable insights into enhancing justice and reconciliation practices in Indonesia's criminal justice system.

Keywords: Judge, Nature, Indonesia, Restorative Justice, Sentencing System

INTRODUCTION

Globalization presents a challenge for future law, necessitating improvements, increased professionalism, and reform for everyone involved in the legal field. This perspective is reflected in the view of national legal unity as a hoped-for legal system, as a consequence of the archipelagic insight that forms the basis of national political strategy. As part of the largest institution, the state has a significant function in realizing the established system order so that it runs optimally. In general, the nation's goals form the fundamental basis for its creation. Whether these goals are positive or negative, they remain the foundation for the existence and formation of the state.

The validity of state functions can be viewed from two aspects of power. The classification of states according to these power functions is as follows:

States where all functions or powers are concentrated in one organ, typically an absolute system. This organ can be characterized in three ways:

Single organ: the highest organ, and supreme power in the state, held by a single individual. This is called a monarchy.

Few individuals: the highest organ and supreme power in the state held by a few individuals. This is known as aristocracy or oligarchy.

Many individuals: the highest organ held by the entire populace. This is called democracy.

States where the functions or powers are separated, typically following Montesquieu's doctrine, with each power distributed among several organs. The crucial aspect is the nature of the relationship between these organs, particularly between the legislative and executive bodies, as this determines the form of government and, ultimately, the state's structure. The relationship's nature, whether the organs can influence each other, is vital.

The view that law can be a means of change and social engineering aligns with the 20th-century welfare state ideal. This perspective has produced many rules, sometimes detailed legislation, and sometimes just basic laws.

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Legal development is multi-dimensional and cannot be viewed from a single aspect. Various aspects can be studied in legal development, which always interacts with other disciplines or value systems. Soerjono Soekanto stated:

"The pairing of conservative and innovative values always plays a role in the development of law, as it follows changes that aim to maintain the status quo. On the other hand, there is a strong belief that law can also function as a means of change and creating new things."

Legal development must be based on the principle of balance grounded in Pancasila and balance principles from customary, religious, and international law. The balance principle based on Pancasila means balancing values: divinity, humanity, nationalism, democracy, and social justice. These five values can be condensed into three pillars: divinity, humanity, and society. The balance principle from customary, religious, and international law involves balancing crime prevention, offender treatment, and societal treatment, and resolving cases outside formal processes through reconciliation or penal mediation.

Legal development, particularly criminal law reform, must include developing legal institutions and the substance of legal products from the legal system, in the form of criminal regulations and cultural aspects that influence the legal system's application. In other words, Indonesia's dream for 2085 is to be sovereign, advanced, just, and prosperous. To achieve this, four pillars must be realized by 2045:

- Human resource development and mastery of science and technology;
- Sustainable economic development;
- Equitable development;
- National resilience and good governance.

Legal protection for society is a primary goal of the nation's founders, as stated in the preamble to the Indonesian Constitution, particularly the fourth paragraph, which states: "...Then, to form an Indonesian government that protects all Indonesian people and the entire homeland of Indonesia and to promote public welfare, educate the nation, and participate in world order based on freedom, eternal peace, and social justice, Indonesian independence is established in an Indonesian Constitution, forming a sovereign Indonesian republic based on belief in one God, a just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation/representation, and by realizing social justice for all Indonesian people."

From the fourth paragraph of the preamble, it is clear that the goals of "social defense" and "social welfare" must be reflected in national development goals and aligned with universal legal developments for legal order among nations in the multidimensional era of globalization. The state's legal protection for society can be seen from its criminal law policy. The institution officially appointed by the government to handle crime reactions is the Criminal Justice System. The Criminal Justice System is a system in society to combat crime, with detailed goals:

- Preventing the public from becoming victims of crime;
- Resolving crime cases to satisfy public justice and punishing the guilty;
- Preventing recidivism.

The Criminal Justice System (CJS) often only focuses on the rights of the perpetrator, neglecting the rights of victims, making criminal law seem more protective of perpetrators' rights. Thus, restorative justice can be a solution for criminal justice reform.

