

Implementation Of Restorative Justice As A Justice Law Enforcement In Indonesia

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ARTICLE INFO	ABSTRACT
<p>Submitted :22-04-2023</p> <p>Received :25-04-2023</p> <p>Approved :05-05-2023</p> <p>Keywords: Restorative Justice; Crime; Law.</p>	<p>The law enforcement framework will in general save essential standards as far as satisfying equity, exclusively because of reasons of satisfying legitimate sureness. Victims in a crime, in the National Legal System, the position is not profitable. Because the victim, in the (Criminal) Judicial System, is only an accessory, not the main actor or just a witness. The type of research used by the author in compiling this research is normative legal research or library law research. It should be emphasized that restorative justice is fundamentally a concept, both about justice and due process, not a theory. Because it is the basis for the development of the judiciary, restorative justice is referred to as the philosophy of justice. So, it is possible to view restorative justice as a collection of legal procedures that primarily seek to repair (recover) the losses suffered by crime victims. In the science of criminal law, justice must try to restore the situation to how it was before the crime was committed. The situation changes when someone breaks the law. So that's where the role of law is to protect the rights of every victim of crime. Helpful equity additionally accentuates common liberties and the need to perceive the impacts of social unfairness and in basic ways review them, as opposed to just giving the culprits formal or lawful equity and casualties not getting any equity. Supportive equity likewise looks to reestablish casualties' security, individual regard, respect, and all the more significantly, a feeling of control. The helpful equity framework can be applied in the event that the lawful culture in a nation requires its execution for a specific case.</p>

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1. Introduction

By applying the arrangements of the criminal procedural regulation genuinely and suitably, the goal of the criminal procedural regulation is to look for and get or possibly

approach the material truth, specifically the total reality of a lawbreaker case. Once the perpetrator has been charged with a crime, they can then ask the court to investigate and make a decision to determine whether the crime has been proven and whether the offender was.

In essence, the criminal procedural law regulates the following matters:(Dewi, 2014)

- a. Examining the truth of criminal law prohibitions that are claimed to use a state that was established specifically for this purpose.
- b. Attempts are made to investigate the perpetrators of this act.
- c. Every effort was made so that the perpetrators of the previous act could be arrested if necessary and detained.
- d. The evidence that has been obtained and collected as a result of the investigation into the truth of the suspicion was submitted to the judge, as well as efforts to make the suspect appear before the judge.
- e. It is up to the judge to decide whether the act allegedly committed by the suspect is proven and what action or punishment will then be taken or imposed.
- f. Determine the legal remedies that can be used against the judge's decision.
- g. The decision that is ultimately taken is in the form of a crime or action or is carried out.

The search for truth is intended to be the goal of the criminal procedure code. In investigating, investigating, and prosecuting crimes, law enforcers—from the police to prosecutors to judges—must always be guided by the truth, namely events that happened.

So, from the description above it can be concluded that the three main objectives of criminal procedural law are:

- a. Search and find the truth
- b. Giving a decision by a judge
- c. Decision execution

In this situation, we need a system that runs through a network called the Criminal Justice System. The main components of this system of crime control include the police, prosecutors, and courts, all of which must work together to operate the system. Otherwise, the following prompt will appear:[2]

- a. In connection with their shared duties there is difficulty in assessing the successes and failures of each agency.
- b. Each institution has difficulties in solving its main problems.
- c. Due to the lack of clarity on the division of agency responsibilities, every organization doesn't give a lot of consideration to the viability of the law enforcement framework.

Criminal justice includes at least three components of legal substance used in the judicial process. First, laws and regulations determine what constitutes a material criminal law violation and the penalties to be examined and defended. The proceedings are governed by two criminal procedural laws. Finally, the application of criminal law by the legal process or procedural law as a conclusion of the criminal justice process, the perpetrator must be a sanction that has been decided by a criminal court in a community institution if proven. has committed a violation and here are the consequences. Therefore, there is a discussion of the functions of criminal law and criminal procedural law to find out the function of law regarding the criminal justice system.

In this situation, law enforcement should focus on upholding pleasure while reducing pain. The law must also aim to promote human pleasure, by giving the widest possible freedom to humans to follow their interests. Keeping everyone safe is the best method to achieve this. Only when a person has enough freedom and security can they be as happy as

possible. The utility of an activity determines whether it is true or false; on the other hand, if it results in the creation or cause of something terrible, worthless, or destructive, the act is said to be wrong.

