Initiating Non-Litigation Arbitration in Indonesia from A Restorative Justice Perspective Based on Progressive Law (Genealogical, Historical and Transformational)

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Abstract

In the development of legal systems, law is not merely a set of normative instruments but also a human-centered construct that must be interpreted through ethical and philosophical lenses. This article explores the integration of restorative justice into non-litigation arbitration as a reflection of the progressive law paradigm, which emphasizes the humanization of legal processes. Specifically, the study seeks to reconceptualize arbitration not only as a procedural mechanism but also as a transformative approach rooted in genealogical, historical, and philosophical dimensions. Employing a qualitative descriptive methodology, the research combines normative legal analysis with socio-legal perspectives. Literature and content analyses are used to trace the historical and theoretical development of both arbitration and restorative justice, with the aim of offering a framework for their convergence. This approach challenges the conventional boundary that restricts restorative justice to criminal law, extending its application to civil and commercial disputes through arbitration mechanisms. Findings suggest that integrating restorative justice into non-litigation arbitration provides a more inclusive, dialogic, and equitable path to dispute resolution. It allows for reconciliation and mutual agreement outside courtrooms, aligning with the ideals of justice as envisioned by progressive legal theorists such as Satjipto Rahardjo. This synthesis not only expands the functional scope of restorative justice but also revitalizes arbitration as a humane and socially responsive legal alternative in Indonesia.

I. Introduction

It happens often We are faced with problems or disputes in life in society. Every problem faced No Far with problem dispute activity economics and business, banking, projects mining, oil and gas, energy, infrastructure, and so on. Usually, settlement disputes that often occur between the parties through the litigation process, in place the parties each other opposite For finish dispute, litigation is means-end after implementation alternative settlement other -litigation disputes do not finish dispute or bear fruit results, besides settlement dispute in a way litigation in practice, there is alternative settlement dispute that is arbitration. In the 1990s Indonesia had abundant wealth with a development and booming economy Because riches source Power increasing nature and availability of field jobs, and the presence of foreign capital in sector Indonesian economy understanding disputes through settlement dispute court can take a long time, so interest settlement dispute through arbitration become increase and moreover dispute across national borders.[1]

With an implementation settlement dispute of course sometimes No close possibility of reaching each other peace between the parties sometimes There is a loser and a winner in litigation which gives rise to a problem new between parties to the dispute. Completion dispute outside court produce a deliberation consensus or a win-win solution agreement because settlement outside court No There is obligation for the trial process open For common. [2]Often what happens case cases related to business or harm to consumers who have a connection with the perpetrator business happened, in connection happens inequality between both of them position bid weak so that target exploitation from perpetrator efforts that are social and economic own strong position. So that the enactment of Law Number 8 of 1999 concerning the protection of consumer No ensures For to organize the protection of consumers, requires the existence of an institution that has the authority To finish in a short time and is not costly as well as with method easy method, with settlement disputes done outside court in a way conciliation, mediation, arbitration. This is the model for finishing settlement disputes to protect consumers besides media, and conciliation so can be done method regulated arbitration Number 350 of 2001.[3]

To do settlement disputes in the field business through the Arbitration Institution can done with Restoratife factum de compromittendo, before dispute clause

[1] Frans Hendra Winarta, *Settlement Law Dispute Indonesian National and International Arbitration: Edition Second* (Sinar Grafika, 2022).

[2] Firda Ainun Fadillah and Saskia Amalia Putri, "ALTERNATIVE DISPUTE RESOLUTION AND ARBITRATION (ETHICS LITERATURE REVIEW)," *Jurnal Knowledge Management Applied* 2, no. 6 (21 July 2021): 744–56, https://doi.org/10.31933/jimt.v2i6.486.

[3]Faisal Riza and Rachmad Abduh, " The Settlement Dispute In General Arbitration For Protect Consumer Through the Settlement Agency Dispute Consumers," *EduTech: Journal Educational Sciences and Social Sciences* 4, no. 1 (May 23, 2018), https://doi.org/10.30596/edutech.v4i1.1886.

arbitration in a form written separated from the agreement principal. Deed compromise happens in dispute clause arbitration in the form written separated from agreement principal, in agreement main for the completion process dispute in Constitution Number 30 of 1999 own Arbitration institution decision is final and has strength law fixed and binding the parties, the parties must be bound by the arbitration decision, although at the execution stage, it still requires the involvement of the District Court. [4]There are also disputes in the financial services sector in the settlement of disputes through arbitration, the Indonesian arbitration institution in the financial services sector in Bani and LAPS-SJK resolving disputes, as the oldest independent arbitration institution in providing its dispute services, in the industrial trade sector, such as commerce, construction, banking, finance, natural resources, telecommunications, and national or international scope, and LAPS SJK accepts disputes that are in the realm of the financial services sector only.[5]

Sometimes alternative dispute resolution in arbitration does not run optimally and cannot realize the problems for the parties. Because its implementation is not optimal, this is to improve the concept and practice of arbitration in the midst of the Indonesian legal community, and also need to restore the rights of justice to each party in dispute with this one of the perspectives that is also developing in the context of dispute resolution is restorative justice, the importance of resolving disputes and resolving cases of the injured parties, a restorative approach justice is not a matter of criminal justice in the realm of protecting or upholding justice but also all aspects of fulfilling the needs for justice which are relevant in aspects of the field.[6]

In this approach the emphasis is placed on reconciliation, restoration, and rebuilding of disturbed relationships, to initiate arbitration with a restorative approach. Justice in Indonesia is an effort that combines important mechanisms in dispute resolution with restorative values. Justice process in the involvement of the parties involved in the dispute resolution process, restoration of relations between the parties, and empowerment to reach a fair and sustainable agreement become the main focus of other approaches. With the integration of restorative justice in dispute resolution arbitration can promote social peace, minimize recurring conflicts, and build stakeholder trust. Besides that, restorative is usually used in the criminal environment for a long time and requires a lot of money, so this also requires restorative in the business environment in disputes for perpetrators, as an effort to resolve problems in the business realm. Because often the dispute resolution that is

[4]Nyoman Adi Astiti and Jefry Tarantang, "RESOLVING BUSINESS DISPUTES THROUGH ARBITRATION INSTITUTIONS," *AL-QARDH JOURNAL* 3, no. 2 (2018): 110–22, https://doi.org/10.23971/jaq.v3i2.1179.

