



# Criminal Justice System Based on The Concept Ofrestorative Justice

Try Sarmedi Saragih

Sekolah Tinggi Ilmu Hukum dan Politik (STIHP) Pelopor Bangsa  
Jl. Arif Rahman Hakim No.3, Kemiri Muka, Kecamatan Beji, Kota Depok, Jawa Barat  
16431

Email : [saragihtry@gmail.com](mailto:saragihtry@gmail.com)

## **Abstract**

In a country, of course, there are several concepts of legal justice that are adopted and applied to solve a crime and criminalization that occurs in the wider community, as well as in the settlement process which always uses several different concepts, there are those who solve it through a system. state law and there are those who resolve it with a judicial process on the basis of mutual deliberation. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that the legal system of restorative justice is a judicial concept in which the settlement process focuses on the peace and kinship system, this concept is certainly very different from the concept of justice adopted by the nation. In Indonesia, where the concept of criminal and civil law is a judicial process that is still adhered to by our current government, implementing a restorative justice justice system in Indonesia will clearly create a new dynamic from a legal perspective as well as from a public perspective, because the principles of justice are both has a very basic difference with the different settlement processes.

**Keywords:** Judiciary, Criminal, Restorative Justice

## **1. Introduction**

In this era of globalization, there have been so many crimes that have occurred in the wider community, most crimes that occur in Indonesian society, always lead to court proceedings, when we talk about crime, there are always two parties involved, namely a criminal and a victim, both parties certainly have a strong basis and reason why the action can be carried out, meaning that in every crime case there will be someone who is declared the perpetrator, because their actions have caused victims and losses, both in kind and in kind. life form (Yunus, 2013; Achmad, 2021). There are various factors behind why every crime always ends in court, one of which is the court route is often considered the most theoretical and conceptual effort because it contains criminal law laws that have been embraced by the Indonesian people for a long time (Pradityo, 2016).

Crime has become a part of people's lives and includes everyday events, for example, cases of robbery, molestation, rape, fraud, and perhaps many other series of

crimes that occur in our environment, so that it becomes a very concerning social dynamic. assessing, establishing interaction and communication, often conflicts will arise. In general, a criminal act or crime will arise if within an individual or group there are intentions to commit a crime and that intention is concretely realized by the existence of opportunities or supporting factors, both by complex environmental factors and factors from potential victims which are one of the causes of crime. one cause of crime (Arief&Ambarsari, 2018; Setyowati, 2020).

Every crime can certainly cause various losses, both material economic and immaterial, such as those involving a sense of security, psychological burden, depression, which threatens its existence when in a social environment. In fact, so far, in terms of analyzing and handling a crime event, attention has always focused on the perpetrators of the crime, very little attention has been directed to the victims of crimes who actually need a lot of protection and defense (Satria, 2018; Utami, 2018; Poluakan, 2019).

In the Indonesian case system, all crimes and criminal cases that occur in a community environment, the point of completion will end through a court process, the concept of criminal law itself has indeed become part of the judicial system that is recognized by the Indonesian government, because it is based on values. the value of the 1945 Constitution and Pancasila as the basis of the state, but in reality the settlement with the criminal system is only a win-lose solution because there will always be a party who wins and on the other hand there will be a party who feels defeated, this kind of thing will certainly have an impact on the judicial level. This is further because one of the parties will try to seek justice through an appeal or cassation mechanism because they are not satisfied with the decision that has been issued, according to Mansyur (2016), which states that the settlement of cases through the judicial system that leads to a court verdict is a enforcer and law (law enforcement) towards the slow lane. This is because law enforcement goes through a long distance, through various levels ranging from the Police, the Attorney General's Office, to the District Court. Meanwhile, according to Kristian & Tanuwijaya (2017) in his book entitled Alternative Dispute Resolution outside the Court, that in general this can be categorized as one of the weaknesses for a litigation institution that cannot be avoided even though it has become a stipulation. From these various explanations, it can be concluded that the process of resolving criminal cases through the courts will only have an impact on the accumulation of a case and take a lot of time, the process is considered protracted, prolonged and very tiring.

