

The Meaning of Restorative Justice by Structural Power in The Legal System in Indonesia

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Abstract

Legal enforcement systems globally are frequently situated within a dichotomous debate between retributive justice, which views law as an instrument of punishment, and restorative justice, which regards law as a mechanism for restoring social harmony. Both perspectives contribute significant insights; however, contemporary legal discourse increasingly gravitates toward restorative justice as a model considered more congruent with current societal conditions. Despite this trend, numerous scholars contend that restorative justice remains a utopian construct, whose practical implementation is often unrealistic and prone to generating institutional resistance. In Indonesia, this tension is reflected in the Regulation of the Attorney General of the Republic of Indonesia No. 15 of 2020, the Indonesian National Police Regulation No. 8 of 2021, and the Supreme Court Regulation No. 1 of 2014, each articulating restorative justice through the lens of their respective institutional mandates and gravitating towards administrative issues rather than the essence of law enforcement. This research employs a literature-based and regulatory analysis to examine the implementation of restorative justice in Indonesia. The study concludes that the current application of restorative justice in Indonesia remains misaligned with the fundamental principles of restorative justice as theorized in the broader academic discourse.

I. Introduction

Giving punishment from surface considered as a simple process. There is crime, then scheme proof and then There is sanctions. If someone obey the law, then on the contrary will There is award like a sense of security as well as high social status in the middle public (Azmiati, 2025).

Thinking thus put law in thinking classic from deep carrot and stick thinking functionalism law , is essence from law That Alone as tool For restore and maintain order.

In thought classic law, provided that law executed with method thus, then will arise effect deter or afraid because people are afraid do which error could be result in terrible punishment. Terrible punishment here is laws that inflict pain and humiliation social deepest (Bertholomeus & al, 2024).

In history law from time to time in every civilization, there is various form terrible punishment. This is Once discussed in book classic Political Death Penalty in Indonesia written in anthology format by Daniel Pascoe, Todung Mulya Lubis and several Indonesianist other (Is & SHIMH, 2024)

In the book that, criticism aimed at the concept punishment death that is scare people not to do crime or oppose power (Widodo, 2023). Often Then criminalization process occurs because the boundary between crime and opposition become ash ash (Insani, 2024).

Besides the anthology book Political Death Penalty, there is books written together between Rahmadani, Hilmi and Tiya who are discussing matter similar, three researchers the highlight punishment that can be fall become tool For strengthen oligarchy. In the punishment model retributive, then truth Can monopolized by one party ruler including definition from what is right and wrong, also what is meant with moral or no. Condition This push thinking progressive to law, especially in context objective from giving punishment (Kian, 2023).

Several academics have discussed the meaning of punishment. For example, Antonius Laot Kian states that the imposition of punishment on a convict always has a purpose. Without it, punishment becomes a barbaric process —referring to a famous historical myth depicting a nation that frequently used punishment as a means of demonstrating power (Munajat, 2022).

Punishment can become a cruel process where a person is punished not for the gravity of the crime but for the subjectivity of the authorities. This has the potential to create a cycle of hatred because the nature of power is dynamic and diverts the law from its primary purpose as a tool for maintaining social harmony.

In his book, "Introduction to Indonesian Law," Muhamad Sadi offers a similar view: punishment often becomes a tool for demonstrating power and strength. This ultimately fosters the politics of revenge and influence. Therefore, punishment must be

based on several important values: (1) faithfulness to its function of helping maintain social order, (2) fulfilling a sense of justice and moral obligation, and (3) creating space for returning perpetrators and victims to the proper social order (Neeraj, 2025).

Although the basic concept of the purpose of punishment is increasingly moving towards restorative justice, the fact is that punishment always creates debate in society, especially in cases of extraordinary crimes such as corruption and violence based on racial and religious hatred (AWWALI, 2024).

Debates about the fairness of punishment for criminals have frequently surfaced on social media. When society cannot accept the form of punishment, there are problems with its implementation (Raditya, 2023).

This research was conducted as an effort to address the problem of the concept of restorative justice at the theoretical and practical levels, particularly in the reality that many overlapping legal products exist in Indonesia. This research builds on the research conducted by Muhammad Isoni, which focuses on conceptual implementation, and research by Mirza Sahputra, which identifies the alignment between restorative justice and Satjipto Rahardjo's progressive legal theory. This research is novel as a step forward in assessing the concept of restorative justice from a conceptual vs. practical perspective. In conducting the philosophical analysis, Foucault's Theory of Power Relations is used as a theoretical framework (Schlee, 2022).

