



Penal Mediation: Synchronization of Restorative Justice and Reflective Justice

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ABSTRACT

Restorative Justice is an alternative settlement of criminal cases involving the perpetrators, victims, family members and the victims as well as the authorities to settle disputes. Restorative justice began to develop in the 19th century and has been regulated in Indonesian legislation as in the Law No. 15 of 2020, and the Police Regulations No. 8 in 2021. In its implementation it uses a criminal mediation mechanism involving law enforcement in the process of investigation, investigation and prosecution. H, there is no legal umbrella that specifically regulates Restorative Justice. In this study, the method of research used is the normative method of jurisprudence in which the study is carried out by the library. The aim of this research is to find out how the correspondence between the mechanisms and requirements in the settlement of criminal cases based on the rules in force in Indonesia on Restorative Justice. The method used is descriptive using secondary data is data obtained from library studies that are then analyzed with the rules, theories and opinions of relevant legal experts to obtain conclusions from the research. The results of this study of the setting on restorative justice still have differences between one and the other in the context of the type of behavior. In addition, restorative justice normatively has been in line with John Rawls's concept of justice but in caseistic there are still some deviations from the rule.

Keywords: Restorative Justice, Penal Mediation, Justice

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INTRODUCTION

The legal profession has many difficult issues in this age of increasing globalization, particularly with regard to law enforcement and conflict resolution¹. Restorative Justice, or Restorative Justice, which in the Indonesian translation is called restorative justice Restorative justice or Restorative Justice contains the meaning, namely: "a restoration of relationships and redemption of mistakes that the perpetrator of a crime (his family) wishes to carry out against the victim of the crime (his family) (peace efforts) outside of court with the aim and purpose of preventing legal problems that arise. The consequences of the criminal act can be resolved properly by reaching an agreement between the parties."² Restorative justice is a concept of criminal reform developed at

¹ Yogi Hardiman, "Mulawarman LawReview," *Mulawarman Law Review* 4, no. 1 (2019): 1–15.

² Ningrum Ambasari Hanafi Arief, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Al-Adl* 10 (2018).

the end of the 19th century.³ By definition, restorative justice is a model of sentencing by a court that is based on the restoration of the victim's rights. The main characteristic of solving cases is the participation of victims and perpetrators, as well as the participation of residents as facilitators.⁴ Restorative Justice aims to encourage everyone to uphold the supremacy of certain laws by using awareness and trust as a basis for ensuring everyone's welfare. It must be made clear that restorative justice is a principle that has a strong foundation.⁵ Case resolution prioritizes deliberation with the parties so that crime does not merely impose sanctions on the perpetrator but also takes into account the condition of the victim with the restoration of mutually agreed rights. The concept of restorative justice views criminal acts not as crimes against the state or society but as crimes against the victim, so that in solving them, the focus is on recovering the victim and not on punishing the guilty.⁶ The restorative justice model begins with the premise that assumptions or responses to juvenile offender behavior will not be effective without the cooperation and involvement of victims, offenders, and the community.⁷

Previously, the principles of restorative justice had been applied in the juvenile criminal justice system as regulated in Law No. 11 of 2012 concerning the juvenile criminal justice system. The legal mechanism is that the process remains the same as for someone who commits a criminal act, with procedural investigations and investigations by the police followed by a prosecution process by the prosecutor's office and a trial in court. Along with the development of criminal law in Indonesia, several law enforcement agencies have also issued regulations regarding restorative justice, such as the Prosecutor's Office of the Republic of Indonesia's Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The seriousness of the Indonesian Attorney General's Office in issuing this regulation is confirmed by the statement by the Indonesian Attorney General, Dr. ST. Burhanuddin, in his book, which emphasizes that the current dynamics of legal development have experienced a paradigm shift from the concept of retributive justice (retaliation) to restorative justice. The development of restorative justice in Indonesia has certainly given rise to several perspectives in the eyes of the public, academics, and legal practitioners. The legal transformation that occurs with the peace approach in criminal cases appears foreign to the public because the public understands that criminal cases are always faced with legal

³ Vivi Arfiani Siregar, "Perspektif Restorative Justice dalam Perlindungan Anak Sebagai Peradilan Pidana Di Indonesia," *Jurnal Hukum Das Sollen* 4 (2020).

