



## Legal Analysis of the Implementation of Restorative Justice in Dispute Resolution in Society

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### Abstract

*This research aims to analyze the application of the Restorative Justice principle in dispute resolution within the community, using a juridical analysis approach. Restorative Justice is an alternative dispute resolution that prioritizes the restoration of relationships between the involved parties: victims, offenders, and society. The method used in this study is a normative method with a qualitative approach, examining relevant legal norms and their application in community dispute cases. The study also utilizes literature review to explore legal sources, literature, and journals related to the application of Restorative Justice in Indonesia. The objective of this research is to understand the effectiveness of Restorative Justice in resolving disputes, both legally and socially, and to identify the potential and challenges faced in its implementation. The research aims to provide recommendations for developing a legal system that is more focused on restoration and reconciliation.*

## Introduction

Restorative Justice (RJ) is an approach to dispute resolution that focuses on restoring relationships between the parties involved, rather than simply punishing the perpetrator. This concept is increasingly important in the context of law and society, especially in countries with criminal justice systems that prioritize punishment. Restorative justice upholds the principle that justice is not only achieved through punishment, but through efforts to restore the losses experienced by victims and rehabilitate the perpetrators (Gabbay, 2005; Braithwaite, 2000).

In conventional legal systems, dispute resolution often focuses on the criminal responsibility accepted by the perpetrators of the crime. However, although this may provide a sense of justice for some parties, this process often does not address the social problems that underlie the conflict or crime. RJ provides an alternative by placing all parties involved in the dispute including victims, perpetrators, and the community in a more equal position to engage in dialogue, understand the impact of their actions, and work together to find solutions that are restorative, not just punitive.

The concept of restorative justice is important in building a more humane and just legal system. Amid the increasing crime rate in various parts of the world, including in Indonesia, the implementation of RJ is considered an answer to the weaknesses of the legal system that only prioritizes punishment. In addition, RJ has the potential to reduce feelings of revenge or hatred between disputing parties, which often persist in society if not resolved in a more in-depth manner (Fernando, 2020; Laurent, 2018).

One of the main principles of RJ is "restoration", which is not only returning the victim to their original state, but also seeking change in the perpetrator so that they do not repeat their actions. In many cases, this means changing the perpetrator's mindset through dialogue, admitting

mistakes, and efforts to improve social relations. Therefore, the implementation of restorative justice focuses on restoring social balance and restoring trust in society, not just short-term conflict resolution.

The implementation of restorative justice in the Indonesian legal system, especially in cases of minor crimes and family mediation, has had a significant positive impact. The mediation process that is at the heart of RJ allows the parties to resolve their problems in a more peaceful manner, without having to go through time-consuming and costly court procedures. For example, in cases of minor crimes or violations involving children or adolescents, RJ provides an opportunity for perpetrators to admit their mistakes, apologize to the victim, and commit not to repeat the mistake in the future (“Impacts of Conflict,” 2016; Silaban et al., 2022).

However, the biggest challenge in implementing RJ is changing the mindset of people who are used to the punishment system. Not all parties feel comfortable or believe that RJ can replace the harsher formal justice process. Therefore, education and socialization regarding the benefits of RJ are very important so that more people understand this approach as a more constructive and sustainable solution in resolving disputes.

This study aims to explore further the extent to which the RJ principle has been applied in the Indonesian legal system, especially in handling minor criminal cases and resolving disputes at the community level. This study will assess whether the application of RJ is more effective in resolving disputes in the community, both from a legal, social, and psychological perspective for victims and perpetrators. This study will also assess how the community accepts the RJ concept, both from the perspective of victims, perpetrators, and society as a whole. The challenges of regulation and implementation in the field, as well as the role of law enforcement in implementing the RJ principle will be the focus in analyzing obstacles that may arise in its application (Arief & Ambarsari, 2018).

This study aims to identify the extent to which restorative justice has been applied in the Indonesian criminal justice system, especially in resolving disputes involving individuals and the community. This includes analyzing the policies and regulations underlying the application of RJ as well as existing best practices. This study will also measure the effectiveness of RJ in reducing conflict levels, increasing recovery for victims, and helping perpetrators reintegrate into society.

The social and psychological impacts of the application of RJ will also be analyzed, both on victims, perpetrators, and society as a whole. Thus, the challenges faced can be found both in terms of public understanding, regulations, and support from related parties, such as law enforcement officers and judicial institutions.

