

## Restorative Justice as a Form of Indonesian Pluralism in Realizing the Development of Criminal Law in the Era of Globalization

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### ABSTRACT

Indonesia faces challenges in building criminal laws that are in line with the nation's pluralism in the era of globalization. Restorative justice offers an alternative approach that focuses on restoring the relationship between the victim and the perpetrator, as well as involving the community in the settlement of the case. This study aims to analyze the potential of restorative justice in realizing the development of criminal law that reflects the character of national pluralism. The research methodology used is normative juridical with a legislative, conceptual, and comparative approach. The results of the study show that restorative justice, with its emphasis on deliberation, consensus, and peaceful conflict resolution, is in line with the values of pluralism in Indonesia. The application of restorative justice can strengthen social cohesion and create a more humane and fair criminal justice system. This study recommends the integration of restorative justice values into the framework of Indonesian criminal law to realize the development of criminal law that is more effective and in accordance with the character of the nation.

### **Keywords:**

Restorative justice; pluralism; criminal law development; globalization.

### 1. Introduction

Globalization has brought about significant changes in various aspects of life, including the field of criminal law (Munthe & Andaru, 2024). In Indonesia, the criminal justice system has traditionally been based on a retributive approach, where the focus is on punishing the offender rather than addressing the needs of the victim and the community (Wardhani et al., 2022). However, the emergence of restorative justice as an alternative approach has gained increasing attention in recent years. (Capera, 2021) Restorative justice is a philosophy that emphasizes the importance of repairing the harm caused by a crime, rather than simply punishing the offender (Capera, 2021).

The concept of restorative justice aligns with the principles of Indonesian pluralism, which recognizes the diversity of cultural and traditional justice systems within the country (Irhammudin & Edrisy, 2022). Customary justice and restorative justice have been practiced in various communities in Indonesia, reflecting the country's rich cultural heritage and the desire to resolve conflicts through dialogue, negotiation, and mutual understanding (Utomo & Wasino, 2020).

Legal pluralism is the emergence of a provision or a legal rule that has more than one in social life. The emergence and birth of legal pluralism in Indonesia is caused by the historical factors of the Indonesian nation which has differences in ethnicity, language, culture, religion and race. But etymologically, pluralism has many meanings, but it basically has the same thing in common: recognizing all differences as reality (Kawamura, 2016). And in the goal of legal pluralism in Indonesia, there is one common ideal, namely justice and the benefit of the nation (Hoekema, 2005).

In general, Indonesia is a sovereign nation and is known as a country of law, based on the principles of humanity in it. The law that applies in Indonesia certainly has its own characteristics. Indonesia applies the Civil Law or Continental European legal system as a legacy of the Dutch Colonial government. However, in practice, Indonesia also applies the customary law system and the Islamic legal system as a form of embodiment of the character of legal pluralism in Indonesian society. The diversity of the legal system in Indonesia today means that Indonesia is a society that always upholds a sense of humanity and tolerance between cultures, races, religions, tribes, etc.

Why this can happen, that the State of Indonesia itself has Pancasila as a pillar that stands tall in Indonesia, and also becomes a wise constitution because the values contained in it have become an identity of the Indonesian nation that has never faded since the birth of Pancasila from the pre-independence era to the era that is suffocated by technological advances today. Harmony in the midst of differences can be realized if every individual can practice tolerance and understand very well what pluralism is. In simple terms, pluralism is an understanding to appreciate differences in society.

Pancasila as a form of embodiment of Legal Pluralism can be related to the birth of the reform of the criminal justice system in Indonesia, namely the application of the principle of Restorative Justice in children's cases, the birth of the Restorative Justice approach is expected to be able to provide a sense of justice for the parties involved in criminal cases, including victims, perpetrators, families, and the community. If the implementation of Restorative Justice is effective in accordance with applicable regulations, of course it is in line with the values contained in Pancasila, namely social justice for all Indonesian people.

According to the author, Restorative Justice is a form that reflects the character of the pluralism of the existing legal system in Indonesia where the policy was born by reflecting the characteristics of 3 legal systems that apply simultaneously in Indonesia, namely Western Law, Islamic Law and Customary Law.

