


## Exploring Student Perspectives on Restorative Justice: A Case Study at the Public High School of Kefamenanu

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### Abstract

The exploration of Restorative Justice (RJ) in Indonesia's border areas, particularly within the context of North Central Timor High School, reveals intriguing insights into its implementation and reception among students. This study, employing an empirical legal research approach

focused on statutory analysis, factual examination, and thoughtful analysis, sheds light on the evolving landscape of Indonesia's criminal justice system. Notably, the research highlights that while PERMENDIKBUD 46/23 initially adopts a distributive punishment framework, there exists a growing inclination towards adopting RJ principles. A significant proportion of students, constituting 55.50%, express strong support for the incorporation of RJ within the school environment. Moreover, a majority (51%) acknowledge the presence of RJ initiatives within their schools, emphasizing the gradual acceptance of this alternative approach. Furthermore, the findings underscore the importance of transparency in RJ practices, with 40% of students recognizing its significance. Additionally, a notable percentage (35.5%) of students endorse the application of RJ in addressing issues of sexual violence, signaling a potential avenue for addressing such sensitive matters within the school community. Crucially, a substantial proportion (43.33%) of students advocate for the active involvement of schools in facilitating the resolution of sexual violence cases through RJ processes. This underscores the pivotal role educational institutions can play in fostering a culture of accountability and restoration. Overall, the student perspectives elucidated in this research offer valuable insights into the feasibility and efficacy of RJ in addressing not only disciplinary matters but also complex issues like sexual violence within educational settings. As Indonesia continues to explore innovative approaches to justice, the embrace of RJ principles signifies a promising step towards fostering a more inclusive and restorative justice system.

## Keywords

*Restorative Justice, School, Student, Violence*

### A. Introduction

In the realm of modern education and justice systems, the concept of restorative justice has emerged as a promising alternative to traditional punitive measures. As educational institutions increasingly recognize the importance of fostering a safe and inclusive environment, the implementation of restorative justice approaches has gained

traction. In this context, the Public High School of Kefamenanu serves as a compelling case study for exploring the perspectives of students regarding restorative justice practices.

This study delves into the experiences, attitudes, and readiness of students towards embracing restorative justice within their school community. Kefamenanu, situated in a diverse cultural and socio-economic landscape, offers a unique setting to investigate the efficacy and potential challenges of implementing restorative justice principles. By engaging with the voices of students, this research aims to shed light on their perceptions of restorative justice, its relevance in resolving conflicts, and its impact on the overall school environment. Through qualitative inquiry and dialogue, we seek to uncover valuable insights that can inform future strategies for promoting restorative practices in educational settings.

Located on Timor Island, Kefamenanu is the capital of North Central Timor Regency (“NCT”) exist in Province of East Nusa Tenggara (“ENT”). NCT Regency stretches wide of 2,660.70 km<sup>2</sup>, while Kefamenanu represents 2.7% of the area or about 74.00 km<sup>2</sup>.<sup>1</sup> Total population in NCT Regency is around 256,829 people, where 18.59% or about 47,766 people live in Kefamenanu.<sup>2</sup> There are 8 (eight) high schools around the Kefamenanu, where 3 (three) of them are Public High Schools, namely Kefamenanu 1 Public High School with the number of the students not less than 840 students, Kefamenanu 2 Public High School with 788 students, and Kefamenanu 3 Public High School with 155 students.<sup>3</sup> The complexity of demographics, ethnography, social and economic conditions in the Kefamenanu as the administrative of North Central Timor Regency often presents challenges for law enforcement officials, especially in

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<sup>1</sup> Badan Pusat Statistik, “*Luas Wilayah Menurut Kecamatan di Kabupaten TTU 2013-2018*” (Badan Pusat Statistik, 2018),

<sup>2</sup> Badan Pusat Statistik, “*Jumlah Penduduk menurut Jenis Kelamin dan Rasio Jenis Kelamin 2017-2020*,” Government, Badan Pusat Statistik, 2020, <https://timortengahutarakab.bps.go.id/indicator/12/64/1/jumlah-penduduk-menurut-jenis-kelamin-dan-rasio-jenis-kelamin.html>.

<sup>3</sup> DAPODIKASMEN, “*Data Sekolah Berdasarkan Jenjang Pendidikan-Dapodikdasmen*,” Government, KEMENDIKBUD, 2023, <https://dapo.kemdikbud.g o.id/sp/3/240403>.

cases of children facing the law in North Central Timor Regency. In 2021, 516 cases were identified, where this figure decreased by 12% to 452 cases in 2022 since the implementation of the Regulation of the Chief of National Police of Indonesia Number 8 Year 2021 Concerning Handling Criminal Act of Restorative Justice (“PERKAP 8/21”). Based on the presentation of IPTU Djoni Boro about the various number of criminal data relating to crimes of sexual violence when he attend as a speaker of *Management Training for Handling and Recording/Reporting KtPA, TPPO and ABH Cases at North Central Timor Regency 2023 at the Cendana Wangi College of Law on November 29<sup>th</sup>, 2023* IPTU Djoni Boro, explained that there were 11 cases of sexual immorality and 37 cases of sexual intercourse are currently being handled by the Police of NCT. Some cases can be resolved using a *restorative justice*.

As an approach in the process of problem solving, restorative justice (“RJ”) considered as a new paradigm of criminal law.<sup>4</sup> This assumption arose as a result of a shift towards a criminal justice system that focuses on resolving harm rather than punishment.<sup>5</sup> RJ shifts the judicial legal process into a non-judicial process.<sup>6</sup> This consideration ground to provide more benefits not only for the victim but also for the perpetrator, because the creation of RJ is based on the agreement between the perpetrator and the victim. The existence of RJ is not immediately accepted by law enforcement, this approach is still debatable in several circles, especially for the parties who view RJ as merely an Out Court Settlement (“OCS”) like an alternative dispute resolution (“ADR”). The different backgrounds of RJ and ADR mean that these two concepts cannot be equated, even though the similar

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<sup>4</sup> M. Ilham Martadinata, “*Analisis Pergeseran Paradigma Hukum Dari Retributive Justice Menuju Restorative Justice Dalam Penyelesaian Perkara Pidana Ringan (Studi Surat Edaran Kapolri Nomor 8 Tahun 2018 tentang Penerapan Restorative Justice dalam Penyelesaian Perkara Pidana)*” Thesis. (Lampung, Universitas Lampung, 2022).

