

## IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE CRIMINAL SYSTEM IN INDONESIA



<sup>1\*</sup>Mitro Subroto, <sup>2</sup>Najla Putra Rovindra

<sup>1,2</sup>Program Studi Teknik Pemasarakatan, Politeknik Ilmu Pemasarakatan – Indonesia

### e-mail:

<sup>1\*</sup>subrotomitro07@gmail.com (corresponding author)

<sup>2</sup>najlarovindra@gmail.com

### ABSTRACT

*This study was written to identify the types of restorative justice and to determine whether this approach can be applied in Indonesia. This research utilizes the literature review method. The literature review has several characteristics. First, this research deals directly with textual and numerical data, not with events or witnesses in the form of incidents, people, or other objects. Second, the data has already been compiled, so the researcher only needs to work directly with the sources available in the library. Third, library data is generally a secondary data source. Restorative justice is a judicial process that prioritizes compensation for losses caused by criminal acts. There are various types of restorative justice practices. The suitable restorative justice approach for use in Indonesia is victim-offender mediation, which has been implemented in the juvenile criminal justice system as regulated by Law No. 11 of 2012. The implementation of restorative justice in Indonesia requires public awareness and understanding. This approach is suitable for Indonesia, specifically through victim-offender mediation, which has been carried out in the juvenile criminal justice system as stipulated in Law No. 11 of 2012. In the future, restorative justice in Indonesia can be applied to criminal acts with a penalty of no more than 5 years, offenses that do not endanger human life, and crimes that do not degrade human dignity.*

**Keywords:** Application; Restorative Justice; Criminal



©2025 Copyright : Authors

Published by : Program Studi Manajemen, Universitas Nusa Cendana, Kupang – Indonesia

This is an open access article under license :

CC BY (<https://creativecommons.org/licenses/by/4.0/>)

## INTRODUCTION

The Criminal Code (WvS) as *Ius Constitutum* is a legacy of Dutch colonialism that is no longer in line with societal development. The current application of the Criminal Code/WvS is based on Article 2 of the Transitional Provisions of the 1945 Constitution, which legitimizes the enforcement of criminal law in Indonesia. This explains why Dutch criminal law still applies in this country (Bazemore, 2005). The enforcement of the Criminal Code (WvS) is carried out under the principle of deliberation for consensus and is regulated by Law Number 1 of 1946, which serves as the foundation of the prevailing criminal law.

In Indonesia, imprisonment remains the dominant form of punishment compared to other types of sentences. Substantive criminal law includes various types of punishment, such as the death penalty, imprisonment (life and temporary), fines, and special supervision for juveniles in accordance with Law Number 3 of 1997 on Juvenile Law. According to Widodo Barda Nawawi, the threat of imprisonment in Indonesia and other countries is quite common, with approximately 98% of all criminal acts being regulated by punishments that restrict freedom. Around 92% of all legal violations result in imprisonment outside of non-criminal law.

Reviewing the data on the number of prison sentences imposed, it appears that this correlates with the continued occurrence of criminal acts, without any direct connection to a reduction in criminal activity. This raises the question: is imprisonment effective? Sentencing convicts to prison is often considered ineffective because there is no guarantee that inmates will behave better after being released. In prison, they may undergo a process of institutionalization, adopting the lifestyle within the correctional facility. This process, through interactions with fellow inmates, often leads to recidivism.

Aside from imprisonment, correctional facilities also face classic issues such as overcrowding. Although imprisonment is the primary form of punishment in Indonesia, in many cases, it is not the best solution. In some cases, the losses experienced by victims and society can be remedied, and the negative consequences of imprisonment can be avoided. To address offenses that can be restored, the punishment paradigm known as restorative justice has been applied, where offenders are encouraged to repair the harm they have caused.

Research previously show that according to Fitria (2020), Indonesian criminal law's notion of restorative justice centers on case settlement that incorporates the victim, offender, and community with the goal of achieving justice for all parties. This strategy places more emphasis on mending social ties and compensating the victim than it does on just punishing the criminal. It is anticipated that this will lower recidivism rates and promote a more compassionate view of justice. In order to move juvenile case resolution from formal judicial proceedings to out-of-court processes, including mediation to reach an agreement focused on restoration rather than retribution, the Juvenile Criminal Justice System (SPPA) has adopted this idea and emphasizes the diversion process.

