

Applying Restorative Justice to Resolve Minor Assault Cases

Hendro Widodo ¹, Raul Gindo Cahayao ^{2, *}, Reza Octavia Kusumaningtyas ³

¹ Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia

² Sekolah Tinggi Ilmu Hukum Adhyaksa, Jakarta, Indonesia

³ Faculty of Law, Universitas Negeri Semarang, Semarang, Jawa Tengah

*Corresponding Author: raul.gindo@stih-adhyaksa.ac.id

Abstract

To facilitate non-litigation case resolution, the criminal justice system in Indonesia has implemented restorative justice through the Prosecutor's Regulation and the Police Regulation. Nevertheless, the practical implementation of restorative justice in cases of minor assault continues to encounter a variety of challenges. Consequently, this investigation aims to evaluate how restorative justice is implemented to resolve instances of minor assault. This investigation implements a normative legal research methodology. The study's findings suggest that Indonesia's criminal justice system has initiated the implementation of restorative justice as an alternative to traditional court procedures for resolving cases, particularly minor crimes. This approach emphasizes dialogue and the restoration of relationships. This method aims to mitigate the burden on judicial institutions, prevent societal resentment, and reduce criminalization and stigma. Nevertheless, its implementation is impeded by a lack of understanding, limited legal regulations, and minimal support from the community and victims. To achieve success, it is necessary to implement more stringent regulations, provide law enforcement officers with training, and engage the community.

Keywords: Implementation; Mild Assault; Restorative Justice.



Copyright ©2024 by Author(s); This work is licensed under a Creative Commons Attribution License (CC BY 4.0). All writings published in this journal are the personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

Introduction

Upholding justice in accordance with the law is a shared responsibility of every citizen, state official, government institution, and community organization. While courts are commonly relied upon to address justice-related matters, including community offenses, Indonesia's legal system often falls short of its intended effectiveness, leaving society to grapple with persistent issues and challenges. (Nur et al., 2022)

The law aims to regulate and uphold the equilibrium between individual interests or desires; in fact, the presence of law enforces a balance between individual rights and collective rights. The law must be equitable and certain by its very nature to function effectively. Nevertheless, the criminal justice system in Indonesia consistently concludes with imprisonment. In reality, prison is not the optimal solution to address crime issues, particularly those



that result in harm to society and its victims, to restore the damaged conditions to their original state. This does not imply that the threat of criminal punishment is eliminated; rather, it necessitates an assessment of the benefits and drawbacks of the threat of punishment to facilitate healing.(Barlow & Decker, 2010)

The resolution of minor criminal cases through a judicial system that prioritizes retaliation does not offer justice and gratification to both victims and perpetrators during its development. The parties believe that a fair solution is establishing a peace agreement focused on restoration rather than retribution. This approach to criminal settlement, which involves the application of restorative justice, is more conducive to establishing conditions that promote justice and balance for both victims and perpetrators.(Pratama & Ardhya, 2023)

Restorative justice is a concept that prioritizes justice that is founded on peace. In the resolution of a case, no acknowledgment of justice is based on revenge or punishment for the perpetrator. The application of this concept is a form of the criminal justice system's development that underscores the involvement of the perpetrator and victim in the resolution of a case, which is not currently a known mechanism in conventional criminal procedure law. Restorative justice is regarded as a more comprehensive and effective solution because it aims to empower victims, perpetrators, families, and the community to enhance the actions or consequences of unlawful acts. For the law to function effectively, power is required; however, the extant power must not infringe upon the rights and interests of individuals, as the law also serves to safeguard the interests of society.

