

# COMPARISON OF THE APPLICATION OF RESPONSIVE LEGAL THEORY IN RESPONDING TO SOCIAL CHANGE IN THE CRIMINAL LAW AND CIVIL LAW

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## ABSTRACT

*Philippe Nonet and Philip Selznick stated that responsive law is a law that is oriented to the fulfillment of social needs and is able to adapt according to the dynamics of society. This study aims to compare the application of responsive legal theory in responding to social changes in the field of criminal and civil law. The research method used is normative or doctrinal legal research with a conceptual and comparative approach. The conceptual approach is used to understand the basic principles of responsive legal theory that emphasize legal flexibility in dealing with social dynamics. A comparative approach is applied to analyze the similarities and differences in the application of this theory in criminal and civil law. The results show that the application of responsive law theory in criminal law tends to focus on the rehabilitation of perpetrators and the restoration of social relations through a restorative justice approach. On the other hand, in civil law, this theory is implemented through flexible alternative dispute resolution, such as mediation and arbitration, which considers substantive justice for the parties to the dispute. Although the goals and processes in these two areas of law are different, they emphasize the need for legal adaptation to social changes and societal needs. Thus, responsive legal theory is expected to be able to create a legal system that is more inclusive, fair, and relevant to the development of Indonesian society.*

**Keywords:** Civil Law, Criminal Law, Responsive legal theory, Social Change.

## INTRODUCTION

Social change is an unavoidable phenomenon of social life. Every society will continue to face developments due to the influence of various factors such as economics, politics, technology, culture, and demographics. Social changes that occur often have significant consequences for the applicable law. So in order for the

law to remain effective and fair, the legal system must be able to adapt to these changes. This is where the concept of responsive legal theory becomes relevant as an approach that allows the law to be

more dynamic and sensitive to the demands of a changing society.<sup>1</sup>

As the opinion of Philippe Nonet and Philip Selznick which states that responsive law is law that is oriented towards meeting social needs and is able to adapt according to the dynamics of society. Law is not only seen as a rigid and inflexible set of rules, but as a means to achieve substantive justice by considering the evolving social context. This approach is different from repressive law which tends to emphasize control and power alone, without considering the dynamics of society.<sup>2</sup>

In the context of criminal law, social change often gives rise to new forms of crime or can even change the public perception of a crime. For example, changes in living patterns due to urbanization and industrialization have led to an increase in crimes such as environmental crimes, corruption, and collective criminality. If the criminal law system is not responsive to these changes, then law enforcement will find it difficult

to achieve its main goal, which is to maintain order and protect public interests.

As Sudarto emphasized, criminal law must always be in harmony with the development of values that live in society in order to be effective in providing legal protection.<sup>3</sup>

On the other side, civil law is also experience similar challenges due to social changes. An increasingly complex and dynamic society needs a civil law system that is able to accommodate new needs. According to Satjipto Rahardjo, a good law is one that is able to protect individual rights effectively and provide solutions in accordance with the development of society.<sup>4</sup> Therefore, the use of a responsive approach in civil law will allow flexibility in dispute resolution, so as to provide more substantive justice.

Although criminal law and civil law have different objectives, where criminal law is punitive to provide sanctions for violations, while civil law is reparative to resolve disputes and protect individual rights. However, both require

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<sup>1</sup> Sulaiman and Muhammad Nasir, "Responsive Law: Law as a Social Institution Serving Social Needs in Transition," *Journal of Ius Civile: Reflections on Law Enforcement and Justice* 7, no. 1 (2023), <https://doi.org/10.35308/jic.v7i1.7570>.

<sup>2</sup> Philippe Nonet and Philip Selznick, *Responsive Law* (Bandung: Nusa Media Publisher, 2019), p.69.

<sup>3</sup> Yaris Adhial Fajrin and Ach. Faisol Triwijaya, "The Direction of Indonesian Criminal Law Reform

in the Middle of Indonesian Legal Pluralism," *Expose: Journal of Legal Research and Education* 18, no. 1 (2019).

