

## IMPLEMENTATION OF PRINCIPLES OF RESTORATIVE JUSTICE IN CRIMINAL PROCEDURAL LEGAL PROCEEDINGS

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### ABSTRACT

*This study aims to assess and analyze how the principle of restorative justice is applied in criminal procedural legal proceedings. Normative juridical methods were used in the study. The results showed that, despite some obstacles and difficulties, the principles of restorative justice have been used in criminal procedural legal proceedings. In some situations, several key principles have been applied, such as recovery for victims, active participation of perpetrators in the recovery process, and community involvement in peacekeeping. Nevertheless, the concept of restorative justice is still a complex concept to understand and study, as well as the availability of adequate resources to support its implementation. This study improves our understanding of the use of restorative justice in criminal procedural law. This research can serve as a basis for making more efficient legal policies and practices that support restorative justice in enforcement.*

**Keywords:** *Principles of Justice, Restorative Justice, Criminal Procedural Law.*

### INTRODUCTION

The implementation of restorative justice principles in criminal law processes is becoming increasingly important because the complexity of these cases often results in significant impacts on victims and society. This approach offers a more comprehensive solution by considering the interests of all parties involved in the legal situation. However, although these principles have been internationally recognized as a potentially

more effective approach to handling criminal conflicts, their implementation in criminal procedural law still faces various challenges, especially in contexts that hinder their application in criminal cases.

The principles of restorative justice have become a significant subject in discussions of modern criminal justice systems because they offer a different approach from the current punitive-oriented criminal justice system. This concept emphasizes restoration,

reconciliation, and active participation of offenders, victims, and communities in resolving criminal cases. The importance of these principles is increasingly evident in addressing the complexity of crimes, not only focusing on sanctions but also on repairing disrupted social interactions. However, the challenges in implementing these principles in the justice system require a broad approach, both in concept and practice.

One of the issues that arises is the lack of understanding or awareness of restorative justice principles among legal practitioners, including police officers, prosecutors, lawyers, and judges. This can result in their inability to recognize situations where restorative approaches could be effectively applied. Additionally, there are constraints within the legal structure and procedures that may not align with these principles, thus hindering their effective implementation.

Inaccuracy or lack of adequate regulation related to restorative justice principles also poses a barrier to its implementation. Without clear and strong legal foundations, the justice system may struggle to enforce these principles consistently and fairly. Moreover, resistance from certain parties within the justice system who are still attached to conventional or existing approaches also

presents a serious obstacle to adopting restorative justice principles.

Regarding the aspect of victims, it is sometimes difficult to obtain active involvement from the victims in the restorative process, either due to the trauma they have experienced, lack of trust in the legal system, or other factors. Without active participation from victims, restorative efforts may lose focus on the recovery and reconciliation that should be the primary goal.

In this context, it is also important to consider the aspects of representation and fairness in the restorative process. Power imbalances among offenders, victims, and the community can lead to an imbalance in negotiations and conflict resolution. This can threaten the principles of justice that should be the mainstay of the legal system. Furthermore, it is crucial to address the potential for abuse or manipulation in the implementation of restorative justice principles. Without strict supervision and effective control mechanisms, there is a risk that the restorative process could be exploited by certain parties to avoid responsibility or mitigate the sanctions they should rightfully receive.

More broadly, it is important to recognize that the implementation of restorative justice principles in the criminal procedural process involves

cultural and paradigm shifts within the justice system. This is not an easy task and requires commitment and cooperation from various stakeholders involved in the legal system, including legislators, the judiciary, the executive branch, and society as a whole. Law enforcement agencies such as the police, prosecution, lawyers, and judicial institutions are mandated to handle criminal cases on behalf of and in the interest of the state. They often proceed with the handling of cases through formal legal processes without considering the impact of the offender's actions and involve the community less in the resolution of criminal cases, which is no longer deemed significant in their role.<sup>1</sup>

Furthermore, in the implementation of restorative justice principles at every stage of the criminal procedural process, from investigation, prosecution, to trial proceedings in court, various legal challenges need to be addressed. In the investigation stage, common issues arise such as resource limitations and a lack of understanding of effectively applying the restorative justice approach. Law enforcement agencies tend to prioritize evidence collection over facilitating dialogue between victims and offenders to

achieve satisfactory resolutions for both parties. During the investigation phase, the main challenge is for law enforcement officials to comprehend and apply restorative justice principles. Investigative systems that tend to focus on tracing offenders may overlook the role of victims and relevant recovery efforts within the context of restorative justice.

