

# 10. Non-Procedural Dispute Resolution: Study of the Restorative Justice Approach Tradition in Indonesian Society

*by Achmad Irwan Hamzani*

---

**Submission date:** 17-Oct-2023 11:42AM (UTC+0700)

**Submission ID:** 2198324963

**File name:** Restorative\_Justice\_Approach\_Tradition\_in\_Indonesian\_Society.pdf (379.55K)

**Word count:** 7476

**Character count:** 40803

# Non-Procedural Dispute Resolution: Study of the Restorative Justice Approach Tradition in Indonesian Society

International Journal of  
Offender Therapy and  
Comparative Criminology  
1–15

15

© The Author(s) 2023


Article reuse guidelines:

sagepub.com/journals-permissions

DOI: 10.1177/0306624X231165425

journals.sagepub.com/home/ijo



Achmad Irwan Hamzani<sup>1</sup> , Fajar Dian Aryani<sup>1</sup>,  
Bambang Tri Bawono<sup>2</sup>, Nur Khasanah<sup>3</sup>,  
and Nur Rohim Yunus<sup>4</sup>

## Abstract

11

The Indonesian Muslim community is familiar with restorative justice. The substance of restorative justice is building joint participation between perpetrators and victims through third parties. The objectives of this study are: to describe the traditions of Indonesian Muslim society and to examine the relevance of restorative justice for the settlement of criminal cases in the future. This research uses a philosophical approach, namely legal construction at an ideal level in the future. The results show that the restorative justice approach has strong roots in Indonesian Muslim society, namely deliberation to reach a consensus. Deliberative institutions are held to find solutions that can satisfy all parties. In the future, restoration justice needs to be applied in Indonesia in resolving criminal cases, especially crimes against life. The restorative justice approach offers a different view from the approach applied in the current criminal system.

## Keywords

restorative justice, tradition, Pancasila, Indonesia, criminal

<sup>1</sup>Universitas Pancasila Tegal, Central Java, Indonesia

<sup>2</sup>Universitas Islam Sultan Agung, Semarang, Central Java, Indonesia 25

<sup>3</sup>Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan, Central Java, Indonesia

<sup>4</sup>Universitas Islam Negeri Syarif Hidayatullah, South Tangerang, Banten, Indonesia

## Corresponding Author:

Achmad Irwan Hamzani, Universitas Pancasila Tegal, Street Halmahera Km. 1, Tegal, Central Java 52121, Indonesia.

Email: al\_hamzani@upstegal.ac.id

## Introduction

The Indonesian Muslim community is familiar with restorative justice, an approach that has been re-discussed in many countries to resolve criminal cases. The restorative justice approach offers a different way of looking understanding and dealing with a crime. The substance of restorative justice builds joint participation between perpetrators, victims, and community groups. Perpetrators, victims, and the community are placed as "stakeholders" who work together and try to find solutions that are considered fair for all parties (win-win solutions) (Manan, 2008, p. 4).

The emergence of restorative justice discourse as a model in resolving criminal cases as peacemaking criminology offers a choice about the form of funding that is non-violence, involving the participation of victims, perpetrators, and the public through a mediation mechanism. The basic idea of restorative justice is justice for all parties.

Restorative justice is seen as an alternative funding philosophy that spawns different forms of sanctions than conventional criminal ones that put perpetrators against the state (Braithwaite, 2002, p. 10). The mechanization of criminal justice through the current criminal justice system does not give attention and justice to the victim, because the center of attention is only on the perpetrator. The criminal system, which is only oriented towards perpetrators if applied to crimes against the lives of others, does not provide justice to victims or their families. For example, the victim of the murder is the head of the household. In such cases, the state does represent the families of victims punishing perpetrators. But the need for the victim's wife after the case is over is not a concern of the state. Convicted offenders are instead imprisoned at state expense. With a restorative justice approach, the fund is required to recover the losses suffered by the victim so that the victim's condition returns as before the criminal event.

One way to think of restorative justice is simply as a particular method for dealing with a crime that brings together an offender, his or her victims, and their respective families and friends to discuss the aftermath of an incident and the steps that can be taken to repair the harm an offender has done. It was a handful of programs in Australia, Canada, New Zealand, the United Kingdom, and the United States using precisely this method, usually as an alternative to formal prosecution, that was the catalyst for the emergence of the restorative justice movement in the mid-1990s, and this way of thinking about restorative justice continues to dominate the restorative justice literature (Roche, 2006).

The Indonesian Muslim community is familiar with the deliberation and consensus approach to resolving conflicts. The deliberation approach has existed and has long been practiced by the Indonesian Muslim community. Deliberation for consensus is taught by Islam as the religion adopted by the majority of the Indonesian population. An evaluation is needed to redesign the current criminal model to be more effective and provide justice for all parties. It is time for the criminal system to shift to give attention and justice to all, not only the perpetrators of the crime, but also the victims. With a restorative justice approach, justice is more likely to be obtained by all parties, especially victims who are marginalized in the current criminal justice system.

## Research Methods

### Type and Approach

This is a type of field research. Field research is research that is conducted directly on the subject of study. Because the data used in this study are primary data obtained directly by the researcher, field research is included. This study takes a phenomenological approach. A phenomenological approach is one that uses manifestations of religious experience to study and understand various religious phenomena. This study employs a phenomenological approach because it observes and investigates legal phenomena that exist in a society and are based on religious teachings.

