

# Legal Politics in Restorative Justice

Indra Satria Pratama

Universitas Dirgantara Marsekal Suryadarma, Indonesia. e-mail: [indrasatria17@gmail.com](mailto:indrasatria17@gmail.com)

Article History	Submitted	Revised	Accepted
	2023-07-29	2023-09-21	2023-09-25

## Abstract

This research aims to examine legal politics in restorative justice in the criminal justice system. This research is essential. After all, many obstacles are encountered because there is still no sound and comprehensive understanding of the limitations or lack of human resource capacity. This research is normative juridical normative research, with the approach tending more toward statutory and conceptual regulations. The results of this research show that implementing legal politics means holding elections to achieve the best results in criminal legislation in the sense of fulfilling the requirements of justice and being effective. The law must have a conscience. The law is not a tool to win competition but to achieve peace. He explained that the Indonesian legal system is gradually sending people to prison. The law should peacefully resolve matters that humanely, logically, and feel do not need to be brought to court or do not need to be punished severely; the law must also pay attention to the fate of the victim. For this reason, the role of authorized state bodies is needed to express justice through restorative justice.

**Keywords:** Legal politics, justice, restorative justice



© The Author(s) 2023. Published by CV. Strata Persada Academia.

This is an Open Access article distributed under the terms of the [Creative Commons Attribution 4.0 International \(CC BY 4.0\)](https://creativecommons.org/licenses/by/4.0/)

## Introduction

Changes to legislative regulations in Indonesia must create a more stable environment so that every citizen can enjoy an atmosphere and climate of order and legal certainty with a core of justice. So, it is necessary to continue taking steps to formulate laws and regulations concerning the rights and obligations of citizens to implement Pancasila and the 1945 Constitution of the Republic of Indonesia. It is hoped that all Indonesian citizens must always be aware of and obey the law. On the other hand, it is the state's obligation to uphold and guarantee legal certainty.<sup>1</sup> Policies to make criminal law good and effective, good and valuable, or criminal law political policy (penal policy) are part of criminal law policy (criminal policy); as Marc Ancel said, "Criminal law policy" is a science as well as art which ultimately has the practical aim of enabling positive legal regulations to be formulated better and to provide guidance not only to legislators, but also to the courts that apply the law, but also to the courts that apply the law and also to the administrators' state or executor of court decisions."<sup>2</sup>

Legal politics is "legal policy or an official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals."<sup>3</sup> Thus, legal politics is a choice about laws that will be enforced and regulations that will be revoked or not implemented, all of which are intended to achieve state goals as stated in the Preamble to the 1945 Constitution.<sup>4</sup> Criminal law reform must include reform of criminal law material (substantive), criminal implementation law, and formal criminal law (criminal procedural law). One form of criminal law politics is through the concept of restorative justice as an alternative to solving problems through non-litigation. Through a retributive approach (retribution), it will shift to a restorative approach (recovery). Recently, it seems the court is the best place to resolve legal problems (conflicts) and seek justice. So, every indication of a criminal act, without considering the escalation of the act, will continue to be rolled into law enforcement, which will only be the jurisdiction of law enforcers. Active participation from the community doesn't seem important anymore, and everything boils down to court decisions in the form of punishment without looking at its essence. Historically, a restorative justice-based approach to resolving criminal cases did not use the criminal justice system as an emergency measure in the 1960s. This restorative justice approach focuses on the direct participation of perpetrators, victims, and the community in resolving criminal cases.

Indonesian law enforcement, which is considered to have violated general justice and is considered far from Pancasila values, through the concept of restorative justice in resolving disputes or cases is seen as a kind of resolution that fulfills Pancasila values, especially regarding the fourth principle of Pancasila values (deliberation). Looking at the background above, the role and existence of legal politics in developing national law cannot be separated, so the author is interested in raising the title "Legal Politics in Restorative Justice." This guideline applies and must be followed by courts throughout Indonesia. This guideline resolves cases through restorative justice in minor crimes, women in conflict with the law, children's issues, and narcotics cases. Challenges for law enforcement officials in implementing restorative justice in the criminal justice system still face obstacles because there is still no sound and comprehensive

---

<sup>1</sup> Abdul Manan, *Aspek-Aspek Pengubah Hukum* (Jakarta: Kencana Prenada Media Group, 2009), 5.

<sup>2</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1996), 4.

<sup>3</sup> Moh Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Raja Grafindo Persada, 2012), 1.

<sup>4</sup> Mahfud MD, *Politik Hukum Di Indonesia*, 2012.

understanding of limitations or lack of human resource capacity. Based on the description above, in this research, the author is interested in discussing further "Legal politics in restorative justice."

## METHOD

The research method used is normative juridical by examining library materials. The data used is secondary data.<sup>5</sup> The data used is secondary data. The approach in this research tends to be more legal and conceptual. The specifications of this research use descriptive analysis. The characteristic of descriptive analysis is solving the problem being studied by connecting it to legal theories and the practice of implementing positive law regarding the issue being researched, and the data collected is first compiled, explained, and then analyzed.<sup>6</sup> Considering that the approach method in this research is normative juridical, the data used is secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials. In order to obtain this data, it was carried out through the literature study method.

## RESULT AND DISCUSSION

The Indonesian state is a state of law (*rechtsstaat*); confirmation of this can be seen in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to Daniel S. Lev, the juridical-constitutional confirmation by the founding fathers as above is very appropriate because sociologically, various groups of Indonesian society also support or agree with the rule of law for various reasons.<sup>7</sup> The national development planning system is a unified development procedure for producing long-term, medium-term, and annual development plans implemented by state and community administrators at the central and regional levels.<sup>8</sup>

In another sense, legal politics is "legal policy or an official line (policy) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve state goals." Thus, legal politics is a choice about laws that will be enforced and laws that will be revoked or not implemented, all of which are intended to achieve state goals as stated in the Preamble to the 1945 Constitution.

M. Mahfud MD believes that legal politics includes: First, legal development, which has at its core the creation and updating of legal materials to suit needs. Second, implementation of existing legal provisions, including confirmation of institutional functions and guidance of law enforcers.<sup>9</sup>

In the practice of criminal law enforcement, we often hear the term Restorative Justice, which in the Indonesian translation is called restorative justice. Restorative justice or Restorative justice is a restoration of relationships and redemption of mistakes that the perpetrator of a criminal act (his family) wishes to carry out against the victim of the criminal act (his family) (peace efforts) outside of court with the aim and purpose of eliminating legal problems that arise as a result of the criminal act. This can be adequately resolved by reaching agreement and agreement between the parties. The justice that has been taking place in the criminal justice system in Indonesia is

<sup>5</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2004), 13.

<sup>6</sup> Surachmad Winarno, *Dasar Dan Teknik Research Pengantar Metodologi Ilmiah* (Bandung: CV Tarsito, 2004), 135.

<sup>7</sup> Daniel S. Lev, *Hukum Dan Politik Di Indonesia: Keseimbangan Dan Perubahan* (Jakarta: LP3ES, 1990), 386.

<sup>8</sup> Pasal 1 Ayat (3) Undang-Undang Nomor 25 Tahun 2004 Tentang Sistem Perencanaan Pembangunan Nasional.

<sup>9</sup> Moh Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: LP3ES, 2001), 9.

retributive justice. Liebmann simply defines Restorative justice as a legal system that aims to restore the welfare of victims, perpetrators, and communities damaged by crime and to prevent further violations or criminal acts.<sup>10</sup>

Restorative justice also emphasizes human rights and the need to restore the impact of social injustice. In simple ways, perpetrators receive justice rather than formal (legal) justice, where victims do not get any justice. Then restorative justice also seeks to restore the victim's security, personal respect, dignity, and, more importantly, a sense of control.<sup>11</sup>

The position of restorative justice in Indonesia is clearly regulated in various laws and regulations, for example, the 1945 Constitution of the Republic of Indonesia; Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 as amended by Law Number 5 of 2004 as most recently amended by Law Number 3 of 2009 concerning the Supreme Court. Thus, considering that the Supreme Court (MA) is a state institution that exercises judicial power and is the pinnacle of the judiciary, it is appropriate for the Supreme Court (MA) to adopt or embrace and apply the approach or concept of restorative justice. Apart from that, the Judicial Power Law, namely Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, in Article 5, specifically states that judges are obliged to explore the values that live in society (the living law or local wisdom). Thus, in essence, judges must or are obliged to apply the approach or concept of restorative justice in resolving cases because the approach or concept of restorative justice is in accordance with the spirit of the Indonesian nation, namely Pancasila, in accordance with customary legal values and is also in accordance with religious values.

Based on Attorney General Regulation No. 15 of 2020, the requirements for carrying out restorative justice are:

1. This is a criminal offense that has been committed for the first time
2. Losses under IDR 2.5 million
3. There is an agreement between the perpetrator and the victim
4. Criminal acts are only punishable by a fine or by imprisonment for not more than five years
5. The suspect returns the items obtained from the crime to the victim
6. The suspect compensated the victim's losses
7. The suspect shall reimburse the costs incurred as a result of the criminal act and repair the damage caused as a result of the criminal act

Settlement of cases using restorative justice is excluded for criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly governments and their representatives, public order, and decency.

In this era of modernization, many crimes (deliks) occur among Indonesian people who end up in the Court (litigation), where people tend to use the Court as an effort to resolve a case which, according to them conceptually and theoretically, will create justice. Still, In reality, or at the law-in-action level, this is actually not easy to achieve because its nature tends to be a win-lose solution. With a fact like this, resolving a case through judicial channels, which is only a win-lose

---

<sup>10</sup> Marian Liebmann, *Restorative Justice, How It Work* (London and Philadelphia: Jessica Kingsley Publishers, 2007), 25.

<sup>11</sup> septa chandra, "POLITIK HUKUM PENGADOPSIAN RESTORATIVE JUSTICE DALAM PEMBAHARUAN HUKUM PIDANA," *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 2 (August 13, 2014): 273, <https://doi.org/10.25041/FIATJUSTISIA.V8NO2.301>.

solution in general, often creates a feeling of "unpleasantness." or disappointment," holding a grudge, feeling dissatisfied, feeling unfair, even worse, intending to take revenge.

Satjipto Raharjo stated that resolving cases through the judicial system culminates in a court verdict and is law enforcement on a slow track. This is because law enforcement takes a long distance, through various levels, starting from the Police, Prosecutor's Office, District Court, High Court, and even to the Supreme Court, which ultimately impacts the accumulation of several cases in the Court.<sup>12</sup>

The characteristics of the national legal system will depend on Indonesia's national legal politics. In other words, Indonesia's national legal politics will determine the characteristics of the Indonesian national legal system. So, the creation of a national legal system that has the Pancasila philosophy and is based on the 1945 Constitution of the Unitary State of the Republic of Indonesia depends on national legal politics.<sup>13</sup> Regarding the Legal Politics of Criminal Law Reform in the upcoming National Criminal Law, there will be a concept known as Restorative Justice

The concept of Restorative Justice is relatively new in the process of enforcing criminal law and holding perpetrators accountable. Philosophically, this concept offers a form of resolving various legal cases that occur outside the existing criminal justice process so that society does not only depend on current procedures in accordance with the reflection of Pancasila values, namely "fair and civilized deliberation" in order to achieve social justice for all people or citizens in the Republic of Indonesia.

A British Criminology expert, Tony F. Marshall, in his writing "Restorative Justice an Overview," says: "Restorative Justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future" (Restorative Justice is a process where the parties with an interest in a particular violation meet together to solve problems together on how to resolve the consequences of the violation for the benefit of the future)"<sup>14</sup>

The term political law refers to the concretization of law related to state policy in forming legal regulations or laws, which include guidelines for developing laws or the formulative stage, policies for implementing statutes or the applicative stage, and policies for implementing laws or the executive stage. According to Mahfud, MD, legal politics embodies the nuances of life with community members. On the other hand, legal politics is also closely related, even almost integrated with the use of power in reality. To govern the state, nation, and people. Legal politics is manifested in all types of state legislation.<sup>15</sup>

Sudarto provides a definition of legal politics as:

1. Efforts to create reasonable regulations according to the circumstances and situations at any given time.

---

<sup>12</sup> Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia*, ed. Karolus Kopang Medan and Frans J. Rengka (Jakarta: Buku Kompas, 2003), 170.

<sup>13</sup> Otong Rosadi and Andi Desmon, *Studi Politik Hukum: Suatu Optik Ilmu Hukum, Edisi II* (Yogyakarta: Thafa media, 2013), 45.

<sup>14</sup> Marlina, *Peradilan Pidana Anak Di Indonesia, Pengembangan Konsep Diversi Dan Restorative Justice* (Bandung: Refika Editama, 2009), 88.

<sup>15</sup> Mahfud MD, *Politik Hukum Di Indonesia*, 2001.



2. Policy from the state through authorized bodies to establish desired regulations which are thought to be used to express what is contained in society and to achieve what is aspired to.

Thus, carrying out legal politics means holding elections to achieve the best results in criminal legislation in the sense of fulfilling the requirements of justice and being effective.

Coordinating Minister for Political, Legal, and Security Affairs, Mahfud MD, said that the law must have a conscience. The law is not a tool to win the competition but to achieve peace. He explained that the Indonesian legal system is gradually sending people to prison. The law should peacefully resolve matters that humanely, logically, and feel do not need to be brought to court or do not need to be punished severely, and the law must also pay attention to the fate of the victim. For this reason, the role of state bodies authorized to express justice through restorative justice is needed, namely the police and the courts of first instance.

In carrying out its duties in criminal law enforcement, the National Police stands between two interests, namely interests that align with social objectives and fulfilling legal objectives, namely the creation of legal certainty. Law in the context of public order requires that law is not only a means of achieving certainty but must pay attention to order in society. The National Police carry out the implementation of legal certainty and order in society. Some of the obstacles include:<sup>16</sup>

- 1) The investigative authority granted by the Criminal Procedure Code is the authority to prove a criminal act and find suspects who must be held accountable before a trial. The Criminal Procedure Code does not give the investigator the authority to stop the case if the criminal elements are met as a result of the investigation.
- 2) In the Criminal Procedure Code, investigators are given the authority to stop an investigation on the grounds that it is not a criminal act, there is insufficient evidence as a criminal act, and for the sake of the law. However, the Criminal Procedure Code does not give investigators the authority to resolve cases outside the court session or to set aside cases for certain considerations.
- 3) The Criminal Procedure Code regulates the withdrawal of reports or complaints only in certain cases, namely those that constitute a complaint offense. So that the investigator is judicial. except for formal offenses, complaints must be forwarded to the Public Prosecutor for cases which, based on investigation, are proven to be criminal acts. Meanwhile, in the development of criminality, the parties prefer to settle cases outside of court, even in cases that are classified as pure offenses/not complaint offenses.

In carrying out the investigation process, the National Police certainly prioritizes formal legal enforcement to hold perpetrators accountable based on the principle of error (*Geen Straf Zonder Schuld*) rather than a solution approach with a restorative justice approach. Based on the Police Law, namely Law Number 2 of 2002, there is a concept outside of formal jurisdiction for the National Police institution in carrying out its duties, including that the National Police has the authority to carry out other actions aimed at creating the maintenance of security and public order as well as internal security.<sup>17</sup>

<sup>16</sup> Agus Andrianto, "Strategi Penerapan Prinsip Restoratif Justice Guna Meningkatkan Pelayanan Prima Dalam Rangka Terwujudnya Kepercayaan Masyarakat," 2012.

<sup>17</sup> In carrying out the duties as in articles 13 and 14 in the field of criminal proceedings, the National Police of the Republic of Indonesia has the authority to (letter l) carry out other responsible actions according to law, which are required in paragraph 2, which do not conflict with the rule of law, are in line with legal

The concept of applying restorative justice in first-instance courts is as follows:

In relation to the enforcement of criminal law, restorative justice is an alternative resolution of criminal cases which was initially a mechanism focused on punishment, becoming a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim, and other related parties, to create an agreement jointly on the resolution of criminal cases that are fair and balanced for both victims and perpetrators by prioritizing restoration to their original condition and restoring patterns of good relations in society.

The aim of Restorative Justice (RJ) The objective of restorative justice in the context of criminal law is to empower victims, perpetrators, families, and communities to repair the consequences of a criminal act that has been committed, using awareness and conviction as a basis for improving social life (the concept of viewing justice as not from one side, but looking at it from various parties, both for the benefit of the victim, perpetrator, and society).