<sup>5</sup> Irvan Maulana Maulana dan Mario Agusta Agusta, “Konsep Dan Implementasi Restorative Justice Di Indonesia,” *DATIN Law Jurnal* 2, No. 2 (2021).

<sup>6</sup> Anita Zulfiani, “Restorative Justice dan Penjatuhan Pidana Pada Anak”. *Ranah Research: Journal of Multidisciplinary Research and Development* 5, no. 4 (2023).

concepts promote peace, and mutual benefit, and tend to be futuristic in line with the spirit of OCS.<sup>7</sup>

Assumptions of RJ as a new era of the penal policy in Indonesia, eliminating the form of retributive justice which identified as the conventional criminal justice system were focuses on punishment for the perpetrator.<sup>8</sup> Cruft explain that the concept of conventional justice is oriented to the retributive punishment which means a wrongdoer should be punish because of his mistakes.<sup>9</sup> It line with Anthony Duff idea of Communicative theory of Punishment (“CToP”) as well as Aristotle idea about the real existence of Corrective Justice.<sup>10</sup> Supporting Duff’s idea, Kathleen Daly explain that understanding of RJ moves on two basic traits, RJ is ‘care’ (adj. Feminism) while RJ is also ‘justice’ (Adj. Masculine) as a response to criminal act. Kathleen Daly shows that RJ is a myths story of law enforcement.<sup>11</sup> Furthermore, he explained that the Family Group Conference (FGCs), 1989<sup>12</sup> in New Zealand and Family Group conference (FGCs), 1992 in Australia<sup>13</sup> was formed on 4 (four) RJ myths lead by advocates which is (1) RJ is the opposite of Retributive Justice; (2) RJ is a customary justice practice and a form of pre-modern justice; (3) masculine and feminine nature of RJ; (4) expectations of their contribution to major changes in society.<sup>14</sup> The

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<sup>7</sup> Isakh Benyamin Manubulu, Hildegardis Ina Tona, dan Yohana Ati Bui, “Pergeseran Nilai Pada Tradisi Kumpul Keluarga dalam Kehidupan Masyarakat di Pulau Timor”. *Journal of Education Sciences: Foundation & Application* 2, no. 2 (2023). Furthermore, it emphasized that main principle of agreement where two or more parties decided to create the reciprocal relationship based on gift giving.

<sup>8</sup> Daniel W. Van Ness et al., *Restoring Justice: An Introduction to Restorative Justice* (Routledge, 2022).

<sup>9</sup> Rowan Cruft, Matthew H. Kramer, and Mark R. Reiff. *Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff*. (OUP Oxford, 2011).

<sup>10</sup> Antony Duff, “Punishment, Communication and Community,” in *Debates in Contemporary Political Philosophy* (Routledge, 2002).

<sup>11</sup> Kathleen Daly, “Restorative Justice in Diverse and Unequal Societies,” *Law in Context: A Socio-Legal Journal* 17 No. 1 (2000).

<sup>12</sup> Judge F.W.M. McElrea, “The New Zealand Model of Family Group Conferencing,” *European Journal on Criminal Policy and Research* 6, No. 4 (1998).

<sup>13</sup> Nathan Haris, “Family Group Conferencing in Australia 15 Years On | Office of Justice Programs,” *Child Abuse Prevention*, No. 27 (2008): 13-15.

<sup>14</sup> Kathleen Daly, “Restorative Justice: The Real Story,” in *Restorative Justice*, 1st ed. (Routledge: Routledge, 2004).

concept of RJ provides significant value in the law enforcement process even though it is rejected because it is not in line with 'suffering' as a nature of punishment.

Hiariej define RJ from 2 (two) meanings, RJ as a 'concept' mean restoring justice which does not focus on punishment as well as RJ as a 'process' namely as the resolution of cases involving perpetrators and victims.<sup>15</sup> RJ as a 'concept' define as psychological recovery for children in conflict<sup>16</sup>, comes from the implementation of penal mediation<sup>17</sup>, Punishment must provide recovery to the victim.<sup>18</sup> Meanwhile, RJ as a 'process' is explicitly defined on-Process values and goals on *Handbook of Restorative Justice Program*.<sup>19</sup> This idea is in line with process value of RJ explained by Johnstone and Ness.<sup>20</sup> This analysis displays the gap in Hiariej's analysis regarding the understanding of RJ as a 'concept' and 'process', where he unable to provide firm boundaries for the meaning of RJ, instead he is trapped in the program offered as an outcome of RJ as explained by Dandurand.<sup>21</sup> Zulfiani's research shows that the analyses of RJ as a method applied in the juvenile justice system<sup>22</sup>, also in line with Latukau's research regarding the method of RJ in settlement of children's cases facing the law<sup>23</sup>, Adriansyah analysis about RJ but more

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<sup>15</sup> Milenia Shinta, "Pengertian Restorative Justice Sacara Konsep dan Secara Proses" Indonesia, News, 2021, <https://www.kompas.tv/video/321075/pengertian-restorative-justice-sacara-konsep-dan-secara-proses-berikut-selengkapnya>.

<sup>16</sup> Putri Marlenny Puspitawati et al., "Factors Inhibiting the Psychological Recovery Process of Children in Conflict with the Law". *Psikohumaniora: Jurnal Penelitian Psikologi* 6, no. 1 (2021).

<sup>17</sup> Isma Septiningsih, "Correlation Between Restorative Justice in the Settlement of Criminal Cases and Pancasila Values," *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 4 (2023).

<sup>18</sup> Maulana and Agusta, "Konsep dan Implementasi Restorative Justice di Indonesia." pp. 54-56.

<sup>19</sup> Yvon Dandurand, *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series (Vienna-New York: United Nations, 2006).

<sup>20</sup> Gerry Johnstone and Daniel Van Ness, "*Handbook of Restorative Justice*" (Routledge, 2013).

<sup>21</sup> Dandurand, *Handbook on Restorative Justice Programmes*.

<sup>22</sup> Zulfiani, "Restorative Justice dan Penjatuhan Pidana Pada Anak".