### Data Collection

This study relied on primary data as its source of information. Primary data is information gathered directly by researchers. In this study, data was gathered through observation and interviews. This study is also aided by secondary data in the form of legal documents obtained both offline and online. An offline literature review is a task that is performed in order to locate library sources for data storage areas. While online searching is a method of locating library resources in cyberspace via the internet. Conventional literature searches are conducted by looking for library materials, book collections, and personal journals, purchasing books, and participating in scientific activities (seminars). While an online search is carried out by searching the internet.

### Data Analysis

The method of data analysis used is qualitative, with an inductive flow of thought. The process of organizing and sorting data into patterns, categories, and basic units of description in order to find themes that can be presented in narrative form is known as qualitative data analysis. Because the data will be presented in a narrative-descriptive format rather than numbers or numeric, this study employs qualitative data analysis.

## Discussion

### *Restorative Justice in the Tradition of Indonesian Muslim Society*

The Indonesian Muslim community is familiar with an approach similar to restorative justice in resolving conflicts by deliberation to reach consensus. The practice of deliberation and consensus is taught by Islam. It is natural that consensus deliberation has existed and has long been practiced by the Indonesian Muslim community.

Culturally, the practice of deliberation and consensus actually always wants to be put forward in solving cases, including criminal cases. The measure of justice is not based on retributive justice in the form of revenge (an eye for an eye) or imprisonment, but based on conviction and forgiveness. Although general criminal acts handled by the community themselves are contrary to positive law, this mechanism has succeeded in

maintaining harmony in the community. The involvement of state law enforcement officers often complicates and exacerbates the problem (Dewi & Fatahillah, 2010, p. 4).

For example, many criminal cases, especially the crime of killing people due to negligence, can be resolved through deliberation and consensus by prioritizing kinship. Organizing consensus deliberation involving the families of victims, perpetrators and third parties. Third parties sometimes involve community leaders or religious leaders, and are also facilitated by police law enforcement (Interview with HRW, 2022).

The peace process is through deliberation for consensus, through a fairly long dialogue process, and the role of a third party as a mediator is necessary and dominant. This is understandable because humanly the victim's family will feel as the right party and must benefit because the sufferer. Likewise, the perpetrator, humanly will also try not to be blamed and free from responsibility. It is the third party as a mediator whose role is to precipitate each other's egoism, how to make the perpetrator admit his mistake and take responsibility, and the victim's family willingly forgives and accepts it (Interview with AW, 2022).

Restorative justice free translation in Indonesian is "restorative justice." The meaning of restorative justice is restored justice. Restoration includes the recovery of victim losses and the restoration of the relationship between the victim and the perpetrator. The restoration of the relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can tell about the losses he suffered and the perpetrator is allowed to redeem it through compensation mechanisms, peace, social work, and other agreements.

Terminologically, restorative justice means a fair solution involving the perpetrator, the victim, their family, and others involved in a crime, jointly seeking a solution to the crime and its implications, emphasizing the restoration back to its original state. Restorative justice is a process where all the stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have afflicted the harm must be central to the process (Braithwaite, 2004).

Theoretical formulations for restorative justice or related theories in criminology have focused almost exclusively on effects on repeat offending by offenders (see, e.g., Braithwaite, 2002), with no formal theories of victim consequences. While Braithwaite, for example, provides nuanced discussions of the benefits or costs of restorative justice as a whole, he does not suggest a detailed theoretical framework for why RJ should be expected to provide benefits to victims. Nor does Strang et al. (2006), in the only book so far devoted entirely to empirical work on the victims' perspective on restorative justice. Nevertheless, two theories from beyond criminology offer plausible rationales for predicting positive outcomes from restorative justice for participating crime victims. In psychology, Cognitive Behavioral Therapy (CBT) research suggests that victims can benefit from extended "deconditioning" discussions of their prior traumas held in safe and controlled environments. In sociology, the theory of "interaction ritual" predicts that the emotional energy arising from a successful restorative

justice conference will have positive benefits for victims by restoring their identity and sense of self-worth (Strang, 2006).

The characteristics of customary law in each region are generally in line with the application of restorative justice, although the terms are different. Long before the birth of the United Nations, in Indonesia, there had been a pattern of resolving a dispute both civil and criminal by using a restorative justice-like approach. During the Majapahit Kingdom, there was already a criminal law book, the Book of Kutara Manawa. There is a decree in the book that takes into account the importance of the victim in the decision-making, and also recognizes compensation on the part of the victim (Mulyana, 1979, pp. 182–188). The main value of restorative justice has been included here, which involves the participation of victims, perpetrators, the public in making improvements to a crime.

Some laws look like restorative justice, such as those contained in *Qanun Mangkuta Alam* (in Samudera Pasai Sultanate, Aceh), *Simbur Cahaya* (in Palembang Sultanate), *Serat Angger-Agger Suryangalam* (in Demak Sultanate), and other books that apply in the Sultanate in the Nusantara. The dispute resolution mechanism stipulated in the book is done through an agreement between the victim or his family, the perpetrator, and a third party originating from a person or head of a custom in the field of law or the field of religion (Hamzani, 2016).

Dispute resolution mechanisms are generally based on consensus deliberations in which the parties are asked to compromise to reach an agreement (Dewi & Fatahillah, 2010, p. 5). Each individual is asked to relent and put the interests of society above personal interests to maintain harmony together. The concept of deliberation is effective in resolving disputes in society amid the failure of the role of the state and the courts in delivering justice (Barnes, 2007, p. 109).