2. Research Method

Study arranged For answer how is it implementation restorative justice in Indonesia. The study model used studies study literacy and studies regulations. Primary sources of study This is discussion about draft restorative justice from a number of corner view as well as rule related rules with restorative justice such as Regulation Republic of Indonesia Attorney General's Office No. 15 of 2020, Regulation Indonesian National Police Regulation No. 8 of 2021, Supreme Court Regulation No. 1 of 2014 (Bagenda & al, 2024). Meanwhile source secondary from study This is studies regarding Foucault's Theory of Power Relations and also studies studies related to discussing about restorative justice. For source tertiary research This based on articles and opinions in the mass media print and online (Haugaard, 2022).

3. Results and Discussion

The Concept of Restorative Justice

Discussion about restorative justice begins when criminologist Howard Zehr said term This in his book Changing Lenses: A new Focus for Crimes and Justice discussed in Lots study regarding restorative justice. There is understanding that restorative justice is effort look for road in the middle for the sake of perpetrator and victim (HENDRAWATI, 2024).

Draft road middle This No Once affirmed by Howard Zehr because like title his

book, Howard tries see other related perspectives crime. Howard Zehr actually see thinking look for road middle This Can misunderstood as effort permissive in something crime.

On the other hand, Howard Zehr assesses that problem This should seen in framework relationship. Howard Zehr considers that when happen crime, then There is disturbed relationship. Relationship This also the one who becomes attention from model court system humanity in Africa is known as Ubuntu. Ubuntu, different with system modern justice, is justice based African culture that encourages judicial processes to direction repair relations (Ibrahim, 2024).

In the judicial model restorative justice Howard Zehr, ia see that crime damage order social and harmony among society. When crime happen, trust become damaged. This is including among them arise hatred of certain people, tribes certain and even certain religious beliefs, this all arise consequence existence crime.

Promote retributive justice is considered as A business counterproductive. The main reason is that retributive justice at the level certain is satisfying feeling justice is one of the party just (Jansen & al, 2024).

Retributive justice actually No answer the core problem is existence problem the relationship that occurs Because crime. Crime betray order so that in explanation Johan Galtung 's triangle of conflicts, is necessary business repair.

In Galtung's theory, there are triangle conflict that mentions that conflict caused by several thing. The first, contradiction, in stages this, the perpetrator crime own objective for example express hatred of rich people, believe it that his group oppressed and have more rights Lots from the victim or objective other conflicting goals with his obedient victims rule.

The second one, happened conflict attitude. Created attitude antipathy like for example do bullying, teasing or attitude attitude provocative others. At the stage lastly, it appears behavior that is crime That itself which results in damage something connection (Mirza & Zen, 2020).

In view peace resolution Galtung, then the best step is with method finish reason conflict in a way opposite. First, wrong behavior must be still get punishment. Not as satisfiers of a sense of justice, will but become marker that second split party has get the consequences.

Next, in the step Second, the state must act firm in form form hostility like for example provocation on social media and in the environment open, the state must present For ensure that attitude hostility No develop more far away. From there Actually when the country has take action firm behavior and attitudes provocative, slow contradictory goals disappear (Pan, 2023).

In line with the thoughts of Galtung and Howard Zehr, Ralf Dahrendor and Thomas Malthus also saw crime and conflict in fact is natural human instincts For

endure life and the feelings that arise Because treatment that is not fair. Therefore, the punishment given No may forget root from problem actually. This restorative justice make law over over as end, law is beginning from A change positive.

From within the country, the theory restorative justice in line with thinking Satjipto Rahardjo who directed law as connecting agent change social Where matter That close together with known concept as law progressive. In theory law progressive, law must interpreted in accordance change era to remain relevant with current needs. If not, the law will late in welcome change era (Rahmadani et al., 2025).

Back to the concept Ubuntu, a judicial process For finish issue humanity serious in Rwanda where basically invite the perpetrators genocide For on trial in context law custom, not with give the most severe punishment but as efforts to knot knot conflict, contradiction, attitude and behavior Finally completed and the country of Rwanda can live a brighter future Good (Sahputra, 2022).

Important lessons from matter This is that in the end restorative justice is about repair relationship. Therefore that, evaluation on the concept restorative justice can based on how product existing laws of course effective and efficient For repair connection or No.