In addition to causing a lot of accumulation of cases, there are many criminal cases that are only stealing sandals, stealing wood, stealing cassava and many more cases that should not be resolved through the trial process, because in fact it is considered not to meet the common sense of justice and can be resolved through a deliberation by producing a peaceful consensus, especially considering the current phenomenon of the role and function of the court which is considered to be incompatible with the goals of society, not least in which there are acts that are not commendable such as corruption, collusion and nepotism, settlement disputes through the courts have received sharp criticism, both from practitioners and legal theorists. The role and function of the judiciary today is considered to be overloaded, slow and a waste of time, very expensive and unresponsive to the public interest, or

considered too formalistic and too technical, especially the existence of "judicial mafia" which seems to indicate that judges' decisions can be bought (Hasibuan et al, 2015; Setyaningrum&Ma'ruf, 2017; Hambali, 2020).

Along with the development of the era of technology and communication, discussions about crime and criminalization began to be responded to by various groups, to then be discussed and determined regarding the problems and developments of criminal law and their solutions using the court system, a new alternative emerged and began to be offered to the community. , the concept is called restorative justice, this concept is gaining popularity and is being introduced in various parts of the world, for the restorative justice system itself is against formal law, because the mechanism really offers a comprehensive and effective solution, aiming to improve the system. previously considered slow and unimportant to the principles of justice for the wider community, by empowering victims, perpetrators and their families, restorative justice uses awareness and collective deliberation as the basis for resolving any problems for the benefit of the community. a much better social life, Restorative justice is one way to resolve criminal cases involving the community, victims, and perpetratorscrime with the aim of achieving justice for all parties so that it is hoped that the same conditions as before the crime occurred and prevent further crimes (Amdani, 2016; Sidiq et al, 2021; Sidiq&Maulida, 2021).

In principle, the presence of a restoration justice approach in a state law, aims to collaborate criminal law and civil law into a community law that is more sensitive in reading every case of crime and criminalization in a community environment, because this restorative justice approach uses a philosophy of mediation in solving the problem (Suharto, 2015). The restorative justice approach actually restores the function of criminal law to its original path, namely the ultimiumremidium function, an ultimate weapon when other legal remedies can no longer be used in dealing with a crime in society. In the practical order of handling and resolving criminal cases using a restorative justice approach, it offers alternative answers to a number of problems faced in the criminal justice system, for example the judicial administration process which is difficult, expensive and takes days, to the accumulation of cases or court decisions that do not accommodate In the interests of victims, the concept of a restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and the victims themselves. Procedural and criminal justice mechanisms that focus on sentencing are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators.

## **2. Approach Method**

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that discusses the Criminal Justice System Based on the Concept of Restorative Justice, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

### 3. Result and Discussion

#### 3.1 Definition of Restorative Justice

The emergence of thinking and understanding of the restorative justice system among the wider community, is based on the restoration of the criminal case settlement process that leads to the trial line, because basically the restorative justice system itself focuses on a deliberation with the direct participation of the parties involved, such as perpetrators, victims, and the community, therefore this approach is also often referred to as the none state justice system, because in the process the role of the state in resolving criminal cases becomes less significant, or it can be said that there is none at all (Prayitno, 2012; Hambali, 2019; Ningtias et al, 2020).

In addition, the process of restoration of justice can also be said as an alternative or other way besides the state judicial process, based on the principle of togetherness, an integrated approach to the perpetrators and victims, to be united in a common understanding and find the right solution until a trial is reached. and return to the pattern of good relations in social life.

On the other hand, the theory of restoration of justice is also very friendly to the wider community, because this approach really requires the participation of the community as a bridge to return to the scope of social life, because often someone who gets the frills of criminals or convicts for criminalization cases gets a lot of treatment. which is unfair to the general public. The concept of restoration of justice itself offers several answers to important issues in society how to resolve a criminal case but with humane approaches, because in truth justice in the concept of restoration of justice requires a process of recovery/returning the losses caused by the crime. , as contained in Article 1 number (6) of the SPPA Law states, restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation (Budoyo& Sari, 2019).

