

Application of Restorative Justice in Statutory Practice

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ABSTRACT

The purpose of the research is to provide an explanation of how restorative justice is used in constitutional practice. In its implementation there has been development, due to awareness of the importance of restorative justice. So, the support of various parties, government, non-governmental organizations, civil society is needed so that restorative justice becomes an integral part of the Indonesian justice system in facing the challenges of law enforcement and constitutional practices which are explained in detail in the theory of Restorative Justice and the effectiveness of law enforcement. The research method was carried out normatively and sociologically with a descriptive analytical research design and using secondary and tertiary data to explain the writing of the research with the research locus in the Constitutional Procedural Law (HTN) courts. The findings of research on how restorative justice is used in constitutional practices can make law enforcement procedures that are inclusive, fair, and beneficial to society stronger. The utilization of supportive equity can assist with fortifying the groundworks of Indonesian state organization which depends on the standards of a vote based system, equity, and common liberties (HAM). The findings of the research lead to the following recommendations: (1) Indonesia must begin the process of developing a restorative justice law; (2) the government needs to increase the capacity of institutions and human resources involved in restorative justice; (3) it is necessary to collaborate with various parties to increase public awareness of the benefits of restorative justice (4) collaborate with various stakeholders to evaluate the restorative justice program.

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Introduction

The restorative justice theory is a theory in law to close the weaknesses in resolving conventional criminal cases, namely the repressive approach as implemented in the Criminal Justice System. The weakness of the repressive approach as a resolution to

criminal cases is, among other things that it is oriented towards retribution in the form of punishing and imprisoning the perpetrator, but even though the perpetrator has served his sentence, the victim does not feel satisfaction in getting justice. Meanwhile, the justice that has been taking place in the criminal justice system in Indonesia is retributive justice. Restorative justice, on the other hand, is something that is hoped for. Restorative justice is a process in which all parties involved in a particular criminal act work together to figure out how to deal with the consequences in the future. Restorative justice practices everywhere must be based on the principles of inclusion, respect, mutual understanding and voluntary and honest dialogue (Sanjaya et al., 2024).

Albert Eglash, Randy Barnett, and Nils Christie came up with restorative justice for the first time in 1977. Eglash, Barnett, and Christie were among the first to discuss the crisis in the criminal justice system as well as alternative paradigms that have the potential to fundamentally replace the punishment paradigm. Eglash specifically distinguishes retributive, distributive, and restorative forms of criminal justice. According to him, retributive and distributive focuses on criminal acts, denies the victim's participation in the justice process, and only requires passive participation from a perpetrator. As for restorative (Alamdari, 2023), the system focuses on recovering the damage or loss caused by the perpetrator, and all parties, both the perpetrator and the victim, are actively involved in the justice process (Gavrielides, 2020).

A model for resolving criminal cases that places an emphasis on restoring victims, perpetrators, and restorative justice is referred to in society. The fundamental tenet of restorative justice is for victims and perpetrators, as well as citizens acting as facilitators, to participate in the resolution of cases. This ensures that children or perpetrators will no longer disrupt the social harmony that has been established (Durahman, 2022).

Restorative justice's ability to resolve disputes outside of court is a novel aspect that merits theoretical and practical investigation. From a practical perspective, there will be a correlation between achievements in the field of justice and restorative justice. The number of cases brought to court in their various forms and variations rises over time. As a result, judges find it difficult to examine and decide cases in accordance with the "simple, fast, and low-cost justice" principle without sacrificing the achievement of the goals of justice, namely legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*), and justice (*gerechtigkeit*) (Ningrum et al., 2023).

Meanwhile, restorative justice was introduced in Indonesia in early 2000, The passage of Law No. 11 of 2012 on the Juvenile Criminal Justice System was one of the significant events. When dealing with cases involving children as perpetrators or victims, this law applies the principles of restorative justice. These principles emphasize an approach that prioritizes recovery of losses and rehabilitation of children, as well as prevention of future criminal acts (Azmi & Hatta, 2023).

Restorative justice has been implemented as a method for resolving criminal cases by all Indonesian law enforcement agencies, including the Supreme Court, Attorney General's Office, Republic of Indonesia Police, and Ministry of Law and Human Rights. Article 1 number 2 Notice of Concurrence with the Central Equity of the Republic of Indonesia, the Priest of Regulation and Common Liberties of the Republic of Indonesia, the Principal Legal Officer of the Republic of Indonesia, and the Top of the Public Police of the Republic of Indonesia Number HM.03.02 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012, dated October 17, 2012 illustrates this point, concerning the Execution of Changes in accordance with Cutoff points for Light Wrongoings and Measures of Fines, Fast Assessment Strategies, and Use of Helpful Equity) expresses that Supportive Equity is used[7] is the method involved with settling minor lawbreaker cases by including the culprit, casualty, family, culprit/casualty, and significant local area pioneers to mutually look for a fair goal that underlines reclamation back to its unique state. This is finished by agents at the examination stage or judges from the beginning of the preliminary.[8]

