SOLUTIONS TO DIFFERENCES IN SENTENCES FOR PARALLEL INTEGRATION OF RESTORATIVE JUSTICE IN INDONESIAN COURTS

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Abstract

This study describes the problems and solutions related to differentiating sentences for the parallel integration of restorative justice in Indonesian courts. This study is normative-legal research using statute, comparative, and conceptual approaches. This study utilizes primary legal materials and secondary legal materials. This study is based on 25 (twenty-five) cases decided by judges in Indonesian courts. The research results indicate that the values of restorative justice are very relevant to the cultural values of *gotong royong* in Indonesia. Judges must consider the community's cultural values and the implementation of restorative justice in their decisions. Parallel integration of justice has been re-applied in Indonesian courts. Still, in practice, judges do not have guidelines for parallel integration, so it is very possible that there will be differences in punishment for applying parallel integration. Therefore, as a solution to the problem of differentiation of sentences, the authors propose 2 (two) concepts of court decisions, namely (1) the verdict of the indictment cannot be accepted, and (2) the decision of the public prosecutor cannot be accepted.

Keywords: differentiating sentences, restorative justice, Indonesian courts.

Introduction

Parallel integration of restorative justice in the Indonesian criminal justice system has been carried out. Parallel integration is carried out with restorative systems and retributive systems that run simultaneously and influence each other. Restorative is carried out within the official authority as well as outside the official authority. The higher the restorative achievement, the lower the sentencing. The lower the restorative achievement, the higher the sentencing. Police, prosecutors, and judges should apply restorative justice at every stage of the law enforcement process. The interaction of the three law enforcement officers, accompanied by regulations, institutional procedures, and perceptions (social behavior), will support the implementation of restorative justice. With all of them, integration is easier. The restorative justice integration model in each country is different; some are side by side, only as a complement or a substitute for the retributive system.[1] There are several models used in several countries such as the United States[2] and South Africa[3] with an alternative model, Belgium[4] with a parallel model, Australia[5] and New Zealand[6] with a diversion model.[7] Three options can be considered, namely: First, the restorative justice process is implemented after the police investigate the crime and find the perpetrators and before the prosecution is read to the perpetrators, if peace is reached then the indictment will not be carried out. Second, restorative justice is applied after the indictment, and the results of the agreement and its fulfillment

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[1] Eva Achjani Zulfa, "Implementation of Restorative Justice Principles in Indonesia: A Review," *International Journal of Science and Society* 2, no. 2 (2020).

[2] Gerkin, P., Walsh, J., Kuilema, J. and Borton, I. (2017). Implementing Restorative Justice Under the Retributive Paradigm: A Pilot Program Case Study. *SAGE Open*. 7(1). 1-10. https://doi.org/10.1177/2158244017691562.

[3] Traggy Maepa, Mike Batley, and A Dissel, "Beyond Retribution: Prospects for Restorative Justice in South Africa," *Institute for Security Studies Monograph Series* 111, no. February (2005).

[4] Ivo Aertsen and Tony Peters, "Mediation and Restorative Justice in Belgium," *European Journal on Criminal Policy and Research*, 1998.

[5] Kathleen Daly and Hennessey Hayes, "Restorative Justice and Conferencing in Australia," *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, no. 186 (2001).

[6] Hannah Goodyer, "Rethinking Justice in New Zealand : A Critical Assessment of Restorative Justice," *Canterbury Law Review* 9 (2003).

[7] Daly and Hayes, "Restorative Justice and Conferencing in Australia."

are submitted to the judge for consideration in the decision. Third, restorative justice is carried out after a court decision.[8] The ideological and religious basis of the Indonesian people is very relevant to the principles of restorative justice. The idea of participation and deliberation has deep meaning and will have a strong history in Indonesia.[9] The parallel integration of restorative justice in the Indonesian criminal justice system is a favorite choice. The disparity of court decisions hurts the reality of parallel integration. The results of the restorative justice program should have an impact on the criminal process, especially the sentencing and freedom of judges in determining sentences, and inadequate regulations are the leading causes.[10]

Disparities in sentencing in Indonesian courts often occur and are considered reasonable because they cannot be avoided.[11] Clancy et al. [12] divided the disparity of sentencing into 2 (two) types, namely interjudge and intrajudge.[13] Federal Judge Marvin Frankel stated that sentencing disparity was a severe issue.[14] For this reason, since the 1970s the US has reformed the sentence to limit judicial discretion in determining the sentence.[15] The Indonesian criminal justice system does not have sentencing guidelines and sentencing commissions.[16] Judges are free to

[8] Schmid, (2001), *Op.Cit*

[9] Giuseppe Maglione, "Restorative Justice Policy in Context: A Legal-Archaeological Analysis," *International Journal for the Semiotics of Law* 35, no. 2 (2022).

[10] Penelope Gibbs et al., "Judged by Peers ? The Diversity of Lay Magistrates in England and Wales Judged by Peers ? The Diversity of Lay Magistrates in England and Wales," *eprints.bbk.ac.uk* (2014).

[11] Wahyu Nugroho, "Disparitasi Hukuman Dalam Perkara Pidana Pencurian Dengan Pemberatan," *Jurnal Yudisial* 5, no. 3 (2012).

[12] K. Clancy et al., "Sentence Decisionmaking: The Logic of Sentence Decisions and the Extent and Sources of Sentence Disparity," *Journal of Criminal Law and Criminology* 72, no. 2 (1981).

[13] Interjudge occurs when there is a difference of opinion between judges regarding the term of sentence in the case being handled and Intrajudge occurs when there is a difference in the term of sentence in the same or identical cases.

[14] Marvin E. Frankel, "Criminal Sentences: Law without Order," *Stanford Law Review* 25, no. 3 (1973).

[15] Charles W. Ostrom; Brian J. Ostrom; Matthew and Kleiman, "Judges and Discrimination: Assessing the Theory and Practice of Criminal Sentencing," *National Institute of Justice* (2004).

[16] Clancy et al., "Sentence Decisionmaking: The Logic of Sentence Decisions and the Extent and Sources of Sentence Disparity."

decide on the standard of minimum and maximum penalties. Unlike the US, which has a Guidelines Manual and Sentencing Commission, England and Wales have a Sentencing Guidelines Council or Sentencing Advisory Panel, and Australia has Sentencing Councils. The sentencing guidelines are quite successful in achieving consistency of punishment. It is recognized that restorative justice is not included in the US sentencing guidelines as part of considering mitigating sentences. Unlike Australia, which has the Crimes (Restorative Justice) Act 2004.[17]

The parallel integration of restorative justice in the Indonesian courts has also experienced a disparity in sentencing. Focus on 25 (twenty-five) criminal cases that use restorative justice, a total of 10 (ten) cases of abuse[18], 5 (five) cases of insult or defamation[19], 4 (four) cases of child abuse[20], 2 (two) cases of traffic accidents[21], 1 (one) case of embezzlement[22], 1 (one) case of fraud[23], 1 (one) case of theft[24], 1 (one) case of disturbed road function and utilization[25]. The disparity in punishment is seen from the variety of sentences, namely: 11 (eleven) imprisonment decisions, 6 (six) probationary decisions, 2 (two) decisions *ontslag van alle rechtvervolging*, 2 (two) verdicts of unacceptable demands, 1 (one) verdict of the prosecutor's indictment cannot be accepted, 1 (one) sentence of imprisonment and fines, 1 (one) verdict fines, 1 (one) decision on restitution.

The first part of the writer looks at the relationship between the values of restorative justice and the culture of mutual cooperation, which was born from the ideology of the Indonesian nation. The following section describes the implementation of restorative justice in

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[17] Ian Edwards, "Sentencing Councils and Victims," *Modern Law Review* 75, no. 3 (2012).

[18] Decision Number 21/Pid.Sus/2015/PN.Mtr.; 32-K/PM II-08/AD/II/2014; 59/Pid.B/2014/PN.Bkl; 168/Pid.B/2019/PN Tlg; 41/Pid.B/2019/PN Tgl; 135/Pid.Sus/2014/PN Byl; 32/Pid.Sus/2019/PN Pwr; 39/Pid.Sus/2016/PN. Mjn; 28/Pid.B/2016/PN Mkd; 80/Pid.B/2017/PN Kln.

[19] Decision Number 159/Pid.B/2016/PN Msb; 2530/Pid.B/2019/PN Mdn; 2/Pid.Sus/2020/PN Srg; 10/Pid.B/2013/PN.Slk; 1/PID/2016/PT PAL.

