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Restorative Justice In The Perspective Of Contemporary Procedural Law

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Abstrak

Penelitian ini membahas konflik antara prinsip keadilan restoratif dan sistem hukum formal yang didominasi oleh pendekatan retributif dalam hukum acara pidana di Indonesia. Keadilan restoratif menawarkan pendekatan yang lebih humanis dengan fokus pada pemulihan korban, pelaku, dan masyarakat, dibandingkan dengan sekadar penghukuman. Namun, implementasi pendekatan ini masih terbatas, terutama dalam kasus-kasus tindak pidana berat, seperti korupsi dan pembunuhan, yang diatur secara ketat dalam hukum formal. Tantangan utama yang dihadapi dalam penerapan keadilan restoratif di Indonesia meliputi kesiapan emosional korban dan pelaku, serta kurangnya dukungan komunitas yang penting untuk menjalankan proses pemulihan. Penelitian ini menggunakan metode hukum normatif dengan menganalisis peraturan perundang-undangan serta doktrin hukum yang berlaku untuk mengeksplorasi sejauh mana integrasi keadilan restoratif dapat diadopsi dalam sistem hukum pidana formal di Indonesia. Hasil penelitian menunjukkan bahwa penerapan keadilan restoratif memerlukan reformasi regulasi yang lebih komprehensif serta peningkatan kapasitas penegak hukum dan partisipasi masyarakat.

Kata Kunci: *Keadilan Restoratif, Hukum Pidana, Korban*

Abstract

The retributive approach to criminal procedural legislation in Indonesia is formal and controlled by the legal system, which is at odds with the concepts of restorative justice, as discussed in this paper. Instead of punishing wrongdoers, victims, and society as a whole may find healing and rehabilitation via restorative justice's humanistic approach. But this method is still not often used, particularly when dealing with major offenses that are heavily controlled by formal law, like murder and corruption. Both victims and offenders' emotional preparedness and a lack of community support, which is crucial for healing, are the primary obstacles to restorative justice's adoption in Indonesia. In order to determine how far restorative justice may go in Indonesia's official criminal justice system, this research use normative legal methodologies by reviewing relevant legislation and legal theories. According to the study's findings, restorative justice can't be put into practice without sweeping changes to regulations, stronger police enforcement, and active community involvement.

Keywords: *Restorative Justice, Criminal Law, Victims*

INTRODUCTION

The idea of restorative justice is becoming more prominent in modern systems of procedural law. Restoring connections between the offender, victim, and community is the main goal of this method, which aims to restore the damage caused by the crime, instead of only punishing the perpetrator (Huruji et al., 2024). This view holds that the purpose of the legal system extends beyond the imposition of retributive justice to include the restoration of harmony and healing for all parties concerned. When it comes to settling legal disputes, restorative justice places an emphasis on communication, healing, and mutual accountability (Pakaja et al., 2024).

Mediation, restorative conferences, and rehabilitation programs that include both offenders and victims directly are common ways that restorative justice is used in modern procedural law. Victims are able to recover emotionally and offenders are able to accept responsibility when these procedures provide open communication between them. As an alternative to the standard procedural legal method that emphasizes punishment as a remedy, restorative justice provides a more humane option and focuses on long-term prevention of reoffending.

Contemporary procedural law often employs restorative justice practices like as mediation, restorative conferences, and rehabilitation programs that directly include victims and offenders. When victims and offenders are able to communicate openly throughout these processes, victims may emotionally heal and criminals can take responsibility. In contrast to the conventional approach to law enforcement, which places an emphasis on punishment as a means of correction, restorative justice offers a more compassionate

alternative that prioritizes the prevention of future offenses (Arief et al., 2023). In spite of this, in reaction to the shortcomings of traditional approaches to procedural law, a number of nations' court systems have started to include restorative justice ideas, either formally or via community efforts.