<sup>23</sup> Fikry Latukau, "Kebijakan Hukum Pidana Terhadap Tindak Pidana Perbankan di Indonesia". *Jurnal Restorative Justice* 4, No. 1 (2020).

focuses on analysing the relationship between RJ and URP,<sup>24</sup> as well as Sukma's analysis of resolving ITE cases using the RJ approach.<sup>25</sup> These following aspect delivered about the originality of this journal, it different from the previous articles because this journal provides a focused analysis of the process value of RJ mentioned by Johnstone and Ness<sup>26</sup> from the perspective of the students.

## B. Method

This journal is formulated with an empirical legal research method supported factual approach, statutory approach and analytical approach. Types and sources of data include primary data, namely data obtained from interviews, observations and questionnaire survey results on questionnaire instruments from participants in Roadshow activities in the context of preventing violence in educational institutions (Kefamenanu 1 Public High School, Kefamenanu 2 Public High School and Kefamenanu 3 Public High School) of North Central Timor Regency 2023 ("ROADSHOW DP3A TTU"). Questionnaires were distributed randomly to 30 (thirty) participants of each school so that there were 90 (ninety) questionnaire instruments taken from the 3 (three) schools.

Secondary data in the form of statutory regulations relating to RJ such as Law 2/02 concerning Police of Indonesia Republic, Law 11/21 concerning the Prosecutor's, Law 11/12 concerning Juvenile CJS of Indonesia, Law 35/2014 concerning Narcotics, Decree of Chief Police of Indonesia 8/21 concerning Restorative Justice in National Police office ("PERKAP 8/21"), Decree of Attorney General of Indonesia 15/20 concerning Restorative Justice in Attorney Office ("PERJA 15/20"), Decree of the Director Generals of General Judicial Agency 1691/2021 concerning RJ in Supreme Court of Indonesia (SK

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<sup>24</sup> Muh Adriansyah, Poetri Enindah Suradinata, dan Jaya Setiawan Sinaga, "Perlindungan Hukum Terhadap Investor Online Ditinjau Dari Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal," *Jurnal Restorative Justice* 7, No. 1 (2023).

<sup>25</sup> Dara Pustika Sukma, "Penerapan Konsep Restorative Justice Dalam Penanganan Kasus Penyebaran Berita Bohong (Hoaks) Untuk Pencemaran Nama Baik Di Media Sosial," *Jurnal Inovasi Penelitian* 3, No. 9 (2023).

<sup>26</sup> Johnstone and Ness. *Handbook of Restorative Justice*.

BADILUM 1691/2021”), Ministerial Regulation of Kemendikbud 30/21 concerning Prevention and Handling of Violence in the Education Unit (“PERMENDIKBUD 30/21”) and the other regulation related with RJ and education unit. This research is located on Kefamenanu 1 Public High School, Kefamenanu 2 Public High School and Kefamenanu 3 Public High School. The population of this study is students in grades 10-12 with the range of ages among 15-18 years old which arranged using purposive sampling. Research materials analysis using qualitative-descriptive methods with deductive as the conclusion drawing techniques.

## C. Result and Discussion

### 1. Restorative Justice in School Environments: Fostering Problem Solving and Community Healing

Basically, Article 4(3) of Law 20/03 has determined the principle of 'enculturation' and student empowerment so that students are responsive to the complexity of social relations.<sup>27</sup> The application of sanction is a form of character building for a student. Enactment of Ministerial Regulation of KEMENDIKBUD No. 56/M/2022 concerning the Project for Strengthening the Pancasila Student Profile (“BUD 56/22”) provides a new challenge for teachers to arouse Pancasila characters for the student.<sup>28</sup> The profile of Pancasila student is formulated based on Graduate Competency Standards (“SKL”) and flexibly brought into students’ culture, intra-curricular, co-curricular and extracurricular learning. Pancasila Student Profile (“PSP”) then encourage the teacher's performance to create the faithful student, devout and noble character; critical thinking; independent; cooperate; global diversity; and creative.<sup>29</sup> The problem is happen when a student

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<sup>27</sup> Juanda Juanda, “Peranan Pendidikan Formal Dalam Proses Pembudayaan,” *Lentera Pendidikan: Jurnal Ilmu Tarbiyah dan Keguruan* 13, No. 1 (2010).

<sup>28</sup> Kartilah Kartilah, “Peran Guru Bimbingan dan Konseling dalam Implementasi Projek Penguatan Profil Pelajar Pancasila Tingkat Sekolah Menengah Atas,” *Jurnal Thalaba Pendidikan Indonesia* 5, No. 2 (2022): 69–79.

<sup>29</sup> Suheriadi, “Pahami P5 dalam Kurikulum Merdeka, Jadi Pedoman Untuk Siswa” fortuneidn.com, 2023, <https://www.fortuneidn.com/finance/suheriadi/pahami-p5-dalam-kurikulum-merdeka-jadi-pedoman-untuk-siswa>.



is not built on healthy family upbringing, which will give rise to patterns of juvenile delinquency in the school environment.<sup>30</sup>

The family plays a very important role in determining the psychological of children in the school.<sup>31</sup> Mubasyiroh, et.al examine about impact of emotional symptoms on 11,110 student students showed that as many as 60.17% of them experienced emotional symptoms, including 44.54% feeling lonely, 40.75% feeling anxious and 7.33% had intending to commit suicide.<sup>32</sup> The result of GSHS Survey 2015, shows that 1,170 students have experienced violence, 2,849 students have experienced harassment and 1,825 students have felt uncomfortable at school.<sup>33</sup> Mubasyiroh explained that the class determines the level of emotional symptoms<sup>34</sup>, it brings an opportunity of juvenile delinquency such as drugs addict, brawls, promiscuity and various acts of aggression of teenager.<sup>35</sup> Factors of self-management of the student can brings an impact to increasing crime and violence in school unit, as the resolve this journal introduced RJ approach for the Teachers in the problem solving process.

RJ approach as a new paradigm in criminal law of Indonesia is present as antithesis of the *namien leadere* principle (instruction not to harm others) and *suum cuique tribuere* principle (acting proportionately). RJ tried to create a new era in penal policy that is oriented towards punishment, like Aristotle's idea of corrective justice

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<sup>30</sup> Dadan Sumara Sumara, Sahadi Humaedi, dan Meilanny Budiarti Santoso, "Kenakalan Remaja dan Penanganannya". *Prosiding Penelitian dan Pengabdian kepada Masyarakat* 4, No. 2 (2017).