<sup>4</sup> Mia Amalia et al., *Introduction to Legal Science* (Jambi: PT. Sonpedia Publishing Indonesia, 2024). Page. 12

the application of responsive legal theory in order to respond appropriately to social change. In criminal law, the application of this theory ensures that the law not only punishes the perpetrators of crimes, but also pays attention to prevention and rehabilitation efforts. Meanwhile, in civil law, the application of responsive law ensures that dispute resolution not only follows formal procedures, but also takes into account the interests of all parties involved.

This research will compare the application of responsive legal theory in criminal law and civil law in responding to social change. Through this analysis, the comparison and relevant challenges of the two areas of law will be discussed. With this comparison, it is hoped that a more comprehensive understanding of how the law can dynamically adapt to social changes, as well as concrete steps that can be taken to make the law in Indonesia more responsive, inclusive, and equitable.

## **METHOD**

This study uses normative or doctrinal legal research methods with conceptual and comparative approaches. The conceptual approach is used to explore the basic principles of responsive legal theory and its relevance in dealing with

social change. Meanwhile, a comparative approach is used to analyze the similarities and differences in the application of responsive legal theories in criminal and civil law. The data sources used in this study are secondary, including related legal regulations, legal literature, journal articles, and scientific works from legal experts.

Data collection was carried out through literature studies by examining various relevant references related to the application of responsive legal theory in criminal and civil law. The data obtained were then analyzed using a qualitative descriptive method to provide an in-depth explanation of the application of responsive legal theory. In addition, a comparative analysis method is applied to assess the effectiveness of the application of this theory in responding to social changes in both areas of law. By using this approach, this research is expected to be able to provide in depth insights into the challenges and effectiveness of the application of responsive legal theory in Indonesia.

## **RESULTS AND ANALYSIS**

### **RESPONSIVE LEGAL THEORY AND SOCIAL CHANGE**

Responsive legal theory is a legal approach that emphasizes the importance of law to be able to adapt to social change and the evolving needs of society. This concept was first introduced by Philippe Nonet and Philip Selznick. In which they divide the development of law into three phases: repressive law, autonomous law, and responsive law. Of the three phases, responsive law is considered the most ideal because it can harmonize the rule of law with social reality, and provide space for the community to participate in the legal process.<sup>5</sup> This is in line with Sajierto Rahardjo who also argues that law should not be considered as an entity separate from society, but must be able to adjust to the evolving social dynamics. Responsive law is expected to provide solutions that are more relevant to the needs of society.<sup>6</sup>

Responsive legal theory emerged as a critique of the liberal legalism approach which was considered too rigid and formal. In this view, the law is seen as a neutral set of rules, but often ignores the structural

injustices that exist in society. Criticism from a neo-Marxist perspective also highlights that the law is often used to maintain the status quo and the interests of the ruling class, thus failing to capture the social changes that are taking place. In response to these criticisms, responsive legal theory emphasizes several key principles: adaptation to social change, substantive justice, community participation, and progressive problem solving.<sup>7</sup>

The application of this theory offers a more dynamic and inclusive framework, which allows the law to remain relevant and effective in the face of challenges posed by social change. Social change itself refers to changes in societal structures, patterns and values that occur over time, and affect the way laws are applied. Without an adaptive response from the legal system, injustices can occur, for example if existing laws are no longer relevant to changing social conditions. Responsive law is therefore essential to keep the rules in line with evolving social realities.

Responsive legal theory as introduced

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<sup>5</sup> Philippe Nonet and Philip Selznick, *Responsive Law* (Bandung: Nusa Media Publisher, 2019), pp. 119.

<sup>6</sup> Mia Amalia et al., *Introduction to Legal Science* (Jambi: PT. Sonpedia Publishing Indonesia, 2024), p.12.

<sup>7</sup> *Opcit*, p.5.

by Nonet and Selznick, provides an answer to the need for a more adaptive legal system. This theory emphasizes the importance of laws that are not only reactive, but also proactive in responding to social dynamics. Thus, the application of responsive legal theory in the face of social change is very important to keep the law relevant and responsive to changes that occur in society. This theory also encourages community participation in law formation, so that the resulting law reflects the interests of all parties, not just the authorities. Ultimately, the application of responsive legal theory aims to ensure that the law does not only become a tool of coercion, but also creates more substantive justice for all levels of society.<sup>8</sup>