Until now, people think that they will experience greater losses if they take the dispute to court. There is even an adage in the community that “if you lose a goat, then report it to law enforcement officials, instead of returning the goat, you will lose the cow.” The existence of deliberation as local wisdom is very vital to maintain public order. Deliberation can be used as a basic concept for dispute resolution in the community, both private and public (Dewi & Fatahillah, 2010, p. 6). Deliberation as the basis for dispute resolution used by the community daily is an effective tool to maintain order and public order and is effective in dealing with criminal justice problems.

Moore (2003, pp. 20–23), a mediation expert, included deliberation as a form of traditional mediation. Deliberations among the traditional community are usually conducted by community leaders, religious leaders, and the elderly. When members of the public are in contention and unable to resolve themselves, they go to community leaders to facilitate that the fighting parties can seek to solve the problem. Until now, such habits still live among Indonesians. Religious leaders and community leaders perform voluntary service to the community to maintain harmonious and harmonious relationships.

Indonesians are very familiar with the functionalization of deliberation institutions as part of the mechanism for resolving cases. Deliberations either organized by the

perpetrator and the victim himself, or by involving police institutions or prosecutors, or through traditional institutions show the mindset of the community in looking at a problem that arises. Settlement mechanisms through deliberation can work in the community.

Although Indonesia consists of many tribes, customs, languages, and methods of dispute resolution, it has basic similarities in resolving all types of public and private disputes, namely the mechanism of deliberation and consensus. The only difference is the history of acculturation, such as the Muslim community because of the influence of Islamic teachings. This mechanism is the same as the essence to be achieved in a restorative justice mechanism where the parties compromise to reach a common ground that benefits all parties until an agreement is reached.

Indonesians have a tradition of self-governing including resolving disputes. Although there are some vigilante actions, many more can be solved by the community. The tradition of deliberation is embraced by the Indonesian community, in addition to sensitivities that consider it inappropriate to be brought to justice, as well as atheism towards law enforcement.

Problem-solving through deliberation is a mindset that is summarized in restorative justice. Deliberation institutions are known as highly institutionalized mediation in the civil justice system (Kusumaatmadja, 2006, p. 14). The process of dialogue as a medium of communication becomes the main capital of the implementation of mediation institutions. The whole process can be found in the model of restorative justice.

The association of people's lives as a place for individuals to interact is certainly different, and there can even be conflicts of interest that can lead to conflict. To resolve the conflict there is a consensus, and they obey it as a form of loyalty to social solidarity. Social awareness makes them submit and accept. Because in a reciprocal relationship, always need each other as a form of embodiment of indigenous law society.

There is an expression of *Ubi societas ibi ius*, that where there is a society there is a law. Each society generally has a social institution as well as legal institutions in its own life which is unique and different as a peculiar form of social life. The social institutions and institutions laws formed in society generally go hand in hand with the walking of people's lives (Rahardjo, 1983, p. 144).

Pancasila as the value of nation life aspired by the Indonesian nation is the source of all living legal resources and based on the values in society. Even Pancasila is extracted from religious and customary values which are the perspective of the Indonesian nation in the state (Putrajaya, 2005, p. 266), so restorative justice can also be excavated from Pancasila values with the principle of:

- a. Recognition that Indonesians are creatures of the One True God. The existence of sanctions in restorative justice should not be determined by any religious beliefs embraced by the People of Indonesia. Sanctions against a person must be directed at the awareness of the perpetrator's faith so that he can repent and become a faithful and obedient human being, so that sanctioning must serve as mental coaching for the perpetrator and transform the perpetrator into a religious human being;

- b. Recognition of the nobility of human dignity and dignity as god's creation. The lifting of sanctions should not undermine his most basic human rights and not demean his dignity for any reason;
- c. Foster national solidarity with others, as a sesame citizen. Perpetrators are directed at efforts to increase tolerance for others, foster sensitivity to the interests of the nation, and direct against repeating the crime;
- d. Cultivate maturity as a citizen who serves, can control himself, be disciplined, and respect and obey the law as a form of people's decision; and
- e. Raising awareness of each individual's obligations as a social being, which ends justice along with others as fellow citizens (Zulfa, 2010, p. 19).

Pancasila in the history of the Indonesian nation has been through a political consensus and philosophical consensus so that it is a philosophical system and is also a system of values embraced by the nation. Although influenced by other great world thoughts, Pancasila can be said to be a great work of Indonesians so it should be considered as a core philosophy that is a local genius and local wisdom of the Indonesian nation.

Harmonization and consistency between the development of national law and the values and socio-cultural that exist in society are indispensable. It is necessary to study and excavate national values that are sourced in Pancasila and that are sourced on the values that exist in society (religious values as well as cultural/indigenous values) (Arief, 2007, p. 8).

Pancasila is the core philosophy of the Indonesian nation. As a core philosophy Pancasila becomes a source of value for the legal system in Indonesia. Please four Pancasila mentions "The People Led by Wisdom of Wisdom in The Community/ Representative." The philosophy of deliberation or deliberation means:

- a. Prioritize deliberation in making decisions for the common good;
- b. Respect every decision of deliberation;
- c. The decision taken must be morally accountable to the One God; and
- d. Upholding human dignity and dignity, the value of truth and justice puts unity and unity first for the common good.