[5]The Legion of Nadhilah Qomarani, "DISPUTE SETTLEMENT BY ARBITRATION IN ALTERNATIVE DISPUTE SETTLEMENT INSTITUTIONS IN THE FINANCIAL SERVICES SECTOR AND THE INDONESIAN NATIONAL ARBITRATION BOARD IN THE FINANCIAL SERVICES SECTOR" (bachelor's Thesis, Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta, 2023), https://repository.uinjkt.ac.id/dspace/handle/123456789/74269.

[6] Ahmad Syahril Yunus MH S H. and Dr Irsyad Dahri, SH, *Restorative Justice in Indonesia* (GUEPEDIA, nd).

carried out has not been realized and is often delayed from the deadline set in the regulations. The importance of a mechanism for implementing restorative in the business sector in resolving cases that are not prolonged and provide more legal certainty for businesses is cost-effective.[7]

Implementation in arbitration with restorative justice of course needs to be implemented in Indonesia in the field of aspects other because of what is faced challenge complex problems he faces. Understanding community and practitioners' law about draft This is sometimes Still limited, and lack of supporting infrastructure. And often restorative justice is only known to practitioners. Law For used in the environment litigation criminal matter this is what limits settlement For justice, restorative justice is only used in court criminal and not There are spaces for outside settlement dispute To realize settlement dispute in arbitration with the approach the need for restorative justice the existence of holistic or support from academic law, government, practitioners law, and society civil existence collaborative This For build system more arbitration inclusive, equitable and sustainable For finish disputes in business/aspects business.[8] From the statement above is the background article study namely There is a number of focus point issue study namely *First* idea about arbitration (genealogy, history and transformation) the *second* idea about Restorative justice (genealogy , history and transformation) and ideas with merge second, namely Initiate non- litigation arbitration in Indonesia from a restorative justice perspective (genealogy, history and transformation).

Consideration that study is very interesting is, that we do systematic literature with similar studies, there are a number of interesting research such as *the First* research conducted by Ernesto Lodi et al . with the title study Use of Restorative Justice and Restorative Practice at School: A Systematic Literature The review in this article provides a study of In several years Lastly, the use of justice restorative (RJ) and practice restorative (RP) in schools has developed rapidly. Understand How Theory and Research Discuss Topic This is important For implementation in practice based on knowledge scientific. The purpose of article This is To analyze practices that originate from RJ implemented in schools and the types results that have been achieved. Started with an analysis study qualitative and quantitative in the field, review systematic done in the decade final studies using RJ and RP in every level of education school. Method: To review this, method including PRISMA guidelines, PRISMA flowchart, and synthesis qualitative done. Scientific articles For review library chosen according to the criteria following : (1) date publication between 2010–2021 ; (2) population student aged 6–18 years ; (3) publications in Language

[7]Ady Thea DA, " Justice Restorative in Dispute Business ," hukumonline.com, accessed September 18, 2023, https://www.hukumonline.com/berita/a/berharap-konsep-keadilan-restoratif-diadopsi-dalam-penyelesaian-kasus-bisnis-lt6332b25a0df3a/.

[8]Tiwuk Herawati, "RESOLVING MEDICAL DISPUTES FROM A RESTORATIVE JUSTICE PERSPECTIVE" (masters, University of Muhammadiyah Malang, 2020), https://eprints.umm.ac.id/64482/.

English ; (4) articles can accessed directly or can accessed with contact author); 34 articles fulfill criteria inclusion. Result: the most RP used in school is circle (n=26), followed by conference restorative (n=17), mediation peers (n=10), conversation restorative (n=8), mediation (n=7), and circle development community (n=5). RP can increase climate school , discipline , and management of conflict positively through purposeful action to prevent suspension , exclusion , conflict , and behavior bad (e.g. , bullying). RJ practices promote connection positive between Friends and peers and between students and teachers, as well as behavior prosocial through the development skills social and emotional. Conclusion: From the studies examined, there is a great interest in applying justice restorative and practice in schools appear with clear. Discussion about benefits and challenges of implementation provided. However, the is still There is proof limited in matter correlation directly, which shows studies carry on about the impact of RJ and RP in the arrangement of school.[9]

The second research conducted by M Hazrati et al . with the title study **Conceptualizing restorative justice in the energy Transition : Changing the perspectives of Fossil Fuels** in article This gives information related with Justice restorative in sector energy focuses on the needs of victims, such as the state, citizens, and nature. Justice This returns them to position back to before the occurrence of destructive activities. The importance of justice restorative is that justice can become an approach policy proactive For prevent loss and conflict in sector energy If applied and taken into account since the beginning of project or activity energy. During years, studies of justice energy have owned three principles that are at the heart of the research, however, This focus on justice restorative which has been developed since 2017. Review This aims To catch additional justice restorative and provide perspective law and studies case comparative as well as explore the implementation of justice restorative in three countries, Iran, Malaysia, and Canada, with a focus on sector oil and gas. In the exploration deep First about justice restorative, our results confirm that justice restorative If applied can act To ensure enforcement justice energy, that is, moving from theory to practice. Research also highlights the existence of a number of devices in the law that make justice restorative as a principle guide such as the Assessment Process Impact Environment (EIA), Energy Financial Reserve Obligation (EFRO), and Licensing Social For Operational (SLO). Things This the more Lots applied and can be ensure justice restorative move more Far from just theory conceptual to practice.[10]

Third is research conducted by Meredist Rossner et al . with the title study The

[9] Ernesto Lodi et al ., "Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review," *International Journal of Environmental Research and Public Health* 19, no. 1 (January 2022): 96, https://doi.org/10.3390/ijerph19010096.