## **APPLICATION OF RESPONSIVE LAW THEORY IN CRIMINAL LAW**

Responsive legal theory as explained by Nonet and Selznick emphasizes that law must be on the side of substantive justice and the interests of society, not just formalistic implementation of rules. In criminal law, this theory shifts the paradigm from a retributive approach that emphasizes retribution to a more

progressive approach with an orientation to corrective and restorative justice. A responsive criminal law must be able to adapt to social change and provide fairer solutions for all parties involved.<sup>9</sup>

One form of application of responsive legal theory in criminal law is the concept of restorative justice. This approach emphasizes recovery for the victim, social responsibility of the perpetrator, and a more dialogical settlement than just punishment. Peraturan Kepolisian Negara Republik Indonesia (Perpol) Nomor 8 Tahun 2021 allows the termination of legal proceedings for certain cases resolved through deliberation between the perpetrator and the victim, reflecting the adaptation of criminal law to a more substantial need for justice. With this approach, the law becomes more flexible and not only oriented towards revenge, but also provides an opportunity for the perpetrator to correct his wrongs.<sup>10</sup>

Responsive theory approach to criminal law is also seen in the reform of the correctional system in Indonesia. Undang-Undang Nomor 22 Tahun 2022 emphasizes rehabilitation and social reintegration for inmates, shifting the focus from mere

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<sup>8</sup> *Ibid.*

<sup>9</sup> Ahmad Syahril Yunus and Irsyad Dahri, *Pengantar Restorative Justice* (GUEPEDIA, 2021), hlm. 9.

<sup>10</sup> Rachel Dameria, "Urgensi Penerapan Media Penal Dalam Sistem Peradilan Pidana Di Indonesia," , " *JSH Supremasi Hukum: Jurnal Penelitian Hukum* 32, no. 1 (2023).

imprisonment to improving individuals so that they can return to society better. In addition, Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika provides space for addicts to get rehabilitation instead of just serving prison sentences. This approach is in line with the principle that criminal law serves not only to punish, but also to guide and improve individuals to return to productive members of society. In other words, responsive criminal law considers the social impact of the sentences imposed.<sup>11</sup>

The application of responsive legal theory is also relevant in the juvenile criminal justice system. Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak (SPPA) adopts the principle of diversion, which aims to prevent children from the formal judicial process which can have a negative impact on their psychological development. The settlement of juvenile criminal cases prioritizes coaching and education over conventional punishment. This principle shows that a responsive criminal law must consider the factors of age, social

conditions, and rehabilitation opportunities for the perpetrator. With this approach, children who are in conflict with the law are not necessarily given severe punishment, but are given the opportunity to improve themselves through educational programs and social guidance.<sup>12</sup>

In addition, the application of responsive legal theory in criminal law can be seen in alternative dispute resolution (ADR) or out-of-court dispute resolution. The concept of penal mediation is a form of responsive law that prioritizes peaceful solutions.<sup>13</sup> Data in 2022 shows that thousands of cases were successfully resolved through restorative justice mechanisms, reducing the burden on the court and providing more equitable solutions. This kind of settlement is widely applied in minor cases such as petty theft or petty mistreatment, where a dialogical approach is more effective than just punishment. Penal mediation allows the victim and the perpetrator to reach an agreement that is more beneficial to both parties compared to the retributive

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<sup>11</sup> Ari Hastuti, Joko Sriwidodo, and Basuki, "Penerapan Peraturan Kejaksaan Nomor 18 Tahun 2021 Terkait Rehabilitasi Narkotika Berdasarkan Keadilan Restoratif," *Jurnal Riset Ilmiah* 1, no. 3 (2024).

<sup>12</sup> Fahmi Azis, "Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Anak Di

Indonesia," *Jurnal Kolaboratif Sains* 8, no. 1 (2025).

<sup>13</sup> Yolanda Fadia, "Penyelesaian Tindak Pidana Ringan Melalui Restorative Justice Sebagai Bentuk Upaya Pembaharuan Hukum Pidana Dalam Perspektif Keadilan," *Innovative: Journal of Social Science Research* 4, no. 1 (2024).

approach.<sup>14</sup>

In the context of economic and corporate crimes, criminal law has also begun to adopt the collective responsibility of companies rather than just individual perpetrators. This approach suggests that responsive law focuses not only on the individual, but also on the broader system. For example, in the case of corruption, the law not only punishes individual perpetrators but also demands accountability from the institutions or companies involved in the crime.<sup>15</sup> Thus, responsive legal theory in criminal law does not only see criminal acts as individual actions, but also considers the systemic factors behind them. This is important to create a legal system that is more just and able to respond to the challenges of the times.

