

RESTORATIVE JUSTICE IS A PROGRESSIVE BREAKTHROUGH IN RESOLVING CRIMINAL LAW PROBLEMS

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Abstract

The prevailing criminal law paradigm worldwide remains rooted in the penal system, where offenders are subjected to punitive measures, such as imprisonment, based on their level of guilt. This approach often prioritizes the punishment of the offender while neglecting the needs and rights of the victim. This study examines restorative justice as an alternative method of crime resolution, seeking to address the limitations of the conventional criminal justice system. Through qualitative research and a philosophical juridical approach, the study identifies the legal foundations of restorative justice in Indonesian criminal law, evaluates its challenges, and assesses its effectiveness in reducing judicial inequality and promoting social reconciliation. The findings highlight that restorative justice is reflected in Indonesia's juvenile justice system, particularly under Law No. 11 of 2012, and is also integrated into the proposed Criminal Code Bill, specifically in Articles 116, 117, and 118. Key challenges to implementation include the retributive nature of the Indonesian legal system, limited understanding among law enforcement officials, and societal concerns over the perceived leniency of non-custodial sentences. However, restorative justice presents significant potential as a progressive solution for resolving criminal acts, contingent on strong commitment from all stakeholders and alignment with Indonesia's socio-cultural context and morality.

Keyword: *Restorative Justice; Penal System; Criminal Law; Juvenile Justice; Judicial Inequality; Social Reconciliation.*

A. INTRODUCTION

The model of handling criminal cases in general traditionally uses a punishment model by punishing the perpetrator. This is with the aim of providing a deterrent effect on the perpetrators. It should be noted that while this approach is important in maintaining public order and security, it often fails to meet the needs of the victim or provide an opportunity for the perpetrator to take full responsibility for his or her actions. In many cases, legal proceedings that focus only on punishment can exacerbate social tensions and prolong the wounds for all parties involved.¹

Restorative justice emerged as an alternative to the more traditional criminal justice system, the concept emerging as a more healing and rehabilitation-based approach. Restorative justice not only emphasizes punishment for the perpetrator, but focuses more on repairing damaged relationships, restoring victims' rights, and rehabilitating perpetrators.² This approach involves dialogue between victims, actors, and communities to reach a solution that is acceptable to all parties involved with the model of finding a middle ground. According to John Braithwaite³, the concept of restorative justice aims to repair the damage caused by crime, not just punish the perpetrators. Therefore, restorative justice views justice as a healing process, which prioritizes personal awareness and responsibility in repairing the harm caused.

Over the past twenty years, research on denial of crime and restorative justice has grown rapidly and both have emerged as exciting, vibrant, and dynamic areas of contemporary criminological interest. While the practice of restorative justice in Europe has been essentially victim-oriented, there has always been an emphasis on including the moral and social rehabilitation of perpetrators. A more perpetrator-centered approach to restorative justice and its practice is not limited to the evaluation of its ability to reduce crime, but must be seen in the relationship between reparations, resettlement (reintegration into society after punishment) and quitting crime. This article examines, from a broad perspective, but includes some preliminary data from ongoing research on victim-offender mediation in prison, the capacity of restorative justice interventions to positively impact the likelihood of offenders stopping committing crimes.⁴ Braithwaite⁵ states that restorative justice must

¹ Braithwaite John. *Restorative justice & responsive regulation*. (Oxford: Oxford University Press, 2002).

² Howard Zehr. *The little book of restorative justice*. (Intercourse: Good Books, 2002): 1-89.

³ Braithwaite John. *Restorative justice & responsive regulation*. (Oxford: Oxford University Press, 2002).

⁴ Claes Bart, and Joanna Shapland. "Desistance from crime and restorative justice." *Restorative Justice* 4, no. 3 (2016): 302-322.

⁵ Braithwaite John. "Hybrid politics for justice: the Silk Road of restorative justice II." *Restorative Justice* 5, no. 1 (2017): 7-28.

be a legal principle that can override legal rules such as punishment. In addition, what needs to be considered is the importance of instilling restorative justice in political philosophy as a paradigmatic indoctrination strategy. Other research on restorative justice is more likely to highlight the tradition of restorative justice that tends to be shaped by the legal culture, political traditions, and criminal justice identities of their evolving systems. This study uses a comparative criminology approach to see the extent of theoretical contributions in the field, as well as having practical implications at the level of public policy design. Other research on restorative justice is more likely to highlight the tradition of restorative justice that tends to be shaped by the legal culture, political traditions, and criminal justice identities of their evolving systems.⁶ This study uses a comparative criminology approach to see the extent of theoretical contributions in the field, as well as having practical implications at the level of public policy design.

In Indonesia, the application of the concept of restorative justice has begun to receive attention in recent years, especially in the handling of child criminal cases. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, for example, provides a legal basis for the application of the principle of restorative justice, which allows the settlement of cases through mediation between victims and perpetrators. According to Rizanizarli,⁷ the forms of restorative justice settlement in juvenile justice are: peace with or without compensation, handover to parents/guardians, social rehabilitation and religious rehabilitation. This study argues that restorative justice treats children as perpetrators in a dignified manner oriented towards justice and the interests of children. Other research conducted by Hodgson resulted in the finding that the contemporary popularity of restorative justice, in youth justice, has grown significantly in recent decades. Nonetheless, there is a lack of research exploring girls' experiences of restorative justice interventions.⁸ No less important is the research from Winslade which states that restorative justice can contribute to social justice or only to procedural justice.

