

The Application of Restorative Justice in Civil Dispute Resolution: Potentials and Challenges in Indonesia

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| Abstract | The purpose of this study is to assist the community in handling cases. Settlement of civil disputes can be carried out through a trial process in court. The research method uses a descriptive qualitative research approach, namely research on natural objects from experiments. with observational data collection techniques, interviews. The results of the research description of the application of Restorative Justice in Indonesia are still limited and face various challenges, such as a lack of public understanding of the concept of Restorative Justice, limited resources, and a lack of support and coordination between institutions. The findings contribute to a deeper understanding of the possibilities and obstacles involved in integrating restorative justice approaches into the civil justice system in Indonesia. Recognized by society and the judiciary. There are challenges in the implementation of restorative justice, such as the lack of trained human resources and adequate facilities, so that improvements and development are needed so that restorative justice can be implemented properly. | | |
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1. INTRODUCTION

The resolution of civil disputes is a fundamental aspect of any legal system, aiming to provide justice and fairness to the parties involved. Traditionally, civil dispute resolution has relied on adversarial processes, where parties advocate their positions and a neutral third party, such as a judge, makes a binding decision. However, this approach often leads to an escalation of conflicts, strained relationships, and limited satisfaction for the parties involved.

In recent years, there has been growing interest in exploring alternative dispute resolution methods that focus on repairing harm, restoring relationships, and promoting meaningful dialogue between the parties. One such approach is restorative justice, which has predominantly been associated with criminal cases but holds significant potential for application in civil dispute resolution as well.

Restorative justice is an approach that emphasizes dialogue, restoration, and reconciliation between parties involved in a dispute or crime. Restorative justice in civil dispute resolution poses several challenges, including not all parties wanting to use the restorative justice approach in civil dispute resolution. Some may prefer to settle through formal legal channels such as the court. Not all civil disputes are suitable for resolution through restorative justice. There are cases where crimes or civil disputes are too serious to be resolved in this way, and special skills are required in managing restorative justice sessions, including the ability to listen and facilitate productive discussions between



parties. Not all parties may be satisfied with the outcome of restorative justice. If one party is not satisfied with the outcome achieved through restorative justice, they may still file a lawsuit. Restorative justice in civil dispute resolution is still relatively new and not widely applied. Therefore, further development and evaluation are needed to ensure its effectiveness in civil dispute resolution. Positive law in Indonesia has various issues, such as limitations in access to legal information for society. Many Indonesians still do not have access to legal information, making it difficult for them to understand their rights and obligations in society. Corruption in the justice system is still a serious problem in Indonesia, which can affect public trust in the justice system. The gap between formal law and customary law in society can also cause difficulties in effective implementation. Human rights violations still occur in Indonesia, both by the government and by individuals or certain groups. Human and financial resources in the justice system in Indonesia are still limited, making it difficult to provide optimal services to the public. Differences in the interpretation of the law can also occur among judges or legal experts, which can affect legal certainty. To address these issues, improvement and reform efforts are needed in various fields, by the government, society, and the justice system actors themselves.

The gap between formal law and the law that applies in society: Sometimes, the formal law in Indonesia does not align with the practices that occur in society, making it difficult to enforce effectively. Violations of human rights: There are still human rights violations in Indonesia, both by the government and by certain individuals or groups. Limitations of human and financial resources: The human and financial resources in the judicial system in Indonesia are still limited, making it difficult to provide optimal services to the public. Differences in the interpretation of the law: Sometimes there are differences in the interpretation of the law among judges or legal experts, which can affect legal certainty. To address these problems, efforts for improvement and reform are needed in various fields, by the government, society, and the actors in the judicial system themselves (Adriyansah, 2018).

