

Integration of Investigators as Mediators in Realizing the Proportionality of Restorative Justice as a Right

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Abstract

Restorative justice has developed as an alternative paradigm in the criminal justice system, emphasizing an approach that prioritizes dialogue and restoration of relationships between victims, perpetrators, and society. This article aims to explore the role of investigators as mediators in realizing the proportionality of restorative justice as a right, taking into account legal, social, and ethical aspects. This study uses a normative juridical approach with a qualitative analysis method, combining literature studies, legal document reviews, and in-depth interviews with legal practitioners and academics. The results of the study show that investigators have a strategic role in integrating the principles of restorative justice through balanced mediation, based on the principle of proportionality. In this context, investigators are required to understand the values of restorative justice, facilitate constructive dialogue, and ensure the protection of the rights of all parties involved. However, the challenges faced include regulatory limitations, institutional resistance, and inadequate mediation skills. To address these challenges, special training for investigators, strengthening regulatory frameworks that support restorative justice, and cross-sectoral collaboration between law enforcement agencies, communities, and legal education institutions are needed. This study concludes that the integration of investigators as mediators not only increases the effectiveness of restorative justice, but also strengthens the legitimacy of the law as an instrument of human rights protection. These findings make an important contribution to the development of a more humane and inclusive criminal law policy, as well as expanding the academic discourse on restorative justice in the context of Indonesian law.

Keywords: *Restorative Justice, Legal Proportionality, Investigator as Mediator.*

INTRODUCTION

Law has so far only been understood as rigid rules and has placed too much emphasis on the legal system aspect without seeing the connection between legal science and the problems that must be handled.(1) Tackling crime by inflicting suffering (punishment or criminal punishment) is the oldest method, as old as human civilization itself.(2) Law has so far only been understood as rigid rules and places too much emphasis on the legal system aspect without seeing the connection between legal science and the problems that must be handled. Investigators are police officers of the Republic of Indonesia or civil servants who are given special authority by law to conduct investigations.

Mediation is a method of resolving disputes through a negotiation process to reach an agreement between the parties with the assistance of a mediator. Integrating these two roles with the concept of restorative justice, it is important to see how they complement each other in an effort to realize a deeper and more sustainable conflict resolution. In the context of restorative justice, investigators have an important role in gathering facts and evidence that

will help understand the truth behind the conflict. Meanwhile, mediators can help facilitate the dialogue process between perpetrators and victims, encouraging them to reach a mutual agreement that can support the restoration and rebuilding of damaged relationships.

These two roles, although different, complement each other and contribute to law enforcement and restorative-based conflict resolution. Investigators as mediators can create a more holistic and effective approach to conflict resolution, placing victims, perpetrators, and communities at the center of the solution. This is in accordance with the principles of restorative justice, which emphasizes the restoration, repair, and rebuilding of damaged relationships, rather than simply imposing punishment.(3)

Given the scattered restorative justice regulations, the implementation of penal mediation is returned to each law enforcement agency. This is because the legal basis that is the reference for penal mediation is a regulation that is binding on the internal institution. There are no other laws/regulations that accommodate integrated penal mediation arrangements for law enforcement institutions. The discussion in this article will focus on the judicial environment, especially in resolving criminal cases.(4)

Traditionally, mediation is recognized as an Alternative Dispute Resolution method in the field of civil law, but over time, mediation has also been adapted into criminal cases, known as Penal Mediation. Penal Mediation can be applied in a number of specific criminal cases. The purpose of using mediation in resolving criminal cases is not only to avoid escalation of conflict between the perpetrator and the victim, but also to assist law enforcement in dealing with the backlog of case files.(5)

The criminal justice system is a legal structure administered by the government to address behavior that is considered to be disruptive, damaging, or detrimental to social welfare. The primary purpose of this system is to deter crime by punishing those found guilty. As Kadish, Schulhofer, Steiker, and Barkow point out, there are three basic elements to the criminal justice system: law enforcement, trial, and rehabilitation.(6)

