



DOI: <https://doi.org/10.31933/unesrev.v6i2>

Received: 15 Desember 2023, Revised: 7 Januari 2024, Publish: 9 Januari 2024

<https://creativecommons.org/licenses/by/4.0/>

## Implementation of Restorative Justice, The Intent of Punishment, and Legal Clarity In Indonesia

Fauziah Lubis<sup>1</sup>, Fatimah Zahara<sup>2</sup>, Wanda Hamidah<sup>3</sup>

<sup>1</sup>Fakultas Syariah dan Hukum, Universitas Islam Negeri Sumatera Utara, Indonesia

<sup>2</sup>Fakultas Syariah dan Hukum, Universitas Islam Negeri Sumatera Utara, Indonesia

<sup>3</sup>Fakultas Syariah dan Hukum, Universitas Islam Negeri Sumatera Utara, Indonesia

Corresponding Author: [fauziah@uinsu.ac.id](mailto:fauziah@uinsu.ac.id)

**Abstract:** *This study looks at the fairness of restorative justice, the goal of punishment, and the need of legal certainty. According to the study's findings, restorative justice is still only being applied theoretically. In this instance, it emphasizes that the formalistic, long-established ideas of justice that have arisen in society and are applied in Indonesian customary law assemblies serve as the foundation for the genuine aim of sentencing. In contrast, the notions of individual deterrence and general deterrence call for actions to be absolute in order to produce a deterrent impact. Afterward, the idea of reform or rehabilitation was further developed. The use of restorative justice emphasizes the recovery of victims' material losses as a result of the perpetrators' unlawful acts, both physically and psychologically. This is done through a consensus-building process involving the perpetrator, the victim, the perpetrator's family, and the victim's family, as well as, if necessary, the community and the appropriate authorities. With relation to legal norms and values, this research methodology is normative juridical along with theories, legal doctrine, jurisprudence, applicable rules and regulations, as well as publications pertinent to the research topic. According to the study's findings, restorative justice is a noble form of justice when instances of illegal behavior have happened. Therefore, repair or restoration is crucial if the victim is to be rehabilitated or healed from the suffering he has endured on a material, physical, or psychic level. To be clear, restorative justice does not apply to all crimes; rather, it only does so in circumstances involving crimes against children, minor offenses, women in conflict with the law, and drug-related offenses. In order to provide clarity, there should be a firmness if the offender does not want to make restitution even though it is deemed capable of doing so in terms of material capabilities. There also needs to be concrete sanctions so that restorative justice is not only limited to other options; the legal framework for it should be expanded to the Constitution.*

**Keyword:** *Legal Clarity, Sentencing Purpose, and Restorative Justice.*

## INTRODUCTION

Indonesia's high rate of crime serves as an example of how law enforcement officers have failed to have a deterring effect on offenders (Adiesta, 2021). Likewise, at this period, neither the criminals nor the victims of crime consider the age of children or adults (Kim, E.M., 2020). There hasn't been a clear solution or good integration of stakeholders' efforts in crime prevention thus far (Allace, R., et al.,

2013). While the resolution of a lawsuit is a component of human rights, which calls for fairness and predictability in the law. Additionally, Indonesian criminal procedural and legal instruments have governed the formal steps that must be taken in order to resolve a criminal case. Unfortunately, people who *are* dressed in law enforcement uniforms frequently utilize this formal system in actuality as an oppressive tool (Amjad, 2019).

It is true that carrying out criminal law enforcement is a difficult task (Asadullah, 2012). Legal protection for victims is one instance of how problems of justice and human rights *are* neglected in criminal law enforcement (Braithwaite, 2021). Even though it is well recognized that a victim is someone who endures bodily and emotional harm as a result of another party acting in violation of their rights and with their own self-interest (Burns, J.C and Sinko, L., 2021). In many instances, it is understandable that crime victims—who *are* essentially the people that suffer the most as a result of a crime—do not obtain the protection required by law (Edyono, 2021).

Romli Atmasmita noted in Law Number 8 of 1981 that the Criminal Procedure Code (KUHAP), which emphasizes the rights of suspects, has as its primary role "protection of the dignity of the suspect defendant."