In general, utilitarianism is an ideology that emphasizes expediency as the main goal of law. This advantage is known as happiness (happiness). So, whether a law is good, harmful, or unfair depends on whether it makes people happy or not. Thus, the purpose of the law is to guide the individual to the happiness of the greater part of society. (Erwin, 2016) While prison is not the ideal way to deal with crime, prison is the end of all abuses dealt with by the Indonesian criminal justice system. [4]

The Preamble to the RKUHP which states that the contents of the national criminal law must be adapted to legal politics, conditions, and the development of the nation and state of Indonesia, then explicitly states the requirements for changing the law to be fair and by reality and rooted in societal values. Although it is said that the purpose of developing criminal law is to respect and protect human rights as well as trying to change the national law based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Hasanah & Uang, 2011).

The best approach to solving problems is through restorative justice, which emphasizes addressing the root cause of the problem. Recovering losses and losses incurred by the occurrence of a crime is an important option to remember. The application of a good and correct social order in a country must be developed by the concept of the cultural roots of society. The notion of restorative justice is not a perfect and stable concept for improving the social order of society as a result of a crime event. In applying this concept, many factors must be adapted to the culture of the community because the implementer is the community itself. (Prakoso, 2019)

The direct participation of the parties is preferred in restorative justice. While the culprit is encouraged to venture out in rectifying the wrongs made by the wrongdoing and in fostering his social worth framework, the casualty can recover control. Dynamic cooperation locally fortifies the local area and ties it to shared upsides of regard and sympathy. Today, the public authority's syndication over the general set of laws is significantly diminished. To lay out a circumstance where casualties and culprits can determine their disparities and mend their injuries, helpful equity requires participation among society and government.

Parties to a conflict sometimes feel that going to court to resolve their issues has less impact. Compared to the lawsuit process, mediation offers several advantages, including; (Astarini & SH, 2021)

- a. In mediation, there are two main guiding concepts. First, try to win collectively, not win or lose (win-win solution). Also, it includes the triumph of moral reputation, especially reputation, and trust, and does not refer only to economic or financial success. Second, the decision prioritizes equality, decency, and a sense of justice over legal factors and justification.
- b. It is also stated that mediation settlement speeds up dispute resolution compared to litigation. Prolonged legal proceedings have cost other than money. Psychologists' responsibilities are equally important and have a significant impact on the various attitudes and behaviors of plaintiffs;
- c. The breaking of social ties or brotherhood is one of the social impacts of litigation for Indonesian society. The wider familial relationship is also affected by this effect in addition to the relationship between the parties. Most cases that arise concern the family and the rights and dignity of the plaintiff. This can be prevented by mediation. Relationships that have been broken can be repaired;
- d. The social foundation of Indonesian society which emphasizes kinship, affiliation, kinship, and cooperation is ideal for mediation. These foundations have shaped

behavior, made people more tolerant and forgiving, and they have promoted the idea of putting the common good first.

- e. An international phenomenon, mediation. The use of mediation as an alternative to conflict resolution has increased on a global scale as a result of the complexity of litigation (cost, time, increasingly complex laws, reputation, etc.). The ideal case resolution method is mediation.
- f. Viewed from the point of administration of justice, there are several advantages of mediation:
 - 1) As more cases are resolved through mediation, there will be less pressure on the number of cases that go to court. This will have an impact on the possibility of solving problems that are pending or past due. The judge could examine in depth each case, which is expected to increase the standard of assessment for the benefit of the litigants and legal progress.
 - 2) According to the judge's reputation, mediation settlements are carried out by non-judge parties, so mediation is the single most important tool.
 - 3) Gradually litigation in court can be discussed within the legal framework of the main issues rather than complex and broad definition of cases which would be detrimental to the development of law and the possibility of legal doctrine.