Disagreement between restorative justice principles and the more conventional and formalistic legal system is the primary obstacle to the implementation of restorative justice in modern procedural law. Many nations' criminal procedural laws, like Indonesia's, place an emphasis on the formal court procedure with a retributive perspective, which views punishment as the primary tool for enforcing justice. The Criminal Procedure Code provides the framework for this, with the steps of investigation, prosecution, and trial mirroring the formal litigation procedure, and the offender portrayed as the subject deserving of punishment. In this regard, the concept of due process of law is upheld by Article 183 of the Criminal Procedure Code, which states that substantial evidence must be presented before a defendant may face punishment.

Restorative justice, in contrast, places an emphasis on alternative dispute resolution processes that do not include litigation and which aim to help victims and communities heal after an offense. (Diharjo et al., 2024). The formal legal system views punishment as a means of achieving justice, which is why this method is frequently seen to be at odds with its fundamental aim. Although there are various efforts to incorporate elements of restorative justice into juvenile criminal justice in Indonesia, as outlined in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the principles of restorative justice are still not widely applied. A foundation in restorative justice concepts, including opportunities for mediation and resolution outside of court, is essential for the juvenile criminal justice system, as stated in Article 5, paragraph 1, of the statute (Harahap et al., 2023).

A significant obstacle, however, is the application of restorative justice in contexts outside of juvenile delinquency. One problem is that there aren't enough rules to back up the restorative justice process in most crimes, particularly major ones like corruption or murder. Perpetrators of corruption in Indonesia are to be punished severely according to Article 7 of Law Number 31 of 1999 on the Eradication of Corruption, which does not allow for the possibility of dispute settlement via a restorative approach (Muhtar, 2019). In this case, the prevailing retributive paradigm in criminal law stands in stark contrast to the more humanitarian restorative justice movement.

Problems with execution are another issue with restorative justice. Community support and emotional preparedness on the side of victims and offenders are essential to the restorative process that involves conversation between the two groups. Unfortunately, not

all victims are eager to take part in the process, particularly when the damage is substantial or the crime is very severe (Mahendra, 2020). Just as victims are hesitant to acknowledge wrongdoing and take part in healing, so too do perpetrators. Given that criminal procedural law mandates the offender's admission of guilt as an element of restorative justice, this presents a particularly difficult situation. From a more pragmatic standpoint, this often gets in the way of restorative justice programs.

New trends in international law, however, suggest that restorative justice may soon be acknowledged as an integral aspect of the judicial system as a whole. Some Canadian legislation have made provisions for restorative justice models, such as court-based restorative justice programs. The implementation of these models demonstrates that restorative justice ideas may be modified to meet the demands of modern law in order to attain justice objectives that are more inclusive and comprehensive, regardless of cultural or legal disparities.

There are primarily two areas that need fixing when it comes to modern procedural law and restorative justice. Firstly, the formal legal system is primarily focused on punishment, which is at odds with the restorative justice ideal. The Criminal Procedure Code governs criminal procedure in Indonesia, which places an emphasis on punishment as a means of justice, in contrast to the restorative method, which places more emphasis on mending broken relationships and settling disputes. Because of this conflict, the restorative process is subject to few rules; as a result, it is only used in cases involving juvenile offenders and has not been extensively implemented in other types of criminal cases.

The second major problem is that victims, offenders, and the community all need to be emotionally prepared to participate in restorative justice for it to work. Problems arise when trying to use restorative discourse in situations where not all parties are willing to participate, such as those involving major crimes.

In light of the foregoing, we pose the following question: (1) How might the adoption of restorative justice principles in Indonesian criminal procedure law be impacted by the tension between the restorative character of restorative justice principles and the retributive dominance of the formal legal system? (2) How does the emotional preparedness of victims, offenders, and the community impact the efficacy of restorative justice in Indonesia, and what are the practical obstacles to its implementation?

RESEARCH METHOD

The normative legal research approach was used in this study. This method is based on readings from normative legal sources, particularly those that discuss restorative justice's role in Indonesian criminal procedural legislation. This study utilizes normative legal research to delve into the ideas, doctrines, and legislation of Indonesian criminal law. It also examines how the restorative approach aligns with or conflicts with the formal retributive legal framework. The criminal procedure code, other Indonesian laws and regulations, and policies concerning restorative justice will constitute the backbone of the investigation of this issue. To further offer this notion a larger perspective, secondary legal resources are also used, including books, scientific papers, journals, and other academic works that address restorative justice both domestically and internationally (Ishaq, 2017).