Criminal law reform includes criminal policy or criminal justice policy. G. Peter Hoefnagels states that "criminal policy is the rational organization of social reactions to crime" and offers several definitions:

- Criminal policy is the science of response to crime;
- Criminal policy is the science of crime prevention;
- Criminal policy is the science of designating human behavior as crime;

Criminal policy is a rational response to crime, implemented in various forms, including:

Criminal law application;

Crime prevention without punishment;

Influencing societal views on crime and punishment through mass media.

The central issue in criminal law policy is criminalization, which must consider: The national development goal of creating a materially and spiritually prosperous society based on Pancasila, aiming to combat crime and provide corrective measures for crime control for societal welfare and protection; Acts to be prevented or combated by criminal law must be undesirable and harmful (materially or spiritually) to society; Criminal law use must consider the cost-benefit principle; Criminal law use must consider the capacity and workload of law enforcement agencies to avoid overburdening them. From a sociological perspective, punishment has many meanings, as David Garland states: "Punishment is not reducible to a single meaning or purpose. It is a social institution embodying a range of purposes and historical meanings."

Garland views punishment as a social institution with various deep historical meanings. Andrew Von Hirsch distinguishes criminal sanctions from everyday wrongdoing, stating: "The criminal sanction announces in advance that specified categories of conduct are punishable. Because the prescribed sanction expresses blame, this conveys the message that the conduct is reprehensible and should be avoided. It is not necessarily about inculcating that the conduct is wrong."

The implementation of imprisonment in correctional facilities is based on correctional principles as goals, processes, and implementations of prison sentences in Indonesia. Correctional principles, as goals, processes, and implementations, have proven independence and demonstrated both success and failure. Law enforcement officers often feel constrained by the legality principle, which requires criminal cases to be resolved based on legislation. Law enforcement is bound by the letter of the law, even in seeking justice and utility, which must align with legal certainty. Such law enforcement processes often fail to achieve the desired justice for the parties involved (perpetrators, victims, and society). Satjipto Rahardjo argued that litigation, as a form of law enforcement, leads to slow resolution and case backlog due to lengthy processes in the Criminal Justice System. Restorative justice is now being recognized as an alternative process for resolving criminal cases. The paradigm of punishment in Indonesian criminal law is shifting from retributive justice to restorative justice. This paradigm shift necessitates a change in mindset among law enforcement officers, especially judges. Judges must transition from a punishment-based (retributive) approach to a restorative justice approach focused on restoring conditions.

The goal of restorative justice education is to change societal perspectives on crime and problematic behavior, replacing professional punitive justice systems with community-based restorative justice and moral social control. Restorative justice aims to not only effectively control crime but also achieve other desired goals, such as meaningful justice experiences for crime victims, healing from trauma, and reintegrating offenders into law-abiding communities. John Braithwaite, Howard Zehr, and Mark Umbreit, proponents of restorative justice, see it as an effort to eliminate punishment for wrongdoing by giving offenders responsibility and involving all parties (offenders, victims, and society). Restorative justice involves apologies, restitution, acknowledgment of wrongdoing, and efforts to heal and reintegrate offenders into society with or without additional punishment, allowing them to improve themselves. The ideal form of restorative justice includes repair, restoration, reconciliation, and reintegration of offenders and victims with each other and the community.

The trend shows a shift in punishment perspectives towards justice for all parties involved, giving offenders a chance to improve themselves and be accepted back into society. In Indonesia, restorative justice practices are particularly used for minor offenses. Restorative justice is gaining legal support through Indonesian National Police Regulation Number 6 of 2019 on Criminal Investigation and Indonesian Prosecutor's Office Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice. Restorative justice-based case handling can make punishment a last resort, reduce case backlogs in courts, and alleviate overcapacity in correctional facilities. Termination of prosecution based on restorative justice is carried out by prosecutors to meet public justice needs, balancing legal certainty (*rechtmatigheid*) and utility (*doelmatigheid*) in the exercise

of prosecutorial authority based on law and conscience. In response to legal dynamics and community legal needs, the Attorney General of Indonesia issued Regulation Number 15 of 2020 on Termination of Prosecution Based on Restorative Justice. Restorative justice benefits victims by empowering them, fulfilling their needs and rights, and actively involving them in the case resolution process. The process should be offered to the parties voluntarily and not as an automatic service. Restorative justice processes can be applied throughout the criminal justice system. Restorative justice, similar to penal mediation, offers an alternative to the formal criminal justice process. This alternative can avoid lengthy and cumbersome formal litigation. The formal criminal justice process is often costly and slow, resulting in justice being delayed and denied. Restorative justice and penal mediation should be considered for all types of cases, excluding serious crimes and offenses.