Positive Law in Indonesia

Draft restorative justice does not discussed and mentioned in constitution and law law the basis of the Republic of Indonesia. In several article, often the keywords found is justice social justice social in matter This often aligned with equality. However, the concept This equality is also being debated. What is the base equality? If in sect economy equality is considered the widest competition wide and free free, what the difference between Pancasila and liberalism (Sari & Najicha, 2022). If the perpetrator crime Then given punishment in accordance his crime, whether That No more near with draft retributive justice ?

Even though like No own basic, but Actually soul from restorative justice lies in commitment the state constitution which guarantees Humanity. Every Indonesian citizen has the right to be treated humanely, even if they are criminals. Article 28I, paragraphs 4 and 5, states that the state promises to protect the human rights of the Indonesian people. Therefore, perpetrators of crimes do not automatically lose their right to protection as human beings, and this is where restorative justice has its roots for implementation in Indonesia (Siregar, 2024).

These roots do not necessarily open the door to the immediate implementation of restorative justice in Indonesia. Despite its long history, restorative justice lacks a lex superior basis in Indonesia. moment this, no There is rule legislation invitations that are special discuss restorative justice. Rules law the highest one that discusses restorative justice is in the regulations institutions that all No bound For become the law above other rules.

Absence synchronization of regulations related restorative justice triggers question about objective base from Regulation Republic of Indonesia Attorney General's Office No. 15 of 2020, Regulation Indonesian National Police Regulation No. 8 of 2021, Perma No. 1 of 2014. One of the things that became highlight is statement from the Minister of Law and Human Rights 2014-2024, Yasonna Laoly on June 12, 2024 which highlighted condition institution correctional facilities were over capacity by up to 89 percent. At that time Yasonna request that some action criminal completed with more simple and not need involving punishment confinement (G. A. Wicaksono, 2024).

Based on thinking said, can identified that the restorative justice model put forward by Indonesia and version based on reason Why Restorative justice is very different. In the Indonesian model, the decision For promote restorative justice is based on simplifying the work process enforcer law so that institutions enforcer law still operate his obligations with grounded in reality that institution institution This Not yet own good capacity. While that, restorative justice has become the concept being promoted globally and internationally is How restorative justice broken relationship in the middle public (Yusuf & Siregar, 2023).

Based on three applicable law about restorative justice too namely in the Regulations Republic of Indonesia Attorney General's Office No. 15 of 2020, Regulation Indonesian Police Regulation No. 8 of 2021, and Supreme Court Regulation No. 1 of 2014, there are gap Because third rule This No designed each other complete.

Regulation Police 8/2021 is at the level investigation, while That Regulation Indonesian Attorney General's Office No. 15 of 2020 regulates at the level prosecution, and MA Regulation 1/2014 only valid in a way limited just (B. B. C. N. Indonesia, 2016).

From the characteristics chapter the existing article also speaks more Lots leading to a solution simple and non - legal path in accordance with draft restorative justice. In the Regulation Police 8/2021 Article 5, there is a number of condition material before restorative justice is implemented, in rule mentioned, there are condition crimes that can completed past non- legal channels like No cause conflict social and not nature radicalism-separatism and so on. Requirements the can it is said as anomalous requirements.

The nature of crime whatever is always cause conflict social, even crime smallest even though. In research about racism towards Madurese people , attitude racism appear Because actions crimes committed part Madurese people in the diaspora who initially is action thuggery or theft in scale small (theft) iron for example, those whose value is below the minimum wage). Behavior behavior This in fact cause conflict social, even until create stereotypes racism. Various conflict between the growing

ethnicity also began from actions actions criminal small responded — according to Galtung savings— with destructive behavior (C. N. N. Indonesia, 2024).

Racism among Madurese is one example. Several other cases, summarized from various studies, suggest that Lampung residents are associated with muggings and Pati residents with motor vehicle theft. This research shows that, if not properly resolved, victims of crime will also include people from the same ethnicity and religion, for example, or even simply because they come from the same domicile.

The same regulation oversimplifies the problem, specifically in Article 8, which states that electronic transaction crimes can be resolved by deleting the content. In reality, the impact of electronic transaction crimes is far-reaching, and the losses are nearly impossible to eliminate. Personal data breaches, a frequently discussed issue, have resulted in a loss of trust in many online service providers. However, Police Regulation 8/2021 simplifies this (Pramono, 2025).