[10] M. Hazrati and RJ Heffron, "Conceptualizing restorative justice in the Energy Transition: Changing the perspectives of fossil fuels," *Energy Research & Social Science* 78 (August 1, 2021): 102115, https://doi.org/10.1016/j.erss.2021.102115.

Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins this study provides information related to Justice restorative is an idea and practice that has give impact significant on criminology during four decades last and has been spread wide throughout system justice criminal. However, since the beginning movement, has There been concern that mainstreaming justice restorative will cause dilution , or even corruption, and weaken potential transformative . Developing along with increasing institutionalization justice restorative has movement justice emerging transformative from more movement big For justice racial and gender, which refers to values the same basis as justice restorative. Review This investigates the connection between justice restorative and transformative with an inspection of the development of ideas and experiments on the fringes movement justice restorative in three field main — response to injustice racial, violent sexual, and damaged environment —and finds that justice restorative capacity For work in various levels For respond damage, change relationships, and prevent injustice in the future.[11]

Fourth is research conducted by Steve Kirkwood with the title A Practice Framework for Restorative Justice in the article This gives information related to Justice restorative offers a different approach to responding to moral loss. Values The main thing is to emphasize volunteerism , safety , inclusion , dignity , respect , responsibility responsibility , accountability , disclosure of truth , and honesty . Justice restorative focuses on handling loss, by offering the chance to those who have done or been harmed by crime To discuss with safe nature and consequences from violation, submitting questions and offer answers, and agree What should done To redeem mistakes and avoid loss more continue. This article synthesizes, and discusses in a way critical, and maps the connection between values, principles, assumptions knowledge, and guidelines practice For offering framework Work practice For justice restorative. Framework Work the set difference between dialogue and deliberation in practice justice restorative, exploring role justice restorative in allowing repair, rehabilitation, termination, recovery, and so on. Critical reflects the importance of context about justice restorative and skeletal Work practice in a way more general.[12] With four studies above, give an understanding that Restorative Justice studies are widely conducted in the legal world. Only just in the world of arbitration and the world law civil and economic still very minimal, and this is the stigma that we want to do and change with do search in a way deep in a way historical genealogy and conception in more dimensions wide in dimensions in the legal world.

[11] Meredith Rossner and Helen Taylor, "The Transformative Potential of Restorative Justice: What the Mainstream Can Learn from the Margins," *Annual Review of Criminology* 7, no. Volume 7, 2024 (January 26, 2024): 357–81, https://doi.org/10.1146/annurev-criminol-030421-040921.

[12] Steve Kirkwood, "A practice framework for restorative justice," *Aggression and Violent Behavior*, Practice Frameworks in the Criminal Justice System, 63 (March 1, 2022): 101688, https://doi.org/10.1016/j.avb.2021.101688.

RESEARCH METHODS

This study adopts a qualitative descriptive methodology that integrates both normative legal research and socio-legal approaches, grounded in the paradigm of progressive law. Two primary methodological frameworks are employed. First, a normative legal analysis is used to examine legal doctrines, statutory texts, and regulatory frameworks related to arbitration and restorative justice in Indonesia. Second, an empirical-sociological approach is applied to analyze how restorative justice practices, often associated with criminal law, can be theoretically and practically extended to civil law domains through non-litigation arbitration mechanisms.

The research is conceptual in nature and relies heavily on a systematic review of literature, historical records, legal instruments, and scholarly publications. Content analysis is used to trace and interpret the genealogical, historical, and transformational trajectories of both arbitration and restorative justice. This dual-lens approach enables a more holistic understanding of how these legal paradigms—when viewed through the lens of progressive legal theory—can be integrated to offer a more humane, participatory, and equitable form of dispute resolution outside the courtroom. By exploring this convergence, the study seeks to challenge the prevailing assumption that restorative justice is confined solely to criminal law, proposing instead its applicability within civil legal systems, particularly through alternative dispute resolution mechanisms such as arbitration.

PROGRESSIVE LEGAL PARADIGM: EXPLORING SAJIPTO RAHARJO'S VIEWS

In the study This is I will speak about the study of law progressive, i know term This from an expert in law Saejipto Raharjo at UNDIP in Naturally his mind gives a study on Progressive Law, and some of his work describes law Progressive is Dissecting Progressive Law, in his book This as Sajipto state that part First is about thinking beginning and roots law progressive, and parts second is law progressive and in it sue idealism and harmony law. While part third is direction ideal future position and parts law progressive part fourth in book Is in the form of crystallization thinking about the idea law progressive thinking he is very thick with approach to social conditions of society in a place particular. Field the study being pursued sajipto thank you flowing in dimensions sociological and provide enlightenment to study law that is too normative in conditions and nature sociology in Indonesia.[13]

In another book, Sajipto Raharjo also talked about enforcement law in Indonesia in