The Prosecutor's Office is advocating for implementing restorative justice in the context of general offenses. This is evidenced by the issuance of Prosecutor's Regulation (Perja) No. 15 of 2020, which serves as an internal regulation for the prosecutor's office to manage criminal cases. The regulation pertains to the settlement of cases based on restorative justice. The management of criminal cases through a restorative justice approach presents a variety of perspectives and strategies for preventing and resolving criminal activity.(Amin et al., 2020) The definition of a criminal act in the context of restorative justice is fundamentally identical to that of criminal law in general, which is to say that it is an assault on the rights of individuals, citizens, and communities. Researchers are particularly interested in minor assaults, as the law enforcement process for minor assaults is distinct from that of other assaults. While other assaults adhere to the Criminal Procedure Code, minor theft focuses more on the principle of restorative justice or restorative justice. Considering the context above, the author will examine the extent to which restorative justice is implemented or implemented in the resolution of criminal cases. Restorative justice is a method of resolving legal disputes deemed adequate by various organizations, as previously mentioned.

Methodology

The research titled "Implementation of Restorative Justice in the Settlement of Minor Assault Cases" examines the applicable legal regulations, concepts, and their application in the criminal justice system of Indonesia using the normative legal research method. (Jaelani et al., 2024) The method employed is a legislative approach that analyzes pertinent laws and regulations, including the Criminal Procedure Code, Supreme Court Regulation Number 2 of 2012, Prosecutor's Regulation Number 15 of 2020, and Police Regulation Number 8 of 2021. Additionally, the approach is conceptual and examines the concept of restorative justice, the principles of restorative justice, and its implementation in criminal law, particularly in cases of minor assault. Finally, the approach is a case study investigating the practice of resolving minor assault cases using a restorative justice approach. Data sources are derived from primary legal materials, such as laws and regulations; secondary legal materials, such as literature, journals, and other scientific works; and legal dictionaries and encyclopedias, which enhance comprehension of terminology. The data were qualitatively analyzed by interpreting legal texts and associated documents to elucidate the application of restorative justice in resolving minor assault cases. (Suryani et al., 2024)

Results and Discussion

Implementation of Restorative Justice in Resolving Minor Abuse Cases

Indonesia's criminal justice system is rigorously regulated by the Criminal Procedure Code (KUHAP) or Law Number 8 of 1981. Law Number 8 of 1981, also known as the Criminal Procedure Code (KUHAP), is identical to criminal law enforcement. Criminal law enforcement is a system of power or authority the state grants to the Police, Prosecutors, Judges, and Correctional Institutions to enforce criminal law. This definition of the criminal justice system is also referred to as the law enforcement system, as it acknowledges that the primary objective of these institutions is to enforce abstract legal regulations through concrete actions. The resolution of criminal cases through Restorative Justice involves the perpetrator, victim, perpetrator/victim's family, and other relevant parties collaboratively to achieve an equitable resolution that prioritizes restoration to the original state rather than retribution. Restorative Justice in the Criminal Justice System In the recent evolution of Indonesian law, society tends to employ normative channels, specifically the courts, to establish justice in the event of a crime. However, this is not a simple task to accomplish in practice. Acknowledging that the outcomes obtained through the court process are win-lose solutions is imperative. As a result, there will be a winner and a loser. (Al-Billeh et al., 2024)



Restorative justice necessitates that the perpetrator take responsibility for the errors they have committed and address the disarray resulting from their actions to restore the situation to its original state. The objective of the problem-solving approach is to integrate and unify the perspectives of all individuals or groups with an interest in the crime. This is, of course, in direct opposition to the existing criminal justice system. The resolution of criminal acts outside the courts is called restorative justice, prioritizing communication between the perpetrator, victim, the perpetrator's family and/or victim, and the related parties. The objective is to achieve a peaceful resolution in which the perpetrator can take equitable measures to enhance the situation, such as paying compensation and refraining from receiving sanctions or punishment. (Aidonojie et al., 2024)

The legal requirements of the community for the resolution of criminal cases through restorative justice underscore the importance of the restoration of the original state and the equilibrium between the interests and protection of the victims and perpetrators of criminal acts that are not motivated by retribution. Furthermore, the concept of restorative justice is perceived as more straightforward and less time-consuming when it comes to resolving criminal cases of abuse. The primary obstacle to the successful implementation of the restorative justice approach or concept in the criminal justice system, as well as in a legal system in general, is the resolution mechanism distinct from that of the current criminal justice system. Consequently, it remains challenging to accept. This is because the mechanism of restorative justice emphasizes mediation or peace, in which perpetrators, victims, law enforcement officers, and the broader community directly participate in the resolution of criminal cases. This starkly contrasts the traditional criminal justice system, which has been in place for an extended period and remains valid today. (Marder, 2022)