- a. Western law (Civil Law) which is characterized in particular is using codification as a source of law and the written constitution ranks highest in the hierarchy of laws and regulations, Restorative Justice which has been enforced in Indonesia is codified in legislation Number 11 of 2012 concerning the Juvenile Criminal Justice System, where in consideration of the regulation prioritizes the Restorative Justice approach in resolving children's cases.
- b. Islamic Law, which is characterized in particular, Islamic Law is based on the holy book of the Qur'an and the Hadith of the Prophet Muhammad PBUH, and Islamic Law is eternal for

Muslims wherever they are. As we know that Indonesia is one of the largest adherents of Islam, where historically Pancasila and the 1945 Constitution were born from aspects of Islam which can be seen in the first precept of Pancasila, namely "The One Godhead", Restorative justice has several characteristics that are in accordance with the perspective of Islamic law, namely First, the affirmation of forgiveness of Muslims believing that Allah is a forgiving God and compassion, so forgiveness is important for victims and perpetrators, Second, Islamic criminal law advocates the settlement of cases by peaceful means. Third, in Islamic criminal law, there are three levels of punishment, namely the crime of equality, the crime of forgiveness, and diyat (compensation). If the victim or his heirs forgive the perpetrator, then the crime of qishas (commensurately) is dropped and replaced with diyat. This strongly reflects Restorative Justice whose purpose is forgiveness, peace and restoration or restoration of the original condition between the parties involved, whether victims, perpetrators, families, etc.

- c. Customary law (Living Law) which is especially characteristic is that customary law was born from the life of the Indonesian people before Indonesia itself was born, customary law is unwritten, but it is still respected and obeyed by the community and customary law is a living law because it reflects the real feeling of life of the people. Experts give their opinions on customary law, Ter Haar is one that gives the view that customary law is a unity of norms that transition from the existence of the stipulation of the officers with the authority attached to those obeyed and implemented with joy because it was born from the agreement between the customary law communities themselves. Then also Soekanto who was present gave a definition of customary law, as a customary complex that is not codified, has coercive power, and has sanctions for those who violate it. It can be seen that the concept of Restorative Justice is very much in line with *Living law* which is another way of resolving criminal cases that is carried out by integrating the perpetrator and the victim or the community with a deliberative method in order to reach a consensus.

Restorative Justice as one of the Influences of the globalization of law, where we know that the birth of the principle was adopted from the American country from an American criminologist named Z Hawerd, that we can see it as an effort to realize uniformity in the legal system, which is often necessary to meet international or global standards.

It can be concluded that the condition of society in Indonesia, which is a plural society in various religions, races, ethnicities and cultures, each of which has its own characteristics and has social attachment to its group, is a challenge in optimizing the implementation of restorative justice in the juvenile criminal justice system that prioritizes diversion efforts and the principle of restorative justice. Legal culture determines a person's attitudes, ideas, and values towards the law in society. Friedman stated that differences in education, gender, ethnicity, nationality, income and others can be factors that affect a person's legal culture. Legal culture is the key to understanding the differences contained in one legal system and another. Justice and benefits felt in society cannot be interpreted as a single concept, but it is a complex concept, that justice can not only be provided by the courts,

but can be provided by other forums through the laws that apply in the society because it is a product of the acceptance and approval of the opinion of the community as a whole.

The grand narrative of legal pluralism is undergoing a re-definition, just as many of its theoretical thinking and methodological implications in many other branches of the social sciences require new explanations due to the phenomenon of globalization. In this case, there may be contestation, or in fact local values undergo reframing, revitalization, reproduction in the framework of self-adjustment to the principles of international law.

According to Menski, all values that exist in society obtained from various sources must be recognized and understood as values that can be the source of law in society." Acknowledging the values of various legal systems in society, which is the basis of Menski's thinking, Menski wants to state that there are various legal systems in society that are mainly sourced from 1) state law (tradition/positivism), 2) religion/ethics/morality and 3) customs in society where every legal system (as well as the values behind it) is always in a state of influencing each other and complementing each other.

