



Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities

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Abstract

Restorative justice is an alternative approach to dispute resolution that emphasizes the restoration of relationships between the parties involved, in contrast to the retributive approach that focuses on punishment. Based on the concept of the rule of law, legal certainty in Indonesia can not only be achieved through the norms contained in the law, but also by considering the values that live in society, such as customary law. This research aims to explore the application of restorative justice in customary law as an out-of-court dispute resolution mechanism. This research uses a normative research method that focuses on the study of legal documents, especially those related to the implementation of alternative dispute resolution that has been promulgated as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The results show that customary law that emphasizes restorative justice is recognized and integrated in Law Number 30 of 1999, enabling out-of-court dispute resolution in a way that is more in line with local values. The recognition and integration of customary law in the national legal framework strengthens the role of customary law in achieving legal certainty in Indonesia, especially in the context of dispute resolution at the community level.

Keywords: Customary Law, Dispute Resolution, Restorative.

INTRODUCTION

Restorative justice is an approach to dispute resolution that focuses on restoring the relationship between disputants, with the aim of creating peace and social harmony.¹ In contrast to retributive approaches that emphasize punishing perpetrators, restorative justice prioritizes dialogue, reconciliation, and healing for victims and affected communities. This concept provides space for perpetrators to take direct responsibility

¹ Ilyas Sarbini, Sukirman, dan Aman Ma'arij, "Restorative Justice sebagai Alternatif Penyelesaian Perkara Pidana" *FUNDAMENTAL: Jurnal Publikasi Hukum*, Vol 9 No 1 (2020): 30-42

for their actions and contribute to repairing the harm that has been caused. In the context of dispute resolution, restorative justice is often considered more humane and in line with local values, especially in societies that uphold togetherness and mutual cooperation.²

In the legal system of dispute resolution in Indonesia, there are two main approaches: litigation resolution through the judicial process and non-litigation resolved outside the court. Non-litigation dispute resolution, which is formally recognized by legislation especially in civil matters, is now increasingly developing in various forms. However, in criminal cases, non-litigation approaches are more often applied implicitly and develop in society, especially in communities that adhere to customary law. This restorative justice approach is in line with the principles contained in customary law, where customary law is not only a guideline in daily life, but also plays an important role in resolving criminal disputes in a way that reflects the values, customs and traditions inherited by the ancestors.³ Customary law, which often prioritizes dispute resolution mechanisms outside of formal courts, demonstrates how restorative justice can be used effectively in maintaining balance and harmony within communities.⁴

Customary law, which often prioritizes dispute resolution mechanisms outside of formal courts, demonstrates how restorative justice can be used effectively in maintaining balance and harmony within communities.⁵ The relevance of customary law in this context becomes clearer when looking at how family-based dispute resolution and customary justice have succeeded in achieving true justice. This process focuses not only on conflict resolution, but also on restoring disrupted social relations, by prioritizing the principles of deliberation and consensus. In many ways, this approach is in line with the principles of restorative justice, which emphasize the importance of restoration rather than punishment. The process aims to seek ultimate justice, which in practice is often similar to the concept of restorative justice. In the context of customary law, dispute resolution between perpetrators and victims is carried out by prioritizing the principles of

² Muhammad Andy Lesmana, Muzdalifah, dan Yamani Naufal, "Efektivitas *Restorative Justice* Berbasis Kearifan Lokal Sebagai Sarana Penyelesaian Perkara Pidana Pada Masyarakat Banjar" *Rio Law Jurnal*, Vol 5 No 1 (2024): 20

³ Maidina Rahmawati, dkk. *Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia*, Jakarta: Institute for Criminal Justice Reform, 2022, h.20

⁴ Jamaluddin, dkk. *Penyelesaian Sengketa Melalui Peradilan Adat*, Sulawesi: Unimal Press, 2019, h.10

⁵ La Syarifuddin, "Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana" *Risalah Hukum*, Vol 15 No 2 (2019): 1-10

deliberation and consensus, where both parties try to resolve the issue peacefully.⁶ This approach aims not only to address the conflict directly, but also to restore social relations that may have been damaged by the dispute. The relevance of customary law lies in its ability to offer solutions that are more in line with local values, where justice is not only measured in terms of positive law, but also of the balance and harmony achieved within the community. As such, customary law remains an important alternative in dispute resolution in various indigenous communities in Indonesia, in line with the principles of restorative justice that emphasize restoration and peace.