The Restorative Justice approach can be a viable alternative for resolving criminal cases that involve minor assaults. Rather than focusing on punishment, this approach consists of a dialogue and mediation process involving the perpetrator, victim, perpetrator/victim's family, and other relevant parties. The goal is to collaboratively establish a fair and equitable settlement for both the victim and the perpetrator, with a focus on restoring the original state and fostering positive relationships in society. In contrast to the conventional procedural law approach, restorative justice can assist victims in achieving genuine justice. Restorative justice allows victims to participate in the peace process to determine how to restore the losses they have experienced and to express the anguish and anger they feel due to the criminal action committed by the perpetrator. (Hobson & Payne, 2022)

Not all criminal cases can be closed by law, and the Prosecutor's Office halts their prosecution by implementing the termination of prosecution based on restorative justice. Article 5 of the Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on restorative justice outlines the initial considerations of the Prosecutor acting as the public

Prosecutor to ascertain whether or not a case can be resolved through restorative justice.(Sharpless et al., 2022)

Additionally, the Prosecutor's Law is not the sole legal framework that governs the resolution of criminal acts of abuse through restorative justice mechanisms; the Police Law also regulates these mechanisms to resolve criminal acts of abuse. This is consistent with Article 5 and Article 6 of the Regulation of the Republic of Indonesia National Police Number 8 of 2021, which outlines the prerequisites for resolving criminal cases of abuse outside of the court.(Gerson, 2022)

It is evident from these regulations that Indonesia's criminal justice system has implemented restorative justice as an alternative to the resolution of criminal cases, particularly those involving abuse. In cases of abuse, a practical restorative justice approach is contingent upon two determining factors: first, the victim of the crime must be taken into account to repair losses. Second, the perpetrator of the crime must be willing to admit their mistake and thoroughly repair the losses. Law enforcement should only assist in the execution of non-litigation settlement efforts.(Marcucci, 2021)

Essentially, laws are enacted to safeguard the broader community. The restorative justice approach, which involves non-litigation criminal resolution methods to resolve criminal cases outside of the court, is one of the methods developed to achieve this. The restorative justice mechanism achieves this by prioritizing deliberation by both parties, thereby reversing the situation before the crime occurred and preventing the occurrence of criminal acts. This is achieved by settling criminal cases of abuse without the need for a court process or the imposition of a prison sentence. The restorative justice concept's ultimate objective is to decrease the number of prisoners detained, remove the stigma or label, and restore the perpetrators of the crime to their natural state. It also aims to enable the perpetrators to recognize their errors to prevent them from repeating them, reduce the workload of prosecutors, police, detention centers, courts, and correctional institutions, save the state money, and avoid resentment from arising as a result of the victim's forgiveness of the perpetrator.

Obstacles in the Implementation of Restorative Justice Mechanisms in Cases of Minor Assault Crimes

The issuance of the Supreme Court Regulation and the MAHUMJAKPOL Memorandum of Understanding is intended to promote a sense of Justice within the community by resolving minor criminal acts. The binding of the regulations that apply in the Supreme Court revealed that the Supreme Court Regulation Number 2 of 2012 had vulnerabilities. This implies that the Supreme Court regulation only applies in the judicial environment, including high and district courts. Consequently, judges in this environment are obligated to independently evaluate the object of the case, as other institutions, such as the police handling investigations and the prosecutor's office prosecuting cases, are not impacted by the regulation. Additionally, the Supreme Court does not have the authority to influence external entities, such



as citizens, when viewed from the hierarchy of rules. The Formation of Laws and Regulations Law Number 12 of 2011 regulates the hierarchy of laws and regulations. The conclusion is that legal products in the form of "Supreme Court regulations" both before and after the enactment of Law Number 12 of 2011 concerning the Formation of Legislation cannot be classified as legislation, as the position of Supreme Court regulations is not in the Hierarchy of Legislation. (Chatlani et al., 2023)

