

The Effectiveness Of The Guideline For Adjudicating Criminal Cases Based On Restorative Justice By The Supreme Court Of The Republic Of Indonesia

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Abstract

This research aims to analyze aspects of legal effectiveness related to the formulation of Perma RJ 2024. This research is normative legal research by prioritizing conceptual and statutory approaches. The research results confirm that the essence of Perma RJ 2024 is related to the idea of RJ which actually includes efforts to emphasize the role, participation and activeness of judges so that the RJ approach can run optimally. Perma RJ 2024 actually fulfills the three aspects of effective legal rules as stated by Anthony Allott, namely preventive nature, which is relevant to the substance of Perma RJ 2024 to educate perpetrators so that they do not repeat their actions. In the aspect of legal rules regulating clearly and firmly so that they are oriented towards resolving disputes (curatively) effectively and without being complicated, it is also relevant to Perma RJ 2024 which has emphasized the role and activeness of judges in carrying out RJ. In the aspect of legal rules, it is able to provide facilities for legal subjects to carry out legal actions (facilitative) through the formulation of norms and legal substance that are relevant and applicable in society. This is also relevant to Perma RJ 2024 which provides for the involvement of various parties in RJ, such as the perpetrator's parents, victims, religious leaders, and community leaders to work together to solve problems.

I. Introduction

Restorative justice (RJ) is an orientation within the criminal justice system that emphasizes substantive justice, prioritizing the restoration of the victim's harm in addition to stressing the acknowledgment of guilt by the perpetrator of the crime (Hasbullah, 2022; Vooren et al., 2022). RJ fundamentally serves as a critique of the criminal justice system's mechanism, which tends to emphasize procedural aspects, thereby often neglecting the dimension of substantive justice in the general process of law enforcement (Fahmi et al., 2022). Therefore, the orientation of RJ practice aims to optimize the fulfillment of substantive justice within the criminal law enforcement process.

One of the issues in enforcing criminal law based on restorative justice (RJ) is the lack of comprehensive regulation, particularly within the courts (SyafriZal Tanjung & Fifaldi Harahap, 2024). Although the Supreme Court (MA) has issued regulations addressing RJ, these are insufficient to accommodate the standards, procedures, and implementation of RJ within the MA (Setyowati, 2020). Consequently, in 2024, the MA issued a legal product in the form of Supreme Court Regulation (Perma) No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (Perma RJ 2024). The formulation of Perma RJ 2024 aims to accommodate developments in the penal system, which not only focuses on the punishment of defendants but also aligns the interests of victim recovery and defendant accountability through a restorative justice approach (Komnas Perempuan, 2024). Additionally, the drafting of Perma RJ 2024 is intended to establish a restorative justice approach that is not yet adequately regulated within the criminal justice system, particularly regarding the types of cases, requirements, and procedures for its application at the trial level for decisions that incorporate a restorative justice approach (Hanum, 2021). From this orientation, it is evident that the purpose of formulating Perma RJ 2024 is to optimally affirm the existence of RJ in the criminal law enforcement process.

From the above discussion, this research focuses on analyzing the legal effectiveness of the formulation of Perma RJ 2024. The theory of legal effectiveness used in this analysis is the theory proposed by Anthony Allott. The reason for

using Allott's theory of legal effectiveness is that it emphasizes the importance of a law being effective when it can prevent and restore the condition of society post-crime to its original state or improve it. This is inherently relevant to the concept of RJ and the purpose of formulating Perma RJ 2024. Therefore, this research aims to analyze: a) the essence of restorative justice in Perma RJ 2024 and b) the legal effectiveness of Perma RJ 2024.