The fourth precept of Pancasila can be a guide in determining an option through deliberation and prioritizing deliberation in making decisions for the common interest. Deliberation to reach consensus is filled with the spirit of kinship, so that if the philosophy of "deliberation" is broken down, it contains five principles as follows. First, conferencing (meeting to hear each other and express desires). Second, search solutions (looking for a solution or meeting point for the problem at hand). Third, reconciliation (to make peace with each other's responsibilities). Fourth, repair (repairing all the consequences that arise). Fifth, circles (support each other). The principles are needed and are the keywords in restorative justice so that restorative justice finds its basis in the philosophy of the fourth principle of Pancasila (5) (ayitno, 2012, p. 414). These five principles have long been embedded and rooted in the culture of Indonesian society.



## The Relevance of the Restorative Justice Approach to the Settlement of Criminal Cases in the Criminal Law System in Indonesia

The settlement of criminal cases in the future needs to lead to the application of restorative justice. Restorative justice can be seen as a new paradigm that can be used as a frame for a strategy for handling criminal acts aimed at addressing dissatisfaction with the functioning of the current criminal justice system. With restorative justice, it is more likely that all parties can obtain it, especially victims who are marginalized in the current criminal justice system.

The number of law cases in Indonesia that are not resolved or have ended with unsatisfactory ends has made the public disappointed with the legal process. This is because the existing legal mechanisms do not support the achievement of justice. It is exacerbated by the moral and social crisis that befell the law enforcement apparatus so that the law tends to be rigid on the one hand, and on the other hand very elastic on the other hand, according to whom the rule of law is enforced. Various things that appear in legal life are often not well explained (Rahardjo & Sholehudin, 2011, p. 3).

The downturn of law in Indonesia is dominantly caused by two factors, namely the corrupt behavior of law enforcers (professional Juris) and the mindset of law enforcers who are very confined in legalistic-positivistic thoughts (Mujahidin, 2007, p. 52). The deteriorating legal condition ultimately does not have a place in the hearts of the people because it does not provide answers to just legal needs. The phenomenon of taking the law into one's own hands in society can be used as an indication of the weakening public trust in legal mechanisms.

Law does not always take the position of balancing the interests of society because law tends to accommodate the interests of certain elites (Pekuwali, 2008, pp. 359–370). The indication is when law enforcement places too much emphasis on the aspect of legal certainty by ignoring justice and legal benefits for the community. The adage of justice has changed along with the development of a century of modern nationalism which prioritizes the power of reason, rarely satisfies the human mind about the meaning and meaning of justice in the rhythm of legal movement in society (Atmasasmita, 2001, p. 30).

The law in its implementation must be fair, but what often happens is that it is injustice. Law enforcement officials are not yet fully aware of this (Friedrich, 2004, p. 239). The law enforcement process is still far from a sense of community justice. Even though the essence of law is justice itself.

Justice in law is the right of every citizen which must be guaranteed and protected by the state. Even the right to legal justice is affirmed in Article 3 of the Republic of Indonesia Law Number 39 the Year 1999 concerning Human Rights that; "Everyone has the right to recognition, guarantee, protection, and fair legal treatment as well as to legal certainty and equal treatment before the law." Legal justice that appears is more of a legal-formal nature, justice based on written text that is in law (rule-bound).

Law enforcers should be able to feel the moral message contained in statutory regulation. There is no eternal law, because the law is a definite formula, while it must deal

with life that is always changing. Laws that are fixated on the formulation of words will be left behind from the changes that occur in society, which must be controlled or controlled (Rahardjo, 2008, p. 11).

A restorative justice approach is needed to create justice that benefits all parties in conflict. The settlement of criminal acts using a restorative justice approach solves a criminal problem by trying to improve it to its original state through an agreement between the parties involved. This includes improving relations between the parties (victims, perpetrators, their families, and communities) related to the incident.

The importance of the restorative justice approach to be applied in the criminal law system is also in line with the responsive legal theory put forward by Nonet and Selznick (2009). According to responsive legal theory, the law is no longer seen as an independent entity but must be able to interact with other entities with the main objective of adopting existing interests in society. The law will be better able to understand or interpret the disobedience and disorder that occurs in society. Because in a responsive law, the space for dialogue is wide open to provide discourse and a pluralistic idea as a reality (Nonet & Selznick, 2009).

Responsive law is no longer based on mere juridical considerations, but looks at a problem from various perspectives in the pursuit of "substantive justice." Law is only a means, and justice must be an end to be pursued, even though it does not always use a legal perspective. The flexibility of the law is very responsive to other matters outside the law. The opportunity to participate is also more open. Legal action is a vehicle for groups, organizations, and tendencies to participate in determining public policy (Tanya et al., 2010, pp. 204–211).

Legal work and its results are not only legal matters but part of a larger social process. Regulations can function effectively and are respected or obeyed when there is a psychological bond with those who bear the rules. Law does not exist in a vacuum but exists in society with the uniqueness of its respective cultural roots. Law must serve the community so that the legal system must be as distinctive as the cultural roots of the people it serves (Rahardjo, 2003, p. 23). Whether a law is bad or not, depends on whether the law gives happiness to humans or not.

A criminal act is a violation against a person and is related to the state's obligation to defend these rights. The parties related to the criminal act should be involved in the process of determining the punishment. A criminal act has created an obligation to seek solutions for improvement, reconciliation, and creating peace. An action is considered a criminal act if it damages or harms the interests of others. To provide justice and restore it to its original state, it is necessary to punish the perpetrator. This is true in any society.