The criminal justice system and community participation must be employed to address the factors that impede the occurrence of mediation of minor assault crimes. This includes the enhancement and reinforcement of law enforcement officers and the establishment of legislation that has legal consequences to encourage citizens to adhere to it. Next, the challenges encountered in resolving minor assault cases include the absence of admission or statement of guilt from the perpetrator, the lack of approval from the victim/family and the desire to forgive the perpetrator, the absence of support from the local community to facilitate resolution through deliberation and consensus, and the lack of facilities and infrastructure, as well as insufficient funding. (Ariefulloh et al., 2023)

Restorative Justice is a concept of criminal Justice that aims to "restore damaged relationships due to criminal acts between victims and perpetrators of crimes" by means outside the court. "Restorative Justice" is derived from the word "Restore," which means returning or restoring to the original state. In the criminal law system, Restorative Justice is the concept of criminal Justice that views criminal acts as crimes against society, not crimes against the state and creates obligations for victims and society to improve. In the prosecutor's office, not all applications or cases of Restorative Justice are successfully managed. (Sukardi & Purnama, 2022) However, there is a restorative justice application from the prosecutor's office that fails to implement restorative Justice. The prosecutor's office discovered that the requirements contained facts that indicated a high level of reprehensibility from the leadership's perspective. The prosecutor is inherently obligated to make restorative efforts before pursuing prosecution in any case that meets the criteria above. Prosecutors adhere to the Prosecutor's Regulation to implement restorative Justice, ensuring that the Pekanbaru District Attorney's Office's actions or procedures are consistent with the Standard Operating Procedure (SOP). The prosecutor's office must offer specialized training and education to all prosecutors, particularly those who handle criminal cases, to ensure that the principle of humorous law enforcement conducts restorative settlements. This will ensure that every case affecting the community is undertaken humanely and does not disrupt the community's sense of Justice.

Conclusion

An alternative to resolving criminal cases, the criminal justice system in Indonesia, as regulated by the Criminal Procedure Code, has initiated implementing a restorative justice approach, particularly in cases of minor

assault. This method emphasizes restoring the original state through dialogue and mediation involving the perpetrator, victim, family, and related parties to obtain a tranquil agreement without a conventional court process. On the condition that the perpetrator is willing to accept responsibility and repair the victim's losses, restorative justice endeavors to reduce criminal penalties, restore social relationships, and remove the stigma of the perpetrator. This method is also cost-effective, reduces the burden on the judicial institution, and prevents societal resentment. Nevertheless, the implementation of this system is fraught with obstacles due to its divergence from the conventional criminal justice system's mechanisms. A lack of comprehension, limited legal regulations, and minimal support from the community, perpetrators, and victims impede the implementation of restorative justice in the context of minor crimes. Restorative justice aims to reestablish the relationship between the perpetrator and victim by engaging in deliberation outside of the courtroom. Nevertheless, the case's level of reprehensibility and lack of training for prosecutors frequently fail in its implementation. Therefore, the success of this approach necessitates robust regulations, law enforcement officer training, and community support.

References

- Aidonojie, P. A., Antai, G. O., John, D. J., Ibeh, S., & Adebayo, A. K. (2024). Curtailing Male Rape in Nigeria: Legal Issues and Challenges. *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2(3), 287–303. <https://doi.org/10.53955/jsderi.v2i3.43>
- Al-Billeh, T., Al-Hammouri, A., Khashashneh, T., AL Makhmari, M., & Al Kalbani, H. (2024). Digital Evidence in Human Rights Violations and International Criminal Justice. *Journal of Human Rights, Culture and Legal System*, 4(3), 842–871. <https://doi.org/10.53955/jhcls.v4i3.446>
- Amin, R., Al Aziz, M. F., & Manalu, I. (2020). Penerapan Keadilan Restoratif Dalam Penyelesaian Perkara Kecelakaan Lalu Lintas Berat Di Kepolisian Resort Metro Jakarta Pusat. *Krtha Bhayangkara*, 14(1), 1–26. <https://doi.org/10.31599/krtha.v14i1.35>
- Ariefulloh, A., Nugroho, H., Angkasa, A., & Ardhanariswari, R. (2023). Restorative justice-based criminal case resolution in Salatiga, Indonesia: Islamic law perspective and legal objectives. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23(1), 19–36. <https://doi.org/10.18326/ijtihad.v23i1.19-36>
- Barlow, H. D., & Decker, S. H. (2010). *Criminology and public policy: putting theory to work*. 292.
- Chatlani, N., Davis, A., Badillo-Urquiola, K., Bonsignore, E., & Wisniewski, P. (2023). Teen as research-apprentice: A restorative justice approach for centering adolescents as the authority of their own online safety. *International Journal of Child-Computer Interaction*, 35, 100549. <https://doi.org/10.1016/j.ijcci.2022.100549>