(1) Old Law: Article 10 of the Criminal Code (KUHP) defines restorative justice as the application of law based on the principles of justice and propriety. Article 10 of the Criminal Code: continues to regulate the application of law based on the principles of justice and propriety, as stated in the revised Criminal Code (KUHP). In the meantime, the judge must take into account both aggravating and mitigating circumstances when determining the punishment, according to Article 10A of the Criminal Code. Article 65 paragraph 2 of Law Number 11 of 2012 on the Juvenile Criminal Justice System states that "it is permissible to use the principles of restorative justice in resolving children's cases." Article 4 paragraph 1 of Law Number 8 of 1981 on the Criminal Procedure Law also states that "provides a basis for implementing restorative justice through mediation and peace meetings." Additionally, Article 10A of the Criminal Code states that the judge must take into account both the mitigating and aggravating factors in.[9]

Restorative justice is still in its infancy in Indonesia, but awareness of its significance is growing, as evidenced by the aforementioned legal foundation. In light of the difficulties in the field of law enforcement, it is hoped that the idea of restorative justice can become a more integral part of the Indonesian justice system, including constitutional practice or constitutional law, with support from a variety of parties, including the government, non-governmental organizations, and civil society. (HTN) In Indonesia (Lubis, 2021).

Meanwhile, the relationship between the application of restorative justice and constitutional law in Indonesia involves aspects such as conflict resolution, justice, protection of human rights (HAM), and democracy development. The following are several points that explain this relationship: (1) Conflict Resolution: Restorative justice offers an alternative approach in resolving conflicts at the local and national level. In the context of Constitutional Law, restorative conflict resolution can reduce potential social and political tensions, as well as strengthen political stability and state sovereignty; (2) Justice: The principles of restorative justice, such as recognition of losses, responsibility, and reconciliation, support the realization of more comprehensive justice in the legal system. In Constitutional Law, the application of restorative justice can increase access to justice for all citizens, including those who are vulnerable or marginalized; (3) Protection of Human Rights (HAM): Restorative justice pays attention to the needs and rights of individuals, including victims and perpetrators of crimes, in the law enforcement process. In the context of Constitutional Law, the application of restorative justice can strengthen the protection of human rights, by ensuring that the legal process respects the dignity and integrity of individuals; (4) Democracy Development: Restorative justice promotes active community participation in law enforcement and conflict resolution. In Constitutional Law, a restorative approach can support democratic development by providing space for community participation in the decision-making process and solving problems that affect their lives (S. A. Hasibuan et al., 2024).

Supportive equity can assist with fortifying the groundworks of Indonesian sacred regulation, which depends on the standards of democracy, justice, and human rights, by strengthening law enforcement processes that are inclusive, fair, and have a positive impact on society (Ferdiles, 2019).

In its development, restorative justice, which is implemented in the state administration or Constitutional Law in Indonesia, has begun to be introduced in several contexts, especially in dealing with social conflicts and overcoming violations of human rights (HAM). One example of the application of restorative justice in state constitutional law is through reconciliation and conflict resolution mechanisms at the local level (Fitriana et al., 2023).

An important example is the application of restorative justice in resolving conflicts between the state and indigenous communities in Indonesia. One of the striking events related to this is the Settlement of the Lapindo Brantas Land Dispute. In this case, there was a conflict between the Sidoarjo indigenous community and the oil and gas company PT Lapindo Brantas regarding the issue of responsibility for the Lapindo Mud disaster which occurred in 2006. Conflict resolution was carried out through a restorative justice approach which involved a process in which the parties involved engage in mediation, dialogue, and peace meetings. The outcomes of this process include efforts to restore the environment and local economy as well as an agreement on compensation and restitution for disaster victims (Gumz & Grant, 2009).

In addition, the principles of restorative justice have been applied in a number of instances of human rights violations in Indonesia. This strategy aims to bring about justice for victims, acknowledge perpetrators' guilt, and rebuild relationships between victims, perpetrators, and society (L. R. Hasibuan et al., 2023).

Although the application of restorative justice in constitutional law (HTN) in Indonesia is still in the development stage, several initiatives such as those mentioned above show that this approach has the potential to be an effective alternative in dealing with conflict and human rights violations in Indonesia (Irabiah et al., 2022).

The following are the research problem formulation questions, as described above:

- a. How is restorative justice put into practice according to the constitution?
- b. What are the obstacles in implementing restorative justice in Indonesia?

Theoretical Framework

To answer the problem formulation question above, namely how restorative justice is implemented in constitutional practice and what obstacles are experienced The author will use two theories to answer theoretically the question of how restorative justice is applied in Indonesian state administration: the restorative justice theory and the theory of legal effectiveness. In the meantime, the challenges will be explained in the following explanation.

Restorative Justice Theory

In the 1960s, Indonesia developed restorative justice, also known as restorative justice, as a method for resolving criminal cases. In contrast to the approach utilized in the conventional criminal justice system, this one places an emphasis on the direct involvement of the perpetrator, the victim, and the community in the process of resolving criminal cases. Liebmann is all that is needed to define restorative justice (Ferdianto & Puspitosari, 2023) as a legal system that "aims to restore the welfare of victims, perpetrators and communities damaged by crime, and to prevent further violations or criminal acts".

