

DOI: <https://doi.org/10.38035/jlph>

Received: 4 August 2024, Revised: 27 August 2024, Publish: 30 August 2024

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

## ***Restorative Justice in the Reform of the Indonesian Criminal System (Case Study of Violence Against Children in the Selebar Police Sector Area, Bengkulu City)***

**Safira Gustika Maharian<sup>1</sup>**

<sup>1</sup>Semarang State University, Semarang, Indonesia [safiragustika6@students.unnes.ac.id](mailto:safiragustika6@students.unnes.ac.id)

Corresponding Author: [safiragustika6@students.unnes.ac.id](mailto:safiragustika6@students.unnes.ac.id)

**Abstract :** Imprisonment in several criminal cases is considered ineffective. This is because there is no guarantee that when the convict is released, he will be better or worse. The classical school is also considered irrelevant to the modern life of today's society. In dealing with criminal acts that can be restored or restored, a paradigm of punishment is known, namely *restorative justice*, in which the perpetrator is encouraged to compensate for the losses that have been caused to the victim, his family and also the community. The research method used is normative juridical referring to the approach in legal science. The results of this study are efforts to reform criminal law in the application of *restorative justice* based on police report number LP / B / 71 / VI / 2023 / SPKT / POLSEK SELEBAR / POLRESTA BENGKULU / POLDA BENGKULU in Indonesia still has shortcomings because there is no law that specifically regulates *restorative justice*. In the National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, it only focuses on administrative matters in the police, not on *restorative justice* itself. The implementation of *Restorative Justice* in the punishment of perpetrators of criminal acts in Indonesia is very good considering that there is no law that specifically regulates *restorative justice* itself. In 2022, the number of cases resolved using the restorative justice system was 15,809 cases. This number increased by 11.8 % compared to the number in 2021 of 14,137 cases.

**Keywords:** *Restorative Justice*, Violence Against Children, Criminal Law Reform.

### **INTRODUCTION**

*Staffrect's Wetbook voor Netherlands Indie* or better known as the Criminal Code (KUHP) is the *ius constitutum* or law that is currently in force and is the basis for the implementation of Indonesian criminal law. The Criminal Code has been used since the Dutch Colonial era which was ratified through *staatsblad* number 732 of 1915 and came into effect on January 1, 1918. After Indonesia's independence, the Colonial Criminal Code was still enforced but with the alignment of several articles that were no longer relevant. Through Article II of the 1945 Constitution of the Republic of Indonesia (UUD 1945), it is explained that "All existing state institutions still function as long as they implement the provisions of

the Constitution and no new ones have been created according to this Constitution", so that all laws and regulations in the colonial era still apply in Indonesia.

On February 26, 1946, the government issued Law Number 1 of 1946 concerning Criminal Law Regulations to confirm the implementation of the colonial Criminal Code.

The theory of retaliation as part of the punishment in the colonial Criminal Code is a characteristic of the dominant classical school. The punishment in Article 10 of the Criminal Code is explained that there are several sanctions consisting of:

- a) Principal crimes:
  1. Death penalty;
  2. Imprisonment;
  3. Imprisonment;
  4. Criminal fine;
  5. Cover-up crime.
- b) Additional penalties:
  1. Revocation of certain rights;
  2. Confiscation of certain goods;
  3. Announcement of the judge's decision.

The implementation of criminal punishment through imprisonment still dominates in Indonesia compared to other criminal punishments. This is in line with the opinion of PAF Lamintang who stated. (Lamintang, 1984:86)

"The penalty of deprivation of liberty is a punishment by way of limiting the freedom of movement of the convict, which is carried out by means of isolating the convict in a correctional institution, where later the person is obliged to comply with all the rules and regulations in force in the correctional institution, which relate to any disciplinary actions for those who have violated the rules."

In fact, the imposition of prison sentences in several criminal cases is not effectively implemented. This is because there is no guarantee that when the convict comes out, he will be better or worse. The classical school is also considered irrelevant to the modern life of today's society.

The long criminal justice process has not been able to guarantee that the rights of victims have been restored and the perpetrators receive punishment commensurate with their actions. The essence of the loss received by the victim is not only material or physical suffering but also psychological.

In criminal justice practices, victims of crime are placed as one of the evidences, namely as witnesses, so that the possibility for victims to fight for their rights is very small. In addition, victims in criminal justice are also represented by the Public Prosecutor. In reality, the losses experienced by victims are increasingly neglected.