Research on restorative justice (RJ) and Perma has been conducted by several previous researchers, including: first, an analysis by Fuad Nur (2024) that discusses law enforcement based on restorative justice, including its regulation through Perma (Nur, 2024). The novelty of this research lies in identifying a lack of harmony in the regulation of restorative justice both through Perma and Prosecutorial Regulations, thus making RJ-based law enforcement suboptimal. The second study was conducted by Fadila et al. (2024), which discusses the resolution of criminal acts based on RJ as part of criminal law reform (Fadila et al., 2024). The novelty of Fadila et al.'s (2024) research lies in the emergence of Perma and other technical regulations related to RJ intended as efforts for criminal law reform. However, ideally, the reform of criminal law emphasizing RJ should be done through revisions of the Criminal Code (KUHP) and Criminal Procedure Code (KUHP). The third study was conducted by Mayora and Yusuf (2024), which discusses RJ in medical disputes (Tiara & Yusuf, 2024). The novelty of Mayora and Yusuf's research (2024) is the legal vacuum regarding RJ-based resolution in medical disputes. This often prioritizes criminal urgency as the *primum remedium* in medical disputes, thus harming medical personnel (Wijaya et al., 2021).

From the three previous studies above, it can be concluded that the specific discussion regarding RJ is not specifically addressed by the three previous researchers because the Perma RJ 2024 law was only issued in 2024 and has not been extensively analyzed by many researchers, making this study an original research.

2. Research Method

This study employs normative legal research, also commonly referred to as

doctrinal legal research, which emphasizes the analysis of legal norms, principles, doctrines, and statutory regulations. Normative legal research is primarily concerned with the examination of law as a system of rules, rather than as an empirical social phenomenon. Accordingly, the focus of this research lies in the doctrinal analysis of legal issues associated with the effectiveness of law, particularly in relation to the formulation and regulatory substance of Perma RJ 2024. This methodological orientation is appropriate given that the core issues under examination pertain to legal norms, regulatory frameworks, and conceptual doctrines governing restorative justice within the Indonesian legal system.

Normative legal research is characterized by its reliance on library-based sources and authoritative legal documents. The study does not prioritize field observations or statistical measurements, but instead concentrates on the systematic interpretation of legal texts, theoretical constructs, and jurisprudential arguments. In this regard, the research seeks to evaluate the coherence, adequacy, and normative implications of Perma RJ 2024 by situating it within broader legal doctrines concerning legal effectiveness and restorative justice. The analysis is therefore grounded in legal reasoning, doctrinal interpretation, and conceptual evaluation.

The legal materials utilized in this study are categorized into primary, secondary, and tertiary legal materials, consistent with established legal research methodologies. Primary legal materials constitute the principal sources of binding law and serve as the foundation of normative analysis. In this research, the primary legal material is Perma RJ 2024, which is examined as the central regulatory instrument governing restorative justice within judicial practice. As a binding legal norm, Perma RJ 2024 provides the primary framework for evaluating legislative intent, normative structure, and regulatory objectives.

Secondary legal materials consist of scholarly works and academic literature that provide interpretative guidance, theoretical perspectives, and analytical commentary on primary legal sources. These include peer-reviewed journal articles, academic books, legal commentaries, and relevant research findings addressing legal effectiveness theory, restorative justice principles, and judicial regulation. Secondary materials play a critical role in normative research by enabling the researcher to contextualize statutory provisions within broader doctrinal debates and theoretical

frameworks. They also facilitate critical assessment of regulatory adequacy, conceptual consistency, and practical implications.

Tertiary legal materials function as supporting references that assist in clarifying terminology, concepts, and linguistic precision. In this study, tertiary materials include language dictionaries and reference works that contribute to terminological accuracy and conceptual clarity. Although tertiary materials do not possess binding authority, their inclusion ensures methodological rigor and consistency in legal interpretation.

The selection of these approaches reflects the normative nature of the research problem. Legal effectiveness and restorative justice are fundamentally doctrinal issues that necessitate interpretative and conceptual analysis rather than empirical investigation. Normative legal research, therefore, provides the most appropriate methodological framework for addressing questions concerning regulatory adequacy, doctrinal consistency, and normative implications.

Through the integration of statutory analysis and conceptual evaluation, this research aims to provide a comprehensive doctrinal assessment of Perma RJ 2024. The study seeks to contribute to legal scholarship by clarifying normative interpretations, identifying potential regulatory challenges, and evaluating the theoretical coherence of restorative justice within judicial regulation. Ultimately, this methodological framework ensures that the analysis remains grounded in legal reasoning while maintaining conceptual depth and academic rigor.