The simplification of criminal cases is also evident in Article 2(e) of the Republic of Indonesia Prosecutor's Office Regulation No. 15/2020, which promotes restorative justice as a simple, swift, and lenient resolution method. This explanation equates to viewing the law as merely a procedure rather than an integral instrument for restoring societal functions disrupted by crime.

Article 5 stipulates that the considerations used are losses under 2,500,000 Rupiah and that the defendant/suspect has only been accused of committing the crime once. This thinking positions crime as something to be tolerated, and the value of the loss is measured solely by the amount of money involved. This assumption has been criticized in various contexts. First, losses are not only about the nominal cost but also the stereotypes that arise from a crime, such as theft of iron by certain ethnic groups or acts detrimental to the public interest, such as drunkenness on the street. Second, a second chance does not invalidate the law because the law is fair. Equality before the law is not only about perpetrators who have committed crimes once or twice, but rather a comprehensive and objective process (Telaumbanua & Citra, 2024).

Article 7 offers peacemaking or conflict resolution efforts to the conflicting parties. This point needs to be reexamined, as previously mentioned, as the victims of a crime are not limited to a single individual; they can also encompass entire ethnicities and religions, receiving similar or even exceeding punishments under the law. For example, the ban on boarding houses from Eastern Indonesia, particularly Papua, is due to the crimes of individuals (Battjes & Zane Kaplan, 2023). Under such circumstances, how is the state accountable to the people whose lives are affected by this incident?

Perma no. 1 of 2014 can it is said more progressive rather than regulation regulation related other restorative justice. However matter the No as well as immediately remove fact that in the Perma the nominal loss Still become existing

restorative justice considerations and models allows the barter process in a judicial process. This barter process is often considered as a problem in the future that leads to transactional processes in look for justice.

Ultimately, these three different regulations on restorative justice practice point to the reality that the restorative justice process is not a systematic effort. Second, rather than emphasizing the need for restorative justice as an effort to repair relationships, the process is more of an administrative simplification. Third, the impact of crime is viewed narrowly at the victim and perpetrator levels, even though the impact of crime can be far-reaching (Sulaiman & ul Hosnah, 2022).

Analysis of Foucault's Theory of Power, stating that although these three institutions have independent rules regarding restorative justice, they simultaneously move in the same direction, namely, directing law enforcement to be simple and cost-effective. means see the legal process as troublesome thing or even like commodity economy (González, 2019).

Form commercialization law — not in realm sell buy law — appears in the explanation that cases that have mark losses below the minimum wage can excluded as per the Regulations Attorney General's Office No. 15 of 2020. Not yet nullify article that threatens the sentence is under 5 years. In fact, without care about threat punishment, both above 6 and 7 years even though, it should be all law positive own the same power and must enforced. In principle coercive law, announcement contradictory with principle supremacy law. When supremacy law can announced, then We Actually more near with condition anarchist (Hikmawati, 2017). From error pattern think this is an important lesson is that in a way Indonesia's capacity is still fight For uphold rule.

Thinking as a country of law in Indonesia still confined complexity Because institution law No as well as immediately superior, question reflective like whether If genocide happened in Indonesia then enforcer law as well as immediately Can prevent it be one of reminder that in Indonesia, in general institutions, law enforcement law difficulty For uphold laws made Alone.

In Foucault's view, the deficiency is in the aspect technical This has make things difficult for one's own country For carry out task with as good as good. This is make draft forced restorative justice For compromise with reality.

Phenomenon This increasingly confirm Foucault's thought that power No shut up, he move Because relation power, forming systems and order, labeling something conditions and compromising ideas with reality including when faced is issue about restorative justice (Zarkasi et al., 2022).

Justice restorative borrowed No more from the concept that is actually more near with the term ' way' family ' in finish problem. This is considered finish problem without problem. But is it Correct so ? One of them very interesting study is that one

crime Can So just sub or part from another such crime ever written in opinion Ardiyanto Pramono in his research about klitih. In the research he develop, Ardiyanto Pramono sees that crime like klitih No wise If in question Because the mode. Ardiyanto, comparing with crimes that occur in various place, see that klitih just door opener before other more serious crimes big (Iskandar, 2024).

Perpetrator robbery, violence and murder own history do crime categorized crimes as mischief teenagers. In case this, they viewed as a person who is not Can do crime with pretext doli incapax or reality that child child No Can do crime serious. In fact, the crime child child or other adults often it is said as crime light That is end, can So This precisely beginning from other more serious crimes big.