During the prosecution stage, legal issues arise due to varying interpretations on how to integrate restorative justice principles into the prosecution process. Some prosecutors may consider that such an approach is not aligned with their goal of enforcing the law firmly and administering appropriate punishment to offenders. Furthermore, during court trial proceedings, the implementation of restorative justice can pose challenges in changing the judicial culture accustomed to conventional approaches. Judges and lawyers may need to adjust their perspectives to facilitate a restorative process that gives a greater role to victims and offenders in achieving reconciliation.

The restorative justice approach emphasizes significantly on principles of fairness, accountability, and recovery. Offenders must acknowledge their wrongful actions and recognize their consequences on the affected individuals and the community as a whole. Acknowledgment of the offense is

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<sup>1</sup> Hasuri Hasuri, 'Restorative Justice Bagi Anak Pelaku Tindak Pidana Pembunuhan Dalam Perspektif Pidana Islam', *Ajudikasi : Jurnal Ilmu Hukum*, Vol. 2. No. 1 (2018), 55 <<https://doi.org/10.30656/ajudikasi.v2i1.575>>.

considered as the first step in the restorative justice process<sup>2</sup>. Amidst these challenges and complexities, it is crucial to continue conducting in-depth studies and evaluations of the implementation of restorative justice principles in the criminal justice process. This is necessary to identify emerging obstacles and to seek appropriate solutions to enhance the effectiveness and fairness of the overall judicial system.

Therefore, understanding the background and legal issues in implementing the principles of restorative justice in the criminal justice process is essential to enhance fairness and utility of the judicial system for all parties involved. Close cooperation among various stakeholders is required to achieve this goal optimally. Based on the background description above, the researcher is interested in conducting a study entitled "Implementation of Restorative Justice Principles in the Criminal Justice Process." This research will focus on studying the concept of restorative justice and how it is implemented.

## PROBLEM IDENTIFICATION

Based on the background above, the following problems can be formulated:

1. How are the principles of restorative justice applied in criminal procedural law?
2. What is the implementation of restorative justice principles in the criminal procedural law process in Indonesia?

## RESEARCH METHOD

The method employed by the author in this research is Normative Legal Research Method. This method is also known as doctrinal legal research, or commonly referred to as library research or document study. It is termed doctrinal because it focuses on the analysis of written regulations or other legal materials. The terms "library research" or "document study" are used because this research relies more on secondary data available in libraries..<sup>3</sup>

The normative juridical analysis approach will begin by identifying the relevant legal foundations related to the implementation of restorative justice principles in the criminal procedural law process. This research will gain a profound understanding of restorative justice

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<sup>2</sup> Sindhi Cintya and Hery Firmansyah, 'Penerapan Restorative Justice Sebagai Bentuk Permaafan Hakim Dalam Tindak Pidana Pencurian Oleh Lansia', *Jurnal Usm Law Review*, Vol. 6. No. 2 (2023), 543 <<https://doi.org/10.26623/julr.v6i2.6379>>.

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<sup>3</sup> Sutarman dan Philips Dillah, *Metode Penelitian Hukum* (Malang: Alfabeta, 2012), Hlm. 51.

principles through literature analysis. This includes reviewing scholarly literature, journal articles, books, and other relevant documents. Literature analysis will assist in deepening the understanding of the concept of restorative justice and provide a theoretical basis to support the findings of this research.

## DISCUSSION AND ANALYSIS

### Restorative justice principles in criminal procedural law

Restorative justice understands that criminal actions are not only violations of state laws but more so violations of the balance of justice within society. This approach does not aim solely to punish offenders for breaking state laws but rather focuses on efforts to repair social relationships and restore justice within the community disrupted by crime.<sup>4</sup>

Tony Marshall explains that restorative justice is a process where all parties involved in a particular violation come together to collectively address the consequences of that violation, taking into account its future implications.<sup>5</sup>

According to Tony Marshall's statement, restorative justice should consider the future impact among victims, perpetrators, and the community.

In simpler terms, Marian Liebmann explains restorative justice as a legal system aimed at restoring victims, perpetrators, and affected communities of crime, as well as preventing recurring violations or criminal actions.<sup>6</sup> According to Liebmann, restorative justice is a legal approach intended to address the consequences of crime and prevent its recurrence.

John Braithwaite defines restorative justice as a legal problem-solving model that focuses on striving for justice and well-being values, which include the use of sanctions and efforts to improve conditions, particularly economically, as an integral part of achieving justice.<sup>7</sup> So, according to Braithwaite, achieving justice in a legal context involves prioritizing justice and well-being values to improve the conditions of victims, perpetrators, and the community.