Experts or experts who explain the Restorative Justice Theory in the application of constitutional law (HTN) are: (1) Marlina; (2) Wesley Crag; (3) Professor John Braithwaite from Australia, a sociologist and legal theorist who has made significant contributions to the development of restorative justice theory; (3) Howard Zehr, is a criminology expert from the United States who has contributed greatly to the development of the concept and practice of restorative justice (Parasdika et al., 2022). The theories of the two experts are as follows:

- a. Marlina states in her book that the concept of restorative justice is a process of resolving legal violations that occur by bringing the victim and perpetrator (suspect) together to sit in one meeting to talk.
- b. Wesley Cragg links the emergence of restorative justice to the theory of retribution or retribution in criminal law. According to Cragg, the theory of retaliation is basically less successful in suppressing crime. What's worse is not being able to repair the losses suffered by the victims. Therefore, there is an effort to change the paradigm of punishment from retaliation to restorative or recovery.
- c. According to Braithwaite, restorative justice is not only an approach to law enforcement, but also reflects fundamental principles in democratic constitutional law. In Braithwaite's view, the application of restorative justice strengthens the connection that exists between individuals and society as a whole, as well as between individuals and the state. Braithwaite emphasized that restorative justice focuses not only on enhancing the relationship between the criminal and the victim in criminal cases, but also on enhancing the relationship between individuals and the state as a socially beneficial institution. By fortifying local area contribution in the policing and giving casualties a voice, supportive equity helps fabricate a more responsive, comprehensive and vote based overall set of laws. According to Braithwaite, the incorporation of restorative justice into constitutional law has the potential to bolster the tenets of democracy, justice, and community involvement in law enforcement. Through this approach, the state can create a more harmonious relationship with its citizens and strengthen its legitimacy and authority as an institution responsible for protecting individual rights and the interests of society at large. However, it should be noted that the restorative justice approach proposed by Braithwaite may require adaptation and adjustment to the legal and cultural context of each country, including Indonesia. Nevertheless, the basic concepts introduced by Braithwaite provide a strong foundation for understanding the relationship between restorative justice and constitutional law in a global context.
- d. Howard Zehr stated that restorative justice is not just an alternative method of law enforcement, but is also a basic principle that can be applied in a democratic constitutional law system. According to him, restorative justice has broader implications in terms of relations between individuals, society and the state. In Zehr's view, the application of restorative justice in constitutional law can change the paradigm of law enforcement which is more authoritarian and retributive to become more responsive, inclusive and participatory. Restorative justice strengthens the relationship between individuals and the state and between individuals and society, by emphasizing the importance of dialogue, reconciliation and shared responsibility. Zehr highlighted that restorative justice places victims, perpetrators and the community as the center of attention in the law enforcement process, which is in line with democratic principles which emphasize community participation in decision making. By strengthening community involvement in conflict resolution and perpetrator

rehabilitation, restorative justice helps build a legal system that is more just, sustainable and recovery-oriented. Although Zehr's view does not directly link restorative justice to constitutional law in a formal context, the concept he introduced provides a strong basis for understanding the relationship between restorative justice and the principles of democracy and justice in the context of constitutional law. Through this approach, restorative justice can be an effective tool in strengthening the foundations of inclusive and sustainable constitutional law.

According to the preceding explanation, in restorative justice, the priority is not the imposition of punishment on the criminal, but rather how the criminal can be held accountable for the crime and how the victim can obtain justice to restore normalcy. A fair trial is the primary objective of restorative justice. Aside from that, it is hoped that all parties—victims, perpetrators, and the community—will play a significant role in it. In order to cover their losses and alleviate their suffering, victims are entitled to compensation that is appropriate and mutually agreed upon with the perpetrator. In restorative justice, the offender must accept full responsibility in the hopes that he or she will recognize their error (Agus et al., 2023).

The perpetrator has the opportunity to apologize to the victim through restorative justice; it is best to hold a professional meeting to facilitate this. Restorative justice has taken the place of retributive justice, or *Lex talionis*, and this restorative justice perspective is the result. If a more retributive and legalistic approach is picked, it is hard to treat the casualty's injuries in endeavors to recuperate them. As a result, restorative justice aims to emphasize the offender's guilt for his harmful actions (Putri, 2021).

The practice is referred to by the term "restorative justice" itself. Reestablishing the casualty's relationship with the wrongdoer is important for rebuilding. How to reestablish this relationship can be agreed upon by both the perpetrator and the victim. The offender can make amends through compensation, peace, social work, or other agreements, and the victim can talk about their losses (Leo & Sinaga, 2023).

A strategy is executed as a feature of the helpful equity approach so the method involved with settling criminal demonstrations beyond the lawbreaker court framework is understood and settled through a thought interaction. Indeed, even standard regulation in Indonesia doesn't recognize the goal of common and criminal cases; all cases can be settled through pondering determined to accomplish balance or reestablishing what is happening. The Indonesian people actually have known this for a long time (Lodi et al., 2021).

Legal Effectiveness Theory

The theory of legal effectiveness can be linked to the concept of restorative justice (Mendrofa, 2023) in the context of law enforcement which is oriented towards recovery and reconciliation. One of the experts who developed this theory was Lawrence W. Sherman. Lawrence W. Sherman is a criminologist and legal academic from the United States. In 1993, Sherman together with his colleagues developed the theory of "Law as a Social Control of Effectiveness", which emphasizes that the effectiveness of law enforcement can be measured based on its impact on human behavior.

In relation to restorative justice, Sherman highlights that restorative approaches can increase the effectiveness of the law in ways that are different from conventional approaches. Sherman believes that a restorative process that involves the active participation of the offender, victim, and community can provide a more meaningful experience and influence future behavior (Menkel-Meadow, 2007).