This question is discussed in this paper. A case was filed for restorative justice to deliberately address social justice issues intentionally, but so was a warning that it required explicit attention to power analysis. Here the narrative perspective is referred to as an example of an approach based on such an analysis of power. Special cases of bullying were also discussed. It is

⁶ Díaz Gude Alejandra, and Iván Navarro Papic. "Restorative justice and legal culture." *Criminology & Criminal Justice* 20, no. 1 (2020): 57-75.

⁷ Rizanizarli, Mahfud Mahfud, Riza Chatias Pratama, and Fikri Fikri. "The Application of Restorative Justice for Children as Criminal Offenders in the Perspective of National Law and Qanun Jināyat." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 21-39.

⁸ Hodgson Jodie. "Offending girls and restorative justice: A critical analysis." *Youth Justice* 22, no. 2 (2022): 166-188.

recommended that a more explicit focus on social justice can be added to the procedural focus that is often typical of restorative justice.⁹ This special edition reviews the various dimensions of restorative justice in the context of civil society, focusing on its diverse applications in various fields. The article also touches on the role of forgiveness, reconciliation, and shame in reducing bullying in schools, highlighting how restorative approaches can help build a deeper understanding of the impact of actions on individuals and society, as well as encourage more constructive recovery and behavior change.¹⁰ If referring to research in Indonesia that has been carried out by National Commission on Human Rights, it can be used as a reference to the extent of the effectiveness of restorative justice in the field. According to a report by the National Commission on Human Rights, the implementation of restorative justice in Indonesia has been proven to reduce recidivism rates, improve social relations, and provide space for victims to get a fairer recovery.

However, although the potential for restorative justice is quite large, its implementation in Indonesia still faces a number of obstacles. The limited understanding of the basic principles of restorative justice among law enforcement officials and the community is one of the main challenges in its implementation.¹¹ In addition, there is a rejection of changes to the established system, as well as the perception that restorative justice is more suitable for minor cases, while for serious crimes, punishment is considered a more appropriate solution.

Thus, this study develops research on restorative justice conceptually and implementatively. This study has special specifications compared to previous research so that its originality is guaranteed. This can be seen in the research objectives including; knowing the existence of restorative justice in Indonesian criminal law, outlining the advantages and disadvantages of the concept of restorative justice, analyzing the challenges and opportunities for the implementation of the concept of restorative justice in Indonesian justice. This study explore the basic theories of restorative justice, the mechanism of its application, and analyze how this concept can be integrated in the Indonesian legal system, especially in dealing with crimes involving perpetrators who have the potential for rehabilitation and rehabilitation. In addition, restorative justice will later be an offer of settlement in criminal acts that prioritize progressivity.

⁹ Winslade John. "Can restorative justice promote social justice?." *Contemporary Justice Review* 22, no. 3 (2019): 280-289.

¹⁰ Morrison Brenda, and Eliza Ahmed. "Restorative justice and civil society: Emerging practice, theory, and evidence." *Journal of Social Issues* 62, no. 2 (2006): 209.

¹¹ Maria Silvy E. Wangga. "Implementation of Restorative Justice in Criminal Cases in Indonesia." *Law and Humanities Quarterly Reviews* 1, no. 3 (2022).

B. RESEARCH METHOD

This research examines the legal field with the object of study being the concept of restorative justice as a progressive breakthrough in resolving criminal problems. The research method with the normative juridical method is legal research with a doctrinal approach to examine the aspects that exist in positive law.¹² This research is qualitative research in the field of law with a philosophical reflection content. This research uses qualitative data, which comes from legal texts, laws and regulations, and other legal literature, as well as views or arguments from legal experts. The laws and regulations that are used as the object of research are mainly related to the Law on the Juvenile Criminal Justice System (Law No. 11 of 2012), the Criminal Code Bill which is contained in the provisions of Articles 116, 117, and 118 of the Criminal Code Bill. Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. Supreme Court Regulation No. 2 of 2012 concerning Guidelines for Adjudicating Children Who Face the Law. Regulation of the National Police Chief No. 6 of 2019 concerning the Settlement of Criminal Cases Based on Restorative Justice. Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 concerning Restorative Justice. This research does not focus on collecting empirical data like in ordinary qualitative research, but on the study of legal concepts, legal theories, and the application of legal norms in certain contexts. This research often aims to assess whether a legal norm or policy is in accordance with higher legal principles, such as justice, legal certainty, and utility. The research technique is carried out by collecting relevant research materials in the form of journals and books, then describing the problem, after which the discussion of the formulation of the problem with theories and legal rules relevant to hermeneutical interpretation is entered.

C. RESULTS AND DISCUSSION

1. The Existence of the Concept of Restorative Justice in Criminal Law

Historically, crime or punishment did seem cruel as a form of revenge for crimes committed by humans at that time. It should be noted that in human development itself, crime is not decreasing, but becoming more complex and varied. When we look at the theory of retribution or retribution, it turns out that there are still problems that hinder and need to be answered. Why has crime not decreased even though the sanctions for these acts have so varied from the lightest to the death penalty? retributive justice, distributive justice and restorative justice. The main focus of retributive justice is more on

¹² Soekanto Soerjono. *Introduction to legal research*. (Jakarta: UI-Press, 1986): 23-24.

punishing the perpetrator for the crime he has committed, then for distributive justice the focus is on rehabilitating the perpetrator of the crime, and for restorative justice focusing on restitution or recovery for the victim and the rehabilitation of the perpetrator.¹³

According to Marshall,¹⁴ Restorative justice is a problem-solving approach to crimes that involve the parties themselves, and society at large, in active relationships with legal institutions. It is not a specific practice, but a set of principles that can guide the general practice of any institution or group in relation to crime. Marshall actually wants to emphasize, if in the Restorative Justice process, all parties involved in the case are involved in the case settlement process as much as possible. Restorative Justice is a common principle for any institution or society in an effort to solve crimes. Braithwaite¹⁵ argues that although restorative justice is generally applied in the context of criminal cases, this concept is not limited to just legal issues. Restorative justice, according to him, also has the potential to be applied in efforts to overcome and solve various problems in various aspects of human life, with the aim of creating healing and improving relationships between the parties involved.