According to Howard Zahr, restorative justice is a process involving all relevant parties and a particular

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<sup>4</sup> Rahman Amin, Muhammad Fikri Al Aziz, and Iren Manalu, 'Penerapan Keadilan Restoratif Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Berat Di Kepolisian Resort Metro Jakarta Pusat', *Krtha Bhayangkara*, Vol. 14. No. 1 (2020), 1–26 <<https://doi.org/10.31599/krtha.v14i1.35>>.

<sup>5</sup> Restika Prahanela Prayogo Kurnia, Gresti Dian Luthviati, 'Penegakan Hukum Melalui Restorative Justice Yang Ideal Sebagai Upaya

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Perlindungan Saksi Dan Korban', *Jurnal Gema*, Vol. 27. No. 2 (2014), Hlm. 1499.

<sup>6</sup> Ibid. Hlm. 1499.

<sup>7</sup> Bambang Suyekti Setyawan, 'Kebijakan Restorative Justice Dalam Upaya Penanggulangan Tindak Pidana Medis Di Indonesia', *Jurnal Aktualitas*, Vol. 2. No. 2 (2019), Hlm. 682.

violation to identify and clarify threats, needs, and responsibilities in order to heal and restore the situation as effectively as possible.<sup>8</sup> Based on Howard Zehr's statement, restorative justice involves the parties among victims, perpetrators, and the community to restore the crime as best as possible.

So based on several definitions above, the author can also present the definition of restorative justice as a legal system method that focuses on the restoration and reconciliation between offenders, victims, and the community. This differs from punitive methods that emphasize punishment for offenders.

Restorative justice aims to empower victims, offenders, families, and communities in repairing the consequences of criminal actions by using awareness and consciousness as a foundation to enhance collective living.<sup>9</sup> Therefore, its primary goal is to compensate for the damages caused by the crime, repair the relationship between the offender and victim, and restore public trust in the legal system.

The Restorative Justice approach emphasizes the application of justice and

balance for both the perpetrator and the victim. The criminal justice system and procedures, initially focused on punishment, are replaced with negotiation and mediation processes to achieve a more balanced and fair resolution for both parties.<sup>10</sup> In this context, both involved parties can utilize mediation to settle their disputes.<sup>11</sup> The mediation process between the perpetrator and the victim is a key principle of restorative justice, where a mediator assists them in communicating to reach an agreement that addresses the harm caused by the criminal action.

Compared to punitive systems, where legal processes are often imposed, restorative justice typically involves voluntary participation in the healing and reconciliation process. Restorative justice principles also emphasize the importance of building empathy between perpetrators and victims and acknowledging accountability for actions. Because restorative justice encourages cooperation between the community and formal legal systems in resolving criminal conflicts, it

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<sup>8</sup> Waluyo Bambang, 'Penegakan Hukum Di Indonesia', *Sinar Grafika*, 2016, Hlm. 108.

<sup>9</sup> Henny Saida Flora, 'KEADILAN RESTORATIF SEBAGAI ALTERNATIF DALAM PENYELESAIAN TINDAK PIDANA DAN PENGARUHNYA DALAM SISTEM PERADILAN PIDANA DI INDONESIA', *Ubelaj*, Vol. 3.No. 2 (2018), Hlm. 145.

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<sup>10</sup> Muhammad Fatahillah Akbar, 'Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia', *Masalah-Masalah Hukum*, Vol. 51. No. 2 (2022), Hlm. 98. <<https://doi.org/10.14710/mmh.51.2.2022.199-208>>.

<sup>11</sup> Lidia Br Karo Aziza Yuli Susanti, Antory Royan A, '( The Implementation of Restorative Justice Principles', *Bengkoelen Justice*, Vol. 9. No. 2 (2019), Hlm. 97. <[https://ejournal.unib.ac.id/j\\_bengkoelenjustice/article/view/9983/4962](https://ejournal.unib.ac.id/j_bengkoelenjustice/article/view/9983/4962)>.

emphasizes the community's role in addressing crime at the local level.

Providing alternatives that prioritize recovery over punitive punishment, which emphasizes isolation and separation, is a crucial component of restorative justice. Both perpetrators and victims experience significant psychological impacts from the restorative justice approach. The reconciliation process can help victims reduce psychological trauma, and perpetrators can change their behavior.

Restitution for victims and rehabilitation for offenders are the primary focuses of restorative justice. Its aim is to prevent repeat offenses and restore conditions to pre-crime states. Restorative justice can be achieved through the support of law enforcement agencies and community involvement. They have the ability to provide moral support, resources, and the necessary social networks to facilitate the reconciliation process smoothly.