In dealing with criminal acts that can be restored or recovered, a punishment paradigm is known as *restorative justice*, in which the perpetrator is encouraged to compensate for the losses that have been caused to the victim, his family and also the community.

The concept of *restorative justice* has been implemented in the juvenile criminal justice system, which is written in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially for children in conflict with the law. This regulation applies a diversion approach to resolve juvenile criminal cases and also the concept of *restorative justice* where all *stakeholders*, especially the community, are involved, the most important *stakeholder* here is the community because it helps the process of restoring conditions to be better. (Bilal Sindu and Mitro Subroto, 2023:1154)

Furthermore, *restorative justice* is also explained in the National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. In several laws and regulations

above, *restorative justice* is simply a process of resolving criminal cases by involving parties involved in a crime to find a fair way of resolving it by seeking restoration to the original state and not just revenge for the perpetrator.

It is hoped that with the existence of two laws and regulations that can be said to be derivatives of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (because it adopts restorative justice and diversion from the law), it can maximize the implementation of *restorative justice* in Indonesia.

In the implementation of *restorative justice* in cases of violence against children committed by 6 (six) perpetrators against child victims VV, RR and AK, based on police report number LP / B / 71 / VI / 2023 / SPKT / POLSEK SELEBAR / POLRESTA BENGKULU / POLDA on June 04, 2023, experienced several obstacles. Victims of violence against children committed by 2 (two) children and 4 (four) adults.

It is expressly stipulated in the constitution in Indonesia that the state guarantees the rights of every child to survival, growth and development and to protection from violence and discrimination. Therefore, the best interests of children should be lived as the best interests for the survival of humanity.

Based on the background above, the author raises two problem formulations (i) how are the efforts to reform criminal law in the application of *restorative justice* based on police report number LP / B / 71 / VI / 2023 / SPKT / POLSEK SELEBAR / POLRESTA BENGKULU / POLDA BENGKULU? (ii) how is the implementation of *restorative justice* in the punishment of perpetrators of criminal acts in Indonesia?

## METHOD

The research method used is normative juridical referring to the approach in legal science that focuses on the analysis and interpretation of legal regulations set by the government or authorized institutions. This approach is based on written legal norms, such as laws, regulations and court decisions. Legal analysis is carried out by referring to existing legal texts and interpretation is carried out based on words and phrases in legal documents. (Jonaedi, 2018:20) Sources of legal documents are obtained from literature that is related to the object of research and will provide descriptive analytical legal study results.

## RESULTS AND DISCUSSION

### **Criminal Law Reform Efforts in the Implementation of *Restorative Justice***

The conflict resolution procedure in Indonesia currently still involves many judicial institutions. The many conflicts that occur, especially because of the diversity of Indonesian society, have resulted in the suboptimal enforcement of justice in court. Restorative justice as one of the efforts to resolve conflicts outside the courts, aims to ensure that the enforcement of justice can run optimally without going through a long legal process.

The concept of restorative justice is an approach that emphasizes the conditions for creating justice and balance for perpetrators of criminal acts and their victims. The mechanism of criminal procedure and justice that focuses on punishment is changed into a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is fairer and more balanced for victims and perpetrators. Restorative justice itself has the meaning of restorative justice, while restoration here has a broader meaning than what is known in the conventional criminal justice process, namely restitution or compensation for victims.

The concept of punishment that was initially emphasized on revenge or misery given by the state to the perpetrator, turned out to be not entirely effective in providing a deterrent effect. The dissatisfaction of victims and their families with the implementation of existing criminal law, as well as the implementation of a criminal justice system that is felt to provide

less justice for individuals, protection for victims and does not provide benefits to society, makes restorative justice the main alternative sought.

In Indonesia, the concept of restorative justice is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

There is no specific law regulating restorative justice, making this concept not yet mature in its application. The classification of criminal acts that can be subject to restorative justice has also not been made specifically. In the crime of violence against children that occurred in Air Sebakul, Bengkulu City, the police experienced several obstacles. The case of violence against children that occurred was recorded in Police Report Number LP / B / 71 / VI / 2023 / SPKT / POLSEK SELEBAR / POLRESTA BENGKULU / POLDA BENGKULU) which was carried out by 6 (six) perpetrators, namely Riski Apri Wahyudah (21 years old), Erik Katmandala Putra (22 years old), Sahril Ramadani (27 years old), Darpan (19 years old), child perpetrators TAP (17 years old) and RA (17 years old) against victims Rama Ramadhan, child victims VV (15 years old) and AK (17 years old).