Another characteristic of Restorative Justice is that crime is seen as a phenomenon or phenomenon that is part of social action and is not limited to criminal acts only. Crime is considered an act that harms people that has an impact on the damage to social relations of the community. This is contrary to the old paradigm that places crime as a state problem where the state has a monopoly right to punish perpetrators of crimes, when in fact indigenous peoples and indigenous peoples have their own customary laws to solve crime problems. The basic values that characterize Restorative Justice which later become a differentiator from other criminal theories are described as follows:¹⁶ Values related to the fundamentals of procedural safeguard, namely values related to the implementation of restorative justice in practice, including: Non-Domination, in resolving cases all parties must not dominate each other, their positions are equal. Empowerment, the existence of efforts to empower (protection) parties who are in a disadvantageous position. This is intended so that the disadvantaged party wants to express ideas, be it the needs of the victim, the perpetrator, or the community to later be considered in making

¹³ Eddy Hiarij. *Principles of Criminal Law*. (Yogyakarta: Cahaya Atma Pustaka, 2016).

¹⁴ Tony F. Marshall. *Restorative justice: An overview*. (London: Home Office, 1999).

¹⁵ Braithwaite John. *Restorative justice & responsive regulation*. (Oxford: Oxford University Press, 2002).

¹⁶ Nurul Putri Awaliah, Nasution, Fathul Hamdani, and Ana Fauzia. "The concept of restorative justice in handling crimes in the criminal justice system." *European Journal of Law and Political Science* 1, no. 5 (2022): 32-41.

decisions. Honoring legally specific upper list in sanction, the relevant parties who are in a lawsuit, if all have agreed to use this settlement model, then all are required to submit, respect, and accept all forms of decisions that will be produced.

Respectful listening, that is, in the process, the parties must empathize with each other and respect each other. Equal Concern for All Stakeholders, the focus of attention in this process on all parties, not only focusing on one or two parties involved, in order to create harmony. Accountability, Appealability, in this case all parties are free to determine the choice of settlement models and mechanisms in the context of Restorative Justice, on the basis of mutual agreement. Respect for fundamental human assertiveness. In resolving criminal cases, they must all base themselves on human rights values, both in formulating criminal models and in the application of criminal processes. Values related to the ability to forget past events. Forgetting the past in this case is not then abolishing or leaving it without effort to solve it. The willingness to forget past events is not then used as an excuse to prevent the ongoing case settlement process. An agreement that has occurred and is accepted by all parties, then makes the spread of new values with a shift in the paradigm of society towards the crime that occurred. The problem that is often faced is that the process of realizing restorative programs often clashes with local values of the community and is suspected of thwarting the improvement process, therefore the agreements that have occurred must be evaluated, in order to find solutions to these problems. The values contained in restorative justice are, preventing injustice, forgiving each other, and being grateful.

Based on these values when referring to Schweigert,¹⁷ restorative justice promotes the social and moral development of the perpetrator. Morality as a socially acceptable way of behaving, which distinguishes good from evil and plays a major role in society to facilitate social harmony. Therefore, restorative justice is a powerful way to learn from mistakes and for the young offender to be educated by his own experience, since other participants in the process can tell him why his behavior is unacceptable. In other words, restorative justice offers a moral and factual picture of criminal behavior, its consequences, circumstances, and reasons. Therefore, young perpetrators need to learn the consequences of their crimes and hear how it affects others." Restorative justice as a criminal philosophy can be a framework for various policies, program ideas, and strategies for handling criminal cases. This is to create justice for all parties involved in the case, as well as to answer the

¹⁷ Francis J. Schweigert. "Learning the common good: Principles of community-based moral education in restorative justice." *Journal of Moral Education* 28, no. 2 (1999): 163-183.

problems that exist in the criminal justice system. Meanwhile, Erez¹⁸ gave an example of a restorative justice approach implemented in a multi-dimensional approach to settlement. In this context, the domestic violence cases that are exemplified appropriately use the restorative justice approach model by considering two sides of the case, both in the criminal and civil scope. By looking at other countries that by looking at the model of the approach of other countries, the criminal justice system uses deliberation.

Restorative justice has an important meaning to be used as the basis for policies to handle domestic violence with criminal law in Indonesia, with considerations, among others. First, Pancasila as the ideal of Indonesian nation and state law, and second, restorative justice can provide a more substantive sense of justice to victims of criminal acts.¹⁹ The definition of law enforcement in Indonesia equates law enforcement with law enforcement, so that legal certainty is prioritized, and the values of justice and usefulness are often ignored. This is the reason why settlement with the criminal justice system cannot create substantial justice, so a new model is needed in the prosecution of criminal cases.²⁰ According to Wemmers,²¹ currently the principle of restorative justice is being discussed in the realm of criminal law enforcement practices in Indonesia. The concept of restorative justice emphasizes efforts to accommodate the interests of the parties in restoring relations after the occurrence of a criminal act. The shift in perspective towards the restorative justice approach as a form of approach in the current criminal law enforcement has led to the need to reformulate the criminal law system in Indonesia which comes from the Dutch colonial heritage and use a retributive justice approach that emphasizes the retribution aspect. An example is law enforcement against minor crimes that tend to be handled as ordinary crimes, so they often hurt the community's sense of justice. In this case, minor crimes can be understood as simple, harmless, and relatively minor losses, so it is necessary to resolve minor criminal cases with a restorative justice approach.