<sup>31</sup> Lolang Maria Masi, "Analisis Kondisi Psikologis Anak Dari Keluarga Tidak Utuh Pada Siswa SMA PGRI Kupang". *Jurnal Kependidikan: Jurnal Hasil Penelitian dan Kajian Kepustakaan di Bidang Pendidikan, Pengajaran dan Pembelajaran* 7, No. 1 (2021).

<sup>32</sup> Rofingatul Mubasyiroh, Indri Yunita Suryaputri, dan Dwi Hapsari Tjandrarini, "Determinan Gejala Mental Emosional Pelajar SMP-SMA Di Indonesia Tahun 2015". *Buletin Penelitian Kesehatan*, 45 (2017).

<sup>33</sup> WHO, "Global School Based Student Health Survey," *Global School-Based Student Health Survey, This Is the Second GSHS Conducted by Indonesia* (Indonesia: World Health Organization, 2015), <https://helpfulprofessor.com/injunctive-norms/>.

<sup>34</sup> Mubasyiroh, et.al, "Determinan Gejala Mental Emosional Pelajar SMP-SMA Di Indonesia Tahun 2015"

<sup>35</sup> Risqi Dwi Amaliasari and Uun Zulfiana, "Hubungan Antara Self-Management Dengan Perilaku Agresi Pada Siswa SMA," *Cognicia* 7, No. 3 (2019).

and Anthony Duff's view of communicative theory of punishment CTOP.<sup>36</sup> Schmid explained that RJ focuses on negative impacts caused by wrongdoers for the victim, perpetrator itself and also the community, then looks for ways to restore the situation and impact cause of it wrongdoers.<sup>37</sup> This is what makes RJ considered a new paradigm in penal policy in Indonesia and lead the assumption that RJ will be more useful in the process of problems solving rather than looking for the most appropriate form of punishment which identified as the western conventional concept of justice called *retributive punishment*.<sup>38</sup> RJ will be very beneficial for students. Apart from being a new approach in the problem-solving process apply by teachers and guarantee of sustainable and improvement in education unit.<sup>39</sup> There is a few cases often happened in the school which is bullying, issues of gender discrimination, fights, verbal and non-verbal as well as hate speech with social media is a problem. Responding to this problem, teachers tend to apply an approach to students through counseling methods both individually and in groups<sup>40</sup>, and forming a peer counselor group at school.<sup>41</sup> If the problem cannot be resolved within the school, the problem will be solved by the Government or law enforcement and it bring negative impact not only the institution, but also the student, teachers and every unit in school environment.<sup>42</sup>

The urgency of introducing RJ for teachers in the school environment has become more critical since the enactment of

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<sup>36</sup> Isakh B. Manubulu, Randy V. Neonbeni, dan Anak Agung Gede Agung Indra Prathama, "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia," *Jurnal Restorative Justice* 7, No. 2 (2023).

<sup>37</sup> Schmid Donald, "Restorative Justice: A New Paradigm for Criminal Policy". *Victoria University Wellington Law Review* 34, No. 1 (2003).

<sup>38</sup> Manubulu, et.al. "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia".

<sup>39</sup> Zvi D. Gabbay, "Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices". *Journal of Dispute Resolution* (2005).

<sup>40</sup> Sumara, et.al., "Kenakalan Remaja dan Penanganannya".

<sup>41</sup> Ekaprasetya, F., Nastiti, E. M., Darotin, R., Kamil, R. B., Munawaroh, R. A., & Dityawardani, R. A. (2023). *Kelompok Teman Sebaya dalam Pertolongan Pertama Dengan Teknologi First Aid Guideline (FAG Di SMP 12 Jember*, pp. 38-40.

<sup>42</sup> Anita Anita, Hidayat Andyanto, and Meidy Triasavira, "Perlindungan Hukum Terhadap Korban Dan Pelaku Tindak Pidana Praktik Bullying di Lingkungan Sekolah" *Jurnal Jendela Hukum* 8, No. 2 (2021).

PERMENDIKBUD 46/23 which change PERMENDIKBUD 82/15. Based on Article 2(1) PERMENDIKBUD 46/23, this policy is a guarantee for the prevention and action of violence that targets students, educators, education personnel and residents in educational units<sup>43</sup> consist of all types of violence both outside and within the educational unit environment<sup>44</sup>. The types of violence referred in Article 6 is physical, psychological, bullying, sexual violence, discrimination and intolerance, policies that contain violence and other forms of violence whether physical, verbal, non-verbal and ITE.<sup>45</sup> The grouping based on the type of violence in PERMENDIKBUD 46/03 includes physical violence,<sup>46</sup> Psychological Violence,<sup>47</sup> Bullying,<sup>48</sup> Sexual Violence,<sup>49</sup> discrimination and intolerance,<sup>50</sup> as well as policies containing violence are contained in Article 13 paragraphs (1), (2), (3), and (4) of PERMENDIKBUD 46/23.

The content of Article 14 of PERMENDIKBUD 46/23 has determined the supporting factors for preventing violence in educational units lie in strengthening governance, education and providing facilities and infrastructure. If explained, (1) Strengthening governance is related to the formation of policies both within the ministry, regional government and at the education unit level (see Article 15 to Article 17 PERMENDIKBUD 46/23). (2) Education carried out through a series of activities to increase critical understanding of violence prevention and handling programs in educational units.<sup>51</sup> (3) Provision of facilities and infrastructure related to physical needs factors such as reporting channels, examination rooms and office stationery<sup>52</sup>. Furthermore, the implementation of this program is carried out by the TPPK/STPPK<sup>53</sup> where membership

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<sup>43</sup> See Article 4(1) PERKEMDIKBUD 46/23.

<sup>44</sup> See Article 5 Letters a and b PERMENDIKBUD 46/23.

<sup>45</sup> See Article 6 (1), (2) PERMENDIKBUD 46/23.

<sup>46</sup> See Article 7 PERMENDIKBUD 46/23.

<sup>47</sup> See Article 8 PERMENDIKBUD 46/23.

<sup>48</sup> See Article 9 PERMENDIKBUD 46/23.

<sup>49</sup> See Article 10 paragraphs (1) to (5) PERMENDIKBUD 46/23.

<sup>50</sup> See Article 11 and Article 12 PERMENDIKBUD 46/23.

<sup>51</sup> See Articles 18 to 21 PERMENDIKBUD 46/23.

