

Restorative Justice for Perpetrators of Theft Crimes Caused by Poverty

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Abstract

This research aimed to explore how the concept of Restorative Justice is applied in resolving criminal acts of theft caused by poverty. Due to the many weaknesses and problems that arise as a result of positive repressive law enforcement, it is deemed necessary to resolve minor criminal cases through non-penal measures by fulfilling the principles of Restorative Justice to safeguard people's lives and to fulfill a sense of justice, rather than carrying out and resolving criminal cases through the courts, especially for perpetrators of criminal acts of theft caused by poverty. The research method used is Normative Juridical. The research employed a Normative Juridical approach to analyze the concept of Restorative Justice in addressing theft crimes related to poverty. From the research results, it was found that criminal acts of theft which are usually committed because of poverty can be carried out with Restorative Justice efforts considering that the criminal threat under Article 362 of the Criminal Code is no more than five years because this is one of the requirements according to Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and Republic of Indonesia Regulation Number 6 of 2019 concerning Criminal Investigation.

Keywords: Restorative Justice, Theft Crime, Poverty

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A. INTRODUCTION

The State of Indonesia is a state of law, as stated in Article 1 paragraph (3) of the 3rd amendment to the 1945 Constitution, which reads: "The State of Indonesia is a State of Law". This has the consequence that all community and government activities or activities must be based on law, so all actions or actions that conflict or violate the true law must be held accountable in accordance with applicable law in Indonesia.¹

In a social life, of course, one cannot be separated from crime or criminal acts or criminal acts (*strabaar feit*). Therefore the existence of law is very necessary. The law becomes the basis, basis and as a guardian of achieving the goals of living together. Of course the law also functions to prevent or preventive aspects, reduce or minimize and eradicate criminal acts.

One of the efforts to achieve these aims and objectives is by means of law that must be upheld through law enforcement, including the settlement of criminal cases. Moreover, previously described that Indonesia as a rule of law country, of course law enforcement does not ignore the purpose of law. L.J Van Apeldoorn, said that the purpose of law is to regulate the peaceful association of human life. Peace between humans is maintained by law by protecting certain legal interests of humans, freedom, honor, life, property against those who harm them.²

For more than half a century after the independence of the Indonesian people, it turns out that law enforcement practices are still based on retributive and deterrence philosophies, so that they only focus on the quantitative aspect as an output, namely on how many cases are resolved in court and the number of

¹ W R Wood and M Suzuki, "Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice," *Social & Legal Studies*, 2020, doi:10.1177/0964663920911166.

² A. M. Suherman, *Pengantar Perbandingan Sistem Hukum, Civil Law, Common Law, Hukum Islam* (Jakarta: PT. Raja Grafindo Persada, 2004).

criminals imprisoned by law enforcement officials. The success of the criminal justice system is often measured by the conviction and sentencing of perpetrators in court..

In 2009, we were shocked by the news that Grandma Minah was sentenced to 1 month and 15 days in prison with 3 months probation for the charge of stealing 3 cocoa pods that she picked at the place where she worked. The judge who read out the verdict at that time cried. And there are many other minor cases that must be resolved in court, such as the case of watermelon theft committed by brothers Basar Suryanto and Kholil, residents of the Bujel sub-district, Mojoroto District, Kediri, East Java, whose loss was only Rp. 30,000, - both were found guilty by the Kediri District Court and sentenced to 15 days with one (1) month probation. In addition, both of them were also detained and as a result greatly disrupted their family's economy.³

The case mentioned above has led to issues and a negative societal response, with people feeling that the law does not align with their conscience and sense of justice. This seems to justify the adage: "the law is blunt up and sharp down". With so many weaknesses and problems arising from law enforcement that are positively repressive, it is deemed necessary that minor criminal cases be resolved through non-penal efforts by fulfilling the principle of Restorative Justice to maintain order in society and to fulfill a sense of justice.⁴

Research regarding the concept of Restorative Justice or Restorative Justice in criminal law was carried out by Brother Muh. Irfan in his thesis entitled "Application of the Concept of Restorative Justice in Resolving Crimes Committed by Minors in Makasar City", Faculty of Sharia and Law, UIN

³ L Walgrave, "Restorative Justice in Severe Times: Threatened or an Opportunity?," *New Criminal Law Review*, 2019, <https://online.ucpress.edu/nclr/article-abstract/22/4/618/109842>.

⁴ A Lanni, "Community-Based and Restorative-Justice Interventions to Reduce over-Policing," *American Journal of Law and Equality*, 2022, doi:10.1162/ajle_a_00040/112634.

Alauddin Makassar in 2017. In this research, it is explained about the factors that cause children under age of committing a criminal offense in the jurisdiction of the Makassar District Court. This research also explains the rationale for implementing Restorative Justice in resolving criminal acts committed by children in the jurisdiction of the District Court in Makassar City.

The next research is "Implementation of the Restorative Justice Process through the Restorative Conferencing Initiatives Approach in Indonesia" by Melva Noya, Elsa Rina M.T, and Carolina Tuhumury in the journal Legal Sciences Vol.1 No.4 June 2021, Pattimura University Ambon. In this research the author focuses more on the Restorative Conferencing Initiatives approach, which is then divided into two (2) models, namely Family Group Conference and Police-Ied Community Conferencing.