Next, many crime big, conflict social that swallows many victims started from crimes that are not nominally such big and even categorized as crimes under UMR value. Although heard like problems that don't need enlarged enlarge, impact the real thing Far more damaging and even Lots case genocide started from problems that are considered trivial This.

In the end, another problem looms enforcement the actual law based on a vision of the future Where law become flexible as far as as damper problem temporary with mark measuring condition from outside looks Good Good just temporary actually — according with Johan Galtung's thoughts— exist attitude enmity that is waiting for the momentum to become behavior criminal and each other hurt. Settlement crime stuck in a narrowing very limited objectives. Conditions like this should be addressed immediately before the impact becomes widespread (Simanjuntak, 2022).

In fact, many policies are still short-term in nature. National Police Chief Regulation No. 6 of 2019, which was used to supplement National Police Chief Regulation No. 8 of 2021, states that the goal of resolving minor crimes is process efficiency (Article 14 paragraph 1), and the reference to efficiency is included in various wordings of the regulation. This potential become problems later time because settlement crime considered as part from fulfillment obligation (R. A. Wicaksono & Kusriyah, 2018).

Mentality fulfillment obligations are also reflected in Perma No. 1 of 2014 which is derivative from Invite Invite Child Protection, namely Invite Invite Number 11 of 2012 concerning System Child Criminalization (Cahyaningtyas, 2020). Adoption rule This potential For impact No only in court child child but also other crimes that have dimensions complex problems However simplified (Setiawan & Fakrulloh, 2022)

Knot relation power in the end No off from crime crime small that is not completed in a way proportional where then day give impact difficult destructive repaired.

4. Conclusion

Restorative justice is basically is paradigm recovery relation social as initiated by Howard Zehr and strengthened by the theory Johan Galtung's conflict, as well as in harmony with Ubuntu spirit and thinking law progressive Satjipto Rahardjo. Concept This emphasize that crime No just violation rules, but rather damage connection between humans and between groups that must be restored through a dialogical, inclusive and upholding process dignity every individual. Restorative model This stand opposite with approach retributive only emphasize revenge and fulfillment of a sense of justice unilateral.

In the Indonesian context, although the 1945 Constitution does not in a way explicit mention restorative justice, the principles humanity, justice social, and human rights protection provides runway strong normative. However, the absence of base law same level Constitution make implementation restorative justice in Indonesia is fragile, not uniform, and tends to pragmatic. Third rules — Regulations Prosecutor's Office No. 15/2020, Regulation Police Regulation No. 8/2021, and PERMA No. 1/2014— no only No each other complements, but also contains simplification excessive problem. Terms materials provided precisely show lack of understanding institution enforcer law to characteristic conflicts and crimes that in reality always impact social wide, even when loss looks small or nominal.

Institutionalized approach in third regulations That more Lots positioning restorative justice as instrument administrative For reduce burden institution socialization and effectiveness Work enforcer This differs fundamentally from the global RJ concept, which prioritizes relationship restoration. This simplification results in latent conflicts in society not being addressed substantively, thus opening up opportunities for the development of stereotypes, prejudice, and even the escalation of ethnic and social conflict, as seen in various case studies in Indonesia.

Within the framework of Foucault's theory of power, this situation demonstrates that the concept of restorative justice in Indonesia has been "tamed" by the power structure. It has been absorbed not as a concept of restoration, but as a mechanism of bureaucratic efficiency. Power, through legal institutions, modifies the meaning of restorative justice to merely "a family way" or "a problem-free resolution," even though the end result ignores the multi-layered impact of crime on the wider community. This situation demonstrates that power relations shape how the state interprets and practices justice, so that even ideal concepts must compromise with limited institutional capacity.

Therefore, it can be concluded that the implementation of restorative justice in Indonesia still does not reflect its true essence. Rather than being an instrument for restoring relationships, it often appears as a tool for simplifying cases. The absence of a strong legal basis, inconsistencies between regulations, and the tendency to view crime solely as an administrative matter are major obstacles. To make restorative

justice relevant and effective, legal reform is needed that places the restoration of social relations at the heart of policy, not merely as a procedural option. Without a comprehensive understanding of the nature of conflict and the social impact of crime, restorative justice will become mere jargon devoid of substantive meaning.

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