Only Chapter XIII of Articles 98-101 of the Criminal Procedure Code, which deals with the merging of compensation claims, addresses victim protection. However, it is believed that the arrangement has flaws in both its process and its substance. In actuality, merging compensation claim instances is also quite uncommon. Due to the victim's ignorance of their rights, the public prosecutor's failure to tell them of these rights, the legal advisor's unwillingness to be bothered, and the judge's failure to provide this process, this occurred. This makes the issue rather difficult.

In most cases, there are two parties involved in a crime: the criminal and the victim (Castillo, 2021). Although in actuality there are some crimes that happen without having a victim, such as gambling and drug misuse, the victims of these crimes are also the ones who commit them. Every criminal conduct must result in positive repercussions for the offender, specifically in the form of a court-issued sentence (Daye Gang et. at., 2021). The objective of the punishment is to, as much as is humanly feasible, return the victim to his pre-crime state or condition (Hodgson, J., 2022). As of now, the major punishment meted out to the offenders is incarceration. However, in essence, the neighborhood needs the situation to be as favorable as possible before a crime occurs (Ivo Aertsen, et al, 2013). Even though the majority of allegations and complaints from the public about crime victims who are convicted and sentenced to prison are true, the criminal justice system can nevertheless be considered successful (Juhari, 2017).

In an administrative practice, statutory restrictions interact with social attitudes or conduct to produce the approach to the administration of criminal justice and criminal justice. The system incorporates the outputs of an interaction process that was planned logically and effectively to achieve certain objectives within the bounds of that process. For certain offenses that are not extraordinary crimes but disturb the peaceful functioning of society and the state, dissatisfaction with the formal judicial system that has been implemented thus far calls for the application of customary law or traditional justice (Karim, 2016). To promote the development of peace, tolerance for the diversity of viewpoints, paradigms, education, and social status is necessary. In fact, respecting the

differences in every human being is a natural thing without having to create gaps in life in society and state, and it requires the active participation of the surrounding community (Karjoko, I. et. al., 2021). Law enforcement officials must therefore operate progressively, that is, by not applying normative law contextually but by circumventing the formal regulations of the Criminal Procedure Code and the substantive regulations of the Criminal Code as *lex generalis* and other norms as *lex specialist*. This serves as the context for the author's research.

Similar to the restorative justice system that is now in place in Indonesia (Lodi, 2022). By engaging in non-litigation peace efforts aimed at achieving a good resolution based on an agreement between the parties, restorative justice is a criminal law approach that contains noble/traditional values or it can be said to be a socio-cultural approach. As a result punishment by providing deterrence and retribution, which can be detrimental to life in the future, can be minimized. The guiding principle of restorative justice is that victims who have suffered as a result of crime can be compensated, and there can be peace. Of course, this principle is not one-sided, impartial, or arbitrary, and it only sides with the truth in accordance with the relevant laws and regulations, while also taking equality of victims' rights to compensation and balance in all spheres of life into consideration. While the offender receives physical or psychological punishment in its application, the traumatic criminal act caused by the offender's activities is recovered through care for the victim.

## **METHOD**

This research methodology is normative juridical. The relationship between different forms of data is also explained, and the analysis is deductively inductively concluded in the form of a systematic narrative description. Secondary legal data, such as rules, laws, and empirical data, are information gleaned from primary legal materials, secondary legal materials, and tertiary legal materials in normative research. The focus of this research is on examining how legal concepts are put into practice, whether through research on textual positive law or research on societal legal norms. The statutory approach and the case approach are the methods of approach that will be used. For getting primary data the interview with informants and professionals gets information to supplement the gaps in secondary data. Specifically, conducting interviews with informants and performing library research were the two methods used to acquire data for this study. Materials from secondary data are used as data collection tools in normative juridical research with the goal of gathering concepts, theories, and information as well as conceptual ideas from previous researchers in the form of legislation, scholarly works, journals, and other forms of secondary data.

## **RESULTS AND DISCUSSION**

### ***Fairness of Restorative Justice***

Justice, expediency, and legal certainty are the three fundamental legal concepts. A good law is one that can integrate these three components for an individual's welfare as well as the welfare of the community, according to the legal foundation's perspective on the concept of justice. The benefits of the law's contents are in line with the goal it is intended to pursue, and legal certainty is described as a situation in which the law can serve as a rule that must be followed. This means that justice accords equal rights to everyone before the court (Lustick, 2021).