3. Results and Discussion

The Essence of Restorative Justice in Perma RJ 2024

Restorative justice (RJ) is simply understood as a form of resolving criminal cases by involving the perpetrator, victim, the perpetrator's/victim's family, and other relevant parties to collectively seek a fair resolution emphasizing restoration to the original state, rather than retaliation (Walim, 2024). In Howard Zahr's view, RJ is a process of engaging with all possible parties involved in a specific violation and identifying and explaining the threats, needs, and obligations to heal and place

them as closely as possible to where they belong (Banwell-Moore, 2022). Furthermore, Tony Marshall views RJ as a process where all parties involved in a particular offense come together to collectively solve the problem of how to agree on the consequences (negative) of an offense and its future implications (Nascimento et al., 2023).

From the perspectives of Howard Zehr and Tony Marshall, it can be concluded that RJ views a criminal act broadly, encompassing (Rasmussen, 2024) (Ramadhani, 2021):

- 1) Crime is a violation against the people and the relationships between members of society.
- 2) Violation creates obligations.
- 3) Justice includes victims, offenders, and members of society in an effort to set things right.
- 4) Victims needing recovery from their losses are the central focus in RJ, encompassing physical, psychological, and material aspects, with offenders being responsible for restoration (typically through acknowledgment of guilt, apologies, and remorse from the offender).

From the description above, it can be seen that the RJ approach has several goals, encompassing (Aruan, 2024) (Yulia et al., 2023):

- a. Preventing the community from becoming victims of crime;
- b. Resolving criminal cases so that the community is satisfied that justice has been served and the guilty have been punished; and
- c. Striving to ensure that individuals who have committed crimes do not repeat their offenses.

Restorative justice (RJ) as an approach to resolving issues in criminal law was first introduced historically by Albert Eglash, who coined the term "restorative justice." In his writings, he discussed reparation and stated that RJ is an alternative restitutive approach to retributive and rehabilitative justice (Hariyanto, 2023)

(Cakranegara & Istiqomah, 2023). RJ began with the implementation of alternative dispute resolution programs outside traditional court systems, known as victim-offender mediation, which started in the 1970s in Canada (Ramadhan et al., 2024) (Rossner & Taylor, 2024).

From the early orientation of RJ practice, it can be seen that the RJ approach to resolving conflicts or damages arising from criminal acts is viewed as a conflict that occurs within the relationships among members of society, which must be resolved and restored by all parties collectively. The resolution circle revolves around balance by providing opportunities for victims to play a role in the criminal resolution process (Gunawan et al., 2024). This aligns with Umbreit's view that restorative justice is a response to crime centered on victims, desiring victims, offenders, their families, and community representatives to address the harm and losses caused by the criminal act (Syafri Tanjung & Fifaldi Harahap, 2024).

In principle, RJ has five main principles as emphasized by Susan Sharpe, that is (Indriati Amarini, Gamalel Rifqi Samhudi & Noorfajri Ismail, 2024)(Marder, 2022):

1. RJ involves full participation and consensus. In this case, both the victim and the perpetrator are actively involved in negotiations to find a comprehensive solution. Furthermore, it also provides an opportunity for the community, which has been disturbed by the perpetrator's actions, to join in solving the problem together. The invitation to participate is basically not binding or mandatory, but rather voluntary. However, of course, the perpetrator will be involved; if not, the traditional judicial process will proceed.
2. RJ seeks solutions to restore and heal the damage or losses caused by the perpetrator's criminal act. This includes efforts to heal or restore the victim from the crime committed against them. However, perpetrators also need healing; they need to be freed from their guilt and fear.
3. RJ instills a sense of full responsibility in perpetrators for their actions. Perpetrators must show remorse and acknowledge their mistakes while realizing that their actions have caused harm to others.
4. 4. RJ tries to reunite the perpetrator as a member of the community with

his community which has been separated due to criminal acts. This is done by establishing reconciliation between the victim and the perpetrator and reintegrating both of them into normal community life. Both must be freed from their past for the sake of a brighter future.

5. RJ empowers communities to prevent the recurrence of crimes. Crimes cause damage to community life, but they can also serve as lessons for the community to pursue true justice for everyone.