By involving parties directly involved in resolving conflicts and redressing losses, restorative justice can create stronger feelings of justice among them and increase trust in the legal system. This can help prevent re-offending and promote peace and reconciliation in society (Menkel-Meadow, 2015).

Through an approach based on legal effectiveness, Sherman underscores that restorative justice has the potential to be an effective tool in improving behavior, restoring social relations, and strengthening the rule of law in society. This theory provides a strong foundation for understanding the relationship between restorative justice and legal effectiveness in the context of sustainable and inclusive law enforcement (Moore & Lawrence, 2023).

There are five (five) factors that influence law enforcement, according to Soerjono Soekanto. These factors include: (1) the law itself (the law); (2) the parties who create and enforce the law; the facility or factors that support law enforcement; the community factors, specifically the setting in which the law is used or is used; and the cultural factors, specifically as a result of work, creativity, and feelings that are based on human intention in social life (Muliadi et al., 2024).

Because they are the most important and serve as a benchmark for the efficiency of law enforcement, the five aforementioned factors are intertwined. In this study, Satjipto Rahardjo stated that in order for the law to work or play a good role in people's lives, the following things must be taken into account: (1) Get to know the problems being faced as well as possible. This includes carefully identifying the community that will be the target of the cultivation; (2) Understand the values that exist in society. This is important in terms of social engineering being applied to society with multiple sectors of life such as: traditional, modern and planning. At this stage, the values of which sector are selected are determined; (3) Make hypotheses and choose which ones are most feasible to implement; (4) Follow the implementation of the law and measure its effects (Nascimento et al., 2023).

Research Methods

This study employs a normative legal method with a statutory approach, which involves the examination and comprehension of relevant laws and regulations, as well as the beneficial outcomes of implementing general principles of good governance in government administration. Additionally, the study utilizes a conceptual approach to explore and analyze relevant principles, doctrines, and concepts related to the research topic. Information gathered through the literature review includes data from statutory regulations, books, and articles related to the topic under study, such as Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, and Perma No. 1 of 2016 regarding Mediation Procedures in Court.

Results and Discussions

The implementation of restorative justice (Putri, 2021) in constitutional practice in Indonesia involves various aspects, from resolving local conflicts to protecting human rights. The following is a more detailed explanation along with examples and legal basis:

- a. Local Conflict Resolution: Type: Resolution of conflicts between citizens, agrarian conflicts, etc. Form: Mediation, peace meeting, dialogue between disputing parties. Example: Mediation between farmers and companies in agrarian conflicts. Peace meeting between residents regarding property disputes. Legal Basis: There is no law that specifically regulates restorative justice in resolving local conflicts. However, the

- principles of justice and peace are emphasized in the 1945 Constitution Article 28E paragraph (1) and Article 28I paragraph (2).
- b. Protection of Human Rights (HAM): Type: Cases of human rights violations, gender-based violence, etc. Form: Restitution to the victim, rehabilitation of the perpetrator, reconciliation between the victim and the perpetrator. Example: Reconciliation between victims and perpetrators of past human rights violations. Rehabilitation program for perpetrators of gender-based violence. Legal Basis: The principles of restorative justice are in accordance with the 1945 Constitution Article 28I paragraph (2) which guarantees everyone's right to life and freedom from torture.
 - c. Community Development and Social Reintegration: Type: Rehabilitation of ex-convicts, reintegration of ex-prisoners, etc. Form: Training programs, social assistance, psychosocial support. Example: Social reintegration program for former prisoners. Social assistance for ex-detainees. Legal Basis: Community development and social reintegration programs can be supported by various laws related to human development, including Law Number 23 of 2014 concerning Regional Government.
 - d. Strengthening Local Democracy and Community Participation: Type: Increasing community participation in decision making. Form: Public dialogue forum, public consultation. Example: Dialogue forum between local government and community regarding local development planning. Public consultation in the preparation of environmental policies. Legal Basis: The legal basis for community participation can be found in Law Number 6 of 2014 concerning Villages.

Despite the fact that there is no specific law in Indonesia governing restorative justice (Leo & Sinaga, 2023), In accordance with the Indonesian Constitution's and laws' guarantees of justice, peace, and human rights, there are principles that can be applied. In addition to bolstering democracy at the local level, restorative justice's guiding principles are in line with the spirit of sustainable and inclusive community development. The following is a comprehensive explanation of how restorative justice is used in Indonesian state administration:

Application of Restorative Justice in Constitutional Practice

The application of restorative justice (Lodi et al., 2021) emphasizes the pure will of the perpetrator to repair the losses he has caused as a form of responsibility. Repairs for losses must be proportionate taking into account the rights and needs of victims. To produce an agreement between the parties, in this case the victim and the perpetrator, it is necessary to carry out informal dialogues such as mediation and deliberation. The active involvement of relevant and interested community members is very important in this section as an effort to re-accept the child in society. The solution that is important to pay attention to is repairing the damage or loss caused by the crime.