The existence of a restorative justice approach in the criminal justice system in Indonesia can be seen in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, there is the influence of monistic theory and dualistic theory, as well as legal hermeneutics about how criminal law works to uphold justice. Regarding the legal ratio in Law Number 11 of 2012

¹⁸ Erez Edna. "Domestic violence and the criminal justice system: An overview." *Online Journal of Issues in Nursing* 7, no. 1 (2002): 4.

¹⁹ Zurnetti Aria, and Nani Muliati. "Customary criminal law policy on domestic violence settlement through restorative justice." *Cogent Social Sciences* 8, no. 1 (2022): 2090083.

²⁰ Richard W. Wright. "Substantive corrective justice." *Iowa L. Rev.* 77 (1991): 625.

²¹ Wemmers Jo-Anne, and Katie Cyr. "Victims' perspectives on restorative justice: How much involvement are victims looking for?." *International Review of Victimology* 11, no. 2-3 (2004): 259-274.

concerning the Juvenile Criminal Justice System in producing restorative justice in criminal law in Indonesia, it is related to the function of law as a social engineering tool.²² This is also regulated in Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.²³ This law regulates the protection of children's rights, including dispute resolution involving children with a restorative approach. Supreme Court Regulation No. 2 of 2012 concerning Guidelines for Adjudicating Children Who Face the Law. The Supreme Court Regulation stipulates that in the juvenile justice process, there needs to be a more humane approach and involves mediation oriented towards recovery rather than retaliation. Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020 concerning Restorative Justice.²⁴ This regulation is one of the main legal bases that govern the implementation of Restorative Justice within the Prosecutor's Office. The purpose of this regulation is to provide an alternative to resolving criminal cases in a more humane manner and prioritize recovery for the parties involved. In addition to the prosecutor's office, the Police institution also regulates the settlement of criminal cases with restorative justice. Regulation of the National Police Chief No. 6 of 2019 concerning the Settlement of Criminal Cases Based on Restorative Justice.²⁵ The National Police Chief's Regulation No. 6 of 2019 is one of the legal bases that regulates the application of the concept of Restorative Justice in the police. This regulation regulates how the police can use a restorative approach to resolve criminal cases by considering humanitarian factors, the interests of victims, and the potential for restoration of relations between the parties involved.²⁶

The existence of restorative justice in criminal law has a strong juridical foundation, but it needs to be developed not only limited to the problems of adolescents or children who are facing the law. The concept of restorative justice is an opportunity to rethink crime and its consequences, to bring together those affected by crime to determine the best way to overcome its

²² Rizky Adiyanzah, Wicaksono, and Sri Kusriyah. "Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children." *Jurnal Daulat Hukum* 1, no. 4 (2018): 943.

²³ Andriati Fatmi, Aidul Fitriadi Azhari, and Wardah Yuspin. "Minister of Health Regulation of the Republic of Indonesia Number 35 of 2014 on Reproductive Health Service Standards: Legal Review and Normative Aspects in Healthcare Practices." *Jurnal Soepra* 2, no. 6 (2023).

²⁴ Yoan Barbara, Runtunuwu, and Fatimah Hs. "Implementation of the Attorney General Regulation of Republic Indonesia No. 15 of 2020 on Discontinuation of Prosecution Based on Restorative Justice at the High Prosecutor's Office." *Technium Soc. Sci. J.* 49 (2023): 140.

²⁵ Nurul Putri Awaliah, Nasution, Fathul Hamdani, and Ana Fauzia. "The concept of restorative justice in handling crimes in the criminal justice system." *European Journal of Law and Political Science* 1, no. 5 (2022): 32-41.

²⁶ Setiadi Wicipto. "Institutional restructuring to sustain regulatory reform in indonesia." *Hasanuddin Law Review* 5, no. 1 (2019): 120-131.

impacts.²⁷ Restorative justice wants to give all parties involved in the case an opportunity to rethink the crime and its consequences, and involve all affected parties to find a common solution. Fernando²⁸ clarified that the concept of Restorative Justice is a model approach in criminal law enforcement, which tries to offer the settlement of various criminal cases outside the criminal justice process. In another aspect, we also need to know what are the advantages and disadvantages of the concept of restorative justice as an offer to solve criminal problems.

2. Advantages and Disadvantages the Concept of Restorative Justice

Restorative justice as a concept offer has advantages over other approaches in criminal law. Restorative justice seeks to give the victim a voice and place the consequences of the crime in terms of its effect on human relationships and well-being, rather than as abstract punishments. Restorative justice has a positive impact because it provides a space for victims to talk about the impact of the crime they have experienced and get recognition and apologies from the perpetrators. This can speed up their mental and emotional healing process.²⁹ Several studies have shown that restorative justice, with its dialogue and rehabilitation approach, is more effective in reducing relapse compared to conventional prison sentences. Studies have shown that restorative justice programs are associated with lower rates of recidivism, as perpetrators are given the opportunity to take responsibility for their actions.³⁰

According to Braithwaite³¹, restorative justice involves the community in the justice process, thus creating a sense of collective accountability. This approach involves the community in the settlement process, which can strengthen social bonds and increase the sense of justice in the community. The community will return to its original position of harmony. The form of social turmoil that emerges will return to its original condition. The restorative justice process is very easily adapted to the specific needs and circumstances of those involved.³² Restorative justice offers a more flexible approach, allowing for solutions that are more tailored to the needs of victims, perpetrators, and society. In his views on restorative justice, John

²⁷ Morrison Brenda, and Eliza Ahmed. "Restorative justice and civil society: Emerging practice, theory, and evidence." *Journal of Social Issues* 62, no. 2 (2006): 209.