[13] Satjipto Rahardjo, *Dissecting law progressive* (Publisher Kompas Book, 2006), https://books.google.com/books?hl=id&lr=&id=g4wxVhxY8_sC&oi=fnd&pg=PR12&dq=hukum+progresif+satjipto&ots=ppUZKO3e8s&sig=-s-NPSgmO27yWIo7AaXTWh_AYBM; Satjipto Rahardjo, *Enforcement law progressive* (Publisher Kompas Book, 2010), https://books.google.com/books?hl=id&lr=&id=f7EqH7E4x4IC&oi=fnd&pg=PA110&dq=satjipto's+progressive+law&ots=BTJZw0IBK-&sig=RZc0_iSi_HlxAMFjiPIBXJU42Qk.

the book This gives information about what if the law is a man so he No may become an obstacle For channeling dynamics of society, we must understand the concept of the development model from Phillip Nonet and Phillip Selznick, which in essence say that law That he will reflect dynamics interaction powers in society. Don't law That to maintain and enforce a contradictory construction with dynamics public.[14] In research, others also stated that according to Hyronimus Rhiti who wrote Foundation Philosophical Law Progressive state that law progressive Sajipto Raharjo is meant as much as antitheist to modern law, although so, not yet clear runway philosophical law, with the basic ideas law progressive like is " law" For human " and " orientation sociological "and liberation direction from philosophical law This can be known, both with a philosophical basis certain can it is said that anthropology metaphysics realism process philosophy and postmodernism is root philosophy from law progressive.[15] Whereas in another writing by Muhammad Samsuri, We Know Relevance of Progressive Law against Islam, which also cites Sajipto state under law progressive is a radical action to change the legal system (including changing rules law when necessary) so that the law is more useful, especially For lift price self fiber ensure happiness and well-being human. Do freedom, good in method think and also act in law, so that law That capable to finish his job serve to human beings. Because of the law Not only building regulations, but also the building of ideas, culture, and ideals. The between ideas of law progressive and legal Islam conformity can be described with two important points if seen from the principles of law Islam in a way general, then hope law Islam the own conformity with characteristics of law progressive, namely with law For interest human. Ijtihad a method For making law Islam in every era is by characteristics and rejects maintaining the status quo in to be in law.[16]

So in this paper, it is assumed to have paradigm law progressive sourced from from words sajipto "

> that law progressive is a radical action with changes the legal system (including changing rules and laws when necessary) so that the law is more useful, especially For lifting the price self fiber to ensure the happiness and well-being of humans. Do freedom, good in method think and also act in law, so that law That capable to finish his job serve to human beings. Because of the law That Not only building regulations, but also the building of ideas, culture, and ideals "

so give room better understanding wide to restorative justice theory with also explore the non-litigation realm in the field of arbitration Are there any interesting things to study and try to maintain peace law is built outside the trial, and that law is

[14] Rahardjo, *Enforcement law progressive*.

[15] Hyronimus Rhiti, " Foundation philosophical law progressive," *Justitia Et Pax* 32, no. 1 (2016), https://ojs.uajy.ac.id/index.php/justitiaetpax/article/view/760.

[16] Muhammad Samsuri, " The Relevance of Progressive Law Against Islamic Law," *Mamba'ul'Ulum*, 2021, pages 95–105.

truly a human being who is not hinder prosperity carried out by humans That Alone.

ARBITRATION CONCEPT (GENEALOGICAL, HISTORICAL, CONCEPTUAL)

The term or word *arbitration* comes from several words from various countries, namely *arbitrar*y (Latin), *arbitrage* (French), *arbitration* (English), *and schiedspruch* (German) which means the right to settle a case peacefully by an arbitrator. [17]Arbitration is defined as a method of settlement carried out by a particular judge, fast in making decisions, because it is final and binding, and easy to do because it will be agreed upon by the parties. [18]Arbitration is a procedure carried out voluntarily by the disputing parties to obtain a decision from a third party outside the judicial process. The logic and simplicity of arbitration have received much praise for the process intended for humans since the first century. In addition, arbitration is widely accepted as a complement to the formal law of the Romans and Greeks as a means of resolving commercial disputes during the Middle Ages. [19]Meanwhile, R. Soebekti formulated arbitration as a dispute resolution by a judge based on the agreement of the parties and will obey every decision that has been given by the judge. [20]Meanwhile, another opinion according to Priyatna Abdul Rasyid stated that Arbitration is one of the alternative dispute resolution mechanisms which is a form of legal action recognized by law in which one or more parties submit their dispute, the absence according to his understanding, his disagreement with one or more other parties to one person (Arbitrator) or more (arbiter panel 437) experts who will act as judges or private 437courts 437that will apply the legal procedures for peace that have been agreed upon by the parties to arrive at a final and binding decision. [21]Meanwhile, according to Law Number 30 of 1999 concerning Arbitration and Alternative Resolution of General Disputes Article 1 Number 1, arbitration is a method of resolving a civil dispute outside the general courts which is based on an arbitration agreement made in writing by the disputing parties.[22]

Arbitration was initially known in ancient Greek times, and developed in Roman times, so that it reached European business countries such as England and the Netherlands, initially this arbitration was indeed a scope known 437 to be mini and developed in resolving civil disputes through arbitration in family disputes, industry, and trading companies. Since the 1920s, arbitration has been introduced in the international world. And arbitration was indeed at that time one of the alternatives to resolve business intensity problems, such as in the Greek era, the Christian era, and the rulers of the kings at that time all used dispute resolution through arbitration. Arbitration in modern history has been known as the Jay Treaty in 1794, England and

[17] " Course Module Arbitration Dispute Resolution.pdf," tt, 1.
[18] Sudargo Gautama, contract trade international , Alumni (Bandung: 1976), p. 5
[19] " Course Module Arbitration Dispute Resolution.pdf," 2.
[20]R. Soebekti, *Collection of Essays on Contract Law, Arbitration and Judiciary*, (Bandung: Alumni, 1980), p.1
[21] Priyatna Abdulrrasyid, arbitration, and alternatives settlement dispute, (2003)
[22]"Law No. 30 of 1999," Regulation Database | JDIH BPK, accessed September 21, 2023, http://peraturan.bpk.go.id/Details/45348/uu-no-30-tahun-1999.