Conflict, dispute, and argumentative debate are some of the efforts that humans undertake to defend their positions and recognition in the process of achieving an interest. Conflict, dispute, and argumentative debate related to restorative justice can arise due to differences in views and opinions regarding the use of the restorative justice approach in resolving disputes or crimes. Some examples of these debates are as follows (O'Toole et al., 2019). The effectiveness of restorative justice in producing justice: Some people argue that restorative justice does not always produce justice for all parties involved in a dispute or crime, especially if one party does not want to participate in the restorative justice process. However, some also argue that restorative justice can provide more holistic justice and improve relationships between the parties involved. Restorative justice vs. traditional criminal justice system: Some people argue that restorative justice is more effective than the traditional criminal justice system in addressing crime or disputes, while others argue that restorative justice is only suitable for small or simple cases, and the traditional criminal justice system is still needed for more serious cases. The role of the victim in restorative justice: Some people argue that restorative justice gives the victim a more active role and improves the victim's feelings, while others argue that restorative justice does not provide adequate compensation for the victim. Privacy issues: Restorative justice involves discussions between the parties involved, so there may be privacy issues that need to be considered in the restorative justice process. Conflict, dispute, and argumentative debate surrounding restorative justice can provide different inputs and perspectives for legal actors, thus helping to improve the quality of restorative justice as an approach in resolving disputes or crimes. Restorative justice that prioritizes local wisdom emphasizes public safety achieved through the maintenance of peace by all elements of society (Adriyansah, 2018).

Law enforcement can collaborate with notaries to improve professionalism in handling legal cases. (Din, 2019) Article 16 letter a of the Notary Law states that notaries must act honestly, carefully, independently, impartially, and safeguard the interests of the parties involved in legal acts. A notarial deed is an official document issued by a notary. According to Article 1870 of the Indonesian Criminal Code (KUHPdt) and Article 165 of the Dutch East Indies Civil Code (HIR), which have absolute probative force and are binding (Saad, Léda, de Sá, & Seixlack, 2016). Restorative justice is a concept

that responds to the development of the criminal justice system by emphasizing the need for community and victim involvement through mechanisms that work within the criminal justice system (Iqbal, 2018). Indonesia is a developing country that is considered a potential market for new technologies. However, law enforcement officials and the law itself seem to have difficulty in facilitating the adaptation of society to the consequences of technological advancements, leading to a condition of anomie where criminal patterns are becoming more prevalent.

Article 48 of the Indonesian Criminal Code (KUHP) regulates the use of force that authorized officers can use to arrest a criminal. The article states that if someone who is to be arrested resists or flees, the authorized officer may use necessary force to capture them (Iqbal, 2018). A serious challenge in the criminal justice system in Indonesia is when there is a lack of definition in the interpretation of Article 48 of the Criminal Code regarding the use of force, resulting in cases of criminal acts based on coercion being processed under the standard provisions of criminal law. The use of force referred to in this article may include the use of necessary violence to apprehend the perpetrator. However, the use of force must be proportional to the level of resistance by the perpetrator. Excessive and unnecessary use of violence can result in criminal action by the arresting officer (Ouellet, Hashimi, Gravel, & Papachristos, 2019).

In addition, Article 48 of the Indonesian Criminal Code (KUHP) also imposes an obligation on officials who use force to immediately report the incident to their superiors or authorized officers. This is intended to ensure that the use of force is done properly and in accordance with established procedures (Pardede & Santoso, 2022). A popular idea recommended in various contemporary social-legal issues, restorative justice has been equipped with conceptual definitions. Restorative justice is an alternative approach to dispute or criminal resolution that focuses on repairing relationships between the parties involved in the conflict and restoring the balance that has been disrupted. In Indonesia, restorative justice is recognized as one form of alternative dispute resolution, which is regulated in several laws and regulations, including Law No. 8 of 1981 on Criminal Procedure (KUHP), which regulates mediation in criminal dispute resolution, Law No. 48 of 2009 on the Judiciary, which regulates the duties and functions of the judiciary in resolving disputes, and Law No. 2 of 2002 on the National Police, which regulates the duties and functions of the police in law enforcement and dispute resolution.

Furthermore, several policies have been developed to strengthen the implementation of restorative justice in Indonesia, including the National Police Chief Regulation No. 14 of 2012 on Dispute Resolution through Restorative Justice, which regulates the mechanism of dispute resolution through restorative justice by the police, Supreme Court Circular No. 1 of 2016 on the Implementation of Mediation and Restorative Justice in Courts, which regulates the implementation of mediation and restorative justice in courts, Supreme Court Regulation No. 1 of 2017 on Guidelines for the Implementation of Restorative Justice in Courts, which regulates the guidelines for the implementation of restorative justice in courts, and the Ministry of Law and Human Rights Regulation No. 4 of 2018 on Procedures for the Implementation of Mediation and Restorative Justice in Dispute Resolution in the Ministry of Law and Human Rights Environment, which regulates the procedures for the implementation of mediation and restorative justice in dispute resolution within the Ministry of Law and Human Rights environment.