The development of responsive law in criminal law is increasingly visible with the implementation of a settlement mechanism involving the role of the community. In various regions in Indonesia, the community participates in resolving minor violations through the

provision of social sanctions or the application of customary law that is still based on the principle of justice. This approach emphasizes that law enforcement is not only the responsibility of the state, but also involves the active participation of the community in maintaining social balance. Some regions in Indonesia still use customary law as a means of resolving certain cases, this further reflects the flexibility of responsive law in adjusting to applicable social norms.<sup>16</sup>

Although responsive legal theory in criminal law has many benefits, there are various challenges in its implementation, especially in the readiness of law enforcement officials to understand and implement this approach.<sup>17</sup> In addition, not all criminal acts can be resolved with responsive legal mechanisms, especially in cases involving the broader public interest. Serious crimes such as murder or terrorism still require a retributive and repressive approach to maintain public order and security. Therefore, the application of responsive law must still take into account the limitations and types of crimes that can

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<sup>14</sup> Dimas Verdy Firmansyah, "Upaya Optimalisasi Restorative Justice Di Indonesia," *Al-Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 5 (2023).

<sup>15</sup> Zul Kaidir Kadir and Adi Suriadi, "Kebijakan Kriminal Dalam Sistem Peradilan Pidana: Studi Teoretis Tentang Pemilihan Skema Berdasarkan

Jenis Dan Dampak Kejahatan," *Kajian Eksekusi Madani Law Journal* 1, no. 3 (2024).

<sup>16</sup> La Syarifuddin, "Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana," *Risalah Hukum* 15, no. 2 (2019).

<sup>17</sup> Henry Arianto, "Hukum Responsif Dan Penegakan Hukum Di Indonesia," *Lex Jurnalica* 7, no. 2 (2010).

use this approach.<sup>18</sup>

Therefore, it can be understood that responsive legal theory in criminal law provides room for a more flexible and adaptive approach in responding to social change. With the development of a justice system that is more open to restorative and rehabilitative approaches, criminal law in Indonesia is increasingly leading to a system that is more humane, efficient, and relevant to the needs of society. This shows that criminal law is not only aimed at punishing, but also to create broader justice and provide benefits to all parties involved. Thus, the application of responsive legal theory in criminal law continues to develop and become a better solution in solving legal problems in the modern era.

## **APPLICATION OF RESPONSIVE LEGAL THEORY IN CIVIL LAW**

Responsive legal theory, as explained by Nonet and Selznick, prioritizes laws that must be pro-people and pro-justice, where the rule of law must be on the side of the people and justice must be placed above the rule of law.<sup>19</sup> Legal regulations are

responsive, always linked to goals beyond the textual narrative of the law itself, which Nonet and Selznick call "the sovereignty of purpose", that is, the social goals that it seeks to achieve and the consequences of the implementation of a law.<sup>20</sup> In this context, law is not a final institution, but a dynamic process that always adapts to social changes (law as process). Responsive legal theory also emphasizes the impetus of the role of the public, this is in accordance with the limited ability to entrust everything to the force of law is an unrealistic and erroneous attitude.<sup>21</sup>

Civil law, with its main focus on resolving disputes arising between individuals or groups, is very suitable for applying the theory of responsive law, for example by providing protection to weaker parties and granting fair rights to each individual in the ever-changing world. For example, Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen is a form of application of responsive legal theory in the context of civil law in Indonesia. This regulation is a form of response to the development of trade in

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<sup>18</sup> Kadir and Suriadi, "Kebijakan Kriminal Dalam Sistem Peradilan Pidana: Studi Teoretis Tentang Pemilihan Skema Berdasarkan Jenis Dan Dampak Kejahatan."

<sup>19</sup> Sajipto Rahardjo, *Membedah Hukum Progresif* (Kompas, 2006), [https://erepository.uwks.ac.id/15034/1/Buku%20le%20ngkap%20prof%20ari\\_watermark.pdf](https://erepository.uwks.ac.id/15034/1/Buku%20le%20ngkap%20prof%20ari_watermark.pdf).