Restorative justice is based on the following tenets: (1) Making offenders responsible for repairing the losses caused by their mistakes; (2) Giving offenders opportunities to prove their capacity and quality in addition to overcoming their feelings of guilt; (3) Involving victims, parents, and families; (4) Creating a forum for working together to solve problems; Establishing a direct and obvious link between wrongdoing and formal social reaction.[23]

Compensation or remuneration for casualties is a notable part of helpful equity, similar to the reclamation of the casualty's relationship with the wrongdoer. How to reestablish this relationship can be agreed upon by both the perpetrator and the victim. Compensation, peace, social work, or other agreements are some of the options available to the perpetrator to make amends, and the victim can express their losses. In this scenario, both the victim and the perpetrator can actively participate in resolving their issue. Each

and every sign of a crime only results in a criminal decision or punishment. As a result, restorative justice is an effort to resolve disputes peacefully outside of court.[24]

A traditional case resolution model is the name given to the principle of restorative justice. John Braitwhait refers to the concept of restorative justice in the United Nations Handbook on Restorative Justice Programs. "a return to traditional partners.", 2006, is formulated that "Restorative justice is an approach to problem solving that, in its various forms, involving the victim, the offender, their social networks, justice agencies and the community" (Menkel-Meadow, 2015).

Restorative justice principles have been used extensively in alternative dispute resolution (ADR), which is governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (Moore & Lawrence, 2023). Perma Number: 1 of 2008, pertaining to Court Mediation Procedures, restorative justice is also implemented in civil cases through the mediation process. "Mediation is a method of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator "is stated in the Supreme Court Regulation (Perma) Number: 1 of 2016 regarding Mediation Procedures in Court, Article 1 Number 1. This document was later superseded by Perma Number: 1 of 2016 regarding Mediation Procedures in Courts. This document implements Articles 154 of the Regulation to Regulate the Laws of the Netherlands. Perma Number: 1 of 2016 regarding Intercession Techniques in Court makes a strict requirement for intercession. "Every Judge, Mediator, Parties, and/or legal representatives are obliged to follow dispute resolution procedures through Mediation," states Article 3 paragraph 1 of Perma Number: 01 of 2016 regarding Mediation Procedures in Court,".

(a) Except if generally resolved in light of this High Court Guideline, a goal should initially be looked for through intervention in all polite questions that are submitted to the Court, including contestation cases (*verzet*) for *verstek* choices and obstruction from disputants (*partij verzet*) or outsiders (*derden verzet*) against the execution of choices that have long-lasting lawful power. (b) Debates that are excluded from the commitment to determine through Intercession as expected in passage (1) include: (a) questions for (Muliadi et al., 2024).

The following disputes are exempt from the obligation to resolve through mediation as stated in paragraph (1): (b) disputes in which the examination is conducted without the presence of the plaintiff or defendant who has been duly summoned; (c) counterclaims (*reconventions*) and the entry of a third party into a case (*interventions*); (d) disputes regarding the prevention, rejection, annulment, and legalization of marriage; (e) disputes that have been submitted to the Court following attempts to settle outside of the Court through.[28]

Even though the mediation trial was unsuccessful, efforts to establish peace were always made through mediation before a decision that had long-lasting legal effect was made (*inkracht van gewijsde*). "Based on the agreement of the Parties, disputes which are excluded from the Mediation obligation as intended in paragraph (2) letters a, c, and e can still be resolved through voluntary Mediation at the case examination stage and level legal effort," states Article 4 paragraph 4 of Perma No. 1 of 2016 concerning Mediation Procedures in Court".

Meanwhile, for the purpose of settling a case, the High Court, the Principal legal officer's Office, the Indonesian Public Police, and the Service of Regulation and Basic freedoms have adopted the principles of restorative justice. This was carried out in accordance with a Memorandum of Agreement that was signed with the Top of the Public Police HM, the Principal legal officer HM, the Clergyman of Regulation and Basic liberties HM, and the Main Equity of the Republic of Indonesia. 03.02 of 2012, Number: KEP-06/E/EJP/10/2012, Number: B/39/X/2012, dated October 17, 2012, with respect to the execution of Supportive Equity, which governs the resolution of criminal cases based on restorative justice principles. Following the conclusion of the Joint Memorandum of

Understanding, additional regulations were established for each institution by the Supreme Court, the Attorney General's Office, and the Republic of Indonesia Police. Among other things, these regulations included guidelines for applying restorative justice to criminal cases:

- a. The Republic of Indonesia State Police Circular SE/8/VII/2018 of 2018 (SE Kapolri/8/2018) addresses restorative justice in criminal cases;
- b. Regulation No. 6 of the 2019 Republic of Indonesia State Police regarding Investigations
- c. Infractions (Perkapolri,6/2019);
- d. Prosecutor's Regulation No. 15 of 2020 Concerning Termination in the Republic of Indonesia
- e. Restorative Justice-based prosecution (Prosecution Service 15/2020);
- f. Regarding the Implementation of Restorative Justice (Kepdirjenbadilum1691/2020), Decree No. 169/DJU/SK/PS.00/12/2020 from the General Justice Agency of the Indonesian Supreme Court)

How restorative justice principles can be used to resolve criminal cases at every stage of the legal process, starting with the inquiry and investigation stage to the prosecution stage to the examination stage in court—is basically governed by the regulations of each institution.