Despite having many advantages, the restorative justice approach also faces criticism. Some critics argue that this approach can lead to justice issues because there are no clear standards to determine the appropriate processes and punishments. Mediators and other law enforcement officials require specific training to implement restorative justice.

They must have good communication skills and a deep understanding of restorative principles.

Conventional legal systems often interact with restorative justice independently. Depending on the situation, their relationship can be cooperative or competitive. New technologies, such as digital platforms enabling online mediation or monitoring restoration progress, can aid in implementing restorative justice.

Protecting victims so that they do not feel threatened or intimidated during the reconciliation process is a top priority in restorative justice. Countries can strengthen and expand the implementation of restorative justice worldwide by collaborating and sharing knowledge about best practices.

In resolving criminal conflicts, restorative justice offers various methods that emphasize recovery, reconciliation, and voluntary participation. All of these methods aim to restore harm, improve relationships, and rebuild community trust through mediation processes. Restorative justice faces criticism regarding fairness and sustainability despite its advantages such as focusing on restitution and rehabilitation. However, restorative justice has the potential to become a more inclusive and sustainable approach within the legal system with an emphasis on

equality, cooperation, technological utilization, and strong international collaboration. The discussion and analysis above reflect the importance of restorative justice principles in the context of criminal procedural law as well as the challenges and opportunities associated with its implementation.

### **The implementation of restorative justice principles in the criminal procedural law process in Indonesia**

In recent years, the debate on the implementation of restorative justice principles in the criminal procedural law process in Indonesia has increased. The concept of restorative justice influences various aspects of the legal process in criminal procedural law in Indonesia, ranging from investigation, prosecution, and trial processes. This concept emphasizes recovery and reconciliation between perpetrators, victims, and the community, rather than solely punishing the offenders.

The State Police of the Republic of Indonesia Regulation Number 8 of 2021 regulates the Handling of Criminal Acts with a Restorative Justice Approach, in Article 1 paragraph (3) which defines restorative justice as a method of resolving criminal acts involving perpetrators, victims, perpetrators' families, community

leaders, religious leaders, traditional leaders, and other parties.

According to the provisions contained in Article 1 paragraphs (5) and (2) of the Criminal Procedure Code, investigation is a series of steps taken by investigators to identify an alleged criminal act, in order to determine whether the investigation can be conducted in accordance with the provisions stipulated in this law. Meanwhile, based on the provisions stated in Article 1 paragraph 2 of the Criminal Procedure Code, investigation refers to the series of steps taken by investigators in accordance with the provisions stipulated in this law, with the aim of searching for and collecting evidence related to the incident and identifying the involved suspect.<sup>12</sup> Restorative justice encourages law enforcement in investigating and prosecuting criminal cases to consider alternative resolutions other than criminal prosecution. This includes mediation between perpetrators, victims, and the community to reach agreements that benefit all parties involved.

In the investigation stage, legal problems that often arise include limited resources and a lack of understanding of

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<sup>12</sup> Masrizal Afrialdo, 'Pelaksanaan Penyelidikan Dan Penyidikan Perkara Pidana Oleh Kepolisian Terhadap Laporan Masyarakat Di Polisi Sektor Lima Puluh', *JOM Fakultas Hukum*, Vol. 3. No. 2 (2016), Hlm. 4.

how to effectively implement restorative justice approaches. Law enforcement officials often prioritize evidence collection over facilitating dialogue between victims and perpetrators to achieve a satisfactory resolution for both parties. Meanwhile, when it comes to the investigation stage, the main challenge lies in law enforcement officials' readiness to understand and implement restorative justice principles. The investigative system, which typically focuses on tracking perpetrators, may overlook the role of victims and efforts at recovery that may be undertaken in the context of restorative justice.

Indonesian Attorney General Regulation Number 15 of 2020 concerning Discontinuance of Prosecution Based on Restorative Justice regulates the discontinuance of prosecution. Restorative justice is defined in Article 1 paragraph (1) as a method of resolving criminal cases involving perpetrators, victims, their families, and other relevant parties to achieve a fair resolution focused on restoring conditions rather than punishment. As stated in Article 1 paragraph (4) regarding the Indonesian Attorney General, prosecution refers to the action taken by the public prosecutor to transfer the case to the District Court with jurisdiction, in accordance with the procedures stipulated in criminal

procedural law, to request that the case be adjudicated and decided by the judge in court.