⁴ Hanafi Arief, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia."

⁵ NANDA IVAN NATSIR, ABDUL HAMID, and SYAMSUL HIDAYAT, "Penerapan Restoratif Justice Dalam Kasus Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Wilayah Kota Mataram," *Ganec Swara* 15, no. 2 (2021): 1250, <https://doi.org/10.35327/gara.v15i2.243>.

⁶ Arman Sahti, "Penerapan Konsep Restorative Justice Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Dihubungkan Dengan Surat Edaran Kepolisian Republik Indonesia Nomor: Se/8/Vii/2018 Tentang Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkar," *Aktualita (Jurnal Hukum)* 2, no. 2 (2019): 615–42, <https://doi.org/10.29313/aktualita.v2i2.5176>.

⁷ Muhammad Sacral Ritonga, Mahmud Mulyadi, and Mustamam Mustamam, "PENERAPAN RESTORATIVE JUSTICE SEBAGAI MODEL PERLINDUNGAN TERHADAP ANAK (Studi Penanganan Perkara Anak Berhadapan Dengan Hukum Pada Wilayah Hukum Pengadilan Negeri Dumai Kelas IA)," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 2, no. 2 (December 2019): 318–35, <https://doi.org/10.34007/jehss.v2i2.94>.

sanctions due to someone's actions that have been committed. The shifts that occur in the mechanisms of the criminal justice system in Indonesia must be understood both materially and formally so that they do not harm the values of legal justice.

The basics of legal science through philosophical thinking methods criticize the fundamentality of law. These issues relate to the construction, essence, function, and objectives of the law.⁸ In relation to laws that are born in society, they certainly have their own orientation, namely to fulfill the values of justice. Based on the description above, the author is interested in studying and conducting more comprehensive research with the article title "PENAL MEDIATION SYNCHRONIZATION OF RESTORATIVE JUSTICE AND REFLECTION OF JUSTICE." To find out how restorative justice is regulated according to the laws and regulations in force in Indonesia, and does the concept of restorative justice provide guarantees for the values of justice?

METHOD

This research uses normative legal law. Normative juridical research is a type of research that uses a library research approach that combines phenomena that occur in document studies using legal theory, expert doctrine, and statutory regulations. Normative juridical research uses relevant secondary data to solve the problems in this research.

DISCUSSION

Restorative justice arrangements according to applicable laws and regulations in Indonesia

The development of law enforcement systems and methods in Indonesia shows a tendency to follow developments in social justice, especially the development of restorative justice principles, which require criminals to have a conscience to admit mistakes, apologize and provide compensation to their victims for damages and losses commensurate with the circumstances. original or at least can satisfy the victim's sense of justice.⁹

Indonesian positive law has implemented the concept of restorative justice in the criminal justice system; this is manifested in statutory regulations that regulate materially and formally. As stated in the report (document A/COND.169/16) of the 9th UN Congress in 1995 on Crime Prevention and the Treatment of Criminals, which stated that to solve the problem of overload (increasing cases) in the courts, efforts for parole, mediation, and compensation are emphasized, especially for novice and young offenders, resulting in an emphasis on penal mediation as an option for courts that allows settlement through negotiated procedures between the offender and the victim.¹⁰ In the Vienna Declaration, 10th UN Congress/2000 (document A/CONF.

⁸ Muhammad Helmi, "Konsep Keadilan Dalam Filsafat Hukum Dan Filsafat Hukum Islam," *Jurnal Pemikiran Hukum Islam* 14 (2015).

⁹ Zainul Akbar, "Penerapan Restorative Justice Dalam Tindak Pidana Pelanggaran Lalu Lintas," *Julia* 10, no. 2018 (2023): 44–51.

¹⁰ Barda Nawawi Arief, "Mediasi Penal: Penyelesaian Perkara Pidana Di Luar Pengadilan," 2009.