The difference between previous researchers is that this research aims to find out how the concept of Restorative Justice is used in resolving criminal acts of theft caused by poverty. Due to the many weaknesses and problems that arise as a result of positive repressive law enforcement, it is deemed necessary to resolve minor criminal cases through non-penal measures by fulfilling the principles of Restorative Justice to safeguard people's lives and to fulfill a sense of justice, rather than carrying out and resolving criminal cases.⁵

Recently, we have been presented with interesting facts from the Attorney General's Office which stopped the prosecution process based on the principle of Restorative Justice. An example of a case that the author can cite is the termination of the prosecution case carried out by the South Sulawesi High Prosecutor's Office in the case of a motorcycle theft committed by a young man, in which the motorbike was pawned for the purposes of paying for the delivery of his wife, where previously the suspect had been detained for 2 months. And

⁵ D W Van Ness et al., *Restoring Justice: An Introduction to Restorative Justice* (taylorfrancis.com, 2022), doi:10.4324/9781003159773.

there are many more cases whose prosecution has been stopped by the Attorney General on behalf of Restorative Justice.

Taking into account the background above, in this article, the author raises the issue: how to use Restorative Justice in criminal law enforcement in Indonesia, especially for theft crimes caused by poverty.

At this time law enforcement, especially the judicial process, is a very serious concern for the community. Therefore, society, especially victims of crime, always emphasizes the criminal justice system in our country. True justice is not only a matter of trials, court decisions, justice and legal certainty, but more than that it involves efforts to overcome crime and efforts to recover for the victim or the victim's family before a crime that harms them occurs.⁶

The concept of the Restorative Justice approach is an approach that focuses more on conditions for creating justice and balance for the perpetrators of crime and the victims themselves. Settlement of criminal cases by involving victims, perpetrators, families of victims or perpetrators, and other related parties to jointly seek a fair solution by prioritizing restoration to its original state, and not retaliation.

Restorative Justice or often translated as restoration justice, is an approach model that emerged in the 1960s in efforts to resolve criminal cases. Unlike the approach used in the conventional criminal justice system, this approach places more emphasis on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases.⁷

⁶ T Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy* (books.google.com, 2020), https://books.google.com/books?hl=en&lr=%5C&id=9AAJEQAAQBAJ%5C&oi=fnd%5C&pg=PA2%5C&dq=restorative+justice+for+perpetrators+of+theft+crimes+caused+by+poverty%5C&ots=RbgxSm-_vn%5C&sig=gCJffLdkKrKKdFO0Oz_70-g4VMA.

⁷ Y Amdani, "Konsep Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Pencurian Oleh Anak Berbasis Hukum Islam Dan Adat Aceh," *Probation Journal* 13, no. 1 (2016): 64–65.

The concept of restorative justice emerged more than twenty years ago as an alternative to solving juvenile criminal cases. The United Nations (UN) Juvenile Justice Working Group defines restorative justice as a process in which all parties related to a particular crime sit together to solve problems and think about how to deal with the consequences in the future. This process is basically carried out through discretion (policy) and diversion (the transfer from the criminal justice process to outside the formal process to be resolved by deliberation). Settlement through deliberations is actually not a new thing for Indonesia, even customary law in Indonesia does not distinguish between criminal and civil cases, all cases can be resolved through deliberations with the aim of obtaining a balance or restoration of the Criminal Law situation in a repressive way. The existence of a non-penal settlement has received the attention of the legal community.⁸

Prof. Barda Nawawi Arief, a Professor of Criminal Law at Diponegoro University, said that in general, efforts to deal with crime can be divided into 2 (two) namely through the "penal" route (criminal law) and through the "non-penal" route (outside criminal law).⁹

Formal criminal law as a rule that regulates the procedures and procedures for settling a case, both light, medium and serious cases must go through the same criminal process, starting from investigations or investigations, prosecutions, to trials in court.¹⁰ Of course, all of this has gone through long, complicated, and winding processes and procedures and takes a long time and is

⁸ H. S. Bakhtiar, "Pengertian Restorative Justice," 2020, doi:doi:<https://doi.org/10.13140/RG.2.2.22830.82245>.

⁹ B. N. Arif, *Upaya Non-Penal Dalam Kebijakan Penanggulangan Kejahatan* (Semarang, 1991).

¹⁰ E. O. S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014).

expensive, especially if the settlement process reaches cassation at the High Court or cassation at the Supreme Court.

On the other hand, the criminal process which takes so long has had a significant impact on the formation of negative opinions or stigmatization not only towards the perpetrators, but also often targets the families of the perpetrators or those whose lives depend on them, even witnesses and victims of a crime. This negative stigma has started to form since the beginning of handling the case and continues even though the person who committed the crime has finished serving his sentence.¹¹

Various factors that cause the ineffectiveness and inefficiency of the settlement of a criminal case through the criminal justice mechanism, encourage thoughts to find various alternatives and the best solutions in the process of resolving criminal cases which of course must prioritize the fulfillment of the rights of victims, society, and even countries that affected by the crime.¹² So with that Restorative Justice is present as an alternative in the criminal justice system and law enforcement in Indonesia which focuses more on conditions for creating justice and balance for the perpetrators of crimes and the victims themselves. Settlement of criminal cases by involving victims, perpetrators, families of victims or perpetrators, and other related parties to jointly seek a fair solution by prioritizing restoration to its original state, and not retaliation.

¹¹ A Gosita, *Masalah Korban Kejahatan* (Jakarta: Universitas Trisakti, 2009).