Judges play a crucial role in the development of restorative justice in Indonesia. The concept and application of restorative justice principles by the judiciary and throughout the Indonesian legal system are expected to bring about justice aligned with the values of Pancasila, customary law, and religious teachings. The concept of restorative justice has long been recognized in Indonesian society through local wisdom and customary law values. Restorative justice is primarily applied to cases involving children as perpetrators to protect them from the negative impacts of development and globalization. Legal protection for child offenders includes the concepts of restorative justice and diversion, aiming to resolve cases outside the formal criminal justice process. This process involves the active participation of family and community. Legal protection, in this context, ensures certainty of rights and shields the weak from behavior that contravenes legal norms.

METHODOLOGY

This study employs a normative legal research methodology using several legal approaches, including legal document analysis of Indonesian laws, regulations, and judicial decisions pertinent to Restorative Justice, comparative analysis of Indonesian Restorative Justice practices with those in other jurisdictions, and doctrinal analysis of legal doctrines and principles that support or inhibit the application of Restorative Justice.

RESULTS AND DISCUSSIONS

The Nature of Restorative Justice in the Indonesian Criminal System

In criminal law enforcement, the concept of a sentencing system is recognized. According to L.H.G. Hulsman, the definition of a sentencing system is very broad; it refers to the statutory rules relating to penal sanctions and punishment. The most traditional sentencing system is retributive, or punitive, justice. Although retributive justice is the oldest system, it often fails to deter crime effectively, leading to dissatisfaction. Restorative Justice emerged from dissatisfaction and frustration with the formal justice system. While courts strive to create justice, in practice, achieving it is not always easy due to the win-lose nature of the process. This can result in feelings of dissatisfaction or resentment in the losing party, who may seek "justice" at higher levels of the judiciary, such as the High Court or the Supreme Court. In response to this frustration, the Restorative Justice System was introduced to involve all parties in the conflict, as well as the surrounding community, in resolving issues and addressing consequences. Restorative Justice is based on the belief that all involved parties should actively participate in finding a resolution. This approach is seen as a means to promote peaceful expression, build appreciation for diversity, and enhance responsible community practices.

Restorative Justice focuses on the needs of both victims and offenders, and it helps offenders avoid future crimes. It is based on a theory of justice that views crime and violations as infringements on individuals or communities, rather than just the state. Through Restorative Justice, dialogue between victims and offenders aims to foster offender accountability and provide higher satisfaction for victims. Voluntariness is a fundamental requirement for achieving peace in Restorative Justice. Restorative Justice is a problem-solving model that involves victims, offenders, their social networks, judicial institutions, and the community. Its core principle is to provide restitution to victims through compensation, peace, community service, or other agreements. Restorative Justice must be impartial, fair, and focused on truth and equity in all aspects of life. Therefore, offenders have the opportunity to engage in restoration, the community plays a role in maintaining peace, and the court maintains public order. The implementation of Restorative Justice in Indonesia involves three main law enforcement bodies:

Supreme Court: Actively participates in the development of Restorative Justice in Indonesia by issuing the Director General of the General Court's Decree No. 1691/DJU/SK/PS.00/12/2020 on the Guidelines for the Implementation of Restorative Justice in General Courts. This decree outlines that Restorative Justice is a principle of law enforcement for resolving cases through dialogue and mediation involving all relevant parties. However, the implementation of this decree was suspended and replaced by Supreme Court Regulation No. 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

Prosecutor's Office: Regulates Restorative Justice in the Indonesian Prosecutor's Office Regulation No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice, emphasizing case resolution by involving offenders, victims, and related parties to achieve restoration to the original state, rather than merely punishment.