187/4/Rev.3), it was stated, among other things, that to provide protection to crime victims, mediation and restorative justice mechanisms should be introduced.¹¹

Indonesia has implemented the concept of restorative justice in the criminal justice system at the stages of investigation, prosecution, and general justice. Settlement of criminal cases inside or outside the legal process emphasizes the deliberation and direct participation of perpetrators, victims, and the community. Resolving criminal cases returns the situation to normal.¹² However, it is based on an agreement in 2012 that included law enforcement institutions, including the Supreme Court, Attorney General's Office, Indonesian National Police and KEMENKUMHAM or Ministry of Law and Human Rights Number 131/KMA/SKB/X/2012, Number M.HH -07.HM.03.02/2012, Number KEP-06/E/EJP/10/2012, Number: B/39/X/2012 concerning Implementation of Adjustments to Limits for Light Crimes and Amounts of Fines, Quick Examination Procedures, and Implementation of Justice Restorative (Restorative Justice).

Based on the joint memorandum of agreement, additional regulations were made by each institution as a guideline for implementing the principles of restorative justice at every stage of the judicial process, starting from the investigation, prosecution, and trial levels. Therefore, there are several juridical bases that support the implementation of restorative justice, such as Law No. 11 of 2012 concerning the juvenile criminal justice system, Republic of Indonesia Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Republic of Indonesia National Police Regulation No. 8 of 2021 concerning Handling of Crime Based on Restorative Justice, each of which can be explained regarding similarities and differences. Restorative justice is an alternative or different criminal justice method that prioritizes an integrated approach between the perpetrator on the one hand and the victim or community on the other hand as one unit to find solutions and restore justice.¹³

Qualification	Act no. 11 of 2012 concerning the Juvenile Criminal Justice System	Prosecutor's Regulation No. 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice	Republic of Indonesia State Police Regulation No. 8 of 2021 concerning Handling of Crime Based on Restorative Justice
Enforcement Authority	Article 16 paragraph (1) (1) Investigators, Public Prosecutors and Judges are obliged to provide special protection for children who are being investigated because of criminal acts committed in emergency situations.	Article 3 paragraph (5) (5) Termination of prosecution based on restorative justice as intended in paragraph (4) is carried out by the public prosecutor in a responsible manner and submitted in stages to the Head of the High Prosecutor's Office.	Justice is carried out in the following activities: a. carrying out the Criminal Investigation function; b. investigation; or c. investigation. (2) Implementation of the Criminal Investigation function, as referred to in paragraph (1) letter a, is carried out by the

¹¹ Arief.

¹² Josefhin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 309–19.

¹³ Agung Nusa Marsella & Wessy Trisna Pratidina, "Implementation of Restorative Justice on Flouring of Palm Oil by Children Under Age," *JUNCTO : Jurnal Ilmiah Hukum* 2, no. April (2020): 172–80.

			Community Development and Samapta Polri functionaries in accordance with their duties and authority. (3) Investigations, or investigations as intended in paragraph (1) letters b and c, are carried out by Polri investigators.
Stage	Investigation, prosecution, and trial	Prosecution at the Prosecutor's Office	Investigation by Police
Terms and types of crime	<p>Article 7, paragraphs (1) and (2)</p> <p>(1) At the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be attempted.</p> <p>(2) Diversion, as intended in paragraph (1), is carried out in the event of a criminal act committed:</p> <p>a. threatened with imprisonment for less than 7 (seven) years; and</p> <p>b. is not a repetition of a criminal act.</p> <p>The Diversion Agreement must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family, except for:</p> <ul style="list-style-type: none"> • criminal acts in the form of violations; • minor crimes; • victimless crimes; or • the value of the victim's losses is not more than the local provincial minimum wage. 	<p>Criminal cases can be closed by law and prosecution terminated based on Restorative Justice if the following conditions are met:</p> <p>a. the suspect has committed a crime for the first time;</p> <p>b. criminal offenses are only punishable by a fine or punishable by imprisonment for not more than five (five) years; And</p> <p>c. The criminal act is committed with the value of the evidence or the value of the loss incurred as a result of the criminal act not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah).</p> <p>Termination of prosecution based on Restorative Justice is carried out by fulfilling the requirements that the suspect has been restored to his original condition by:</p> <ol style="list-style-type: none"> 1) returning the goods obtained from criminal acts against victims; 2) compensating victims' losses; 3) compensating for costs incurred as a result of a criminal act; <p>and/or</p>	<p>Criminal acts that RJ can commit include:</p> <ol style="list-style-type: none"> a. does not cause unrest and/or rejection from the community; b. does not impact social conflict; c. does not have the potential to divide the nation; d. not radicalism and separatism; e. not a repeat perpetrator of a criminal act based on a court decision; And f. not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives.