¹² M Umbreit, *Crime and Reconciliation: Creative Options for Victims and Offenders* (books.google.com, 2022), <https://books.google.com/books?hl=en%5C&lr=%5C&id=7rSREAAAQBAJ%5C&oi=fnd%5C&pg=PR7%5C&dq=restorative+justice+for+perpetrators+of+theft+crimes+caused+by+poverty%5C&ots=3PEQIKUrL-%5C&sig=jmHJx6ZpnYOsPd-5uqFuyOmKsZY>.

B. RESEARCH METHOD

This study uses a descriptive analytical research methodology, which describes and systematically describes a symptom or situation that is the object of research and then analyzes it. Research Stages and Data Collection Techniques

This research was conducted in two stages, namely;

a. Library Research ; namely studying legal materials or literature, which includes primary legal materials, secondary legal materials or tertiary or non-legal (non-legal) legal materials related to the problem under study. The search for legal material is carried out by reading, viewing, listening, which is then recorded and inventoried as well as data classification.¹³

b. Field Research; namely obtaining primary data by conducting research in the field to obtain facts relating to the object of research and finding problems. or stop the prosecution by conducting structured or unstructured interviews according to the circumstances at the time of the interview. The meaning of the interview is one method of collecting data by means of communication, namely through conversations conducted by two parties, namely the interviewer (interviewer) who asks questions and the interviewee (interviewee) who gives answers to the question.¹⁴

C. RESULT AND DISCUSSION

Restorative Justice Concept

Legal reform which has become a national reform agenda as a whole and as a whole, is an integral part of the spirit and motivation for the birth of the

¹³ Fajar M dan Ahmad Y, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Belajar, 2015).

¹⁴ L. J Moleong, *Metodelogi Penelitian Kualitatif* (Bandung: PT Remaja Bandung : Rosda Karya, 2007).

total reform era in general. The essence of the rule of law is how to achieve the embodiment of the principles of legal reform as a whole with the end of the rule of law. And the essence of the rule of law itself is the principle of upholding the law in all aspects in an upright and proportional manner. Law enforcement that contains a proportional principle is how it is upheld not only the aspect of legal certainty, but also the aspect of the value of justice.¹⁵

Law enforcement itself is attention and action against acts that are against the law, both those that actually happened and those that might happen (Onrecht in Potentie).¹⁶ In order to achieve law enforcement, media and tools are needed, namely the justice system, in this case the "criminal justice system".

The Criminal Justice System (SPP) comes from the words "system" and "criminal justice". understanding of the "system" can be interpreted as a series of a number of elements that are interrelated to achieve certain goals. In Muladi's view, the notion of a system must be seen in context, both as a physical system in the sense of a set of elements that work in an integrated way to achieve a goal and as an abstract system as an orderly arrangement that is dependent on one another.¹⁷ Whereas "criminal justice" is a mechanism for examining criminal cases that aims to convict or acquit someone from criminal charges. In relation to criminal justice, in its implementation it is carried out within the criminal justice system

According to Prof. Muladi, a professor of criminal law at one of the well-known campuses in Indonesia, the criminal justice system is a judicial network that uses material criminal law, formal criminal law and criminal law enforcement. However, according to him, this institution must be seen in a social

¹⁵ S. Sunaryo, *Kapita Selekta Sistem Peradilan Pidana (Cet. 2 Ed.)* (Malang: Malang Press, 2004).

¹⁶ Sudarto, *Hukum Pidana 1* (Semarang: Yayasan Sudarto, 2009).

¹⁷ R Marbun, *Sistem Peradilan Pidana Indonesia* (Malang: Setara Press, 2015).

context. Excessive behavior if based only for the sake of legal certainty will bring disaster in the form of injustice.

If we relate this to the case described above, in 2009 we were shocked by the news that Grandma Minah was sentenced to 1 month and 15 days in prison with 3 months probation for the charge of stealing 3 cocoa pods that she picked at the place where she worked. The judge who read out the verdict at that time cried. And there are many other cases with minor criminal cases that must be resolved in court, such as the watermelon theft case committed by brothers Basar Suryanto and Kholil, residents of the Bujel sub-district, Mojoroto District, Kediri, East Java, whose loss was only Rp. 30,000, - both were found guilty by the Kediri District Court and sentenced to 15 days with one (1) month probation. In addition, both of them were also detained and as a result greatly disrupted their family's economy. Of course, by imposing a criminal penalty on the suspect, people will see that this is a form of injustice for people who are economically disadvantaged. This comparison can be seen when comparing it to corruptors who have embezzled large sums of money. people who are much larger in number are only lightly punished, even in prison corruptors get luxury facilities, such as special rooms, cellphones, laptops and so on.¹⁸

Therefore, Restorative Justice efforts are considered an alternative for resolving criminal cases outside the court system. Where in addition to the aspect of legal certainty, the values of justice should be fulfilled in the settlement of criminal cases, especially in cases of theft where the total loss of the victim is not large and also the perpetrators in carrying out the theft are forced due to poverty.

¹⁸ R Peacock, "Restorative Justice and Access to Justice: Critical Reflections of the Global North-South Divide," *The International Journal of Restorative Justice*, 2023, https://www.academia.edu/download/106161358/TIJRJ_2023_06_02_DEF_Peacock.pdf.

According to Tony Marshall: "Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future".

From this definition, the settlement of a crime using Restorative Justice prioritizes the occurrence of an agreement between the litigants, with the interests of the future.

