



TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 79/2026
A New Decade for Social Changes



PLUS
COMMUNICATION P



International
Communication & PR

Construction of *restorative justice* regulations in the integrated justice system

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Abstract. The Republic of Indonesia is a constitutional state (*rechtsstaat*), which means that all attitudes, behaviors, and actions, whether carried out by the authorities or by its citizens, must be based on the law. Indonesia as a constitutional state is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Basically, a constitutional state aims primarily to provide legal protection for the people. Philipus M Hadjon states that legal protection for the people against government actions is based on two principles, namely the principle of human rights and the principle of the constitutional state. This research uses a normative juridical research type. The construction of *restorative justice* arrangements in the integrated criminal justice system is necessary because all criminal cases resolved under the Criminal Code and Criminal Procedure Code must be resolved through the integrated criminal justice system via law enforcement officials so that dispute resolutions involving the community, which are recognized and developed within the community, do not receive facilities under the old Criminal Code and Criminal Procedure Code, even though the application of restorative justice provisions in the Criminal Code has been included in the provisions of Article 54 of Law Number 1 of 2023 concerning the Criminal Code. The application of restorative justice provisions in the Criminal Code is stipulated in Article 54 of Law Number 1 of 2023 concerning the Criminal Code Criminal Law Code, the provisions still have weaknesses in that there is no specific law regulating the restorative justice mechanism, so that the resolution of cases through this approach does not yet have a strong legal basis, which can lead to legal uncertainty.

Keywords. construction; justice; restorative

Introduction

The Republic of Indonesia is a constitutional state (*rechtsstaat*), which means that all attitudes, behaviors, and actions, whether carried out by the authorities or by its citizens, must be based on the law. Indonesia as a constitutional state is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Basically, a constitutional state aims primarily to provide legal protection for the people. Philipus M Hadjon states that legal protection for the people against government actions is based on two principles, namely the principle of human rights and the principle of the constitutional state.

In the philosophy of Pancasila as a theoretical foundation, Pancasila has the knowledge to explain how the principles should actually be implemented. The philosophy of Pancasila as a science has knowledge consisting of the aspects of *epistemology, ontology, and axiology*.

These three aspects can be used to examine law in Indonesia. Laws born from the values of Pancasila are laws that implement the values contained in the 5 principles of Pancasila, namely the value of belief in one God, Humanity in the form of justice and civilization, Indonesian Unity, Democracy guided by the wisdom of deliberation/representation, and Social Justice for all Indonesian people. These values are manifested in the text and context of Indonesian law. The values of Pancasila must be the reference for every policy decision in the field of law. Pancasila as *a way of life* is a form of personal and collective awareness for law enforcement officials in resolving every legal issue based on Pancasila.

In the concept of a state based on the rule of law, ideally, it is the law, not politics or economics, that should be the commander in the dynamics of state life. The law is the main foundation for creating order, security, justice, and prosperity for its citizens. The law not only binds every action taken by Indonesian citizens, but also state administrators, whether they are the President, politicians, or bureaucrats, must also obey the law. Therefore, there is a common perception that the principle of the rule of law is *the rule of law, not the rule of man*. The law can be seen as a tool for society to create order and regularity in social life. Therefore, the law works by providing guidance on behavior (*act behavior*) and therefore the law takes the form of norms.

Restorative justice is a method for resolving problems involving perpetrators, victims, and community members to achieve justice. In relation to criminal law enforcement, *restorative justice* is an alternative to criminal proceedings, which originally focused on punishment. Instead, this mediation process involves the perpetrator, the victim, the perpetrator's or victim's family, and other parties involved in the case. In criminal law, the goal of *restorative justice* is to give victims, perpetrators, families, and the community the opportunity to repair the consequences of criminal acts by using awareness and conscience as a basis for improving community life (a concept that views justice from various perspectives, both for the interests of the perpetrator, the victim, and the community).

Almost all crimes handled by the Indonesian Criminal Justice System always end in prison. However, prison is not the best solution in resolving crime problems, especially crimes where the "damage" caused to victims and the community can still be restored so that the "damaged" conditions can be returned to normal, while also eliminating the negative impact of prison. In addressing crimes that are considered restorable, there is a sentencing paradigm known as *restorative justice*, where perpetrators are encouraged to repair the harm they have caused to victims, their families, and the community.