[20] Decision Number 05/Pid-B/2011/PN.Nbe.; 263/Pid.Sus/2015/PN.Pal.; 905 K/PID.SUS/2014; 6/JN/2020/MS.Cag.

[21] Decision Number 35/PID.SUS/2017/PT JAP; 6/Pid.B/2019/PN Snn.

[22] Decision Number 508/Pid.B/2015/PN Gpr.

[23] Decision Number 76/Pid.B/2018/PN Pwr.

[24] Decision Number 7/Pid.B/2014/PN Kbj.

[25] Decision Number 211/Pid.Sus/2016/PN Kln.

court with a focus on the recovery of victims based on selected cases, followed by the problem of disparity in sentencing. In the end, the author provides a solution to the disparity in sentencing and the parallel integration of restorative justice in Indonesian courts.

Method

This study is normative-legal research that meaningfully examines and analyzes the law based on regulations or court decisions. The study employs several approaches, namely the statute approach with the aim of examining applicable regulations, the conceptual approach with the goal of analyzing legal concepts, and the comparative approach with the objective of comparing court decisions related to the issues.[26] This study is based on 25 (twenty-five) cases decided by judges in Indonesian courts. This study utilizes primary legal materials and secondary legal materials. The primary legal materials resulted from some relevant laws and 25 (twenty-five) selected court decisions following the study's subject from 2014 to 2020. Secondary legal materials are derived from previous studies and scholarly articles related to the study subject. The legal materials collected are analyzed descriptively, prescriptively, and related to the problems.

Results and Discussion

Restorative Justice and Culture of *Gotong Royong*

Restorative justice as a program is meeting all stakeholders to determine the course of recovery or repair of damage. Restorative justice as a concept (value) is empowerment[27], balance[28], healing and restoration of victims[29], reparations and social welfare[30], as well as

[26] Marzuki, P. M. (2009). *Penelitian Hukum*, 5th ed. Jakarta: Kencana. p. 59

[27] Margarita Zernova, "Aspirations of Restorative Justice Proponents and Experiences of Participants in Family Group Conferences," *British Journal of Criminology* 47, no. 3 (2007).

[28] Christina L. McMahan, "Juvenile Justice in Oregon: Balanced and Restorative Justice in Action," *Juvenile and Family Court Journal* 70, no. 1 (2019).

[29] Timothy J. Holler, "Instituting Restoration: Establishing and Sustaining a Restorative Model of Justice" (Indiana University of Pennsylvania, 2015).

[30] Lois Presser and Patricia Van Voorhis, "Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs," *Crime and Delinquency*, 2002.

reforming perpetrators by rebuilding their morals and social feelings[31], not humiliating, demeaning perpetrators and damaging social bonds[32]. The core values of restorative justice include healing, voluntary participation, respect, empowerment, inclusiveness, equal status, personal accountability, and problem-solving[33]. Ness and Strong argued that in building the value of restorative justice, it includes inclusion, encounter, amends and reintegration.[34] Braithwaite suggests that standardizing restorative justice values includes constraining and maximizing.[35] Restorative justice as a program is used by various countries in different ways due to different cultural backgrounds.[36] This is a formidable challenge in evaluating restorative justice programs.[37] The victim-perpetrator model of mediation is practiced in the US[38] regarding property crimes and juvenile offenses[39], in Finland[40] and Belgium[41] under the supervision of official authorities, in Australia[42] the model conference, in Canada with Model circles applied by indigenous

[31] Donald H.J. Hermann, "Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice," *Seattle Journal for Social Justice* 16, no. 1 (2017): 1–103.

[32] Jerry Goodstein and Karl Aquino, "And Restorative Justice for All: Redemption, Forgiveness, and Reintegration in Organizations," *Journal of Organizational Behavior* 31, no. 4 (2010).

[33] Kimmett Edgar and Tim Newell, "Restorative Justice in Prisons: A Guide to Making It Happen," in *Restorative Justice in Prisons: A Guide to Making It Happen*, 2006.

[34] Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, 2014.

[35] John Braithwaite, "Setting Standards for Restorative Justice," *British Journal of Criminology* 42, no. 3 (2002).

[36] Belinda Hopkins, *From Restorative Justice to Restorative Culture*, *Revista de Asistenţ\ Social*, 2015.

[37] Berit Albrecht, "Multicultural Challenges for Restorative Justice: Mediators' Experiences from Norway and Finland," *Journal of Scandinavian Studies in Criminology and Crime Prevention* 11, no. 1 (2010).

[38] Katherine Van Warmer, "Restorative Justice: A Model for Social Work Practice with Families," *Families in Society* 84, no. 3 (2003).

[39] Mark S. Umbreit, "The Handbook of Victim Offender Mediation: An Essential Guide to Research and Practice," *The British Journal of Social Work* 31, no. 5 (2001).

[40] Albrecht, B. (2010), *Op. Cit.*

[41] Aertson, I. and Peters, T. (1998), *Op.Cit.*

[42] Sue Bailey, "Youth Offending and Restorative Justice. Implementing Reform in Youth Justice," *Journal of Forensic Psychiatry and Psychology* 16, no. 4 (2005).

peoples and growing in Ontario[43] and North America[44], in England and New Zealand with the model family group conferencing (children 1989[45] and adults 1994 [46], in South Africa in the 1990[47] and in Indonesia with the model of diversion (child crime) and rehabilitation for narcotics and drug users. Implementing a restorative justice program will not result in recovery if the program is not based on the principles and values of restorative justice[48]; the main thing is the achievement of values and principles, not neglect of the process. It is necessary to test the process and the value of the application of restorative justice[49]. Restorative justice is related to fairness because it emphasizes justice for all people[50]. Many people think that the resolution of crime with restorative justice is not a new concept but is born from a traditional concept that is expressed in a progressive process.[51] In South Africa, restorative justice is called a moral regeneration movement rooted in indigenous spirituality and culture.[52] The values of restorative justice are relevant to the cultural values of *gotong royong* in Indonesia.

[43] Hopkins, B. (2015), 34. pp. 19-34.

[44] Stuart, B. "*Sentencing Circles: Purpose and Impact*." National Canadian Bar Association, (1994).

[45] Dignan, J. and Marsh, P. Restorative Justice and Family Group Conferences in England: Current State and Future Prospects. p. 85. (2001).

[46] Helen Bowen and Jim Boyack, "Adult Restorative Justice in New Zealand/Aotearoa," in *Plenary Speech at the 4th International Conference on Conferencing & Circles*, 2003.

[47] Skelton, A. and Frank, C. (2003) Conferencing in South Africa: Returning to Our Future. p. 103 See also, Morris, A. and Maxwell, G. (2001) Conferencing, Mediation and Circles. Portland Oregon: Oxford.

[48] Ness, D.W.V. and Strong, K.H. (2015), *Op.Cit.* p. 48.

[49] Braithwaite, J. (2003). 'Principles of Restorative Justice'. Edited by Hirsch, A.V., Roberts, JV., Bottoms, A., Roach, K. and Schiff, M. (2003) 'Restorative Justice and Criminal Justice Competing or Reconcilable Paradigms?' Oregon: Hart Publishing Oxford and Portland. p. 8.

[50] Wormer, K.V. (2003), *Op.Cit.*

[51] Levin, M. (2005). Restorative Justice in Texas: Past, Present and Future. Texas: Texas Public Policy Foundation. (October 2005). p 5-7, http://www.texaspolicy.com/pdf/2005-09-restorativejustice.pdf.

[52] Batley, M., et al. (2005), *Op.Cit.*

Cultural values[53], basic culture [54] , national culture [55] or the cultural philosophy of *gotong royong*[56] in Indonesia are the most relevant in restorative justice programs. *Gotong royong* comes from the Javanese language, *gotong* means work[57], *royong* means together; it can be concluded that *gotong royong* means working together. Indonesia is a country that has a culture of *gotong royong*, which is very important [58] in every community activity, in the workplace[59], in organizations[60], in business relationships[61], and in daily interactions as well as in the family environment[62]. The culture of *gotong royong* was born from Pancasila as the ideology of the Indonesian nation.[63]

The *gotong royong* culture contains 4 (four) values, namely: (a) humans are part of the community; (b) humans depend on each other; (c) humans continuously maintain good relations with each other; (d) humans must be fair to one another[64]. *Gotong royong* also contains the

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53 Hofstede, G., Hofstede, G.J. and Minkov, M. (2010). Cultures and Organizations Software Ofthe Mind Intercultural Cooperation and Its Importance for Survival. McGraw-Hill eBooks. https://e-edu.nbu.bg/mod/resource/view.php?id=557036. Accessed 22 June 2021.