According to the development of modern Western law, it is the ruler who has the right to carry out the criminal process. The role of the ruler is absolute, and society, especially victims, is not involved at all. Theoretically, it is the role of the authorities or the state in protecting victims, therefore the perpetrator of the crime is dealing with the state so that a criminal act is an act that violates the state and its laws. As a result, both the community and the victim are not involved in determining the punishment imposed on the perpetrator, in the execution of the crime creates many problems, especially for the victim. Problems that arise and lead to victim dissatisfaction are:

- a. The victim feels that he does not receive protection from the state;
- b. Provide opportunities for perpetrators and law enforcers to collude;
- c. It often happens that the perpetrator has received a serious sentence but the victim is still not satisfied because the losses suffered by the victim are irreplaceable; and
- d. The parties are often dissatisfied with the resolution of the problem, thus requiring further legal proceedings ranging from the appeal, cassation to review.

For murder and injury/maltreatment, the legal process without involving the victim, of course, will not provide justice to the victim or his family. The justice that is aimed at is only justice that is created and according to the standards of the ruler, which of course is not the same as justice according to the victim. The completion of the murder case taken completely by the state will not encourage the improvement of the relationship between the victim and the perpetrator. The settlement process pits the state party against the perpetrator's side. The result is that some win and some loss to the next level. This is not something strange if you see the purpose of punishment developed especially in Indonesia. The focus of the attention of the criminal is more on efforts to make the perpetrator become a good person, the perpetrator becomes a useful person again in society after serving a sentence, and as much as possible be punished as lightly as possible. Meanwhile, the victim or his family who was harmed and his harmony disturbed due to the actions of the perpetrator did not get attention and was not involved, even though the case happened to him.

This model of the imposition of crimes needs to be reexamined. Because for criminal acts against life and persecution, justice cannot be realized and harmony in society cannot be restored if the victim or his family does not involve them. It should be seen what causes the crime to occur. To find out and restore the original condition, the settlement process is by involving all people related to the criminal act. This process will be much more effective and more accepted by the community because the parties related to the crime collectively seek alternative solutions. This kind of model in Indonesia has been recognized and practiced by the community, namely deliberation.

The aim of the Indonesian criminal law in the future must lead to the protection of interests in a balanced manner. This balance can be achieved by involving the parties in the process of solving problems or criminal acts. The process of involving all parties related to a criminal act together and how to deal with future consequences or its implications is called the restorative justice approach.

The need for the concept of restorative justice to reform punishment is very important. The current criminal system for homicides presents further problems for the families of victims and perpetrators of crimes, such as:

- a. The conviction of the perpetrator of the crime does not satisfy the victim's family;
- b. The perpetrator's family still feels anxious about the threat of revenge from the victim's family;

- c. The formal process of criminal justice is time-consuming, expensive, and uncertain; and
- d. The family relationship between the victim and the perpetrator is severed (if they previously knew each other well).

4

The fundamental premise of the restorative justice paradigm is that crime is a violation of people and relationships rather than merely a violation of the law. The most appropriate response to criminal behavior, therefore, is to repair the harm caused by the wrongful act. As such, the criminal justice system should provide those most closely affected by the crime (the victim, the offender, and the community) an opportunity to come together to discuss the event and attempt to arrive at some type of understanding about what can be done to provide appropriate reparation (Latimer et al., 2005) 7

The application of restorative justice in several developed countries is also not just a discourse by criminal law academics and criminology. For example in North America, Australia, and several countries in Europe, restorative justice has been applied in the criminal justice process from the investigation stage to the execution stage (Wahid, 2009, p. 1).

If restorative justice is applied, it will bring benefits to the victims, perpetrators, society in general, and the country. The benefits for victims and perpetrators are as follows:

- a. Restorative justice focuses on justice for victims according to personal wishes and interests, not the state that determines it;
- b. Offer recovery for both the perpetrator and the victim so that there is no revenge; and
- c. Make the perpetrator responsible for the crime he has committed.

Meanwhile, the benefits for society in general and the state are as follows:

8

- a. The community is given space to handle their legal problems 5 which are expected to be fairer. The simple and clear principle which is widely known and used in customary law in the handling of civil cases can also be applied in criminal law. Especially for countries whose legal systems do not recognize sharp criminal and civil differences such as countries in the Middle East that apply Islamic law widely; 5
- b. The burden on the State in some cases is reduced because the burden of dealing with criminal acts can be resolved independently by the community. Police, prosecutors, and courts can focus more on eradicating 5 crimes with a more dangerous qualification and relating to broader security, such as narcotics, terrorism, human trafficking, or serious human rights violations. Administratively, the number of cases that enter the justice system can also decrease; and 32
- c. The burden of providing a budget for the administration of the criminal justice system, especially in terms of the administration of correctional institutions, is also reduced (Zulfa, 2010, p. 85).

10

Various principles and instruments in the restorative justice approach, the process of dialogue between perpetrator and victim is basic moral and the most important part. Direct dialogue between the perpetrator and the victim makes the victim able to express what he feels, expressing the hope of fulfillment of the rights and desires of a settlement. Through the dialogue process, the perpetrator is expected to be moved to correct himself, realize his mistakes, and accept responsibility as a consequence of the crimes committed with full awareness. From this dialogue process, people can participate in realizing the results of the agreement and monitoring its implementation.

The settlement of criminal cases with restorative justice approaches offers a different view of the approach applied in the current criminal system. The meaning of criminal acts in a restorative justice approach is an offense against individuals and society as well as public relations. The victim of a crime is not a state, but an individual. The involvement of victims, perpetrators, and the community is important in the effort to see justice that win-win solution and reconciliation can be done.