## **Methods**

The descriptive legal research method is an approach used to describe or explain a legal problem that occurs, with the aim of obtaining a clearer and deeper understanding of the object being studied, without making changes to the object. This method focuses on a systematic explanation of the laws and regulations, practices, and implementation of laws that apply in a particular legal context. In descriptive legal research, researchers do not aim to test hypotheses or develop new theories. Instead, the main goal is to provide a more detailed picture of how the law is applied in social life or in a justice system. This research focuses on collecting legal data, both in the form of regulations, legal documents, and interviews with legal practitioners or parties involved in the legal process, to analyze existing practices in the field.

The selection of the descriptive legal method for journals that analyze the application of restorative justice in resolving disputes in society is based on several important reasons: 1)

Describe Existing Legal Practices: Restorative Justice is a relatively new approach in the Indonesian legal system. By using the descriptive legal method, researchers can describe in detail how this concept is applied in practice in Indonesia, both at the police, prosecutors, and court levels; 2) Analysis Based on Empirical Data: This method allows researchers to collect empirical data related to the implementation of restorative justice, including the collection of relevant regulations, legal decisions, and the experience of legal practitioners in implementing the concept; 3) Understanding Challenges and Barriers in Implementation: With a descriptive approach, researchers can dig deeper into the challenges faced in implementing restorative justice, such as resistance from law enforcement officers, limited resources, and lack of understanding of this concept; 4) Offering a Comprehensive Overview: This method provides a more complete picture of the entire process, from the basic theory of restorative justice to its implementation in the criminal justice system in Indonesia; 5) Analyzing Existing Regulations: In this study, researchers can dig deeper into the regulations governing the implementation of restorative justice in Indonesia, such as Attorney General Regulation Number 15 of 2020, as well as policies at the Police and Prosecutor's Office levels that allow for the termination of prosecution based on restorative justice.

## Results and Discussion

### Teori Restorative Justice

Restorative Justice (RJ) is an alternative approach to dispute resolution that emphasizes efforts to restore losses caused by criminal acts, not solely on the imposition of punishment. This approach focuses on improving the relationship between victims, perpetrators, and the community, with the aim of creating constructive dialogue between the parties involved. This process aims for all parties to feel a deep healing and recovery process (Suhariyanto et al., 2021).

One of the main principles of RJ is to give primary attention to victims, by providing space for them to convey the emotional impact caused by the crime they experienced. On the other hand, perpetrators are given the opportunity to be responsible for their actions and try to repair the losses that have occurred through more humane and deeper methods, not just with sanctions. RJ also invites the community to be actively involved in resolving conflicts, and can be applied in various social situations that are not only limited to criminal law, but also broader social conflicts or violence (Setyowati, 2020).

In the theoretical framework, RJ is seen as a solution to the weaknesses of the conventional justice system which tends to focus on punishment. RJ aims to avoid the long-term negative impacts of injustice and repair damaged relationships between victims and perpetrators. One example of the application of RJ is in easing tensions between groups in a society affected by conflict.

This approach also provides long-term benefits for perpetrators, because they are expected to feel genuine regret and commit not to repeat their actions. In addition, perpetrators better understand the social and emotional impacts of their actions, which can be a driving force for their reintegration into society. This concept was first introduced by Albert Eglash in 1977, who emphasized that RJ prioritizes healing over punishment. RJ has also been applied in various forms, including in criminal justice and other social dispute resolution.

In practice, RJ is often applied in the form of mediation or direct meetings between victims and perpetrators. The goal is to give both parties the opportunity to talk about their experiences and agree on steps for improvement. In some cases, perpetrators can express their regret, while victims can gain an understanding of the conditions that triggered their actions.

However, although RJ is widely praised for offering a more humane solution, its implementation is not always easy. One of the main challenges is ensuring that the process is carried out voluntarily, fairly, and accepted by all parties. This process requires active participation from the judicial institution, the community, and related parties so that it is not misused and remains effective.

Based on research and implementation in various countries, RJ has proven effective in reducing the rate of recurrence of crimes and repairing damaged social relationships. In several countries, RJ has become part of the justice system, giving perpetrators the opportunity to make restitution to victims and participate in mediation. In Indonesia, the implementation of RJ is increasingly gaining attention as an alternative in resolving legal cases, especially those involving children or minor offenses. Research also shows that RJ can create a more equitable sense of justice and speed up the legal process by reducing the burden on the justice system (Sahputra, 2022).

Overall, Restorative Justice theory emphasizes the importance of social rehabilitation and the restoration of relationships between individuals, rather than focusing solely on punishment. This approach prioritizes open dialogue, regret, and joint efforts to restore balance in society, with a more comprehensive principle of justice. RJ offers an alternative view to the traditional perspective in dealing with violations of the law (Prayitno, 2012).