Restorative Justice, or restorative justice, places victims, perpetrators, and communities at the center of the conflict resolution process. It aims to repair the negative impacts of the crime and rebuild damaged relationships. The RJ approach is more effective and humane in dealing with crime compared to the retributive legal system that focuses on punishment.(7) However, the concept of restorative justice itself does not seem to be fully understood comprehensively by law enforcers and the public in general.(8)

The resolution of cases through mediation is increasingly advanced because it has a strong foundation for law enforcers, thus creating changes in the local community to resolve their problems in this restorative manner.(9) In conflict situations, they focus on finding the truth and restoring balance in a responsible manner without alienating the individual from his or her social environment.(10) The criminal procedure and justice mechanism that focuses on punishment has been changed to a process of dialogue and mediation to create an agreement on the settlement of criminal cases that is fairer and more balanced for victims and perpetrators.(11)

By achieving restorative justice in a conflict handling carried out by investigators, it gives birth to rights and obligations for victims and perpetrators themselves to be followed up by investigators. The concept of integrating investigators as mediators in the legal system is a transformation from the traditional approach to law enforcement to a more holistic and restorative approach. Therefore, it is important to analyze the meaning and application of

restorative justice in the context of the criminal justice system. It can be said that the restorative justice approach is a dissolution of the discourse of criminal law and civil law because this approach prioritizes the "peace" process by conducting mediation.(12).

RESEARCH METHODOLOGY

This research is categorized into the type of research is a normative legal it is based on the issues and themes raised as a research topic: What is the meaning of Restorative Justice as a right of the parties and How to measure the proportionality of the Investigator as a Mediator in Realizing Restorative Justice. The research approach used is philosophical and analytics. The research focuses on the view of the rational, analytical, critical and philosophical. It ends with the conclusion that aims to generate new findings as answers from the subject matter that has been set. As well as will be analyzed with a descriptive-analytical method, namely by describing the laws and regulations that apply to the legal theory and practices of law enforcement positively related to the problem.(13)

DISCUSSIONS

Restorative Justice as a right of the parties

The emergence of an idea of restorative justice as a critique of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflicts.(14) Restorative justice according to Bagir Manan is a concept that originated from countries that use English, such as Canada, Australia, New Zealand, and England. By continuing to call it Restorative justice, it is hoped that the sense of language contained in the original language will immediately influence our mindset. (15) Restorative Justice or restorative justice is a form of approach related to efforts to resolve criminal conflicts as an answer to the problem of the criminal justice system which is considered unable to accommodate the aspirations of the parties to the case.(16) Meaning refers to the intended meaning of the speaker or the implied meaning in a word.

The significance of the meaning in a word or phrase lies in its ability to provide clarification and limitations, which allows the reader to understand and recognize the purpose of determining the meaning.(17) A correct understanding of the meaning of a word or phrase is a key element in effective communication. Without proper interpretation of the meaning, the message to be conveyed can be wrong or unclear, which can lead to misunderstanding or ambiguity. Thus, determining the right meaning not only allows for better understanding, but also facilitates the exchange of ideas and information more clearly and accurately. Therefore, meaning plays a very important role in all forms of communication, be it verbal or nonverbal, and ensures that we can understand and respond to each other appropriately.(18)

Satjipto Rahardjo defines law as an institution that aims to bring humans to a just, prosperous, and happiness.(19) In this view, law is positioned as a tool used to achieve human interests. As a "tool", law is used to help achieve a just, prosperous, and happy life for humans. Therefore, in progressive legal theory, law is not considered as the final goal achieved by humans, but only as a means to achieve it.

Criminal acts often create a scenario in which two parties find themselves in significantly conflicting positions. On the one hand, there is the perpetrator of the crime, and on the other hand, there is the victim of the crime, each with their own background and perspective.(20)

These conditions, which are strongly influenced by their role in the crime, contribute to the complexity of conflict resolution and the search for justice. Perpetrators of crimes, with their own backgrounds and motivations, often seek to avoid punishment or seek forgiveness, while victims of crimes tend to seek recognition of their suffering and press for compensation or justice.(21) However, behind these conflict dynamics, there is potential for resolution and healing. This is where the concept of restorative justice comes into play. Restorative justice offers an approach that is centered on both victims and perpetrators, with the aim of repairing the negative impact of the crime and restoring damaged relationships.