There are several main programs that form the basis for the formation of the restoration justice process itself as the most appropriate law to be applied in a social environment, the first point is that crime is placed as a symptom that is part of social action and is not placed as a violation of criminal law, then this theory focuses on the relationship of the perpetrator in solving each problem with the victim or with the wider community, then crime is seen as an act that can harm others, and damage a social life, of course this view is very different from the theory of criminal law which places a crime at the highest level and enter into state problems, so that only state law has the right to try them, and the last one is to abolish the prison system which is considered not so optimal in solving an act of violence or crime in the social environment.

The process of a restorative justice approach that prioritizes deliberation and mediation as a way out to resolve a case, of course, wants to utilize the parties who have been involved in the case, and opens opportunities for perpetrators to get restitution or reparations as well as a sense of security both within the family and in the environment. social justice, as for the basic principles of justice contained in the process of restoration of justice including, every individual process or community member who is indeed harmed by a crime, it is obligatory to take an active part in

solving every problem so that the justice process will be found quickly without prolonging problems that can eventually create new cases so that it slows down the settlement process, Setyorini&Utomo (2020) describes the substance of restorative justice containing the principles of settlement that are considered fair for all parties (win-win solutions).

Because this restorative justice system applies a justice approach, the mechanism offered is the values of peace and kinship, where the general public and law enforcement officers participate in each other and establish a cooperation to take part in the process of solving these problems, of course this process is felt very in contrast to criminal law which is considered too rigid and formalistic, emphasizes legal certainty in force and the settlement process which is considered very complicated and takes a very long time, does not attach importance to the sense of justice that exists in the wider community, restorative justice as a process that involves all parties involved. have an interest in the problem of certain violations to come together to solve collectively and together how to respond and resolve the consequences of violations and their implications for a better future (Ernis, 2017).

Basically, the Restorative Justice Court wants to change the paradigm of the community which always resolves the problem process with a face-to-face pattern between the two parties, where the mechanism is actually considered very outdated and needs to be replaced with a new system that is more relevant and can speed up the judicial process. parties involved are required to use a cooperative and integrated pattern, reaffirm a high sense of responsibility and of course get a balanced justice through the maintenance of security and order together, social service is one aspect that needs to be formed and enforced in the midst of life. the wider community so that they can guarantee a sense of security and participate in carrying out several functions such as supervising, interfering, repairing, and providing the best service to criminals in order to avoid discrimination or harassment that still often occurs until now. Currently, Restorative Justice focuses on crime as loss/damage and justice which is an attempt to repair the damage with a vision to elevate the role of crime victims, perpetrators of crime and society as three very important determinant dimensions in the criminal justice system for the welfare and welfare of the peoplepublic safety (Mareta, 2019; Andriyanti, 2020).

**Table 1.**

Restorative Justice	
Criminal Code Court	<i>Restorasive Justice</i>
Based on the crime committed	Refers to errors (errors) caused by violations
Placing the victim in a central position	Putting the victim in a secondary position
The goal is centered on the idea of how to punish the guilty justly	The basic goal is to provide satisfaction experienced by the parties involved in the violation
Determined by legal professionals	Determined by pre-determined parties such as the community, victims, perpetrators, law enforcement officers
<i>Retributive justice</i>	<i>Restorative justice</i>

### 3.2 Restorative justice perspective in Indonesian courts

To realize a justice process using the concept of restorative justice, it is necessary to have a high level of public awareness and some basic understanding of the mechanism for implementing the concept of restorative justice so that later the general public can quickly respond to all the advantages and disadvantages of the pattern by evaluating any policies that have been implemented. made using this pattern, furthermore, the concept of understanding does not have a negative effect on the existing justice system. The practice of solving problems with approaches or concepts (restorative justice) does exist in the culture or culture of the Indonesian nation itself, even though in reality the Indonesian state legally and sovereignly still uses the concept of criminal justice in resolving every crime case that has occurred to date.