Restorative justice attempts to reconstitute the way people think about crime. Restorative justice advocates argue that crime is, more importantly, harm committed against individual victims and secondarily against a community than it is a breach of state laws. Repairing this harm is deemed more important than punishing the offender. By minimizing the governmental role in criminal justice and making the victim the central party, restorative justice recasts criminal justice more like civil law. In blurring the distinction between civil and criminal law, restorative justice is like other versions of informal justice, but its activist roots in North America lie in religiously based critiques of penal practices and its theoretical roots in a critique of dominant theories of criminology (Olson & Dzur, 2004).

Restorative justice is a movement within (and sometimes outside of) the criminal justice system, a victim-centered approach, with special relevance to marginalized populations, one of which is women. Unlike standard forms of criminal justice that are adversarial and hark back to primitive practices related to combat, restorative justice can be considered more humanistic. Instead of revenge, the emphasis is on a resolution. Typically, in this process, offenders take responsibility for their crimes and make restitution to the victim and community. Restorative justice approaches are promising in their ability to respond to relationship issues with special meaning for women (Wormer, 2009).

The application of restorative justice as a concept of thought that responds to the development of the criminal justice system by focusing on the needs of community engagement and victims who are sidelined with mechanisms that work in the criminal justice system that exists today. Through restorative justice approach try to empower victims and communities (Zulfa, 2006, p. 399). The meaning of criminal acts in the restorative justice approach is the same as the view of criminal law in general which is an attack on individuals and society as well as societal relations.

The main victim of a crime is not the state, as in the criminal justice system that now exists. The crime creates an obligation to correct the damage to the relationship as a result of a crime. Justice is interpreted as the process of finding problem-solving

that occurs in a criminal case that the involvement of victims, communities, and perpetrators becomes important in the effort to improve, reconciliation, and guarantee the continuity of the improvement effort.

The implementation of restorative justice in several developed countries is not merely a debate by criminal law and criminology academicians. For example, in North America, Australia, and some countries in Europe restorative justice has been applied at all steps of the criminal justice process starting from investigation to execution. When restorative justice is applied, it will bring benefits to both the victim, the offender, the society general, and the state (Hamzani, 2019).

The importance of the application of a restorative justice system for example for the crime of murder, the victim is the head of the household. In such cases, the state does represent the families of victims punishing perpetrators. But the need for the victim's wife after the case is over is no longer a concern for the state. Convicted offenders are instead imprisoned at state expense. With a restorative justice approach, sentencing is sought to make the fullest possible return of the victim's condition as before the crime struck the victim. Prison sentences are just an alternative criminal.

## Conclusion

The restorative justice approach has strong roots in Indonesian Muslim society. The Indonesian Muslim community is familiar with deliberation and consensus. The institution of deliberation is held to find a solution that can satisfy all parties. Restorative justice values are also found in Pancasila as a philosophy in the state. Restorative justice in the future is considered necessary to be applied in Indonesia in resolving criminal cases, especially crimes against lives. The restorative justice approach offers a different view of the approach applied in the current criminal system. The meaning of criminal acts is an offense against individuals and society as well as public relations. The victim of a crime is not a state, but an individual. The involvement of victims, perpetrators, and the community is important in the effort to seek justice that a win-win solution and reconciliation can be done. The current criminal law is still oriented towards the entangled and rehabilitation of perpetrators of crimes only, while attention to the victim is not a concern.

9


## Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

## Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

## ORCID iD

Achmad Irwan Hamzani  <https://orcid.org/0000-0002-2732-9899>

## References

- Arief, B. N. (2007). *Penyelesaian Perkara di Luar Pengadilan* [Out of court case settlement]. Pustaka Magister.
- Atmasasmita, R. (2001). *Reformasi Hukum, Hak Asasi Manusia dan Penegakan Hukum* [Legal reform, human rights and law enforcement]. Bandar Maju. <https://lib.ui.ac.id/detail?id=20252829>
- Barnes, B. E. (2007). *Culture, conflict, and mediation in the Asian Pacific*. University of America Press. <https://www.amazon.com/Culture-Conflict-Mediation-Asian-Pacific/dp/0761834451>
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford University Press. <http://johnbraithwaite.com/wp-content/uploads/2019/02/Restorative-Justice-and-Responsive-regulation-book.pdf>
- Braithwaite, J. (2004). Restorative justice and de-professionalization. *The Good Society*, 13(1), 28–31. [http://johnbraithwaite.com/wp-content/uploads/2016/03/RJ\\_De-Professionalization\\_2004.pdf](http://johnbraithwaite.com/wp-content/uploads/2016/03/RJ_De-Professionalization_2004.pdf)
- Dewi, D. S., & Fatahillah, A. S. (2010). *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia* [Penal mediation: Application of restorative justice in Indonesian Juvenile courts]. Indie-Publishing. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=984198>
- Friedrich, C. J. (2004). *Filsafat Hukum: Perspektif Historis* [Philosophy of law: Historical perspective]. Nuansa dan Nusamedia. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1155879>
- Hamzani, A. I. (2016). Sejarah Berlakunya Hukum Pidana Islam di Nusantara [History of the application of Islamic criminal law in the Nusantara]. *Hikmatuna: Journal for Integrative Islamic Studies*, 2(2), 261–284. <https://e-journal.iainpekalongan.ac.id/index.php/hikmatuna/article/view/962>
- Hamzani, A. I., Nur Rohim Yunus, M., & Havis Aravik, S. (2019). The reorientation of criminal justice system to give protection to crime victims. *International Journal of Scientific & Technology Research*, 8(8), 196–199. <https://www.ijstr.org/final-print/aug2019/The-Reorientation-Of-Criminal-Justice-System-To-Give-Protection-To-Crime-Victims.pdf>
- Kusumaatmadja, M. (2006). *Konsep-konsep Hukum dalam Pembangunan* [Legal concepts in development]. Alumni. <https://simpus.mkri.id/opac/detail-opac?id=5139>
- Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85(2), 127–144. <https://journals.sagepub.com/doi/10.1177/0032885505276969>
- Manan, B. (2008). *Retorative justice (Suatu Perkenalan)*, dalam *Refleksi Dinamika Hukum Rangkaian Pemikiran dalam Dekade Terakhir* [Restorative Justice [An Introduction], in the Books Reflections on the Dynamics of Legal Thought Series in the Last Decade]. Perum Percetakan Negara Republik Indonesia.
- Moore, C. W. (2003). *The mediation process: Practical strategies for resolving conflict*. Jossey-bass. <https://www.wiley.com/en-sg/The+Mediation+Process:+Practical+Strategies+for+Resolving+Conflict,+4th+Edition-p-9781118304303>
- Mujahidin, A. M. (2007). Hukum Progresif: Jalan Keluar dari Keterpurukan Hukum di Indonesia [Progressive law: A way out of legal adversity in Indonesia]. *Varia Peradilan*, 257, 22. [https://perpustakaan.mahkamahagung.go.id/slims/pa-boyolali/index.php?p=show\\_detail&id=544](https://perpustakaan.mahkamahagung.go.id/slims/pa-boyolali/index.php?p=show_detail&id=544)