The initial statement of the issue will be addressed via an examination of the conflict between the formal criminal law system in Indonesia, which tends to prioritize retribution, and the principles of restorative justice, which concentrate on the rehabilitation of victims and perpetrators. In order to comprehend how the incorporation of restorative justice might take place within the current framework of procedural law, this research will investigate applicable legal documents and policies pertaining to the execution of restorative justice. This research will use a normative descriptive analytic methodology to assess the benefits and drawbacks of integrating the two methods in Indonesian court practice.

The research will center on a normative examination of the many practical problems encountered in the implementation of restorative justice in order to solve the second issue formulation. This method places an emphasis on the community's involvement in facilitating the restorative process and employs a juridical-analytical examination of elements such as the emotional preparedness of victims and offenders. To better understand the challenges and possibilities associated with restorative justice's implementation in Indonesia, this research will draw on pertinent legal ideas, such as those pertaining to victim healing, community involvement, and restorative justice. As a result, we anticipate that this strategy will help us find workable answers to the problems we're facing and will fortify the national criminal justice system's use of restorative justice.

RESULT AND DISCUSSION

1. Conflict Between Restorative Justice and Formal Legal System on Implementation in Criminal Procedure Law in Indonesia

For the most part, Indonesia's criminal justice system has followed a retributive justice model up until now. This model emphasizes punishment as a means of exacting revenge for wrongdoing (Muhtar et al., 2023). But restorative justice, a method for resolving conflicts that brings together victims, offenders, and the society at large, to work toward solutions that prioritize healing and restoration, is likely to emerge as the preferred method. The focus of restorative justice is on making amends for wrongdoing by rehabilitating victims, offenders, and the communities hit hard by criminal activity (Atmasasmita, 2010).

Restorative justice is based on the idea that community engagement may help bring about and sustain peace in a community by including both victims and abusers in the process of resolving conflicts. Within this paradigm, criminal behavior is seen as an affront to both individuals and the bonds between them, in addition to a breach of the laws of the land. Many methods exist for bringing about restorative justice, including community-based healing programs for victims and offenders, family conversations, and mediation between victims and offenders. The difficulty in broadly implementing restorative justice stems from the fact that its efficacy is contingent upon the legitimacy of the underlying judicial system in any given nation.

Legal certainty, justice, and social advantages may all be achieved by selective application of the notion of restorative justice, even if not all nations completely embrace it. Criminal cases involving disputes between people and society continue to provide significant issues for law enforcement in the Indonesian environment (Syahrin, 2018). There is no denying that Indonesian law enforcement is strongly influenced by the Criminal Procedure Law (Law No. 8 of 1981), which emphasizes formalities in the legal process. Punishment and penalties for criminals constitute a large portion of law enforcement in this system (Pura & Faridah, 2021).

In criminal law, the three primary factors that must be taken into account are the unlawfulness, the error, and the criminal act. All three constitute the bedrock of formal criminal law, and legislation pertaining to these areas should take societally beneficial values into account. Many believe that Indonesian law enforcement is not as effective as it may be in carrying out its stated objectives. Restorative justice, which takes a socio-cultural rather than a normative stance, is one viable alternative to traditional forms of law enforcement that might help address this issue.

As an alternative to addressing crime and social disorder via the formal justice system,

there has been a renewed focus on maintaining and enhancing customary law and traditional justice traditions. To lessen the effects of crime, several of these options provide venues where all stakeholders, including communities, may take part in resolving conflicts. The core principle of restorative justice programs is that everyone involved in a disagreement should do their share to make it right and cope with the fallout. In some instances, this method also promotes local community participation in decision-making, which has the potential to enhance social cohesiveness.

An integral part of contemporary legal theory, Restorative Justice has its conceptual foundations in the legal systems of long-vanished cultures, including those of the Germanic peoples, the ancient Greeks and Romans, the Arabs, and the Vedic civilization of India. Asian religions and philosophies, including Confucianism, Taoism, and Buddhism, have had an impact on this idea (Gavin, 2023). Restoration is seen as a more compassionate and successful means of dispute resolution in these traditions, even in the most extreme circumstances like murder. Conflict resolution via this restorative approach is more tangible and interactive than through more formal, abstract methods because it gives communities a chance to be actively engaged.