4) repairing the damage resulting from a criminal act; Termination of prosecution based on Restorative Justice is excluded for cases:

- criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order, and decency;
- criminal offenses that are punishable by a minimum sentence of 5 years;
- narcotics crimes;
- environmental crimes; and
- criminal acts committed by corporations.

Legal Subjects	Children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act	Adults over 18 years old	Adults over 18 years old
Result	<ul style="list-style-type: none"> a. refund of losses in the event of a casualty; b. medical and psychosocial rehabilitation; c. handing it back to parents/guardians; d. participation in education or training at an educational institution or LPKS for a maximum of 3 (three) months; or e. community service for a maximum of 3 (three) months. 	<ul style="list-style-type: none"> a. agree to make peace accompanied by the fulfillment of certain obligations; or b. agreed to make peace without accompanying fulfillment certain obligations. 	<ul style="list-style-type: none"> a. peace from both parties, except for Drug Crimes; And b. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes which can take the form of: <ul style="list-style-type: none"> • return thing; • compensate for losses; • reimburse costs incurred as a result of criminal acts; and/or • compensate for damage caused as a result of criminal acts.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states explicitly that the authority to resolve criminal cases can be exercised jointly between the Public Prosecutor, Police, and Judges, which means that these three elements are responsible and authorized to resolve criminal cases as regulated in this provision, namely specifically regarding juvenile justice. Furthermore, Perja No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice is a special rule stipulated by the Prosecutor's Office of the Republic of Indonesia, specifically the authority given to the Public Prosecutor to implement the rules of that institution. Likewise, Perpol No. 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice is specifically stipulated for the police institution, so that the authority to follow up on handling criminal acts using a restorative justice approach is the police. According to the area of application of these three regulations, they have one thing in common, namely that in the context of criminal cases, they can be resolved using a restorative approach as long as they comply with the provisions that have been regulated.

According to the classification of types of criminal acts and their conditions, there are differences between the three rules regarding the types of criminal acts that can be resolved using the principles of restorative justice. UU No. 11 of 2012 stipulates that the type of crime aimed at children must not be more than 7 years old and not a repetition of the crime, so that restorative justice can be provided with a diversion approach or diversion of case resolution if there is a victim. Law enforcement is based on the concept of diversion, so the justice achieved does not only focus on recovering the losses suffered by the victim and restoring the situation of the perpetrator, but also contains the values of justice. Various forms of social programming for.¹⁴

This is different from Perja No. 15 of 2020 and Perpol No. 8 of 2021, which are formal rules set by each institution in terms of providing restorative justice. There are several disparities in the grouping of types of criminal acts that should be aligned in the judicial process, namely in the investigation and prosecution stages. So there is a contrast between the inconsistencies of law enforcement officials regarding the judicial process in handling criminal cases using a restorative justice approach. Referring to the Prosecutor's Regulations, criminal offenses are punishable by no more than 5 years and are not threatened with minimum criminal sanctions. This is different from the Police Regulations, which require special requirements, namely that drug crimes for users and criminal acts of disseminating illegal information and content are threatened with sanctions. specific minimum and maximum penalties. The discrepancies in the types of criminal acts can be explained again when Perja No. 15 of 2020 expressly excludes the provision of restorative justice while Perpol No. 8 of 2021 provides opportunities for special requirements, so that several differences in regulations arise from each law enforcement agency. The discontinuity in terms and types of punishment in both the Prosecutor's Regulations and the Police Regulations opens up the potential for overlapping regulations regarding resolving cases through restorative justice.