Various actual examples that have attracted public attention, such as case Number 31/Pid.Sus/2018/PN Lbo, resulted in a criminal sentence of 5 (five) years imprisonment and a fine of Rp. 100,000,000 (one hundred million rupiah) or a subsidiary penalty of imprisonment for 3 (three) months. In this case, before engaging in sexual intercourse, the defendant and the victim had been dating for a long time, which was known to both the defendant's parents and the victim's parents. The defendant's act of raping the victim occurred in 2017, where the defendant persuaded the victim by saying that he would take responsibility and marry the victim. Based on the testimony of the defendant, the victim's child, and the witnesses revealed in the trial, the sexual intercourse committed by the defendant only occurred once and did not result in the victim's child becoming pregnant. The defendant then kept his promise to marry the victim's child, and they were married according to Islamic law, with the blessing of both sets of parents and without any problems. After the wedding, they lived as husband and wife and had sexual relations repeatedly, and it was only then that the sexual intercourse resulted in the victim becoming pregnant. The reconciliation, which was pursued through the village head

as the representative of all elements of the local community, should represent the response of the local village community to the judge's decision in the case in question. The village head, community leaders, religious leaders, and traditional leaders are elements of society whose views can be accepted as representing the voice of the local community. In addition, according to research data, it has become customary in the local community for a 15-year-old woman to be considered ready for marriage because she is considered an adult, and the fact that the local village community is concerned about the suffering of the victim, who has to bear the burden of running a household alone by supporting the child she has given birth to, so that the decision of the panel of judges above not only harms the defendant but also the victim and the child she has given birth to, and of course the disappointment over the court's decision *in this case* is also felt by the surrounding community, who clearly does not respect the peaceful decision that had been taken within the community institution. This shows that the peace efforts made prior to the verdict, which should have been the source of justice, were not yet visible in the considerations of the verdict *in this case* because the sentence imposed was the minimum sentence without any consideration for the future of the victim and the child she had given birth to. The Indonesian criminal justice system has not yet accommodated the concept of *restorative justice*, namely the restoration of the victim, the defendant, and the community as stakeholders. Referring to the definition of restorative justice, namely the settlement of criminal cases that is transformed into a process of dialogue and mediation involving victims, perpetrators, and interested parties to create a fair and balanced settlement agreement by prioritizing restoration to the original situation and restoring good relations in the community. To accommodate *restorative justice*, the prosecutor's office, police, and judiciary have each made their own rules for the use of *restorative justice*. However, legally, there are still no specific laws or regulations that serve as an umbrella or reference for *restorative justice* in Indonesia. Therefore, it is necessary to harmonize the regulation of *restorative justice* in *ius constituendum* in the criminal law system in Indonesia so as to create legal certainty and justice in the implementation of *restorative justice*.

From an epistemological perspective, *restorative justice* exists as a method or means of resolving criminal cases by reconciling the victim and the perpetrator, as well as families or other parties concerned about the losses suffered as a result of the crime. It is hoped that *restorative justice* will provide a legal resolution that creates an agreement between the perpetrator, victims, and the surrounding community, thereby obtaining legal certainty and perceived justice. In this case, it is also hoped that it will become a means to accommodate the things that victims want to convey willingly and sincerely so that the legal and punitive objectives oriented towards the restoration of both the perpetrator and the original situation can be achieved through *victim impact statements in the criminal justice system*, which will be able to provide substantial justice.

Axiologically, the existence of *restorative justice* as a method or approach to resolving criminal cases by reconciling the perpetrator, victims, and related parties is beneficial not only to those parties through restoration and return to the original state, but also provides all benefits to the state through the legal system, namely the proper functioning of its components so that legal objectives and the orientation of imprisonment as an *ultimum remedium* imposed on perpetrators are achieved, thereby transforming it into a peaceful path so that the number of perpetrators being processed and causing *overcapacity* in correctional institutions will decrease. The benefit of *restorative justice* with a focus on victims is that they can convey their circumstances and losses, which will then be discussed with the perpetrator to obtain their rights for the losses they have suffered in *the criminal justice system* in Indonesia.

Research Method

This research uses a normative juridical research type.

Construction of *Restorative Justice* Regulations in the Integrated Criminal Justice System

The ratio legis and purpose of Law Number 1 of 2023 concerning the Criminal Code are to encourage national development in various fields in line with development demands, legal awareness, and the dynamics of social development. The renewal of the New Criminal Code contains the spirit of change from decolonization to recodification, which has been fought for throughout the history of the nation's development on a national and international scale.