2. Materials and Methods

The exploration strategy is a way that is done as a progression of logical exercises that are done systemically, deliberately, and every time to get total lawful material that can be deductively represented so the examination targets can be accomplished. Legitimate exploration is an interaction to track down lawful standards, lawful standards, and lawful tenets to answer the lawful main things. (Marzuki, 2017a) The exploration technique involved by the creator in this study is as per the following:

The methodology that the creator involves in this exploration is the rule approach and the case approach. The legal methodology is completed by analyzing all regulations and guidelines that are connected with the legitimate issues being taken care of. In the statutory approach, it is necessary to understand the hierarchy and principles of statutory regulations. (Marzuki, 2017a)

3. Results and Discussions

3.1. Implementation of Restorative Justice in Indonesian Law.

In the utilization of supportive equity, it was observed that the way that it was implemented was exclusively in specific cases, for instance in instances of kids and criminal traffic offenses. It is seen that these cases can be taken in a moderate course and track down a place of understanding or harmony between the culprit and the person in question. Accordingly, that's what I decipher on the off chance that the case can in any case be held thought then it ought to be finished to consider the things that are productive above. Rebuilding equity can be done in situations where there is a "center way" conceivable.

On the KPAI website [9] it says "Only adults who have committed a crime must be locked up. Children should not be sent to prison as doing so will ruin their future

opportunities. He is a developing independent individual; needs help and direction. A sort of helpful equity called proper equity for reprobates means to improve and revamp the connection between the culprit and the casualty to keep up with concordance throughout everyday life. The heaviest discipline that can be forced on them is obligatory training. Assuming adolescent equity forms into a different equity framework that isn't a part of the whole law enforcement framework, then, at that point, this worldview will really be accomplished.

While looking at the freedoms and obligations of a youngster, which will likewise influence his remaining under the watchful eye of the law, we must first recognize that children, in all meanings and definitions, differ from adults in several ways. It was also said that children are a mandate and a gift from God Almighty who has dignity human being in the discussion of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Youngsters are qualified for extraordinary security, particularly legitimate assurance in the equity framework, to ensure their respect.[10] Retnowulan Sutianto claims that youngster insurance is important for public turn of events. Dealing with kids implies safeguarding endlessly individuals ought to be created however much as could be expected. This is reflected in public turn of events, in particular the development of a completely upright Indonesian person. Disregarding kid security issues won't help the nation's turn of events. Absence of kid assurance will bring about a few social issues that can slow down keeping up with the rule of law, keeping up with security, and the advancement of the country.(Suprpto & Atmasasmita, 1997)

Bagir Manan, in his works, portrays the substance of "helpful equity" In instances of criminal demonstrations carried out by kids, the supportive equity framework basically plans to fix/reestablish (to reestablish) criminal demonstrations carried out by youngsters with activities that are valuable to kids, casualties, and their current circumstance which includes them straightforwardly (reintegration and restoration) in critical thinking and are unique in relation to the approach to taking care of grown-ups, which will then prompt the reason for the actual wrongdoing which as per Barda Nawawi Arief the motivation behind discipline depends on "security of society" and "Insurance/direction of individual culprits of criminal demonstrations.(Arief, 2002)

Article 1 point (6) of Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework, expresses that helpful equity is the settlement of criminal cases including culprits, casualties, groups of culprits/casualties, and other related gatherings to look for an answer mutually. equity by stressing rebuilding to the first state, and not reprisal. The Adolescent Law enforcement Framework should focus on the Helpful Equity approach. The Adolescent Law enforcement Framework incorporates:

- a. criminal examination and arraignment of kids did by the arrangements of regulations and guidelines except if generally specified in this regulation;
- b. trials of kids directed by courts inside the general court climate
- c. Guidance, direction, oversight, or potentially help during the most common way of executing a wrongdoing or activity and in the wake of serving a wrongdoing or activity.

In the Adolescent Law enforcement Framework, as alluded to in section (2) letters an and b, endeavors should be made to redirection. Redirection is the exchange of settlement of kid cases from the law enforcement cycle to processes beyond law enforcement.