The discussion of restorative justice is not only for criminal cases; it has many potential applications, such as resolving conflicts in the workplace or educational institutions. Both victims and offenders are considered in the restorative justice model, which aims to assist offenders in avoiding recidivism. This method enhances victim satisfaction and makes offenders more accountable for their acts by encouraging discussion between victims and offenders.

The use of restorative justice practices also shows consideration for victims' rights. The Victim Impact Statement is one tool that may help with this; it's a written account of the victim's emotional, mental, and bodily suffering as a result of the crime. The purpose of submitting this statement to the court is to help in reaching a just conclusion about the offender (Bandes, 1996). This declaration will help the court take into account the victim's interests by considering the crime's long-term effects and other circumstances influencing the victim. To further ensure a level playing field for all parties, this report may be supplemented by necessary medical evidence and costs pertaining to the injuries sustained.

The basic disparities between the two approaches to law enforcement are shown in the dispute between restorative justice and the formal legal system in Indonesia on the application of criminal procedural law. Punishment of the offender is the principal tool for executing justice in Indonesia's formal legal system, as shown in the Criminal Procedure Code. This stems from the retributive concept, which holds that because a crime is an affront

to the state, the state has an obligation to punish and prosecute the offender via the legal system. Victims seldom have a voice in finding solutions in these situations; they are often seen as either bystanders or wounded parties. To illustrate, when someone commits a typical crime like stealing or assault, they are taken before a court, the trial is conducted using evidence, and the offender is condemned according to the law. Here, punishment and vengeance play a central role in maintaining societal order.

Restorative justice, in contrast, takes the inverse view of this method. According to its central concept, criminal activity affects more than just the state; it also violates people and their social connections. Thus, restorative justice's resolution process entails bringing the offender, the victim, and the community together to discover a way to make amends for the victim's losses while giving the offender a chance to face the consequences of his actions.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) explicitly incorporates the principle of restorative justice in the handling of cases involving children who have been involved with the law, thus establishing the application of restorative justice in Indonesia's juvenile criminal law. The goal of mediation in adolescent criminal cases is to help the parties involved achieve a recovery agreement outside of court, which is one way it is put into practice (Dewantary, 2016). Restoring social peace and giving juvenile offenders opportunity to rehabilitate themselves without the social stigma associated with formal legal proceedings has been more beneficial in certain circumstances, such as cases of minor offenses or juvenile delinquency.

Nevertheless, restorative justice is currently only used in situations involving juvenile offenders or very minor offenses. The retributive approach, which prioritizes the application of harsh punishment as a means of achieving justice, continues to predominate in Indonesia's formal legal system with regard to more severe criminal offenses, including corruption and murder. The state considers corruption as a major breach of the public interest that necessitates harsh punishment to serve as a deterrence, as outlined in Law Number 31 of 1999 on the Eradication of Corruption. Consequently, the restorative method is not taken into consideration in these circumstances. Meanwhile, the settlement process primarily focuses on punishing the culprits, with little to no involvement from the victims of corruption, who comprise the larger society.

Problems arise when trying to implement restorative justice ideas inside a formal judicial system that is primarily concerned with punishment and very legalistic. Furthermore, restorative justice implementation is hindered by the cultural norms of Indonesian law. Many members of the legal profession, including judges and prosecutors, are resistant to or confused by restorative justice since they are used to a more formal and punitive system.

Also, when it comes to major offenses, the society still thinks that harsh formal punishment is the only way to get justice. This is why, despite the acknowledged advantages of restorative justice in certain settings, its widespread adoption remains a challenge.

A case involving a juvenile offender was brought to light in Yogyakarta in 2019, for instance. In accordance with the SPPA's restorative justice principles, the offender was spared jail time in exchange for victim-offender mediation and community work. The offender had a transformation and successfully reintegrated into his society because of this. But if the same thing happened to an adult offender, the official criminal justice system would probably favor retribution, thus the punishment would be far worse. This demonstrates a bias in the use of restorative justice, which is now reserved for certain types of criminal cases, such as those involving juvenile offenders or less serious offenses.

