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The Development of Restorative Justice in the Indonesian Criminal Justice System

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Abstract

This study explores the development and implementation of restorative justice (RJ) within the Indonesian criminal justice system. Restorative justice, a concept that shifts the focus from retributive justice to repairing relationships between victims and offenders, is analyzed in light of its historical roots in Indonesia's customary law system. The research identifies the challenges and driving forces in applying RJ, including legal certainty, public acceptance, and the integration of traditional conflict resolution methods with formal criminal procedures. By employing a juridical-normative approach, this study investigates the effectiveness and limitations of RJ practices in addressing minor offenses and juvenile cases, while proposing legal reforms and improvements to strengthen its implementation. The findings emphasize the need for better coordination between law enforcement agencies, socialization of restorative practices, and the development of appropriate legal frameworks to harmonize restorative approaches with the existing criminal justice structure.

Keywords: *Restorative justice, Indonesia, criminal justice.*

INTRODUCTION

The concept of restorative justice has become an important discourse in crime prevention in Indonesia, although its application still triggers debate, especially in relation to the guarantee of legal certainty and a sense of justice (Pramujayanto, 2024). This approach seeks to shift the paradigm of criminal case resolution from retributive, which focuses on retaliation, to restorative, which prioritizes restoring the relationship between victims and perpetrators (Muti'ah et al., 2022). This approach seeks to shift the paradigm of criminal case resolution from retributive, which focuses on retaliation, to restorative, which prioritizes restoring the relationship between victims and perpetrators and returning the situation to its original state, not just retaliation (Clifford & Arief, 2018). This approach is seen as more effective in touching the root causes of social conflict and providing opportunities for the fulfillment of justice for victims through reconciliation mechanisms (Sukardi, 2016). This paradigm shift emerged as a response to public dissatisfaction with the conventional justice system, which is often considered to have failed to reflect substantial justice, especially in handling minor crimes (Adiesta, 2021). The concept of restorative justice, which has long existed in Indonesian society, seeks to harmonize the principles of justice in the legal realm with social practices (Mirza & Zen, 2022). This indicates an effort to harmonize between the formal criminal justice system and local wisdom values that emphasize conflict resolution through deliberation and consensus (Setiawan, 2022). This debate is inseparable from the view that the repressive conventional criminal system prioritizes criminal sanctions based on the Criminal Code, thus often overlooking aspects of social recovery and reintegration. However, restorative approaches seek to overcome these limitations by promoting the active participation of all parties involved, including the community, to reach a resolution that is oriented towards recovery and reform (Ghosh, 2014). This shift is in line with human rights principles that place

individual protection as fundamental in any legal process (Sasmita, 2011). The implementation of restorative justice also reflects a shift in the paradigm of punishment from imprisonment to correctional, where the focus of guidance is directed at the social reintegration of prisoners (Ashraff & Subroto, 2022). However, the integration of restorative justice principles in the Indonesian criminal justice system still faces serious challenges in maintaining the balance between legal certainty and the flexibility required in community conflict resolution (Pramujayanto, 2024).

Indeed, the purpose of punishment in the Indonesian criminal law system is not only oriented towards retribution, but also includes aspects of prevention, community protection, maintenance of social solidarity, and balancing, which is in line with the idea that punishment must repair individual and social damage caused by criminal acts (Furqan & Sidiq, 2019). The application of restorative justice emphasizes that progressive legal development in Indonesia requires a reinterpretation of legal texts and a deep understanding of the social dynamics of modern society (Fauzan, 2020). This paradigm shift indicates a fundamental change in the philosophy of punishment from retributive to guidance and social reintegration, as reflected in the purpose of correctional facilities which seeks to shape prisoners into full human beings so that they can be accepted back into society (Seputra & Wibowo, 2021). This social reintegration approach emphasizes efforts to return prisoners to society after serving their sentences, by restoring their social relationships, lives, and livelihoods (Yulianto & Muhammad, 2021). The implementation of social reintegration aims to restore social conditions to normal conditions after disorganization due to criminal acts, helping prisoners and correctional students to return to adaptive functioning in society (Ma'ruf, 2023). However, the effectiveness of the criminal justice system is often questioned, especially in relation to punishment, which should have beneficial and demonstrable consequences (Ristanti, 2022).

Therefore, an in-depth study is needed on the impact and challenges of restorative justice implementation, especially in the context of applicable legislation in Indonesia, to ensure effective legal protection for victims and perpetrators as well as society as a whole (Wahyuni, 2010). This study is crucial considering the differences in the application of punishment by one judge to another, because the legislation only recognizes the maximum criminal limit without a uniform standard of punishment (Sukarmini & Idrus, 2020). This condition shows the existence of epistemological problems in legal science in Indonesia, which if not realized, has the potential to hinder legal development and even cause legal chaos, because the understanding of legal truth is only seen partially and separately (Prasetyo et al., 2019). This study aims to comprehensively analyze the development of the concept of restorative justice in the criminal justice system in Indonesia, identify inhibiting and driving factors in its implementation, and formulate relevant policy recommendations for strengthening restorative justice in the future.