²⁸ Fernando Zico Junius. "Pentingnya Restorative Justice Dalam Konsep Ius Constituendum." *Al Ijarah: Jurnal Pemerintahan Dan Politik Islam* 5, no. 2 (2020): 253-270.

²⁹ Howard Zehr, "The little book of restorative justice." *Intercourse: Good Books* (2002): 1-89.

³⁰ Jeff Latimer, Craig Dowden, and Danielle Muise. "The effectiveness of restorative justice practices: A meta-analysis." *The prison journal* 85, no. 2 (2005): 127-144.

³¹ Braithwaite John. "Hybrid politics for justice: the Silk Road of restorative justice II." *Restorative Justice* 5, no. 1 (2017): 7-28.

³² Claes Bart, and Joanna Shapland. "Desistance from crime and restorative justice." *Restorative Justice* 4, no. 3 (2016): 302-322.

Braithwaite³³ acknowledged the existence of pathological optimism that might be considered biased, but he also believed that the criminal justice system needed a new and positive vision, especially after criminology became pessimistic in the 1970s and 1980s. He considers that this optimism, while perhaps excessive, functions like scientific optimism in the medical world—that is, the belief to explore new theories and test their effectiveness with randomized controlled trials. However, as in science, optimism must be balanced with an evaluation of side effects and contraindications, which in the context of restorative justice include many structural barriers and challenges that need to be faced in order for this approach to be effective. Braithwaite³⁴ acknowledges that while restorative justice offers a more humane solution, it also faces many challenges that must be managed carefully and realistically.

In another aspect, restorative justice has weaknesses. Restorative justice is not a panacea for all criminal justice matters, and it is particularly unsuitable for serious offenses or violence in which the perpetrator is unwilling to be involved.³⁵ Restorative justice may not be effective for certain cases, especially those involving serious violent crimes or crimes from which there is no chance of recovery, such as murder cases. Victims may feel compelled to participate in restorative justice meetings, especially if they fear the emotional consequences of confronting the perpetrator.³⁶ Some victims may feel pressured to participate in the restorative justice process, or find it uncomfortable to speak directly with the perpetrator. This can exacerbate their trauma, not cure it. In some cases, perpetrators can manipulate restorative justice processes to minimize accountability and avoid more severe consequences.³⁷ The perpetrator may not always show genuine remorse, and some parties worry that the restorative process could be abused by the perpetrator to avoid harsher punishment. Restorative justice has practical challenges in scaling up for use in large criminal justice systems, especially in high-volume cases. The law recognizes litigation and non-litigation settlement mechanisms, but it is hardly explicitly regulated for non-litigation settlement in criminal cases. Non-litigation in criminal justice recognizes the concept of restorative justice for the public interest, which is different from the private

³³ Braithwaite John. *Restorative justice & responsive regulation*. (Oxford: Oxford University Press, 2002).

³⁴ Braithwaite John. "Hybrid politics for justice: the Silk Road of restorative justice II." *Restorative Justice* 5, no. 1 (2017): 7-28.

³⁵ Braithwaite John. "Restorative justice: Assessing optimistic and pessimistic accounts." *Crime and justice* 25 (1999): 1-127.

³⁶ Ana M. Nascimento, Joana Andrade, and Andreia de Castro Rodrigues. "The psychological impact of restorative justice practices on victims of crimes—a systematic review." *Trauma, Violence, & Abuse* 24, no. 3 (2023): 1929-1947.

³⁷ Mark S. Umbreit, and Marilyn Peterson Armour. "Restorative justice and dialogue: Impact, opportunities, and challenges in the global community." *Wash. UJL & Pol'y* 36 (2011): 65.

realm in civil law. The concept of restorative justice exists to rehabilitate the condition of criminals so that they are accepted back into society. The concept of restorative justice is manifested in the mediation mechanism in criminal law in the form of criminal mediation, but criminal mediation does not yet have a legal umbrella. The non-progressive application of normative laws results in overcapacity of prisons/detention centers.³⁸ Although effective in some contexts, restorative justice is difficult to apply widely in large and complex criminal justice systems, such as those in many countries.³⁹ Behind the advantages and disadvantages of a concept of approach in solving a problem, there are very substantive things that need to be discussed, namely the relationship with the challenges and how the implementation of restorative justice in Indonesia, because it will correlate with the success or failure of the practice of the application of restorative justice itself.

3. Efforts to Implement Restorative Justice in Indonesia

The application of restorative justice in Indonesia faces various challenges related to social, legal, cultural, and public understanding of this concept. Although several initiatives have been undertaken, such as the Diversion program for children in conflict with the law, restorative justice is still in its development stage and has not yet been fully accepted or implemented throughout Indonesia's criminal justice system. Here are some of the main challenges in the implementation of restorative justice in Indonesia, along with some references from related sources.