Essentially, the application of restorative justice in a case is not a punishment for the offender but rather a harmonization between community members and the components that make it up. First, when justice is established through the criminal mediation procedure, a talk between the offender and victim constitutes one of the key components of restorative

justice (Maglione, G., 2021) and must also acknowledge guilt as a result of the crimes committed. Second, justice focuses on giving victims, offenders, families, and communities the tools they need to put an end to unlawful behavior by using awareness and conviction as the cornerstone of a better social environment (Miers, 2021). Law enforcement no longer conducts investigations, prosecutions, and trials in order to impose formalistic sentences (Murhula PBB and Tolla AD, 2020).

Third, justice that places a strong emphasis on recovering losses brought on by criminal acts; compensation includes giving the victim's property back or paying for the loss or damages sustained as well as giving back costs incurred as a result of criminal acts, providing services, and protecting recovery rights (Marabessy, 2015). Fourth, restorative justice is an alternative technique of resolving criminal cases whose philosophical approach is intended to resolve conflicts by ameliorating the circumstances brought on by unlawful activities. Fifth, justice that is balanced with the development of the rapid, easy, and affordable justice principle. Sixth, relative justice, which is another name for restorative justice, is one of the ideas of punishment in the criminal judicial system that derives from societal principles of justice. The seventh type of justice is balanced justice, which takes into account the harmony of the rights and obligations of both the perpetrators and the victims. Eighth, justice that prioritizes victim justice according to individual preferences and interests rather than those set by the state.

In reality, retributive justice cannot be replaced by restorative justice or a humanist philosophy. Since the creation of the legislation, restorative justice has incorporated a humanist philosophy. It is a component of the criminal justice system as well as a judge's conscience when serving on a panel of judges. Third, by challenging the legitimacy of decisions and acting as a check on judges' consciences, the humanist approach is not a brand-new dimension of consideration that is introduced outside the criminal justice system. The law already states that the judge bases his or her choice on conscience. Considering human growth when it comes to criminal law has more advantages than using corporal punishment. Then, from a criminal standpoint, restorative justice can exist with humanist pressure.

Because it involves all pertinent parties, considers victims' needs, acknowledges harm and violence, reintegrates pertinent parties into society, and motivates and encourages offenders to accept responsibility, restorative justice cannot be separated from the judicial process and must be integrated with retributive justice. A number of factors can be taken into account, including the fact that the completion of a good legal process is placed more on the quality aspect and does not give a quantity target at the operational level, but instead seeks solutions to the delay in completing the process, and places more emphasis on prevention than handling cases within the framework of the law enforcement function (Nikki D'Souza, 2021).

Government Regulation Number 43 of 2017 and Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Victims to Witnesses and Victims, for instance, include specific regulations governing the treatment of children. Restitution is when the offender or a third party pays the victim and his family money. According to this law, victims are entitled to restitution in the form of compensation for lost property or income, losses attributable to suffering that was directly caused by criminal acts, and/or payment for medical expenses or costs of psychiatric or medical care (Pristiwiyanto, 2020). In contrast to the idea of restorative justice, where the implementation of compensation can still be carried out without having to be based on a judge's decision that has legal force, there are weaknesses in restorative justice where it has not been determined. Restitution can only be implemented in the application of juvenile crime based on a judge's decision that has permanent legal force. Restitution has not

turned into a mandatory criminal punishment and is still simply an option if the crime's perpetrator does not wish to pay the compensation.

### ***The use of legal certainty in restorative justice***

According to the principle of legal certainty, the law must be understandable to its subjects so that they can adapt their behavior to the laws in place and prevent the state from acting arbitrarily while wielding authority (Saefudin, and Nasirudin, 2022). Given that the goal of the law is to establish justice and order, efforts should be taken to effectively govern areas that are not already controlled. The key is to carefully consider the legal precepts associated with the proposed regulation. Additionally, it is vital to prioritize content rather than merely formality during implementation and to pay attention to the factor of efficiency (Suzuki, M and Jenkinz, T., 2022). Law that lacks certainty value will be meaningless and worthless. Legal certainty is necessary to carry out beneficial actions in society and to establish order.