America regulated the formation of 3 mixed commissions to resolve disputes between the two parties. Arbitration succeeded in Bama-style arbitration claims in 1872 which resulted in England paying compensation for the loss of Confederate warships built in England. This success of the arbitration institution motivated further arbitration in the 18th century.[23]

Arbitration has been known in Indonesia since the Dutch colonial era. The role of arbitration as an effort to resolve international commercial disputes began in the late 18th century, marked by the establishment of the Jay Treaty on November 19, 1794. This agreement was made between America and England. This agreement has brought fundamental changes in the procedure for resolving international trade disputes. If before this Agreement, trade disputes were resolved through diplomatic channels, then its nature changed to international arbitration based on procedures that are higher than legal principles. The old solution is often times disappointing. Resolutions tend to be influenced by political interests. [24]With the Jay Agreement, an agreement was reached to establish an organization that would form a Joint Committee that would resolve trade disputes legally. This organization developed and became the forerunner of national and international arbitration. During the Dutch East Indies, arbitration was agreed upon by traders, both exporters and importers, as well as other businessmen. There were three permanent arbitration bodies established by the Dutch government:

1. Arbitration body for Indonesian agricultural exports;
2. Arbitration body on fire;
3. Arbitration body for accident insurance.[25]

In Indonesia, interest in dispute resolution through arbitration has increased since the enactment of Law Number 30 of 1999 concerning Arbitration and Alternative General Dispute Resolution (Arbitration Law). This development is part of the globalization trend where dispute resolution outside the court has become the choice of business actors to resolve their commercial disputes. In addition to being fast, effective, and complete, arbitration also adheres to the principle of mutually beneficial and uninterrupted settlement because there is no appeal or cassation. Arbitration costs are also more measurable because the process is faster. Another advantage of arbitration is that its decisions are direct (final) and binding, in addition to being confidential because the trial and arbitration decisions are not published. Based on the principle of reciprocity, foreign arbitration decisions relating to foreign companies can be enforced internationally, likewise, international arbitration

[23] Gusri Putra Dodi MH SH, *Arbitration in the Indonesian Legal System* (Prenada Media, 2022).
[24]M. Yahya Harahap , *Several Review About System Trial and Settlement Dispute* , (Bandung: Citra Aditya Bakti 1997), p. 226
[25] Gunwam Wijaja and Akhmad Ynai , *Business Law Series , Arbitration Law* , (Jakarta: Raja Grafindo Persada (2000), p. 13

decisions relating to foreign companies will be enforced internationally operating abroad. To participate in international law enforcement efforts, this organization organizes the settlement of disputes or differences of opinion arising in various commercial, industrial, and financial sectors, through arbitration, arbitration and other alternative forms of dispute resolution, including in the fields of corporations, insurance, financial institutions, manufacturing, intellectual property, licensing, franchising, Construction, maritime traffic, environment, remote sensing, etc. within the framework of international law and practice.[26]

LEGAL BASIS OF ARBITRATION

There are several legal bases used in non-litigation dispute resolution. Including:[27]

a. Article II of the transitional provisions of the 1945 Constitution
b. Article 377 HIR
c. Articles 615 to 651 RV
d. Article 3 paragraph (1) of Law No. 14/1970
e. Article 80 of Law No. 14/1985
f. Article 22 paragraphs (2) and (3) Law No.1/1967
g. Law No. 5/1968
h. Presidential Decree No. 34/1981
i. Supreme Court Regulation No.1/1990
j. Law No. 30/1999

There are two types of arbitration that are recognized and have validity, are regulated, and are referred to in various regulations and conventions, namely:[28] *First, Ad Hoc Arbitration* or la mini arbitration, a special arbitration formed to resolve or decide certain disputes. This arbitration is incidental, its position and existence are only intended to serve and resolve certain disputes. Thus, if the dispute is resolved through a trial, the existence of the ad hoc arbitration function will disappear and end by itself. *Second,* Institutional Arbitration, an institution or arbitration body that is permanent and continues to exist forever even though the dispute being resolved has been resolved. Currently, institutional arbitration is widely known as the national international arbitration regulations (BANI) and international such as the International Chamber of Arbitration Regulations of Commerce (ICC) in Paris, the Arbitration Rules of the International Center for Investment Dispute Resolution (ICSID) in Washington. These bodies have their own rules and arbitration systems.

In relation to the definition of arbitration from several perspectives, there are several principles applied in resolving arbitration disputes, namely:

[26] " Course Module Arbitration Dispute Resolution.pdf," 7–8.
[27] Ahmad Musadad , *Alternative Dispute Resolution* , 2nd ed. (Malang City: CV. LiterasiNusantara Abadi, 2022), 206.
[28] Musadad, 210.