[54] Sri Rahayu et al., "Budgeting of School Operational Assistance Fund Based on The Value of Gotong Royong," *Procedia - Social and Behavioral Sciences* 211 (2015).

[55] John R. Bowen, "On the Political Construction of Tradition: Gotong Royong in Indonesia," *The Journal of Asian Studies* 45, no. 3 (1986).

[56] Bowen, J.R. (1986), *Op.Cit.*

[57] Pranowo, M.B. *Multidimensi Ketahanan Nasional.* Cetakan 1. Jakarta: Pustaka Alvabet. p. 137. (2010)

[58] Nur Khasanah, "Pengejawantahan Nilai-Nilai Dalam Pengembangan Budaya Gotong Royong Di Era Digital," *Edukaisi* 01, no. 01 (2013).

[59] Dodi Wirawan Irawanto, "An Analysis Of National Culture And Leadership Practices In Indonesia," *Journal of Diversity Management (JDM)* 4, no. 2 (2009).

[60] Dodi Wirawan Irawanto, Phillip L. Ramsey, and James C. Ryan, "Tailoring Leadership Theory to Indonesian Culture," *Global Business Review* 12, no. 3 (2011).

[61] Marko S Hermawan and Mark K Loo, "The Construction of Kekeluargaan as an Indonesia's Organizational Culture," *Jurnal Humaniora* 31, no. 1 (2019).

[62] Yulina Eva Riany, Pamela Meredith, and Monica Cuskelly, "Understanding the Influence of Traditional Cultural Values on Indonesian Parenting," *Marriage and Family Review* 53, no. 3 (2017).

[63] Nicholas Simarmata et al., "Gotong Royong in Indonesian History," *Digital Press Social Sciences and Humanities* 5 (2020).

[64] Pramudyasari Nur Bintari and Cecep Darmawan, "PERAN PEMUDA SEBAGAI PENERUS TRADISI SAMBATAN DALAM RANGKA PEMBENTUKAN KARAKTER GOTONG ROYONG," *JURNAL PENDIDIKAN ILMU SOSIAL* 25, no. 1 (2016).

principle of mutual benefit[65], helping each other or bearing the burden together[66]. Indonesia has succeeded in resolving social, ethnic, and religious conflicts in various areas such as Ambon (1999), Aceh (2005), Sampit (2001), Ahmadiyah vs. Shia (1998-2000), indigenous vs. Chinese ethnic conflicts (1998) through cultural values and *gotong royong*.

Implementation of Restorative Justice in Courts

Restorative justice in Indonesian courts manifests in three forms: firstly, under the court's authority, specifically for minor violations, women, children, and narcotics users. Secondly, outside the court's jurisdiction, its recognition in the judge's decision applies to offenses not covered in the first form. Thirdly, restorative justice is considered in the judge's decision without formal program implementation. Here, judges adopt a values-oriented approach to restorative justice, setting aside its status as a program. It signifies that judges, regardless of the absence of a structured restorative justice program, employ its principles as a fundamental basis for legal decisions. A total of 25 (twenty-five) cases focus on the author's attention; there are 2 (two) cases using restorative justice form 3, namely cases of rape against children[67] and insults or defamation[68]. This paper focuses on Form 2 and Form 3.

Restorative justice, extending beyond the court's jurisdiction, employs a family group conferencing model initiated by the offender and their family. Communication begins as the offender's family reaches out to the victim's family, targeting a pivotal member to convey their empathetic intent. The victim's family reciprocates, potentially allowing a visit. In ensuing meetings, apologies and regrets are expressed, showcasing empathy for the victim's suffering. Effective communication is pivotal; subsequent encounters may delve deeper into resolving criminal issues. Designated spokespersons from each family facilitate these meetings, potentially with a mediator. The process

[65] John Braithwaite, "Partial Truth and Reconciliation in the Longue Durée," *Twenty-First Century Society* 6, no. 1 (2011).

[66] Kenneth Moore, "Hermeneutics in Anthropology - Clifford Geertz: Local Knowledge: Further Essays in Interpretive Anthropology. (New York: Basic Books, Inc.1983. Pp. 244. $18.50.)," *The Review of Politics* 48, no. 4 (1986).

[67] Decision Number 6/JN/2020/MS.Cag.

[68] Decision Number 1/PID/2016/PT PAL.

continues until forgiveness is granted, formalized in a peace certificate and a retraction letter from the victim's family.[69] The Indonesian people's character and family culture harmonize seamlessly with the aforementioned restorative justice model, rooted in the values of *gotong royong* derived from Pancasila, the nation's ideology.

Recovery of Victims

It is recognized that restorative justice not only provides full support and action to victims[70], but also has to reform perpetrators by rebuilding their morality and social feelings[71]. One of the ideas of the emergence of restorative justice is a caring response to crime and justice.[72] The victim is the person most harmed by a crime. Restorative justice looks at crime by emphasizing the recovery of the victim.[73] Support from various parties is needed for the recovery of victims. The form of recovery for victims is in the form of physical[74], mental[75], emotional and psychological recovery[76], trauma[77], addiction[78], and

[69] Joanna Shapland, "Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful?," *Oxford Journal of Law and Religion* 5, no. 1 (2016).

[70] Joanna Shapland, Gwen Robinson, and Angela Sorsby, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*, 2011.

[71] Hermann, D.H.J. (2017), *Op.Cit*.

[72] Kathleen Daly, "Restorative Justice: The Real Story," *Punishment & Society* 4, no. 1 (2002).

[73] Van Ness and Strong, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*.

[74] Eidell Wasserman and Carroll Ann Ellis, "IMPACT OF CRIME ON VICTIMS," *National Victim Assistance Academy*, 2010.

[75] Michael R. McCart, Daniel W. Smith, and Genelle K. Sawyer, "Help Seeking among Victims of Crime: A Review of the Empirical Literature," *Journal of Traumatic Stress*, 2010.

[76] Masahiro Suzuki and Tamera Jenkins, "The Role of (Self-)Forgiveness in Restorative Justice: Linking Restorative Justice to Desistance," *European Journal of Criminology* 19, no. 2 (2022).

[77] Alex Lloyd and Jo Borrill, "Examining the Effectiveness of Restorative Justice in Reducing Victims' Post-Traumatic Stress," *Psychological Injury and Law*, 2020.

[78] Anna Kawalek, Michael Edwards, and David Best, "Recovery and Restorative Justice: Systems for Generating Social Justice," in *Routledge International Handbook of Restorative Justice*, 2018.

economic/financial recovery[79]. Victims experience a crisis of anger, hurt, and social disorientation.[80]

Including victim recovery in a peace agreement between the victim and perpetrator is essential, as it facilitates responsibility monitoring, lacking adequate supervision forms. The author finds securing an agreement challenging without accompanying recovery terms. Notably, if recovery precedes the agreement, it might be excluded. Supervision in the restorative justice program is imperative. The following outlines recovery forms for crime victims based on 25 court decisions in Indonesian courts, as judges play a pivotal role in determining the appropriate restitution measures for victims.

Genuine Apologies

The form of the culture of *gotong royong* is essential in solving crimes through a sincere apology from the perpetrator to the victim. One of the values of the *gotong royong* culture is forgiving mistakes. Indonesian people find it easier to ignore the errors of others, and this is the primary basis for solving crimes through restorative justice.

In cases of insult or defamation[81], the judge has adopted family values as the basis for considering restorative justice because the victim and the perpetrator forgive each other (peacefully) and greet each other because they live in the same village. Restorative justice is the basis for judges to punish perpetrators with probation. Likewise, in the case of defamation through electronic means[82], the victim and the perpetrator have forgiven each other (peacefully) so that the victim withdraws his complaint.

The order of the values of restorative justice is remorse, apology, and forgiveness.[83] When the victim receives the apology, the apology from the perpetrator to the victim is the core of the restorative program and a form of reconciliation. Apologies must be made sincerely by the

[79] Rochelle F. Hanson et al., "The Impact of Crime Victimization on Quality of Life," *Journal of Traumatic Stress* 23, no. 2 (2010).

[80] Ness, D.W.V. and Strong, K.H. (2010), n33.