LITERATURE REVIEW

The concept of restorative justice has historically been an integral part of the customary legal system in Indonesia, long before the adoption of modern criminal concepts, and is rooted in communal values that emphasize social harmony and conflict resolution through deliberation to reach consensus. This approach reflects local wisdom in addressing legal issues by prioritizing relationship restoration over retribution (Yusro et al., 2020). Mediation and reconciliation aspects are at the core of such conflict resolution, involving the active role of customary elders or community leaders in facilitating dialog between disputing parties. The practice of mediation in dispute resolution has developed in various legal domains, including civil, with executorial powers equivalent to court decisions (Wiantara, 2018). This is in line with the goal of restoring state financial compensation in corruption cases, which is not

sufficient only with the imposition of prison sanctions, but also efforts to recover the losses caused (Indriana, 2019).

However, challenges arise when these local values are confronted with the principle of formal legality adopted in Indonesia's modern criminal justice system, where often the handling of legal cases ignores aspects of recovery and instead prioritizes aspects of positive law which sometimes reduce or even shift the principle of legality itself (Muammar, 2023). The integration of these two systems requires the adaptation of legal doctrines and regulatory frameworks to ensure that restorative approaches can work harmoniously with the formal criminal system, without compromising legal certainty or the rights of the parties (Susetya et al., 2018). Empirical research involving interviews with public prosecutors shows that optimizing the recovery of state financial losses post-court decision is crucial, even up to the execution stage (Ilmi et al., 2022). Execution as a legal action carried out by the court is an inseparable continuation of the case examination process, emphasizing that the recovery of victims' losses is a priority after the verdict is legally binding (Januarydy, 2022).

METHODOLOGY

This research uses a juridical-normative approach by analyzing secondary data in the form of primary and secondary legal materials, supported by a juridical-sociological approach to understand the implementation of restorative justice concepts in law enforcement practices in society (Damayanti & Nurudin, 2023) (Pande, 2011). This approach allows for in-depth analysis of existing regulations as well as practices that develop in the field, to identify gaps between legal norms and social realities (Chandra & Yunimar, 2022). This research method also involved a comparative analysis of restorative justice models implemented in other jurisdictions to gain a broader perspective on their effectiveness and adaptability to the Indonesian legal context. Normative research is also used to analyze legal theories or doctrines relating to punishment, including comparisons with laws in other countries (Kholiq et al., 2015). This juridical-normative approach focuses on literature study, analyzing legislation, legal theories, and relevant court decisions, in order to identify consistency and coherence in the application of restorative justice (Hardianti, 2018) (Fauziah & Apriani, 2021). This approach is based on the principle that legal truth is not only found in the text of positive legislation, but also in the broader logic of legal science, including primary, secondary and tertiary legal materials (Denisanjaya & Mangesti, 2022).

Primary legal materials include laws, government regulations, and court decisions that directly regulate restorative justice, while secondary legal materials include legal literature, scientific journals, and relevant research results; while tertiary legal materials are used as support in interpreting primary and secondary legal materials (Fauziah & Apriani, 2021). Primary data collection can also be done through field surveys and interviews with relevant informants to obtain direct information about the issues studied (Jayanti & Marlina, 2018). The technique of collecting legal materials in this research is carried out through literature study, followed by qualitative analysis and descriptive presentation of primary and secondary legal materials that have been obtained (Ruslan, 2023). This research is prescriptive, aiming to find and provide solutions to existing legal problems in the implementation of restorative justice in Indonesia (Yuanita, 2017). This qualitative approach in analyzing descriptive legal material allows the identification of juridical normative aspects through analytical descriptive methods, describing the description of the legal material obtained and connecting it to get conclusions (Fauziah & Apriani, 2021).

RESULTS AND DISCUSSION

The results show that although there is a legal basis and various initiatives to implement restorative justice, its implementation still faces significant challenges related to understanding the concept, coordination between law enforcement agencies, and resistance to changing the traditional paradigm that prioritizes retributive (Wibowo, 2021). The concept of restorative justice contradicts criminal procedural law, which focuses on the discovery of material truth based on evidence and judges' beliefs (Masthuro, 2023). This is exacerbated by the lack of socialization of government regulations regarding guidelines for implementing diversion and understanding of the parties, as well as the lack of expertise of juvenile prosecutors in applying restorative approaches (Wicaksono & Pujiyono, 2015). In addition, the criminal justice system in Indonesia is still heavily influenced by the principle of formalistic legal certainty, which tends to ignore substantive justice which should be the main focus in resolving criminal cases (Haryono, 2019). Other challenges include the lack of adequate facilities and infrastructure, as well as limited knowledge of law enforcement officials regarding the implementation of an educative punishment system for children in conflict with the law (Silalahi, 2022). These obstacles hinder the implementation of diversion as an alternative solution for children in conflict with the law, which should be prioritized for their future (Sofyan, 2020).