Legislative reform, changes in police mindsets, and public education are all necessary for a long-term solution to the tensions between restorative justice and Indonesia's formal judicial system. Reforming relevant legislation, such as the Criminal Procedure Code, is the first move toward fixing this issue. This is particularly true of the rules that regulate the process for handling criminal cases. To expand the scope of situations where restorative justice concepts may be used, beyond those involving minor infractions or young offenders, regulatory reforms are necessary.

Restorative justice isn't simply another option; it's a complementary strategy that, depending on the case and society, may work hand in hand with retributive measures. Training and education for law enforcement professionals, including police, prosecutors, and judges, should emphasize the advantages and concepts of restorative justice and how to apply them. This should be done in addition to reforming regulations. Everyone in law enforcement needs to know that restorative justice isn't merely about being easy on offenders; it's also about making sure victims get what they deserve, that offenders face consequences for their actions, and that the community comes together to heal. Everyone involved, including victims, offenders, and the society at large, stands to gain from a shift in police attitudes toward more dialogic forms of conflict resolution, such as mediation and group talks.

Justice, it is said, is not always linked with harsh punishment, but may also be attained via rehabilitation and mending broken relationships. The widespread belief that formal penalties and trials are necessary to attain justice is a major barrier to the spread of restorative justice practices in Indonesia. For situations where criminal crimes have harmed social connections, it is particularly important to educate the public via NGOs, universities, and the media on how a restorative approach may lead to justice that is both more

compassionate and long-lasting. Building a stronger framework for restorative justice in the law and in institutions is another critical step. Restorative justice has not yet been completely institutionalized and is currently being used in restricted contexts. Countries like Canada and New Zealand who have implemented restorative justice systems and found success with them may teach Indonesia a thing or two about how to run restorative programs with the help of the government. To alleviate the strain on traditional courts and provide a more adaptable and recovery-focused alternative, institutions dedicated to mediation or group discussions might be set up.

Local cultural norms that encourage dispute settlement via discussion should also be included into the execution of restorative justice. A system better suited to the socioeconomic circumstances of Indonesian society may be built upon the foundation of traditional law's restitution process, which is comparable to restorative justice. To make the legal system in Indonesia more inclusive and responsive to society's needs, we may combine traditional principles based on mutual collaboration and debate with the contemporary approach of restorative justice.

The government's will to modify the laws and the close collaboration between the police, civic society, and other interested parties are crucial to the long-term viability of restorative justice initiatives in Indonesia. The formal system has to be aligned with restorative principles, which will take time and a lot of effort. However, the rewards will be worth it in the end, particularly when it comes to making the criminal justice system more equitable, sustainable, and accommodating to everyone's needs. As a result, restorative justice has the potential to be a remedy in certain situations and an essential component of a criminal justice system that better addresses the concerns of all parties involved.

2. Practical Challenges in Implementing Restorative Justice in Indonesia Regarding Emotional Readiness and Community Support

There are a number of logistical hurdles to overcome while implementing restorative justice in Indonesia. These include issues with victim and offender mental health as well as the lack of community support for victims' rehabilitation. As a kind of alternative punishment, restorative justice encourages offenders and victims to talk things out in order to make amends for the harm that has been done to them and their communities (Taqiuddin & Risdiana, 2022). But in reality, this method isn't always easy to put into effect, as the victim's and perpetrator's emotional traits are often the biggest roadblock.

For example, victims of crime may not be emotionally prepared to meet the offender face-to-face, particularly in the setting of mediation that calls for participation from both

sides. However, the offender may be hesitant or unprepared to accept full responsibility for his acts for a variety of reasons, including but not limited to psychological issues, societal pressures, or a lack of knowledge on the advantages of restorative justice. Because this method relies so much on open communication and true emotional investment from both sides, emotional preparedness is a deciding element in whether the restorative process may be successful.