<sup>20</sup> Sajipto Rahardjo, "Hukum Responsif: Hukum Yang Membebaskan," *Jurnal Hukum Progresif* 1, no. 1 (2005): 6–7.

<sup>21</sup> Ari Purwandi and Cita Yustisia Serfiyani, *Penyelesaian Sengketa Lingkungan Hidup (Perspektif Hukum Responsif)* (Surabaya: UWKS Pres, 2019).



goods and services which causes concerns about unfairness in transactions between consumers and producers.<sup>22</sup> With the emergence of various new sectors of the economy such as e-commerce and digital transactions, these regulations are here to provide protection to consumers in accordance with social and economic developments. This theory shows its application in regulations that are concrete and relevant to social and economic changes.

This approach is more flexible when compared to the traditional civil law system which is more formal and rigid. The application of responsive legal theory advocates the use of Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration, which allow dispute resolution outside of formal court channels. This emphasizes dialogue and consensus as the best solution, when compared to the time-consuming and costly litigation process. This shows that the application of responsive legal theory in civil law not only creates a more efficient solution, but is also adaptive to social needs.

Contrast to the traditional approach in

civil law, which relies more on a litigation system, the application of responsive legal theory offers an alternative based on substantive justice rather than just procedural justice. It was motivated by the emergence of social problems such as mass processes, poverty, crime, environmental pollution, and urban riots that hit the United States in 1950.<sup>23</sup> Responsive legal theory then emerged to overcome these problems by being oriented towards justice and the public interest. This theory emphasizes more on substantial justice.

The application of responsive law is also relevant in the context of companies and businesses. Undang-Undang Nomor 40 Tahun 2007 tentang Perusahaan Terbatas (PT), responds to the needs of the developing business world with the aim of providing clarity regarding the rights and obligations of business entities.<sup>24</sup> This regulation is here to meet the needs of the world in an effort to encourage change to be more responsive to increasingly complex business practices. The role of responsive legal theory in civil law provides a more adaptive space to regulate relationships between individuals by providing solutions to disputes that arise in

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<sup>22</sup> Republik Indonesia, "Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen" (n.d.).

<sup>23</sup> Ari Prayitno, "Penerapan Mediasi Penal Dalam Perkara Kecelakaan Lalu Lintas Yang Melibatkan

Keluarga Inti," *Jurnal Ilmu Kepolisian* 12, no. 1 (2018): 62–72.

<sup>24</sup> Republik Indonesia, "Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (PT)" (n.d.).

society. This is reflected in various regulations and laws that are present to protect individual interests and create justice that is relevant to existing social conditions.

Responsive legal theory in civil law focuses more on resolving disputes peacefully, efficiently, and fairly, by providing room for legal adjustment to existing social and economic developments. The application of this theory in civil law encourages the use of ADR mechanisms, such as mediation and arbitration, that are more flexible and responsive to the needs of the parties involved in the dispute. One of the main instruments that implements this theory is mediation, as an alternative dispute resolution that emphasizes peaceful and adaptive resolution, when compared to the formal and time-consuming and costly litigation process.<sup>25</sup>

The application of responsive legal theory in the implementation of mediation in civil disputes in Indonesia is regulated Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif

Penyelesaian Sengketa.<sup>26</sup> Mediation provides a more efficient and flexible alternative without having to go through a formal and protracted litigation process. In the litigation process, it is often a win-lose, so there is a feeling of being harmed by one of the parties. On the contrary, mediation is oriented towards achieving a win-win solution that can be accepted by all parties.

There are dispute cases can be resolved by mediation, such as divorce, and inheritance. Mediation provides space for the parties to reach a more humane agreement and does not trigger a prolonged conflict. One of the proofs of the success of mediation in Indonesia is data in 2022 which recorded 20,861 cases that were successfully reconciled through the mediation process, this increased from the previous year by 92.24%.<sup>27</sup> This data shows that mediation is effective in reducing the burden of cases in court and providing a more satisfactory solution for the parties involved. The Religious Court of Cimahi for example, in 2024 succeeded in reconciling 53 cases out of a total of 120 cases that must be mediated. This figure

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<sup>25</sup> M. I Rosyidi, *Mediasi Dan Penyelesaian Sengketa: Pendekatan Responsif Dalam Hukum Perdata* (Salemba Empat, 2024).