[81] Decision Number 159/Pid.B/2016/PN Msb

[82] Decision Number 2/Pid.Sus/2020/PN Srg

[83] John Braithwaite, *Restorative Justice & Responsive Regulation*, *Restorative Justice & Responsive Regulation*, 2001.

perpetrator[84], so that they can be received sincerely by the victim. Victims doubted the sincerity of the perpetrator's apology and only 27% believed it.[85] Dignan's data shows that only 61% of perpetrators apologized to victims on the grounds that they were genuinely sorry for their actions.[86] Other studies, in Australia and the UK, show that the percentage of victims who forgive their perpetrators is 30-70%[87], as well as in Northern Ireland that 80% of victims forgive their perpetrators[88], and in New Zealand about half of juvenile offenders feel they have received forgiveness.[89] Before the perpetrator of a crime apologizes to the victim, the perpetrator must first forgive himself accompanied by sincere regret for the crime he has committed.

The sincerity of the perpetrator's apology and the victim's forgiveness are the primary keys for restorative justice to be carried out. Without it, the restorative justice program cannot continue. Therefore, the most crucial focus is forgiveness. This view is different because forgiveness should not be intended for restorative justice but is considered as a gift[90], so forgiveness is on the margins of restorative justice[91], but it is recognized that the lack of studies related to forgiveness in restorative justice which has an impact on forgiveness cannot be forced on victims.[92]

The sincerity of forgiveness from the victim is determined by the sincerity of the apology from the perpetrator of the crime. When the victim sincerely forgives the perpetrator, it is a form of recovery for the victim who was previously angry, resentful, and afraid of the

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[84] Kathleen Daly, "Mind the Gap: Restorative Justice in Theory and Practice," in *Restorative Justice & Criminal Justice. Competing or Reconcilable Paradigms?*, 2003.

[85] Daly, K. (2002), *Op.Cit.*

[86] Dignan and Maguire, *Understanding Victims and Restorative Justice*, *Crime and Justice*, 2005.

[87] Lawrence W. Sherman et al., "Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials," *Journal of Experimental Criminology* 1, no. 3 (2005).

[88] Catriona Campbell et al., *Evaluation of the Northern Ireland Youth Conference Service* (Belfast, 2005).

[89] Gabrielle Maxwell et al., *Achieving Effective Outcomes in Youth Justice* (New Zealand, 2004).

[90] Myra N. Blyth, "Introduction to the Section on Restorative Justice (OJLR-Jan 2016)," *Oxford Journal of Law and Religion*, 2016.

[91] Suzuki, M. and Jenkins, T. (2020), *Op.Cit.*

[92] *Ibid.*

perpetrator, turning into knowing and having a good attitude towards the perpetrator. The sincerity of the perpetrator's apology reduces or eliminates the perpetrator's guilt toward the victim and can increase the perpetrator's confidence to be able to interact well in the social life of the community.

Restitution

The form of victim recovery through the provision of restitution by the perpetrator of the crime consists of 2 (two) ways, namely: 1. Restitution to the victim from the judge's decision; 2. Restitution to the victim before the judge's decision. Restitution to victims through a judge's decision is based on cases of rape against children that occurred in Aceh.[93] The judge's decision to punish the perpetrators of the crime to pay restitution to the victim as much as Rp.15,000,000 (Fifteen Million Rupiah) which is based on physical and mental losses due to trauma experienced by the victim. In addition, the judge also sentenced the perpetrator to 150 lashes.

Criminal law in Indonesia consists of national criminal law and local criminal law. The local criminal law that applies in the province of Aceh is the *Jinayat* Law (*Qanun Jinayat*), which was adopted from Islamic law[94], which regulates caning[95]. The restitution decision is based on the *qanun jinayat*. Restitution Islamic criminal law recognizes apologies, forgiveness (*af'wu*), and the provision of restitution (*diyat*).[96]

Furthermore, the provision of restitution before the judge's decision occurs in cases of traffic accidents.[97] In the first case, the form of restitution, in this case, is the provision of compensation for mourning money and medical expenses for the victim as well as

[93] Decision Number 6/JN/2020/MS.Cag.

[94] Nurrohman Syarif, "Transformation and Reformation of Islamic Criminal Law; The Study on Aceh Qānūn Jināyah and Its Impact To Woman and Non-Muslim," *Jurnal Dinamika Hukum* 19, no. 2 (2019).

[95] Faradilla Fadlia et al., "DETERRING OR ENTERTAINING? Can the Caning Punishment Execution in Aceh Meet Its Objective?," *Mazahib Jurnal Pemikiran Hukum Islam* 19, no. 1 (2020).

[96] Zainuddin Zainuddin, "RESTORATIVE JUSTICE CONCEPT ON JARIMAH QISHAS IN ISLAMIC CRIMINAL LAW," *Jurnal Dinamika Hukum* 17, no. 3 (2017).

[97] Decision Number 35/PID.SUS/2017/PT JAP dan Decision Number 6/Pid.B/2019/PN Snn.

transportation costs to the hospital. The total restitution given to the victim is Rp.126,000,000 (one hundred twenty-six million rupiah). In the second case, the form of restitution is compensation for ties of love of Rp.100,000,000 (one hundred million rupiah) was given to the victim's parents because the victim died.

In cases of abuse, especially violence against children.[98] Restitution is given before the court's decision. The form of restitution is to provide assistance for medical expenses to the victim of Rp.3,000,000 (three million rupiah). Victims and perpetrators are categories of children who attend the same school. Victims and perpetrators and their families reconcile. Judges use restorative justice considerations to ease the punishment for the perpetrators.

In cases of embezzlement[99], judges use restorative justice considerations in their decisions; without a restorative justice program, there is no peace between the victim and the perpetrator. Restorative justice considerations are used as a basis for mitigating the judge's decision with a sentence of 10 months. The perpetrator is willing to pay for the victim's loss, but the victim refuses. The form of restitution in cases of fraud[100] and theft cases[101] is to return objects (motorcycles) belonging to the victim. Both cases use restorative justice programs. The victim, the perpetrator, and their family agreed to make peace. Judges use restorative justice considerations to lighten the punishment of the perpetrator.

The description shows that restitution is something that can no longer be ignored, even though some people think that it is not the main thing in restorative justice.

Harmonization

Harmonization of relations between victims and perpetrators and their families is one form of recovery for victims and perpetrators. In cases of physical violence in the household, the husband abuses his wife.[102] Restoration takes the shape of reconciling spousal ties and preserving domestic unity amid tranquility sought by the victim (wife)

[98] Decision Number 32/Pid.Sus/2019/PN Pwr.
[99] Decision Number 508/Pid.B/2015/PN Gpr.
[100] Decision Number 76/Pid.B/2018/PN Pwr
[101]Decision Number 7/Pid.B/2014/PN Kbj.
[102] Decision Number 21/Pid.Sus/2015/PN.Mtr., 32-K/PM II-08/AD/II/2014, 39/Pid.Sus/2016/PN. Mjn.

and perpetrator (husband). The judge opts for restorative justice, eschewing imprisonment for the wrongdoer, guided by Goodyer's skepticism that in cases of domestic violence, restorative justice may falter due to imbalanced power dynamics between spouses.[103] In these three instances, a notable power imbalance exists between the victim (wife) and perpetrator (husband). Economically, the wife is relies heavily on the husband, lacking employment and solely managing household duties. While the sincerity of forgiveness may be dubious, the author prioritizes the vital reconciliation of the marital relationship, which is crucial for the well-being of victims, perpetrators, and their children. Future measures are imperative to prevent the recurrence of such actions, considering the alarming 3,221 reported cases of spousal violence from the National Commission on Violence Against Women.[104]

The resolution of child abuse[105] cases involves achieving reconciliation between the victim and the perpetrator fostering restored relationships within their families. Restorative justice serves as the foundation for judges to impose probationary sentences, emphasizing recovery. Through methods like reconciliation or sincere apologies, social relationships can be restored, providing protection for victims and aiding in the healing process.[106] This approach alleviates inner wounds, allowing both victims and perpetrators to find relief. Judges consider restorative justice principles, providing grounds to reduce sentences for offenders.

