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Legal Protection for Criminal Justice: A Book Review 'Restorative Justice di Indonesia', Ahmad Syharil Yunus SH and Dr Irsyad Dahri SH MH, Guepedia, Bogor Indonesia, 2021, 142 pages, ISBN 978-623-5525-98-3

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BOOK DATA

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Abstract *The book entitled “Restorative Justice di Indonesia” was written by Ahmad Syahril Yunus, S.H. and Dr. Irsyad Dahri, S.H., M.H. Restorative Justice is the restoration, compensation, and repayment of a part of the relationship between the victims and perpetrators, as well as the society regarding the prosperity or conciliation in criminal justice system. Specifically, this book focuses on the steps involved in implementing Restorative Justice and social justice responses for criminal victims in Indonesia. This book also presents empirical data that shows how Restorative Justice has been used in legal practice by several countries, how victims and perpetrators respond to a new perspective on the legal system through the resolution of Restorative Justice, and how far this can be used effectively to create a standard of punishment and compensation based on fair and balanced treatment of victims and perpetrators.*

Keywords: Criminal law, Crime, Restorative Justice



This book explains how efforts to realize a responsive legal process necessitate a balance of perpetrator and victim interest. The existence of Restorative Justice will later make it possible to reduce the interference of the ruling parties to win the judicial case that drops or harms the weak party. The concept of Restorative Justice shows various forms of justice that apply the same values but are carried out in various ways. The values of the restorative justice system encourage criminals to accept responsibility for their actions and to consider how they will make amends to the victim. The Restorative Justice

Program responds to the development of criminal justice system thought by

emphasizing public involvement and victim perceived and accepted needs as a result of crime.

In the history of criminal law development, a criminal action is said to be a crime if it is seen as having the potential to damage or harm the interests of others. For this reason, retaliation is required to restore the loss to its original situation. Retaliation here does not only mean that the perpetrators of crimes are punished or suffer similar harms; the intended situation also does not include retaliating with the same behavior as the violators, but includes the obligation to pay compensation by helping the victim and the victim's family in material and psychological terms. It also emphasizes a new way of thinking that can be used by justice enforcers to respond to legal issues more openly. According to Burt Galway and Joe Hudson, the definition of restorative justice includes the following fundamental elements:

1. Crime is primarily viewed as a conflict between individuals that causes harm to the victim, society (community), and the offender.
2. The goal of the criminal justice system should be to bring peace to society by reconciling the parties and curing the wounds caused by disputes.
3. Criminals involved in the judicial process must actively participate in assisting victims and resolving the resulting conflicts.

The work of criminal law cannot eliminate the causes of criminal acts that occur, but it can help in the process of overcoming a symptom. The process of reforming and restoring justice is essentially an effort to review and re-enforce criminal law in accordance with the existing law's socio-political, socio-philosophical, and socio-cultural values. The use of Restorative Justice in resolving criminal cases prioritizes the occurrence of an agreement between the litigants by considering future losses and interests. Restorative Justice is a concept that shows various judicial practices with the same values but more systematic practices for crime victims and perpetrators. Justice achieved by Restorative Justice emphasizes

recovery rather than focusing solely on retaliation for criminal acts. Restorative justice has become a global phenomenon, particularly in juvenile and criminal justice systems. The concept of justice offers an alternative understanding of crime as well as new ways to respond to it in a more systematic but targeted manner. Through the restorative program, a number of important criteria will be met in judicial decisions, including victim and perpetrator satisfaction in obtaining legal certainty, reducing trauma for victims, developing empathy for perpetrators, increasing more peaceful settlements, and lowering recidivism. The restorative justice program provides several new alternatives that would be beneficial to the Indonesian justice system.

The concept of restorative justice appeared as a result of public dissatisfaction with the implementation of the retributive criminal justice system. This is thought to be less profitable for victims, perpetrators, and the community. In other words, the trial results were unsatisfactory and less focused on the key points of criminal cases. In the mid-1970s, there was a movement in North America and Europe to reform the criminal system in a more organized manner, until the concept of restorative justice emerged. Initially, this program was only intended to compensate victims of child crimes. Because it has received a positive response from the community, it encouraged the way for the implementation of similar programs in various countries. Restorative justice is also emphasized in the scope of providing facilities and care for victims' families which is carried out by prioritizing restorative values based on collaborative procedures and judicial consensus or also judiciary.¹

The rest of the criminal law enforcement in Indonesia has been coherently formulated in Law Number 8 of 1981 concerning the Criminal Procedure Code, which refers to the formal law implementation. However, due to the large amount

¹ Dewi Setyowati, "Memahami Konsep Restoratif Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta*, No. 1 (2020): 125, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v15i1.24689>

of arbitrariness of individuals who use the government as a foothold for the ruling regime, it can be said that views on justice enforcement in Indonesia have declined. So, the law is thought to have failed to achieve the goals that are essentially implied by state law. Therefore, in order to provide legal certainty and balanced legal satisfaction to both perpetrators and victims of crime, an alternative law enforcement system that minimizes the entry of interference from parties who should not be involved is required, namely a justice restoration system in which victims and perpetrators are met directly with a socio-cultural approach rather than a normative approach based on written legal studies. This is based on the theory of justice, which holds that crimes or violations are primarily actions between individuals, and that resolution will be more effective if the disputing individuals are directly involved in the settlement.²