Police: Regulates Restorative Justice in the Indonesian National Police Regulation No. 8 of 2021 on the Plan for Criminal Actions Based on Restorative Justice. In the Police, Restorative Justice involves all relevant parties to find a fair resolution through reconciliation, emphasizing restoration to the original state.

Despite the differences in regulations, the views of the three law enforcement bodies align philosophically. Restorative Justice considers crime as a violation against individuals and the community, not just the state, and aims to heal the wounds or losses suffered by victims. This approach sees justice as an evaluation of treatment or actions according to prevailing norms, with a focus on restoration and reducing stigma against offenders.

However, the process is not always easy, as emotions are involved for both victims and offenders. It requires genuine willingness from both parties to make amends and address the harm caused. Restorative Justice aims to restore the original state, which can sometimes be challenging to achieve, such as when a victim cannot fully recover from their injuries.

The Position Of Restorative Justice Within The Penal System In Indonesia

Restorative justice plays a crucial role across all levels of law enforcement bodies, including the police, prosecution, and the Supreme Court. This approach emphasizes peaceful resolution of conflicts between offenders and victims, promoting rehabilitation without lengthy formal legal processes.

Firstly, at the police level, restorative justice offers an alternative for handling minor to moderate criminal cases. Police can use mediation to reconcile both parties and restore harmony between them. This approach not only reduces the burden on the criminal justice system but also allows communities to actively participate in resolving conflicts.

Secondly, the prosecution plays a critical role in determining the course of legal proceedings. They may consider redirecting cases towards restorative justice if deemed appropriate and beneficial to all parties involved. The prosecution acts as a facilitator to ensure that the mediation process is fair and adheres to applicable legal standards.

Thirdly, the Supreme Court supports the formal legal backing of restorative justice implementation at the national level. They can develop guidelines and policies to support law enforcement agencies in consistently and effectively applying this approach. By providing legal recognition and support, the Supreme Court helps strengthen restorative justice practices as an integral part of the broader judicial system.

Overall, restorative justice is not just an alternative dispute resolution method but also reflects deeper values of justice within society. This approach not only transforms how traditional law enforcement bodies operate but also broadens perspectives on justice by actively involving individuals and communities in processes of reconciliation and rehabilitation.

Restorative justice plays a crucial role at all levels of law enforcement bodies, namely the police, prosecution, and the Supreme Court. This approach aims to peacefully resolve conflicts between offenders and victims, as well as promote rehabilitation without lengthy and burdensome formal legal processes.

Firstly, at the police level, restorative justice provides an alternative in handling minor to moderate criminal cases. Police can use mediation to facilitate dialogue between offenders and victims to achieve a fair and

satisfying agreement for both parties. This approach not only alleviates the burden on the criminal justice system but also allows communities to actively participate in resolving conflicts at the grassroots level.

Secondly, the prosecution holds a strategic role in determining the course of legal proceedings. They can assess cases to decide whether using a restorative justice approach is more beneficial than conventional judicial processes. The prosecution is responsible for ensuring that mediation between offenders and victims adheres to principles of justice and applicable laws, while also providing opportunities for offender rehabilitation without neglecting the interests of victims.

Thirdly, the role of the Supreme Court is crucial in providing guidance and legal support for the implementation of restorative justice at the national level. The Supreme Court can issue guidelines and policies that support law enforcement agencies in consistently and effectively applying this approach. By offering clear legal recognition and support, the Supreme Court helps strengthen restorative justice practices as an integral part of the broader judicial system.

Overall, restorative justice is not merely an alternative method for dispute resolution, but also represents deeper values of justice within society. This approach emphasizes reconciliation, rehabilitation, and active participation of all parties involved, thereby expanding perspectives on justice within and beyond formal legal processes.

CONCLUSION

Based on the analysis in this study, the researcher concludes that Restorative Justice in Indonesia's criminal justice system is a principle aimed at achieving peace among offenders, victims, and the community through a consultative process to restore the situation or compensate for damages caused by criminal acts. However, its implementation remains fragmented across various levels of law enforcement, potentially leading to sectoral egoism among law enforcement agencies. Therefore, unified legislation is needed to streamline legal processes, alongside campaigns to enhance public and law enforcement understanding of the benefits and processes of Restorative Justice, and to change the perception that prison sentences are the only form of justice available.

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