Accordingly, Meyrina (2017) states that the goal of restorative justice in Indonesia's juvenile justice system is to establish equity and balance for both victims and offenders, particularly when minors are involved in legal disputes. Without requiring the criminal to go through official legal procedures, the idea encourages case settlement through communication between the victim, the community, and the offender. Restoring the social ties that were harmed by the offense and making up for the victim's losses are the main goals of restorative justice. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which permits the diversion procedure for minors involved in criminal crimes, supports the use of restorative justice in Indonesian law.

In Indonesia, the concept of restorative justice has been implemented in the juvenile justice system under Law Number 11 of 2012. This regulation aims to address juveniles in conflict with the law through diversion and restorative approaches, involving all stakeholders, especially the community. The community plays an essential role in helping restore the condition of children involved in legal issues. This law serves as a fair legal foundation, particularly for children who need attention and guidance from those closest to them to develop good character and a sense of responsibility (Dewi & Fauzi, 2019).

## **LITERATURE REVIEW**

The concept of restorative justice offers an alternative to traditional punitive approaches, focusing on repairing harm caused by criminal acts through dialogue and reconciliation among offenders, victims, and the community. Restorative justice emphasizes restoration over retribution, aiming to address the needs of all parties involved and to foster a supportive environment for rehabilitation and social reintegration (Zehr, 2002).

In Indonesia, restorative justice has been primarily integrated into the juvenile justice system. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System enables diversionary processes, where cases involving juveniles are resolved outside formal court proceedings through mediation, which includes victims, offenders, and community representatives. This approach reflects a shift towards repairing social ties and emphasizing emotional healing over punishment, particularly for minors who require developmental support rather than stigmatization (Dewi & Fauzi, 2019; Meyrina, 2017).

### **Types and Practices of Restorative Justice**

Various practices exemplify restorative justice, including victim-offender mediation, family group conferencing, and community service. Victim-offender mediation brings the victim and offender together to facilitate mutual understanding and agreement on reparations. Family group conferencing expands this model to include the families of both parties, particularly in cases involving juvenile offenders, enhancing support networks and reducing recidivism (Bazemore & Schiff, 2005). Reparative community councils and victim impact panels are other forms, where trained community members engage with offenders to discuss the broader impact of their actions on the community. Research suggests that these methods can effectively reduce recidivism rates by fostering empathy and accountability among offenders (Sherman & Strang, 2007).

### **Restorative Justice in the Indonesian Context**

In Indonesia, restorative justice aligns with traditional values emphasizing harmony and community involvement in conflict resolution. For example, restorative practices echo indigenous conflict-resolution practices, such as those among the Māori in New Zealand, which rely on community and familial support. This aligns with the broader goal of restorative justice: to protect individual rights, preserve community dignity, and reintegrate offenders into society constructively (Braithwaite, 2002).

Law Number 11 of 2012 has facilitated the use of restorative justice in juvenile cases, where community involvement is essential in supporting child offenders and ensuring they receive guidance from their families and communities. The approach encourages accountability while minimizing the negative effects of formal judicial proceedings. Some scholars argue that restorative justice could be further expanded in Indonesia to address non-violent crimes with sentences of up to five years, such as fraud

or defamation, given that these offenses often cause social and personal harm that can be addressed without incarceration (Rahman & Fahmi, 2019).

### **Challenges and Future Directions**

Despite its benefits, implementing restorative justice in Indonesia requires strong public awareness, trained mediators, and legal support. To achieve broader application, restorative justice must be backed by social acceptance and resources that encourage meaningful victim-offender interactions. Expanding restorative practices could enhance the Indonesian criminal justice system's ability to rehabilitate offenders and reduce recidivism, providing a more compassionate approach that aligns with Indonesia's cultural values and legal framework (Nugroho & Anggraini, 2017; Sari & Akbar, 2018).