Through dialogue and mediation, victims and perpetrators have the opportunity to interact directly, share their perspectives, and seek a resolution that is satisfactory to both parties.(22) Thus, although the crime may have brought the two parties to opposing positions, it is possible through the restorative process to reach a shared understanding, recognition of the impact of the crime, and steps for recovery and prevention of future crimes.(23)

According to Howard Zehr, a key principle of restorative justice is that "crime is a violation of people and relationships, not simply a violation of the law.(7) It emphasizes that restorative justice focuses on the emotional and social impact of the crime, not just its legal consequences. While Daniel Van Ness, an expert in the field of restorative justice, also emphasizes the importance of participation and the dialogue process in restorative justice. He states, "Restorative Justice gives victims, offenders, and communities the opportunity to talk about the impact and consequences of the crime, and decide how things can be fixed".(24)

In New Zealand, the restorative justice approach has become an integral part of their legal system. New Zealand has a system of "Family Group Conferences" for youth criminal cases, which places the victim, the offender and their family at the center of the resolution process. The rights of the offender are also respected in this process, with a focus on the offender's recovery and reintegration into society.(25) Meanwhile, according to John Braithwaite, a sociologist and criminal policy researcher, restorative processes can help prevent re-offending. He argues, "Through restorative processes, offenders can see the impact of their crimes on victims, and this can encourage them to change their behavior in the future".(26)

In Norway, restorative justice has been integrated into their legal system in a more structured way. This is reflected in various programs and initiatives that focus on restorative principles.(27) For example, in Norway, the Mediation and Reintegration Service is responsible for providing victim-offender mediation services for all types of crimes and conflicts, regardless of the age of the offender. The goal is to provide victims and offenders with the opportunity to meet in a safe and structured environment, where they can discuss the impact of the crime and ways to improve it. Norway also has a reintegration program that aims to help offenders return to society after serving their sentences.(28)

Meanwhile, in Sweden, restorative justice is realized through various initiatives, including mediation and reintegration programs. Victim-offender mediation can be used as an alternative or addition to traditional legal processes, and focuses on facilitating dialogue between victims and offenders. In addition, Sweden also has programs aimed at helping offenders reintegrate into society and preventing recidivism.(29)

The implementation of restorative justice in these countries reflects the recognition that the consequences of criminal acts go beyond legal and material losses, and that there is a need to reconcile victims, offenders and the wider community. This process places repair and

restoration at the heart of the legal system, respecting and defending the rights of victims and offenders in this process.(30)

The law must be based on the principle of benefit and the value of justice. Good law must also be easy to understand and known by everyone, consistent in its implementation, simple, and easy to enforce consistently.(31) Law determines the framework of legal relations between individuals, communities, institutions, and even countries. These legal relations are governed by rights and obligations recognized by law. Every legal relationship created by law always includes two aspects, namely rights and obligations.(32) Both are inseparable and there is no right that is not accompanied by an obligation, and vice versa, every obligation maintains a certain right. This is based on the basic principle that every element has its partner. Rights, in this context, refer to the power or authority granted by law, or an interest protected by law, be it a personal interest or a public interest.(33)

Alternative definitions consider rights as a power assigned by objective law to a legal subject. Other definitions also refer to rights as a legitimate claim that requires others to act and behave in a certain way.(34) The power assigned by objective law to a legal subject has direct implications for the legal subject himself, allowing him to do anything with something that is his right, as long as it does not conflict with existing legal regulations, public order, or prevailing social norms.(35)

It is important to note that rights and obligations are two sides of the same coin in law. They are interrelated and interact in every legal situation. For example, the right to private property also carries with it an obligation not to use that property in a way that is harmful to others or unlawful. In the context of restorative justice, this concept becomes particularly important. For example, offenders have the right to be heard and understood, but they also have an obligation to acknowledge the impact of their crime and, where possible, make efforts to repair the harm they have caused. This is a fundamental principle of restorative justice, which recognizes that every individual is part of a community and that their actions have consequences for others in that community.