From the five principles above, Helen Cowie and Jennifer identify the main aspects of RJ, encompassing (Pranadita, 2024) (Tiara & Yusuf, 2024):

- a. Repair is not about winning or accepting defeat, accusations or seeking revenge, but about justice;
- b. Restoring relationships is not about punishing criminal offenders by making them accountable for their mistakes and fixing them in various ways, but through open and direct communication between victims and criminals, which has the potential to change how they relate to each other;
- c. Reintegration, at its broadest level, provides an arena in which children and parents can receive a fair process. This means that parties can learn about the consequences of violence and crime and understand the impact of behavior on other people.

In Russ Immariageon's perspective, the recovery process requires a broad relationship between the perpetrator, victim, and community to understand the consequences of actions that may lead to remorse for the perpetrator. This creates a situation where information can be exchanged, learning can take place, and agreements can be reached on punishment and sanctions together (Kristhy & Satrio, 2022). Recovery should be understood as the restoration of victims' rights through compensation from the perpetrator and granting the perpetrator the right to be accepted as a part of society (Jülich et al., 2024).

Although RJ has a sound conceptual orientation, its implementation in Indonesia faces five aspects that hinder its optimization and alignment with the concept of restorative justice itself. These are based on five findings that form the

basis of this conclusion: first, involvement tends to be procedural rather than substantive; second, there is a gap in impunity or recurrence; third, neglect of victim recovery; fourth, prioritization of a superficial image of harmony; and fifth, minimal accountability. These five hindrances related to RJ are essentially based on several factors, such as vague or partial policy conditions, minimal human resource capacity, lack of supervision, and patriarchal and feudalistic cultures in society. These factors obstruct constitutional rights and delay transformations needed to improve the imbalanced relationships within society.

In response to various issues related to the implementation of RJ mentioned above, the Supreme Court (MA) subsequently formulated the Supreme Court Regulation on RJ 2024, with one of its orientations being to emphasize the importance of victim recovery in applying restorative justice as per its fundamental concept. Several articles in the Supreme Court Regulation on RJ 2024 are oriented towards victim recovery, although consensus among judges is needed regarding the form of recovery. For instance, Article 5 stipulates that victim recovery is implemented through the restoration of the victim's losses and/or the restoration of relationships between the defendant, victim, and society. An essential aspect of the Supreme Court Regulation on RJ 2024 is that judges must ensure that the efforts for restorative justice and peace are achieved without coercion, compulsion, or deception. Moreover, judges are not allowed to apply restorative justice if power relations exist in the case, as regulated in Article 6 paragraph 2 (b) of the Supreme Court Regulation on RJ 2024. Emphasizing power relations is crucial to ensure that the principle of consensuality, also present in the Supreme Court Regulation on RJ 2024, does not become superficial consensuality. Therefore, there is a need for capacity building and synchronization with legal institutions and other relevant parties that play important roles in implementing RJ mechanisms.

Related to the situation and involvement of victims, the Supreme Court Regulation on RJ 2024 also ensures the involvement of victims in the restorative justice process through direct oversight by the court. Before commencing the trial, the judge examines the victim's statements, including the losses incurred and/or the victim's needs as a result of the crime, and any agreements made. If the judge finds that the agreement is not being implemented by the perpetrator or is only

partially implemented, the judge may seek the victim's approval to create a new agreement. If the victim refuses, the judge may proceed with the trial process in general court proceedings.

Based on several substantive aspects in the Supreme Court Regulation on RJ 2024 mentioned above, it can be concluded that the essence of the Supreme Court Regulation on RJ 2024 is related to the idea of RJ, which essentially includes efforts to affirm the role, participation, and activeness of judges so that the RJ approach can function optimally. Another important essence of the Supreme Court Regulation on RJ 2024 is the effort to minimize engineered RJ where RJ is often forced to protect one party due to power relations. The orientation of the Supreme Court Regulation on RJ 2024 is to ensure that if RJ is conducted under coercion and the victim refuses, the judge can proceed with the regular trial process.