<sup>52</sup> See Article 21(1) to Article 23 PERMENDIKBUD 46/23.

<sup>53</sup> See Article 24 PERMENDIKBUD 46/23.

requirements are regulated in Article 27 PERMENDIKBUD 46/23 where exceptions are made for perpetrators of violence, who are not ex-convicts and are not or are currently receiving disciplinary punishment<sup>54</sup>. The stages taken in the context of handling violence in Article 39 paragraph (2) PERMENDIKBUD 46/23 include (1) Receipt of the Report, (2) Examination, (3) Preparation of Conclusions and Recommendations, (4) Follow-up to the Audit Result Report, ( 5) Recovery.

Even if PERMENDIKBUD 46/23 give the benefit to preventing and handling cases of violence but there still needs to be criticized about PERMENDIKBUD 46/23 is the incompatibility of its content with the dynamics of law in Indonesia. There are several discrepancies between PERMENDIKBUD 46/23 and RJ values, including:

- (1) PERMENDIKBUD 46/23 is oriented to discover and determine the fault of one of the parties. The concept of RJ as a new paradigm in the criminal system does not focus on the mistakes committed by the perpetrator, this appears in the *Handbook of Restorative Justice* ("UN HoRJ") where RJ is a response to criminal behavior through creating balance in a community.<sup>55</sup> Sub 1.2 Features of RJ UN HoRJ explains that RJ creates a flexible response to the problem solving process to be considered individually, prioritizes honor and equality and promotes harmony in the community, reduces stereotype towards parties who make mistakes, a more traditional approach (local wisdom) in problem solving, an approach that prioritizes of problem solving rather than the causes of a conflict, focuses on the impact and needs of victims, prioritizes the perpetrator's awareness and responsibility in restoring conditions affected by the wrongdoers, prioritizes sustainability, instills new values from the problem solving process rather than providing punishment and make the wrongdoers realized about the rule of living in community. In this case, RJ is implemented 'justice' where the antinomy of justice is

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<sup>54</sup> See Article 27(5) PERMENDIKBUD 46/23.

<sup>55</sup> Dandurand, *Handbook on Restorative Justice Programmes*.

equality<sup>56-57</sup>, while the equality promoted by Pancasila is equality based on social justice that's bring prosperity among all people.<sup>58</sup>

The provisions of Article 53(2) PERMENDIKBUD 46/23 actually make education unit like a judicial institution or an auxiliary of a judicial body that proves the guilt or innocence of a wrongdoers. As the result, whether guilty or not is further determined in Article 53(4) PERMENDIKBUD 46/23 if the reported person are proven guilty, whereas if not proven guilty there would be the procedure of vindication as well as continue education service.<sup>59</sup> Sanctions can also be given in the form of mild, moderate and heavy.<sup>60</sup> These sanctions are applied differently for Non-Government Employees of Education Personnel in the form of mild sanctions,<sup>61</sup> moderate sanctions,<sup>62</sup> and heavy sanctions,<sup>63</sup> in PERMENDIKBUD 46/23. Meanwhile, for student educational staff, the sanctions given are mild sanctions,<sup>64</sup> moderate sanctions,<sup>65</sup> and heavy sanctions<sup>66</sup>. Furthermore, the imposition of sanctions is given by the TPPK (namely for the team enrolled by the school and registered in Government as violences prevention and response team). Based in Article 67(1) PERMENDIKBUD 46/23, the implementation will be evaluated by the Regional Government Task Force in article 67 paragraph (4) to strengthen the implementation<sup>67</sup> or

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<sup>56</sup> Isakh Benyamin Manubulu, *506 Tahun Jejak Otonomi di Pulau Rote, Jilid 1. Terselat dalam Pemahaman Nusak, Tangguh Denara Jaya* (Kupang: Tangguh Denara Jaya, 2023).

<sup>57</sup> Tanius Sebastian, "Anti-Positivisme Ronald Dworkin: Menalar Hukum Sebagai Moralitas," *Undang: Jurnal Hukum* 6, No. 1 (2023).

<sup>58</sup> Yosep Copertino Apaut and Randy Vallentino Neonbeni, "Justice as A Law Sacrament: Measuring Justice in Pancasila Philosophy," *International Journal of Social Service and Research* 3, no. 4 (2023).

<sup>59</sup> See Article 53(5) PERMENDIKBUD 46/ 23.

<sup>60</sup> See Article 57(1) PERMENDIKBUD 46/23.

<sup>61</sup> See Article 59(1) PERMENDIKBUD 46/23.

<sup>62</sup> See Article 59(2) PERMENDIKBUD 46/23.

<sup>63</sup> See Article 53(3) PERMENDIKBUD 46/23.

<sup>64</sup> See Article 60 (1) PERMENDIKBUD 46/23.

<sup>65</sup> See Article 60(2) PERMENDIKBUD 46/23.

<sup>66</sup> See Article 60(3) PERMENDIKBUD 46/23.

<sup>67</sup> See Article 67(4) letter a PERMENDIKBUD 46/23.

amend according to article 67(4) letter b by reducing the sentence or imposing a heavier sentence in accordance with PERMENDIKBUD 46/23.

- (2) Prioritizes of punishment rather than recovery for victims. Even though the provisions of Article 69 of PERMENDIKBUD 46/23 determine recovery, this is not the form of recovery intended by RJ. The RJ approach prioritizes compensation for victims, the impact of the perpetrator's mistakes and the perpetrator's awareness of the mistakes they have made. This can be identified in the process value of Johnstone and Ness.<sup>68</sup> RJ is creating to growth an idea that the law cannot understood from its binding but rather as a final measure to understand social control.<sup>69</sup> it seen on Article 5(6) letters a, b and c PERJA 15/20 and Article 6(3) PERKAP 8/21. The concept that prioritizes punishment is a type of corrective justice proposed by Aristotle and is the basic idea of retributive justice which is supported by Kathleen Daly and Anthony Duff.<sup>70-71</sup>
- (3) The existence of the TPPK is not as a Facilitator who helps the progress of Decision-Making but more like an Adjudication Committee within the Education Unit. In this case, both UN HoRJ, PERJA 15/20, PERKAP 18/21 and Process Value from RJ by Johnstone and Ness, explicitly show an idea where experts agree that the existence of a third party is only a facilitator, not a decision maker. like a judicial body (Cf. Article 2(3) Law 48/09).<sup>72</sup> This concept is in line with the civil principles of freedom of contract concerning the validity of an aggrement in Article 1320 *Burgerlijk Wetboek* ("KUHPdt"), Article 130 (2)

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<sup>68</sup> Johnstone and Ness, *Handbook of Restorative Justice*. Also compare with *Restoring Justice: An Introduction to Restorative Justice* and Manubulu, et.al. "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia".