Maijers states that throughout history, no other concept has been more central to civil law than rights. His argument is very relevant because rights are something inherent in humans, both in physical and existential aspects. Maijers even shows that the relevance of rights is not limited to civil law, but covers all areas of law. Law is basically created to uphold rights.(36) It is important to understand that rights are fundamental to the existence and function of law. Without the recognition and protection of rights, the law cannot function effectively or fairly. This applies to a wide range of rights, including civil and political rights, economic, social and cultural rights, and environmental rights.(37)

Rights can be viewed from several perspectives: first, in terms of the existence of the rights themselves; second, from the way these rights interact within the structure of the state; and third, from the way they are interwoven into the dynamics of society. Taking this view and relating it to the rights of suspects in the restorative process, we can see several important points.(38) From the perspective of the existence of rights themselves, suspects have a fundamental right to be treated fairly and by applicable law, regardless of their status as suspects. This includes the right to a fair legal process, the right to be heard, and the right to legal representation. In the context of the state, suspects are protected by the constitution and national law. The state has an obligation to ensure that the rights of suspects are respected and protected throughout the legal process, including in the restorative process.(39)

Finally, in the context of society, the concept of restorative justice encourages the understanding that suspects are not isolated actors, but part of the wider society. It recognizes that the actions of the accused may have been influenced by a number of social and environmental factors, and that restorative solutions can help to repair damaged relationships and restore balance in society. The variety of definitions of restorative justice put forward by experts, according to Miers, is due to the many variations in models and forms that have developed in its application. This has increased the terminology used to describe the restorative justice movement, including: communitarian justice, positive justice, relational justice, reparative justice, and community justice.(40)

Thus, in restorative resolution, the accused is given the opportunity to take responsibility for their actions and attempt to repair the impact of their actions. Through this process, their rights as individuals are respected and maintained, while they are also given the opportunity to contribute positively to society and the healing process.

A deep understanding of the concept of rights is essential. Restorative Justice aims to repair the impact of criminal acts by recognizing and repairing the damage that has been done to the rights of individuals and communities. In this process, the victim's right to justice and restoration is upheld, while the perpetrator's right to be heard and understood is also respected. Therefore, rights become a key concept in the restorative justice framework, serving as the foundation for the process and its goals.

A crime from the perspective of Restorative Justice is a violation of human beings and human relationships. Restorative justice can be implemented through: Mediation between victims and offenders; Family group discussions; community services that are restorative for both victims and offenders.(41) In addition, the concept of rights in restorative justice also includes community rights. Communities have the right to live in a safe and harmonious environment, and crime often undermines this right by creating fear, insecurity, and instability. Therefore, in the practice of restorative justice, communities are also involved in the process of conflict resolution and recovery, because they have the right to participate in finding solutions and repairing the damage that has occurred. In practice, restorative justice respects and upholds all of these rights through a participatory and inclusive process. Through dialogue and negotiation, victims, perpetrators, and communities are given the opportunity to voice their views, understand the impact of the crime, and work together to find the most effective way to repair the damage and prevent future crimes from happening. Although it is a modern concept in the criminal justice system, justice systems around the world, including in Indonesia.(42)

However, the implementation of restorative justice must also ensure that these rights do not conflict with each other. For example, the perpetrator's right to be treated fairly and humanely should not be at the expense of the victim's right to justice and reparation. Therefore, there needs to be a careful balance between the rights of the various parties in the restorative justice process. This requires a deep understanding of the concept of rights and how they interact in the context of conflict and reparation.

One thing that must be emphasized is that restorative justice has important implications for the determination of suspect status in criminal law. In traditional legal systems, the process of determining suspects is often unidirectional and top-down, with legal authorities making decisions based on existing evidence and law. However, in restorative justice, this process becomes more inclusive and participatory.

Initially, perpetrators of crimes are identified as "suspects" based on existing evidence and legal procedures. However, in the restorative justice process, their identity is not only defined by their criminal acts, but also by their role in the recovery process and their desire to change their behavior in the future. In other words, restorative justice views the suspect as an individual who has the capacity to change and contribute positively to society, and not just as a perpetrator of a crime. In addition, the determination of suspect status in the context of restorative justice also includes consideration of the suspect's rights. Even though they have committed a crime, suspects still have fundamental rights that must be respected and protected, including the right to receive fair and humane treatment, the right to speak and be heard, and the right to have the opportunity to correct their mistakes. Overall, restorative justice has significant consequences for the determination of suspects, by expanding the scope and depth of this process to include aspects such as restoration, change, and fundamental rights. This creates a more holistic and humane approach to criminal justice, which can ultimately contribute to long-term goals such as crime prevention and community restoration.