¹⁴ Dewi Ervina Suryani et al., "Penerapan Restorative Justice Pada Kasus Bullying Yang Dilakukan Anak (Studi Kasus Polisi Resor Kota Besar Medan Sumatera Utara)," *JURNAL INTERPRETASI HUKUM* 4, no. 3 (2023): 308–15.

The regulations regarding restorative justice regulated in Law No. 11 of 2012, Perja No. 15 of 2020 and Perpol No. 8 of 2021 have differences in cases that can be resolved with restorative justice. According to Police Regulation Number 8 of 2021, restorative justice is the process by which criminal acts are resolved by bringing together perpetrators, victims, perpetrators' families, victims' families, community leaders, religious leaders, traditional leaders, or other stakeholders in order to work toward a peaceful resolution that respects all parties and emphasises the restoration to its original state.¹⁵ Restorative As regulated in Perpol No. 8 of 2021 which states that drug cases can be subject to restorative justice, whereas Perja No. 15 of 2020 regulates drug cases as excluded cases. In this case, the uncertainty presented by law enforcement officials in handling drug cases can be seen. Restorative justice is really needed in resolving various kinds of criminal acts, especially certain criminal acts that, if handled retributively, do not provide significant benefits but instead actually cause new losses both for the victim and the state.¹⁶

Based on the legal subject and sanctions, these three rules are consistent, namely that the principle of restorative justice is given to criminal acts involving perpetrators and victims. UU No. 11 of 2012 specializes in children, while Perja and Perpol open the potential to a plurality of legal subjects as long as they have committed criminal acts and meet the requirements for providing restorative justice. In terms of sanctions, these three rules require that people be able to make peace with the parties who are given the authority to be involved in resolving the case. The Juvenile Justice System Law emphasizes diversion, while Perja No. 15 of 2020 and Perpol No. 8 of 2021 use a mediation approach with the same output, namely alternative dispute resolution and restorative justice, becoming a reform of the criminal system from conventional to a restorative system that provides alternative resolution of criminal cases by involving perpetrators, victims, and authorized parties.

Restorative Justice in Providing Guarantees of Justice Values

John Rawls's theory of justice in Justice as Fairness assumes that parties in a genuine or natural position do not have knowledge about the question of a person's goodness or psychological tendencies. The initial position is an initial statute quo that confirms that the basic agreement has been reached fairly. Nevertheless, the principles of justice are affirmed in a state of ignorance, thereby ensuring that no one is affected by advantage or disadvantage based on the choice of natural principles or the limitations of social situations.¹⁷ John Rawls added that the principle of justice is the result of consensus from fair or fair bargaining and is related to the term justice, as fairness is if a fair

¹⁵ Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *Legality Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90, <https://ejournal.umm.ac.id/index.php/legality/article/view/24247/12233>.

¹⁶ Sienny Karmana et al., "IMPLEMENTASI RESTORATIVE JUSTICE BAGI PELAKU PENYALAHGUNA NARKOTIKA DI DIREKTORAT RESERSE NARKOBA 1. Implementasi Restorative Justice Di Direktorat Reserse Narkotika Polda Bali," *JURNAL INTERPRETASI HUKUM* 4, no. 1 (2023): 68–73.

¹⁷ John Rawls, *A Theory of Justice Terje, Aham Uzair Fauzan Dan Heru Prasetyo*, 3rd ed. (Yogyakarta: Pustaka Pelajar, 2018).

agreement is obtained from an ideal or fair situation.¹⁸ It continues if the principle assumes that when someone faces a situation, they carry out their obligations as written in the rules of an institution or state and simultaneously voluntarily accept the benefits offered, as long as the institution is fair or just.¹⁹