- Mulyana, S. (1979). *Negara Kertagama dan Tafsir Sejarahnya* [Kertagama state and its historical interpretation]. Bhatara Karya Aksara.
- Nonet, P., & Selznick, P. (2009). *Law and society in transition; Toward responsive law*. Harper Colophon Books. [https://books.google.co.id/books?id=P5xrwZ8QyVwC&printsec=frontcover&hl=id&source=gbs\\_atb#v=onepage&q&f=false](https://books.google.co.id/books?id=P5xrwZ8QyVwC&printsec=frontcover&hl=id&source=gbs_atb#v=onepage&q&f=false)
- Olson, S. M., & Dzur, A. W. (2004). Revisiting informal justice: Restorative justice and democratic professionalism. *Law & Society Review*, 8(1), 139–176. <https://www.jstor.org/stable/1555115>
- Pekuwali, U. L. (2008). Memposisikan Hukum Sebagai Penyeimbang Kepentingan Masyarakat [Positioning the law as balancing the interests of the community]. *Jurnal Pro Justitia*, 26(4), 359–370. <https://journal.unpar.ac.id/index.php/projustitia/article/view/1093>
- Prayitno, K. P. (2012). *Restorative Justice* untuk Peradilan di Indonesia [Perspektif Yuridis Filosofis dalam Penegakan Hukum]. *Concreto (Restorative Justice for Courts in Indonesia (Philosophical Juridical Perspective in Law Enforcement In Concreto))*, *Jurnal Dinamika Hukum*, 12(3), 407–420. <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/116>
- Putrajaya, N. S. (2005). *Kapita Selekta Hukum Pidana* [Capita selecta of criminal law]. Badan Penerbit Universitas Diponegoro.
- Rahardjo, S. (1983). *Hukum dan Perubahan Sosial* [Law and social change]. Alumni.
- Rahardjo, S. (2003). *Sisi-sisi Lain dari Hukum di Indonesia* [Other faces of law in Indonesia]. Penerbit Buku Kompas.
- Rahardjo, S., & Sholehudin, U. (2011). *Hukum dan Keadilan Masyarakat Perspektif Kajian Sosiologi Hukum* [Law and justice society perspective of legal sociology studies]. Setara Press.
- Roche, D. (2006). Dimensions of restorative justice. *Journal of Social Issues*, 62(2), 217–238. <https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-4560.2006.00448.x>
- Strang, H., Sherman, L., Angel, C. M., Woods, D. J., Bennett, S., Newbury-Birch, D., & Inkpen, N. (2006). Victim evaluations of face-to-face restorative justice conferences: A quasi-experimental analysis. *Journal of Social Issues*, 62(2), 281–306. <https://spssi.onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-4560.2006.00451.x>
- Tanya, B. L., et al. (2010). *Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi* [Legal theory; Human order strategy across space and generations]. Genta Publishing.
- Wahid, E. (2009). *Keadilan Restorative Justice dan Peradilan Konvensional dalam Hukum Pidana* [Restorative justice and conventional justice in criminal law]. Penerbit Universitas Trisakti.
- Wormer, K. V. (2009). Restorative justice as social justice for victims of gendered violence: A standpoint feminist perspective. *Social Work*, 54(2), 107–116. <https://refugeereseach.net/wp-content/uploads/2017/05/Van-Wormer-K.-2009.-Restorative-justice-as-social-justice-for-victims-of-gendered-violence-A-standpoint-feminist-perspective.pdf>
- Zulfa, E. A. (2006). Pergeseran Paradigma Pemidanaan di Indonesia [Shifting criminal paradigm in Indonesia]. *Jurnal Hukum dan Pembangunan*, 36(3), 389–403. <http://digilib.ui.ac.id/detail?id=20298221>
- Zulfa, E. A. (2010). Keadilan Restoratif dan Revitalisasi Lembaga Adat di Indonesia [Restorative justice and revitalization of traditional institutions in Indonesia]. *Jurnal Kriminologi Indonesia*, 6(2), 182–203. <http://journal.ui.ac.id/index.php/jki/article/viewFile/1114/1022>