Applying the concept of restorative justice also opens up the possibility that individuals who commit unlawful acts do not always need to be designated as "suspects" in the traditional sense. In this context, the status of "suspect" may not fully capture the essence of the restorative justice approach, which emphasizes healing, reconciliation, and repair of relationships rather than punishment and stigmatization.

In some cases, restorative justice may offer a more constructive and humane alternative to traditional legal processes. For example, offenders may more appropriately be called "participants" in the restorative process, signifying their active role in engaging with victims, listening to and understanding the impact of their actions, and working to repair the harm they have caused.

This does not mean that offenders can escape the legal consequences of their actions. In fact, restorative justice may require them to take concrete steps to repair the harm and prevent reoffending, which may be more emotionally and morally demanding than traditional punishment. However, by encouraging offenders to take responsibility for their actions and work to repair the damage, restorative justice can help them learn from their mistakes, gain a deeper understanding of the impact of their actions, and ultimately help them to change and contribute positively to society.

Measuring the proportionality of investigators as mediators in realizing restorative justice

Mediation is an alternative to dispute resolution outside the court environment. The goal is to end the conflict between the two parties with the help of a neutral and impartial third party. The mediation process seeks to achieve a lasting and sustainable peaceful resolution, because both parties are placed in the same position and there are no winners or losers (win-win solution).(43) During mediation, the parties involved in the dispute have an active role and have full control over decision-making. A mediator does not have the authority to make decisions, but plays a role in assisting the parties in carrying out the mediation process to reach a peaceful agreement.(44)

The benefits of conflict resolution through mediation are very obvious, because both parties can reach a fair and beneficial agreement for all parties. Even if mediation fails and the parties do not reach an agreement, the process still provides benefits. The availability of the parties to meet and discuss in the context of mediation has at least helped to identify the

source of the dispute and narrow the differences between them. This shows a willingness to resolve the dispute, even though an agreement format that is acceptable to all parties has not been found.

Setyo Utomo emphasized that restorative justice has different characteristics, where criminal acts are considered as manifestations of social behavior and not just as violations of criminal law.⁽⁴⁵⁾ Crime is seen as an act that endangers individuals and damages social bonds. This is in contrast to criminal law which views crime as a problem that is within the jurisdiction of the state. According to criminal law, only the state has the authority to impose punishment, although in reality indigenous communities can impose their own sanctions.⁽⁴¹⁾

Law enforcement is an important component of the legal system, functioning as a rational tool to deal with crime and realize an effective sense of justice. To deal with crime, various instruments, both criminal and non-criminal, can be used in an integrated manner. If criminal law is used to deal with crime, this indicates the application of criminal law policy, namely the process of determining the most appropriate criminal law for current and future conditions and situations.⁽⁴⁶⁾

According to Soerjono Soekanto, law enforcement is not only about implementing rules or laws, although it is often considered that way. Sometimes, law enforcement is interpreted as the implementation of court decisions. However, this narrow view has shortcomings, because implementing laws or court decisions can potentially damage harmony and tranquility in social life.⁽⁴⁷⁾

In the context of restorative justice, Soerjono Soekanto's view is very relevant. Restorative justice focuses on restoration and peace, not just on law enforcement in the narrow sense of enforcing rules or court decisions. In the concept of restorative justice, which is an approach to resolving conflict through peace, emphasizing the restoration of relationships and empowering communities, emphasizing the role of investigators as mediators to help realize restorative justice.

Investigators who prioritize the restorative justice approach strive to achieve peace and harmony in society, not just technically implementing the law. They involve all parties affected by the crime - victims, perpetrators, and the community - in the process of finding a fair and satisfactory solution, which will help restore losses and repair relationships damaged by crime.⁽⁴⁸⁾

This concept emphasizes the importance of understanding and addressing the root causes of conflict and crime, not just responding to the consequences through punishment or sanctions. This also means considering the impact and consequences of law enforcement actions on peace and harmony in society. For example, in some cases, implementing harsh or retributive punishments can damage relationships in society and lead to more conflict or crime.