At the Investigation and Investigation Stage

The Regulation of the Chief of Police (Perkapolri) Number 6 of 2019 and the Circular (SE) of the Chief of Police of the Republic of Indonesia (Kapolri) Number 8 of 2018 serve as guidelines for the application of restorative justice's principles to the resolution of criminal cases (Pade et al., 2024) at the inquiry and investigation stage. Restorative justice principles can be used to resolve criminal cases in accordance with these two regulations, provided that the material and formal requirements, namely:

- a. *The following are the limiting principles for the perpetrator: (1) The level of the perpetrator's error is not serious, that is, the error is intentional; and (2) Non-recidivist perpetrators of criminal acts in the process are as follows: (i) investigation, (ii) investigation, before the SPDP is sent to the public prosecutor. Material requirements include: (a) not causing public unrest or rejection; (b) not impacting social conflict; (c) there is a statement from all parties; Formal requirements include the following: (a) a letter of application for peace between the reported party and the investigator; (b) the investigator's superior must acknowledge a statement of peace (akta dadang) and the resolution of disputes between the parties involved (the complainant, the respondent, and/or the family of the respondent and representatives of community figures); (c) the minutes of additional examinations of the litigants after the case has been resolved through restorative justice; (d) recommendations for specific case titles that*

The provisions of SE Kapolri 8/2012 can be used to stop the investigation or investigation by for the purpose of restorative justice, issuing an Order to Stop the Investigation and a Decree to Stop the Investigation if the aforementioned conditions are met. An administrative procedure and a case title must be followed before an investigation or inquiry can be closed (Savira, 2024).

Prosecution Stage

Guidelines for terminating restorative justice prosecutions are outlined in paragraph 2 of Article 3 of the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice. The Public

Prosecutor closes the case for legal reasons for a number of reasons, including the following: (a) the defendant has passed away; (b) the criminal prosecution has ended; (c) a court decision has permanent legal force against the same person (*nebis in idem*); (d) the criminal offense complaint has been dismissed or withdrawn; or (e) the case has been settled outside of court (*afdoening buiten process*) (Widya et al., 2023).

The following conditions must be met for a criminal offense to be dismissed by the Public Prosecutor: (a) it must be committed by a first-time suspect; (b) it must only be punishable by a fine or by imprisonment for no more than five (five) years; and (c) the value of the evidence or losses incurred as a result of the criminal act must not exceed Rp. Article 5 paragraph Two hundred five hundred thousand rupiah describes these conditions.

In addition, the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice states that the following are the conditions for a criminal act that can be stopped by the Public Prosecutor: (a) there has been reinstatement in the original condition carried out by the Suspect using; (b) return items obtained from criminal acts to the Victim; (c) compensation for the victim's losses; (d) reimbursement of costs incurred as (Scholl & Townsend, 2023).

However, the Public Prosecutor may, hypothetically, exclude some of the aforementioned conditions in order to end the prosecution in accordance with restorative justice. [33], such as:

- a. The prosecution can be terminated based on Restorative Justice, as stated in Article 5 paragraph (2) of the Prose Two hundred five hundred thousand rupiah, if the following conditions are met: (a) the suspect has committed a crime for the first time; (b) the criminal offense is only punishable by a fine or is punishable by imprisonment for not more than five (five) years; and (c) the criminal act is committed with the value of the evidence or the value of losses incurred.
- b. Article 5 paragraph 3 of Prosecutor's Office 15/2020 prohibits losses in excess of IDR 2,500,000.00 (two million five hundred thousand rupiah) for crimes against persons, bodies, lives, and freedom);
- c. For criminal acts committed due to negligence, this provision can be excluded (Article 5 paragraph (4) Prosecutor's Office 15/2020);
- d. The requirements for criminal acts committed against persons, bodies, lives, and freedom of persons from criminal acts committed due to negligence can be excluded if the public prosecutor, with the approval of the Head of the District Prosecutor's Branch or the Head of the District Prosecutor's Office, determines that the public
- e. The conditions requiring reinstatement may be excluded if the suspect and the victim reach an agreement (Article 5, paragraph 7 Prosecutor's Office 15/2020).

According to Restorative Justice (Article 7 in conjunction with Article 8 Prosecutor's Office 15/2020), the Public Prosecutor can bring about peace by summoning the victim in a legal and proper manner and explaining why. The Republic of Indonesia Agent's Rule Number 15 of 2020 concerning End of Arraignment further coordinates agreement. According to Article 9 of Prosecutor's Office 15/2020, the peace process is carried out voluntarily with consensus deliberation to reach a consensus. Compulsion, terrorizing, and pressure are not utilized. Both the victim and the suspect must sign a written peace agreement with the public prosecutor if a peace process is successful (Article 10 of Prosecutor's Office 15/2020).

The High Court decides that the rule way to deal with supportive equity can be applied to a few crook acts in court in the Pronouncement of the Chief General of the General Court of the High Court of the Republic of Indonesia Number: 1691/DJU/SK/PS.00/12/2020 concerning the Execution of Rules for the Execution of Helpful Equity. These include the following: (1) minor criminal cases, specifically those involving criminal threats as outlined in Articles 364, 373, 384, 407, and 482 of the Two Million Five Hundred Rupiah; (2) cases involving children; (3) cases involving women who are in violation of the law; and (4) cases involving drugs.

How are disputes involving the state administration settled outside of court? Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution was primarily enacted with the intention of resolving civil disputes. This is reflected in the letter's preamble, which states that "in addition to being able to submit civil disputes to the General Court, there is also the possibility of being submitted through arbitration and alternative dispute resolution" in accordance with the applicable laws and regulations. Because of this, it is clear that arbitration and alternative dispute resolution can be used to resolve civil disputes outside of the legal system. This keeps the two institutions separate from one another (Srijadi, 2023).