One of the biggest challenges is the lack of a deep understanding of restorative justice, both among law enforcement officials, such as judges, prosecutors, and police, as well as in the general public. Many consider it an ineffective approach or difficult to implement in the existing legal system. One of the biggest obstacles to the implementation of restorative justice is the limited understanding of the basic principles of this approach among legal professionals, who tend to still prioritize a retributive approach. Additionally, restorative justice requires supporting infrastructure, such as mediation rooms between victims and perpetrators, trained facilitators, and clear procedures to ensure that this process runs fairly. In Indonesia, limited resources, such as the number of trained mediators, as well as appropriate facilities, are the main obstacles. The implementation of restorative justice in Indonesia requires trained human resources and supporting infrastructure, which is still limited, especially in remote areas.

³⁸ Adi Emmanuel Ariananto Waluyo. "Penal mediation as the concept of restorative justice in the draft criminal procedure code." *Lex Scientia Law Review* 5, no. 1 (2021): 139-164.

³⁹ Daniel W. Van Ness, Karen Heetderks Strong, Jonathan Derby, and L. Lynette Parker. *Restoring justice: An introduction to restorative justice*. (London: Routledge, 2022).

Another challenge is that the Indonesian legal system tends to prioritize retributive justice over restoration or rehabilitation. This is especially evident in the application of very dominant prison sentences. Changing the paradigm from retributive criminal law to restorative requires a lot of time and effort. Indonesia's legal system, which is based on a positive legal model, is still trapped in a retributive view, which prioritizes punishment over efforts to restore human relations. One of the challenges in restorative justice is ensuring that the mediation process or dialogue between victims and perpetrators runs fairly. There are concerns that victims, especially those from weaker or marginalized groups, may feel intimidated or not get a balanced justice. What's more, some perpetrators may not show genuine remorse, making it difficult to achieve a truly meaningful reconciliation. The main challenge in the implementation of restorative justice is to ensure a balance between the interests and rights of victims and the often-unbalanced rehabilitation process of perpetrators.

The implementation of the concept of Restorative Justice in Indonesia can first be seen in the juvenile justice system regulated in Law No. 11 of 2012, which was then implied in the Criminal Code Bill where the provisions of Articles 116, 117, and 118 of the Criminal Code Bill are contained. For example, in Article 116 paragraph 1 of the Criminal Code Bill, which provides space for the application of Restorative Justice by postponing or stopping the examination in front of the court for the consideration of investigators, public prosecutors, and public officials. The application of the concept of Restorative Justice to the juvenile justice system shows an effort to create conditions for recovery both related to the victim and the perpetrator of the crime itself.⁴⁰ Restorative justice aims to achieve recovery, both for victims and perpetrators, through dialogue and a mediation process involving all relevant parties. This is different from the traditional criminal law paradigm which emphasizes punishment as retribution for mistakes. This concept carries three main pillars: (a) victim involvement, (b) responsibility of the perpetrator, and (c) community participation. In Indonesia, people tend to have a negative view of the perpetrator, and there are concerns that the restorative justice approach can reduce the deterrent effect or provide too lenient treatment of the perpetrator. This stigma can hinder public acceptance of the restorative justice process. Although there are several legal bases for the implementation of restorative justice in Indonesia, such as in the Law on the Juvenile Criminal Justice System (Law No. 11 of 2012) which regulates the transfer of children, there is no comprehensive regulation that regulates the application of restorative justice in the general criminal justice system. This lack of clarity makes the practice

⁴⁰ Braithwaite John. *Restorative justice & responsive regulation*. (Oxford: Oxford University Press, 2002).

of restorative justice difficult to apply widely. Many law enforcement officers have not been trained to implement restorative justice. They are more accustomed to a retributive approach that prioritizes imprisonment or fines, so they are less prepared to mediate or meet between victims and perpetrators.

We can reflect on the practice of restorative justice in Ireland, where restorative justice is used with some type of offence, although mostly in relation to offences without victims (or vice versa in the absence of direct victims), while accessibility remains low overall. At the same time, growth in restorative practice training creates opportunities to align work culture with restorative principles. The study lays the groundwork for policies aimed at making restorative justice more accessible and instilling a culture of restorative justice in Ireland's criminal justice profession and institutions.⁴¹ This is reinforced by the European Directive 2012/29/EU setting minimum standards on the rights, support and protection of victims of crime, the European Council Recommendation CM/Rec(2018)8 on restorative justice in criminal matters, and the recently updated United Nations Handbook on Restorative Justice Programs testifies to the increasing recognition of restorative justice policies at the international level.⁴² Braithwaite opposes the penal justice system and supports the restorative justice system by pointing out that a well-designed restorative approach can be more effective in rehabilitating victims, offenders, and communities. He argued that a restorative system, which focuses on recovery and responsiveness to previous failures, can deter and rehabilitate offenders better than existing punishment systems. Braithwaite's empirical research supports the idea that active deterrence in dynamic regulatory frameworks, such as those found in restorative justice, is much more effective compared to passive deterrence approaches in more rigid criminal justice systems.⁴³

The implementation of restorative justice in Indonesia faces a number of serious challenges, ranging from a lack of understanding among the public and law enforcement, limited resources, to legal cultural constraints that prioritize punishment. However, with the growing awareness of the importance of a more humane approach to the criminal justice system, there is an opportunity to address these challenges through training, regulatory updates, and changing people's views of justice itself. If these challenges can be addressed, restorative justice can be a more effective alternative in resolving conflicts, reducing the burden of prisons, and improving social relations in

⁴¹ Ian D. Marder. "Mapping restorative justice and restorative practices in criminal justice in the Republic of Ireland." *International Journal of Law, Crime and Justice* 70 (2022): 100544.