<sup>69</sup> Isakh Benyamin Manubulu, *506 Tahun Jejak Otonomi di Pulau Rote, Jilid 1. Tersesat dalam Pemahaman Nusak, Tangguh Denara Jaya*

<sup>70</sup> Cruft, Kramer, and Reiff, *Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff*.

<sup>71</sup> Daly, "Restorative Justice in Diverse and Unequal Societies."

<sup>72</sup> Manubulu, Neonbeni, and Prathama, "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia".

*Herzien Indlandsch Reglement* (“HIR”), Article 1313 KUHPdt concerning the application of *pacta sunt servanda* principle, PERMA No. 1 of 2016 concerning Guidelines for Mediation in Court, KMA Decision no. 108/KMA/SK/VI/2016 concerning Governance of Mediation in Court.<sup>73</sup> Due to the provisions regarding the position of the TPPK as an adjudication committee, it will indirectly create unfair decision for between the perpetrators and victims, there will be no adjustment between the agreement between the victim and the perpetrator and the values of life in society like the role of the Police and Prosecutor, Mediator and The TPPS will subjectively determine the best decision which then based on Article 67 paragraph (4) PERMENDIKBUD 46/23 will be evaluated by the Regional Government Task Force.

PERMENDIKBUD 46/23 was formed in a conventional way of thinking about the imposition of punishment that does not seem like criminal law reform which views punishment as the last resort to create order. In referring to the Memorandum of Understanding between the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights, the Attorney General of the Republic of Indonesia, and the Chief of Police of the Republic of Indonesia in 2012, SUKEP DIRJEN BANDILUM No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for Implementing RJ in the General Court Environment (“Sukep 1691/2020”) which considers that RJ is a principle in the problem-solving process as an instrument of recovery that should be of concern to the lawmakers, especially in educational units. Situations, where there are differences in the spirit of law formation due to the subject matter of its formation, can be answered in legal epictolism<sup>74</sup>. Thus, this analysis leads to the conclusion that PERMENDIKBUD 46/23 which is the aesthetic of RJ in the educational unit has not formed in the spirit of the new era of penal policy in Indonesia, however, in creating a healthy and sustainable situation in the teaching and learning

<sup>73</sup> Isakh Manubulu and I Putu Yayi Laksi, “*Produk Otentik Mediasi di Indonesia*,” Researchgate, May 15, 2021, [https://www.researchgate.net/publication/351626157\\_PRODUK\\_OTENTIK\\_MEDIASI\\_DI\\_INDONESIA](https://www.researchgate.net/publication/351626157_PRODUK_OTENTIK_MEDIASI_DI_INDONESIA).

<sup>74</sup> Isakh Benyamin Manubulu, *Pelebagaan Mahkamah Partai Politik di Indonesia (Pengantar Epiktolisme Hukum)*, 1st ed. (Kupang: Tangguh Denara Jaya, 2022).

process in the school, RJ can be introduced to teachers, school officials and students, education personnel and other parties who are involved in activities in educational units in Indonesia. By including parties in the education unit as RJ mentors, together they can support the achievement of a new paradigm for the criminal system in Indonesia.

## 2. Student Preparedness for Embracing Restorative Justice Practices

This analysis continues with the distribution of questionnaires to determine students' readiness and response to the use of RJ at the school regarding PERMENDIKBUD 46/23. Based on the results of a questionnaire randomly distributed to 90 (ninety) students who attended the DP3A TTU ROADSHOW with ages 15 to 18 years old at Kefamenanu 1 Public High School, Kefamenanu 2 Public High School and Kefamenanu 3 Public High School, as shown on Figure 1.

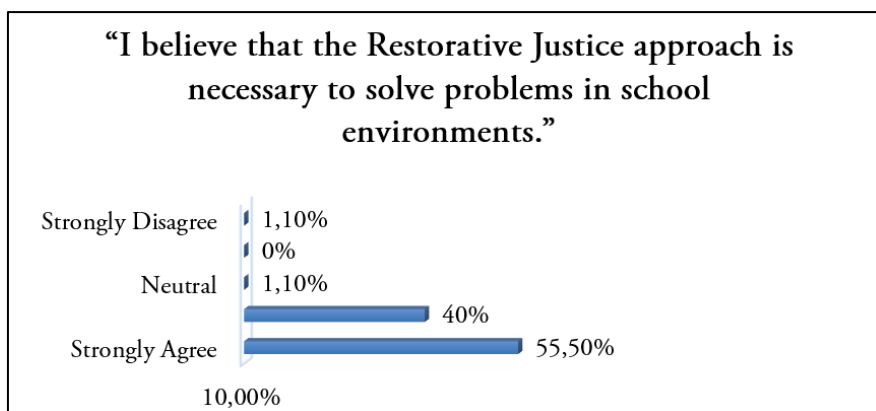


FIGURE 1. Student Approval of the Use of the RJ Approach in the School Environment (Source: Results of Questionnaires from 90 students in DP3A SOCIALIZATION TTU)

The displayed data indicates that the majority of students (55.50% or 53 students) strongly agree with the Restorative Justice (RJ) approach being implemented for problem-solving within the school environment. Additionally, 40% (36 participants) agree with this approach. It is important to note that students do not agree with the assumption that



PERMENDIKBUD 46/23 was formed with a focus on punishing wrongdoer in line with retribution justice as shown on Figure 2.<sup>75</sup>