### **Regulation of the Implementation of Restorative Justice**

The implementation of Restorative Justice (RJ) in Indonesia has a legal basis that is increasingly developing along with the increasing public understanding of the importance of justice that does not only focus on punishment, but also on the restoration of social relations and the rehabilitation of perpetrators of crimes. In this context, Restorative Justice plays an important role in creating more humane and constructive solutions in resolving disputes, both in the realm of criminal and social law. Regulations related to the implementation of Restorative Justice in Indonesia can be found in various forms of laws and regulations, policies, and practices carried out by judicial and law enforcement institutions. In this explanation, we will dig deeper into the regulations for the implementation of Restorative Justice in Indonesia and how they are implemented in the field.

#### ***Criminal Code (KUHP)***

Basically, the Indonesian Criminal Code does not explicitly include the concept of Restorative Justice. However, in practice, several articles in the Criminal Code provide space for the application of RJ principles, especially in resolving cases involving children or minor crimes. The Criminal Code regulates actions that can be punished and forms of criminal responsibility that can be applied to the perpetrator. However, in practice, many lighter cases or those involving children can be resolved using the RJ approach, which prioritizes resolution through mediation and restitution.

#### ***Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA)***

This law provides a clear legal basis for the implementation of Restorative Justice in resolving cases involving children. The articles in this law regulate the importance of the rehabilitation process for children in conflict with the law, and provide space for the use of the Restorative Justice approach, such as mediation, to resolve cases involving children. One of the main objectives of the SPPA is to provide protection for children and ensure that the punishment received does not damage their future, but rather emphasizes recovery.

#### ***Perma No. 2 of 2012 concerning Guidelines for Resolving Criminal Acts Based on Restorative Justice***

This Perma is one of the more explicit regulations governing the implementation of Restorative Justice in Indonesia. Perma Number 2 of 2012 provides guidelines for judges in handling criminal cases that can be resolved through the RJ approach, especially for cases involving children and minor crimes. In this Perma, judges are given the authority to mediate between the perpetrator and the victim to reach an agreement that benefits both parties.

This regulation regulates the steps that must be taken in the mediation process, including conveying the impact of the crime experienced by the victim, as well as the perpetrator's responsibility to make the necessary restitution or improvements. Although in practice not all cases can be resolved through RJ, this regulation provides clear guidance on how this approach can be implemented effectively.

### ***Law No. 12 of 2022 concerning Elections and Government Systems Implementing Restorative Justice***

One of the new breakthroughs in the implementation of RJ in Indonesia is the Law on Elections and Government Systems, which encourages community participation in resolving conflicts involving government agencies and the community. In this context, RJ is not only applied to criminal cases, but also to social and political issues, where community involvement in resolving disputes through mediation and dialogue is important (pnadmin, 2021).

### **Legal Analysis of Restorative Justice Implementation**

The implementation of Restorative Justice in the Indonesian justice system has a positive impact, but it is not free from challenges in its implementation. Based on various existing studies and practices, the legal analysis of the implementation of RJ includes several main aspects, namely:

**Legal Basis** In the legal context, RJ in Indonesia has obtained a legal basis through several regulations, especially in the juvenile justice system. However, there is still no regulation that specifically regulates the application of RJ in general criminal cases. This creates legal uncertainty and limits the scope of application of RJ outside of juvenile cases. It is necessary to update or strengthen the regulations governing RJ so that its application can be broader and more comprehensive; 2) **Mediation Process and Involvement of Related Parties** One of the main elements in RJ is mediation between the victim and the perpetrator. Legally, this mediation can be carried out by parties who have the authority, such as investigators, prosecutors, or judges. In this case, this consensus-based approach is more humane and does not only prioritize sanctions. The mediation carried out must meet the principles of justice and transparency, and be carried out voluntarily by both parties involved. However, in practice, the mediation process often experiences obstacles related to the existence of an imbalance of social power between the perpetrator and the victim.

**Community Participation** Restorative Justice also prioritizes community involvement in dispute resolution. The community plays a role as a party that provides moral support for both parties in the conflict resolution process. Legally, the community can be involved in the mediation process to provide advice or become a witness to the agreement reached. This is important so that the dispute resolution process is inseparable from the social values that exist in the community.

**Effectiveness of the Use of Restorative Justice** One of the main objectives of implementing RJ is to reduce the rate of repeat criminal acts (recidivism) and provide a rehabilitative impact on the perpetrators. In a legal context, the effectiveness of the implementation of RJ must be measured based on whether the perpetrators have succeeded in changing their behavior after following the RJ process. Research on the effectiveness of RJ in Indonesia shows that this

approach has the potential to reduce the rate of repeat crime, but there needs to be stricter supervision of its implementation, both in terms of law and socially.