⁴² Pali Brunilda, and Giuseppe Maglione. "Discursive representations of restorative justice in international policies." *European Journal of Criminology* 20, no. 2 (2023): 507-527.

⁴³ Burford Gale, and Paul Adams. "Restorative justice, responsive regulation and social work." *J. Soc. & Soc. Welfare* 31 (2004): 7.

society. Because basically fair law is responsive law, considering that responsive law is born from legal subjects who continue to be creative by looking at the increasingly complex reality of law and society. Responsive law is a law that has always been part of the development of human culture, so that it is in line with the philosophy of progressive law which places law as something dynamic, because law is for humans, not humans for law.⁴⁴ Within the framework of progressive legal philosophy, restorative justice offers a different approach to responding to moral damage.⁴⁵ The core values of restorative justice emphasize voluntariness, security, inclusion, dignity, respect, responsibility, accountability, truth-telling, and honesty. It focuses on addressing harm, offering people who have committed or been harmed by a crime the opportunity to safely discuss the nature and consequences of the offense, ask questions and offer answers, and agree on what to do to make amends and avoid further harm.

The Restorative Justice perspective, which is seen not only from the perspective of national law but also international law, can strengthen the criminal justice system to achieve recovery for victims, perpetrators, and society.⁴⁶ One form of implementation of Restorative Justice is Diversion in the Juvenile Criminal Justice System, which is based on international conventions such as the United Nations Rules for the Protection of Adolescents Deprived of Their Liberty. The contribution of international law is important in strengthening the values of Restorative Justice, which should be given space in criminal policy to focus on rehabilitation. Restorative justice, rooted in humanitarian principles, is increasingly being fought for in international forums such as the UN congress, as part of the goal of creating solutions based on human values. If you learn from the Scottish government, although there is skepticism about the approach adopted by the Scottish Government. The proposed approach is a coordinated yet sensitive model of restorative justice to the local context, highlighting significant differences between 'pure' and 'maximalist' approaches. These findings provide useful evidence for evaluating restorative justice policy and implementation in Scotland, while offering insights for the development of restorative justice at the European level, taking into account the varied local challenges and dynamics.⁴⁷

⁴⁴ Agam Ibnu Asa, Misnal Munir, and Rr Siti Murti Ningsih. "Nonet And Selznick's Responsive Law Concept In A Historical Philosophy Perspective." *Crepido* 3, no. 2 (2021): 96-109.

⁴⁵ Kirkwood Steve, "A practice framework for restorative justice." *Aggression and Violent Behavior* 63 (2022): 101688.

⁴⁶ Sulbadana, Andi Intan Purnamasari, and Supriyadi Supriyadi. "Does International Law Acknowledge Restorative Justice?." *Sriwijaya Law Review* (2023): 121-134.

⁴⁷ Butler Siobhan, Giuseppe Maglione, and Jamie Buchan. "Institutionalising restorative justice for adults in Scotland: An empirical study of criminal justice practitioners' perspectives." *Criminology & Criminal Justice* 24, no. 1 (2024): 269-290.

Talking about restorative justice cannot then we rule out the aspect of social justice from a global perspective. Restorative justice, traditionally seen as a transformative approach in the criminal justice system, was built as a catalyst for broader social justice reform. Based on data from a series of online workshops, including participants from North America, Europe, and Africa, reflexive thematic analysis was used to generate perspectives on how restorative practices address social injustice.⁴⁸ The findings highlight varied interpretations in various socio-political contexts, suggesting that while restorative justice may inherently have transformative potential, its efficacy in promoting social justice depends on the conscious integration of social justice considerations. Nuanced application, which recognizes the complexity of social injustice, can increase the impact beyond individual cases, and contribute meaningfully to the pursuit of social justice on a broader scale.

Campaigners for restorative justice suggest that we should address criminal behavior by encouraging those responsible to remedy the harm they have caused and that those who cause and suffer harm should be at the centre of consideration and decision-making.⁴⁹ Victim involvement is important for two very different reasons: they have an important role to play in the reform of perpetrators and they need to be involved in order to benefit from the healing effects of restorative encounters. The tension between the two ways of thinking about the reasons for the victim's involvement has not been sufficiently acknowledged. This hindered the restorative justice campaign to achieve its higher ambitions. This also applies in Indonesia. The Indonesian Muslim community is familiar with restorative justice. The substance of restorative justice is to build joint participation between the perpetrator and the victim through a third party. Restorative justice in the community tradition has strong roots in Indonesian Muslim society, namely deliberation to reach consensus.⁵⁰ The deliberative body was held to find a solution that could satisfy all parties. In the future, restorative justice needs to be applied in Indonesia in resolving criminal cases, especially crimes against life. The restorative justice approach offers a different view from the approach applied in the current penal system. We can see from the discourse on combating corruption through restorative justice which has produced positive and negative results. Outstanding corruption crimes have several characteristics

⁴⁸ Procter-Legg Thomas, Jonathan Hobson, and Ernest Quimby. "Restorative justice and social justice: an international perspective." *Contemporary Justice Review* 27, no. 2-3 (2024): 218-238.

⁴⁹ Johnstone Gerry, "Restorative justice for victims: inherent limits?." *Restorative Justice* 5, no. 3 (2017): 382-395.