The community uses restorative justice for sustainable peace and harmony to eliminate crime and criminal thinking in society.[107] Restorative justice plays a role in rapprochement and peace.[108]

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[103] Goodyer, H. (2003), *Op.Cit.*

[104] Friski Riana and Amirullah, "Komnas Perempuan: Ada 299.911 Kasus Kekerasan Terhadap Perempuan Sepanjang 2020," *Tempo.Co.*

[105] Decision Number 135/Pid.Sus/2014/PN Byl

[106] Decision Number 41/Pid.B/2019/PN Tgl, 168/Pid.B/2019/PN Tlg, 28/Pid.B/2016/PN Mkd dan Decision Number 80/Pid.B/2017/PN Kln

[107] Sohail Amjad and Nagina Riaz, "The Concept and Scope of Restorative Justice System: Explaining History and Development of the System for the Immediate Need of Society," *International Journal of Law* 5, no. 5 (September 5, 2019): 100–104.

[108] Emanuela Biffi, *The Potential of Restorative Justice in Cases of Violent Extremism and Terrorism* (Luxembourg, 2021).

Restorative justice comes from traditional values in traditional societies such as the value of balance, harmonization, and peace in society.[109]

In cases of sexual intercourse with children[110], the form of recovery is that the perpetrator marries the victim because she is pregnant and gives birth to a child. The perpetrator is responsible and recovers the victim. In cases where marriage is both legal and community-sanctioned, the judge's decision to release the defendant without a sentence aims to spare the victim (wife) from further harm through the legal process.

For road-related disruptions, the judge employs restorative justice, advocating reconciliation and sincere forgiveness between victims and perpetrators, using it as the foundation for a probationary sentence.[111]

In instances of insult or defamation, restorative justice considerations guide the judge, aspiring for relationship harmonization despite the absence of a formal program. The judge, hopeful that probation will foster such reconciliation, underscores the nuanced role of restorative justice in judicial decisions.[112]

Recovery from Psychological Trauma

In Indonesian courts, addressing psychological trauma is a vital aspect of victim recovery, particularly pronounced in sexual crime cases with profound implications for life expectancy.[113] Focusing on a case involving sexual intercourse with a child, the judge rejects the prosecutor's indictment, citing restorative justice[114], Despite insincere forgiveness, peace is established between victim, perpetrator, and their family. Withdrawal of the complaint, deemed in the victim's best interest, protects against psychological trauma. However, the legal system requires the victim to recount the immoral acts in court,

[109] Eva Achjani Zulfa, "Keadilan Restoratif Dan Revitalisasi Lembaga Adat Di Indonesia," *Jurnal Kriminologi Indonesia* 6, no. II (2010).

[110] Decision Number 263/Pid.Sus/2015/PN.Pal.

[111] Decision Number 211/Pid.Sus/2016/PN Kln.

[112] Decision Number 2530/Pid.B/2019/PN Mdn dan Decision Number 1/PID/2016/PT PAL. serta Decision Number Decision Number 10/Pid.B/2013/PN.Slk.

[113] Lloyd, A. and Borrill, J. (2020), *Op.Cit.*

[114] Decision Number 05/Pid-B/2011/PN.Nbe dan Decision Number 905 K/PID.SUS/2014.

necessitating a more comprehensive approach for long-term psychological recovery, recognizing the time it takes for victims to heal fully.

The case, in the short term, may help victims of psychological trauma, but it is very unlikely in the long term. Victims need a more comprehensive recovery, even if it is difficult. Recovery of victims of sexual violence crimes is much more difficult than property crimes[115], and even becomes a serious social problem[116], as it is increasing substantially all over the world[117], including in Indonesia. According to data from the National Commission on Violence Against Women, sexual violence against women in Indonesia in 2020 was recorded at 4,989 cases.[118]

Disparity in Sentencing

The use of restorative justice in judicial decisions has resulted in sentencing disparities, with 11 (eleven) imprisonment verdicts, 6 (six) probations, 2 (two) acquittals, 2 (two) deemed unacceptable demands, 1 (one) unacceptable charges, 1 (one) imprisonment with fines, 1 (one) fine, and 1 (one) restitution decision. Judges grapple with complexities, factoring like the offense, motives, mental states, methods, backgrounds, societal justice, and victim forgiveness. Varied legal knowledge levels among judges exacerbate the issue, compounded by the absence of sentencing guidelines in Indonesian courts. The disparity, as per Zerh, extends beyond forgiveness, emphasizing victim needs, perpetrator accountability, and multi-party involvement.[119] The

[115] Wasserman, E. and Ellis, C.A. (2010). *Op.Cit.*

[116] Ulrich Orth, "The Effects of Legal Involvement on Crime Victims' Psychological Adjustment," in *Social Psychology of Punishment of Crime*, 2009.

[117] Albert J. Reiss and Jeffrey A. Roth, *Understanding and Preventing Violence*, vol. 1 (Washington, D.C.: National Academies Press, 1993).

[118] Komnas Perempuan. Info Grafis Catahu 2020: Catatan Tahunan Kekerasan terhadap Perempuan Tahun 2019. https://komnasperempuan.go.id/download-file/323. Accessed 22 June 2021.

[119] Fernandez, M. (2010). Restorative Justice for Domestic Violence Victims an Integrated Approach to Their Hunger for Healing. Maryland United States: Published by Lexington Books A division of Rowman & Littlefield Publishers. Inc. A wholly owned subsidiary of The Rowman & Littlefield Publishing Group, Inc. p. 12, http://www.lexingtonbooks.com/. See Also Zehr, H. and Gohar, A. (2003). The Little Book of Restorative Justice. Pennsylvania USA: Published by Good Books, Intercourse. (2003). p. 21, *www.goodbooks.com*. Accessed 19 June 2021.

challenge lies in integrating restorative justice into Indonesia's retributive court system. This disparity was born because of the freedom of judges in interpreting the law[120], as happened in US courts before the 1984 Sentencing Reform Act (SRA) guidelines.[121] The limitations are on the constitution and laws (written law), still, of course written law always requires interpretation.[122] In law enforcement's dark room, judges' integrity and competence are crucial, unlike the common law system's binding force of precedent, upheld in the United States, South Africa, and England. This principle, prioritizing legal certainty over justice and truth, renders the law rigid, presenting a fundamental challenge to flexibility in legal interpretation.[123] Courts in certain cases have ruled it out, such as in Warren and Pennsylvania.[124] Stevens concludes that our habits favor obedience over deviating from precedent.[125] Should the judge follow precedent, when he knows that there is a mistake there. It was something common sense couldn't possibly accept, even for reasons of obedience and certainty. The author's view is that the principle of stare decisis is not a solution for Indonesian judges to avoid disparities. In Poland, the concept of clarifying the law to create uniformity in the application of business law[126] or the set of interpretive directives proposed by Zieliński[127] is worth considering. Judges' oaths in Indonesia are subject to the constitution and laws, not precedent. In addition, judges must follow the development of a flexible community culture.

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[120] Heru Sugiyono and Robinsar Marbun, "Disparity of Judges' Decisions in Civil Dispute," *International Journal of Business, Economics and Law* 20, no. 5 (2019).

[121] Crystal S. Yang, "Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing," *Journal of Legal Studies* 44, no. 1 (2015).

[122] Judith N. Shklar, "Law's Empire. By Ronald Dworkin (Cambridge: Harvard University Press, 1986. 470p. $20.00).," *American Political Science Review* 81, no. 1 (1987).

[123] Kuzenski, W.F. (1922). 'Stare Decisis'. Marquette Law Review. 6(2). pp. 65-70, http://scholarship.law.marquette.edu/mulr/vol6/iss2/1. Accessed 22 June 2021.

[124] Cooper, C.J. (1988). 'Stare Decisis: Precedent and Principle in Constitutional Adjudication'. Cornell Law Review. 73(2). pp. 401-410. http://scholarship.law.cornell.edu/clr/vol73/iss2/21. Accessed 22 June 2021.

[125] Cooper, C.J. (1988), n131.

[126] Halina Sierocka, "Issues in Translating, Interpreting and Teaching Legal Languages and Legal Communication," *International Journal for the Semiotics of Law*, 2023.

[127] Zieliński, M. (2002). Wykładnia Prawa. Zasady. Reguły. Wskazówki. Warszawa: LexisNexis. p. 79

The Indonesian Supreme Court strives for legal uniformity through cassation, yet not all criminal cases reach this stage, leading to divergent opinions among Supreme Court judges. A key issue, per the researcher, is the absence of regulations governing restorative justice beyond the court's jurisdiction. Existing rules only cover its implementation within the court's authority, resulting in a lack of consensus on cases suitable for restorative justice based on individual judges' considerations, contributing to a shortage of unified perspectives.