Moreover, in the general arrangements of Article 1 number 1 of Regulation no. 30 of 1999 concerning Mediation and Elective Question Goal states: "Discretion is a technique for settling common debates outside the general court which depends on an assertion understanding made recorded as a hard copy by the gatherings to the debate", while what is implied by Elective Debate Goal is in Article 1 point 10 of the Law No. 30 of 1999 concerning Assertion and Elective Debate Goal which expresses that "Elective Question Goal is a foundation for settling debates or contrasts of assessment through techniques settled upon by the gatherings, specifically settlement beyond court through conference, exchange, intercession, appeasement or master evaluation."

The conclusion that can be drawn from this explanation is that arbitration is a method of resolving disputes in civil cases that have previously been agreed upon by the parties through an arbitration agreement, and that the parties have chosen arbitration as their method of resolving disputes. While alternative dispute resolution is a dispute resolution procedure that has not been institutionalized, the model used in resolving this dispute, namely "consultation," demonstrates that arbitration as an alternative form of dispute resolution is a form that has been institutionalized. Additionally, it is possible to say that the subject matter of arbitration is limited to civil disputes, whereas alternative dispute resolution encompasses a wider range of issues beyond just civil disputes (Strang et al., 2013).

Because there are no restrictions on the subject of the dispute in alternative dispute resolution, it is very possible to use it to resolve disagreements between the community and the government by paying attention to the dispute object side of the process. Non-institutionalized alternative dispute resolution can be used to start a dispute resolution process between the community and the government. Law No. 5 of 1986, on the other hand, established State Administrative Courts. Amendments to Law No. 5 of 1986 regarding State Administrative Courts were made in UU No. 9 of 2004. Aside from not regulating the use of alternative dispute resolution in state administrative disputes, UU No. 51 of 2009, which is about the Second Amendment to Law No. 5 of 1986, also does not prohibit the use of alternative dispute resolution (Suzuki, 2023).

According to Article 2 paragraph (2) of Perma no. 1 of 2016 regarding Mediation Procedures in Court, "Courts outside the general court and religious court as referred to in paragraph (1) can implement Mediation based on this Supreme Court Regulation as long as it is possible by the provisions of statutory regulations," mediation must be carried

out by the parties in order to resolve state administrative disputes; if they do not take mediation procedures, the decision will be void. When it comes to resolving disagreements with the State Administration, peace can save time, money, and effort. As a result, in State Administrative Trials, mediation emerges as one method for enforcing the tenet of quick and inexpensive justice (Suzuki & Yuan, 2021).

The presence of a neutral third party in alternative dispute resolution will actually provide a new atmosphere, especially regarding the position of the parties which has so far been unequal. Plaintiffs (society and civil legal entities) have been in a weak inferior position, because they are dealing with the Government which has a superior position. Therefore, it is hoped that the involvement of a neutral third party can place the parties on an equal footing, which will enable the resolution of disputes in an impartial manner. The presence of a third party will also erase the gap between the authorities as defendants and the community as plaintiffs, who are often positioned as the weak party (Syauqi, 2023).

The application of restorative justice is based on deliberation and consensus, where parties are asked to compromise in order to reach an agreement, as described above. In order to keep everyone in harmony, everyone is asked to give in and prioritize the needs of society over their own. In a society where the state and the courts have failed to provide a sense of justice, the idea of deliberation has proven to be more effective at resolving conflicts (Taqiuddin & Risdiana, 2022).

The Pancasila values are unquestionably in harmony with and in accordance with an approach to restorative justice that adheres to the principles of harmony, harmony, harmony, peace, tranquility, equality, brotherhood, and family. Thus, the supportive equity approach is basically in accordance with Indonesia's public soul, which puts a high worth on connection, local area, family relationship, shared collaboration, resilience, simple pardoning, and a mentality that puts normal interests first (Tomalili & Ariadi, 2022).

The principles of customary law are also compatible with the restorative justice approach, which upholds the principles of harmony, harmony, peace, tranquility, equality, brotherhood, and kinship. This is notwithstanding the way that it is as per the upsides of Pancasila. This case demonstrates that, in Indonesia, case resolution, including customary law case resolution, frequently involves the perpetrator, victim, community, and community leaders who are believed to be able to mediate and resolve the conflict. The peace in question seeks to ensure that the circumstance that led to the dispute or parties in the dispute can be neutralized so that the victim and the perpetrator can return to their previous state. Peace is achieved here.

Obstacles in the Implementation of Restorative Justice in Indonesia

Currently a question arises, can a restorative justice approach be applied in Indonesia? Regarding this question, Braithwaite said that "Indonesia is a nation with wonderful resources of intracultural restorative justice. Traditions of musyawarah (deliberation) decision by friendly cooperation and deliberation-traverse the archipelago. Adat law at the same time allows for diversity to the point of local criminal laws being written to complement universal national laws". Based on Braithwaite's opinion, it is clear that problem solving practices using the approach or concept of restorative justice already exist in Indonesian culture as they have been carried out by Indonesian society, even though in practice they are still carried out by certain elite groups in society (Weaver & Swank, 2020).

The primary issue in executing helpful equity really lies in the accompanying elements, to be specific the legitimate variables themselves, policing, in particular the gatherings who structure and carry out the law, supporting framework and offices factors for policing, factors where the law applies or is applied, and social elements. which is as yet nearby local area strategy and is still active today (Theosalim & Hutabarat, 2023).