Jan M. Otto claims that it demonstrates how legal certainty can be attained if the law is in line with the requirements of the community. The rule of law that can produce legal certainty is one that is derived from and reflects the community's culture. Real legal certainty is what is referred to as such, and it calls for harmony between the state and the populace in terms of how they see and comprehend the legal system.

Legal clarity is crucial for settling criminal cases in connection to the application of restorative justice (Zulfa, A.E. (2020). This is a common practice when dealing with minor reasons in everyday crimes. As stated by Gustav Radbruch, with his combined theory, always "justice," priority "benefit," and finally "certainty," all types of serious, minor, serious, and non-serious crimes must still prioritize the law, taking into account the rights of a suspect, defendant, or convict by applying the principles of the "rule of law," and prioritizing the principle of "priority" (Muhaimin, 2019). The legislation appears to be so solid and perfect at first glance. However, this adage frequently makes it challenging to find justice within the letter of the law. Human values appear to be ignored by the law. Due to Indonesia's covert pursuit of legal certainty in law enforcement, justice in the law becomes constrained (Taylor, O.T and Bailey, M.K.T., 2021).

The Criminal Procedure Code in Indonesia regulates formal procedures to address the issue of material criminal law violations. However, formal legal procedure is frequently exploited as a purely oppressive tool, disregarding the values of justice, and even the nature of the law as a preventive measure often goes unconsidered. When the law may bring pleasure to crime victims, it incorporates assurance in restorative justice (Velez, M.G. (2021). For there to be a sense of justice and order, this concept of certainty must be present in every legal issue that is created. The legal framework of restorative justice (RJ) and the extent of its application within the Supreme Court of the Republic of Indonesia serve as the foundation for its execution:

#### **1 Minor crime**

##### **Legal Basis:**

- a. Article 310 of the Criminal Code (KUHP);
- b. Article 205 of the Criminal Procedure Code (KUHAP);
- c. Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Number of Fines in the Criminal Code (KUHP);
- d. Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police Number 131/KMA/SKB/XI/2012, Number



M.HH.07.HM.03.02 of 2012, Number KEP06IE/EJP/10/2013, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of Adjustment on the Limits of Minor Crimes and the Amount of Fines, Rapid Examination and the Implementation of Restorative Justice;

- e. Letter of the Directorate General of the General Judiciary Agency Number 301IDJU/HK011312015 concerning Settlement of Minor Crimes;
- f. Decree of the Directorate General of General Judiciary Agency Number 1691IDJU/SK/PS.00112/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts; It can, in theory, be used to impose penalties under Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code with a maximum loss amount of Rp 2,500,000.00 (two million, five hundred thousand rupiahs), provided that the offense is not repeated.

## 2 Child case

Legal basis:

- a. Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare;
- b. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System;
- c. Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are not yet 12 (Twelve) Years Old;
- d. Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

Basically, diversion is feasible within the parameters set forth by the law, and if the diversion is unsuccessful or fails to meet the standards for diversion, the judge seeks a ruling using a restorative justice method as governed by Articles 71 to 82 of the Law. Law No. 11 of 2012 of the Republic of Indonesia relating to the juvenile justice system.

## 3 Cases involving Women in Legal Dispute (PBH) Legal Basis:

- a. CEDAW Convention (Convention on The Elimination of All Forms of Discrimination Against Women) which has been ratified by Law of the Republic of Indonesia Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women);
- b. The ICCPR (International Covenant on Civil and Political Rights) convention which has been ratified by Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights);
- c. Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT);
- d. Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons;
- e. Law of the Republic of Indonesia Number 31 of 2014 concerning Protection of Witnesses and Victims;
- f. RI Law Number 35 of 2014 concerning Child Protection;
- g. Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Become Victims of Crimes;

- h. Government Regulation of the Republic of Indonesia Number 7 of 2018 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims;
  - 1 Regulation of the Supreme Court Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law, As for its implementation, case examination is carried out, in essence the Judges is to consider gender equality and non-discrimination, by identifying the facts of the trial as follows:
    - a) Inequality of social status between the litigants;
    - b) Inequality of legal protection that affects access to justice;
    - c) Discrimination;
    - d) The psychological impact experienced by the victim;
    - e) The victim's physical and psychological powerlessness;
    - f) Power relations that make the victim/witness helpless;
    - g) History of violence from the perpetrator against the victim/witness.