According to Kevin I. Minor and J.T. Morrison (1996), Restorative justice can be defined as a response to criminal behavior that seeks to restore the harm suffered by the victim of a crime and facilitate peace and tranquility between the opposing parties.¹⁹

Although experts put forward definitions of restorative justice with various formulations, these various definitions actually have the same substance, namely the restorative justice approach is an effort to settle criminal cases peacefully by empowering interested parties to resolve these cases. Peaceful resolution can be achieved if the perpetrator realizes his mistake and is voluntarily willing to provide compensation to the victim in order to obtain 'forgiveness' from the victim.²⁰

Restorative justice essentially offers answers to important issues in the settlement of criminal cases, namely as follows:

1. Criticism of the criminal justice system which does not provide opportunities, especially for victims.

¹⁹ S Linder, *PROPORTIONALITY AND MAKING THINGS RIGHT: AN INTEGRATIVE APPROACH TO RETRIBUTIVE AND RESTORATIVE JUSTICE* (scholarsbank.uoregon.edu, 2022), <https://scholarsbank.uoregon.edu/xmlui/handle/1794/27934>.

²⁰ C Fosse, "Restorative Justice: The Politics and Philosophy of an Alternative Approach to Criminal Justice," *Xavier Journal of Politics*, 2020, https://www.xavier.edu/xjop/documents/vol9_2018/xjop-vol-ix-fosse.pdf.

2. Eliminate conflict, especially between perpetrators and victims and society.
3. Feelings of helplessness experienced as a result of a crime must be overcome in order to achieve reparations.

To overcome this problem, the programs contained in restorative justice must at least include:

1. Institutionalize a peaceful approach in resolving criminal cases.
2. Build partnerships to reaffirm shared responsibility to respond constructively to crimes that occur in society.
3. Strive for a balanced approach to the needs of victims, perpetrators and society through a process that maintains security and dignity for all parties.²¹

Justice in the Legal System

Justice in the legal system is the principle that underlies every legal action taken, including in the context of restorative justice which aims to restore harmony that is disturbed due to violations of the law. It refers to the necessity to ensure that every individual, regardless of their background, is treated fairly and gets equal treatment in the eyes of a fair and neutral law. In the context of restorative justice, the legal system must be able to provide mechanisms that not only remedy the harm caused by the violation of the law, but also promote reconciliation, growth, and positive transformation for all individuals involved.²²

As the times evolve, it is important for the legal system to continue to adapt to social, cultural, and technological changes. In the context of restorative justice, the legal system must be able to provide an understanding of the causes

²¹ Waluyo, *Penyelesaian Perkara Pidana (Penerapan Keadilan Restoratif Dan Transformatif)* (Jakarta: Sinar Grafika, 2020).

²² J. Shackford-Bradley, "Legal Violence and Restorative Justice," *Hastings J. Gender & Law*, 2023, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/haswo34%5C§ion=17.

of violations of the law, as well as provide the necessary protection for victims. The main goal of restorative justice is to rebuild the damaged relationship between the perpetrator, the victim, and society as a whole. This process involves dialogue, identification of the impact of the violation, and commitment to repair the damage caused by the violation.

Overall, the principle of justice in the legal system is a fundamental foundation in the application of restorative justice. A fair and responsive legal system is an important step in building a harmonious and dignified society. By ensuring that each individual is treated fairly and sustainably, restorative justice can play a powerful role in achieving true justice in our society.

Definition of Restorative Justice

Restorative justice is a very important alternative approach in the legal system that aims to recover the negative impact caused by crime through the active involvement of all parties involved, including the perpetrators, victims, and the wider community.²³ In repairing damaged relationships as a result of criminal acts, this approach emphasizes the importance of reconciliation rather than punitive punishment alone. Restorative justice sees crime as a violation of relationships between individuals and communities, not just a violation of the law.

Through the application of this method, there is an open and honest dialogue between the perpetrator and the victim, which aims to achieve deep

²³ K R Lang, "Utilization of Restorative Justice in Violent Offenses,," *Internet Journal of Restorative Justice (IJRJ)*, 2020, <https://search.ebscohost.com/login.aspx?direct=true%5C&profile=ehost%5C&scope=site%5C&authtype=crawler%5C&jrnl=20562985%5C&AN=147242054%5C&h=NQzBg1%2FGFV128N1NLuggCbNzvy7y49BldnWE1p5AKsGpB1z2hTxPwv5qalWVH%2BGhVRgIQi8zIUL%2B7HSarn0%2BPQ%3D%3D%5C&cr=c>.

reconciliation and bring significant meaning to the improvement process.²⁴ In this dialogue, the perpetrator will feel his or her personal responsibility and show a sincere sense of remorse, while the victim will feel the opportunity to express the negative impact they have experienced and make a restorative that aims to obtain more holistic justice. Through this inclusive approach, communities are also given the opportunity to participate in the restoration process, thus making an important contribution to realizing more balanced and sustainable justice.

Definition of Restorative Justice

Restorative justice has a growing definition, but at its core is an approach that prioritizes the restoration of relationships damaged by crime.²⁵ The definition of restorative justice involves the inclusion, active involvement, and participation of all affected parties, with a focus on the needs of the victim and the responsibility of the perpetrator. In practice, restorative justice allows for a mediation process, face-to-face meetings between victims and perpetrators, as well as open discussions about the impact of crime. The main goal is to reach a fair agreement and recover the damage caused by the crime.

Restorative justice does not only focus on punishment, but also prioritizes rehabilitation and reconciliation efforts. In the context of restorative justice, victims have a stronger role in the recovery process, where they are given the opportunity to share their experiences, put forward their needs, and contribute to determining the appropriate consequences for the perpetrator.²⁶ Meanwhile, the perpetrators are also expected to be aware of their actions,

²⁴ N Schimmel and N Schimmel, "Defining Reparative Justice and Global Examples of Its Implementation," ... *and Fulfilling the Right to Reparative Justice ...*, 2020, doi:10.1007/978-3-030-50270-6_2.