Recommendations

Restorative justice in Indonesian courts manifests in two forms: first, under the court's jurisdiction, restricted to minor, female, and juvenile crimes, as well as narcotics offenses; second, outside the court's authority, acknowledged through judicial considerations. Establishing regulations is essential to guide judges, focusing on the latter. Inconsistencies in restorative justice application by Indonesian judges pose a challenge, compromising court credibility. Urgent solutions include harmonizing punishments through two types of court decisions: rejecting the indictment and refusing public prosecutor demands, thus addressing disparities and fostering a cohesive approach to restorative justice beyond the court's immediate jurisdiction.

The conceptual framework revolves around integrating restorative justice seamlessly into the dual stages of case examination in Indonesian courts: the initial examination and the main case examination. Initially, formal requirements, chiefly the prosecutor's indictment, are subject to restorative justice interventions. It involves a written peace agreement and a victim-issued certificate of complaint revocation. Presented to the judge, these documents prompt an initial (interrupted) decision, declaring the indictment unacceptable. With the victim's complaint annulled, formal case examination prerequisites are invalidated. During the main case examination, restorative justice integration unfolds through a peace agreement and a complaint withdrawal certificate. The panel of judges, appraising these documents, issues a final decision, deeming the public prosecutor's claim unacceptable. Here, the judge doesn't delve into the perpetrator's actions but scrutinizes the prosecutor's obligations and authorities. The peace agreement and victim's certificate effectively nullify the

prosecutor's mandate, culminating in a nuanced application of restorative justice within the established court procedures.

The peace of the victim/perpetrator is vital in implementing the two forms of decision according to the stages of the case examination. Both forms of decision are accepted by victims and perpetrators, families and communities. Victims and their families and communities accept because they want the examination of the case in a retributive system not to be continued. The perpetrators, their families, and the community accept because the two forms of decisions support the implementation of the reform of the perpetrators by rebuilding their morals and social feelings[128], not by humiliating, demeaning the perpetrators, and damaging their social bonds[129]. The two forms of decision do not determine the actions and mistakes of the perpetrators. It is crucial to reform the perpetrators so that they are not excessively burdened with blame.

Decisions in the form of indictments cannot be accepted, and decisions in the form of demands by the public prosecutor are unacceptable. Both forms of decisions are relevant to integrating restorative justice with the retributive system if the restorative justice program achieves peace between the victim and the perpetrator. It is different when the restorative justice program does not produce peace between the victim and the perpetrator. Both forms of judgment cannot be applied. Parallel integration is based on the basic principle that if the restorative achievement is high, the retributive application is low. However, if the accomplishment of restorative justice is low, the application of retributive is high. Guidelines related to this matter are needed so that judges can use these guidelines as the basis for parallel integration.

Conclusion

In essence, courts in Indonesia use a retributive system. Courts in Indonesia also use and recognize the implementation of restorative justice. Restorative justice is carried out within the official authority and outside the official authority. The values of restorative justice are very relevant to the cultural values of *gotong royong* in Indonesia. Judges must consider the cultural values of the community and the implementation

[128] Hermann, D.H.J. (2017), *Op.Cit.*
[129] Goodstein, J. and Aquino, K. (2010), *Op.Cit.*

of restorative justice in their decisions. The 25 (twenty-five) cases are the focus of the author's attention. The recovery of victims in these 25 (twenty-five) cases was achieved, although more comprehensive action is still needed. Courts in Indonesia have implemented parallel integration of restorative justice. However, the implementation of parallel integration has not been supported by adequate regulations, so disparities in punishment in parallel integration of restorative justice often occur. The stages of examining cases in Indonesian courts are generally 2 (two) stages, namely the initial examination stage (formal requirements in the form of an indictment by the public prosecutor) and the main examination stage (proof of the actions and mistakes of the perpetrator). The writer's offer of a solution regarding the disparity of punishment is in 2 (two) forms, namely (1) The decision in the form of an indictment cannot be accepted, and (2) The verdict in the form of a public prosecutor's claim cannot be accepted. The two forms of decision will not result in disparity in sentencing. Both forms of decisions are very relevant and support the realization of values and restorative justice programs.

Bibliography

Amjad, S. and Riaz, N. (2019). The Concept and Scope of Restorative Justice System: Explaining History and Development of the System for the Immediate Need of Society. International Journal of Law. 5(5). pp. 100-104, www.lawjournals.org. Accessed 19 June 2021.

Aertson, I., Peters, T. (1998). Mediation and Restorative Justice in Belgium. *European Journal on Criminal Policy and Research*. (6). 507–525. https://doi.org/10.1023/A:1008644529468.

Albrecht, B. (2010). Multicultural Challenges for Restorative Justice: Mediators Experiences from Norway and Finland. *Journal of Scandinavian Studies in Criminology and Crime Prevention*. (11). pp. 3–24, http://dx.doi.org/10.1080/14043851003616204.

Bakhtiar, H. S., (2015). Penerapan Sanksi Pidana dan Tindakan Terhadap Anak Menurut UU No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Universitas Muslim Indonesia*.

Bakhtiar, H. S., Sofyan, A. M., & Haeranah, H. (2019). Criminal Justice System of Children in Indonesia. *IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume*, *24*, 01-07.

Batley, M. et al. (2005). Beyond Retribution – Prospects for Restorative Justice in South Africa. Iss Monograph Series. Institute for Security Studies. *South Africa: Pretoria.* No. 111. 128. https://media.africaportal.org/documents/Mono111.pdf. Accessed 19 June 2021.

Biff, E. (2021). The Potential of Restorative Justice in Cases of Violent Extremism and Terrorism. European Commission documents. Luxembourg: Publications Office of the European Union. https://europa.eu/european-union/index_en. Accessed 19 June 2021.

Bintari, P.N., and Darmawan, C. (2016). Peran Pemuda Sebagai Penerus Tradisi Sambatan Dalam Rangka Pembentukan Karakter Gotong Royong. *JPIS, Jurnal Pendidikan Ilmu Sosial.* 25(1). pp. 57-76, https://doi.org/10.17509/jpis.v25i1.3670.

Blyth, M.N. (2016). Introduction to the Section on Restorative Justice. *Oxford Journal of Law and Religion.* 5(1). (February 2016). pp. 49–53, https://doi.org/10.1093/ojlr/rww003.

Braithwaite, J. (2002). Setting Standards for Restorative Justice. *British Journal of Criminology*. 42(3). pp. 563–577, https://doi.org/10.1093/bjc/42.3.563.

Braithwaite, J. (2003). 'Principles of Restorative Justice'. Edited by Hirsch, A.V., Roberts, JV., Bottoms, A., Roach, K. and Schiff, M. (2003) 'Restorative Justice and Criminal Justice Competing or Reconcilable Paradigms?' Oregon: Hart Publishing Oxford and Portland.

Braithwaite, J. (2002). Restorative Justice & Responsive Regulation. New York: Oxford University Press.

Braithwaite, J. (2011). Partial Truth and Reconciliation in the Longue Durée. *Contemporary Social Science: Journal of the Academy of Social Sciences*. 6 (1). pp. 129-146, http://dx.doi.org/10.1080/17450144.2010.534498

Bowen, H. and Boyack, J. (2003). Adult Restorative Justice in New Zealand/Aotearoa. Paper presented at Building a Global Alliance for Restorative Practices and Family Empowerment, *Fourth International Conference on Conferencing, Circles and other Restorative Practices*, set for 28-30 (Augustus 2003). Center for Justice and Reconciliation. pp. 120-131.

Bowen, J. R. (1986). On the Political Construction of Tradition: Gotong Royong in Indonesia. The Journal of Asian Studies, 45(3), pp. 545–561, https://doi.org/10.2307/2056530

Campbell, C., Devlin, R., O'Mahony, D., Jackson, J.D.J., Corrigan, T. and McEvoy, K. (2006). Evaluation of the Northern Ireland Youth Conference Service. NIO Research and Statistical Series. Report No. 12. Belfast. Northern Ireland Office, Statistics and Research Branch

Clancy, K., Bartolomeo, J., Richardson, D. and Wellford, C. (1981). Sentence Decisionmaking: The Logic of Sentence Decisions and the Extent and Sources of Sentence Disparity. *J. Crim. L. & Criminology*. Northwestern: University Pritzker School of Law. 72(2). pp. 524-554. https://doi.org/10.2307/1143005.

Crawford, A. and Newburn, T. (2003). *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Devon: Willan Publishing.