In the practice of "restorative justice," Although not documented in official documents, the police often use techniques that are considered outside the law to resolve actual criminal cases. Experts have acknowledged the potential "irregularity". As per Romli Atmasasmita "in a vote based country apparently the police contraption is constantly confronted with two irreconcilable situations, specifically the interest of keeping everything under control from one viewpoint and the interest of keeping up with the guideline of lawfulness then again.(Abidin, 2005)

It should be emphasized that restorative justice is fundamentally a concept, both about justice and due process, not a theory. Because it is the basis for the development of the judiciary, restorative justice is referred to as the philosophy of justice. So, it is possible to view restorative justice as a collection of legal procedures that primarily seek to repair (recover) the losses suffered by crime victims. In the study of criminal regulation, equity should attempt to reestablish what is going on to the way things were before the wrongdoing was perpetrated. The circumstance changes when somebody oversteps the law. So that is where the job of regulation is to safeguard the privileges of each and every wrongdoing casualty.(Marzuki, 2017b)

Helpful Equity requires agreeable endeavors from the local area and government to establish a climate where casualties and culprits can suggest their contention. Helpful equity returns the contention to the gatherings generally impacted (casualties), culprits, and their "local area interest" and gives need to their inclinations. Helpful Equity likewise accentuates common liberties and the need to perceive the impacts of social shamefulness and in straightforward ways change them, as opposed to just giving the culprits formal or lawful equity and casualties not getting any equity. Supportive Equity likewise tries to reestablish casualties' security, individual regard, pride, and all the more significantly a feeling of control.(Atmasasmita, 1996) The supportive equity framework can be applied in the event that the lawful culture in a nation requires the execution of helpful equity for a specific case.

Albeit overall debate goal outside the court just applies to common questions, criminal cases are much of the time settled external the court at the prudence of various policing or through exchange/placation systems or pardoning establishments in the public eye like families, towns, and standard considerations. It is typical for cases that have already been settled informally but are still being processed in court by applicable law because the practice of settling criminal cases outside the court has not yet had a formal legal basis. It is because not all laws that contain criminal law specifically regulate out-of-court settlements.

The specialist's optional activities recorded in Article 16 passage (2) can be done with the accompanying circumstances: not in opposition to a law and order; in accordance with legitimate commitments that require the move to be made; should be fitting, sensible, and inside the extent of his situation; sensible thought in view of convincing conditions; and regard common freedoms. The authority possessed by investigators can provide space for perpetrators of criminal acts and victims to make peace or penal mediation. If at the penal mediation stage, it has been agreed that there will be peace then this agreement can be used as an excuse by investigators to stop the investigation, moreover, this is being carried out by indigenous peoples where the state recognizes the existence of customary law in Indonesia (Arief, 1998).

In the "Illustrative reminder" of the European Chamber Proposal No. R (99) 19 concerning "Intervention in Corrective Matters", set forward a few models of punitive intercession as follows:

- a. informal mediation

The model is completed by law enforcement staff in their typical obligations, which can be done by the Public Examiner by welcoming the gatherings to do a casual settlement with the point of not proceeding with the arraignment in the event that an understanding is reached; can be done by a social laborer or post trial supervisor, by a cop, or by an appointed authority.

b. Traditional village or tribal moots

According to this approach, society comes together to resolve criminal disputes among its residents. This paradigm, which prioritizes benefits for society at large, is used in some less developed countries and rural and inland locations. Most contemporary mediation programs are based on concepts that predate Western law. The benefits of the tribal debate are often attempted to be introduced in modern mediation programs in ways that are adapted to contemporary societal systems and legally recognized individual rights.

c. victim-offender mediation

The model that most often comes to the minds of the public is mediation between victims and perpetrators. This strategy requires meetings between several parties and an appointed mediator. This model comes in various forms. The mediator can be an appointed official, an impartial third party, or a combination of both. Any stage of the process — policing, prosecution, sentencing, or even after sentencing — can be used to conduct this mediation. This model is used for all criminals; there are variants for juvenile offenders and some for specific forms of crime (eg shoplifting, robbery, and acts of violence). Some are aimed primarily at juvenile criminals and first-time offenders, while others are for serious crimes.

d. Repair negotiation programs

This model is exclusively for assessing/surveying the remuneration or fixes that should be paid by the culprit of a wrongdoing to the person in question, for the most part at the hour of assessment in court. This program isn't connected with compromise between the gatherings, however simply connected with material improvement arranging. In this model, culprits of criminal demonstrations might be liable to work projects to set aside cash to pay remuneration.

e. Community panels of courts

The model is a program to redirect criminal cases from indictment or equity to local area techniques that are more adaptable and casual and frequently include components of intercession or exchange.

f. Family and community group conferences

This idea which underlines local area contribution in the law enforcement framework was created in Australia and New Zealand. It involves not only the victims and perpetrators of the crimes, but also their relatives, other members of the public, law enforcement officials, judges, and those who support the victims. It is hoped that the perpetrator and his family will reach a thorough agreement that will satisfy the victim and prevent the perpetrator from further difficulties.(Barda Nawawi Arif, n.d.)