The implementation of restorative justice in customary law is actually not a new concept for indigenous peoples in Indonesia.⁷ Since long ago, customary law communities have applied this approach in order to resolve various customary offenses or minor criminal cases that occur in their communities. In the context of customary law, dispute resolution does not focus solely on punishment, but rather on restoring disrupted social relations and balance. This approach emphasizes the importance of deliberation and consensus between the perpetrator and victim, with the aim of reaching a solution that is acceptable to all parties and restoring harmony in the community.

However, recently the concept of restorative justice has come back into the spotlight as public trust in formal justice has declined. Many feel that court decisions often do not provide the expected sense of justice, sometimes even creating new problems in the community. This dissatisfaction encourages people to look back and adopt approaches that are closer to local values, such as restorative justice in customary law, which is considered more capable of resolving disputes in a more humane way and in accordance with the expectations of the wider community. This implementation is proof that customary law still has a strong relevance in maintaining justice and social order in various regions in Indonesia.

Customary law and the positive legal system in Indonesia offer different approaches to dispute resolution.⁸ The positive legal system, with its formal procedures,

⁶ Elmayanti, Mukhlis R, "Penerapan Hukum Adat Dalam Penyelesaian Perkara Pidana Melalui Konsep Restorative Justice di Kabupaten Rokan Hulu Provinsi Riau" *Riau Law Journal*, Vol 4 No 2 (2022): 212-230

⁷ Duwi Aryadi, "Implementasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Sebagai Perwujudan Nilai-Nilai Yang Berwawasan Pancasila" *Aldaulah*, Vol 9 No 2 (2020): 139

⁸ Rikardo Simarmata, "Pendekatan Positivistik Dalam Studi Hukum Adat" *Mimbar Hukum*, Vol 30 No 3 (2018): 465-489

is oriented towards the strict application of legal norms, aiming to uphold justice through the punishment of offenders. The litigation process in the courts follows rigid procedures and is often unable to fulfill people's sense of justice because it focuses more on fulfilling legal requirements than social and cultural aspects. In contrast, customary law emphasizes dispute resolution based on deliberation and consensus, which is oriented towards restoring social relations and harmony in the community. This approach is considered more humane and relevant to local values in the community.

Law No. 30/1999 on Arbitration and Alternative Dispute Resolution plays an important role in supporting restorative justice by providing a legal framework for formal out-of-court dispute resolution.⁹ The law recognizes and facilitates dispute resolution mechanisms that are in line with the principles of customary law, giving legitimacy to traditional processes that have long been applied in indigenous communities. As such, the law allows communities to choose resolution pathways that are in line with their local values and strengthens the application of restorative justice as a legitimate and effective alternative in resolving disputes in Indonesia.

It is important to further investigate how the implementation of restorative justice in customary law can provide more effective solutions in a broader social context. Research on "Restorative Justice in Customary Law: Alternative Dispute Resolution in Indigenous Communities" is crucial to understanding the contribution of this approach in meeting community needs as well as the challenges it may face. By exploring the practices and outcomes of restorative justice applications, this research can provide valuable insights on how to improve the integration between customary law and the positive legal system, and strengthen Indonesia's dispute resolution system.

METHODS

The research method used is a type of normative legal research which is also referred to as library research. This research focuses on the study of legal documents, especially related to the implementation of alternative dispute resolution that has been promulgated as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The sources or legal materials used include legislation, official documents, and relevant legal doctrine. This research will evaluate the application of restorative

⁹ Hudiyanto, dkk. *Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Online Dispute Resolution (ODR)*, Jakarta: Otoritas Jasa Keuangan, 2017, h. 50

justice principles in the context of customary law, with the aim of understanding how the law supports or integrates non-litigation dispute resolution approaches in Indonesia.

DISCUSSION

The Concept of Restorative Justice

The definition of Restorative Justice has been formulated by various experts. One of them, Sarre stated that:¹⁰

“...restorative justice is concerned with rebuilding relationships after an offence, rather driving a wedge between offenders and, their communities, which is the hallmark of modern criminal justice systems”.

Sarre states that restorative justice focuses on rebuilding disrupted relationships after a crime, rather than on creating distance or separation between offenders and their communities.¹¹ In contrast to modern criminal justice systems that often emphasize punishment and isolation as forms of law enforcement, restorative justice aims to repair broken relationships and restore social harmony. This approach involves all parties affected by the criminal offense, including the offender, victim, and community, in the dispute resolution process.¹² The goal is to achieve comprehensive healing by prioritizing dialogue, responsibility, and reconciliation. In this way, restorative justice seeks to restore damaged social relationships, reduce the likelihood of future offenses, and create deeper understanding and awareness among all parties involved. This approach emphasizes the importance of healing and restoration rather than mere punishment or isolation.

Restorative justice suggests that this approach focuses on restoring relationships and peace between victims and offenders, rather than mere retaliation or punishment. Prof. Mardjono Reksodiputro emphasizes that peace is at the core of restorative justice, which aims to neutralize the circumstances that gave rise to the dispute and allow active

¹⁰ Rufinus Hotmaulana Hutaauruk. (2013). *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*. Jakarta: Sinar Grafika, h.108

¹¹ Joel Efraim Yohanis Walintukan, dkk, “Penerapan Restorative Justice Dalam Proses Penyelesaian Pelanggaran Kecelakaan Lalu Lintas Yang Menyebabkan Kematian” *Lex Crimen*, Vol 10 No 11 (2021): 66

¹² Henny Saida Flora, “Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Di Indonesia” *Jurnal Law Pro Justitia*, Vol 2 No 2 (2017): 42

participation of both parties in the resolution process.¹³ By engaging victims in dialogue and giving perpetrators the opportunity to take responsibility, this approach seeks to achieve justice that is fairer for all parties involved.

The restorative justice approach emphasizes the importance of restoring harm to victims and rehabilitating offenders, as well as involving the community in the process. This is a paradigm shift from the conventional criminal justice system, which often focuses on punishment and isolation.¹⁴ Restorative justice offers a more holistic and humane solution, with the aim of righting wrongs, restoring harm, and rebuilding relationships within society. This approach has the potential to make a positive contribution to Indonesia's criminal justice system, emphasizing reconciliation and rehabilitation as part of law enforcement.

The concept of Restorative Justice is essentially simple: the measure of justice is no longer based on retribution from the victim to the offender in the form of physical, psychological, or punishment. Instead, it focuses on healing from the hurtful act by providing support to the victim and holding the offender accountable, often with the help of family and community where necessary. Law enforcement does not stand alone, but has a close reciprocal relationship with society. The structure of society influences law enforcement by providing the social means that enable the implementation of the law, and can also create barriers that hinder or reduce the effectiveness of law enforcement.

In Indonesia, the concept of Restorative Justice has long been practiced in various communities, such as in Papua, Bali, Toraja, Minangkabau, Kalimantan, Central Java, and other communities that still strongly hold their traditional culture.¹⁵ When criminal offenses, including violations of the law, are committed by children, they are often resolved through consensus meetings or deliberations. In this deliberation, community leaders, the perpetrator, the victim (if willing), and the perpetrator's parents will gather to reach an agreement to correct the mistakes that have been made.

¹³ Irwan Yulianto, Jufaldi, "Restorative Justice Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Yang Di Lakukan Oleh Anak Yang Berhadapan Dengan Hukum" *Jurnal Ilmiah FENOMENA*, Vol 16 No 1 (2018): 1774-1796

¹⁴ Yeni Priskila Ginting, "Upaya Penyelesaian Tindak Pidana melalui Upaya Restorative Justice dengan melibatkan Keluarga Pelaku/ Keluarga Korban" *Jurnal Pengabdian West Science*, Vol 03 No 04 (2024): 410-428

¹⁵ Shinta Nur Ramadhanti, "Konsep Restorative Justice Dalam Perbandingan Hukum Pidana Di Indonesia Dengan Hukum Islam" *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora*, Vol 01 No 04 (2022): 418

This process reflects the values and characteristics of the Indonesian philosophy as stated in the fourth principle of Pancasila, which is deliberation for consensus. Restorative justice in this context seeks to achieve peace, so that there is no grudge between the perpetrator and the victim, and the victim can be restored.¹⁶ Some of the methods that can be used in this consensus include mediation, payment of compensation, or other methods agreed upon by the victim/family of the victim and the perpetrator. Other parties such as the police, lawyers, or community leaders can also be involved as mediators in this process.

Thus, Restorative Justice is not a new concept for Indonesian society. The aim is to achieve peace and healing for the victim, so that both the perpetrator and the victim can move on without the burden of resentment. Restorative Justice offers a more humane and community-centric approach to handling criminal cases, which is in line with the cultural values and philosophy of the Indonesian nation.

Restorative application of customary law

The discussion of customary justice as a key element in the evolution of restorative justice sentencing philosophy stems from the belief that restorative justice is fundamentally based on long-established indigenous values. This is because restorative justice views a criminal case as:

“Viewed through a restorative justice lens, "crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.”¹⁷

Howard Zehr's definition illustrates a restorative justice view of the meaning of crime that is essentially similar to the view of criminal law in general, namely as an attack on individuals, society, and social relations.¹⁸ However, in the restorative justice approach, the primary victim of the crime is not the state, as it is in the conventional criminal justice system. Therefore, the crime creates an obligation to repair the damage to the relationship caused by the crime.

¹⁶ Mergie Gladies Sopacua, “Implementasi Keadilan Restoratif Sebagai Landasan dalam Penyelesaian Masalah Kekerasan Dalam Rumah Tangga di Indonesia” *Jurnal Pembangunan Hukum Indonesia*, Vol 6 No 01 (2024): 96-111

¹⁷ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*. Scottdale, Pennsylvania; Waterloo, Ontario: Herald Press, 1990. p 181.

¹⁸ Koesriani Siswosobroto, *Pendekatan Baru dalam Kriminologi*, (Jakarta: Penerbit Universitas Trisakti, 2009).

Justice in this context is understood as a process of finding solutions to problems arising from a criminal case, where the involvement of victims, communities, and perpetrators is important in efforts to repair, reconcile, and ensure the sustainability of these repairs.¹⁹ If you look at the definition of restorative justice, its perspective on crime and offenders is different from the current approach. The aim of this philosophy is to resolve criminal cases in a more holistic way, so this kind of thinking makes sense.

In general, society is of the opinion that conflicts can only be resolved through the courts. In fact, many legal professionals share this view. To date, most of them tend to choose the litigation route and ignore non-litigation dispute resolution methods, such as Alternative Dispute Resolution (ADR). As mentioned in I Made Widnyana's book, Dispute Resolution or "Alternative Dispute Resolution" is a series of processes that aim to resolve disputes between the parties involved.²⁰

This new legal system prioritizes justice in society over justice controlled by the authorities. Law as a work of human creation aims to uphold human dignity, not just to follow the text of the law, but to fulfill human interests and values. Law is not only a rational product, but also part of intuition. In this context, ADR (Alternative Dispute Resolution) as part of Restorative Justice offers a new approach to conflict resolution between perpetrators and victims or disputing parties.²¹ Many turn to ADR because the conventional justice system often does not achieve the desired justice, so ADR is a relevant solution to realize more civilized justice in accordance with national values, as reflected in the second principle of Pancasila.²²

Restorative approaches in Indonesia, which have long existed and are integrated in customary law, according to Soepomo, are:²³

“With regard to offenses that primarily only harm the interests of a family group or the interests of an individual and do not jeopardize the legal balance of the village community in general, the legal officer (kepala adat, judge) will only act if requested by the affected party. In such cases, the affected party is often given the opportunity to make peace (rukunan) with

¹⁹ Muhammad Rif'an Baihaky, Muridah Isnawati, "Restorative Justice: Pemaknaan, Problematika, dan Penerapan yang Seyogianya" *UNES Journal of Swara Justitia*, Vol 08 No 2 (2024): 276

²⁰ Ismael Roby Silak. (2011). *Konflik Perang dan Perdamaian Orang Yali di Angguruk*. Makassar: Pustaka Refleksi, hal. 1

²¹ Glery Lazuardi, PENDEKATAN RESTORATIVE JUSTICE DALAM TINDAK PELAKU PENYEBARAN HOAKS, *Jurnal Kertha Semaya*, Vol. 8 No. 9 Tahun 2020, hlm. 1301-131

²² Saifur Rohman, Menembus Batas Hukum, *Opini Kompas*, 22 januari 2010

²³ R. Soepomo, (2007). *Bab-Bab Tentang Hukum Adat* (cetakan ke-17), Jakarta: Pradnya Paramita, hal. 118

the party who committed the offense. In such cases the fine or payment of damages from the party committing the offense does not go to the state treasury but is given to the affected party.”

In the process of resolving criminal cases through a restorative approach, individuals are required to play an active role in problem solving, while the state acts as a support for individuals or communities who want to resolve the conflicts they experience. In the restorative view, it should be the individuals who play the main role and responsibility in solving conflicts collectively, not the state. The state is not considered to have an exclusive or dominant role in the resolution process.²⁴

Restorative justice in the context of customary law is an approach that emphasizes the active role of individuals and communities in resolving criminal conflicts. This approach differs from the conventional criminal justice system that focuses on the state as the main victim. In the restorative view, crime is seen as a violation of individuals and social relations, not just a violation of state law. Therefore, the resolution of criminal cases through customary law aims to restore the harm suffered by the victim and repair relationships disrupted by the crime. Restorative justice involves all relevant parties, namely the victim, offender, and community, to find solutions that support recovery, reconciliation, and the certainty of future improvements. This approach is in line with Indonesia's long-standing humanitarian and customary values, where communities play an active role in the peace process, and compensation is given directly to the injured party.

The application of restorative justice in Indonesian customary law emphasizes the importance of solutions rooted in local values and culture. As explained by Soepomo, this approach allows communities to resolve conflicts peacefully, by providing an opportunity for the parties involved to reconcile. Fines or loss payments are not put into the state treasury, but given directly to the affected parties. This reflects the more holistic philosophy of restorative justice, where individuals and communities are collectively responsible for conflict resolution, with the state serving as a support. Restorative justice encourages more civilized conflict resolution and is in line with the values of Pancasila, particularly the second principle that emphasizes a just and civilized humanity. This approach not only fulfills legal needs but also strengthens human dignity and social harmony in society.

²⁴ Rufinus Hotmaulana Hutaeruk, (2014). *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif*, Sebuah Terobosan Hukum, Jakarta: Sinar Grafika, hal.111

CONCLUSION

Restorative justice in Indonesian customary law offers a more humane approach to dispute resolution that is in line with local values that emphasize restoring relationships and social harmony. In contrast to conventional justice systems that focus on punishment, restorative justice prioritizes dialogue, reconciliation and compensation provided directly to the injured party. This approach not only benefits victims and offenders, but also strengthens the community's role in maintaining social balance, in line with the values of gotong royong and deliberation. In the context of customary law, restorative justice enables peaceful conflict resolution and emphasizes individual and community responsibility, while the state serves as a support. By emphasizing these principles, restorative justice plays an important role in creating a more just and civilized justice, as well as strengthening the integration between customary law and the positive legal system in Indonesia. This implementation of restorative justice not only fulfills legal needs, but also strengthens human dignity and social harmony in society, reflecting the values of Pancasila, especially the second principle of just and civilized humanity.

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