The beginning of the implementation of the concept of restorative justice that occurred in the Indonesian state can be said to start from the Constitutional Court of the Supreme Court, this is because the institution plays a very important role in carrying out every judicial power, the Supreme Court is also considered the highest legal basis in Indonesia. Indonesia, this is expressly conveyed through a 1945 Constitution of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Powers, Law Number 14 of 1985 as has been reformed into Law Number 5 of 2004 and amended again by Law Number 3 of 2009 concerning the Supreme Court. Thus, considering that the Supreme Court (MA) is a state institution that exercises judicial power and as the pinnacle of the judiciary, it is appropriate for the Supreme Court (MA) to adopt or adhere to and apply the approach or concept of restorative justice (Ginting&Muazzul, 2018; Flora, 2018).

After the decision of the Act is issued legally and sovereignly, by stating that the Supreme Court has adopted and adhered to the restorative justice, system as one of the recognized judicial concepts in Indonesia, then whether the judicial institutions under it also participate in implementing the concept of restorative justice. or only in the realm of recognition of the law. because basically the Indonesian state was born and raised through a criminal and civil law court process, then to determine a new judicial concept in Indonesia, it must be determined by looking at the situation and developments that occur in the wider community, because according to the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, precisely in Article 5 explicitly states that judges are obliged to explore the values that live in society, so in this case the judge is obliged to apply several approaches related to the concept of restoration of justice itself, whether the concept is in accordance with the soul the Indonesian nation, namely Pancasila, in accordance with the values of customary law and in accordance with religious values.

If we compare the concept of criminal justice which has been embraced by the Indonesian people, with the concept of restorative justice justice, we will find some very basic differences, while some of the objectives of criminal justice according to Meyrina et al (2017) are, to prevent people from becoming victims of crime, then resolve a crime case that occurred so that the public response is very satisfied with the settlement process, that justice has been upheld and the guilty person (suspect) has been processed in accordance with existing legal provisions, and on the last point to make sure that those who have committed crime/mistake not to repeat the act,

because it is against the law and the Indonesian constitution. while some of the principles contained in the judicial restorative justice are, crime is a violation and its nature only involves between individuals, in this case of course the state has no authority over the process of the problem, then the victim and the community are the center of justice because in judicial law Restorative justice the wider community has the right to take part in the process of resolving a crime case and is not centered on the provisions of state law and the judiciary, the next point is the main priority in the justice process is to help the victim, not to dispute it and continue in the reporting and court process, the fourth point is the perpetrator Violators have a personal responsibility to the victim and to the community for every crime that has been committed (Syahrin, 2018).

If restorative justice is stated as an answer to dissatisfaction or failure of the criminal justice system in Indonesia, then restorative justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the need for the involvement of the wider community and victims who feel marginalized by mechanisms that Working in the current criminal justice system, restorative justice as a legal system "aims to restore the welfare of victims, perpetrators and communities damaged by crime, and to prevent further violations or criminal acts. helps in integrating two parties, both victims and perpetrators, as well as dialogue between victims and perpetrators to achieve mutual justice

#### **4. Conclusion**

After observing some of the principles contained in the concept of criminal justice and restorative justice, it can be concluded that the two judicial legal mechanisms have very different perspectives in each determining the point of issue until the peace settlement process, but if we look at the criminal justice process that now adopted by the people and the Indonesian government often lead to ongoing problems and disputes, there are times when both parties are unable to accept every court decision that has been set and creates a new problem among the community, in this case the state has the authority to determine a judicial process that will lead its people to a much more prosperous life, because the purpose of the 1945 Constitution and Pancasila is to establish a government and judiciary that highly upholds the values of that exist in Indonesian society, it is necessary to review whether the criminal justice system is better at bringing peace to the wider community, or indeed a new justice system is needed that is more populist and very tolerant in creating a peace for all Indonesian people.

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