Cooper, C.J. (1988). 'Stare Decisis: Precedent and Principle in Constitutional Adjudication'. Cornell Law Review. 73(2). pp. 401-

410. http://scholarship.law.cornell.edu/clr/vol73/iss2/21. Accessed 22 June 2021.

Daly, K., & Hayes, H. (2001). Restorative Justice and Conferencing in Australia. Trends and Issues in Crime and Criminal Justice, *Australian Institute of Criminology*, 186(1-6). https://www.aic.gov.au/sites/default/files/2020-05/tandi186.pdf, Accessed 21 June 2021.

Daly, K. (2002). Restorative Justice: The Real Story. *Punishment and Society*. (4). pp. 55–79, https://doi.org/10.1177%2F14624740222228464.

Daly, K. (2003). Mind the Gap: Restorative Justice in Theory and Practice. Edited by Hirsch, A.V., Roberts, J.V., Bottoms, A., Roach, K. and Schiff, M. (2003). Restorative Justice and Criminal Justice Competing or Reconcilable Paradigms?. Oregon: Hart Publishing Oxford and Portland.

Dignan, J. and Marsh, P. (2001). Restorative Justice and Family Group Conferences in England: Current State and Future Prospects

Dignan, J. (2005). Understanding Victims and Restorative Justice. England: Open University Press.

Dworkin, R. (1986). Law's Empire. Cambridge: Harvard University Press.

Edwards, I. (2012). Sentencing Councils and Victims. *The Modern Law Review*. 75(3). pp. 324-346. https://www.jstor.org/stable/41682854.

Edgar, K., Newell, T., and James, E. (2006). *Restorative Justice in Prisons A Guide to Making it Happen*. Waterside Press Domurn: Winchester.

Frankel, M.E. (1973). *Criminal Sentences: Law Without Order*. New York: Hill and Wang.

Fadlia, F, Ramadani, I, Susilawati, N and Sari, N. (2020). Deterring Or Entertaining?, Can the Punishment Execution in Aceh Meet its Objective?. JPHI. Muzahib. 19(1). Pp. 41-78. http://doi.org/10.21093/mj.v19i1.2055.

Fernandez, M. (2010). Restorative Justice for Domestic Violence Victims an Integrated Approach to Their Hunger for Healing. Maryland United States: Published by Lexington Books A division of Rowman & Littlefield Publishers. Inc. A wholly owned subsidiary of The Rowman & Littlefield Publishing Group, Inc. p. 12, http://www.lexingtonbooks.com/.

Gerkin, P., Walsh, J., Kuilema, J. and Borton, I. (2017). Implementing Restorative Justice Under the Retributive Paradigm: A Pilot Program Case Study. *SAGE Open*. 7(1). 1-10. https://doi.org/10.1177/2158244017691562.

Geertz, C. (1983). *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: NY Basic.

Gibbs, P and Kirby, A. (2014). Judged by Peers? The Diversity of Lay Magistrates in England and Wales. https://howardleague.org/wp-content/uploads/2016/04/HLWP_6_2014.pdf, Accessed 19 June 2021.

Goodyer, H. (2003). Rethinking justice in New Zealand. A Critical Assessment of Restorative Justice. Canterbury Law Review 179. http://www.nzlii.org/nz/journals/CanterLawRw/2003/6.html. Accessed 19 June 2021.

Goodstein, J. and Aquino, K. (2010). And Restorative Justice for all: Redemption, Forgiveness, and Reintegration in Organizations. *Journal of Organizational Behavior*. (31). pp. 624–628. http://dx.doi.org/10.1002/job.632

Hanson, R.F., Sawyer, G.K., Begle, A.M., and Hubel, G.S. (2010). The Impact of Crime Victimization on Quality of Life. J Trauma Stress, (April 2010). 23(2). pp. 189–197. https://doi:10.1002/jts.20508.

Hermann, D.H.J. (2017). Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice. *Seattle Journal for Social Justice Seattle Journal for Social Justice*. 6(1). pp. 71-103. https://digitalcommons.law.seattleu.edu/sjsj/vol16/iss1/11.

Hermawan, M.S. and Loo, M.K. (2019). The Construction of Kekeluargaan as an Indonesia's Organizational Culture, *Jurnal Humaniora Universitas Gadjah Mada*, Vol. 31, No. 1. pp. 1-13, https://doi.org/10.22146/jh.42851.

Holler, T.J. (2015). Instituting Restoration: Establishing and Sustaining a Restorative Model of Justice. Dissertation, *Indiana University of Pennsylvania*. p 17. https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.840.8554&rep=rep1&type=pdf. Accessed 19 June 2021.

Hofstede, G., Hofstede, G.J. and Minkov, M. (2010). Cultures and Organizations Software of the Mind Intercultural Cooperation and Its Importance for Survival. McGraw-Hill eBooks. https://e-edu.nbu.bg/mod/resource/view.php?id=557036. Accessed 22 June 2021.

Hopkins, B. (2015). From Restorative Justice to Restorative Culture. Revista de Asistenţă Socială. XIV (4). pp. 19-34.

Irawanto, D.W. (2009). An Analysis of National Culture and Leadership Practices in Indonesia, Journal of Diversity Management. 4(2). pp. 41-48. https://doi.org/10.19030/jdm.v4i2.4957.

Irawanto, D.W., Ramsey, P.L. and Ryan, J.C. (2011). Tailoring Leadership Theory to Indonesian Culture. Global Business Review 12(3). pp. 355–366, https://doi.org/10.1177%2F097215091101200301.

Kawalek, A., Edwards, M. dan Best, D. (2019). Recovery and Restorative Justice: Systems for Generating Social Justice. Chapter 7 (January 2019). https://www.researchgate.net/publication/333311217_Recovery_and_Restorative_Justice_systems_for_generating_social_justice. Accessed 19 June 2021

Khasanah, N. (2013). Pengejawantahan Nilai-Nilai dalam Pengembangan Budaya Gotong Royong di Era Digital. *Edukasi: Jurnal Pendidikan Islam. STAI Muhammadiyah Tulungagung*. 1(1). pp. 92–108.

Kuzenski, W.F. (1922). 'Stare Decisis'. Marquette Law Review. 6(2). pp. 65-70, http://scholarship.law.marquette.edu/mulr/vol6/iss2/1. Accessed 22 June 2021.

Komnas Perempuan. Info Grafis Catahu 2020: Catatan Tahunan Kekerasan terhadap Perempuan Tahun 2019. https://komnasperempuan.go.id/download-file/323. Accessed 22 June 2021

Larsen, J. J. (2014). Restorative Justice in the Australian Criminal Justice System. *Canberra Australia: Australian Institute of Criminology*. https://www.aic.gov.au/sites/default/files/2020-05/rpp127.pdf, Accessed 21 June 2021.

Levin, M. (2005). Restorative Justice in Texas: Past, Present and Future. Texas: Texas Public Policy Foundation. (October 2005). p 5-7,

http://www.texaspolicy.com/pdf/2005-09-restorativejustice.pdf.

Lloyd, A. and Borrill, J. (2020). Examining the Effectiveness of Restorative Justice in Reducing Victims' Post-Traumatic Stress. Psychological Injury and Law. (13). pp. 77–89, https://doi.org/10.1007/s12207-019-09363-9;

Maxwell, G., Kingi, V., Robertson, J., Morris, A., Cunningham, C. and Lash, B. (2004). Achieving Effective Outcomes in Youth Justice: Final Report. Wellington New Zealand: New Zealand Ministry of Social Development.

McCart, M.R., Smith, D.W. and Sawyer, G.K. (2010). Help Seeking Among Victims of Crime: A Review of the Empirical Literature. J Trauma Stress. 23(2). pp. 198–206. https://doi:10.1002/jts.20509.

McMahan, C.L. (2019). Juvenile Justice in Oregon: Balanced and Restorative Justice in Action. *Juvenile and Family Court Journal*. 70(1). p.59-72. https://doi.org/10.1111/jfcj.12126.

Maglione, G. (2020). 'Restorative Justice Policy in Context: A Legal-Archaeological Analysis'. Int J Semiot Law. Springer Nature. https://doi.org/10.1007/s11196-020-09747-0.

Morris, A. and Maxwell, G. (2001). Conferencing, Mediation and Circles. Portland Oregon: Oxford.

Ness, D.W.V. and Strong, K.H. (2015). *Restoring Justice: An Introduction to Restorative Justice*. Fifth Edition, Waltham USA: Anderson Publishing is an Imprint of Elsevier.