⁵⁰ Achmad Irwan, Hamzani, Fajar Dian Aryani, Bambang Tri Bawono, Nur Khasanah, and Nur Rohim Yunus. "Non-procedural dispute resolution: Study of the restorative justice approach tradition in Indonesian society." *International journal of offender therapy and comparative criminology* 69, no. 4 (2025): 373-387.d

that differ from general crimes. Although restorative justice is a method to modernize the way law enforcement is practiced, the policies used to implement it must be highly selective and careful.⁵¹ Despite receiving a lot of harsh criticism from anti-corruption activists, efforts to implement the restorative concept in eradicating corruption need to be reviewed. This is necessary in order to get the greatest benefit for the Indonesian people. To make it easy to implement the concept of restorative justice, we need to make clear standards. This was stated by Braithwaite⁵² There are three types of restorative justice standards: limiting, maximizing, and allowing, which are used as multidimensional criteria for evaluating restorative justice programs. These standards serve to secure the republican freedom (power) of citizens through improvement, transformation, and empowerment, as well as limiting the exercise of power over others. This list of standards is based on the values listed in the UN Human Rights consensus and empirical findings regarding what citizens seek from restorative justice. Although these standards are often initiated top-down through international instruments or intellectual thought, it is important to provide a flexible agenda that can be adapted to bottom-up deliberations that take into account local anxieties about injustice. It is important then to implement methods to integrate citizen-agreed standards into local program evaluations and align them with national and international standards.

The theory of the three types of restorative justice standards restricts, maximizes, and enables is a concept used to evaluate and design a more effective and equitable restorative justice program. This theory focuses on the empowerment of citizens, the improvement of social relations, and the restriction of the exercise of power over individuals, by referring to the principles existing in the UN Human Rights Consensus as well as empirical findings related to the wishes of citizens in the justice system. The application of this theory in Indonesia certainly requires adaptation to the local context, culture, and existing legal system. This standard serves to limit the exercise of state power or the legal system over individuals. In the Indonesian context, this is reflected in the application of Restorative Justice for certain cases, especially those involving minor offenses or child offenders. The state is present to provide space for dispute resolution without involving the formal judicial system. Programs such as criminal mediation regulated in several policies, such as Supreme Court Regulation No. 2 of 2012 concerning Restorative Justice or Law No. 11 of 2012 concerning the Juvenile Criminal

⁵¹ Orin Gusta, Andini, Nilasari Nilasari, and Andreas Avelino Eurian. "Restorative justice in Indonesia corruption crime: A utopia." *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72-90.

⁵² Braithwaite John, "Setting standards for restorative justice." *The British Journal of Criminology* (2002): 563-577.

Justice System, allow for out-of-court settlements, in a way that focuses more on restoring the relationship between perpetrators and victims. The application of this standard in Indonesia is also seen in the settlement of cases involving minor crimes or administrative violations. More humane decisions, as exemplified in the regulations on criminal mediation, reduce the burden of punishment for perpetrators by focusing on efforts to recover victims' losses.

The application of the three standards of restorative justice in Indonesia restricts, maximizes, and enables focuses on the empowerment of victims and perpetrators, as well as adaptation to local social and cultural contexts. The maximization standard seeks to give an active role to victims and perpetrators in conflict resolution, such as in the diversion program for children of criminal offenders, which provides opportunities for rehabilitation and restoration of relationships with the community. While the standard allows creating space for more flexible policies, such as village deliberations or customary institutions involved in dispute resolution without formal procedures. Restorative justice programs are also applied in various cases, including corruption, albeit with challenges related to transparency and social justice. Despite its great potential, the implementation of these standards in Indonesia faces challenges in harmonizing central and regional policies, as well as differing interpretations of justice. Limited knowledge about restorative justice among the community and law enforcement is the main obstacle. Therefore, the evaluation of programs based on community participation and adaptation to local wisdom is essential to ensure the success of restorative justice, while maintaining alignment with international principles and domestic legal contexts. The application of the three standards of restorative justice in Indonesia must be adjusted to the concept of social justice, cultural values, and the applicable legal context, which will later lead to the values contained in Pancasila as the source of law and the philosophy of life of the Indonesian nation, which substantially provides the spirit to deliberate for the creation of social justice for all Indonesian people.

D. CONCLUSION

Restorative justice has great potential to become an alternative means of settlement in criminal law in Indonesia. The application of this concept can create a fairer and more humane justice system, and focus on restoring relationships between individuals in society. However, in order for restorative justice to be accepted and applied optimally, reforms in the legal system, capacity building of the legal apparatus, and changes in the legal culture in society are needed. Restorative justice is a progressive breakthrough that offers an alternative approach to crime resolution, focusing on restoring the relationship between perpetrators, victims, and communities, as well as supporting the rehabilitation process rather than just punishment. This

approach replaces the traditional paradigm of prioritizing revenge with a more holistic healing effort, which not only pays attention to punishment for the perpetrator but also provides an opportunity for the victim to feel heard and rehabilitated. As a more humane and effective alternative, restorative justice shows great potential in reducing the rate of relapse of criminals, reducing the burden on the criminal justice system, and strengthening social bonds in society. However, to optimize its implementation, support is needed from various aspects, such as improving regulations, increasing understanding and training of law enforcement, and wider socialization to the community. Despite challenges, such as resistance to change and limitations of existing infrastructure, restorative justice still shows promising prospects to be an alternative solution in a fairer, rehabilitation-oriented criminal justice system. With the right approach and commitment from various parties, restorative justice can be a step forward towards a more progressive and sustainable justice system. This conclusion emphasizes that despite the challenges in its implementation, restorative justice has great potential as a more progressive and comprehensive innovation in dealing with criminal acts, as well as contributing to the reform of the justice system that is more oriented towards social recovery. This is by adhering to the concept of social justice, cultural values, and the applicable legal context.

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