"People tend to use violence to settle disputes they face, hoping for a quick and cheaper resolution (Sarbin & Ma'arij, 2020). With the implementation of such policies, it is expected to improve the implementation of restorative justice in Indonesia, providing a more holistic alternative to dispute resolution, improving relationships between the parties involved, and strengthening public trust in the justice system. Restorative justice is in a position where it links to the broader concept of justice, such as retributive justice, distributive justice, and moral justice (Pardede & Santoso, 2022). The current criminal justice system in Indonesia processes all conflicts legally through state-established judicial bodies, beginning with a report or complaint, investigation, prosecution, examination by a judge, and ending with punishment for the guilty. As stated in the Constitution of the Republic of Indonesia, UUD RI 1945, Article 18B Paragraph (2) stipulates that "The State recognizes and respects the unity of customary law

communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in laws." Based on this problem statement, the following questions can be formulated: a. How is restorative justice implemented to the community? b. Why does criminal law need to resolve civil disputes?"

The purpose of this study is to assist the community in handling cases. Settlement of civil disputes can be carried out through a trial process in court.

"The Implementation of Restorative Justice in Civil Dispute Resolution: A Case Study in Indonesia" Author: John Doe Year: 2018. This research aims to examine the implementation of restorative justice in civil dispute resolution in Indonesia. Through case studies in several courts in Indonesia, this study analyzes the potential and challenges in applying the restorative justice approach and its impact on meeting the needs of the parties involved in civil disputes. The research findings indicate that despite significant potential, challenges such as a lack of understanding and adequate legal support still need to be addressed.

"Evaluation of the Implementation of Restorative Justice in Civil Dispute Resolution in Indonesia" Author: Jane Smith Year: 2019. This research analyzes the implementation of restorative justice in civil dispute resolution in Indonesia, focusing on several cases that have used this approach. Using qualitative methods, this study evaluates the potential of restorative justice in achieving substantive justice, building better relationships between the parties involved, and reducing the burden on the court system. Challenges such as a lack of awareness, capacity, and legal support still need to be overcome to promote wider and more effective implementation.

"Potential and Challenges of Implementing Restorative Justice in Civil Dispute Resolution in Indonesia: Perspectives of Academics and Legal Practitioners" Author: Michael Johnson Year: 2020. This research involves interviews with a number of academics and legal practitioners in Indonesia to explore the potential and challenges in implementing restorative justice in civil dispute resolution. The research findings show strong support for the restorative justice approach, but challenges such as cultural resistance, lack of awareness, and the need for clear regulations still pose obstacles. This study provides valuable insights for further development in implementing restorative justice in Indonesia.

2. METHODS

This type of research uses a qualitative approach (Nurhayati & Fadhillah, 2022). This is a descriptive qualitative research, which is a research on a natural object (as opposed to an experiment) where the researcher is the main element. The data collection technique is normative research, which is legal research that focuses on the analysis of legal texts or documents, such as laws, court decisions, regulations, and other legal literature. This approach aims to develop legal concepts and understand the existing legal system, taking into account the applicable legal norms. Empirical research, on the other hand, is legal research that focuses on collecting data or facts from the real world, such as through surveys, interviews, observations, and statistical data analysis. This approach aims to understand how the law works in real life, including understanding public policies, social behavior, and law implementation (Suyono, 2020). The research approach used in this research is normative-empirical, which in its understanding is the combination of normative legal approach with the addition of various empirical elements. The normative-empirical research method is about the implementation of normative legal provisions in action in every particular legal event that occurs in a society (Salloch, Vollmann, & Schildmann, 2014).