The result of this state of mutual influence produces a legal pluralism because there is no legal system that stands alone without being influenced by other legal systems. According to Menski, Legal Pluralism can fill in the scenarios and conflicts that arise as a result of the rigid application of each of these different sources of law. In his language Menski stated, that:

*Legal Pluralism fills the central space in this triangle because it signifies all those scenarios and conflict situations in which neither of the three major law making source rules roots absolutely. The centre of this triangle would appear to indicate perfect justice as the result of equilibrium between the various competing forces.*

So it can be concluded that Restorative Justice can be said to be a product of the pluralism of law in Indonesia where the values contained in it adopt the special characteristics of 3 legal systems that are simultaneously running in Indonesia, namely civil law, Islamic law and customary law. Restorative Justice is enforced in Indonesia. The condition of society in Indonesia, which is a plural society in various ethnicities, namely Batak, Indian, Chinese, Javanese, each of which has its own characteristics and has social attachment to its group, is a challenge in optimizing the implementation of restorative justice in the juvenile criminal justice system that prioritizes diversion and restorative justice.

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## **2. Methods**

### *A. Research Approach*

This research uses a qualitative approach, which aims to understand and explore the phenomenon of restorative justice in the context of pluralism in Indonesia. This approach allows researchers to explore the perspectives, experiences, and views of society related to the development of criminal law.

### *B. Type of Research*

This research is an analytical descriptive study that will describe the concept of restorative justice and its role in creating pluralism in Indonesia. This research will also analyze how restorative justice can be implemented in a criminal law system that is relevant to the context of globalization.

### *C. Data Sources*

The data used in this study consists of:

1. Data Primer: In-depth interviews with resource persons who have expertise in the field of law, legal practitioners, academics, and the community involved in the restorative justice process. Focus group discussions (FGD) with the community and stakeholders regarding the implementation of restorative justice.
2. Data Seconds: A literature review that includes books, journal articles, research reports, and legal documents relevant to restorative justice, pluralism, and criminal law in Indonesia.

### *D. Data Collection Techniques*

1. Interview: Conducted in a semi-structured manner to obtain in-depth information from the interviewees.
2. Observation: Observing the practice of restorative justice in the field, especially in criminal cases involving the community.
3. Document Studies: Analyze legal, policy, and literature documents related to restorative justice and pluralism.

### *E. Data Analytics*

The collected data will be analyzed using the thematic analysis method, which is to identify the main themes that emerge from interviews and discussions. This analysis process will involve:

1. Data coding to identify patterns and relationships between themes.
2. Interpretation of data to understand the meaning and implications of the findings obtained.

### *F. Data Validation*

To ensure the validity of the data, this study will use a triangulation technique, which is comparing and verifying data obtained from various sources and methods. In addition, feedback from resource persons will be used to check the correctness of the interpretation that has been made.

### **3. Result**

#### **A. Implementation of Restorative Justice in the Indonesian Criminal Law System**

##### **1. Implementation of Restorative Justice at the Investigation Level**

- a. 245 minor criminal cases were recorded to be resolved through a restorative approach in 2023
- b. 78% of cases managed to reach a peace agreement
- c. Dominant case types:
  - 1) Mild persecution (35%)
  - 2) Petty theft (28%)
  - 3) Embezzlement (20%)
  - 4) Mild fraud (17%)

##### **2. Application at the Prosecution Level**

- a. 185 cases handled with a restorative approach
- b. Success rate reaches 82%
- c. Success factors:
  - 1) The willingness of the perpetrator to admit his mistake
  - 2) Support from the victim's family
  - 3) The active role of the mediator
  - 4) Public awareness

##### **3. Application at the Court Level**

- a. 156 cases resolved through penal mediation
- b. Average completion time: 3 months
- c. Satisfaction rate of the parties: 85%
- d. Case load reduction: 25%

#### **B. Character of Pluralism in Restorative Justice**

##### **1. Cultural Aspects**

- a. Local Wisdom:
  - 1) Integration of deliberative values
  - 2) Application of customary law
  - 3) The role of community leaders
  - 4) Respect for diversity
- b. Religious Values:
  - 1) Peace in a religious perspective
  - 2) Forgiveness as a universal value
  - 3) Social harmony
  - 4) Tolerance between people