#### 4 Narcotics case

##### Legal Basis:

- a. The Criminal Code;
- b. RI Law Number 35 of 2009 concerning Narcotics;
- c. Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions;
- d. Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2011 concerning Placement of Victims of Narcotics Abuse in Medical Rehabilitation and Social Rehabilitation institutions;
- e. Joint Regulation of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/II/2014, Number 3 of 2014, Number 11 of 2014, Number Per/OOSA/I JAI/03/2014, Number 1 of 2014, Number Perber/01/11112014/BNN concerning Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions (vide.. Decree of the Directorate General of General Judiciary Agency Number 1691/DJU/SK/PS.00/1212020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts Environment).

Restorative justice can essentially only be used in drug cases when the addict, abuser, victim, or narcotics dependent is treated, cared for, and recovered in a medical rehabilitation facility and/or a social rehabilitation facility (Walgrave et al 2019). Legal certainty, as defined by Van Apeldoorn, might also indicate that it can be decided by the law in specific circumstances. Legal certainty ensures that the law is followed, that people who are entitled can exercise those rights in accordance with the law, and that decisions can be put into action. Likewise, legal certainty, in the words of Sudikno Mertokusumo, is a justifiable protection (seeking justice) against arbitrary actions, which implies that someone will be able to obtain what is expected under specific conditions.

Meanwhile, according to the theory of the legal system (Lawrence M. Friedman, 2009), in order to achieve legal certainty, the following elements must be supported: the legal structure (Legal Structure), the legal substance (Legal Substance), and the legal culture (Legal Culture), where each of these elements must be interrelated and mutable (Willis, R. and Hoyle, C., 2019). The principle is the center of the rule of law, but it is

impossible to compare legal principles and legal norms since the former regulate and explain, while the latter serve as legal instructions. As a result, the former excludes affirmative law and serves only as a general guide. and, of course, it cannot be used to settle legal problems directly (Sulistiyawan, 2019).

Laws and regulations can only be overruled by judges if their application will result in violations of the fundamentals of justice that are not in line with social reality or the enactment of customary law and religious law in a particular area. The legal system in Indonesia is positivist, where regulations rank first in the application and enforcement of the law. Law is seen as an explicit byproduct of a specific legitimate source of political authority in the positivist stream of thought. The law takes the form of clear directives that positively ensure its certainty in light of the standards themselves. Legal positivism's existence demonstrates how human action creates and destroys law, making it independent of morality and the norm system as a whole. To put it another way, law exists independently of morality (Sulistiyawan, 2019).

According to Herbert Lionel Adolphus (1961), legal positivism has five traits, namely:

1. Law is a human-given commandment.
2. Neither the applicable law (law as it is) nor the idealized law have an unbreakable bond with morality (law as it ought to be).
3. It's critical to distinguish between and analyze the legal notion from:
  - a. Researching the origins of law or its causes historically.
  - b. Sociological research on how the law interacts with other social phenomena, legal inquiries based on morality, social objectives, legal purposes, and so forth ..
4. The legal system is a closed logical system, meaning that it can derive the correct legal provisions from predetermined legal laws using logic (logical means), without taking social, political, or other aims into account. moral principles, etc.
5. Logic-based arguments and evidence cannot be used to support or refute considerations of decency because information in facts can be confirmed or disproven (non cognitivism in ethics).

Legal certainty is the ultimate goal of legal positivism, according to Austin (J. L., 1962), and in order to achieve it, law and morality must be separated in order to create a logical, unchanging, and closed system (Close logical system). the foundation for the legal certainty principle, which is embodied in positive law through legislation. On the basis of legal positivism, the following conclusion can be made regarding the existence of legal certainty:

1. The legal system of a nation is effective not because it is rooted in social life or the national soul, nor is it founded on natural law, but rather because it receives its positive form from the appropriate authorities.
2. Law must be detached from its material form in order to be understood merely in terms of its formal form.
3. Although legal substance is acknowledged to exist, it is not relevant to legal science since it could compromise the discipline's scientific integrity.