²⁵ G A Abubakar et al., "Necessity of a Multifaceted Approach in Analyzing Growth of Impervious Surfaces," 2020, doi:10.3390/su12104109.

²⁶ V N Jones and C G McElderry, "Social Work and Reparations: Applying a Restorative Justice Approach," *Journal of Ethnic & Cultural Diversity in ...*, 2023, doi:10.1080/15313204.2021.1949774.

accept responsibility for their actions, and commit to change in order to repair damaged relationships.

As an approach that continues to evolve and is used in various countries, restorative justice offers a more holistic and humane alternative to dealing with crime. Through an approach that engages all affected parties, restorative justice bridges the gap between punishment and rehabilitation, and allows for a more meaningful and productive process for all involved.

Principles of Restorative Justice

The very important and relevant principles of restorative justice include several important aspects that cannot be overlooked, including the principles of active participation which are very important in this context. This principle strongly emphasizes the importance of active participation of all parties involved in the ongoing restorative process, be it the perpetrators, victims, or the surrounding communities affected by the act. In increasing this active participation, every individual involved has an equal and fair opportunity to contribute to this process of true justice building. This positively impacts the final outcome, making it more purposeful, satisfying, and positively impactful for all parties involved and involved in the situation.²⁷

In this context, it should be noted that the active participation in question involves an open and inclusive dialogue, in which all voices and perspectives are valued and given space. Digging deeper, active participation also includes each individual's responsibility to listen with empathy and respect the point of view of others throughout the restorative process.²⁸ In this case, active participation also includes the ability to share ideas, suggestions, and experiences

²⁷ L. Bazelon and B A Green, "Victims' Rights from a Restorative Perspective," *Ohio St. J. Crim. L.*, 2019, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/osjcl17%5C§ion=19.

²⁸ W M Timpson, "Restorative Justice: Principles, Practices, and Possibilities," *Global Mental Health Ethics*, 2021, doi:10.1007/978-3-030-66296-7_20.

that can help improve the situation and come up with better solutions. By involving active participation in the restorative process, we create an inclusive and democratic environment, where each individual feels respected and has an important role. The principles of restorative justice also emphasize the importance of restoration and reconciliation after adverse actions. Therefore, active participation also serves as a tool to rebuild damaged relationships and strengthen social bonds between all parties involved. In this process, active participation also contributes to the formation of a more harmonious and mutually supportive community.

Looking at all the advantages associated with active participation, there is no doubt that this principle should be the main cornerstone in any restorative process that seeks to achieve true justice. In implementing active participation, it is important to ensure that each individual feels safe and supported to share their thoughts and experiences.²⁹ In addition, the party responsible for the restorative process must also provide the necessary support and facilities so that active participation can be fully realized. By strengthening active participation in the restorative process, we open the door to real and sustainable change, as each individual can contribute to creating true justice and building a better society. Therefore, it is clear that active participation is not only important, but also essential to achieving a more equitable, sustainable, and meaningful end goal for everyone involved in the restorative process.

Principle of active participation

The principle of active participation is a very important cornerstone of restorative justice, which emphasizes the active role of all parties involved. This is very important because it requires perpetrators, victims, and communities to

²⁹ G Pavlich, "Rethinking Accusation: Comparing Two Formative Restorative Justice Promises," *Comparative Restorative Justice*, 2021, doi:10.1007/978-3-030-74874-6_2.

be really directly involved in finding solutions and carrying out a better recovery process.³⁰

In this context, active participation is not only a demand, but also provides great hope. This participation creates a very meaningful opportunity for each individual involved so that they can listen, understand, and respond to the needs, desires, and aspirations of others. Through active participation, the problem-solving and decision-making process becomes more fair and inclusive.

In carrying out active participation, it is important for each party to respect and consider the opinions and viewpoints of the other party. Thus, the decision taken is not arbitrary, but collaborative and represents the interests of all parties involved in the case. In this process, each individual will have an equally important role, ensuring that restorative justice can be better achieved.

Active participation also has the potential to strengthen the relationship between actors, victims, and communities. By involving all relevant parties directly, it paves the way for a fruitful dialogue and allows for a deeper understanding of each situation and context involved. Therefore, active participation not only drives better solutions, but also builds stronger trust and strengthens relationships between individuals.³¹

In conclusion, active participation is a basic principle that cannot be ignored in restorative justice. By actively participating, each individual has the opportunity to contribute directly to finding solutions and recovering from the situation that occurred. The decisions taken will also be the result of collaboration and represent the interests of all parties involved. The more parties

³⁰ R Rodogno, "Shame and Guilt in Restorative Justice," *Shame Punishment*, 2019, doi:10.4324/9781315243290-7.

³¹ R B Ruback, *Economic Sanctions in Criminal Justice: A Multimethod Examination of Their Imposition, Payment, Effect, and Fairness* (books.google.com, 2021), https://books.google.com/books?hl=en%5C&lr=%5C&id=EARREAAAQBAJ%5C&oi=fnd%5C&pg=PP1%5C&dq=restorative+justice+for+perpetrators+of+theft+crimes+caused+by+poverty%5C&ots=j6Lrx9ufG%5C&sig=Eo1ofgfOS1o7RP3ebuI_CC5fIX0.

are actively involved, the more likely it is that restorative justice can be better achieved.

Advantages and Challenges of Using Restorative Justice

The use of restorative justice has several very significant advantages, including allowing victims and perpetrators to actively participate in the conflict resolution process, increasing a deeper understanding of the consequences arising from their actions, strengthening empathy and a sense of responsibility, and effectively reducing the risk of relapse in the wider society. However, it is undeniable that there are various challenges that must be faced in the implementation of this restorative justice.³²

One of them is the need for specialized skills in conflict mediation that can ensure a fair and balanced settlement for all parties involved. In addition, the decision-making process in restorative justice will take longer because it involves various considerations and deep recovery in the perpetrator. And of course, the success of the implementation of restorative justice also depends on good cooperation between various related parties in the implementation, such as government agencies, law enforcement agencies, and the community as a whole. In an effort to achieve the ultimate goal of restorative justice, it is important for all of us to understand that no one approach is perfect and that all parties must commit to continuing to adapt and address any challenges that may arise. Thus, restorative justice will continue to develop and become a strong foundation in the development of a more just and harmonious society.

However, it should be remembered that restorative justice is not just a legal settlement of conflicts. In reality, this concept carries very important social aspects. This can be seen in the process that involves the perpetrators and

³² K April et al., "Conceptualizing Juvenile Justice Reform: Integrating the Public Health, Social Ecological, and Restorative Justice Models," *Children and Youth ...*, 2023, <https://www.sciencedirect.com/science/article/pii/S0190740923000828>.

victims directly, where they are given the opportunity to communicate and listen to each other. In the context of restorative justice, it is important for us to develop a culture of mutual understanding and tolerance.³³ Through dialogue and understanding, perpetrators and victims can reach mutually beneficial agreements and can produce more sustainable justice in our society. Restorative justice also provides an opportunity for the perpetrator to take responsibility for his actions and take the necessary steps to improve himself and obtain appropriate rehabilitation. In this case, the role of law enforcement agencies and government agencies is very important in supporting this restorative justice process.

However, along with the advantages it has, restorative justice is also faced with various complex challenges.³⁴ One of them is the issue of justice and inequality in conflict resolution. In some cases, actors who have access to resources are more likely to find a more favorable conflict resolution. Therefore, it is important that we improve the accessibility of restorative justice for all parties involved, regardless of their background and social position. In addition, the process of implementing restorative justice also requires strong support and cooperation from all related parties. Government agencies, law enforcement agencies, and the community must actively work together to create an environment conducive to the implementation of restorative justice.

Along with the times, restorative justice must also adapt to social and technological changes. In the digital era, the dissemination of information can take place quickly and effectively. Therefore, it is important for us to use technology wisely in supporting this restorative justice process. Social media, for

³³ A Dore, A Hübschle, and M Batley, "Towards Environmental Restorative Justice in South Africa: How to Understand and Address Wildlife Offences," ... of *Environmental Restorative Justice*, 2022, doi:10.1007/978-3-031-04223-2_14.

³⁴ E M Trpevska and G Lažetić, "Restorative vs Punitive Approach. Eight Fundamental Principles of Juvenile Delinquency Prevention," *Human Rights Protection and Ius Puniendi* ..., 2023, doi:10.1007/978-3-031-41253-0_5.

example, can be used to expand reach and raise awareness about restorative justice to the wider community.³⁵ However, we must also consider the risks that may arise, such as the dissemination of inaccurate information or closed access for some people to technology. In this case, regulation and education are key in ensuring that technology is used in an appropriate and responsible manner.

Overall, restorative justice is an important approach in resolving conflicts and building a more just and harmonious society. However, the success of the implementation of restorative justice is highly dependent on the support and active participation of various parties. This process is not easy and requires time and strong commitment. But with joint efforts and collective awareness, we can achieve the desired goal. Let us continue to adapt, improve understanding, and work together to strengthen restorative justice in our society.

Advantages of Restorative Justice

One of the main advantages of using restorative justice is the shorter process length compared to conventional legal processes, thus providing faster, more efficient, and timely solutions.³⁶ In addition, restorative justice also provides opportunities for victims to directly interact with perpetrators and contribute to determining the desired restoration efforts, thereby increasing victims' feelings of justice, empathy, and satisfaction in the conflict resolution process.

In addition, restorative justice is also able to reduce the costs incurred by the legal system in resolving certain cases, thereby providing significant financial efficiency and ensuring adequate resources for more complex legal issues. With

³⁵ A Faisol and A Mashdurohatur, "Law Enforcement against the Criminal Action of Little Theft," *Law Development Journal*, 2021, <https://jurnal.unissula.ac.id/index.php/ldj/article/view/15352>.

³⁶ M S E Wangga et al., "Periscope of Ideas Selective Criteria for the Application of Restorative Justice in Corruption Crimes," ... *of Indonesian Legal ...*, 2024, <https://journal.unnes.ac.id/journals/jils/article/view/4530>.

this approach, restorative justice not only provides better solutions individually, but also provides broader social benefits by creating a safer, peaceful, and equitable environment.³⁷

Therefore, the use of restorative justice can bring about positive changes in the legal system and society as a whole. The successful implementation of restorative justice depends on the application of its principles which involve the active participation of all relevant parties. In this context, it is important to ensure that stakeholders understand and adhere to the values of restorative justice, such as reparative justice, voluntary participation, and resolutions that benefit all parties involved.

In addition, efforts need to be made to increase public awareness of restorative justice and its benefits in resolving conflicts. Socialization and education activities will help eliminate stigma and change the wrong view of restorative justice. In the long run, this will lead to wider adoption of this approach and its integration into the larger legal system.³⁸

In conclusion, restorative justice has many advantages, ranging from shorter process lengths to reduced costs and the creation of a safer and fairer environment. With proper implementation and efforts to raise awareness, restorative justice has the potential to bring about positive change in the legal system and society as a whole.

Legal Rules for the Use of Restorative Justice

Settlement of cases using a restorative justice approach first appeared at the UN Congress on Crime Prevention and The Treatment of Offenders in 1990 and 1995. This congress discussed and discussed the development of crime, its

³⁷ J Speed, "Restorative Justice: Emergence, Institutionalization, and Critiques," *Peace, Justice and Strong Institutions*, 2020, doi:10.1007/978-3-319-71066-2_54-1.

³⁸ M A Walters, "Punish or Repair? Where Is the 'Social Justice' in Hate Crime Laws?," *Criminalising Hate: Law as Social Justice Liberalism*, 2022, doi:10.1007/978-3-031-08125-5_7.

prevention and handling, as well as various related topics. In 1995 also in a number of congress sessions held in Cairo, discussing in depth and depth technical matters related to the use of a restorative justice approach. On July 24, 2002, ESC (UN) adopted Resolution 2002/12 concerning Basic Principles of Using Restorative Justice Programmers in Criminal Cases which contains several basic principles for using the Restorative Justice approach and also some regarding mediation.³⁹

Although the international community through the UN only discussed it in 1990 and 1995, historically the paradigm of restorative justice has been practiced in Indonesian society. The philosophical basis for implementing restorative justice can be seen in the precepts contained in Pancasila as the core philosophy of the Indonesian nation. As the core philosophy of the Indonesian nation, Pancasila is a source of value for the existence of a legal system in Indonesia. In the fourth precept "Populist Led by Wisdom of Wisdom in Deliberation/Representation" contains a deliberative philosophy which means prioritizing deliberation in making decisions for the common good. The 4th precept teaches us to make choices through deliberation. Make decisions for the common good with a family spirit.⁴⁰

The deliberative philosophy contains the following five principles:

1. Conferencing (meetings to listen to each other and express wishes);
2. Searching for solutions (finding solutions or common ground for the problem at hand);
3. Reconciliation (reconciliation with each other's responsibilities);
4. Repair (repair all consequences that arise);

³⁹ M Lokanan, "Restorative Justice: Application to Corporate Fraud," *New Approaches to CSR, Sustainability and ...*, 2022, doi:10.1007/978-981-16-9499-8_8.

⁴⁰ S Kirkwood, "A Practice Framework for Restorative Justice," *Aggression and Violent Behavior*, 2022, <https://www.sciencedirect.com/science/article/pii/S1359178921001427>.

5. Circle (mutual support).

These principles are identical to the principles needed by restorative justice, so that the 4th precept can be used as a philosophical basis for the application of restorative justice in the Indonesian criminal law system.

There are several legal bases that can be used as a basis for the use of restorative justice, including Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, which states "judges and judges of the constitution are obliged to explore, follow, and understand legal values and a sense of justice that lives in society". This article regulates the finding of law (*recht finding*) by judges, meaning that in making decisions, judges are not only based on written laws and regulations, but also use the values of law and justice that live in society.⁴¹

Then Article 8 paragraph (4) of Law no. 16 of 2004 concerning the Prosecutor's Office, which states that in carrying out its duties and authorities, the prosecutor's office always acts according to law by heeding religious norms, decency and morality, and is obliged to explore and uphold human values that live in society, and always maintain honor and professional dignity. This article is the basis for judges to be able to make legal discoveries. But in reality, in carrying out their duties, the prosecutor's duty is to enforce the law, not to break the law. This is an obstacle in realizing Article 8 paragraph (4).

To provide a legal framework for the Attorney General's Office in implementing Restorative Justice,⁴² the Republic of Indonesia Prosecutor's Office Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice was issued. This is regulated in Chapter III regarding

⁴¹ O Dana and S Crawford, "Restorative Prosecution: Rethinking Responses to Violence," *NYL Sch. L. Rev.*, 2019, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nyls64%5C§ion=7.

⁴² G Pavlich, "Commandment, Commencement and Restorative Justice," *The Howard Journal of Crime and Justice*, 2022, doi:10.1111/hojo.12462.

Closure of cases in the public interest contained in article 3 paragraph (1) which reads: "The public prosecutor has the authority to close cases for the sake of law", and article 3 paragraph (2): "closure of cases for the sake of law can carried out in the following cases:

- a) The accused died
- b) Expiration of criminal prosecution
- c) There has been a court decision that has permanent legal force against someone regarding the same case or what is known as *nebis in idem*
- d) Complaints for criminal offenses complaints are withdrawn or withdrawn
- e) There has been a settlement of cases out of court.

Then Article 15 paragraph (2) letter k Law no. 2 of 2002 concerning the Indonesian National Police (Polri) states that in order to carry out their duties, the police have the authority to carry out other powers that fall within the scope of their duties. Then in Article 18 paragraph (1) it is stated "in the public interest, officials of the Indonesian National Police in carrying out their duties and authorities can act according to their own interests". This provides the legal basis for the police to exercise their discretionary rights, including the option to mediate criminal cases. Mediation in cases deemed to be in the public interest must be conducted using a restorative justice approach.⁴³ This was later corroborated by the Regulation of the Head of the Indonesian National Police (Perkap) Number 6 of 2019 concerning Investigation of Criminal Acts which contains Restorative Justice as stated in article 1 which reads: "Restorative Justice is the settlement of criminal cases involving perpetrators, victims and/or their families and related parties, with the aim of achieving justice for all parties".