<sup>26</sup> Republik Indonesia, "Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa" (n.d.).

<sup>27</sup> Azizah, "Selama Tahun 2022, 20.861 Perkara Berhasil Didamaikan Melalui Proses Mediasi," Mahkamah Agung Republik Indonesia, February 23, 2023, <https://www.mahkamahagung.go.id/id/berita/5669/selama-tahun-2022-20861-perkara-berhasil-didamaikan-melalui-proses-mediasi>.

shows that mediation has great potential in finding solutions for the parties to the dispute by utilizing the application of responsive legal theory.<sup>28</sup>

In addition, in civil disputes, the theory of responsive law also proposes the importance of taking into account the social and economic factors of the parties to the dispute. This makes dispute resolution more sensitive to the condition of the parties who do not have a balanced bargaining position. For example, in business contracts involving large corporations and consumers, a responsive approach prioritizes the protection of weaker consumer rights rather than just looking at formal legal aspects.<sup>29</sup> Therefore, a responsive approach to mediation seeks to create a balance by paying attention to the broader context and providing protection for the more vulnerable parties.

Responsive legal theory in Indonesia can adapt to the local context through adjustments to the diverse culture, social values, and dynamics of Indonesian society. Several regions in Indonesia

resolve disputes outside the court through a deliberative or consensus mechanism. In this context, responsive legal theory adapts to more local and community-based dispute resolution practices. The application of customary law that has developed in various regions reflects the customs and traditions accepted by the local community. Customary law is often not formally recorded in the national legal system, but is recognized and respected in the resolution of disputes or conflicts that occur at the local level.

Bali is one of the customary law holders who plays a very important role in resolving disputes, especially in terms of divorce, inheritance, or land issues. The settlement in the case will involve traditional leaders who act as mediators, by providing solutions based on local values.<sup>30</sup> This can be seen as the application of responsive legal theories that can adjust to the principles of customary law in providing justice that is more contextual and accepted by the community. The responsive legal theory approach not only introduces alternative dispute

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<sup>28</sup> “Membanggakan, Keberhasilan Mediasi Tahun 2024 PA Kota Cimahi Tembus 41,13%,” Pengadilan Agama Kota Cimahi, n.d., <https://www.pa-cimahi.go.id/seputar-peradilan/873-membanggakan-keberhasilan-mediasi-tahun-2024-pa-kota-cimahi-tembus-41-13>.

<sup>29</sup> D Suryani and P Dwi, *Arbitrase Dan Penyelesaian Sengketa Bisnis: Perspektif Hukum Responsif Di Indonesia*, 2023.

<sup>30</sup> Hartana and Ni Ketut Suriati, “Penyelesaian Sengketa Tanah Adat Kabupaten Buleleng Bali,” *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 3 (September 2020): 219–27.

resolution, but also adapts to local traditions and beliefs to achieve justice that is more in line with local conditions.

Although mediation as an alternative to the application of responsive legal theory offers many advantages, there are a number of challenges in its implementation. One of them is the gap in the quality of mediators. Mediators who are poorly trained and do not have an understanding of responsive legal theory can hinder the success of mediation. In addition, mediation cannot address all types of complex civil disputes. So that a litigation channel is still needed to get clearer and more transparent justice.

Challenges related to the quality of mediators and acceptance of mediation still need to be overcome so that the application of responsive legal theory can run optimally. The application of customary law in dispute resolution at the local level as happened in Bali is considered to be the application of the responsive theory which is more based on local context and traditional values. This approach not only emphasizes legal solutions based on legal texts, but also pays attention to the social context and pays attention to the protection of individual rights and substantive justice for all parties. Thus, responsive legal

theory in civil law provides space for local wisdom to play a role in the dispute resolution process that is more in line with the social values that exist in the local community. This makes responsive legal theory more open and integrated with the needs of the community.