The purpose of providing clarity to positive law, where positivistic law requires regularity and certainty to promote the correct and efficient operation of the legal system, is the relationship between the principle of legal certainty and legal positivism thinking. This may definitely be accomplished in order to safeguard the general welfare, individual interests, serve as the primary force behind the establishment of law in society, maintain public confidence in the government, and maintain the legitimacy of the rulers in the eyes of the populace.

In accordance with Law No. 12 of 2011 Concerning the Formation of Legislation, which governs the process of creating laws and regulations, Indonesia is a member of the



Continental European legal system. Regulations must be created based on the criteria listed below;

1. The philosophical foundation (*Filosofische grondslag*), which derives from Pancasila and the 1945 Constitution, is a factor that shows how the laws are created while taking into account the way of life, awareness, and legal ideals, as well as the national philosophy and inner atmosphere of Indonesia.
2. Sociological foundation, which talks about the laws created to satisfy human requirements.
3. The juridical basis (*yuridische grondslag*), regulations are developed to overcome legal issues, legal voids, taking into consideration the current norms, which will be altered or canceled in order to guarantee legal clarity and a sense of fairness. The third point deals with resolving legal issues and voids while taking into account current legal regulations or favorable legal regulations (current legislation), which will be amended. 22 December 2020: 1691/DJU/SK/PS.OO.

The protection of criminal victims is a component of restorative justice as well because the victim's loss must be taken into account first. This loss may include not only financial loss or physical suffering but also psychological trauma in the form of anxiety, cynicism, depression, and other symptoms (Zulfa, A.E. (2011). Even though it is true that victims' losses are overlooked, court practice up to this point frequently ignores the interests of victims, including the loss and suffering they endured as a result of the criminal acts they witnessed.

## CONCLUSION

Originally focused at law enforcement as a result of legal positivism, restorative justice is a new paradigm for the purpose of punishment that analyzes the sources of law from legal values obtained from local wisdom values (customary law) and a feeling of justice that exists in society. The goal of restorative justice is to bring victims, offenders, and members of the community together for discussion and consensus. This process is guided by law enforcement officials from the police, attorney, and court levels. Legally speaking, especially in certain situations, like instances involving minors, the case file no longer needs to be submitted to the prosecutor's office if the Restorative Justice agreement has been struck at the police level. Similar cases include those involving minor offenses (*Tipiring*) and ladies who have run afoul of the law (PBH). A sign of the resocialization of the offender's obligation as a citizen is the restoration of justice efforts to apply reparations to crime victims in the context of the relationship between the victim and the perpetrator. Restorative justice is founded on the admirable principles of justice that exist in society. The "rule of law" must be applied while settling criminal cases in order to give consideration to the rights of a suspect, defendant, or convicted party. This is necessary for the implementation of restorative justice.

## BIBLIOGRAPHY

- Adiesta, I.O.1. «2021). Penerapan Restorative Justice Sebagai Inovasi Penyelesaian Kasus Tindak Pidana Ringan. *IDJ*, Volume 2, Issue 2): pp. 143-17
- Allace, R., et.al. (2013). Changing on the Inside: Restorative Justice in Prisons: A Literature Review. *The International Journal of Bahamian Studies*, Vol. 19, page: 57-69
- Amjad, S., Riaz, N. (2019). The concept and scope of restorative justice system: Explaining history and development of the system for the immediate need of society. *International Journal of Law*, Volume 5; Issue 5, page- 100-104
- Asadullah, M. (2012). Decolonization and Restorative Justice: A Proposed Theoretical Framework. *Decolonization of Criminology and Justice*, Article, Volume 3(1), page: 27-62