Therefore, the proportionality of investigators as mediators in implementing restorative justice is very important. Investigators must balance their duty to uphold the law with their commitment to restoring harmony and peace in society. This means that they need to choose the most appropriate and effective approach in the specific context and circumstances of each case, whether through criminal law, mediation, or a combination of the two.

In the context of restorative justice, the role of investigators can change to be more inclusive and mediation-oriented. Investigators as mediators aim to facilitate dialogue

between victims and perpetrators, help them reach agreements on the best way to repair the harm and restore the relationship, and ensure that these agreements are respected and implemented. However, it must be emphasized that although the role of investigators can involve mediation and restorative justice, this does not reduce their obligation to comply with the law and exercise their authority as investigators as stipulated in the Criminal Procedure Code and other regulations. Proportionality here means that investigators must balance their roles as law enforcers and mediators, ensuring that justice, the rights of victims, and the rights of perpetrators are always respected.

In addition, in the application of restorative justice, it should be noted that this approach is not always appropriate or possible in all cases. For example, in cases of domestic violence or sexual crimes, a restorative approach may not always be appropriate or safe for victims. Therefore, investigators must always consider the specific context and circumstances of each case and choose the most appropriate and effective approach. There are several factors that need to be considered in applying the principles of restorative justice and mediation in law enforcement:

1. **Training and Competence:** Investigators acting as mediators must have the appropriate training and competence. Mediation and restorative justice require communication and negotiation skills, a deep understanding of the dynamics of crime and conflict, and the ability to help the parties reach satisfactory and just solutions.
2. **Confidentiality:** The principle of confidentiality is essential in mediation. All parties must feel safe to speak honestly and openly, and information shared in the mediation process must be protected.
3. **Volunteering:** Participation in mediation must be voluntary. Both the victim and the perpetrator must be willing to participate in the process and must not feel forced or pressured to do so.
4. **Security and Protection:** The safety and protection of victims must always be a top priority. In some cases, such as domestic violence or sexual crimes, a restorative approach may not be appropriate or safe. Investigators must always consider the potential risks and consequences of mediation and safeguard the safety and well-being of victims.
5. **Justice and Restoration:** The main objective of mediation and restorative justice is to restore harm and achieve justice. Investigators as mediators must ensure that the solutions found take into account the rights and needs of victims, allow perpetrators to be held accountable for their actions, and contribute to recovery and peace in the community. In its application, existing legal regulations are still the main reference in carrying out the duties and authorities of investigators. However, restorative justice can be an alternative approach in resolving cases, especially those involving interpersonal or community conflicts, where recovery and reconciliation between parties are the main objectives. In addition to existing regulations and principles, there are legal principles that strengthen the position of investigators as mediators in carrying out mediation between victims, perpetrators and families, the relevant legal principles are:
 - 1) **Principle of Participation:** This principle emphasizes the importance of involving all parties in the restorative justice process. Victims, perpetrators, and communities must have the opportunity to speak, listen, and contribute to the process. This active participation helps ensure that all voices are heard and that the solutions formulated take into account the needs and interests of all parties.

- 2) Principle of Reparation: This principle shows that the main goal of restorative justice is to repair the damage caused by the crime. This includes the restoration of material losses, but also the restoration of relationships and trust. To achieve this, victims and perpetrators must work together to formulate a repair plan.
- 3) Principle of Reintegration: This principle emphasizes the importance of ensuring that offenders can reintegrate into the community after undergoing the restorative justice process. To make this possible, offenders must acknowledge their wrongdoing and seek to repair the negative impact of their actions. The community must also be willing to accept offenders back and support them in this healing process.
- 4) Principle of Prevention: This principle emphasizes that restorative justice also aims to prevent future crimes. Through dialogue and deepened understanding, all parties can learn from this experience and develop strategies to prevent similar conflicts in the future.

The full involvement and participation of all parties in the restorative justice process is key to achieving this goal. The investigator as mediator has a vital role in

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