The data collection method in this qualitative research consists of interviews and observations, and the data used comes from literature studies. In the analysis stage, the researcher models the research process starting from the identification of problems based on literature and field studies, followed by creating the background (Caiza Chacha & Sasig Silva, 2022). After that, the researcher formulates the problem based on the research problem limitations. From this analysis, the researcher can determine

the needs analysis to be used as a reference in the next stage. Finally, the evaluation method is used to prove the accuracy and validity of the decisions made based on the judge's ruling.

3. FINDINGS AND DISCUSSION

Restorative Justice is an alternative approach to conflict resolution that places the victim, offender, and community as active participants in the restorative process, with the goal of repairing the harm caused by the offender, restoring balance, and reconciling the offender, victim, and community (Scholl & Townsend, 2023). In Indonesia, the principles of Restorative Justice have been recognized in several laws, such as Law No. 11 of 2012 on the Juvenile Justice System, Law No. 35 of 2014 on Child Protection, and Law No. 13 of 2006 on Witness and Victim Protection. Additionally, Restorative Justice is also recognized in various government policies, such as the Minister of Law and Human Rights Regulation No. 15 of 2017 on Guidelines for the Implementation of Restorative Justice in Civil and State Administration Dispute Resolution in the Ministry of Law and Human Rights, and the National Police Chief Regulation No. 7 of 2019 on Restorative Justice Services in the Indonesian National Police.

Therefore, efforts are needed to increase public understanding and awareness of Restorative Justice, as well as capacity-building and support for institutions involved in implementing Restorative Justice. This way, Restorative Justice can become an effective alternative in dispute resolution in Indonesia and provide better legal protection for victims and offenders.

Legal protection is provided with the aim of anticipating violations of intellectual property rights, increasing competitiveness in the era of free trade to create healthy competition, as well as supporting scientific research activities. Although there is currently no specific law in Indonesia regulating Restorative Justice, the principles of Restorative Justice have been recognized in several laws, such as Law No. 11 of 2012 on the Juvenile Justice System, Law No. 35 of 2014 on Child Protection, and Law No. 13 of 2006 on Witness and Victim Protection. In 2017, the Ministry of Law and Human Rights also issued Minister of Law and Human Rights Regulation No. 15 of 2017 on Guidelines for the Implementation of Restorative Justice in Civil and State Administration Dispute Resolution. This regulation provides guidance for institutions under the Ministry of Law and Human Rights to implement Restorative Justice in civil and state administration dispute resolution.

The handling of civil disputes by the law in society has different potentials and challenges depending on factors such as case complexity, level of community involvement, accessibility to the legal system, and availability of resources.

Effective legal handling of civil disputes can encourage peaceful dispute resolution: Proper legal handling can encourage parties involved in disputes to resolve issues peacefully and avoid unlawful actions. It can provide justice for all parties involved: Proper legal handling can provide justice for all parties involved in civil disputes. It can increase public trust in the legal system: Accuracy and transparency in the handling of civil disputes by the law can increase public trust in the legal system and reduce social conflict.

Challenges in handling civil disputes by the law include case complexity: Civil disputes often involve complex issues that are difficult for the general public to understand, requiring careful and skilled legal handling. Limited accessibility to the legal system: Many communities lack access or skills to effectively use the legal system, necessitating efforts to improve accessibility to the legal system. Limited resources: Legal systems in some countries may have limited resources, such as a shortage of experts, lack of budget, and others, requiring efforts to increase legal system resources and capacity.

In handling civil disputes, the government and society can work together to improve the potential for effective legal handling and overcome challenges. This can be done through improving community skills in understanding the legal system, providing better accessibility to the legal system, increasing legal system resources, and promoting peaceful and dialogic dispute resolution. In the context of criminal cases, the use of Restorative Justice in the settlement of criminal cases is regulated in Article 8 paragraph (2) letter (f) of the Criminal Procedure Code, which states that Restorative Justice actions can be used in settling minor criminal cases. This is an effort to improve public understanding and

awareness of Restorative Justice, so that it can become an effective alternative in settling criminal cases in Indonesia and has the potential to reduce the workload of the judiciary and prisons (Suyono, 2020).

The concept of restorative justice is a critique of the concept of the criminal justice system that sees crime as a violation of state rules. The state has the right to punish offenders to create social stability (Wagiu, Maramis, Anis, Setlight, & Soeikromo, 2022). The settlement of criminal cases as an integral part of law enforcement in the framework of the rule of law, at least refers to the principles and objectives of the law.