The Effectiveness of Perma RJ 2024 Law

The effectiveness of law relates to how the law is implemented (Ahadi, 2022). This is certainly related to how the application of abstract values in law becomes something concrete. One of the proponents of the theory of legal effectiveness is Anthony Allott, an expert in law from the University of London. The legal effectiveness theory proposed by Anthony Allott is officially called the effectiveness of law theory (Allott, 1981). Based on the legal effectiveness theory proposed by Anthony Allott, in general, Anthony Allott wants to emphasize that the law aims to regulate and shape the behavior of members of society based on a law which both in substance and implementation has an orientation to achieve legal effectiveness (Syahfei, 2021). According to Anthony Allot, legal effectiveness occurs if the purpose of its existence and application can prevent unwanted actions and eliminate chaos.

Anthony Allott's perspective on legal effectiveness is an orientation towards concretizing the philosophical goals inherent in law into practical and effective application within society. According to Allott, legal effectiveness can be observed through a legal product, one of which is the law itself. Allott considers a law effective when it has made efforts in both its substance and application to bring about legal effectiveness.

There are three main focuses of the study of legal effectiveness theory, encompassing (Anakletus Rahajaan & Yaurwarin, 2022):

a. Success in law enforcement

Success in law enforcement means that the intended purpose of the law is achieved. The purpose of legal norms is to regulate human interests. When legal norms are obeyed and implemented by both the community and law enforcement agencies, then the implementation of the law is said to be effective or successful in its implementation.

b. Failure in its implementation

Failure in law enforcement means that the legal provisions established have not achieved their intended purpose or have not been successful in their implementation.

c. Factors influencing it

Factors influencing it are things that contribute to or affect the implementation and application of the law.

A legal rule according to Anthony Allott is effective if (Yulia et al., 2023) (Nachrawi & Agung, 2020):

1. A legal rule prioritizes a preventive nature, thus emphasizing the orientation for legal subjects to prevent prohibited actions.
2. A legal rule regulates clearly and firmly so that it is oriented towards resolving disputes (curatively) effectively and without being complicated; and
3. A legal rule is able to provide facilities to legal subjects to carry out legal actions (facilitative) through the formulation of relevant norms and applicable legal substances within society.

Based on Anthony Allott's three criteria for an effective legal rule, they are essentially cumulative, meaning all three criteria must be met to fulfill the legal goal of effectiveness within society.

Besides explaining the three criteria for effective legal rules, Anthony Allott also elaborates on three obstacles within the law that render it ineffective,

encompassing (Kristhy & Satrio, 2022) (Cahyaningsih, 2020):

1. The obstacle that renders the law ineffective is the suboptimal formulation of articles or norms within a legal rule, resulting in incoherence between the legislators' intent and the purpose of the law's creation. In practice, the existence of multiple interpretations of a legal rule, understood both by law enforcement officials and the general public, is one aspect that hinders the realization of effective law.
2. Another obstacle to legal effectiveness is the conflict between the substance stated in legal rules and the will of the society. The societal will in this context should be seen from two perspectives: the general public's views and opinions regarding a legal substance and its connection to the philosophical values and traditions in society. In this regard, for the law to be effective, it must not contradict the societal will.
3. Another obstacle to legal effectiveness is when the legal substance is "incomplete," meaning the formulation of legal regulations is clear but becomes difficult to implement by government institutions, law enforcement agencies, and the general public.

Referring to Anthony Allott's three criteria for effective legal rules, it can be seen that Perma RJ 2024 has met the criteria for effective legal rules according to Anthony Allott. In the first aspect, which prioritizes a preventive nature, Perma RJ 2024 indeed has an orientation to prevent criminal acts through the implementation of RJ. One of the key orientations of RJ is to prevent criminal acts by emphasizing the acknowledgment of guilt and repentance from the perpetrators. This also aims to restore the malicious intentions and will of the perpetrators so that they can live harmoniously in society in the future.

In the second aspect, where a legal rule is clearly and firmly regulated to effectively resolve disputes (curative) without complications, Perma RJ 2024 is also in line with this aspect. The clarity aspect in Perma RJ 2024, as stated in Article 6 paragraph (1) of Perma RJ 2024, emphasizes that judges apply guidelines for adjudicating criminal cases based on Restorative Justice if one of the following criminal acts is met: (a) the criminal act committed is a minor offense or the victim's

loss is not more than Rp2,500,000.00 (two million five hundred thousand Indonesian rupiahs) or not more than the local provincial minimum wage; (b) the criminal act is a reportable offense; (c) the criminal act carries a maximum sentence of 5 (five) years in prison in one indictment, including jinayat crimes according to qanun; (d) the criminal act involves a juvenile offender whose diversion is unsuccessful; or criminal traffic offenses.