For restorative justice to be effective, it is essential to have community support in addition to overcoming emotional obstacles. As part of this strategy, members of the community must work together to help victims and offenders mend fences and prevent society from becoming too unstable as a result of the crime (Gultom, 2016). Community solidarity is essential to carry out the healing process, although it is often lacking in many regions of Indonesia, particularly metropolitan areas.

Some communities may be hesitant to participate in restorative processes that prioritize healing because they are more used to a punitive judicial system that views punishment as the exclusive means to attain justice. Sometimes communities might become so split that they take sides with one side or the other, making it even more difficult to resolve conflicts amicably. Restorative justice, which aspires to, ideally, restore peace in society, may fail if the social processes that should underpin it are disrupted by a lack of community support. Emotional preparedness and community support are two interconnected aspects that impact the efficacy of restorative justice initiatives. The whole process may collapse if you ignore one of these issues.

Issues of sufficient community support, as well as the emotional preparedness of victims and offenders, are at the heart of the practical difficulties in applying restorative justice in Indonesia. For restorative justice to work, it is often necessary for offenders and victims to talk things out, so that everyone may take part in becoming better. Nevertheless, victims' emotional preparedness often poses a significant obstacle. Some crime victims may not be emotionally prepared to confront the offender head-on in a mediation setting.

Victims must undergo extensive recovery from this emotional trauma before they can have constructive conversations. While victims may have trouble accepting responsibility for their actions, offenders may face additional obstacles while trying to do so, such as societal shame or pressure. Since restorative justice relies on offenders being honest about their wrongdoing and ready to offer apologies, it might backfire if they don't admit wrongdoing and feel bad about it (Noviana, 2015).

The restorative justice method also benefits greatly from community backing. Punishment is still seen as the most fair and efficient kind of justice by many Indonesian

communities that follow a retributive perspective. Because of this, a lot of individuals are hesitant or unprepared to take part in procedures of mediation or discussion that try to mend fences between communities. Because neither victims nor offenders get the assistance they need as a result of the community's misunderstanding of restorative justice, a crucial component of social repair is lost in the restorative process.

To help victims and offenders alike, as well as to foster an atmosphere that is amenable to healing and amicable settlement of conflicts, the community must rally behind these causes. When members of the community aren't invested in helping to mend broken connections, the restorative justice process may fail to accomplish its goals.

The absence of a social and legal framework in Indonesia that promotes restorative justice only makes the situation worse. Law 11 of 2012, which regulates the Juvenile Criminal Justice System, has used this idea in juvenile criminal cases, but it has had relatively little use in adult criminal cases or instances involving more severe offenses. Systematic adoption of restorative justice is hindered by the lack of defined legislation and methods that facilitate its use in a larger context within the criminal law system (RIANA KUSUMA PUTRI BEMBA, 2019). The advantages of restorative justice are not yet well understood or taught to law enforcement. Alternative dispute procedures centered on conversation and rehabilitation are less acceptable to many law enforcement officials, who are more at ease with a punitive approach.

Taken together, these obstacles highlight the need for a more holistic strategy to ensure restorative justice's success in Indonesia. This strategy should incorporate public education regarding the advantages of restorative justice, psychological support for victims and offenders, and enhanced law enforcement capabilities to handle cases using this approach. To ensure that restorative justice is not reserved for certain offenses, legislative changes are required to expand its applicability. By taking a more comprehensive view, restorative justice has the potential to be an efficient method of addressing crime that promotes both punishment and long-term societal rehabilitation.

CONCLUSION

There are still obstacles to implementing restorative justice in Indonesia's criminal law system, despite the fact that it provides a more humane approach and prioritizes the healing of victims, offenders, and society as a whole. Widespread implementation of restorative justice is impeded by the inherent tension between its rehabilitative goals and the retributive nature of the formal court system. At now, restorative justice is only employed in situations involving juvenile offenders or those with less serious offenses; the Indonesian legal system

continues to prioritize harsh punishment for more significant crimes like corruption or murder.

Victims' and offenders' emotional preparedness, as well as community support, is an additional obstacle to the restorative process's effectiveness. Victims and perpetrators are unable to have productive conversations because neither party is adequately prepared. Further stumbling blocks to restorative justice's widespread adoption include public ignorance and law enforcement officials used to a punitive mindset.

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