- Braithwaite, John. (2021). Street-Level Meta-Strategies: Evidence on Restorative Justice and Responsive Regulation. *Annual Review of Law and Social Science*, 17:205-25, 001: <https://doi.org/10.1146/annurev-lawsocsci-111720-013149>
- Burns, J.C and Sinko, L. (2021). Restorative Justice for Survivors of Sexual Violence Experienced in Adulthood: A Scoping Review. *Trauma, Violence, & Abuse*, XX(X) 1-15, DOI: <https://doi.org/10.1177/115248380211029408>
- Castillo, M.M. (2021). Restorative Justice Education from Intrajudicial Criminal Mediation Associated Factors.
- Daye Gang et.al. (2021). A Call for Evaluation of Restorative Justice Programs. *Trauma, Violence, & Abuse*, Vol. 22(1): page 186-190
- Eddyono, (2021). W.S. Restorative Justice for Victim's Rights on Sexual Violence: Tension in Law and Policy Reform in Indonesia. *Journal of Southeast Asian Human Rights*, Vol.5 Issue. 2, pp: 176-201, DOI: 10.19184/jseahr. v5i2.28011
- Hodgson, J. (2022). Offending Girls and Restorative Justice: A Critical Analysis. *Youth Justice*, Vol. 22 (2): page 166-188
- Ivo Aertsen, Stephan Parmentier, Inge Vanfraechem, Lode Walgrave & Estelle Zinsstag (2013) An adventure is taking off. Why Restorative Justice: An International Journal?, *Restorative Justice*, 1:1, 1-14, DOI: <https://doi.org/10.5235/120504721.1.1.1>
- Juhari. (2017). Restorative Justice Dalam Pembaharuan Hukum Pidana di Indonesia. *Jurnal Spektrum Hukum*, Vol. 14/No. 1
- Karim. (2016). Tanggung Jawab Pelaku Pidana Pelanggaran Dalam Perspektif Restorative Justice. *Yuridika*, Volume 31 No.3, DOI: 10.20473/ydk.v31i3.4787
- Karjoko, L. et. al. (2021). The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia. *al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 16 (2), 2021: 362-392, DOI: <http://doi.org/10.19105/al-lhkam.v16i2.5314>
- Kim, E.M. (2020). Transformative justice and restorative justice: Gender-based violence and alternative visions of justice in the United States. *International Review of Victimology*, Vol. 27(2) 162-172, DOI: <https://sagepub.com/journals-permissions>
- Lodi, E.; Perrella, L.; Lepri, G.L.; Scarpa, M.L.; Patrizi, P. (2022). Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review. *Int. J. Environ. Res. Public Health*, Vol. 19, No. 96. <https://doi.org/10.3390/ijerph19010096>
- Lustick, H. (2021). Restorative Justice" or Restoring Order? Restorative School Discipline Practices in Urban Public Schools. *Urban Education* 2021, Vol. 56(8) 1269-1296
- Maglione, G. (2021). Restorative Justice, Crime Victims and Penal Welfarism. Mapping and Contextualising Restorative Justice Policy in Scotland. *Social and Legal Studies*, Vol. 30(5) page: 745-749
- Marasabessy, F. (2015). "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru". *Jurnal Hukum dan Pembangunan* Tahun ke 45, No.1
- Miers, D. (2021). An International Review of Restorative Justice. *Crime Reduction Research Series Paper*, Head of Crime and Criminal Justice Unit Research, Development and Statistics Directorate: London
- Muhaimin. (2019). Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan. *Jurnal Penelitian Hukum, De Jure*, Vol. 19 No.2, hal. 185-206