The legal policy in the drafting of the Criminal Code is related to the provisions of *restorative justice* in the form of codification and unification, which aim to create and uphold consistency, justice, truth, order, benefit, and legal certainty that takes into account the balance between various aspects of interest, including the interests of the community, national interests, and the interests of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

In the new Criminal Code, which shifts the retributive theory in the settlement of criminal cases as stated in Chapter III on Punishment, Criminal Offenses, and Actions. The provisions of Article 54 of the new Criminal Code have imposed restrictions on mandatory sentencing, requiring consideration of certain circumstances with regard to aspects of justice and humanity. The previous Criminal Code and Criminal Procedure Code did not explain the resolution of disputes based on local community wisdom.

In formal law, namely criminal procedure law which serves to uphold substantive law, Indonesia is a country capable of codifying criminal procedure law regulations with the issuance of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). According to Andi Hamzah, with the creation of the KUHAP, Indonesia has for the first time carried out a complete codification and unification covering the entire criminal process from the initial search for truth to the Supreme Court's cassation and review (*herzeining*). The KUHAP serves as a guideline for the police, prosecutors, and judges in carrying out their duties of investigation, inquiry, arrest, detention, and examination in court, which must not conflict with the principles of criminal procedure as stipulated in the KUHAP.

All criminal cases resolved based on the Criminal Code and the Criminal Procedure Code must be resolved through an integrated criminal justice system through law enforcement officials so that the resolution of disputes involving the role of the community, which is actually recognized and developed in the community, does not receive facilities in the old Criminal Code and Criminal Procedure Code. The renewal of the application of restorative justice provisions in the new Criminal Code is contained in the provisions of Article 54 of Law Number 1 of 2023 concerning the Criminal Code, which states that punishment must take into account, among other things, paragraph (1) letter j, "forgiveness from the victim and/or the victim's family." as well as in the provisions of Article 132 paragraph (1) Prosecution authority is declared void if: one of the provisions in letter g "there has been a settlement outside the judicial process as regulated in the Law" is included. The weakness in this provision is that there is no specific law regulating the *restorative justice* mechanism, so that the settlement of cases through this approach does not yet have a strong legal basis, which can lead to legal uncertainty. Therefore, the Criminal Procedure Code needs to be revised to further regulate the mechanism for settling cases through restorative justice, even though there are currently regulations in each law enforcement agencies, namely Regulation of the Indonesian National Police Number 8 of 2021

concerning the Handling of Criminal Acts Based on Restorative Justice, Indonesian Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, and Indonesian Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. However, these regulations are partial and sectoral in nature and have not been fully integrated into the national criminal justice system. In addition, differences in regulations and authority between the police and the attorney general's office in applying *restorative justice* can lead to overlap and conflicts of authority. This can hinder the effective application of the *restorative justice* approach in the criminal justice system. In the provisions of Law Number 1 of 2023 concerning the Criminal Code, the role of victims in the restorative justice process has not been optimally accommodated. This can reduce the effectiveness of the *restorative justice* approach in achieving the justice that victims truly desire.

The Urgency of *Restorative Justice* in the Settlement of Criminal Cases in Court

Restorative justice is defined as an effort to resolve criminal cases involving victims, perpetrators, and the community with the aim of creating justice for all parties in the hope of restoring the situation and preventing further crime. Philosophically, from the perspective of *restorative justice*, crime is no longer seen as an attack that harms the state, but is limited to the actions of a person who harms or has an impact on another person as a victim through a criminal act committed by the perpetrator and the resolution based more on human values from the perspective of the victim and also the perpetrator's, so that *restorative justice* aims to heal the wounds or losses suffered by the victim as a result of the criminal act committed by the perpetrator.

The criminal justice system involves three parties, namely the perpetrator, the victim, and the state. The state has an interest in maintaining public order, while the victim and the perpetrator have interests that need to be given equal attention. The basic principles of justice for victims of crime and abuse of power as stated in UN General Assembly Resolution No. 40/43 on November 29, 1985, state that victims are people who have personally or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or significant damage to their fundamental rights through acts or omissions that are contrary to the criminal laws in force in member states, including laws concerning the abuse of power that are subject to criminal penalties.

Legal Construction of *Restorative Justice* in the Integrated Criminal Justice System

Legal construction is a way of filling gaps in legislation with legal principles and foundations. There are three forms of construction, namely analogy (abstraction), determination (legal refinement), and argumentum a contrario. The need for legal construction in criminal law, particularly in relation to restorative justice in the criminal justice system in Indonesia, is based on *the criminal justice system*, which was created by criminal law specialists and criminal justice professionals in the United States due to dissatisfaction with the working mechanisms of law enforcement agencies and institutions. The mechanisms in criminal justice are gradual, starting from investigation, prosecution, examination in court, and the implementation of the judge's decision by the Correctional Institution. The entire process works within a system so that each of these institutions is a subsystem that is interconnected and influences one another.