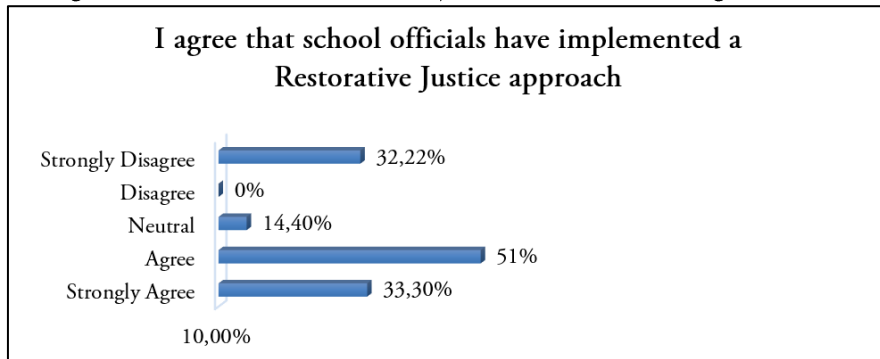


FIGURE 2. Students' views regarding the effectiveness of RJ implementation by school officials (Source: Results of Questionnaires from 90 students in DP3A SOCIALIZATION TTU)

According to the analysis of the process value of Restorative Justice (RJ), as viewed by Johnstone and Ness,<sup>76</sup> it is evident that 46 students (51%) AGREE that school officials have implemented RJ. Moreover, 30 students (33.30%) STRONGLY AGREE that school officials have practiced RJ, while 29 students (32.22%) DO NOT AGREE that RJ has been implemented by officials in the school environment

<sup>75</sup> Cruft, Kramer, and Reiff. *Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff*.

<sup>76</sup> Manubulu, Neonbeni, and Prathama, "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia".

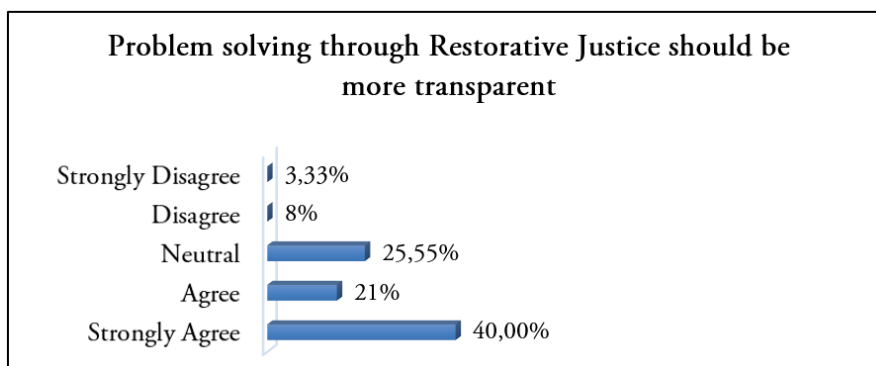


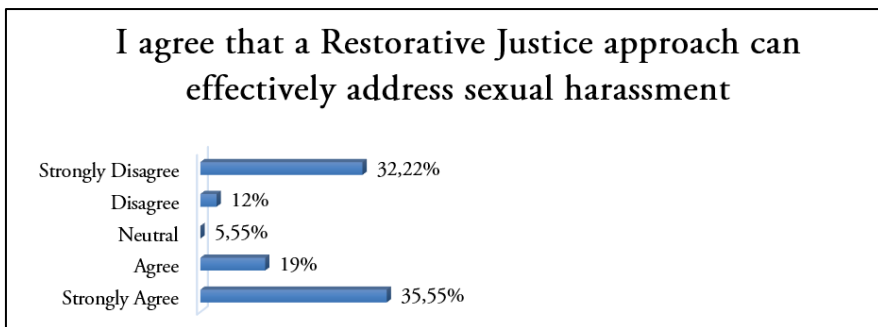
FIGURE 3. Transparency in Problem-Solving in Schools through RJ (Source: Results of Questionnaires from 90 students in DP3A SOCIALIZATION TTU)

Regarding the transparency factor in the implementation of RJ, 36 students, or if presented as many as 40.00% of students STRONGLY AGREE that the implementation of RJ must be transparent. One of the principles to be developed from the RJ approach is a form of recovery in situations that does not only focus on the victim but also on the perpetrator and the community. The demand for transparent implementation of RJ shows that participation in the problem-solving process in the school environment still tends to be high. This means that guilty behavior carried out by an actor in an educational unit also has an impact on other students so the transparency requested is merely a form of gathering opinions on the impacts caused. RJ is built on the principle of transparency, this is shown in Article 4 letter (a) Article 5 PERKAP 18/21, and Article 5(6) letter c PERJA 15/20.

The implementation of Restorative Justice (RJ) in SUKEP 1691/2020 is transparent and covers four types of cases. These include:

1. Implementation of RJ on TIPIRING, where transparency is reflected in the presence of perpetrators, victims, and community figures. This is by (Chapter II. Subpart A Number 2 Letter e SUKEP Guidelines 1691/2020).
2. Chapter II, Subpart B, Number 2, Letter d of the SUKEP Guidelines 1691/2020 emphasizes the implementation of Restorative Justice (RJ) in cases concerning children. It highlights the importance of transparency in the approach of judges who

- work in coordination with PK Bapas, Social Workers, and Community Representatives to resolve cases involving children.
3. Implementation of RJ in cases of Women in Conflict with the Law, where judges are required to explore legal values, local wisdom, and the community's sense of justice (Chapter II. Subpart C Number 2 Letter C point iii. SUKEP Guidelines 1691/2020).
  4. Implementation of RJ in Narcotics cases, where the transparency provision is accessed from the judge's decision. The judge must pay attention to the results of the assessment from the Integrated Assessment Team. This responsibility is also given to the clerk who first examines the prosecutor's prosecution files (Chapter II. Subpart D Number 2 Letters b and c, SUKEP Guidelines 1691/2020).



**FIGURE 4.** Problem-Solving of Sexual Violence through RJ (Source: Results of Questionnaires from 90 students in DP3A SOCIALIZATION TTU)

Regarding sexual violence, 37 students, or 35.55% of respondents **STRONGLY AGREE** if RJ is the approach, 32.22% (29 respondents) **DISAGREE**, while 19%, or 17 respondents chose to **AGREE** in resolving the problem of sexual violence. The scope of sexual violence is explained in Article 4 paragraph (1) and paragraph (2) of Law 12/22, such as forced contraception, sterilization, marriage, sexual torture, physical and non-physical violence, slavery, and electronic-based sexual violence as well as other types of sexual violence. others are relative offenses. This allows the police to act without having to prioritize reports from victims. Regarding the application of the complaint offense, it only applies to the types of criminal acts mentioned in Article

5 of Law 12/22 and Article 6 letter a of Law 12/22 (vide Article 7(1) of Law 12/22), this provision is excluded for criminal acts against persons with disabilities, disability or child.