# 10. Non-Procedural Dispute Resolution: Study of the Restorative Justice Approach Tradition in Indonesian Society

## ORIGINALITY REPORT

18%

SIMILARITY INDEX

16%

INTERNET SOURCES

9%

PUBLICATIONS

10%

STUDENT PAPERS

## PRIMARY SOURCES

1	<a href="https://collections.lib.utah.edu">collections.lib.utah.edu</a> Internet Source	2%
2	<a href="https://spssi.onlinelibrary.wiley.com">spssi.onlinelibrary.wiley.com</a> Internet Source	2%
3	<a href="https://refugeereseach.net">refugeereseach.net</a> Internet Source	1%
4	Submitted to University of Central Oklahoma Student Paper	1%
5	<a href="https://unramlawreview.unram.ac.id">unramlawreview.unram.ac.id</a> Internet Source	1%
6	<a href="https://researchoutput.csu.edu.au">researchoutput.csu.edu.au</a> Internet Source	1%
7	<a href="http://www.jopafl.com">www.jopafl.com</a> Internet Source	1%
8	Submitted to Georgia Gwinnett College Student Paper	1%
9	<a href="https://lucris.lub.lu.se">lucris.lub.lu.se</a> Internet Source	1%
10	Satriadi Satriadi. "Restorative Justice the Limitations of Authority of Police and Prosecutors in the Criminal Justice System", <i>Al-Bayyinah</i> , 2022 Publication	1%
11	<a href="https://journal.iain-samarinda.ac.id">journal.iain-samarinda.ac.id</a> Internet Source	1%

12	<a href="http://journal.hmjournals.com">journal.hmjournals.com</a> Internet Source	1 %
13	Ahmad Syauf, Diana Haiti, Mursidah Mursidah. "Application of Restorative Justice Values in Settling Medical Malpractice Cases", <i>International Journal of Criminology and Sociology</i> , 2020 Publication	<1 %
14	Submitted to Colorado State University, Global Campus Student Paper	<1 %
15	Submitted to Central Washington UNiversity Student Paper	<1 %
16	<a href="http://www.lawjournals.org">www.lawjournals.org</a> Internet Source	<1 %
17	<a href="http://rechtsvinding.bphn.go.id">rechtsvinding.bphn.go.id</a> Internet Source	<1 %
18	<a href="http://epdf.tips">epdf.tips</a> Internet Source	<1 %
19	<a href="http://lppm-unissula.com">lppm-unissula.com</a> Internet Source	<1 %
20	<a href="http://wisuda.unissula.ac.id">wisuda.unissula.ac.id</a> Internet Source	<1 %
21	Revie Kurnia Katjong, Harry Tuhumury, Anwar Moch Roem, Liani Sari. "Legal Protection of Customary Law Communities Over Ulayat Land Forests", <i>JURNAL LEGALITAS</i> , 2023 Publication	<1 %
22	Submitted to Universiti Putra Malaysia Student Paper	<1 %
23	<a href="http://journal.unnes.ac.id">journal.unnes.ac.id</a> Internet Source	<1 %

[jurnal.untag-sby.ac.id](http://jurnal.untag-sby.ac.id)

24	Internet Source	<1 %
25	<a href="http://e-journal.metrouniv.ac.id">e-journal.metrouniv.ac.id</a> Internet Source	<1 %
26	<a href="http://journal.fh.unsri.ac.id">journal.fh.unsri.ac.id</a> Internet Source	<1 %
27	<a href="http://referensi-ptk-tesis-skripsi.blogspot.com">referensi-ptk-tesis-skripsi.blogspot.com</a> Internet Source	<1 %
28	<a href="http://repository.up.ac.za">repository.up.ac.za</a> Internet Source	<1 %
29	<a href="http://dokumen.pub">dokumen.pub</a> Internet Source	<1 %
30	Ana M. Nascimento, Joana Andrade, Andreia de Castro Rodrigues. "The Psychological Impact of Restorative Justice Practices on Victims of Crimes—a Systematic Review", <i>Trauma, Violence, &amp; Abuse</i> , 2022 Publication	<1 %
31	Umami Maskanah. "Implementation of restorative justice in medical dispute resolution", <i>Jurnal Aisyah : Jurnal Ilmu Kesehatan</i> , 2023 Publication	<1 %
32	<a href="http://arno.uvt.nl">arno.uvt.nl</a> Internet Source	<1 %
33	<a href="http://discovery.researcher.life">discovery.researcher.life</a> Internet Source	<1 %
34	<a href="http://download.garuda.ristekdikti.go.id">download.garuda.ristekdikti.go.id</a> Internet Source	<1 %
35	<a href="http://e-journal.iainpekalongan.ac.id">e-journal.iainpekalongan.ac.id</a> Internet Source	<1 %
36	<a href="http://fb.uklo.edu.mk">fb.uklo.edu.mk</a> Internet Source	<1 %

37

[jurnal.uinbanten.ac.id](http://jurnal.uinbanten.ac.id)

Internet Source

<1 %

---

38

[papyrus.bib.umontreal.ca](http://papyrus.bib.umontreal.ca)

Internet Source

<1 %

---

39

[www.foresee.hu](http://www.foresee.hu)

Internet Source

<1 %

---

Exclude quotes      On

Exclude matches      Off

Exclude bibliography      On