- Gerson, J. C. (2022). Restorative Justice and Alternative Systems. In *Encyclopedia of Violence, Peace, & Conflict* (pp. 125–136). Elsevier. <https://doi.org/10.1016/B978-0-12-820195-4.00161-8>
- Hobson, J., & Payne, B. (2022). Building restorative justice services: Considerations on top-down and bottom-up approaches. *International Journal of Law, Crime and Justice*, 71, 100555. <https://doi.org/10.1016/j.ijlcrj.2022.100555>
- Jaelani, A. K., Octavia Kusumaningtyas, R., Dian Luthviati, R., Al Fatih, S., & Siboy, A. (2024). Green Legality Certificate on Agrarian Reform: Indonesian Experience. *KnE Social Sciences*. <https://doi.org/10.18502/kss.v8i21.14713>
- Marcucci, O. (2021). Why restorative justice works in schools: An investigation into the interactional dynamics of restorative circles. *Learning, Culture and Social Interaction*, 31, 100561. <https://doi.org/10.1016/j.lcsi.2021.100561>
- Marder, I. D. (2022). Mapping restorative justice and restorative practices in criminal justice in the Republic of Ireland. *International Journal of Law, Crime and Justice*, 70, 100544. <https://doi.org/10.1016/j.ijlcrj.2022.100544>
- Nur, H., Sahari, A., Ilmu, M., Program, H., Universitas, P., & Sumatera, M. (2022). UPAYA PENEGAKAN HUKUM OLEH POLRI DALAM PENANGANAN TINDAK PIDANA BERDASARKAN KEADILAN RESTORATIF TERKAIT TINDAK PIDANA LALU LINTAS. *Jurnal Doktrin Review*, 01(01), 1–10.
- Pratama, S. P. H., & Ardhya, S. N. (2023). Keadilan Restoratif Terkait Penyelesaian Tindak Pidana Kecelakaan Lalu Lintas Yang Mengakibatkan Korban Meninggal Dunia. *Jurnal Komunikasi Hukum (JKH ...)*, 9, 153–161. <https://ejournal.undiksha.ac.id/index.php/jkh/article/view/67648%0A> <https://ejournal.undiksha.ac.id/index.php/jkh/article/download/67648/27021>, Diakses Pada 29 Februari 2024, Pukul 08: 40
- Sharpless, L., Kershaw, T., & Willie, T. C. (2022). Associations between state-level restorative justice policies and mental health among women survivors of intimate partner violence. *SSM - Mental Health*, 2, 100085. <https://doi.org/10.1016/j.ssmmh.2022.100085>
- Sukardi, S., & Purnama, H. R. (2022). Restorative Justice Principles in Law Enforcement and Democracy in Indonesia. *Journal of Indonesian Legal Studies*, 7(1), 155–190. <https://doi.org/10.15294/jils.v7i1.53057>
- Suryani, I., Budia Warman, A., Roni Efendi, & Tenrilawa, D. F. (2024). The Possibility of Talaq Performers Criminalization in Indonesia: An Essential Lesson from India. *Journal of Human Rights, Culture and Legal System*, 4(3), 593–620. <https://doi.org/10.53955/jhcls.v4i3.282>