The purpose of providing restorative justice is to direct the final outcome to the value of the process of how the settlement is obtained through the agreement of both parties, namely the perpetrator and the victim. The targets of the process are as follows: (1) Victims who agree to be involved in all judicial processes with security guarantees; (2) The perpetrators can consciously understand how their actions have affected to the detriment of the victim's life interests; (3) The final result is in the form of flexible actions agreed upon by the parties that focus on improvement rather than retaliation in the form of the same loss; (4) The perpetrators of the crime promise to be fully responsible in accordance with the law; and (5) In addition to receiving legal satisfaction, victims and perpetrators gain an understanding of how events and consequences occur, as well as a sense of security in returning to community life. Although no man-made agreement can be completely perfect, a carefully and strategically designed restorative justice that

² Hanafi Arief & Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia," *Al 'Adl: Law Journal*, No. 2 (2018): 176-178, <https://doi.org/http://dx.doi.org/10.31602/al-adl.v10i2.1362>.

involves the involvement of public sector bodies in this case the parties involved in all litigation processes can find a new and effective solution.

The mediation (rehabilitation) program for victims and perpetrators is part of the main restorative justice program. This program is intended to meet the needs of victims and ensure the accountability of the perpetrators, so that there are parties who receive and lose in a fair manner. During the mediation process, the traumatized victim is usually unwilling to meet with the perpetrator. If this occurs, the victim will be referred by the mediator officer to ensure that the victim gets assistance in various aspects to support the process of the agreement. Reconciliation of victims and perpetrators occurs within the context of the criminal justice system as an exercise of discretion by police, legal counsel, prosecutors, or other judiciaries. This program also involves community conferences, which are seen as alternative actions to openly resolve cases in several countries. Such communities include the Conference of Family Groups in European countries, the Peacemaking Committee in Zwelethemba, and others.

The third chapter of this book explains the fundamental principles of how Restorative Justice is used in the process. In this case, the perpetrator has the opportunity to involve in recovering the victim's condition, the victim receives compensation, the community contributes to the preservation of peace, and the court contributes to the preservation of public order by enforcing the rules in accordance with the applicable positive law. The restorative process should focus on the free and voluntary consent of the victim and perpetrator in decision-making, and both should be given the right to withdraw their choice of consent while the process is ongoing.³ Basically, the principle of restorative justice is the existence of victim recovery and agreed compensation that leads to peace.

³ Dewi Setyowati, "Memahami Konsep Restoratif Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta*, No. 1 (2020): 129, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v15i1.24689>.

A fair law in the context of Restorative Justice cannot be one-sided, which means that it only sides with the truth according to the applicable laws and regulations. The agreement will be reached after the perpetrator's rights and obligations to compensate the victim are fulfilled. If the restorative agreement process fails, it must be immediately returned to the initial stage of discussion while still adhering to the restorative principle, because the Restorative Justice process is in the form of deliberation between individuals that are different from court decisions that can appeal to allow justification or imposition of a heavier sentence on the perpetrator.⁴ According to John Braithwaite's Restorative Justice principle, *Restorative Justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community.* In Indonesia, the application of the justice restoration system model can also be found in civil law; this term in civil law is known as Alternative Dispute Resolution, and the regulation of which is formulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The application of the innovative strategic approach to Restorative Justice that the government must develop is then explained in chapter four of this book. New structures and programs that support Restorative Justice can be incorporated into judicial practice elements. The handling Restorative Justice also requires different attention in each case; for example, the application of law in children's cases is different from the application of law in women's cases or narcotics criminal cases. Introducing restorative justice programs must be implemented gradually or even repeatedly in order to create a successful experience that strengthens the rule of law. The initial stage of implementing the Restorative Justice can be carried out with a simple procedure initiative but still structured and relevant to restorative principles. The program's strategic approach can be

⁴ Eka Fitri Andriyanti, "Urgensitas Implementasi Restorative Justice dalam Hukum Pidana Indonesia," *Jurnal Education and Development*, No. 4 (2020): 328, <https://doi.org/http://journal.ipts.ac.id/index.php/ED/article/view/2175>.

applied through various government institutions, such as through the executive, legislative and judiciary.

The book, entitled *Restorative Justice in Indonesia*, is written in simple language that is easy to understand. This is relevant for students and lecturers to use as an educational reference or scientific study. This book goes into detail about the judiciary's use of Restorative Justice. In several discussion chapters, the author provides a comprehensive description of the data and systematic explanation of the process of implementing Restorative Justice in Indonesia, which is accompanied by concrete examples from several foreign countries. There is also a brief description of the strategic approach and suggestions for efforts that the government could make to introduce Restorative Justice through various government institutions at the end.

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