### **METHOD**

This research employs a qualitative method with a literature study approach, enabling the researcher to explore the topic in depth through the analysis of various literature sources. The literature review in this study has specific characteristics, where the researcher engages directly with relevant textual and numerical data. This data is collected from various sources, such as books, journals, scientific articles, and legal documents. The data collection process is conducted systematically by identifying credible and relevant sources to ensure that the information obtained is comprehensive and up-to-date. Furthermore, this study relies on pre-existing data, allowing the researcher to focus more on analysis and interpretation rather than primary data collection.

As a research method based on secondary data, a literature study offers advantages in terms of time and resource efficiency. Library data, which is generally secondary in nature, allows researchers to access information that has already been processed and analyzed by other researchers. During the analysis stage, the researcher will use content analysis techniques to explore emerging themes and patterns from the data. Subsequently, the researcher will compare findings from various sources to identify consistencies and differences, thus providing deeper insights into the phenomenon being studied. With this approach, the research is expected to make a significant contribution to the development of knowledge and practice in the relevant field.

### **RESULTS AND DISCUSSION**

#### **Justice Restorative and Its Approaches**

Justice restorative is an approach that emphasizes repair losses caused by crimes committed by the perpetrator. This concept involves participation of victims, perpetrators and the community in the process of dialogue and mediation For reach a fair agreement for all parties involved (Marwan & Susanto, 2021). Some type practice in restorative justice includes :

- Victim- Offender Mediation, which brings together the victim and the offender, and may also involve other participants.
- Conference Group Family, which is more broad and involving families of victims and perpetrators, as well as professionals, especially in cases involving children.
- Circle Carrier Peace, as an alternative to legal process for confessed offender his mistake and is willing responsible responsibility.
- Reparative Council Community, which handles perpetrator crime adults and perpetrators crime teenager on crimes that are not accompanied by violence,

involving trained citizens in interaction direct with perpetrator crime as ordered by the court.

- Compensation Financial to the victim, which is addressed For give change make a loss on the losses that have been suffered. Research in the United States show that This method can reduce recidivism, although this can also be managed through informal procedures.
- Service Personal for the victims, where is the responsibility responsibility change make a loss shared between actors, state, and society.
- Service, as a form punishment volunteering is considered as an alternative punishment prison.
- Application Excuse me Written or Oral, where the perpetrator must confess his mistake.
- Victim Impact Panel or Community, which gives victims the opportunity For share impact crime with perpetrators and others.
- Statement about Resolution and Impact Conflict towards the Community or Environment.
- Empathy, which aims make perpetrator realize consequence his actions.
- Training Completion Dispute in Prison, aims For equip convict with skills settlement conflict as part from the process of restorative justice.

### **Implementation Justice Restorative in Indonesia**

Justice Appropriate restorative For implemented in Indonesia involves approach Victim-Perpetrator Mediation, especially in context system justice the child in charge in Law No. 11 of 2012. In cases where the perpetrator and victim are children initiative can come from enforcer law or family perpetrator For reach mutually beneficial solutions profitable. The settlement process can also be involving community panels, where the law custom Still hold role important in Indonesia.

The law emphasizes principle restorative justice and rules strict redirection For keep away children from formal legal processes and prevent stigmatization. For reach this is necessary involvement all stakeholders interest. John Braithwaite argues that restorative justice refers to the process of completion recognized informal dispute in a way law, as practiced by the Māori community in New Zealand. In the context of law criminal, very important For protect individuals, society, and the state, as well as to uphold rights, including dignity individual.

In the future, Justice Restorative can applied to the act criminal with punishment up to five years, such as fraud and theft , which is not threaten safety soul . This approach is also relevant For cases involving pollution Name good, because is act criminal based on complaints that are cannot processed without existence complaint from the defamed party.

### **Urgency Implementation of Restorative Justice in Handling of Child Crime Cases**

According to Sari (2018), implementation of justice restorative is very important in handle case crime teenagers. This approach allows perpetrator crime teenager For understand error them and try repair losses incurred, so prevent negative stigma that can hinder rehabilitation they. More Far again, with involving victims and the community in the process of completion, a more conducive environment support created for child For integrate back. This is in line with principle that children own right For get protection and

guidance, and them has the potential to become responsible individual responsibility. Therefore That, Justice Restorative Not only help perpetrator crime teenager but also supports victim and community recovery in a way overall.