John Rawls' theory presents two priorities for implementing these two principles. Since this priority exists, it must be an effort to implement a principle of justice; that priority is the priority of freedom and the priority of justice above efficiency and prosperity. First, Freedom Priority, Lexical order does not respond to the principles of justice, and nevertheless, freedom itself can be limited to one freedom, namely; Strengthening the freedom that everyone can enjoy must be done through non-exclusive freedom, and those who have less freedom are obligated to accept less linear freedom. Secondly, Priority of justice above efficiency and welfare. This principle of justice literally goes beyond the principle of efficiency and maximizing overall profits. The principle of equality of opportunity must precede the principle of differences.²⁰ The first priority means that the basis of freedom cannot be separated by material benefits that are more dominant for all people, or even for those who have not yet benefited. According to John Rawls' theory of priorities, if restrictions on freedom must be introduced, they can only be limited to a greater balance of freedom for everyone. This means that these boundaries are interpretable and can be expressed to a plurality of people. The balance of distributing rights and obligations to society to unlock its real potential and feel the burden equally is Rawls's response to orienting justice. Rawls's concept of justice is based on a concept of justice for social cooperation. Nevertheless, it is reaffirmed to maintain a balance in the distribution of rights and obligations, emphasize fair consensus, and stimulate social cooperation in the midst of society.²¹ Rawls' general conception of justice is that freedom, all social values, income, prosperity, and the basics of self-respect must be allocated equally. Special exceptions when the unequal distribution of some or all interests is intended to support the less fortunate.²² So if justice can be distributed equally as justice as fairness and is driven by the original or natural position of humans, then a just or fair social order can be constructed. In essence, law has an interest in ensuring the social life of society because law and society have an interrelation.²³

Social construction, or societal order, will have legal links within it. Gustav Radbruch simply shares the objectives of law, one of which is justice (*Gerechtigkeit*). The purpose of the law will influence the legal rules that apply as an ontological factor in the formation of a statutory regulation. Fairness in John Rawls's concept of justice is a condition when individuals can support their rights, and there is a value of equality that

¹⁸ Rawls.

¹⁹ Rawls.

²⁰ Rawls.

²¹ Iqbal Hasanudin, "Keadilan Sosial:Telaah Atas Filsafat Politik John Rawls," *Jurnal Refleksi* 17 (2018).

²² Rawls, *A Theory of Justice* Terje, Aham Uzair Fauzan Dan Heru Prasetyo.

²³ Haryanto Ginting and Muazzul Muazzul, "Peranan Kepolisian Dalam Penerapan Restorative Justice Terhadap Pelaku Tindak Pidana Pengeroyokan Yang Dilakukan Oleh Anak Dan Orang Dewasa," *Jurnal Ilmiah Penegakan Hukum* 5, no. 1 (2019): 32, <https://doi.org/10.31289/jiph.v5i1.1977>.

is based on fairness, which in this context is when the law can distribute the rights of each individual, who is part of the social order, in order to create values of justice. John Rawls is adding at the level of abstraction from Immanuel Kant's thoughts on the concept of justice, namely that one must apply the principle of morality, which means that when an individual is moral, then it is justice. Viewed from an Islamic perspective, justice is one of the principles that must be respected. The nature of 'adl (all-just) is confronted with the word zulm. When Allah commands humans to do justice, on the same occasion, Allah also orders humans not to do injustice.²⁴ However, economic justice and social justice are conditions for the realization of social welfare, which means that the role of state leaders is closely related to upholding justice. Based on the principle of distributive justice, the state must ensure that its society is free from justice gaps in state life so that it can minimize differentiation from one individual to another. The government can realize justice through state law by manifesting laws that are fair and non-discriminatory in society.

The concept of restorative justice offers an alternative handling of criminal cases involving perpetrators and victims and has become something new in the criminal justice system that developed in the 20th century in Indonesia. However, the restorative justice paradigm contains several things, including when a crime occurs, we must first consider the interests of the victims, because they are the people who are directly affected by the crime that has been committed and the restorative process must optimize the contribution and participation of affected people in efforts to restore, understand, empathize, take responsibility, and prevent.²⁵ In essence, there are two priority principles of justice according to John Rawls, namely regarding the principle of freedom and the principle of justice above efficiency and welfare, so restorative justice can be categorized as fair if it is linked to John Rawls' justice if it has fulfilled. When someone has carried out their obligations, namely by fulfilling the victims' rights, give the victim the freedom to accept or reject peace, and set the terms of justice as fair, which is at least as fair as is appropriate according to the circumstances.