Victims of crime are often neglected and do not have fair representation in the criminal justice system because legal requirements still rely on protecting perpetrators, so that the status

of victims in the Indonesian criminal justice system is virtually ignored (*offender oriented*). This situation results in a lack of legal protection for victims and court decisions that do not satisfy the sense of justice for victims, perpetrators, and society as a whole. The lack of legal protection due to victims not being treated fairly in the criminal justice system can be investigated through criminal law regulations and empirical observations in law enforcement activities. The judicial process focuses more on whether the suspect/defendant who committed the act is in accordance with the formulation of the criminal law article that was violated. Criminal procedural law serves as the basis for legal proceedings, the purpose of which is to obtain material truth as the whole truth and to guarantee full protection of human rights. The judicial process's neglect of victim factors tends to separate the judge's decision from a decision that satisfies the sense of justice for both the perpetrator and the community. In dealing with perpetrators, public prosecutors or prosecutors represent the position of victims in the criminal justice system. The role of victims is as witnesses. A fundamental weakness in law enforcement is the neglect of the rights of victims of crime in the criminal case resolution process and the consequences that victims of crime must bear because legal protection for victims of crime is not adequately regulated. Victims, who are the parties affected by criminal acts, receive no attention whatsoever, especially with the increasing focus on the rehabilitation of prisoners, which is interpreted as something related to the interests of victims. Therefore, it is very important to help victims of crime because they are the ones who suffer the most from crime, and victims are often unable to cope with what they have experienced, both physically and financially. Therefore, adequate protection for crime victims is needed because the suffering of victims as a result of criminal acts does not end with the sentencing and punishment of the perpetrators. The criminal justice system needs to balance and equalize the quality and quantity of the suffering and losses of victims.

Conclusion

The construction of *restorative justice* arrangements in the integrated criminal justice system is necessary because all criminal cases resolved under the Criminal Code and Criminal Procedure Code must be resolved through the integrated criminal justice system via law enforcement officials so that dispute resolutions involving the community, which are recognized and developed within the community, do not receive facilities under the old Criminal Code and Criminal Procedure Code, even though the application of restorative justice provisions in the Criminal Code has been included in the provisions of Article 54 of Law Number 1 of 2023 concerning the Criminal Code. The application of *restorative justice* provisions in the Criminal Code is stipulated in Article 54 of Law Number 1 of 2023 concerning the Criminal Code Criminal Law Code, the provisions still have weaknesses in that there is no specific law regulating the *restorative justice* mechanism, so that the resolution of cases through this approach does not yet have a strong legal basis, which can lead to legal uncertainty. Therefore, the Criminal Procedure Code needs to be revised to further regulate the mechanism for resolving cases through the restorative justice mechanism, including the absence of a strong legal basis, partial regulations, overlapping authorities, the minimal role of victims, and the absence of uniform SOPs. Therefore, concrete steps are needed through the drafting of a special law on *restorative justice* and the harmonization of regulations between law enforcement agencies to ensure that the application of the *restorative justice* approach is effective and consistent in the Indonesian criminal justice system. The urgency of restorative justice in criminal case resolution includes overcoming the weaknesses of the retributive system, efficient case resolution, reintegration of perpetrators into society, and judicial support for

implementation. The legal construction of restorative justice in the Integrated Criminal Justice System requires the inclusion of a penal mediation mechanism at the investigation and prosecution stages, fully adopting the penal mediation mechanism from the draft Criminal Procedure Code. The scope of criminal acts that can be resolved using a restorative justice approach needs to be expanded. giving victims the right to be involved in the mediation process between victims and perpetrators through legal facilitators, providing operational guidelines for law enforcement officials to involve victims in the mediation process, adding the obligation to compensate victims in the implementation of social work, explicitly regulating the obligation of judges to consider the results of penal mediation in their considerations for verdicts, and fully adopting the Criminal Procedure Code as a mandatory reference in verdicts related to restorative justice. The application of restorative justice in the integrated criminal justice system holds great promise given the current state of crime, utilizing many traditional values from various cultures to build a justice and legal system that is far more accountable, easier to understand, and healing, which can lead to a greater sense of community through the active involvement of victims and the community in efforts to recover from the impact of crime.

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