4. Conclusion

The law enforcement framework will in general save fundamental standards as far as satisfying equity, exclusively because of reasons of satisfying legitimate conviction. The Preamble to the RKUHP which states that the contents of the national criminal law must be

adapted to legal politics, conditions, and the development of the nation and state of Indonesia, then explicitly states the requirements for changing the law to be fair and by reality and rooted in societal values. Despite the fact that it is said that the motivation behind creating criminal regulation is to regard and safeguard common liberties and to attempt to change public regulation in view of Pancasila and the 1945 Constitution of the Republic of Indonesia.

The best approach to solving problems is through restorative justice, which emphasizes addressing the root cause of the problem. Recovering losses and losses incurred by the occurrence of a crime is an important option to remember. The application of a good and correct social order in a country must be developed by the concept of the cultural roots of society. The notion of restorative justice is not a perfect and stable concept for improving the social order of society as a result of a crime event. In applying this concept, many factors must be adapted to the culture of the community because the executor is the community itself.

It should be emphasized that restorative justice is fundamentally a concept, both about justice and due process, not a theory. Because it is the basis for the development of the judiciary, restorative justice is referred to as the philosophy of justice. So, it is possible to view restorative justice as a collection of legal procedures that primarily seek to repair (recover) the losses suffered by crime victims. In the study of criminal regulation, equity should attempt to reestablish what is going on to the way things were before the wrongdoing was carried out. The circumstance changes when somebody oversteps the law. So that is where the job of regulation is to safeguard the privileges of each and every survivor of wrongdoing.

Supportive equity requires agreeable endeavors from the local area and government to establish a climate where casualties and culprits can suggest their contention. Helpful equity returns the contention to the gatherings generally impacted (casualties), culprits, and their "local area interest" and gives need to their inclinations. Helpful equity additionally accentuates basic freedoms and the need to perceive the impacts of social treachery and in straightforward ways review them, as opposed to just giving the culprits formal or lawful arbitrator and casualties not getting any honesty. Helpful equity likewise tries to reestablish casualties' security, individual regard, pride, and all the more significantly, a feeling of control. The supportive equity framework can be applied in the event that the legitimate culture in a nation requires the execution of helpful equity for a specific case.

5. References

- Abidin, Z. (2005). *Pemidanaan, Pidana, dan tindakan dalam Rancangan KUHP 2005*. Elsam.
- Arief, B. N. (1998). *Beberapa aspek kebijakan penegakan dan pengembangan hukum pidana*. Citra Aditya Bakti.
- Arief, B. N. (2002). *Bunga Rampai Kebijakan Hukum Pidana Citra Aditya Bakti*. Bandung.
- Astarini, D. R. S., & SH, M. H. (2021). *Mediasi Pengadilan*. Penerbit Alumni.
- Atmasasmita, R. (1996). *Sistem Peradilan Pidana Indonesia*. Jakarta: Putra Bardin.
- Barda Nawawi Arif. (n.d.). *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, 1996, hal. 39.
- Dewi, E. (2014). *Sistem Peradilan Pidana Indonesia (Dinamika dan Perkembangan)*. Yogyakarta: Graha Ilmu.
- Erwin, M. (2016). *Filsafat Hukum: Refleksi Kritis terhadap Hukum dan Hukum Indonesia (dalam Dimensi Ide dan Aplikasi) Edisi Revisi*. PT RajaGrafindo Persada, Jakarta.

- Hasanah, U., & Uang, A. H. W. (2011). *Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI*. Jakarta.
- Marzuki, M. (2017a). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Marzuki, M. (2017b). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Prakoso, A. (2019). *Hukum penitensier*.
- Suprpto, P. H., & Atmasasmita, R. (1997). *Peradilan Anak Di Indonesia*. *Mandar Maju*.