Ness, D.W.V. and Strong, K.H. (2010). Restoring Justice: An Introduction to Restorative Justice. Fourth Edition, Matthew Bender & Company, Inc., a member of the LexisNexis Group New Providence.

Nugroho, W. (2012). Disparitas Hukuman Dalam Perkara Pidana Pencurian Dengan Pemberatan. 5(3). (Desember 2012), pp. 261-282. http://dx.doi.org/10.29123/jy.v5i3

Nur, R., & Bakhtiar, H. S. (2020). The Imposition of Sanctions for Children. *Hasanuddin Law Review*, *6*(2), 165-171.

Nur, R., & Bakhtiar, H. S. (2017). Model of Child Prisoners Counseling (A Comparative Study in Japan, Malaysia and Indonesia. *JL Pol'y & Globalization*, *68*, 34.

Ostrom, CW., Ostrom, B.J. and Kleiman, M. (2004). 'Judges and Discrimination: Assessing the Theory and Practice of Criminal Sentencing'. Document Research, (February 2004). https://www.ojp.gov/pdffiles1/nij/grants/204024.pdf. Accessed 19 June 2021.

Orth, U. (2009). The Effects of Legal Involvement on Crime Victims' Psychological Adjustment. In Oswald, M. E., Bieneck, S. and Heinemann, J.H. (Eds.). Social Psychology of Punishment of Crime. pp. 427-442. Chichester, UK: Wiley.

Presser, L and Voorhis, P.V. (2002). Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs. *Crime & Delinquency*. 48(1). p. 162-188. https://doi.org/10.1177%2F0011128702048001007.

Pranowo, M.B. (2010). *Multidimensi Ketahanan Nasional*. Cetakan 1. Jakarta: Pustaka Alvabet.

Piszcz, A. and Sierocka, H. (2020). The Role of Culture in Legal Languages, Legal Interpretation and Legal Translation. Int J Semiot Law. 33(3). (September 2020). pp. 533–542. https://doi.org/10.1007/s11196-020-09760-3

Rahayua, S., Ludigdo, U., Irianto, G. and Nurkholis. (2015). Budgeting of School Operational Assistance Fund Based on the Value of Gotong Royong. *Social and Behavioral Sciences*. (211). pp. 364–369, https://doi.org/10.1016/j.sbspro.2015.11.047.

Reiss, A. J., and Roth, J. A. (1993). Understanding and Preventing Violence. Washington DC: National Academy Press

Riany, Y.E., Meredith, P. and Cuskelly, M. (2017). Understanding the Influence of Traditional Cultural Values on Indonesian Parenting. *Marriage & Family Review*, 53(3). pp. 207-226, https://doi.org/10.1080/01494929.2016.1157561.

Rigg, J., Allott, A., Harrison, R., & Kratz, U. (1999). Understanding Languages of Modernization: a Southeast Asian View. Modern Asian Studies, Cambridge University Press, 33(3), pp. 581- 602, https://doi.org/10.1017/S0026749X99003480.

Richards, K. (2010). Police-Referred Restorative Justice for Juveniles in Australia. Trends and Issues in Crime and Criminal Justice. *Institute of Criminology: Australian*. 398 (1-8). https://www.aic.gov.au/sites/default/files/2020-05/tandi398.pdf. Accessed 21 June 2021.

Rosenberg, M. L., and Fenley, M. A. (1991). Violence in America: A Public Health Approach'. New York: Oxford University Press.

Samuels, A. (2020). The Sentencing Guidelines: Reflection and Reform. *The Journal of Criminal Law*. 84(3). pp. 246–248, https://doi.org/10.1177%2F0022018320926469.

Shapland, J. (2016). Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful?. *Oxford Journal of Law and Religion*. 5(1). pp. 94–112, https://doi.org/10.1093/ojlr/rwv038.

Shapland, J., Robinson, G. and Sorsby, A. (2011). Restorative Justice in Practice Evaluating what Works for Victims and Offenders. Routledge 2 Park Square, Milton Park, Abingdon, Oxon.

Sherman, L.W., Strang, H., Angel, C., Woods, D., Barnes, G.C., Bennett, S. and Inkpen, N. (2005). Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials. Journal of Experimental Criminology. 1(3). pp. 367–395, https://doi.org/10.1007/s11292-005-8126-y.

Simarmata, N., Yuniarti, K.W., Riyono, B. and Patria, B. (2020). Gotong Royong in Indonesian History. Proceeding of the 10th International Conference of Indigenous and Cultural Psychology 2019, Digital Press Social Sciences and Humanities 5: 00006 (2020), https://doi.org/10.29037/digitalpress.45341.

Skelton, A. and Frank, C. (2003) Conferencing in South Africa: Returning to Our Future.

Stuart, B. (1994*). Sentencing Circles: Purpose and Impact*. National Canadian Bar Association.

Smith, A. (2013). Mainstreaming Restorative Justice in South Australia's Criminal Justice System: A Response to the Over-Representation of Indigenous Offenders'. *Anu eView*. Canberra: The Australian National University. The ANU Undergraduate Research Journal. (5). pp. 169-185. http://doi.org/10.22459/AURJ.05.2013.

Syarif, N. (2019). Transformation and Reformation of Islamic Criminal Law; The Study on Aceh Qanun Jinayat and Its Impact to Woman and Non-Muslim. Jurnal Dinamika Hukum. 19(2). pp. 407-428. http://dx.doi.org/10.20884/1.jdh.2019.19.2.2523.

Suzuki, M. and Jenkins, T. (2020). The Role of (Self-) Forgiveness in Restorative Justice: Linking Restorative Justice to Desistance. European Journal of Criminology. pp. 1–18, https://doi.org/10.1177/1477370819895959.

Sugiyono, H. and Marbun, R. (2019). Disparity of Judges Decisions in Civil Dispute. International Journal of Business, Economics and Law. 20(5). pp. 127-134.

Tempo. (2021). 'Komnas Perempuan: Ada 299.911 Kasus Kekerasan terhadap Perempuan Sepanjang 2020'. https://nasional.tempo.co/read/1439271/komnas-perempuan-ada-299-911-kasus-kekerasan-terhadap-perempuan-sepanjang-2020/full&view=ok. Accessed 22 June 2021.

Umbreit, M.S. (2001). *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research*. San Francisco: Jossey-Bass.

Wasserman, E. and Ellis, C.A. (2010). Impact of Crime on Victims. Chapter 6. (March 2010). National Victim Assistance Academy Track 1: Foundation-Level Training. https://ce4less.com/Tests/Materials/E075Materials.pdf. Accessed 29 June 2021.

Wormer, K.V. (2003). Restorative Justice: A Model for Social Work Practice with Families. Families in Society: *The Journal of Contemporary Social Services*, 84(3), pp. 441–448, http://dx.doi.org/10.1606/1044-3894.127.

Yang, C.S. (2015). Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing'. The Journal of Legal Studies. 44(1). pp. 75-111. https://doi.org/10.1086/680989.

Zainuddin. (2017). Restorative Justice Concept on Jarimah Qishas in Islamic Criminal Law. Jurnal Dinamika Hukum. 17(3). (September 2017). pp. 335-341. http://dx.doi.org/10.20884/1.jdh.2017.17.3.826.

Zernova, M. (2007). Restorative Justice Ideals and Realities. England: Ashgate Publishing Limited.

Zehr, H. (2008). Doing Justice, Healing Trauma - The Role of Restorative Justice in Peacebuilding. Peace Prints: South Asian Journal of Peacebuilding. 1(1).

Zehr, H. and Gohar, A. (2003). The Little Book of Restorative Justice. Pennsylvania USA: Published by Good Books, Intercourse. (2003). p. 21, *www.goodbooks.com*. Accessed 19 June 2021.

Zieliński, M. (2002). Wykładnia Prawa. Zasady. Reguły. Wskazówki. Warszawa: LexisNexis.

Zulfa, E.A. (2020). Implementation of Restorative Justice Principles in Indonesia: A Review. *International Journal of Science and Society*. 2(2). 317-327. https://doi.org/10.200609/ijsoc.v2i2.161.

Zulfa, E.A. (2010). Keadilan Restoratif dan Revitalisasi Lembaga Adat Di Indonesia. Jurnal Kriminologi Indonesia. 6(II). (Agustus 2010). pp. 182-203. http://dx.doi.org/10.15742/ilrev.v1n2.81