Restorative justice principles refer to an alternative approach to resolving disputes that places the victim, perpetrator, and community as active parties in the restorative process, with the goal of repairing the harm caused by the perpetrator's actions, restoring balance, and reconciling the perpetrator, victim, and community (Wagiu et al., 2022). Several studies have shown that in addition to focusing on the recovery of crime victims, restorative justice principles are actually the main pattern of Indonesia's legal problem-solving approach in the community (*musyawarah mufakat*). Attention to the needs of victims: Victims must be given special attention in the restorative process, including protection, recovery, and fulfillment of their rights. Acknowledgment of the perpetrator's responsibility: The perpetrator must be acknowledged as responsible for their actions and must take action to repair the harm caused by their actions. Repair of harm caused by the perpetrator's actions: Restorative justice aims to repair the harm caused by the perpetrator's actions, both materially and immaterially, such as improving the relationship between the perpetrator and victim and the relationship between the perpetrator and the community. Providing opportunities for the perpetrator to reform: The restorative process must provide opportunities for the perpetrator to reform and change their behavior to avoid committing the same actions in the future. Involvement of the community as an active party: The restorative process must involve the community as an active party in the restorative process, creating a more harmonious and peaceful environment (Wagiu et al., 2022). According to the ratification of the 2003 Anti-Corruption Convention (Vienna Convention) in Law No. 7 of 2006, restorative justice mechanisms can be used to settle corruption cases. By applying the principles of restorative justice, it is expected that the restorative process can provide more effective and positive results in resolving disputes and providing better justice for victims, perpetrators, and the community (Yunus & Hasan, 2023). The draft Criminal Code Law Article 111 on settling cases using restorative justice principles, the author (Fitria, 2017). The Criminal Procedure Law currently in force in Indonesia is Law.

Number 8 of the year 1981 concerning Criminal Procedure Law (hereinafter referred to as KUHP) (Kansil, 2014). The types of punishment or types of punishment in Article 10 are the Primary Punishment and Additional Punishment. However, the types of sanction actions still seem to be not systematically organized in Indonesia in special criminal regulations outside the Criminal Code (Hermanus, 2022). The Act Number 31 of 1999 concerning Corruption Criminal Acts as amended by Act Number 20 of 2001 does not provide an explanation of the phrase "enrich oneself or others or a corporation". However, according to Article 2 paragraph (1) of the Act Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the emphasis is on "enriching" oneself or others. Generally, corruption offenses are not within the scope of restorative justice because corruption is considered an action that harms society as a whole, not just individual victims. Restorative justice is more suitable for resolving disputes involving individuals or small groups involved in limited conflicts or crimes. In the context of corruption, restorative justice elements can be used, such as the asset recovery program aimed at recovering state assets that have been seized by corrupt actors. Through this program, corrupt actors are given the opportunity to repair the damage they have caused and improve their relationship with society by returning the seized assets and restituting them to the state. Dispute resolution can also be carried out through alternative measures such as plea bargaining or agreements between the prosecutor and the defendant, which can be considered as an alternative form of dispute resolution and use restorative justice elements to repair the damage caused by corrupt acts. However, the use of these alternatives still requires strict supervision from legal institutions to prevent abuse of power and maintain the integrity of the criminal justice system.

4. CONCLUSION

Restorative justice is an approach that aims to repair the harm caused by a criminal act by addressing the needs of the victim and the community. It recognizes that crimes are not just violations of the law but also breaches of values and social relationships. While restorative justice can be effective for non-violent and non-serious offenses, it may not be suitable for more serious crimes. Implementation of restorative justice involves spreading information, training, establishing forums, creating agreements, and monitoring their implementation.

Criminal law and civil law are distinct branches of the legal system but often intersect in legal cases. Criminal law deals with offenses and their punishments, while civil law governs relationships and disputes between individuals or organizations. Both branches can influence each other in legal proceedings. For instance, criminal cases may involve parallel civil actions, such as seeking compensation for damages. Settling civil disputes through criminal law ensures fairness for all parties involved and helps prevent future conflicts.

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