⁴³ K T McCrea et al., "Understanding Violence and Developing Resilience with African American Youth in High-Poverty, High-Crime Communities," *Children and Youth ...*, 2019, <https://www.sciencedirect.com/science/article/pii/S0190740918306157>.

In the investigation process, restorative justice can be carried out as stated in article 12 of the Regulation of the Head of the Indonesian National Police (Perkap) Number 6 of 2019 concerning Investigation of Criminal Acts if it fulfills both material requirements, such as not causing public unrest, and formal requirements, such as obtaining a letter of request for peace.

Material requirements include:

- a) Does not cause public unrest or there is no rejection from the community
- b) Does not cause social conflict
- c) There is a statement from all parties involved not to object, and to waive their right to sue before the law
- d) There is a limiting principle on the perpetrator (the level of guilt of the perpetrator is relatively not serious or the error is intentional and the perpetrator is not a recidivism) and on criminal acts in the process (investigations and investigations before the SPDP is sent to the Public Prosecutor).

While the Formil Requirements include:

- a) A letter of request for peace between the two parties, whether the reporter or the reported party
- b) Statement of Conciliation (akte dading) and settlement of disputes between the litigants (the complainant, and/or the reporting family, the reported and/or the reported family and representatives of community leaders) are known by the Investigator's superiors
- c) minutes of additional examination of the litigants after the settlement of the case through restorative justice
- d) recommendations for the title of a special case that approves the completion of restorative justice; And

e) the perpetrator has no objection and is carried out voluntarily on responsibility and compensation.

This was later strengthened by the issuance of Republic of Indonesia National Police Regulation Number 2021 concerning the Handling of Crimes Based on Restorative Justice.

In solving a crime, within a philosophical framework, the presence of a restorative justice approach in criminal law is not intended to abolish criminal law or combine criminal law and civil law, because the restorative justice approach prioritizes mediation between victims and perpetrators.⁴⁴

The restorative justice approach actually returns the function of criminal law to its original path, namely the function of *ultimum remedium*, the last weapon when other legal remedies can no longer be used in dealing with a crime in society. In a practical setting, the handling and settlement of criminal cases using a restorative justice approach offers alternative answers to a number of problems faced in the criminal justice system, for example, the judicial administration process is difficult, long and expensive, the accumulation of cases or court decisions that do not accommodate the interests of the victim.⁴⁵

The restorative approach in criminal law has the power to restore the relationship between the perpetrator and the victim. It also has the power to prevent further hostilities between the parties and promote voluntary reconciliation between perpetrators and victims. Another strength is encouraging the participation of other community members, such as family members or

⁴⁴ J Hobson et al., “‘Spaces’ for Restorative Development: International Case Studies on Restorative Services,” *Contemporary Justice ...*, 2022, doi:10.1080/10282580.2022.2044802.

⁴⁵ H. S Flora, “Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Di Indonesia,” *Jurnal Law Pro Justitia* 2 (2017): 41–60.

neighbors and emphasizing the importance of the role of victims in the process towards justice.⁴⁶

The restorative approach in handling criminal acts also aims to prevent perpetrators from being sentencing, which is sometimes felt to be unable to reflect the values of justice. And in practice, restorative justice can be carried out through:

1. Mediation between the victim and the perpetrator.
2. Family group meeting.
3. Community service that is remedial for both victims and perpetrators.

The process of a restorative justice approach is carried out with a policy so that the diversion of the process of solving criminal acts is realized outside the criminal justice process and is resolved through a process of deliberation. Settlement through deliberation is actually not a new thing for Indonesia, even customary law in Indonesia does not distinguish between the settlement of criminal and civil cases, all cases can be resolved by deliberation with the aim of getting a balance or restoring the situation. (Siregar)⁴⁷

D. CONCLUSION

The author concludes that the restorative justice approach in the criminal system in Indonesia aims to achieve the goals of punishment in Indonesia in terms of restoring the situation to how it was before the crime occurred and what is no less important is how to prevent the perpetrators of crime, because when someone violates the law then things will change. So therein lies the role of law to protect the rights of every crime victim. Through restorative justice the goal of punishment will actually be achieved, because the

⁴⁶ E Moore, "Trauma and Restorative Justice," *Trauma-Informed Forensic Practice*, 2022, doi:10.4324/9781003120766-29.

⁴⁷ V. A. (n.d.) Siregar, *Perspektif Restorative Justice Dalam Perlindungan Anak Sebagai Sistem Peradilan Pidana Di Indonesia*, n.d.

restorative justice approach places perpetrators, victims and the community as 'stakeholders' who work together and immediately try to find a solution that is considered fair for all parties, so that with such a model it will give rise to direct responsibility from the perpetrator to the victim, because they will be faced directly with the consequences of their actions.

In contrast, the imprisonment approach treats victims and perpetrators as subjects of examination, with perpetrators easily evading responsibility by following state guidance during their prison term. In contrast, the restorative justice approach focuses on holding perpetrators directly accountable through discussions between the perpetrator and the victim. Because violations of criminal law are understood as conflicts between individuals that cause harm to victims, society, and the perpetrators themselves. Among the three groups, the interests of victims of crime are the main part, because the main crime is violating the rights of victims. For example, a person whose bicycle or motorbike has been stolen will be filled with a greater sense of justice if the thief returns the stolen item to the victim or provides compensation equivalent to the item.

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