The current implementation of the criminal justice system in Indonesia has not fully integrated a comprehensive restorative approach, especially in cases involving children, where the diversion process is often hampered by a lack of understanding and coordination between the parties involved (Gurusi, 2021). Nevertheless, the legal protection of children has normatively been regulated in various laws and regulations and has been implemented in law enforcement practices in the community, especially in the handling of sexual harassment cases by the Women and Children Protection unit in the police (R., 2016). This protection effort is strengthened by the mandate of the 1945 Constitution Article 28B Paragraph 2, which emphasizes the right of every child to survival, growth and development, and protection from violence and discrimination (Utami, 2018). This condition is exacerbated by the fact that violence against children, including sexual violence, is still a crucial issue in Indonesia, with thousands of cases recorded each year, many of which cannot be processed further due to insufficient evidence or the complaint is retracted by the complainant (Azzahra et al., 2020). Child victims of violence, exploitation and discrimination require special protection that ensures their rights are fulfilled in order to survive, grow and develop optimally (Syahputri, 2022). Children as a vulnerable group need a guarantee of a decent life, access to health, and protection from all forms of violence and discrimination (Syahputri, 2022). This reality shows that, despite an adequate legal framework, the implementation of child protection in Indonesia still faces serious challenges, especially in the context of sexual crimes and exploitation that deprive them of their human rights (Syahputri, 2022). The number of cases of sexual crimes against children and women in Indonesia is alarming, with thousands of reports recorded each year (Ristanti, 2022). Data from the Indonesian Child Protection Commission between 2011 and 2019 showed 11,492 cases of children in conflict with the law, underscoring the urgent need for a more adaptive and humane justice system (Ariyani & Susilowati, 2021).

Statistics also show that in the previous year, 214 crimes against children were recorded, including 96 cases of sexual abuse and 90 cases of physical violence, while the rest related to neglect and other forms of crime (Utami, 2018). This figure reflects the urgent need for a thorough evaluation of existing child protection strategies and the development of more effective interventions (Kurniawan & Arsil, 2019). Legal protection for victims of online gender-based violence, which often involves children, is crucial and regulated in various laws in Indonesia to ensure the physical and psychological recovery of victims (Arsyad, 2022). The phenomenon of children being forced to work, often in inappropriate and dangerous

conditions, exacerbates their vulnerability to exploitation and hinders access to education, which in turn can cause mental trauma and hinder their holistic development (S & Kanic, 2024). This situation highlights the complexity of the problems of working children who are faced with family economic limitations and low levels of parental education, which are often the main triggers of their vulnerability to exploitation and various forms of rights violations (S & Kanic, 2024). Cultural aspects of society, such as the view that child labor is a social norm, also exacerbate this condition, hampering effective legal protection efforts for working children in Indonesia (Munawir, 2023). The data indicates a correlation between vulnerable socioeconomic conditions and an increased risk of violence and exploitation against children, suggesting that poverty is one of the dominant factors hindering the protection of children's rights (Shindy et al., 2022). Women as the economic support of the family are often trapped in a cycle of poverty that forces them to allow their children to work for survival. Poverty and parents' limited access to education are often the main driving factors why children are forced to work, which in turn exacerbates their vulnerability to exploitation and various rights violations (Kamal et al., 2015). In addition, the lack of effective implementation of existing regulations, such as the 1996 Education Act, contributes to the problem of children who are out of school because they have to work.

Therefore, a strong advocacy policy for women and children based on the protection of victims of violence is needed, which is realized through the formulation of policies to eliminate domestic violence and two service models, namely the procedural rights model and the service model (Chilmiati, 2014). The first model focuses on providing comprehensive procedural rights for victims, ensuring access to information, legal aid, and participation in every stage of the judicial process. The service model, on the other hand, emphasizes the provision of holistic support, including psychological counseling, medical assistance, as well as temporary shelter facilities for victims who need urgent protection (Maharani et al., 2024). This model is in line with the principles of restorative justice, which prioritizes the recovery of victims and perpetrators, and involves the community in the problem-solving process to achieve sustainable reconciliation. Protection of children from exploitation, including hazardous work that interferes with their education and development, is explicitly regulated in Law No. 13/2003 on Labor as well as Law No. 39/1999 on Human Rights (S & Kanic, 2024).

CONCLUSION

Restorative justice (RJ) presents a transformative approach within the Indonesian criminal justice system, aiming to prioritize healing and reconciliation over punitive measures. Despite its strong alignment with local customs and values, its integration into the formal legal system faces several challenges. The existing legal framework, heavily influenced by formal legality and retributive traditions, often obstructs the application of RJ. Additionally, there is a lack of comprehensive understanding and training among legal practitioners, which hampers its potential effectiveness, particularly in cases involving children and minor offenses. To overcome these barriers, the study calls for a balanced approach that accommodates the need for legal certainty while promoting the rehabilitation and reintegration of offenders into society. Furthermore, policy reforms and better coordination among law enforcement agencies are essential to ensure the practical application of restorative justice principles, ultimately contributing to a more humane and effective justice system in Indonesia.

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