If we look at child perpetrators against child victims, then it is appropriate to carry out restorative justice because this is also in accordance with Law Number 12 of 2011 concerning the Child Criminal Justice System. The law explains that restorative justice and diversion are intended to avoid and distance children from the judicial process so that they can avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally.

In this case of violence against children, the victim accompanied by a parent/guardian, along with the perpetrator accompanied by a parent/guardian, carried out a peace process before restorative justice was carried out at the police. As a result, they have agreed to make compensation or resuscitation.

In the conventional criminal justice process, the term restitution or compensation for victims is known. Restitution is compensation given to the victim or his/her family by the perpetrator or a third party which can be in the form of returning the victim's property, payment of compensation for loss or suffering and/or reimbursement of costs for certain actions.

Restitution is in accordance with the principle of restoration to the original state (*restitutio in integrum*) which is also the goal of restorative justice. Resuscitation is an effort that the victim of a crime must be returned to the original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to the original condition. This principle emphasizes that the form of recovery for the victim must be as complete as possible and cover various aspects arising from the consequences of the crime. With restitution, the victim can be restored to freedom, legal rights, social status, family life and citizenship, return to their place of residence, restore their work, and restore their assets.

Based on the results of the *visum et repertum* on the child victim VV, it was found that on the left front side of the stomach there was a cut wound, reddish in color, flat edges, both sharp corners, muscle base, when pressed together forming a line with a size of 4 cm x 1.5 cm (four centimeters by one point five centimeters). The victim was given treatment and medication. After consulting a surgeon with the results that the victim had a cut wound accompanied by bleeding in the stomach, the victim was advised to undergo medical treatment in the operating room and receive intensive care.

Based on the above *visum et repertum*, the victim in this case of violence against children received recovery of rights in the form of resuscitation, namely the perpetrator paying a certain amount of material compensation (money) to the victim as medical expenses for the physical injuries suffered by the victim.

Even though there has been resuscitation, there are still pros and cons to restorative justice in the case because the crime of violence against children is considered a serious crime that is not appropriate if in its classification that restorative justice can only be applied to minor crimes. Moreover, in this case, the perpetrators are mostly adults.

Law enforcement officers (in this case the Police) face several obstacles. One of them, in the National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice only focuses on administrative matters in the police, not on restorative justice itself. Even the administrative process still experiences several obstacles, such as all suspects must have been gathered (no fugitive suspects) before restorative justice can be decided. This is a dilemma for investigators, because the victim and their parents/guardians have made peace with the perpetrators previously. However, the administration of gathering all suspects must still run, so that restorative justice was hampered.

In the renewal of criminal law, especially before a regulation is implemented, there needs to be readiness from law enforcement officers and the regulation itself.

In essence, efforts to reform criminal law include the field of criminal law policy which is part of and closely related to law enforcement policy, criminal policy and social policy. Therefore, criminal law reform is in principle part of the policy (rational effort) to renew the substance of law in order to make law enforcement more effective, combat crime in order to protect society, and overcome social problems and humanitarian problems in order to achieve national goals, namely social protection and social welfare.

Many conflicts have been resolved with restorative justice, the reduction in overcapacity in prisons which has now reached 500%, shows that there have been many positive impacts. It is hoped that the Restorative Justice Law will maximize the enforcement of justice outside the court, especially now that Law Number 1 of 2023 concerning the Criminal Code has come into effect which is oriented towards victims of crime.

Restorative Justice in the Indonesian legal system is still partial and not comprehensive (still spread across various legal instruments and policies), meaning it has not been implemented comprehensively in the criminal justice system in Indonesia.

### **Implementation of *Restorative Justice* in the punishment of criminal perpetrators in Indonesia**

Crime prevention by using criminal law including revocation of freedom of perpetrators of criminal acts (for example, imprisonment) is the most classic way. In the development of human civilization, the implementation of criminal sanctions by revoking freedom contains many negative aspects. Negative aspects arising from criminal revocation of freedom, for example, *dehumanization*, *prisonization*, *stigmatization*, as well as the many sacrifices of time, energy, thoughts of law enforcement officers and the large amount of state budget expenditure to punish perpetrators of crimes. In fact, the focus should be on restoring or restoring the situation due to the occurrence of crime.