The happiness factors that support the concept of restorative justice, according to John Rawls, can be classified into two categories: objectively and subjectively. First, objective happiness can be achieved with plans that have been adapted to the conditions of human life and rely on rational beliefs. Second, subjective happiness: if there are obstacles in implementing the rational plan, then there has been an error in the objective conception. According to John Rawls, justice will be achieved if its implementation focuses on fulfilling the obligations of the perpetrator and the freedom of the victim, so that it will support happiness for the parties involved in the case because it has prioritized morality as a condition for obtaining justice. Based on this description, restorative justice normatively fulfills the elements of justice according to John Rawls' theory of justice and justice from an Islamic perspective. However, in a casuistic or case approach, it is still possible for some deviations to occur that are contrary to norms regarding restorative justice. So there is a need for formal legal

²⁴ Fauzi Almubarak, "Keadilan Dalam Perspektif Islam," *Jurnal; Istighna* 1 (2018).

²⁵ Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana Edisi Revisi*, 1st ed. (Yogyakarta: Cahaya Atma Pustaka, 2016).

improvements or constructing more ideal law enforcement in accordance with applicable norms in order to further minimize the gap between norms and their enforcement. Furthermore, the role of law enforcement officers is also very influential in the process of administering restorative justice. John Rawls argues about the principle of equality, which means that law enforcement officials do not side with victims or perpetrators but rather take a moderate attitude in resolving criminal cases. So that the objectives of law, one of which is regarding the elements of justice, can be fulfilled with the idea of the theory of justice that has been formulated by John Rawls.

CONCLUSION

Restorative justice is an alternative effort to resolve criminal cases that is oriented towards restoring the relationship between the victim and the perpetrator. Restorative justice is based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, all three of which have similarities in terms of alternatives for resolving criminal cases using non-litigation processes. However, each regulation has a different mechanism in terms of the authority that takes action, jurisdiction, conditions and types of criminal acts, legal subjects, and peace results. So restorative justice regulations in Indonesia are still not harmonized and can give rise to legal uncertainty. In terms of realizing justice, it is carried out using a restorative justice approach. In general, restorative justice has provided guarantees of justice for parties involved in a lawsuit by emphasizing the victim as the person who has been harmed and obliging the perpetrator to fulfill the victim's rights, so that it is in line with John Rawls's theory of justice as fairness that a person carries out obligations as stipulated in provisions that are voluntary and prioritize two priorities, namely the priority of freedom and the priority of justice above efficiency and welfare. However, in several cases, the implementation of restorative justice still contains several deviations or gaps from established norms. Nevertheless, it is necessary to improve the quality of law enforcement in Indonesia so that the implementation of restorative justice does not create a gap between norms and implementation.

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REFERENCES

- Akbar, Zainul. "Penerapan Restorative Justice Dalam Tindak Pidana Pelanggaran Lalu Lintas." *Julia* 10, no. 2018 (2023): 44–51.
- Almubarak, Fauzi. "Keadilan Dalam Perspektif Islam." *Jurnal; Istighna* 1 (2018).
- Andini, Orin Gusta, Nilasari Nilasari, and Andreas Avelino Eurian. "Restorative Justice in