1. Efficient, compared to dispute resolution through general courts, resolution through arbitration is more efficient in terms of time and costs.
2. *Accessibility,* arbitration must be affordable in terms of cost, time, and place.
3. Protection of the rights of the parties, especially those who are unable, for example, to bring in expert witnesses or to hire a well-known lawyer, must receive appropriate protection.
4. Final and appealable, the arbitration decision shall be final and appealable *unless* the parties do not wish it or if there are reasons related to due process. process.
5. *Fair and just,* must remain fair and appropriate for the disputing parties.[29]

RESTORATIVE JUSTICE: GENEALOGICAL, HISTORICAL, CONCEPTUAL

Draft justice is mini ve or restorative justice is approach paradigm new in effort settlement case criminal. Different from the existing system moment this (system criminal traditional), approach or draft justice is mini ve or more restorative justice drip focus on the participation of direct perpetrators, victims, and society in the process of completing case criminal. Therefore, approach this is also known as a " system" of non-state justice " in which the role of the state in finish case criminal weak or even No there is. However presence approach or draft justice is mini ve or restorative justice gives rise to various questions Good in a way theoretical and also practical. Problems in the implementation approach or the concept of restorative justice in system law in general and the system justice criminal law in particular lie in the mechanism Handling approach or draft justice The proposed restorative justice different with mechanism proposed solution with approach or draft justice is mini ve. System justice criminal moment This is Still difficult to accept. Indeed proposed mechanism in approach or draft justice is mini This prioritizes draft peace, the concept of " reconciliation " and the concept of reconciliation in which the perpetrator, victim, police, and community generally participate directly in the mediation process. Resolving case criminal Of course just contradictory to the system justice criminal that has There since long ago and still applicable until the moment This is. This is driven by the attention and opinions provided to violations and justice achieved in the settlement of a case criminal .[30]

Restorative Justice is the settlement dispute through non- litigation in interest personal in a way peace For reach justice for the parties in finish problem conditions that occur between the parties.[31] According to Muladi, the goal main of justice is To reach the fairest possible justice, especially for all parties involved, and not just prioritize punishment. Justice is mini ve have a view that is not quite enough to

[29] BASUKI REKSO WIBOWO, "ARBITRATION AS AN ALTERNATIVE FOR RESOLUTION OF TRADE DISPUTES IN INDONESIA" (postdoctoral, AIRLANGGA UNIVERSITY, 2004), http://lib.unair.ac.id.
[30]Asst. Prof. Dr. Edi Ribut Harwanto, SH, MH, " *Restorative Justice Implementation Criminal Law Policy Worth Philosophy of Pancasila* " Lampung: CV Laduny Alifatama, 2021, p.5.
[31] Irvan Maulana Maulana and Mario Agusta Agusta, "CONCEPT AND IMPLEMENTATION OF RESTORATIVE JUSTICE IN INDONESIA," *DATIN LAW JOURNAL* 2, no. 2 (2021), https://doi.org/10.36355/dlj.v2i2.734.

answer the perpetrator shaped by understanding To take action and help him decide which action is right and best.[32] Within the framework justice is mini ve, besides criminal prison, the court can also drop punishment For perpetrators between other: *first* Repair (replace) make a loss) The punishment is la mini new, introduced in 1985. It involves perpetrator paying a sum of money to the victim of the violation through the court as compensation for loss emotional or lost mini damage. There is no compensation For the injured body.

Second Fines (fines) In the case of a criminal act causing mental or physical harm to the victim without cause and the court decides to impose a fine, then it is necessary to consider whether the fine should be imposed in whole or in part on the victim or not. In cases where the court decides to wear a fine the. *Third,* Community service (work) social) With agreement convict, the court can emit an obligatory command To finish between 20 and 200 hours of service in some type of organization or society. Implementation punishment This is limited by the talent and ability perpetrator To get a suitable job. *Fourth* Periodic Detention (Detention) Periodic) Detention periodic can be charged to convict who committed work social below supervision staff Department of Law. *Fifth* Community Program (Special Program) If the court decides that the perpetrator requires a special program To prevent it repeat his actions, then the court can drop punishment where the perpetrator must complete the program. For example, in case an accident results in the death of another person because of a driver drunk, the court can request perpetrator finish a course counseling drugs and la min.[33]

According to Eva Achjani Zulfa, the restorative justice paradigm in Handling case criminal brings Lots of profit or positive change to society and the state. A number of the benefits between other : [34] *First* The public was given room For the finish problem the law felt less fair. In terms of This principle simplicity, clarity, and cash, which is known and more widely used in law custom in finish case civil, can also applied in law criminal. Moreover, Because law Indonesian customs are No no difference between law criminal and legal civil. *Both* State Burdens in a number of matters become reduced for example: Handling load act criminal Still be handled in a way independent by the community. Police, prosecutors, and courts can more minor in eradicating acts the crime that are considered more dangerous , such as drugs, terrorism , trafficking of human, or gross human rights violations. In a mini ve, the number of the matters brought to the system of justice can reduced so that reduce burden authority judiciary, as mentioned above. *Second,* the burden of providing funds for the management system justice criminal, in particular in matter management of

[32]Irvan Maulana, Mario Agusta. " *Concept and Implementation of Restorative Justice in Indonesia* " Datin Law Journal, no.2 (2021), p . 58.
[33]*Ibid*, pp. 58-59.
[34] Ahmad Faizal Azhar, " Implementation draft justice restorative justice in system justice criminal law in Indonesia," *Court: Journal of Islamic Law Studies* 4, no. 2 (2019): 134–43.

correctional facilities that are resolved case the crime especially end with the fall criminal prison confinement, has caused Lots of problems in 442I am a correctional institution said. We hope will appear to form a punishment newer one good and effective (as proposed) in the draft of the Indonesian Criminal Code at the moment).