- Murhula PBB and Tolla AD . (2020). The effectiveness of restorative justice practices on victims of crime: Evidence from South Africa. *International Journal for Crime, Justice and Social Democracy* 10(1): 98-110, DOI: <https://doi.org/10.5204/ijcjsd.1511>
- Nawawi, Arief Barda. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti
- Nikki D'Souza. (2021). The exclusion of serious and organised offenders and their victims from the offer of restorative justice: Should this be so and what happens when the offer is put on the table? *Criminology and Criminal Justice*, 00 (0) 1-18, DOI: <https://journals.sagepub.com/home/iccj>
- Pristiwiyanto. (2020). Anak Berhadapan Hukum Dalam Perspektif Restorative Justice. *ZAHRA: Research And Thought Elementary School Of Islam Journal*, Vol. 1 No.1 Tahun. 2020 Hal. 1-7
- Saefudin,W.,and Nasirudin. (2022). Implementation Of Restorative Justice By Probation And Parole Officers In Indonesia. *Journal of Correctional Issues*, Vol.5 (1), page: 1-11
- Suzuki,M and Jenkinz, T. (2022). The role of (self-) Forgiveness In Restorative Justice: Linking Restorative Justice To Desistance. *European Journal of Criminology*, Vol. 19(2), page: 202-219, DOI: <https://doi.org/10.1177/11477370819895959>
- Taylor, O.T and Bailey, M.K.T. (2021). The Restorative Justice Attitudes Scale: Development and Initial Psychometric Evaluation. *The Counseling Psychologist*, Vol. 50 (1) 6-39, DOI: <https://us.sagepub.com/en-us/journals-permissions>
- Velez, M.G. (2021). School-Based Restorative Justice: Lessons and Opportunities in a Post-Pandemic World. *Laws*, 10 (71), page: 2-11, DOI: <https://doi.org/10.3390/laws10030071>
- Walgrave et al. (2019). When restorative justice meets the Good Lives Model: Contributing to a criminology of trust. *European Journal of Criminology*, 2021, Vol. 18(3), page: 444-460, DOI: <https://uk.sagepub.com/en-gb/journals-permissions>
- Willis, R and Hoyle, C. (2019). The Good, The Bad, and The Street: Does 'street culture' affect offender communication and reception in restorative justice? *European Journal of Criminology*, Vol. 19(1) 118-138, DOI: <https://journals.sagepub.com/home/euc>
- Zulfa, A.E. (2011). Restorative Justice in Indonesia: Traditional Value. *Indonesia Law Review*, No. 1 - Volume 2, Page: 34-43
- Zulfa, A.E. (2020). Implementation of Restorative Justice Principles in Indonesia: A Review. *International Journal of Science and Society*, Volume 2, Issue2, page: 317-327
- Lawrence M. Friedman, 2009, *System Hukum Dalam Perspektif Ilmu Sosial, The. Legal System: A Sosial Science Perspektif*. Bandung: NusaMedia
- A. Y. Sulistyawan, "Urgensi Harmonisasi Hukum Nasional Terhadap Perkembangan Hukum Global Akibat Globalisasi," *Jurnal Hukum Progresif*, vol. 7, no. 2, pp. 171-181, Oct. 2019. <https://doi.org/10.14710/hp.7.2.171-181>
- Herbert Lionel Adolphus Hart. (1961). *The Concept of Law*. Oxford: Oxford University Press [36]
- Austin, John Langshaw. (1962). *How to Do Things With* Oxford University Press [37]
- Muladi. 1995. *Kapita Selektta Sistem Peradilan Pidana*. Semarang: Badan Penerbit. Universitas Diponegoro
- Kitab Undang-Undang Hukum Acara Pidana (KUHAP) Pasal 205 [40]
- Kitab Undang-Undang Hukum Pidana (KUHP) Pasal 310
- Konvensi CEDAW (*Convention on The Elimination of All Forms of Discrimination Against Women*) / Kovensi mengenai Penghapusan Segala Bentuk Diskriminasi

terhadap Wanita yang telah diratifikasi dengan Undang-Undang RI Nomor 7 Tahun 1984 tentang Pengesahan Konvensi mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita (*Convention on The Elimination of All Forms of Discrimination Against Women*)  
Konvensi ICCPR (*International Covenant on Civil and Political Rights*) yang telah diratifikasi dengan Undang-Undang RI Nomor 12 Tahun 2005 tentang Pengesahan *International Covenant on Civil and Political Rights* (Kovenan Internasional tentang Hak-Hak Sipil dan Politik)  
Menteri Kesehatan RI, Menteri Sosial RI, Jaksa Agung RI, Kepala Kepolisian Negara RI, Kepala Badan Narkotika Nasional RI Nomor *01/PB/MA/III/2014*, Nomor 3 Tahun 2014, Nomor 11 Tahun 2014  
Penanganan Anak yang belum berumur 12 (Dua Belas) Tahun;  
Peraturan Bersama Ketua Mahkamah Agung RI, Menteri Hukum dan Hak Asasi Manusia RI,  
Peraturan Mahkamah Agung Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum  
Peraturan Mahkamah Agung Nomor 4 Tahun 2014 tentang Pedoman Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak