



# *Restorative Justice in Indonesian Law Enforcement: Due Process Model Perspective Analysis*

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**Abstract** - Restorative justice (RJ) carries the idea of restoration to its original state and involvement of victims in the process in resolving criminal cases. However, in Indonesia, law enforcement institutions: the Police, Prosecutor and Supreme Court give a narrow meaning to RJ, which makes it seem as RJ is only interpreted as terminating cases. This article examines the regulation and application of RJ in Indonesia from the perspective of due process of law principle. The research method is qualitative with a normative legal approach. The research result shows that a narrow interpretation of the meaning of RJ has important implications for the implementation of the principles of due process of law in criminal procedural law, such as the PoI (PoI) and the principle of NSI (NSI). Equating RJ with discontinuing a case creates a potential violation of the two principles: PoI and NSI, which should protect suspects or defendants. This narrowed understanding is also not in line with the principle of voluntarism in RJ. Although the defendant may declare that he is willing to stop the case, this is more due to a desire to end the legal process, rather than true voluntarism. Therefore, it is important to return the essence of RJ to its true principle, namely restoration to its original state. The application of RJ must be able to balance two conflicting interests, namely the interests of the victim and the interests of the perpetrator. This is all done so that the implementation of RJ in Indonesia is in line with the principle of human rights as the essence of Due Process of Law principle.

**Keywords**- RJ, law enforcement officers, due process model

## I. INTRODUCTION

Restorative justice (RJ) is a paradigm of justice that is often being an idea in reforming criminal law and other social aspects. In the criminal justice system (CJS), RJ is often associated with efforts to repair the damage caused by criminal acts while restoring relationships between victims, perpetrators and society which damaged by criminal acts.

RJ has a noble goal; provide an inclusive justice process and a place for victims to become involved in the CJS. The idea of this restorative application was born because it was thought that criminal procedural law had neglected to protect the rights of crime victims. In the Indonesian context, Mardjono Reksodiputro said that the idea of RJ was born so that victims

have a place and can be involved in resolving criminal cases, so that their rights can be restored.[1]

This article was written to analyze that RJ is constructed by each law enforcement agency seems to mean RJ as just a way to end the cases. In fact, if you look beyond that, RJ is a paradigm of justice which is often be an idea in reforming criminal law and other social aspects. This article will try to examine narrow RJ arrangements from the perspective of the DPM in the CJS which contains the principles; presumption of innocence (PoI) and non-self-incrimination (NSI). The DPM principle provides protection to the defendant, but on the other hand, RJ provides protection for the rights of victims. It is a question of how these two principles can meet. [2]

RJ arrangements which are defined as terminating cases can be a dilemma. Although RJ aims to restore the relationship between the perpetrator and the victim, and repair the losses caused by criminal acts, there are questions about whether the principles; [3] PoI and NSI are still being enforced properly. The balance between providing opportunities for victims recovery and protecting the rights of defendants is a challenge that must be overcome in the context of implementing RJ within the framework of the DPM in the CJS in Indonesia. Thus, this article aims to discuss in more depth how these two approaches can go hand in hand without compromising the basic principles of justice and protection of human rights. [4]

RJ which is interpreted as the termination of the case can raise a number of questions about the extent to which this approach is in line with the principle of NSI. The principle of NSI is a legal principle that gives the defendant the right not to give evidence that could harm himself in a criminal case. This principle is very important in the context of the Due Process Model, where the protection of human rights is the main focus. In this case, the principle of NSI serves to protect the defendant from pressure or coercion to provide information that could harm him.

When RJ is defined as the termination of a case, there is the potential question of whether this process allows the defendant to voluntarily and without pressure fulfill the obligations associated with rehabilitation, or whether the defendant may feel compelled to do so. If the defendant feels compelled to provide information that can harm himself in order to reach a peace agreement, this can violate the principle of NSI. Therefore, the application of RJ needs to guarantee that the accused has the right and freedom not to provide information that harms himself, including in the application of RJ by law enforcement in Indonesia.

The application of RJ by law enforcement in Indonesia must be in line with the DPM concept which emphasizes the protection of human rights, protecting the rights of all parties, both victims and perpetrators. This includes the right to redress, the right to follow a fair legal process, and the right to be treated in accordance with applicable legal procedures. By maintaining a balance between the interests of victims and perpetrators, a restorative approach can be an effective tool in creating a just and humane CJS.

The issue, however, is that the regulations established by the Prosecutor's Office, the Supreme Court, and the Police are distinct. The disparity in regulations gives rise to complexities and uncertainties when it comes to the implementation of the RJ principle in Indonesia. The primary distinction lies in the nature of criminal activities that can be resolved utilizing RJ. There are no specific requirements in the Polri Internal Regulations pertaining to criminal offenses that may be resolved through the use of RJ. This implies that RJ has the potential to solve any illicit act in principle. Nevertheless, certain conditions must be met. For an act to be considered criminal, it must not incite societal unrest or alienation, provoke social unrest, divide the nation, harbor radical or separatist undertones, involve offenders with a prior criminal record (recidivism), or be classified as terrorism, national security threat, corruption, or life-threatening. In contrast, the Internal Regulations of the Prosecutor's Office stipulate that a criminal act punishable by a maximum of five years in prison or a fine

is amenable to resolution through the use of RJ. Furthermore, this stands in contrast to the stipulations put forth by the MA, as the letter restricts the implementation of RJ to minor offenses, felonies committed against children or women, and narcotics-related offenses.

## II. FINDINGS AND DISCUSSION

### *A. RJ Arrangements in Indonesia*

In Indonesia, the concept of RJ in criminal law was first adopted in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, there is no legal framework that comprehensively regulates the concept of RJ in the context of adult offenders in the criminal justice system (CJS). The old Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) did not yet provide a place for the concept of RJ. Even in the context of victim protection, the used model is a service model where victims are not involved in the criminal justice process. This results the loss of the victim's right to participate. The approach applied tends to be retributive, focusing only on the criminal acts committed by the perpetrator without fully considering the experiences and impacts experienced by the victim. [5]

This is then exacerbated by the lack of options for resolving cases at the pre-adjudication stage in the Criminal Procedure Code. These limitations result in a large number of cases entering the courts, increasing the workload of the justice system and ultimately causing an increase in the number of prisoners. The further impact of this is overcrowding in correctional institutions, which often results in inhumane conditions and human rights issues.

The government then raised the issue of RJ as a solution to overcome problems in the Indonesian criminal justice system. This is reflected in the 2020-2024 RPJMN, especially in Chapter VIII which aims to strengthen political stability, defense law, security, as well as increasing the transformation of public services. Researchers suspect that this program encourages law enforcement agencies to develop regulations related to RJ, with the aim of optimizing the function of laws and regulations that support the implementation of RJ.

Law enforcement publishes regulations related to RJ, the Police Department publishes Policy Regulation Number 8 of 2021 on the Handling of Criminal Actions Based on RJ, the Prosecutor's Office publishes Prosecutor Regulation Number 15 of 2020 on Termination of Prosecution Based on RJ, and the Supreme Court publishes the Director's Decision. General of the General Judicial Body No. 1691/DJU/SK/PS.OO/12/2020 about RJ Maintenance in general justice. [7]

But the problem is that the rules made by the Police, the Prosecutor's Office, and the Supreme Court are different from each other. This difference in regulations creates challenges and ambiguities in the application of the RJ concept in Indonesia. The most striking difference can be seen in the type of crime that can be solved with RJ. Polri Internal Regulations do not contain specific requirements regarding criminal acts that can be solved by using RJ. This means that in principle all criminal acts can be solved with RJ. However, there are exceptions, such as the criminal act must not cause anxiety or rejection from the community, cause social conflict, not have the potential to divide the nation, not contain elements of radicalism and separatism, not involve perpetrators who have a previous criminal record (recidivism), and not included in the category of terrorism, harming national security, corruption, or threatening people's lives. Whereas the Internal Regulations of the Prosecutor's Office regulate the conditions for a criminal act that can be solved by using RJ is a criminal act that is punishable by a fine or imprisonment for a maximum of 5 years. This is also different from the provisions made by the MA, where the letter targets the application of RJ

only to minor crimes, crimes against children, crimes against women, and narcotics crimes. [8]

Although there are significant differences in the regulations issued by various law enforcement agencies in Indonesia, researcher highlights fundamental similarity, which perceive that the success of RJ must result in the termination of the case. In the Police Regulations and Prosecutor's Regulations, the expected result is the issuance of an Order to Stop Investigation (SP3) and a Decree to Stop Prosecution (SKP2) which marks the end of the legal process in the pre-adjudication stage. A similar thing happens in court, where the peace agreement reached influences the judge's considerations in the final decision. On the other hand, if peace fails, the case investigation process will be continued.

This shows that RJ seems to be interpreted only as ending the case. The implementation of RJ should only be one of the considerations for law enforcers in deciding whether to stop the case or not. On the other hand, failure to implement RJ does not mean that the case must proceed to court and the perpetrator must be punished. In fact, there are various options that can be considered, such as the application of lighter legal provisions, or other actions that are in line with the aim of restoring the original situation.

### *B. RJ Arrangements: A Due Process Model Perspective*

In 1968, Herbert Packer discussed the limits related to the application of criminal sanctions in the criminal justice system. The main point underlined is the existence of two objectives operating simultaneously, but often in conflict, within the framework of the criminal justice system. Packer identified two models that hold different values: the Due Process Model (DDM) and the Crime Control Model (CCM). The DPM emphasizes the importance of compliance with legal rules and law enforcement in accordance with established procedures. On the other hand, the CCM focuses on crime control efforts. In an effort to achieve this goal, the CCM emphasizes the importance of efficiency. [9]

The CJS aims to balance efficient crime control with the protection of individual rights. In this section the focus studied is the DPM which places greater emphasis on efforts to protect individual rights. This model is also usually associated with the adage that it is better to free a thousand innocent people than to punish one innocent person. The DPM places greater emphasis on efforts to protect defendants in the criminal justice system, which also emphasizes limiting the power of law enforcement. The DPM concept adheres to several important principles in the administration of the criminal justice system, including the principle of presumption of innocence, the principle of NSI and the right to be accompanied by legal counsel.

The principle of PoI is an important principle that states that a person should be considered innocent until a court decision has permanent legal force. In the context of the Due Process Model, the PoI is a key element that emphasizes the protection of individual rights and justice in the judicial process. This principle at least gives special features to the criminal justice system. First, the importance of equality for the disputing parties (equality). [10] Second, this principle guarantees that a person cannot be punished or subjected to criminal sanctions before being proven guilty legally and convincingly. Third, the principle of PoI places the burden of proof on the plaintiff, not the defendant. [11]

The principle of NSI is a legal principle that gives the defendant the right not to give evidence that implicates him in a criminal case. In the context of the Due Process Model, the principle of NSI guarantees that the accused cannot be forced to provide information that is detrimental to himself. This is embraced in Indonesian criminal law, especially in the Criminal Procedure Code (KUHAP) which does not recognize the term confession, but instead uses the term Accused's Evidence as evidence. This principle recognizes that individuals have the right to protect themselves from confessions that can harm them in the

criminal justice process, and this is an effort to ensure that the accused is treated fairly in accordance with human rights standards.

In the context of the application of RJ in Indonesia which is mostly constructed as a final case, have the values contained in the DPM above been fulfilled? This is important because researchers see that there are two interests that must be combined in looking at RJ from the DPM's point of view. On the one hand RJ looks more at the victim, and on the other hand DPM looks more at the perpetrator.

A narrow understanding of the concept of RJ, which only means terminating cases, can give rise to human rights issues. It needs to be underlined that one of the basic principles of RJ is voluntarism. The RJ process can only be carried out if there is sufficient evidence to charge the perpetrator and if the perpetrator and victim voluntarily agree to involve themselves in the process without coercion. Both also have the right to stop the restorative process at any time. The agreement formed must be based on voluntariness and contain reasonable and balanced obligations for all parties involved. If the success of RJ is assessed by the case being stopped, perpetrators may state that they agree to the restorative process more for the reason of ending a protracted legal process rather than because they actually voluntarily agree. This condition raises questions about the extent to which the principle of voluntarism is adhered to in the implementation of RJ in Indonesia. [12]

From the perspective of the principle of presumption of innocence, it is important to ensure that the implementation of RJ provides equality between protection for victims and protection for perpetrators. Therefore, facilitators who act as peacemakers must not have personal interests related to the case, either directly or indirectly, towards the victim or suspect. This is important to maintain the independence and neutrality of the peace process, so that all parties feel that they can speak freely and feel respected in efforts to achieve peace. On the other hand, facilitators who are not neutral have the potential to make decisions that are not in line with the principle of equality. [13]

It is important to recognize that the implementation of a RJ approach in the CJS must pay attention to the basic principle that "a person cannot be punished before there is a court decision that has permanent legal force". The issue that arises is whether the fulfillment of a peace agreement which includes the fulfillment of certain obligations can be considered a form of punishment against the defendant. Here, it is necessary to understand that RJ has the aim of restoring to its original state, and the defendant usually consciously and voluntarily agrees to a peace agreement and obligations must be fulfilled. Therefore, fulfilling a peace agreement in a restorative context is not interpreted as a form of punishment, but rather as an effort to return the situation to its original state.

However, you need to be careful if RJ is always directed at terminating the case without providing other options. This may violate the principle of voluntariness, as the defendant may feel forced to accept an agreement in order to avoid court proceedings. Therefore, it is important to consider flexibility in restorative implementation and allow defendants to have wider options, including settlements that do not always have to result in dismissal of the case. In this way, we can maintain volunteerism and respect human rights principles in the implementation of restorative measures in Indonesia.

Furthermore, the definition of RJ which is defined as terminating a case has the potential to be inconsistent with the principle that the burden of proof is on the prosecution, considering that the defendant voluntarily admits his guilt without the need for evidence to be presented by the public prosecutor in court. This can raise issues regarding the balance between human rights principles which emphasize that a person should not be considered guilty and the recovery goals to be achieved through a restorative approach. Thus, it is important to ensure that the concept of RJ continues to take into account fundamental

principles in the criminal law system to ensure justice and compliance with human rights. [14]

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### III. CONCLUSION

RJ is an approach that aims to restore damage and reach solutions through the participation of victims, perpetrators and the community. The focus is on reconciliation and restoration to the original state. RJ must be positioned as a criminal paradigm that animates all decisions taken by law enforcement officers, not merely related to terminating criminal cases. Because, if restorative is only positioned as a case termination, its implementation will potentially be inconsistent with the concept of the DPM in the Criminal Justice System, which highly upholds the principle of PoI and the principle of NSI. The application of RJ in the CJS in Indonesia must be able to balance the interests of victims and perpetrators who often conflict with each other. The aim of this approach is to achieve restoration to its original state, while fulfilling the human rights principles that are the essence of the DPM principles. Through this approach, it is important to give equal attention to the rights of victims to obtain justice and recovery, as well as the rights of perpetrators of crimes to be treated fairly and in accordance with applicable legal procedures. By maintaining this balance, RJ can be an effective tool for creating a CJS that is fair and respects human rights for all parties involved.

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