Principle of Restorative Justice (RJ) The basic principle of restorative justice is the restoration of victims who suffer from crime by compensating the victim, peace, the perpetrator carrying out social work, or other agreements. Fair law within the framework of restorative justice is certainly not one-sided, impartial, or arbitrary, and only sides with the truth in accordance with applicable laws and regulations and considers equal rights to compensation and balance in every aspect of life. The perpetrator has the opportunity to be involved in restoring the situation, the community plays a role in preserving peace, and the court plays a role in maintaining public order.

## CONCLUSION

In the end, this research concludes that legal politics leads to the concretization of laws related to state policy in forming legal regulations or laws, which include law formation policies or the formulative stage, law implementation policies or the applicative stage, and law implementation policies. -legislative or executive stage.

Carrying out legal politics means holding elections to achieve the best results in criminal legislation to fulfill the requirements of justice and be effective. Coordinating Minister for Political, Legal, and Security Affairs Mahfud, MD, said that the law must have a conscience. The law is not a tool to win competition but to achieve peace. He explained that the Indonesian legal system is gradually sending people to prison. The law should peacefully resolve matters that humanely, logically, and feel do not need to be brought to court or do not need to be punished severely; the law must also pay attention to the fate of the victim. For this reason, the role of state bodies authorized to express justice through restorative justice is needed, namely the police and the courts of first instance. The position of restorative justice in Indonesia is clearly regulated in various laws and regulations, for example, the 1945 Constitution of the Republic of Indonesia; Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 as amended by Law

---

obligations. Which requires the action to be carried out must be appropriate, reasonable, and include, within the scope of the position, appropriate considerations based on compelling circumstances and respect for human rights. The main investigation task is part of the National Police's duty to serve the community. In Article 14, paragraph 1, letter k, it is explained that in carrying out the main tasks as intended in Article 13 (including enforcing the law), the National Police of the Republic of Indonesia is tasked with providing services to the community in accordance with their interests within the scope of police duties.

Number 5 of 2004 as most recently amended by Law Number 3 of 2009 concerning the Supreme Court.

## REFERENCES

- Abdul Manan. *Aspek-Aspek Pengubah Hukum*. Jakarta: Kencana Prenada Media Group, 2009.
- Andrianto, Agus. "Strategi Penerapan Prinsip Restoratif Justice Guna Meningkatkan Pelayanan Prima Dalam Rangka Terwujudnya Kepercayaan Masyarakat," 2012.
- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti, 1996.
- chandra, septa. "Politik Hukum Pengadopsian Restorative Justice Dalam Pembaharuan Hukum Pidana." *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 2 (August 13, 2014): 255-77. <https://doi.org/10.25041/FIATJUSTISIA.V8NO2.301>.
- Lev, Daniel S. *Hukum Dan Politik Di Indonesia: Keseimbangan Dan Perubahan*. Jakarta: LP3ES, 1990.
- Liebmann, Marian. *Restorative Justice, How It Work*. London and Philadelphia: Jessica Kingsley Publishers, 2007.
- Mahfud MD, Moh. *Politik Hukum Di Indonesia*. Jakarta: LP3ES, 2001.
- — —. *Politik Hukum Di Indonesia*. Jakarta: Raja Grafindo Persada, 2012.
- Marlina. *Peradilan Pidana Anak Di Indonesia, Pengembangan Konsep Diversi Dan Restorative Justice*. Bandung: Refika Editama, 2009.
- Rahardjo, Satjipto. *Sisi-Sisi Lain Dari Hukum Di Indonesia*. Edited by Karolus Kopang Medan and Frans J. Rengka. Jakarta: Buku Kompas, 2003.
- Rosadi, Otong, and Andi Desmon. *Studi Politik Hukum: Suatu Optik Ilmu Hukum, Edisi II*. Yogyakarta: Thafa media, 2013.
- Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers, 2004.
- Winarno, Surachmad. *Dasar Dan Teknik Research Pengantar Metodologi Ilmiah*. Bandung: CV Tarsito, 2004.