Prosecution also means transferring criminal cases to the competent court, by requesting that the case be tried and decided by the judge in that court.<sup>13</sup> In the prosecution stage, legal issues arise concerning different interpretations of how restorative justice principles can be integrated into the prosecution process. Some prosecutors may feel that this approach is not consistent with their goal of vigorously enforcing the law and providing adequate punishment to the perpetrators.

As stated in Decision Letter Number 1691/DJU/SK/PS.00/12/2020 concerning the Guidelines for Implementing Restorative Justice in the General Judiciary Environment, the Director General of the General Judiciary also establishes regulations related to the use of Restorative Justice. Restorative justice, as outlined in Section 1, Point D, Number 2, is a method of resolving criminal cases involving perpetrators, victims, their families, and other relevant parties to achieve a fair solution focused on restoring conditions rather than punishment.

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<sup>13</sup> Billy Lanongbuka. Olga A.Pangkerego. Christine S.Tooy, 'Wewenang Penuntut Umum Melakukan Penuntutan Tindak Pidana Korupsi', *Lex Crimen*, Vol. IX. No. 4 (2020), Hlm. 75. <<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/30807>>.

According to Law Number 2 of 1986 concerning the General Judiciary, district and high courts are official institutions designated to conduct judicial processes such as examination, adjudication, and decision-making in various cases. Judiciary refers to all activities or processes carried out in courts related to tasks such as examination, adjudication, and decision-making, applying applicable laws or regulations.<sup>14</sup> Ideally, during the trial process, the court may consider a restorative approach in determining sanctions against the perpetrator. This could involve the use of non-custodial sanctions, such as community service or restitution payments to the victim, aimed at repairing the impact of the committed crime.

However, there are several challenges that have yet to be addressed when implementing restorative justice principles in the criminal procedural law process in Indonesia. One of them is the lack of understanding among law enforcement officials about the idea and benefits of restorative justice. In order for this method to be effectively applied, broader training and education are needed. Additionally, resource constraints also

pose obstacles to implementing restorative justice. Many legal institutions in Indonesia face issues with limited budgets, personnel, and infrastructure, which can hinder the implementation of restorative programs.

There is cultural resistance to change. Because they are accustomed to a more conventional legal approach that emphasizes punishment for perpetrators, some parties may be skeptical of restorative justice. Although not explicitly focused on criminal procedural law processes, the Indonesian government has also issued several policies to support the implementation of restorative justice. For example, Law Number 11 of 2012 concerning the Juvenile Justice System prioritizes the rehabilitation and reintegration of children who have committed offenses.

Indonesia can learn from the experiences of other countries in implementing restorative justice. Countries like New Zealand, Canada, and Norway have successfully implemented this method, demonstrating increased victim satisfaction and decreased crime rates. Overall, although there are still many challenges to overcome, the implementation of restorative justice principles in the criminal procedural law process in Indonesia is an important step towards a fairer and more sustainable legal

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<sup>14</sup> Ahmad Asif Sardari and Ja'far Shodiq, 'Peradilan Dan Pengadilan Dalam Konsep Dasar, Perbedaan Dan Dasar Hukum', *JIFLAW: Journal Of Islamic Family Law*, Vol. 1. No.1 (2022), Hlm. 22.

system. Efforts to promote a more restorative approach to law enforcement are crucial and should be continually encouraged.

## CONCLUSION

1. The criminal procedural law system can be enhanced and improved by restorative justice principles. Restorative justice offers a more efficient and humane alternative to conventional methods that overly emphasize punishment by focusing on repairing relationships between perpetrators, victims, and the community. They can promote fair and sustainable conflict resolution by prioritizing recovery and reconciliation. Therefore, integrating restorative justice principles into the criminal procedural law system is a crucial step towards enhancing justice and humanity in law enforcement.
2. In recent years, the debate regarding the implementation of restorative justice principles in the criminal procedural law process in Indonesia has intensified. This concept significantly influences various phases of the legal process, ranging from investigation, prosecution, to trial. Although legal institutions such as the Indonesian National Police and the Indonesian Attorney General have established regulations to govern the

handling of criminal acts based on restorative justice principles, there are still issues in understanding and effectively implementing them. Challenges to be overcome include resource limitations and a lack of training. However, with the support of existing policies in Indonesia and the experiences of other countries that have implemented restorative justice, there is still a path towards a fairer and more sustainable legal system. Therefore, efforts to promote more restorative law enforcement methods must continue to be encouraged to achieve better justice for all parties involved in the criminal procedural law system in Indonesia.

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