History of the development modern law in the implementation justice of the mining started with implementation of a mediation program led by community outside justice known traditional with victim- offender mediation laws that began in the 1990s until the 1970s in Canada. This program at first implemented as one of the alternative punishments for perpetrator crime children, where before punishment was implemented, the perpetrator and victim were allowed to meet To prepare a proposal punishment and things This is one of many things considered by the judge. This program assumes that the perpetrator will benefit from this law min and the victim will also get attention and benefits special For reducing the amount of recidivism among perpetrator children and improve amount child. I am responsible answer giving compensation to the victims. Implementation of this program produces level more satisfaction tall for victims and perpetrators compared to If they follow the judicial process traditional.[35]

Implementation of this program produces level more satisfaction tall for victims and perpetrators compared to If they follow the judicial process traditional. Observers and practitioners who discuss justice are mini ve conclude that until moment This, the victims are Not involved in the judicial process criminal traditional. The victim is only requested to become a witness when required, but The same very Not involved in making decisions. The decision was taken solely by the judge based on questions asked during the legal process. For those who do action said, following its inclusion in the trial only nature passive, the mini is a big role and participation they represented by a lawyer they. In practice victim- perpetrator reconciliation, treatment, and participation are different from justice traditional. Treatment This involves the victims involved directly in the formulation of agreement punishment so that They can determine the results of the decision that will be taken. In the process of reconciliation between the victim and the perpetrator, not only victims become the center, but the perpetrator is also involved directly and can play a role in making decisions that are rated realistic and reasonable reason. The direct way of the justice program la mini ve has developed rapidly (in popularity) throughout the world over time. Point beginning change system justice children in several countries and the basis thoughts given to treatment to perpetrator crime child is reason implementation draft new, namely justice la mini ve. Concept This is in line with conversion all over system data section justice criminal to in a precise process, namely at every level of justice or enforcement existing laws in system justice criminal, can diverted to system mini justice ve. Concept This is relevant For the

[35]Dr. Fajar Ari Sudewo, SH, MH, " *Restorative Justice Approach for children facing each other with the law* ", Bojong: PT. Nasya Expanding Management, 2021, p.44.

transformation of all system data section justice criminal to the right process meaning in every level of justice or la min from la min enforcer the law that includes in system justice criminal can be diverted to the restorative justice process.[36]

Following a number of related principles in the concept of restorative justice contained in the Draft Declaration of Basic Principles on The Use of Restorative Justice Programmers in Criminal Matters:

a. Restorative justice program means some programs that use restorative processes or have Meaning reach restorative results (restorative outcome).
b. A restorative outcome is An agreement reached as a result of the restorative justice process. Examples: restitution, community service, and programs that are intended to repair victims and society and returning victims and /or perpetrators.
c. Restorative process in a matter This is a process in which victims, perpetrators, and society affected by crime participate actively together in making a settlement of the problem of crime and interference by parties third. Examples of restorative mediation, conferencing, and circle processes.
d. Parties in matter This are victims, perpetrators, and other individuals or members people who feel harmed by the crime involved in the restorative justice program.
e. Facilitator in a matter This is party the third one running function facilitate participation participation of victims, perpetrators in the meeting.[37]

INITIATING ARBITRATION BASED ON RESTORATIVE JUSTICE: GENEALOGICAL, HISTORICAL, CONCEPTUAL

Arbitration has been explained statement previously that arbitration from the term " the right to resolve a case peacefully by an arbitrator ". Arbitrage done No only in the court but also can outside court as an alternative solution to disputes between the parties that will be completed in a way peaceful party third. Indeed in a way historical Arbitration in early Greece developed in Roman times ancient and outdated to Europe inside the field of business For alternative settlement disputes in the field of " trade " in Europe usually English and Dutch do agreements. So " Concept: arbitration as alternative settlement dispute trading international or settlement entity business ". This is also regulated in Law No. 39 of 1999 concerning Arbitration and Alternative General Dispute Resolution (Arbitration Law). " dispute resolution outside the court has become an option for business actors to resolve their

[36] Hasuri Hasuri, "Restorative Justice for Child Perpetrators Action Criminal Murder in Islamic Criminal Perspective," *Adjudication : Journal Legal Studies* 2, no. 1 (July 20, 2018): 55–66, https://doi.org/10.30656/ajudikasi.v2i1.575.
[37] *Ibid*, p . 48.

commercial disputes."[38]

Restorative justice has been explained in the statement **(Read)** *"Settlement of cases together outside of court in upholding justice peacefully,"* said Restorative This justice is a new idea in interpreting the word from the historical and transformational conception. With the new idea that is meant "read" in the meaning *" Restorative Justice turns out to be a medium of justice for resolving disputes peacefully outside the courts and can be used to resolve civil cases, not just criminal cases. "* So with that, This idea of new settlement dispute arbitrage based on restorative justice in case civil turns out it's also possible because of as a medium of justice.

This was also discussed from the study data study previously discussed and initiated that restorative justice can also be an alternative or media of justice in settlement disputes outside criminal as in the study written by Febri Nor entitled *" Settlement dispute right create through* restorative *justice"* that say right create is right riches intellectuals who have mark economy, for problem dispute in right create field economy through restorative justice as an alternative medium of justice For finish settlement dispute so own potential as a breakthrough in settlement right create to recovery to victims ' rights and more efficient than to go through effort law other.[39] Second, the study was written Syafri the daily journal entitled *" Approach Justice Restorative in settlement conflict source Power natural between fishermen and miners in Bangka Belitung"* in activity economy source Power nature fishermen and miners each have right activity For access interests. Among both of them happen dispute in exploit source Power nature of each party For determine his rights, then For finish in field economy source Power 444the mini approach in restorative justice frame because give room in a way peace and justice for the parties For dialogue and negotiation, providing empathy of each party For continue activity economy in source Power nature, and more the savings of the parties can participate actively For to finish problems and build more Good in frame restorative justice.[40]

Third, it is written Askarial entitled " *Communication and Interaction* " *Ninik Mamak With Nieces In Division Treasure Heritage of the Lubuk Community Treasurer As Form Implementation of Restorative Justice"* that what happens in families related distribution treasure inheritance that occurs dispute can complete in a way peace with Restorative Justice approach as role negotiation between the parties involved in distribution treasure inheritance For uphold tradition deliberation and

[38] Agung Sujati Winata, "LEGAL UNCERTAINTY IN THE SETTLEMENT OF INTERNATIONAL BUSINESS DISPUTES THROUGH INTERNATIONAL ARBITRATION IN INDONESIA," *IBLAM LAW REVIEW* 3, no. 1 (January 30, 2023): 89–98, https://doi.org/10.52249/ilr.v3i1.120.