- Indonesia Corruption Crime : A Utopia.” *Legality Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90.
<https://ejournal.umm.ac.id/index.php/legality/article/view/24247/12233>.
- Arief, Barda Nawawi. “Mediasi Penal: Penyelesaian Perkara Pidana Di Luar Pengadilan,” 2009.
- Ginting, Haryanto, and Muazzul Muazzul. “Peranan Kepolisian Dalam Penerapan Restorative Justice Terhadap Pelaku Tindak Pidana Pengeroyokan Yang Dilakukan Oleh Anak Dan Orang Dewasa.” *Jurnal Ilmiah Penegakan Hukum* 5, no. 1 (2019): 32.
<https://doi.org/10.31289/jiph.v5i1.1977>.
- Hanafi Arief, Ningrum Ambasari. “Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia.” *Jurnal Al-Adl* 10 (2018).
- Hardiman, Yogi. “Mulawarman LawReview.” *Mulawarman Law Review* 4, no. 1 (2019): 1–15.
- Hasanudin, Iqbal. “Keadilan Sosial:Telaah Atas Filsafat Politik John Rawls.” *Jurnal Refleksi* 17 (2018).
- Helmi, Muhammad. “Konsep Keadilan Dalam Filsafat Hukum Dan Filsafat Hukum Islam.” *Jurnal Pemikiran Hukum Islam* 14 (2015).
- Hiariej, Eddy O.S. *Prinsip-Prinsip Hukum Pidana Edisi Revisi*. 1st ed. Yogyakarta: Cahaya Atma Pustaka, 2016.
- Karmana, Sienny, Anak Agung, Sagung Laksmi, and Luh Putu Suryani. “IMPLEMENTASI RESTORATIVE JUSTICE BAGI PELAKU PENYALAHGUNA NARKOTIKA DI DIREKTORAT RESERSE NARKOBA 1 . Implementasi Restorative Justice Di Direktorat Reserse Narkotika Polda Bali.” *JURNAL INTERPRETASI HUKUM* 4, no. 1 (2023): 68–73.
- Mareta, Josephin. “Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak.” *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 309–19.
- NATSIR, NANDA IVAN, ABDUL HAMID, and SYAMSUL HIDAYAT. “Penerapan Restoratif Justice Dalam Kasus Kecelakaan Lalu Lintas Yang Dilakukan Oleh Anak Di Wilayah Kota Mataram.” *Ganec Swara* 15, no. 2 (2021): 1250.
<https://doi.org/10.35327/gara.v15i2.243>.
- Pratidina, Agung Nusa Marsella & Wessy Trisna. “Implementation of Restorative Justice on Flouring of Palm Oil by Children Under Age.” *JUNCTO : Jurnal Ilmiah Hukum* 2, no. April (2020): 172–80.
- Rawls, John. *A Theory of Justice Terje, Aham Uzair Fauzan Dan Heru Prasetyo*. 3rd ed. Yogyakarta: Pustaka Pelajar, 2018.
- Ritonga, Muhammad Sacral, Mahmud Mulyadi, and Mustamam Mustamam. “PENERAPAN RESTORATIVE JUSTICE SEBAGAI MODEL PERLINDUNGAN TERHADAP ANAK (Studi Penanganan Perkara Anak Berhadapan Dengan Hukum Pada Wilayah Hukum Pengadilan Negeri Dumai Kelas IA).” *Journal of Education, Humaniora and Social Sciences (JEHSS)* 2, no. 2 (December 2019): 318–35.
<https://doi.org/10.34007/jehss.v2i2.94>.
- Sahti, Arman. “Penerapan Konsep Restorative Justice Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Dihubungkan Dengan Surat Edaran Kepolisian Republik Indonesia Nomor: Se/8/Vii/2018 Tentang Penerapan Keadilan Restoratif (Restorative Justice) Dalam Penyelesaian Perkar.” *Aktualita (Jurnal Hukum)* 2, no. 2 (2019): 615–42. <https://doi.org/10.29313/aktualita.v2i2.5176>.

- Siregar, Vivi Arfiani. "Perspektif Restorative Justice dalam Perlindungan Anak Sebagai Peradilan Pidana Di Indonesia." *Jurnal Hukum Das Sollen* 4 (2020).
- Suryani, Dewi Ervina, Fabian Xavier, Petricia Simbolon, Gio Swandy Siagian, and Muhammad Yusuf Siregar. "Penerapan Restorative Justice Pada Kasus Bullying Yang Dilakukan Anak (Studi Kasus Polisi Resor Kota Besar Medan Sumatera Utara)." *JURNAL INTERPRETASI HUKUM* 4, no. 3 (2023): 308–15.