## CONCLUSION

Justice restorative is approach transformative which emphasizes repair damage caused by behavior criminal through participation active from the victims, perpetrators, and the community. Various practices, such as victim- offender mediation, conference group family, and reparative council community, facilitating meaningful dialogue and reconciliation, which ultimately aiming For reach a fair agreement for all parties involved . In the Indonesian context, the implementation of restorative justice, especially in system justice child, in line with framework law such as Law No. 11 of 2012. This approach is important For handle crime child, because help perpetrator young confess error them and grow a supportive environment For rehabilitation, while in a way simultaneously involving victims and the community in the process. With promote understanding and empathy, restorative justice Not only help in reintegration perpetrator young but also contribute to the healing of victims and communities, by emphasize importance protect rights and dignity child.

## REFERENCES

- Andriyanti, E. F. (2020). *Urgensitas Implementasi Restorative Justice dalam Hukum Pidana Indonesia*. Jurnal Education and Development, 8(4), 326–331.
- Arif, B. N. (2016). "Keadilan Restoratif dalam Sistem Peradilan Pidana Anak di Indonesia." *Jurnal Hukum Ius Quia Iustum*, 23(1), 47-68.
- Barda, N. W. (2013). *Asas-Asas Hukum Pidana di Indonesia*. Jakarta: Pustaka Sinar Harapan.
- Bazemore, G., & Schiff, M. (2005). "Community Justice, Restorative Justice, and Crime Prevention: Possibilities and Pitfalls." *Criminal Justice Review*, 30(4), 485-502.
- Dewi, L. R. S., & Fauzi, R. (2019). "Implementasi Pendekatan Restorative Justice dalam Peradilan Anak." *Jurnal Hukum dan Peradilan*, 8(1), 21-40.
- Hariyanto, H., & Mustaqim, M. (2020). "Restorative Justice sebagai Upaya Penyelesaian Perkara Anak di Indonesia." *Jurnal Penegakan Hukum*, 7(2), 123-140.
- Indonesia. Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.
- Indonesia. Undang-Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak.
- Indonesia. Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana.
- Marwan, M., & Susanto, R. (2021). "Analisis Implementasi Keadilan Restoratif dalam Sistem Peradilan Pidana Anak." *Jurnal Penelitian Hukum De Jure*, 21(4), 435-450.
- Meyrina, S. A. (2017). *Restorative justice dalam peradilan anak berdasarkan Undang-Undang No. 11 Tahun 2012* [Restorative Justice in Juvenile Justice System Based on Law No. 11 of 2012]. *Jurnal Penelitian Hukum De Jure*, 17(1), 92-107.
- Mufid, M., & Irawan, D. (2018). "Penerapan Restorative Justice dalam Penyelesaian Tindak Pidana di Indonesia." *Jurnal Cakrawala Hukum*, 9(2), 213-225.
- Nugroho, A., & Anggraini, R. (2017). "Pendekatan Restorative Justice dalam Penyelesaian Tindak Pidana Ringan di Indonesia." *Jurnal Kriminologi Indonesia*, 13(1), 67-81.
- Rahman, M. A., & Fahmi, F. (2019). "Pendekatan Restorative Justice pada Penyelesaian Tindak Pidana di Peradilan Indonesia." *Jurnal Ilmu Sosial dan Humaniora*, 8(1), 112-129.
- Sari, D. P., & Akbar, S. (2018). "Efektivitas Restorative Justice dalam Mengurangi Residivisme pada Peradilan Anak." *Jurnal Hukum Pro Justitia*, 36(2), 115-132.

- Sherman, L. W., & Strang, H. (2007). "Restorative Justice: The Evidence." *Journal of Experimental Criminology*, 3(3), 253-282.
- Soetandyo, W. (2017). "Perkembangan Penerapan Restorative Justice dalam Kasus Pidana di Indonesia." *Jurnal Ilmu Hukum*, 45(2), 139-158.
- Tyler, T. R. (2006). "Restorative Justice and Procedural Justice: Dealing with Rule Breaking." *Journal of Social Issues*, 62(2), 307-326.
- Walgrave, L. (2008). *Restorative Justice, Self-interest and Responsible Citizenship*. Portland: Willan Publishing.
- Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.