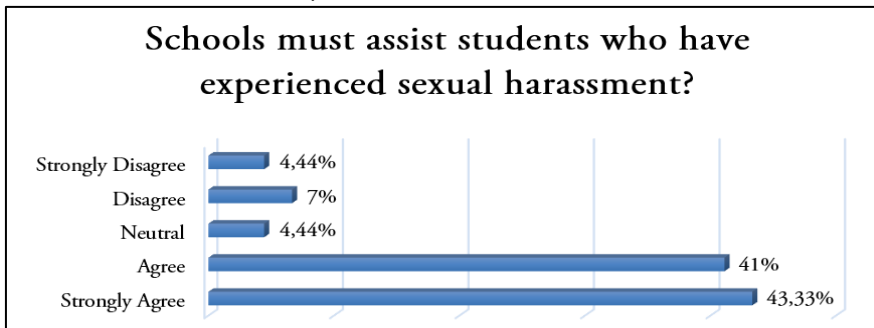


FIGURE 5. Approval of Third-Party Assistance in Cases of Sexual Harassment in Schools (Source: Results of Questionnaires from 90 students in DP3A SOCIALIZATION TTU)

According to the results of a questionnaire, 39 students, which is 43.33% of the total, strongly agree that sexual violence must have a legal assistance process. 37 students agree, which is 41% of the total, while 6 students slightly agree with the assistance process. Law 12/22, Article 26 (1) states that assistance applies to every judicial process. This means that third parties, such as Advocates, Paralegals, or other companions, can be included in Article 26(2) of Law 12/22 to ensure a transparent legal process that follows the principles of resolving sexual violence issues.

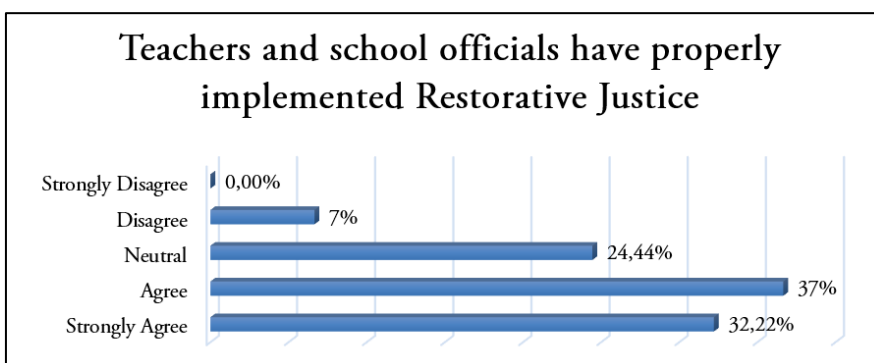


FIGURE 6. Examining the Compatibility of RJ Principles with Problem Solving Practices in the School Environment (Source: Results of Questionnaires from 90 students in DP3A SOCIALIZATION TTU)

Based on the data collected, the majority of students agree that teachers and school officials have implemented RJ (Restorative Justice) correctly. However, due to the open-ended nature of RJ, it is challenging to determine if the implementation is appropriate.<sup>77</sup> As a comparison, the PERJA 15/20, PERKAP 18/21, and SUKEP 1691/2020 can identify several stages as the process value of RJ, including: (1) Informal processes involving victims; (2) Empowerment of people affected by a crime or wrongful conviction; (3) Focus on the perpetrator's understanding of the mistakes committed in a way to take responsibility; (4) Ensuring decisions are in line with community values; (5) Providing compensation and recovery to victims in an appropriate form and method; (6) Promoting strengthening and improving relationships between individuals to resolve difficult situations.<sup>78</sup>

After conducting an analysis, it can be concluded that RJ, as a new approach in the modern criminal justice system, has been accepted by the majority of students. However, the lack of support from the government's policy, specifically PERMENDIKBUD 46/23, poses a challenge for teachers, educational staff, and school officials in implementing RJ. Therefore, a regulation is needed to provide a legal foundation for educational units, enabling them to become effective partners in law enforcement and to usher in a new era of punishment in Indonesia.

## D. Conclusion

This analysis concludes that RJ (Restorative Justice) is a modern approach to the criminal justice system that offers significant benefits to victims, offenders, and society as a whole. The results of the TTU DP3A SOCIALIZATION activity, based on a student questionnaire, indicate that the majority of students are interested in implementing RJ in problem-solving processes. However, the open concept of RJ poses a challenge for teachers, staff, and officials in educational institutions. In the absence of a legal framework for the implementation of RJ, it could

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<sup>77</sup> Manubulu, Neonbeni, and Prathama, "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia".

<sup>78</sup> Manubulu, Neonbeni, and Prathama, "Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia".

be viewed as a deviation from the established authority. Therefore, this research recommends that the Government, particularly the Ministry of Education, Culture, and Technology, establish policies to promote the use of RJ in problem-solving within the school environment. This will create opportunities for educational institutions to become partners in the criminal law reform process in Indonesia.

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*People respond in accordance to how you relate to them. If you approach them on the basis of violence, that's how they will react. But if you say, we want peace, we want stability, we can then do a lot of things that will contribute towards the progress of our society.*

**Nelson Mandela**

## Acknowledgment

We are pleased to express my gratitude to the Head of the Women's Empowerment and Child Protection Service of North Central Timor Regency, Mrs. Paula Anthonete Kono, for her invaluable support in the successful implementation of this activity and research, as well as Chair of the Cendana Wangi College of Law, the Chair of the Bina Damai Utama Legal Aid Foundation, and the Directorate General of Yabiku NTT for their outstanding cooperation during the activity. Their contribution and assistance throughout the process have been truly appreciated.

## Funding Information

This Research was conducted with the collaboration of the North Central Timor Regency Child Empowerment and Protection Service and the Cendana Wangi College of Law, who provided their valuable support throughout the research. In addition, YBH Bina Damai Utama and Yabiku NTT played an instrumental role in the implementation of the research.

## Conflicting Interest Statement

There is no conflict of interest in the publication of this article. The present article outlines the results of thorough research conducted on three schools located in the North Central Timor District. The authors would like to express their willingness to consider any feedback or suggestions that may help clarify or address any disparities between the data presented herein and the results of other similar research studies.

## Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.