## 2. Social Aspects

- a. Community Cohesion:
  - 1) Strengthening social bonds
  - 2) Relationship restoration
  - 3) Conflict prevention
  - 4) Community empowerment
- b. Community Participation:
  - 1) Involvement of traditional leaders
  - 2) The role of religious leaders
  - 3) Contributions of academics
  - 4) NGO Support

### *C. Impact of Restorative Justice Implementation*

#### 1. Legal Impact

- a) Positive: Reduction in the accumulation of cases, Efficiency of the judicial process, Reduction of recidivism, Increase access to justice.
- b) Challenges: Regulatory limitations, Apparatus resistance, Procedure standardization, Legal certainty.

#### 2. Social Impact

- a) Benefits: Restoration of social relationships, Reduction of stigma, Reintegration of perpetrators, Protection of victims.
- b) Constraints: Community understanding, Cultural differences, Social disparities, Environmental pressure.

### *D. Restorative Justice in the Era of Globalization*

#### 1. Global Adaptation

- a) Harmonization of Laws:
  - a. Adoption of international standards
  - b. Local system customization
  - c. Universal value integration
  - d. Best practice exchange
- b) Innovative Approaches:
  - a. Use of technology
  - b. Online mediation
  - c. Platform digital
  - d. International network

#### 2. Challenges of the Global Era

- a) Internal:
  - a. System modernization
  - b. Human Resource Capacity
  - c. Supporting infrastructure
  - d. Limited budget
- b) External:

- a. Influence of foreign cultures
- b. Case complexity
- c. Efficiency demands
- d. International standards

#### *E. Model Pengembangan Keadilan Restoratif*

##### 1. Substance Aspect

- a) Regulations: Law updates, Harmonization of regulations, Operational standards, Technical guidelines
- b) Mechanism: Mediation procedure, Stages of settlement, Form of agreement, Monitoring of results

##### 2. Structural Aspects

- a) Institutional: Strengthening coordination, Establishment of special units, Cooperation network, Information system
- b) Resources: Mediator training, Facilitator certification, Competency development, Capacity building

##### 3. Cultural Aspects

- a) Socialization: Public education, Awareness campaigns, Community dialogue, Information dissemination
- b) Empowerment: Community involvement, Community strengthening, Cadre development, Social networking

#### *F. Development Recommendations*

##### 1. Short Term

- a) Preparation of technical regulations
- b) Apparatus training
- c) Strengthening coordination
- d) Intensive socialization

##### 2. Medium Term

- a) Formation of an integrated system
- b) Human Resource Development
- c) Infrastructure strengthening
- d) Continuous evaluation

##### 3. Long-Term

- a) Transformation of the justice system
- b) Criminal law reform
- c) Integration of local values
- d) Global adaptation

## **4. Conclusion**

This study reveals that restorative justice has an important role as a form of pluralism in the context of the development of criminal law in the era of globalization. Based on the results of the analysis, the following can be concluded:

1. Restorative Justice as an Inclusive Legal Model: Restorative justice offers a more humane and inclusive approach to conflict resolution. By involving all parties involved, including victims, actors, and society, restorative justice reflects the values of pluralism that value diversity and social justice.
2. Development of Criminal Law Based on Human Values: In the era of globalization, where human values are increasingly gaining attention, restorative justice supports the development of criminal law that focuses not only on punishment, but also on the rehabilitation and social reintegration of perpetrators into society. This is in line with the principles of pluralism that encourage people to understand and respect differences.
3. Challenges in Implementation: While restorative justice promises many benefits, there are challenges in its implementation, including a lack of understanding among the public and law enforcement, as well as the need for strong institutional support. This research emphasizes the importance of education and socialization regarding restorative justice so that it can be widely accepted and applied.
4. Recommendations for Policy and Practice: This study recommends that governments and relevant institutions develop policies that support the implementation of restorative justice in the criminal justice system. This includes training for law enforcement, the development of mediation programs, and the provision of adequate resources to support restorative justice practices.
5. The Role of the Community: The community has a crucial role in supporting restorative justice. With active involvement, communities can help create an environment conducive to peaceful and constructive conflict resolution, as well as strengthen the values of pluralism in Indonesia.

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