**Challenges in the Implementation of Restorative Justice** Although it has many positive potentials, the implementation of Restorative Justice in Indonesia faces a number of challenges, including: 1) Lack of legal understanding of RJ among law enforcement officers. Many parties still consider RJ as an approach that only applies to cases of children or minor offenses, even though the principles of RJ can be applied to various types of crimes; 2) Differences in perception between victims and perpetrators. Not all victims or perpetrators feel comfortable with the mediation approach, especially if the crime committed involves severe physical or emotional violence; 3) Limited budget and resources. The RJ program requires sufficient resources to involve various parties, including competent mediators and supporting institutions.

### **Implications of Restorative Justice Implementation**

The implementation of Restorative Justice has a significant impact on dispute resolution in society. Some implications that can be drawn from the implementation of RJ are as follows:

#### ***Social Recovery and Reducing Social Conflict***

Restorative Justice aims to restore relationships between individuals involved in the dispute. This provides an opportunity for the perpetrator to regret his actions and commit not to repeat them, while the victim is given the opportunity to express his feelings. In the context of a wider society, RJ can act as a means to reduce social tensions and improve relations between groups. For example, in a society that is divided due to conflict between ethnic or religious groups, RJ can be a bridge to build understanding and reconciliation between the warring parties.

#### ***Increased Trust in the Justice System***

One important implication of the implementation of RJ is increased public trust in the justice system. A justice system that prioritizes restoration and fair resolution is often more acceptable to the public than a system that focuses only on punishment. In many cases, victims feel more satisfied when they can get a direct explanation from the perpetrator regarding the reasons behind their actions, and receive proper restitution or compensation. This is different from the feelings that arise when only punished without any concrete sense of justice.

#### ***Rehabilitation of Offenders and Recidivism Reduction***

Restorative Justice provides an opportunity for offenders to take responsibility and improve themselves, which in turn can reduce the rate of recidivism or repeating criminal acts. In the RJ process, offenders are invited to understand the social and emotional impact of their actions on the victim and the community. This gives the perpetrators awareness to change, so that they can better reintegrate into society without returning to crime.

#### ***Community Participation in the Dispute Resolution Process***

The community plays an important role in the implementation of RJ. In the process of mediation or dispute resolution, the community can act as a mediator or witness who provides moral considerations for both parties. This community participation is very important to ensure that the agreement reached not only benefits the perpetrator or victim, but also reflects the social norms that apply in the community. This helps strengthen the sense of togetherness and justice at the local level (Syahputra, 2021).

#### ***Reducing the Burden on the Justice System***

The application of RJ to minor cases or individual violations of the law can reduce the workload of the formal justice system. In some cases, RJ can accelerate dispute resolution without having

to go through long and time-consuming court procedures. This can also reduce the costs incurred by the state to handle minor cases, while having a positive impact on society and perpetrators.

### ***Perspective Change in Dispute Resolution***

More broadly, RJ offers a perspective change in how society views dispute resolution. This approach emphasizes that problem solving is not only about giving punishment, but also about understanding the root causes of conflict and working together to improve relationships. This can have an impact on how society deals with conflict outside the legal context, such as in other social problems that may not reach the courts.

### ***Potential for Abuse and Challenges in Implementation***

Despite its great potential, the implementation of RJ is also not without challenges. One of the main challenges is ensuring that the mediation or dialogue process carried out is not misused by certain parties. For example, in some cases, perpetrators can pressure victims to accept offers that are unfair or not in accordance with the victim's wishes. Therefore, strict supervision and regulation are needed so that the RJ process runs fairly and transparently.

### ***Limitations in Resolving Serious Cases***

While RJ is effective in resolving minor cases and disputes between individuals, its application to serious cases or serious crimes such as physical or sexual violence is still controversial. In these cases, victims often need more than just restoring their relationship with the perpetrator, such as more intense emotional protection and support. Therefore, RJ in severe cases needs to be balanced with victim protection and a more sensitive approach.

## **Conclusion**

The application of Restorative Justice (RJ) in dispute resolution in society aims to improve relations between the parties involved, with a focus on the needs of victims, perpetrators, and the community. The main findings show that RJ offers an alternative solution in a more humane dispute resolution, by bringing perpetrators and victims closer together in a constructive mediation process. However, the main challenges faced are the limited understanding of RJ and the lack of support in its application in the justice system. Several studies have revealed that the application of RJ is very effective in cases of minor crimes, especially those involving children, because it can prevent perpetrators from overly harsh legal sanctions, while providing space for rehabilitation and social recovery. To strengthen the application of RJ, further socialization is needed to the community and legal parties so that they understand this concept in depth. In addition, there needs to be regulations that support the application of RJ more systematically in criminal and civil law. Further research is also needed to explore the effectiveness of RJ in various types of disputes, as well as how legal mechanisms can be adapted to support the wider implementation of RJ.

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