### **Comparative Application of Responsive Legal Theory in Criminal and Civil Law**

The context of criminal law, responsive legal theory aims to shift the retributive approach that focuses on retribution to a more progressive approach and is oriented towards corrective and restorative justice. One of the real implementations of this theory is the application of restorative justice which provides space for criminal settlements outside the formal justice mechanism, especially for misdemeanor crimes. This approach allows the perpetrator to be directly accountable to the victim through deliberations facilitated by law enforcement and the public. This is in line with the principle that criminal law not only aims to punish, but also to improve individuals so that they can contribute to society again.<sup>31</sup> Meanwhile, in the case of civil law, responsive legal theory

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<sup>31</sup> Kadir and Suriadi, "Kebijakan Kriminal Dalam Sistem Peradilan Pidana: Studi Teoretis Tentang

Pemilihan Skema Berdasarkan Jenis Dan Dampak Kejahatan."

emphasizes the legal response to evolving social changes. The application of responsive law in society plays a role in creating a fair settlement for both parties through alternative mechanisms, which involve more third parties to facilitate dispute resolution.

In terms of effectiveness in responding to social change, civil law is more adaptable because of its more open nature to negotiation-based dispute resolution mechanisms. In some cases, such as digital transactions and e-commerce, civil law regulations have evolved to accommodate changing technologies and new transaction patterns. Meanwhile, in the criminal law sphere it still faces more complex structural challenges, as any changes must take into account broader public interest aspects. However, the criminal justice system in Indonesia has shown development in a more responsive direction, especially with the implementation of restorative justice in certain cases such as the juvenile justice system regulated in Undang-Undang Nomor 11 Tahun 2012.

Challenges and obstacles to the application of responsive legal theory in criminal law and civil law in Indonesia as a whole arise from structural, cultural, and

implementation aspects in the field. This theory exists to form a legal system that is more adaptive to evolving social needs. The development of responsive law in Indonesia is the result of the evolution of the development of legal theories that are in accordance with the values that live in Indonesian society.<sup>32</sup> Some of the key challenges include limited infrastructure and resources, mismatches between formal legal norms and local practices, and low public and legal understanding of responsive approaches. In overcoming these challenges, more profound reforms are needed in the legal education system, improved facilities and training for law enforcers, and the creation of a more open dialogue space between national law and local wisdom in the community.

Both of these areas of law show flexible and sensitive application to social and cultural contexts, although their application is more clearly seen in civil law which is more open to alternative dispute resolution that suits local conditions. Going forward, it is important to expand the application of restorative justice in criminal law, as well as strengthen the role of communities and local values in these two areas of law, so that the justice

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<sup>32</sup> Leni Dwi Nurmala, "Studi Komparatif Tentang Asas Legalitas Berdasarkan Hukum Pidana Positif Indonesia Dan Hukum Pidana Islam," *Suloh* :

*Jurnal Fakultas Hukum Universitas Malikussaleh* 9, no. 1 (2021): 53.

achieved truly reflects existing social conditions.

## CONCLUSION

The application of responsive law theory in criminal law tends to focus on the rehabilitation of perpetrators and the restoration of social relations through a restorative justice approach. On the other side, theory responsive in civil law is implemented through flexible alternative dispute resolution, such as mediation and arbitration, which considers substantive justice for the parties to the dispute. Although the goals and processes in these two areas of law are different, they emphasize the need for legal adaptation to social changes and societal needs. Thus, responsive legal theory is expected to be able to create a legal system that is more inclusive, fair, and relevant to the development of Indonesian society.

Responsive legal theory in criminal and civil law reflects legal efforts in adapting to changing social dynamics. This approach requires the law to be more adaptive to the needs of the community, not just enforce the rules rigidly. The application of responsive legal theory in criminal law still faces various challenges, although some mechanisms such as restorative justice have begun to be implemented, their application is still

limited and requires broad policy support. Meanwhile, civil law is more flexible in adopting responsive enclosurement because of its focus on resolving disputes between individuals. Alternative dispute resolution such as mediation and arbitration have long been used and have proven to be more adaptive to social change than formal judicial mechanisms.

The biggest challenge in the application of responsive law in Indonesia is the gap between legal norms and social practices that are growing due to limited resources in the legal system. Therefore, concrete steps are needed in the form of policy reform, capacity building of law enforcement officials, and active participation of the community in creating a more inclusive legal system. Thus, the law in Indonesia can develop into a system that is more responsive, fair, and able to face the challenges of changing times.

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