[39]Febri Noor Hediati and Orin Gusta Andini, " The Settlement Copyright Disputes Through Restorative Justice," *National Seminar on Law, Social and Economics* 2, no. 1 (March 22, 2023): 40–46.

[40]Syafri Hariansah and Atma Suganda, " The Approach Justice Restorative in Completion Conflict Natural Resources between Fishermen and Miners in Bangka Belitung," tt

consensus distribution treasure inheritance in a way fair or Restorative Justice.[41] Fourth, in the thesis written by Jeremiah entitled *" Analysis To Concept and Practice Restorative Justice in the Community Sentani from Perspective justice Christian Restorative "* study This Draft justice Christian Restorative faces a problem-related case of civil lawsuit divorced by a husband who is considered not enough fair by the wife who feels rights his justice discrimination, then with approach, Christian Restorative Justice complements and strengthens Christian justice. In mam practiced with Correct.[42]

Based on Historical on Regarding restorative justice for initiating restorative justice based on arbitration the question How does restorative justice work in case arbitration? The first method restorative justice works in the same case right riches intellectual or right creation that has marked economy for the injured party and the perpetrator harm with ADR settlement or alternative settlement dispute that is mediation with attending to parties and third parties For to deliberate to the parties to the dispute and decide problem between the parties with approach implementation of restorative justice media or called restorative justice as speed up, efficient, recovery agreement justice victims ' rights as the embodiment of restorative justice. This means the same thing civil approach to restorative justice the method of alternative settlement of the dispute is also the same that is the method of arbitration.[43]

Second, how restorative justice works in settlement conflict source Power natural above, namely Give room dialogue in a way peace, negotiation, mutual empathy, for continue activity source Power nature, participatory in finish case mentioned. So that settlement disputes between the parties can handled together in a way peace and justice. It means the same thing This is with the restorative justice approach then the method The same with uses arbitration as a party third For deciding litigation between the parties.[44] Third, in a settlement dispute distribution of treasure inheritance can be completed in restorative justice, namely attending the disputing parties, and the attended party is the third competent in his field To finish a case with open room dialogue or involving deliberation and negotiation, in division in division equal things This as form restorative justice between the parties in a way peace. It means the same thing in the realm field of civil outside court with a restorative justice approach The method of settlement of the dispute is also the same

[41]Askarial Askarial and Kasmanto Rinaldi, " Communication and Interaction Grandmother and Granddaughter with their Nephews in Distribution Treasure Heritage of the Lubuk Community Treasurer As Form Implementing Restorative Justice," *Medium* 11, no. 01 (June 25, 2023): 158–71, https://doi.org/10.25299/medium.2023.vol11(01).11053.

[42] Yeremia Suebu, " Analysis to Concept and Practice Justice Restorative in Mam on the Sentani Tribe from a Justice Perspective Christian Restorative " (Thesis, SAAT Malang Theological College, 2023), http://repository.seabs.ac.id/handle/123456789/1599.

[43] Hediati and Andini, " Settlement Copyright Disputes Through Restorative Justice."

[44] Hariansah and Suganda, " The Approach Justice Restorative in Completion Conflict Natural Resources between Fishermen and Miners in Bangka Belitung."

For the use of arbitration as a party third For deciding the case in a way peace.[45]

Fourth, the matter in description or lawsuit filed abusive husband his wife, with settlement dispute method Work restorative justice approach or restorative justice mam namely that case fight divorce of the parties For completed in a way peace with fair with The Christian restorative approach teaches For strengthen justice in bickering each other Negotiate Back Before to cut off a divorce and mutual openness in finish problem with Good Because Christian restorative work teaches justice and mutual Love peace. It means the same thing in the realm field of civil outside court with a restorative justice approach then the method of settlement of the dispute is also the same For the use of arbitration as the party third decides the case in a way peace.[46]

CONCLUSION

Based on the statement on can concluded that Arbitration restorative justice is an alternative solution to disputes between the parties in litigation outside court with a party third Deciding and holding an alternative settlement of the dispute that has been agreed upon by the parties. With settlement based on justice, mutual agreed without fissure For reach peace. Restorative justice has been explained in a statement that **(Read)** *"Settlement of cases together outside of court in upholding justice peacefully,"* said Restorative This justice is a new idea in interpreting the word from the historical and transformational conception. With the new idea that is meant "read" in the meaning *" Restorative Justice turns out to be a medium of justice for resolving disputes peacefully outside the courts and can be used to resolve civil cases, not just criminal cases. "* So with that, This idea of new settlement dispute arbitrage based on restorative justice in case civil turns out it's also possible because of as a medium of justice.

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[45] Askarial and Rinaldi, " Communication and Interaction Grandmother and Granddaughter with their Nephews in Distribution Treasure Heritage of the Lubuk Community Treasurer As Form Implementation of Restorative Justice."
[46] Suebu, " Analysis to Concept and Practice Justice Restorative in Mam on the Sentani Tribe from a Justice Perspective Christian Restorative ."

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