Retributive theory that focuses on revenge is considered no longer relevant in society. This has triggered the idea of implementing *restorative justice* in the concept of punishment. The implementation of *restorative justice* that emphasizes the restoration of losses caused by criminal acts has proven successful in various countries in the world.

Since President Susilo Bambang Yudhoyono used the term *out of court settlement* for the Bibit S. Rianto-Chandra M. Hamzah case, the term has become popular. The people also learned a new lesson that case resolution can also be done outside the court. (Sadjipto, 2020:3) *Restorative justice* as an alternative to resolving cases outside the court has become increasingly popular in Indonesia.

Indonesia as a communal country allows *restorative justice to be established* as one of the efforts to resolve criminal cases outside the courts. The reflection of *restorative justice*

can be clearly seen in the customary criminal justice system in Indonesia. Indigenous people are accustomed to a system of deliberation in resolving a conflict. In resolving a conflict, the injured party (victim) is asked for a response regarding what obligations the perpetrator must carry out so that the victim's rights can be restored. Criminal law also returns to its essence, namely as an *ultimum remedium* that will be used if the deliberation does not reach an agreement.

*Restorative justice* concept in Indonesia has been applied in certain cases, for example in minor crimes such as traffic violations and children in conflict with the law.

In minor crimes, it is considered sufficient to reach an agreement between the parties in its settlement rather than following a series of complicated and lengthy judicial processes. Restoration of rights will also be more optimal if deliberation has been reached.

In the consideration of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that children are a mandate and gift from God Almighty who have the dignity and honor of a whole human being. To maintain their dignity and honor, children have the right to receive special protection, especially legal protection in the justice system.

Article 1 point (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not revenge.

The success of *restorative justice* in Indonesia can be seen from data released by the National Police, which states that the police have prosecuted 276,507 criminal cases throughout 2022. Meanwhile, the number of cases that have been completed is 72.38 % or 200,147 cases.

According to the Chief of Police, the number of cases resolved in 2022 decreased compared to 2021. One of the factors was because the police implemented *restorative justice* or a law enforcement method that does not involve criminal sanctions, but rather restorative justice. In 2022, the number of cases resolved using the restorative justice system was 15,809 cases. This number increased by 11.8 % compared to the number in 2021 of 14,137 cases.

## CONCLUSION

1. Efforts to reform criminal law in the application of restorative justice in Indonesia still have shortcomings because there is no law that specifically regulates restorative justice. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, are considered insufficient considering that there are still many things that have not been regulated but in reality are already underway. In addition, National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice only focuses on administrative matters in the police, not on restorative justice itself.
2. The implementation of Restorative Justice in the punishment of criminals in Indonesia has been very good. This is proven by the number of cases completed by the Police with the restorative justice system of 15,809 cases, an increase of 11.8% compared to the number in 2021 of 14,137 cases.

## REFERENCE

- Arief, Barda Nawawi. (2011). *Criminal Law Reform in the Perspective of Comparative Studies*. Bandung: PT. Citra Aditya Bakti.
- Efendi, Jonaedi and Johnny Ibrahim. (2018). *Legal Research Methods: Normative and Empirical*. Prenada Media.
- Lamintang, PAF (1984). *Indonesian Penitentiary Law*. Bandung: Armico.

- Rahardjo, Satjipto. (2010). *Progressive Law Enforcement* . Jakarta: Kompas.
- Juhari. (2017). *Restorative Justice in Criminal Law Reform in Indonesia*. Journal of Law Spectrum, Vol. 14/No. 1/April 2017.
- Muladi. (2002). *Human Rights, Politics and the Criminal Justice System* . Semarang: Diponegoro University Publishing Agency.
- Reksa, Mochamad Bilal Sindhu and Mitro Subroto. (2023). *Implementation of Restorative Justice in the Criminal Justice System in Indonesia* . Journal of Legal Communication Vol. 9 No. 1, February 2023.
- Wijaya, Irawan Adi. (2018). *Granting of Restitution as Legal Protection for Victims of Criminal Acts*. Journal of Law and Economic Development, Vol.6 No.2: 95.