Restorative justice, which aims to resolve disputes peacefully outside of court, is still difficult to implement. There are numerous customary laws in Indonesia that can be used as restorative justice, but neither the state nor national law recognizes their existence. Disputes that arise in society can be settled through the application of customary law, bringing both parties involved satisfaction. The development of the concept of restorative justice as a criticism of the criminal justice system's use of imprisonment, which is regarded as ineffective at resolving social disputes. The reason for this is that neither side is actively working toward resolving the conflict. Even though the perpetrators are in prison, they still pose new challenges for families, and so on (Asmara & Iskandar, 2021).

Even though several legal regulations have been issued as legal umbrella for implementing restorative justice, one of the challenges in implementing restorative justice is still how to develop and strengthen the implementation of restorative justice in statutory regulations, especially in Comprehensive Law (UU) level. Another challenge is preparing human resources (HR) from enforcers who understand the importance of restorative justice as well as the challenge of carrying out dissemination to the community as subjects of restorative justice.

Although the concept of restorative justice has the potential to provide more inclusive and sustainable solutions in law enforcement in Indonesia, there are several obstacles that can hinder its implementation. The following are several obstacles that may be faced in implementing restorative justice in Indonesia along with examples and reasons for the obstacles:

- a. **Legal Awareness and Education: Obstacles:** Lack of awareness of the concept and benefits of restorative justice, as well as lack of understanding of its principles among the public and legal practitioners. **Example:** Many people are more accustomed to conventional law enforcement systems and lack legal training or education regarding restorative justice. **Reason:** Without adequate understanding of restorative justice, society and legal practitioners may tend to choose traditional approaches in resolving conflicts and enforcing the law.
- b. **Limited Resources and Infrastructure: Constraints:** Limited funds, personnel and infrastructure needed to support the implementation of restorative justice, especially at the local level. **Example:** Lack of budget to train mediators, facilitators or social welfare workers needed to organize restorative sessions or rehabilitation programs. **Reason:** Without adequate support in terms of resources, the implementation of restorative justice becomes difficult to carry out effectively and sustainably.
- c. **Legal Culture and Culture: Obstacles:** A legal culture that tends to prioritize punishment and retribution rather than reconciliation and restoration. **Example:** Stigma against restorative approaches that are considered “weak” or “inadequate” in dealing with crime or conflict. **Reason:** Changes in legal culture require a lot of time and effort, especially in changing the paradigm from punishment-based law enforcement to an approach that is more oriented towards recovery and reconciliation.
- d. **Institutional and Political Strengths: Constraints:** Resistance from institutions accustomed to conventional law enforcement approaches, as well as security politics and policies that strengthen punitive approaches. **Example:** There is no support or

incentive for law enforcement agencies to adopt a restorative approach. Reason: Institutions that have an interest in the status quo in the law enforcement system may hinder changes towards restorative justice.

To overcome these obstacles, strong commitment is needed from various parties, including the government, legal institutions, civil society and the general public. Intensive education and training, adequate resource allocation, and changes in legal and political culture will be the key to effectively promoting and implementing restorative justice in Indonesia.[33]

Conclusion

Based on the discussion above, it can be concluded that the theory that explains how restorative justice can relate to state administration in Indonesia in resolving problems is as follows: (a) local conflict problems with the type of conflict resolution between citizens, agrarian conflicts and the forms can be in the form of mediation, meetings peace, dialogue between conflicting parties; (b) Human Rights Protection (HAM) issues with types of cases of human rights violations, gender-based violence and its forms in the form of: restitution to victims, rehabilitation of perpetrators, reconciliation between victims and perpetrators. (c) Community Development and Social Reintegration problems with the types of problems of rehabilitation of ex-convicts, reintegration of ex-prisoners; (d) problems in strengthening local democracy and community participation.

In the meantime, restorative justice implementation in Indonesia faces the following challenges: (a) Limited Resources and Infrastructure: limited funds, personnel, and infrastructure are required to support restorative justice implementation; (b) Legal Awareness and Education: public and legal practitioners lack legal awareness of restorative justice's benefits and concept;, especially at the local level; (c) Legal Culture and Culture, namely a legal culture that tends to prioritize punishment and retribution rather than reconciliation and restoration; (d) Institutional and Political Strength, namely resistance from institutions that are accustomed to conventional law enforcement approaches, as well as security politics and policies that strengthen punitive approaches.

There are four (4) recommendations in this research, namely: (1) Development of a Special Law on Restorative Justice: the government needs to initiate the formation of a special law that clearly regulates the implementation of restorative justice in Indonesia; (2) Strengthening Institutional Capacity and Human Resources: the government needs to increase the capacity of institutions and human resources involved in implementing restorative justice, including training for judges, prosecutors, police, social workers, mediators and restorative justice facilitators; (3) Increasing Public Awareness and Education: The government, non-governmental organizations, and the media need to work together to increase public awareness about the concept and benefits of restorative justice through information campaigns, outreach, seminars, and other educational approaches; (4) Collaboration between the Government, Legal Institutions, and Civil Society: the government needs to facilitate collaboration between various stakeholders, including legal institutions, law enforcement agencies, academics, civil society organizations, and local communities in designing, implementing, and evaluating restorative programs justice.

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