The clarity aspect in Perma RJ 2024, as regulated in Article 6 paragraph (2) of Perma RJ 2024, states that judges are not authorized to apply guidelines for adjudicating criminal cases based on Restorative Justice in cases where: (a) the Victim or Defendant refuses to reconcile, (b) there is a Power Relation; or (c) the Defendant repeats a similar criminal act within a period of 3 (three) years since the Defendant completed a legally binding court decision.

In the third aspect, which involves a legal rule's ability to provide facilities to legal subjects for legal actions (facilitative) through the formulation of relevant norms and legal substances applicable in society, this aspect has also been fulfilled in Perma RJ 2024. This is evident in Article 12 paragraph (1) of Perma RJ 2024, which states that in striving for a new agreement, the judge explores information on various aspects including: (a) the impact of the criminal act on the Victim; (b) economic and/or other losses arising from the criminal act; (c) medical and/or psychological treatment costs already incurred and to be incurred by the Victim; (d) the Defendant's ability to fulfill the agreement; (e) the availability of services to assist in the recovery of the Victim and/or Defendant; (f) other information deemed necessary by the judge to be examined and considered.

Article 12 paragraph (2) of Perma RJ 2024 further emphasizes that judges, in striving for a new agreement, have several authorities, such as: (a) providing an opportunity for the Defendant and Victim to express their respective issues and needs; (b) encouraging constructive communication between the Defendant and Victim as an effort to restore their relationship; (c) providing advice to the Defendant and Victim; (d) allowing the presence of religious figures, community leaders, and/or traditional leaders upon the proposal or approval of the parties; (e) making persuasive efforts to the Defendant and Victim to reach an agreement that can be implemented by the Defendant to fulfill their responsibilities and meet the interests and/or needs of the Victim for recovery; (f) instructing all statements

made by the Defendant and Victim to be recorded in the trial record; (g) instructing the Victim and Defendant to submit a copy of the reconciliation agreement to the Public Prosecutor and/or legal advisor; (h) suggesting the Public Prosecutor to consider the agreement between the Defendant and Victim as a consideration in the indictment; and/or; (i) suggesting the legal advisor to consider the agreement between the Defendant and Victim as a consideration in the defense brief. In the event of a new agreement being reached, this new agreement becomes a consideration in the judge's decision.

From the description above, it can be concluded that the substance of Perma RJ 2024 has fulfilled the three aspects of effective legal rules as stated by Anthony Allott. The aspects of prevention, clarity, and facilitation for legal actions are all covered in Perma RJ 2024, as explained in the aforementioned articles. This demonstrates that Perma RJ 2024 is designed with consideration of the principles of legal effectiveness expressed by Anthony Allott.

4. Conclusion

The essence of Perma RJ 2024 regarding the concept of RJ essentially includes efforts to emphasize the role, participation, and active involvement of judges so that the RJ approach can work optimally. Additionally, an important essence of Perma RJ 2024 is the effort to minimize the occurrence of engineered RJ, where the power relation factor in RJ is often enforced to protect one party. Perma RJ 2024 is oriented towards ensuring that if RJ is conducted under coercion and there is victim rejection, then the judge can proceed with the usual trial process.

Perma RJ 2024 has indeed fulfilled the three aspects of effective legal rules as outlined by Anthony Allott: the preventive nature, which is relevant to Perma RJ 2024's substance of educating offenders to prevent them from repeating their actions. The aspect of clear and firm regulation to effectively resolve disputes without complications is also relevant to Perma RJ 2024, which emphasizes the role and active involvement of judges in implementing RJ. Additionally, the aspect of legal rules being able to provide facilities for legal subjects to carry out legal actions (facilitative) through the formulation of relevant norms and legal substances applicable in society is also relevant to Perma RJ 2024. This is evident in Perma RJ 2024's engagement of various parties in RJ, such as the parents of

perpetrators/victims, religious figures, and community leaders, to collectively resolve issues.

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